

ARGENTINA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2010 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Argentina remain on the Priority Watch List in 2010.

Executive Summary: Last year there were very few positive developments taken by the government to improve the copyright piracy situation in Argentina. Copyright enforcement simply is not a priority, and the pervasive economic theft of piracy, both hard goods and online, is a huge challenge for the legitimate content industries. The copyright industries believe that a comprehensive national strategy aimed at protecting and enforcing the Argentine copyright law is necessary to solve longstanding problems and promote the development of the creative sectors.

Piracy of hard goods, especially those found at street fairs (such as the public market in the Greater Buenos Aires area known as "La Salada"), remains high. End-user piracy of business software applications, especially in corporate settings, causes serious economic harm. Unauthorized photocopying continues on and near university campuses. Although the copyright industries appreciate the continued cooperation of the police with enforcement raids against piratical hard goods, only a small number of criminal cases result in final judgments with deterrent sanctions. The creation of a specialized IP prosecutors' office would greatly improve local efforts. Not surprisingly, Internet piracy continues to grow in Argentina. Rights holders are doing their best to take action, but the criminal authorities have yet to get seriously involved. Furthermore, the government should reconsider its "hands off" approach and work with the affected sectors (rights holders and Internet service providers) to find solutions to halt the transmission of illegal copyrighted materials on telecommunications networks. Beyond criminal enforcement efforts, civil infringement actions remain ineffective because of the lack of a statutory damages remedy and extensive court delays. The Argentine government should review its agencies' use and procurement of computer software in order to ensure that legal software is being used. On the legislative front, strengthened criminal sanctions and remedies to protect copyrighted materials in the digital age are sorely needed. Two positive developments last year involved improved efforts by the customs authorities and the passage of legislation to extend the term of protection for sound recordings and performances was achieved.

Priority actions requested to be taken in 2010: The copyright industries recommend that the following actions be taken in the near term to improve Argentina's adequate and effective protection of copyrighted materials:

Enforcement

- Commit, at the highest levels of the Argentine government, to develop and implement a coordinated anti-piracy campaign that addresses hard goods and online infringements as a matter of national priority.
- Require that the federal and Buenos Aires provincial governments take appropriate measures to halt the distribution of pirate and counterfeit merchandise at the "La Salada" Fair and other large, public markets and fairs that distribute these infringing products.
- Provide more resources for police Internet crime units to address illegal downloading and provide enforcement officials high-level political support to undertake these efforts.
- Instruct Argentine prosecutors and courts to consider criminal copyright cases a priority and press for the expeditious resolution of these cases.
- Take steps to encourage the active cooperation of Internet service providers with rights holders to prevent the use of networks for the commission of infringing acts, including but not limited to requiring the termination of accounts of repeat infringers.
- Improve border enforcement, partnering with Paraguayan and Brazilian officials to establish a program to inspect goods in-transit for potential pirate product.

Legislation

- Support efforts to issue an executive decree that would require government legalization of current business software programs within a balanced and neutral system to select the technical solutions and improve procurement practices.
- Support legislative vehicles that would create and fund an office of specialized intellectual property prosecutors.
- Consider introducing and enacting legislation to increase criminal sanctions for copyright piracy.
- Consider clarifying certain elements of the current 1933 copyright law in order to: (1) implement the "making available right to the public" as required by WIPO Treaties in order to give legal background to digital businesses for authors, performers and phonogram producers; (2) implement protection and remedies/sanctions for technological protection measures (TPMs) and rights management information (RMI); (3) extend the scope of reproduction right to explicitly protect temporary copies; (4) increase the minimum penalty for piracy (currently 1 month) up to at least 2 years in order to apply deterrent sanctions; (5) create statutory damages provisions in civil infringement cases; and (6) provide clear guidelines regarding liability for ISPs (Internet service providers), and include notice and takedown provisions.

Argentina is a beneficiary country of the U.S. Generalized System of Preferences (GSP) trade program which provides Argentina with preferential market access to the U.S. market. The GSP program requires beneficiary countries to provide "adequate and effective" protection to U.S. copyrighted materials. During 2009, \$505.8 million in Argentine products entered the U.S. under the GSP duty-free code. Argentina has been under Special 301 scrutiny for many years.¹

COPYRIGHT PIRACY IN ARGENTINA

Hard goods piracy, La Salada and end-user piracy: "La Salada Fair," is an enormous central market in Buenos Aires that provides pirated and counterfeit merchandise to retailers and re-sellers from Argentina and neighboring countries. The physical area is growing and probably also the total invoicing, but we have not new reliable statistics. One report indicated that this market area covers about 2 million square feet, and approximately 50,000 consumers visiting daily. In fact, local press reports suggest that La Salada may even be expanded, noting that it costs up to US\$80,000 to purchase a stand in the fair itself.² There are organized groups operating around La Salada, providing raw materials for piracy and recording, storing and distributing pirate products. This untenable situation is well known by the police. Local government officials and flea market administrators simply do not cooperate with the private sector on raiding actions and refuse to close this market.

These kinds of flea market fairs are appearing in more and more cities across the country. 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. In general, the largest concentration of pirate product of films and music is in the greater Buenos Aires district, but the industries face serious challenges in larger cities throughout the provinces. In addition, blank optical media products, mostly from Southeast Asia, continue to enter the Argentine market via Uruguay and Paraguay. This media serves as the basis for the local "burning" of copyrighted materials on these discs, a widespread phenomenon that adversely affects the legitimate markets of almost all the content industries. According to data provided by CAFMO, (Trade Association of Optical Disc Manufacturers) in 2009, 21,566,600 CD-Rs and 72,481,032 DVD-Rs were imported into Argentina.

The Business Software Alliance (BSA) reports that there was no major improvement in the business software piracy situation in Argentina during 2009. Piracy of business software programs among end-users, the most damaging form of

¹ For more information on Argentina under Special 301, see Appendix D at <http://www.iipa.com/pdf/2010SPEC301USTRHISTORY.pdf> and Appendix E at <http://www.iipa.com/pdf/2010SPEC301HISTORICALSUMMARY.pdf> of this submission. For more on IIPA's global issues, see IIPA's 2009 cover letter to this 301 submission at <http://www.iipa.com/pdf/2010SPEC301COVERLETTER.pdf>. The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in Appendix B of IIPA's 2010 Special 301 submission at www.iipa.com/pdf/2010spec301methodology.pdf.

² See article in the newspaper La Nación, "En La Salada, el metro cuadrado es más caro que en Puerto Madero," December 6, 2009 at http://www.lanacion.com.ar/nota.asp?nota_id=1208454.

piracy, remains quite high, especially in small and medium-sized organizations. This problem involves the federal, provincial and municipal government offices as well as a number of private companies. The industry continues to support any effort by the Argentine federal, provincial or municipal levels of government to legalize business software programs currently installed on government computers and improve their procurement practices.³ There was no positive news to report on any progress made by the government to legalize its software last year. It is still easy to find hardware dealers selling computers with illegal OEM versions or simply illegal copies pre-installed on computer hard disks. BSA's preliminary estimated trade losses due to business software piracy in Argentina in 2009 were \$209 million, with an estimated 71% piracy rate (a slight decline from 73% in 2008).⁴

Piracy of music and sound recordings in both the physical and online environment continue unabated in Argentina. Hard goods (physical) piracy of music accounts for 60% of the music market. CAPIF, the local recording industry group, has noticed an increase in the number of fairs where pirate products are sold, and a slight decline in the level of non-fair-related street piracy. The cities have the highest levels of piracy are Buenos Aires, Capital Federal, Córdoba and Tucumán. Said another way, the level of physical piracy remains the same in 2009 as in 2008, but digital piracy continues to inflict the most harm, accounting for 99% of the digital music market. The latest estimate is that over 800 million songs are being downloaded illegally in Argentina every year. Estimated losses due to physical piracy of music caused an estimated \$63.4 million in losses in 2009. The most recent estimate shows about 20 million units of pirate product in the market, representing close to 60% of all sale units. The local estimate recorded music market is declining; unit sales decreased by 21% in 2009 compared to a 12% decrease in 2008.

The Motion Picture Association (MPA) reports that one full MPA member company film was sourced to an Argentine theater in 2009. Extensive trainings have been conducted for police and theater employees in Argentina after a rash of camcords a couple of years ago.

The book publishing industry reports unauthorized photocopying of compilations and full academic works continues on and around major university campuses. Academic book publishers suffer from unauthorized photocopying of materials in and around university campuses. Copyshops convenient to campus copy entire books or unauthorized compilations of chapters from different books, at student or teacher request, decimating the market for academic publishers. Steps should be taken to encourage use of legitimate products on campuses, crack down on for-profit copyshops and foster appropriate licensing agreements for academic compilations.

Internet piracy: Argentina has 20 million Internet users, reflecting about 49% of the population. The growth in internet usage has been remarkable, growing 700% between 2000 and 2009 (according to internetworkstats.com). The Argentine broadband market remains one of the most developed in South America. With the increased availability of broadband in homes, Internet cafés, and public telephone call center/LAN houses, Internet piracy is having significant prejudicial consequences on the sale and distribution of legitimate materials. Increased broadband penetration has altered Argentina's Internet piracy landscape, making the rapid proliferation of peer-to-peer (P2P) file-sharing sites (including BitTorrent and eDonkey), hash link sites and sites offering links to download movies from free file hosting sites more problematic than traditional hard goods websites.

The recording industry reports that digital piracy represents 99% of the entire digital music market (as mentioned above). The digital market represents 7% of the local music market (including CD sales) and is made up of two segments: mobile (66.04%) and Internet (33.96%). Online music piracy occurs via P2P file-sharing, hyperlinks and cyberlockers. As mentioned above, there are now more than 700 million illegal downloads of songs in Argentina per year based on a third party survey that was completed in 2007. A quick estimate of the amount of downloads today would probably show that it is

³ According to a January 2008 report issued by BSA-IDC called The Economic Benefits of Reducing PC Software Piracy, the information technology sector's contribution to the Argentine economy could be even bigger if Argentina's PC software piracy rate were to be lowered 10 percentage points over four years. This would create an additional 3,900 jobs, \$630 million in local industry revenues and \$81 million in additional tax revenues for federal, regional, and local governments. This report is posted on BSA's website at <http://www.bsa.org/idcstudy>.

⁴ BSA's 2009 statistics are preliminary and represent the U.S. software publishers' share of software piracy losses in Argentina. 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, and follow the methodology compiled in the Sixth Annual BSA and IDC Global Software Piracy Study (May 2009), available at www.bsa.org. BSA's final 2009 data will be available later in 2010.

at least 25 to 50% higher. Argentina has a most popular "link-sharing" site called TARINGA, with more than 2,577,263 users and 80,800 posts with the tag "music." This site is financed through revenue from banner ads, and fortunately, after significant engagement with the recording industry, it now responds positively to take-down notices. Nevertheless new music links are uploaded to the site everyday in huge numbers.

For the business software industry, the Internet offers local packages of pirated and counterfeit software, including compilations containing dozens of computer programs. The Business Software Alliance (BSA) notes the use of P2P sites is the favored method to access unauthorized copies of software programs; there are a few pirate websites but they are not the largest source of pirated programs. BSA does perform take-down operations with local ISPs and there is a high degree of success. However, for every site removed, more appear.

COPYRIGHT ENFORCEMENT IN ARGENTINA

Federal and state police forces lack sufficient resources to provide expert reports on seized product, which delays processing cases. There is no dedicated police force to handle piracy cases. The music, business software industries report continued good cooperation with the Argentina's police forces, particularly the Gendarmería Nacional (the federal police agency) and border officials. While there has been significant support from the Federal Police Cyber Crime division on Internet cases, few prosecutions are pursued and few criminal cases reach final judgment. Three overarching problems in the criminal area are: (1) it is difficult to obtain search warrants (costs and time in organizing the investigation and filing complaints); (2) the enforcement authorities do not have enough space to store seized products; and (3) the months it takes the authorities to perform forensic analyses of seized product. Unfortunately, there are very few prosecutions that are completed to final judgment. In addition, civil infringement actions, often brought by the business software community, also faced roadblocks with long delays and non-deterrent damage awards.

Software actions, both criminal and civil: The software industry does take criminal actions, although BSA does not. BSA takes a variety of actions in Argentina, ranging from civil claims to non-judicial procedures (such as cease and desist letters, notices to ISPs, and the like). During 2009, the BSA program in Argentina conducted 56 voluntary business audits, obtained 44 preliminary injunctions, took 89 criminal raids to court, and worked on 23 customs actions. BSA notes that the police and customs authorities do take *ex officio* actions in their cases.

In the past, criminal copyright actions in the software area were not widely used by BSA. More recently, 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. In smaller provinces, local police are not trained in computer crimes, and there have been problems caused by pre-raid leaks. In some cases, it is possible to replace local police with the better trained Gendarmería. In addition, preliminary injunctions and searches performed by court officers and the police under instructions from civil courts have been effective to obtain the legalization of the commercial software used as well as the payment of damages by a number of end-user companies.

Criminal actions involving hard goods: The industries active in anti-piracy enforcement report good cooperation with law enforcement authorities conducting raids.

The recording industry indicates that both the police and customs authorities are taking *ex officio* actions and industry supports those actions. The recording industry (led by CAPIF) focuses on investigating complex organized crime cases, and planning street piracy actions. They are careful in the selection of targets and work with the proper security forces to obtain the best results. CAPIF also cooperates in the performance of forensic analysis in order to speed up the process.

Unfortunately, the recording industry reports that the number of raids during 2009 is 36% below levels for the same period in 2009. The volume of seizures in 2009 also represents a decrease of 33%. During 2009, CAPIF assisted in 336

raids (include street raids, warehouses, labs),⁵ resulting in the seizure of 700 thousand copies of media with infringing content (most of which were CD-Rs) and 312 pieces of equipment. The industry believes that this drop is not entirely surprising and may be explained by the following two points: (1) the industry's local anti-piracy campaign last year was dedicating more time and effort to its internet piracy cases, and (2) the police does not take a proactive stance on hard goods cases unless the rights holders are involved to prompt police intervention. In 2009, 28 criminal piracy cases were initiated, resulting in two arrests and indictments; there was only one conviction in a music piracy case in all of 2009.

Actions in the Internet space: The recording industry continues to be very active in Internet piracy enforcement in Argentina. In 2009, APDIF Argentina (the local organization of the recording industry) produced the following take-down results: 74,353 blog posts, 740,014 cyberlocker links, 166,329 forum posts, 16,670 P2P links, 1,981 eDonkey indices, 7 domain names, and 32,378 offline pre-release copies of sound recordings.

There have been a number of high profile actions. In December 2009, CAPIF shut down the first BitTorrent tracker in Latin America. "Siscate" was dedicated to illegal content distribution consisting mostly of music files; there were more than 159,000 monthly views of this site, and they have more than 1,600 torrents available for download. Content included categories dedicated to Argentine and Latin music; most of the users were from Argentina (58%), Mexico (29%) and Chile (14%). In addition, actions have been taken against various social sites allowing registered users to post links to illegal music files. In November 2009, another music forum site ("Tusdescargas") was shut down after CAPIF notified the site administration of massive copyright infringement there; this site had approximately 1,000 music posts with cyberlocker music files available for download. This was the eighth music forum site taken down in just the last half of 2009. Earlier this month, a joint internet anti-piracy operation involving three separate anti-piracy components resulted in the take-down of a major site known as fileschecker.com.ar. PROMUSICAE, the Spanish Association of Music Producers, initially detected illegal activity on this site and immediately removed the music content. Since the operator of the site was based in Argentina a follow-up investigation was coordinated with IFPI and the local national group, CAPIF. This site allowed access to a voluminous amount of music through approximately 3,000 download links in Spanish along with access to some of the most recent major pre-releases in Europe and the United States. Prior to being dismantled on February 1, 2010, this illegal site attempted to maximize its traffic by disseminating its links to the most important forums and virtual communities in Argentina.

Inter-industry cooperation on Internet piracy cases: Local ISPs are slowly beginning to collaborate in certain limited circumstances, such as taking down infringing sites in very specific instances. In this aspect, the recording industry reports that cooperation with ISPs on specific actions did continue in 2009 (see discussion above).

Since 2007, the local sound recording and film industry sectors have been trying to get broader voluntary cooperation with Argentine ISPs on Internet piracy matters. The P2P file-sharing context, ISPs are not cooperating with rights holders, because they claim they are not responsible for what users do on their networks. To make matters worse, the Argentine authorities have disengaged from these industry talks, claiming that they do not want to take part in what they believe is a problem of private interest. To the contrary, the Argentine government should promote a climate that incentivizes meaningful cooperation between the parties, and that encourages rights holders and ISPs to reach and implement robust solutions to this problem.

There also have been judicial efforts to get more cooperation from ISPs on policing piracy on their networks. In 2007, the local recording industry, led by APDIF Argentina, approached CABASE (the Argentine Trade Organization of ISPs) to establish a voluntary framework to fight the Internet piracy problem. Unfortunately, CABASE refused to cooperate. In early 2008, APDIF filed for preliminary injunctions against two ISPs in Buenos Aires, asking the judge to order the ISP to adopt technical measures (port blocking) to impede the exchange of music files using P2P networks. Both injunctions were granted but the ISPs appealed the first instance decisions and the injunctions got stuck in the judicial system, leaving no remedy in force. APDIF did not appeal one case, and the other case is still pending.

⁵ Here is the break down of the 336 raids: 187 street actions, 13 warehouses, 14 labs, 67 cybercafes, 8 home delivery actions, 5 jukeboxes, 42 stores and 1 other action.

Slow prosecutions and non-deterrant judgments: Very few criminal cases reach final sentencing. Part of this problem is due to the very formalistic structure of Argentina's judicial system. Another part of the problem involves few human resources and poor infrastructure in the court system. The bigger problem appears to be the lack of will by both prosecutors and judges to push these cases through. Most copyright infringement cases finished with a suspension of judgment. The music industry reports that there was only one conviction for music piracy in each of the last two years (2008 and 2009).

Furthermore, Argentina's current criminal provisions for copyright infringement are totally inadequate to address the piracy problem. The minimum penalty is only one month (per Article 72bis of Act 11.723 (Copyright Act)); this minimum penalty should be increased to a minimum of two years (see legal reform discussion below). While certainly some criminal sentences have been issued, the industries are not aware of any major, deterrent sentences issued last year. Finally, the average criminal piracy case takes two to fours years to reach a verdict in the first instance, and that usually results in no jail time or jail time is suspended because the judges do not consider intellectual property crimes as serious offenses.

Delays and weak damages in civil infringement cases: The business software industry continued to rely on civil enforcement in Argentina, given the systemic problems with criminal enforcement. Even so, there remain significant problems, especially with procedural delays in obtaining and conducting civil searches in business piracy cases. While this situation has improved in the courts of the city of Buenos Aires, civil actions are still weakened by the lack of statutory damages and extensive delays. BSA has achieved some positive results despite the problems with enforcement, relying primarily on the process of mediations required by the civil procedure, which facilitates the resolution of cases. Another problem is caused by the unavailability of deterrent civil damages; this important problem could be corrected if Argentina were to introduce an effective statutory damages system (see discussion in legal reform, below).

Border enforcement: The Custom Service, jointly with the military police and coast guard (the Gendarmería Naciona" and Prefectura Naval), are the governmental bodies that have border duties to stop counterfeiting and piracy. Last year, border enforcement was pretty good, and included the implementation of mobile scanners in some frontier/border crossings. The Argentina Customs Code currently provides for *ex officio* actions. There are reports that significant progress was made with the Customs authorities in 2009, who now understand the damage that piracy causes, not only to the owners of intellectual property rights, but also to the State itself, since pirate products evade taxes and do not generate legitimate employment.

Given the extent of the piracy and counterfeiting problems in the tri-border area, Argentina should forge a working plan with Brazilian and Paraguayan customs officials to inspect goods in-transit for potential pirate product.

The Argentine customs, through the unit called "Fraude Marcario", has seized shipments of blank CDs; these activities are directed to act against tax evasion. During 2009, Customs seized about 1.5 million blank optical discs, a 39 percent decrease over 2008. Despite the decrease during 2009, Argentine Customs (*Administración Nacional de Aduanas*) authorities continued to be supportive and alert to piracy and blank media imports. Customs has provided a regular useful forum for exposing the problems with the importation of blank media.⁶

Industry trainings and public awareness efforts: The recording industry (APDIF and CAPIF) have developed trainings for police involved in cybercrime and internet cases.

COPYRIGHT LAW REFORM AND CERTAIN MARKET ACCESS ISSUES IN ARGENTINA

Argentina's Copyright Act (1933, as amended), while one of the oldest in the Western Hemisphere, has remained remarkably flexible over the year. Argentina is a member of the two WIPO Internet treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty), and those provisions are self-executing in national law and actually have

⁶ The government's customs website (AFIP - La Administración Federal de Ingresos Públicos) is <http://www.afip.gov.ar/aduana/foro/foroMarcario.asp>.

a superior rank to national law. This is not so say, however, that further refinements are not necessary; they are. Specificity in national legislation helps to provide clear "rules of the road" for rights holders, consumers and enforcement authorities, including the courts.

For example, IIPA and its members have identified several legal deficiencies (or lack of clarity in the copyright law such as the desired need to provide:

- express protection for the "communication to the public" and "making available" rights;
- explicitly extend the scope of the reproduction right to clearly cover temporary copies;
- protect against the circumvention of technological protection measures and removal or alteration of electronic rights management information;
- increase criminal penalties for piracy (the current minimal penalty is only one month, and this should be increased to a much more deterrent level, such as a minimum of two years). The current maximum penalty is already at a deterrent level (six years);
- establish statutory damages;
- explicitly provide for the seizures of infringing equipment;
- establish provisions on ISP liability and procedures for notice and takedown;
- provide equitable and balanced treatment for all rights holders, including those who are juridical entities.

Given current political concerns, the industries believe that movement on any copyright law-related reforms in 2010 is unlikely.

2009 Copyright Act amendment: On November 25, 2009, the term of protection for phonograms and performances was extended to 70 years from publication. Law 26.570 signifies the expansion of 20 years for the protection of juridical entities such as phonogram producers; the recording industry is pleased with this development as it has been working to pass this legislation for several years, and the term is now comparable to that of many other copyrighted works in Argentina.

Need to increase scope of infringements and criminal sanctions: Legislative efforts to strengthen criminal enforcement measures in Argentina have not gained much traction in recent years. Five years ago a bill (Bill 1546-S-05) to amend the criminal chapter of the Copyright Act was introduced in the Senate, but it fell off the docket at the end of 2007. In 2007, the recording industry resubmitted a new bill (1987-S-2007) to the Senate, and meetings were held in 2008 along with the motion picture industry to expand some provision of that bill (e.g. adding provision on criminal conspiracy); this bill also fell off the docket at the end of 2008. Since then, no new legislative vehicle has been proposed (and appears unlikely to be proposed this year) that would address the following issues that were in the prior legislation, such as:

- providing for criminal sanctions for the circumvention of technological protection measures (TPMs) and the modification or suppression of digital rights management (RMI);
- creating statutory damages by creating a minimum (1,000 pesos, US\$260) and maximum (1,000,000 pesos, US\$259,240) level for each infraction, depending on a number of factors;
- clarifying the existing remedy of preliminary injunctions by eliminating the onerous requirement to produce evidence before presenting a full case based on arguments of merit; and,
- empowering the courts to impose fines to force the execution of the sentences issued.

Legislation needed to create specialized IP prosecutors: Three years ago, a bill proposed to create a special public prosecutor devoted to trademark protection. At that time, the copyright industries believed that a similar proposal should be developed for copyright, or at that pending bill should have been expanded to include the copyright sector. The copyright industries would support legislation that creates specialized IP prosecutors.

Government software legalization: Unfortunately no progress was made on this important issue last year, and it is clear that the current government is not going to make any effort in this area. With respect to government legalization efforts, the business software industry continues to call upon 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 not taken action toward legalizing its software inventories.

Customs duties affecting audiovisual works: The Argentine Customs Valuation Code requires that all audiovisual works, excluding computer software, must pay an *ad valorem* customs duty based on the value of the “authors’ rights”, that is, on the potential royalty generation of the film, rather than solely on the value of the physical materials which are being imported. MPA opposes this burdensome practice, which is a form of double taxation since royalties are subject to remittance, withholding and income taxes. Customs duties should be based on specific fees, such as weight or length, or, if *ad valorem*, be based on the value of the carrier medium only. Because of this duty, MPA member companies import negative prints on a temporary basis and copy positive prints locally. There have been no new developments in this matter in 2009.

Withholding taxes and royalties on computer software: The software industry continues to report a problem regarding the withholding that local licensees must perform when wiring royalties to foreign licensors. The local tax collection authority, AFIP, refuses to apply the special rules that the Income Tax Law provides for “authors rights” international transfers. AFIP contends that the legal nomenclature “author” is limited to physical persons, and that a legal person (e.g. a corporation) cannot be an author and, as a result, cannot hold these “authors rights.” Only two cases so far have been presented to courts: in one case, the Court agreed with AFIP, and in the other, the Court rejected AFIP’s position. Both cases are at Federal Supreme Court (*Corte Suprema de Justicia de la Nación*) level now; pending of final resolution. This creates much uncertainty, and could create high economic liability for taxpayers if the AFIP position prevails. This problem could be solved by amending the Income Tax Act to establish a concrete withholding rate for software license payments, similar to what was done for music and motion pictures several years ago.

Audiovisual Communications Services Law: The Audiovisual Communications Services bill was signed into law on October 10, 2009. The law has several objectionable provisions, including an unprecedented advertising restriction on pay television, an obligatory registration for international networks, and preferential tax treatment for local Argentine networks. It appears that the government will issue implementing regulations as one package in mid-February or March 2010. MPA recommends that the implementing regulations define any network that has a BIT with Argentina as a “local network” which would address the problematic tax issue. IIPA remains concerned that the law will force programmers, who are the legal rightsholders or licensees of the entire signal that they transmit, and all of the programming on the signal including advertising space, to make advertising space on the channels the “property” of the cable operator with the ability to sell six minutes of advertising on their own proprietary channels. This move would directly interfere into private contractual agreements. The willingness of the Autoridad Federal de Servicios de Comunicación Audiovisual’s (formerly COMFER) to listen to foreign rights holders is appreciated, and MPA encourages active engagement on this important matter.