

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2004 SPECIAL 301 REPORT

# PARAGUAY

### EXECUTIVE SUMMARY

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**Special 301 recommendation:** IIPA recommends that Paraguay continue to be monitored under Section 306 of the U.S. Trade Act of 1974.

**Overview of key accomplishments/problems:** Both the Paraguayan and the U.S. governments have invested years of effort to improve the Paraguayan system. In December 2003, Paraguay signed another Memorandum of Understanding on Intellectual Property Rights with the U.S. Officials in the new Paraguayan administration have exhibited a renewed interest in tackling copyright piracy in-country and at its borders. Several decrees were issued in 2003 to establish special measures to combat piracy and counterfeiting, create a specialized technical unit, and amend the customs law regarding importation of blank optical media discs. IIPA members are hopeful that improvements will occur in Paraguay.

Despite the renewed energy among some Paraguayan officials to combat piracy, the piracy situation in Paraguay remains dire. Unfortunately, enforcement efforts taken by Paraguayan authorities, however well intended, continue to be largely ineffective in deterring widespread piracy there. Organized crime elements remain intimately involved in the production and distribution of pirated products, thus making enforcement even more difficult. There are still too few criminal investigations, raids and prosecutions against copyright pirates. The copyright law and criminal code works to frustrate the application of deterrent sentences because they treat intellectual property violations as minor offenses. The borders remain porous, despite cooperative efforts between industry and border officials to halt suspect shipments and review false documents. Amendments to the criminal code to increase penalties are urgently needed. The Paraguayan judiciary remains largely unwilling to issue deterrent sentences.

#### **Actions which the government of Paraguay should take in 2004**

- Promptly enact the obligations in the 2003 IPR Memorandum of Understanding;
- Improve border enforcement, including the interception and seizure of piratical goods as well as the inspection of blank optical disc media;
- Enact the legislation to amend the criminal code to increase penalties for copyright infringement (elevating IPR violations for treatment as major crimes), establish *ex officio* actions, and criminalize the circumvention of technological protection measures;
- Impose deterrent remedies against pirates, including criminal penalties;
- Control the points of entry for the importation of CD-Rs into Paraguay;
- Continue to support review by Customs, the Ministry of Industry and Commerce (MOIC) and rightsholders in examining the shipping invoices for blank CD-Rs;
- Audit large-scale importers of blank CD-Rs who are suspected suppliers to pirate organizations for possible tax evasion;
- Improve training for prosecutors and judges, with the objective result being that the Paraguayan system provides deterrence to copyright piracy;

- Extend the July 2003 sunset of the criminal code law that makes copyright infringement a “public” action (reports are that the sunset currently is not being applied in practice);
- Reduce the problem of widespread street vendors offering pirate product;
- As a preventive measure, Paraguay may want to consider raising tariffs for the importation of CD-Rs.

**PARAGUAY**  
**ESTIMATED TRADE LOSSES DUE TO PIRACY**  
*(in millions of U.S. dollars)*  
**and LEVELS OF PIRACY: 1999 – 2003 <sup>1</sup>**

INDUSTRY	2003		2002		2001		2000		1999	
	Loss	Level								
Records & Music <sup>2</sup>	154.6	99%	204.4	99%	253.6	99%	200.0	90%	200.0	90%
Motion Pictures	2.0	80%	2.0	80%	2.0	80%	2.0	80%	2.0	80%
Business Software Applications <sup>3</sup>	NA	NA	2.2	71%	3.5	72%	8.5	76%	6.7	83%
Entertainment Software	NA	NA	NA	NA	NA	NA	9.7	99%	8.1	99%
Books	2.0	NA	2.0	NA	3.0	NA	3.0	NA	3.0	NA
<b>TOTALS<sup>4</sup></b>	NA		210.6		262.1		223.2		219.8	

### New Memorandum of Understanding on IPR

On December 19, 2003, the Paraguayan Ministry of Foreign Relations and the U.S. Embassy in Paraguay announced the conclusion of the first meeting of the Joint Council on Trade and Investment (JCTI) and the completion of a new Memorandum of Understanding on Intellectual Property Rights (IPR MOU). This new IPR MOU includes elements on legislative, administrative and enforcement-related issues designed to strengthen that government’s ability to effectively fight copyright piracy and trademark counterfeiting and to improve its overall intellectual property system. There will be a regular review of Paraguay’s progress under the IPR MOU throughout 2004. The text of this document is not yet publicly available (as of February 2004); thus, IIPA and its members reserve more detailed comments until after our review of this agreement. The bottom line remains that the Paraguayan government needs to

<sup>1</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2004 Special 301 submission at <http://www.iipa.com/pdf/2004spec301methodology.pdf>.

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

<sup>3</sup> BSA’s 2003 piracy statistics were not available as of February 13, 2004, and will be made available in the near future and posted on the IIPA website at <http://www.iipa.com>. BSA’s statistics for 2003 will then be finalized in mid-2004 and also posted on the IIPA website. In IIPA’s February 2003 Special 301 filing, BSA’s 2002 estimated losses of \$4.3 million and levels of 69% were identified as preliminary. BSA’s revised figures are reflected above. BSA’s trade loss estimates reported here represent losses due to piracy which affect only U.S. business software publishers in Paraguay, and differ from BSA’s trade loss numbers released separately in its annual global piracy study which reflect losses to (a) all software publishers in Paraguay (including U.S. publishers) and (b) losses to local distributors and retailers in Paraguay.

show, with concrete results, a real commitment to consistent and transparent copyright enforcement.

The 2003 IPR MOU is a new agreement which replaces the 1998 IPR MOU which expired on January 1, 2003. To review, in February 1998, USTR initiated a nine-month investigation into Paraguay's IPR practices, after designating Paraguay as a Priority Foreign Country under Section 301 of the U.S. trade law. On November 17, 1998, USTR announced its determination that certain acts, policies and practices of the government of Paraguay regarding the protection and enforcement of intellectual property rights were "unreasonable and discriminatory and constitute a burden or restriction on United States commerce." The investigation was concluded when Paraguay and the U.S. signed a "Memorandum of Understanding on Intellectual Property Rights" in which the Paraguayan government committed to take a number of near- and long-term term actions (e.g., strengthen enforcement efforts, pass certain legislation, improve training of enforcement officials, enhance public awareness, and provide deterrent penalties and civil remedies).<sup>4</sup> The 1998 IPR MOU contained nine articles and an annex which comprised the "Enforcement Action Plan."<sup>5</sup> In previous IIPA Special 301 submissions, we outlined the numerous key elements in the IPR MOU which the copyright industries believe the Paraguayan government did not implement effectively.<sup>6</sup>

## **COPYRIGHT PIRACY IN PARAGUAY**

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### **Optical Media Piracy: Transshipment and CD-Rs**

Paraguay continued to serve as one of the favored destination in 2003 for much of the pirated optical media product being produced in Southeast Asia (e.g., Thailand, Malaysia, Macau, Hong Kong, Singapore, and Taiwan). This sourcing continued Paraguay's significant regional role as a transshipper of pirate product to its neighbors.

**Blank CD-Rs and CD-R burning:** Pirates in Paraguay have continued to shift their products from pre-recorded OD product to importing blank recordable CD (CD-R's) into Paraguay. In 2003, about 119 million units were imported, up slightly from the approximately 100 million units in 2002 and 104 million in 2001. All these statistics represent a significant increase from the 34 million units in 2000. Paraguay clearly does not have the legitimate markets to absorb these immense amounts of product. In addition to their clandestine industrial CD production capacity, the pirates of Ciudad del Este shifted their replication method by spreading it out through the use of CD burners. Hundreds of labs have replaced the previous

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<sup>4</sup> Also in 1998, USTR terminated both the Section 301 investigation and its review of Paraguay's IPR practices under the Generalized System of Preference program, which had commenced in October 1996 as part of the 1995 GSP Annual Review. For the first 11 months of 2003, \$14.4 million worth of Paraguayan goods (or 31.4% of Paraguay's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP program, representing a 25.7% increase from the same period last year. For more information on Paraguay's history under Special 301, see Appendix D (<http://http://www.iipa.com/pdf/2004SPEC301USTRHISTORY.pdf>) and Appendix E (<http://http://www.iipa.com/pdf/2004SPEC301HISTORICALSUMMARY.pdf>) of this submission.

<sup>5</sup> The full text of Paraguay's 1998 IPR MOU is available on the U.S. Department of Commerce website at <http://www.tcc.mac.doc.gov/cgi-bin/doi.cgi?204:64:1:185>.

<sup>6</sup> For example, see IIPA's 2003 Special 301 country report on Paraguay, available at <http://http://www.iipa.com/rbc/2003/2003SPEC301PARAGUAY.pdf>.

underground illegal CD plants, but it is obvious that those burning facilities are supplied by pirate kingpins who coordinate their work and provide the small labs with the blank CD-Rs. These “sprayed” plants serve Paraguayan, Argentine, Uruguayan and mostly Brazilian illegal CD-R duplicators.

It is obvious that the importation of 119 million CD-Rs in 2003 and another 100 million in 2004 for a market that may absorb no greater than 1 million units per year is a mechanism that supports other activities, among which is piracy of music, software and other copyrighted products. As a preventive measure, Paraguay may want to consider raising tariffs and the valuation for the importation of CD-Rs.

**Local optical disc and blank CD-R manufacture:** Back in 1999, Paraguay’s role as a substantial local manufacturer of pirated optical media was revealed when the recording industry confirmed that clandestine CD manufacturing companies had made their way into Paraguay via Brazil. Two CD plants were later closed down, and, at last report, no real evidence has surfaced regarding any new plants. Industry is aware that there appears to be one operational CD-R manufacturing plant, SCA Technologies in Ciudad del Este, which is producing approximately 40-50,000 blank CD-Rs daily. The Paraguayan government has not kept industry informed of SCA’s production output, nor have they maintained regular audits of the plant as mandated by law. The potential exists for more manufacturers to set up CD lines locally. The Paraguayan government may want to consider implementing optical disc legislation to control the installation of new plants and licensed production.

In October 2003, a public scandal erupted in which the President dismissed his Minister of Interior and the Director General of Customs for their non-transparent and possibly illegal release of 1.3 million seized optical discs that had no legal origin. This case demonstrates the depth of corruption in Paraguay and its relation to optical disc piracy. It also may be an optimistic sign that the new President will seriously address corruption in Paraguay.

## **Organized Crime Elements Still Control Piracy in Paraguay**

Organized criminal groups remain involved in the production and distribution of pirated and counterfeit product in Paraguay. Organized crime elements from Taiwan, the Far East and the Middle East control much of the distribution in Ciudad del Este and in other cities. It remains the case that in 2003, much of the huge surplus in production capacity for the manufacture of audio compact discs, CD-ROMs, videogame cartridges and other optical media products in Southeast Asia is being devoted to pirate production and export, especially to Paraguay, for transshipment throughout Latin America. Organized groups from Korea, Lebanon, Libya, Brazil, Bolivia and Argentina are involved. Of course, Paraguayan groups also take part in these illegal activities. The influence of organized crime pervades not only street distribution, but also affects the judiciary.

## Domestic Piracy Remains Widespread in Paraguay

The recording industry again reports that the piracy that affects Paraguay's national legal market is dwarfed by the piracy that involves production for export, or transshipment through Paraguay, of pirate product into Brazil, Argentina, and other countries. Total legitimate sales in 2003 were approximately 200,000 units, although Paraguay has the potential to sell 20 million units. Transshipment and local manufacturing for export of CDs has the effect of devastating the legitimate market for sound recordings and music in other countries. Increasing amounts of pirate music CDs from Paraguay—up to 90% of all transshipments—are aimed at Brazil. Thousands of pirate CDs and CD-Rs are found in the streets and shopping centers in Ciudad del Este, which continues to be the major production and trade center for the export of pirated product going to Brazil and Argentina. In addition to CD and CD-R piracy, audiocassette piracy continues to be rampant in Paraguay. Estimated trade losses due to recording and music piracy in Paraguay were approximately \$154.6 million in 2003 (this figure includes both losses due to local piracy as well as those caused by transshipment).

The entertainment software industry reports that Paraguay continues to permit the manufacture, sale, import and export of pirated entertainment software in all formats. Both CD-based piracy of videogames (which includes console CDs for PlayStation®) and cartridge-based piracy remain major problems. Counterfeit videogame components (such as semi-conductor chips and packaging) and cartridges are imported from the People's Republic of China, Taiwan, Hong Kong, for assembly in Paraguay, and then exported to other countries in the region. The industry continues to have some success working with local district attorneys and Paraguayan customs to seize shipments and destroy infringing product.<sup>7</sup> An ESA member company reports that more than 4.4 million pirated and counterfeited products have been confiscated in Paraguay since the 1998 IPR MOU, the largest number of infringing products the company has seized in the entire western hemisphere.

The business software industry reports that Ciudad del Este continues to be a major source of piracy for business software, primarily for distribution to other Latin American markets such as Brazil and Argentina. Severe problems with end-user piracy in businesses inflicts the most economic harm on the potential growth of a legitimate software base in Paraguay.

The motion picture industry reports that its primary concern is Paraguay's position as a transshipment and organization hub for optical disc piracy. The commercial interests of MPA member companies in the Paraguayan market are very limited, which may be a reflection of Paraguay's minimal trade in general with the United States. Ciudad del Este is the central distribution point for an increasing amount of blank optical discs (CD-R and DVD-R) and locally reproduced CD-R and DVD-R. This product is primarily exported to Brazil, Chile and Argentina. As a result, Paraguay remains a significant threat to other Latin American markets because of the large pirate transshipment operations in Ciudad del Este. The border city has long been a transshipment point for other forms of optical disc piracy (music, software and videogames), so as the market for DVDs continues to grow in Latin America, Paraguay may become the origin of pirated DVDs in the region. Annual losses to the U.S. motion picture industry due to audiovisual piracy in Paraguay are estimated at \$2 million in 2003 (this figure is for in-country market losses only; the damage inflicted on neighboring countries is not calculated).

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<sup>7</sup> A recent raid on a large warehouse in Ciudad del Este resulted in seizure of close to 40,000 counterfeit Nintendo products, including semi-conductor chips, stickers and packaging boxes. A criminal case is now pending against the warehouse owner.

AAP reports that commercial piracy (full reprints) exist for trade book translations as well as English language teaching materials used in schools and colleges. There are increasing amounts of photocopied materials being used in place of legitimate books in institutions of higher learning. Estimated trade losses due to book piracy remained at \$2.0 million for 2003.

## **COPYRIGHT ENFORCEMENT IN PARAGUAY**

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There is a wide variety of enforcement challenges in Paraguay, all of which have existed for years, despite bilateral promises and legal reform. In 2003, the Paraguayan government issued three decrees regarding enforcement: (1) establishing special measures to combat piracy and counterfeiting; (2) creating a specialized technical unit; and (3) amending the customs law regarding importation of blank optical media discs.

**Paraguayan border measures remain ineffective.** Not surprisingly, many piracy problems in Paraguay are centered in the border cities. It remains imperative that the government improve its customs procedures to combat cross-border piracy and corruption of its agents. As presently structured, the Paraguayan customs system is an ineffective enforcement authority which cannot conduct searches without a court order. This notorious problem has been unresolved for years. The border with Brazil is completely open today and *sacoleiros*, individuals who come to buy counterfeit products to later sell in Brazil, are flooding Ciudad del Este.

In October 2002, the Ministry of the Economy signed a customs anti-piracy agreement with the recording industry that calls for, among other items: (a) training of customs officials by anti-piracy experts; (b) the exchange of information regarding pirate CDs and CD-Rs; (c) participation of the industry's anti-piracy personnel, as deemed necessary by customs, in the identification and inspection of suspect product; and (d) the implementation of an importers' register that will prevent ghost companies from importing pirate CDs or CD-Rs. The effective implementation of this agreement is viewed by the recording industry as a fundamental part of Paraguay's ability to deal with piracy, and to curtail Paraguay's participation as a major transshipment point for pirates. The recording industry indicates that communication with customs is strained because that agency views product seizures as lost opportunities to increase revenues.

Even though Paraguayan Customs has cooperated more with the industry over the last two years, the problem of enormous amounts of blank CD-Rs being imported for piracy purposes continues. The fact that customs still needs court orders to perform thorough inspections hinders their enforcement capability and gives the pirates more time to corrupt public officials outside of the customs jurisdiction.

Controlling the points of entry for the importation of CD-Rs into Paraguay is critical. In September 2003, Paraguayan Customs issued a press release stating they were limiting the points of entry for blank CD-R product to five ports via a resolution. In November 2003, Paraguayan customs did limit the ports of entry for blank CD-Rs to 7, down from 17 (as required by Decree No. 126 of October 8, 2003).

Also in September 2003, the recording industry secured an agreement with Customs and the Ministry of Industry and Commerce (MOIC) which provides that no blank CD-R shipment will be released until these groups verify that the submitted invoices and documents are valid and accurate. As a result of this new system, over 6 million blank CD-Rs with false or questionable invoices have been seized between September 2003 and early February 2004.

ESA reports that in February 2004, the Asuncion Airport authorities detained an individual who was suspected of transporting pirate copyright material from Malaysia to Paraguay. The individual, already under surveillance by recording industry representatives, arrived in Asunción with ten bags and was immediately detained by the anti-drug authorities for questioning. His bags were confiscated by customs authorities and held while the individual was questioned. While this person was then released, his bags were held in custody. A warrant was subsequently obtained and the bags searched. The bags' contents were 16,000 PlayStation 2<sup>®</sup> video games. As is customary for pirate products replicated in Malaysia, SID codes on these discs had been gouged out. (The individual did not return to retrieve his bags.)

**Police are generally helpful, but only after industries' investigations.** The Paraguayan police still have not shown any proactive efforts to enforce intellectual property rights in Paraguay. The Prosecutor's Office relies on the police only for physical protection during the criminal raids. The Division of Economic Crimes of the Police, the department in charge of enforcing IPR laws in Paraguay, has been publicly accused of requesting bribes to different retailers in Ciudad del Este. Most if not all of the investigations are carried by private investigators paid by the industry. The results of these investigations are later submitted to the Prosecutor's Office with a criminal complaint.

There remains a question about the status of copyright infringements and whether they are "public" or "private" crimes. In order to implement the 1998 IPR MOU, in June 1999 the President signed into law an amendment to the criminal code which made copyright crimes public offenses, and, therefore, prosecutors were able to pursue these cases on their own initiative. Despite a statement issued by the Office of Implementation of the Criminal Procedure Code of the Supreme Court of Justice of the Republic of Paraguay interpreting that this law was scheduled to sunset in July 2003, prosecutors still treat copyright offenses as "public" crimes. To IIPA's knowledge, no judicial decision has yet challenged the prosecutors' ability to pursue these crimes on their own initiative.

The legitimate recording industry in Paraguay (represented by APDIF Paraguay) continues to be very active in conducting investigations and filing cases mainly against pirates operating in Ciudad del Este and Encarnación. However, since the business model for pirates has changed from large-scale operations to loosely knit, small-scale groups, the tasks of identifying and immobilizing these organizations has become more difficult. The more sophisticated criminals involved in music piracy groups have adopted the "cell" structure of operations. The recording industry continued to conduct raids based on its own investigations. In 2003, the recording industry conducted 236 raids, which resulted in the seizure of over 2,115,925 units of infringing products (mostly music CDs) and the closure of 40 manufacturing facilities, most of them small to mid-sized CD-R replication facilities, and 135 storage facilities of different sizes. Two major organized crime cases with international nexuses are currently under investigation. Shipments of contraband blank CD-Rs amounting to 8,477,930 million units, allegedly destined for the pirate market, were seized by Paraguayan authorities based on information provided by APDIF/Paraguay.

Regarding business software enforcement, during 2003, BSA conducted four (4) civil end-user actions as opposed to seven in 2002. In addition, in 2003, BSA assisted the Prosecutor's Office in six criminal raids against software resellers in Ciudad del Este and Asunción compared to seventeen criminal raids in 2002. Several of these criminal raids were conducted against the same resellers that were raided during 2000 and 2001. Most of their merchandise was seized by the authorities. Most of the resellers raided would be open for business the following day, with a complete display of counterfeit software.

MPA does not take enforcement actions in Paraguay. MPA reports that it has never had positive results coordinating with Paraguayan enforcement officials, but it has had success coordinating its investigative efforts in Paraguay with Brazilian and Chilean enforcement officials in order to stop the contraband shipment of optical discs out of Paraguay to those countries. MPA will continue to focus its efforts on coordinating with enforcement officials of neighboring countries instead of with the to-date ineffective Paraguayan enforcement agencies.

**Lack of effective prosecution and deterrent sentencing:** There are five specialized IPR prosecutors in Paraguay, three in Asunción and two in Ciudad del Este. The prosecutors now have, temporarily, the ability to pursue copyright infringement cases as "public" actions, thanks to Law No. 1.444, which entered into effect on July 9, 1999. At present, only one of these prosecutors is assigned full time to IPR cases.

In April 2003, an executive from one of Paraguay's biggest importers of blank disc was issued a suspended sentence for tax evasion regarding the importation of blank CD-Rs. He was sentenced to two years in jail (suspended), fined \$14,000, and ordered to pay importation taxes of \$53,000 and VAT of almost \$149,000. The recording industry reported that in 2003, Paraguayan courts issued 36 criminal judgments against pirates of sound recordings. Sentences included imprisonment of up to 2½ years, but 16 were suspended, 20 became fines and the rest were benefited by probation. The recording industry initiated 30 judicial actions in 2003.

BSA reports that in 2003, the courts of first instance issued three convictions against resellers of illegal software. The defendants in these three cases did not serve any time in jail because the courts imposed sentences of less than two years and fines, thus making the defendants eligible for the suspension of their sentences. The fact that the defendants received suspended sentences detracts from the deterrent effect that this news would otherwise have had. In addition, during 2003, the Criminal Court of Appeals of Paraguay (*Tribunal del Crimen Cuarta Sala*) issued a decision substantially reducing the amount of the fines that two defendants were ordered to pay in a prior conviction.

**Civil end-user actions and civil Ex Parte searches:** In 2003, BSA conducted four civil copyright infringement actions (compared to seven inspections conducted in 2002). All of the cases conducted in 2003 are currently pending. One of the main problems that BSA faces with civil enforcement is the sometimes unreasonable delay of some courts in granting *ex parte* search orders. In many cases, it can take a minimum of 45 days to obtain a civil warrant search. It takes an average of three years to reach a decision from a district court and an additional year if the case is appealed.

# COPYRIGHT LAW IN PARAGUAY

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## Copyright Law of 1998

The new copyright law entered into effect on October 21, 1998 (Law No. 1.328/98). The 1998 law represented a much-needed improvement over the old 1951 copyright law. After some delay, implementing regulations for this law were signed by the President on September 13, 1999 (Decree No. 5.159). IIPA has summarized disappointing elements and deficiencies in the 1998 Copyright Law in prior Special 301 filings.<sup>8</sup> Paraguay already has deposited its instruments of ratification to both the WIPO treaties—the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. In order to achieve the kind of comprehensive implementation desired by the copyright industries, further refinements to Paraguayan laws will be necessary.

## Criminal Code

Paraguay reformed its criminal code in October 1998. This reform, however, has caused more problems, for several reasons (all of which IIPA has identified in previous 301 submissions). First, Article 184 of the Criminal Code identifies cases involving acts infringing the author's right. But it does not contain any provisions regarding the infringement of neighboring rights, the rights which protect producers of sound recordings. The criminal code therefore does not protect against acts of piracy involving sound recordings. This new law in fact abrogated the penalties provided under an 1985 law (Law No. 1.174), which established relatively strong criminal prohibitions for piracy of sound recordings, and also clearly provided that the state could proceed *ex officio* against infringers. The recording industry continues to bring cases based on the copyright law, but all the general provisions regarding penalties follow the criminal code. As a result, nobody goes to jail and there is no real application of criminal sanctions. The recording industry has been forced to bring cases for different violations (such as contraband, tax evasion, etc.) rather than violation of copyright.

Second, the new criminal code provides a penalty of up to three years or a fine. Unfortunately, this allows judges to impose either a fine or a prison sentence. This kind of choice will likely limit the deterrent effect of the law because convicted defendants could buy out, or convert, their jail time into fines. The current penalty of 6 months to three years for IPR violations prevents any effective deterrent sentences. IIPA and its members suggest increasing these penalties in order to elevate them to major crimes.

Third, in June 1999, the President signed into law an amendment to the criminal code which made copyright crimes “public” actions, and therefore prosecutors can pursue these cases on their own initiative. This law (Law No. 1.444 of June 10, 1999) was signed on June

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<sup>8</sup> Problems in the 1998 copyright law include: a term of two to three years' imprisonment (with levels of fines remaining unchanged), which were shorter than prior drafts; failure to make copyright infringement a “public action,” in which police and prosecutors can take action on their own initiative (this problem was temporarily corrected by legislation in mid-1999); the hierarchy of authors over neighboring rights remains in the law, contrary to international norms (including the WIPO treaties); the TRIPS element on the machine-readability of databases is missing from the law; a Berne/TRIPS-incompatible provision permitting third parties to edit or translate works 20 years after the author's death remains; terms of protection for various works varies throughout the law—industry had argued for longer terms for certain products; the administrative authority for the National Copyright Office to carry out surprise inspections and seizures was removed.

25, and entered into effect on July 9, 1999. This bill deleted language in the Criminal Procedures Act of 1998, which required that private parties had to initiate and bring prosecutions. Unfortunately, according to an interpretation issued by the Paraguayan office in charge of judicial training, this law was scheduled to sunset in July 2003. Despite this interpretation, prosecutors have continue to bring public actions in copyright infringement cases. To IIPA's knowledge, to date no judicial decision has contested this interpretation of the law.

**Need to amend the criminal code:** To mitigate the obstacles above, the recording industry (led by APDIF/Paraguay) has been working on a bill which calls for the following reforms:

- Increase criminal penalties for intellectual property rights violations to a minimum of two years and maximum of eight years. Fines would be added to prison terms;
- Include knowingly supplying raw materials to pirate organizations as a punishable criminal offense;
- Provide penalties for violations of technical protection measures and rights management information;
- Ratify *ex officio* action for prosecution of intellectual property rights violations.

We encourage the Paraguayan government to support these amendments to create the necessary legal framework to fight piracy effectively.

## **Government Software Management**

The Republic of Paraguay has renewed its commitment to legalize its installed software base in the IPR MOU. Even though, up to date, only the Ministry of Industry and Commerce and the Ministry of Foreign Affairs have legalized their software, IIPA welcomes the Government of Paraguay's efforts to start an audit process of its installed software base. While this positive step was not enough to fulfill its obligations under the first IPR MOU, it is still clearly a step in the right direction.