

# PARAGUAY

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2012 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that Paraguay remain under Section 306 Monitoring in 2012.

**Executive Summary:**<sup>1</sup> Paraguay has languished under Section 306 monitoring for more than ten years now, and after so many years, few of the country's most pervasive piracy problems have changed. There continues to be large-scale production of pirate optical discs and illegally modified videogame consoles within Paraguay and a consistent traffic flow of illegal goods into Brazil. The business software sector continues to suffer from end-user piracy, and the government has taken no steps on its commitment to implement a legalization program among its agencies. In 2012, the Government of Paraguay can point to a variety of actions to adjust its resources among its enforcement bodies, including welcome attention to the formerly very effective Specialized Enforcement Unit (the UTE), but to date none of these efforts has resulted in concrete enforcement improvements. Police and customs forces need a coordinated plan to focus more proactively on the steady piracy-based crimes occurring at the manufacturing sites, marketplaces, and borders of the country. IPR Prosecutors Units must be staffed with experienced and effective personnel. Courts need to receive training and would most benefit from judges dedicated to IPR cases. Enforcement efforts overall, while appreciated, are sporadic and simply incapable of producing any level of meaningful deterrence. As IIPA pointed out in its Public Comments on the U.S.-Paraguay IPR Memorandum of Understanding (MOU), submitted to USTR on October 18, 2011,<sup>2</sup> Paraguay avoided years ago the consequences that designation as a Priority Foreign Country would entail in exchange for agreeing to the terms of the Enforcement Action Plan embodied in the MOU. Yet, the serious enforcement deficiencies identified in the MOU continue to persist. As the current IPR MOU, now extended through April 2012, nears its expiration, IIPA urges USTR to bring Paraguay's attention to the need for national commitment and follow-through in the government's renewed focus to copyright enforcement.

#### **PRIORITY RECOMMENDED ACTIONS FOR PARAGUAY IN 2012**

- Establish a specialized IPR Court with national competence, authorization to take independent actions across the country, and a staff of trained IPR judges and prosecutors.
- Facilitate swift and deterrent convictions by removing corrupt expert witnesses and judges, providing for the proper handling of pirate product evidence, and imposing deterrent level sanctions provided by the 2008 Criminal Code amendments.
- Support the restored authority of the special anti-piracy unit (UTE), by stepping up enforcement actions and encouraging better communication with rights holders in 2012, including detailed reports of products seized and destroyed.
- Investigate and conduct raids against the large-scale distribution points operating in Ciudad del Este as well as the sources of local production.
- Continue to increase actions at the border to control the spread of pirate product across the region.
- Issue and implement a software legalization decree (a long overdue obligation from the IPR MOU).

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<sup>1</sup>For more details on Paraguay's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/pdf/2012SPEC301HISTORICALCHART.pdf>, as well as the previous years' reports, at <http://www.iipa.com/countryreports.html>. For a summary of IIPA's 2012 global issues, see our cover letter at <http://www.iipa.com/pdf/2012SPEC301COVERLETTER.pdf>.  
<sup>2</sup>[http://www.iipa.com/pdf/2011\\_Oct18\\_IIPA\\_Comments\\_US\\_Paraguay\\_IPR\\_MOU.PDF](http://www.iipa.com/pdf/2011_Oct18_IIPA_Comments_US_Paraguay_IPR_MOU.PDF).



**The IPR Memorandum of Understanding and Action Plan:** Both the Paraguayan and the U.S. governments have invested years of effort to improve the laws and enforcement mechanisms in the Paraguayan intellectual property rights system. The current U.S.-Paraguay Intellectual Property Rights Memorandum of Understanding (IPR MOU) has been extended from its original expiry date of December 31, 2011 to April, 2012. 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.

The extension of the MOU in 2012 should not be viewed as an end in itself. IIPA reiterates to USTR its view that, should the two governments agree to a revitalized MOU, the U.S. Government must encourage renewed attention to these priorities by proactively monitoring progress against its provisions through periodic consultations with the Government of Paraguay in the coming year. Such interactions would allow for the review of accomplishments toward an informed decision as to whether the Government of Paraguay has met its obligations under the agreement.

**Generalized System of Preferences:** Paraguay is a beneficiary country under the U.S. Generalized System of Preferences program (GSP), which requires that a beneficiary country provide "adequate and effective" protection to U.S. copyrighted materials. During the first eleven months of 2011, \$67.4 million worth of Paraguayan goods entered the U.S. under the duty-free GSP code, or more than 70% of Paraguay's entire imports into the U.S.<sup>3</sup>

## **COPYRIGHT PIRACY IN PARAGUAY**

The Paraguayan market is characterized by an abundance of physical piracy. The country is a major source of manufactured and trans-shipped pirate products throughout the region. Pirated physical goods appear in the principal markets of Paraguay, in the form of pirated optical media of videogames, movies, music and recordings, and business software on CD-Rs and DVD-Rs, as well as videogames in cartridge format. Of particular concern are the large quantities of game consoles and PC computers modified in Paraguay to store or accommodate pirated software of all kinds, which are then transshipped to Brazil and other markets. Unauthorized copies of application software are common in businesses. Widespread photocopying of copyrighted books takes place especially in and near universities. Internet piracy is also beginning to take root in Paraguay, affecting certain sectors in particular.

The primary targets for enforcement in Paraguay have long been the markets of Asuncion and Ciudad del Este, the latter having been a major concern for foreign governments because of the central role the city plays in transshipment activities in the tri-border region with Brazil and Argentina. The Uruguayan market is also directly implicated by Paraguayan piracy, given its geographical proximity and Montevideo's longstanding role as a transit point for containers destined for Paraguay. The markets of both of these neighboring countries face long-term effects from Paraguay's massive-scale production of physical pirate product. That said, commercial traffic in general in Ciudad del Este decreased significantly in 2011 due to Brazilian controls on the Friendship Bridge and at other land transit points on Brazilian routes between Ciudad del Este and Sao Paulo, resulting in some positive trends against the flow of pirated products to Brazil. While Brazilian efforts are aimed primarily at stopping the flow of arms and narcotics from Paraguay to Brazil in preparation for global sporting events to be hosted in Brazil in the coming years, counterfeit and contraband products are also seized in these controls. As a result, wholesale Brazilian buyers have sought other sources of these products.

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<sup>3</sup>During 2010, more than US\$43 million in imports to the U.S. from Paraguay enjoyed duty-free treatment under the GSP Program, or more than 71% of Paraguay's entire imports into the U.S.

Optical disc piracy remains a large-scale problem, though it appears less in retail outlets than in years past. The few individuals who continue to deal exclusively in industrial OD piracy generally do not maintain retail outlets, but distribute from warehouses to wholesale buyers. Burned copies of CD-Rs/DVD-Rs full of pirated content and illegal 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 remains steady, particularly in cities bordering Brazil, such as Ciudad del Este, Pedro Juan Caballero and Salto del Guaira. Significant piracy, mostly of music, movies, and videogames (CD-Rs and DVD-Rs), can be found on the streets of Asuncion.

The prevalence of circumvention devices in Paraguay remains a crucial concern for the entertainment software industry; however, as a result of recent enforcement actions against entities selling modchips, the modchips and game copiers are normally only sold to laboratories using modchips to modify game consoles (“modlabs”) and known Brazilian buyers. Retail outlets send consoles to modlabs to be modified, and the modlab then supplies and installs the modchips. The circumvention device industry in Paraguay is sophisticated, and Paraguay continues to serve as a transshipment point for syndicates who bring in such goods from overseas with the intent of distributing them throughout South America. Circumvention devices, including modchips, game copiers and USB-based modification software, are freely imported into Paraguay via passenger suitcases, air cargo, and courier services, often declared as “parts,” from unknown sources. Courier services sometimes deliver modchips to Brazil where they are legal and can be smuggled into Paraguay by land. R4 circumvention devices are sold; however, they are not as readily available as in the past, likely due to enforcement actions taken to seize these products. Following the initial seizures of R4s in 2009, importers began importing the parts and packaging of R4s separately to hinder identification efforts and lower damage in the event that a shipment is seized. In addition, modification software is downloaded and used in modification labs to modify significant quantities of consoles so that they can play pirated games. The business software industry reports that end-user piracy in businesses and government agencies continues to cause the most economic harm for this sector. Corporations place orders via email to receive pirate software from hired distributors, and PCs customized with illegal pre-installed software is produced in Paraguay to be sold in Brazil. Pirate organizations offer illegal compilations of programs, including technical software for particular business sectors, 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, and the growing availability of the Internet is starting to adversely affect the business software sector.

Internet-based piracy in Paraguay has grown in recent years as local Internet access is becoming more and more affordable, although the growth in digital piracy is limited as broadband connections are few and slow in Paraguay. Many of the popular cyber cafés have installed illegal games and software on their computers. Consumers use Internet forums to offer pirate products and upload links to free hosting sites such as Megaupload or Rapidshare, but also use websites to order hard copies of pirated goods (often in optical disc format). In general, Paraguay’s Internet piracy problem is a cause of concern, but has changed little in the past year, and is not yet at the level of severity reported in Brazil and Argentina.

## **COPYRIGHT ENFORCEMENT IN PARAGUAY**

IIPA members report that relationships with Paraguayan enforcement authorities remained the same in 2011, and in some cases deteriorated. The government has directed much positive focus on revitalizing the Specialized Technical Unit (Unidad Tecnica Especializado, or UTE), but there is little evidence that the unit’s additional resources have yet paid off. Border efforts are lacking; and police forces show little initiative. Within the judicial system, rights holders face poor engagement on the part of prosecutors, procedural obstacles regarding the retention of seized evidence and expert witnesses, long delays, and non-deterrent sentences. The result is visible: street piracy continues to be high in Paraguay’s major economic areas. The Government of Paraguay has meanwhile made no effort to demonstrate a respect for legitimate software within public offices. A specialized IPR court is needed to overcome enforcement hurdles resulting from an untrained, and often corrupt, judiciary.

**Government software regulation:** The Government of Paraguay has taken no steps to issue or implement a software legalization program among its agencies, an important obligation under the country's MOU with the United States.

**The Specialized Technical Unit (UTE):** Although the UTE has undergone positive changes in 2011, industry still awaits evidence that the unit's training and re-staffing can result in renewed effectiveness in its enforcement efforts. After suffering devastating setbacks between 2009 and 2010, the Specialized Technical Unit in the Ministry of Industry and Commerce saw the hiring of new unit members at the end of 2010 and began training in January 2011 through the USAID coordinated Plan Umbral II and the U.S. State Department's INL. Historically the one agency of the government to independently investigate, collect evidence and seize products, the private sector looked to 2011 for the UTE to retain qualified personnel and regain its effectiveness in unilaterally pursuing investigations. Early in 2011, members received training on Procedural Criminal Law under Umbral II; however, in March of 2011, Umbral II canceled its support to the UTE due to the short time frame between the establishment of the re-staffed UTE and the close of Umbral II in October, 2011. USAID continued to provide eight training sessions to the unit on issues including Intellectual Property, Registering Trademarks, Detection of Counterfeit and Pirated Products, and Trademark Violations, among other topics. USAID also assisted the UTE in establishing profiles for vacancies and strengthening their working relationship with other government entities. In February 2011, a presidential decree was signed appointing a legal advisor to the UTE, another positive move forward. The Ministry of Industry and Commerce also called for applicants for additional five investigator slots; which according to the UTE now have all been filled. In 2010, the government added a budgetary line item to provide Paraguayan funding for the UTE for the first time, and as of January 2012, the government proposed the same budget, approximately US\$450,000, pending the signature of the President of Paraguay.

Unfortunately, the UTE has not yet regained the trust of the private sector. Despite these positive developments, questions remain regarding the qualifications and dedication of the unit's new leader, and UTE has reported very few details to the private sector regarding its *ex officio* enforcement actions for 2011. News reports indicate with little detail that the UTE has conducted *ex officio* enforcement actions against targets involving gaming piracy and modified consoles in Ciudad del Este. USAID also received reports from UTE stating that from April through November 2011, it conducted seizures valued at US\$31 million, but no information as to products seized, destructions, or product returns are available. Without confirmation of destruction or at least that these seizures did not suffer from large returns to their sources, it is impossible to know whether the past year's activity has been truly productive or simply for show. While IIPA encourages U.S. Government involvement in providing training and funding for UTE, such aid must be conditioned on UTE allowing USG to monitor investigations and seizure actions to ensure transparency and the absence of corruption. To the knowledge of industry, since the original UTE staff has been replaced, no entity has attempted the same level of mass enforcement of street piracy in Paraguay that it had conducted in the past.

**Border enforcement:** IIPA members report that border enforcement actions in 2011 had limited results, and even then were based on private sector initiative. A major setback was the removal of Customs Director Javier Contreras, an ex-anti-corruption prosecutor who made significant advances in combating corruption in customs, and his subsequent replacement with two customs directors who have demonstrated no interest in combating either piracy or internal corruption. While the Government of Paraguay maintains cooperation efforts with Brazilian, Argentine, and Uruguayan authorities, most neighboring governments are untrusting of Paraguayan authorities. Customs authorities, primarily investigative and border control units such as the Administrative Coordination of Customs Investigations (CAIA) and the operational unit (COIA), as well as Departamento Tecnico Aduanero de Vigilancia Especializada (DETAVE), conducted only sporadic seizures to combat piracy 2011. One of the most significant seizures consisted of game consoles (presumably modified) and accessories being loaded into a small airplane in the airport of Salto del Guairá to be smuggled across the border in to Brazil. Like prosecutors and police units in Paraguay, customs officials lack the motivation to conduct *ex officio* enforcement actions.

**Police enforcement:** The Entertainment Software Association (ESA) reports that police enforcement efforts have decreased in the past year, partly due to the decrease in commerce in Ciudad del Este described above. Still, *ex officio* enforcement actions are not a priority for police authorities. No *ex officio* enforcement actions involving pirated game products were known to have been conducted by the National Police Economic Crimes unit.

**Problems within the judiciary:** On the whole, the primary enforcement problems in Paraguay are the judicial and administrative personnel involved in the IPR prosecutors office and the courts. Judges are inexperienced in IPR and have little appreciation for copyright enforcement; *ex officio* prosecutorial actions, already rarely if ever taken, have been called into question; evidence is poorly supervised and rarely destroyed after convictions (and in some cases has disappeared, with broken security seals left uninvestigated); corrupt expert witnesses are common; cases face years of delays; and sentences are not deterrent. In 2011, Paraguay named the first specialized Economic Crimes judge designated to handle all IPR cases in Asuncion; however, because the judge does not have nationwide competence his jurisdiction does not include the principal problem area of Ciudad del Este.

In Ciudad del Este, the situation was temporarily improved following the revocation of a 2010 resolution that designated two specific judges for all IPR cases. The selection system for judges for each legal proceeding returned to a lottery system in 2011. Another 2010 resolution of the Supreme Court continues to represent a judicial hurdle, requiring a judge to accompany all IPR and tax raids and container inspections in Ciudad del Este. Problems such as information leaking prior to enforcement actions and dismissals regarding seized infringing product continue. The judicial system in the capital city of Asuncion differs greatly from Ciudad del Este and other areas. Prosecutors and judges in Asuncion can be expected to conduct themselves in a much more professional and transparent manner in IPR cases as compared to their colleagues in other parts of the country with IPR issues.

Enforcement efforts carried out on behalf of ESA in Paraguay resulted in limited, but positive seizures. The quantity of efforts was limited by the substantial decrease in commercial activity in Ciudad del Este. In 2011, enforcement actions were conducted as criminal actions initiated through the IPR Prosecutor's Office as a result of independent investigation, taken on behalf of ESA. They resulted in the seizure of the following merchandise:

January 2011: modification labs, warehouses and retail outlet in Ciudad del Este

Modchips	1,113 units
Modified Consoles	2 units
Optical media video games	965 units
Game Copiers	2 units

September 2011: warehouse in Ciudad del Este

Optical media disks	26,100 units
Optical media game inserts	217,000 units

ESA reports that all of the product seized in the January raid was destroyed; however, no significant legal sanction was applied to the defendants.

Meanwhile, the Business Software Alliance (BSA) reports that no major actions involving the massive imports of optical discs were publicized for 2010 by the Direction of Intellectual Property within the Ministry of Industry, nor were actions taken by the Ministry of Industry, the Ministry of Finance, or any District Attorneys regarding tax evasion on the imports of optical discs.

BSA also continues to report unnecessary enforcement delays in Ciudad del Este, as well as information leaks that lead to unsuccessful investigations. Requests for a warrant and a search and seize order involve lengthy waiting periods, during which informants within the court give notice to the targets in time to vacate the premises

before a raid is conducted. In those cases in which the prosecutors of Ciudad del Este have conducted successful raids, they fail to seek deterrent sanctions.

The copyright sectors report no progress in 2011 on the need for Paraguayan officials to address the role of landlords at large-scale distribution points operating in Ciudad del Este, including with respect to the open and notorious illegal activities taking place on their premises. Sanctions against landlords of pirate points of sale are not applied in Paraguay. According to sources, authorities feel they are not authorized to take action against landlords; in the past, sources inside the UTE explained that attempts to apply landlord liability laws were denied by the Fiscalia (the district attorney's office).

In July, 2009, the revised criminal code took effect and implemented changes to the copyright law prohibiting circumvention devices, to include modchips and R4 devices. While IPR Prosecutors now have an adequate understanding of the law and the definition of circumvention devices, judges remain in dire need of additional education and training on this topic.

**Specialized IPR Prosecutors Units:** Paraguay's specialized IPR prosecutor units, formerly known as the "Trademark Units," have undergone restructuring and were replaced by the UEPI-Unidad Especializada de Propiedad Intelectual. Under the new structure, however, the IPR Prosecutor's office does not have the in-house investigative resources necessary to identify potential targets, leaving the responsibility to the private sector to signal criminal activities for action. At the end of 2011, we saw the transfer of one of the three IPR prosecutors in Ciudad del Este to Asuncion, to be replaced by an IPR prosecutor who previously held the position and was known to be highly ineffective. As a result, only one prosecutor in Ciudad del Este can be trusted to conduct enforcement actions. The existing IPR prosecutors and an IPR Prosecutor's unit now in place in Encarnacion, a major land port for containers entering Paraguay from Argentina, should have "nationwide competence," an element that copyright industries have long sought. Specialized IPR Public Prosecutors are also now empowered to investigate tax evasion cases. However, under the new structure the prosecutors will still depend on judges in local jurisdictions to issue raid warrants, which could diminish the positive effects of nationwide prosecutorial jurisdiction. Rights holders are optimistic for improvements in 2012 with the expected change of the Attorney General.

**Specialized IPR Court:** A trained and dedicated specialized IPR court that works effectively with specialized IPR prosecutors is badly needed in Paraguay. Local representatives have questioned the composition of the IPR court in Ciudad del Este, reporting that a number of cases have been plagued by "irregularities." 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.

**Ex officio prosecutorial actions:** The Supreme Court is now reviewing the decision of an appeals chamber declaring that, in IP infringement cases, each action must be individually initiated. If affirmed, the decision would undo the ability of prosecutors to take *ex officio* actions, a crucial element in anti-piracy activities.

**Supervision and Destruction of seized evidence:** In 2010, Paraguay passed penal code reforms that proscribe the distribution of circumvention devices. Some Prosecutors have begun to embrace the penal code reforms, and now conduct raids without hesitation. Others, however, are reluctant to seize the entirety of illegal merchandise in a given raid, limiting seized goods to only those products of companies represented by the attorneys in the instant case. Furthermore, due to poor security in the prosecutors' warehouse, modified consoles are normally left in the custody of the defendant. On several occasions, consoles retained under judicial orders and in the control of defendants have been removed and altered. Judges, however, take no notice of the blatant violation of the judicial orders, making prosecution futile. Many judges simply do not believe that modified consoles should be destroyed due to their high value, and believe that circumvention devices may have legitimate uses. Others have taken more inexplicable steps: in one case of pirate merchandise discovered within the defendant's store and home, the

evidence was proven to be illegal but the defendant was found to be innocent, and the court ordered the seized merchandise to be returned to the defendant. On appeal, the sentence was revoked. A new trial is pending, but the defendant has fled and is now a fugitive.

Meanwhile, despite numerous ESA seizures, to date, no modified consoles have been destroyed in Paraguay. Current destruction procedures 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 costs related to 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 refused to pay higher sums in accordance with the new decree; however, the reduced fees appear now to have been accepted. Despite this, one ESA member reports that it continues to be charged destruction fees from seizures that were conducted 4-5 years ago.

**Expert witnesses:** There has been little improvement in the area of corrupt experts and judges in Paraguayan courts. Rights holders have recently experienced problems coming up against expert witnesses that are paid by defendants but have little or no qualifications. The problem is massive and widespread. In 2008, the Supreme Court suspended authorizations of new expert witnesses, but the problem persists. In a recent trial, the court appointed expert witness refused to appear in court, and although the court issued an arrest order for the expert, the lack of an expert resulted in a mandatory sentence favorable to the defendant. Judges continue to use a long-standing “2 to 1” practice, citing to two expert witnesses hired by defendants to report that product is authentic against one expert declaring the product not authentic. In this manner, judges are able to wash their hands in cases in which pirated product is returned. The inclusion of an IP Expert witness in the UEPI unit may be a step in the right direction if honest, competent individuals are appointed. Local business software representatives highlight that promising expert witness regulations have been endorsed by the Supreme Court, and are now under review.

**Internet enforcement:** To date there have been very few developments in Internet piracy enforcement. The local ISPs are cooperating responsively to protect copyright, but only in the limited circumstances when they are required to provide information by judicial order. Currently there is no specific legislation regarding ISP liability. Many providers assume that they are subject to general liability principles in the Civil Code, though this has not yet been tested.

**Anti-corruption measures:** The Supreme Court has displayed unwillingness to investigate allegedly corrupt judges, even though Plan Umbral I created mechanisms to file a complaint and request an investigation against judges involved in cases of corruption. In practice, the Supreme Court has disregarded the findings of investigations and failed to sanction or remove corrupt judges. As there is no mechanism for anonymous filings, rights holders fear that filing a complaint will prejudice judges in pending cases.

**Criminal sanctions are not deterrent:** Despite reforms to the Criminal Code, prosecutors do not press for deterrent level sanctions, and judges similarly do not impose deterrent sanctions in criminal copyright cases. As a result, the relatively low fines that can be expected, should a defendant be convicted, have become a simple business expense for IP criminals.

**Delays and low damages in civil cases:** BSA faces ongoing 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, a problem that creates a danger of leaks.

**IPR Training Programs:** Judges in Paraguay, in particular, are in dire need of training in the importance and operation of intellectual property enforcement. In August 2010, ESA co-sponsored training for officials from the Asuncion Prosecutor’s office, Customs, the UTE, and Treasury; however, not a single Prosecutor or assistant

attended. Training should be required for Judges and Prosecutors, who should not be permitted to send their assistants to attend as their replacement. BSA reports that it has conducted several seminars in the past two years for the benefit of public prosecutors forensics officials, public prosecutors, and judges.

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

**Cybercrime law:** A draft Cybercrime Law was recently presented to the government, but has not moved forward. As Internet piracy rates gradually increase in the country, so do cases of identity theft. Paraguay should consider updating its laws to deal with illicit activities online.

**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 modern standards. In recent years, the copyright industries have focused on enforcement objectives, including reform of the criminal code. 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:** Paraguay achieved important reforms to its criminal code that have not been fully implemented in practice. IIPA and its members worked with the government for years to try to fill the troubling gaps in the criminal code and strengthen enforcement remedies for copyright infringement. After a comprehensive effort, amendments to the Criminal Code (formerly Law No. 1160/97) were approved in Law No. 3440 of July 16, 2008, and entered into force in July 2009. This legislation makes copyright infringement a major crime, upgrading infringement to a felony. The amendment significantly increases the maximum penalties of copyright infringement up to five years, and in special and serious cases the penalty could be extended to eight years of imprisonment. 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 legislation unfortunately keeps a minimum penalty of one month for some infringing acts, and as the industries have long complained, this discretionary low minimum penalty may lead judges to refuse to issue jail sanctions, instead issuing only fines. 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.