

BRAZIL

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2015 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Brazil remain on the Watch List in 2015.¹

Executive Summary: Enactment of Marco Civil da Internet thrust Brazil onto center stage in Internet governance last year. The enacted bill preserves space for voluntary notice and takedown and other inter-industry cooperative efforts, but implementation must be carefully monitored in 2015. As Marco Civil left final resolution of the notice and takedown issue to future copyright legislation, the focus now shifts to long-delayed copyright reform efforts. Besides dealing effectively with online infringement and resisting excessively broad exceptions and limitations to copyright protection, copyright reform must also address the deficient laws against circumvention of technological measures used by copyright owners to restrict access and copying. This inadequacy, coupled with exorbitant taxes and escalating duties on legitimate imported video games and consoles, has stunted the development of a legitimate market for video games in Brazil. Proliferating market access barriers for the audio-visual sector, from the VOD tax to content quotas to threatened regulation of digital cinemas, should also be addressed.

The explosive growth of broadband access in Brazil has accelerated the migration to the Internet of pervasive piracy of all kinds of copyright works. Many notorious sites targeting the Brazilian market provide links to offshore pirate repositories, and illicit peer-to-peer (P2P) services continue to thrive. Criminal enforcement against online piracy remains stalled. In this environment, it is difficult for services that legitimately deliver copyright works online to gain further traction, though the legitimate sector is growing. Hard-goods piracy remains a serious problem for some sectors, including video games, though in decline for audio-visual. Systemic bottlenecks persist in investigation, prosecution and the criminal courts, and systemic reform is needed. Enactment of important but modest legislative reforms to streamline criminal copyright prosecutions, along with critical legislation to impose criminal penalties for camcording, are essential next steps.

PRIORITY ACTIONS REQUESTED IN 2015

Enforcement

- As steps toward a deterrent enforcement system, implement a national program to train judges, prosecutors, and police officers on IPR law and enforcement measures; adopt judicial policies that expedite criminal copyright investigations; and reform sentencing practices to achieve deterrent impact.
- Ensure that the National Council to Combat Piracy and Intellectual Property Crimes (CNCP) has the resources and political backing to ramp up its efforts against hard-goods piracy, including continued expansion of the “City Free of Piracy” initiative.
- Bring CNCP resources to bear on encouraging cross-industry efforts to combat Internet piracy.
- Launch criminal prosecutions against those engaged in major online piracy activities or knowingly providing the means for doing so, seeking strong penalties to raise awareness and foster deterrence.
- Effectively enforce the current Penal Code to address illicit camcording in theaters.

¹For more details on Brazil's Special 301 history, see previous years' reports at <http://www.iipa.com/countryreports.html>. For the history of Brazil's Special 301 placement, see <http://www.iipa.com/pdf/2015SPEC301HISTORICALCHART.pdf>.



Legislation and Regulation

- Monitor implementation of the “Marco Civil” Internet law to ensure there is no interference with voluntary notice and takedown efforts or other constructive and cooperative agreements to combat online piracy.
- Enact pending legislation to streamline copyright prosecutions and to clarify criminal remedies, and to provide criminal penalties for unauthorized camcording of films in theaters without a requirement of proof of an intent to profit.
- Advance copyright reform legislation that effectively addresses online infringement and explicitly outlaws circumvention of technological protection measures and trafficking in circumvention devices and services.
- Reduce high tariffs and taxes placed on video game products, thus enabling industry growth.
- Mitigate imposition of the “VOD tax” on movies and TV programming delivered on demand; restrain ANCINE (national film agency) efforts to regulate intrusively the digital cinema sector; and relax audio-visual quotas that discriminate against non-Brazilian content.

COPYRIGHT PIRACY IN BRAZIL

Internet piracy is a major challenge for all copyright-based industries doing business in Brazil. Piracy involving hard goods – mostly CDs, DVDs, and other media carrying pirate music, movies, TV programming and video games, but also devices that circumvent access controls on video game consoles – continues to be a concern for most copyright sectors. The book publishing industry still confronts widespread unauthorized photocopying of educational materials.

Internet Piracy: Internet access continues its explosive growth in Brazil. It ended October 2014 with 179 million fixed and mobile broadband connections, 46 percent more than a year earlier. The most rapid growth was in mobile broadband (54%), but fixed broadband connections also grew 10% from the previous year.² Over half of all Brazilians (53.1%) used the Internet in 2014,³ and a remarkable 47% of the population had at least one social network account.⁴

As the potential market grows rapidly, legitimate services for online delivery of copyright materials are gaining an increasing foothold in Brazil. For example, there are at least nine free or low-cost online platforms that offer legal viewing options to Brazilian television and film audiences, including Crackle, Mundo Fox, and iTunes/Apple Brazil. Music industry digital revenues in Brazil increased 22.3% in 2013⁵, and some two dozen licensed services now deliver recorded music to Brazilian listeners at compelling price points (including for free, in the case of 9 ad-supported streaming services).⁶ But the development of a robust legitimate online marketplace in delivering copyright materials to Brazil’s growing population of Internet users continues to be stunted by the prevalence of online piracy. IIPA reported previously on a study conducted for the Brazilian Government showing that 81% of Brazilians who downloaded music or films from the Internet, including individuals from all economic classes, regions, age brackets, and levels of education, did so exclusively from illegal sources.⁷ The Internet certainly remains Brazil’s fastest-growing forum for copyright piracy, and the primary piracy challenge for most industry sectors.

Internet piracy problems in Brazil feature two main distribution channels. The first involves sites targeted to the Brazilian market that link to infringing distribution hubs (sometimes called “cyberlocker” services), nearly all of which are located outside Brazil. (Brazilian websites that directly host pirate content remain relatively rare – although

²See <http://www.telecompaper.com/news/brazil-ends-october-with-179-mlm-broadband-connections--1053378>, citing figures from telecoms operators association SindiTelebrasil.

³See <http://www.statista.com/statistics/292757/brazil-internet-user-penetration/>.

⁴See <http://www.statista.com/statistics/284424/brazil-social-network-penetration/>.

⁵IFPI, *Recording Industry in Numbers: 2014 Edition*, at page 34, available at <http://ifpi.org/recording-industry-in-numbers.php>.

⁶See <http://pro-music.org/legal-music-services-latin-america.php> (visited Jan. 24, 2015).

⁷See Comunicado do Ipea - 2012 - Maio - nº 147, “Download de músicas e filmes no Brasil: Um perfil dos piratas online”, at http://www.ipea.gov.br/portal/index.php?option=com_content&view=article&id=14071 (unofficial translation on file with IIPA), summarized in IIPA’s 2013 Special 301 submission, see <http://www.iipa.com/rbc/2013/2013SPEC301BRAZIL.PDF> at 106 (“IIPA 2013”).

a number of sites selling infringing copies of video games, and devices for circumventing technological protection measures used to prevent the playing of those copies, are locally operated.) Link sites to infringement hubs account for the majority of online music piracy, and a comparable share of the Internet piracy cases involving audiovisual works like movies and TV programs. One very popular site in this category, *degracaemaisgostoso.org* (“free is much better”), has been in operation for eight years, and provides its 2.6 million monthly users links that are refreshed daily to infringing movies, music, video games and books. *MusicasparaBaixar.org* (“music for download”), which has a comparable volume of visitors and has been operating since 2008, is a blog site supported by advertising that specializes in links to infringing music albums but also distributes books, video games, movies, and concert recordings. The files to which such sites link are generally stored on offshore hosting sites such as 4shared.com, Uploaded and Bitshare. But the sites themselves are available only in the Portuguese language and clearly target the Brazilian market almost exclusively.

Other linking sites to infringement hubs that specifically cater to the Brazilian market include *teleona.org*, which features camcorder first run motion pictures, with Portuguese audio captured from a local theatre or with Portuguese subtitles added; *Megafilmeshd.net*, which provides links to streams of thousands of films, TV series, and concerts, much of it in Portuguese, and which ranks 61st in popularity among all Brazilian Internet users, according to Alexa (nearly 10 million monthly unique visitors); *Filmesonlinegratis.net*, active since 2009 and ranked 101st in Brazil by Alexa; *Baixeturbo.org*, with thousands of links to infringing music and other content, available only in Portuguese; *Hitsmp3.net*, with some 11,000 links to infringing albums; and *Sapodownloads.net*, another blog site specializing in links to infringing music. Such links also continue to be propagated massively through social networking communities. Many Brazilian sites also employ unique methods for undermining anti-piracy efforts, such as the use of local encryption and “captcha” technology to prevent rights holders from detecting links to infringing files through automated monitoring.

The second channel for Internet piracy is file sharing via illicit P2P networks, which stands out as a growing threat for the entertainment software industry in particular, making pirated video games widely available. The Entertainment Software Association (ESA) reports that in 2014, for the fourth straight year, Brazil ranked second in the world in the number of connections by peers participating in unauthorized file sharing of select ESA member titles on public P2P networks. Notably, if PC games are excluded from the calculation, Brazil ranked first in the world in P2P-based infringement of video games.

Taken together, these forms of online piracy are a significant obstacle to efforts to develop legitimate online distribution channels for copyright works in Brazil. For example, legitimate online audiovisual services have increased in recent years, but still suffer from the pervasive availability of illicit, advertising-supported services that are free to the consumer.⁸ Similarly, while robust growth of the legitimate market for online music continues, the fact remains that this marketplace is dominated by illegal sources, with only a small minority of Brazilian online consumers patronizing authorized services.

Hard Goods Piracy: Even though Internet piracy is clearly growing faster than physical piracy in Brazil for films, TV programming and video games, these products demand high bandwidth. For the audio-visual sector, the prevalence of pirate DVDs and other disc-based products is declining slowly, but these remain a significant issue in large cities, with their popular street markets; along the borders; and in small towns, where broadband penetration levels are low and even movie theaters are scarce. In the case of video games, pirate titles for console platforms like the Nintendo Wii are usually sold on discs that are locally burned and assembled (with inlay cards) on site. For handheld video games, the most common delivery medium is a memory card loaded with hundreds of titles downloaded from pirate Internet sites, bundled with a circumvention device, and sold by street vendors or via online marketplaces and shops. Piracy of entertainment software through the sale of pen drives loaded with huge quantities of pirate video games is also common, especially in the specialized pirate video game markets such as Santa Ifigenia

⁸The uncertainties regarding the new video on demand tax, and other market access barriers discussed in this submission, also play a role in retarding the growth of the legitimate online audiovisual market.

Street in São Paulo. While some of this pirate product enters the Brazilian market through the nation's relatively porous borders and ports, it is becoming more common for it to be burned onto imported blank media in small, decentralized burner facilities, often located in private homes. Vendors also burn discs on demand, or load memory cards, from a library of video game content stored on PCs.

Finally, a major feature of the piracy landscape for video games in Brazil is the prevalence of so-called game copiers and other circumvention devices aimed at nullifying access control technologies used by copyright owners, thus enabling the play of pirate video games on modified consoles (the great majority of game consoles in the country have been so modified). Most game copiers and mod chips are produced in Asia and flown into Brazil or delivered through the same channel as for modified game consoles. Santa Ifigenia Street in São Paulo is a leading retail venue for sales of these circumvention devices, targeting consoles such as PS2, Wii, 3DS and Xbox 360, and R4 devices and other game copiers. Typically, sellers of the game copiers also include a memory card with up to 500 game titles that were illegally downloaded from the Internet. Such a copier-and-card bundle can be purchased for about R140 (about US\$51). These circumvention devices are significant multipliers that exacerbate levels of online piracy by enabling the use of unauthorized copies of game software.

As Brazil's largest, city São Paulo is also a key hub of national piracy networks for hard goods. Not only are pirate products widely sold in the city, but distributors based there supply many similar retail operations in other parts of the country. The Galeria Page, with 170 vendors, some of them specializing in pirated video games, video game circumvention devices, modified video game consoles, and counterfeit DVDs, is the epicenter of hard goods piracy in São Paulo; but vendors in the nearby Shopping 25 de Março mall, and in other high-profile areas in that city, also participate. In Rio de Janeiro, the huge outdoor market in Camelodromo Uruguaiana includes scores of vendors of pirate products, especially on weekends. The Feira dos Importados (also called Feira do Paraguai) in Brasilia is of similar size and is also rife with pirate hard goods.

Camcorder Piracy: Ninety percent of all pirated movies available during a film's theatrical release originate as unauthorized in-theater camcorders. In Brazil, the problem typically takes the form of in-theater audio captures, after which the dubbed Portuguese soundtrack is married with high-quality video captures sourced elsewhere. The resulting copies are made available online to Portuguese speakers worldwide, as well being burned onto DVD-Rs and then distributed to Brazil's many black markets. The Motion Picture Association of America (MPAA) identified 19 member company films stolen in this way from Brazilian theaters in 2014. While one arrest took place in 2014, no indictments, prosecutions or enforcement actions were undertaken. The Independent Film & Television Alliance (IFTA) reports that camcording in Brazil fuels rampant online piracy, negatively impacting worldwide distribution and preventing the establishment of legitimate online distribution platforms.

COPYRIGHT ENFORCEMENT IN BRAZIL

Enforcement Overview

The challenges of enforcement against piracy in Brazil have been extensively detailed in past IIPA filings.⁹ For 2014, there is little new to report.

The CNCP, the main governmental entity responsible for the central coordination and implementation of Brazil's national anti-piracy campaign, has been led by a committed and energetic team, although there have been a number of leadership changes recently. Concerns persist about whether the CNCP will maintain the high level of participation and cooperation with industry groups that was its hallmark prior to its 2012 reorganization. Now that the national elections are over, newly appointed officials at the Ministry of Justice should take the necessary steps to ensure that the reorganized CNCP continues to work closely with industry, that it is adequately resourced to expand

⁹See, e.g., IIPA 2013 at 109-112.

the “City Free of Piracy” program, and that it follows up vigorously on its initial steps to expand its work beyond its traditional focus on physical piracy.

Enforcement Against Hard Goods Piracy: Many Challenges Remain

The news on the fight against hard goods piracy was mixed. Administrative changes in late 2014 to the Special IP unit in Rio de Janeiro led to some proactive enforcement efforts there; and some progress was reported in São Paulo in connection with the World Cup, continuing to repair the damage caused by the enforcement hiatus in 2013.¹⁰

However, even though the copyright industries in general enjoy good (in some cases, excellent) working relationships with enforcement agencies, and even though there have been some instances of constructive cooperation, little has been done to tackle the larger, systemic problems that render Brazil’s criminal justice system inadequate in deterring piracy. The main deficiencies have been described in detail in past IIPA reports. They include:

- Prolonged, inconsistent, and inefficient police investigations, sometimes taking years, during which right holders must push the process every step of the way. Among other detrimental impacts, the requirement to store all seized goods throughout the long pendency of the case drains away resources that could be better applied to running more enforcement operations.
- Criminal case experts can only be appointed by a judge, there are too few experts in the country, and there are no standard criteria for expert analysis of and reporting on seized materials. To expedite preliminary investigations conducted by the police, Brazilian law should be amended to permit the private sector to appoint experts and specialized IPR experts should be appointed at the “*Instituto de Criminalística*” (CSI Institute of Brazil).
- Prosecutors and judges lack specialized training in IPR cases, and, although some training has been provided to municipalities participating with the CNCP in “Cities Free of Piracy,” there is no effective national program. Although currently most training for judges, prosecutors and police officers is organized and financially supported by the affected industries, the CNCP has actively stimulated, promoted and participated in such events at the national, regional, and state levels; but these efforts must be expanded considerably.
- Creating a specialized court for copyright matters, at least in a few major jurisdictions such as Rio de Janeiro and São Paulo, would improve judicial expertise and help expedite case processing. The 1997 Industrial Property Law authorized the judiciary to create specialized IPR courts, and such courts exist for patent and trademark matters, but this authority has never been exercised with respect to copyright.
- Finally, criminal penalties imposed on pirates are too frequently suspended. Since prosecutions take so long to reach final disposition, a defendant who may have been caught multiple times is treated as a “first offender” so long as none of the other prosecutions is complete; and a suspended sentence for a first offender is treated as almost an inalienable right in the Brazilian legal system, sometimes conditioned on the defendant agreeing to provide minimal monetary compensation to the victim. All this contributes to a culture of impunity for copyright violations. A recent decision of the Brazil Superior Court of Justice provided a rebuttal to the notion that piracy is a socially acceptable practice; but this case was an exception, not the rule, and it is too soon to tell whether it will have any impact.

Internet Enforcement: Cooperation and Government Action Needed

Effective enforcement against the growing problem of Internet piracy in Brazil will require positive and active cooperation among rights holders and ISPs. This cooperation is forthcoming in some areas. Purely on an informal

¹⁰See IIPA’s 2014 Special 301 report on Brazil, at <http://www.iipa.com/rbc/2014/2014SPEC301BRAZIL.PDF>, at 90-91.

basis, a number of ISPs are responsive in a reasonably prompt fashion to requests from rights holders to remove individual links to pirate sites; to take down individual unauthorized files they may be hosting;¹¹ to delete advertisements for infringing copies; and even to shut down blogs, forums and social networking communities that are dedicated to disseminating pirate product. But clearly this ad hoc approach is not by itself sufficient to cope with the rapid growth in online piracy of all sorts of copyrighted materials. Furthermore, this cooperation does not extend to working together to fight the pervasive piracy carried out via P2P services. Brazilian laws and regulations provide no incentive for ISPs to pass on notices to their subscribers who misuse their access to engage in P2P piracy, nor to effectively deal with repeat infringers. Consequently, many ISPs do nothing, and this channel for piracy proliferates unchecked.

Clearly, active government involvement could help to bring ISPs and right holders together to find effective means to deal with the most serious forms of online piracy, and to prevent its further growth. As long ago as 2008-09, the CNCP identified as a priority for its future activities the area of “Partnerships and Cooperation with Internet Service Providers,” and has made intermittent efforts since then to bring ISPs to the table for discussions, but without any success (in part, because of recurring opposition from other government agencies). A reported recent CNCP project to engage with payment processors to discourage use of their services by sites dedicated to piracy was similarly derailed; discussions continue, but without government support. IIPA urges the Brazilian Government to advance such initiatives instead of discouraging them, in order to send a clear signal that effective cooperation against the piracy that now blights the online marketplace is in the best interests of Brazil’s economic, technological and cultural development.

The situation is also discouraging with regard to criminal enforcement against serious online copyright crimes. Existing legislation already provides a framework for this, and some Brazilian enforcement authorities have considerable experience in investigating other types of cybercrimes. But Brazilian authorities continue to take virtually no enforcement actions in Brazil’s fastest growing marketplace for copyright piracy – the Internet. In view of the significant damage that pirates inflict on Brazil’s economy and culture, authorities must accord a much higher priority to criminal investigations of online piracy.

LEGISLATION AND REGULATION IN BRAZIL

“Marco Civil da Internet” Internet Legal Framework: A four-year project to “establish principles, guarantees, rights and obligations on the use of the Internet in Brazil” culminated last April in the enactment of the Marco Civil legislation, and its dramatic signing by President Rousseff at the podium of the Net Mundial Internet governance conference in São Paulo. Although IIPA has been concerned since the outset that the proposal did not recognize the importance of protecting copyright in the online environment as an essential ingredient for the healthy growth of electronic commerce, we are pleased that the final version of the bill was amended to exclude copyright cases from the blanket rule that “providers of Internet applications” cannot take down or remove access to material except in response to a specific takedown order issued by a court. This would have eliminated the voluntary notice and takedown activities engaged in by many Brazilian ISPs with regard to hosted infringing content today, a limited but critical example of the inter-industry cooperation against online infringement that is so essential to tackling pervasive online piracy. Fortunately, as enacted, Art. 19 of the Marco Civil legislation carves copyright cases out of the blanket immunity rule, calls for “specific statutory regulation” dealing with notice and takedown procedures for violations of copyright or related rights, and leaves the issue to be governed in the meantime by existing copyright law. This significant improvement preserves Brazil’s ability to design an effective and flexible legal regime for dealing with online copyright theft.

IIPA urges the U.S. Government to monitor developments in the implementation of Marco Civil (an implementing decree is reportedly due early in 2015), first to ensure that in fact there is no adverse impact on current

¹¹ However, as noted above, hosting sites based in Brazil are not the major sources of the online piracy problem there, and cooperation is much less frequent with regard to links to off-shore hosted material and other forms of online infringement.

or future inter-industry arrangements to combat online piracy (including but not limited to notice and takedown), as well as to encourage an appreciation of the importance of copyright protection to a sound and robust e-commerce marketplace. Especially in view of Brazil's increasingly prominent role in global discussions about Internet governance, its handling of this critical issue in its national law demands careful scrutiny.

Copyright Law Reform: The final language of the Marco Civil legislation should bring back to center stage the pressing need to update Brazil's 1998 copyright law to reflect today's copyright protection and enforcement challenges. The most recent official draft amendments were released by the Ministry of Culture in March 2011. IIPA submitted detailed comments on the draft, which are summarized in previous IIPA submissions.¹² However, after undergoing further changes, the draft was returned for review by the new Minister of Culture in mid-2012, and no subsequent drafts have been publicly released since then.

Besides the notice and takedown issue left open by Marco Civil, and online copyright liability questions more generally, a comprehensive update of Brazilian copyright law will also need to address a number of other topics. The complete lack of effective legal prohibitions against trafficking in devices and services aimed at circumventing technological protection measures (TPMs) used by copyright owners to control access to their works has acted as an insurmountable obstacle to the healthy growth of a legitimate video game marketplace in Brazil, and has hampered the prospects for other copyright-intensive sectors that depend on TPMs. This big gap in Brazilian law should be filled by legislation that brings the law into alignment with global norms under the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), and which promotes legitimate digital commerce by protecting TPMs. Additionally, any copyright law reform must avoid the addition of broad or vaguely worded exceptions to copyright protection (a pitfall to which the 2011 draft succumbed). IIPA urges the U.S. Government to continue to engage with Brazilian authorities to encourage copyright reform that enhances the protection of copyright and neighboring rights, and thus promotes production of new original works, in the face of technological developments that have effectively eroded the ability of rights holders to enforce their rights.

Proposed Legislation Related to Enforcement: A plethora of bills to improve copyright enforcement in Brazil have been presented to the legislature, but few have progressed. One important exception is Bill 2729/03, which is a product of cooperative efforts between the copyright industries and the CNCP. It includes a few vital reforms that would address some of the systemic enforcement impediments identified above. For instance, the bill would allow expert reports in infringement cases to be based on a sampling of the goods seized, and would authorize the destruction of all pirate product seized in a criminal case. Bill 2729/03 was approved by the House of Deputies in 2012, and was sent to the Senate (now labeled Bill 63/2012). It received committee approval over a year ago, and still awaits action by the full Senate. Once enacted, this bill will streamline criminal prosecutions and reduce the significant costs entailed in storing vast quantities of seized materials until the final resolution of a criminal case. IIPA commends legislators for advancing this legislation, and urges its passage as soon as possible. We would then encourage Brazilian legislators, with the leadership of the large, multi-party Parliamentary Front against Piracy (also known as the Congressional Anti-Piracy Caucus), to turn to other long-overdue and critical enforcement reforms, including some that had to be jettisoned from Bill 2729/03 to expedite its passage.¹³

Throughout 2014, committees of Brazil's Senate continued to consider amendments to the Criminal Code (Bill 236/12) that would have significant impacts on criminal copyright enforcement. The most recent report, over the signature of Senator Vital do Rego, would create a new criminal offense for camcording (recording audio-visual works or soundtracks in movie theaters), thus giving law enforcement a necessary new legal tool for combating a serious piracy problem. IIPA strongly urges that this provision be retained as the legislation moves forward. The same report also corrects a problem in earlier versions of the legislation, by retaining the status of copyright offenses

¹²See, e.g., IIPA 2013, at 112-13.

¹³Among other improvements, various pending bills would allow criminal judges to appoint private sector experts; increase government resources allocated to fighting software piracy; criminalize the advertisement of pirated products, the distribution of instructions on how to manufacture counterfeit goods, and the purchase of pirated goods intended for resale; and facilitate removal of infringing material from Internet sites.

as public criminal actions which can be initiated *ex officio*. IIPA urges the U.S. Government to closely monitor further developments on this legislation as it moves toward action by the full Senate and then the House of Representatives, to preserve the progress made recently and to try to correct remaining negative aspects of the bill. These include repeal of the catch-all provision in the chapeau of Article 184, providing a penalty for criminal copyright violations that are not otherwise specified; this repeal could significantly reduce the effectiveness of criminal enforcement in a fast-changing technological environment. IIPA also remains concerned about reports that Bill 236/12 would substantially reduce penalties for some basic copyright violations, including unauthorized reproduction for profit and infringement on the Internet, thus sending precisely the wrong message to a Brazilian society that already deprecates the significance of copyright infringement, and to a legal system that in practice provides impunity from criminal penalties in most cases. We urge lawmakers instead to seek ways to support Brazil's creative economy by strengthening effective copyright enforcement.

MARKET ACCESS AND RELATED ISSUES

High Tariffs and Barriers on Entertainment Software: Brazil's high tariffs and taxes on video game products have long plagued the entertainment software industry, and remained a challenge in 2014. They are a significant barrier to legitimate market entry, a spur to the pirate market, and an obstacle to the growth of a legitimate video game industry, which could, if allowed to develop, benefit the national economy, create jobs, and generate tax revenues that are now being lost to piracy. Under a 2013 interpretation of the customs law, tariffs and taxes began to be calculated based on the imputed "copyright value" of a video game title itself (i.e., the distribution and marketing fees paid to the copyright holder), rather than on the much lower value of the import medium. By adding 75% to the cost to the Brazilian consumer, this new interpretation further marginalized the legitimate market (since, of course, pirate copies, whether smuggled across the border or burned within the country, do not pay these fees). It also runs contrary to well-established international rules favoring the use of the value of the medium as the basis for tariffs and taxes. We urge that this new interpretation be reconsidered. In addition, taxation on imported video game consoles, totaling nearly 90%, makes it almost impossible to bring them into the market legitimately.

Foreign Ownership Restrictions and Content Quotas on the Audiovisual Sector (Law 12.485): This law imposes local content quotas for pay television to be enforced by ANCINE, the national film agency, and it delegates to ANCINE unprecedented powers to limit advertising and to direct business activities. MPAA is concerned that local content quotas will limit what consumers experience and push consumers towards illegitimate sources of content. Under the implementing regulations, only works in which local producers own the majority share of intellectual property rights are included as Brazilian works; co-productions between Brazilian and foreign producers are excluded if they fail to meet this criterion. This exacerbates the harm inflicted on the Brazilian pay television market. Lawsuits challenging the constitutionality of the quotas and powers granted to ANCINE remain pending before Brazil's Supreme Court.

Video on Demand (VOD) Tax: The provisional measure which creates ANCINE also establishes the VOD tax, as part of a broader tax regime on film and television content called CONDECINE. The taxes represent a unique and serious threat to the growth of the VOD market. As set forth in Provisional Measures 2228/2001, the taxes apply to films, advertising, Pay-TV and "other segments" which ANCINE considers to be VOD content. Currently, the tax is assessed per title, varying from US\$100 to US\$3000, payable every five years during which a title remains in the VOD window (and when a title is licensed to multiple VOD outlets, the tax must be paid for each outlet). CONDECINE is burdensome, amounting to as much as US\$25 million in charges in the case of large collections of VOD titles, and will limit the choices available to Brazilian consumers in the nascent online content market and through other VOD services. We understand that ANCINE has acknowledged the threat this tax poses to the VOD market, and is engaging in discussions with industry stakeholders on possible changes to its approach. We encourage ANCINE to continue these efforts and to seek a reasonable solution that promotes, rather than impedes, the growth and development of Brazil's VOD market and robust content choices for consumers.

Digital Cinema Regulation: Yet another ANCINE regulatory initiative was launched in April 2014, when the agency announced its intent to regulate digital distribution of motion pictures for exhibition, including by forbidding non-Brazilian companies or companies affiliated with distributors or exhibitors from transferring or encoding digital content or monitoring digital projectors. The announcement was coupled with proposals to further expand the existing screen quotas to restrict the exhibition of non-Brazilian titles on multiple screens. As a first step, ANCINE demanded that film industry participants disclose their commercial terms for digital cinemas including their Virtual Print Fee agreements. This intrusion into legitimate commercial relations exceeds ANCINE's statutory authority, and its proposal for regulation creates debilitating uncertainty in the audiovisual sector, to the detriment of the Brazilian economy. This initiative should be opposed.

Screen Quotas: On December 31, 2014, the Presidential Decree on Screen Quotas was published. The Decree provides for quotas in 2015 that largely track those for 2014, requiring between 28 and 770 days of screening, depending on the number of theaters in the theater complex, for between 3 and 24 national films. The Decree for 2015 also specifies that for a widely-released title exhibited in complexes with more than 20 theaters, the complex may limit the title to showing in only 30% of its theaters. Brazil's screen quota is facing a constitutional challenge at the Supreme Court. Quotas limit consumer choice, and have the adverse effect of pushing consumers toward illegitimate content sources. They should be relaxed.