

Piracy in México

DIAGNOSTIC OF THE SUPPLY
AND INSTITUTIONAL ACTONS



AMERICAN CHAMBER
MEXICO

**OBSERVATORIO
hIACIOhIAL
CIUDADANO**

AUTORES:

Doria del Mar Vélez Salas,
Manuel Alejandro Vélez Salas,
Ana Laura Velasco Ugalde,
Laura Jimena Ambrosio Jaramillo,
Hugo Javier Fuentes Castro.

DISEÑO EDITORIAL:

Citlaly Andrade Paredes,
Gabriela Fajardo Hernández.

Primera edición, julio de 2020

ISBN: 978-607-9364-74-8

Piratería en México: Diagnóstico de la oferta y de las acciones institucionales

D.R. © OBSERVATORIO NACIONAL CIUDADANO DE SEGURIDAD, JUSTICIA Y LEGALIDAD
Leibnitz No. 20, PH 1, Col. Anzures, Alcaldía Miguel Hidalgo, C.P. 11590, México, Ciudad de México
www.onc.org.mx

Queda prohibida la reproducción total o parcial de este material, por cualquier medio, sin el previo y expreso consentimiento por escrito de los autores y del Observatorio Nacional Ciudadano de Seguridad, Justicia y Legalidad.



AMERICAN CHAMBER
MEXICO



Chapter 1

How can we understand piracy and which is the supply?

1.1 Key definitions in three areas: piracy in informal trade, piracy in formal trade and digital piracy

1.1.1 Definitions: How current and prevailing is this term? What are the general perceptions?

Piracy has become a rich term used to refer to a very large group of products and services. It can simultaneously evoke usual images such as the "vagonero" (coach seller) of the subway, carrying a backpack with a huge speaker, playing and selling a wide variety of compact discs with the greatest hits of rock in Spanish, the stall filled with "designer" clothing in a travelling market close to the holidays, or the famous "carpeteros" (street sellers) on Eje Central in Mexico City, selling computer programs for a fraction of their original price.

At the same time, the adjective "pirated" has been used to refer to the forged and falsified uniforms and badges of the police departments and the Armed Forces, security companies, taxis, musical groups, vessels, and even radio stations. This linguistic richness reflects that in society, there is a polysemic usage of the term "piracy" and its adjectives. In these cases, the multiplicity of meanings gets away from the area of intellectual property, that is to say, the forgery or counterfeit of brands and trademarks, as well as the unauthorized use of contents protected by copyright.

For the owners and holders of rights, whether they are companies, performers, artists, inventors or other creators, as well as the authorities specialized in intellectual property, the meaning of piracy is narrowed down to the legal definitions provided in the Law. On the contrary, the socially spread idea of piracy focuses more on the products' attributes, for instance, if they are of poor quality, the price, their characteristics and the location of points of sale, among others. These aspects do not necessarily coincide or reflect adequately the established legal definitions.

According to the fieldwork made in the framework of this research, unfortunately, the first conscious contact people have with intellectual property is through piracy. The foregoing has serious consequences, because piracy as a social phenomenon is associated with a certain degree of acceptability, tolerance and justification. Since this is the first contact with intellectual property, then it can be negatively perceived or undervalued as a pillar of social and economic progress.

Although initially the term was delimited to copyright and, in particular, the situation of creative industries, piracy is now used to refer to the forgery and counterfeit of trademarks, and even in some industries, some actors extend it to patents as well.¹ As a colloquial term, piracy includes a very wide array of diverse and dissimilar, so much that they do not contribute enough in order to create a greater understanding of this phenomenon. Thus, it loses its validity bit by bit.

Taking this perspective into account, we present three little known examples that illustrate perfectly the previous point. The first of these is the "seed" piracy, which consists in the unauthorized use of material protected by an "obtaining" title or ownership (similar to a patent).

¹ According to authors like Li (2009) & Hopkins et. al. (2003) patent violations do not qualify as piracy (counterfeiting).

Although the frequency of this type of piracy does not compare to the cases of forgery and counterfeit of trademarks or copyright, it does reflect qualitative differences in relation to other sectors. This piracy happens when a company or public institution makes improvement work on a vegetal variety, so that it can become more resilient to climate conditions, change its visual characteristics, such as its color, or increase its performance or lifespan. The new vegetal variety is protected, and the company or public institution is granted a title or ownership that gives an exclusive commercial exploitation for a fixed term, depending on the type of crop or culture. When a person uses this material without a previous formal consent, he or she incurs in a breach to the “obtaining” title or ownership. This is known as “seed” piracy.

The second example was produced due to the technological change in the telecommunications industry. Over-the-top (OTT) or Internet television (IPTV) piracy derives from the evolution of viewers’ habits and their migration to “on demand” platforms. This happens when users access to protected content (in real time or out-of-time) without subscribing to a cable or satellite service through specialized hardware (legal or illegal decoders) and/or software (apps). It includes both the sale of illegal physical devices and the prevalence of free or pay apps that link the users to a great variety of content that seriously infringe copyright.

The third example, maybe the most known of all, refers to the “import and sale of electronic equipment”, such as computer, tablet and phone chargers. Despite being perceived as simple accessories, they have to comply with security standards certified by an independent institution with its own brand. What can be seen in the market is the presence of this kind of chargers with the brand that proves their security, but counterfeit, that is to say, it never passed through any certification process; therefore, it is unknown if the use of this charger can damage the equipment and/or the user.

Although in the previous examples it is shared the notion of “unauthorized use”, the dynamics and actors are extremely varied. It must be pointed out that each one of the examples implies diverse consequences: in the case of seed piracy, it is inhibited the investment in new and better vegetal varieties, which limits farming productivity; in the case of OTT piracy, the risk of identity theft increases, as well as the prevalence of other cybercrimes; and in the last one, it increases the possibility of causing fires or injuries.

Besides this multiplicity of dynamics covered in the term “piracy”, terminological issues are deepened when it is mixed the vocabulary of health hazards with the one of intellectual property. For example, let’s take the case of pirated finished medicines. If we choose a strictly legal definition of intellectual property, a pirated medicine will be that which shows a forged brand or trademark, regardless of its content. Also, for some laboratories, a pirated medicine will be that which does not respect any of the multiple patents in full force and effect.

However, if we go for a definition based on healthcare laws, the description of pirated medicine can include several factors: if it is adulterated, polluted, forged, if it lacks a sanitary registration or if it is expired. In these cases, it is necessary to prove if the product falls in any of the cases provided by the Law, regardless of the trademark shown. Although there can be some concurrence among definitions, namely, a falsified medicine that shows a counterfeit brand or trademark, there are still significant technical difficulties to resolve.² Due to the latter, some authorities prefer to refer to them as irregular medicines or to make a distinction between substandard and counterfeit.

² Due to these terminological differences, there is an international effort lead by WHO in order to clarify these concepts and assign them a much more careful treatment that contributes to narrow down the scopes of clinical research and improve sanitary regulations.

It is worth mentioning that these conceptual issues are not limited to the pharmaceutical or medical equipment industries; they are also identified in other industries, such as agrochemicals, tobacco, alcohol, food, non-alcoholic or soft beverages, food or dietary supplements, perfume products, beauty and hygiene, amongst others. Hence, discussing piracy in these sectors requires an additional care, since there is the risk of reaching biased diagnostics.

On the other hand, part of the existing studies on piracy are based either on the definitions of international organisms or on those provided in the law as a first identification strategy for this phenomenon. Although this analytic method is valid, it is pertinent to discuss if it applies to all studies on piracy or if we require individual analyses that reflect with greater technical accuracy what happens in each industry. Likewise, one of the needs detected in the fieldwork is the development of new approaches that allow an alternative understanding of the problem and contribute to the creation of better public policies.

In this sense, piracy markets are classified in primary and secondary (Atsumi, 2016 y Di Liddo, 2017); the first ones are those in which there is mixed information, that is to say, the consumers do not know that they are purchasing a product or service that breaches any intellectual property rights, for example, the agrochemical market, auto parts, machinery, home appliances, toys, school supplies, among others, whereas the secondary markets refer to those with clear information, that is, the majority of consumers know for sure if the product infringes any right. For instance, this category would include phonograms, videos, clothing, computer programs, or luxurious items such as watches and purses, etc. This distinction is very relevant because, while in the second type of market there is a complicity by the consumer, in the first one there is none or it is unlikely.

TABLE I.1 Classification of piracy markets and their perception

Type of market	Sector	Sociological	Economical	Criminological
Secondary Market	Supply	<ul style="list-style-type: none"> • Provides jobs. • It is conceived as a means for survival. • It is preferable that they sell piracy rather than incurring in worse activities; for example, kidnapping. 	<ul style="list-style-type: none"> • Low production costs. • Homogenous products in quality. • Mixed with stolen products. 	<ul style="list-style-type: none"> • They are not seen as criminals, but rather as traders. • Less organization to commit the crime.
	Demand	<ul style="list-style-type: none"> • Inspirational consumption; "having for being" and social status. • The idea of beating the "system" for getting something cheaper or even free. • Fair prices. 	<ul style="list-style-type: none"> • Advantages of having reduced prices compared to the original products. 	<ul style="list-style-type: none"> • No hay una víctima
	Effects	<ul style="list-style-type: none"> • It does not cause any damage, or it only harms multinational companies. 	<ul style="list-style-type: none"> • Improves welfare for having a wider variety of affordable goods. 	<ul style="list-style-type: none"> • "Light" crime. • It does not cause violence or other effects.

Type of market	Sector	Sociological	Economical	Criminological
Primary Market	Supply	<ul style="list-style-type: none"> • Ignorance and disbelief of the supply of this kind of products. • Belief on some sort of moral or ethical impediment that inhibits production. 	<ul style="list-style-type: none"> • The size of the primary market is smaller than the secondary. • They are specific-target markets and, apparently, less visible or underground. 	<ul style="list-style-type: none"> • The fraudulent behavior is more intense. • More organization to commit the crime.
	Demand	<ul style="list-style-type: none"> • There is no inspirational or status-related issue. • Sometimes, it can be the result of a perceived need or pressure. • Consumption by mistake. 	<ul style="list-style-type: none"> • It becomes a consumption problem due to its uncertainty. • The price difference may not be that evident to reduce the probability of identifying the deceit. 	<ul style="list-style-type: none"> • More awareness of being the victim. • Acknowledgement of the deceit. (<i>expost</i>)

Source: Made by ONC

In the following sections, we will analyze in depth some of these perceptions and myths of the previous table in order to demystify them and provide argumentative elements to encourage a more effective institutional response.

1.1.2 Mexico's role in piracy

Piracy understood as a socially acceptable illegal activity, carried out through different extents and varieties, is undoubtedly a clear example of the way its reproduction has been adjusting to market, institutional, social, economic, and technological changes in Mexico. In the last decades, this transition has been significantly marked by several factors, mainly external, which have caused that our country is deemed as importer of certain types of pirated products, but with a thriving demand for their sale.

In this country, just as in the rest of the world, figures, calculations and references are scarce or suspicious. Therefore, the opportunity to study the trends regarding the most pirated products or Mexico's role in this activity is through the law firms specialized in this matter, the right owners or holders, the authorities, or the traders themselves. In this case, the first three were an essential reference to prepare this section.

The seventies and eighties were the periods that the interviewees considered a watershed for the piracy industry in Mexico. Some of them mentioned that this market niche saw a huge increase in this period due to the increasingly large investment in the registration of trademarks and brands, and their appropriation in the Mexican domestic market. In those years, the most frequent references pointed mainly to the production of pirated tennis shoes with renowned brands or banners, as well as the manufacture of jeans with the use of logos or banners of certain brands.

"many of the workshops that manufacture piracy in Mexico... Moroleón, uh, they are very famous pirated clothing production centers..."

María Elena Sada, lawyer, interview.

Also, a former IMPI (Mexican Institute of Intellectual Property) officer took some similar elements mentioned by Sada, like the case of the municipalities with the largest production and the kind of pirated products. However, Juárez believes there is another reason why these markets emerged:

“If you look at the places where they established jeans or denim factories, like Puebla, of certain brands, it is precisely where it is currently concentrated the largest productivity of pirated jeans or denim. Places like Guanajuato, the shoe industry, which was established in our country to create productivity with cheap workforce, at the end became a place that produced piracy, because that same people worked there, learn the mechanisms and the know-how, and then established their own factories. And so, we can locate the same trend in certain regions of our country, for example, in the clothing industry. In Michoacán and Jalisco, you are going to find that the places where they manufactured shirts and T-shirts are now producing pirated merchandise. Hence, in a way, the legal industry slowly turned into an illegal one.”

Andrés Juárez, former IMPI officer, interview

Years later, at the beginning of the nineties, with the boom of cassettes and VHS or Beta videocassettes, and then with the CD's and DVD's that were used as the most preferred formats to burn software, movies and music, the black market identified another business opportunity with low costs and risks, but with great profit.

“This was between the eighties and nineties, when we started to see more often these street markets. In those, you could find a small stall of pirated cassettes and LP's, or where they sold original cassettes and the first compact discs. That was in music, but there were also movies in VHS format. That was when it started. They began to do these clones, or the same video recorder allowed you to record directly what was broadcast in television.”

Juan Gómez, representative of right owners, interview

These products, just like tennis shoes and denim, are still a domestic production for their sale nationwide, or sometimes for their distribution in Central and South America.

“Mexico produces all kinds of things, I mean, they import a lot of supplies from the east, evidently... back then it was CD's, USB's, and now mobile devices, blah, blah, blah... they have always done that. They import a lot of machinery to replicate DVD's, etc. They manufacture a lot of merchandise here, too, and from here it is exported again to the rest of Mexico, Central and South America, basically.”

María Elena Sada, lawyer, interview

During all these years, Mexico's role in the trade of pirated products has been so significant that, at the beginning of the nineties, with the execution and signing of the North American Free Trade Agreement (NAFTA), it was created an antipiracy office in the PGR (Office of the Mexican Attorney-General), the COFEPRIS (Federal Commission for the Protection against Sanitary Risk), local prosecutor offices in charge of dealing with this crime, Indautor (National Institute of Copyright), amongst others. In the association of intellectual property specialists, these institutions receive the nickname of “NAFTA institutions”, because of the Agreement. In Mexico, this was the first time this issue was considered part of a government program.

Currently, due to the poor quality of Mexican pirated products and the rise of piracy markets in Asia, a high percentage of these products come from Hong Kong, China, Vietnam, India, among others. For this crime, Mexico is considered as a transit country of apocryphal and fake merchandise with destination for the United States, Central and South America.

Regarding downloads of pirated digital content, the quantification is even more complex. However, in a report submitted by one of the right holders, it is stated that behind Australia, Germany, Sweden, Brazil and India, Mexico has positioned itself in the first quarter of the year as one of the countries with the most significant increase in the frequency of pirated downloads. In this matter, it included downloads via WhatsApp with 11.87%; Instagram with 17.7%, and other variants such as Facebook Live and WhatsApp Video.

On the other hand, as part of the products that show different patterns in the value chain, there are those related to house maintenance, such as detergents and disinfectants, and those of personal care, such as deodorants, body soaps, etc. These can be produced at home and then be sold in local markets. Some right holders that participated in the questionnaires mentioned that the profits earned by the seller of these pirated products are usually very high, just as the risk to the consumers' health.

Look, a long time ago we had a shampoo brand, right? Well, on the street markets they sold the bottles that they picked up from the trash and refilled; the same happened with alcohol, they refill and sell the bottles. You saw the bottles of shampoo, which were transparent, then looked at them, and just see how the content settled, it was something really...³ Once, we got to a laboratory, I think it was in Guadalajara, and all the liquid was in barrels, like in a garage, there, in barrels. No hygiene at all, nothing. The thing is, if you start to tour these markets, you see the cost and the risk, right?

Daniel Rodríguez, lawyer, interview

The start of sales of this kind of products varies according to the years in which they began to be detected by the brands; therefore, the sales volume or reductions related to this felony are unknown. However, in the answers submitted in the questionnaires given to the authorities and the right holders or owners, it is remarkable that in most cases, the consumers do not know that they are buying a product that is not original, and that the bottles, containers or packaging are being reused without passing through a proper recycling or cleaning process.

1.1.3 Piracy in the Informal Sector

When talking about informal markets, both the Bank of Mexico and the World Bank refer to two categories included in this same term. The first refers to the businessmen and freelancers that do not produce either farming resources or services, that are not included in the tax collection programs, and besides own their businesses. The second refers to informal workers who are salaried employees of small businesses or start-ups, but where the economic relationship is subordinated to the employer-employee status.

Maloney (2004), pioneer in the study of informal markets in Latin America, states that these economic sectors are not the result of the lack of opportunities created by formal markets; in any case, they are an option to obtain resources through different work types. Also, he points out that at least in this geographic region, where the countries share similarities in their economic development, the most important elements that lead people to search for jobs in the informal sector are: 1) the opportunity of getting a medical insurance thanks to other family member or

³ Some words were removed in the edition by request of AMCHAM, but do not affect the sense of the quote.

relative; 2) the administrative costs for social security are very high compared to the quality of the labor benefits acquired; and 3) the high level of staff turnover or rotation in formal jobs reduces the opportunity for the employees to be promoted and improve their salary conditions.

In Mexico, the size of the challenge presents itself in the latest figures published by INEGI (National Statistics, Geography and Informatics Institute); in May of 2019, it was estimated that the population working informally⁴ reached 30.8 million people throughout the first quarter of the year, while the population working in the informal sector reached a total of 15 million people in the same period⁵. Some comparisons made by the same institution show that at least in 2017, 22.7% of the GDP was informal, and was generated by 57.1% of the population working in the informal sector.

Informal markets can be found in different places and presentations: catalogue selling, websites, social media, self-employment, stands, street markets, among other. Unlike formal markets, Maloney (2004) considers that these do not require a physical space to be carried out.

In this context, piracy finds a niche in the informal market, because it has the sales capacity of any kind of product that is not regulated by the authorities and does not have either the quality or the licenses for their exploitation and sale to the public. However, it is not possible to make an estimation regarding the share of pirated products in these markets in Mexico due to the scarce existing information. Taking the latter into account, the interviews made within the framework of this research were a means that allowed us to give a context to both matters and build the information.

The right holders or owners that participated in the fieldwork stage helped us identify some of the most tangible benefits for the traders of this kind of merchandise. They stated that there is a clear business opportunity for the traders in the informal market since, regardless of the type of pirated product sold, this status provides them economic discretion for their businesses and, more importantly, a source of income and employment for many families.

“Then, I would say that, indeed, this economic activity works for Mexico. That is to say, it is useful for the country because a high percentage of the population works in the informal sector, but at the same time it creates unfair competition. And this is a matter of competition. We cannot omit the fact that the protection to intellectual property... the monopolist protection to intellectual property is created because we have to reward innovation. That is essential.”

Rosario Sánchez, former COFEPRIS officer, interview

López (2015) in its article “*Del comercio informal y los espacios públicos*” [Informal trade and public spaces] (2015), clearly delimits the type of economic share of informal markets that have commercial establishments in some location of the public space. She points out that, although this type of economic activities does not become a formal collection of a State-regulated tax, there are some alternative collection systems, like area rights. This means that the informal trader has to pay for the occupation of the spaces where he or she performs his or her activity. Informal traders pay their “area rights” to the people who legally control the selling spaces (local offices or municipalities) and, other times, to whom illegally controls the public space.

⁴ This category includes all the modalities of informal employment.

⁵ This category refers to the population engaged in non-farming economic units, operated without accounting records and carried out with household resources or by the person who leads the activity, without incorporating it as a company.

In many cases, the amounts payable are far from low, and represent a significant percentage of the profits.

Regarding these monetary transactions among authorities, union leaders and street vendors, several authorities and, most of all, brand or trademark representatives, were the ones who confirmed that there is a wide social fabric that gets benefited from its existence.

Cross (2011) wrote a whole section dedicated to the challenge of piracy for an economy such as the Mexican, it we consider three substantial elements. One of these refers to the legal challenges acquired with the execution and signing of the North American Free Trade Agreement (NAFTA), and the other two derive from the social, political and economic structure that gives continuity to this activity in the country. We will tackle the last one in the following paragraphs.

First, according to Cross's perspective, piracy in this country, unlike other types of crimes that require large organizational structures, is not organized by a significant number of local gangs, drug cartels or other criminal syndicates with large-scale influence; instead, their organization and sales power lies in the small family networks in charge of manufacturing and selling the pirated products. Cross mentions that probably this lack of local knowledge is what limits the effectivity of police operations in the country because, due to the foregoing, there are few "ringleaders" whose arrest can have a significant impact on the piracy economy. The latter, as well as large-scale actions, would be responsible for the low effectivity level of the government interventions.

However, the evidence found in the fieldwork of this research contradicts Cross's statements. Although there are shopping malls where pirated merchandise is sold thanks to the rules and social agreements on a very local small scale, we have also identified criminal syndicates with great economic and social influence that are involved in the sale of pirated products and other crimes. The following sections hereof will deepen on this matter.

"We dismantled laboratories in several operations that we performed, for example, in Tepito. This is a reality: in these places, we found that they were burning and cloning movies and pornography. They had the cases, the virgin discs, the covers, the plastic, the boxes... and in the covers you could see that it was pornography, child pornography, which we couldn't know if it came from human trafficking or it was consented pornography, right? Then, usually, when we talk about organized criminal groups, the ones that trade and manufacture this pirated merchandise, they could also have businesses of human trafficking, smuggling, gun-running, and also drug trafficking."

Mariana Frías, lawyer, focal group

Cross highlights a fundamental characteristic of informal markets that sell pirated products in Mexico: their ability to withstand and adapt to local administrative changes. He states that much of the piracy is created in economic sectors with a broad organizational experience that allow them to guarantee their permanence thanks to the wide political capital they have among their traders.

Also, Guillermo Valdés, former director of extinct CISEN, in an interview made by Milenio TV on July 25, 2019, mentioned as well both characteristics presented by Cross, although he did not make a direct attribution. Valdés proposes an analytic approach in which there are established the communication lines created among groups of street vendors or union organizations, criminal syndicates, political parties and authorities. From his perspective, the lines are blurred among these connections, and many times it is impossible to distinguish them. He said:

“Vendors in Tepito, where most of them try to earn their living honestly, are part of this immense organization, and then there is Unión Tepito, which engages in illegal activities... And, where is the border between legal vendors and Unión Tepito, or, I don’t know, between “moto-taxi” drivers of Tláhuac and the drug cartel lead by “El Ojos”? Another problem is that these union organizations of informal economy, like street market vendors, taxi drivers, street vendors, etc., are organized on a client basis and belong to PRI, PRD, and now Morena. Thus, the connections among criminal syndicates, union organizations, political parties, and authorities are usually more constant than in other entities.”

(Valdés, 2019).

Beyond the economic factors that stand out from these informal systems, Alicia Banderas, specialized attorney in this area, mentioned that their effects also include the waste of talent of possible professionals with great qualities of the formal market and the lack of meritocratic systems that affect the development of the country. This factor was mentioned by Maloney, too (2004).

1.1.4 Piracy in the formal sector

The sale of pirated products in formal markets has been increasing throughout the years due to the boom of digital platforms around the world. The first objective of this section is to deepen in the sale of this kind of merchandise through the analysis of the distribution of pirated physical products, and specifically in Mexico, through commercial platforms or marketplaces. In this case, we rule out the sale of software packages, access accounts to unlimited content, among others, which provide a service to the user through the web. This last point will be developed in the next section.

The second objective is to assess the responsibility of large, medium and small companies that are formally registered before the correspondent authorities, in which it has been identified the sale of pirated merchandise in the country. It shall be pointed out that, although the information collected through applied interviews, as well as bibliographical and newspaper information, could not deepen in the purchase mechanisms of this kind of merchandise, these cases were constantly mentioned by some right holders and law firms.

We understand formal markets as “those activities that are duly registered before tax authorities, and report their economical movements by means of the payment of taxes before SAT (Tax Administration Service), so that it is informed regarding incomes, expenses, costs, suppliers and customers of a micro, small, medium or large company, as well as of an individual with business activities”. Lewis (1954) and Harris-Todaro (1970) consider that formal markets are characterized by the offer of better salaries for their workers and the creation of more attractive jobs for society.

The sale of pirated products through these commercial systems emerge from different cases. The first focuses on the sale of piracy through trading platforms acting as third-party sellers, which has been growing to the extent to which these points of sale show a significant boom both for suppliers and consumers. Although the number of identified cases in Mexico remains unknown by right holders, authorities and law firms, some federal government authorities indicated that certain trading platforms on the Internet tend to gather the majority of reports made by brand or trademark owners.

According to these authorities, in such cases, the proceedings filed do not imply the creation of an investigation file aimed to find the responsible people that sell the products in the platform; instead, they seek the support of said authorities so that the product can be deregistered. For their part, some other brand owners choose to proceed with the deregistration from their legal department without involving the authorities.

“(...)What the marketplaces say is that they do not have control of what they upload. So, the brand owner has to monitor constantly what each of them is selling. All of these platforms have downlink procedures... [...] they are very receptive. It would be unfair to ask the platform to proactively monitor all the products sold by their users. They already include in their terms and conditions that if you sell piracy, then you will be deregistered; that is, if they know, they do deregister the user that is selling illegal things. What happens it that said user registers again with another name and sells the same merchandise once again.”

Alicia Banderas, lawyer, interview

In that regard, in February of 2019, Local Circle, an international consulting company, estimated that at least one out of five products sold in any of these platforms is pirated, and from this total, the most forged and sold are perfumes and cosmetics. However, they do not dismiss the existence of purses, shoes or toys of poor quality. Currently, according to this same source, in the United States and India, they are working on the preparation of a legal framework in e-commerce matters aimed to regulate the requirements implemented in certain trading platforms, in order to reduce the number of suppliers of pirated products in those countries.

In January of 2018, the European Commission published the first *Counterfeit and Piracy Watch List*, where they point to some platforms such as Bukalapak, EVO Company, Group Lazada, Snapdeal, Xxjcy.com, y China-telecommunications.com as those which sell a larger number of pirated products. Some companies with significant presence in Mexico were not included due to the efforts they make on an international level to stop the presence of this type of suppliers.

In Mexico, the interviewed authorities mentioned that, up until now, they do not consider the inclusion of any amendments or additions to the existing framework to control the type of suppliers included in digital platforms. However, they did add that they constantly seek the execution of collaboration agreements among the representatives of these platforms in order to make more efficient the collaborating systems in case of any report or complaint.

Likewise, some platforms are currently implementing the Intellectual Property Protection Program, aimed to block the trade of pirated products. The page quotes the following word by word: “the objective is to prevent that they are listed or offered through [X] articles that violate any Intellectual Property Rights, whether they are copyrights, patents, trademarks, brands, industrial models and/or designs, or other third-party rights. The people registered to the Program, the right owner, or any User can identify and request the removal of those items that, according to their criteria, infringe or breach the provisions established in the General Terms and Conditions”.

Besides the sale of pirated products through marketplaces, one of the interviews made allowed us to identify another way of selling pirated products through websites. Its modus operandi is the sale of pirated products, movies, music, among others, through illegal sites that the user reaches thanks to the intermediation of advertising agencies that are hired by the same brand owners.

“The problem is that, at the end, the advertisers of legal genuine products get advertised in illegal sites because they do not purchase the advertising, an agency does; it searches what sites have the most visits, and then they buy advertising there, which is crazy. You end up advertising yourself in an illegal site that may harm you, that can damage someone else in the industry, or someone like you that does pay taxes”.

Alicia Banderas, lawyer, interview

Regarding this case, it was not identified any other bibliographical or newspaper reference; hence, it is likely that the frequency of these cases is minimum, or that this mechanism to sell pirated products has not been documented enough in the country.

As part of the second objective of this section, we analyzed the involvement of formal companies on different scales in which it was identified the existence of pirated products. To this regard, there have been few discussions in Mexico about these practices; however, a significant number of the people interviewed, both right owners and law firms, made reference to specific cases.

The first one is related to the debate between the entry of pirated merchandise and the gray market, which products have the potential to be sold in large marketing companies engaged in the sales to the general public, both at wholesale and retail levels. Secondly, they mentioned pirated products that usually come with great volumes of original merchandise and are put in department stores. According to the evidence collected, in this case, is 100% provable by the right holders that this merchandise is illegal. As a third point, it is tackled the use of shell or ghost companies which are in charge of the sales of pirated products to the largest chain stores.

Regarding the gray market, some trade specialists like Skoko and Krivokapic [2019] pick up this term when referring to products legally manufactured abroad, but that are imported without the permission or consent of the intellectual property holder. From their perspective, the product conditions and the lack of authorization for its sale by the owner turn out to be a transfer derived from parallel imports between one country and another. Other specialists state that in Mexico there is a very thin line between both conceptions, pirated merchandise and gray merchandise. They add that, due to the lack of knowledge by some Mexican authorities, it is likely that the mechanisms to identify one or the other are not clear.

“(…) it is what ‘maquiladores’ (manufacturers) sometimes do, referred to as the fourth shift, which is the shift worked clandestinely, but that has the materials, supplies, indications, everything. The product sees the light, and you compare it to the original and it’s the same, but when you put the tracking to see the producer’s cross-sector, the traceability of the product in the barcode, it does not identify it, because it’s not a product encoded by the brand or trademark owner. Then, this product is sold around the world, and you say, is it piracy or not? A [X product] that you buy at [X store] is a genuine product, what happens is that it was probably bought in an outlet. The product is authentic; the problem is that, sometimes, when it arrives to the customs office, they don’t know how to describe it, if it is pirated or not... if it is what we call allowed parallel import or piracy, the line is very thin... and the customs office doesn’t have either the experience, skills or the proper training to be able to detect what is piracy, what is gray market, and what is allowed parallel import”.

María Elena Sada, lawyer, interview

Likewise, the case of the “paca” (baled) merchandise sold in the country, which can be original or not, but that was legally acquired, is a relevant issue that connects with these commercial practices, in which there are different factors at play: the debatable legality of the products, and that they are sold to the public through formal businesses on a smaller scale.

The arrival of pirated products in batches of legal merchandise is the second element to analyze, and was mentioned by at least two authorities and two right owners interviewed. The pattern is similar in these cases: the introduction of the pirated merchandise arrives through large containers of original merchandise and is sold, until the right owner identifies them and requests their removal from all the shelves.

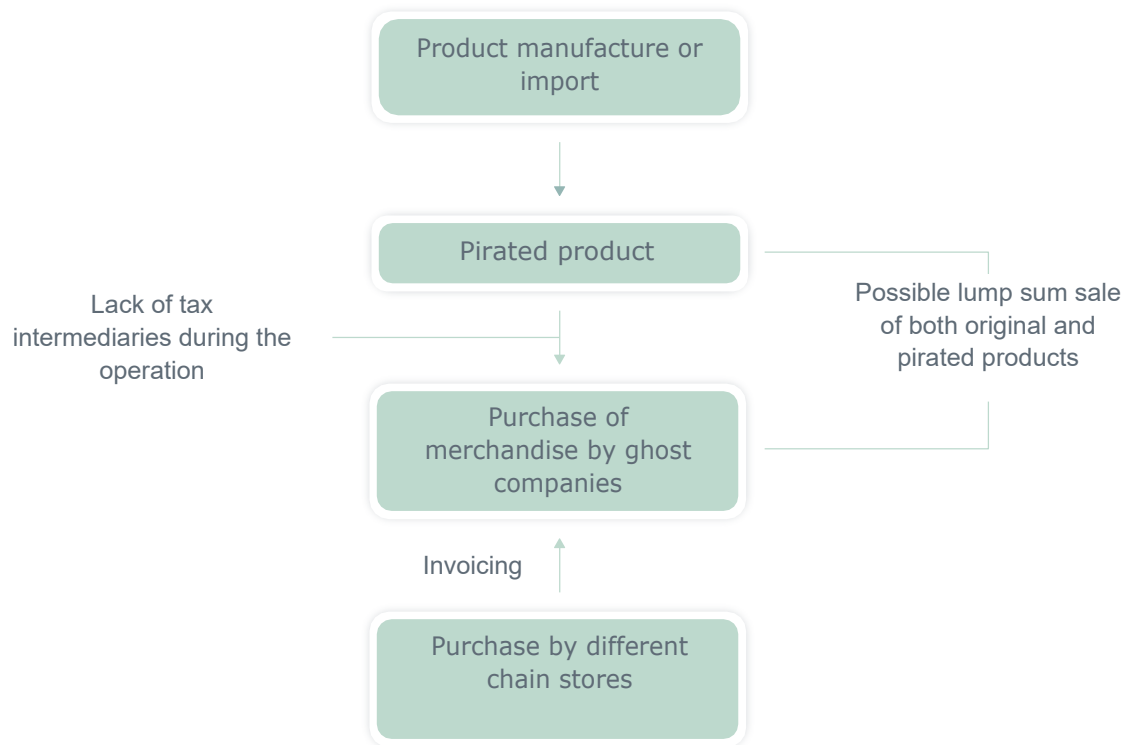
“Supermarkets also receive [pirated products]; they buy huge quantities [of merchandise] in Asia and then they don’t notice, or the purchasing manager, without accepting corruption or anything like that, suddenly receives shipments that can be falsified or could be carrying an unnoticed brand, and with a simple letter they make the proper recall from the sales floor”.

Andrés Juárez, IMPI former officer, interview

Particularly, a brand engaged in the sale of toys and other that sells house cleaning products mentioned these practices through the questionnaires applied during the research stage. However, we could not identify any reference in the media or the local press that documented both cases. On the other hand, an authority of the federal government stated that, in recent years, more communication channels have been opened between brand owners and sales centers in order to take fake or apocryphal products off the market.

Finally, in the last years, it has been detected that some legally incorporated companies and ghost companies are used to sell all kinds of pirated products. In the first of these cases, it was documented that, at the end of August of 2018, the company *Lion’s International* was identified as the one responsible of marketing certain medicines, which were sold through a Facebook profile and a network of employees hired by the same company. The complaint was filed in COFEPRIS and, through a collaborative work between these authorities and Facebook, the profile was dismissed.

As for the second case, the interviews indicate that the common denominator is tax evasion though the sale of pirated products. The mechanisms tend to adjust according to the type of individuals involved throughout the transaction process. In general terms, they purchase the pirated merchandise through different means for their subsequent invoicing and sale to large chain stores. The State’s tax authority does not get involved until the last stage of the process, in which is authenticated the source and tax burden based on the product’s characteristics and origin. This type of tax strategies is widely studied from a theoretical point of view by Anbarci, Gomis-Porqueras y Pivato (2012).

DIAGRAM 1.1 Discretion before tax burdens in formal markets

Source: Made by ONC

In this document, the authors bring up the coexistence and the passage between formal and informal markets as a consequence of their tax burdens. They say: “The [commercial] agents can move between markets depending on their profitability. In the informal sector, vendors and buyers divide the surplus by means of negotiations”.

1.1.5 Digital Piracy

The information collected in this study on the current status of digital piracy in Mexico uses as its main source the fieldwork. It must be pointed out that we do not detail rough numbers or data related to any stage of distribution or consumption of the different forms of digital piracy; instead, we aim to provide an overview of the panorama faced by the right owners in Mexico from the evidence gathered in interviews and focal groups.

One of the great coincidences found among the consulted sources is the increasing use of the Internet as a means to distribute piracy for practically all industries. This transversal character of digital piracy is the first indication of the need to surpass the traditional ideas of the way people use illegal goods or property on the web. For example, one of the right owners’ representatives in the agri-food industry mentioned that they have located falsified products in e-commerce platforms, and that this is forcing them to plan a specific strategy to fight this type of illegal trade. If an industry that at first sight would not be related to digital piracy is already taking an important action to protect its products, then it is undeniable that the challenges faced by the authorities, the rights owners and their legal defense are huge.

Mexico was essentially described as a consuming country. It was even stated that the servers of pirate websites are mostly located abroad. This is important to highlight because, regardless of the complexity of digital matters, at some point, it would be needed a physical support for legal procedures. Said support can be located anywhere in the world, but still be the base for a very profitable activity in Mexico. In most cases, internationalization outlines for the supply represent particular challenges to take them to the courts.

In general terms, digital piracy works in two ways. The first one is the sale of illegal physical products through social media, websites or e-commerce platforms. This way corresponds to the evolution from commerce to e-commerce. The second is the distribution of digital material, usually phonograms, videos, or videogames, protected by copyright. Each one of them represents a series of specific challenges that will be tackled in the following sections.

1.1.5.1 Illegal digital commerce in its different expressions

Most of the consulted sources agree that the most important e-commerce platforms operating in Mexico tend to cooperate when they are informed of a detected pirated product.

“Some of them took some time to understand the situation. Especially one, which is Latin American, but with the rest, you just let them know and they dismiss it. You report this in those huge sites, but they are indeed the most important sites. Then, there are the small sites where you would have to do it, and that is when you can take several actions, from filing a complaint with the authority, sending them a letter, or reporting to the Internet providers or the ones who get the domain names”.

Andrés Juárez, former IMPI officer, interview

Another of the interviewees added that, in the case of these big platforms, it is very hard to control the people who offer and sell their products there, because the purpose is precisely to give more options and choices to the customers. Due to this, the brand owner has to monitor what is sold, and then use the procedures to request a deregistration if they detect an anomaly.

Other issue is the sale of pirated products through social media. In this case, the sources agreed that the process is more complicated because it takes a lot of time, or it is almost impossible that the platforms reply to requests of the rights owners. Particularly, there were references from the authorities of the sale of pirated products in Mexico through WhatsApp and Facebook.

It is worth mentioning that not all illegal sales in digital platforms correspond to physical products. For example, it was found evidence of sale of accounts to access entertaining platforms or videogames. In these cases, the process to request the dismissal is more complex, because they argue that it not a breach of copyright, but a violation of the contract's terms and conditions. Similar cases were reported by gamers, and will be described in the specific case at the end of this section.

1.1.5.2 Evolution of digital content consumption

From the side of the consumption or use of products protected by copyright, the outlook is even more complex, and it also forces to revise the common outlines to understand piracy.

“Well, these methods keep evolving. Now, you don't have to wait for the guy to record the movie, go to his place and edit it... There can be live transmissions from the movie theater, streaming, live streaming, periscope, or the use of these applications to stream live the movie from the person's phone. So then, this is extremely serious, because you can now access to the movie from other ways besides the Internet

website. There are also what we call Internet streaming devices, which are illegal; they are little boxes, like the satellite or cable decoders. Well, now they do just the same, but with the Internet signal. (...) We have that. We have piracy through apps, too. We have piracy through Internet private channels. We have illegal streaming. And of course, we still have physical piracy”.

Juan Gómez, rights owner’s representative, interview

The evolution of streaming was one of the most remarkable findings of our fieldwork. The consulted sources agreed that it is now one of the main sources of piracy consumption. Under this consumption outline, the Internet sites for downloads or cyberlockers, which are a series of links or hyperlinking that select content, have been surpassed by illegal streaming. Similarly, the platforms to share content peer to peer are no longer appealing sources, and they represent a minimum percentage of the digital piracy consumption. It is interesting to point out that, although legal streaming platforms were precisely created to offer a consumption alternative, there are also ways that users find to bend them.

“Because we can also find that there is piracy in digital formats and streaming, I have called it digital ‘fayuca’ (contraband). There are increasingly more people that take an IP address outside of Mexico and set up their [X] or [X] as if they were in the United States in order to broaden their catalogue and the opportunity that comes with it, and that is a sort of contraband, since it bypasses all legal resources. You don’t pay here anymore, you don’t pay VAT, and you breach the copyright here because you have access to content that is not authorized in our country”.

Enrique Bernal, consultant, interview

Another significant finding was the discussion on the monetization of several ways of digital piracy consumption, as well as the existence or inexistence of a profit motivation by the people who make them available. In that regard, one of the experts referred to the use of content created by users, such as videos, that under the cover of tutorials or opinion blogs, actually contribute to piracy, since they use a lot of material from works for which they do not own the rights. An example would be a series of videos that supposedly analyze movies, but that make available up to 80% of these works through streaming in the channel.

It is paramount to point out that much of the illegal content consumed through streaming is considered free by the users, when it is hardly that. For their part, the same pirates that make this content available have their own motivations to keep that mistaken perception.

“Then, through indirect channels they get their earnings, through advertising, a click, or an action requested, right? For example, I can ask you... if you want to download faster, then you have to become a premium user, click this program and enter your data... Each action taken is monetized, too. So yes, there are many ways in which these guys can earn money”.

Juan Gómez, rights owner’s representative, interview

Of course, there are other ways that Internet pirates have to benefit from the users that turn to their contents. The consulted authorities referred to the great lack of awareness of Mexican users regarding the security threats that represents the use of piracy. For example, through the download or streaming of any type of content, it is possible to link the device or equipment to an additional code. This code, which surely cannot be easily seen by the user, can, for instance, install an agent that steal personal data or follow buying patterns.

There are other cases where they remain dormant for a while and then act when the user access to a bank's website in order to steal his or her user name and password.

Not all cases of people who make this digital piracy available are individuals or organizations with criminal purposes, in the most common sense. However, the consulted sources agreed that, whether the person who uploaded the pirated content made it for profit or not, someone is going to monetize the opportunity.

"And now, to be honest, any youngster with enough technological knowledge to build a website, put some links, or have a server and give you access to any content, is the one behind this. Why? First, because it is very easy for them to do it. Because it is what they studied, what they do for a living, not necessarily as their only activity, but they do have enough knowledge to do it. Second, they think that are going to get away with it... curiously, they have the skills to create a site and know all the technological capacity, but they think they are untraceable, that they are in anonymity. And third, you can earn money from it".

Salomón Durán, representante de tenedores de derechos, entrevista.

To deepen about content monetization, it is worth reviewing the case of certain video platforms. When an unauthorized user makes available a phonogram or video over which he or she does not have the rights, the owners have the choice to allow to keep it in his or her channel, as long as they get the profits, or they just can ask the removal of said content. Even though the user does not have the intention to make a profit out of it, this happens because the profit will be generated anyway due to the own performance of the platform. Each counted view adds an amount of money that, despite being small, exists nonetheless. If the user that uploaded the content does not claim it, the companies will likely detect and collect it.

From the point of view of the consulted sources, it is very hard to think that a person who made the effort of uploading contents over which he or she does not have the rights on this kind of platforms makes this selflessly. Other type of behavior detected in these platforms is that, in the case of music, they upload the whole disc. In these cases, the companies can only monetize the first song, and they receive no profits for the rest. This is in case the disc belongs to the same artist, but there are usually mixes or non-stop transmissions that make difficult the monetization of the content for the right owners. Taking into account that it is possible that the user is unaware that he or she is violating copyrights with the content uploaded, the popular platform has admonishments. The right owners' representatives consulted define them as a series of strikes, like in baseball.

From the industries affected by digital piracy, the only case in which it was found solid evidence regarding the probable lack of for-profit was that of videogames. For some communities of gamers, or, more specifically hackers, there is software that can present a challenge for their technical skills and, therefore, to disarm or crack them would mean a recognition in a community with similar interests. Then, it is likely that this software is made available for the community as a display of the hacker, or even driven by an ideological justification on the free access to Internet contents. However, once these contents are without their security locks, they create the opportunity for others to make some profit at the expense of the rights owner.

CASE STUDY

Piracy in videogames: the new frontiers of the concept

Just like other sectors analyzed in this study, the concept of piracy in the videogames industry has been surpassed by all the technological advances and the variety of forms in which it is expressed. The information included here is qualitative and does not intend to be comprehensive. The purpose of this study case is to show a market that do not get much attention in the studies on piracy in Mexico, as well as to give some examples that illustrate the complexity of the scenario faced by both the sector's right owners and the authorities in charge of upholding these rights.

How does piracy appear or express itself in the videogames market?

Throughout the fieldwork, we detected that it still persisted the piracy of physical backups such as game consoles, cartridges, and accessories, but also the one for software. For instance, we have ROMS, which are game files extracted from other media, either the motherboard of an arcade or a chip inside an old cartridge. It is important to point out that the new developments of this industry do not limit to the traditional console sector; there is a market for computer and mobile device games that are also subject of piracy, as well as their accessories or extensions.

Derived from these new ways of playing, it has been evident the adaptation of videogame pirates, as well as the wide array of elements that can be subject of piracy. For example, it was detected piracy in game tool such as skins. These refer to a graphic element that changes the look of a videogame character or its weapons. The viability of pirate skins depends, in part, on the games' facilities. Some of them hardly have this black market because skins are not interchangeable among players. However, other games do allow this; therefore, it opens the possibility of having unauthorized sales. There are also free games that sell skins to customize the characters to the gamer's liking. This aspect is relevant because, sometimes, the sale of skins becomes the only income source for the creators of these games, and if they are subject of piracy, they can put at risk the viability of their business.

Another illegal use detected in the fieldwork is the sale of stolen codes or account "kidnapping". The consulted sources mentioned websites like g2a.com and kinguin.com where you can find pirated codes for videogames. It is worth mentioning that this kind of platforms of specialized sales does not offer pirated material by default, but sometimes they could have it available. Likewise, they mentioned a popular Latin American online sales platform where they would sell pirated licenses for videogames and software. It is important to clarify that these accounts are not necessarily stolen; they could be surplus, for example, of a wholesale purchase that can be later resold in these websites. Anyway, these sales are not authorized by the right owners who compete directly with their products.

Other case to be revised is the one of MOD's, or videogame modifications. A MOD is a software extension, or ROM, that modifies an original videogame by giving more possibilities such as settings, characters, dialogues or objects. Although they could seem harmless adjustments, they operate on a gray area of copyright. A way of making a modification that could fall in this blurred area is when a modifier uses an element of a third-party intellectual property for a game that does not correspond to the first element.

For example, to import a character from a battle game to a racing game of a different brand. One of the main questions raised is: who owns the copyright of these MODs, the game creator or the MOD creator? From the original creator's point of view, the ideal answer is that these MODs must be considered a byproduct of his or her work.

MODs can also be made on the videogame's hardware, and they enter in a blurred area, too, if their purpose is to play with pirated or authorized copies of the videogame. This is often carried out through the use of a chip, a device that avoids the digital restrictions connected to the console's system. The MOD would not be illegal per se, but the fact that it could facilitate the reproduction of illegal copies of all sorts of videogames.

Like videos, videogames are made of other elements that can be subject of copyrights or trademark protection. This is the case of their music. Videogames soundtracks or tunes are an essential part of the experience, and many times they turn out to be memorable for the gamers, just as much as the characters. Hence, there is a high demand for videogame music, but it is not always sold independently by the right owners, so the consumers search for alternatives. However, this opens the door for unauthorized users to monetize the videos with the music they publish or post. A recent case was the website Gilvasunner, which had more than 300,000 followers in its platform, and received more than a hundred complaints of copyrights violations for publishing music from Nintendo videogames.

Some gamers argue that the distribution of this music in platforms such as YouTube does not have a lucrative purpose, and that, if it wasn't for those unauthorized channels, the music of old videogames would be lost. Although the first part of this argument is questionable due to the policies of content monetization of the video platform, the second one is a debate in the industry that is worth explaining.

Is there a "positive" effect of piracy in videogames?

An issue that stood out in the conversations with gamers was that in the industry they talk about a positive effect of piracy. There is a sector of consumers and software experts that state that the only way in which the first generations of videogames and consoles can keep existing is through pirates. This conservation effect would be explained because these videogames stopped being produced by the companies that created them, and they are only available in sites where they illegally store them and put them at the public's disposal.

These games are, for example, some of the classics of the eighties that stopped being sold a long time ago. There are people who extract the game's ROM and create an emulator, that is, the software that will emulate the console in which the videogame operated. The gamers insist that the motivation to do these pirated versions is not primarily economic, but a genuine interest to preserve a product with a highly symbolic value for the industry. According to this logic, the websites specialized in the distribution of ROMs would be a sort of library that document the history of videogames.

Among the advantages of these platforms, pointed out by the gamers, are that they are user-friendly, accessible, and supposedly free, because they keep them online thanks to donations or through the sale of publicity spaces. One of the platforms mentioned was emuparadise.com, whose owner deactivated last year the links that led to the ROMs free downloads.

Although he did not explain the reason, it is believed that it was a precautionary measure for possible legal actions from one of the biggest videogame creators. Thus, ROMS can be an effective way of preserving games, but they are very problematic because they violate copyrights. It is worth clarifying that, if these sites get income from publicity, then there would be a monetization of the service and, therefore, an opportunity for the website owners to make profit out of it. Some companies, like Nintendo, have offered alternatives for the customers that look for this kind of products. In 2016, the company relaunched the 1985 console with the name *NES Classic*, and then the *SNES Classic*. However, the original game catalogue included more than 700 titles, and this time there was only available a handful of them.

Another reason why we can explain that the supply of pirated ROMS continues is the expiration date of the life cycle of physical backups. Any electronic device of 30 years old or more will be at perpetual risk of malfunctioning. This include game cartridges, consoles and their accessories. If we add that the pieces or spare parts needed to keep them operating in optimal conditions stop being available as well, then online platforms become a reliable alternative for gamers, but also a great challenge for the industry that does not satisfy such demand.

How does this affect new developers?

Beyond the technical and legal discussions regarding the different forms in which piracy appears in videogames, the consulted sources agreed that piracy and the gamers' tolerance to it are a threat for new developers that struggle to position their products. In that regard, they referred to a symbolic case on the power of piracy to oust a creator, which will be explained in the next paragraph.

In 2013, the Australian company Green Heart Games decided to teach a lesson to its customers on the harm caused by piracy. It developed a computer simulation game, whose purpose was to recreate the experience of being a videogame developer, from creating the idea to offering it in the market. The name of the game was *Game Dev Tycoon*, and it was the first of the company. The same day they launched it on the website, they also uploaded it to the famous pirate site Piratebay.com with a false identity. The trick was that this "pirated" version had a design error put there on purpose: you could not win because the "pirates" of the own simulator always took you to bankruptcy. Within a few hours of the launch of both versions, many gamers started to complain about this error in the forums. In the meantime, the company was also monitoring the downloads in both websites and the difference was overwhelming: 6.4% in their site against 93% for the "pirated" version. That is, the great majority of them stole it despite its low price. The next day, the company released a statement in its blog and explained that they wanted to take advantage of this unique opportunity to teach a small lesson to the users who downloaded the pirated version.

"However, as a developer, who spent over a year creating this game and hasn't receive a salary, I wanted to cry. Surely, for most of these players, 8 dollars wouldn't hurt them, but it makes a great difference for our future!"

Green Heart Games Blog

The message was clear: piracy does affect.

1.2 Notorious markets managed by municipalities and mayor's offices

1.2.1 Term's origin

The term “notorious markets” was coined by the Office of the United States Trade Representative (USTR) in 2010, and makes reference to examples of both physical and online markets that have reports of participating, omitting or benefiting substantially from the violation of copyrights through piracy and the counterfeit of brands and trademarks. The identification of these trade centers is made by the USTR and lists them on a yearly basis in the *Special 301 Report*.

As part of its efforts, the document classifies them, based on the reports issued on intellectual property of each country, in two lists: The *Priority Watch* and the *Watch List*. The first one aims to reflect the urgent need to implement measures for making structural changes in order to strengthen the protection of intellectual property in those countries, whereas the second reflects the concern by the American government regarding the number of cases of violations to intellectual property rights in the listed countries.

From some years now, Mexico is part of the Watch List for being considered one of the countries with most websites for the download of pirated content, as well as for being the second place with the highest number of downloads of pirated movies worldwide. Specifically, the report points to Tepito in Mexico City and San Juan de Dios in Guadalajara as the main notorious markets in the country.

Regarding intellectual property, the *Special 301 Report* is an informative mechanism on an international level that allows to lay the foundations for a proper diagnostic and a deeper characterization of the notorious markets in each country. For example, in Mexico, they have identified more than 19 of these markets, and in some cases, it is possible to define: their role and importance; the type of participating economic units; the type of products; their location; their persistence and resilience to police operations, as well as the elements of political economy involved in such markets.

Then, taking into account this background, besides the results obtained through information requests and interviews made to different authorities and right owners, we present a characterization of the most important notorious markets in Mexico. The two main purposes focus on identifying and making these patterns public which, based on the same distribution of the environment, allow these markets to consolidate themselves as an essential part of the supply chain and the distribution of pirated products in Mexico, and, secondly, to publish the compartmentalization of pirated products for each type of notorious market.

1.2.2 Notorious markets in Mexico

Nationwide, we identified 19 notorious markets that were the most mentioned throughout the interviews made to authorities of different government levels and right owners, and in bibliographical and newspaper information. It is important to highlight that this list does not limit to the existence of other markets; it only focuses on those that were most frequently mentioned or acknowledged.

All the markets identified fall in at least one of the following categories: 1) zones where they trade, mostly, pirated products of some kind; 2) the products sold do not have the permissions or licenses granted by any authority to be marketed or traded; or 3) they do not have the copyright for the use of a brand or trademark, and is being used during the production process or in the final product sold. In some cases, the information collected throughout the research process allowed us to identify some specialization of these markets by sector, and in most cases, the coexistence of products derived from all three categories.

MAP I. Notorious markets by type of pirated products in Mexico



1. Mexico City

Tepito, Cuauhtémoc



Central de Abasto, Iztapalapa



Plaza de la tecnología, Cuauhtémoc



Plaza Meave, Cuauhtémoc



Plaza Centrocel Teresa, Cuauhtémoc



Bazar Pericoapa, Tlalpan



2. State of Mexico

Chinconcua



Shoes



Tennis shoes



Videos



Food



Backpacks



Watches



Perfumes



3. Guadalajara, Jalisco

Mercado San Juan de Dios



El Santuario



Central de Abasto



Plaza de la tecnología



4. Monterrey, Nuevo León

Mercado de la Pulga del Río



Downtown



5. Puebla, Puebla

Centro Comercial Jorge Murad Macluf "La Fayuca"



6. Guanajuato

San Francisco del Rincón



Downtown León



Moroleón



7. Chihuahua, Chihuahua

El Pasito



Plaza de la Tecnología



In some cases, like in the markets of Tepito and San Juan de Dios, we managed to characterize the following: the type of sector in which they “specialize” for the sale of pirated products; some social dynamics related to their protective mechanisms; the source of the products sold, as well as the involvement of criminal syndicates that carry out activities in those trading zones. In general, for the rest of the markets identified, they are presented according to the entity where they are located and to the type of sector in which they focus their business niche.

Among the general findings, it stands out that Mexico City is the federal entity with most notorious markets in the country, followed by Jalisco, State of Mexico, Guanajuato, Nuevo León and Puebla (see Map 1).

1.3 Main actors involved in the supply of piracy in Mexico

1.3.1 Mapping of actors involved in the supply of piracy in relation to the supply chain, distribution and marketing

Making reference to the actors involved in piracy can seem a simple task if we part from a superficial appreciation around the final stage of the trading operation, that is to say, if we only consider the role of the people who sell and purchase forged products. Nevertheless, if we take a deeper look into the whole supply chain, that is, the production, storage, distribution and marketing, it reveals the participation of a wide array of actors, from factories, “maquilas” (manufacturers), warehouses, importing companies, self-service stores, political groups, trading unions, hackers, streamers, to transnational groups of organized crime, among others. The involvement of this diversity of actors show the complex processes and structures parallelly developed so that the consumer can access to a pirated product and each one of these actors gets a benefit from this activity, either directly or indirectly.

It is worth mentioning that the processes and structures behind piracy become even more complex in proportion with their connections to larger criminal groups, and with the way in which they expand or diversify the sets of operations and the forged merchandise that is trafficked and marketed. For example, it is not required the involvement of the same actors when a person engages individually in the production and sale of a determined counterfeit product than when it is included a criminal syndicate, which links with local and customs authorities in order to facilitate the entry and sale of the pirated goods.

To understand the reasons why unions, authorities, formal companies and other stakeholders get involved in piracy, we must start from two fundamental conceptions that tend to be set aside when we analyze illegal businesses: opportunity and entrepreneurship.

Leeper (2017) states that the opportunity behind this kind of illegal activities must be understood in light of the technological advances that have facilitated the access to information linked to this type of rights, as well as of the manufacture of certain products. It is deemed convenient to add that from the prevailing technology, they can configure certain spaces that allow them to act anonymously, with which they consider that they do not put themselves at risk when committing this crime, since the probability of finding the identity of the responsible people is minimal. In addition, it could be pointed out that due to the idea that these crimes are easy to commit from a personal computer at home, the vision of the damage caused is trivialized or nullified. This theoretical proposal of “opportunity” is mostly applicable to digital piracy, the forgery of phonograms and videos, and the sale of counterfeit products in social media and online b2b platforms.

Other approaches to the idea of opportunity that can make easier to understand the motivations of the variety of actors involved both in physical and digital piracy lie in the legal loopholes that they identify in the informal regulatory systems, in order to take advantage of them to obtain certain political or economical benefits. One of the factors that can determine the proclivity to take advantage of these loopholes lies in the actors' personal and demographic characteristics; in the perception they have on the possibility of being sanctioned for this kind of activities; in their assessment of costs and benefits to maximize individual profits; in the process of ethical decision-making; in the social appreciation that exists around piracy, among others (Leeper, 2017).

How can we understand entrepreneurship behind the violations to industrial property rights and copyrights, as well as the existing relation with the identified opportunities valued by the involved actors? Gottschalk (2009) proposes to understand entrepreneurship from the illegal logic, in the sense that whoever make the decision to participate in this kind of enterprises are those individuals who decide to face risks in order to develop industrial and commercial activities that deal with a criminal behavior, with the objective of generating profits.

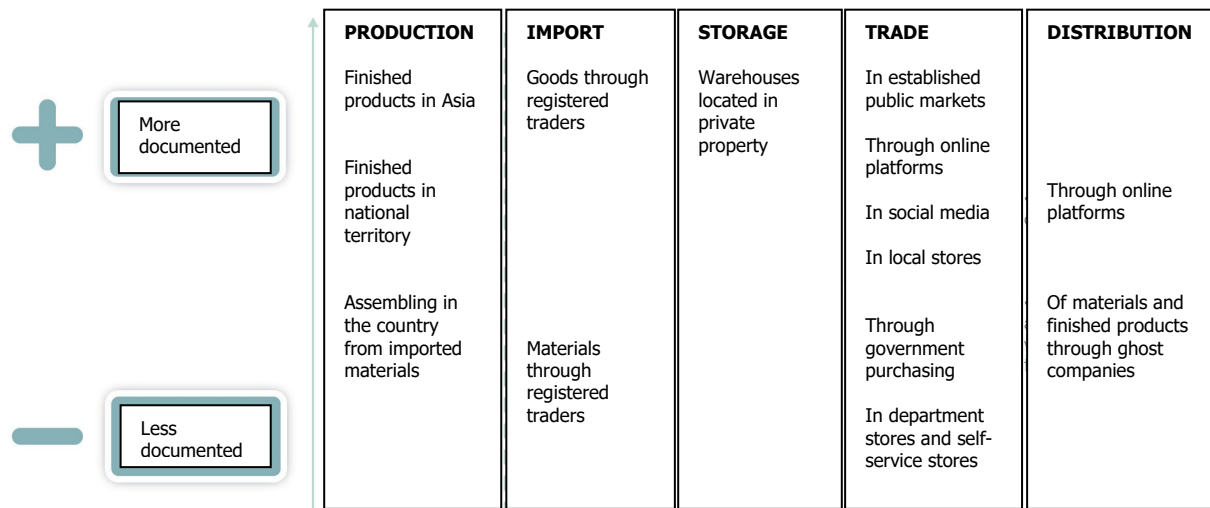
Some authors, like Symeonidou – Kastanidou (2004), complement this approach by considering that this type of entrepreneurs take the risks inherent to the activity. Likewise, they state that in the groups behind this kind of criminal entrepreneurship, there are three key elements: assignment of specific roles, hierarchies, and concrete structures. These allow or facilitate capital investment and obtaining a certain amount of power to take part in selected markets (Gottschalk, 2009).

From this perspective, it can be said that formal companies, authorities, unions and each one of the actors involved in piracy play a critical organizational role, since they can make easier for it to become an established lucrative activity with low risks for the stakeholders.

In order to present each one of these crucial links behind this illegal activity, in this section we will differentiate physical piracy from digital piracy, since they refer to different dynamics and actors. In the case of physical piracy, despite being traditionally and mainly characterized in the informal sector, and more precisely, in notorious markets, it has not been discussed and documented enough the participation of formal companies.

Said economic units can get involved being either aware or unaware of the fact that they are violating or helping to violate industrial property rights and copyrights. Their involvement as intermediaries in several stages of the aforementioned chains does not necessarily relate to substantial piracy activities, like the production of logos or direct sale. Dobson (2017) states that the role of intermediaries in global value chains has strong implications for piracy, because it can make easier to obtain raw materials and goods, to prepare ground, maritime and air transportation, as well as to enable the use of production sites, warehouses and points of sale.

DIAGRAM 1.2 Relevant Economic Activity



Source: Made by ONC

Some of these roles and the actors are more documented than others; hence, Diagram 1.2 puts into context said roles according to the evidence found during fieldwork.

In Diagram 1.2, we can see that the level of documentation of the involvement of formal companies in piracy is varied. While there is certainty regarding the production of finished products in Asia by registered companies, the import of finished products through legal marketers, the leasing of warehouses in private property, the commercialization in established public markets, through online platforms, social media and local stores, there is less certainty regarding other type of participations.

More specifically, the activity that reported the highest variation based on the qualitative evidence found is commercialization. In this stage, very diverse dynamics coexist, which surely are not comparable in terms of sales, but that show a more varied supply of points of sale for piracy, less focused on the most typical and popular places.

In particular, it becomes fundamental to draw the attention to those trading sites where the consumer wouldn't expect to find and buy counterfeit or apocryphal merchandise, like department stores, self-service stores and public purchases. During fieldwork, several interviewees, among them brand owners, reported these cases that are worthy per se of a deeper research that shows the actual prevalence of these behaviors.

Regarding the sales in department stores and self-service stores, it stands out that it is a matter of unfair competition. In order to investigate in depth the frequency of this behavior, it would be required a comprehensive examination of these sales and establish, based on legal criteria, whether there is or not a level of confusion among brands or trademarks.

It can also be a mistake made due to deficiencies in the due diligence processes with their suppliers, because maybe they did not identify that the products bought violated the intellectual property rights of a third party.

One of the implications of the previously described scenario links directly to the deception to the consumers, because they think they are buying legal and original items in an establishment of the formal market. In this case, the traditional pairing of piracy-informality is not met. Then, it is required to broaden the research on this matter in order to validate and measure the frequency of these behaviors, and to see if there is an industry more affected than the others. However, such research is not part of the scope of this document.

Regarding the commercialization of pirated merchandise through government purchasing, there have been detected several cases, from printer toners and ink cartridges to medicines. In the first of them, there is participation from both formal companies and officials that can procure these products for the government institution where they work at. Besides, these officials can play the role of facilitators of material for the production of forged cartridges, because they can keep each one of the packaging and labelling elements, as told by one of the lawyers interviewed.

“For many years, we also saw, for example, piracy in toners and ink cartridges. Why? Back then, an ink cartridge cost more than a thousand pesos, so... what happens? There are many ‘fillers’ that purchase the empty cartridges. These are very expensive, and they do not manufacture them, but they do collect them from the companies when they finish them. They say, ‘you know what? Don’t throw them, I buy them’, and depending on the demand, they bought them for 100 pesos, 20 pesos or more. And so, the most expensive back then, according to the cases we were working on, could be bought in 100 pesos. Then, they reached an agreement with the government offices... they asked them not to destroy the box and keep it, so these people took care of everything. And then, they just filled them, put them back in the box, in the same original box that is reused, and sell them for a thousand pesos each.”

Daniel Rodríguez, lawyer, interview

In addition, several legal representatives stated that those who offer counterfeit or apocryphal products usually win the invitation to tender because they quote lower than the companies that own the rights or some authorized licensees. From that strategy, it was difficult for these licensees to offer a lower price without suffering losses; thus, it was established the perfect scheme to obtain the expected economical benefits derived from piracy. It is paramount to take into account this type of mechanisms that make easier the procurement of pirated products by the institutions within the framework of the new centralized policy of government purchasing of the current federal administration; otherwise, it would be generating a positive incentive regarding this behavior.

As was previously mentioned, other pirated products that are usually procured through government purchasing, with the involvement of formal companies, are medicines. Below, we include some fragments of one of the interviews made to an expert in hospital pharmacies:

“There are public hospitals that are purchasing this type of medicines. There are distributors in Mexico that focus especially on those medicines. They generate very huge profits. I can tell you that there are products, medicines, that exceed the cost of a million pesos for a one-time treatment, right? Between one and two million pesos. If they associate this for one single patient and then sell it to five patients, we are talking about 10 million pesos in the treatment of only five people. The profits made from that probably surpass 400 or 500%, so...”

It's just that... leaving it as evidence is very complex. The people engaged in this, both the procurement and the use, are never going to leave a documental proof, so to speak. However, I can assure you that if, as part of your study, you pass yourself off as a patient that need this kind of treatment and involve a doctor, you can prove that these medicines are purchased and administered in those institutions. Remember, the use of such medicines put the institution at risk; therefore, they protect themselves very well, because they know they are doing something wrong and they have to cover their tracks”.

Juan Carlos Espinosa, expert in hospital pharmacies, interview

Just like with toners or ink cartridges, the essential factor used by the people involved in this crime is the price offered. From this perspective, the decision to centralize this kind of purchases in the Ministry of Finance and Public Credit (SHCP in Spanish) and the austerity logic of the current federal administration can be the wrong ones if they want to discourage the procurement of this type of medicines in public hospitals. Additionally, regarding the procurement of these products through government purchasing, it must be pointed out that the involved formal companies not only participate in their commercialization, but also in their distribution, using a scheme of small ghost companies. These are very elusive for SAT, because they unregister periodically.⁶

According to Diagram 1.2, other role played by these formal companies is the one of importer. Regarding these actors, in both the fieldwork and the desk research, we identified that these economic units involved in piracy usually have close relationships with sophisticated criminal organizations that have very large structures. Besides, this kind of companies tend to repeat, because they are not deregistered from the Importer Registration List, which becomes a positive incentive to keep making profits through the import of forged or apocryphal goods.⁷

As for the role played in the distribution of apocryphal merchandise by these formal companies, the ones that stand out are materials and finished products through ghost companies, as well as through online 2b2 platforms, like we saw in previous sections. Besides these economic units, other actors involved in physical piracy might be trading unions, customs officials, police officers and either local, state or federal authorities. One of the characteristics shared by these actors is the influence and political relevance they have so that this criminal activity can be tolerated and facilitated in the correspondent regions. Below, we present some of the cases identified during our fieldwork:

“Hey, authority, here are all these markets, all these sales of illegal or apocryphal products, what are you going to do about it? ‘Oh, what happens is that I am the one who has them, I am the one who rents them.’ They are public spaces that the own municipality rents. It’s like living with the enemy, because if you claim to the authority a right you have that it also has, then it gets complicated and you are just ignored”.

Juan Gómez, right owner’s representative, interview

⁶ Given this is a very complex and delicate issue, it would require a further analysis.

⁷ This is paradoxical if we consider that in the General Rules of Foreign Trade, published on December 18, 2017 in the Federal Official Journal, they include the following causes for suspension in the registration list: XXI. The individuals who are subject to a criminal process for presumed crimes in copyright, industrial property and tax matters. XXIV. The customs authorities that have knowledge of the detection by the competent authorities of merchandise that violate industrial property rights or copyrights protected by the Industrial Property Act and the Federal Copyright Act.

“But in the case of brands and trademarks, it is still upon request of the interested party, it is still the same... I think it has to be upon request of the parties, right? Because when it is at official initiative, it can lead to more corruption, you know? If there is a policeman, someone who can exercise these duties... or file a complaint, etcetera, he or she can walk down the street, see someone selling in the street and, because he or she knows that he or she can arrest this person for being an official initiative, then it is the ideal moment to be corrupt, right? And they do nothing, and this happens a lot in other fields... There are many lawyers that take part in the extortion of pirates”.

Daniel Rodríguez, lawyer, interview

In the fragments taken from the interviews, they mention two strategic actors of piracy: unions or trading unions and the local authorities or policemen. If we analyze these statements as a whole, it is evident that due to their transactional relationship, they obtain benefits that could be political or economic. Therefore, it can be confirmed that the local authorities are not interested at all in stopping the sale of counterfeit or apocryphal products in the markets they control, despite the fact that this commercial action implies a crime *per se*.

This kind of attitudes shown by the local authorities are quite incongruous with the laws that should govern their actions, especially if we consider that, in most of the rules or regulations applicable to markets, central markets and trading centers, it is stated that: it is prohibited the commercialization of pirated products in markets, and that the people carrying out trading activities in the street within the limits of the municipalities are forbidden from selling and distributing piracy. In addition, failure to comply with these provisions usually merits the definitive revocation of the licenses or permissions granted to the market tenants or the street vendors. If we only consider the existence of this regulatory legal framework, we can see that an important part of the problem revolving around piracy is that it is neither respected nor implemented by the local authorities.

1.3.2 Blurred boundaries between informality, illegality and organized crime

One of the most complex tasks to determine who is involved in piracy lies in the blurriness of the boundaries between informality, illegality and organized crime. These are social phenomena that intertwine through corruption with the aim to establish piracy as a sort of effective tool or instrument to guarantee a certain level of political and economic power for the stakeholders. Such blurriness, which makes very difficult to characterize specifically the roles played by each participant, is one of piracy’s strengths as a criminal business, since it allows the connection of formal, informal and criminal economies. This is organized in such a way that, at the same time, they configure several obstacles to block an efficient institutional response that could discourage this behavior.

In order to explain the thin lines between the aforementioned phenomena, we present Diagram 1.3, which graphically represent the links among certain strategic actors of piracy in the country’s notorious markets. The configuration of this network shows the existence of free-flowing links between members of political parties and local authorities, who negotiate and make agreements with the trading unions. From the latter, it is very hard to distinguish those who sell piracy individually, completely unrelated to the organized crime, from those who are part of the criminal groups in the notorious markets. Hence, how can we determine which actors of this network are part of the human resources of organized crime and who are coopted by it?

DIAGRAM I.3 Configuration of the network of links among strategic stakeholders of piracy in notorious markets

Source: Made by ONC

In order to show more clearly the blurriness between informality, illegality and organized crime, we present a case study of Mexico that relates directly to Tepito's notorious market. From 1920, Tepito is a well-known area where there has been a great development of commercial activities and, from the fifties and sixties, it has been closely associated with client-based practices to maintain informal economy.⁸ Due to this, they developed and established large trading organizations that were benefited from some government policies, which "gave the associations' leaders an unlimited power over their members, since they were conferred the survival of the individual vendor, who could not get a stall or a 'tolerance' without the leader's consent" (Oehmichen, 2001). Historically, it has been identified that these client-based tolerances were:

A resource used permanently by the [...] party in order to obtain political loyalties and buy the vote through the leaders' intermediation. This resource consisted, and [...] still does, in that the leaders of the trading organizations forced their members to pay land use fees and attend to the party's political events, otherwise, their 'membership' would be suspended or cancelled, and therefore, they would lose the possibility to sell in certain streets. The same happened with the merchants located in the markets, who also had to attend the party's meetings and rallies as 'acarreados' (people bussed in by the government) in order to keep working (Grisales, 2003).

⁸ Grisales (2003) mentions that the corporate spirit has acted as a bond between merchants and the State in Mexico City since 1952, when Ernesto Uruchurtu ruled this entity, who attempted to take street vendors off the streets by building 150 markets, where he tried to accommodate 50,000 merchants. However, these weren't enough, and in 1957, the government started to grant official authorizations for certain vendors to set up in the street.

As part of this clientelism (political patronage), street trading becomes especially relevant, since: "Along with the political and economic interests of the leaders and the corruption of the authorities, it has allowed and creation and appropriation of spaces for the proliferation of sales of merchandise that violate registered trademarks and property rights, commonly known as piracy; likewise, it relates to the expansion of drug sales on a micro-scale, also known as 'narcomenudeo' (retail drug dealing)". (Monreal, 2016)

Precisely, the foregoing is linked as well to the historical evolution of Tepito's market as a place where this people have developed both legal and illegal informal commercial activities. Within the illegal activities, we can find the sale of drugs, weapons and piracy. In the framework of this dynamic, it is possible to locate the origin of Unión Tepito between 2009 and 2010; this union was created in order to protect merchants from Tepito and Mexico City's Downtown from theft and extortion, according to the narrative of this criminal syndicate. However, it has been identified that this group has been focusing on controlling the sale of drugs and other type of illegal products. According to the statements of several actors interviewed, Unión Tepito is one of the biggest controllers of piracy in Mexico. In addition, it is worth mentioning that in this notorious market, mostly controlled by this criminal syndicate, we can find different kinds of original, stolen and forged products, such as batteries, razors, shampoos, clothes, shoes, compact discs, DVDs, watches, purses, glasses, toys, food, medicines, vitamins, etcetera.

From the links shown and exposed between informality, illegality and organized crime in Tepito, one would expect that the aforementioned client-based tolerances excluded, for example, those merchants that sell stolen or forged products. Nevertheless, it is important to point out that client-based tolerances do not depend directly on the kind of product sold. This means that they apply to vendors who sell food, fruit and vegetables, original clothes, stolen tennis shoes, counterfeit compact discs, among other types of products.

A clear example of the tolerances that are still practiced in certain markets was described by one of the participants of the focal groups created for this research. Said informant told us that when some people expressed their concern about piracy to one of the former governors of Mexico City, this person told them that he would never take action against piracy, since it was a source of work for the population. From the perspective of the clientelism that exists since 1950, it is impossible to set out this statement made by the head of the local executive power from the political calculation of the votes that represent all of these piracy merchants.

According to Diagram 1.3, there are street vendors or merchants that sell forged products without the need to belong to this criminal groups, because they are only forced to pay area rights.

How is the relationship between these actors involved in the supply of piracy? According to the opinion of some interviewees, it has been free-flowing, since both of them acknowledge the other's origin, and also because these merchants recognize that it is impossible to throw them out. One of the interviewed officials explained that this was starting to change due to the diversification of the criminal activities of La Unión Tepito:

"I think the same is already happening in Tepito. Maybe at first, people were okay with this cartel of La Unión because they were from the same neighborhood, but when they began to suffer the consequences of their actions, like the extortion, the murders, the seizures... then the same social base said, 'you know what? I don't want these people here, let them continue with their thing that is drug dealing, let them be, but don't let them come here because my business is to sell, not to pay or cover up the cartel's behavior'. And it has happened, indeed. I mean, people in Tepito is rejecting the cartel of La Unión, because their business, historically, has always been the sale of piracy, which they consciously received, they think it's okay, that they don't harm anybody.

Maybe it is a crime, but they don't see it like that, they don't consider it as serious as supporting this kind of people who kill, kidnap and extortionate... Then they say, 'no, wait a minute, I just sell piracy, I don't have anything to do with them, don't compare me to them'.

Sergio Carrera, former FGR public servant, interview

One of the difficulties faced when identifying the boundaries between informality, illegality and organized crime lies in the regulatory systems that rule or mediate all the actors involved in piracy. In order to do this, it is necessary to start from the fact that regulatory systems are ways of handling the risks to which individuals are exposed when they participate in transactions with other parties. They aim to reduce uncertainty, to the point that it is very likely that the stakeholders involved in the transaction will act in a predictable way, assuming cultural values and common rules (Cross & Peña, 2006).

In the context of the three phenomena that intertwine within the piracy framework, it can be said that the following regulatory systems coexist in Tepito market: informal and illegal. The expected outcome of the first one is a relatively steady market with low fixed costs that favor small businesses; whereas, in the second regulatory system, the expected outcome is an unstable market due to disruption and violence. The evolution of Tepito market and the role played by La Unión Tepito in relation to the rest of the actors involved in piracy prove that the prevailing regulatory systems are variable, because they depend on the relevant context and the motivation pursued when participating in this activity.

1.3.3 Piracy, from large criminal organizations to traditional crime

Usually, when we refer to piracy, it is believed that it is an "innocent" activity that allows the subsistence of a sector of the population in Mexico. It could even be stated that piracy is not generally considered a crime, and this inevitably affects the security agenda, because it is not a priority. This perspective is mistaken, as has been proved by both the international literature and the events that have occurred in the country, because it can be one of the activities carried out by criminal syndicates and the organized crime which operate on an international level.

To show the way in which piracy can be planned by this type of organizations, it is necessary to start from the definition of organized crime included in the "United Nations Convention against Transnational Organized Crime". It characterizes organized crime as a group made of three or more people that exists for a determined period of time with the purpose of committing one or more serious crimes in order to obtain an economic or material benefit. Although this definition is general because it does not allow to give more specific features to this kind of actors, it is functional, since it allows to include all of them, from small gangs or local groups to international criminal organizations.

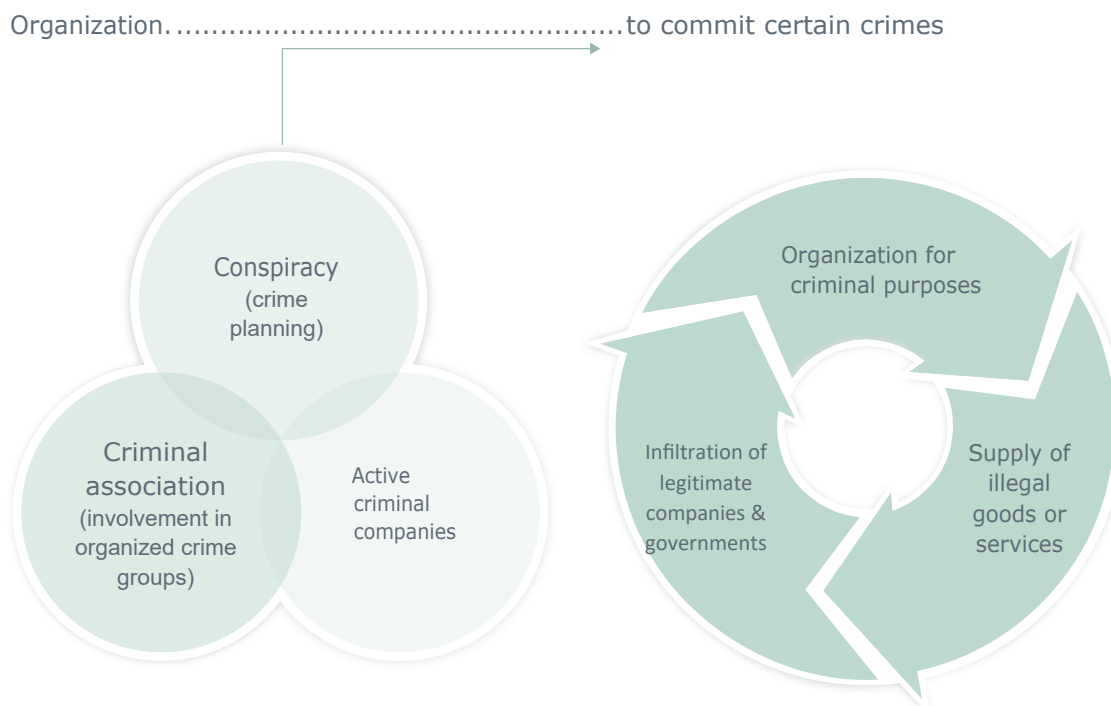
How does piracy enter in larger criminal organizations? To understand this complex mechanism, it may be convenient to analyze how these organizations are built and structured to commit crimes. According to Albanese (2019), they can carry this out from three types of behavior: organization and goods supply, illegal services and infiltration of companies and legitimate governments, as shown in Diagram 1.4.

Diagram 1.4, as proposed, shows that the logic of larger criminal organizations (“macro-criminality”) implies certain processes, structures, links and organizations in order to commit crimes that are not necessarily violent, because they include the famous white-collar crimes. According to specialized literature, piracy can become a strategic activity for criminal groups regarding profit maximization, the diversification of their illegal businesses, a more efficient and profitable use of both the routes and the transfer modus operandi, the facilitation of certain illegal operations, the establishment of connections with political and economic actors, and the control over certain territories with the respective creation of protective markets, among others.

From this approach, it stands out that piracy is a complementary activity for this kind of criminal organizations. Besides, they are not necessarily in charge of all the supply chain, distribution and commercialization of these products; instead, they can build strategic alliances with similar groups that operate in other countries or regions. This type of linking networks between criminal organizations marks the evolution of “macro-criminality” since 1970, and they are particularly relevant for the inclusion of piracy as one of their activities. This is due to the fact that, back in those years, they optimized transfer logistics, which now allows them to have opportunities in more markets that do not necessarily revolve around an illegal demand.

It has been documented that, regarding the forgery of products, there is an increasing tendency of criminal groups to insert certain goods in the legal supply chain. This kind of method identified is commonly used in products that could be potentially dangerous for the consumers’ health and safety, as well as in traditional consumer goods such as clothes, shoes, compact discs, etc. Thus, they exponentially boost those markets that they can access to and, with it, their profit margin from piracy supply (UNICRI, 2011).

An international example of the foregoing can be found in the researches made by UNICRI and UNODC, which state that “groups like the Mafia or the Camorra in Europe and America, as well as the Triads and the Yakuza in Asia, have diversified towards the illegal traffic of forged merchandise, aside from their criminal activities, which go from drug dealing to human trafficking, extortion or money laundering” (UNODC, 2014). Likewise, it is worth mentioning that there is evidence that shows the relationships that some of them have built within the piracy framework. A proof of this type of criminal associations was exposed in the study *Rapport contrefaçon et criminalité organisée* made by UNIFAB (2005), which makes reference to the existing connections between the Yakuza and Israeli criminal groups, as well as the ones between the Camorra and the Triads, among others.

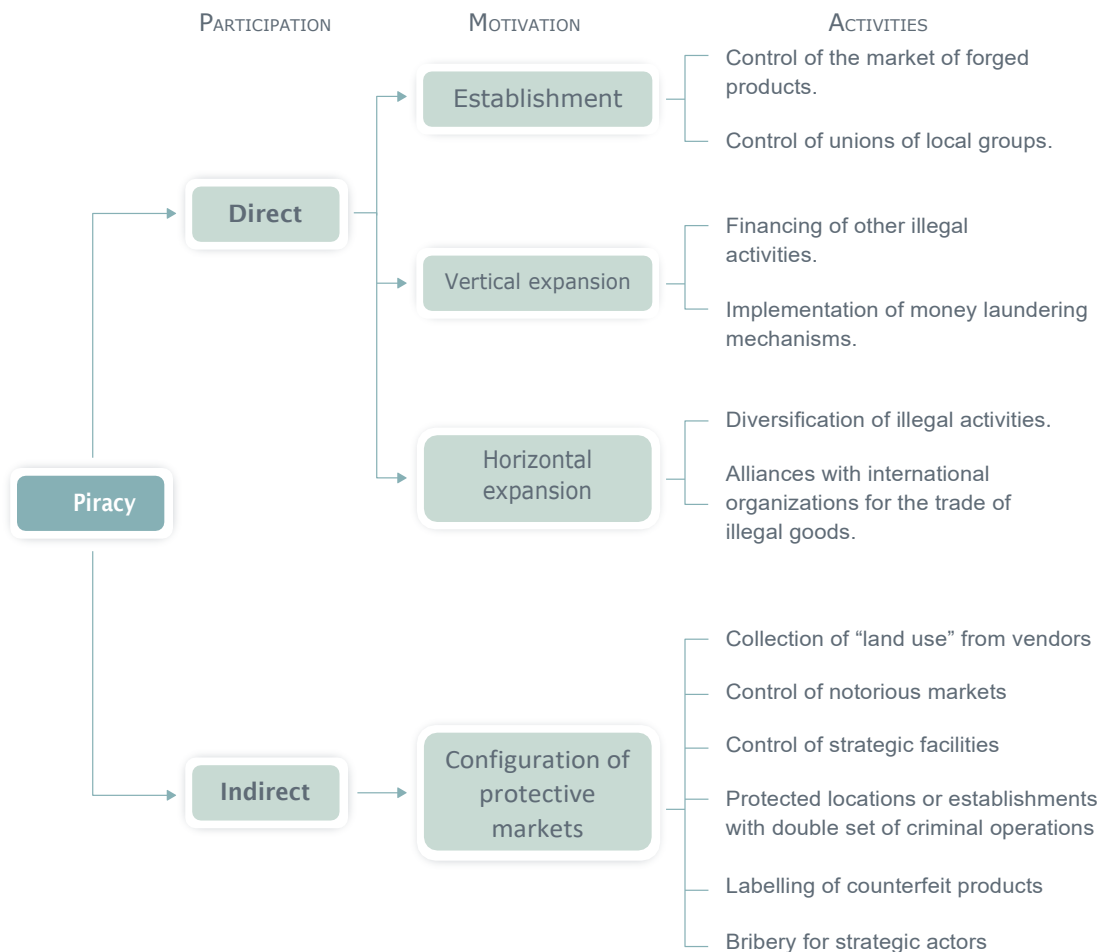
DIAGRAM 1.4 Description of organized crime according to Jay S. Albanese⁶

Mexico is not the exception of this international dynamic, because piracy is an activity that criminal groups can do almost without facing any risks, and with the possibility of obtaining a large profit margin due to the existing demand. Nevertheless, in the case of Mexico, it must be highlighted that, apparently, not all national criminal groups get involved in piracy and, when they do, it does not happen in a homogenous way or at the same time with the same intensity. For example, there is not enough evidence to confirm that piracy is one of the strategic criminal set of operations of the crime syndicate of the Pacific; however, there is proof of this for Los Zetas or La Familia Michoacana.

In Diagram 1.5, we present the motives and the constituent activities of both the direct and indirect involvement of criminal organizations in piracy in Mexico. This diagram derives from the information collected during the newspaper research carried out and the interviews made to officials on duty, former public servants, right owners, customs offices and intellectual property firms.

Said diagram allows to characterize and classify the participation of criminal organizations according to their motives and their activities. The diagram's categories are not discriminatory, so a particular organization can participate both directly and indirectly at the same time. From the fieldwork and the bibliographical and newspaper research, we could identify several examples that show that Mexican organizations are indeed involved in piracy, but the ways in which they do are neither uniform nor stable throughout time. However, before explaining those cases, it is relevant to acknowledge some aspects that limit the scopes of this interpretation:

DIAGRAM I.5 Motives and constituent activities of both the direct and indirect involvement of criminal organizations in piracy in Mexico



Source: Made by ONC

- A. One of the complications to characterize the participation degree of a criminal organization in piracy lies in the lack of certainty over the priority of this activity as a business set of operations of each actor. That characteristic is fundamental to establish how included is piracy in the macro-criminality framework that distinguishes this kind of organizations. During the fieldwork made, we located some cases where not all the crime syndicate was involved in piracy, only some of its cells, because they found that this activity was quite profitable.
- B. Also, another factor added to the complexity of defining in which part of the production, distribution and commercialization chain they participate has to do with the own illegal regulatory system established and implemented by these involved organizations in order to carry out criminal transactions among them.

- C. Other aspect which is harder to define is the economic importance of piracy for these criminal organizations. It is clear that it is closely related to its priority as a criminal set of operations, but there are other determinant factors, such as the volume of demand of the market, the business relationships established with other international criminal organizations, the relationships and agreements with the involved authorities, the trading unions and the formal companies, as the case may be, among others. That is, piracy's economic relevance depends directly on the criminal business model of each crime syndicate.
- D. It is worth mentioning that there is a consensus in specialized literature regarding the economic weight of the earnings obtained by criminal groups through piracy. For example, there are those who affirm that for some of them, these profits surpass the ones of drug transfers, to the extent that they have replaced this activity, especially in the case of medicines. There are other cases in which it is claimed that they get just a little profit, which they only use to cover routine operating expenses, like part of the payroll for their operating personnel.
- E. A factor that intersects in this discussion is temporariness. Since macro-criminality structures are in constant evolution, it is possible that in a given moment, piracy acts as a profit stabilizer when the monitoring of riskier operations (drug dealing) intensifies, and then put aside when the organization cannot stay in the market any longer due to an undermining in its structure.
- F. One of the elements that stands out from Mexican criminal organizations that will be mentioned in the following paragraphs is that most of them were created after 2000. This date is relevant, because since then, it was identified a strategic change of the operating models of organized criminal groups in Mexico that resulted in the split of Los Zetas from the *Cártel del Golfo* (Gulf Cartel). Even former officials and specialists in this matter state that from that moment, it was created the Zeta model of criminal organization, which consists of the inclusion of local gangs into their structure, along with the respective professionalization, the merger with certain types of crime syndicates through violence, as well as the identification and establishment of new criminal business lines.

The identified cases encompass several regions, such as Mexico City, Zacatecas, San Luis Potosí, Nuevo León, Coahuila, Tamaulipas, Veracruz, Michoacán, Jalisco and Sinaloa during the last two decades.

One of the most repeated cases in the interviews was the counterfeit and commercialization of phonograms and videos with the labeling of crime syndicates like Los Zetas and La Familia Michoacana. In this case, we identified a direct participation aimed for a horizontal expansion and establishment, but also an indirect one through the product labeling in order to establish an influential zone in several points of sale and control (or have influence in) certain strategic bordering facilities, such as ports, to facilitate the entry of materials, like towers to burn discs.

A relevant detail of this kind of participation derives from the fact that a crime syndicate rarely plans to leave any traces for the authorities to look into in, so the specific labeling of phonograms and videos is a singularity.

Although this case has been documented in the newspaper, we could not identify if this practice still exists due to the reconfigurations of these crime syndicates and the technological changes in the phonographic and cinematographic industries.

Another well-known example is La Unión Tepito, whose direct participation looks to establish it in order to exert a certain degree of control of the pirated products market, where we can find videos, phonograms, videogames, shoes, clothing, watches, among others, as well as to attempt to control local trading unions who were previously engaged in the legitimate parallel import of merchandise. It was also identified a vertical expansion through the inclusion of importing companies into the structure of this crime syndicate.

The indirect involvement of this criminal organization was identified from activities such as the collection of "land use" fees, the double set of operations of several locations and establishments, and the bribery of strategic actors in order to make up an influential zone tolerated by the authorities.

The last case that draw attention for being the most recent one corresponds to the involvement of crime syndicates in Jalisco and Sinaloa in the production, distribution and commercialization of counterfeit razors and shaving machines. The information given by authorities and brand owners on the source of such products is still uncertain, but they mentioned clues on warehouses located in Sinaloa and their commercialization in Guadalajara's urban area or in small towns through grocery stores. The type of participation of the abovementioned case is direct, but we cannot be absolutely sure of the motivation pursued by these groups.

On the other hand, and according to the information provided at the beginning of this section, within the conception of organized crime, we can also find other actors involved in piracy, such as local gangs and international mobs. From the research made for this project, it was possible to identify the participation of some criminal groups and mobs that apparently are not involved in the dynamics set up by criminal organizations that operate on an international level. It is worth mentioning that in most of these references, it was not specified the name of each group, only the nationality or ethnical origin of their members, which will be reserved for the purpose of this publication.

The hypotheses revolving around the operation of foreign groups and mobs in the piracy supply in Mexico can be about the operating links among crime syndicates based on an international trading logic, the high demand of forged products, the tolerance and permissiveness of this behavior, that is a low-risk conduct in our country, among other things. Below, we present some cases referred in the interviews made:

"The rest are offshoots, like the people who end up selling, transporting, or doing minor activities, but there are organizations of X group. There was a mob here that manufactured Transformers and things like that. There were also tires, and other things they bring. So yes, there are different kinds of mobs, at the end I think some of them were killed here in Jalisco [...] because they sold their pirated transformers to the wrong people [...]"

I think those of X group are the ones who encompass more. They bring technology, televisions, cell phones, certain types of technology and clothes, shoes, tennis shoes. And the ones from Y group bring more clothes, T-shirts, those kinds of things. And they encourage a lot the sale of denim, eh, the entry of denim, which is a crime of contraband, and supposedly they bring it, then it is transformed here in Mexico and then is returned already changed to the United States. Many times, they don't send anything, they charge to Hacienda (Ministry of Finance and Public Credit) and end up selling this raw material to domestic piracy manufacturers.

They are not a gang of baddies that you see very dangerous, but they are people who know our tax and financial systems, who can avoid this part and end up bringing in the raw the material to our country as a method to participate in piracy [...]. The ones of Z group could bring a little more of clothes, you know, designer clothes, casual clothing like soccer jerseys, etc.; they manufacture them there and then introduce it to the country. And this is more or less how each mob is focusing on certain sectors”.

Sergio Carrera, former FGR official, interview

“The mobs of A nationality and the mob of B nationality are the ones that have many operations in Mexico, especially with movie products. For example, this thing called camcord recording, theater recording, right? They have very sophisticated equipment, or they find the way to get the master, or they make very sophisticated recordings of a movie premiere in any part of the world... and then they give it to their distributors in several countries...already subtitled for piracy markets”.

María Elena Sada, lawyer, interview

1.3.4 Relation of piracy to other crimes and illegal conducts

It is a fact that piracy associates with other type of crimes. It means that it does not limit to the forgery of a brand or to an illegal streaming of a movie. There were other crimes that previously facilitated the sale of products with counterfeit brands, like contraband, or that later on can open the door for other crimes, like retail drug dealing or the sale of weapons in the same sites but at a different time; in the digital field, it can enable identity theft. Likewise, it must be taken into account that pirated products are known as receiving goods, because they are located at the bottom of the pyramid of low-risk criminal activities and, therefore, they can precede other type of illegal activities.

In order to have a more particular perspective on what happens in Mexico, it is relevant to consider that connected crimes and illegal conducts are usually committed to achieve certain specific objectives, like the following:

1. A more efficient use of transfer routes and points of sale for illegal products. For example, it has been observed that in Puebla, points of sale for pirated products have an alternative use at nights, especially, the sale of weapons and retail drug dealing.
2. Cost reduction of the workforce involved in the production, storage and distribution of counterfeit products. For example, in searches and product confiscations, it was found that minors and Mazahua people were exploited in deplorable conditions for the manufacture of pirated products, unaware that they were participating in a crime.
3. Tax benefits. For example, it has been registered that some companies take advantage of preferential import programs to bring in materials for the production of pirated merchandise.
4. An easier entrance of forged products into the country’s borders, ports and customs offices. For example, it was found that they counterfeit authenticity certificates of some pirated auto parts in order to facilitate their entry and commercialization in the country. Likewise, there have been some practices of bribery in the customs offices, so whoever looks to bring in apocryphal products, they pay in kind to some customs officials.

5. Use of well-known brands to increase profits. For example, it has been observed in some advertisements on the Internet that they take advantage of companies and cars' brands and trademarks in order to make public the supposed sale of a fleet of cars from former employees. They ask the interested people for an advance payment, and they never receive the car. Other cases found consist of the theft of certain primary consumer goods, which are relabeled with the logos of well-known brands for their sale in markets or grocery stores.
6. Higher profit margins from the inclusion of other types of products or lines of illegal businesses. For example, it has been identified that there are some people that steal domain names of famous brands, where they put child pornography sites or pornography sites where they exploit human trafficking victims, and users have to pay in order to access to those contents. Besides, they take advantage of the entry to those websites to install ransomware and then charge for data recovery. The same situation was reported when people illegally download or watch movies.

Additionally, there are other kind of crimes connected to piracy that are not searched, or even considered, by the people involved in piracy. In fact, it could be stated that, in strict sense, they are collateral effects of the commercialization of forged products. This is the case of environmental crimes or crimes against public health. An example of this situation is a person who counterfeits and sells a toy or color pencils, because he or she does not care about the health of a minor that could be affected, or even that could lose his or her life, as a consequence of the concentration of pollutant substances in apocryphal products, like lead.

In order to show more specifically the crimes connected to piracy, we present Diagram 1.6, made based on the fieldwork and desk research carried out.

DIAGRAM 1.6 Identified crimes connected to piracy in Mexico



Source: Made by ONC

The connection to other crimes will depend on the type of product and the actors involved. For example, in the agrochemical sector, when they use products with a high concentration of pollutants, it increases the possibility of committing an environmental crime for the damage to fields, plots or adjacent bodies of water. Likewise, if piracy connects directly to the activities of the organized crime, it is possible that the profits obtained from this illegal conduct are used to cover the payroll of kidnappers, extortionists, murderers, etcetera.

Secondly, it will also depend on the stage of the piracy supply chain (production, storage, distribution and commercialization), since there is more proclivity to certain types of crimes in each one of them. An example is that in the commercialization stage, it can be easier to sell drugs and/or weapons in the illegal stalls or establishments; whereas, in the production and storage stages, there is more likely to connect it to human trafficking and labor exploitation of vulnerable population. Another factor to take into consideration is that crimes connected to piracy will change if it is physical or digital.

One of the most significant findings was that, since piracy is not a priority in Mexico's security agenda, there is not enough detailed information that allows to know more specific patterns of the criminal businesses revolving around violations to copyright and industrial property rights. Unfortunately, this obstacle has not been efficiently negotiated either by both right owners and law firms; therefore, there is still an area of opportunity for the design of public policies based on evidence.

1.4 Where are the costs? A path to identify and measure them

The burning question is: Does piracy generate any benefits? The answer is that it would directly benefit the people who manufacture and sell that product, for which they would receive an income. Consumers in secondary markets can also be benefited from it, because they buy this kind of products that bring them a higher satisfaction level than the cost they paid, starting from the assumption that these consumers are fully aware that the product bought is not original. Nevertheless, they can consider them a close replacement, or at least close enough given the price. It can also be said that it is a market that provides jobs to a sector of the society that, due to its human capital level, for instance, has been expelled from the market. That would be the case of street vendors⁹ in developing economies. Also, piracy in secondary markets allows people to afford goods that, otherwise, especially due to the price, they would not be able to get.

The problem here is that these short-term benefits, perfectly identified and limited, do not compensate at all the costs they create for society, and many times, paradoxically, not even for the consumers. Finally, the piracy market is characterized by variable levels of information asymmetry. In the primary markets, the consumer does not know for certain what he or she is buying, which implies the presence of information holes about the product that, otherwise, the buyer would not consume.

In the following section we will describe some of the costs of piracy that we found in the fieldwork. It is worth mentioning that it is not a comprehensive list, but a clear and conclusive one. So, we will describe the costs incurred by right owners, consumers, and the government.

⁹ It can also include those people that decide not to have a formal job and prefer the informality, which can offer them a flexible schedule, tax evasion or the possibility to take care of their children.

1.4.1 Costs for the producer

A direct victim is the producer, who sees his or her product get “pirated”. The fact is that piracy constitutes a violation to property and the usufruct of said property. This person (or company) invests, faces the production costs and takes risks, while other uses this brand or value-creating idea without paying for its use. In the words of one of the interviewees:

“...so, a company has to pay salaries, taxes, and publicity, and for someone who manufactures something pirated, it just costs him or her nothing. He or she simply takes advantage of what the other has achieved, either for a brand or a work”.

Sergio Carrera, former FGR official, interview

The impact of piracy on the company can be direct, like a drop in sales, or indirect, in the way piracy affects the brand’s image, status or exclusivity, which will result later on in the loss of clients. It has also an impact on the expenses spent to identify its product or reinforce its exclusivity in order to complicate the creation of any duplicate, and finally, there are all the expenditures paid for legal proceedings related to legal actions and administrative complaints.

As was previously stated, the first impact that companies experience is on their income. That is, the original producer sees how sales fall because the product is offered by a third party who has pirated it, either pretending it is the original product, stealing the original product and selling it with another brand, or failing to pay the right of use.

An issue that did not go unnoticed when carrying out the fieldwork was that specialists highlighted the difficulties to measure this phenomenon in terms of the impact on incomes. For some, this could result in the exaggeration of sums or amounts due to the use of unsuitable or inaccurate methodologies. For example, to consider that each pirated product in the market is the one that the original producer would have sold. This assumes that they are perfectly replaceable products for the consumer, and that he or she was deceived when he or she bought it. However, this interpretation ignores the fact that the price of the pirated product, which is usually lower, can be the decisive factor for the buyer, fully aware that it is a pirated product, and that the original was unaffordable anyways.

This type of measurements, controversial for some, can be seen as measures aimed at increasing the significance of the matter in the public agenda and making the population aware that it is a costly problem. Insofar as we lack measurements with better methodologies, like the ones suggested by RAND (2012), the use of figures will tend to be a weak argument, widely questioned in the fight against piracy.

Despite these reservations, it is a fact that the impact on sales can act as a predictor of a problem of piracy that is affecting the company. This will basically depend on the price difference, regardless of its elasticity according to the demand.

“We have a client that indeed, we are still fighting, eh... indeed his business was suffering a lot from the piracy that came from China. We started to go to the customs office to train customs officials, even the General Director, I mean, they gave us the chance so that only the company could talk with the customs people to explain which were good, which were bad, and we began to file complaints and take action against the stores that sold the pirated product from China and... his sales improved”.

Daniel Rodríguez, lawyer, interview

The second impact is related to image. That is, the brands positioned in a luxurious niche suffer in their image if their use becomes popular due to clones or copies. After the loss of exclusivity or the harm to their reputation, it follows that their regular consumers abandon the brand. The interviewees describe it like this:

“Then it is, indeed, impressive, but is not that [X brand] loses... they don’t count value for the purse that they stopped selling, but for the harm it could do to the exclusivity and status that having a [X brand] purse can give you”.

Andrés Juárez, former IMPI official, interview

The third impact is the presence of expenses to prevent piracy. In this way, the company looks to reduce the impact on their income or image, by creating emblems or signs that allow consumers to differentiate the product, or to facilitate their detection in the case of police operations. From the interviews made, we could observe different strategies to avoid that pirates have access to the original bags or packages; label changes; distinction and innovation mechanisms, or product analysis management.

“The nursery industry is helping us in that sense. They can ask consumers to return the bags in exchange for a raffle ticket to win a tractor or whatever, so they are searching for mechanisms. But the mechanism is to recover that bag. We also found people that counterfeits the whole bags. So, the nursery industry is looking for ways to put something in the bags to avoid being pirated”.

Javier Blanco, former SNICS official, interview

The fourth impact focuses on the expenditures derived from law suits and police operations. We know that a proper legal framework allows the transaction to carry one despite having incomplete agreements (Joskow 2006). However, there are problems for its use: 1) a very specialized language, and 2) the law suit can be a very costly way of completing agreements due to its cost. If we focus on this aspect, the interviews reinforce the idea that the use of legal mechanisms brings high costs along with it:

“You know that operations with IMPI, acting with IMPI is much more expensive than with PGR, because with IMPI you have to pay the inspectors’ fees, right? You have to pay the inspectors’ fees. Let’s say, you have an operation in Manzanillo, and you have to cover the storage expenses. The Office of the Federal Attorney General doesn’t get charged for it, we get paid for it in IMPI, and of course, the brand’s owner has to pay for it”.

Andrés Juárez, former IMPI official, interview

Despite the efforts made by the right owners and their legal representatives, some interviewees stated that there are cases in which the offenders that have been incarcerated get off there very fast, or that they do not even serve their sentence. Therefore, due to elevated costs and low effectiveness, a lot of companies prefer to desist from the use of legal mechanisms.

“The companies end up just giving up. They just say, ‘you know what, I’m not seeing results, I am spending a lot of money, so instead, I will try to have a better innovation and distinction system in my products to keep them far from piracy”.

María Elena Sada, lawyer, interview

The costs involved for the producer that has seen his or her product subject to piracy lead to a lower investment, which means a less than ideal investment, which translates in a less than ideal scale for the business, affecting the creation of jobs. In fact, all of this, as a whole, can lead to the closing down of the company. Piracy can also lead the entrepreneur to a premature “death”, by denying him or her any chance of growth, and making impossible the investment in sectors.

“Now, imagine a domestic producer or an independent producer that films his or her opera prima, who sold almost everything and mortgaged his or her house to complete the budget needed to make his or her movie, and the same. The movie is pirated, too, and he or she is left without the chance to recover. He or she is still in debt, his or her producing company files for bankruptcy, owes to everyone, and of course he or she will not feel like doing another movie ever again. So, it is a ruinous competition, and also inhibits a lot the interests of producers and directors from coming to a market like this to make more productions”.

Juan Gómez, right owner’s representative, interview

1.4.2 Costs for the consumer

Through piracy, the consumer has access to a “good” that, although it is not original, fulfills his or her satisfaction level, and given the price paid, seems adequate. The interviews made show that the essential matter is that the cost can be a lot higher than the price, and can mean the consumer’s health, or even his or her own life. A clear example is the one of counterfeit medicines. Evidence points to cases of expensive medications, such as those to treat cancer, or high demand products, like the ones to treat erectile dysfunction.

“...There can be medications for cancer that cost, I don’t know, from 500,000 to 700,000 pesos, so it is very attractive to forge that kind of medicines. And we have found that indeed, they have counterfeit some of our medicines for oncology, but the most forged are obviously the ones that treat erectile dysfunction, because they are sold a lot...”

Paco Urrutia, right owner’s representative, focal groups

Although the volume of the counterfeit medicine (according to the provisions detailed in the legislation) is inaccurate because it requires certain infrastructure and phytosanitary processes to reach those calculations, it is important to mention that we have also seen imported medicines that do not meet or lacks a sanitary registration. This can be the case of some advanced or biotechnological medicines, such as monoclonal antibodies, which are characterized for being of a limited volume, but with a high profit rate for each treatment.

Besides this, we can add a terrible fact: when the consumer buys a product thinking it is original, and pays a price according to that status. A modality within the healthcare market is the case of cloned medical devices. This entails a high-risk health issue where, as stated by the interviewee, they use unsuitable or inadequate materials, or they even sell reused devices taken from corpses.

“But if we talk about medical devices, it is another problem just as big. Even worse, because we don’t know the scope of that problem. Why? Because medical devices are not, even, sorry, they are not regulated as medicines in our country. We are still revising the regulations for the control of these devices. [...] We are having this problem in Mexico, too, we have also found stolen and cloned medical devices, especially cloned, that come from China, and have poor quality.

Or even worse, reused devices from deceased patients...that is another issue”.

Juan Carlos Espinosa, expert in hospital pharmacies, interview

It is a fact that the consumers' health is put at risk, without being warned and aware of it. A case that we will explain in depth through a case study at the end of the section refers to pirated agrochemicals, which remain under the population's radar. Another example is the one of auto parts, which can be bought with full awareness that they are pirate, but that is not always the case. Regardless of the type of transaction, the consumer's safety is hung by a thread, since these are not only essential parts, like brake linings, brakes, oil filters or batteries, but also carpets or mirrors, which can become a risk factor. According to the answers of one of the right owners surveyed that belong to the auto industry, the price difference varies from 26 to 50% cheaper. The auto parts are usually sold in street markets, auto part stores and established markets, as well as in websites, both in Mexico and Central America.

Finally, as was already mentioned, the piracy market has a high level of information asymmetry, which, as shown by Milgrom&Roberts(1992), can lead to inefficient results in the trade or, as the case may be, to the market's disappearance. Thus, the consumer may be buying an item or product that put his or her life and health at risk, without knowing it, as was seen in the cases of medicines, food and auto parts. But there is an additional element: the loss of confidential information, like bank data. Such is the case when the buyer includes personal and delicate information in websites that offer pirated products or services¹⁰.

As these devices begin to enter the Mexican market, the effects on the consumers will start to be felt with much more frequency. According to a company surveyed for this study, as well as to personnel from institutions specialized in cybercrimes, this is already seen in Mexico for a while now.

Lastly, it must be highlighted that the use of pirated materials has also effects in the productivity of those who buy and use them, undermining their efficiency and business scale. This effect is observed as well in other types of goods such as light machinery, heavy machinery spare parts, agrochemicals used as raw materials, or components of capital goods. Likewise, it is important to stop focusing exclusively and restrictively on the effects of piracy in the b2c area and concentrate in the b2b field, too.

1.4.3 Costs for the government

The impact of piracy on public finances is very broad and covers several aspects; however, tax evasion is undoubtedly the most important. When there is tax evasion, the government sees its budget reduced, as well as the possibility of providing more and better public goods and services; its administrative and managerial capacity diminishes in all government areas, including federal, state and local scopes. Additionally, evasion becomes a terrible harm for society, because it tends to reproduce in other spaces, as well. If it is not attacked or is consented, other stakeholders will think about their right to evade taxes. In short, evasion is an evil that gravely impacts developing countries and reduces their capacity to attain better welfare levels.

¹⁰ According to the latest publication of Digital Citizens Alliance (2019), after more than 500 test hours in illegal streaming apps connected to decoders, they found the following: malware preloaded in the devices, the transmission of the WiFi address and its password to servers in Indonesia after tuning in to a live sports program, malware that detected the vulnerabilities of the equipment to extract personal information, the sale of legal devices such as the Amazon Fire Sticks and modified Kodi boxes through social media and other digital platforms, and the monetization of free apps through the publicity of well-known brands. These findings are added to the previous ones of 2015, where 1 out of 3 sites that offered free content exposed the consumers to malware.

Also, the fight against piracy generates costs, which can be preventive, for monitoring or litigation. Preventive expenses can derive from the creation of regulations, the transmission of signs that reassert the conviction of the authorities to stop and eliminate piracy, the capacity to catch the offenders, as well as the significant punishment for those who are caught. All of these actions look to discourage the practice of piracy by the people who are already established, or the entry of the individuals who might be tempted by it.

Likewise, monitoring costs imply resources for the procurement of technology, the personnel who performs duties of surveillance and control, as well as the ongoing training that looks to update and specialize the human capital in their tasks. For its part, the costs of litigation focus on the expenses incurred by the government when it carries out a legal proceeding, which, given its characteristics, are high. All of them (prevention, monitoring and litigation) suppose opportunity costs that affect the generation of public goods and services, and reduces the managerial and administrative capacity of other services and goods that the government provides or might provide.

In turn, the government will be subject to externalities that harm all actions aimed at attracting foreign investment, create and promote quality jobs, guarantee healthcare or public security, and it will even face decay processes within its institutions in the presence of corruption. All of these issues will be discussed in the following sections.

CASE STUDY

Piracy in the farming industry: the silent menace

In Mexico, the most usual references to piracy tend to be associated with products protected by copyright, such as videos and phonograms, or to the forgery of luxurious items. Since in this study the ONC resolved to update the scenario of the piracy supply in Mexico, it was decided to expand the list of industries that could be victims of this crime. Although during our desk research we did not find references on the existence of piracy in the country's farming sector, in the fieldwork we did find solid evidence in that regard.

The following case gathers the findings of this work. The information profile is qualitative and collects the statements of former officials, representatives of this industrial sector and right owners. Due to the scarce public and outlined information on this matter, it was decided to compile the findings around a single descriptive concept: costs. This aims to present the problems faced by the industry in the study of piracy in Mexico, as well as to draw the attention to the risks this crime implies for public healthcare. In advance, the ONC emphasizes the urgency to broaden the research work and the dissemination on the dangers of piracy in the farming sector and the institutional response.

Why is it important to study piracy in the farming sector in Mexico?

In Mexico, there is not a public discussion on the dangers that piracy represents for the country's agri-food industry. The ignorance on the introduction level of piracy in this industry is such that two former officials of the federal government stated that not even the students of the country's agronomy schools are aware of the harm that it can do to their professional practice.

“And when I played the video of the police operation in Chiapas and all the forged agrochemicals, then all of them said... So, now you see an issue that affects you, because you are studying a major that will benefit the field, and look how it can damage all your crops due to a product that you simply buy in the belief that it is original and that it will be useful. And at the moment of truth, it will not kill grass or the insects, or help you produce more; on the contrary, it will harm your crops”.

Sergio Carrera, former FGR official, interview

It is hard to think of a similar scenario in a school engaged in the creative sector, like cinema or music, because the effects on these industries have been visible and widely documented. They have also been object of important communication campaigns in order to mitigate these effects. However, the case of piracy in the farming industry has not had the same luck, and deserves a different attention due to the critical consequences it has for the human health and the environment, and to understand the particular challenges of the industry to face the threat and raise awareness in the consumers. Unlike the industries that are traditionally associated with the crime of piracy, farming products reach all the sectors of the population; whether by direct consumption or because they are used as raw material in other industries, like livestock, all people consume food. That means that the range of potential victims is much larger. Another implication is that the challenge of the industry of maintaining a food production that satisfies the increasing demand using the lowest amount possible of natural resources, especially arable soil and water, is related to the incentives behind the demand of pirated products in this sector. This characteristic widely differs from the incentives that motivate consumers in other industries like the one of shoes, where people do not buy, for example, tennis shoes out of need, but for the value associated with a certain brand. Besides, according to the information gathered, it is common that the purchase of pirated agrochemicals is not intentional.

“They introduce it in a high concentration and the product works [...] That’s the issue. The problem is that they bring it in higher concentrations because it works very well in the field, is an insecticide, but if you apply inadequately a product with 30% of concentration over a crop it will be, for sure, harmful for the health and the environment”.

Samantha Villeda, right owner’s representative, interview

The development of technology in this industry requires a huge investment in research and development. These processes demand a lot of resources and time for the companies that carry them out, and besides, they are subject to strong regulations by the sanitary authorities, precisely to avoid damages for the health and the environment. Consequently, the prices of these products can be high, and it is considered, for example, that the price of grains deemed as commodities, like corn and wheat, has remained low in the last years; therefore, the farmer’s profitability remains low, as well, and it is probable that he or she seeks alternatives to increase it.

This is a potential opportunity for pirates who offer illegal products at lower prices than the originals, but that end up in a family's table through food.

To develop a new product, Carlos (changed name) can confirm this, to develop a new product in the industry, is like in the pharmaceutical industry, it's just the same. Why? Because they apply the same standards as the ones applied in the pharmaceutical industry, because it is a product that will be consumed by humans. Then the FDA, EPA, all of them, in Europe, too, demand high, very high standards and... a new product takes, I don't know in the pharmaceutical industry, but in our case, it takes like 10 years before it arrives to the market. [...] Then, we take a lot of care that the products that do arrive to the market meet all those standards of quality for the human being, especially for the human being, and for the environment. Then, yes... the demonizing of the word 'pesticide' comes from piracy and the uncontrolled pollutants in those illegal products".

Esteban Guerra, right owner's representative, focal groups

On the other hand, the negative association mentioned in the last quote is extremely important to understand the industry's challenges. According to the information gathered, the producers of seeds and agrochemicals are reluctant to talk publicly about piracy because they sell products considered controversial. It is not the purpose of this case study to discuss the nature of this controversy, but it is to draw the attention to the differences between the regulations of the legal industry and the illegal one. It results evident that it is highly likely that a pirated agrochemical, which did not pass 10 years of studies and that surely does not respect the concentration levels of active product and pollutants, harms people's health.

It can be argued that the cost of self-censorship for the industry is its inability to present their own version of the facts, and that it is replaced with misinformation. The consulted sources stated that in the cases where they have filed complaints against an offender, the treatment given by the press to their products is not always careful enough to distinguish the concepts. That is, they suggest that due to an action to stop an illegal product, they risk to smear the reputation of an already controversial industry. However, this criterion is not used by other industries with similar reputations, like the tobacco industry or the one of alcoholic beverages, which are usually very vocal to report the dangers of piracy for their customers. Likewise, it is highlighted again the need to delve into a pragmatic discussion based on evidence regarding the agri-food industry for the own nature of the final products and their potential consumers, including, for example, minors.

How does piracy appear in this sector?

According to the information collected, pirated agrochemicals can be classified in two large groups: counterfeit products and unregistered products. In the first group, it has been detected that it can be imported material, at least the active ingredient, or an altered one. They have a percentage of the active component that can work against a plague, for example, but the concentration level of said component is unknown, or if it has other additives.

The alteration of these products is made in clandestine laboratories that do not have the necessary safety and harmlessness conditions, either for the manufacture or for waste disposal. Sometimes, they use original containers or they forge the labels.

“Yes, the farmers, especially small and medium farmers, well, they don’t have a clue, they open the bottle and it stings. We have both cases, that is, they steal products from us, then copy them to be used in those crops, or there is also other type of organizations that use that, and I don’t know if it is their source of income of what, but they alter the product, for example, with 100 liters they make a thousand, and they sell them, not through our direct distributors, but through what we call retailers, the ones of small towns, the small distributor, and those products come by means of... and normally those products reach the small and medium farmers”.

Esteban Guerra, right owner’s representative, focal groups

The second group of illegal agrochemicals include those that are not registered by the regulatory authorities: in the case of Mexico, said authority is COFEPRIS. This means that, although they show a brand, and probably a label with their composition data, these products have not been assessed and, therefore, are controlled by no one. Based on the information gathered, the Mexican market of illegal agrochemicals differ from the international one because there is a higher percentage of unregistered products than of counterfeit products. According to the consulted sources, in Mexico are commercialized at least 100 brands of illegal agrichemicals.

One of the constant complaints detected in our fieldwork is that there have been found products with labels written in other languages that are supposedly from abroad. However, when the data is confronted against the information of the authorities of the supposed country of origin, it is found that the product does not exist. This is a pattern that seems to be repeated in other countries of Latin America, but in Mexico, the singularity detected is that the products are presumably American. Another consulted source mentioned the possibility that, in some cases, they are products that entry the country by contraband.

Regarding the size of the Mexican market of illegal agrochemicals, just as it happens in other industries, the data is inconclusive. The estimations made by the consulted authorities and right owners indicate that, in some regions, especially with high agricultural production, the percentage exceeds 27% of illegal agrochemicals. This means that one out of four products would be counterfeit. The sources state that the biggest challenge to make calculations on the total volume in the country is that, many times, the farmers receive the product directly from the pirate, from a factory in a remote location, without half-way points.

Which are the costs of pirated agrochemicals?

Just as the other industries referred in this study, the costs for piracy in the agricultural sector are substantial. These express directly in economic losses for the farmers and the rest of the industry, as well as for the tax authorities in terms of evasion. Nevertheless, a more detailed interpretation of the industry allows to highlight the specific costs for the involved actors.

The first one is the farmer. The most visible cost is when he or she is deceived or swindled by one of these products, because his or her production is totally or partially lost. Sometimes, this may not be apparent immediately, that is to say, the crop was harvested in the expected volume and there are not obvious physical signs that indicate the pollution of the product. However, in one of the next stages of the operation, they can be detected and rejected by a buyer, either final or an intermediary.

Regarding this last point, the consulted sources mentioned cases of Mexican products for export, mainly to the United States, that were rejected because they detected toxic components. The cost of this type of losses is counted in millions of dollars for the producer and, sometimes, they have to pay for the destruction of the product, and they are also included in a list for the precedent of the offense. In other cases, according to one of the sources, the products are returned to the domestic market in order to reduce the losses.

This leads to mention the other costs of pirated agrochemicals. First, they are a risk for the farmer's health and his or her work team. For example, if a farmer gets poisoned due to the misuse of the product, the healthcare personnel will have difficulties to know what treatment they should apply, because the information of the product with which he or she got poisoned does not correspond with the label data. The farmer can take this risk either consciously or unconsciously. However, the second potential victim, the consumers of the product, are almost always captive individuals. Besides, the harm to a person's health due to the ingestion of food polluted with pirated agrochemicals can appear on a short or a long term if there is a steady consumption.

"If we talk in terms of what I said at the beginning, sure, now, if I talk like a business manager of any of these companies, I'm going to emphasize a lot the market or what we are no longer receiving as an industry, and it doesn't mean that is unimportant, of course it is important. Just as the tax issue for the State, but really, that other scenario loses a lot of value. The health issue will always be first".

Samantha Villeda, right owner's representative, interview

Besides the cost of reputation assumed by the right owners when they decide to take actions against offenders, there are two other associated costs. The first one is the responsibility of carrying out the research. According to the information gathered, it is very common that the own companies are the ones that hire investigators and obtain the evidence that is then submitted to the authorities. Even though the opinions on the accompaniment of the authorities were varied, they did express a preference for criminal proceedings and the response of the authorities in those cases. However, in the administrative field, they mentioned bureaucratic obstacles and lack of disposition.

The second associated cost is related to safety. By taking care of their own investigations, the consulted right owners have faced threats from the organized crime. In one of the cases, they would have been enough reason to desist from taking actions. It is worth mentioning that the criminal structures described not only fit perfectly in the definition of organized crime, but also, it was talked about links with macro-criminality structures, like the cartels. In other cases, they made reference to companies legally incorporated in Mexico that also have parallel illegal operations, for example, in generic or altered products.

Chapter 2

The Institutional Response

2.1 How do we understand the institutional response?

From the moment any right owner of intellectual property (IP) detects any piracy problem, the definition and implementation of measures and strategies to solve it will depend on multiple factors, like the type of policy followed by the headquarters in the case of multinational companies, the tendency to carry out legal, administrative, or criminal proceedings, the volume of the piracy detected, the importance of the intellectual property rights, among others. These measures and strategies have as main purpose the value protection of intellectual property¹¹.

The decisions made on brand or trademark protection, copyright or other kind of intellectual property may take two different courses, but not discriminatory. The first refers to the actions that are not associated with legal proceedings, and therefore, are taken by each right owner without the active participation of the authorities. These are grouped in seven categories (Chaudhry y Zimmerman, 2009): 1) internal, 2) aimed at the distribution channels, 3) aimed at the governments, 4) with international organizations, 5) aimed at pirates, 6) aimed at consumers, and 7) with the competition. These actions can encompass from publicity and awareness campaigns, establishment of authorized distributors, collective lobbying actions with authorities, design of authentication labels or holograms, establishment of an IP protection team, to the involvement of international organisms specialized in the matter, among many others.

The second course includes all the legal actions taken by the right owners to protect themselves from piracy. These actions may be directly related or not to intellectual property. Those that are associated with IP can be settled through administrative or legal means, whereas the actions which do not relate to IP can involve proceedings of illegal practices of foreign trade (contraband), tax evasion, public healthcare, among other crimes or felonies that the right owners report to the authorities, or those pursued *ex officio*.

Both courses of action make up the institutional response, both from the right owners and the authorities facing piracy. This response will tend to vary in intensity and the choice of actions based on the productive sector affected, the surveillance and economic capacities of each authority, the priority of the political and the public agenda, the intensity and relevance of IP in the right owner's economic activity, the history and background, the applicable legal framework, among other factors.

Also, the institutional response is not exempt of costs (zero cost) (Fink & Correa, 2009), that is to say, each action supposes costs both for the right owners and the authorities. For this reason, the selection of actions depends mainly of their efficiency and how they adapt to the technological changes that affect supply and demand of piracy. For example, a few years ago, mechanical backups like CDs and DVDs were essential materials for the production, distribution and commercialization of video and phonograms without the authorization of the right owner, whereas now, digital formats demand more actions to prevent and reduce illegal streaming.

¹¹ In addition to this purpose, they seek the consumer's protection from possible harm caused by pirated products lacking quality standards.

The problem persists, but the nature of the supply forces the involved actors to change their strategies. Taking into account the answers of the right owners to the questionnaire, we observed that they have implemented some of these measures:

TABLE 2.1 Responses of the right owners in the presence of piracy

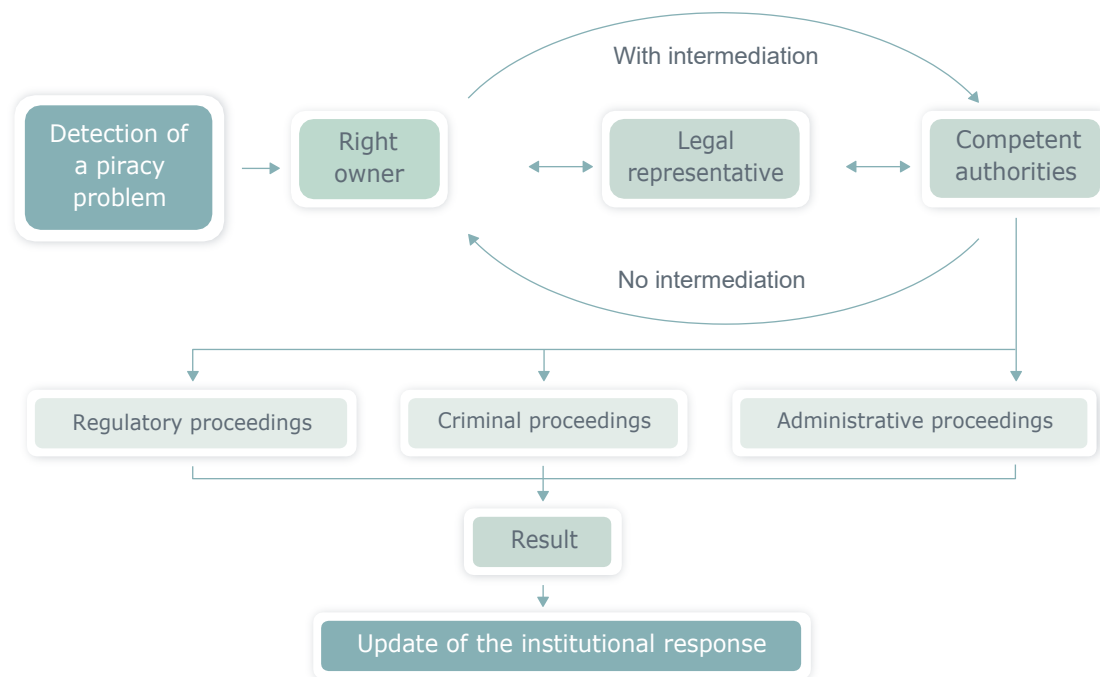
Aimed at the consumers (n=9)	Internal (n=9)
<ul style="list-style-type: none"> • Special packaging and/or labeling. • Dissemination of the negative effects of piracy through publicity. • Emphasis on the benefits of consuming the original product. • Creation of an image based on luxury and exclusivity. • Emphasis that original products have warranty and after-sales services. • Spread of lists of legitimate distribution channels. • Supply of site licenses (collective or multiple-user licenses). • Supply of products with discount or lower prices. • Non application of the product's warranty. 	<ul style="list-style-type: none"> • Development of a strategy or plan to protect intellectual property. • Establishment of a brand integrity team. • Development and systematization of the information related to breaches to intellectual property. • Training for the company's employees on the protection of intellectual property. • Hiring of private investigators. • Development of a quality assurance program of a provider. • Alignment of the antipiracy strategies with the headquarters. • Sharing of information among partners or shareholders. • Use of AGA trademark.
Aimed at distribution channels (n=8)	Aimed at pirates (n=8)
<ul style="list-style-type: none"> • Training for those involved in the distribution channels. • Encouragement for the distributors to notify the company in case of observing piracy. • Warnings for distributors and retail sellers. • Use of authentication technology. • Surveillance and monitoring of distribution channels. • Surveillance of products in stores. • Surveillance of products on the Internet. • Request to remove advertisements of pirated products on Internet. 	<ul style="list-style-type: none"> • Request of support from the State Police. • Request of support from the Federal Police. • Warnings to pirates on the possible legal actions against them. • Operation of undercover actions. • Strategy of total protection of intellectual property rights. • Technological solutions on the Internet. • Establishment of extra-legal agreements. • Operations against points of sale, warehouses or storehouses.
Aimed at national governments (n=5)	With the competition (n=5)
<ul style="list-style-type: none"> • Registration of some sort for intellectual property. • Training for the authorities. • Lobbying to seek stricter laws. • Lobbying to seek a stricter application of the law. • Request of aid from tax, administrative or law enforcement authorities, or from the police. 	<ul style="list-style-type: none"> • Sharing of the information regarding the location of points of sale or warehouses, entry points or other relevant data of pirated products. • Joint police operations. • Joint lobbying with the authorities. • Joint communication campaigns. • Joint training for authorities.
With international organisms (n=5)	
<ul style="list-style-type: none"> • Participation in multilateral organizations of intellectual property. • Monitoring of OMPI's actions. • Participation in IACC. • Monitoring of OECD's recommendations. • Lobbying for a stronger protection of IP rights on an international level. 	

Source: Made by ONC

Although the frequency of use and the cost of these measures are varied, Table 2.1 shows that they have taken at least 49 different antipiracy actions. Regardless of the efficiency and preference for these actions, this is a reflection of the wide range of use of simple solutions, like the use of differentiating packaging, or of those with greater scope and organizational complexity, like individual or joint lobbying with the authorities.

On the other hand, the institutional response related to legal proceedings is understood as a cycle that include right owners, the competent authorities¹² according to the legal framework in full force and effect, and the legal representatives. In turn, the last ones are optional within the scheme, since the right owners can decide to carry out their duties, without their intermediation, through the internal legal departments.

DIAGRAM 2.1 Cycle of the institutional response related to legal proceedings



Source: Made by ONC

In this cycle, both the right owners and the legal representatives can seek diverse objectives, like: 1) the confiscation of the pirated or apocryphal merchandise in order to avoid their circulation in points of sale¹³ or their entry to the country, 2) the payment of the offender's fine¹⁴, 3) the closure of the site, 4) administrative arrest, 5) the criminal penalty according to law, 6) recovery of the harm and damage on a subsequent civil proceeding, 7) some sort of repairing agreement for the property damage, or outside the legal process, 8) the dissuasion of the sale of certain products, among others derived from the criminal or administrative proceedings.

¹² In the diagram, we only mentioned the main authorities, but in the group also stands out the role of the police departments (Federal Police), the experts of the General Coordination of Expert Services, etcetera.

¹³ In several interviews, it was mentioned that these operations are carried out in order to avoid that the consumers suffer accidents due to the malfunctioning of pirated products.

¹⁴ It is worth mentioning that the right owner does not receive the sum of the fine for being an administrative proceeding. In order to repair the damage, the right owner must file a complaint for harm and damages through civil means once there is a definitive resolution.

A factor to be highlighted in this cycle is its resourceful nature. When a legal proceeding concludes, each right owner assesses its cost-efficiency and decides if it is worth carrying them on. In practice, it has been observed that, in some extreme cases, there are companies that abandon their antipiracy efforts and choose alternative strategies. For example, the following quote talks about a company whose brand is frequently forged:

“The level is such that many companies have already deserted from their fight against piracy, they said no more, I can’t, I can’t anymore. [X brand], for example, has such a level of parasitism in its products, designs, etcetera, it was so complicated to fight piracy that it deserted. Because formal piracy, that is, the one from companies that due to some mistake are involved in a problem like this, that is very easy, the law is very efficient, but to fight a criminal group, for example, piracy on the Internet, and issues like that, the truth is that the system is highly inefficient”.

María Elena Sada, lawyer, interview

Unlike this company, our research showed other more active that start legal proceedings recurrently. The following quote exemplifies the zero-tolerance policy toward piracy of a company from the industry of luxurious items:

“[Y brand] has a policy... exactly... a zero-tolerance policy. I didn’t have many cases of [Y brand] at IMPI, most of them went to the Office of the Federal Attorney-General, but when I handled those cases, it was... [Y brand], hey, it’s the customs office. We have ten purses in the customs office of Reynosa, and for ten purses it did it... turn it into a case. While other companies said, hey, I’m not going for ten jackets, I mean, it’s not worth it”.

Andrés Juárez, former IMPI official, interview

Other zero-tolerance examples were identified in the agrochemical industry and the one of auto parts. In these cases, they proceeded legally and concluded their proceedings until they got a condemnatory sentence.

So, what are the determinant factors of the tendency to start legal proceedings? From the right owner’s point of view, there are several, like: the internal policy of the headquarters, the characteristics of each industry, the level and type of piracy. Likewise, strategies undertaken by the legal representatives, as well as their litigation abilities, can also have an influence. Finally, the outcome of previous proceedings can serve as precedents for the right owners and their legal representatives, who will adjust their beliefs and expectations. These characteristics are worthy of a more detailed study due to its heterogeneity and the increasing sophistication of piracy.

Based on this perspective, the effectiveness of the institutional response can be understood from the obstacles faced by both right owners and legal representatives in order to enforce the law, and by the authorities to do their job. These obstacles can be transversal to intellectual property matters, like the Mexican procedural legal system that can apply to several matters, characteristics of the economy, informality, among others. Or they can be specific of this matter, like the lack of a public policy on illegal markets, the volume of piracy, the lack of priority in the public agenda, the insufficiency of resources in the competent public institutions, and even the position of the criminal judges regarding intellectual property crimes.

2.2 Transversal obstacles of the institutional response related to legal proceedings

2.2.1 Procedural system

The Mexican procedural legal system comes from the Romano-Germanic tradition. It applies to all legal affairs and their processes, regardless of the matter: criminal, administrative, labor, tax, business or any other. Even though the applicable laws for piracy are the proper ones, for the right owners, the legal representatives and the authorities themselves, it represents a challenge to settle these proceedings as promptly as possible.

For example, from the legal representative's point of view, the procedural system supposes a delay in the settlement of these issues, which, in turn, makes an impact on the cost borne by the right owner or the law firm itself in some cases. In the following quote, the interviewee refers to an administrative proceeding for a brand offense.

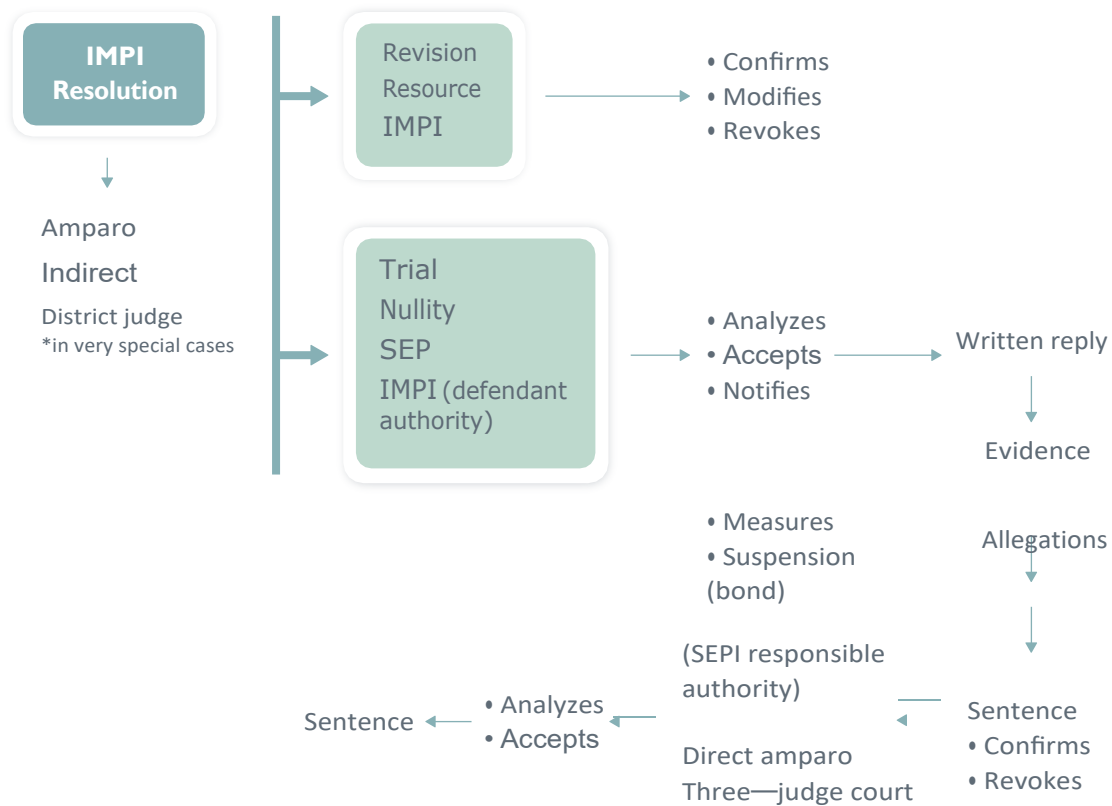
“Really, the system to fight piracy, I mean, it is effective at first to seize the merchandise, but because of the slowness of the proceedings carried out at IMPI, the appeals that you could have, then the contestation, which is the next instance, it can take a long time, if you are lucky, 4 to 6 years. It is really a strong problem to fight piracy. I have here, I have bags...obviously the pirate disappeared, there were Japanese gel pens that were pirated here, and for years, we had the bags in the law firm with the seized products. There were thousands of pens, but they were garbage bags. And they told me here, we don't have space, we have to throw them... But I cannot throw them because they are from a proceeding and I'm not authorized to destroy them”.

Daniel Rodríguez, lawyer, interview

First, the quotes show that the procedural system has asymmetric inefficiencies, that is to say, the first measures to seize merchandise can be effective, but the destruction procedures can take a long time. Besides, both appeals and contestations that happen in each instance add costs to the lawsuit that the right owner will have to pay until a definitive resolution is ordered, which, in turn, makes that each legal action turns into a long distance and financial solvency run, where only a few companies can keep the pace.

Second, it is implied that an administrative proceeding, where the plaintiff files a complaint against a defendant, required that this person is reachable to hear and receive notices regarding the process. This requirement is hard to be met because of the circumstances of informality that characterize Mexican economy, as well as other developing economies. The difficulties to give notice to the defendant are also frequently seen in tax and labor proceedings because of the impossibility to identify the address of the summoned individual or business entity. Even the same authorities or former authorities acknowledge that the procedural system represents a significant obstacle for the companies:

DIAGRAM 2.3 Proceeding after IMPI



Source: Made by ONC

On the other hand, criminal proceedings regarding intellectual property crimes are carried out differently if they are related to copyright or to trademarks. What is sought through criminal proceedings is the identification of signs or clues that lead to the punishment for the presumed offenders, or to reach an agreement between the parties. In this case, we have to remember that criminal law has a very strict application, and that since 2016, Mexico started to work with the adversarial criminal justice system. This system gives alternative solutions, known as Alternative Mechanisms of Controversy Solutions, which allow the parties to settle any legal conflict and reach repairing agreements where there was a property damage.

Regarding the criminal proceeding¹⁵, it is considered faster and more effective according to some interviewees:

“They are just starting the preliminary investigation, barely... let’s see what happens next. Then comes the expert analysis, expert services, IMPI’s opinion, which must be issued within the same preliminary investigation, which is absurd... And then, barely, in that moment, the investigation file of ready to see... if there are any arrested people, or not, and who to summon to declare... what other elements we can bring... And once is all there in the investigation file, then it is decided if it merits a criminal action. And then the file is taken to court, and sent to a criminal judge... That can take a year... The whole package”.

María Elena Sada, lawyer, interview

¹⁵ It is worth mentioning that criminal proceedings do not replace the administrative ones. It is not necessary either to exhaust the administrative channel in order to start a criminal one; what must be done is prove the brands’ identity, that is to say, the presumed counterfeit and the original one.

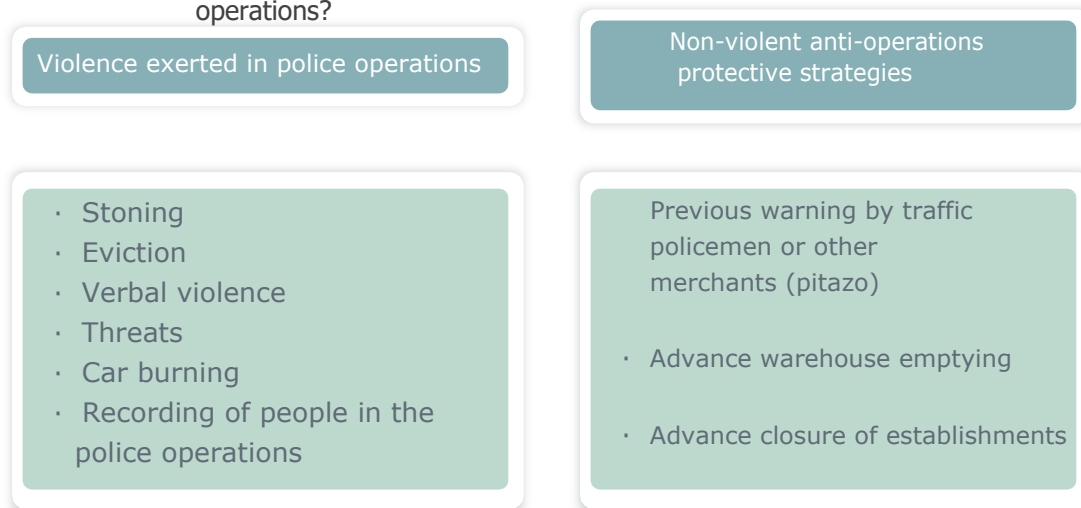
Although the criminal procedural system is in the process to be fully established, these proceedings can require at least a year to determine the situation of the investigation file, and if it is taken to court, then the next stage begins¹⁶. When the right owners or their legal representatives have an imperative issue that they have investigated in depth, this process can be faster. However, there are other fundamental obstacles in the criminal proceedings of this type of crimes, which will be tackled in section 2.3.

2.2.2 Informal markets or informality?

As was explained in the first chapter, it is possible to characterize a part of the piracy supply in the informal sector, either based on the characteristics of the points of sale and notorious markets where the payment of federal taxes is uncommon, or on the aspects of the involved actors (mainly the workers) who are not covered by any social security system. However, the fieldwork carried out limits the informality according to two things: first, the points of sale and connected services, as well as the product storage, and second, the lack of government regulations in accordance with the intellectual property normative in full force and effect. Although the minimum elements that define informality are tax payment and access to social security, these are not the most relevant factors from the point of view of the obstacles faced by the right owners, their legal representatives and the authorities themselves. Therefore, this discussion is limited to spaces like street markets, commercial zones and other kinds of informal establishments.

In this kind of areas, there are other sets of operations, such as: the retail sale of fruit and vegetables, prepared food and beverages, used or smuggled clothes, publications and magazines, houseware, or the repair in situ of durable goods. Some of these sets of operations are subject to formal sanitary regulations, although in reality, their application and monitoring is uncommon. For this reason, informal markets constitute a transversal obstacle, that is, one that escapes from the strict compliance of other regulations, like land use and public health, and not just from the ones related to intellectual property rights.

¹⁶ Although the organic structure of FGR includes UEIDDAPI, the unit specialized in this matter, it is also possible to file and start proceedings in the FGR branches.

DIAGRAM 2.4 What happens before and after police operations?

Source: Made by ONC

Likewise, the relationship between piracy and informal markets is created endogenously:

“But what I think is the biggest problem of piracy in Mexico is the relationship, already irreducible, between informality and piracy. One fosters the other. They feed back mutually, and if there is not a concrete action to fight informality... Informality nourishes from competitive products, like pirated merchandise, like counterfeit items... but they are, I mean, the range is wide... forged, stolen, expired medical products, expired medicines, there is a lot of that as well, altered, refilled, I mean, the scope... stolen, the scope of illegal products is very wide...”.

María Elena Sada, abogada, entrevistada

It is worth mentioning that informal markets do not operate in a loophole of institutions, and that they are not all the same in terms of organization, situational dynamics, motivations, types of costs and social outcomes (Cross & Peña, 2006). While some of them owe their existence to social and institutional patterns directed towards the local market, with a high competition level in illegal activities and under a permanent negotiation with government agents in search of collective interests, other markets are closer to a criminal model directed towards both regional and local markets, but linked to international ones, with components of market control through the use of violence and mainly letting interests.

The foregoing implies that the actors involved in the institutional response related to legal proceedings will face difficulties during the investigation stage, the police operations on the street or on searches of real estate such as warehouses, and the judicial process. In reality, these obstacles are made evident through the violence exerted during police operations on the street or on establishments, as well as through other non-violent protective tactics.

Usually, raids in notorious markets are dangerous. Seizures on warehouses and stores located in places such as Plaza Meave, Tepito, San Juan de Dios, or even some less known by their reactivity like Pericoapa or some markets of Colonia Obrera in Mexico City, entail risks for IMPI inspectors, since they are unarmed and, sometimes, they do not have enough police support. Several anecdotes show that due to the danger and riskiness of these places, it is not viable to carry out actions with the expected frequency; therefore, they become safe spaces for piracy.

The following quote proves the foregoing, and it is worth mentioning that the referred situation is far from being an exception¹⁷.

“Well... We had attempts to carry out police operations in Tepito... The only one that we managed to make... We worked a long time for [X company], which produces videogames... There is a lot of piracy in that segment, impressive, one of the most pirated... Because it’s a super sellable product, especially for children, and it is so expensive that it’s evidently very profitable, right? And... the only police operation that we could make in Tepito... when we got there... it was very difficult to get to the warehouse... and it was completely empty... Three days before that, private investigators had taken photos, video, etcetera, of a normal operation of taking boxes in and out, and after that, one night, they got the warning (pitazo) and emptied everything... the following times we got stoned, kicked out, insulted, I mean, there was no way, no way at all. It is a separate territory”.

María Elena Sada, lawyer, interview

Additionally, an aspect that characterizes legal proceedings in matters of piracy related to informal markets is that the cost of these actions is the same regardless of the amount of items seized, that is to say, it does not matter if they seize 10 products in the point of sale or thousands of them in a warehouse; the legal work will be the same, and just vary the warehousing and destruction costs¹⁸. Therefore, where there are warnings before seizures or simultaneous police operations are prohibited¹⁹ due to a high-level decision based on political criteria, the effectiveness of these proceedings diminishes or is completely lost. Both the research and deploy efforts become sunk costs for right owners, legal representatives and the authorities themselves.

For its part, a critical review of this obstacle demands that we acknowledge the following aspects: 1) informal markets withstand the reactive raids, like the ones described so far; therefore, it is necessary to develop other options of policies and regulations, 2) it is unknown the influence and evolution of the digital economy that will become essential in terms of b2b and b2c transactions, and 3) it is slanted the analysis and the implementation of legal proceedings in highly populated urban areas; hence, products like agrochemicals and machinery have been set aside from the analysis.

¹⁷ The stories on violence and warnings (pitazos) are plenty, for example, in San Juan de Dios (Jalisco), San Francisco del Rincón (Guanajuato), El Santuario (Jalisco), among others. They even highlighted the intervention of the Armed Forces in a police operation in San Juan de Dios, where they attacked vehicles and fenced in the personnel of the institutions.

¹⁸ Covered by the right owner in the administrative proceeding, and in charge of FGR in the criminal one.

¹⁹ These police operations consist of the seizure of apocryphal merchandise of several economic units at the same time. For example, the police operations to seize pirated school supplies in the surrounding streets of Mexico City’s downtown. According to the authorities of FGR (before the current administration), this type of police operations are no longer carried out, and they must only focus on one establishment, not various.

2.3 Specific obstacles of the institutional response related to legal proceedings

2.3.1 Detection and acknowledgement of the problem: from private to public

It seems petty to affirm that a right owner can lessen the existence of a piracy problem, but in reality, the acknowledgement of this issue is crucial to bring legal proceedings before the competent authorities and prepare unrelated strategies. For Hopkins et. al (2003), one of the distinctive factors of piracy is that its effect in the internal performance of companies may be hidden in the sales behavior, the value of intellectual property or the loss of control of marketing and the value chain. In case the right owners acknowledge the problem, they will not always know what to do about it.

For LeParc (2002), there is a culture of denial of piracy in certain industries due to multiple factors, such as the following: 1) piracy is considered a problem of developing economies, 2) few incidents in the distribution systems of advanced economies, 3) fear of a loss of income and market share, 4) reluctance to report these problems to the authorities, 5) possible liability problems, 6) reluctance to spend in security mechanisms that prove the originality of their products, and 7) piracy is considered a clearly legal problem, not a business one.

The detection of the problem, from a private point of view, can come from several places, like the company's personnel, the customers and/or the authorities, and it usually happens in the physical or virtual points of sale, without being identified at first in the higher levels of the chain; that is to say, it is a detection of the final transaction that shows more elements of the demand than of the supply. In the first contact, not much can be inferred on the volume of piracy or its impact for the company; therefore, acknowledging the problem as one private or public will depend on the internal assessment of the right owner.

From the surveyed companies, 90% detected piracy for the first time in the decade of 2000; even so, 40% identified it in the last five years. Additionally, it is worth mentioning that all the companies, except one, have identified digital points of sale, like websites or social media of very diverse industries, such as advanced medicines, consumer goods, movies, toy, home appliances, spare parts of vehicles, among others.

In contrast, street markets, stores and established markets, as well as other forms of semi-mobile street sales, remain as recurring physical points of sale. Once the problem is acknowledged, the actions and strategies taken by each right owner will intertwine with the public sector in several moments: 1) when they start legal, administrative or criminal actions or other type of regulatory proceedings, 2) when there are lobbying opportunities on a legislative or executive level, 3) when there is a public policy on that matter, and 4) when there are commitments acquired from international treaties.

The detection and acknowledgement of piracy as a public problem can happen in several agendas, but with different levels of priority and specificity. For example, the issues that stand out are intellectual property, foreign trade, security and justice; depending on the industry, they can be included in sectorial agendas like public health and sanitary risks, culture or agricultural.

Regarding this matter, the interviews show that piracy has rarely been an imperative issue for the Mexican government:

“In the first place, there is that, right? That is has never been a priority for the governments. I think that is not politically profitable for a mayor, a governor, a president, to get too involved in this, because there is a lot of people participating in the informal sector. Well... so, it can have a political cost... at the end, nobody argues that the impacts of fighting this are positive, but... let’s say that, for certain sectors, it can be a safety relief, right?”

Eduardo Rojas, officer of an international organization, interview

“Yes, so, if you are not covered in blood, don’t bother to come. We have been there. So, I tell you, the last five or six years we have been insisting on that issue. We have received this type of answers that, it doesn’t affect the right owners, what is the harm, no, no, this isn’t an impactful crime”.

Juan Gómez, right owner’s representative, interview

The statements made in the interviews show the lack of priority in the public agenda from multiple levels and political aspects. Either in high-level positions with a significant decision-making power, by judicial decisions in criminal processes, or by the institutional priorities of the law enforcement bodies, piracy is deemed as a “light” crime, without victims, as well as a justified economic activity, regardless the product, industry or its relationship with other crimes. From the point of view of the interviewees, the role of the political decisions is also a factor that conditions the institutional response related to the legal proceedings and to the will of the highest-level actors.

We observed dissimilar positions regarding the priority that piracy should have in the country. While some²⁰ state that the acknowledgement of the intellectual property rights without compliance damages the possibility of economical development and discredit the value of regulations, others maintain that the role of the government must be rational and proportional in the presence of problems such as weapon trafficking or other crimes deemed more serious from their perspective.

Likewise, the ability of specific industries such as the pharmaceutical, agrochemical, auto, creative, or others to promote a public agenda in which piracy has a preponderant place for the key actors will depend on their individual and/or collective dialogue capacity with the authorities, and on the way said authorities perceive this problem.

For example, when referring to the musical, film and videogame industries, there was a moment when piracy, through mechanical backups such as CDs and DVDs, become unusually relevant, and even the FGR promptly monitored the imports of disc burners and basic materials along with SAT, and carried out multiple police operations on the streets and notorious markets like Tepito y Pericoapa.

On the contrary, in the case of the pharmaceutical industry, there have been observed a lot of problems with the spread and dissemination of informative campaigns.

“Whatever you want, we said to them, let’s put them however you want, and we have even gotten the buses to say, we put them for free for a while. Obviously, after some time we got nothing, all of that stopped [...] During a time COFEPRIS was like, no, I don’t like it, I don’t like what you put. How do you want it? But let’s do this so that, we said to them, we can really tell people to stop buying, for example, in street markets or in public markets, that they only buy in authorized establishments, in order to avoid precisely that people consume pirated medicines. No, no, no, because you can create a lot of... well...”

²⁰ In general, this position is defended by legal representatives and specialists in intellectual property.

Not controversy, but it will cause that people worries too much...”
Paco Urrutia, right owner’s representative, focal groups

To achieve that piracy acquires enough relevance in the public agenda, and then in the political agenda, either at the legislative, executive or judicial level, constitutes the next step in the institutional response related to legal proceedings. The modification of the legal framework in full force and effect, the implementation of trademark bases and of a measure system in the borders, among others, are examples of how the right owners or their legal representatives try to influence the actions of the authorities despite the priority level of this matter. It is worth mentioning that these efforts are made both individually and collectively through sectorial or specialized chambers.

2.3.2 The commitment of the right owners and the cost of legal proceedings

The type of response derived from legal proceedings will depend in a first stage on the interface between the owners of intellectual property rights and their legal representatives. In the reality, the people who monitor these actions can be directly the legal department of each company or association, or they can delegate this task to a law firm specialized in this matter. The experience shows that they carry out different functions like the ones included in Diagram 2.5.

DIAGRAM 2.5 Functions performed by right owners



Source: Made by ONC based on the fieldwork

Unlike what happens with other type of conducts, in these, some of the affected parties gather evidence and carry out preliminary investigations on their own to contribute to the allegations, recitals and submission of evidence of the administrative proceedings, as well as to the identification of clues of the probable crime offenders. Below, we list some examples collected during the research related to the film industry and the one of consumer goods like shampoo:

“Well, Mexico is also in the first places, now we are in second place worldwide in the export of pirated films that come from the movie theaters. We said to them, look, we know that here in the [X movie theater] in Puebla is where all these movies are coming out. No, but how do you know? Because we have forensic experts. All the movies from our studios have a watermark which is imperceptible at first sight, but if it is pirated, we make tests in the lab and we know which cinema, at what time, in which theater it happened. Then, we are bringing all the investigation, look, these are the suspects, these are the movies, look, they are from this theater, it’s all there, and it’s just there, the complaint is already filed. But...nothing. And it has been the same the last years”.

Juan Gómez, right owner’s representative, interview

“It was simply...you go, it’s very simple, go downtown, to Plaza de la Computación... for example, before, a long time ago, it was... they had the piracy there. Now, they don’t have it exposed. For instance, in the case of software, they just have pictures and you ask, they have an assistant that gets out running... there is too much security, they are very protected, the warehouses are well hidden. I mean, they are more sophisticated in the sense that they take more care because they know that they can get busted because they are more visible”.

Daniel Rodríguez, lawyer, interview

From the first quote, it stands out the intensive work of identification of the whole chain linked to the appropriation of the content in a specific site in Puebla, whereas in the second, that the research work falls on the field experience and draw attention to the protective mechanisms improved due to the police operations in that area. The performance of this kind of functions is not an exclusive phenomenon of Mexico, since it is usually seen in other latitudes, as stated by Hopkins et. al, Chaudhry & Zimmerman and Naím (2005).

Afterwards, the legal work carried out by the right owners and/or their legal representatives is conditioned by the type of applicable law, either for a brand forgery case, one of copyright, or of other type of intellectual property. What is referred in the interviews is the need to adapt to the regulatory hypothesis in order to identify which is the most appropriate path to maximize the benefit of the client and/or to harm the pirate. The following quote shows one of the used applicability criteria²¹.

“But if the crime... what is the crime? It’s to forge the brand, not the product. Then you can say, who is the biggest sinner? Maybe the printer, who is making the label, because he is the one that is reproducing the brand. Now, the reality is that all misconducts are punished, the ones who manufacture, sell, distribute, transport, store, import... That’s why you can have merchandise that comes from... abroad, because, if it’s the same, you go for a criminal proceeding, if it’s similar, if they change something, you go with IMPI”.

Daniel Rodríguez, lawyer, interview

²¹ A second applicability criterion that we observed consists on discriminating if it is easier to carry out the procedure for the brand or for the copyright. We have to remember that a product can have more than one intellectual property right. For example, a film that involves copyright and also trademarks.

Depending on the most convenient strategy defined by the right owners and/or their legal representatives, legal proceedings can have a variable duration. In this respect, it is common that it is only pursued a dissuasive effect so that the offender or presumed criminal, as the case may be, stop selling products of certain brand or those that violate copyrights. To this end, it is necessary to carry out the seizure of merchandise from police operations in customs offices, tracking guides of parcel services, on the street²², in searches on business establishments and warehouses; or, on the digital part, to manage international actions to limit the access to content protected in the country or, as the case may be, to proceed with the suspension of a server located in domestic territory.

In other cases, the affected parties seek to do what it takes and exhaust all the available paths, whether for the risks implied in the free circulation of the products for the people's health and physical integrity or for other reasons of the right owner. To do what it takes refers to criminal punishments, but also to the destruction of the merchandise seized, and even the start of other legal proceedings.

In a few cases of brand or trademark counterfeit, the right owners seek to file a civil complaint for damages²³. This has to be done after the previous actions are concluded, because to get to this stage, it is required the existence of an unappealable legal decision. The foregoing would imply legal costs that exceed the net benefit of starting this proceeding. Taking legal actions is costly²⁴ due to all the developed stages.

The interface between the right owners, with their legal representatives, and the authorities constitute the second phase of the cycle of the institutional response related to legal proceedings, which will be explained in the following section. Nevertheless, the concerns perceived by the law enforcement authorities in criminal matters stand out over the diversity of objectives and costs of each legal action, as well as over the commitment of the right owners and their legal representatives to the attainment of these proceedings. The information gathered in the fieldwork shows a difference between what the plaintiffs seek and what the authority pursues in a criminal process of brand or trademark counterfeit:

"You saw very often why the trademark crime was for complaint. The ones of trademarks. You saw very often that once you carried out the police operation, the trademark owners reached agreements, and therefore granted their pardon, in exchange for a sum of money. You saw that a lot. But we as authorities didn't see it as something good, because we had worked a lot to carry out a police operation, to make a big merchandise seizure, and at the end it was just finished, but what we wanted was a bunch of remands, right? Consign and take criminal actions, which at the end... is the purpose of all investigations. But now I do see it, me personally, I think it's okay. I think it can work because you don't want to be criminalizing everybody. And unfortunately, and this is part of this conversation, unfortunately, you often reach the final consumer, I mean, the final vendor. It's harder to go higher".

Pedro Rivoli, former FGR official, interview

²² This kind of actions show a series of untrivial logistic challenges. In the fieldwork, we identified that sometimes these police operations have implied injuries or confrontations between the institutions' personnel and the merchants or the people close to them. For some right owners, these events are not attractive due to the image it would show of the brand in case there is a bigger scandal.

²³ In contrast, in matters of copyright, it is possible to start a civil proceeding for damages parallelly to the administrative proceeding. According to the fieldwork, there is the impression that the owners of the copyrights do not use this resource as much as expected despite being a recurring claim.

²⁴ A factor that will have an impact on the cost of legal proceedings for the right owners are the competition conditions in the market of legal consultancy specialized in intellectual property.

Likewise, this concern found echo with other elements of the public organisms that observe an asymmetry in the cost transfer of the right owners and the legal representatives to the public agencies regarding the storage and destruction of seized goods, allowances and other procedures²⁵. This asymmetry is explained in the legal framework in full force and effect.

2.3.3 Powers, resources and coordination of the competent authorities

The environment of the government institutions directly or indirectly involved in the matters of intellectual property is characterized basically by the division of acknowledgement and compliance tasks for these rights. In this section, we will explain in depth the second one, that is to say, what corresponds to the enforcement duties.

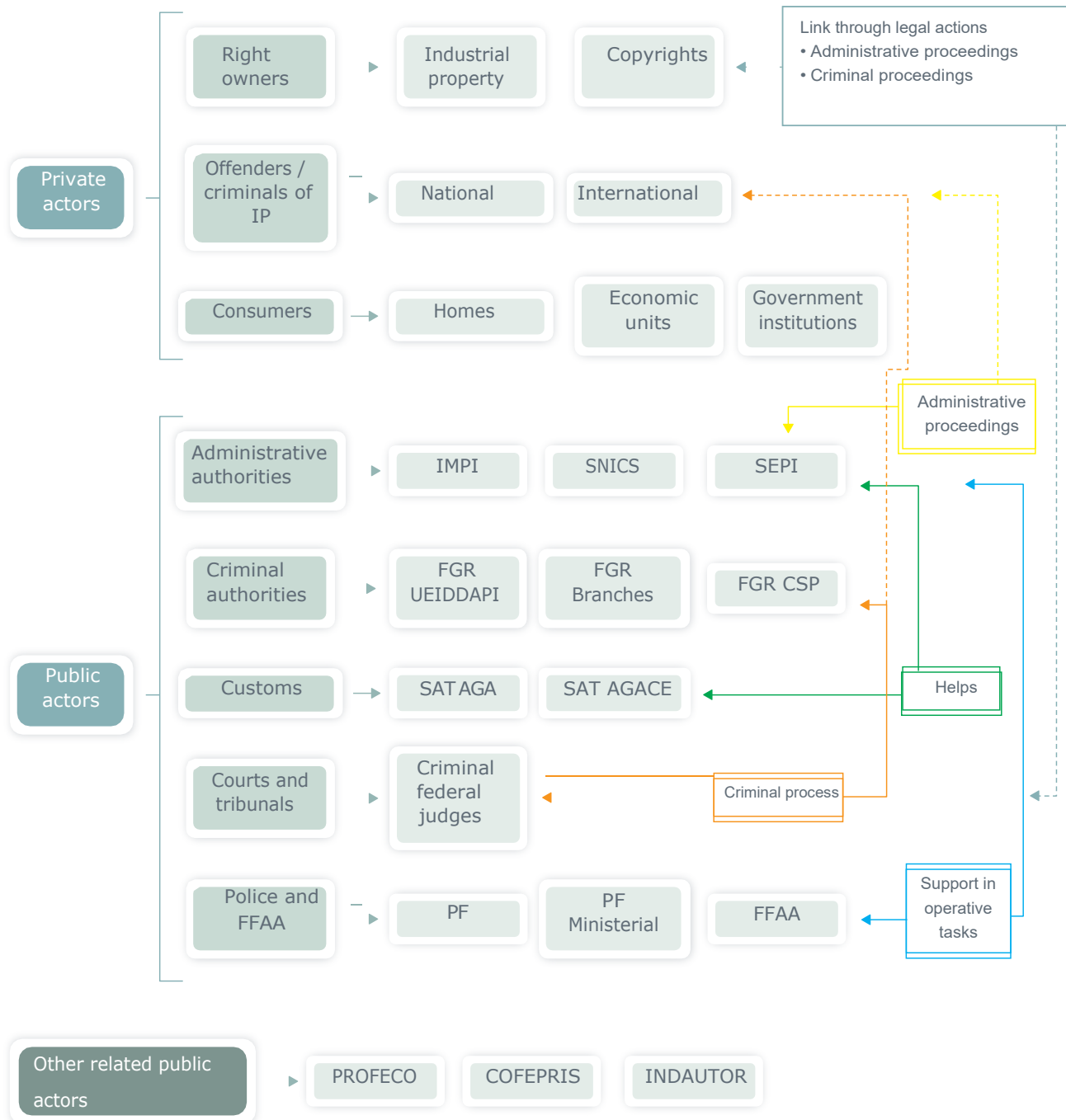
As stated by Fink & Correa (2009), Aguiar (2011) and Muñoz (2009), there is a tendency to increase the application of standards and laws aimed at the protection of intellectual property and, therefore, to make operational the provisions set forth in international treaties, both in developed and developing economies. This implies the modification of the legal framework, so that these rights can be effectively protected, that the authorities are granted more powers, and that the processes derived from the legal actions taken by the right owners are duly defined.

Additionally, it encourages the demand of budget resources for this matter that the national governments of developing economies are probably unwilling to give, since the tax space is reduced, or there are other political priorities (infrastructure, education, healthcare), despite having signed and ratified those treaties.

In terms of the key actors involved, we present Diagram 2.6 to identify the interactions of the government organizations and how they relate to private actors. The diagram is divided in two: public and private. It classifies private in three: right owners, offenders / criminals, either national or international, and the consumers, either homes, economic units and government institutions. For its part, the public subdivision is first divided in two: those who participate directly in enforcement actions and those who are in the ecosystem, but do not participate in the proceedings. Then, the first group is classified according to the function, distinguishing if they take actions in criminal or administrative proceedings, and if they help in those. From Diagram 2.6, and based on the fieldwork and desk research made, we have the following characteristics:













²⁵ Besides, the authorities stated that some legal representatives do not conclude criminal proceedings, do not show a collaborative attitude in several stages of the process, and sometimes, take expired trademark registrations. These inefficiencies imply that the investigation filed remain pending of a judicial decision.







DIAGRAM 2.6 Mapping of involved actors in the piracy ecosystem















Source: Made by ONC







📁 Institution																																																																																	
IMPI																																																																																	
📁 Structure	👤 Personnel																																																																																
Divisional Directorate of Protection to Intellectual Property	159 people (17% of the institution’s total personnel) * *Up to September of 2018; according to the report, up to September of 2019, the staff has not increased.																																																																																
📁 Relevant functions																																																																																	
<ul style="list-style-type: none"> • Violation of industrial property (mainly trademarks, identical brand or similar in terms of confusion) • Violation of copyright • Provisional measures • Inspection visits, <i>ex parte</i> and <i>ex officio</i> • Merchandise seizure • Technical opinions and reports for FGR • Imposition of fines or penalties • Closure of business establishments • Attention to civilian complaints in the piracy box • Consumption surveys of counterfeit products • Program “Customs Observers” • Destruction of apocryphal merchandise • Take-down of sites with protected content 																																																																																	
📌 Main obstacles																																																																																	
<p>Slowness in the proceedings due to workload – related to the volume of piracy and the Mexican procedural system</p>																																																																																	
📄 Relevant data																																																																																	
<ul style="list-style-type: none"> • According to the recommendations provided in the report of IIPA (2018) of section 301, IMPI should have the powers to investigate <i>ex officio</i> violations to industrial property. • As shown in the attached graph, inspection visits <i>ex officio</i> associated with administrative proceedings for copyright double the number of inspection visits <i>ex parte</i> both for violations to industrial property and for copyright. • If this recommendation was implemented, it would imply a gradual growth of inspections, and hence, it would create an increased net workload if this is not compensated with more personnel in the Divisional Directorate of Protection to Intellectual Property. 	<div style="text-align: center;"> <p>Inspection visits made by the personnel of the Divisional Directorate of Protection to Intellectual Property 2001-2019</p> <table border="1" style="display: none;"> <caption>Estimated data from the graph</caption> <thead> <tr> <th>Year</th> <th>Industrial Property (ex parte)</th> <th>Copyright (ex parte)</th> <th>Copyright (ex officio)</th> </tr> </thead> <tbody> <tr><td>2001</td><td>800</td><td>300</td><td>2900</td></tr> <tr><td>2002</td><td>800</td><td>300</td><td>2400</td></tr> <tr><td>2003</td><td>700</td><td>400</td><td>1800</td></tr> <tr><td>2004</td><td>700</td><td>200</td><td>1400</td></tr> <tr><td>2005</td><td>900</td><td>300</td><td>1200</td></tr> <tr><td>2006</td><td>500</td><td>200</td><td>1300</td></tr> <tr><td>2007</td><td>600</td><td>300</td><td>2700</td></tr> <tr><td>2008</td><td>500</td><td>400</td><td>2800</td></tr> <tr><td>2009</td><td>500</td><td>500</td><td>2800</td></tr> <tr><td>2010</td><td>500</td><td>400</td><td>3000</td></tr> <tr><td>2011</td><td>500</td><td>400</td><td>3000</td></tr> <tr><td>2012</td><td>400</td><td>400</td><td>3100</td></tr> <tr><td>2013</td><td>600</td><td>500</td><td>3100</td></tr> <tr><td>2014</td><td>500</td><td>600</td><td>3000</td></tr> <tr><td>2015</td><td>600</td><td>500</td><td>3100</td></tr> <tr><td>2016</td><td>700</td><td>900</td><td>2900</td></tr> <tr><td>2017</td><td>700</td><td>900</td><td>3200</td></tr> <tr><td>2018</td><td>700</td><td>800</td><td>3200</td></tr> <tr><td>2019</td><td>700</td><td>700</td><td>3200</td></tr> </tbody> </table> </div> <p>**The information for 2019 corresponding to the inspection visits <i>ex parte</i> is presented as an estimate, since in the work report it was submitted apart. It was assumed that 47% of the inspection visits <i>ex parte</i> correspond to the industrial property, just like in 2018.</p>	Year	Industrial Property (ex parte)	Copyright (ex parte)	Copyright (ex officio)	2001	800	300	2900	2002	800	300	2400	2003	700	400	1800	2004	700	200	1400	2005	900	300	1200	2006	500	200	1300	2007	600	300	2700	2008	500	400	2800	2009	500	500	2800	2010	500	400	3000	2011	500	400	3000	2012	400	400	3100	2013	600	500	3100	2014	500	600	3000	2015	600	500	3100	2016	700	900	2900	2017	700	900	3200	2018	700	800	3200	2019	700	700	3200
Year	Industrial Property (ex parte)	Copyright (ex parte)	Copyright (ex officio)																																																																														
2001	800	300	2900																																																																														
2002	800	300	2400																																																																														
2003	700	400	1800																																																																														
2004	700	200	1400																																																																														
2005	900	300	1200																																																																														
2006	500	200	1300																																																																														
2007	600	300	2700																																																																														
2008	500	400	2800																																																																														
2009	500	500	2800																																																																														
2010	500	400	3000																																																																														
2011	500	400	3000																																																																														
2012	400	400	3100																																																																														
2013	600	500	3100																																																																														
2014	500	600	3000																																																																														
2015	600	500	3100																																																																														
2016	700	900	2900																																																																														
2017	700	900	3200																																																																														
2018	700	800	3200																																																																														
2019	700	700	3200																																																																														

 Institution		 Institution	
SNICS		SEPI TFJFA	
 Structure	 Personnel	 Structure	 Personnel
Headquarters and 39 operative units	71 people (not all the institution performs duties related to the protection of obtaining titles)	1 specialized chamber with 3 magistrates	33 people (they deal with other more complex affairs of intellectual property)
 Relevant functions		 Relevant functions	
<ul style="list-style-type: none"> • Administrative proceedings on vegetal varieties (obtaining titles) • Monitoring visits of seed distribution sites • Implementation of a 01800-phone number for complaints or reports • Informative campaigns on pirated seeds • Establishment of reliable distributors • Special labeling of certified seeds (with obtaining titles or variety titles) • Conciliation meetings between the parties when there is an unauthorized use of seeds protected by an obtaining title • Connection with state delegates of the farming development programs to carry out workshops and courses aimed at farmers and the authorities 		<ul style="list-style-type: none"> • It is the second instance in administrative proceeding for violation. • It settles the affairs through Judicial Trials. 	
 Main obstacles		 Main obstacles	
<ul style="list-style-type: none"> • They need more powers to deal with the issue of biopiracy and the departure of plant-genetic material from Mexico according to the provisions of the Nagoya Protocol. • They have to work in the adaptation of the legal framework in matters of vegetal varieties. 		Not detected	
 Relevant data		 Relevant data	
<ul style="list-style-type: none"> • During the third quarter of 2019, there were carried out 10,315 inspection to fields, warehouses and business establishments. • Regarding the third quarter of 2018, the number of inspections increased 14%. • Establishment of the National Seed Policy (National Seed System). • Continuity of the campaign against piracy through the dissemination of 900 posters to the SNICS units, 15,000 brochures, developments of use in social media and 4 awareness events. 		<ul style="list-style-type: none"> • There are no public statistics available on judicial trials derived from violations to industrial property and copyright. 	







 Institution	
FGR state branches	
 Structure	 Personnel
32 state branches	9,361 people (not all the personnel of the state branches work in crimes of intellectual property)
 Relevant functions	
<ul style="list-style-type: none"> • The FGR branches allocated in all the federal entities are in charge of carrying out criminal investigations and ministerial duties for the crimes of intellectual property, only where there are preliminary investigations or investigation files with arrested persons or preliminary investigations without arrests. • In the second case, it will only apply when the sum of the affair is less than 23,000 days of general minimum wage in effect in Mexico City, when the events had happened only in that federal entity, when the clarification of the facts do not imply technical complexity, or when the institution's holder determines so. 	
 Main obstacles	
<ul style="list-style-type: none"> • Due to the sum agreement, state branches deal with the affairs of piracy beneath 2.34 million pesos. Sometimes, significant and technically complex affairs (label counterfeit) do not reach this value, which impede them to go to UEIDDAPI. • In the branches, they discriminate piracy matters. 	
 Relevant data	
<ul style="list-style-type: none"> • According to CNPJF 2015-2019, state branches were informed of 3,317 crimes of industrial property between 2014 and 2018. • They represent 45% of all the crimes of industrial property known by FGR. • According to CNPJF 2015-2019, state branches were informed of 3,297 crimes of copyright between 2014 and 2018. • They represent 84% of all the crimes of copyright. 	













 Institution																																														
FGR UEIDDAPI																																														
 Structure	 Personnel																																													
A specialized unit (physically it has located outside the FGR headquarters from the beginning due to the way it operates on the field)	60 people (CNPJF 2019)																																													
 Relevant functions																																														
<ul style="list-style-type: none"> It is the specialized unit assigned to the Deputy Public Prosecutor's Office Specialized in the Investigation of Federal Crimes. Its purpose is to conduct and monitor the attributions inherent to the ministerial function, related to the integration of the preliminary investigations and/or investigation files for facts with characteristics of a crime against copyrights and industrial property (Title XXVI of the Federal Criminal Code and the ones included in the Federal Copyright Act). Some of the duties it performs in the field include: comply with authorized orders to carry out searches, make searches in buildings and other properties, police operations on the street, customs inspections, seizure of objects, dismantling of laboratories and factories, arrests in the act, seizure of vehicles, money and securities, real estate and establishments, parcel tracking guides, among others. 																																														
 Main obstacles																																														
<p>The Federal General District Attorney's Office appointed a new holder of the Specialized Unit in Investigation of Copyright and Industrial Property Crimes assigned to the Deputy Public Prosecutor's Office Specialized in the Investigation of Federal Crimes. According to the statements made by some right owners, this change has caused that the fight against piracy focuses on the pursue of the largest producers, manufacturers, importers or distributors of counterfeit products, instead of focusing on the small vendors. The right owners said that now, this unit is not looking to avoid that the merchandise comes to the Mexican market, assuming that, if the offender is punished, consequently, this will reduce the number of forged products in the market. Based on this perspective, they mentioned that the authority delegates or transfers all the burdens of proof to the affected right owners. Besides this change of strategy, the budget cut that suffered the Federal General District Attorney's Office represents an obstacle for the operation of specialized units such as UEIDDAPI. We have to keep in mind that it is a unit that, due to the nature of its work, is deployed in the field, organizing police operations either in customs offices or in notorious markets. It is worth mentioning that, for the fiscal year of 2020, this unit received 14% more budget resources in actual terms than in 2019, but 8% less than in 2018. Therefore, it is natural that when we review the statistics of the police operations carried out and of the products seized, we are in lower levels than the ones observed in previous administrations, although they manage more budget resources in actual terms.</p>																																														
 Relevant data																																														
<ul style="list-style-type: none"> According to CNPJF, UEIDDAPI was informed of 2,734 crimes related to industrial property between 2014 and 2016**. They account for 37% of all the crimes in the matters of industrial property known by FGR. According to CNPJF, UEIDDAPI was informed of 430 crimes related to copyright**. They account for 12% of all the crimes in the matters of copyright known by FGR. Between 2017 and 2019, this unit has complied with 189 authorized orders of searches, it has searched 1,351 properties, carried out 33 police operations on the street, 71 customs inspections, seized 4.5 million objects, dismantled 11 laboratories and 3 factories, arrested 115 people in the act, seized 6 vehicles, 760 business establishments, 66 properties and MXN \$52,854 in cash and securities. Just like other specialized units of FGR, UEIDDAPI operates with limited budget resources. It does not receive income from exploitation or use like IMPI, therefore, its operation is limited to budget planning and to the internal and external priorities of FGR. Given the level of the budget, the implementation of the recommendations issued in the report of IIPA (2018) of section 301, like the development of a national antipiracy campaign ex officio, coordinated by this unit, as well as a greater emphasis on the cases of digital piracy, seems unlikely. <p>**The information of the census reports no crimes known by the unit from 2017, but it is likely a mistake of the report. It must be pointed out that, in the request of the census data, they refer to 196 crimes in matters of copyright and 1,284 in matters of industrial property between 2016 and 2017. These are classified in the category "Others", but it is probably a transcription mistake, and that they correspond to UEIDDAPI.</p>	<p style="text-align: center;">Expenses spent by UEIDDAPI 2013-2020P vs. Operating indicators</p>  <table border="1"> <caption>Expenses and Operating Indicators (2013-2020)</caption> <thead> <tr> <th>Year</th> <th>Expenses (Millones de pesos)</th> <th>Searches and inspections</th> <th>Police operations on the streets</th> <th>Dismantled labs and factories</th> </tr> </thead> <tbody> <tr> <td>2013</td> <td>23</td> <td>~750</td> <td>~100</td> <td>~100</td> </tr> <tr> <td>2014</td> <td>23</td> <td>~750</td> <td>~100</td> <td>~100</td> </tr> <tr> <td>2015</td> <td>25</td> <td>~750</td> <td>~100</td> <td>~100</td> </tr> <tr> <td>2016</td> <td>25</td> <td>~750</td> <td>~100</td> <td>~100</td> </tr> <tr> <td>2017</td> <td>23</td> <td>~750</td> <td>~100</td> <td>~100</td> </tr> <tr> <td>2018</td> <td>25</td> <td>~750</td> <td>~100</td> <td>~100</td> </tr> <tr> <td>2019</td> <td>20</td> <td>~750</td> <td>~100</td> <td>~100</td> </tr> <tr> <td>2020</td> <td>23</td> <td>~750</td> <td>~100</td> <td>~100</td> </tr> </tbody> </table> <ul style="list-style-type: none"> According to the information of the operative actions against piracy published by FGR, all the actions referred in 2019 as authorized search orders, searched properties, police operations on the street, customs inspections, seized products, dismantled laboratories and factories, arrested people in the act, and seized properties and establishments, show a significant decrease compared to the levels seen in 2018. It draws the attention that in 2019, there was only one police operation on the street, that nobody was arrested on the act, and that there have been no customs inspections in the last two years. The evidence is consistent with the change of criteria by this unit, and second, that even with almost the same budget resources, the operative activities have reached historic minimum levels. 	Year	Expenses (Millones de pesos)	Searches and inspections	Police operations on the streets	Dismantled labs and factories	2013	23	~750	~100	~100	2014	23	~750	~100	~100	2015	25	~750	~100	~100	2016	25	~750	~100	~100	2017	23	~750	~100	~100	2018	25	~750	~100	~100	2019	20	~750	~100	~100	2020	23	~750	~100	~100
Year	Expenses (Millones de pesos)	Searches and inspections	Police operations on the streets	Dismantled labs and factories																																										
2013	23	~750	~100	~100																																										
2014	23	~750	~100	~100																																										
2015	25	~750	~100	~100																																										
2016	25	~750	~100	~100																																										
2017	23	~750	~100	~100																																										
2018	25	~750	~100	~100																																										
2019	20	~750	~100	~100																																										
2020	23	~750	~100	~100																																										

 Institution		 Institution	
FGR CGSP		Federal Police and FFAA / National Guard	
 Structure	 Personnel	 Structure	 Personnel
Department of Intellectual Property with coverage of the central sector, plus the personnel in the 31 state branches	66 experts on intellectual property (3.9% of the personnel of CGSP) CNPJF 2019 (2018)	It is unknown which division of the FP participated in the field. The evidence in open sources indicates that the NG has participated in seizures. The Coordination for the Prevention of Electronic Crimes of the Scientific Division performs duties related to digital piracy.	There is no exact information on the number of elements that have participated in antipiracy tasks. Based on the answer to the information request, there is not a permanent program in that regard.
 Relevant functions		 Relevant functions	
<ul style="list-style-type: none"> • The General Coordination of Expert Services supports the Federal Prosecutor's Office assigned to UEIDDAPI or the state branches regarding the expert specialization of intellectual property. • According to the Guide of Federal Expert Specializations (2015), its purpose is to identify similitudes and differences between the products or services that hold trademarks or brands protected by the Industrial Property Act through the confrontation of security elements, qualitative characteristics, and the applicable regulation in order to establish their correspondence. • Regarding copyrights, its purpose is to create a comparative study between the figures protected by the Federal Copyright Act and the questioned objects through the analysis and use of technological instruments, in order to establish the existence of their reproduction. • Attention to intervention requests of expert opinions and reports on intellectual property. 		<ul style="list-style-type: none"> • Support in operations on the street and on searches in business establishments. • Seizure of objects that are probably apocryphal, of real estate and laboratories and put them at the disposal of the correspondent authorities. • Systematization of the information on seizures (Office of the General Commissioner) • Support in the investigation of cases of piracy in matters of copyright in digital media. • The participation of FFAA is more isolated, since it was just located in a few press releases and some isolated anecdotes. 	
 Main obstacles		 Main obstacles	
<ul style="list-style-type: none"> • The issuance of expert opinions that ignore the characteristics of the criminal types regarding trademark counterfeit. The expert work is carried out based on products, not on trademarks or brands. • Regarding digital piracy, it is observed the need to have better training in order to pair with the increasing complexity of this issue. 		<ul style="list-style-type: none"> • Despite the FP has the capacity and willingness to collaborate, request its support is complicated and require a lot of procedures. • The Cybernetic Police provides support only by request of the interested party. • Piracy is not an imperative issue within the organization (FP). It is unclear if this activity is a priority for the NG. 	
 Relevant data		 Relevant data	
<ul style="list-style-type: none"> • According to CNPJF 2018, in 2017 were admitted 3,832 intervention requests, from which 100% were concluded. • According to CNPJF 2019, in 2018 were admitted 3,097 intervention requests, from which 100% were concluded. • 39% of the concluded intervention requests in matters of intellectual property corresponds to expert opinions, 43% to reports, and the other 18% to other requests. • From the total number of interventions admitted by CGSP, the ones for intellectual property account for 0.9%. 		<ul style="list-style-type: none"> • They have participated in the seizure of objects that are probably apocryphal, of real estate and laboratories put at disposal of the authorities in the 32 federal entities. This information exists from December of 2006 to November of 2018. • During this period, they have participated in seizures of up to 30 different products, five types of materials and six different capital goods. • It is unknown if these seizures were part of operations planned from an administrative proceeding for trademark or copyright violation, or if they were carried out in the course of a routine police operation. • They have seized 112.5 million pieces, 3,084 tons and 556 properties. 	

 Institution	
Federal criminal judges (courts and tribunals)	
 Structure	 Personnel
<p>Before the criminal amendment: 50 district courts of federal criminal proceedings;</p> <p>32 federal legal circuits</p> <p>After the implementation of the criminal amendment, there was a change in the judicial cartography □ 41 Centers of Federal Criminal Justice</p>	<p>There is no exact information on the number of judges and magistrates that have participated in criminal proceedings related to crimes in matters of industrial property and copyrights.</p>
 Relevant functions	
<ul style="list-style-type: none"> • The role of federal criminal judges is to know the crimes of federal order, that is to say, those provided in the laws, federal codes, and international treaties. • Their duty is to administer justice and settle the criminal proceedings related to crimes in matters of intellectual property. 	
 Main obstacles	
<ul style="list-style-type: none"> • The references to federal criminal judges indicate that they do not know enough about intellectual property and its implications. • The crimes they judge does not seem imperative for them compared to other more serious. Therefore, their penalties are usually low, if any. • In turn, judges demand expert reports on intellectual property when there is no need to request them. 	
 Relevant data	
<ul style="list-style-type: none"> • The ones that participate in this activity are district courts, control or guarantee courts and trial tribunals. They know crimes in matters of copyrights and industrial property registered in the different criminal proceedings. They have information available of proceedings filed, pending and settled. • According to CNIJF 2011-2019, criminal judges were informed of 2,925 criminal proceedings filed for crimes in matters of copyrights between 2010 and 2018. In this same period, 4,892 were settled. • According to CNIJF 2011-2019, criminal judges were informed of 326 criminal proceedings filed for crimes in matters of intervention and trademarks between 2010 and 2016. In that same period, 396 were settled. • According to CNIJF 2011-2019, criminal judges were informed of 272 criminal proceedings filed for crimes in matters of intellectual property between 2010 and 2016. In that same period, 443 were settled. • According to CNIJF 2011-2019, criminal judges were informed of 76 criminal proceedings filed for crimes in matters of industrial property between 2017 and 2018. In that same period, 47 were settled. • The aforementioned census shows evidence on the scarce response of this authority, since between 2017 and 2018, there is information about 7 sentences for crimes in matters of copyrights and 4 in matters of industrial property. • Regarding the number of crimes known by the state branches and UEIDDAPI, the crimes known by the authorities that administer justice are substantially less, which implies a significant reduction of the probability to order penalties. • The foregoing could be derived from the lack of priority assigned to this type of crimes by these organisms. 	

🏢 Institution		🏢 Institution	
SAT AGA		SAT AGACE	
📎 Structure	👤 Personnel	📎 Structure	👤 Personnel
<p>Central Administration of Customs Investigation (ACIA)</p> <p>49 customs offices in the country</p>	<p>6 912 people (up to the third quarter of 2018)</p> <p>We did not find any information on the number of employees that works at ACIA. It only refers that at an organizational level, it has 9 administrations of customs investigation.</p>	<p>General Administration of Foreign Trade Auditing</p> <p>It has 7 central administrations</p>	<p>1,266 people (up to the third quarter of 2018)</p> <p>*AGACE will return to AGA according to information published in open sources</p>
📎 Funciones relevantes		📎 Funciones relevantes	
<ul style="list-style-type: none"> • Give notice to the authorities on the entry of probably counterfeit or apocryphal merchandise to the 49 customs offices in the country (IMPI and FGR). • Before the dispatch, to notify and suspend recurring importers from the Registration List when the individuals or companies are subject to a criminal process for the presumed commission of crimes in matters of taxes, industrial property and copyrights, or when the customs authorities are informed of the detection by the competent authorities of merchandise that violate industrial property or copyright. • Keep updated the Trademark Base of Customs Offices with the information to facilitate data crossing with identification purposes. • Participate in the Committee to Fight Illegality. • Exert the power of acknowledgement and verification based on the results of the automated selection system. In case of discrepancy between the statement made in a claim or petition and the information proved, it is filed a custom proceeding in administrative matters (PAMA). In case of observing piracy, they must notify the right owner or the legal representative, and they must start an administrative or criminal proceeding. 		<ul style="list-style-type: none"> • It was created in July of 2012 to separate the dispatch duties correspondent to AGA from the auditing ones. • The purpose of the creation of this general administration in SAT is to fight illegal trading and customs fraud. • During its operation, it carried out 6 auditing programs in matters of foreign trade aligned to SAT's strategic plan. • From the six programs derived 30 subprograms. • Participate with members of the Committee of Illegal Trade of OECD in a round table. • Collaboration with ICE and the Center of Intellectual Property of this institution. • It focuses on the customs audit after dispatch. • Participate in the Committee to Fight Illegality. 	
🚩 Main obstacles		🚩 Main obstacles	
<ul style="list-style-type: none"> • Despite the fact that the Trademark Base of Customs Offices is free, its use has turned out lower than expected. • Lack of legal powers to carry out seizures. According to law, SAT cannot be the first respondent, just helps and notifies the competent authorities. It cannot begin the chain of custody. • Need to amend the Customs Act in order to regulate the proceedings related to intellectual property. 		<ul style="list-style-type: none"> • Due to its nature, the emphasis of AGACE is in matters of sub-valuation, IMMEX programs abuse, and other type of customs frauds. There is no emphasis in products which are potentially apocryphal. • Lack of communication between AGACE and ACIA (CONCAMIN, 2019). 	
📄 Relevant data		📄 Relevant data	
<ul style="list-style-type: none"> • The results of the Committee to Fight Illegality lack uniform information standards regarding piracy. • They gather information on seizures, interinstitutional operations with IMPI and PGR, suspension of free circulation of merchandise from abroad for presumably contain forged or apocryphal merchandise to Mexico as both final destination and as a transfer point to countries of Central America like Guatemala, El Salvador, Costa Rica, and of South America, like Chile. • The degree of detail regarding piracy is variable. In a few years, it is available information per article, in other is added in multiple categories, and in others it is not deepened at all. • The information with a better systematization degree was observed for tobacco and alcohol. For example, they seized five million liters of irregular alcohol, and destroyed 16.7 million cigarettes. • Besides, they implemented many measures to improve auditing of these sectors, such as auto, shoes and textile, with favorable results for collection. • Recently, they reported a greater piracy activity in internal customs offices (CONCAMIN, 2019). 			

 Institution	
COFEPRIS	
 Structure	 Personnel
Commission of Sanitary Operations (COS) formed by the Executive Directorate of Sanitary Supervision and Surveillance (3 deputy directorates)	150 people (operative and administrative) (up to the third quarter of 2018)
 Relevant functions	
<ul style="list-style-type: none"> • It is not a competent authority in matters of intellectual property. • It knows about probable “pirated” or apocryphal products in accordance with the General Healthcare Act, in particular, articles 205, 206, 207, 208 and 208 bis. In said articles, it is defined what are altered products, polluted products or raw material, modified products or raw material, counterfeit products. • It is worth mentioning that the conception of pirated products of this institution does not necessarily agree or coincide with the perspective of intellectual property, but they can be correlated in some way. • The scope of products with which they work is limited: healthcare material, pesticides and vegetal nutrients, tobacco and alcohol, food, beverages, dietary supplements, perfume products, beauty and hygiene. • It is in charge of monitoring the compliance of safety, quality and efficiency criteria, from the manufacture to the distribution, for which it is monitored the enforcement of applicable regulations depending on the type of product or material. • It carries out surveillance activities on products, processes, services and commercialization through visits. • Its duties include the issuance of sanitary warnings based on sanitary surveillance, verification visits, complaints filed by affected companies, as well as reports based on information provided by state sanitary institutions. • Participates in the Committee to Fight against Illegality. 	
 Main obstacles	
<ul style="list-style-type: none"> • Up to this date, we could not find institutional information on the status of said commission. The disappearance of the Commission of Sanitary Operations is a sign of alarm for right owners of the pharmaceutical and agrochemical industries because, despite not having enough personnel for the size of the economy, it did show the presence of the government in the regulatory field. • It was stated the existence of proceedings that take too long and should be digitalized. • The Commission does not issue as many sanitary warnings as similar organisms in Latin America. 	
 Relevant data	
<ul style="list-style-type: none"> • From 41 sanitary warnings registered in the website of COFEPRIS, from the years 2013-2019, at least 18 of them include cases of presumably counterfeit medicines, most of them reported by the affected company (16), one more by an anonymous civilian report, and another thanks to the information provided by the state sanitary authority. • These medicines include from pills to treat cough (Agin) or syrup to treat the flu (Antiflu Des Jr.) to growth hormones (Norditropin, Protophin) or Human Immunoglobulin (Octaglob D). • In 10 additional sanitary alerts, COFEPRIS warns about the commercialization of medicines that do not have a sanitary registration, or that hold a false one. In these cases, it does not affect a right owner, but the market itself with unfair competition, besides the negative impact on the consumer who buy products of doubtful quality. • There are no cases of counterfeit in the sanitary alerts referring to alcohol (3), tobacco (9), food (4), healthcare services (35), dietary supplements (38), deceiving publicity (5), or others (18). • Besides, it has carried out seizures of “miracle” products, alcoholic beverages, tobacco products, as well as medical devices. 	

 Institution		 Institution	
PROFECO		INDAUTOR	
 Structure	 Personnel	 Structure	 Personnel
The organism in charge in the most related functions to piracy is the Office of the Assistant Attorney General of Verification	3,607 people (including temporary jobs and employees paid by fees) (All PROFECO) Up to 08/31/18	Not detected due to functional characteristics	186 people up to 08/31/18
 Relevant functions		 Relevant functions	
<ul style="list-style-type: none"> • It is not a competent authority in matters of intellectual property. • It knows about probable “pirated” or apocryphal products, but the legislation would force it to start legal actions just regarding products that try to deceive consumers in direct violation of the Mexican Official Standards. • It carries out verifications in establishments and customs offices. • In the past, it carried out surveys on the consumption of piracy. 		<ul style="list-style-type: none"> • It is not an enforcement authority in matters of copyright. • It is in charge of the registration of titles, assignment of ISBN and ISSN registers, registration of works, legal consultancy, renewals of reserves of exclusive use rights, contract registration, among others. • Execution of agreement hearings to settle amicably the conflicts in matters of copyright stated in the Federal Copyright Act. 	
 Main obstacles		 Main obstacles	
Its work in matters of piracy is questioned. Despite the products of the secondary market try to deceive the consumer, they transfer that responsibility to IMPI.		Not detected	
 Relevant data		 Relevant data	
Not detected		Not detected	

In the previous charts, it is given a full explanation of the relevant duties, structures, personnel, main obstacles detected and pertinent data of the government institutions involved in the regulation enforcement in matters of industrial property and copyright at a federal level. Said institutions do not operate alone; therefore, it is raised the need to have a legal framework that define clearly the duties and powers of each one. The foregoing has been achieved due to regulatory changes and to the pressure of relevant private actors; nevertheless, there are issues still pending, like amendments to the Customs Act and the enforcement in issues related to intellectual property. Likewise, the public sector has promoted initiatives to give the country more legal instruments in order to protect its plant-genetic material and its vegetal varieties, as well as to strengthen national innovation, although it must be pointed out that these instruments have not been materialized due to differences with the legislative power.

It is necessary that effective processes of interinstitutional coordination that do not depend on the profile, motivations and relationships of the people who hold the positions in each institution. For example, one of the coordination initiatives implemented is the Committee to Fight Illegality, where members of business chambers, as well as several institutions, participated under the coordination of SHCP. This effort involved the alignment of both private and public agendas focused on certain industries, like tobacco, alcohol, auto, and textile. There were other authorities, like IMPI, FGR, the extinct National Security Commission, and regulatory ones like COFEPRIS to implement courses of action against piracy. The advantage of these initiatives is that they facilitate the sharing of information, encourage legal actions if they can implement tax, administrative, regulatory and criminal proceedings in a simultaneous and selective manner, broaden monitoring scopes, allow to identify good practices, maximize the strengths of each participant and reduce the lack of budget resources with regard to other political priorities.

2.4 Evidence and useless or nonexistent requirements

2.4.1 Definitions and examples

Within the list of institutional obstacles identified by the right owners during the stage of definition of objectives of this project, it was made reference to the request of evidence and useless or nonexistent requirements. In the desk research, we only detected information related to the expert specialties handbook of the General Coordination of Expert Services of FGR. Therefore, the sources of information used for this section are mainly the semi-structured interviews and the focal groups. That is, it has an eminently qualitative character.

According to the fieldwork carried out, evidences and useless or nonexistent requirements are those requests made by the intellectual property experts to the right owners or their legal representatives as part of the criminal proceedings before the FGR, based on the premise of making a visual and physical comparison that proves that the product identified as pirated is exactly identical to one produced under the protection of copyrights or trademarks.

Term's nonexistence

This proposed concept derives from a variety of examples described by both right owners and legal representatives. Below, we present one of them, and its implication is discussed afterwards.

“Is that this movie here is “Fast and Furious 10”. I need you to bring me the DVD. Look, it hasn’t even come out yet, I mean, it doesn’t exist. The film is still in the cinema. If it’s still in the cinema, then there isn’t an original DVD yet because it’s still in the theaters. Until it’s no longer in the cinema and passes to Netflix and then Cablevisión, or Izzii, then I will put the DVD on sale, but this cannot block you from exerting the legal action, so, go ahead. No, it’s just that, without evidence, I can do nothing. It is a matter, I tell you, of common sense...a lot of it”.

Juan Gómez, right owner’s representative, interview

This example regarding nonexistent evidence shows the specific difficulties faced by the film industry, when the piracy is physically available even before they make available their protected material in that format. This could be considered a base case of nonexistent evidence of piracy in videos, since it refers to a temporary impediment. This means that a film that is played in cinemas will eventually be offered to the consumers in a physical format. However, the tendency in this sector is not necessarily going for this path. As mentioned in the example, the supply also includes online streaming platforms. The question is: if the film is not offered in a physical format, just online or on television, what is the evidence that they expect to receive?

“For example, let’s say that this is an illegal product. You have to present both the illegal and the legal one. [...] Suddenly, there are houseware products where you have two, two floor cleaners or two fabric softeners. And they make you bring the original. Well, that doesn’t exist in the market? With watches, I’m sure they said, uhm, what is it called, a [X brand], a [X brand] that is [X brand] and [Y brand], and bring both. How are you going to do that? Then, they tell you, since this is not the same thing, I have nothing to compare it to...”.

Alicia Banderas, lawyer, interview

The duplicity of brands in a single product is shown in this example for two very different sectors: consumer goods and luxurious watches. As it has been explained in other sections of this study, we have detected piracy in products that are not usually associated with the classic conception of the crime, as house cleaners or personal hygiene products. That is, they do not have the aspirational element described by the interviewees that have the luxurious brand, and that can explain the use of two of them in a product with high value in the market to make it supposedly more attractive. The ostentation of two or more brands in a single product implies an additional challenge for the right owners, because it is almost impossible that they have an “original” to make the comparison. Besides, this forces them to coordinate a strategy and increases the costs for the proceeding.

“We found that someone stole from a very famous artist a hard drive, and this person was commercializing unpublished discs that never saw the light, okay? So, we found this person. And that goes to expert services, and they say, where are the originals? These are. Where are they? These are the originals. But they don’t have the cover. They are unpublished. You have to explain them that they never saw the light. The intention of the artist was to have them in a hard drive, saved, and in the proper time, one day, he was going to publish them, when he could reach an agreement with the record company, I don’t know... Someone extracted it and is selling it, I mean, it is unauthorized. But there isn’t an original. Yes, it is. This is it. We had to register them in INDAUTOR, against our will because they are unpublished... and then tell the experts, here, this is the registration... I mean, they didn’t want to. At the end, what we did was to say, okay, let’s go with someone else, because all we needed was the match”.

Salomón Durán, right owner’s representative, focal groups

The aspect that stands out the most of this example was the apparent lack of understanding of the protected legal property by the experts of intellectual property. The protection on a phonogram is not over the physical backup, but the music. The cover, the case and the CD unit should not be considered essential to confront that an album protected by copyright is commercialized without the authorization of the author or the right owners. The problem described here must be considered as well in view of the technological changes that has suffered the industry in the last two decades. There are artists who are opting to sell their music only through digital downloads or streaming platforms, not in a physical format. When this material is subject of piracy, it is not possible to present the product itself in a physical backup for its reproduction.

"...for example, in pens, this is the pirated [X brand] and this is the original. Then, they say, bring me the original. There is no original, I mean, this is an invention of piracy, how am I going to bring you the original of this? Then, it isn't. It's just that, forget about the product, all I want is for you to tell me that here is wrong the brand of [X], anyone you pick, forget about the ink, here is an unauthorized reproduction of the distinctive sign, yes or no? That is what you really ask the experts".

Salomón Durán, right owner's representative, focal groups

It also happened a lot with the experts, like, hey, look, I represent [X brand], and [X brand] doesn't make trash cans. No, but here it is a [X brand] trash can, you have to bring the original [X brand] trash can. No... don't ask me that.

Juan Gómez, right owner's representative, interview

These two examples presented show clearly cases of requests of nonexistent evidence for unauthorized use of a brand or trademark. The use of logos or emblems of luxurious brands to commercialize goods that are not related to the product catalogue of the right owner is a type of piracy, because the brand or trademark is used without any authorization. The criterion to compare this against an original product is unnecessary if the producer of this item is incapable of proving that he or she has the authorization of the right owner to reproduce the brand, for example, a license.

2.4.2 Why is this still happening? What impacts does it have in legal proceedings?

According to the consulted sources, the participation of the experts in intellectual property does not respond to a formal requirement established by the law, but to a practice consolidated in the criminal processes.

According to the descriptions gathered, the purpose of the bureaucratic body made up by the expert services in matters of crimes against intellectual property is to give an opinion or rule if the object is pirated, that is to say, if it is forged or not. However, they mentioned that, in most cases, the step to obtain an expert opinion to determine this forgery is unnecessary. Then, the question is: why was this opinion requirement created? And therefore, why it was created a whole bureaucratic body that generates a cost for the State. The consulted sources agree that it exists for the "relief and practicality of the Public Prosecutor's Office".

The expert opinions of crimes are relevant if the legal process demands specialized scientific knowledge and expertise to found complex processes where it is required the opinion of an expert. The expert opinion relegates the decision's support to a technician, who later on contributes to the final decision of the judge of the Public Prosecutor's Office. In criminalistics, for example, an expert opinion can determine if a bullet came from a specific weapon.

The rest of the decision, since it is a matter of the law, is taken by law specialists. However, an expert on intellectual property does not meet that need. One of the interviewees described their involvement as a contradiction in itself, because the expert on intellectual property does not provide any technical or scientific elements. Their work, he added, is to compare a registration certificate against the product.

“in order to say that the owner of [X brand] is coming to declare that this, this...bottle is a pirated product, it is only required that the expert asks to [X brand], are you the owner? Did you give this license? No. Okay, so, you who did it and is selling it, show me your license. No, I don't have one. It's counterfeit. You don't need a technical analysis; you don't require an expert opinion. And that is a requirement, it's a practice, because the proceeding doesn't need it, it's just a practice, a vice that was adopted, out of comfort, which has given jobs to many bureaucrats that, in reality, perform unnecessary duties. And when a case arrives that can be a little more complex or unusual, which there is not such thing, but well, which is not the typical, I have this original tennis shoe and this one pirated, and, okay, did you see that they don't match in, I don't know, the three strips that Adidas has, that this has only two? Oh, okay, yes.

Cristian Cruz, lawyer, focal groups

“For example, last year, with this migration of piracy from physical to digital in music, we requested some works of expert opinions. When you are telling Expert Services about a site, and they do start an investigation against an illegal site, because they do have one, they charge you a subscription for... I mean, they can't be more pirate. You say, okay. Where are your discs? Your originals? When you explain, not to the expert, but to the owner, to the second on board, etcetera, that the backup is not protected, but the content, regardless of the backup, and they keep asking you the same... you know what, I want the original CD, how can I compare this without it... We just tell them, look, there is music that doesn't exist anymore in physical formats. We say, look, this is the link of Spotify, this is the link of iTunes, this is the link of other, it's free, that's the link, you can compare there. But I don't see the booklet, I don't see the cover...”.

Salomón Durán, right owner's representative, focal groups

From this example, it is worth mentioning that, as was explained in the previous section, they are also institutional costs those borne by the right owners in order to settle the loopholes or the bias in which the authority can incur to enforce their rights. The training of experts in intellectual property carried out by a specialized association is a cost borne by the right owners, which, if it does not produce results, as shown in this example, can discourage them to take legal actions.

When asked about the incentives that carry on this practice, the answers tend to mention that criminal judges keep asking for expert opinions in order to avoid the cost of being them who apply the criterion. If the expert is the one responsible of signing the opinion that establishes if there is a possible criminal conduct, then the file becomes the main instrument for the decision. Hence, it is a source of certainty. One of the interviewees declared that it was a way of eliminating the gray area, part of the matter of intellectual property, and that is usually avoided by judges. This indicates that the detected institutional obstacle does not limit only to the actions of the experts on intellectual property, but also to the conditions that protect this practice.

“Yes, let the experts on intellectual property disappear. They don’t need them. But, above all, that the judges understand that they don’t need expert opinions on intellectual property. For what we talked, it is not a question of fact. It is a question of the law”.

Alicia Banderas, lawyer, interview

In this regard, it is worth mentioning that the only cases mentioned by the sources as complex enough to require an expert on intellectual property were those related to patents. One of the interviewees explained that, in other countries, there are experts specialized in this area, and that their activity is essential.

Conclusions

Chapter 1

The piracy phenomenon appears in practically all the industries that manufacture physical and digital products for everyday consumption, and which is in constant evolution due to technological changes. This means that the traditional idea of the term that relates it to material protected by copyright or to the forgery of trendy or luxurious brands or trademarks is completely surpassed. The evidence collected throughout this study points to a linguistic plasticity reflected in the polysemic usage of the term piracy and its adjectives. This multiplicity of meanings gets also far from the field of intellectual property, that is to say, the counterfeit of brands and trademarks and the unauthorized use of content protected by copyright.

The spread of piracy has consequences in several fronts. One of them is that it captures the discussion on intellectual property. According to the fieldwork made in the framework of this research, unfortunately, the first conscious contact that many people have with intellectual property is through piracy. This, instead of reinforcing the actions to reject and contain it, seemingly normalizes its consumption and, therefore, it is not seen as a crime. The term piracy encompasses a wide array of dynamics so different and diverse that they hardly contribute to generate an accurate understanding of the phenomenon. Hence, it loses its validity little by little.

Mexico was characterized as a country that mainly imports piracy, but with a thriving demand for it. The presence of points of sale of piracy and its growth is mostly explained by the existing corruption in all the areas of the government; that is to say, corruption allows to provide a commercial scale to this activity. The dynamics and actors involved in piracy in this country are extremely varied. It is worth mentioning that each of the examples shown in this study implies different consequences for the right owners, the users, and the government. This, along with terminological problems, becomes more evident when people mix the vocabulary of sanitary risks in the pharmaceutical industry with that of intellectual property.

Throughout this study, it was made clear that, in practice, it is confirmed one of the premises of specialized literature: it is a criminal activity characterized by high profits with low risks for those who commit it. In this regard, it is worth revising in depth the evidence gathered regarding informal markets, which can be found in different places and forms and, in fact, do not require a fixed physical space to carry out their activities. Not only that, it was also made clear that there is a broad social network that get benefited from its mere existence.

Although there are informal markets where the pirated merchandise is usually sold due to very local rules and social agreements, we have also identified criminal syndicates with great economic and social influence that participate in this business. These sites are characterized as well for their resistance and adaptability before local administrative changes. Therefore, there are experts who propose an analytical approach in which there are established the communication lines created among groups of street vendors or trading unions, criminal organizations, political parties and the authorities. The reason is that these dividing lines are very blurred between each other, and many times it is impossible to distinguish them.

Another concerning finding is the link between formal business establishments and piracy as intermediaries. The sale of pirated products in formal markets has been increased in the last year, mostly due to the boom of digital platforms around the world. However, it is worth taking into account the responsibility of the small, medium and large companies that are formally registered before the correspondent authorities, where it has been identified the sale of pirated merchandise in the country, for example, toys or chargers for electronic equipment.

It has become imperative to broaden the investigation to those selling sites where the consumer would not expect to buy counterfeit or apocryphal goods. The evidence presented indicates that the piracy-informality combination, usually assumed in the traditional concept of the phenomenon, is no longer met, and that we have to start creating solutions along with different intermediaries in order to guarantee a due diligence and the traceability of products.

Regarding piracy in government purchasing, it was identified a specific *modus operandi*: the suppliers win the invitations to tender by quoting below the companies that own the rights or an authorized licensee. Thus, the essential factor used by the people involved in this crime is the price they offer. Legal companies participate not only in their commercialization, but also in their distribution, using a scheme of small ghost companies. In the fieldwork, we detected a very specific example of sale of printing equipment. However, the window of opportunity to buy products with potentially more delicate consequences in government purchasing is wide open. The evidence collected indicates that another largely sold products are pirated medicines. We emphasize the urgency to broaden the investigation on piracy in this industry and the one of medical equipment, given the seriousness of the findings shown in this document.

Another way in which legal companies get involved in this crime is through imports. In these cases, there are close relationships with sophisticated criminal organizations that have large structures. They usually repeat these actions, because they are not deregistered from the Importer's Registration List. We highlight the need to widen the investigation in this regard.

During the interviews, people pointed to the following strategic actors of piracy: trading unions or organizations, local authorities and the police. Some of the characteristics that these stakeholders share are the influence and the political relevance they have so that this criminal activity is tolerated and facilitated in the corresponding regions. It is clear that due to this transactional relationship, they obtain several benefits, either political or economic. Therefore, it can be seen that the authorities are not interested at all in stopping the sale of counterfeit products. That is, an important part of the problem revolving around piracy is that this activity is not punished by local authorities, and the burden of the institutional response lies in the federal legal proceedings.

Nationwide, there were identified 19 notorious markets that were the most mentioned throughout the interviews made to authorities at different levels of the government. From these, the majority of them are concentrated in the most important urban areas of the country. It is important to point out that the list presented is not limited to the existence of other markets, and it only highlights those that were acknowledged or mentioned more frequently. In some of these notorious markets, it was observed a certain degree of specialization for each type of sector, especially in the case of pirated medicines, food and shoes. In two sections of this report, it was reviewed the case of Tepito market as an example of the close, and sometimes evident, connection between criminal organizations with trading unions, and these, in turn, with political organizations.

As was previously mentioned, there is a variety of actors involved in piracy that show all the complex processes and structures. These get more elaborate as they form links with the macro-criminality, how the sets of operations are broadened or diversified, as well as the forged merchandise that is trafficked and commercialized. Another condition of the blurriness of the boundaries between informality, illegality and the organized crime, which makes difficult the specific characterization of the roles played by each of the actors, and it is one of the strengths of piracy as a criminal business, because it allows the interconnection between formal, informal and criminal economies. Despite the evidence of these links, in Mexico prevails the idea that piracy is "innocent", because a sector of the population subsists because of it. It can even be stated that piracy is not deemed as a crime, and the proof is that it is not included as priority in the security agenda.

Throughout the fieldwork, it was detected that in Mexico, there is evidence of the participation of macro-criminality groups in piracy. Provided that the purpose of these groups is to optimize the transfer logistics, these routes open opportunities for their involvement in other markets aside from drug dealing. Nevertheless, in the case of Mexico, it is worth mentioning that, apparently, not all the criminal organizations participate in piracy, and when they do, it does not happen in the same way. With the evidence gathered, it can be affirmed the direct participation of criminal groups in Sinaloa and Jalisco; whereas, in both the direct and indirect modalities, the groups currently or previously involved include La Familia Michoacana, Los Caballeros Templarios, Los Zetas, la Unión Tepito and the Cartel Jalisco Nueva Generación.

The links detected are mostly general. One of the difficulties faced to define the degree of involvement of a criminal organization in piracy lies in the lack of certainty regarding the priority of this activity as a business set of operations of the correspondent actor. Another one is to assess the economic importance of piracy for the criminal organizations, since there is not a specific consensus in the specialized literature regarding the economic weight of the earnings obtained by the criminal syndicates through piracy. Another obstacle is to identify the moment where piracy was part of their activities, since the macro-criminality structures are in constant evolution.

Likewise, it was gathered information that connects local criminal groups with international mobs. It is worth mentioning that in most of the cases, it was not mentioned the specific name of each group, only the nationality or the ethnical origin of their members. This finding is key to understand piracy as part of an ecosystems of international trade, where the supply chains surpass national borders. In the case of Mexico, the consensus among the consulted specialists was the link to Asian organizations. However, the lack of accuracy implies similar problems to the ones described in the previous paragraph, since it is complicated to define the value, duration and relevance of the connections within each criminal structure.

It is a fact that piracy is associated with other type of crimes. We found evidence of the coincidence of retail drug dealing, sale of weapons and child pornography in informal markets where they sell piracy. These would be counted as a more efficient exploitation strategy for the transfer routes and the points of sale of illegal products. Another crime which is usually related to piracy is the obtention of tax benefits. However, there are others that can be considered collateral effects of the commercialization of counterfeit products. This is the case of environmental crimes or crimes against health. The associated crimes will depend on the type of products and the people involved, as well as on the stage of participation in the chain.

During fieldwork, it stood out the increasing use of the Internet as a means of distribution of piracy for almost all industries. Mexico was described as a mainly consuming country that uses servers located abroad. This dynamic presents particular challenges to take this kind of cases to legal instances, which must be explored in depth. In general, it was evident the absence of specialized literature on this matter in Mexico, as well as the low level of public discussion on this phenomenon. It is inferred that the attitudes of tolerance and permissibility towards the traditional sale of piracy were transferred to the digital field.

Internet piracy in Mexico appears in different forms, from the sale of forged merchandise in business platforms and social media, to the sale of accounts for the use of entertaining platforms or videogames. Regarding the use of business platforms as points of sale of pirated products, it is unknown the number of cases identified by the right owners, authorities and law firms, but they are emphatic when stating that they are increasing, and that little by little, they start to oust the traditional points of sale. Some authorities of different levels of the federal government indicated that certain business platforms on the Internet usually concentrate this practice.

The evolution of streaming was one of the findings that stood out in the fieldwork. The consulted sources agreed that it is now one of the main sources of consumption of piracy, and that it is more common than downloads. Although having access to contents through streaming may seem free for the user, there is an important discussion in the industry on the multiple ways in which these practices are monetized, as well as on the unlikelihood that this content is made available for the public for no profit whatsoever. A factor highlighted by the authorities is that Mexican users often ignore the threats to their safety that represent the use of piracy on Internet.

To broaden the discussion on the costs of piracy, the more susceptible effects of their measurement correspond first to the right owners, then the consumers, the society and the government, and finally, to other type of effects such as innovation rates and economic growth. The specialists pointed out the difficulties there are when measuring the phenomenon in terms of the impact on the income. For some, this could lead to exaggerate the sums for using inadequate or inaccurate methodologies; therefore, it is necessary to widen the research in order to design strong and comparable measuring methodologies.

Although the object of this study is not to propose a concrete measuring methodology, we did identify a series of factors that must be assessed to understand the costs with a complete approach. For the producer, the costs counted are the impact on sales, on the brand or the product's image and reputation, the presence of preventive expenses, and the expenditures derived from litigations and police operations. It is imperative for them to consider that piracy can really jeopardize the subsistence of the companies. For the consumers, the costs can be even higher since, in the case of certain products such as medicines and agrochemicals, their health and life can be at risk. For the State, the impact that piracy has on public finances is very big, and it covers different aspects; however, the most significant is tax evasion.

Chapter 2

The fieldwork made for this study indicates that the definition and implementation of measures and strategies prepared by the right owners to solve the problem of piracy will depend on multiple factors, such as the type of policies established in the headquarters in the case of multinational companies, the tendency to start legal, administrative or criminal proceedings, the volume of pirated products, the significance of the intellectual property rights, among others. It is common that it is only pursued a dissuasive effect so that the offender or presumed criminal, as the case may be, stop selling products of a certain brand or violating copyrights. The information gathered in the fieldwork shows a difference between what the complainants seek against what the authorities pursue in a criminal process of brand or trademark counterfeit. In some cases, the companies just give up.

From the right owner's point of view, this is influenced by factors such as the internal policies of the headquarters; the characteristics of each industry; the level and type of piracy, and also, the strategies applied by the legal representatives, as well as their litigation abilities. Finally, the outcome of the previous proceedings will become a precedent as well for the right owners and their legal representatives, who will adjust their beliefs and expectations. These characteristics need to have a further study due to their level of heterogeneity and the increasing sophistication of piracy.

One of the findings presented in this study related to the institutional obstacles is the identification of transversal obstacles. One of them is the procedural systems that has asymmetric inefficiencies regarding piracy. This implies that the first measures to seize pirated merchandise can be effective, but the destruction proceedings can take a lot of time. Therefore, each legal action becomes a long distance and financial solvency run that just a few companies can hold. On the other hand, the criminal proceedings are deemed faster, more effective and applicable than the administrative one, according to the testimonies collected, although it limits only to those cases that meet the identity criterion.

The cases where it is presented the combination of informality and piracy imply specific obstacles. In practice, they are made evident through the violence exerted during police operations on the street or on establishments, as well as other non-violent protective tactics. It is concluded that the operations in notorious markets are dangerous for both the right owners and their legal representatives. It is also a cost added to the legal actions and borne by the private actor, as well as by the own State when it provides support with policemen or the armed forces. When there are previous warnings to avoid seizures, or simultaneous police operations are prohibited due to a high-level decision based on political criteria, the effectiveness of these proceedings is reduced or completely lost. This worsens if it is considered that the cost of the actions does not depend on the amount of seized products.

To achieve that piracy acquires enough relevance in the public agenda, and then in the political agenda, either at the legislative, executive or judicial level, constitutes the next step in the institutional response related to legal proceedings. The modification of the legal framework in full force and effect, the implementation of trademark bases and of a measure system in the borders, among others, are examples of how the right owners or their legal representatives try to influence the actions of the authorities despite the priority level of this matter. It is worth mentioning that these efforts are made both individually and collectively through sectorial or specialized chambers. Likewise, the ability of specific industries such as the pharmaceutical, agrochemical, auto, creative, or others to promote a public agenda in which piracy has a preponderant place for the key actors will depend on their individual and/or collective dialogue capacity with the authorities, and on the way said authorities perceive this problem.

In the second chapter of the study, it was given an explanation of the relevant functions, duties, structures, personnel, main obstacles detected and pertinent data of the government institutions involved in the regulation enforcement in matters of industrial property and copyright at a federal level. Said institutions do not operate alone; therefore, it is raised the need to have a legal framework that define clearly the duties and powers of each one. The foregoing has been achieved due to regulatory changes and to the pressure of relevant private actors; nevertheless, there are issues still pending, like amendments to the Customs Act and the enforcement in issues related to intellectual property. It is necessary that there are effective interinstitutional coordination processes that do not depend on the profile, motivations and relationships of the people who hold the positions in each institution.

The last finding regarding institutional obstacles is related to those processes identified by right owners as useless or nonexistent evidence and requirements. According to the fieldwork made, the participation of the experts in intellectual property on the criminal proceedings before the FGR represents one of the most urgent aspects that needs to be reassessed due to its lack of efficiency. According to the consulted sources, the involvement of experts in intellectual property does not respond to a formal requirement established in law, but to a practice consolidated by the Public Prosecutor's Office and the judges. In that regard, it is recommended to revise in depth the conditions that support this practice, as well as the cost-benefit relation that their participation implies in the process.



Este documento ha sido posible gracias al apoyo de AMERICAN CHAMBER OF COMMERCE OF MEXICO. Su contenido es responsabilidad del autor y no refleja necesariamente el punto de vista de AMCHAM.



Years
Connecting Business
1917-2017



AMERICAN CHAMBER
MEXICO

OBSERVATORIO
**NACIONAL
CIUDADANO**
"SEGURIDAD, JUSTICIA Y LEGALIDAD"