

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2001 SPECIAL 301 REPORT

BRAZIL

EXECUTIVE SUMMARY

The IIPA recommends that Brazil be elevated to the Special 301 Priority Watch List this year. We also strongly support the U.S. government's initiation of a review of Brazil's intellectual property rights practices under the Generalized System of Preferences (GSP) program, a U.S. trade law. This GSP review was prompted by a petition filed by the IIPA in August 2000.

Brazil occupies a very important and sensitive position with respect to copyright protection and the status of the copyright industries. Brazil is simultaneously one of the largest markets in the world for legitimate copyrighted materials, and home to one of the globe's greatest pirate marketplaces. Moreover, the cultural dimensions of piracy in Brazil are perhaps unequalled given the tremendous stake of Brazilian creators, and would-be creators, in the cultural marketplace. In some areas, such as music for example, Brazilian record companies, performers, songwriters, composers, music publishers and musicians bear the brunt of piracy — more than 70% of the piracy in Brazil is of their creations. In addition, Brazil has a large legitimate computer software/informatics sector, as well as by far the largest and most active internet sector in Latin America, which would also benefit enormously from strong action against piracy (see tax and employment losses in Brazil as a result of software piracy at page 9).

If Brazil were to effectively address the piracy problems outlined in this report, its cultural sector and overall copyright industries would undoubtedly become one of the strongest in the world, and the Government of Brazil would simultaneously increase its tax base. Thus, while U.S. industries believe that Brazil should not expect to enjoy preferential trade status with the U.S. while it is denying effective protection to U.S. copyright owners, we hasten to add that firmly addressing piracy would first and foremost create a platform for Brazilian creativity, and inure to the great benefit of Brazilian society. We are heartened by recent accounts that the Government may be bracing itself to engage in this battle, and we pledge our support in this initiative.

Pirated optical media product, primarily manufactured in Southeast Asia and Paraguay, crosses Brazilian borders and devastates the local markets. Organized crime elements, from within and outside Brazil, exercise control over the production and distribution of infringing copyrighted products. While a few Brazilian police units have conducted a substantial number of raids, this is, unfortunately, the exception rather than the rule. Sadly, these raids have resulted in only a miniscule number of criminal prosecutions, and of those few cases, the judgments that have been issued have not been deterrent. To compound matters, legislative efforts to improve processing of criminal cases have resulted in more defendants in copyright infringement cases being released instead of serving their sentences. In civil infringement cases, the business software industry has achieved some success, but Brazilian courts require extremely high expert fees and bond requirements in these cases.

The Brazilian government has made numerous commitments to U.S. government officials to address the core problems of extremely high piracy rates and inadequate enforcement. And yet there has been little concrete action by Brazil to address these issues. In 1999, Brazil proposed plans of action and proposals to both the U.S. government and the copyright private sector. Engagement with the private sector halted abruptly after the industries offered suggestions to improve the Brazilian government's proposal. Again, in 2000, there were very few collaborative initiatives on anti-piracy matters taken by Brazilian authorities. Even though our industries continue to increase their anti-piracy investigations, foster public awareness through educational campaigns, and expand their local presence, piracy continues to grow. Despite impressive strikes by Brazilian industry to legalize their acquisition and use of legitimate business software, the Brazilian government has lagged behind. Estimated trade losses due to copyright piracy of U.S. products in Brazil escalated to \$956 million in 2000.

The IIPA notes that Brazil has apparently recently formed an Inter-Ministerial Committee under the leadership of the Minister of Justice. We look forward to an official statement confirming this understanding, and hope that it signals a new intention by the Government of Brazil to address the many problems affecting Brazilian and U.S. copyright owners. We welcome this development, and look forward to seeing progress made in the near future.

BILATERAL ENGAGEMENT ON COPYRIGHT ISSUES

During the 1990s, Brazil received a significant degree of attention from the U.S. government under the Special 301 bilateral trade tool.¹ On April 30, 1993, the U.S. Trade Representative designated Brazil as a Priority Foreign Country. As a result of the ensuing Section 301 investigation, in a February 1994 diplomatic agreement the Brazilian government committed to take certain concrete steps to improve its IPR regime, including the early implementation of TRIPS, improving protection for computer software, addressing certain tax issues affecting computer software, and improving copyright enforcement in general. Over the next few years, Brazil's placement on the Special 301 lists seesawed between the Special Mention list and the Watch List.

USTR put Brazil back on the Watch List in April 1999, noting that "the lack of effective enforcement is a serious and growing concern. Some efforts have been made to improve copyright enforcement, but these efforts have fallen short given the scale of the piracy problem in Brazil and the absence of a coordinated strategy on the part of the government. Piracy rates have continued to climb over the past year, and the sound recording industry saw its losses double in 1998. We have particular concerns with proposed legal reforms that could reduce criminal penalties for intellectual property crimes and remove police authority to engage in *ex officio* searches and seizures on their own initiative. We look to the Government of Brazil to take decisive action to reduce piracy rates, focusing on the major markets currently being devastated by piracy. We also look to the Brazilian government to ensure full implementation of all TRIPS obligations, including enforcement obligations, no later than January 1, 2000."²

¹ For more details on Brazil's Special 301 history, see Appendices D and E of this filing.

² Press Release, Office of the U.S. Trade Representative, April 30, 1999.

The 2000 deadline came and went, without any meaningful action. Despite IIPA's recommendation in February 2000 that Brazil be elevated to the Priority Watch List, Ambassador Charlene Barshefsky kept Brazil on the Watch List, noting: "... Progress has not been sufficient on Brazil's commitment to increase effective enforcement actions, from raids through judicial decisions, against intellectual property infringement; the rate of CD piracy in Brazil continues to worsen. Failure to address this problem could lead to the collapse of the market for legitimate CDs in Brazil. We look to Brazil to significantly increase its enforcement efforts against video, music CD, video game, as well as other piracy in the coming year, consistent with its WTO obligations. We hope that the newly formed inter-ministerial IPR task force will prove effective in this regard."³

IIPA and its members looked to Brazil to increase its enforcement efforts against copyright piracy. However, the lack of progress being made by Brazil to enforce its copyright law through the first half of 2000 led IIPA to file a petition against Brazil on August 21, 2000, responding to USTR's invitation for interested parties to "submit petitions to have the status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria" in the 2000 Annual GSP Country Eligibility Practices Review. (See 65 Fed. Reg. 41514 [July 5, 2000].) Specifically, Section 502(c)(5) of the Trade Act of 1974, as amended, requires the President to "take into account the extent to which such country is providing adequate and effective protection of intellectual property rights."⁴ IIPA's petition asked the President to (1) review the eligibility of Brazil as a GSP beneficiary developing country, and, if Brazil fails to achieve swift improvements, then (2) the President should suspend or withdraw GSP benefits of Brazil, in whole or in part, for its failure to provide adequate and effective copyright protection for U.S. copyright owners.⁵

Furthermore, Brazil's copyright enforcement deficiencies are not just an issue between the U.S. and Brazil. As a member of the World Trade Organization, Brazil is currently obliged to provide the standards of copyright protection found in the TRIPS Agreement. Given the wide range of deficiencies in its enforcement system, Brazil fails to meet its current TRIPS enforcement obligations in several ways, including: its failure to impose deterrent criminal penalties (TRIPS Articles 41 and 61); to avoid unwarranted delays in criminal and civil cases (TRIPS Articles 41 and 61); to avoid unnecessarily costly procedures (TRIPS Articles 41 and 50.3) and to provide effective border measures (TRIPS Articles 41, 51-60). The WTO TRIPS Council is scheduled to review Brazil's intellectual property regime at its April 2001 meeting in Geneva.

COPYRIGHT PIRACY IN BRAZIL

Because of inadequate and ineffective copyright enforcement in Brazil, both the levels of piracy and the estimated trade losses due to piracy remain very high, causing U.S. copyright owners significant economic loss.

³ Press Release 00-30, Office of the United States Trade Representative, "USTR Releases Super 301, Special 301 and Title VII Reports," May 1, 2000.

⁴ See GSP Renewal Act of 1996, Title I, Subtitle J, of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188 (codified at 19 U.S.C. 2462(c)(5)).

⁵ In 1999, \$1.9 billion of Brazil's imports to the United States benefited from the GSP program, accounting for 16.9% of its total imports to the U.S. For the first eleven months of 2000, \$1.93 billion of goods from Brazil entered the United States under the duty-free GSP code, an 11.5% increase over the same time period last year.

ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1995 - 2000

INDUSTRY	2000		1999		1998		1997		1996		1995	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	120.0	33%	120.0	35%	125.0	40%	110.0	30%	100.0	35%	90.0	38%
Sound Recordings / Musical Compositions	300.0	MC98% CD34%	300.0	MC95% CD35%	290.0	MC95% CD30%	110.0	80%	80.0	50%	70.0	45%
Business Software Applications ⁶	269.8	57%	319.3	58%	298.8	61%	315.7	62%	366.7	70%	307.6	74%
Entertainment Software ⁷	248.2	94%	116.2	90%	103.2	89%	99.1	87%	92.5	82%	82.5	80%
Books	18.0	NA	18.0	NA	20.0	NA	26.0	NA	27.0	NA	30.0	NA
TOTALS	956.0		873.5		837.0		660.8		666.2		580.1	

Optical Media Piracy Continues to Undermine the Brazilian Market for Legitimate Copyrighted Materials

Pirated optical media product, primarily manufactured in Southeast Asia and Paraguay, cross the porous Brazilian borders, devastating the local markets. There is also local manufacture of pirated optical media product within Brazil. Organized crime elements, both within Brazil and outside, exercise control over the production and distribution of infringing copyrighted products.

CD piracy exploded in Brazil in 1998, leading to dramatic increases in losses for U.S. recording companies, music publishers, film companies, book publishers, and publishers of entertainment software and business software. During 1999 and 2000, the CD piracy problem worsened as a result of Brazil's economic recession as the legal market for products fell dramatically and the demand for pirate materials rose.

The recording industry was able to confirm that a significant part of its problem involved the unrestricted, international distribution of optical media product, emanating primarily from production facilities in Southeast Asia, combined with the lack of a national Brazilian enforcement strategy to deter piracy. Such optical media distribution networks are under the control of organized criminal elements.

Yet 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 nonestablished facilities in *camelodromos* (flea markets) or on the streets, and finally, the large quantities of blank recordable compact disks (CD-Rs) which are being imported as contraband into Brazil. There are also growing numbers of small duplication facilities

⁶ BSA estimates for 2000 are preliminary. In IIPA's February 2000 Special 301 filing, BSA's 1999 estimates of \$362.9 million at 61% were identified as preliminary. BSA finalized its 1999 numbers in mid-2000, and those revised figures are reflected above.

⁷ IDSA estimates for 2000 are preliminary.

which assemble CD burners; in turn, these facilities can produce a significant amount of pirate CDs each day.

MPA has noted the beginnings of optical disc piracy, previously not present in Brazil. The legitimate DVD market is growing rapidly (more than doubling in each of the past three years) and pirate product is beginning to fill some of the new demand. Although the incidence is still low, MPA has taken action in street markets in São Paulo and Rio de Janeiro and has begun a new investigative effort for pirate optical disc imports along the Paraguay border.

Replication of pirate optical discs sold in Brazil, whether on a large scale such as found in Southeast Asia, or small scale, such as the many CD burner operations scattered throughout Brazil, generally cuts across all the copyright industries. The videogame industry has seen both Asia-source counterfeits as well as locally manufactured disc find their way to Brazilian street markets.

Piracy Continues at Unacceptably High Levels for All Copyright Sectors

Piracy levels in Brazil have remained high for years, with many of the copyright industries estimating levels above 50%, 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.

The recording industry is overwhelmed by expanding levels of music piracy in CD format; the audiocassette market was lost to pirates years ago.

In 1999, the recording and music industries reported that the widespread audio piracy problem in Brazil worsened due to several factors including: the growing pirate market, the shift of street vendors from selling pirate audiocassettes to selling pirate CDs, and to a lesser degree, Brazil's economic troubles. Estimated losses due to piracy of sound recordings and music, in both compact disc and audiotape format, amounted to an alarming \$300 million in 2000.

Alarming increases in the levels of CD piracy in Brazil first hit in 1998, when the recording industry began to call attention to the fact that piracy was increasingly threatening to destroy the world's sixth largest market for sound recordings and music. Audio CD piracy blanketed about 34% of the Brazilian market in 2000 (35% in 1999), causing about \$200 million in estimated trade losses each year. The main states which are being attacked by piracy are São Paulo, Paraná, Minas Gerais, Rio de Janeiro, Goiás, the Federal District (Brasilia), and the states in the northeast.

The chief reasons for the rapid increase in music CD piracy are: (a) the lack of a strong and coordinated action by the Brazilian government, as well as the lack of a high-ranking Brazilian official accountable for copyright enforcement and empowered to coordinate the efforts of other enforcement agencies, the judiciary, and the local and state police, against unrestricted imports, distribution centers and street vendors; (b) the regional CD problem caused mainly by neighboring Paraguay, and unrestricted imports via airports and seaports in Brazil and its links to Southeast Asia; (c) the lack of proper legislation and judicial guidelines to allow the judiciary to proceed definitively against the suspect infringers; and (d) the lack of convictions and judicial sentences which deter piracy. The CD piracy problem is so sophisticated that it makes investigations and actions very difficult to accomplish without the full intervention and commitment of the federal government using all its enforcement agencies. For example, rising CD piracy caused commercial sales of legitimate product in Brazil to fall 20% in 1998 (compared to 1997) and 15% in 1999

(compared to 1998). When the legal recording market sales dropped 30% in the first four months of 1998, the industry pleaded with the Brazilian government for action, but to no avail. The market fell 47% in 1999 against the prior year. There was a slight recovery in sales figures for recorded music for 2000.

Pirate and bootleg music cassettes and CDs mainly enter Brazil from Paraguay via Foz de Iguazu, Corumba, Cascavel, Londrina, Riberao Preto, Maringa, Campo Grande, Cuiaba, Goiania 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 pirate CD product from Taiwan, Korea, Thailand, Singapore, and China, as well as from the emerging CD plants in Paraguay, the U.S. and several European countries (Italy, Germany and France). 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. During 1999, the recording industry found and dismantled two huge CD plants in Ciudad del Este which were targeting the Brazilian market. Amazingly, the CD plants entered Paraguay from Brazil, with no restrictions at all. In 2000, the pirates seemed to change their strategy by shifting into CD-R replication. Thirty-four million CD-Rs were imported into Paraguay without any restriction; the industry believes that Brazil was the ultimate destination of all these CD-Rs. Also, the industry's efforts in Paraguay located two huge CD-R replication facilities in Ciudad del Este, no doubt conveniently located to serve the illegal Brazilian market. The industry reports that Paraguay has just installed yet another CD-R plant.

For the last four years, Brazil's audiocassette market has been completely lost to pirates. For 2000, cassette piracy accounts for 98% of the cassette market. For years, pervasive audiocassette piracy has simply destroyed the legitimate Brazilian market for cassettes. In the southern cities and in the interior, the pirate cassette market is still strong. Based on the industry's past experience, this market will gradually switch toward selling pirate CDs, which will totally undermine the legitimate music CD market. Almost 75% of this pirate product in Brazil affects Brazilian repertoire. The industry believes that this fact alone would suggest that the Brazilian government would be even more concerned in addressing the piracy problem. In recent years, the pirate market switched very rapidly from audiocassettes to CDs, as street vendors, flea markets, and *sacoleiros* and contrabandists crossing from Paraguay into Brazil increasingly sold CD product. This phenomenon is obvious in major cities like São Paulo, the interior of São Paulo, Salvador, Curitiba, Recife, Fortaleza, Rio de Janeiro, Belo Horizonte, Goiania, and even in Brasília, where more and more street vendors now sell pirate CDs and cassettes. In northeast Brazil, pirate sales began to take the place of established shops in 1998. Gas stations throughout the country freely distribute pirate CDs. There is an urgent need to attack this problem in a direct and coordinated manner.

In response to piracy, the recording industry introduced a hologram seal of authenticity for placement on all legitimate CDs. In December 1998, the Brazilian government issued a decree to establish an official, numbered stamp, issued and sold exclusively by the government, to be affixed to IPR goods, including sound recordings, videos and books, and grant authenticity to them. The recording and audiovisual industries remain concerned that if this stamp is not properly implemented, it could be used against these industries by spawning an entirely new counterfeit stamp industry. This stamp program was implemented on March 15, 2000. The Brazilian Video Union (UBV) filed a legal action on behalf of all of its member distributors (MPA member companies included) against the stamp. The UBV member companies have agreed to continue to

oppose the stamp implementation legally and politically, not only because it constitutes an additional financial burden, but also because of administrative problems in its supply by the government, and its possible “promotion” of piracy by rerecording pirates. Since this government-issued stamp confers authenticity by the Brazilian government to the VHS physical support bearing it, pirates will be able to rerecord pirate films over the original films contained in a VHS physical support bearing the stamp. The recording industry is also challenging this stamp in a separate legal action. The industries will continue to watch the implementation of this stamp closely. UBV obtained a preliminary injunction, suspending the use of the stamp pending a final court decision. The parties are waiting for a decision of the court. There are concerns that this stamp is nothing more than a tax, with no value as an anti-piracy tool.

The motion picture industry continues to face widespread video piracy and rising problems with VCD and DVD piracy.

According to the Motion Picture Association (MPA), Brazil’s enormous market potential for audiovisual product is extremely hard to develop because video piracy in Brazil has reached a high degree of integration into the video market. Although the overall percentage is lower than other Latin American countries (about 33% of all video product distributed in Brazil is pirate), the overall volume is much higher because of the size of the market. Video clubs carry at least 80% of the total pirate video market (there are 10,000-12,000 video clubs throughout the country, many of which never buy legitimate product and are not registered by any government authority). The remaining 15% of pirate product is sold by street vendors. Approximately half of the pirated material in video clubs is copied back-to-back from legitimate product, while the other half is distributed from numerous small clandestine duplication laboratories. Excellent quality counterfeit videos, sold by clandestine duplication and distribution organizations, are common throughout Brazil. Piracy levels vary between various cities and regions. Annual losses to the U.S. motion picture industry due to audiovisual piracy in Brazil are estimated to be \$120 million in 2000.

The evidence suggests that video piracy in Brazil is changing, just as it has changed in other Latin American countries, as organized reproduction and distribution begin to displace the use of small-scale back-to-back copying. If allowed to grow, this pirate industry will integrate into elements of organized crime and will become even more difficult to attack. Pirate videos distributed through street vendors compose up to 10% of the total pirate video market. This activity is generally located in urban areas. It is supplied by numerous small duplication labs, often in low-income areas. This kind of activity is deeply related to unemployment as a social phenomenon and generally receives a high degree of tolerance from government authorities. This distribution system is also becoming a distribution system for VCD piracy.

The incidence of VCD piracy is increasing, often in conjunction with pirated software or video games. How fast VCD pirate product availability grows is dependent on the player hardware penetration (VCD and DVD players, computers and PlayStation® machines). In 1998, only 89 DVD titles were offered for sale. In June 2000, the number of titles made available to the public jumped to 210. In 1998, 86,720 DVD units were sold in 12 months. In 2000, nearly 10 times that amount of units – over 800,000 – were sold.

This movement in DVD player purchases and increased demand for DVD product indicates the potential demand for optical disc product, and consequently, the potential market for pirate VCD product. Much of the pirate VCD product is entering Brazil from Paraguay, perhaps produced

there, but most likely imported from Asia, with Paraguay as a transshipment point. This product is arriving in the southern Brazil markets and will inevitably move north to the major markets of São Paulo and Rio de Janeiro.

The entertainment software industry suffers from optical media piracy entering Brazil from sources in the Far East as well as locally produced product.

The biggest problems for the interactive entertainment software industry in Brazil remain the lack of border controls and the general tolerance for the high level of videogame piracy. Estimated trade losses due to piracy of entertainment software (including videogame CDs and cartridges, personal computer CDs and multimedia products) in Brazil in 2000 were \$248.2 million, more than doubling the losses estimated for 1999. The estimated level of game piracy in Brazil also rose to 94% in 2000.

A significant portion of illegal software for all entertainment software platforms is made in Asia (Hong Kong, Macau, the People's Republic of China, Taiwan, Thailand, Malaysia or Singapore) and is shipped to Paraguay, or, increasingly, other transshipping countries, and then Brazil. Pirated videogames in cartridge format, produced in Southeast Asia, enter the Brazilian market, often via Paraguay where they are assembled. Pirate CD-ROMs containing entertainment software products are mixed in with other shipments of optical media directly from Southeast Asia. For example, piracy of Sony Playstation products is about 98%, all of which is imported from Thailand, Malaysia, Singapore, Paraguay and Argentina. A large number of these consoles are grey-marketed by tourists returning to the country or products smuggled into Brazil. As a result, a huge videogame counterfeit channel has been established, and this is damaging to all other consoles' game sales. Reports indicate that there is an organized crime element involved in videogame piracy, and this makes it very difficult to engage local authorities in this fight. In addition, parallel imports (which are legitimate products from other markets) from Asia also enter Brazil, thus harming the ability of copyright owners and their licensees to distribute locally.

The retail videogame industry in Brazil continues to experience serious piracy problems, with stores having large quantities of counterfeit cartridges and videogame software for sale. Videogame pirates have gone from imported silver industrial CDs to widespread gold-disc burning operations, run by organized crime. Gold discs are recordable discs, called *tostadas* in Brazil. Piracy levels for some gold-run games for PC (personal computers) comprise a pirate market where 75% of the software is infringing copies. These burning operations are very profitable. Interestingly, almost all the pirate software is copied on erasable media; there does not yet appear to be professional-level CD pressing of game software within Brazil.

There is a variety of pirate fronts which require attention. One is the sale of pirate game software through advertisements offering games placed in newspapers and other sources. The customer calls, orders are taken in a fly-by-night telephone room, and the product is delivered to another location. The disc is then burned (made to order), taken to yet another location where it is given to a delivery person who often makes the delivery on a Moped®. These kinds of *tostada* operations are very difficult to investigate and track back, up the chain of command, to those directing and managing the infringing activities. Reports indicate that police are reluctant to arrest the delivery people, who are often teenagers and children. Another method are the pirate outlets, called *promocenters*. These are small retail booths, renting space in larger markets and galleries, which sell piratical and counterfeit goods. Street vendors are also a point of sale of all types of

piratical game software, including gold CDs, silver CDs and cartridges. Pirate videogames, especially PC-based game products, are frequently found in flea markets. Console pirates products tend to be in the normal retail trade channel. In addition, piracy over the Internet appears to be growing in Brazil. "Warez" is popular source of pirated game software. There are a large number of Internet sites offering pirate game software for sale, in addition to such software being offered on auction sites (such as Ibazar, Arremate, and Lokau).

Business software industry continues to suffer from traditional forms of software piracy, as well as the increasing utilization of the Internet to offer pirate software for sale.

The Business Software Alliance (BSA) reports that its preliminary estimated trade losses due to business software piracy in Brazil reflect a 15% decline over the prior year, with losses placed at \$269.8 million in 2000. The estimated level of business software piracy dropped slightly to 57% last year. Brazil has a very large informatics/software development and distribution industry which contributes to the Brazilian economy. According to a PricewaterhouseCoopers study, the packaged software industry generated 71,535 legitimate jobs in Brazil and paid \$622 million in taxes to the Brazilian government in 1998.⁸ If the piracy rate in Brazil had dropped to 25%, a level more closely approximating that in Western Europe/Canada/U.S. that year, there would have been 107,364 more jobs and \$934 million more in taxes paid by the industry. If this lower level of packaged software piracy had been achieved in Brazil, by the year 2002, with the natural growth of the industry, it is estimated that there would be 265,757 legitimate jobs in the packaged software sector, and that the industry would pay \$3.315 billion in taxes in Brazil.

BSA focuses its anti-piracy activities in the following states: Minas Gerais, Paraná, Rio de Janeiro, Rio Grande do Sul, Santa Catarina, São Paulo and the Federal District of Brasilia. 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. Although Brazilian Internet pirates have been responsive to cease and desist letters sent by BSA and its member companies, many of these pirates simply close down one Website and open up an identical Website undetected (with a different Universal Resource Locator [URL] or Web address). The Internet may well eclipse other media for advertisement and distribution of illegal software in the near future. With respect to end users, BSA has concentrated most of its efforts on bringing civil enforcement actions against large and medium-sized companies, which has had some impact on the level of piracy. However, there still exists a considerable medium- and small-business segment in Brazil that has far from legalized. In addition, the press, particular in São Paulo, has reacted negatively to certain actions brought by BSA against corporate end users, despite evidence of illegal software in use by these entities.

⁸ PricewaterhouseCoopers, Contribution of the Software Industry to the Latin American Economies, A study commissioned by the Business Software Alliance, September 1999 at Sec. 7.3, page 29. BSA does not have statistical estimates for the Brazilian market for the year 2000.

Books remain vulnerable to widespread unauthorized photocopying.

The book publishing industry reports that there was no improvement in the book piracy situation in Brazil in 2000. 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. 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. Many university texts used are *apostilas*, anthologies made up of chapters from various books copied illegally, both in English and in translation. Some of the largest universities are now discussing legitimizing the photocopying that goes on in their libraries. However, there are still only few contracts signed between ABDR (Associação Brasileira de Direitos Reprograficos) and the major universities. More unauthorized photocopying occurs in the northeastern states of Brazil, compared to São Paulo, Rio de Janeiro, Minas Gerais and Porto Alegre. Imported educational materials are commonly photocopied, due in part to their high price. The potential problem in the near future may be unauthorized translations, as U.S. publishers begin to enter that specific market in Brazil. Estimated trade losses due to piracy were \$18 million for 2000.

The Brazilian Criminal Justice System Fails to Address Copyright Piracy Effectively, and Does Not Create Deterrence.

Brazil continues to exhibit a general lack of interest and unacceptable delays in effective enforcement of the copyright law throughout the enforcement system, including police officers, judges, prosecutors and customs officials. 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 Estadual, Policia Fazendaria, Alfandega) to act against instances of copyright infringement.

Police raiding activities against piracy are inconsistent; good in some cities and non-responsive in others.

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.

The police, prosecutors and judges have demonstrated a lack of understanding of IPR issues in many instances. Copyright enforcement is simply not a priority. Rightholders may initiate criminal actions with either federal or state police officials to obtain search orders based on proof of copyright infringement. The federal police and judiciary are not considered to be effective in copyright enforcement. Federal police officials have jurisdiction over the types of crimes that are

generally viewed as producing large-scale corruption (such as border controls and drug trafficking). Most industry-led enforcement efforts end up being handled by state and local police officials.

There should be a centralized unit that could work the most important cases, and specific guidelines should be given to the police corps (for example, the Policia Fazendaria, regarding tax evasion cases) to take the lead in executing a centralized plan.

The local recording anti-piracy association, APDIF do Brasil, has been very active for more than four years, working primarily in the states of São Paulo, Paraná, Minas Gerais, Mato Grosso do Sul, Goiás, Bahia and Rio de Janeiro. During 2000, the recording industry brought 724 actions (versus 777 actions in 1999), which resulted in the seizures of 3.2 million CDs and 1.4 million cassettes. While these statistics are impressive, they in fact reflect only a very small portion of the entire pirate market. These 4.6 million seized units are low, compared to a pirate market of some 95 million legal units and 96 million pirate units (50 million illegal CDs and 45 million pirate cassettes).

Although the Brazilian police seemed to start cooperating in actions against street vendors of pirated music during 1998, such cooperation declined in 1999, and this declining trend continued in 2000. This downward spiral is happening because there is a lack of clear guidelines and direction from senior Brazilian officials, in addition to jurisdictional problems between different police corps and different *delegacias*. In those rare cases where the police were helpful and took action, the cases got bogged down with the prosecutors, who with few exceptions are unwilling to bring cases. Evidence of the lack of enforcement can be found in the following areas where music piracy thrives openly: São Paulo City (the surroundings of the 25 De Marco Street, 12 de Outubro Street), the downtown of São Paulo, Camelodromos of Campinas, Riberão Preto, Porto Alegre, as well as throughout the cities of Florianópolis, Curitiba, Goiânia, Cuiabá, Feira de Santana, Vitória de Conquista, Teresina, Natal, Feira de Sulanca in Caruaru. These are just a few examples of the locations where piracy exists with impunity. The recording industry notes that it has been almost impossible to proceed with its more serious piracy cases due to the high incidence of leaks. In other countries, one of the only ways to deter piracy is to affect their revenue stream (by using tax evasion laws) and to impose serious jail terms against convicted pirates.

The motion picture industry also has been very active in Brazil. During 2000, the Motion Picture Association (MPA) conducted 1,535 raids and seized 220,878 pirate videos. MPA investigations uncovered 37 laboratories which were dismantled with police action, and 275 VCRs were seized. In the last four years, MPA has coordinated over 6,000 raids and their local counsel worked with police and prosecutors to file over 5,000 cases. Of all these cases, there have been only two convictions which involved suspended jail terms of 4 and 12 months. While the number of raids may appear impressive, at the end of the day there is no deterrence (see discussion in the next section).

Regarding business software efforts, BSA, in collaboration with the Associação Brasileira Das Empresas de Software (ABES) (the local software association), brought 134 criminal police actions against resellers in Brazil in 2000. Out of these actions, 7 were against small stores where 42,955 CDs were seized, 120 actions were brought against street resellers where 166,432 CDs were seized, and 7 actions were brought against individuals offering pirate software for sale in newspapers where 3,511 CDs were seized. A total of 212,898 illegal CDs have been seized as a result of these actions, of which ABES calculates that a minimum of 72,000 contained business software with a retail value of over U.S.\$19 million. However, despite these statistics, there have

still been no cases to date in which BSA has been involved where an individual has served a jail term for software piracy. In addition, while there have been examples in prior years of the police (particularly the consumer affairs police) bringing actions mostly on their own initiative, there were no such actions in 2000.

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 Software Law enacted in February 1998. 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. With the exception of a limited number of actions by tax authorities in the Federal District of Brasilia and the state of Bahia in 1999, two and one-half years into the new Software Law, it is clear that the Brazilian IRS (Receita Federal) and the respective state tax authorities are dedicating no resources to pursue this kind of tax evasion. 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. BSA was extremely hopeful that this type of tax evasion case would have a big impact on the level of piracy in Brazil, especially by medium-sized and large companies.

Unnecessary requirements for technical analysis cause excessive delays and expose viable cases to unwarranted dismissal.

MPA reports that it has had several cases dismissed because of improper technical analysis by police experts. Some police experts still insist on physically examining the suspected pirate tape, looking for physical evidence of piracy (lack of a proper label, etc.). This type of exam is based on a trademark paradigm where the essential element is falsification, but in copyright the essential element is lack of authorization. MPA does not argue that a technical analysis is improper but asserts that has been improperly applied in copyright cases. As a result, MPA has developed a series of training seminars for police experts to increase the proper application of copyright analysis. These courses have reduced the problem to some degree, although it continues to be an important operational obstacle.

Brazilian prosecutors pursue very few criminal copyright cases, despite the high numbers of complaints filed and raids conducted. In those few cases which reach judgment, non-deterrent sentences are issued.

Prosecutions are ineffective; few cases reach the courts, and those few that do fail to impose deterrent penalties. Sadly, this pattern has continued for years, without improvement.

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 in the law and a general lack of resources. 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. A major problem has been the low penalties imposed in the few criminal copyright infringement cases which have been decided by the courts. This problem may be alleviated if the penal code is reformed to index penalties for inflation and if the courts actually impose deterrent levels of penalties in copyright cases. Regulations aimed at reducing the backlog of court cases further undermine and weaken

deterrence. Courts usually suspend jail terms for first offenses, thus returning defendants to the streets to return to their illicit activities.

In 2000, the recording industry filed 724 complaints with the police, and this resulted in actions against 724 targets (the Industry filed only in those cases that were secured previously; 560 were street raids that do not attack the core of the problem). Out of these 724 cases, 131 were suspended and only nine people out from the 1,348 arrested persons were indicted. In these nine cases, the fines were minimal and the defendants were never charged by the police

With respect to audiovisual cases, MPA reports that the pattern of no deterrence at the prosecutorial and judicial levels continues. In 2000, MPA filed 1,957 complaints with the police, which resulted in 1,535 raids. 146 of their cases were suspended or dismissed and there were only two convictions in 2000, both with jail sentences which were converted to community service.

To sum up, the last four years, MPA coordinated over 6,000 raids and their local counsel worked with police and prosecutors to file over 5,000 cases. Of all these cases, there have been only two convictions which involved suspended jail terms of 4 and 12 months. Both of the 2000 sentences were then converted to community service, hardly a deterrent. (Note that at the time of this writing, MPA reports three additional convictions in 2001, although none resulted in jail time or collected fines: All were converted to community service). Not one video pirate has sentenced to serve, and actually did serve, a single day in jail. The percentage of MPA cases through 2000 in Brazil resulting in convictions was 0.09%, with a zero percentage chance of being jailed. In addition, MPA has had 219 cases suspended in Brazil under Law No. 9099-95, but no fines or damages – as required by that law for such suspensions – have ever been collected. During 1999 and 2000, 381 of MPA's cases were suspended or dismissed. This means that 9.6% of MPA's cases were suspended, 6.5% were dismissed, and only 0.09% resulted in conviction.

As for business software actions, BSA's criminal campaign against resellers is focused on seizures and publicity, conducting actions with the state police. As stated above, in 2000 there were 134 criminal business software complaints filed in Brazil. These actions were brought in collaboration with ABES, the local Brazilian software association. No criminal verdicts have been issued as a result of these actions.

**CRIMINAL COPYRIGHT ENFORCEMENT
STATISTICS IN BRAZIL FOR 1998, 1999 and 2000**

ACTIONS	Recording Industry 1998 (1999) [2000]	Motion Picture Industry 1998 (1999) [2000]	Business Software Industry 1998 (1999) [2000]
Number of complaints filed with police	530 (409) [724]	1,320 (832) [1,957]	34 (118) [134]
Number of raids conducted	680 (777) [724]	2,381 (1,671) [1,535]	34 (118) [134]
Number of pirate copies seized	2.85 million (2.86 million) [4.63 million]	243,581 (212,063) [220,878]	NA (NA) [212,898]
Number of cases suspended or dismissed	NA (18) [131]	148 (235) [146]	(0) (0) [0]
Number of defendants convicted (including guilty pleas)	5 (3) [9]	1 (0) [2]	0 (1) [0]
Criminal sentence issued	Minimal fines (1-year jail term, commuted to small minimal fines) [sentences commuted to small fines - \$260]	Community service (None) [Community service]	None (2 years' probation plus fine < \$600) [None]
Ratio of convictions to the number of raids conducted	0.7% (0.8%) [1.2%]	0.04% (0%) [0.09%]	0% (0.8%) [0%]

Notes

- Statistics in this chart are provided by IFPI Latin America, the Motion Picture Association (MPA) and the Business Software Alliance (BSA).
- The suspensions or dismissals cited above are the result of judicial decisions. See discussion below regarding Law 9099-95, which permits judges to sentence first-time offenders with up to two years' probation and monetary damages.
- NA = Not available.

Unwarranted Delays By The Police, Prosecutors And Judges, Are Common.

For those rare criminal cases that do make their way to court, the time to complete a case takes a very long time. Delays in criminal copyright infringement cases can take as long as two to three years in the courts of first instance. Not surprisingly, 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.

MPA has a case backlog of 4,934 cases in Brazil (1,066 in São Paulo and 1,247 in Rio de Janeiro, among the total). Nearly half of the cases are from 1998 and 1999, 345 are still pending from 1997. There is no attempt by Brazilian authorities to expedite priority cases. For example,

MPA has 328 recidivist cases and 22 high-priority cases (involving organized distribution, probably related to organized crime), yet these cases are treated with the same general lack of enthusiasm that all cases meet.

It is important to show the proper authorities that there are certain priority cases that deserve a special focus and that there are thousands of cases susceptible to a proper application of the suspension procedures under Law 9099-95.

One solution often proposed to address the problem of delays has been the creation of a specialized court for copyright matters. 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 should significantly improve intellectual property rights enforcement. Our reports indicate that these courts are restricted to industrial property matters. IIPA and our members continue to recommend that courts also be established to handle copyright infringement cases. Although no specific action has been taken to create these courts, our last report indicated that the Brazilian Judicial Commission has assigned the issue as a specific agenda item (Number 15) in its list of pending actions.

Brazilian Border Measures are Ineffective.

In 1999, the copyright industries requested that the Brazilian government focus on improving border enforcement. There seemed to be little progress made on this problem. Because of the lack of coordination of the actions of Brazilian Customs and federal police, border controls are lax and must be tightened to stop the massive amounts of pirated and counterfeit product (including piratical CDs, audiocassettes, videocassettes and videogames) entering Brazil from Paraguay, particularly at the cities mentioned above, among these being Foz do Iguazu, Corumba, Campo Grande and Maringa. Bolivia and Uruguay are also potential sources of counterfeit production for the Brazilian market.

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. Brazilian airports are also a significant source for pirate shipments around the country. While coordination efforts may be underway, they have resulted in only limited tangible improvement on the ground. According to the Brazilian government, they do implement a "red traffic light" system in the major seaports with Paraguay. However, in 1999 the recording industry found that two large CD plants made their way to Paraguay via Brazil (via the ports of Santos and Paranagua).

Unwarranted Delays are Prevalent in Civil Cases.

The civil court system in Brazil is notoriously overloaded, inefficient, and slow. In São Paulo, judges may be responsible for 3,000 or more cases in a year. Cases usually take from eighteen months to two years to come to trial. Moreover, defendants have many grounds for appeal, and this process regularly takes three years before a judgment is issued by the relevant superior court. Incredibly, BSA has cases in São Paulo dating back to 1991 and 1992 that have still not received a judgment from the relevant superior court.

The business software industry also uses civil actions in its anti-piracy campaign in Brazil. BSA continues to bring civil search and seizure actions, followed up in most part (unless the defendant settles within thirty days of the search and seizure) with the filing of civil damages suits. BSA members acting through BSA brought 53 civil actions against software pirates in 2000, and 36 in 1999. The BSA anti-piracy hotline received 23,624 calls in 2000 (20,797 calls in 1999), which produced 1,337 leads of suspected piracy.

Nonetheless, in two civil cases in 2000 and one case in January 2001, BSA has received extremely favorable judgments for multimillion-dollar sums. The judges in these cases applied Article 301 of the Copyright Act of 1998 (Law No. 9.160/98) ordering the defendants to pay damages of 3000 times the retail value of the illegal software seized. The level of damages awarded in these cases is unprecedented worldwide with respect to software copyright infringement suits.

CRIMINAL CODE AND REGULATIONS

The Brazilian Criminal Code Fails to Provide Effective Deterrence. Proposed Amendments Have Been Pending for Years, Without Progress.

The Brazilian penal code was amended in 1993. Unfortunately, those 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. The legislation should be amended to provide this seizure authority. In addition, the levels of fines in the 1993 amendments have been overwhelmed by inflation, and should be tied to the indexing system in the general provisions of the Brazilian penal code. The Brazilian government promised to make best efforts by June 1994 to pass legislation to ensure that the range of higher penalties available under the indexing system in the general provisions of the penal code applied to copyright infringement. This has not been achieved.

Two amendments to the current Brazilian penal code have been pending for years. The first is Bill No. 2.681/96, which has strong copyright industry support. This bill would amend Article 184 of the penal code to include unauthorized rental of a work or sound recording for profit and add provisions permitting the destruction of seized materials by Brazilian authorities. This bill has been waiting to be included in the agenda of the Plenary of the lower house (the Chamber of Deputies). If approved by the Plenary, it will be sent to the committees in the Senate for analysis and approval.

The second proposal, Portaria 232/98 proposed by the Ministry of Justice, reflects a substantial revision of the entire penal code. The concern here is that this proposal would lower the level of criminal penalties and remove the authority of the police to initiate searches and seizures on their own initiative (*ex officio*), and instead would make them available only upon judicial warrants. The copyright industries oppose this proposal. Our industries' experience around the world has been that the only way to deter piracy effectively is to increase the criminal penalties for copyright infringement and impose these deterrent sentences on the defendants.

It is important to know that a criminal procedure regulation was issued in 1995 to alleviate serious court overcrowding. 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 have begun issuing these suspensions, there is growing concern that these regulations are not supporting the creation of a system which has expeditious and deterrent penalties. As detailed above, most copyright cases are cycled through this system. Many offenders receive suspended sentences or very low fines, community service, or no sentences at all. This leniency clearly does not deter piracy. As reported above, MPA had 219 cases in 1999 and 2000 suspended under this law, but no fines or damages were ever collected.

COPYRIGHT LAW AND RELATED ISSUES

The Copyright Law and the 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. These bills were finally enacted by February 1998. The software bill (PL 200/96) passed both Houses, and was signed in its entirety, without amendment, by President Cardoso, and entered into effect on February 20, 1998. On February 19, 1998, President Cardoso signed into law amendments to the 1973 Copyright Law (Law No. 9.610) which entered into effect on June 20, 1998. Although these laws provide good levels of substantive protection, they are not enforced in-practice (see discussion, above). The copyright law even includes some provisions of the WIPO treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Specialized IPR Courts With Copyright Jurisdiction Should be Created.

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. IIPA and our members continue to recommend that courts also be established to handle copyright infringement cases. Although no specific action has been taken to create these courts, the Brazilian Judicial Commission has assigned the issue as a specific agenda item (Number 15) in its list of pending actions.

The Brazilian Government Must Take Action to Reduce Piracy of Business Software Programs Within Its Ministries and Agencies.

The Brazilian government should consider stronger efforts to support government software management in its public ministries and agencies. The Brazilian government has done less to reduce government software theft (piracy) than perhaps any other major Latin American

government. The President has never enacted a decree ordering federal agencies to buy legitimate software. Moreover, public entities are required by law to appeal any decisions against them to the end of the appeals process, with the result that software piracy actions against government agencies involve costly legal battles that last for many years.

NON-TARIFF BARRIERS

Local Printing Obligations for Films and TV Programming

MPA member companies continue to be negatively affected by various taxes aimed at collecting funds to promote the local film industry. Restrictions on color prints imported into Brazil remain in effect in 2000. Article 21 of Brazilian Law 8.401/92 establishes a 100% local printing obligation for films and television programming. Importation of color prints for the theatrical and television markets is prohibited. All such prints (with the exception of up to six prints for films of recognized culture/artistic value) must be produced locally, regardless of price or quality of work. There are only two printing laboratories in Brazil, which cannot supply the growing demand for prints in Brazil due to the increasing construction of multiplex theaters. Based upon the number of member company releases in Brazil (approximately 90 features annually), and an average of 80 prints per feature, it is estimated that MPA member companies lost \$8.6 million in 2000 due to this obligatory local printing restriction.

This provision violates Article XI of the General Agreement on Tariffs and Trade, which prohibits quantitative restrictions on imports. It also is inconsistent with Brazil's obligations under the treaty of Asunción, which created Mercosur and establishes the free circulation of goods and services within the member countries of Mercosur. Brazil should take immediate steps to bring its practices into conformity with its international trade obligations. In order to supply the Brazilian market with the number of prints required and to increase competition and promote modernization of printing labs in Brazil, Brazil should allow the importation of prints manufactured abroad.

Remittances and Computer Software

Pursuant to the last modification of the Central Bank's regulation on overseas remittances relating to software purchases/licenses, per Circular number 2682 of September 1996, the financial institution conducting the currency exchange operation still requires all documentation listed in Circular number 2682 of May 1996, which are: (i) the agreement signed with the exporter of the software (import license); (ii) a certificate from the Government Bureau of Computer and Automation Policy (part of the Ministry of Science and Technology), approving the software license agreement or the assignment of rights in any software sales/distribution agreement; (iii) copies of the invoices reflecting the sale of software and (iv) a declaration of liability.

Brazil has eliminated most of the nontariff barriers that afflicted the computer software industry. At last report, the Central Bank is still requiring (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. In addition, 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.

Onerous Duties for Entertainment Software

Import duties for entertainment software are quite high in Brazil, and the entire tax and duty structure is rather complex. The bottom line is that all these taxes significantly increase the cost of importing entertainment software into Brazil, and pose a significant barrier to trade. These duties prevent local distributors from importing some videogame titles.

Cartridge-based videogames incur higher taxes than PC-based CD videogame titles. For example, cartridge-based games pay 22.5% federal import duties (calculated on the CIF value of the good), 40% federal tax on industrialized products (calculated on the CIF value of the good) plus 18% state tax on the transaction related to the circulation of goods (calculated over the CIF value plus the two federal taxes; this state taxes varies between states). In comparison, imported PC-based videogame software is subject to 18.5% federal import duties, 15% federal tax on industrialized products, and 18% state tax. In both cases, these duties are extremely high. In addition, the inequitable tax structure has created a controversy over whether CD-based videogames should be characterized as the lower-dutied PC software or the higher-dutied videogames.