

PARAGUAY

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2009 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Paraguay remain under Section 306 monitoring in 2009.

Executive Summary: Yet another year has passed and sadly, there was no reduction in copyright piracy levels in Paraguay in 2008 -- not in the streets, not at the borders. Piracy levels remain the same, still focused primarily on physical piracy in large scale labs and blank optical disc smuggling, a situation only exacerbated due to the increase in production by the local blank optical disc plants in Ciudad del Este. In fact, the recording Industry reports that piracy has essentially eliminated any legal market and is unable to obtain dependable sales data, and as a result, the industry is also unable to provide a reasonable estimate of losses to piracy other than saying it is practically 100% of the market. IIPA members report continued cooperation with key Paraguayan authorities, especially by the special anti-piracy unit (known as UTE) in 2008, yet the all-too-familiar problem of poor results remains the standard. Corruption and an ineffective judicial system are deeply embedded systemic problems that have provided many roadblocks to criminal enforcement. One ray of light is that criminal code amendments to strengthen the copyright sanctions were adopted in 2008; it remains imperative that the overwhelmed prosecutors and the courts work together to issue deterrent sentences in piracy cases. More judicial training on IPR enforcement and the adoption of sentencing guidelines are direly needed. IIPA supports the renewed bilateral Memorandum of Understanding on Intellectual Property Rights (IPR MOU) which is in force through 2009. Unfortunately, much more work needs to be done by the Paraguayan government to implement this MOU, and as such, IIPA again recommends that the U.S. government maintain close consultations with Paraguayan authorities on progress being made on-the-ground on MOU elements.

Priority actions requested to be taken in 2009: The copyright industries recommend that the following actions be taken in the near term in Paraguay in order to improve the adequate and effective protection of copyrighted materials there:

Enforcement

- Investigate and conduct raids against the large-scale distribution points operating in Ciudad del Este, including addressing the role of landlords with respect to the open and notorious illegal activities taking place on their premises.
- Improve border enforcement, including (a) the interception and seizure of piratical and counterfeit goods, (b) the interception and seizure of contraband PC hardware, and (c) the inspection of blank optical disc media.
- Improve training for officials in the special anti-piracy unit (UTE) so that they may continue their good work. The government should also provide sufficient resources for UTE to hire, train and maintain its inspectors.
- Create a Special IP Prosecutor with national competence, such as those set for drugs and corruption.
- 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 should consider creating a specialized unit familiar with the business of optical media and other exportable products.
- Impose deterrent criminal sanctions. This is even more important in 2009 as the criminal code was recently amended to cover more infringing actions and provide higher penalties.
- Improve training for both prosecutors and judges in order to improve effective deterrence against criminal copyright piracy.
- Request that the Supreme Court suspend and/or remove expert witnesses and judges reported to be involved in corruption cases from current dockets.
- Create a specialized IPR Court and a cadre of specialized IPR judges with national competence.

Legislation

- Issue and implement a software legalization decree (long overdue from the IPR MOU).

- Ease regulations for the destruction of seized evidence. Currently destruction procedures are very expensive because they require high court fees from the complainants for each individual case instead of pooling them together. Current provisions in the criminal procedure code do not allow judges to destroy seized merchandise before final ruling. Destructions are expensive because the petitioner must cover all cost related to the storage, transport, destruction, attorneys and court fees. In 2008, the Supreme Court issued a decree regulating the amount to be paid to judges for destructions. Initially, judges refused to act on cases where attorneys followed the new decree and refused to pay the high sums; however, the reduced fees appear to have now been accepted.

The IPR Memorandum of Understanding and Action Plan: Both the Paraguayan and the U.S. governments have invested years of effort to improve the Paraguayan system. On December 19, 2003, both nations agreed on a Memorandum of Understanding on Intellectual Property Rights (IPR MOU). The 2003 IPR MOU was extended through 2007, and then a revised MOU that contained an action plan was signed on April 30, 2008, effective through December 31, 2009. While there has been some progress (especially with the UTE and most recently, with criminal code reform), Paraguay unfortunately has not met many of the major objectives of these IPR MOUs, including:

- Failing to significantly reduce the levels of copyright piracy;
- Not increasing *ex officio* actions at the border;
- Not strengthening deterrence by actually imposing mandatory minimum prison sentences on offenders convicted of manufacturing, importing or distributing commercial quantities of pirated or counterfeit goods;
- Not providing for the seizure of an infringer's assets upon conviction for commercializing pirate product;
- Not finding ways to work with the judiciary to promptly resolve pending cases; and
- Not increasing the terms of copyright protection for all copyrighted materials.

PARAGUAY Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2004-2008 ¹										
INDUSTRY	2008		2007		2006		2005		2004	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Sound Recordings & Musical Compositions ²	NA	NA	128.0	99%	128.0	99%	128.0	99%	127.8	99%
Business Software ³	7.0	81%	7.0	82%	6.0	82%	6.0	83%	6.0	83%
Entertainment Software ⁴	NA	NA	NA	NA	NA	98%	NA	NA	NA	NA
Books	NA	NA	NA	NA	2.0	NA	2.0	NA	2.0	NA
Motion Pictures ⁵	NA	NA	NA	NA	NA	NA	2.0	86%	2.0	95%
TOTALS	7.0		135.0		136.0		138.0		137.8	

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in Appendix B of IIPA's 2009 Special 301 submission at www.iipa.com/pdf/2009spec301methodology.pdf. For the history of Paraguay and 301, see Appendices D and E at <http://www.iipa.com/pdf/2009SPEC301USTRHISTORY.pdf> and <http://www.iipa.com/pdf/2009SPEC301HISTORICALSUMMARY.pdf> of this submission. To read IIPA's cover letter to our 2009 Special 301 submission, go to <http://www.iipa.com/pdf/2009SPEC301COVERLETTER.pdf>.

² RIAA reports that it is unable to obtain reliable information for the legal market or its potential size and therefore cannot estimate the amount of losses to piracy in 2008. Prior estimates (such as in 2007) included both domestic piracy and estimated losses caused by transshipment.

³ BSA's 2008 statistics are preliminary and represent the U.S. software publishers' share of software piracy losses in Paraguay, and follow the methodology compiled in the Fifth Annual BSA and IDC Global Software Piracy Study (May 2008), available at www.bsa.org. These cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software.

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."

⁵ MPAA's 2005 estimates used a methodology that analyzed both physical/"hard goods" and Internet piracy.

Paraguay is a beneficiary country under the U.S. Generalized System of Preferences program (GSP). The GSP program requires that a beneficiary country provide "adequate and effective" protection to U.S. copyrighted materials. During 2008, \$61.8 million worth of Paraguayan goods entered the U.S. under the duty-free GSP code; this was a 56% increase over 2007.

COPYRIGHT PIRACY IN PARAGUAY

Optical media importation, piracy and the border: Optical disc piracy levels have not been reduced in Paraguay. Even though the importation of blank media has decreased, this has been offset by the five large optical disc factories operating in the Province of Alto Parana, where Ciudad del Este is located.

The amount of optical media product legally imported into Paraguay continues to exceed possible local use. For example the year-end estimate for 2007 for legally declared imports of compact discs (including CDs and DVDs) was 90 million units, according to the RISMOMP, the Office of the Ministry of Industry and Commerce overseeing imports of optical discs. Another 100 million units of blank media that had been previously routed through Paraguay are now being diverted to the border between Uruguay and Brazil. One report indicates that Paraguay imported some 7,100 tons of polycarbonate, which is the material used to manufacture optical discs. Approximately 30% of all imported blank media come from two major manufacturers. Most of the imports come from Southeast Asia (Taiwan and China) and almost all of it is destined for pirate production of music, movies and software to be sold in Brazil. Hundreds of smaller burning labs in Ciudad del Este are supplied by pirate kingpins who coordinate their work and provide these small labs with blank CD-Rs. These "sprayed" plants serve Paraguayan, Argentine, Uruguayan and (mostly) Brazilian illegal CD-R duplicators.

There are optical disc factories in Paraguay. Several years ago, over the same objections, the Paraguayan government authorized and provided incentives under the law (*Ley de Promocion Industrial*) to then set up four new industrial CD-R and DVD-R plants in Ciudad del Este. Nowadays there is a striking lack of oversight regarding the blank optical plants. Currently there are five (5) optical disc factories, and what is stunning is the increase of output of product from these plants. The addition of the fifth plant indicates that overall output has risen from 150 million units in 2006 to more than 370 million units in 2008. One of the plants does have the authorization to legally export their products to Brazil and Argentina. It is further believed that one of these factories is partially owned by a convicted felon from a previous IPR/tax case

Paraguay continues to be a key destination for much of the pirated optical media product produced in Southeast Asia (e.g., Malaysia, Macau, Hong Kong, Singapore, and Taiwan). Paraguay remains a significant transshipper of pirate products and optical media to its neighbors, especially Brazil.

Physical / hard goods piracy: Recorded CD-Rs/DVD-Rs, and cartridge-based video games are readily available in Paraguay, with much of the most visible piracy seen in Ciudad del Este. The level of hard goods piracy for recorded music is 99%. Pirated music and film products are still found at the wholesale and retail levels, such as the San Blas municipal market at the foot of the Friendship Bridge. Hard copies of illegal software also are available in large quantities in Ciudad del Este. Street piracy remain steady and in the cities which have borders with Brazil, such as Ciudad del Este, Pedro Juan Caballero and Salto del Guaira, which are the ones that supply the Brazilian market and have open borders. Significant piracy of mostly music and movies (CD-Rs and DVD-Rs) can be found on the streets of Asuncion.

The entertainment software industry reports that for 2008, the market remains replete with pirated and counterfeit video games. A survey of the market found that about 80% of the pirated product sold at retail consisted of imported or factory-replicated games on DVD, with the remaining 20% locally produced, burned product. The country also remains a major transshipment point for pirated and counterfeit video games from Asia into South America. Also, an increasing quantity of optical media games are smuggled into Paraguay from sources in the Middle East, specifically Dubai and Syria. In most cases, shipments of pirated entertainment software on optical media are manufactured in Malaysia, while counterfeit cartridge games and components are shipped from China—all for subsequent and further shipment into South America's key markets like Brazil. A significant quantity of factory replicated games on DVD manufactured in Argentina also entered the market. Shipments of counterfeit cartridge games and components, for example, have been seized in the U.S. and in Uruguay, with Paraguay as the

destination country. Border enforcement efforts must also focus on counterfeit game cartridges, game components and console game discs, for which the volume of suspect shipments is also as significant as optical disc products. In addition, there remains a big problem with 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 business software. Much of this contraband hardware arrives in Paraguay, and then enters Brazil, Argentina and Uruguay. There is also trafficking of circumvention devices with Brazil and Argentina, mostly through the border cities.

The business software industry reports that end-user piracy in businesses and government agencies continues to cause the most economic harm for this sector. With respect to piracy targeted at corporations, email is used to place orders online, and purchasers obtain the products via a distributor hired by the piratical organization. Pirate groups offer pirated compilations of business software, including those specially tailored to a particular business sector, for example, to engineers, architects, and accountants. Government implementation of a software legalization decree (required by the original IPR MOU) is long overdue. The growing availability of the Internet is starting to adversely affect this sector.

The book publishing industry continues to report concerns about use of photocopied books in universities and encourages institutions of higher learning to take a more active role to ensure use of legitimate materials by students and lecturers.

Internet piracy: Internet-based piracy in Paraguay has grown as local Internet access is becoming more affordable. Still, broadband connections are few and slow in Paraguay, and that technical fact has contributed to a less than rapid growth of this piracy. Cyber cafés have proliferated across the country, and many of the computers in these cyber cafes have installed illegal games and software. Consumers use Internet forums and webspaces to offer their products and upload links to free hosting sites such as Megaupload or Rapidshare. Piracy is also distributed via discussion forums and blogs. The levels of mobile piracy are still not determined. Importantly, Internet based piracy often works to offer the sale of hard copies of pirated goods (often in optical disc format). ESA has also noted an increase in national and regional Internet sites offering the sale of hard copy of DVD format video games. In 2008, BSA supported criminal actions that results in taking down two big Internet sites, FEJO and SUPERSOFTPY, which offered several unauthorized software products. These sites ran delivery system where they would send infringing copies of business software on DVDs to homes or businesses. In sum, Paraguay's Internet piracy problem is a cause of concern, but is not yet at the level of severity reported in Brazil and Argentina.

COPYRIGHT ENFORCEMENT IN PARAGUAY

Copyright anti-piracy actions taken by Paraguayan authorities, while well intended, continue to be largely ineffective in deterring widespread piracy. One bright note continues to be the proactive and reliable work done by the Specialized Technical Unit (UTE) in the Ministry of Industry and Commerce, which has conducted several high-impact raids and has worked well with industry representations on operations and investigations. While some criminal work is done with the Economic Crime Unit of the police, the results there have been far from reliable or satisfactory.

Criminal actions are inconsistent despite the good work of UTE: The sound recording and software industries, both of whom have enforcement programs in Paraguay, report that cooperation with UTE is very good. The UTE is the only agency of the Government to act on its own, to investigate, collect evidences and seize products. It is not a police force, but works with other agencies on actions. UTE continues to perform well on street and mid-level infringers, but needs more training in dealing with complicated or organized crime cases.

Unfortunately, it appears UTE has no political support from most national and local government agencies, with the exception of the Ministry of Industry and Commerce. UTE has no support from the prosecutors of Ciudad del Este, whom are always blocking the work of UTE Agents, creating artificial legal obstacles to prevent the good execution of procedures.

The recording and motion picture industries are represented by APDIF in Paraguay. For the past two years, APDIF has focused much of its enforcement work in Paraguay with efforts aimed at protecting the music and film markets in Brazil. These efforts include, for example: obtaining information on the importation of polycarbonate for each plant to determine

estimated production; showing evidence of falsified records or tax evasion based on false manufacturing data; investigation whether optical disc plants are manufacturing and/or exporting product to other countries in violation of their agreement with the Ministry of Industry and Commerce; working to ensure the MIC agreement is followed; conducting investigations of OD plant ownership issues; and investigating wholesale businesses that cater to purchasers of CD-R/DVD-R burners and optical blank media in Ciudad del Este that in turn supply the *sacoliero* pirate market.

While APDIF's cooperation with UTE in 2008 was excellent, the number of raids for the year decreased by 74% to 21 operations and the amount of product seized by 5% to 4.7 million units. It is clear that the authorities are not able to maintain the intensity of the campaign without major support from the industries. Although piracy is a crime to be pursued *ex officio*, IFPI reports that 70% of the anti-piracy operations are initiated by complaint of the industry. This is largely due to the high level of corruption in the National Police.

ESA has also experienced excellent cooperation from the UTE resulting in enforcement actions conducted against 15 targets. The entertainment software industry struck 14 diverse targets in Ciudad del Este and at points of entry. In early 2008, ESA seized 27 passenger suitcases in the Asuncion airport, all being brought in by one individual traveling from Dubai, resulting in the seizure of over 50,000 pirated game discs. Another airport operation targeting pirated game discs entering the Asuncion airport via international courier packages led to the seizure of 15,000 pirated game discs. All seized product was destined for Ciudad del Este and eventually, the Brazilian market. Pirated video game cartridges and game discs were seized in numerous warehouses and retail outlets raided in Ciudad del Este while the raid of a game production laboratory resulted in the seizure of 54 CD/DVD burners used for the production of pirated game discs. All enforcement actions were successfully executed with the excellent participation of the UTE.

Prosecutions are uneven and results disappointing: The District Attorney's Office is the institution that houses prosecutors specialized in intellectual property crimes. There are seven specialized IPR prosecutors (each unit usually consisting of one prosecutor and two assistants) -- four in Asunción and three in Ciudad del Este. For years, the prosecutors have had ability to pursue copyright infringement cases as "public" actions (Law No. 1.444, which entered into effect in July 1999).

Unfortunately, the quality of work between these two sets of prosecutors varies dramatically. Both the business software industry and the recording industry indicate that they have good working relationship with the prosecutors in Asuncion. BSA reports that they work very well with the authorities (both prosecutors and judges) in Asuncion. The relation with the prosecutors in Asuncion is pretty good. The level of cooperation in Ciudad del Este is different. District Attorney's office should consider the necessary changes in CDE to appoint new prosecutors really committed with the fight against piracy.

BSA also reports difficulties working with prosecutors and judges of Ciudad del Este. There has been a constant turnover of prosecutors there. BSA has experienced unnecessary delays as well as information leaks that cause, in many cases, the need to engage in even more unsuccessful procedures. Also, BSA's experience suggests that the Ciudad del Este prosecutors are not well prepared, in terms of knowledge of the law, in software cases. For example, in order to obtain a warrant and a search and seize order, BSA attorneys have to wait for hours; during these lengthy periods, informants either in the judge's office or the prosecutor's office give notice to the targets about the upcoming search so that when the search is executed, the premises are either closed or empty. To be clear, the prosecutors of Ciudad del Este also have conducted successful raids. In those cases, the problem then becomes that they do not press for deterrent sanctions, and instead accept only meagre fines to end the cases before trial. BSA then has to prepare additional information to bring appeals in those cases.

ESA found that the only method of preventing information leakage from affecting raid results was to enlist the cooperation of the Head Prosecutor in Ciudad del Este in allowing the targets to be 'covered' by the UTE and an assistant prosecutor while waiting for the raid warrant.

The reduction in the quantity of prosecutors in Ciudad del Este from five to three has created an overwhelming workload of IP cases. While some of the prosecutors already lacked motivation to investigate and pursue deterrent sanctions, this reduction greatly worsened the situation. For example, ESA reports that prosecutors that found pirated merchandise while conducting raids targeting other pirated/counterfeit goods, no longer sealed the location allowing merchandise not targeted to

later be seized. By the time another raid warrant could be issued, the location had been emptied. There is an unofficial proposal to eliminate the specialized IPR Prosecutors' responsibility for acting in tax evasion cases. If implemented, three prosecutors may be sufficient for Ciudad del Este.

During 2008, BSA continued its good relationships with UTE, but relationships alone do not provide the measure of tangible enforcement success beyond UTE. BSA took seven retail actions in Ciudad del Este, all without much success, because the leak of information and at the time we arrived with the judge and prosecutor, accompanied by local police, we found some empty stores. In this case, the prosecutor refused to seizure other counterfeit videos and video games, claiming that those products were not on the complaint. Over the objections of both BSA attorneys and the police officer in charge, the prosecutors also refused to seal the location before another complaint could be filed.

Criminal sanctions are not deterrent: As discussed above, prosecutors do not press for deterrent level sanctions, and judges similarly do not impose deterrent sanctions in criminal copyright cases. The recording industry reports that in 2006, Paraguayan courts issued 14 criminal judgments against pirates of sound recordings, but none resulted in effective incarceration. And for 2008, the recording industry confirms that no criminal convictions were issued on music piracy cases all year. ESA reports that in 2008, Paraguayan courts issued 14 criminal judgments against video game pirates; however, none resulted in incarceration.

The recording industry reports that a new problem involves the use of expert witnesses. The use of expert witnesses or *peritos* by both sides ends up giving the defendant a litigation advantage because *peritos* are paid private parties. So even in cases where the recording industry won a conviction in the lower court, they have almost all been reversed on appeal because of this evidentiary question. The problem is massive and widespread.

The majority of the expert witnesses approved by the courts have little or no qualifications, and report findings are typically subject to the whims of the highest bidder. As long as expert witness continues to be paid by the private sector instead of being employed by the courts, the window of opportunity for this corruption will remain. In 2008, the Supreme Court eliminated the designation of new experts. While this does not solve the problem with the current roster of experts, it may be a step in the right direction.

Ineffective border enforcement: The Paraguayan government needs to do much more to combat cross-border piracy and corruption of its agents. The border with Brazil remains wide open and *sacoleiros*, individuals who come to buy counterfeit products to later sell in Brazil, pass easily over the Friendship Bridge. During 2008, there was a surge in river-traffic, so much so that Brazilian authorities on the other side of the river have been overwhelmed. An undetermined amount of merchandise is being trafficked into Brazil through 'dry' border crossings including Pedro Juan Caballero and Salto de Guaira.

In June 2008, Paraguayan Customs, through the US-funded Plan Umbral, created the Administrative Coordination of Customs Investigations (CAIA), an investigative unit with port and border verification abilities comprised of individuals screened through U.S. administered polygraphs. The unit initially proved to be capable and motivated to conduct effective enforcement actions. However, the change in the Customs administration led to the CAIA being reduced to a limited intelligence research role with very little support from the Director of Customs. DETAVE, Custom's border enforcement and anti-contraband/piracy unit, also created under Plan Umbral, has been re-focused almost exclusively to targeting contraband entering Paraguay, per the direction of the new administration. The group's success in the anti-piracy arena has been extremely limited.

The authorities, specially the UTE and the District Attorney's Office of Asuncion, are working with customs. Even though these authorities have *ex officio* powers to take their own actions, the industries are not aware of any major actions.

The recording industry reports that the situation regarding border operations continued its decline during 2008, mainly because Paraguay became an "exporter" of blank media after having been an "importer" for many years. The government doesn't have the political will to stop the smuggling of blank media (manufactured in Ciudad del Este) into Brazil. Also, the Government of Paraguay provided incentives for the installation of the CD/DVD plants. Importations of blank media decrease

from 312 million in 2006 to only 45 in 2008. In the meantime, the plants located in CDE are producing something between 350 and 391 million units in 2008 (based on the amount of polycarbonate imported).

BSA reports that it carried out 4 border actions in Ciudad del Este in 2008. Once again, the support of the UTE was effective. Unfortunately, the proceedings were initiated by the prosecutor only after excessive and unwarranted delays. The secrecy of the operation was compromised during this delay and, as a result, no pirated software was found.

Tax authorities should conduct strict audits of businesses catering to the *sacoleiro* traffic in Ciudad del Este since tax evasion is rampant. A new recordation process established with the customs authorities was a welcome development, but there must be better cooperation with the Recordation Office when suspect products are found.

Delays and low damages in civil cases: In 2008, BSA continued to face difficulties in its civil *ex parte* actions, including excessive delays and low damages awarded by the courts. 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. Because the search warrants take so long to be issued, there is a danger of leaks. BSA has met with the President of the Supreme Court to suggest that new courts with exclusive jurisdiction for intellectual property infringements be created (like those courts that exist for Drug Corruption and Terrorism).

The creation of such a court would be beneficial for the entire industry and specialized IPR training for these judges could be offered. The creation of a specialized IPR judge with national jurisdiction would also be helpful.

Internet enforcement: To date there has been very few developments in Internet piracy enforcement. For 2008, BSA reports one positive development in that they dismantled two big suppliers of software products that used the Internet to promote their products and to obtain sales. BSA also successfully removed these sites, pressing criminal charges against the owners, who were previously fully identified. The difficulty with this action is that it involved procedures and prosecutors in Ciudad del Este. Processing this case took a long time for both prosecutors and the judge to take action, during which time the potential for a leak mounted. Disappointingly, the prosecutors only sought that the court impose a fine on the defendants, instead of a more appropriately severe sanction. BSA also brought a case in 2007 where it worked with authorities to conduct a raid against one Internet pirate who operated internationally. This defendant offered franchises supplying pirated software products targeted at specific professions (e.g. architecture, medicine, law). In this action, 213 pirated DVDs were seized, many that were used as masters for these "special packages" of programs. Such packages often included four or five DVDs. As of early 2008, this criminal case was still in its early stages: the District Attorney's Office has presented an indictment against the defendant, but no preliminary court hearing has yet taken place to decide whether the case should go to trial.

The local ISPs are cooperating to protect copyright, but only in the limited circumstances when they are required to do so by judicial order, and then they are responsive. In order for rights holders to pursue enforcement and collect evidence for any investigation, they must first obtain a judicial order to request information from an ISP. Currently there is no specific legislation regarding ISP liability, but many assume that they are subject to general liability principles in the Civil Code, but this has not yet been tested.

COPYRIGHT LAW AND CRIMINAL CODE ISSUES IN PARAGUAY

Criminal code reform in 2008: IIPA and its members have been working for years to try to fill the troubling gaps in the criminal code to strengthen enforcement remedies for copyright infringement.⁶ The most recent solution was based on a

⁶ For years, there had been two principal problems with Paraguay's Criminal Code. First, the now former Article 184 identified cases involving acts infringing authors' rights (copyright) but did not contain any provisions regarding the infringement of neighboring right (the rights which protect producers of sound recordings). The criminal code therefore did not explicitly protect against acts of piracy involving sound recordings. The code even abrogated penalties provided under another law (Law No. 1.174 of 1985) which established relatively strong criminal prohibitions for piracy of sound recordings and clearly provided that the state could proceed *ex officio* against infringers. Second, the current criminal code provided a penalty

comprehensive criminal code effort. Amendments to the Criminal Code were approved in Law No. 3440 of July 16, 2008, which amended several provisions of Law No. 1160/97 (the previous Criminal Code), and these new provisions will enter into force in July 2009.

With respect to copyright, this legislation makes copyright infringement a major crime, upgrading infringement to a felony. This amendment significantly increases the maximum penalties of copyright infringement, going from a maximum of three years to five years, and in special and serious cases, the penalty could be extended to eight years of prison. Furthermore, the reform of Article 184 (which addresses copyright and related rights) has been expanded to include more infringing acts, including prohibitions against circumvention devices. The one drawback of this legislation is that it unfortunately keeps the minimum penalty of one month for some of the infringing acts, and as the industries have long complained, this low minimum penalty may mean that judges will refuse to issue jail sanctions, instead issuing only fines. Thus, the copyright revisions appear to continue to allow the possibility of issuing a fine as a sanction; imposition of jail time is left to the discretion of the judge. Now that the criminal code has been amended, prosecutors and judges must impose these deterrent penalties in-practice.

In addition, the 2008 reforms also expand the existing money laundering Article (196) to include copyright violation, as defined in Article 184a, as a crime used to facilitate money laundering.

Copyright Law of 1998: Paraguay adopted a new copyright law in 1998 (Law No. 1.328/98), and later deposited its instruments of ratification to both the WIPO Treaties—the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Although the copyright law in general is quite good, further refinement would be needed in order to fine-tune the legislation up to the more comprehensive standards found, for example, in the intellectual property chapters found the U.S. Free Trade Agreements with nations such as Peru, Chile and Central American countries. In recent years, the copyright industries have focused on enforcement objectives, including reform of the criminal code (discussed above). One major concern for the recording industry is the term of protection for sound recordings which is only 50 years from publication. Paraguay must increase the term of protection up to 70 years to adapt its legislation to current trends in the region.

IPR Training Programs: During 2008, several firms have conducted training and seminars, both in Asuncion and Ciudad del Este. For example, BSA participated in two seminars, one in Asuncion regarding counterfeiting procedures and a second organized by the Federation of Commerce Chambers of Ciudad del Este (FEDACAMARA). ESA conducted training on identification techniques and legal aspects of video game piracy for judges, prosecutors and assistants in Ciudad del Este; however, the lack of participation in the training further demonstrates the absence of drive in these individuals to act and grow as professionals in their field.

of six months to three years or a fine. Unfortunately, this allows judges to impose either a fine or a prison sentence, and another criminal code provision (article 321) obligated judges to issue fines instead of incarceration for cases involving penalties of less than 6 months.