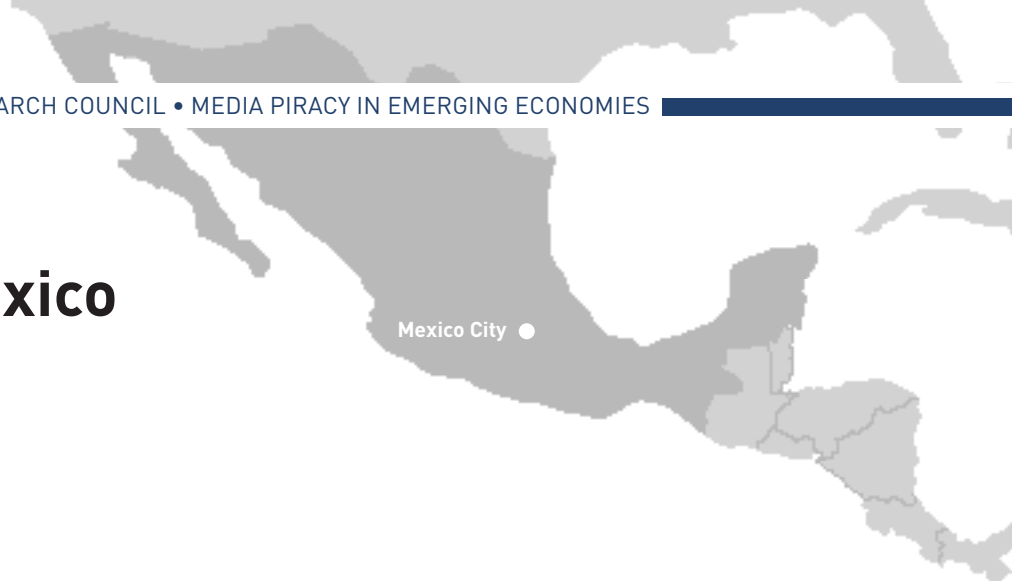


Chapter 6: Mexico

John C. Cross



Introduction

Mexico is usually listed among the largest producers and consumers of pirated goods. Among the countries cited by the International Intellectual Property Alliance (IIPA) in its Special 301 recommendations, it routinely places in the top ten in losses claimed by US companies: seventh or eighth in software, second or third in recorded music, first in film, and fourth or fifth in video games (IIPA 2010; 2008; 2006). In terms of per capita losses, Mexico is generally surpassed only by Russia and Italy. Such numbers have helped assure Mexico a spot on the Special 301 “Watch List” of the Office of the United States Trade Representative (USTR) since 2003 and the “Priority Watch List” since 2009.

The politics and geography of US-Mexico relations make Mexico a particularly difficult case for the US copyright industries. The long, porous border facilitates trafficking of all kinds—people, drugs, counterfeit goods, arms, and inevitably, pirated materials. Mexico is also usually the first and largest Spanish-language market for movies and music produced in the United States and consequently serves as a gateway for the illegal distribution of new releases to the rest of the Spanish-speaking world.

For these reasons, the growth of piracy in Mexico since the 1990s has been an object of persistent attention from the IIPA and the USTR. Substantial pressure has been brought to bear on the Mexican government to crack down on piracy within its borders. However, this pressure rarely dominates other factors in the US-Mexico relationship. High levels of illegal migration and drug trafficking along the border make intergovernmental cooperation the highest priority in bilateral talks and confrontational engagements over intellectual property (IP) policy or enforcement unlikely.

Mexico provides an important context for understanding not only the growth dynamics of piracy but also the factors that make enforcement extremely costly, both economically and politically. The country has suffered through a series of devastating economic crises over the last several decades, including the current one. It has an average per capita income of less than one-third that of its northern neighbor (CIA 2010) and a political system that faces recurring and often serious challenges to its legitimacy, from the Zapatista rebellion, to the corruption of the police and armed forces by drug cartels, to perceptions of perpetual subordination to the United States. Enforcement actions on behalf of US and multinational corporations play into this dynamic, especially when they appear designed to restrict the local availability of

Chapter Contents

305	Introduction
307	Optical Discs and the Informal Economy in Mexico
309	The History of a Pirate Market
310	The Social Organization of Piracy in Tepito
313	Political Incorporation
315	Law and Enforcement
318	Private-Sector Pressure
318	Attitudes toward Piracy
320	Pirate Justifications
321	Pirate Populism
322	Conclusion
324	About the Study
324	References

cheap goods. Mexican officials inevitably weigh the potentially significant costs and the uncertain benefits of such actions. As a US Embassy official in Mexico noted in 2005:

Some government leaders are reluctant to crack down on piracy out of fear that this could lead to social unrest, and many Mexicans believe cheap knock-offs offer a preferable alternative to what they view as overpriced products sold by greedy American firms. There are also corrupt politicians and law-enforcement officials who protect IPR [intellectual property rights] violators, from the street vendor level up to ringleaders of notorious markets like Mexico City's Tepito. (US Embassy 2005)

The first sentence concisely summarizes the political challenges and risks for Mexican officials. The second, however, does less well in portraying the political, legal, and social practices that structure piracy in Mexico.

Our work suggests that piracy in Mexico needs to be understood within three broad contexts:

- Piracy is not organized to a significant degree by gangs, drug cartels, or other large organizations, even in notorious markets such as Tepito, but instead is carried out primarily by networks of smaller family-based producers and vendors. There are consequently few “ringleaders” whose arrest could have a significant impact on the pirate economy. This is what makes targeted investigations of piracy ineffective and larger, sweeping enforcement actions relatively high risks for social unrest.
- Street vendors in Mexico have a long history of resisting administrative attempts at repression while working with political allies within the government. Consequently, most piracy takes place not at the disorganized margins of the market economy but within a highly organized sector of the informal economy, which has long experience in acquiring and successfully managing political capital. Common notions of corruption are very hard to apply in this context.

- While Mexico has adjusted its legal system repeatedly to accommodate treaty obligations under TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights), NAFTA (North American Free Trade Agreement), and other agreements, the country has a distinctive legal culture and a penal code, in particular, that reflects the broader social and political compromises of Mexican history. These differences have kept Mexico at odds with international rights-holder groups in certain respects and with the broader project of “harmonization” around stronger IP norms and enforcement practices.

As in other countries, piracy in Mexico is part of a dynamic informal sector that reacts to changes in enforcement and, above all, changes in technology. The shift from cassette and VHS tapes to CDs and DVDs in the 1990s allowed for much faster, cheaper, and higher-quality copying—factors that produced an explosion in the street sale of pirated goods. The proliferation of very inexpensive disc burners and, increasingly, broadband connections is forcing a further reconfiguration as prices drop and alternative sources become more widely available.

Optical Discs and the Informal Economy in Mexico

In the 1970s, media piracy primarily involved illegally produced vinyl records, taped music, and later, video cassettes. The process of copying these media was slow and generally resulted in a significantly inferior product. Reproduction required expensive equipment and, consequently, was organized on an industrial scale. The high costs of production meant that pirated goods were not significantly cheaper than licensed products. Both remained expensive relative to low Mexican incomes.

By the mid-1990s, this equation had begun to change. Music CDs had become widely available in Mexico. Software CDs and, by the late 1990s, movie DVDs had begun to appear. The consumer infrastructure lagged behind these new arrivals but grew rapidly in the following years. DVD-player penetration soared in the first decade of the new millennium, from 14.7% of

Acronyms and Abbreviations

ACTA	Anti-Counterfeiting Trade Agreement
AFI	Agencia Federal de Investigación (Federal Investigation Agency)
APDIF	Asociación para la Protección de los Derechos Intellectuales sobre Fonogramas (Association for the Protection of the Intellectual Property Rights of the Phonographic Industry)
BASCAP	Business Action to Stop Counterfeiting and Piracy (an initiative of the International Chamber of Commerce)
BSA	Business Software Alliance
GATT	General Agreement on Tariffs and Trade
IIPA	International Intellectual Property Alliance
IMPI	Instituto Mexicano de la Propiedad Industrial (Mexican Institute of Industrial Property)
IP	intellectual property
IPR	intellectual property rights
ISP	Internet service provider
MPAA	Motion Picture Association of America
NAFTA	North American Free Trade Agreement
PGR	Procuraduría General de la República (Office of the Attorney General)
PRI	Partido Revolucionario Institucional (Institutional Revolutionary Party)
PROFECO	Procuraduría Federal del Consumidor (Attorney General for Consumer Affairs)
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
USTR	Office of the United States Trade Representative
VCD	video compact disc

households in 2003 to 47.9% in 2006 (Scott 2008). The number of computers per capita also climbed steadily beginning in the late nineties, from roughly 4 per 100 persons in 1998 to 15 per 100 in 2008 (ITU n.d.)

The combination of expanding consumer infrastructure and new copying technologies proved explosive. As costs of production dropped and quality rose, prices in Mexico City for pirated music and video plummeted, from US\$5 per unit in 2000 to \$1 or less by 2005. Licit CDs and DVDs in Mexican stores, in contrast, ranged from \$20 to \$40.¹ As early as the mid-1990s, the informal economy had begun to shift toward optical disc sales to exploit this gap. Street vending and other “microbusinesses” became the primary distribution infrastructure for recorded film and music as demand rose and as more individuals entered the informal economy in order to meet that demand (Ferriss 2003).

The GATT (General Agreement on Tariffs and Trade) provisions and NAFTA also played a role by easing restrictions on the importation of cheap materials from Asia. Inexpensive personal computers allowed many more people to set up their own production facilities. Huge consignments of blank optical discs, mostly from China, fueled the supply side and pushed prices even lower (Brown 2003).

Table 6.1 Internet Access Figures for Mexico
(Broadband and Dial-up), 2000–2009

	Users	Population	Penetration
2000	2,712,400	98,991,200	2.7 %
2004	14,901,687	102,797,200	14.5 %
2005	17,100,000	103,872,328	16.5 %
2006	20,200,000	105,149,952	19.2 %
2008	27,400,000	109,955,400	24.9 %
2009	30,600,000	112,468,855	27.2 %

Source: Mexican Association of the Commercial and Advertising Industry on the Internet (Asociación Mexicana de la Industria Publicitaria y Comercial en Internet—AMIPCI) and the International Telecommunications Union.

As Internet access and particularly broadband access have increased in Mexico, street-based optical disc piracy has encountered its first serious competition. In 2004, only 14.5% of the total population had access to the Internet (Miniwatts Marketing Group n.d.), compared to 68% in the United States (NTIA 2009). By 2009, 27.2% of Mexicans had regular Internet access (see table 6.1), and the percentage of broadband users had grown dramatically—now approaching 20% of households. The rapid growth of broadband, in particular, is fueled by basic telephony needs: cable service is often easier to install in middle-class neighborhoods than

1 Some businesses do sell cheaper legal CDs and DVDs, but these are usually overstocks.

a landline (Paradis 2008). The pressure on street pricing for optical discs is already apparent: pirated CDs and, in particular, DVDs are available for roughly the cost of blank optical discs in a retail store.²

The History of a Pirate Market

Discussions of enforcement in Mexico usually revolve around Tepito—an inner-city neighborhood in Mexico City famous for street vending, crime, counterfeit goods, and now, optical disc piracy. As the 2005 IIPA report observed:

Well known pirate marketplaces remain largely outside the reach of law enforcement—most notably the district of Tepito. Without a government-initiated, sustained campaign against well known pirate marketplaces like Tepito, the situation in Mexico is unlikely to change dramatically, regardless of the otherwise fine intentions and work of PGR [the Procuraduría General de la República, equivalent to the Office of the US Attorney General]. (IIPA 2005)

Tepito is the center of a region-wide production and distribution network for pirated optical discs. By most accounts, it dominates local production, though not sales. The number of vendors selling pirated CDs in Mexico City is estimated at between 30,000 and 70,000. Tepito has a total of 8–10,000 street stalls, of which roughly one-third are dedicated to the sale of pirated music, movies, or computer software.³ Most vendors from other areas of the city use Tepito as their wholesale market.

Many of the other goods for sale in Tepito are counterfeited—designer clothes and bags, cosmetics, toys, and accessories of all kinds. “Here, everything is pirated,” one vendor asserted, referring to cheap counterfeit imports from China that look like name-brand goods. Nonetheless, vendors rarely try to fool customers into believing that they are purchasing legitimate goods. Pirated DVDs, for example, are often labeled as “clones” or otherwise marked as pirated goods.⁴

Originally a marginal Indian settlement in the marshy swamps of Lake Texcoco, Tepito became a vast slum area during the pre-revolutionary period as impoverished migrant families moved into the neighborhood. Tepito’s status as a center of street vending was established in the 1920s when “El Baratillo,” the city’s secondhand goods market, was relocated to the

2 A music-industry-funded Ipsos Bimsa survey of 400 people from 2009 has tried to quantify this shift in Mexico. Predictably, it finds very rapid growth of online piracy, claiming that 4.7 billion songs were downloaded illegally in 2008 by some 14 million Mexicans, representing roughly 99% of the online market.

3 Interview with Alfonso Hernandez, Director of the Centro de Estudios Tepiteños (CETEPIS), July 12, 2008.

4 In which case, the goods are pirated but not counterfeited: their content is reproduced, but they are not presented as the original goods.

neighborhood.⁵ Tepito subsequently became known as the “thieves’ market” because the ubiquitous secondhand goods on sale were sometimes of dubious origin. But much of the Tepito economy was licit. The area became well known for workshops that recycled used goods for poorer customers and for its ability to produce cheap knockoffs of products available at higher prices in more exclusive neighborhoods. Leather workshops, especially, produced shoes and garments of all kinds. As Mexico embraced import substitution policies in the 1950s and ‘60s, imposing high tariffs on the importation of select luxury goods, Mexican industry displaced much of the artisanal craftwork of the neighborhood, and many Tepiteños branched out into contraband. Efforts during this period to incorporate the street vendors into regulated, city-built public markets failed, prompting most vendors to return to the streets by the late 1960s (Cross 1998).

By the 1980s, Tepito had become the center of *fayuca* (contraband) products in the city, selling illegally imported shoes, clothes, and especially electronic goods, such as television sets and VCRs. Many of the goods were imported, but fake trademarks would often be applied locally. Because tariffs on goods sold in department stores could reach 100%, Tepito was a bargain for those who weren’t intimidated by stories of thieves and bandits. Government officials railed against the “unpatriotic” selfishness of the neighborhood and the criminal gangs that supposedly ran it, but their attempts to curtail the illegal trade—even to the point of cordoning off the entire area with customs officials or police—had no lasting effects.

Repeatedly, Tepito shifted its commercial focus to adapt to new economic conditions and opportunities. When protectionist policies were abandoned upon Mexico’s entry into GATT and later NAFTA, the price advantage of *fayuqueros* relative to legal goods fell sharply, driving out much of the contraband business. Today, the sale of electronics, for example, has almost completely disappeared.

The Social Organization of Piracy in Tepito

The production of DVDs and CDs in Tepito is well organized, with a relatively complex division of labor. The largest disc wholesalers work out of the old, centrally located workshop areas, which are less vulnerable to surprise raids. Boxloads of their products, often marked only with a number, are sold by the hundreds on the street. CD and DVD covers, in turn, are duplicated separately by print shops and sold in another area of the market, also in bulk. Individual vendors buy the CDs and covers separately and put them together within plastic “jewel” cases (or sometimes just plastic sleeves), which they purchase in yet another area. Vendors often do their own “final assembly,” sometimes at their stalls while they wait for customers. Smaller producers work out of their own homes with a few burners, using friends or family as workers.

Much of the production—and almost all the sales—is conducted by family-based businesses.

5 Tepito was at that time considered to be a peripheral location, although today it is virtually in the center of the metropolitan area.

The Pirate's Life

Geraldo (not his real name) is an example of this process of economic dislocation and adaptation. His father used to run a successful leather workshop employing dozens of workers to produce handbags for an upscale Mexico City department store called Paris. But when tariffs on Asian goods were lowered, the store shifted to imported bags, forcing his father out of business. His father's next and last venture was a small taco stand in Tepito, which his family helped run until he died. His widow, unable to work the stand herself, rented out the space to Korean merchants and lent Geraldo and his brother money to purchase a street stall, where they sold imported baby clothes. The brother left, discouraged by low sales, and Geraldo struggled on until he made an

arrangement with a friend in 2000 to sell pirated music CDs. Pirated CDs were still relatively expensive and the supply was limited, but over time he was able to establish relations with better suppliers and eventually buy his own CD burners. By this point Geraldo was earning enough to rent an apartment outside Tepito and send his children to private schools. A year before our interview, however, his site in Tepito was raided and his equipment (fifteen burners) and CD materials were confiscated. After that, the family had to give up the rented apartment and the private schools. With a loan from friends, he was able to buy some old burners and start to build up his business again. When we next met, Geraldo had ten working burners and was back in business.

“Geraldo,” for example, has a small apartment in Tepito with his wife, teenage son, and two daughters. He spends his afternoons burning music CDs from master copies acquired elsewhere in the market—simultaneously running three machines that have three to four burners each. After school, the family watches TV while folding copies of CD covers. Still later, they sit at the dinner table assembling the jewel cases, covers, and CDs. By the end of the evening, they will have two hundred to three hundred pirated CDs, which Geraldo will sell at his stall while the kids are at school. The kids usually help him set up and take down the stall, as well as taking over for brief periods when Geraldo goes to select the CD and DVD “masters” that he will copy in the future.

Not all family arrangements follow this model. In some cases older siblings or cousins divide the labor—one handling production and another sales. There are also family businesses that specialize in one or the other. Such arrangements are common because optical disc piracy is now a very low-cost enterprise. All the necessary elements, moreover—from burners, to blank discs, to jewel cases, to covers—are readily and legally available. Computer towers are sold in Tepito itself or at a nearby computer market. Blank CDs, DVDs, and VCDs (video compact discs) are also sold in bulk in the neighborhood, often delivered straight to the stalls or residences of the producers. Prices for blanks are so competitive that they actually fluctuate during the day by a few pesos per hundred and are lower than in any retail store. Cases are sold by the boxload and are often also delivered to the door—although as prices have dropped,

some vendors have economized further by switching to thin plastic sleeves. An entire street is dedicated to the sale of the “covers” copied from original CDs and printed by the hundreds. All these preliminaries are perfectly legal. The only act that violates the law is the physical “burning” of copyrighted material onto a blank disc for the purpose of sale.

Some vendors handle all aspects of the process themselves. Geraldo starts by acquiring covers of the discs he wants to sell and, if necessary, a master—a high-quality copy of the original disc. Blank discs and cases are delivered to his stall or his house by “runners” who move through the stalls of vendors offering their products. The use of family labor in assembling the final product dramatically lowers production costs, allowing producers and vendors to reduce markups to approximately ten cents per piece. The low overhead means that, in Tepito, CDs and DVDs can be sold for less than a dollar. On the high end, good-quality copies of new releases cost between one and two dollars.

Streets in Tepito are generally organized by type of product—music, movies, or computer software—and vendors tend to specialize further by genre, particularly among movie and music vendors, who are the vast majority. As a result, despite the huge size and chaotic appearance of the market, it is usually fairly easy to find what one is looking for by just asking around. Vendors are generally very knowledgeable about their genre and their stock, and the larger ones, generally in back streets, have sizeable “back catalogs” of material stacked up in boxes or bags.

The spatial distribution of small-scale and large-scale vendors also reflects the organization of the wider market. The largest producers, as well as vendors of printed covers and other materials, such as jewel cases, are usually in the interior streets of the neighborhood since they service the wholesalers. Smaller wholesalers and retailers are located at the “entrance” to the neighborhood from downtown, where subway stations and a major traffic artery bring more casual customers. Generally, prices are cheaper closer to the center of the neighborhood. A CD selling for \$0.50 in the center may sell for \$1 at the periphery and \$2 downtown or in suburban markets. This price elasticity reinforces vendor claims that there is no gang or cartel control of the market, which would monopolize aspects of the trade and maintain higher prices.

Even with this high level of competition driving bargain pricing, several sources among the vendors indicated that Tepito’s dominance is beginning to wane. Vendors who used to wholesale to other vendors coming from as far away as Puebla or Guadalajara report that their clients are purchasing their own computers or finding other suppliers closer to home. The Internet—while still a relatively small factor in terms of consumer access to pirated goods—plays a huge role in providing pirate producers direct access to the source material itself, further diminishing the need for privileged distributors.⁶

6 The IIPA commented on this decentralization in its 2009 report, noting: “Although Tepito and San Juan de Dios remain dominant sources for the manufacture and commercialization for different types of illegal products, Plaza de la Computación and Plaza Meave are increasingly becoming sources of pirated products. There remain at least 80 very large, very well-known, ‘black markets’ in Mexico, many of which are well organized and continue to be politically protected.”

Political Incorporation

Organization at the level seen in Tepito requires a degree of complicity with political authorities, and indeed there is a long history of incorporation of street vendor organizations into Mexican party politics—notably in connection with the dominant Institutional Revolutionary Party (Partido Revolucionario Institucional—PRI), which ruled Mexico continuously (with some name changes) from the 1930s to the 1990s. This symbiotic relationship emerged in the 1950s after the PRI banned street vending. Street markets were slowly allowed to reappear under a system of agreements brokered with PRI politicians. Vendors were encouraged to organize as civil associations affiliated with the PRI, and vendor leaders were made into local caciques in return for support of the PRI at rallies and during elections (see Cross [1998] for a more detailed description of this process). In exchange, the occupation of specific streets by the merchants was acknowledged through a semiofficial system of “tolerances.”

Over time, thousands of different street vendor organizations emerged, with over forty in Tepito alone. Today, these organizations protect over 300,000 street vendors throughout Mexico City, including roughly 10,000 in Tepito. Most of these organizations have access to one or more political patrons, to whom they can turn for help should local officials try to remove them. This structure has survived the democratization of Mexican politics over the past two decades, though it has become more politicized by it—notably after the victory of the right-wing Partido de Acción Nacional in 2000, when some organizations broke with the PRI and shifted their allegiance to the left-wing Partido Revolucionario Democrático.

The strength of the street vendor organizations provides cover for the subset of vendors who deal in pirated media. At the same time, however, these associations have no legal authority over their members. A leader can discipline a member for keeping a dirty stall or for exceeding his allotted space but cannot make a legal determination about whether or not the vendor is selling a pirated product (as opposed to a clearly illegal product, such as marijuana). When the conservative government threatened in 2004 to apply a conspiracy statute to leaders who “harbored” pirates, a local PRI official countered that “the leader [of the vendor association] isn’t a policeman. He can’t denounce his members to the police because his people could denounce him also for defamation. They aren’t police officers or legal scholars to know what is legal and what isn’t . . . it’s like a witch hunt.”⁷

Of course, street vendor leaders know that their members are selling pirated goods, and in general they turn a blind eye to it. Piracy allows their members to make a livelihood and thus pay their dues. Furthermore, the history of conflict and accommodation between street vendors and the state means that leaders have a strong tendency to see any punitive policy as an attack on their hard-won *de facto* right to sell in the streets. When the leader of a large vendor

7 Specifically, Article 164 and Article 164 bis of the Mexican Penal Code, modeled after racketeering laws in the United States. Interview with Jorge Garcia Rodriguez, president of the Commission of Commerce of the Assembly of Representatives of the Federal District. He was also the leader of a confederation of organizations that included street vendors.

organization publicly raised the possibility of enforcing an anti-piracy policy in response to the government's 2004 racketeering threat, angry vendors demanded a meeting. With over a hundred vendors packed into his office, the leader found himself under attack by his own affiliates. While a few supported him, the vast majority argued from a position of economic necessity and that "custom makes the law." Ultimately, the leader backed down, signaling that local market delegates could make their own decisions. In the end, the racketeering statute was never applied.

Tepito's history of struggle positioned it well to become the main wholesale market for pirated goods in Mexico. This advantage went beyond the political protection afforded by street vendor organizations. Residents protected each other from the police. Vendors could run into their own buildings or those of friends or relatives in the event of a raid. As the street market grew, police raids into core areas of the neighborhood became more difficult. The thick tangle of customers, residents, vendors, and stalls was hard to navigate and the lack of cooperation slowed down or obstructed coordinated police action. This social solidarity within the neighborhood produced a spatial organization in which the most clearly illegal activities take place deeper in the network of streets, surrounded by buffer zones of retail vendors who can relay information and more easily afford to run and leave their merchandise behind (Cross and Hernandez 2009).

The political power of street vendors remains unsettling to many in the Mexican establishment. Elite Mexican opinion in the press and in official statements often attributes these arrangements to "mafias" and "gangs." Statements by the IIPA and by Mexican branches of the international industry organizations have adopted this line of argument—and indeed have gone further in trying to conflate media piracy with the drug trade and other forms of violent criminal activity. A 2009 report authored by the RAND Corporation and sponsored by the Motion Picture Association of America (MPAA)—ambitiously called "Film Piracy, Organized Crime, and Terrorism"—adopts this template of guilt by (spatial) association:

Tepito's resistance to law enforcement makes it terrain for fencing and piracy and provides a haven for the more dangerous criminal enterprises of narcotics and arms trafficking. Drive-by shootings have become commonplace. The Tijuana drug cartel once was said to be ensconced in the neighborhood, using local children to distribute cocaine throughout the capital. The Federal Investigation Agency (AFI) led an early morning anti-piracy raid of warehouses in Tepito in October 2006, confiscating tons of discs and 300 burners capable of producing 43,200 pirated DVDs per day. To illustrate what a cesspool of crime Tepito became, according to authoritative press accounts, six raids were made between April and July 2008, one of which resulted in the seizure of 150 tons of counterfeit material. By late 2006, when Mexican President Felipe Calderon moved to evict residents and street vendors from Tepito, it had become Mexico's premier "narco-neighborhood." (Treverton et al. 2009:108–9)

While it is undeniable that crime in Tepito is common, there is little in this study—or in our own findings—to warrant the conclusion that these activities are organizationally linked. To date, the combination of strong vendor organizations and low profit margins has been a powerful force for ensuring vendor autonomy—from the police on one side and the drug cartels on the other.⁸

Law and Enforcement

The conflation of narcotrafficking and media piracy in the RAND piece underscores a basic constraint on IP enforcement in Mexico: the violent, destabilizing, and corrupting effects of narcotrafficking dwarf the harms attributed to media piracy and so are very unlikely to be comparably viewed by most politicians and law enforcement officials. Estimates of drug cartel profits in Mexico range from \$8 billion to \$24 billion, derived primarily from marijuana sales in the United States (Cook 2008). Drug violence has claimed more than 28,000 lives in Mexico since 2006 (BBC News 2010). Twenty thousand Mexican troops occupy major drug-transit cities near the US border (Booth 2008). In this context, with law enforcement fighting a battle that threatens the Mexican state, media industry efforts to tie the two “wars” together do a disservice to both countries.

Nonetheless, Mexico has been under significant US pressure to shift policing resources toward anti-piracy efforts. The Mexican government has accommodated these requests in several important respects, including the granting, in April 2010, of *ex officio* authority to the police to allow them to act against suspected pirates without a prior complaint from rights holders.⁹ Criminal penalties have also been scaled up, with new law specifying up to ten years

8 The RAND study’s section on Mexico appears to rely exclusively on newspaper stories and interviews with representatives of the copyright industry. There is no indication of any attempt to speak with the parties involved in any of their primary examples. The weakness of this approach is clear in the discussion of a struggle between two street vendor leaders, which resulted in the death of a family member. This tragic ending to a conflict over street space and membership in the two organizations becomes, in the RAND report, part of a misleading litany of piracy-inspired violence. (The author has been in touch with both groups involved in this incident for twenty years; neither has a significant number of vendors selling pirated products.) The complexity of the optical disc production and distribution chain is taken as *prima facie* evidence of “organized criminal syndicates.” *Los Ambulantes/Tepito* (Street Vendors/Tepito) is listed as a criminal organization on par with the Yakuza and Chinese Triad (xiii). In effect, the RAND authors have classified the community as a criminal gang. It is worth noting, too, that studies of narcotrafficking in Mexico fail to mention any connections to media piracy—though connections between narcotrafficking and human and arms trafficking, kidnapping, and other serious crimes are well documented (Cook 2008; UNODC 2007).

9 Previously, *ex officio* authority was off the table because copyright infringement was characterized as a “private complaint” rather than a public matter, following long-standing Berne Convention and TRIPS traditions on this point. Chiefly, this distinction forbade police from conducting on-the-spot arrests or confiscations of goods where people were producing, selling, or buying pirated products. In practice, it meant that the sale of pirated goods often proceeded unimpeded within sight of police officers. As a private matter, the injured party (usually an agent representing a rights-holder organization) had to file a detailed complaint (*querrela*) in order to trigger an investigation or raid. This information, in turn, had to be investigated before a court order could be obtained that allowed agents to arrest the

in prison for anyone involved in the production or wholesale of pirated goods. (Retail sales on the street are subject to a lower penalty of five years.) Other measures remain under discussion, including the loosening of evidentiary requirements for search and seizure, the expansion of agencies that work directly with rights-holder organizations, and the use of the racketeering statute in piracy cases (which carries a sentence of from twenty to forty years for “organized” criminal activity, defined as involving three or more people).

As the IIPA (2010) notes, however, strong penalties on the books and—by their count—some 4,000 thousand raids in 2008 and 3,400 in 2009 translated into few actual arrests and only a handful of convictions. The IIPA claims that only fifty-seven Mexicans were serving jail time for piracy convictions in 2010, attributable to factors ranging from the inadequate prioritization of piracy on the part of judges and federal agencies to the difficulty of prosecuting copyright cases under Mexican intellectual property law.

A central constraint on the enforcement agenda is that, under Mexican law, copyright infringement applies only to acts *con fin de especulación comercial*—conducted for purposes of commercial gain. While industry groups have argued that this applies to any act of copying, on the principle that “profit results from any realized cost savings” (Segovia 2006), most legal authorities in Mexico regard commercial gain as connected to sales. At present, this provision appears to protect both private copying and file sharing. An investigator for the prosecutor’s office assured the author that making copies for oneself or for friends is legal under current Mexican law. There have been no prosecutions for file sharing; nor is there law clarifying ISP (Internet service provider) or other third-party liability for exposing or linking to infringing content. Copyright industry groups have lobbied for legal sanctions for both types of activity and are additionally discussing a version of the controversial three-strikes law to empower industry groups to terminate the Internet service of copyright infringers (IIPA 2009). Mexico was also one of only two developing countries to participate in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations, which many observers expect will create pressure for such changes in national law (the other was Morocco).¹⁰

Mexico’s police forces also present a complex picture. Control over the local police is highly decentralized in response to long-standing distrust of police power. IPR enforcement

accused person and search his or her property. Although the IIPA describes this as a major source of inefficiency in Mexican enforcement, the process was simple enough to permit three to four thousand raids per year by industry and police units. Our research in Mexico was completed before the Chamber of Deputies amended the relevant laws on this point, so we are unable to gauge its impact. It may be low. PROFECO, the Attorney General for Consumer Affairs, has *ex officio* authority but has used it sparingly—drawing IIPA criticism on this point in 2008. In other countries (see, for example, the India and Russia chapters), broader *ex officio* power has not substantially changed the situation on the street, as police resources remain scarce and policing priorities fall elsewhere.

10 A US State Department cable from 2007 reported that Mexican IPR officials were “keen to highlight their increasingly active role in the international arena, stressing their willingness to join the Anti-Counterfeiting Trade Agreement (ACTA) negotiations and push-back against Brazilian efforts to undermine IPR in international health organizations.” (Wikileaks cable 07MEXICO6229, December 2007).

is carried out almost exclusively by federal authorities—specifically the PGR and the Federal Investigation Agency (Agencia Federal de Investigación—AFI). Traditionally, neither agency has had *ex officio* powers, and it remains unclear how their practices will change with the recent expansion of *ex officio* authority.

When authorized, raids range from small-scale busts to large-scale operations involving hundreds of police. The latter often elicit fierce opposition from vendors. In a fairly typical case from August 2003, the International Federation of the Phonographic Industry reported that “Mexican law enforcement authorities (LEAs) and the anti-piracy group APDIF Mexico conducted two raids on targeted locations in the notorious Tepito district which led to violent clashes with criminal gangs operating in the area” (IFPI 2004). When the author visited the neighborhood shortly after this raid took place, the market was booming as though nothing had happened. As the IIPA observes:

Raids in Tepito and other large pirate markets are only conducted at night, as it is unsafe for law enforcement to run actions during the day. Such raids are largely ineffective as the same shops reopen and simply continue their business. (IIPA 2009:65–66)

Organizing raids into districts such as Tepito requires intense planning. PGR officials not only have to coordinate with the rights-holder organizations making the complaint but must also rely on local riot police, who are needed to force entry into hostile neighborhoods and conduct crowd control. These layers of coordination make it difficult to maintain secrecy. PGR officials claim that police officers themselves tip off local residents—a situation that has led to considerable PGR distrust of local police. More generally, however, large police contingents moving into dense neighborhoods make at least some advance notice inevitable.

While vendors usually run from the police, they have occasionally reacted with taunts and—in some cases—violence. In 2008, for example, an anti-piracy operation using three hundred riot police was fought off for three hours (Notimex 2008). An operation in 2005 led to a child being shot by a police officer, resulting in a temporary ban on anti-piracy raids in Tepito. The IIPA’s observation that Tepito is too dangerous for police in the daytime needs to be understood in this context. Although confrontations clearly put police at risk, the greater danger is that large-scale resistance can lead to bystanders being hurt or killed. It is this risk—and its high political cost—that leads the police to operate primarily at night when the streets are free of stalls and pedestrian traffic.¹¹

11 This is not to say that Tepito is unpoliced. Small police patrols do circulate in the market—often heavily armed with submachine guns. But these are “preventive” police, whose primary job is to dissuade violent crime, not to bother vendors.

Private-Sector Pressure

Other government agencies than the PGR also operate in the IP enforcement sphere and—though they lack the power to make arrests—can levy fines and impose other non-criminal penalties against infringing vendors and businesses. The Attorney General for Consumer Affairs (Procuraduría Federal del Consumidor—PROFECO), the Copyright Office, and the Mexican Institute of Industrial Property (IMPI) are the most prominent among these. These agencies work closely with industry groups and often contribute to the investigative work that informs complaints. As in other countries, Mexican groups are often affiliates of US-based or multinational industry associations, like the International Federation of the Phonographic Industry, the MPAA, and the Business Software Alliance (BSA), among others. The agendas and lobbying efforts of these different layers of rights-holder groups are usually closely aligned and often combine in broader alliances that can coordinate legislative and enforcement efforts on local, national, and international levels. In 2006, such an alliance was formalized through the creation of Mexico’s Institute for the Protection of Intellectual Property and Legitimate Commerce—combining representation from the Association for the Protection of Film and Music (APCM), the Mexican Association of Phonogram and Videogram Producers (AMBROFON), the National Producers of Phonograms (PRONAPHON), the BSA, and the MPAA.

Attitudes toward Piracy

The contradictions of enforcement in Mexico are sharpened by the general indifference of the public—and even, in interviews, of some enforcement officers—to the moral and economic arguments against piracy. There have been two recent consumer surveys on these issues—one carried out in 2006 by PROFECO and another in 2009 by the consultant group Strategy One on behalf of BASCAP (Business Action to Stop Counterfeiting and Piracy), an anti-piracy initiative funded by the International Chamber of Commerce. Both studies asked similar questions and arrived at broadly similar results.

Regarding the scale of piracy in Mexico, large majorities of respondents in both studies reported buying pirated and counterfeit goods.¹² PROFECO put this figure at 75%; BASCAP

12 The PROFECO survey queried some 1,425 people over the age of 18, at 81 “interception points” in the Mexico City metropolitan area. These “points” were primarily located in stores, markets, and government buildings in areas selected to represent different income levels. While obviously not random, this study is one of the only large-scale sources on Mexican consumer attitudes toward piracy. If the study has a bias, it lies in its overrepresentation of older and more educated people (those likely to do the shopping or go to government buildings). Some 30% of the respondents had a college degree, only 23% were under the age of 28, and no one under the age of 18 was included—the population most likely to purchase pirated goods according to the BASCAP study. As a result, the survey almost certainly underestimates the prevalence of piracy and its wider acceptance among Mexican consumers. The BASCAP survey was based on online interviews with 1,000 people, complemented by focus group findings.

at 87%. The BASCAP study helpfully differentiated among categories of goods and found that 71% of respondents had purchased pirated CDs or DVDs, and 55% pirated software—numbers significantly higher than those for traditional counterfeit goods, like clothing or luxury items. The studies also found predictable correlations with age, with over 90% of respondents in their late-teens and twenties reporting purchases of pirated or counterfeit goods, followed by lower percentages in older age brackets.¹³ The vast majority of these acquisitions were made on the street: according to PROFECO, some 93% for music CDs, 92% for movies, 84% for video games, and 50% for computer programs.¹⁴

Only small minorities expressed agreement that piracy imposed social costs: in the PROFECO study, 31% agreed that it hurt producers, 26% that it caused unemployment, and 21% that it hurt the economy. Only 1% expressed concern that piracy led to greater corruption (PROFECO did not bother listing other forms of crime). Ignorance of the law was not a factor. Nearly all respondents—89%—indicated that they knew that selling and purchasing pirated goods was illegal. The BASCAP study, which was concerned primarily with field-testing anti-piracy messages around these issues, found that only 16% agreed with the claim that the proceeds of piracy went to criminals and only 2% with the claim that buyers supported “a business based on stealing others’ idea or art.”

This indifference to moral and economic arguments against piracy becomes sharper still in the PROFECO study’s breakdown of reasons offered by the 25% who did not purchase pirated products. Among this group, only 9% (or 2.4% of the whole sample) cited concern about how piracy “affected the economy of the country”; only 4.7% (or 1.2% of the sample) refused to buy pirated goods because it was illegal. In contrast, 47% of this group cited “low quality” as their primary reason, and 28% took the (overlapping) position that they preferred originals.

Overall, the PROFECO survey shows that most respondents focus on the relationship between quality and price. Price was cited by 71% of respondents as the most important factor driving their purchases of pirated goods. At the same time, complaints about quality were the largest single concern: of the sample, 68% claimed to have had some type of problem with pirated products—most commonly with video or music quality (61%). Only 12% indicated that pirated goods were more readily available than legal versions.

13 In the PROFECO study, age was a decisive factor: only 33% of those over 67 acknowledged buying pirated goods. The BASCAP study showed a narrower but still significant disparity.

14 The survey didn’t specify other locations where pirated or counterfeit goods could have been purchased, but small shops and stalls in public-market buildings are also very informal and tend to be sources for pirated and/or counterfeit goods. This is especially true of computer programs, most of which are sold at the “Plaza de la Computación”—a huge public market in Mexico City’s downtown area that specializes in computer hardware and software—or in adjacent small stores rather than on the street in markets like Tepito.

As for their reaction to extensive enforcement efforts and education campaigns, 86% of respondents believed that piracy had increased over the previous two years; 51% agreed with the view that the government was doing “nothing” about it, and 44% indicated “a little.”

Pirate Justifications

The arguments given by consumers for why they purchased pirated media products line up closely with the justifications given by those producing and selling the goods.¹⁵ In interviews with thirteen vendors, all were aware that piracy was illegal and subject to severe punishment under Mexican law.

The most frequent justification for selling pirated goods was the inevitable combination of economic need and lack of other opportunities. “We know it isn’t legal, but it leaves us 2 or 3 pesos and that pays our salaries,” one vendor said. Often this defense is combined with criticism of the government: “There are no jobs here, and if they do provide jobs, your expenses are 200 pesos but you only earn 100. Can you live on that?” A leader of Tepito vendors put it more eloquently, noting that despite low incomes, the piracy trade supports many families, and “the government doesn’t produce jobs, but it does produce poverty.”

Most vendors do not believe that their actions constitute a significant harm to society—a point several made in explicit distinction from the sale of drugs. As one argued: “If you didn’t have a job, would you rather deal drugs, steal, or sell pirated goods?” Another vendor, asked if he thought piracy was an honorable profession, responded: “No, but what honorable job can there be? To switch from piracy to theft?” When asked whether it wouldn’t be better to avoid both, the vendor responded: “That is the proof of our honesty then—for us to die of hunger! They talk of honesty, but they don’t know about our needs.”

The impact on licit business is, nonetheless, something that several vendors felt quite keenly in relation to their own business trajectories. Several had started by selling legal CDs that they had obtained on sale from distributors. One woman noted: “They didn’t sell a lot, but you earned enough.” This model worked when vendors were able to buy originals at a discount, usually when particular CDs were unpopular or retail stores were overstocked. One vendor explained that this secondary market dried up when stores began to destroy their unsold stock instead of reselling it. Customers also pushed for access to newer songs and compilations that the discount model couldn’t provide.¹⁶ Piracy provided superior customer service in this respect and, as several vendors noted, introduced an impossible competitive dynamic: “If I turn legal, but the guy next to me still sells pirated goods, what do I do?”

15 This section is based on interviews carried out in 2004 and 2005. See Cross (2007) for a broader description.

16 Or, for that matter, that were simply unavailable. Pirates routinely produce their own “mix tapes” of popular hits that cater to local tastes. One vendor even lamented that when he makes mix tapes, other vendors simply copy them.

Over time, the prevalence of poverty and illegality in the vendor community clearly has a normalizing effect on these choices. As one vendor indicated, “The truth is that one becomes accustomed to it—being here you see everything and get used to everything.” Younger participants have simply grown up in a pirate economy. When I asked a vendor’s daughter if she felt guilty about the source of her family’s income, she responded simply, “I never thought about it.”

Pirate Populism

After economic need, the most common vendor rationales for piracy were criticisms of the culture industries, often situated within a wider critique of US and international dominance of Mexico’s terms of trade. When I asked a middle-aged couple whether piracy was a form of robbery, the man said yes but then added, “Let me explain. Who robs more, them or us? What have the record companies done for the country? What have the movie studios done? What have the presidents done for the country, to make jobs?” His wife added, “They just worry about themselves.” The man became so excited that he stood over me to make sure I wrote down every word: “That free trade agreement makes the rich richer and the poor more screwed because to benefit from trade you have to have a lot of money. Now [Mexican companies] are all transnationals, but the poor are worse off.”¹⁷

Many vendors, in this context, saw themselves as providing a public service that the transnationals refuse to deliver. “As someone who sells pirated goods, I screw the industry. But who am I helping?” one asked rhetorically, then answered himself: “The people.” Another suggested: “With the minimum [Mexican] salary [about 50 pesos or \$5 per day], it isn’t possible to buy an original disc for 200 or 300 pesos. They will spend their entire weekly wage. They come here and can find the same quality . . . but we can make it cheaper.” Still another added: “The need of popular culture is to have culture that is accessible for the people. But [the industry] just makes money and more money.”

The vendors’ defense of piracy fuses the two main ideas that shape attitudes toward piracy in Mexico: (1) the paramount question of inequality, with the pirates providing the only low-cost access to many kinds of cultural goods; and (2) a politicized, nationalist reading of piracy that attributes high prices to (mostly US) profiteering and that views domestic anti-piracy efforts as a form of subordination to foreign interests.

Although there is a clear self-justifying motive at work, these vendor interviews reinforce and arguably complete the picture of Mexican indifference to the arguments of government

17 This viewpoint was shared to a greater or lesser extent by at least half my informants and is promulgated by a local newsletter put out by an anonymous group that calls itself the “Pirates of Tepito.” In one issue they responded to the director of a movie called *Don de Tepito*, who had complained loudly when his “director’s cut” was distributed widely in the market a month before the official release date. “Who is he to complain,” the article asked, “when his lousy movie makes everyone in Tepito seem like a criminal or a drug dealer?”

and industry groups visible in the PROFECO and BASCAP surveys. In Mexico, the rationale for piracy is economic and populist. Most of the time, economic justifications rise to the top. IP enforcement, on the other hand, is viewed as a foreign (and mostly US-driven) agenda, in which the Mexican state acts illegitimately on behalf of outside interests. Anti-piracy efforts take their place, in this context, in a long history of popular resentment of US dominance of the US-Mexico relationship. Such views are hardly marginal; rather, they were basic features of PRI discourse over decades of one-party rule.

The scope of such views cannot be overestimated, and—in our view—they shape the sometimes schizophrenic approach of the Mexican government to legal change and cooperation with rights-holder groups. In 2005, I interviewed a PGR official charged with IP enforcement in Mexico City. In response to a question about the new criminal penalties for piracy, he said, “I’m convinced that raising the penalties is not the solution. It is a social and economic problem more than a delinquency problem. . . . I would prefer to be grabbing drug traffickers rather than pirates.” Like the pirates, he attributed much of the responsibility for piracy to the industry itself: “It is also a problem of the artists. It isn’t possible that a disc that costs 200 pesos [\$20] has just one good song, while all the rest are garbage!” Why, then, does the Mexican government invest so much in anti-piracy efforts? “It is mostly the internationals—that is, the gringos squeeze us to carry out these operations.” Like several of the vendors, the official repeated the comment about gringos to make sure that I wrote it down.

Conclusion

The economic and political factors surrounding media piracy in Mexico almost never figure in industry reporting, but they are the elephant in the room of IP enforcement. The IIPA’s Mexico reports—so critical to maintaining US pressure on the Mexican government—touch only obliquely on the mix of indifference and hostility that greets enforcement efforts and indeed rarely mention the Mexican public at all, except as the target of industry-sponsored education campaigns, such as the menacing “Think About It” (*Piénsalo Bien*) campaign initiated by the IMPI and the BSA in 2008. In our view, the PROFECO and BASCAP surveys cast strong doubt on the value of these initiatives. There are very few Mexicans who are uninformed about piracy or confused about its legality. And there are very few for whom this knowledge has any deterrent effect.

For nearly a decade, the copyright industry has waged a campaign to connect piracy to Mexico’s flourishing drug trade. The advantages of doing so may seem obvious: Narcotrafficking represents a serious crisis for the Mexican state and a basis for expanded governmental and police powers. Tying piracy to narcotrafficking allows industry groups to capture new public resources for the anti-piracy effort. The use of new organized-crime statutes, the extension of ex officio powers to the PGR and local police, and the formation of specialized IP enforcement units are part of this wider effort to shift enforcement responsibilities and costs onto an expanded security state.

As this chapter has argued, however, the case for substantive connections between street piracy and the drug trade is thin—based largely on guilt by association and reliant on the general disrepute of Tepito and other street vending neighborhoods to cover gaps in the evidentiary chain. It also runs against much of what we know about the informal economy in Mexico. Street vendors are well organized and politically protected for reasons that have nothing to do with the drug trade and much to do with their history of economic struggle and resulting incorporation into alliances with major political parties.

These disconnects between the official account of piracy in Mexico and the facts on the ground point to a persistent upper boundary in the enforcement agenda. Despite constant pressure from the United States and copyright industry groups, the Mexican government has not fully committed to the material and political costs of pervasive street-level enforcement. The diverse “failures of cooperation” cited in IIPA Mexico reports need to be understood in this context—not simply as products of inefficiency or lack of understanding but also as a dynamic process of balancing the demands of trade partners against the possible domestic costs of such efforts. It is hard to imagine short- or medium-term circumstances in which this balancing act would change. Yet, such decisions are inevitably negotiated outcomes, and the Mexican government is not a unified actor in these discussions. Different agencies have adopted different *de facto* positions on enforcement. Mexican trade negotiators involved in the ACTA process, for example, endorsed policies that would sharply impact how the PGR and other enforcement agencies prioritize and conduct their anti-piracy efforts—though only time will tell how much such formal agreements are worth on the streets.

As in many other countries, piracy in Mexico is the product of a complex interaction of forces—among them, the widespread availability of digital media technologies; the high cost of licit media goods; severe, persistent economic inequality; and popular indifference or hostility to enforcement efforts. Because the enforcement agenda of the industry groups does not recognize much less address these issues, those groups seem destined to remain on a war footing, struggling to break an economy built on basic economics and ubiquitous consumer behavior. Here, the drug war analogy seems more apropos.

About the Study

This chapter draws on research conducted by Dr. John Cross over some twenty years of work on the informal economy and urban poverty in Mexico City. Many of the interviews with Tepito vendors and other community members were held in 2004 and 2005. Most of the other interviews—including those with enforcement officers—took place in 2008.

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