

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2005 SPECIAL 301 REPORT

### BRAZIL

#### EXECUTIVE SUMMARY

**Special 301 Recommendation:** IIPA recommends that Brazil remain on the Special 301 Priority Watch List in 2005. We believe that Brazil continues to fail to provide “adequate and effective protection” for U.S. copyrights as required by the GSP trade program. We will be closely monitoring Brazil’s progress on improving copyright enforcement during the extended GSP review through March 31, 2005.

**Overview of Key Achievements/Problems in 2005:** High levels of copyright piracy and inadequate criminal enforcement in Brazil have harmed both Brazilian and U.S. creators for many years. After a year of investigation, in August 2004 a Congressional Parliamentary Inquiry (CPI) released a comprehensive report on the problems of piracy and counterfeiting in Brazil, and containing a series of proposals. Unfortunately, these proposals have largely been ignored by the Administration, and we express our continuing disappointment with the lack of active engagement by the Executive Branch—engagement which is direly needed at both the federal and state levels.

The most serious deficiency in Brazil continues to be ineffective, non-deterrent criminal enforcement. Although a few Brazilian police units continued to conduct a substantial number of raids in 2004, these raids resulted in very few criminal prosecutions. Over the last seven years, the ratio of convictions to the number of raids run each year has been less than 1%. In those few cases that reach judgment, the sentences are not deterrent. While there has been some welcome cooperation between certain Brazilian authorities and the copyright industries, consistent and systematic anti-piracy results from the Brazilian government are few. With respect to civil copyright infringement enforcement, this is one area of moderate success reported by the business software industry due primarily to the statutory damages available under the copyright law. However, the downside to such success on damages is the lengthy time it takes to resolve a civil case and the costly expert fees and court bonds. Significant improvement is needed in border enforcement, an issue critical to all copyright industries because of the influx of piratical product and blank media used in CD-R burning. Organized crime elements, from within and outside Brazil, exercise control over the production and distribution of infringing copyrighted products. Internet piracy is an increasing problem. Estimated 2004 trade losses due to piracy in Brazil amount to US\$931.9 million.

**Measures Which Could be Taken by the Brazilian Government in 2005:** In order to support nationwide improvement in copyright enforcement, several years ago IIPA outlined numerous goals/objectives of an effective national anti-piracy plan as well as examples of the kinds of concerted anti-piracy actions needed at the national level to reduce

copyright piracy in Brazil.<sup>1</sup> IIPA hopes that the Brazilian government will take sustained and tangible steps to improve copyright enforcement in practice.

In the immediate timeframe for early 2005, IIPA believes that the Brazilian government should, at a minimum, take the following actions:

- Continuous self-initiated raids in the well-known pirate marketplaces;
- More inspections and seizures at the Brazil-Paraguay border which result in cases forwarded for prosecution;
- Prosecutions initiated against a number of the high-profile individuals identified in the Brazilian Congress' CPI report;
- Recommendations issued to state and federal public prosecutors to make all efforts to expedite criminal copyright prosecutions;
- Producing federal- and state-level educational and media campaigns about the anti-piracy fight and how piracy threatens national cultural, scientific and economic interests; and
- The swift operational implementation of the new National Council to Combat Piracy and Intellectual Property Crimes.

Of course, while immediate actions by the Brazilian government are critical, the goal should be the lasting and effective reduction of copyright piracy.

**GSP Investigation:** Over the past decade, the U.S. government has devoted a significant amount of time and resources to support improved copyright protection and enforcement in Brazil.<sup>2</sup> In both its 2003 and 2004 Special 301 decisions, USTR stated that Brazil continues to have serious problems with widespread piracy and ineffective enforcement.<sup>3</sup>

Brazil also has been undergoing a review of its intellectual property rights regime under the U.S. government Generalized Systems of Preferences (GSP); this review was based on a petition filed by the IIPA in August 2000. Brazil has been on notice for years that it must take appropriate action to meet its "part of the bargain" in receiving these unilateral trade benefits.<sup>4</sup> On July 2, 2004, USTR announced that it would extend a special 90-day review (through September 30, 2004) of Brazil's IPR practices.<sup>5</sup> At that time, IIPA again called on the Brazilian

---

<sup>1</sup> The IIPA proposed "action plan" in Brazil first appeared in our April 2001 post-hearing brief in the Generalized System of Preferences review of Brazil. That list was repeated in IIPA's 2003 Special 301 submission (pages 61-62), posted at <http://www.iipa.com/rbc/2003/2003SPEC301BRAZIL.pdf>. See also all IIPA Special 301 reports on Brazil, posted at <http://www.iipa.com/countryreports.html>.

<sup>2</sup> We incorporate-by-reference our 2004 Special 301 report on Brazil, which is posted at <http://www.iipa.com/rbc/2004/2004SPEC301BRAZIL.pdf>. For more details on Brazil's Special 301 history, see Appendix D (<http://www.iipa.com/pdf/2005SPEC301USTRHISTORY.pdf>) and Appendix E (<http://www.iipa.com/pdf/2005SPEC301HISTORICALSUMMARY.pdf>) of this submission.

<sup>3</sup> See USTR's 2004 report on Brazil, May 3, 2004, posted at [http://www.ustr.gov/Document\\_Library/Reports\\_Publications/2004/2004\\_Special\\_301/Special\\_301\\_Priority\\_Watch\\_List.html](http://www.ustr.gov/Document_Library/Reports_Publications/2004/2004_Special_301/Special_301_Priority_Watch_List.html), and USTR's 2003 report on Brazil, May 1, 2003, posted at [http://www.ustr.gov/Document\\_Library/Reports\\_Publications/2003/2003\\_Special\\_301\\_Report/Special\\_301\\_Report\\_Priority\\_Watch\\_List.html](http://www.ustr.gov/Document_Library/Reports_Publications/2003/2003_Special_301_Report/Special_301_Report_Priority_Watch_List.html).

<sup>4</sup> During the first 11 months of 2004, \$2.86 billion worth of Brazilian goods (or 15% of Brazil's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 15% increase over the same period in 2003.

<sup>5</sup> See USTR Press Release on Brazil GSP Review, Dec. 6, 2004 at [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2004/December/Brazil\\_Generalized\\_System\\_of\\_Preferences\\_Intellectual\\_Property\\_Rights\\_Review\\_Extended.html](http://www.ustr.gov/Document_Library/Press_Releases/2004/December/Brazil_Generalized_System_of_Preferences_Intellectual_Property_Rights_Review_Extended.html).

government to take swift and effective action to improve copyright enforcement.<sup>6</sup> On December 6, USTR announced that the review would be extended another 180 days, through March 31, 2005. In response to this decision, IIPA notes that the Brazilian government's promises for prospective policy-based actions, while laudable, are not equivalent to tangible raids, prosecutions and deterrent criminal convictions for commercial piracy. IIPA stated Brazil could have taken significant enforcement-related actions during the original 90-day GSP review to reduce piracy, but failed to do so. On a positive note, IIPA continues to express our hopes that the Brazilian government will take sustained and tangible steps to remove the cloud of possible GSP withdrawal.<sup>7</sup>

<b>BRAZIL</b>										
<b>Estimated Trade Losses Due to Copyright Piracy</b>										
<b>(in millions of U.S. dollars)</b>										
<b>and Levels of Piracy: 2000-2004<sup>8</sup></b>										
INDUSTRY	2004		2003		2002		2001		2000	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	120.0	30%	120.0	30%	120.0	35%	120.0	33%	120.0	33%
Records & Music								55%		53%
	343.5	52%	338.7	52%	320.4	53%	302.0	(MC99% CD47%)	300.0	(MC98% CD35%)
Business Software <sup>9</sup>	330.0	63%	309.0	61%	260.8	55%	272.3	56%	264.1	58%
Entertainment Software <sup>10</sup>	120.4	74%	125.7	56%	NA	NA	NA	99%	248.2	94%
Books	18.0	NA	14.0	NA	14.0	NA	14.0	NA	18.0	NA
<b>TOTALS</b>	<b>931.9</b>		<b>907.4</b>		<b>715.2</b>		<b>708.3</b>		<b>950.3</b>	

<sup>6</sup> See also IIPA Press Release on Brazil, July 2, 2004 at [http://www.iipa.com/pressreleases/2004\\_July2\\_GSP-rev.pdf](http://www.iipa.com/pressreleases/2004_July2_GSP-rev.pdf).

<sup>7</sup> IIPA Press Release on Extending Brazil's GSP IPR Review, Dec. 6, 2004 at [http://www.iipa.com/pressreleases/2004\\_Dec6\\_GSP\\_Brazil.pdf](http://www.iipa.com/pressreleases/2004_Dec6_GSP_Brazil.pdf).

<sup>8</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2005 Special 301 submission at [www.iipa.com/pdf/2005spec301methodology.pdf](http://www.iipa.com/pdf/2005spec301methodology.pdf).

<sup>9</sup> BSA's 2003 piracy statistics for business software piracy were not available as of the February 13, 2004 filing of IIPA's 2004 Special 301 report to the U.S. Trade Representative. In May 2004, BSA's 2003 preliminary statistics (of \$186.8 million and 55%) were posted on the IIPA website. In October 2004, BSA and IDC were able to parse out the U.S. publishers' share only of its global piracy losses in Brazil, and these revised, now final, statistics for 2003—which comport more closely to BSA's traditional methodology for 301 purposes—appear above. Historically, BSA's trade loss estimates reported in the Special 301 context represent losses due to piracy which affect only U.S. computer software publishers in Brazil, and differ from BSA's piracy loss numbers released separately in its annual global piracy study which reflect losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in Poland. In July 2004, BSA and IDC issued a new Annual Global Piracy Survey. Unlike prior surveys, this 2004 BSA Global Survey now includes more computer applications, such as operating systems and consumer applications such as PC gaming, personal finance, and reference software, all of which were not reflected in prior BSA surveys. According to its 2004 survey, BSA reports that the piracy rate in Brazil was 61% with \$519 million in estimated losses in 2003. See BSA's Global Piracy Study at <http://www.bsa.org/globalstudy/>.

<sup>10</sup> ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses." The methodology used by the ESA is further described in Appendix B of IIPA's Special 301 report (see link above).

## **COPYRIGHT PIRACY**

Most of the industries continue to place estimated piracy levels at about 50% (or above) of the market, meaning that more than half of each market is composed of pirate products which are generally available at a fraction of the price of legitimate product. In addition to more traditional forms of piracy which the industries have been fighting for decades, piracy involving optical media and the Internet present more enforcement challenges.

### **Copyright piracy remains widespread, and did not improve in 2004.**

**The recording industry reports that legitimate sales continue to plummet due to piracy.** Record piracy still remains at 52% of all CD sales in Brazil. The latest piracy survey shows a total number of 103 million pirate CDs being duplicated, which translates to trade losses that exceed US\$343 million. The legitimate market showed a slight improvement—primarily the result of increased music for DVDs, while CD sales remained essentially flat. The industry continues to release low priced product to attract more consumers from various income levels. As a result, average record prices in Brazil are among the lowest in the world.

Most of the pirate audio products are burned CDRs. While a small amount of finished product may be imported from Paraguay or elsewhere, the great preponderance are locally reproduced in hundreds of facilities spread out around the country. These CD burning facilities range from large operations operating in commercial warehouses with over 100 burners, to small outfits operating out of residential houses producing only a small amount of product.. Most of the blank media used to replicate the pirate CDs come from Paraguay by mainly an army of individuals crossing the “Friendship” bridge between Ciudad del Este and Foz de Iguacu. The original source of the blank CD-Rs continues to be Southeast Asia, primarily Taiwan and China.

**Audiovisual piracy in Brazil continues, with VCD and DVD piracy on the rise.** With only a few concrete actions by the government to point to in 2004, audio visual piracy enforcement in Brazil remains a disappointment. The priority areas of concern to MPA and its member companies are: (1) optical disc piracy, (2) Internet sales, (3) retail piracy, and (4) inadequate border measures to halt imports of infringing digital product. Estimated annual losses to the U.S. motion picture industry due to audiovisual piracy in Brazil are estimated to be \$120 million, with an overall audiovisual piracy rate of 30% in 2004.

MPAA reports that the optical disc piracy rate for films in Brazil is approximately 15% of the market and now accounting for about 40% of total seizures of pirate product. Although most pirate optical discs are still CD-Rs, DVD-Rs will soon overtake CD-Rs in the market. Currently 30% of optical discs seizures are DVD-Rs. In addition, the recent growth of optical disc hardware (burners) in Brazil will open the door to future counterfeit sales. In addition, the sale of hard goods over the Internet, both CD-Rs and DVD-Rs, is also increasing rapidly in Brazil. With the increased availability of broadband both in homes and Internet cafes, local member company executives are increasingly concerned that illegal Internet downloads and internet-based hard good sales of CD-R and DVD-R will become more of a threat to legitimate sales and distribution. Brazil has the largest internet user-base in Latin America with over 15 million users. Twenty-four percent (24%) of Brazil’s four million Internet households have access to broadband. Furthermore, retail video store piracy continues to be of concern in Brazil because of the continuing importance of video store revenue for local home entertainment operations.

About one third of the VHS market is pirate. Most pirate videos are titles in current home video release. The majority of these are back-to-back copies made in the stores, with a growing percentage originating from small reproduction centers that distribute to stores. Particularly worrisome is the ability of these reproduction centers to counterfeit anti-piracy security mechanisms such as exclusive production colors of VHS cassette boxes. Finally, Ciudad del Este, Paraguay, is the principal port of entry and the source of both hardware and more than 100 million blank optical discs (CD-Rs, but increasingly DVD-Rs), entering Brazil annually. These optical discs turn up quickly in major cities throughout Brazil as counterfeit copies further impacting sales in the legitimate market of products.

**Business software piracy continues in a variety of formats.** The Business Software Alliance (BSA) reports that software piracy continues to exist in its traditional forms in Brazil, including illegal reproduction/duplication of software programs both for commercial (i.e., sale) and noncommercial (i.e., use) ends; illegal use by end-users, hard-disk loading of illegal software by computer resellers; and the manufacture and/or sale of counterfeit software products. One of the most alarming trends in recent years has been the increasing utilization of the Internet as a means of advertising illegal software to a large audience, and for the unauthorized electronic distribution of illegal software.

With respect to end users, BSA has concentrated most of its efforts on bringing civil enforcement actions against companies, which has had some impact on the level of piracy. However, there still exists a considerable business segment in Brazil that is far from having legalized. In civil infringement cases, where the business software industry has achieved some success, Brazilian courts continue to require extremely high expert fees and bond requirements. Because of lengthy delays, civil infringement cases related to the business software take many years to be adjudicated (currently more than 200 civil cases are awaiting judgment). In 2004, BSA continued to engage in civil judicial actions (search and seizure) and criminal police actions promoted by the local industry association, ABES. BSA focuses its anti-piracy activities in the following states: Rio Grande do Sul, Santa Catarina, Parana, São Paulo, Rio de Janeiro, Minas Gerais, Espirito Santo, Bahia, Pernambuco, Ceara, Goias, Mato Grosso do Sul, and the Federal District of Brasilia. Preliminary estimated trade losses due to software piracy are US\$330 million, with a 63% piracy rate.

**The entertainment software industry suffers from both optical media piracy imports as well as locally produced pirate product.** Piracy of entertainment software products occurs through local CD-R burning as well as imports of factory-produced products, typically exported to Brazil from Asia through Paraguay, or increasingly through other transshipping countries. Similarly, pirated cartridge-based entertainment software products continue to be shipped from Asia (primarily China) through Paraguay, sometimes assembled there before being transported across the border into Brazil. ESA estimates that the value of pirated videogame product in the Brazilian marketplace was US\$120.4 million in 2004, with an estimated 74% piracy rate.

Pirated entertainment software products are sold in a variety of venues. For the CD-burning operations, advertisements of pirated products are usually placed in newspapers or on the Internet, with the customer calling in to place their "orders." Most of these operations are highly organized in nature. Although the Internet continues to be primarily an advertising medium for CD-burning operations in the country, there are a number of "warez" sites that are a popular source of pirate game software. The Entertainment Software Association (ESA) works with the local association ABES on anti-piracy actions. The compliance rate for requests for

takedown of infringing product has been quite satisfactory. Progress made last year in getting newspapers to stop running advertisements of pirated entertainment software products has continued. In São Paulo, for instance, advertisements in the major newspapers have been reduced to zero, while advertisements in newspapers in Rio de Janeiro have been reduced from 50 per month to 8-12 ads per month. In terms of retail piracy, large quantities of piratical and counterfeit factory-produced discs appear in the “promocenters,” which are small retail booths renting space in larger markets and galleries. Unfortunately, enforcement actions against such operations have only had the effect of cleaning out the on-site stocks of pirate products, which are replaced within days of the action. This replenishment of stocks is evidence of the lack of any real deterrence from enforcement actions because there are no resulting prosecutions nor penalties imposed on the operators. Flea markets and street vendors continue to be sources of pirate products. But given the lack of a fixed location for these operations, enforcement against such vendors becomes rather difficult, particularly in tracing them back to the bigger operations that supply them with illegal products. Internet café is also of concern, as of the 1,500 cafés in the country, only 15% are licensed.

**Unauthorized photocopying continues to undermine the legitimate book publishing markets.** The publishing industry reports that unauthorized photocopying of entire textbooks as well as study materials, individual lessons and chapters from textbooks continues to be the major form of book piracy in Brazil. AAP estimates losses to its members of US\$18 million in 2004 and those losses multiply sharply for local Brazilian publishers. Many university texts used are apostilas, anthologies made up of chapters from various books copied illegally, both in English and in translation. Some professors make photocopied compilations of materials before the first day of classes, which gives the booksellers no chance to import or sell the books before classes. Some estimate that the annual number of unauthorized photocopies ranges from 3 to 5 billion pages. Universities are tacitly, and sometimes actively, condoning these practices, and are certainly taking no role at present in fighting these illegal activities in and around their campuses. The Ministry of Education has likewise failed to address this issue in any way, and the publishing industry really needs this ministry to step up and engage on this issue. Furthermore, illegal copying flourishes in commercial establishments adjacent to institutions of higher learning. Government action on illegal photocopying of academic materials, which cost both domestic and foreign publishers millions of dollars and cost the Brazilian government thousands of jobs and millions in tax revenues, is practically nonexistent. IIPA asks the Ministry of Education and the administrative bodies of universities and colleges to work with the enforcement authorities to make sure that a clear message is sent to those engaged in illegal photocopying, both on and off campus, that this activity will not be tolerated. The recently reorganized Associação Brasileira de Direitos Reprográficos (ABDR) has been working with authorities to conduct enforcement actions and plan for future endeavors. AAP will be monitoring closely the degree of cooperation the ABDR receives from authorities.

## **Internet piracy in Brazil is increasing.**

All the industries report that the Internet is increasingly being used in Brazil as a means to distribute pirated product. The audiovisual, business software, recording and entertainment software industries all report positive responses to their campaigns to takedown websites and web pages in Brazil which offer piratical copyright content

The audiovisual industry has seen an increase in the use of the Internet as a distribution system for optical disc piracy, usually offered on websites for delivery collect-on-delivery. In 2004, MPA obtained good results in getting the ISPs to remove websites selling pirated

goods as well as suspending accounts of users who were downloading films illegally. Nevertheless, more needs to be done by the government and police in this arena—for example, 18 people were arrested for selling pirated goods on the Internet and yet none was indicted.

The recording industry reports that through a local internet anti-piracy campaign over 2,300 web and FTP sites were taken down and 23 investigations were conducted during 2004 that resulted in burners and pirate CDs being seized.

With respect to videogames, the ESA's domestic enforcement program continues to take action against local websites and auction listings. In 2004, 217 pirate websites and over 15,000 auction listings for pirated products were taken down. The entertainment software industry (in cooperation with other copyright industry sectors) is also working with "mercadolive.com" to take down listings for pirated products. With the stepped up local enforcement efforts against online piracy, there has been increased cooperation from the operators of the domestic auction sites and as a result, a decrease in the monthly volume of auction listings of pirated games. Nonetheless, the absence of any legal deterrence plays a key role in the persistently high volume of such listings.

The business software industry reports positive responses in auction sites and specifically in the biggest one (Mercadolivre.com—85% of market share). In 2004, 15,474 advertisements were removed of the Brazilian auction sites. Nevertheless, 14,568 notices were sent to Internet sites (*hotwarez*) and 14,479 Internet sites were removed, totaling 29,953 of takedowns in 2004. However, BSA has seen a significantly increase in the use of the Internet as a distribution system for software piracy, usually offered on websites for delivery (know as *hotwarez*). The takedowns of *hotwarez* have been increasing insufficiently to combat software Internet piracy efficiently in Brazil.

## **Optical media piracy harms the market for legitimate products.**

Replication of pirate optical discs sold in Brazil, whether on a large or small scale, such as the many CD burner operations scattered throughout Brazil, generally cuts across all the copyright industries. Pirated optical media product, primarily manufactured in Southeast Asia and Paraguay, continues to cross the porous Brazilian borders, devastating the local markets. (See industry-by-industry discussion, above). Reports indicate that Brazil has 11 CD plants, with 88 production lines; most of these plants are believed to be operating legitimately and are not a significant source of pirated OD product. Growing numbers of small duplication facilities can produce a significant amount of pirate CDs each day. A related, and continuing, problem is the large-scale distribution networks in Brazil, whether these involve thousands of street vendors and established facilities (such as gas stations) which blanket the major highways in Brazil, or the non-established facilities in *camelodromos* (flea markets), or on the streets.

## **Organized crime remains a significant factor in piracy.**

The Law Kim Chong case developed by the CPI was the major organized crime/piracy case developed in 2004. In June 2004, the notorious piracy kingpin Law Kim Chong was arrested for attempting to bribe the Chairman of Brazil's Congressional Anti-Piracy Committee. As part of the follow up to this arrest, authorities raided one warehouse owned by Chong in which over 7.5 million blank CD-Rs and 3.5 million blank DVD-Rs were seized. The bribe was alleged to be for between US\$1 million and \$2.3 million. Chong owned numerous shopping

centers and supplied product from China to over 10,000 points of sale throughout the country. Chong is now in jail and the investigation continues.

The Federal Police have taken few organized crime-related investigations with no effective results after the ending of anti-piracy CPI. Ironically, the most important illegal commercial centers keep working normally. There is no federal effort at the police level and the existing state-funded task forces are small operations in the states of Rio, São Paulo and Rio Grande do Sul, all with human and financial resources far below the requirements needed, as described by the CPI.

## **COPYRIGHT ENFORCEMENT IN BRAZIL**

The major criminal enforcement problem in Brazil has been failure of Brazilian authorities to emphasize serious prosecution and deterrent sentencing. There is a general lack of interest, and delays hamper effective enforcement of the copyright law throughout the criminal enforcement system, especially with judges and prosecutors. Police activity has been moderately successful at the raiding level (depending on the jurisdiction), but these result in few prosecutions. The civil system on the other hand has, by contrast, offered some relief in appropriate civil cases involving computer software. For years, the industries, especially those based in Brazil, have presented requests to Brazilian officials to take specific actions. Immediate progress on improving copyright enforcement is long overdue, and we are hopeful that the government will quickly implement many of the actions and reforms proposed in the report of the renewed CPI. IIPA and its colleagues believe that immediate progress on improving copyright enforcement is long overdue, and are hopeful that the renewed focus generated by the CPI progress will result in improved federal and state enforcement raids and investigations. Over the years IIPA has publicly outlined possible actions the Brazilian government could take to improve investigations and anti-piracy actions<sup>11</sup> as well as strengthening prosecutorial and judicial efforts.<sup>12</sup>

---

<sup>11</sup> In IIPA's 2004 Special 301 filing, we outlined a series of actions through which the government could take to begin to solve the enforcement problem. Over the last year, including during the CPI review, various copyright industry representatives have raised these same issues. We hope that the Brazilian authorities will enact these kind of actions: (a) Prepare and conduct a national anti-piracy campaign, as a matter of national priority and security; (b) Significantly improve and implement deterrent criminal enforcement, including continuous raiding, effectively prosecuting and convicting copyright pirates in all industry sectors; (c) Establish federal task forces across the country, creating an anti-piracy coordinator at each state office, which would include formal and specific operational coordination with industry sectors, reporting to the Congressional Committee on Piracy; (d) Create a centralized unit of police officers to work on important copyright cases, and provide them with specific guidelines to conduct their cases; (e) Direct the Federal Police and Customs to intensify inspections along country borders, and adopt more efficient norms to intercept contraband, blank CD-Rs and pirate pre-recorded CD imports. Require the customs authorities to keep statistical records of seizures of products; (f) Initiate more investigations using the tax evasion element of the Software Law (for example, using the Policia Fazendaria); (g) Expedite issuance of search warrants, especially in criminal cases where sometimes it has taken up to six months to obtain such warrants; (h) Ensure that all intellectual property in use in government information technology (IT) systems is properly licensed.

<sup>12</sup> Prior IIPA 301 filings have recommended that the Brazilian government take the following illustrative actions to improve prosecutions and convictions: (a) Speed up criminal copyright infringement prosecutions and expedite judicial orders to destroy confiscated piratical and counterfeit products; (b) Assign dedicated prosecutors in each state to lead anti-piracy campaigns that include major investigations of organized crime groups as well as keeping major commercial areas free of pirate product street vendors; (c) Secure convictions against businesses that are replicating and distributing optical discs illegally; (d) Apply the new criminal code amendments in copyright infringement cases; (e) Assign piracy cases to judges trained and experienced in IP cases with a view to establishing specialized IP courts; (f) Reduce bonds and increase timely decisions in civil copyright infringement cases; (g) Create a specialized court which adjudicates copyright infringement cases.

## **The Congress and the CPI Report**

The Brazilian Congress has taken steps to examine and confront the piracy problem harming its economy and culture. In late May 2003, the Brazilian Chamber of Deputies convened a parliamentary commission to analyze the adverse economic impact of copyright piracy, smuggling and tax evasion. Starting in mid-June 2003, the Commission on Parliamentary Inquiry (CPI) held hearings, and many IIPA member associations and their local representatives testified. In addition, some of the CPI's members created a permanent congressional presence (political and physical) in the form of a non-partisan Anti-Piracy and Anti-Tax Evasion Parliamentary Movement (*Frente Parlamentar de Combate à pirataria e à Sonegação*). This Congressional Committee on Piracy movement was launched in the first week of September 2003. It comprises over 100 members of Congress, led by a smaller core leadership group.

The CPI, originally set to end its investigation at the end of September 2003, extended its efforts until June 2004. In August 2004, it released its comprehensive report, which included descriptions of the scope of piracy, problems related to enforcement as well as policy and legislative recommendations to begin to improve the situation. The report noted the lack of national leadership and coordination to date. For example, the CPI recommended the creation of a National Plan to Combat Piracy. Shortly thereafter, the federal government announced the formation of the “National Council to Combat Piracy and Protect Intellectual Property,” and regulations establishing this entity were published in October 2004. The Lula Administration later defined the activities and makeup of the council that will be headed by a senior Ministry of Justice official and have participation of six private sector representatives. Although the council has been created, unfortunately it appears to lack authorization to actually undertake raids and legal actions, and none have been initiated by the government of Brazil despite private-sector recommendations.

The new National Council to Combat Piracy and Organized Crime held two preparatory meetings in Brasilia in late 2004 with members from government and industry. However, it did not take any substantive anti-piracy initiatives by the end of 2004. The National Council has agreed to begin actions by February 2005, which we hope will be the basis for its long promised integrated national plan to address anti-piracy in Brazil. We understand that during the first meeting of the council that took place in January 2005. That first meeting was aimed at discussing various internal operating issues, and a decision was reached to apply the same tools employed in the fight against corruption to the fight against piracy. The second meeting will take place on February 27-28, 2004, and that agenda will include a National Plan to Combat Piracy for the next two years. At present, it is not yet possible to analyze the councils' ability to actually undertake strong anti-piracy measures. While we look forward to the adoption and implementation of this plan, we highlight that Special 301 and GSP decisions should reflect results achieved rather than goals that are announced—particularly bearing in mind that the National Council is a consultative (non-executive) body, and that the eventual execution of this plan will depend on various other public agencies like the Federal Police, the Receita Federal, the Secretary of National Security, the Federal Highway Police, and others (most of them represented at the Council), not to mention the states and municipal authorities.

## **Organized Actions at the State and Local Levels**

The increased national awareness of piracy caused by the CPI report and media coverage appears to have encouraged new enforcement efforts among state and municipal

authorities ranging from police IP Task Forces, to coordination among organized crime prosecutors. For example, the Justice Ministry's Anti-Piracy Council announced in September 2004 a new measure prohibiting the shipment of blank optical discs into Brazil through the Paranagua and Santos ports if those shipments were marked for transit through Paraguay and then to be return to Brazil. Other measures, though, are based more on the good will of a few individual enforcement authorities than on any improvement in or commitment by governmental institutions. Overall, the sum of these new improvements is insufficient to lead to any material improvement in the piracy situation.

The level of governmental anti-piracy attention varies throughout Brazil. For example, the copyright industries report good cooperation with certain Brazilian states. Specifically, the state government of São Paulo has created a specialized police unit for piracy cases, the DEIC, which is part of the Organized Crime Office. The municipality of Porto Alegre in Rio Grande do Sul has established a municipal effort to fight piracy. The State of Rio de Janeiro announced the creation of a special anti-piracy task force in mid-2002, and its Special Anti-Piracy "Delegacia" (Precinct) has been quite active. Nevertheless, this task force (which notably is state-funded and not a federal effort) is a small operation with human and financial resources far below the need shown by the private sector, both copyright and trademark. Ironically, the first such state anti-piracy office—that in São Paulo—was enmeshed in investigations of corruption that reach to higher levels and include the arrest of police officers and commanders. The São Paulo state government has appointed a new commander of the organized crime (DIEC) unit to replace its last division chief suspended for corruption. It is still too soon to assess how effective the new commander will be in addressing piracy in Brazil's largest city.

Other state-level anti-piracy efforts have arisen on an ad hoc basis, including similar police task forces in Goiás and Pernambuco; some prosecutors have also expressed interest in anti-piracy actions as a form of organized crime. Note, however, that these efforts are not initiated by the current administration, are not federal efforts, are not part of an overall government strategy and are certainly not permanent. The industries have identified the need to have anti-piracy task forces in additional cities/states such as Belo Horizonte, Salvador, Fortaleza e Curitiba as well as expanding the São Paulo force to cover effectively rest of the state.

## **Criminal copyright enforcement is not effective and not deterrent.**

**Some police raids take place but inconsistently among the various Brazilian states.** While isolated police efforts have been moderately successful at the raiding level, the actions they take rarely reach conclusion in the courts. There is still a lack of clear and direct instructions from the highest levels that would direct the various enforcement authorities (such as Receita Federal, Policia Federal, Policia Civil, Policia Militar, Policia Fazendaria, Alfandega) to act in cases of copyright infringement.

The level of police attention to piracy varies throughout the country. Certain industries are able to achieve adequate cooperation with police officials, often depending on the region and on personal contacts. Most enforcement efforts in Brazil are commenced by investigations conducted by the copyright industries themselves, and are usually not the result of any major Brazilian government or law enforcement initiatives. Because Brazil has many different police corps, the rivalry among them, with some few exceptions, negatively impacts their ability to conduct effective and efficient raids. Federal police officials have jurisdiction over the types of crimes that are generally viewed as producing large-scale corruption (such as tax evasion, drug

trafficking and money-laundering). Most industry-led enforcement efforts end up being handled by state and local police officials.

RIAA reports no major changes in record industry cooperation with the many police forces. The one bright spot is the effort made by the municipal police to eradicate street vendors from major traffic areas in Rio de Janeiro. This police force has not been discouraged by the aggression shown in some cases by street vendors or the low numbers seized in each location and have been consistently carrying out raids all over the city.

The ESA saw a positive enforcement trend in 2004, with more police actions focused on laboratory operations involved in the production of pirate optical media, including game software. Police cooperation has also been a factor in raids against retail outlets, such as a December 2004 raid at the Stand Center in São Paulo, which resulted in the inspection of 21 stores. Almost 76,500 units of pirate material were seized by a contingent of 51 professionals, including 15 military police officers, 2 bailiffs, 2 court experts, 16 assistants and others. Both the Guarda Municipal da Cidade de São Paulo and the Guarda Municipal da Cidade do Rio de Janeiro (the specialized police forces of these cities) have also been very helpful taking actions against “camelos” (street vendors), seizing pirated products with the goal of reducing the sale of pirated products on the streets. Unfortunately, all such actions produce little in the way of lasting results as defendants remain largely unprosecuted and pirate stocks are replenished soon after these seizures.

In 2004, the BSA reports an increase of police actions focused on the biggest centers of illegal commerce specially at the Stand Center in São Paulo, where there were three strong raids resulting approximately 150,000 of pirate optical media, including business software. Nevertheless, this frequency of raids is far below the need shown by private sector, mainly because these illegal shopping centers have an impressive number of consumers per day, including the weekends. It is strongly required the closing of all those illegal commercial centers as a matter of morality.

In recent news, on January 20, the famous Maracanã soccer stadium in Rio de Janeiro was the site of the destruction of more than 1,000,000 pirated VHS, DVD and CD recordings of film, music and software. Print and electronic media outlets provided broad coverage of the spectacle, describing piracy as a crime and explaining to audiences its harmful effects on society. Associations representing the film, music and software industries helped promote the event, which Rio de Janeiro state organizers announced would be followed by others, at which contraband seized by that state’s civil police force since mid-2003 will be destroyed.

The industries rely on the good will of individual law enforcement officials to address piracy problems. The problem, however, remains prosecution of criminals engaged in piracy.

**Brazilian prosecutors pursued very few criminal cases in 2004.** Prosecutorial attention to copyright offenses is inconsistent, especially in the provinces. Case backlogs constitute a serious enforcement problem, caused by burdensome substantive and procedural formalities and a general lack of resources. Over the last seven years, the ratio of convictions to the number of raids run each year is 1% or less (see chart, below). Enforcement efforts sometimes fail due to the lack of sufficient skilled government agents to investigate violations and due to technical deficiencies in the handling and examination of evidence.

**Non-deterrent penalties continue to be issued by the courts.** In those very few criminal copyright cases which do reach judgment, the sentences are primarily small fines,

probation and community service. Between 1995 and 2004, most of the cases resulted in suspensions or dismissals under Law 9099-95, a law which permits judges to sentence first-time offenders with up to two years' probation and monetary damages for first-time offenders. The Brazilian criminal code was amended in 2003 to clarify and strengthen certain procedures and penalties which had hobbled effective enforcement throughout the 1990s (see discussion, below). The recording industry reports that the courts continue to suspend most cases brought to them; recidivism is not taken into account in most courts. Since the 2003 amendments, it appears that judges are now more likely to authorize the destruction of seized pirated products even before the final resolution of the case.

**Delays by police, prosecutors and judges in criminal cases.** It takes a long time for a criminal case to wind its way through the Brazilian courts. Delays in criminal copyright infringement cases can take as long as two to three years in the courts of first instance. As a result, there is a tremendous backlog of cases in the Brazilian courts. The police often keep the case files in their offices for seven or eight months before sending them to the prosecutor's office to file the criminal case. One solution often proposed to address the problem of delays has been the creation of a specialized court for copyright matters (see discussion, below).

BRAZIL CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS 1998-2004				
ACTIONS	RECORDING INDUSTRY 1988 (1999) [2000] {2001} -2002- *2003* 2004	MOTION PICTURE INDUSTRY 1988 (1999) [2000] {2001} -2002- *2003* 3Q OF 2004	BUSINESS SOFTWARE I & GAME SOFTWARE INDUSTRIES 1988 (1999) [2000] {2001} -2002- *2003* 2004	TOTAL 1988 (1999) [2000] {2001} -2002- *2003* 2004
NUMBER OF COMPLAINTS FILED WITH POLICE	530 (154) [153] {188} -206- *190* 113	1,320 (832) [1,957] {1,750} -- 1,825 -- *2,995* 2,286	34 (118) [134] {273} -253- *351* 668	1,884 (1,104) [2,244] {2,211} -2,284- *3,536* <b>3,067</b>
NUMBER OF RAIDS CONDUCTED	680 (777) [1,011] {621} -870- *1,018* 936	2,381 (1,671) [1,535] {1,354} -- 1,640 -- *2,995* 1,280	34 (118) [134] {273} -253- *175* 626	3,095 (2,566) [2,680] {2,248} -2,763- *4,188* <b>2,842</b>
NUMBER OF PIRATE COPIES SEIZED	2.85 million (1.40 million) [3.22 million] {2.37 million} -3.78 million- *5,686,253*  3,743,538	243,581 (212,063) [220,878] {225,785} -253,805 VHS, 56,037 blank OD- *254,230 VHS and 134,417 CD-R* 196,147 VHS; 65,953 blank OD; 98,819 CDR; and 7,801 DVD-R)	NA (NA) [212,898] {351,944} -355,156- *Business software- 574,341 Game software- 845,977* Business software 352,457; Game software- 861,637	+3.09 million (1.61 million) [3.65 million] {3.3 million} -4.4 million- *7.5 million* <b>5.3 million+</b>

**BRAZIL**  
**CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS**  
**1998-2004**

	RECORDING INDUSTRY	MOTION PICTURE INDUSTRY	BUSINESS SOFTWARE I & GAME SOFTWARE INDUSTRIES	TOTAL
<b>ACTIONS</b>	1988 (1999) [2000] {2001} -2002- *2003* 2004	1988 (1999) [2000] {2001} -2002- *2003* 3Q OF 2004	1988 (1999) [2000] {2001} -2002- *2003* 2004	1988 (1999) [2000] {2001} -2002- *2003* 2004
<b>NUMBER OF CASES SUSPENDED OR DISMISSED</b>	NA (18) [28] {39} -40- *29* 96	148 (235) [146] {87} -144- *23* 397	0 (0) [0] {0} -0- *0* 0	+148 (253) [174] {126} -184- *52* <b>493</b>
<b>NUMBER OF DEFENDANTS CONVICTED (INCLUDING GUILTY PLEAS)</b>	5 (3) [11] {7} -11- *8* 17	1 (0) [2] {13} -13- *14* 15	0 (1) [0] {0} -0- *0* 0	6 (4) [13] {20} -24- *22* <b>32</b>
<b>CRIMINAL SENTENCE ISSUED</b>	Minimal fines (Minimal fines) [Minimal fines] {Minimal fines} -Ranging from: 1-year community service; 2 years community service and fines; 2 years in jail plus small fine; 6 years in jail plus 20 days' fine- *Minimal fines* Minimal fines	Community service (None) [Community service] {Up to 2 years, all given probation} -Community service, probation- *Minimum 1-year, maximum 18-months, all suspended* Minimum 1 year, maximum 3 years, all given probation – community services probation	None (2 years' probation plus fine <\$600) [None] {None} -None- *None* None	Minimal (Minimal) [Minimal] {Minimal} -Minimal- *Minimal* <b>Minimal</b>
<b>RATIO OF CONVICTIONS TO THE NUMBER OF RAIDS CONDUCTED</b>	0.74% (0.39%) [1.09%] {1.13%} -1.26%- *0.79%* 1.82%	0.04% (0%) [0.13%] {0.96%} -0.79%- *0.47%* 0.85%	0% (0.85%) [0%] {0%} -0%- *0%* 0%	0.19% (0.16%) [0.49%] {0.89%} -0.87%- *0.53%* <b>1.1%</b>

Note: Statistics for this enforcement chart are provided by IFPI Latin America (IFPI), the Motion Picture Association (MPA), and the Business Software Alliance (BSA). The recording industry has reviewed and revised its statistics from 1999 to 2002, and the revisions are reflected above. Also, the suspensions or dismissals cited above are the result of judicial decisions under Law 9099-95, which permits judges to sentence first-time offenders with up to two years' probation and monetary damages. In 2003-2004, BSA and ESA undertook concurrent local anti-piracy actions in Brazil, and the only difference between the two industries' reports involves the amount of software products seized. NA = Not Available.

## **Brazilian border measures remain ineffective.**

The copyright industries have long recommended that controls at the major transshipment points be strengthened. Border enforcement will clearly be enhanced if Brazilian authorities can better coordinate with their Paraguayan counterparts in exchanging intelligence and coordinating enforcement efforts. Products from Paraguay and those shipped to Brazil's free ports of Santos and Paranagua should be inspected and thoroughly documented. Although much of the music and audiovisual piracy has turned to domestic production, infringing copies of entertainment software (both in silver disc and cartridge format), and misdeclared and infringing blank CD-Rs, continue to enter as infringing imports. Brazil promised the U.S. years ago that it would work with the Paraguayan government on border issues, but only recently have a few enforcement efforts been observed at the Brazilian border. Nevertheless, human resources to monitor the border continue to be scarce. Industry investigators have observed that at times only three people were available to control the "Friendship" bridge, where thousands of people and vehicles go across on a daily basis.

The Brazil tax agency (Brazil's Internal Revenue Service equivalent) and the Federal Highway Police held joint successful operations at the tri-border area in 2004, seizing a record total of 3.5 million blank CD-Rs and 191,000 DVD-Rs. Nevertheless, these seizures represent a tiny fraction of blank ODs which enter Brazil annually and are turned into pirated goods. By way of example, 12 million blank CD-Rs were seized from a warehouse run by an organized crime boss when he was arrested for money laundering and conspiracy to bribe a congressional official. Federal authorities say that they lack both the resources and personnel to conduct the background intelligence and raids needed to address the audio visual piracy problem coming from the tri-border area.

Brazilians take advantage of the lack of border controls and install manufacturing, assembly and printing facilities on both sides of the border, bringing their products back and forth without any kind of control. To stem the flow of this product, IFPI and Phillips presented in 2002 a joint petition to the Customs Central Coordination (COANA) requesting a number of measures which include creation of a specific line item for blank CD-Rs, checking imports for under-valuation and monitoring entry of known pirate CD-R labels. Unfortunately, nothing has been done yet.

In September 2004, the Justice Ministry's Anti-Piracy Council announced a new measure prohibiting the shipment of blank optical discs into Brazil through the Paranagua and Santos ports if those shipments were marked for transit through Paraguay and then to be return to Brazil. For example, there was one seizure of 1.2 million blank CDRS in Santos.

Also in Fall 2004, the Federal Highway Police began to enforce federal highway regulations against contraband trafficking, usually involving buses transporting contraband merchants (*sacoleiros*) from Paraguay. Heavy fines and/or seizure of the bus can result. About 385 buses have been seized for contraband and, and many others fined. In addition, over 7,000 people have been summoned for potential criminal investigations. Nevertheless, these actions have not yet made a noticeable impact on the extent of pirate product available in the Brazilian marketplace, and are unlikely to do so until greater law enforcement coordination is achieved with Paraguayan law enforcement officials, and pirates and/or those involved in smuggling face greater risks than the occasional loss of their inventory.

Also in September 2004, the copyright industries' anti-piracy groups held a large hands-on training session for more than 100 Brazilian customs, federal police, civil police and internal revenue officers involved in enforcement at Foz do Iguaçu, a key port of entry at the border with Paraguay.

Furthermore, the software industry is concerned about the increasing illegal importation of computer hardware parts and components, which are then assembled into computers and frequently loaded by system builders and assemblers with illegal software. Much of this contraband hardware arrives in Paraguay, and then enters Brazil, Argentina and Uruguay. Stronger border measures and much better border enforcement are necessary to combat this practice.

## **Good damage awards have been issued in civil copyright cases, but lengthy delays and high bond requirements exist.**

The business software industry uses civil actions in its anti-piracy campaign in Brazil, in addition to criminal enforcement. BSA continues to bring civil search and seizure actions, followed up in most part (unless the defendant settles within 30 days of the search and seizure) with the filing of civil damages suits. The level of damages awarded in these software cases is unprecedented worldwide with respect to software copyright infringement suits. Such success is not without some glitches. First, the civil court system in Brazil is notoriously overloaded, inefficient, and slow. Cases usually take from 18 months to 4 years to come to trial. Moreover, defendants have many grounds for appeal, and this process regularly takes three to four years before a judgment is issued by the relevant superior court. Due in large part to these unacceptable delays and the lack of attention of judges to copyright protection, BSA currently reports that more than 200 civil cases are awaiting judgment. Civil infringement cases related to the business software take many years to be adjudicated. Second, Brazilian courts also continue to require extremely high expert fees and bond requirements. In some BSA cases during 2004, for instance, bonds of US\$50,000 to US\$100,000 were required, and BSA had no option but to terminate the cases without seizure of the defendant. On average, BSA has paid up to US\$5,000 for experts' fees and up to US\$25,000 as bonds. However, there have been other cases in which the bonds were so excessively high that the BSA could not afford to continue the case.

## **COPYRIGHT LAW IN BRAZIL**

### **1998 Copyright Law and 1998 Software Law**

Under its 1994 agreement with the U.S., Brazil promised to enact legislation on computer software and to pass amendments to its copyright law by making "best efforts" to accomplish this by January 1, 1995. Finally, both bills were enacted in 1998. The Software Law (Law No. 9.609) entered into effect on February 20, 1998 and the amendments to the 1973 copyright law (Law No. 9.610) entered into effect on June 20, 1998. As a statutory matter, Brazil has already implemented its substantive copyright obligations compliant with, and even beyond, those required by the TRIPS Agreement. These include protection for temporary copies. Brazil already affords a term of life plus 70 years for works and 70 years following first publication for sound recordings and audiovisual works. Brazil also has implemented at least some of the provisions of the two WIPO Internet treaties to include provisions against circumvention of technological protection measures. Brazil has even provided preset statutory

damages for copyright infringement, a key enforcement tool which has resulted in the imposition of deterrent-level civil damages. Although these 1998 laws provide good levels of substantive protection, they are not enforced in practice (see discussion above). In addition, the Brazilian government unfortunately has refused to date to ratify the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, despite the fact that its copyright law is quite comprehensive and the Brazilian creative community relies on copyright protection to reach the global market.

## **Tax Evasion**

After years of effort, the Brazilian software industry, with the support of the U.S. software industry, succeeded in obtaining a “fiscal crime” provision in the 1998 Software Law. Under the Software Law (Article 12, Section 3, Paragraph II), tax evasion that frequently characterizes acts of software piracy can be pursued by the tax authorities as an independent public action. BSA was hopeful that this type of tax evasion case would have a significant impact to lower software piracy in Brazil, especially by medium-sized and large companies. However, it seems clear that the Brazilian IRS (Receita Federal) and the respective state tax authorities are dedicating no resources to pursue these tax evasion cases. The basis of these actions is that the state is suffering great losses due to the sale of illegal software, as pirate resellers are not collecting the applicable tax from purchasers upon such sale.

## **Criminal Code Amendments 2003**

On July 1, 2003, the Brazilian criminal code was amended to increase criminal sanctions for copyright infringement and amend certain procedures. Effective August 1, 2003, Law 10695 amended Article 184 of the Criminal Code by raising the minimum penalty from one year to two years in prison for persons convicted of illegally reproducing, distributing, renting, selling, acquiring, smuggling into the country, or storing protected copyright works with the intent to profit from reproductions. A fine will also apply in addition to the prison sentence.<sup>13</sup> The maximum penalty will apply if the violation involves supplying unauthorized works to the public via cable, optic fiber, satellite, airwaves or any other method of transmission for a profit. Those persons infringing copyright without intent to profit are subject to detention of three months to one year or a fine. These amendments are significant because penalties of one year or less of jail time, at the state level, could be commuted to a fine, or a judge could suspend a case indefinitely (Law 9099.95).

However, the business software industry has expressed concern over these 2003 criminal code amendments in that they fail to increase sanctions for the infringement of computer programs because the one-year sanction for computer software infringement still appears in the separate 1998 Software Law, unchanged by the amendments to the criminal code. The software industry can only use the criminal code amendments to the extent those sections do not conflict with existing law. This means that the procedural provisions regarding the expert reports and the custodial aspects of evidence in the criminal code can be used by the software industry. However, because the minimum penalty of the separate software law (one year) has maintained unchanged, criminal infringement cases brought by the software industry will still be subject to automatic suspension under Law 9099.95.

---

<sup>13</sup> The law changes the “unit” of fines and bonds from “daily salary” units to “monthly minimum wage” units. In other words, the minimum fine or bond is now 240 Reais (US\$92) instead of 1/30th of that amount. The judge sets the fine/bond, not the law. The maximum penalty continues to be four years in jail. In a recent MPA case, the judge set the bond at 4,800 Reais (US\$1,845), the highest amount MPA has seen.

The 2003 amendments also codify procedures to seize and destroy contraband and provides judges authority to dispose of seized equipment in a way that ensures it will not be used for commercial purposes. The amendment affecting experts' determinations is also positive in that it allows a single private party with technical knowledge to make a determination; such a determination, therefore, could be made by an industry expert. The amendment law is helpful in three ways: (1) it requires the judge to assign custody of the evidence to the injured party—in the past, judges have turned evidence over to suspects who have in turn altered the evidence in ways prejudicial to copyright owners' cases; (2) police are more inclined to view piracy as a serious crime worth their time; and (3) suspects apprehended by police are now held until released by a judge, costing the suspect at least time, a bond and perhaps attorney fees.

## **Anti-Piracy Bills Presented by the CPI**

As a result of its investigation, the CPI drafted and presented to Congress five anti-piracy bills, two of which implicate interests of the copyright industries: (1) modifications to the criminal code and the criminal procedural code (including Article 184 of the criminal code); and (2) modification to the Software Law to increase penalties. The amendments were introduced in the lower house of Congress in June 2004 and now await a committee ruling to determine their constitutionality.

Bill Number 3964-04 proposes to amend Articles 184 and 186 of the criminal code and also some provisions of the criminal procedure code which would increase sentencing, from a minimum of two years, to two years and two months. This change is significant because the higher jail time sanction will remove alternative and lesser sanctions such as community service.

The CPI also presented a bill to modify the 1998 Software Law, proposing an increase in penalties from confinement from one to four years and fine to confinement from two years and two months to four years and a fine. This bill also details additional actions involving computer programs which would subject defendants to sanctions.

## **ADDITIONAL ISSUES**

### **Specialized IPR courts with copyright jurisdiction are needed.**

The Industrial Property Law (Law No. 9279, which entered into effect in May 1997) authorized the judiciary to create specialized IPR courts. The copyright industries and other interested parties are working with appropriate judicial officials to prepare for the formation of these courts, which would significantly improve intellectual property rights enforcement. These courts are restricted to industrial property matters. No specific action has yet been taken to create these courts. Consideration of this remedy to help ameliorate the sorry state of anti-piracy enforcement would be welcomed.

### **Prices on Blank Media**

To make it easier to intercept mislabeled blank media—a key raw material for the manufacture of pirate products, it is critical that the Brazilian government adopt a minimum declared price for blank media that corresponds to its real market price. Despite many efforts

by the recording industry that include providing reference prices from other countries—including Paraguay, which has adopted a minimum declared price for blank media, and minimum manufacturing costs for CD-Rs—Brazilian authorities have not yet established such a minimum price. We hope that they will do so shortly.

## **Government Software Management**

The Brazilian government should be encourage to continue its efforts to implement effective software asset management practices in its public ministries and agencies. This will allow it not only to ensure all of its software is licensed, but will also help it make the most out of its investments in information technology. Good software asset management practices can best be achieved through active public-private sector partnership. The government should work closely with the private sector in this regard.

## **Non-tariff barriers—Remittances, Computer Software and Tax Barriers**

Although Brazil has eliminated most of the non-tariff barriers that afflict the computer software industry, several issues still remain. These non-tariff market access barriers, if corrected, could increase additional foreign investments in the technology sector and help further develop the technology industry in Brazil. One of the main issues deals with a law passed by the previous administration. Law 10.332 imposes an additional 10% tax called “CIDE” (*Contribuição de Intervenção no Domínio Economico*) on international payments for technology and royalties of any nature. CIDE essentially raises taxes on foreign remittances of royalties, etc., to 25%, as there is currently a withholding tax of 15% on the remittance of payments related to software licenses. The constitutionality of CIDE is also questionable as it is currently being challenged in court by several Brazilian and international software companies, based upon the argument that CIDE was enacted under the wrong procedure (the Brazilian Constitution, Article 146, Section 3, demands a complementary law to impose the “CIDE,” and Law No. 10.332 is an ordinary law).

A second market access concern involves a Central Bank’s requirement (per Circular No. 2685 of May 1996) that an agreement duly registered with the Ministry of Science and Technology (including the registration certificate) be presented to the financial institution conducting the currency exchange operation as a prerequisite to remitting overseas payments. The Central Bank of Brazil currently requires all documentation listed in Circular No. 2682 of May 1996 of the Central Bank.