

# PARAGUAY

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2010 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that Paraguay remain under Section 306 monitoring in 2010.

**Executive Summary:** Last year, the bilateral Memorandum of Understanding on Intellectual Property Rights (IPR MOU) between Paraguay and the U.S. was renewed through 2011, and except for enforcement actions taken in August against traffickers in circumvention devices and modded consoles, that represents about all the good news to report last year. There was a disturbing turn of events in 2009 as the special anti-piracy unit (known as UTE) received even less political support from the government, thus putting into question the level of national commitment to promote enforcement of the copyright law. The few copyright sectors that have been working with UTE over the years, have done so with good cooperation and good results, considering the scope of the piracy problem in Paraguay. Seizures of infringing products by UTE dropped in the range of 40-50% last year, compared to 2008.

Regarding piracy, there is no progress--there was no reduction in copyright piracy levels in Paraguay--not in the streets, not at the borders. This market is still one facing primarily physical piracy of hard goods. There continues to be a large scale production by the local blank optical disc plants operating in Ciudad del Este at a rate that far exceeds what the nation could consume, and because of that, these products are exported around the region. The business software sector continues to suffer from end-user piracy, and the government has taken no steps to implement a legalization program among its agencies that it obliged to create. The entertainment software industry reports that Paraguay continued, in 2009, to be the source of a steady flow of illegal and counterfeit games, modified consoles and game copiers that flow into Brazil and neighboring countries. Border enforcement remains ineffective. Corruption and an ineffective judicial system are deeply embedded systemic problems that have provided many roadblocks to criminal enforcement. Last year there was hope that the criminal code amendments that strengthened copyright sanctions would be put in practice, and that the prosecutors and the courts would work together to issue deterrent sentences in piracy cases. Sadly that was not the case, and the industries are not aware of any copyright conviction that resulted in any meaningful sentence. Clearly more judicial trainings on IPR enforcement and the adoption of sentencing guidelines are direly needed, but that alone is not enough to address the systemic problem and tolerance of piracy in this nation. IIPA strongly recommends that the U.S. government maintain far more regularized consultations with Paraguayan authorities on progress being made on-the-ground on MOU elements during 2010.

**Priority actions requested to be taken in 2010:** 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 training for officials in the special anti-piracy unit (UTE) and provide sufficient resources for UTE to hire, train and maintain its inspectors.
- 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.
- Audit large-scale importers of blank CD-Rs who are suspected suppliers of pirate organizations for possible tax evasion and 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.



- Create a Special IP Prosecutor with national competence, such as those set for drugs and corruption.
- Impose deterrent criminal sanctions, as sanctions were strengthened in the 2008 criminal code amendments.
- 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 (a long overdue obligation from the IPR MOU).
- Ease regulations for the destruction of seized evidence.

**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 intellectual property rights system, both law and enforcement. 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. Both governments agreed to extend this MOU until December 31, 2011.

Despite years of work under this MOU framework, Paraguay unfortunately has not met many of the major objectives. It has failed to: (1) significantly reduce the levels of copyright piracy; (2) increase *ex officio* actions at the border; (3) strengthen deterrence by actually imposing mandatory minimum prison sentences on offenders convicted of manufacturing, importing or distributing commercial quantities of pirated or counterfeit goods; (4) provide for the seizure of an infringer's assets upon conviction for commercializing pirate product; (5) find ways to work with the judiciary to promptly resolve pending cases; and (6) increase the terms of copyright protection for all copyrighted materials.

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 2009, \$36.4 million worth of Paraguayan goods entered the U.S. under the duty-free GSP code. More information is available regarding the history of Paraguay in the Special 301 context.<sup>1</sup>

## COPYRIGHT PIRACY IN PARAGUAY

There are a variety of forms of piracy impacting the copyright industries in Paraguay, ranging from widespread piracy of physical goods (such as movies, music and recordings, business software and entertainment software on CD-Rs and DVD-Rs and videogames in cartridge format), to unauthorized copies of application software in businesses, to widespread photocopying, especially in/near universities. Internet piracy is also beginning to take root in Paraguay, and this affects different sectors in distinct ways.

Burned copies of CD-Rs/DVD-Rs full of copyrighted content and cartridge-based video games are readily available in Paraguay. This is a very visible form of physical piracy found in Ciudad del Este. Street piracy remain steady, especially in the cities which have borders with Brazil, such as Ciudad del Este, Pedro Juan Caballero and Salto del Guaira. Pirated music and film products as well as copies of business software are easily found at the wholesale and retail levels, such as the San Blas municipal market at the foot of the Friendship Bridge. Significant piracy of mostly music

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<sup>1</sup> For more information regarding the history of Paraguay and Special 301, see Appendices D and E at <http://www.iipa.com/pdf/2010SPEC301USTRHISTORY.pdf> and <http://www.iipa.com/pdf/2010SPEC301HISTORICALSUMMARY.pdf> of this submission. To read IIPA's cover letter to our 2010 Special 301 submission, go to <http://www.iipa.com/pdf/2010SPEC301COVERLETTER.pdf>.

and movies (CD-Rs and DVD-Rs) can be found on the streets of Asuncion. The level of hard goods piracy for recorded music is 99%.

**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 medial product legally imported into Paraguay continues to exceed possible local use. Unfortunately, there was only one major seizure of blank media in 2009. We do not have the official import numbers for 2009. At the local level, there are hundreds of smaller burning labs in Ciudad del Este supplied by pirate kingpins who coordinate their work and provide these labs with blank CD-Rs. Furthermore, Paraguay remains a significant transshipper of pirate products and optical media to its neighbors, especially Brazil.

At last report, blank media plants in Ciudad del Este now produce upward of 400 million units a year, yet they have not been audited in several years. Several years ago, 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. There remains a striking lack of oversight regarding the blank optical plants. There are five optical disc factories, and what is stunning is the increase of output of product from these plants, with output now up to 400 million units in 2009. One (of the plants is believed to have the authorization to legally export their products to Brazil and Argentina.

The entertainment software industry reports that for 2009, the Paraguayan market remains replete with pirated and counterfeit video games. 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 some 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 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 modified game consoles (modified to circumvent the console security systems and permit the use of pirated games) and 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. This sector is also affected by street piracy of pirated and counterfeit products, and the growing availability of the Internet is starting to adversely affect the business software sector. BSA's preliminary estimated losses due to business software piracy in Paraguay in 2009 are \$8 million, with an 82% piracy level.<sup>2</sup> This is a decline from the US\$9 million and 83% in 2008.

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.

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<sup>2</sup> BSA's 2009 statistics are preliminary and represent the U.S. software publishers' share of software piracy losses in Paraguay, and follow the methodology compiled in the Sixth Annual BSA and IDC Global Software Piracy Study (May 2009), available at [www.bsa.org](http://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. Final 2009 BSA statistics will become available later in 2010.

Internet-based piracy in Paraguay has grown as local Internet access is becoming more and 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 are common, 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 noted an increase in national and regional Internet sites offering the sale of hard copy of DVD format video games. In general, 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.

**Few criminal actions, lack of support for UTE within the government:** The historical bright note, the hearty work done by the Specialized Technical Unit (UTE) in the Ministry of Industry and Commerce, dimmed in 2009. 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. The copyright sectors with active campaigns (primarily the software and music industries) have worked well with UTE and its leadership over the years and in 2009 as well.

Unfortunately, it appears that UTE has no political support from most national and local government agencies. The current government of Paraguay has not shown a significant interest in providing any support to the UTE. The present Minister of the Ministry of Commerce and Industry (MIC, which UTE reports to) has no interests in the success of the UTE. UTE also 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 situation with UTE is going from bad to worse in 2010. First, UTE is about to experience a major loss as its successful and aggressive enforcement director, Colonel Cruz, who has been mandatorily retired, effective January 1, 2010, although the President has still not officially signed off on his retirement. There has been no indication of any plans to retain Colonel Cruz separately as a contractor for UTE or to appoint any successor. Second, the UTE remains extremely short-staffed. Most of the officials of the UTE are from the Ministry of Finance. The eight (8) members of UTE that were assigned ("seconded") from the Ministry of Taxes have not had their appointments reauthorized by the Minister of Taxes. As a result, this has effectively dismantled the UTE due a lack of staff. Technically, the only members of UTE that are still authorized to act are Cruz and an UTE member temporarily assigned from the national police.

This entire situation has effectively undermined UTE's ability to sustain its enforcement activities in 2010. The Paraguayan government needs to address this situation immediately by having the Minister of Taxes reauthorize the appointments of the eight tax agents to UTE for 2010, as well as resolving Colonel Cruz's situation. This episode is a sad example of the precariousness of IP enforcement in Paraguay. In large part, this is due to the uncertain status and lack of funding of UTE. The Paraguayan government should resolve this uncertainty by making UTE's status permanent and properly funding this unit and providing its sufficient manpower and resources to address the significant challenge of controlling IP piracy in Paraguay.

In terms of enforcement results, during 2009 the UTE suffered a significant decline in the seizure of all types of contraband goods, including both burned CD-Rs (which include music and films) as well as blank media. Although exact figures are not yet available, UTE sources have estimated the numbers of raids in 2009 were down about 40%, and seizures of illegal music and film products were down at least 50%-60%, compared to 2008. In addition, a key metric --

the value of goods seized--has been utilized by the UTE to determine its effectiveness, and this measure declined from US\$48 million in 2008 to US\$7 million for 2009. The decline in the amount of goods seized was due the lack of political and monetary support from the Paraguayan authorities because 2008 was an electoral year and there was a lack of government interest in IPR protection in 2009.

A key priority has been, for years, the need for Paraguayan officials to 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. Ciudad Del Este continues to be the center of pirate activity. In 2009, no major raids were conducted in the major pirate market of "San Blas" which has more than 250 points of sale containing illegal music and film products. Sanctions against landlords of pirate points of sale are not utilized in Paraguay. According to sources, Paraguayan authorities feel they do not have adequate laws to enforce these types of actions. However, sources inside the UTE advise they have insisted in testing this enforcement tactic but were always denied by the Fiscalia (the district attorney's office).

In years past, the music and motion picture industries were represented by APDIF in Paraguay, and cooperation between APDIF and UTE on investigations, complaints and anti-piracy actions had been good, although the number of raids in 2008 were down from previous years. Last year APDIF closed its office in Paraguay, and local anti-piracy operations were conducted by UTE, with some support for the IFPI Latin American Regional Office. As a result, this industry group no longer files complaints with UTE. For 2009, UTE has reported that its IPR seizure actions involved a value of US\$4.8 million, but no further details were provided.

ESA reports continued cooperation from the UTE, resulting in enforcement actions conducted against 33 individual targets. Ciudad del Este remains the focus of most enforcement, with 31 of the enforcement actions taking place in the city. Ciudad del Este remains home to extensive retail piracy of counterfeit games and peripheral devices, burning labs and storage facilities focused on replicating games on both CD/DVDs and cartridges, and circumvention operations that specialize in the sale of modded consoles and game copiers that are made available domestically and also exported to neighboring countries. In all, UTE led raids resulted in the seizure of over 43,000 pirated games, 140 CD/DVD burners capable of producing untold numbers of additional games, 75,000 counterfeit game covers, and 750 modded consoles/circumvention devices. Although ESA appreciates UTE's enforcement efforts targeted at pirate operations in Ciudad del Este, the ongoing piracy in this area is indicative of the fact that raids are not adequately deterrent in and of themselves. Unless coupled with criminal charges, convictions and deterrent sentences, targets continue to view the seizures as the mere cost of doing business. The effectiveness of raids is further undermined by the fact that targets are regularly tipped off about impending actions, giving them time to remove most, if not all, of their infringing product. In addition to conducting raids, UTE also intercepted a shipment of packages arriving from Syria, containing 3,000 pirated copies of entertainment software.

**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-trafficking, 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. River smuggling on the Parana River between Ciudad del Este and Foz do Iguacu continues to increase and very little is done on the Paraguayan side to curtail these activities. Sources inside the special riverine unit of the Brazilian Federal Police have indicated that the smugglers cannot operate freely unless they have support or assistance from the Paraguayan military and navy that control these clandestine routes.

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 recent, major actions (we are aware that UTE did seize one shipment of pirated entertainment software in 2009). Customs has a special unit dedicated to contraband smuggling but they are undermanned and underfunded and at times subject to

political interference. Unfortunately, corruption of customs officials continues to play a major role in improving border enforcement.

The Director of Paraguay Customs in office for nearly all of 2009 failed to take meaningful action on piracy issues and corruption, as evidenced by the continued movement of pirated goods through numerous points of customs entry. Instead, the Director stifled efforts of the Administrative Coordination of Customs Investigations (CAIA) unit to conduct investigations and seizures. The border control unit, DETAVE, continued to be plagued with corruption, focusing sparse enforcement actions on contraband consumable goods. On December 30, 2009, the President appointed a former anti-corruption Prosecutor as Customs Director, who appears to have the will to combat corruption in Customs and take a strong handed approach to piracy and contraband. The U.S. government should use its bilateral consultations with the Government of Paraguay to ask specific questions regarding the activities of Customs in addressing exports from Ciudad del Este, as it is well-known that this area is the source of significant quantities of counterfeit goods exported into neighboring countries.

BSA reports that last year it carried out three channel actions in Asuncion against assemblers who sold illegal pre-installed software.

**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). The copyright industries have long advocated that a Special IP Prosecutor with national jurisdiction (such as those set for drugs and corruption) be created. We are not aware of any progress on this recommendation.

Unfortunately, the quality of work between these two sets of prosecutors varies dramatically. Both the business software and the recording industries 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 Ciudad del Este 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's experience with the three prosecutors in Ciudad del Este has been uneven with ESA's representatives often finding a lack of interest in authorizing enforcement actions against local piracy operations. The effectiveness of enforcement efforts in Ciudad del Este would be greatly enhanced if all of these prosecutors could be properly motivated by their superiors to administer their responsibilities with respect to IP enforcement.

**Need to ease regulations regarding 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.

ESA experienced some poor judicial supervision of seized evidence. UTE actions in August 2009 produced the first enforcement actions targeting circumvention operations, when a number of such operation in Ciudad del Este were raided and a number of games consoles that had been modified to circumvent their security systems were seized. Unfortunately, several weeks later, without any advice to the prosecutor, the judge, upon motion by a defendant's legal representative, authorized the return of game consoles to the defendant upon the removal of the circumvention device from the console. Reportedly, this removal process was not strictly verified by the court and the concern is that many of these consoles were returned along with the circumvention devices. At a minimum, one would expect that any such procedure involving the return of seized merchandise would require advance notice to the prosecutor as well as the victim's representatives.

**Internet enforcement:** To date there have been very few developments in Internet piracy enforcement. 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.

BSA has been waiting for the conclusion of a significant criminal case which is expected during 2010. Three years ago, BSA reported that it brought a case where it worked with authorities to conduct a raid against an Internet pirate who operated internationally. This defendant offered franchises supplying pirated software products targeted at specific professions (e.g. architecture, medicine, law). 213 pirated DVDs were seized, many that were used as masters for these "special packages" of programs, and such packages often included four or five DVDs.

**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. According to sources, there were no IPR convictions in 2009 that resulted in any meaningful jail sentence to date

Two years ago, a problem arose involving 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.

**Delays and low damages in civil cases:** During 2009, BSA conducted 8 civil actions against end users, and filed one civil action (in addition to the 3 criminal actions against assemblers who sold computers with illegal software pre-installed). 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.

**IPR Training Programs:** In December 2009, WIPO in conjunction with the Public Ministry and the MIC held an IPR seminar in Asuncion geared to Prosecutors and enforcement personnel. It was a three-day seminar attended by 50-60 persons. Speakers came from Europe, the US and Brazilian authorities from both the private and public sector. More training is needed especially in terms of dealing with smuggling and organized crime cases. On October 11, 2009, the BSA in conjunction with the supreme court, held a seminar in Asuncion directed to judges especially from the civil forum, about licensing and identification of counterfeit products. The seminar helped judges understand the different licensing systems and the different types of piracy, such as sublicensing and "soft-lifting."

## **COPYRIGHT LAW AND CRIMINAL CODE ISSUES IN PARAGUAY**

**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 in 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.

**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.<sup>3</sup> The most recent solution was based on a 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 provision (Article 196) to include copyright violation (as defined in Article 184a) as a crime used to facilitate money laundering.

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<sup>3</sup> 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 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.