

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2004 SPECIAL 301 REPORT

ARGENTINA

EXECUTIVE SUMMARY

Special 301 recommendation: IIPA recommends that Argentina remain on the Priority Watch List in 2004.

Overview of key problems: The growing problems with pirate optical media and the illegal use of CD-R burners seriously undermine the ability of all the copyright industries to compete with legitimate product in Argentina. The copyright industries face continuing enforcement hurdles in Argentina, despite concerted efforts by industry anti-piracy actions. While the results on criminal enforcement remain far from ideal, the willingness of the Argentine authorities to take initial actions was somewhat encouraging in 2003. However, raids and seizures did not translate into prosecutions and deterrent sentences. A package of copyright amendments to Argentina's 1933 Copyright Act, aimed at elevating the law's substantive obligations, was circulated in mid-2001 to selected industry representatives, but remains under review within the Ministry of Justice.

Actions which the Argentine government should take in 2004: This list of recommendations is almost a verbatim recitation of IIPA's proposals for 2003.

- Commit to a coordinated anti-piracy campaign as a matter of national priority;
- Enforce the current copyright and criminal laws in practice, by conducting more raids, and importantly, pressing for more criminal prosecutions;
- Continue to support the various enforcement agencies in working with the copyright industries in anti-piracy actions and increase their resources and training;
- Instruct Argentine prosecutors and courts to make copyright piracy cases a priority so that Argentina begins to meet its existing multilateral and bilateral obligations;
- Improve border enforcement significantly. Local industries are ready to work with customs authorities to provide information and training on pirate products;
- Establish a program to inspect goods in transit for potential pirate product;
- Encourage the Secretaria de Seguridad Interior Nacional to take an active role in a national anti-piracy campaign;
- Adopt the bill to amend the copyright law to provide for statutory damages and the seizures of infringing equipment;
- Revive efforts to improve the draft amendments to the 1933 Copyright Act, which are still being reviewed within the Ministry of Justice.
- Implement the obligations of the two WIPO digital treaties into domestic law;
- Extend terms of protection for phonograms and other works not measured by the life of the author to 95 years from publication;
- Support efforts to issue an executive decree in 2003 that would require government legalization of current business software programs on computers and improve procurement practices.

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ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1999 – 2003¹

INDUSTRY	2003		2002		2001		2000		1999	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music ²	30.6	53%	26.0	60%	78.2	47%	76.0	46%	50.0	33%
Entertainment Software	NA	NA	NA	NA	NA	95%	141.4	94%	90.3	92%
Business Software Applications ³	NA	NA	10.7	62%	72.5	62%	92.9	58%	156.7	58%
Motion Pictures	30.0	45%	30.0	45%	30.0	45%	32.0	45%	32.0	45%
Books	4.0	NA	NA	NA	8.5	NA	8.5	NA	8.0	NA
TOTALS ⁴	NA	NA	66.7	NA	189.2	NA	350.8	NA	337.0	NA

Copyright Piracy in Argentina

Piracy levels for all industry sectors remain high in Argentina.⁵ It is critical to note that the estimated annual losses have been declining over the past few years due to the Argentine economy's overall instability, not because of lower piracy levels in-country.

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2004 Special 301 submission, and is available on the IIPA website at <http://www.iipa.com/pdf/2004spec301methodology.pdf>. For more information on the history of Argentina under Special 301 review, see Appendix D (<http://http://www.iipa.com/pdf/2004SPEC301USTRHISTORY.pdf>) and Appendix E (<http://http://www.iipa.com/pdf/2004SPEC301HISTORICALSUMMARY.pdf>) of this submission.

² Estimated 2002 trade losses for the recording industry reflect the impact of significant devaluation during 2002. The level of pirate product in 2003 is based on a third-party survey to improve accuracy of the statistics.

³ BSA's 2003 piracy statistics were not available as of February 13, 2004, and will be made available in the near future and posted on the IIPA website at <http://www.iipa.com>. BSA's statistics for 2003 will then be finalized in mid-2004 and also posted on the IIPA website. In IIPA's February 2003 Special 301 filing, BSA's 2002 estimates of \$70.7 million at 62% were identified as preliminary; BSA finalized its 2002 numbers in mid-2003, and those revised figures are reflected above. While there may be other minor factors, such as an overall drop in sales in 2002, the overwhelming reason for the differential between 2001 losses and 2002 losses was the drop in value of the Argentine currency relative to the U.S. dollar, from an average exchange rate of US\$1-AR\$1 in 2001 to US\$1-AR\$0.35 in 2002. This means that local losses of equal magnitude in the two years, when converted to dollars, would only be one-third as great in 2002 as in 2001. BSA's trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in Argentina, and differ from BSA's trade loss numbers released separately in its annual global piracy study which reflect losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in Argentina.

⁴ In IIPA's 2003 Special 301 submission, IIPA estimated that total losses to U.S. copyright-based industries in Argentina were \$126.7 million for 2002. IIPA's revised 2002 loss figures are reflected above.

⁵ IIPA also has filed 301 reports on Argentina in previous years; they all are posted at <http://http://www.iipa.com/countryreports.html>. Argentina is a beneficiary country under the U.S. Generalized System of Preferences (GSP) trade program. During the first 11 months of 2003, \$407.6 million worth of Argentine goods (or 14.6% of Argentina's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 62.7% increase over the same period in 2002.

The entertainment software industry suffers from several forms of piracy in Argentina including: (a) the importation of cartridge-based videogames (primarily from the People's Republic of China and Hong Kong) as well as console-based videogames (primarily from Malaysia) entering via Iquique, Chile or Colonia, Uruguay; (b) reproduction-on-demand whereby entertainment software is burned onto blank CD-Rs, and; (c) Internet piracy, whereby websites offer pirate videogame software for sale. The recording industry reports that the shift from analog to optical media-based piracy represents a long-term, alarming trend in Argentina which already has caused much harm to the recording industry. The preferred piracy format is burned CD-Rs, which mostly come from Taiwan, go through Uruguay and land in Argentina, as goods in transit, on their way to Paraguay; the same CD-Rs come back into Argentine territory for piracy purposes. Thousands of street vendors take advantage of these CD-Rs throughout the country and are rapidly putting out of business tax-paying legitimate retailers. Although a few raids have been taken place in downtown Buenos Aires, the interior of the country is plagued with street vendors selling pirate product. States like Tucuman, Mendoza, Santa Fe and Cordoba have been practically lost to pirates.

The book publishing industry reports widespread photocopying of English language materials and computer books and texts in Argentina. Commercial copyshops located near the universities, as well student unions and organizations within the universities, are the primary sources of illegal photocopying. Piracy of business software programs among end-users remains quite high, especially in small and medium-sized organizations. Larger organizations may have some licenses to use software, but commonly these licenses only cover a small percentage of the software in use.⁶ The filmed entertainment industry reports that retail video piracy still is the biggest and most inextricable problem its companies face in Argentina. Because of the relatively low DVD-player penetration and the slow growth in DVD sales, neither the legitimate DVD market nor the incidence of optical disc piracy is as significant as VHS piracy. The majority of such film piracy is CD-R, although the potential migration to the less common but high quality DVD-R remains a significant worry for the industry.

Copyright Enforcement in Argentina

Many elements of Argentina's enforcement regime are incompatible with its current obligations under the WTO TRIPS Agreement, including: the failure to impose deterrent criminal penalties in commercial piracy cases; lengthy delays in bringing and completing both criminal and civil infringement cases; ineffective border measures; and the lack of availability of deterrent civil damages.

Criminal enforcement has always been cumbersome, costly, and time-consuming and without deterrent impact on the market for copyrighted products. Consequently, BSA has relied on civil enforcement, given the difficulties with criminal enforcement. Notwithstanding procedural delays before obtaining and conducting a civil search in business piracy cases, the mediation session required by civil procedure facilitated the resolution of quite a few cases by the BSA during 2003.

⁶ The Business Software Alliance (BSA) reports that between 1995 and 2001, the information technology sector in Argentina created 58,000 new jobs. See BSA, "Eighth Annual Global Software Piracy Study" (research compiled by International Planning and Research Corporation, published June 2003), available at <http://global.bsa.org/globalstudy>.

Copyright Law in Argentina

Argentina's 1933 Copyright Act (as amended) has been under review for years. Argentina already has deposited its instruments of access to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty; full implementation into national law is the next necessary step.

A package of copyright amendments, circulated in July 2001 to selected industry representatives, apparently is still under review within the Ministry of Justice. This 2001 package failed to address many of the enforcement deficiencies and required further clarification with respect to other key issues for the copyright industries.⁷ These deficiencies needed to be corrected before introduction to the Congress if Argentina is to have a modern copyright law which promotes e-commerce and investment. We do not have any recent news on whether more copyright law proposals have been developed by Argentine government agencies.

In 2001, a bill was introduced and approved by the Chamber of Deputies which would enhance measures to aid in the anti-piracy fight. It would allow the courts to impose compulsory and progressive damages in copyright infringement cases and also the destruction of infringing material and reproduction equipment. Plaintiffs in a copyright infringement case could also be compensated for damages assessed as (a) the real damage suffered by the plaintiff or (b) a judicial assessment within a minimum of \$1,000 and a maximum of \$1,000,000 (punitive damages) for each infringement, whichever is higher. The status of this bill in the Senate is not known.

Customs Valuation

Argentina bases its customs duties on audiovisual works and sound recordings on assessments of potential royalties. Customs duties should be based on specific fees or be *ad valorem*, based on the value of the physical carrier medium only. Customs duties based on royalties or income serve as a form of double taxation because royalties are generally subject to withholding, income and/or remittance taxes. The film and recording industries seek a modification of the Argentine Customs Valuation Code and/or an exemption from the *ad valorem* duty. Computer programs also face high value-added taxes (VAT) which raise the cost of importing software into Argentina. Notwithstanding this, Law 25.856, passed in January 2003, gave activities (e.g., development, manufacturing, promotion) relating to software the status of an "industry," which is the first step toward obtaining approval of a bill to promote the software industry, which is currently under review in Congress. This bill would grant certain tax benefits to software companies during a transition period of 10 years.

⁷ IIPA's 2002 Special 301 submission identified some of the key problems in this 2001 proposal (see pages 63-64 at <http://www.iipa.com/rbc/2002/2002SPEC301ARGENTINA.pdf>). In fact, separate comments filed by the motion picture, recording and business software industries in Argentina also identified numerous problems with the draft, including: inadequate scope of exclusive rights; overbroad exceptions to protection; inadequate definitions regarding the ownership of copyrighted materials; onerous contractual provisions; inadequate terms of protection; failure to establish a comprehensive definition of audiovisual work and the public performance rights; failure to create deterrent provisions for the circumvention of technological measures of protection; inadequate enforcement remedies on injunctive relief, seizure authority, the scope and level of criminal penalties, *ex officio* authority at the border; and onerous deposit requirements.