

MEXICO

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Mexico be placed on the Priority Watch List in 2025.¹

Executive Summary: Mexico's positive legislative improvements to the Copyright Law in 2020, as part of its obligations under the U.S.–Mexico–Canada Agreement (USMCA), are overshadowed by the past administration of former President López Obrador's failure to implement these commitments in any meaningful way, advance any effort to combat rampant physical and online piracy, provide financial, personnel, or educational resources for existing intellectual property (IP) enforcement agencies, or to provide broad political will to support the creative industries.

Instead, Mexico continues to face a systemic and long-standing lack of adequate application, enforcement, and respect of its current laws, regulations, and judicial bodies, affecting legal certainty and security in the business environment. For example, while IIPA commends the May 2024 decision by the Mexican Supreme Court to uphold the 2020 reforms after three lengthy and economically chilling constitutional challenges, including with respect to technological protection measures (TPMs) and notice and take down, the September 2024 passage of a constitutional amendment to overhaul Mexico's judiciary has only exacerbated longstanding concerns regarding the structure and daily operations of the judicial branch, leading in the short term to increased delays and uncertainty in the handling of ongoing and future copyright cases. The lack of the proper enforcement of existing laws and judicial uncertainty have significantly hampered the growth of Mexico's legitimate online marketplace, and instead, rampant piracy continues to grow undeterred. Criminal enforcement against pirates remains uncoordinated and generally weak, slowed by procedural and structural deficiencies, low prioritization, and a lack of adequate resources. It is therefore essential that the new administration of President Claudia Sheinbaum, and the recently appointed General Director of the *Instituto Mexicano de la Propiedad Industrial* (Mexican Institute of Industrial Property, IMPI), Mr. Santiago Nieto, follow through on their initial promises to address widespread piracy and counterfeiting with more strategic and stricter actions to combat and deter these crimes.² Furthermore, civil cases in Mexico are expensive and difficult for rights holders (especially small businesses) to undertake and are slowed by onerous procedural hurdles and insufficient remedies. The IP legal regime in Mexico is also still missing some of the basic tools to address online infringements, including cooperation among rights holders, website owners, and service providers. For example, the current law specifies only general liability instead of a clear principle of secondary liability for those inducing or promoting copyright infringement, which would incentivize Internet service providers (ISPs) to take preventive actions. Unfortunately, the legal reforms of 2020 did not fully address these enforcement deficiencies.

Obstacles also remain in Mexico's compliance with high-level international standards for the recognition and protection of IP rights (IPR), particularly those related to the digital environment and online enforcement procedures. For example, Mexico's implementation of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties) and the USMCA, including reforms to the Copyright Law and the Federal Criminal Code, is still endangered by a lack of implementing regulations. This lack of political will to meaningfully implement the USMCA IP provisions was magnified by the previous administration's successful passage of constitutional reforms in other areas. Additionally, the 2022 Cultural Heritage Law created even more significant legal uncertainty this year for a range of creative industries due primarily again to a lack of implementing regulations, and risks further undermining Mexico's IP regime.

¹ For more details on Mexico's Special 301 history, see previous years' reports, at <https://iipa.org/reports/reports-by-country/>. For the history of Mexico's Special 301 placement, see <https://www.iipa.org/files/uploads/2025/01/Appendix-C-2025.pdf>.

² Cristina Protugues, *Piracy in Mexico, an urgent challenge: Santiago Nieto Castillo, director of IMPI*, *ContraRéplica*, October 15, 2024, available at <https://www.contrareplica.mx/nota-Pirateria-en-Mexico-un-desafio-urgente-Santiago-Nieto-Castillo-director-del-IMPI--2024141012>.

While Mexico remains an important destination for the U.S. creative industries, the above failures by the past administration also critically harm Mexico's domestic creative industries, which a 2021 WIPO report found accounted for over 10% of employment but just over 4% of GDP.³ While IIPA welcomes the new administration's initial positive signals, including having already seized over 200,000 illicit products in a seminal November 2024 raid,⁴ it remains uncertain whether these initial sentiments and actions can be sustainably implemented and provide lasting enforcement, legislative, and market access improvements after so many years of inaction coupled with legal and judicial uncertainty. It will also be critical for this new administration to work closely with industry representatives and rights holders from the creative industries to ensure any legislative or regulative revisions finally allow Mexico to fully implement its obligations under the USCMA and international treaties and meet international best practices.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Empower Mexican IP agencies with the necessary political will and financial and human resources to tackle years of unaddressed rampant physical and online piracy.
- Remove burdensome barriers, requirements, and procedures that prevent effective IP enforcement.
- Develop and adopt a high-level national anti-piracy plan to target major online piracy and counterfeiting operations, which includes improving coordination between federal, state, and municipal enforcement activities.
- Provide training to improve IPR expertise in the judiciary.
- Improve enforcement against theatrical camcording.

Legal Reforms

- Publish the implementing regulations of the 2020 Copyright Law amendments and reject interpretations of those amendments that would impede the positive progress resulting from those changes.
- Amend the Copyright Law and related laws and publish related implementing regulations to address issues not resolved in the 2020 amendments.
- Provide incentives for ISPs to cooperate in enforcement against online copyright infringement, including applying the reform of the 2020 Copyright Law to provide secondary liability for copyright infringement.
- Clarify the scope of the Cultural Heritage Law, and all secondary legislation arising from the 2024 amendment to Article 2 of the Mexican Constitution, in a manner that brings greater legal certainty and includes consultations with rights holders.
- Reject amendments to the Copyright Law that would establish a remuneration system through a "Private Copy Levy" (PCL).
- Reject any interpretation of the Copyright Law that would interfere with exclusive rights, including introduction of a making available remuneration right for performers in addition to the already existing and sufficient exclusive right.

Market Access

- Reject policies proposing Local Content Quotas.
- Reject discriminatory investment obligations in the audiovisual industry.

ENFORCEMENT

- **Empower Mexican IP agencies with the necessary political will and financial and human resources to tackle years of unaddressed rampant physical and online piracy.**

³ https://www.wipo.int/export/sites/www/copyright/en/docs/performance/overview_results_2021.pdf. The report also states "Mexico has substantial underutilized opportunity to increase the share of its copyright industries in GDP to support its continuing shift into medium- to high-technology capital goods and bring its economic performance more in line with its North American neighbors."

⁴ *Authorities seize over 200,000 counterfeit Chinese products in Mexico City*, Mexico News Daily, November 29, 2024, available at <https://mexiconewsdaily.com/news/mexican-authorities-seize-counterfeit-chinese-products-in-mexico-city/>.

Physical piracy is widespread, and online piracy is increasing due to growing access to broadband, mobile phones, and smartphones in Mexico. The International Federation of the Phonographic Industry's (IFPI's) 2023 Music Consumer Study found the music piracy rate in Mexico was 50.7%, one of the highest in the world. The report also found that over 40% of Internet users aged 16 to 64 years reported using a stream-ripping website or mobile app to download pirated music in the previous month, with this figure increasing to 49.9% for those aged 16 to 24 years. Stream ripping, the most widespread source of music piracy in Mexico was popular with users on stream-ripping sites such as *ssyoutube.com* (18.8 million visits), *savefrom.net* (10 million visits) and *y2meta.app* (5.1 million visits) in Q2 2024 based on *SimilarWeb* data. The report also found stream-ripping mobile apps *Snaptube*, *TubeMate*, and *Descargador de MP3 Gratuito* were a key means for Mexican users to obtain illegal content and that 20% of respondents reported using a cyberlocker site to obtain pirated music in the same period.

Video game publishers continue to experience among the highest levels worldwide of e-commerce infringement in Mexico, notably of modded hardware and circumvention devices. In 2024, Mexico ranked 18th in the world for the number of connections by peers participating in the unauthorized file-sharing of Entertainment Software Association (ESA) member video game titles on public peer-to-peer (P2P) networks, and by the same metric, 4th in the world for unauthorized file-sharing of mobile games, and 7th in the world for illicit console-based games.

Mexican officials are admittedly aware of this longstanding and growing problem. Most recently, in October 2024, just days after swearing in as the new director of IMPI, Director Santiago Nieto Castillo stated that fighting piracy is a priority of the new administration under President Claudia Sheinbaum.⁵ Director Nieto noted that “[p]iracy is not only physical; in the digital sphere we see the illegal distribution of music, videos and artistic works,” “[p]iracy generates a parallel economy that affects Mexican businessmen and workers. It is essential that consumers understand that by buying pirated products they are contributing to a system that harms everyone,” and “piracy not only harms national companies that pay taxes and generate jobs but also impacts consumers.”⁶

While awareness of the challenges facing IMPI and other Mexican IP enforcement agencies to address rampant piracy in Mexico is a positive start, it will be difficult for the new administration to tackle the piracy problem that has only worsened in recent years under the former administration. The new administration will immediately face two key hurdles that drive piracy in Mexico, first that IP cases are traditionally considered as “less relevant” compared to other types of illegal conduct, and second, budget cuts to the following key federal agencies engaged in copyright enforcement in Mexico:

- IMPI – oversees administrative enforcement actions under the Industrial Property and Copyright Law;
- *Instituto Nacional del Derecho de Autor* (the National Copyright Institute, INDAUTOR) – registers copyrights and conducts mediation proceedings for aggrieved rights holders;
- Scientific Police (part of the Federal Police) of *Secretaría de Gobernación* (the Secretary of the Interior) – assists rights holders by providing information on illegal software websites and seizing the domain names of infringing sites; and
- *Unidad Especializada en Investigación de Delitos contra los Derechos de Autor y la Propiedad Industrial* (the Specialized Unit on Investigation of Crimes Committed Against Industrial Property and Copyright, UEIDDABI) within *Fiscalía General de la República* (the Attorney General's Office, FGR) – responsible for federal criminal enforcement.

The lack of prioritization and budget cuts have directly led to sizable reductions or full curtailments in effective enforcement activities under the previous administration, particularly by the FGR. For example, one video game publisher reported a decline in counterfeit game product seizures from 35,315 products seized in 2022 down to only 3,045 in 2023, and 5,380 in 2024. This significant drop in seizures exists despite numerous IP trainings programs for

⁵ Cristina Protugues, *Piracy in Mexico, an urgent challenge: Santiago Nieto Castillo, director of IMPI*, *ContraRéplica*, October 15, 2024, available at <https://www.contrareplica.mx/nota-Pirateria-en-Mexico-un-desafio-urgente-Santiago-Nieto-Castillo-director-del-IMPI--2024141012>.

⁶ *Id.*

customs officials in the past two years. No police raids occurred from 2022 until November 2024, when the Ministry of Economy and IMPI led a first of its kind joint effort that seized over 200,000 illicit goods, the Izazaga 89 operation.⁷ This raid should be commended and repeated.

Further, FGR and UEIDDAPI were reluctant to prosecute IP crimes under the previous administration, and there have been very few criminal enforcement actions against piracy services or operators, both in the online and physical realms. This low prioritization is even more apparent regarding investigations into crimes of small quantities of illicit products such as piracy devices (PDs, also known as illicit streaming devices or ISDs), including mod chips, and circumvention devices, especially in the case of products entering through customs. These illegal devices are increasingly being offered in online marketplaces and through social media, but there have not been any detainments or seizures of such devices by customs. There also existed a general understanding in all previous administrations' government offices that few to no administrative actions would be taken against piracy operations. Also, within the UEIDDAPI stood a general order not to seek any search warrants for these types of cases. Notwithstanding the significant and commendable progress made by the Government of Mexico in its efforts to strengthen the country's IP legal framework under the 2020 Copyright Amendments to implement USMCA, there appeared to be no political will by the previous administration to in fact put the new framework into practice and prioritize and prosecute IP cases in Mexico.

IIPA strongly urges the new administration to follow through on their initial public statements about fighting Mexico's rampant piracy by ensuring that all relevant Mexican IP enforcement agencies have the political will to make the changes noted below, prioritize IP cases, and have the financial and personnel resources to fully implement their objectives and Mexico's new IP legal framework. While understanding it may take some months for the new administration to fully rollout and implement its new IP strategy, IIPA and its members are closely monitoring how the new administration will overcome years of inaction against piracy and finally show necessary support for the creative industries.

- **Remove burdensome barriers, requirements, and procedures that prevent effective IP enforcement.**

IIPA continues to recommend several detailed structural reforms and agency actions to improve enforcement that have been detailed in previous submissions.⁸

Administrative Enforcement Challenges

- **Formalities to Institute Administrative Actions:** On July 1, 2020, the new *Ley Federal de Protección a la Propiedad Industrial* (Federal Protection of Industrial Property Act) was enacted. The law entered into force in November 2020. As part of this new law, IMPI is now empowered to issue blocking orders against infringing sites which, in practice, is a clarification of the powers that IMPI previously exercised as part of its general duties. However, IMPI requires the petitioner to comply with an extreme – and sometimes impossible – burden of proof equivalent to providing certificates of copyright ownership of all the content available on the illegal sites to block that content. For example, some officials require proof of ownership for every individual piece of content that is provided by these illegal sites, even when it is evident that these sites solely promote and facilitate content piracy. Instead, the Government of Mexico should allow the initiation of administrative proceedings before IMPI to seek site blocking of websites that offer infringing content, without requiring the industry to prove copyright ownership for each individual creative work provided in the pirate websites. Instead, the burden should be calibrated, and IMPI should require the owner/operator of the infringing sites to produce evidence that they have authorization to make the copyright works in question available.

⁷ Authorities seize over 200,000 counterfeit Chinese products in Mexico City, Mexico News Daily.

⁸ See, e.g., IIPA 2019, 46-47, available at <https://iipa.org/files/uploads/2019/02/2019SPEC301MEXICO.pdf>; IIPA 2022, p. 68-69, available at <https://www.iipa.org/files/uploads/2022/01/2022-SPEC301-3.pdf>.

Civil Enforcement Challenges

- **Burdensome Procedures with Minimal Remedies:** In general, Mexico’s three-tiered civil procedure system makes civil litigation overly complicated, time consuming, and costly for rights holders, even against obvious infringers. The Copyright Law allows rights holders to seek damages in civil courts even before an administrative infringement decision is issued (or becomes final), but the law does not provide for statutory damages (e.g., additional or pre-established damages), and the USMCA-related amendments implemented in 2020 did not address this deficiency. Rights holders can seek 40% of the gross sales revenues from infringing products as damage awards. The Government of Mexico should amend the Civil Code and improve the procedures of the courts to add pre-established remedies and allow the recovery of costs and attorney’s fees; current law does not provide compensatory damages, including lost profits or sufficient monetary damages, nor costs or fees. Mexico needs to amend its Copyright Law to provide for “pre-established” and/or “additional damages” consistent with the USMCA Article 20.81.6 that are “an amount sufficient to constitute a deterrent to future infringements and to compensate fully the right holder for the harm” as set forth in Article 20.81.8.
- **Requirements to Prove Ownership:** There are burdensome steps to prove copyright ownership in lieu of presumptions of ownership (which, as noted, is an unfulfilled USMCA obligation).
- **Electronic Evidence:** Mexican law grants full validity to electronic documents and discovery, although some judges are unfamiliar with these rules.
- **Destruction of Evidence:** The Civil Code provides *ex parte* measures to avoid the destruction of evidence, but these provisions have never been fully implemented.

Criminal Enforcement Challenges

- **Ex Officio Authority:** Since Mexico transitioned to an adversarial justice system in 2008—despite the availability of *ex officio* action in the Criminal Code—prosecutors no longer prosecute criminal copyright cases without the filing of a complaint against an infringer by the rights holder. This change has resulted in prosecutorial delays of IP-related crimes, including at FGR.
- **Physical Copy Requirement:** A complicating element in combating piracy in Mexico is the cumbersome requirement (by FGR) that each copy of an infringing product must be accompanied in prosecution files by a physical copy of a legitimate original for comparative examination by experts (*peritos*). This requirement is followed as a general practice, even though the law does not explicitly require it. In one 2023 case involving 7,000 video game consoles preloaded with infringing games, the prosecutor terminated the investigation claiming the products did not show the publisher’s trademarks and copyrighted works, despite evidence established at the time of seizure. This complicates online or digital matters that do not involve hard goods.
- **Requirement for Expert Testimony for Repeat Offences:** Prosecutors must understand that expert opinions are not required in every case to analyze genuine and counterfeit specimens. Under the existing system, when the comparison involves multiple copies of the same infringing game, music, or film, rights holders must submit an equal number of legitimate game, music, and film DVD copies to the experts for comparison. This results in delays and, in some cases, investigations have been dropped due to undertrained prosecutors, leading brand owners to re-introduce actions often against repeat offenders. These expert opinions or *peritos*’ reports are a burdensome administrative requirement that take too long to complete, in addition to the fact that the *peritos* are insufficiently trained in digital issues, produce factually incorrect determinations, and are often reluctant to cooperate with investigations and prosecutions. Rights holders then

must appeal those decisions through a Control Judge, including having to hire a private expert to counter the *perito's* determination, adding to the expense and delay, which undermines effective enforcement.

- **Copyright Registration Documentation Requirements:** Although Article 5 of the Copyright Law refers to copyright registrations as only voluntary (“recognition of copyright and neighboring rights does not require registration”), in practice, the FGR and courts require registrations to commence a criminal case. This is an additional formalistic practice of Mexican authorities that is contrary to the main purpose of international commitments on IP recognition and protection. The USMCA (Article 20.79.1) requires Mexico to provide clear presumptions of ownership in civil, criminal, and administrative matters, based on the copyright notice appearing on the work, or on a screen, without the need for a mandatory and certified registration. Mexico needs to change its Copyright Law to ensure these presumptions of ownership apply to all works (it currently exists only for sound recordings), even after the 2020 amendments.
- **Commercial Scale Piracy:** In 2023, FGR and UEIDDAPI reverted to their previous criteria to reject complaints of IP infringements based on the lack of loss of profits or lack of commercial scale, affecting the initiation of – and creating more burdens to initiate – any criminal investigation against counterfeit and copyright piracy. As a result, criminal penalties have not been available in Mexico for commercial scale infringements without a direct economic benefit. The “direct economic benefit” for criminal cases is a difficult hurdle to overcome for a prosecutor willing to commence a case in a country already short on resources for such cases. Additionally, Mexican courts generally do not consider file sharing via online networks to be a serious legal violation; this is a continuing obstacle to effective criminal enforcement. Consistent with its WTO TRIPS Agreement obligations, Mexico should have “effective” criminal remedies, including “imprisonment and/or monetary fines,” available in cases of “willful ... copyright piracy on a commercial scale.”⁹ The Criminal Code, Copyright Law, and Federal Protection of Industrial Property Law need to be amended to delete “for profit” provisions and replace them with “acts carried out for commercial advantage or financial gain” and “significant acts not carried out for commercial advantage or financial gain that have a substantial impact on the interests of the copyright or related rights holder.” This change would allow the initiation of enforcement procedures in FGR and UEIDDAPI, and criminal penalties would be available in Mexico for commercial scale infringements absent proof of actual lost profits (in other words, without a direct economic benefit).
- **Destruction of Infringing Goods:** Enforcement agencies should adopt clear and consistent policies for the expeditious destruction of seized infringing goods. Another of the positive 2020 amendments (in the Protection of Industrial Property Law) gives IMPI the authority to order the destruction of infringing goods 15 days after a final court decision, which is faster than previous procedures. The copyright industries have also successfully utilized the *Ley Federal de Extinción de Dominio* (Federal Law for Property Forfeiture) in piracy cases, but materials seized in FGR enforcement operations continue to find their way back into the black market. Another recommendation is for *Procuraduría Federal del Consumidor* (Office of the Federal Prosecutor for the Consumer, PROFECO) to use its *ex officio* powers for consumer protection, and its resources against street market piracy.
- **Coordination with Rights Holders:** FGR had been reorganized under the previous administration and is closed to the general public, meaning that there have been no coordination meetings with rights holders or rights holder organizations, and such practices, which are common in other countries, are not allowed. The lack of communication with the private sector and the absence of any significant enforcement action by FGR against IPR violations have significantly worsened the piracy situation in the last year.
- **Forensic Standards:** FGR should improve the forensic standards for digital enforcement and eliminate the required experts and mandated registrations (as a practice, if not a legal requirement) for criminal cases.

⁹ See WTO TRIPS Agreement, Articles 41 and 61.

Customs Enforcement Challenges

- **Seizure of Illicit Goods:** Exacerbated by the lack of *ex officio* authority, FGR and UEIDDAPI have ceased executing border measures to detain containers of pirated goods, including those comprising counterfeit video game consoles, controllers, and merchandise bound for the local market. They also do not stop in-transit shipments and trans-shipments, resulting in a worsening situation for rights holders. For example, absent an official order from IMPI, customs authorities will not seize infringing products entering the country or detain them for more than a few hours, even where the material is clearly infringing. While IMPI has attempted to address this issue through expeditious communications with customs to seize infringing goods, the lack of action by customs authorities and FGR undermines the enforcement of IPR.
- **Leadership:** During the past administration, there were four changes to the head of Customs in less than four years— including the establishment of the *Agencia Nacional de Aduanas de México* (National Customs Agency of Mexico)—only to be followed by transferring Customs’ authority to the Ministry of the Navy for maritime customs matters and to the Ministry of National Defense for customs matters on land. These inconsistencies in leadership and transfers of power have created an unstable and uncertain customs enforcement regime that is nearly impossible for rights holders to effectively navigate to enforce their rights. Leadership stability and consistency is urgently needed in Mexico’s customs procedures and authorities. The aforementioned problems with Mexican customs authorities continue to be exacerbated by the presence and control of criminal organizations and cartels in Mexico.¹⁰

Judicial Enforcement Challenges

- **Judicial Reform:** In September 2024, the Mexican Congress enacted a structural reform to the judiciary branch promoted by President López Obrador. The key element of this reform is that justices, magistrates, and judges will now be elected by popular vote. The reform has generated significant debate in Mexico, especially since it is not clear how the new model will guarantee the independence and impartiality of the judiciary. The first election will be held on June 1, 2025, and the positions to be elected include all Supreme Court justices (9), as well as 486 magistrates and 386 judges. IIPA urges that this reform does not undermine the rule of law in Mexico and not affect basic rights of due process and access to justice in Mexico.
- **IP Expertise:** Training to improve IPR expertise among judges is an ongoing need—especially training on technology, digital distribution and piracy, and the use of circumvention technologies. Besides simply increasing training on these topics, Mexico could also create specialized IP judges and courts.
- **Non-Deterrent Penalties:** A continuing concern is the judiciary’s consistent failure to give deterrent sentences for IP cases. Instead, Mexico should consider mandatory sentencing regulations for criminal copyright cases or have the Supreme Court issue recommended guidelines to assist judges with the imposition of deterrent sentences and the award of damages.
- **Develop and adopt a high-level national anti-piracy plan to target major physical and online piracy operations, which includes improving coordination between federal, state, and municipal enforcement activities.**

The lack of coordination and capacity among IP enforcement bodies remains a major problem in Mexico, especially when tackling large scale piracy operations that may be located throughout the country. Mexico should therefore develop and adopt a high-level national anti-piracy plan to target major and commercial-scale physical and

¹⁰ Jonathan Nácar, *Corruption investigated in the FGR’s Anti-Piracy Prosecutor’s Office*, ejeCentral, August 12, 2024, available at <https://www.ejecentral.com.mx/category/nuestro-eje/indagan-corrupcion-en-fiscalia-antipirateria-de-la-fgr>.

online piracy operations and operators and to coordinate these enforcement operations with federal, state, and municipal officials. For coordination, this strategy should establish a centralized coordinator for copyright enforcement to improve the efficiency and effectiveness of each of these agencies. Through this coordinator, the Government of Mexico could coordinate municipal, state, and federal government criminal enforcement actions across Mexico's 32 states and 2,400+ municipal governments and help in many regions of the country where state and municipal government anti-piracy efforts are weak. This strategy should also include a national *ex officio* anti-piracy campaign with a consistent focus on major targets, emphasizing coordination of police and prosecutorial resources. For example, Mexico should replicate and expand the success of the Izazaga 89 operation from November 2024.

Further, this strategy should have a strong capacity building component to ensure Mexico's IP enforcement agencies have access to the necessary skills, techniques, and best practices to fight today's modern and evolving piracy operations. Some particularly important areas of capacity building should include specialized training on: (i) initiating effective enforcement procedures against sites offering illegal video game downloads and unauthorized digital goods (UDGs); (ii) search engine sites that provide links to enable the downloading of game content hosted on cyberlocker platforms; (iii) BitTorrent index sites; (iv) piracy and circumvention devices and ISDs, including media boxes, set-top boxes, or other devices that allow users, in combination with illegal software applications (apps), to stream, download, or otherwise access unauthorized content from the Internet, and; (v) devices imported into Mexico pre-loaded with the apps to infringe IPR, apps that are added as a complementary after-sale service, or apps that can easily be installed by the users to access infringing content. There should also be a capacity building component on developing new and enhanced guidelines for prosecuting IP crimes and training on technological solutions and methodologies for properly undertaking criminal investigations directed against online piracy.

Finally, the Government of Mexico should ensure this strategy promotes increasing international cooperation with U.S. prosecutorial and law enforcement authorities to facilitate exchanges of communication and cooperation in criminal investigations and enforcement proceedings in Mexico. Additionally, the collaboration with rights holders to better streamline IP cases should be prioritized in this strategy as it has already had a positive impact on IP enforcement in Mexico. For example, in 2024, the Motion Picture Association (MPA) successfully filed an infringement proceeding before IMPI against one of the largest sites distributing pirated audiovisual content to audiences in Mexico, *Gnula.nu* and *Gnulahd.nu*. As a result, IMPI issued an effective site-blocking order that was successfully implemented in general with support from a majority of the ISPs. Only one ISP filed an injunction to challenge the order, but the request for a provisional suspension was denied. IIPA hopes this type of collaboration can be mirrored by other IP enforcement agencies.

In another positive example demonstrating the importance of public-private collaboration, IMPI signed a Memorandum of Understanding (MOU) with ESA on August 18th, 2022, to enforce and protect video game IP. Under the auspices of the MOU and in accordance with the relevant laws and regulations, IMPI has conducted enforcement activities including infringement referrals, online inspection visits, and investigations, promoting the importance of IP to creative and innovative industries. Practical efforts to execute the MOU continued in 2024 including an ESA-led training with members of the IMPI enforcement team on issues specifically impacting the video game industry. Given the new administration at IMPI, it is crucial in 2025 to maintain the work under IMPI's existing MOUs, such as the one it concluded with ESA. It is also important to grow the partnerships between IMPI and other Mexican IP enforcement agencies with additional rights holders to ensure that Mexico continues to undertake administrative IP proceedings, as well as to enhance the removal of illegal content from digital platforms.

- **Improve enforcement against theatrical camcording.**

Criminal enforcement against illicit camcording is historically ineffective in Mexico for two reasons: (1) inadequate laws and (2) weak and infrequent enforcement of the existing laws. One of the 2020 amendments adopted to comply with the USMCA corrects the legal regime deficiency. New Article 424bis of the Criminal Code criminalizes camcording, and, in the only exception in the Code, deleted the for-profit motive as a prerequisite for criminal infringement, which had thwarted effective prosecutions of camcording. However, the new provision does require a

rights holder to file a claim. Until the 2020 change, the few camcording criminal convictions that had been successful were the result of prosecutions based on an array of crimes other than camcording. As reported in prior IIPA filings, in recent years, many MPA member films have been sourced from illicit camcords in Mexican theaters. Camcords have resurfaced as a piracy problem in Mexico upon theaters reopening post-pandemic, and it is hoped the new laws and improved enforcement will properly address this problem. The independent sector of the film and television industry (namely, the Independent Film & Television Alliance (IFTA)) is especially concerned about Internet piracy derived from camcording because of its harm to the legitimate online distribution platforms and services that provide revenue for financing the development of new creative works worldwide. IIPA suggests that the Government of Mexico organize capacity building programs between prosecutors and relevant agencies in Mexico that encourage improved enforcement against theatrical camcord piracy.

LEGAL REFORMS

- **Publish the implementing regulations of the 2020 Copyright Law amendments and reject interpretations of those amendments that would impede the positive progress resulting from these changes.**

Mexico amended its Copyright Law in 2020 to attempt to fully implement the WIPO Internet Treaties and meet its obligations under the USMCA. These amendments represented needed reforms to Mexico's Copyright Law and included: notice and take down, safe harbor, and related provisions; protection for TPMs and RMI; explicit making available right and right of communication to the public for works and recordings, as well as adaptation or transformation of the phonogram and rent of the original or copies of the phonogram; and sanctions for camcording, as well as against satellite and cable signal theft.

After the Copyright Law reform passed, three constitutional challenges were filed seeking to repeal key provisions of the amendments. These challenges caused several years of legal uncertainty and generated a chilling impact on practical implementation of the reforms because authorities were not willing to address cases based on a challenged law. In May 2024, over three years after the first challenge was filed, the Mexican Supreme Court upheld the 2020 reforms as constitutional. IIPA welcomes this development.

As mandated by the 2020 copyright reform, the Mexican government, and particularly INDAUTOR, were given 180 days to publish implementing regulations for the Copyright Law. However, after more than four years since enactment and more than 180 days since the Supreme Court's 2024 ruling, this obligation remains unfulfilled. The copyright sector is justifiably concerned by this delay because it indicates that the Secretary of Culture and INDAUTOR did not adequately prioritize this matter under the previous administration. IIPA urges the new administration and new leadership at INDAUTOR to promptly introduce the implementing regulations of the Copyright Act to prevent a breach of Article 20.88 of the USMCA.

- **Amend the Copyright Law and related laws and publish related implementing regulations to address issues not resolved in the 2020 amendments.**

While the passage of the 2020 Copyright Law amendment was a welcome development, more revisions are needed to the Copyright Law, as well as to the Industrial Property, Criminal, and Criminal Procedure Codes for Mexico. Further, related implementing regulations must be published, to meet Mexico's obligations in USMCA and international treaties and comply with other international best practices. Some key reforms that are needed, but were not achieved through the 2020 changes include:

- Establish explicit secondary liability for copyright infringement.
- Amend the Forfeiture Law to cover copyright infringements undertaken by organized crime syndicates.
- Add criminal provisions to enforce against the production or distribution of PDs, ISDs, or circumvention devices.

- Provide proper civil and criminal sanctions for all activities relating to the manufacturing of, or trafficking in, circumvention devices or technologies that circumvent TPMs. This is especially relevant in the importation of circumvention devices used in video games that are entering Mexico in small consignments and via courier packages.
 - Enhance penalties for repeat infringers.
 - *Provide ex-officio* authority for all IP enforcement agencies and the ability to detain containers with pirated goods that are in transit or being transshipped.
 - Severely restrict or eliminate exceptions to infringement for certain public performances where retransmission is not “for profit-making purposes” (Copyright Law, Article 150, transmissions of works) and “no direct economic benefit is sought” (Copyright Law, Article 151, neighboring rights). These exceptions are too broad, exceeding what treaties permit.
- **Provide incentives for ISPs to cooperate in enforcement against online copyright infringement, including applying the reform of the 2020 Copyright Law to provide secondary liability for copyright infringement.**

In a positive development, the 2020 Copyright Law required compliance with notices to remove infringing content, with measures to prevent infringing content from being uploaded again, as well as providing safe harbors for services and platforms that comply with the notices. The 2020 package of amendments adopted notice and takedown procedures, defined ISPs, and provided legal remedies and safe harbors to ISPs providing mere conduit, caching, and storage and information location tools, by limiting monetary damages—but not injunctive relief or administrative sanctions—for ISPs that respond properly and timely to notices (Copyright Act, new Article 114 *Octies*). The changes add specific provisional measures to order the suspension, stay down, blocking, or removal of content, and the cessation of acts that are infringing or unauthorized. The new provisions also require ISPs to have repeat infringer policies and counter-notification procedures (requiring rights holders to commence judicial, administrative, or criminal actions within 15 days of notification by an ISP). The Copyright Law also now compels an ISP receiving a notice of infringement to comply and there are administrative penalties (fines) for non-compliance with notices. However, Mexican law should also require an ISP with actual knowledge of an infringement or awareness of facts or circumstances from which infringement is apparent (so-called “red flag” knowledge), to take down material. ISPs also have the right to file an injunction against a takedown order by IMPI that could suspend the decision of authority and frustrate the takedown of the infringing content. Moreover, these amendments have not been in practice in Mexico’s legal regime because even though the Supreme Court confirmed the constitutionality of these provisions, the Mexican government has not issued implementing regulations to the Copyright Law.

The Mexican legal system also includes general liability principles contained in the Civil and Criminal Codes, but it does not include explicit secondary liability for copyright infringement for ISPs and similar parties in the Civil Code. The safe harbors imply that such potential secondary liability exists, but IIPA urges the Government of Mexico to make such liability explicit in its law. The USMCA (Article 20.88) requires Mexico to implement “legal incentives for Internet Service Providers to cooperate with copyright owners to deter the unauthorized storage and transmission of infringing materials or, in the alternative, to take other action to deter the unauthorized storage and transmission of copyrighted materials.” While notice and takedown and related provisions are a strong first step, ISPs need further encouragement to meaningfully cooperate with all rights holders (large and small) to deter the unauthorized storage, transmission, or making available of copyrighted materials. One suggestion is to designate one Mexican IP enforcement agency to take the lead on enhancing cooperation or facilitating communication with ISPs with the purpose to improve a notice and takedown system in Mexico.

Coordination between IP enforcement authorities is also important in this context, especially in view of recent rulings issued by District Courts that have granted protection to the ISPs from the government blocking orders. In these cases, the courts appear to be considering whether blocking an entire website is proportional to the violation of copyrights, weighing the right to information and net neutrality. This potential conflict between government agencies and the courts is adding uncertainty to whether ISPs will follow site blocking orders.

Finally, specific provisions in the Telecommunications Law prohibit ISPs from disclosing a customer's personal information to rights holders seeking civil recourse against alleged infringers (although Article 189 of the Telecommunications Law, as amended in 2014, does allow an ISP to cooperate with an order from any competent authority). Additionally, ISPs have been reluctant to include clauses in their subscriber agreements to permit termination of service contracts if subscribers infringe IPR. ISP contractual practices thus compound the difficulties of obtaining access to information necessary for seeking civil remedies. For file sharing, the two major ISPs (*Telmex Infinitum*, which has about 70% of the domestic broadband connections in Mexico, and *ALESTRA*) have, to date, been reluctant to take any actions. As such, the collaboration between ISP, IP enforcement agencies, and rights holders remains crucial to addressing Mexico's piracy challenges.

- **Clarify the scope of the Cultural Heritage Law, and all secondary legislation arising from the 2024 amendment to Article 2 of the Mexican Constitution in a manner that brings greater legal certainty and includes consultations with rights holders.**

On January 17, 2022, the “Federal Law for the Protection of the Cultural Heritage of Indigenous and Afro-Mexican Peoples and Communities” (the Cultural Heritage Law) was published in the Federal Official Gazette and entered into force the following day.¹¹ The law's implementing regulations should have been issued within 180 days of its publication. However, INDAUTOR asserts that the law can be enforced even in the absence of implementing regulations. The law aims to register, classify, and document the traditional cultural expressions (TCEs) of indigenous communities, while also broadening their scope of protection, acknowledging their economic rights, and introducing an enforcement scheme. Although some of its objectives are aligned with WIPO's stance on the protection of indigenous peoples' traditional knowledge and TCEs, the law creates legal uncertainty for a range of creative industries, given the absence of guidelines for the granting of authorization, the lack of clarity as to which communities are associated with a particular expression, and the fact that some expressions could be removed from the public domain.

The law lists a catalog of administrative infringements that are unclear and ambiguous and establishes fines that range from US\$2,240.00 to US\$224,000.00. The law also establishes criminal penalties for the improper use and exploitation of the elements of cultural heritage of indigenous and Afro-Mexican communities or peoples, and for the cultural appropriation of elements of the cultural heritage of indigenous communities or peoples. Criminal penalties range from two to ten years of imprisonment and double if the conduct results in “cultural ethnocide.” Additionally, Mexico's Human Rights Commission filed a claim of unconstitutionality against the 2022 Cultural Heritage Law, citing policymakers' lack of consultation with indigenous communities during the law's formulation, and the excessive nature of the penalties. The case is pending review at the Supreme Court. Nonetheless, due to the 2024 amendment of the judicial power, the matter has been deferred, and it is unlikely that its unconstitutionality will be settled in the near future.

In September 2024, the Senate approved the presidential constitutional amendment to Article 2 on Indigenous Communities, which establishes TCE protection as these communities' right and expressly establishes that indigenous people hold collective copyright over their TCEs. Consequently, both federal and local governments must create a legal framework for protecting and promoting this right. Secondary regulation will be critical for the implementation of this reform. This constitutional reform, coupled with the 2022 Cultural Heritage Law, increases legal uncertainty in Mexico regarding audiovisual investments. The U.S. government should encourage Mexico to implement this initiative with transparency, broad stakeholder engagement, and adherence to good regulatory practices and USMCA commitments. Additionally, several initiatives were presented in the Mexican Congress in 2024 to support a more extensive protection of cultural heritage and TCEs. IIPA urges U.S. and Mexican authorities to monitor these initiatives to ensure they do not result in further restrictions that might also conflict with USMCA obligations.

¹¹ *Ley Federal de Protección al Patrimonio Cultural de los Pueblos Indígenas y Afromexicanos*, January 17, 2022, available at <https://www.diputados.gob.mx/LeyesBiblio/ref/lfppccpcia.htm>.

- **Reject amendments to the Copyright Law that would establish a remuneration system through a PCL.**

The Government of Mexico should reject proposed amendments of the Copyright Law that would establish a remuneration system through a PCL. Such amendments would require manufacturers and importers of equipment, devices, and technological goods to pay a fixed “compensatory remuneration” for the supposed copying, storing, compacting and/or reproduction of protected works that could occur in the future. This initiative will normalize copyright infringement, offering a blank check to consumers of devices for the unrestricted copying of content, on the assumption that the relevant manufacturer or distributor has already “prepaid” for the reproduction of protected works.

- **Reject any interpretation of the Copyright Law that would interfere with exclusive rights, including the introduction of a making available remuneration right for performers in addition to the already existing and sufficient exclusive right.**

The Government of Mexico should reject any interpretation of the Copyright Law that would interfere with the exclusive rights granted by the law and those required by international treaties. The introduction of a making available remuneration right for performers in addition to the already existing and sufficient exclusive right would be one such example, and IIPA urges the Government of Mexico not to introduce such a measure.

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- **Reject policies proposing Local Content Quotas.**

On a regular basis, Mexican lawmakers and policymakers propose protectionist policies, such as the imposition of local content quotas in both theatrical and streaming, over-the-top (OTT) windows, limiting the number of screens in which a given movie can be exhibited, or regulating the dubbing of films regardless of the market preferences. If adopted, such measures would severely limit the exhibition of U.S. films in Mexico and would potentially contravene Mexico’s USMCA national treatment provision and market access commitments. Instead, Mexican policymakers should encourage open markets, investments, and collaborations that would result in job creation, knowledge transfer, and the internationalization of the alignment of local industry with international best practices for the benefit of both Mexican and U.S. industries.

- **Reject discriminatory investment obligations in the audiovisual industry.**

In recent months, there have been legislative efforts aiming to establish performance requirements to investments in the form of a financial contribution in favor of the Mexican audiovisual industry. If adopted, such measures would be discriminatory and harmful to the audiovisual services platforms that operate within Mexico and may be contrary to USMCA national treatment provision and market access commitments. Mexican policymakers should reject any such attempt to impose investment obligations.