

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE 2004 SPECIAL 301 REPORT

SPECIAL MENTION

URUGUAY

In 2003, Uruguay finally amended its 65-year old copyright law. While the enactment of these amendments was indeed positive, the IIPA also noted that the new law still had deficiencies.

The prosecution of intellectual property cases also remained a significant problem. This proved particularly true for the entertainment software industry in 2003. Copyright owners have repeatedly highlighted the need for increased prosecutions against intellectual property crimes to serve as a deterrent against piracy, particularly where the targets have been large-scale commercial infringers rather than mere small-time vendors. The prosecution of a criminal trademark infringement case in early 2003 against the primary supplier of pirated cartridge-based entertainment software in Uruguay by the enforcement authorities was therefore a welcome result for the entertainment software industry.¹ A series of raids on retail stores and warehouses owned by the defendant resulted in the seizure of large quantities of pirate and counterfeit cartridge-based video games, as well as the filing of a criminal complaint against the defendant and his associates. The case was progressing well, with strong evidence presented on the counterfeit nature of the products being supplied and sold by the defendant. However, in May 2003, the Supreme Court of Justice issued an “executive pardon” (known as *gracia* under the Uruguayan criminal code) in favor of the defendant, dismissing all charges against him and absolving him of all criminal liability. The pardon resulted in the return of all the confiscated counterfeit and pirate video game product to the defendant. This action was a disappointing setback and indeed serves only to weaken intellectual property protection in the country. It can hardly be expected that police and prosecutors will bring increased attention to intellectual property crimes when all their actions would appear to come to naught through an arbitrary grant of pardon from the high court.

¹ Nintendo brought the complaint in 2001 following raids against retail establishments and warehouses in Montevideo. The premises were all owned by one Roberto Lewinger Lencina who was subsequently brought up on trademark counterfeiting charges. Please see Nintendo of America’s separate 2004 Special 301 submission.