

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2003 SPECIAL 301 REPORT

ARGENTINA

EXECUTIVE SUMMARY

Special 301 recommendation: IIPA recommends that Argentina remain on the Priority Watch List due to high piracy levels and ineffective copyright enforcement.

Overview of key problems: The growing problems with pirate optical media and the illegal use of CD-R burners seriously undermine the ability of all the copyright industries to compete with legitimate product in Argentina. The entertainment software industry reports three major forms of piracy: (1) substantial importation of videogame CD-ROMs (especially from Malaysia, Hong Kong, the People's Republic of China, Thailand, Taiwan, Paraguay and Chile), entering via Iquique, Chile or Colonia, Uruguay; (2) reproduction on demand, whereby games software is burned onto blank CD-Rs, and; (3) Internet piracy, whereby websites offer pirate videogame software for sale. The recording industry reports that the shift from analog to optical media-based piracy represents a long-term, alarming trend in Argentina which already has caused much harm to the recording industry. The preferred piracy format is burned CD-Rs which mostly come from Taiwan, go through Uruguay and land in Argentina, as goods in transit, on their way to Paraguay; the same CD-Rs come back into Argentine territory for piracy purposes. Thousands of street vendors take advantage of these CD-Rs throughout the country and are rapidly putting out of business tax-paying legitimate retailers. The book publishing industry reports widespread photocopying of English language materials and computer books and texts in Argentina. Copyshops located near the universities, but mostly by the student unions and organizations in the universities, are the main sources of illegal photocopying. The filmed entertainment industry reports that new forms of optical disc and television piracy are rapidly appearing, and video piracy in Argentina is becoming an integral and perhaps inextricable part of the audiovisual market. With respect to business software, piracy among end-users remains quite high, especially in small and medium-sized organizations. Larger organizations may have some licenses to use software, but commonly these licenses only cover a small percentage of the software in use. Estimated 2002 U.S. trade losses due to piracy in Argentina were \$126.7 million.

The copyright industries face ongoing enforcement obstacles in Argentina, despite concerted efforts by industry anti-piracy actions. While the results on criminal enforcement remain far from ideal, the willingness of the Argentine authorities to take initial actions was somewhat encouraging in 2002. However, raids and seizures did not translate into prosecutions and deterrent sentences. Many elements of Argentina's enforcement regime are incompatible with its current obligations under the WTO TRIPS Agreement, including: the failure to impose deterrent criminal penalties in commercial piracy cases; lengthy delays in bringing and completing both criminal and civil infringement cases; ineffective border measures; and the lack of availability of deterrent civil damages. Procedural delays before obtaining and conducting a civil search in business software piracy cases increased significantly in 2002.

Argentina's 1933 Copyright Act (as amended) has been under review for years. A package of copyright amendments, circulated in mid-2001 to selected industry representatives,

remains under review within the Ministry of Justice. A bill (Bill No. 3205-D-01) to provide statutory damages and the seizures of infringing equipment (among other measures), has been introduced but has been pending for over a year. Argentina was one of the original 30 countries which put the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty into force in 2002.

Actions which the Argentine government should take in 2003:

- Commit to an anti-piracy campaign, as a matter of national priority;
- Enforce the current copyright and criminal laws in-practice, by conducting more raids, and importantly, pressing for more criminal prosecutions;
- Continue to support the various enforcement agencies in working with the copyright industries in anti-piracy actions and increase their resources and training;
- Instruct Argentine prosecutors and courts to make copyright piracy cases a priority so that Argentina begins to meet its existing multilateral and bilateral obligations;
- Improve border enforcement significantly. Local industries (at least the music industry) are ready to work with customs authorities to provide information and training on pirate products;
- Establish a program to inspect goods in transit for potential pirate product;
- Encourage the Secretaria de Seguridad Interior Nacional to take an active role in a national anti-piracy campaign;
- Adopt the bill to amend the copyright for provide for statutory damages and the seizures of infringing equipment;
- Revive efforts to improve the draft amendments to the 1933 Copyright Act, which are still being reviewed within the Ministry of Justice. The 2001 draft failed to address many of the enforcement deficiencies and required further clarification with respect to other key issues for the copyright industries. In sum, the Argentine legislation needs to effectively implement the WIPO treaties, both of which Argentina has already ratified;
- Argentina bases its customs duties on audiovisual works and sound recordings on assessments of potential royalties; customs duties should be based on specific fees or be *ad valorem* based on the value of the physical carrier medium only. Customs duties based on royalties or income serve as a form of double taxation because royalties are generally subject to withholding, income and/or remittance taxes. MPAA and RIAA seek a modification of the Argentine Customs Valuation Code and/or an exemption from the *ad valorem* duty. Computer programs also face high value-added taxes (VAT) which raise the cost of importing software into Argentina;
- Promote high standards of copyright protection and enforcement in the negotiations in the Free Trade Area of Americas (FTAA);
- Support efforts to issue an executive decree in 2003 that would require government legalization of current business software programs on computers and improve procurement practices.

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

INDUSTRY	2002		2001		2000		1999		1998	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music ²	26.0	60%	78.2	47%	76.0	46%	50.0	33%	50.7	35%
Entertainment Software	NA	NA	NA	95%	141.4	94%	90.3	92%	87.1	94%
Business Software Applications ³	70.7	62%	72.5	62%	92.9	58%	156.7	58%	100.8	62%
Motion Pictures	30.0	45%	30.0	45%	32.0	45%	32.0	45%	30.0	45%
Books	NA	NA	8.5	NA	8.5	NA	8.0	NA	7.5	NA
TOTALS	126.7		189.2		350.8		337.0		276.1	

COPYRIGHT AND REGIONAL TRADE NEGOTIATIONS

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

IIPA believes that the IPR chapter in the Free Trade Area of the Americas (FTAA) must be forward-looking, technologically neutral documents that set out modern copyright obligations. They should not be summary recitations of already existing multilateral obligations (like TRIPS). As the forms of piracy continue to shift from hard goods and more toward digital media, the challenges faced by the copyright industries and national governments to enforce copyright laws grow exponentially. The Internet has transformed copyright piracy from a local phenomenon to

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

² Estimated trade losses for the recording industry reflect the impact of significant devaluation during 2002.

³ BSA's estimated piracy losses and levels for 2002 are preliminary, and will be finalized in mid-2003. In IIPA's February 2002 Special 301 filing, BSA's 2001 estimates of \$139.9 million at 60% were identified as preliminary; BSA finalized its 2001 numbers in mid-2002, and those revised figures are reflected above. BSA's trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in this country, and differ from BSA's trade loss numbers released separately in its annual global piracy study which reflects losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in this country.

a global wildfire. CD-R burning is fast becoming a pirate's tool of choice throughout this region. Without a modern legal and enforcement infrastructure, including effective criminal and civil justice systems and strong border controls, we will certainly see piracy rates and losses greatly increasing in this region, thus jeopardizing more American jobs and slowing the growth of the copyright sectors both in the U.S. and the local markets. Therefore, the IPR chapter in the FTAA should contain the highest levels of substantive protection and enforcement provisions possible. At a minimum, the IPR chapter should: (a) be TRIPS- and NAFTA-plus, (b) include – and clarify – on a technologically neutral basis the obligations in the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (WCT and WPPT), and (c) include modern and effective enforcement provisions that respond to today's digital and Internet piracy realities. Despite the existence of these international obligations, many countries in the Western Hemisphere region fail to comply with the TRIPS enforcement obligations, both in their legislation and in practice. It is in the area of enforcement that some of the greatest gains for U.S. and local copyright creators can be achieved.

Argentina is a beneficiary under the U.S. Generalized System of Preferences (GSP) trade program which requires beneficiary countries to afford adequate and effective intellectual property rights protection to U.S. copyright owners.⁴ Argentina also is a WTO member and is obligated to have already implemented both the letter and the spirit (performance) of the TRIPS Agreement.

⁴ For the first 11 months of 2002, \$250.5 million worth of Argentine goods (or 8.7% of Argentina's total imports to the U.S.) entered the U.S. under the duty-free GSP code, representing a 4.4% increase over the same period in 2001. For more information on the history of Argentina under Special 301 review, see Appendices D and E of this submission.