

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2007 SPECIAL 301 REPORT

PARAGUAY

Special 301 Recommendation: IIPA proposes that Paraguay remain under Section 306 monitoring. IIPA also requests that the U.S. Government engage in much more technical consultations to review progress made under the IPR Memorandum of Understanding with Paraguay.

EXECUTIVE SUMMARY

IIPA members report continued high levels of cooperation with the Paraguayan authorities, and commend the actions of the UTE in trying to address piracy. Unfortunately, these actions have thus far not had a meaningful impact on the amount of pirate product available in Paraguay, and especially in the city of Ciudad del Este, or on Paraguay's role as a transshipment point for the raw materials intended for pirate production. It is imperative that Paraguay adopt changes to its criminal code so that deterrent sentencing is possible, and that it undertake judicial training and/or the adoption of sentencing guidelines so that judges impose deterrent sentences when cases come before them. Unfortunately, despite their best efforts, the Paraguayan Administration has failed to create the legal environment to effectively deter piracy.

While recognizing that the Paraguayan Government has undertaken several important steps in trying to address piracy, and that a great deal more attention is now given to this issue, it is nonetheless extremely important to simultaneously examine, from a relatively objective standpoint, Paraguay's performance under the IPR Agreement. Specifically, Paraguay has not achieved the following:

- Significantly reducing the levels of copyright piracy;
- Increasing penalties available and applied in criminal copyright cases through legislative changes;
- Strengthening deterrence by requiring imposition of mandatory minimum prison sentences on offenders convicted of manufacturing, importing or distributing commercial quantities of pirated or counterfeit goods;
- Providing for the seizure of an infringer's assets upon conviction for commercializing pirate product; and
- Working with the judiciary to resolve cases on a timely basis.

PRIORITY ACTIONS IN 2007

Enforcement

- Improve border enforcement, including the interception and seizure of piratical goods and contraband PC hardware, as well as the inspection of blank optical disc media.
- Attack the large-scale distribution points operating in Ciudad del Este, including by addressing the role of landlords with respect to the open and notorious illegal activities taking place on their premises.
- Impose deterrent remedies against pirates, including criminal penalties.

- Audit large-scale importers of blank CD-Rs who are suspected suppliers of pirate organizations for possible tax evasion. Pursue audits of customers of those importers. Tax authorities may want to consider creating a specialized unit familiar with the business of optical media and other exportable products.
- Improve training for prosecutors and judges in order to improve effective deterrence against criminal copyright piracy.
- Improve training for officials in the UTE, the special IP task force.
- Request that the Supreme Court suspend and/or remove expert witnesses and judges reported to be involved in corruption cases from current dockets.
- Coordinate an independent survey of the levels of piracy in the country for the most impacted products.

Legislation

- Enact legislation to amend the criminal code to increase penalties for copyright infringement (designating IPR violations as major crimes), establish *ex officio* actions, and criminalize of the circumvention of technological protection measures.

| PARAGUAY Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2002-2006¹ | | | | | | | | | | |
|--|--------------|-------|--------------|-------|--------------|-------|--------------|-------|--------------|-------|
| INDUSTRY | 2006 | | 2005 | | 2004 | | 2003 | | 2002 | |
| | Loss | Level | Loss | Level | Loss | Level | Loss | Level | Loss | Level |
| Sound Recordings & Musical Compositions ² | 128.0 | 99% | 128.0 | 99% | 127.8 | 99% | 154.6 | 99% | 204.4 | 99% |
| Business Software ³ | 7.0 | 81% | 6.0 | 83% | 6.0 | 83% | 5.0 | 83% | 2.2 | 71% |
| Entertainment Software ⁴ | NA | 98% | NA | NA | NA | NA | NA | NA | NA | NA |
| Books | NA | NA | 2.0 | NA | 2.0 | NA | 2.0 | NA | 2.0 | NA |
| Motion Pictures ⁵ | NA | NA | 2.0 | 86% | 2.0 | 95% | 2.0 | 80% | 2.0 | 80% |
| TOTALS | 135.0 | | 138.0 | | 137.8 | | 163.6 | | 210.6 | |

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2007 Special 301 submission at www.iipa.com/pdf/2007spec301methodology.pdf. For information on the history of Paraguay under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2007SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission.

² RIAA reports that its estimated piracy losses include both domestic piracy in Paraguay and estimated losses caused by transshipment. The decrease in 2003 and 2004 estimates are due to lower average prices of recorded music and currency devaluation.

³ BSA's 2006 statistics are preliminary. They represent the U.S. publishers' share of software piracy losses in Paraguay, and follow the methodology compiled in the Third Annual BSA/IDC Global Software Piracy Study (May 2006), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA's 2005 piracy statistics were preliminary at the time of IIPA's February 13, 2006 Special 301 filing; the 2005 data was revised and posted on the IIPA website in September 2006 (see <http://www.iipa.com/statistics.html>), and the 2005 revisions (if any) are reflected above.

⁴ ESA's estimated piracy rates for Paraguay in 2006 reflect on the piracy rate for handheld products, which may differ from and often underestimate overall piracy levels in country. 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 this report.

⁵ MPAA's trade loss estimates and piracy levels for 2006 are not yet available. However, such numbers will become available later in the year and, as for 2005, will be based on a methodology that analyzes physical or "hard" goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As the 2006 loss numbers and piracy levels become available, they will be posted on the IIPA website, <http://www.iipa.com>.

Bilateral engagement and the IPR MOU: Both the Paraguayan and the U.S. governments have invested years of effort to improve the Paraguayan system. Officials in the new Paraguayan administration have shown a great interest in tackling copyright piracy in-country and at its borders. IPR issues are discussed regularly under the context of the 2003 Memorandum of Understanding on Intellectual Property Rights and at the JCTI (Joint Council on Trade and Investment) meetings. Draft laws have been submitted which would increase the penalties for violations of intellectual property rights. The Specialized Technical Unit, created by decree in 2003, is in charge of conducting raids and seizures, and has established a Statistics Center to collect data on IPR cases.

On December 19, 2003, the Paraguayan Ministry of Foreign Relations and the U.S. Embassy in Paraguay announced the conclusion of the first meeting of the Joint Council on Trade and Investment (JCTI) and the completion of a new Memorandum of Understanding on Intellectual Property Rights (IPR MOU), which was made publicly available in April 2004⁶ and contains an annex setting out the Government of Paraguay's Action Plan for IPR improvement. The MOU includes elements on legislative, administrative, and enforcement issues designed to strengthen the Government's ability to effectively fight copyright piracy and trademark counterfeiting, and to improve its overall intellectual property system. The MOU requires Paraguay to implement TRIPS compliant legislation by "develop[ing] and implement[ing] effective enforcement mechanisms and practices to significantly reduce the levels of copyright piracy and trademark counterfeiting in its territory, including through the imposition of deterrent penalties." One specific element of this is to increase criminal sanctions for those convicted of copyright and trademark violations; this element clearly has not been satisfied.

The IPR MOU, which expired on December 31, 2005, was extended for two more years, through the end of 2007.⁷ The MOU also requires regular review of Paraguay's progress, and IIPA urges that bilateral discussions targeting the effective implementation of the all of Paraguay's MOU obligations be conducted as soon as possible in 2007.

COPYRIGHT PIRACY IN PARAGUAY

Optical media piracy, border measures and transshipment: Paraguay continued in 2006 to serve as a favorite destination for much of the pirated optical media product being produced in Southeast Asia (e.g., Malaysia, Macau, Hong Kong, Singapore, and Taiwan). As a result of this sourcing problem, Paraguay remains a significant player as a transshipper of pirate product to its neighbors. Paraguay is one of the main sources of piratical copyrighted goods, blank media and recording devices to the Brazilian Market. For example, it is estimated that around 50,000 people, 15,000 cars and 10,000 motorbikes, cross the "Friendship Bridge" in Ciudad del Este each day.

Pirates in Paraguay have continued to shift their products from pre-recorded optical disc product to importing blank recordable CDs (CD-Rs) into Paraguay. According to official Paraguayan statistics, there were 290 million blank CD-Rs and DVD-Rs imported into Paraguay in 2005. In comparison, there were 27.4 million units imported in 2000. Simply said, Paraguay does not have the legitimate markets to absorb these immense amounts of product. In addition to their clandestine

⁶ The full text of Paraguay's 2003 IPR MOU is available on the U.S. Department of Commerce's website at <http://www.tcc.mac.doc.gov/cgi-bin/doi.cgi?204:64:1:185>.

⁷ See U.S. Department of State, Paraguay: Background Note, October 2006, posted at <http://www.state.gov/r/pa/ei/bgn/1841.htm>. Paraguay also receives preferential trade benefits under the GSP program, which includes IPR obligations. During the first 11 months of 2006, \$22.8 million worth of Paraguayan goods entered the U.S. under the duty-free GSP program.

industrial CD production capacity, the pirates of Ciudad del Este shifted their replication methods. Hundreds of labs using CD burners have replaced the previous underground illegal CD plants. Many of these burning facilities are supplied by pirate kingpins who coordinate their work and provide the small labs with blank CD-Rs. These “sprayed” plants serve Paraguayan, Argentine, Uruguayan and (mostly) Brazilian illegal CD-R duplicators. As if the excessive levels of imported blank media were not a severe problem in its own right, now four OD factories have been established in the country. These plants have 15 new lines and the capacity to produce 5 million blank CD-Rs and 2 million DVD-Rs monthly (or approximately 52.5 million units annually). It is also known that one of the principals in one of the factories has been convicted of piracy-related charges.

Through October 2006, it was reported that 230 million optical discs had been imported. Nearly 30% of those were DVD-Rs and the remaining 70% were CD-Rs. By the end of 2006, estimates suggest that Paraguay imported (not including what was smuggled) more than 300 million blank optical discs last year. In addition, the local CD-R and DVD-R plants may have produced another 100 million units. We are not aware of any official statistics coming from the plants but certainly have the potential to produce at least that amount.

Organized crime: Organized criminal groups remain involved in the production and distribution of pirated and counterfeit product, and/or in the importation and distribution of raw materials. Organized crime elements from Taiwan, the Far East and the Middle East control much of the distribution in Ciudad del Este and in other cities. Paraguay continues to be a transshipment point for areas throughout Latin America, for the large amounts of surplus optical media product manufactured in Southeast Asia. Organized groups from Korea, Lebanon, Libya, Brazil, Bolivia and Argentina are involved. Of course, Paraguayan groups also take part in these illegal activities. Some industries continued to report that organized crime elements are working more with smaller labs, making it harder to identify those operations.

Domestic piracy remains widespread: Copyright piracy remains pervasive in Paraguay, with little to no improvement in 2006.

The sound recording and music publishing industries report that their primary concerns are Paraguay’s position as a transshipment and organization hub for optical disc piracy, and the lack of opportunities for local talent due to piracy within the country. Ciudad del Este is the central distribution point for an increasing amount of blank optical discs (CD-R and DVD-R) and locally reproduced CD-R and DVD-R. Not surprisingly, this product continues to be primarily exported to Brazil and Argentina. RIAA reports that its estimated piracy losses in Paraguay include both domestic piracy in Paraguay, with most of the losses based almost exclusively on the sale of pirate product with a nexus to Paraguay but intended for consumption outside the country. Since the situation has not improved, the industry estimates that trade losses in 2006 due to music and record piracy remain at approximately the same levels as in prior years, which is approximately \$128 million annually, with a 99% piracy level in-country. The level of pirate product being offered in Asuncion and Ciudad del Este are overwhelming compared to the very few stores with legal product that exist in the country.

The entertainment software industry reports that Paraguay continues to be a hub and transshipment point for pirated entertainment software products, for all formats including games on optical disc and of cartridge-based video games. The counterfeit and pirated material (including component parts) continue to be imported largely from Asia, to then be exported to neighboring countries after being assembled in the country. Due to a lax enforcement environment, an ESA member company reports that there has been an increase in retail piracy. Despite Paraguay’s continued role as a transshipment point for pirated video game products, Paraguayan enforcement authorities did little in 2006 to combat piracy. In fact, according to Nintendo of America, Inc. (NOA), in

2006 there was a marked decline in enforcement activities against pirate operations trafficking in counterfeit and pirated Nintendo products. The company noted that unlike 2005 where there were 26 actions resulting in the seizure of 395,000 counterfeit Nintendo products, in 2006, only five actions took place netting less than 50,000 infringing products.⁸

The business software industry reports that Ciudad del Este continues to be a major source of piracy for business software, primarily for distribution to other Latin American markets such as Brazil and Argentina. Severe problems with end-user piracy in businesses inflict the most economic harm on the potential growth of a legitimate software base in Paraguay. BSA reports that Internet-based piracy does exist, but is presently not at a large scale, mostly due to the low access to the internet, which is on the rise. There are a lot of “cyber cafes” (places where you can rent the use of internet services) where almost all the computers has installed illegal games and software, and where copyrighted content can be uploaded and downloaded. The industry remains concerned about the increasing illegal importation of computer hardware parts and components, which are then assembled into computers and frequently loaded by system builders and assemblers with illegal software. Much of this contraband hardware arrives in Paraguay, and then enters Brazil, Argentina and Uruguay. Stronger border measures and much better border enforcement are necessary to combat this practice. BSA’s preliminary estimated trade losses in 2006 due to business software piracy in Paraguay rose to \$7.0 million, while the estimated piracy level dropped slightly to 81%.

MPA reports that Paraguay remains a significant threat to other Latin American markets because of the large-scale pirate transshipment operations in Ciudad del Este, which is the hub and principal supplier of blank optical discs (CD-Rs and DVD-Rs) and locally reproduced CD-Rs and DVD-Rs to neighboring countries. In addition, growing hard goods sales being made through Internet websites are also reaching local markets.

AAP continues to report that photocopied materials are being used in place of legitimate books in institutions of higher learning. Suspicions regarding the presence of pirated versions of trade books and English language teaching materials remain.

COPYRIGHT ENFORCEMENT IN PARAGUAY

The copyright industries continue to note again in 2006 that the enforcement efforts taken by Paraguayan authorities, while well intended, continue to be largely ineffective in deterring widespread piracy there. Organized crime elements remain intimately involved in the production and distribution of pirated products and/or raw materials for the manufacture of pirated products, thus making enforcement even more difficult. There are still too few criminal investigations and prosecutions against copyright pirates. Unfortunately, the Copyright Law and criminal code work to frustrate the application of deterrent sentences because they treat intellectual property violations as minor offenses. Border enforcement remains weak, despite cooperative efforts between industry and border officials to halt suspect shipments and review false documents.

Paraguayan authorities have been cooperative and active during 2006, but they are fighting against deeply entrenched piracy problem. In January 2006, MPA signed an Agreement of Cooperation with the Ministry of Industry and Commerce to facilitate informational exchange and training for Paraguayan authorities. The recording industry signed a similar agreement several years ago.

⁸ A notable action occurred at the CDE Gallery Page market where a hidden bunker was found holding close to 30,000 counterfeit Nintendo products. Documentation found at the raid identified the products as originating from China. Additional information is available through Nintendo of America’s Special 301 Filing to USTR, dated February 7, 2007.

Strengthen border enforcement: It is well known that many piracy problems in Paraguay are centered in the border cities, and that problem continued in 2006. The Government needs to further its customs procedures to combat cross-border piracy and corruption of its agents. The border with Brazil is open and *sacoleiros*, individuals who come to buy counterfeit products to later sell in Brazil, are flooding Ciudad del Este. In addition, tax authorities should conduct strict audits of businesses catering to the “sacoleiro” traffic in Ciudad del Este since tax evasion is rampant.

Through October 2006, it was reported that 230 million optical discs had been imported. Nearly 30% of those were DVDs and the remaining 70% were CDs. Estimates suggest full-year 2006 imports would reach 300 million units.

Customs operations and industry coordination with the Ministry of Industry and Commerce (MIC) continued during 2006. In September 2003, the recording industry reached an agreement with customs and the MIC which provides that no blank CD-R shipment will be released until these groups verify that the submitted invoices and documents are valid and accurate. As a result of this new system and other investigations, over ten million blank CD-Rs and DVD-Rs with false or questionable invoices were seized during 2006. In addition, close to 10,000 burners for CD-Rs and DVD-Rs were also seized during the course of various operations throughout the year. Most of these raids have been coordinated by the Paraguayan anti-piracy unit.

In late 2006, as part of the holiday anti-piracy actions throughout the region, a significant case was initiated as a result of intelligence gleaned from the recording industry’s program in Paraguay and passed on to Brazilian authorities. Investigators identified a large shipment of blank optical media being moved by a local distributor in Ciudad del Este, Paraguay. Along the route the delivery personnel added boxes of suspected burners to the existing shipment. With the vehicle heading for Brazil over the “Friendship Bridge” the investigators notified Brazilian Customs of the situation. Based on that information, authorities seized, several miles inside the border city of Foz de Iguaçu, a huge shipment containing 475,000 blank CD-Rs/DVD-Rs, 20,000 prerecorded CD-Rs, 35,000 MP3 and CD-RS, 38,000 film DVD-Rs, 10 printers, 250 CD burners, 300 DVD burners and more than 100,000 inlay cards. The subsequent follow-up investigation in Paraguay identified two labs in Ciudad del Este that provided the pirated film and music product seized in the shipment. As part of that raid a total of 110 burners, and 13,332 music and film CD-Rs and DVD-Rs were seized. Five persons were arrested at the Paraguayan labs at the time of the raid; the blank optical media distributor is currently under investigation by Paraguayan authorities for tax evasion.

The recording industry reports that another major action took place on January 20, 2007, when Customs officials seized a cargo container containing 1.5 million blank CD-Rs at a Paraguayan port known as Chaco-I. The container was consigned to a suspect blank CD-R importer with a nexus to Brazilian pirate organizations. In this case, the suspect importer was using a false bill of lading to smuggle the media under a lower import tariff classification. The container originated from Taiwan and the seized optical media was identified by the brand name of “Dr. Hank.”

However, troubles with customs are reported by another industry. An ESA member company reports that despite the flood of counterfeit components entering the country, there were no shipments apprehended by Paraguayan customs in 2006. The inaction by Customs is frustrating, particularly given the country’s status as a top transshipment destination for pirated video game products moving into South America, thus, continuing to make pirated and counterfeit Nintendo video games widely available in the region.

Criminal copyright enforcement: The legitimate recording industry in Paraguay (represented by APDIF Paraguay) continues to be very active in conducting investigations and filing

cases mainly against pirates operating in Ciudad del Este and Encarnación. Since mid-2005, MPA's anti-piracy enforcement actions in Paraguay have been coordinated by APDIF.

However, since the business model for pirates has changed from large-scale operations to loosely knit, small-scale groups, the tasks of identifying and immobilizing these organizations has become more difficult. The more sophisticated criminals involved in music piracy groups have adopted the "cell" structure of operations. The recording industry has continued to provide information for prosecutors to conduct raids. In 2006, the recording industry conducted 156 raids, which resulted in the seizure of over 1.1 million units of infringing products (mostly music CDs) and the closure of 43 manufacturing facilities, most of them small to mid-sized CD-R replication facilities, and 49 storage facilities of different sizes. Another two major organized crime cases with international nexuses are currently under investigation. Shipments of contraband blank CD-Rs/DVD-Rs amounting to 9.5 million units, allegedly destined for the pirate market, were seized by Paraguayan authorities based on information provided by APDIF Paraguay.

Here are a few examples of some major actions taken in cooperation with Paraguayan authorities and the recording industry during 2006:

- On January 16, 2007, the UTE executed a major street operation in Ciudad del Este, Paraguay in the infamous Paseo San Blas. Several major points of sale were targeted which resulted in the seizure of 107,835 music and film DVD-Rs, 43,349 music CD-Rs, several hundred PlayStation2s and over half million jewel boxes. The "Paseo San Blas" is the renovated pedestrian open mall area located at the foot of the Friendship Bridge, which separates Ciudad del Este from Brazil's Foz de Iguacu. The Paseo San Blas has now approximately 235 points of sale with another 250 more points of sale scheduled for opening in 2007. The significance of this operation is not only the quantities of pirate product seized, but also that it was first time that Paraguayan authorities raided this location after its serving as a major known distribution point of pirate product for two years. Paraguay has an anti-piracy enforcement program through a specialized team focused on major laboratories and warehouses; however, it has failed to take appropriate action against retailers and street hawkers that on average account for more than a million pirate units of films and music product available for sale to mostly Brazilian tourists and smugglers.
- Officers from the UTE and the Economic Crime Department of the Policía Nacional conducted eight simultaneous raids on shops and warehouses distributing pirate music and film products in July 2006. Over 158,000 optical discs containing infringing material and 1.5 million inlay cards all containing details of infringing titles were seized. The discs consisted of over 43,000 DVD-Rs containing both films and music and more than 114,000 CD-Rs containing music titles.
- During August 2006, APDIF provided information to the local authorities who in turn seized 3,060 CD-R/DVD-R burners during an on-going investigation into optical media distributors in Ciudad del Este. UTE determined these targeted distributors had arranged for the burners to be mis-declared by a front company in order to pay a substantially lower import duty. Intelligence from multiple sources indicates this shipment of burners was obtained in Taiwan at a very low price and was being stored in a bonded customs warehouse until arrangements could be made for clearance. It is likely that this shipment was mainly bound for distributors in Sao Paulo, Brazil, catering to the pirate market for the 2006 holiday season. The shipment was subsequently seized and another official investigation was initiated against the suspect distributors.

BSA reports that the authorities remain cooperative with industry officials on both criminal and civil cases during 2006. UTE has also been working with BSA members on *ex officio* actions regarding investigations into suspected pirated and counterfeit product. During 2006, BSA conducted 5 channel actions made in Ciudad del Este; these actions involve the making of a formal complaint by the rightsholders, *ex officio* action taken by UTE and the cooperation of the specialised IP District Attorneys. These resulted in the confiscation of pirated software valued at US\$1.8 million. BSA appreciates the investigations and follow-up actions taken by the UTE. In addition, BSA has circulated a considerable number of cease and desist letters to companies in order to improve the use of legitimate software in the marketplace. For 2007, BSA is considering a series of actions in Asunción against the sale of pre installed software in the machines without any licence

Few prosecutions and non-deterrent sentences: There are nine specialized IPR prosecutors (each unit usually consisting of one prosecutor and two assistants) in Paraguay, three in Asunción and three in Ciudad del Este. The prosecutors now have the ability to pursue copyright infringement cases as “public” actions (thanks to Law No. 1.444, which entered into effect in July 1999). One news report indicated that Ciudad del Este now has six prosecutors (although it is unclear whether they are all IPR prosecutors or have general assignments).

One positive note was that the Government issued a new publication on IP procedures to judges and prosecutors. This book, *The Handbook for District Attorneys and Judges on Intellectual Property Rights Matters*, is an essential reference book for all IP matters. It is being used in conjunction with mandatory training programs for judges, district attorneys and customs officials.

The recording industry reports that in 2006, Paraguayan courts issued 32 criminal judgments against pirates of sound recordings, but none resulted in effective incarceration. Despite these convictions, the courts do not seem to be resolving cases in an expeditious manner. An example of the problem and major concern for the industry is the case of three Taiwanese nationals, only one of whom is incarcerated, that have been indicted for custom’s violations and tax evasion related to blank media imported (over 200 million units over a period of three years) for, what is believed, supplying pirate replication cells. The case (also known as Santa Ana) has been lingering in the judicial system for over two years and received fourteen postponements to date.

False expert reports: Severe problems remain with the Paraguayan judiciary, especially related to corruption. BSA reports that one of the most pressing problems it has encountered involves inadequate reports by expert witnesses. There is no punishment for the issuance of the expert witness’s false reports. This also happens in trademark cases, where individuals who purport to be experts continue to be appointed by the courts, but they are not qualified and often simply tailor their findings to suit the wants of the party willing to purchase such testimony. As a result, unfounded opinions by both experts and judges have been issued and seized merchandise returned to the pirates. The Supreme Court’s Superintendence Council, the agency responsible for issuing licenses for court experts, does not effectively monitor the performance of those they license.

Civil *ex parte* searches and delays: BSA reports that in 2006, it obtained a favorable sentence (resolution) at a civil court against a company which was ordered to pay damages of US\$13,500 plus court costs. BSA hopes that this case will assist users, courts and the public in understanding that it is against the law to use unlicensed business software. Another continuing problem that BSA faces with civil enforcement is the sometimes unreasonable delay of some courts in granting *ex parte* search orders. In many cases, it can take a minimum of 45 days to obtain a civil warrant search. It takes an average of three years to reach a decision from a district court and an additional year if the case is appealed.

COPYRIGHT LAW AND RELATED ISSUES IN PARAGUAY

Copyright Law of 1998: The new Copyright Law entered into effect on October 21, 1998 (Law No. 1.328/98). The 1998 law represented a much-needed improvement over the old 1951 copyright law. After some delay, implementing regulations for this law were signed by the President on September 13, 1999 (Decree No. 5.159). IIPA has summarized deficiencies in the 1998 Copyright Law in prior Special 301 filings.⁹ Paraguay already has deposited its instruments of ratification to both the WIPO Treaties—the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. In order to achieve the kind of comprehensive implementation desired by the copyright industries, further refinements to Paraguayan laws will be necessary.

Needed criminal code reform for copyright infringement: Back in 2003, members of the IIPA came together to support introduction of amendments to Paraguay's 1998 Law on Copyright and Neighboring Rights. That copyright reform package was aimed at increasing criminal penalties (among other issues) in Paraguay.¹⁰ The bill was introduced, but legislative consideration stalled in 2005, and has fallen off the legislative agenda entirely. Meanwhile, reform of Paraguay's criminal code is ongoing. There are some troubling gaps regarding the scope of copyright protection in Article 184 of the Criminal Code (see discussion below). As a result, the IIPA members have been working years to try to fill those gaps and strengthen those provisions. Given the recent end of the proposed copyright bill, effective reform of the criminal code becomes more urgent.

In the spring of 2006, IIPA members working in Paraguay learned of two proposals to reform Article 184 of the Criminal Code which have been submitted to the Paraguayan Congress. The first proposal would reduce the level of criminal sanctions, and the copyright industries are unable to support it. The second proposal, by the Ministry of Industry and Commerce (MIC), appears to have been drafted quickly in a well-intentioned effort to respond to the inadequacy of the first proposal. Unfortunately, the MIC proposal also failed to address many of the deficiencies identified by the industries over the years.

To assist in improving the current criminal law, IIPA and its members, working with local colleagues, drafted and proposed a simple amendment to Article 184 that would strengthen sanctions for copyright infringement in Paraguay and address the longstanding inadequacies in the current law. The industries' proposal tracked efforts made by the industries in 2003 and which were included in the industries' 2004 copyright reform proposal. All these bills have been dismissed and consolidated in one project drafted by the commission to reform the criminal code. This project includes provisions for *ex officio* actions, protections for technological protection measures, higher penalties for organized crime cases and also increases the upper limit sanctions for piracy. Unfortunately, it does not include a minimum penalty for piracy that will allow judges to suspend or opt for fines.

Criminal Code and Administrative Remedies: Paraguay reformed its criminal code in October 1998. This reform, however, caused more problems, for several reasons (all of which IIPA has identified in previous 301 submissions). First, Article 184 of the Criminal Code identifies cases involving acts infringing the author's right. But it does not contain any provisions regarding the

⁹ See IIPA's 2005 301 report on Paraguay at <http://www.iipa.com/rbc/2005/2005SPEC301PARAGUAY.pdf>.

¹⁰ The copyright industries had been working to support a copyright law amendment which would have: (1) increased criminal penalties for intellectual property rights violations to between two years and eight years (ten years in some enumerated cases). Fines would be added to prison terms; (2) specifically made these criminal provisions "public" offenses; (3) include knowingly supplying raw materials to pirate organizations as a punishable criminal offense; (4) provide penalties for violations of technical protection measures and rights management information; and (5) permit *ex officio* action for prosecution of intellectual property rights violations.

infringement of neighboring rights, the rights which protect producers of sound recordings. The criminal code therefore does not protect against acts of piracy involving sound recordings. This new law in fact abrogated the penalties provided under an 1985 law (Law No. 1.174), which established relatively strong criminal prohibitions for piracy of sound recordings, and also clearly provided that the state could proceed *ex officio* against infringers. The recording industry continues to bring cases based on the copyright law, but all the general provisions regarding penalties follow the criminal code. As a result, few people go to jail, greatly undermining the deterrent effect of otherwise well intentioned law enforcement efforts. The recording industry has been forced to bring cases for different violations (such as contraband, tax evasion, etc.) rather than violation of copyright.

Second, the criminal code provides a penalty of up to three years or a fine. Unfortunately, this allows judges to impose either a fine or a prison sentence. This kind of choice will likely limit the deterrent effect of the law because convicted defendants could buy out, or convert, their jail time into fines. The current penalty of six months to three years for IPR violations prevents any effective deterrent sentences. IIPA and its members suggest increasing these penalties in order to elevate them to major crimes.

Third, in mid-1999, the President signed into law an amendment to the criminal code which made copyright crimes “public” actions, and therefore prosecutors can pursue these cases on their own initiative. This law (Law No. 1.444 of June 10, 1999) was signed on June 25, and entered into effect on July 9, 1999. In a positive move, this bill deleted language in the Criminal Procedures Act of 1998, which required that private parties initiate and bring prosecutions. Unfortunately, according to an interpretation issued by the Paraguayan office in charge of judicial training, this law was scheduled to sunset in July 2003. Despite this interpretation, the good news is that prosecutors continue to bring public actions in copyright infringement cases. To these best of IIPA’s members’ knowledge, to date no judicial decision has contested this interpretation of the law.

Term of protection for sound recordings: The recording industry has also presented a project to extend the term of protection for works and phonograms from 50 to 70 years. The bill is in the lower house, presented by Congressman Edmundo Rolon, and it is being evaluated by the copyright office. We would encourage the Paraguayan Government to support this bill that would provide authors, performers and producers with much needed protection.

IPR TRAINING AND PUBLIC AWARENESS

The recording industry reports four training seminars in 2006, one done in cooperation with the U.S. Embassy, aimed at enforcement personnel. Two seminars covered border operations and the other two investigations and organized crime. Some of these seminars had up to 100 people in attendance. In 2006, the State Department’s Bureau of International Narcotics and Law Enforcement Affairs (INL) provided Paraguay with \$494,000 in assistance to support its efforts to combat narcotics trafficking, money laundering, and violations of intellectual property rights. Also, since 2003 the U.S. Government has had a Resident Justice Advisor in Paraguay to support efforts to combat money laundering and terrorist financing and other financial crimes as well as organized crime and corruption.