

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301 REPORT

ARGENTINA

EXECUTIVE SUMMARY

Special 301 Recommendation: IIPA recommends that Argentina remain on the Priority Watch List in 2006.

Actions Which the Argentine Government Should Take in 2006:

Enforcement

- Enforce the current copyright and criminal laws in practice, by conducting more raids, and importantly, pressing for more criminal prosecutions;
- Commit to a coordinated anti-piracy campaign as a matter of national priority;
- 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. Forge partnerships at the tri-border region with counterpart Brazilian and Paraguayan officials that would include establishing a program to inspect goods in transit for potential pirate product; and
- Encourage federal and local police Internet crime units to address the problem of illegal downloads.

Legislation

- Adopt the bill to amend the copyright law to provide for statutory damages and the seizures of infringing equipment;
- Support legislation to extend terms of protection for phonograms and other works not measured by the life of the author to 95 years from publication;
- Propose an anti-piracy bill that will increase criminal penalties for piracy and characterize IPR violations as a serious crime (along the lines of the bill proposed in 2001);
- At the appropriate opportunity, Argentina needs to revive efforts to properly implement its obligations under the two WIPO "Internet" Treaties, addressing the following illustrative issues:
 - Affording express protection for temporary copies, distribution and rental rights, and the communication to the public/making available right;
 - Adopting provisions on technological protection measures and electronic rights management information;
 - Providing for notice and takedown provisions and for ISP liability; and
 - Adopting provisions on border measures (*ex officio*).
- Support efforts to issue an executive decree that would require government legalization of current business software programs on computers and improve procurement practices.

ARGENTINA
Estimated Trade Losses Due to Copyright Piracy
(in millions of U.S. dollars)
and Levels of Piracy: 2001-2005¹

INDUSTRY	2005		2004		2003		2002		2001	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music ²	69.5	60%	41.5	55%	30.6	53%	26.0	60%	78.2	47%
Entertainment Software ³	NA	NA	NA	80%	NA	NA	NA	NA	NA	95%
Business Software ⁴	80.6	77%	63.0	75%	44.0	71%	10.7	62%	72.5	62%
Motion Pictures ⁵	NA	NA	30.0	45%	30.0	45%	30.0	45%	30.0	45%
Books	4.0	NA	4.0	NA	4.0	NA	NA	NA	8.5	NA
TOTALS	154.1 +		138.5		108.6		66.7		189.2	

COPYRIGHT PIRACY IN ARGENTINA

The recording industry reports that music piracy worsened in 2005, even after there was some recovery in the prior three years due to generally improved economic conditions in Argentina. The piracy rate went from 55% to 60% of the total market, which amounts to 24 million pirate units. The two major threats involve physical piracy (usually burned CD-Rs) and the Internet. Blank CD-Rs come mostly from Taiwan, go through Uruguay and land in Argentina. Some find their way to Paraguay; later these same CD-Rs return to Argentina and are used to burn music for piratical purposes. Thousands of street vendors take advantage of these CD-Rs throughout the country. Although some raids have taken place in downtown Buenos Aires, the interior of the country remains plagued with street vendors selling pirate product (like cities of Tucuman and Santa Fe). Pirate stands are often seen around train stations and other high traffic areas. Another major concern in 2005 was the widespread offering of “home delivery” for pirate product; these services advertise in newspapers, websites, and through e-mails, and offer custom replication of any music CD and direct delivery to a customer’s home; the recording industry estimates that roughly 20% of all pirate products are being sold through this “home delivery” system. Furthermore, Internet piracy has

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2006 Special 301 submission at www.iipa.com/pdf/2006spec301methodology.pdf. For information on the history of Argentina under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2006SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2006SPEC301HISTORICALSUMMARY.pdf>) of this submission.

² Estimated trade losses for the recording industry reflect the impact of significant devaluation during 2002. The levels of pirate product in 2003 and 2004 are based on a third-party survey to improve accuracy of the statistics.

³ ESA’s reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry “losses.” The methodology used by the ESA is further described in Appendix B of this report.

⁴ BSA’s 2005 statistics are preliminary. They represent the U.S. publishers’ share of software piracy losses in Argentina, and follow the methodology compiled in the Second Annual BSA/IDC Global Software Piracy Study (May 2005), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA’s 2004 piracy statistics were preliminary at the time of IIPA’s February 11, 2005 Special 301 filing; the 2004 data has been revised and is reflected above.

⁵ MPAA’s trade losses and piracy levels for 2005 are available for a limited number of countries and are based on a methodology that analyzes physical or “hard” goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As loss numbers and piracy levels become available for additional countries at a later time, they will be posted on the IIPA website, www.iipa.com.

surged, with one market survey (by a third party vendor) estimating close to 400 million songs are being downloaded on an annual basis. In November 2005, the international recording industry initiated actions against major uploaders using peer-to-peer (P2P) operations in several countries, including for the first time, Argentina.⁶ Because of the dire piracy situation, there are very few legitimate music retailers left in the countries for consumers wanting to buy legitimate product; some of these retailers have redesigned their businesses to include electronic equipment and books in order to stay in business.

The Business Software Alliance (BSA) reports that there was not major improvement in the software piracy situation in Argentina in 2005. 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. Also, the software industry remains concerned about the increasing illegal importation of computer hardware parts and components, which are then assembled into computers and frequently loaded by system builders and assemblers with illegal software. Much of this contraband hardware arrives in Paraguay, and then enters Brazil, Argentina and Uruguay; stronger border measures and much better border enforcement are necessary to combat this practice. Improvement in lowering piracy levels could provide much benefit to the local economy.⁷ The industry continues to support efforts by the Argentine government (in particular, the *Subsecretaría de la Gestión Pública* — the Undersecretariat for Public Administration) to issue an executive decree that would require government legalization of current business software programs on computers and improve procurement practices. While several “standards” have been issued by the *Subsecretaría*, the Argentine government has shown no indication that it is legalizing its software use.

MPA reports that due to the economic rebound, the dynamic of piracy in Argentina has changed in the last years. The sales of DVD players increased significantly in 2005 and the pirate market followed this tendency with high-quality DVD-Rs coming into the market. Illegal duplication labs previously producing high-quality VHS counterfeits are now engaging in producing pirated DVD-Rs, which are provided to video rental stores and street vendors. Finally, with the increased availability of broadband both in homes and Internet cafés, concerns are escalating that illegal Internet downloads will become more of a threat to legitimate sales and distribution.

The book publishing industry reports widespread photocopying in and around university campuses. Commercial copyshops located near the universities, as well student unions and organizations within the universities, are the primary venues for this illegal photocopying. In fact, in 2005 a study of 1,100 students in Buenos Aires and Rosario revealed that 40% study with photocopied materials (not legitimate books) and universities copy more than 2.5 billion pages per

⁶ The International Federation of the Phonographic Industry (IFPI) announced over 2,100 new legal cases against individuals and extending the actions to five new countries in Europe, Asia and, for the first time, South America. In Argentina, four out of ten people who have access to the Internet use unauthorized P2P services. These file-swappers are high-income people, mostly aged between 20 and 30. Seven out of ten people in Argentina are aware that unauthorized file-sharing is illegal. The actions in Sweden, Argentina, Switzerland, Hong Kong and Singapore join Austria, Denmark, France, Finland, Germany, Iceland, Ireland, Italy, Japan, the Netherlands, the UK and the US, bringing the total of countries involved in litigation to 17. See IFPI, “Biggest wave of actions yet announced against illegal file-sharing,” November 15, 2005, at <http://www.ifpi.org/site-content/press/20051115.html>.

⁷ BSA and International Data Corporation (IDC) released a new study on December 8, 2005, which illustrates global economic gains from reducing software piracy. This report, [Expanding the Frontiers of Our Digital Future: Reducing Software Piracy to Accelerate Global IT Benefits](#), using 2004 data, found the following: A 10-point drop in Argentina’s piracy rate (from 75% to 65%) could create 7,000 new jobs and pump \$1.8 billion into the economy. It could also increase local industry revenues by more than \$1.1 billion and generate an additional \$173 million in tax revenues for the Argentine government. See <http://www.bsa.org/idcstudy/pdfs/Argentina.pdf>.

year.⁸ This same study found that 10% of the students admitted they had not read one legitimate book the entire year, 25% said they read one or two books, and 22% said more than six books, with the remaining 45% having read between three and six books. Basically, unauthorized photocopied materials are replacing legitimate books in university settings.

The entertainment software industry continues to suffer from several forms of piracy in Argentina including: (a) widespread piracy in the retail and flea markets, as well as in Internet cafes. Internet café piracy, where the café owners install unlicensed or pirated entertainment software onto café computers, continues to be a problem; (b) reproduction-on-demand whereby entertainment software is burned onto blank CD-Rs; (c) Internet piracy, where websites offer pirated videogame software for sale. During 2005, one publisher experienced an Internet piracy problem involving the unauthorized posting of games on a BitTorrent site, but the investigation unfortunately did not result in the identification of the poster; and (d) 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). In one particularly frustrating incident in late 2005, the National Customs Administration (ANA) detected approximately 20,700 pirated GameCube discs entering the country from Malaysia. However, rather than detaining and seizing the pirated discs, the shipment was simply rejected and returned to the country of origin. The goods should have been removed from the channels of commerce.

COPYRIGHT ENFORCEMENT IN ARGENTINA

Criminal copyright enforcement remains ineffective: Criminal copyright enforcement has always been cumbersome, costly, time-consuming and lacking in deterrent impact. While criminal enforcement remains far from ideal, the willingness of the Argentine authorities to take initial raiding actions was encouraging in 2005, continuing cooperation experienced in 2004. IIPA is encouraged by the role being played by the *Secretaria de Seguridad Interior* in coordinating key raids in major flea markets during 2004. The *Secretaria* was expected to be assigned more enforcement personnel in 2005, but industries are not aware of any increases.

BSA reports that that the various agencies (including the Federal Police, Gendarmería, etc.) are improving their technical capacities to support the courts in the investigation of computer crimes (including piracy) and the provision of technical reports, which is useful evidence in judicial cases. Enforcement is too cumbersome to be used effectively in practice against end-users, so BSA did not rely on it during 2005. BSA does not generally use the criminal process in Argentina because criminal copyright enforcement has consistently proven to be ineffective. The recording industry reports that some anti-piracy actions are being carried out in metropolitan Buenos Aires; but more is needed to reduce the amount of product being offered in high traffic areas. Flea markets and street vendors are easy targets in Buenos Aires since they operate in the open, with impunity. MPA reports that in 2005 it has closely worked with Gendarmería and Federal Police to conduct investigations and raids against labs. In 2005, MPA performed total of 243 raids and seized more than 112,000 pirated movies.

Despite good cooperation from police, few prosecutions are pursued and there are few criminal cases that reach final judgement in Argentina. The recording industry reports that the average case take two years to reach a verdict in the first instance. Unfortunately, the sentences include no jail time or jail time is suspended because the judges do not consider intellectual property crimes as serious offenses. In 2005, the film industry obtained 35 convictions.

⁸ [La Nación](#) online, April 27, 2005, citing studies and interviews with representatives of local book industry associations.

Border authorities are cooperative but more results are needed: Given its triborder geography, Argentina should forge a working plan with Brazilian and Paraguayan customs officials to inspect goods in transit for potential pirate product. On a positive note, the industries recognize that Argentine Customs is inspecting all shipments of blank optical discs coming into the country based on a court order issued in 2004. Philips Argentina works with Customs to identify those importers who are current with patent licenses for blank CD-Rs and DVD-Rs. BSA reports that in 2005 the Customs Service (*Administración Nacional de Aduanas*) is cooperating in an effective way to improve enforcement at the borders. BSA has not pursued interdiction of border entry of blank media or components; however, both problems are reported to continue at least at the same level as in recent years.

Delays and no deterrent damages in civil infringement cases: The business software industry has relied on civil enforcement, given the difficulties with criminal enforcement. However, the industry reports that they face procedural delays before being able to obtain and conduct civil searches in business piracy cases. Civil actions are still weakened by the lack of statutory damages and extensive delays. BSA achieves some results despite the problems with enforcement, relying primarily on the process of mediations required by the civil procedure, which facilitates the resolution of cases under BSA's model. Civil actions which are brought all the way through to final judgment are too protracted to be effective. Another problem is caused by the unavailability of deterrent civil damages. This problem could be remedied if Argentina were to introduce an effective statutory damages system. The recording industry has identified 20 cases involving sizeable uploads of music files using P2P technology. The local industry group is pursuing legal action against these uploaders through civil actions. These 20 cases will be an interesting test of the will of the courts to pursue digital piracy cases. So far, the Argentine courts have agreed with the industry's filings requiring ISPs to reveal uploaders' identities.

Administrative inspections of video stores: During 2005, MPA continued to support the UAV (Argentine Video Committee) and the INCAA (National Film Institute) in forming a closer and more effective alliance for the purpose of identifying pirate video material, and giving store owners the opportunity to surrender pirate product. In 2005, 210 video stores were jointly inspected by UAV and INCAA, an increase of 35% compared to 2004.

Trainings: The recording industry offered several training sessions for police officers as well as providing its annual IP course for judges. In 2005, MPA offered one training session for Argentine authorities.

COPYRIGHT LAW AND RELATED ISSUES IN ARGENTINA⁹

1993 Copyright Act, as amended: Argentina already has acceded to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Argentina's 1933 Copyright Act (as amended) has been under review for many years, and full implementation of the WIPO treaties is still needed.

⁹ IIPA also has filed 301 reports on Argentina in previous years; they are all posted at <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 2005, \$555.0 million worth of Argentine goods (or 13.1% 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 10.3% increase over the same period in 2004.

Legislative amendments in progress: There have been a number of legislative attempts in recent years to improve various Argentine laws related to copyright protection and enforcement:

- The Argentine Senate approved a bill in November 2004 which would increase the term of protection for phonograms. The bill was introduced to the House of Representatives in March 2005, where it is going through some modifications from interested parties. The bill should be returning to the Senate when the legislative session begins. We encourage the government of Argentina to support approval of this bill to ensure protection of the vast and rich catalog of Argentine music. Legislative passage in 2006 remains uncertain.
- There also are pending amendments which would increase penalties for copyright infringement and circumvention of technical measures for all media.
- The government of Argentina should reintroduce and pass a bill which would aid the anti-piracy fight. In 2001, a bill was introduced and approved by the Chamber of Deputies which would enhance such measures. 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. This bill was not approved within the required time frame and fell off the docket.
- Argentina's 1933 Copyright Act has been under review for many years; further amendments are needed to properly implement Argentina's obligations under the two WIPO treaties. For example, a package of copyright amendments, circulated in July 2001, apparently is still under review within the Ministry of Justice. That 2001 package, however, failed to address many of the enforcement deficiencies and required further clarification with respect to other key issues for the copyright industries.¹⁰ For example, deficiencies still need to be corrected before introduction to the Congress and such reforms should include: express protection of temporary copies, distribution and rental rights, and the communication to the public/making available right; protection against circumvention of technological protection measures and removal or alteration of electronic rights management information; establishment of ISP liability and procedures for notice and takedown; establishment of *ex officio* border measures, statutory damages and the seizures of infringing equipment; increasing criminal penalties for piracy; and extend the term of protection for phonograms to 95 years from publication. The Argentine Government should resume discussions to amend its copyright law.

Customs Valuation: Argentina bases its customs duties on audiovisual works and sound recordings on an assessment of potential royalties. Customs duties should be 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. In 2005, Customs authorities filed criminal legal action against broadcasting networks and TV distributors for importation of films and programming based on the price of physical media rather than licensing contracts. MPA expects that, in 2006, Customs authorities will resume investigations related to the home entertainment sector.

¹⁰ For examples of some of the key problems with the 2001 proposal, see IIPA's 2002 Special 301 submission at <http://www.iipa.com/rbc/2002/2002SPEC301ARGENTINA.pdf> (pages 63-64).