

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2003 SPECIAL 301 REPORT

VENEZUELA

EXECUTIVE SUMMARY

Special 301 recommendation: IIPA recommends that Venezuela remain on the Special 301 Watch List in 2003. Continuing economic and political instability in Venezuela may have resulted in providing an increase in copyright piracy.

Overview of key issues: Given the instability in Venezuela, the copyright industries' ability to engage in commercial distribution and conduct anti-piracy campaigns safely and effectively were very limited in 2002. Piracy losses remain high, at an estimated \$99 million in 2002. The streets are flooded with pirated products. Widespread CD-R burning has hit the recording industry hard; there is very little left of a legitimate music industry in Venezuela. Home video piracy remains pervasive, supplied by both large-scale labs as well as small-scale back-to-back copying. The audiovisual industry is concerned that television and cable piracy may increase in the weak economic environment. The software industry reports that its most devastating piracy remains piracy done by legitimate businesses and government agencies using either infringing or unlicensed software; pirated and counterfeit software is also easily available on the streets. Pirated videogames are widespread, with most imported from Taiwan, Hong Kong and China, transshipped through Paraguay. There is about \$3.6 million worth of pirated handheld videogames (GameBoy, Gameboy Color, GameBoy Advance—at pirated prices) in the Venezuelan market. In addition, book publishers face widespread unauthorized photocopying, especially at the secondary and collegiate levels. Estimated U.S. trade losses due to piracy in Venezuela were \$99 million in 2002.

Actual enforcement of the copyright law remains poor. COMANPI, the anti-piracy brigade which was once well-regarded in the region, had its budget slashed years ago and copyright actions declined dramatically when its jurisdiction was expanded. The National Guard (*Guardia Nacional*) has attempted to fill this gap by working with the copyright industries. The Copyright Office (DNDA) has no real enforcement powers, but has helped the software industry by issuing administrative notifications to suspects and providing public support for the software industry enforcement campaigns. The single specialized IPR prosecutor is overburdened with both IP and human rights cases. Customs authorities do not have *ex officio* authority to inspect shipments on their own initiative; a judicial order is required. The courts continue to issue non-deterrent penalties and inadequate damages. A new system which distributes civil cases to judges randomly often delays the process because some judges are not familiar with the copyright law and its application. Frequent public demonstrations and court strikes and closings complicated efforts to enforce the law in 2002. The 1993 copyright law, while relatively comprehensive in many respects, needs to be revised to reflect the modern standards found in the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. The Special Law against electronic crimes (Ley Especial contra Delitos Informáticos) passed in December 2001, but has not been applied in-practice.

Actions which could be taken by the Venezuelan government in 2003:

- Encourage senior government officials to instruct the enforcement agencies to make anti-piracy enforcement a priority in order to meet Venezuela's multilateral and bilateral IPR obligations, including the WTO TRIPS Agreement's enforcement text;
- Ratify the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT);
- Promote high standards of copyright protection and enforcement in the negotiations in the Free Trade Area of Americas (FTAA);
- Apply the Special Law against Electronic Crimes, which was passed in December 2001.

VENEZUELA
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1998 – 2002¹

INDUSTRY	2002		2001		2000		1999		1998	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	25.0	65%	25.0	65%	25.0	65%	30.0	65%	35.0	65%
Records & Music	29.3	75%	54.0	62%	30.0	62%	30.0	62%	15.0	35%
Business Software Applications ²	27.1	52%	25.7	55%	16.9	58%	46.4	60%	55.6	62%
Entertainment Software	NA	NA	NA	NA	47.0	78%	50.9	70%	53.8	73%
Books	18.0	NA	20.0	NA	22.0	NA	21.0	NA	20.0	NA
TOTALS	99.1		124.7		140.9		178.3		179.4	

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2003 Special 301 submission, and is available on the IIPA website at www.iipa.com/pdf/2003spec301methodology.pdf.

² BSA's estimated piracy losses and levels for 2002 are preliminary, and will be finalized in mid-2003. In IIPA's February 2002 Special 301 filing, BSA's 2001 estimates of \$19.7 million at 58% were identified as preliminary; BSA finalized its 2001 numbers in mid-2002, and those revised figures are reflected above. BSA's trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in this country, and differ from BSA's trade loss numbers released separately in its annual global piracy study which reflects losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in this country.

COPYRIGHT AND REGIONAL TRADE NEGOTIATIONS

The negotiation of bilateral and regional free trade agreements (FTAs) is assuming increasing importance in overall U.S. trade policy. These negotiations offer an important opportunity to persuade our trading partners to modernize their copyright law regimes so they can maximize their participation in the new e-commerce environment, and to improve enforcement procedures. The FTA negotiations process offer a vital tool for encouraging compliance with other evolving international trends in copyright standards (such as fully implementing WIPO treaties obligations and extending copyright terms of protection beyond the minimum levels guaranteed by TRIPS) as well as outlining specific enforcement provisions which will aid countries in achieving effective enforcement measures in their criminal, civil and customs contexts.

IIPA believes that the IPR chapter in the Free Trade Area of the Americas (FTAA) must be forward-looking, technologically neutral documents that set out modern copyright obligations. They should not be summary recitations of already existing multilateral obligations (like TRIPS). As the forms of piracy continue to shift from hard goods and more toward digital media, the challenges faced by the copyright industries and national governments to enforce copyright laws grow exponentially. The Internet has transformed copyright piracy from a local phenomenon to a global wildfire. CD-R burning is fast becoming a pirate's tool of choice throughout this region. Without a modern legal and enforcement infrastructure, including effective criminal and civil justice systems and strong border controls, we will certainly see piracy rates and losses greatly increasing in this region, thus jeopardizing more American jobs and slowing the growth of the copyright sectors both in the U.S. and the local markets. Therefore, the IPR chapter in the FTAA should contain the highest levels of substantive protection and enforcement provisions possible. At a minimum, the IPR chapter should: (a) be TRIPS- and NAFTA-plus, (b) include—and clarify—on a technologically neutral basis the obligations in the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (WCT and WPPT), and (c) include modern and effective enforcement provisions that respond to today's digital and Internet piracy realities. Despite the existence of these international obligations, many countries in the Western Hemisphere region fail to comply with the TRIPS enforcement obligations, both in their legislation and in practice. It is in the area of enforcement that some of the greatest gains for U.S. and local copyright creators can be achieved.

Venezuela is a beneficiary under the U.S. Generalized System of Preferences (GSP) trade program which requires beneficiary countries to afford adequate and effective intellectual property rights protection to U.S. copyright owners.³ Venezuela is a WTO member and is obligated to have already implemented both the letter and the spirit (performance) of the TRIPS Agreement.

³ For the first 11 months of 2002, \$533 million worth of Venezuelan goods (or 4% of Venezuela's total imports to the U.S.) entered the U.S. under the duty-free GSP code, representing a 10.5% decrease from the same time period in 2001. For more information on the history of Venezuela under Special 301 review, see Appendices D and E of this submission.