

ARGENTINA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2013 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Argentina remain on the Priority Watch List in 2013.

Executive Summary¹: Argentina's leadership has demonstrated an alarming degree of indifference toward the country's high levels of piracy that, over the past year, has culminated in efforts from officials in both the executive and legislative branches that could undermine efforts to tackle this enormous problem. Digital piracy in Argentina is widespread and takes many forms. The rise in online piracy has not diminished the massive piracy of hard goods found at street fairs such as the public market near Buenos Aires known as "La Salada," which the Argentine Government promotes as a successful commercial model. Legislative proposals would eliminate civil and criminal sanctions for unauthorized file-sharing. Unlicensed software use by enterprises remains widespread, causing serious economic harm, and the Argentine Government needs to implement policies to ensure government agencies use and procure only legal software. Although the copyright industries appreciate the continued cooperation of the police with enforcement raids, only a small number of criminal cases result in final judgments with deterrent sanctions. In one positive development, Argentina's courts confirmed indictments of the founders of one of the country's most popular sources of unauthorized content online, the advertising-based website Taringa.net. Civil infringement actions suffer from extensive court delays and the lack of a statutory damages remedy. The police corps and the judiciary simply lack the resources or the awareness to permit effective enforcement against copyright piracy. Government involvement is needed to forge new cooperative solutions to halt the transmission of illegal copyrighted materials on telecommunications networks. IIPA urges the Government of Argentina to adopt a comprehensive national strategy aimed at protecting and enforcing the Argentine Copyright Law.

PRIORITY RECOMMENDED ACTIONS FOR ARGENTINA IN 2013

- Commit, at the highest levels of the Argentine Government, to develop and implement a coordinated anti-piracy campaign that addresses hard goods and online infringements as a matter of national priority.
- Develop processes that enhance cooperation between rights holders and intermediaries in ways that are likely to contribute to a decline in online piracy.
- Require that the federal, provincial, and city governments take appropriate measures to:
 - Prioritize cleaning up the "La Salada" fair and similar markets to demonstrate political will against the distribution of pirate and counterfeit merchandise.
 - Identify distributors of pirate products in public markets and revoke licenses to those points of sale.
- Support efforts to issue an executive decree mandating legal software use in government agencies and implementing processes to achieve this based on software asset management best practices.
- Provide more resources and high-level support for police Internet crime units to address illegal downloading.
- Instruct prosecutors to seek deterrent criminal sentences on major piracy cases. Encourage judges around the country to resolve these cases expeditiously and to impose deterrent sentences.
- Improve border enforcement, partnering with Paraguayan and Brazilian officials to establish a program to inspect goods in-transit for potential pirate product.

¹For more details on Argentina's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/pdf/2013SPEC301HISTORICALCHART.pdf>, as well as the previous years' reports, at <http://www.iipa.com/countryreports.html>. For a summary of IIPA's 2013 global issues, see our cover letter at <http://www.iipa.com/pdf/2013SPEC301COVERLETTER.pdf>.



Generalized System of Preferences: Argentina is a beneficiary country under the U.S. Generalized System of Preferences (GSP) program, which requires that a beneficiary country provide “adequate and effective” protection to U.S. copyrighted materials. During the first eleven months of 2012, more than US\$222 million in imports to the U.S. from Argentina enjoyed duty-free treatment under the GSP Program, or more than 5% of Argentina’s entire imports into the U.S.²

COPYRIGHT PIRACY IN ARGENTINA

In 2012, Argentinian Government officials invited the operators of “La Salada Fair” (listed as a “Notorious Market” for its widespread availability of counterfeit goods in USTR’s December 13, 2012 list) to take part in official commercial missions to foreign countries, to showcase the market as an example of a successful, popular commercial enterprise. If the nature and scope of piracy in Argentina remained unchanged over the past year, overall the situation appears to have worsened as the government showed less interest in combating this challenge. In a trend anachronistic to patterns in most of the rest of the world, street piracy continues to rise, mostly in the form of DVDs burned with movies, but illegal copies of other copyright products are also available in hard goods. In just the past year, the number of fairs where pirate products are sold has increased. The highest levels of this activity are seen in Buenos Aires, Capital Federal, Córdoba, Mendoza, San Juan, and Tucumán. For most copyright industries, however, digital piracy does the most damage, most frequently in the form of Internet direct downloads of pirated content from hyperlinks and cyberlockers. Widespread use of unlicensed software by businesses remains a damaging form of infringement for the software industry. A combination of extremely high piracy and market access impediments makes Argentina one of the least hospitable markets for entertainment software publishers in the region.

Internet piracy: Argentina is a highly connected country, but one that suffers from such a lack of enforcement, effective laws to curb internet piracy, and government will that its market of 28 million Internet users (over 66% of the population)³ is largely out of reach for legitimate copyright sectors. With the increased availability of pirated content online, Internet piracy is having significant prejudicial consequences on the sale and distribution of legitimate materials. Increased broadband penetration has altered Argentina’s Internet piracy landscape, resulting in the proliferation of piracy through peer-to-peer (P2P) file sharing services (including BitTorrent and eDonkey) and sites offering links to download movies and entertainment software from free file hosting sites.

The recording industry reports that digital piracy continues to represent nearly the entire digital music market in 2012. Digital piracy for this sector occurs predominantly via direct download, for example from cyberlockers that host infringing content. In recent years, within the legitimate music consumption in Argentina, mobile platforms account for the bulk of legitimate Internet sales. There are two prominent “topsites,” sources at the top of the distribution chain for illegal copies, that facilitate music piracy in Argentina: Taringa (www.taringa.net), and Musicuo (www.musicuo.com). Taringa, a site financed through revenue from banner ads, recently faced criminal charges for facilitating copyright infringement. The Criminal Superior Court of Buenos Aires affirmed the indictments of Hernán Botbol, Matias Botbol and Alberto Nakayama, Taringa’s founders, on 29 counts for providing the means for the unauthorized reproduction and distribution of literary works. The court pointed to the fact that Taringa’s owners and administrators knew that the site’s users used the website to commit infringement on a daily basis, but continued to knowingly facilitate the downloading of unauthorized content. The Court ordered the first-instance judge to submit the three accused to a full criminal trial.

²During 2011, more than US\$477 million in imports to the U.S. from Argentina enjoyed duty-free treatment under the GSP Program, or more than 10% of Argentina’s entire imports into the U.S.

³This figure is reported by internetworldstats.com, as of June 2011.

Musicuo is an on-demand streaming music site similar to www.grooveshark.com, that offers thousands of unauthorized music titles. The founder of Musicuo has openly admitted that the site's activity might be infringing copyright, and that he hopes to reach an agreement with rights holders soon. Musicuo incentivizes infringement by rewarding users who upload to a single account at least 1000 songs not already existing on the site, and who offer those files to be shared to other users, with an advertisement-free VIP account. The site is becoming increasingly popular in the Internet community, and has even been featured by the Rolling Stone Magazine-Argentinian edition. The local recording industry group reports that over 50% of Argentinian Internet users who download unauthorized music from the web believe that the activity is included in their ISP connection charges.

For the software industry, the Internet offers local packages of pirated and counterfeit software, including compilations containing dozens of computer programs. BSA | The Software Alliance (BSA) notes the use of P2P sites is the favored method to access unauthorized copies of software programs; there are a few pirate websites but they are not the largest source of pirated programs. BSA does perform take-down operations with local ISPs and there is a high degree of success; however, for every site removed, more appear.

According to the Entertainment Software Association (ESA), in 2012, Argentina placed 12th in the world in terms of the number of connections by peers participating in the unauthorized file sharing of select ESA member titles on public P2P networks, a notable and regrettable increase from its 21st place ranking in 2011.

The Motion Picture Association of America (MPAA) notes that Peer Media Technologies reported that during 2011, users initiated over 11 million downloads/uploads of unauthorized copies of major U.S. movie titles via certain P2P protocols in Argentina.⁴ Linking to illegal files is increasingly problematic, for example with Cuevana.tv, and argentinawarez.com, Argentina-based sites that provide well-organized links to hundreds of U.S.-produced movies and TV shows stored on notorious cyberlockers. Cuevana's founder is also the founder of the site Musicuo, mentioned above. At its height the site has had more than 15 million users and two million hits daily. MPAA and several local entities have filed complaints against Cuevana. Yet, to this day the site remains fully functioning and continues to operate and grow. Not only has Argentina's lack of enforcement against Internet piracy sites like Cuevana deprived MPAA members of significant licensing revenue, it has also caused Argentina to no longer be in compliance with its treaty obligations.

Internet-based piracy prevents the establishment of legitimate online distribution platforms and services for consumers, which independent film producers may use to finance future productions. For independent producers who license content country-by-country, online piracy instantly exports troubled marketplaces and high piracy rates to other markets. The independent production sector is limited in its ability to shift to technology-enabled new business practices that might limit piracy. For example, worldwide same day releases (referred to as "day-and-date" releases) may prove an effective method to curb or delay piracy for major studios that control their own worldwide distribution, but for independents, whose national distributors release on their own schedule, this technique is impossible.

Piracy of software programs: BSA reports that the software piracy rate in Argentina was 69% in 2011, representing a commercial value of unlicensed software of \$657 million.⁵ This piracy includes widespread unlicensed

⁴A major U.S. movie is defined as a movie released in 1,000 or more theaters in the U.S., so these numbers reflect only a small subset of movie-related piracy activity (since it excludes non-major releases, including local titles, other peer-to-peer protocols, and non-peer-to-peer ones, such as websites, and streaming via other technologies). Also, since local language title versions for scanning are not always available from established sources, and access to foreign language BitTorrent sites may fluctuate, results in certain countries are likely underrepresented.

⁵BSA | The Software Alliance's 2012 Global Software Piracy Study, conducted with two leading independent research firms, IDC and Ipsos Public Affairs, measured the rate and commercial value of unlicensed PC software installed in 2011 in more than 100 markets. In 2011, the software piracy rate in Argentina was 69%, representing a commercial value of unlicensed software of US\$657 million. These statistics follow the methodology compiled in the Ninth Annual BSA and IDC Global Software Piracy Study (May 2012), <http://portal.bsa.org/globalpiracy2011/index.html>. The BSA study covers piracy of all software run on PCs, (...continued)

software use by business enterprises, especially in small- and medium-sized organizations. According to a 2010 report issued by BSA and IDC called, “The Economic Benefits of Reducing PC Software Piracy,” the information technology sector’s contribution to the Argentine economy could be even bigger if Argentina’s PC software piracy rate were to be lowered ten percentage points over four years. This would create an additional 4,420 jobs, US\$949 million in local industry revenues and US\$202 million in additional tax revenues.⁶ It is still easy to find hardware dealers selling computers with illegal original equipment manufacturers (OEM) versions or simply illegal copies pre-installed on computer hard disks. Such widespread piracy has caused the legitimate market for software, including from local vendors, to shrink. Often, unauthorized versions of newly released software reaches the local pirate market before a localized version of the software is available from Argentinian distributors, leaving users in the pirate market without authorized local expertise. There was also no material progress made by the government in implementing procedures to ensure government agencies use only legal software.

Hard Goods Piracy and La Salada Fair: The sale of pirate product, including optical discs, by street vendors continues unabated throughout Argentina. La Salada Fair is an enormous central market in Buenos Aires that provides pirated and counterfeit merchandise to retailers and re-sellers from Argentina and neighboring countries. La Salada Fair is clearly the most important center of manufacturing, distribution and selling of illegal products in Argentina. But as a result of its profitability, it has also been the most imitated business model in the last year. Thus, a number of “Saladitas,” or smaller versions of the Salada Fair market, have appeared across Argentina. There are Saladitas in the City of Buenos Aires and every town of the province of Buenos Aires. The phenomenon has not gone unnoticed, and the activity in Saladitas is now considered a priority for possible regulation by law. A bill currently under consideration by the province of Buenos Aires Congress would impose certain requirements on fairs having more than six stores.

As for La Salada Fair itself, the physical area continues to grow. It is made up of four markets – *Punta Mogotes*, *Urkupiña*, *Ocean* (indoor fairs) and *La Ribera* (open-air fair) – built up on the Riachuelo shore. It is a sprawling area with about over 30,000 stands selling everything from music to bags, and it provides pirate and counterfeit merchandise to retailers and re-sellers from Argentina and neighboring countries. This market opens twice a week – on Tuesdays and Sundays – at changing times but mostly at midnight, and is visited by approximately one million people each day. The total volume of sales in 2010 amounted to around US\$2.9 billion (equivalent to around ARS\$12 billion), of which around 10% came from counterfeit music CDs and film DVDs, and accounts for four percent of the country’s GDP. Although La Salada is mainly a physical market, it has its own websites where customers can check out information about the market hours and directions (official sites: <http://www.puntamogote.com.ar/>; <http://www.mercadolasalada.com>). Additionally, the pirate and counterfeit merchandise is openly advertised and sold on such websites, though no CDs or movies are offered online. The social and economic dimensions of this phenomenon are so extraordinary that a documentary has been filmed by the Argentine film director Julián D’Angiolillo. *Hacerme feriante* (Becoming a Stall-Holder) was released on February 10th, 2011, showing the large numbers of visitors to the market, the manufacturing of the products, and role of the Fair in the region. Police are well aware of the illegal activities taking place at the fair. Local government officials and flea market administrators simply do not cooperate with the private sector in raiding actions and refuse to close stands engaged in the sale of infringing works.

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including desktops, laptops, and ultra-portables, including netbooks. It includes operating systems, systems software such as databases and security packages, business applications, and consumer applications such as games, personal finance, and reference software. It also takes into account free software, open source software, and software as a service if it is paid for. It does not cover software that runs on servers or mainframes and routine device drivers, free downloadable utilities such as screen savers, and software loaded onto tablets or smartphones. The methodology used to calculate this and other piracy numbers are described in IIPA’s 2013 Special 301 submission at <http://www.iipa.com/pdf/2013spec301methodology.pdf>.

⁶This report is posted on BSA’s website at <http://www.bsa.org/idcstudy>.

Flea market fairs are appearing in more and more cities across the country. The interior of the country remains plagued with street vendors selling pirate product (for example, in the cities of Tucuman and Santa Fe). Pirate stands are often seen around train stations and other high-traffic areas. In general, the largest concentration of pirate product of films and music is in the greater Buenos Aires district, but the industries face serious challenges in larger cities throughout the provinces. In addition, blank optical media products, mostly from Southeast Asia, continue to enter the Argentine market via Uruguay and Paraguay. This media serves as the basis for the local “burning” of copyrighted materials on these discs, a widespread phenomenon that adversely affects the legitimate markets of almost all the content industries.

On a positive note, BSA reports that physical piracy of software has diminished, owing to the realization on the part of the business community of the costly risks involved in infringement suits, on one hand, and the rise in Internet piracy, on the other.

Piracy of music and sound recordings in both the physical and online environment continues unabated in Argentina. Hard goods (physical) piracy of music accounted for 60% of the music market in 2011, up 10% from the previous year. The local recording industry group has noticed an increase in the hard goods piracy of music in general, but that the products sold on the street most often are DVDs burned with movies. There has been an increase in the number of fairs where pirate products are sold.

The independent sector of the film and television industry (IFTA) reports that Internet and physical piracy of DVDs remain a significant export constraint for independent producers and distributors, the majority of which are small- to medium-sized businesses. Independent producers partner with local authorized distributors to finance and distribute film and television programming. These authorized distributors find it nearly impossible to compete with pirates. Producers and distributors confirm that DVD sales have been particularly impacted since pirated digital copies are offered for free online and with a similar quality viewing experience as a DVD can provide. Unable to compete with free, legitimate distributors often cannot commit to distribution agreements or offer drastically reduced license fees which are inadequate to assist in financing of independent productions. Piracy undermines and may permanently damage legitimate distribution networks essential to reaching consumers, and leaves little confidence for investment in intellectual property.

COPYRIGHT ENFORCEMENT IN ARGENTINA

Local industry representatives describe their relationships with Argentinian authorities as fluid and cooperative, as in years past. Unfortunately, the limited training, resources, and human capital available to police forces and the judiciary in Argentina make effective enforcement of copyright in the country extremely difficult. Federal and state police forces lack sufficient resources to provide expert reports on seized products, which delays processing cases. There is no dedicated police force to handle piracy cases. Industries report continued good cooperation with Argentina’s police forces and border officials. While there also has been significant support from the Federal Police Cyber Crime division on Internet cases, few prosecutions are pursued and few criminal cases reach final judgment. The minimum penalty of one month is so low as to be considered negligible, deterring courts from issuing any prison terms at all. Anti-piracy enforcement actions rely entirely on private sector initiative, resources, and complaints.

Inter-industry Cooperation on Internet Piracy Cases: Local ISPs in Argentina have gradually begun to collaborate in certain limited circumstances, such as taking down infringing sites in very specific instances. Some ISPs have established special procedures to process infringement claims from rights holders, but others require a judicial order before taking down infringing material. Takedowns are limited to hosted content, and ISPs refuse to cooperate with rights holders on any copyright actions within P2P networks. While ISPs claim to have no responsibility for the activities of users on their networks, Argentinians have a different impression; in recent years

studies have reported that one out of two Argentinians who download unauthorized music believes that the activity is covered by their ISP's charges.

Since 2007, the local sound recording and film industry sectors have been trying to achieve broader voluntary cooperation with Argentine ISPs on Internet piracy matters. ISP industry groups have rejected proposals by the local sound recording group to negotiate terms of cooperation. Also, despite appeals from the sound recording industry to the Ministry of Telecommunications and ISP trade groups, the Argentine authorities view Internet piracy as a problem of private interests, and have refused to engage in industry talks, leaving rights holders unable to organize roundtable discussions with ISPs on a voluntary campaign to curb piracy. The disengaged attitude of the Argentine authorities has proven to be the most problematic in the region. With no mechanism in place for rights holders and ISPs to work together on this serious and damaging problem, it is time for the Government of Argentina to reconsider its "hands off" approach and work with industry groups to find solutions to halt the transmission of illegal copyrighted materials on telecommunications networks.

Software Actions: BSA reports cooperation on the part of the police and the courts in general, noting that preliminary measures are executed rapidly. However, BSA has experienced a general slowness in resolving judicial procedures. The software industry is unaware of any *ex officio* actions being taken against software piracy. The industry continues to support any effort by the Argentine federal, provincial or municipal levels of government to legalize software currently installed on government computers and improve their procurement practices.

BSA takes a variety of actions in Argentina, ranging from civil claims to non-judicial procedures (such as cease and desist letters, notices to ISPs, and the like). During 2012, software industry representatives in Argentina conducted 90 raids or court actions against enterprises using unlicensed software. In the past, criminal copyright actions in the software area were not widely used by BSA. More recently, the various agencies (including the Federal Police, Gendarmería, etc.) are improving their technical capacities to support the courts in the investigation of computer crimes (including piracy) and the provision of technical reports, which is useful evidence in judicial cases. In smaller provinces, local police are not trained in computer crimes, but in some cases, it is possible to replace local police with the better trained Gendarmería. In addition, preliminary injunctions and searches performed by court officers and the police under instructions from civil courts have been effective in getting enterprises to legalize their software use and pay damages. Statutory damages are not available.

Slow Prosecutions and Non-deterrent Judgments: The judiciary in Argentina prioritizes crimes of safety and personal security over intellectual property crimes, and simply lacks the resources to do otherwise. Making matters worse, the Argentine judicial system is formal and heavy on written submissions, which means that the process of administering justice is time-consuming. Very few criminal cases reach final sentencing, and most copyright infringement cases close with a suspension of judgment. This problem can also be attributed to the lack of human resources and poor infrastructure in the courts. But clearly, there is a lack of will by both prosecutors and judges to push these cases through. Criminal sanctions are mere formalities; copyright crimes in Argentina do not carry a threat of jail sentences on any practical level.

Delays and Weak Damages in Civil Infringement Cases: The software industry continues to rely on civil enforcement in Argentina, given the systemic problems with criminal enforcement. Even so, there remain problems in some provincial judicial jurisdictions, where there are procedural delays in obtaining and conducting civil searches in software piracy cases. Civil actions are also weakened by the lack of deterrent civil damages; this important problem could be corrected if Argentina were to introduce an effective statutory damages system.

Border Enforcement: The Argentina Customs Code currently provides for *ex officio* actions. Customs authorities have a good understanding of the damage that piracy causes, not only to the owners of intellectual property rights, but also to the State itself, since pirate products evade taxes and do not generate legitimate employment. Given the extent of the piracy and counterfeiting problems in the tri-border area, Argentina should forge

a working plan with Brazilian and Paraguayan customs officials to inspect goods in-transit for potential pirate product. A working plan and continued training to include emphasis on technology and circumvention device issues would help identify important trends and latest forms of piracy crossing Argentinian borders.

Industry trainings and public awareness efforts: BSA is working with the Autonomous Buenos Aires City Government to organize a joint program for capacity building.

COPYRIGHT LAW REFORM IN ARGENTINA

Proposed Amendment to Limit Liability for Unauthorized Access of Content Over the Internet: In November 2012, Bill No. 2995-D-2012 was introduced in Argentina’s legislature that would decriminalize and eliminate all civil liability for the downloading or accessing of material over the Internet, regardless of its copyright protection status, so long as the copy “were not used for commercial purposes or profit.” Among the permitted uses for the accessing of pirate material would be for instruction, education, information, entertainment, or even “for thrills” (“emocionarse”).⁷ The introductory language submitted with the bill specifically mentions that all activities of uploaders over P2P networks should be decriminalized. If adopted, not only would this amendment send a destructive message to Argentine consumers about the value of creative works and the need to support a legitimate creative sector, it would create a host of problems for enforcement against aggregators and networks that supply pirated content.

Copyright Law Reform: Argentina’s Copyright Act (1933, as amended), while one of the oldest in the Western Hemisphere, has remained remarkably flexible over the years. Argentina is a member of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (the “WIPO Internet Treaties”), and those provisions are self-executing, taking precedence over national law. Still, further refinements are needed. Specificity in national legislation helps to provide clear “rules of the road” for rights holders, consumers and enforcement authorities, including the courts.

IIPA and its members have identified the following important elements that would benefit from clarifications or express incorporation in the copyright law:

- Provide express protection for the “communication to the public” and “making available” rights as required by WIPO Internet Treaties, to give legal background to digital businesses for authors, performers and phonogram producers;
- Extend the scope of the reproduction right to explicitly cover temporary copies;
- Protect against the act of circumvention as well as the manufacture or distribution of devices aimed at circumventing TPMs;
- Protect against the removal or alteration of digital rights management information (RMI);
- Increase the minimum penalty for piracy (currently one month under Article 72bis of Act 11.723 of the Copyright Act) up to at least two years to apply deterrent sanctions;
- Establish statutory damages provisions in civil infringement cases;
- Explicitly provide for the seizures of infringing equipment;
- Provide clear guidelines regarding liability for ISPs, and include notice and takedown provisions; and
- Provide equitable and balanced treatment for all rights holders, treating juridical entities no less favorably than natural persons.

⁷ Details of the bill are available at <http://www1.hcdn.gov.ar/proyxml/expediente.asp?fundamentos=si&numexp=2995-D-2012>.

Government Software Legalization: Unfortunately, no progress was made on this important issue last year. With respect to government legalization efforts, the software industry continues to call upon the Argentine Government (in particular, the Subsecretaría de la Gestión Pública—the Undersecretariat for Public Administration) to issue an executive decree that would mandate legal software use in government agencies and implement processes to achieve this based on software asset management best practices. While several “standards” have been issued by the Subsecretaría, the Argentine Government has not taken action toward legalizing its software inventories.

MARKET ACCESS ISSUES

Tax Exemptions for the Local Culture Industry: During 2011, two important and positive tax exemptions were passed for the local culture industry. The first was adopted by the Government of the Province of Buenos Aires, establishing an exemption from payment of gross receipts taxes for revenue from CD/DVD publishing and sales in the territory of the province of Buenos Aires. The second was adopted by the Government of the City of Buenos Aires, establishing an exemption from payment of gross receipts taxes for revenue from DVD publishing and sales in the territory of the City of Buenos Aires. The recording industry supports such tax exemptions as an important benefit for the proliferation of cultural products. Exemptions of this kind should be extended to other provinces, and all formats and devices.

Customs Duties Affecting Audiovisual Works: The Argentine Customs Valuation Code requires that all audiovisual works, excluding computer software, must pay an *ad valorem* customs duty based on the value of the “authors’ rights,” that is, on the potential royalty generation of the film, rather than solely on the value of the physical materials which are being imported. The Motion Picture Association (MPA) opposes this burdensome practice, which is a form of double taxation since royalties are subject to remittance, withholding and income taxes. Customs duties should be based on specific fees, such as weight or length, or, if *ad valorem*, be based on the value of the carrier medium only. Because of this duty, MPA member companies import negative prints on a temporary basis and copy positive prints locally. There have been no new developments in this matter in 2011.

Withholding Taxes and Royalties on Computer Software: The software industry continues to report a problem regarding the withholding that local licensees must perform when wiring royalties to foreign licensors. The local tax collection authority, AFIP, refuses to apply the special rules that the Income Tax Law provides for “authors’ rights” international transfers. AFIP contends that the legal nomenclature “author” is limited to physical persons, and that a legal person (e.g., a corporation) cannot be an author and, as a result, cannot hold these “authors rights.” In 2011, AFIP’s position was upheld by the Argentinian National Supreme Court of Justice, resulting in a considerable increase in the international license cost for end users. This problem could be solved by amending the Income Tax Act to establish a concrete withholding rate for software license payments, similar to what was done for music and motion pictures several years ago. There is also a clear need for the U.S. and Argentina to reach agreement on a treaty to avoid double taxation.

Audiovisual Communications Services Law: In September 2010, Argentina’s Federal Authority on Audiovisual Communication Services passed a bill that limits advertising on pay TV to six minutes per hour and discriminates against foreign pay TV networks by disallowing advertisers to write off investments in these networks, yet permitting advertisers to write off investments in Argentine pay-TV networks.