

ANNEX: GUATEMALA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2020 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Licensed music services have launched in Guatemala in recent years to meet clear consumer demand for such services. At the start of 2020, there were nine digital services competing in the market, including all of the leading international streaming services. However, because of piracy and the lack of effective enforcement locally, the digital music market in Guatemala has had a difficult time developing beyond its initial phase. In the face of strong opposition from broadcasters, the local collective management organization of record producers and artists (AGINPRO) continues to try to collect monies. It has also filed several legal actions (mostly criminal actions) to try to obtain compensation for public performances from businesses performing sound recordings and from cable and satellite operators.

In 2017, AGINPRO won a case in the Constitutional Court against a group of television and radio broadcasters requiring that the broadcasters obtain licenses and make payments for broadcasting recorded music. AGINPRO fought for years to get broadcasters to actually comply with the ruling and pay licensing fees for the use of recordings on television stations. Finally, in 2019, AGINPRO signed an historic agreement with a local broadcasters' association to regulate the terms and conditions of licensing for commercial radio and television. Although the agreement requires implementation by each individual radio and television station, it indicates progress and an acknowledgement by the stations of their willingness to comply with copyright law. IIPA recommends that the Government of Guatemala clearly indicate that stations that do not comply with this agreement will be prosecuted and sanctioned. Unfortunately, compliance will remain difficult as some of the previously resistant broadcast stations are owned by local politicians. Also in 2019, AGINPRO was successful in getting some prominent cable operators (e.g., CLARO TV) to license materials. Others have, however, resisted licensing in part, because pending criminal cases against them have been delayed and are generally not deterrents to continued flagrant infringement. One such case against TIGO Guatemala (a large cable and mobile phone operator) has not proceeded because of prosecutorial mistakes in gathering evidence. The new Government of Guatemala should give clear indications of its willingness to properly enforce copyright laws, including against those who previously used political influence to delay or defeat prosecution.

In its April 2019 Special 301 Report, the U.S. Government noted that the number of enforcement raids and convictions had “declined significantly” in 2017 and 2018. There were no reports by the copyright industries of increased enforcement activity in 2019. The enforcement raids that do take place are undertaken by the National Police and Attorney General’s Office.

Overall, piracy of film and television material continues to rise in Guatemala. The main form of this piracy is cable piracy that takes two forms. First, and most prevalent, is the unauthorized retransmission of programming by local cable operators. Alternatively, some local cable operators have developed and created their own channels through which they distribute U.S.-created content such as telenovelas and sports events (e.g., soccer), financed by the sale of local advertisements. It is estimated that there are 150 channels of this type in Guatemala according to one local cable service. A third variety of piracy is where local cable operators use illegal Internet Protocol TV (IPTV) boxes—these boxes allow users to access TV via the Internet. In this instance, the cable operators provide their own local IPTV service for a fee to cable subscribers, offering programming that they do not pay for by accessing it using these boxes and delivering it (illegally) to their subscribers. As the Internet infrastructure in Guatemala expands, other forms of online video piracy are also on the rise. Most common is the use of Piracy Devices (PDs, also referred to as illicit streaming devices, ISDs), which allow individual users to access subscription-only programming without authorization or payment to rights holders. Another device commonly used and on the rise in Guatemala is direct-to-home (DTH) boxes. These devices are used to access content, including broadcasts from the United States, as well as basic and premium movie and television channels. In Guatemala, they are also commonly used in bars and hotels,



as well as by individual consumers in their homes. The PDs and DTH boxes are now for sale in Guatemala City (a recent phenomenon), and becoming more popular nationwide.

The motion picture industry remains concerned about enforcement against all of these forms of cable and signal piracy, and recommends that the Copyright Office and Guatemala's telecommunications regulator UNCOSU should have administrative authority to act without requiring a complaint from rights holders. Currently, UNCOSU sanctions are small fines and cease and desist letters, neither of which have any deterrent effect. Additionally, there is the need for legislative change to empower the Copyright Office to undertake administrative actions for all IP violations; currently, it serves only as an office of registrations. Both UNCOSU and the Copyright Office need enhanced legislative authority, but also support at the highest levels of government to undertake effective enforcement. At present, the only effective enforcement option for rights holders is to seek criminal referrals to enforcement authorities. While this can be effective, it is a slow process, and cannot properly handle the large volume of cases to effectively and efficiently address piracy in Guatemala.

The music industry remains concerned that broadcasters do not secure licenses for the music they broadcast. In general, there is a need for substantially more criminal enforcement efforts against all forms of piracy and unlicensed uses of copyrighted materials, but also for better and more effective administrative remedies, as identified above, to address certain forms of piracy.

IIPA last filed a country report on Guatemala in 2003. At that time, IIPA recommended that Guatemala be placed on the Watch List. IIPA recommends that Guatemala remain on the Watch List in 2020.

