



February 17, 2004

Mr. Steven Falken  
Executive Director for GSP  
Chairman, GSP Subcommittee  
Office of the U.S. Trade Representative  
1724 F Street NW, Room F-220  
Washington, DC 20508

Re: Brazil GSP IPR Investigation  
Case: 011-CP-02

Mr. Falken and the GSP Subcommittee:

IIPA takes this opportunity to update and supplement the public file regarding the ongoing investigation into Brazil's intellectual property rights practices under the GSP trade program.

Attached please find IIPA's 2004 Special 301 report on Brazil which IIPA filed with USTR on February 13, 2004. This report is also available online at the IIPA website, [www.iipa.com](http://www.iipa.com).

Sincerely,

Maria Strong  
Vice President and General Counsel  
International Intellectual Property Alliance

cc: Meredith Broadbent (USTR)  
Susan Cronin (USTR)  
Brian Peck (USTR)

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2004 SPECIAL 301 REPORT

# BRAZIL

### EXECUTIVE SUMMARY

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**Special 301 recommendation:** IIPA recommends that Brazil remain on the Special 301 Priority Watch List in 2003. Brazil continues to fail to provide “adequate and effective protection” for U.S. copyrights as required by the GSP trade program; the potential penalty facing Brazil is the loss of its GSP benefits and/or the suspension of its GSP beneficiary country status.

**Overview of key problems/achievements in 2003:** High levels of copyright piracy and inadequate criminal enforcement in Brazil have harmed both Brazilian and U.S. creators for many years. The initiation of a concerted, national plan to tackle copyright piracy that achieves tangible results is long overdue. In 2003, the Brazilian Congress held hearings and established a commission to investigate piracy but, as yet, this laudable congressional action has had little impact on encouraging the Administration to engage in concerted leadership and nationwide enforcement actions, and piracy continues to flourish.

Piracy across all industries continues in the more “traditional” format (such as hard-goods piracy of pirate videos, audiocassettes, cartridge- and disc-based entertainment software; unauthorized loading of business software in corporate settings; unauthorized photocopies of books/journals). In recent years, the Brazilian market has embraced digital piracy involving optical media. Pirates domestically produce infringing products on digital media, with much of the source material — blank optical media materials (CD-Rs) — being imported or smuggled from abroad. In addition, pirated optical media product, primarily manufactured in Southeast Asia and Paraguay, still enters the Brazilian market because of weak border measures. Significant improvement is needed in border enforcement, an issue critical to all copyright industries because of the influx of piratical product and blank media used in CD-R burning. Organized crime elements, from within and outside Brazil, exercise control over the production and distribution of infringing copyrighted products. Internet piracy is an increasing problem. Piracy persists even as the industries continue to increase their anti-piracy investigations and foster public awareness through educational campaigns.

The most serious deficiency in Brazil involves ineffective, non-deterrent criminal enforcement. While good laws are in place, enforcing the laws has met with abysmal results. Although a few Brazilian police units have conducted a substantial number of raids, these raids have resulted in very few criminal prosecutions. Over the last six years, the ratio of convictions to the number of raids run each year is less than 1%. In those few cases that reach judgment, the sentences are not deterrent. While there has been some welcome cooperation between certain Brazilian authorities and the industries, consistent and systematic anti-piracy results from the Brazilian government are slim. In mid-2003, amendments to the criminal code were issued to increase penalties for copyright infringement and streamline certain procedures. This hopefully will counter the longstanding problem of judges releasing defendants via suspended sentences instead of serving jail time. The Interministerial Committee, created by the executive branch in 2001, has taken very little concrete, organized anti-piracy action.

One area of moderate success in Brazil involves civil copyright infringement cases that have resulted in significant civil damages in litigation, in part because the Brazilian copyright law contains a deterrent level of statutory damages. This success on the civil side is tempered by the long time it takes to resolve a civil case and the fact that the courts require costly expert fees and court bonds. Civil copyright infringement cases related to business software take many years to be adjudicated (currently more than 200 civil cases are awaiting judgment).

**Measures which could be taken by the Brazilian government in 2004:** In 2003, the copyright industries had hoped that the administration of President Luiz Inácio Lula da Silva would reinvigorate a national approach to reducing copyright piracy, something which had been missing from the prior Cardoso Administration. In order to support nationwide improvement in copyright enforcement, several years ago IIPA outlined numerous goals/objectives of an effective national anti-piracy plan as well as examples of the kinds of concerted anti-piracy actions needed at the national level to reduce copyright piracy in Brazil.<sup>1</sup> An illustrative (non-exhaustive) list of potential actions might include the following:

#### Enforcement in General

- Prepare and conduct a national anti-piracy campaign, as a matter of national priority and security.
- Significantly improve and implement deterrent criminal enforcement, including continuous raiding, effectively prosecuting and convicting copyright pirates in all industry sectors.
- Establish federal task forces across the country, creating an anti-piracy coordinator at each State office, which would include formal and specific operational coordination with industry sectors, reporting to the Congressional Committee on Piracy.
- Create a centralized unit of police officers to work on important copyright cases, and provide them with specific guidelines to conduct their cases.
- Direct the Federal Police and Customs to intensify inspections along country borders, and adopt more efficient norms to intercept contraband, blank CD-Rs and pirate pre-recorded CD imports. Require the Customs authorities to keep statistical records of seizures of products.
- Initiate more investigations using the tax evasion element of the Software Law (for example, using the Policia Fazendaria).
- Expedite issuance of search warrants, especially in criminal cases where sometimes it has taken up to 6 months to obtain such warrants.
- Ensure that all intellectual property in use in government information technology (IT) systems is properly licensed.
- Support the various enforcement agencies working with the copyright industries in anti-piracy actions, use organized crime units in IPR actions, and increase resources and training for these agencies.

#### Prosecution

- Speed up criminal copyright infringement prosecutions and expedite judicial orders to destroy confiscated piratical and counterfeit products.

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<sup>1</sup> The IIPA proposed “action plan” in Brazil first appeared in our April 2001 post-GSP hearing brief. That list was repeated in IIPA’s 2003 Special 301 submission (pages 61-62), posted at <http://www.iipa.com/rbc/2003/2003SPEC301BRAZIL.pdf>.

- Assign dedicated prosecutors in each State to lead anti-piracy campaigns that include major investigations of organized crime groups as well as keeping major commercial areas free of pirate product street vendors.
- Secure convictions against businesses that are replicating and distributing optical discs illegally.

Criminal Convictions / Civil Judgments

- Apply the new criminal code amendments in copyright infringement cases.
- Assign piracy cases to judges trained and experienced in IP cases with a view to establishing specialized IP courts.
- Reduce bonds and increase timely decisions in civil copyright infringement cases.
- Create a specialized court which adjudicates copyright infringement cases.

**BRAZIL**  
**ESTIMATED TRADE LOSSES DUE TO COPYRIGHT PIRACY**  
*(in millions of U.S. dollars)*  
**and LEVELS OF PIRACY: 1999 – 2003** <sup>2</sup>

INDUSTRY	2003		2002		2001		2000		1999	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	120.0	30%	120.0	35%	120.0	33%	120.0	33%	120.0	35%
Records & Music	338.7	52%	320.4	53%	302.0	55% (MC99% CD47%)	300.0	53% (MC98% CD35%)	300.0	MC95% CD35%
Business Software Applications <sup>3</sup>	NA	NA	260.8	55%	272.3	56%	264.1	58%	319.3	58%
Entertainment Software <sup>4</sup>	125.7	56%	NA	NA	NA	99%	248.2	94%	116.2	90%
Books	14.0	NA	14.0	NA	14.0	NA	18.0	NA	18.0	NA
<b>TOTALS</b>	<b>NA</b>		<b>715.2</b>		<b>708.3</b>		<b>950.3</b>		<b>873.5</b>	

<sup>2</sup> In IIPA's 2003 Special 301 submission, IIPA estimated that total losses to the U.S. copyright-based industries in Brazil in 2002 were \$771.4 million. These figures were later revised to include final BSA 2002 statistics and those are reflected above. (Note that the estimated losses for 2002 likely underestimate total losses due to the severe fiscal decline of the Brazilian economy that year.) The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in Appendix B to IIPA's 2004 Special 301 submission at [www.iipa.com/pdf/2004spec301methodology.pdf](http://www.iipa.com/pdf/2004spec301methodology.pdf).

<sup>3</sup> BSA's 2003 piracy statistics were not available as of February 13, 2004, and will be made available in the near future and posted on the IIPA website at [www.iipa.com](http://www.iipa.com). BSA's statistics for 2003 will then be finalized in mid-2004 and also posted on the IIPA website. BSA's trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in Brazil, and differ from BSA's trade loss numbers released separately in its annual global piracy study which reflect losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in Brazil.

<sup>4</sup> 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 IIPA's Special 301 report (see link above).

## BILATERAL ENGAGEMENT ON COPYRIGHT ISSUES

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Over the past decade, the U.S. government has devoted a significant amount of time and resources to support improved copyright protection and enforcement in Brazil.<sup>5</sup> In addition to ongoing bilateral contacts, the U.S. government has used the trade tools of both the Special 301 program and the Generalized Systems of Preference (GSP). Over the past year, Brazil has not responded sufficiently to the specific items identified by the U.S. government in USTR's 2003 Special 301 review of Brazil.<sup>6</sup>

Brazil has been under a GSP intellectual property rights review since January 2001. Both IIPA and MPAA provided testimony at Brazil's October 2003 GSP IPR hearing.<sup>7</sup> Brazil has been on notice for years that it must take appropriate action to meet its "part of the bargain" in receiving these unilateral trade benefits. Unless Brazil complies with its GSP IPR obligations, the potential penalty it faces is the loss of its GSP benefits and/or the suspension of its GSP beneficiary country status.<sup>8</sup>

In the context of the regional Free Trade Agreement of the Americas (FTAA), the U.S. and Brazil are now co-chairs. IIPA believes that the IPR chapter in the FTAA must be a forward-looking, technologically neutral document that sets out modern copyright obligations. In fact, Brazil has *already* implemented most of the substantive provisions — both copyright-specific and enforcement-related — which are contained in other U.S. free trade agreements, into its domestic law. The challenge for Brazil remains its commitment to enforce its already existing laws.

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<sup>5</sup> We incorporate-by-reference into this 2004 Brazil Report our 2003 Special 301 report on Brazil, which is posted at <http://www.iipa.com/rbc/2003/2003SPEC301BRAZIL.pdf>. For more details on Brazil's Special 301 history, see Appendix D (<http://www.iipa.com/pdf/2004SPEC301USTRHISTORY.pdf>) and Appendix E (<http://www.iipa.com/pdf/2004SPEC301HISTORICALSUMMARY.pdf>) of this submission.

<sup>6</sup> Press Release 2003-28, Office of the United States Trade Representative, "Special 301" Report Finds Some Progress on Intellectual Property Protection, but Significant Improvements Needed." Posted at <http://www.ustr.gov/releases/2003/05/03-28.pdf>. USTR's specific comments on Brazil are posted at <http://www.ustr.gov/reports/2003/special301-pwl.htm#brazil> (excerpt follows): "... Despite having adopted modern copyright legislation that appears largely to be consistent with TRIPS, Brazil simply has not undertaken adequate enforcement actions against increasing rates of piracy. In particular, very few prosecutions and deterrent convictions result from raids. There have been recent efforts to move toward enforcing copyright protection in the tri-border area. We look forward to stepped up enforcement actions by the Brazilian Government in the near term. In addition, we encourage the incoming Brazilian administration to: initiate legislation that strengthens the Brazilian enforcement framework against copyright and trademark infringement; commit resources to a broad enforcement action plan that effectively coordinates the work performed by several federal and state authorities, including the police, customs authorities, tax authorities and the judiciary; and investigate and raid illegal domestic manufacturing sources, distribution channels and key distributors. ... We will continue to monitor Brazil's progress in these areas, including through the ongoing GSP review that was initiated by USTR in 2001."

<sup>7</sup> IIPA Pre-Hearing Brief on Brazil IPR Practices to the GSP Subcommittee, Sept. 26, 2003, available at [http://www.iipa.com/gsp/2003\\_Sep26\\_GSP\\_Brazil.pdf](http://www.iipa.com/gsp/2003_Sep26_GSP_Brazil.pdf).

<sup>8</sup> During the first 11 months of 2003, \$2.3 billion worth of Brazilian goods (or 14% of Brazil's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 17.5% increase over the same period in 2002.

## **COPYRIGHT PIRACY IN BRAZIL**

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The copyright industries report that there has been no noticeable improvement in the piracy situation in 2003. Most of the industries continue to place estimated piracy levels at about 50% (or above) of the market, meaning that more than half of each market is composed of pirate products which are generally available at a fraction of the price of legitimate product. In addition to more traditional forms of piracy which the industries have been fighting for decades, piracy involving optical media and the Internet present more enforcement challenges.

### **The recording industry reports that legitimate sales continue to plummet due to piracy.**

Recording piracy in Brazil has grown exponentially over the past five years, from 5% of the CD market in 1997 to 52% in 2003. Over the last three years, recording piracy in Brazil has directly contributed to the closing of over 2,000 legal points of sale and in the loss of about 55,000 jobs, according to IFPI, representing the international recording industry.<sup>9</sup> Estimated trade losses due to sound recording piracy, in both compact disc and audiotape format, in Brazil amounted to \$338.7 million, with an overall piracy level of 52%. In 2003, the 52% piracy level translated into a volume of 94 million pirate units. All the major labels have released very inexpensive CDs in an attempt to fight piracy (in fact, CD music prices in Brazil are among the lowest in the world), but these efforts have not been successful. Record sales revenue in Brazil dropped some 18%, and unit sales dropped 25% during 2003. Meanwhile, recording companies continue to slash artist rosters and personnel to deal with a shrinking market.

RIAA continues to emphasize the point that pirate audio products are increasingly manufactured locally on CD-Rs. Local illegal replication through the use of CD burners and CD-R problem is so sophisticated that investigations and actions are very difficult to accomplish without the full intervention and commitment by federal authorities. The regional CD and CD-R piracy problem is linked to Paraguay, and unrestricted imports via airports and seaports in Brazil and its links to Southeast Asia—primarily of smuggled or misdeclared blank CD-R's. Pirate and bootleg music cassettes and CDs still enter Brazil mainly from Paraguay via Foz de Iguazu, Corumba, Uruguaiana, Salto de Guaira and Ponta Pora, and also through the ports of Santos, Paranagua, Recife and Salvador, as well as at the airports at Manaus, Rio de Janeiro, São Paulo (Congonhas, Guarulhos and Viracopos) and Foz de Iguazu. Paraguay acts as a bridge to deliver blank CD-Rs intended for piracy and some pirate CD product from Taiwan and China. Piracy has changed from an international industrial profile to a domestic semiprofessional effort — the distribution of product, however, remains highly organized. The audiocassette market in Brazil remains entirely dominated by piracy, as it has been for the past several years; almost 75% of this pirate product in Brazil affects Brazilian repertoire

### **Audiovisual piracy in Brazil continues, with VCD and DVD piracy on the rise.**

MPAA continues to report that audiovisual piracy rates remain high, pirate product continues to be ubiquitous, and piracy continues to worsen while anti-piracy enforcement continues to be generally ineffective. Estimated annual losses to the U.S. motion picture industry due to audiovisual piracy in Brazil are estimated to be \$120 million, with an overall audiovisual piracy rate of 30% in 2003.

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<sup>9</sup> IFPI (International Federation of the Phonographic Industry), Commercial Piracy Report 2003, Brazil, posted at <http://www.ifpi.org/site-content/antipiracy/piracy2003-priority-territories.html>.

MPAA reports several piracy trends in Brazil. First, Internet hard goods sales of pirate optical discs are increasing more rapidly than any other form of digital piracy in Brazil. MPA has tracked a steady increase in the incidence of Internet sites for hard goods sales, including both DVD-R and CD-R recordings of its member company product. Second, retail video store piracy remains a problem because of the continuing importance of video store revenue for local home entertainment operations. About a third of the VHS video market is pirate; most pirate videos are titles in current home video release. The majority of these are back-to-back copies made in the stores, with a growing percentage originating from small reproduction centers that distribute to stores. Particularly worrisome is the ability of these reproduction centers to counterfeit anti-piracy security mechanisms such as exclusive production colors of VHS cassette boxes. Third, optical disc piracy is increasing in Brazil, with a piracy rate approaching 15% of the market and accounting for approximately 25% of total seizures of pirate product. Moreover, optical disc piracy is showing a definite growth trend. Most pirate optical discs are CD-Rs, with only limited numbers of DVD-Rs. Inevitably, however, the growing DVD user-base will open the door for strong growth of pirate DVD or DVD-R. With the impressive growth of optical disc hardware, especially in the middle class population, this illegal competition will inevitably have a negative impact. Sales of low-quality CD-Rs are growing quickly in the street markets in urban centers. CD-Rs and DVD-Rs are also available in Ciudad del Este, Paraguay, on the Brazilian border, for illegal introduction into Brazil. MPAA has seen some improvements in piracy and anti-piracy on an *ad hoc* basis in limited areas of the country. These improvements, however, are based more on the good will of a few individual enforcement authorities than on any improvement in or commitment by their governmental institutions.

**Business software piracy continues in a variety of formats.** Brazil has a very large informatics/software development and distribution industry, which contributes positively to the Brazilian economy. The Business Software Alliance (BSA) reports that software piracy continues to exist in its traditional forms in Brazil, including illegal reproduction/duplication of software programs both for commercial (i.e., sale) and noncommercial (i.e., use) ends; illegal use by end-users, hard-disk loading of illegal software by computer resellers; and the manufacture and/or sale of counterfeit software products. One of the most alarming trends in recent years has been the increasing utilization of the Internet as a means of advertising illegal software to a large audience, and for the unauthorized electronic distribution of illegal software.

With respect to end users, BSA has concentrated most of its efforts on bringing civil enforcement actions against companies, which has had some impact on the level of piracy. However, there still exists a considerable business segment in Brazil that is far from having legalized. In civil infringement cases, where the business software industry has achieved some success, Brazilian courts continue to require extremely high expert fees and bond requirements. Because of lengthy delays, civil infringement cases related to the business software take many years to be adjudicated (currently more than 200 civil cases are awaiting judgment). In 2002, In 2003, BSA continued to engage in civil judicial actions (search and seizure) and criminal police actions promoted by the local industry association, ABES. BSA focuses its anti-piracy activities in the following states: Rio Grande do Sul, Santa Catarina, Parana, São Paulo, Rio de Janeiro, Minas Gerais, Espirito Santo, Bahia, Pernambuco, Ceara, Goias, Mato Grosso do Sul, and the Federal District of Brasilia.

**The entertainment software industry suffers from both optical media piracy imports as well as locally produced pirate product.** The predominant form of entertainment software piracy in Brazil continues to be CD burning, which accounts for about 80-90% of pirate product in the market. Although there continues to be a prevalence of factory-produced pirate products (so-called "silver disk" piracy) in the Brazilian market, the entertainment software

industry is not aware of any underground factories producing pirated optical media in the country. Factory-produced pirate console discs are usually produced in Asia (e.g., Malaysia) and exported to Brazil through Paraguay, or increasingly through other transshipping countries. Similarly, pirate entertainment software in cartridge formats continue to be shipped from Asia (primarily China) through Paraguay, sometimes assembled there before being transported across the border into Brazil. Estimated trade losses due to entertainment software piracy in 2003 were \$125.7 million, with an overall estimated piracy level of 56%.

There are several venues through which pirated entertainment software products are sold. For the CD-burning operations, advertisements of pirated products are usually placed in newspapers or on the Internet, with the customer calling in to place their "orders." Most of these operations are highly organized in nature. It should be noted that although the Internet continues to be primarily an advertising medium for CD-burning operations in the country, there are a number of "warez" sites that are a popular source of pirate game software. There is also a large amount of infringing videogame product appearing on Portuguese language auction sites. The Entertainment Software Association (ESA) works with the local association ABES on anti-piracy actions. In many of the Internet cases handled through ABES, the compliance rate for requests for takedown of infringing product has been quite satisfactory. In terms of retail piracy, large quantities of piratical and counterfeit factory-produced discs appear in the "promocenters," which are small retail booths renting space in larger markets and galleries. In addition to promocenters, flea markets and street vendors continue to be sources of pirate products. But given the lack of a fixed location for these operations, enforcement against such vendors becomes rather difficult, particularly in tracing them back to the bigger operations that supply them with illegal products. The police have shown reluctance in taking action against these vendors, particularly where they are minors and possibly where there are links to organized crime.

**Unauthorized photocopying continues to undermine the legitimate book publishing markets.** The publishing industry reports that unauthorized photocopying of English language study materials and individual lessons and chapters from textbooks, as well as entire books, continues to be the major form of book piracy in Brazil. Estimated trade losses due to book piracy in Brazil remained at \$14 million in 2003. AAP indicates that photocopying on university campuses remains rampant, despite the combined efforts over the years of local publishers and the Camara Brasileira do Livro (the local publishers association) to address this problem. Imported educational materials are commonly photocopied. Many university texts used are *apostilas*, anthologies made up of chapters from various books copied illegally, both in English and in translation. Some professors make photocopied compilations of materials before the first date of classes, which gives the booksellers no chance to import or sell the books before classes. Some estimates place the annual number of unauthorized photocopies at from 3 to 5 billion pages. Some of the largest universities are discussing legitimizing the photocopying that goes on in their libraries; there are, however, only a few contracts signed between the universities and the ABDR (Associação Brasileira de Direitos Reprograficos). The ABDR has not been successful, nor are university publishers willing to give up reproduction rights. This RRO (reproduction rights organization) and another called APPDR are planning to merge. The few contracts that exist will be suspended pending these negotiations and the arrangements of new payment schedules. The potential future problem may involve unauthorized translations as more U.S. publishers begin to enter that specific market in Brazil.

**Overview of optical media piracy undermines the market for legitimate products.** Replication of pirate optical discs sold in Brazil, whether on a large or small scale, such as the many CD burner operations scattered throughout Brazil, generally cuts across all the copyright



industries. Pirated optical media product, primarily manufactured in Southeast Asia and Paraguay, continues to cross the porous Brazilian borders, devastating the local markets. (See industry-by-industry discussion, above).

Reports indicate that there are nine CD plants, with 11 lines, in Brazil; most of these plants are believed to be operating legitimately and are not a significant source of pirated OD product. There are also growing numbers of small duplication facilities which assemble CD burners; in turn, these facilities can produce a significant amount of pirate CDs each day. Another problem is the large-scale distribution networks in Brazil, whether these involve thousands of street vendors and established facilities (such as gas stations) which blanket the major highways in Brazil, or the non-established facilities in *camelodromos* (flea markets), or on the streets, and finally, the large quantities of blank recordable compact discs (CD-Rs) which are being imported as contraband into Brazil. The entertainment software industry has seen both Asia-source counterfeits as well as locally produced (i.e., through commercial burn-to-order operations) discs find their way to Brazilian street markets. The legitimate DVD market grew rapidly in 2003 and pirate product is beginning to fill some of the new demand.

**Internet piracy in Brazil is increasing.** All the industries report that the Internet is increasingly being used in Brazil as a means to distribute pirated product. The audiovisual, business software, recording and entertainment software industries all report positive responses to their campaigns to takedown websites and webpages in Brazil which offer piratical copyright content. The business software industry reports positive responses to its campaign to takedown offers in auction sites in Brazil, achieved with cooperation of the auction sites

The audiovisual industry has seen an increase in the use of the Internet as a distribution system for optical disc piracy, usually offered on web sites for delivery COD. In 2003, the MPA Brazil office coordinated with federal police in 14 raids on reproduction centers using the Internet for commercial distribution of CD-R or DVD-R; seven persons were arrested and are being processed for criminal copyright infringement. MPA sent over 2,400 notices to ISPs in Brazil regarding the unauthorized distribution of copyrighted material.

ESA's domestic enforcement program also had some success in its online enforcement efforts, resulting in the take down of approximately 381 pirate websites and over 4,000 auction listings for pirate products from April through June 2003. In a significant development, the entertainment software industry, along with the recording, motion picture and business software industries, also obtained agreement from "Arremate.com" (an auction site) to receive notices of infringement from right holders regarding auctions of pirate products as well as to immediately take down auction listings for pirate products. The auction site also agreed to modify its seller registration policies to allow disclosure of the registration information of online sellers of pirate products to the local associations.

The recording industry reports that through a local internet anti-piracy campaign 755 websites were taken down and 20 more are under investigation. In addition, the campaign produced the first indictment for internet piracy in the city of Cuiritiba against a website named mp3forever.com in August 2003.

**Organized crime remains a significant concern.** Prosecutors of organized crime-related cases now include piracy on their agenda (along with narcotics, money laundering, etc.). For example, this linkage was made at their national meeting February 18, 2003 in Porto Alegre. During 2003, the business software industry continued to promote awareness and education campaigns showing the relationship between piracy and other organized crime. This sought to

increase public awareness of the nature and repercussions of piracy in Brazil. This campaign has had a significant effect, at least in the minds of government prosecutors.

## **BRAZIL LACKS A NATIONAL PLAN TO FIGHT PIRACY**

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**The Inter-Ministerial Committee (IMC) has failed to implement any coordinated national anti-piracy plan.** It would appear, at first glance, that the most tangible step taken by Brazil toward addressing a national anti-piracy plan in recent years was its March 13, 2001 decree implementing the Inter-Ministerial Committee to Fight Piracy (IMC).<sup>10</sup> Appearances can be deceiving, however. IIPA and its members noted at the March 2001 GSP hearing that it was imperative that inter-agency coordination be established immediately in order to take swift action to combat widespread copyright piracy and improve enforcement across the responsible Brazilian agencies.

Under the Lula Administration, the IMC has maintained its organizational structure and remains completely ineffective. An indication of IMC's lack of action is demonstrated by the Congressional decision not even to invite the IMC Director or any of the IMC's members to testify during the current Congressional investigation into piracy and anti-piracy enforcement. This IMC, still headed by the Ministry of Justice, spent at least its first full year of the Lula administration discussing issues but without taking any action (and with almost no participation by the private sector). Its only actions have been to release a brochure explaining the dangers of piracy and to co-sponsor a conference in October 2003 to discuss piracy. Its approach to piracy has been primarily rhetorical in nature, and it has taken little concrete enforcement or enforcement-coordination action. The IMC's paralysis is a reflection of the anti-piracy paralysis in the Ministry of Justice which, under the Lula administration, has completely stopped the few advances made late in the Cardoso administration (such as coordinated national raids, training courses and an MOJ/Industry anti-piracy information database).

**The Brazilian Congress steps up to investigate piracy.** The Brazilian Congress has taken steps to examine and confront the piracy problem. In late May 2003, the Brazilian Chamber of Deputies convened a parliamentary commission to analyze the adverse economic impact of copyright piracy, smuggling and tax evasion. Starting in mid-June 2003, the Commission on Parliamentary Inquiry (CPI) held hearings; many IIPA member associations and their local representatives testified at those hearings. The industries continued to request concrete results in effective criminal anti-piracy actions to lead to a reduction in the high levels of piracy which afflict Brazil.

The CPI, originally set to end its investigation at the end of September 2003, requested an extension of its efforts. The CPI's work will now last until June 2004. The CPI will continue its investigation before releasing its report to the Speaker of the House. The report is expected to be critical of the Administration's lack of concrete action against piracy and will hopefully make specific recommendations to the Ministry of Justice regarding action by the Secretaria de Seguraca Publica in establishing federal task forces, both geographic and territorial, establishing an anti-piracy coordinator at each State office, establishing formal and specific

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<sup>10</sup> The Inter-Ministerial Committee is led by the Ministry of Justice, and is composed of three representatives from the Ministry of Justice, two from the Ministry of Science and Technology, two from the Ministry of Culture, two from the Ministry of Development, Industry and Foreign Trade, two from the Ministry of Treasury, and two from the Ministry of Foreign Affairs.

operational coordination with industry and reporting actions/results to the follow-up Congressional Committee on Piracy.

In parallel with the CPI proceedings, some of the CPI's members created a permanent congressional presence (political and physical) in the form of a non-partisan Anti-Piracy and Anti-Tax Evasion Parliamentary Movement (*Frente Parlamentar de Combate à pirataria e à Sonegação*). This Congressional Committee on Piracy movement was launched in the first week of September 2003. It comprises members of Congress (110 members have indicated interest in participating although local reports estimate that the core group will be 8 to 10 members), with a formal leadership group. This committee will make permanent the current work of the CPI. Although most such congressional committees are "virtual," this committee is expected to have a permanent office and staff. Significantly, the initial indication is that this congressional committee will be run operationally by the private sector via a Secretary chosen and paid by industry. As such, there appears to be some optimism that this committee will continue to press the Administration for enforcement, will follow up its recommendations and will continue to investigate corruption and important cases. We understand this committee will most likely begin its activities after the CPI concludes, which likely means starting up in the June 2004 time frame.

The bottom line is that the present Administration has not gone beyond limited rhetorical acknowledgement of the piracy problem affecting Brazil, notwithstanding the Congressional investigation and the fact that piracy's principal victims are Brazilian creators. While the Brazilian government can present some positive movement against piracy, such improvement comes from institutions and individuals acting outside the Administration's efforts. Neither the CPI, nor the State-level task forces and organized crime investigations, nor the municipal efforts to attack piracy, are due in any manner to the Administration's efforts. In fact, the lack of participation by the Lula Administration presents a real danger that the efforts of members of the Brazilian Congress and the efforts of a few law enforcement individuals will continue to receive nothing more than rhetorical support and will never reach the level of effective action that only federal coordination and support can bring.

**Although there is no federal coordination, some organized enforcement actions at certain state and local levels have been encouraging.** Although a few Brazilian police units have conducted a substantial number of raids, these raids have resulted in very few criminal prosecutions. Police raiding activities are inconsistent, with the level of attention varying throughout the country. For example, the copyright industries report good cooperation with certain Brazilian states. Specifically, the state government of São Paulo has created a specialized police unit for piracy cases, the DEIC, which is part of the Organized Crime Office. The municipality of Porto Alegre in Rio Grande do Sul has established a municipal effort to fight piracy.

The State of Rio de Janeiro announced the creation of a special anti-piracy task force in mid-2002, and activated its Special Anti Piracy "Delegacia" (Precinct) some three months ago. Some industries report that this task force is beginning to conduct some limited operations, and is beginning to show limited results in a region that has historically been subject to corruption and ineffective anti-piracy enforcement. Nevertheless, this task force (which notably is state-funded and not a federal effort) is a small operation with human and financial resources far below the need shown by the private sector, both copyright and trademark. Ironically, the first such state anti-piracy office — that in São Paulo — is currently enmeshed in investigations of corruption that reach to higher levels and include the arrest of police officers and commanders. Other state-level anti-piracy efforts have arisen on an *ad hoc* basis, including similar police task

forces in Goias and Pernambuco; some prosecutors have also expressed interest in anti-piracy actions as a form of organized crime. Note, however, that these efforts are not initiated by the current Administration, are not federal efforts, are not part of an overall government strategy and are certainly not permanent.

## **CRIMINAL CODE IN BRAZIL**

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The Brazilian criminal code was amended in 2003 to clarify and strengthen certain procedures and penalties which had hobbled effective enforcement throughout the 1990s. The Brazilian penal code was reformed in 1993; however, those 1993 amendments failed to include procedural provisions which would have permitted the police to seize all infringing copies (instead of just the amount of product necessary for evidentiary purposes) and implements used for reproduction which are found during an anti-piracy raid. In addition, the levels of fines in the 1993 amendments were subsequently overwhelmed by inflation, and should have been tied to the indexing system in the general provisions of the Brazilian penal code.

In 1995, a criminal procedure regulation was issued for the purpose of alleviating serious overcrowding of the court dockets. Law No. 9099-95 provides for the suspension of proceedings, with a two-year probation for first-time offenders, requiring the defendant to redress monetary damages as a condition to granting the suspension. When the regulation first went into effect, the copyright industries were hopeful that it could have a positive impact on piracy, because it requires the defendant to pay damages as a condition to granting the suspension, and the accused remains on probation for a period of two years. As the courts commenced issuing suspensions, the copyright industries exhibited serious concern that these regulations were not supporting the creation of a system which has expeditious and deterrent penalties. In fact, as detailed in the enforcement chart below, most copyright cases have been cycled through this system of suspensions which in turn resulted in no deterrence

On July 1, 2003, the Brazilian criminal code was amended to increase criminal sanctions for copyright infringement and amend certain procedures. Effective August 1, 2003, this new Law 10695 amended Article 184 of the Criminal Code by raising the minimum penalty from one year to two years in prison for persons convicted of illegally reproducing, distributing, renting, selling, acquiring, smuggling into the country, or storing protected copyright works with the intent to profit from reproductions. A fine will also apply in addition to the prison sentence.<sup>11</sup> The maximum penalty will apply if the violation involves supplying unauthorized works to the public via cable, optic fiber, satellite, airwaves or any other method of transmission for a profit. Those persons infringing copyright without intent to profit are subject to detention of three months to one year or a fine. These amendments are significant because penalties of one year or less of jail time, at the state level, could be commuted to a fine, or a judge could suspend a case indefinitely (Law 9099-95). The amended law also codifies procedures to seize and destroy contraband and provides judges authority to dispose of seized equipment in a way that ensures it will not be used for commercial purposes.

Although almost six months have passed since these amendments entered into effect, it still is too early to tell how Brazilian prosecutors and courts will implement them into their

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<sup>11</sup> The law changes the "unit" of fines and bonds from "daily salary" units to "monthly minimum wage" units. In other words, the minimum fine or bond is now 240 Reais (US\$82) instead of 1/30th of that amount. The judge sets the fine/bond, not the law. The maximum penalty continues to be four years in jail. In a recent MPA case, the judge set the bond at 4,800 Reais (US\$1,644), the highest amount MPA has seen.

criminal practice. Suspensions in copyright cases have been the norm, thus contributing to the lack of effective deterrence against copyright piracy in Brazil. The industries are working with prosecutors to enforce the amendments. The recording industry reports that thus far they have not experienced any major obstacles regarding the deposit of seized merchandise; official experts continue working with samples of the seized goods. The amendment affecting experts' determinations is also positive in that it allows a single private party with technical knowledge to make a determination; such a determination, therefore, could be made by an industry expert. MPAA reports that the amendment law is helpful in three ways: (a) it requires the judge to assign custody of the evidence to the injured party — in the past, judges have turned evidence over to suspects who have in turn altered the evidence in ways prejudicial to MPAA's case; (b) police are more inclined to view piracy as a serious crime worth their time; and (c) suspects apprehended by police are now held until released by a judge, costing the suspect at least time, a bond and perhaps attorney fees.

However, the business software industry has expressed concern over the 2003 criminal code amendments in that they fail to increase sanctions for the infringement of computer programs because the one-year sanction for computer software infringement still appears in the separate 1998 Software Law, unchanged by the amendments to the criminal code. The software industry can only use the criminal code amendments to the extent those sections do not conflict with existing law. This means that the procedural provisions regarding the expert reports and the custodial aspects of evidence in the criminal code can be used by the software industry. However, because the minimum penalty of the separate software law (one year) has maintained unchanged, criminal infringement cases brought by the software industry will still be subject to automatic suspension under Law 9099-95.

## **COPYRIGHT ENFORCEMENT IN BRAZIL**

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The major criminal enforcement problem in Brazil has been failure of Brazilian authorities to emphasize serious prosecution and deterrent sentencing. There is a general lack of interest, and delays hamper effective enforcement of the copyright law throughout the criminal enforcement system, especially with judges and prosecutors. Police activity has been moderately successful at the raiding level (depending on the jurisdiction), but these result in few prosecutions. The business software industry reports moderate success in its ability to obtain deterrent civil judgments.

### **Criminal Copyright Enforcement in Brazil is Not Effective, and Not Deterrent.**

#### **Police raids are numerous, yet inconsistent among the various Brazilian states.**

While isolated police efforts have been moderately successful at the raiding level, the actions they take rarely reach conclusion in the courts. There is still a lack of clear and direct instructions from the highest levels that would direct the various enforcement authorities (such as Receita Federal, Policia Federal, Policia Civil, Policia Militar, Policia Fazendaria, Alfandega) to act in cases of copyright infringement.

The level of police attention to piracy varies throughout the country. Certain industries are able to achieve adequate cooperation with police officials, often depending on the region and on personal contacts. Most enforcement efforts in Brazil are commenced by investigations conducted by the copyright industries themselves, and are usually not the result of any major Brazilian government or law enforcement initiatives. Because Brazil has many different police

corps, the rivalry among them, with some few exceptions, negatively impacts their ability to conduct effective and efficient raids. Federal police officials have jurisdiction over the types of crimes that are generally viewed as producing large-scale corruption (such as tax evasion, drug trafficking and money-laundering). Most industry-led enforcement efforts end up being handled by state and local police officials.

The ESA reports several police actions against videogame piracy were taken last year. In April through June 2003, the local police ran several raids against retail and promocenter outlets, as well as street vendors, in São Paulo and Rio de Janeiro, resulting in the seizure of approximately 300,000 pirated game products (including PC and console games). At a raid on a retail market in São Paulo, a huge uproar ensued, with store owners attempting to close their stores before the police gained entry. However, efficient police action resulted in apprehending these store owners, who were then escorted to the police station for questioning. The police, based on information provided by ESA's domestic program, also took action against two CD software labs in the Santa Catarina region, where 2,200 master copies well as reproduction equipment were seized. There have also been investigations conducted against individuals who run commercial CD-burning operations, such as a raid on an apartment in São Paulo that resulted in the seizure of more than 2,400 infringing discs along with two CD burners. ESA's domestic enforcement program has also participated in law enforcement training events in São Paulo as well as the City of Campinas. So far in 2004, the ESA sees a positive enforcement trend, with more police actions focused on laboratory operations involved in the production of pirate optical media, including game software. Three raids against small- to medium-sized operations, mostly involved in CD-R burning operations, were accomplished in January 2004 in São Paulo.

**Brazilian prosecutors pursued very few criminal cases in 2003, despite numerous complaints filed and raids run.** Prosecutorial attention to copyright offenses is inconsistent, especially in the provinces. Case backlogs constitute a serious enforcement problem, caused by burdensome substantive and procedural formalities and a general lack of resources. Over the last six years, the ratio of convictions to the number of raids run each year is less than 1%. Enforcement efforts sometimes fail due to the lack of sufficient skilled government agents to investigate violations and due to technical deficiencies in the handling and examination of evidence.

**Non-deterrent penalties have been the unacceptable norm.** In those very few criminal copyright cases which do reach judgment, the sentences are primarily small fines, probation and community service. Between 1995 and 2003, most of the cases resulted in suspensions or dismissals under Law 9099-95, a law which permits judges to sentence first-time offenders with up to two years' probation and monetary damages. Recent amendments to the Brazilian criminal code and the criminal procedural code are aimed at improving prosecutions and sentencing. However, IIPA and its members do not yet have sufficient information to evaluate how the new criminal code is being implemented by prosecutors and judges, given that the amended law has only been in effect for less than six months. MPA reports that the number of sentences in 2003 remained nearly the same as in 2002, and although MPA expects an increased number of indictments in 2004 and 2005, they do not expect to see results of the new law for some time.

**Delays by police, prosecutors and judges in criminal cases.** It takes a long time for a criminal case to wind its way through the Brazilian courts. Delays in criminal copyright infringement cases can take as long as two to three years in the courts of first instance. As a result, there is a tremendous backlog of cases in the Brazilian courts. The police often keep the

case files in their offices for seven or eight months before sending them to the prosecutor's office to file the criminal case. One solution often proposed to address the problem of delays has been the creation of a specialized court for copyright matters (see discussion, below).

**BRAZIL**  
**CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS**  
**1998 to 2003**

ACTIONS	RECORDING INDUSTRY	MOTION PICTURE INDUSTRY	BUSINESS SOFTWARE INDUSTRY	TOTALS
	1998 (1999) [2000] {2001} -2002- 2003	1998 (1999) [2000] {2001} -2002- 2003	1998 (1999) [2000] {2001} -2002- 2003	1998 (1999) [2000] {2001} -2002- 2003
Number of complaints filed with police	530 (154) [153] {188} -206- 190	1,320 (832) [1,957] {1,750} -- 1,825 -- 2,995	34 (118) [134] {273} -253- 351	1,884 (1,104) [2,244] {2,211} -2,284- 3,536
Number of raids conducted	680 (777) [1,011] {621} -870- 1,018	2,381 (1,671) [1,535] {1,354} -- 1,640 -- 2,995	34 (118) [134] {273} -253- 175	3,095 (2,566) [2,680] {2,248} -2,763- 4,188
Number of pirate copies seized	2.85 million (1.40 million) [3.22 million] {2.73 million} -3.78 million-  5,686,253	243,581 (212,063) [220,878] {225,785} -253,805 VHS, 56,037 OD- 254,230 VHS and 134,417 CD-R	NA (NA) [212,898] {351,944} -355,156-  574,341	+3.09 million (1.61 million) [3.65 million] {3.3 million} -4.4 million-  6.64 million
Number of cases suspended or dismissed	NA (18) [28] {39} -40- 29	148 (235) [146] {87} -144- 23	0 (0) [0] {0} -0- 0	+148 (253) [174] {126} -184- 52
Number of defendants convicted (including guilty pleas)	5 (3) [11] {7} -11- 8	1 (0) [2] {13} -13- 14	0 (1) [0] {0} -0- 0	6 (4) [13] {20} -24- 22

**BRAZIL**  
**CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS**  
**1998 to 2003**  
**(continued)**

ACTIONS	RECORDING INDUSTRY	MOTION PICTURE INDUSTRY	BUSINESS SOFTWARE INDUSTRY	TOTALS
	1998 (1999) [2000] {2001} -2002- 2003	1998 (1999) [2000] {2001} -2002- 2003	1998 (1999) [2000] {2001} -2002- 2003	1998 (1999) [2000] {2001} -2002- 2003
<b>Criminal sentence issued</b>	Minimal fines (Minimal fines)  [Minimal fines]  {Minimal fines}  -Ranging from: 1-year community service; 2 years community service and fines; 2 years in jail plus small fine; 6 years in jail plus 20 days' fine-  Minimal fines	Community service (None)  [Community service]  {up to 2 years, all given probation} - community service, probation -  Minimum 1-year, maximum 18-months, all suspended	None (2 years' probation plus fine <\$600)  [None]  {None}  -None-  None	Minimal (Minimal) [Minimal] {Minimal} -Minimal-    Minimal
<b>Ratio of convictions to the number of raids conducted</b>	0.74% (0.39%) [1.09%] {1.13%} -1.26%- 0.79%	0.04% (0%) [0.13%] {0.96} -0.79%- 0.47%	0% (0.85%) [0%] {0%} -0%- 0%	0.19% (0.16%) [0.49%] {0.89%} -0.87%- 0.53%

Note: Statistics for this enforcement chart are provided by IFPI Latin America (IFPI), the Motion Picture Association (MPA), and the Business Software Alliance (BSA). The recording industry has reviewed and revised its statistics from 1999 to 2002, and the revisions are reflected above. Also, the suspensions or dismissals cited above are the result of judicial decisions under Law 9099-95, which permits judges to sentence first-time offenders with up to two years' probation and monetary damages. NA = Not Available.

**Brazilian Border Measures Remain Ineffective.**

The copyright industries have long recommended that controls at the major transshipment points be strengthened. Products from Paraguay and those shipped to Brazil's free ports of Santos and Paranagua should be inspected and thoroughly documented. Although much of the music and audiovisual piracy has turned to domestic production, infringing copies of entertainment software (both in silver disc and cartridge format), and misdeclared and infringing blank CD-Rs, continue to enter as infringing imports. Brazil promised the U.S. years ago that it would work with the Paraguayan government on border issues, but only recently have a few enforcement efforts been observed at the Brazilian border.



Brazilians take advantage of the lack of border controls and install manufacturing, assembly and printing facilities on both sides of the border, bringing their products back and forth without any kind of control. To stem the flow of this product, IFPI and Phillips presented in 2002 a joint petition to the Customs Central Coordination (COANA) requesting a number of measures which include creation of a specific line item for blank CD-Rs, checking imports for under-valuation and monitoring entry of known pirate CD-R labels. Unfortunately, nothing has been done yet.

### **Significant Damage Awards Have Been Issued in Civil Copyright Cases, But Lengthy Delays and High Bond Requirements Pose Problems.**

The business software industry uses civil actions in its anti-piracy campaign in Brazil, in addition to criminal enforcement. BSA continues to bring civil search and seizure actions, followed up in most part (unless the defendant settles within 30 days of the search and seizure) with the filing of civil damages suits. The level of damages awarded in these software cases is unprecedented worldwide with respect to software copyright infringement suits.

Such success is not without some glitches. First, the civil court system in Brazil is notoriously overloaded, inefficient, and slow. Cases usually take from 18 months to four years to come to trial. Moreover, defendants have many grounds for appeal, and this process regularly takes three to four years before a judgment is issued by the relevant superior court. Due in large part to these unacceptable delays and the lack of attention of judges to copyright protection, BSA currently reports that more than 200 civil cases are awaiting judgment. Civil infringement cases related to the business software take many years to be adjudicated. Second, Brazilian courts also continue to require extremely high expert fees and bond requirements. In some BSA cases during 2003, for instance, bonds of US\$50,000 to US\$100,000 were required, and BSA had no option but to terminate the cases without seizure of the defendant. On average, BSA has paid up to US\$5,000 for experts' fees and up to US\$25,000 as bonds. However, there have been other cases in which the bonds were so excessively high that the BSA could not afford to continue the case.

## **COPYRIGHT LAW IN BRAZIL**

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**1998 Copyright Law and 1998 Software Law:** Under its 1994 agreement with the U.S., Brazil promised to enact legislation on computer software and to pass amendments to its copyright law by making "best efforts" to accomplish this by January 1, 1995. Finally, both bills were enacted in 1998. The Software Law (Law No. 9.609) entered into effect on February 20, 1998 and the amendments to the 1973 copyright law (Law No. 9.610) entered into effect on June 20, 1998. As a statutory matter, Brazil has already implemented its substantive copyright obligations compliant with, and even beyond, those required by the TRIPS Agreement. These include protection for temporary copies. Brazil already affords a term of life plus 70 years for works and 70 years following first publication for sound recordings. Brazil also has implemented at least some of the provisions of the two WIPO Internet treaties to include provisions against circumvention of technological protection measures. Brazil has even provided preset statutory damages for copyright infringement, a key enforcement tool which has resulted in the imposition of deterrent-level civil damages. Although these 1998 laws provide good levels of substantive protection, they are not enforced in practice (see discussion, above). In addition, the Brazilian

government unfortunately has refused to date to ratify the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, despite the fact that its copyright law is quite comprehensive and the Brazilian creative community relies on copyright protection to reach the global market.

**Tax evasion:** After years of effort, the Brazilian software industry, with the support of the U.S. software industry, succeeded in obtaining a “fiscal crime” provision in the 1998 Software Law. Under the Software Law (Article 12, Section 3, Paragraph II), tax evasion that frequently characterizes acts of software piracy can be pursued by the tax authorities as an independent public action. BSA was hopeful that this type of tax evasion case would have a significant impact to lower software piracy in Brazil, especially by medium-sized and large companies. However, it seems clear that the Brazilian IRS (Receita Federal) and the respective state tax authorities are dedicating no resources to pursue these tax evasion cases. The basis of these actions is that the state is suffering great losses due to the sale of illegal software, as pirate resellers are not collecting the applicable tax from purchasers upon such sale.

## **ADDITIONAL ISSUES**

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**Specialized IPR courts with copyright jurisdiction are needed.** The Industrial Property Law (Law No. 9279, which entered into effect in May 1997) authorized the judiciary to create specialized IPR courts. The copyright industries and other interested parties are working with appropriate judicial officials to prepare for the formation of these courts, which would significantly improve intellectual property rights enforcement. Our reports indicate that these courts are restricted to industrial property matters. No specific action has yet been taken to create these courts. Consideration of this remedy to help ameliorate the sorry state of anti-piracy enforcement would be welcomed.

**Government software management:** The Brazilian government should be encourage to continue its efforts to implement effective software asset management practices in its public ministries and agencies. This will allow it not only to ensure all of its software is licensed, but will also help it make the most out of its investments in information technology. Good software asset management practices can best be achieved through active public-private sector partnership. The government should work closely with the private sector in this regard.

**Non-tariff barriers — Remittances, computer software and tax barriers:** Although Brazil has eliminated most of the non-tariff barriers that afflict the computer software industry, several issues still remain. These non-tariff market access barriers, if corrected, could increase additional foreign investments in the technology sector and help further develop the technology industry in Brazil. One of the main issues deals with a law passed by the previous administration. Law 10.332 imposes an additional 10% tax called “CIDE” (Contribuição de Intervenção no Domínio Econômico) on international payments for technology and royalties of any nature. CIDE essentially raises taxes on foreign remittances of royalties, etc., to 25% as there is currently a withholding tax of 15% on the remittance of payments related to software licenses. The constitutionality of CIDE is also questionable as it is currently being challenged in court by several Brazilian and international software companies, based upon the argument that CIDE was enacted under the wrong procedure (the Brazilian Constitution, Article 146, Section 3, demands a complementary law to impose the “CIDE”, and Law No. 10.332 is an ordinary law).

A second market access concern involves a Central Bank's requirement (per Circular No. 2685 of May 1996) that an agreement duly registered with the Ministry of Science and Technology (including the registration certificate) be presented to the financial institution conducting the currency exchange operation as a prerequisite to remitting overseas payments. The Central Bank of Brazil currently requires all documentation listed in Circular No. 2682 of May 1996 of the Central Bank. Furthermore, the Brazilian entity seeking to make the remittance must also present an import license, an invoice from the (foreign) supplier, and an invoice that the Brazilian entity has issued to the purchaser of the program, among other documentation.