

ARGENTINA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2009 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Argentina remain on the Priority Watch List in 2009.

Executive Summary: Improved effective enforcement and copyright law reform are long overdue in Argentina. Widespread Internet and optical disc piracy (primarily CD-burning) continues to grow in Argentina, threatening the copyright industries' legitimate markets. Piracy of hard goods, especially those found at street fairs (such as the public market in the Greater Buenos Aires area known as "La Salada") and at the retail level remains high. Unauthorized photocopying flourishes on and near university campuses. Although the copyright industries appreciate the continued cooperation of the police with enforcement raids in 2008, only a small number of criminal cases resulted in final judgments with deterrent sanctions, thereby undermining the impact of these police operations. Civil infringement actions remained ineffective because of the lack of a statutory damages remedy and extensive court delays. The Argentine government should review its agencies' use and procurement of computer software in order to ensure that legal software is being used. On the legislative front, implementation of the WIPO Treaties' obligations into statutory law has not moved forward over the past decade, and strengthened criminal sanctions and remedies to protect copyrighted materials in the digital age are sorely needed. In addition, the limited protection term for sound recordings of 50 years jeopardizes the stability of a music industry battered from physical and Internet piracy. The copyright industries believe that a comprehensive national strategy aimed at protecting and enforcing the Argentine copyright law is necessary to address and solve these longstanding problems.

Priority actions requested to be taken in 2009: The copyright industries recommend that the following actions be taken in the near term in Argentina in order to improve the adequate and effective protection of copyrighted materials there:

Enforcement

- Commit, at the highest levels of the Argentine government, to develop and implement a coordinated anti-piracy campaign as a matter of national priority.
- Require that the federal and Buenos Aires provincial governments take appropriate measures to halt the distribution of pirate and counterfeit merchandise at the "La Salada" Fair and other large, public markets that deal in these unauthorized products.
- Provide more resources for police Internet crime units in order to address the problem of illegal downloading.
- Promote the cancellation of municipal operating licenses to any establishment or locale selling pirate products.
- Create a special public prosecutors' office devoted to all sectors of intellectual property, including copyright.
- Instruct Argentine prosecutors and courts to make copyright piracy cases a priority and press for the expeditious resolution of the piracy cases.
- Take steps to encourage the active cooperation of Internet service providers with rights holders to prevent the use of networks for the commission of infringing acts, including but not limited to requiring the termination of accounts of repeat infringers. As an immediate first step to achieving this objective, the government should convene meetings of affected sectors to discuss ways to work cooperatively toward halting the transmission of illegal copyrighted materials on telecommunications networks.
- Improve border enforcement. In particular, forge partnerships at the tri-border region with counterpart Brazilian and Paraguayan officials by establishing a program to inspect goods in-transit for potential pirate product.

Legislation

- Reinvigorate efforts to revise Argentina's 1933 copyright law and implement its WIPO Treaties' obligations by addressing the following issues: (1) implement the "making available right to the public" as required by WIPO treaties in order to give legal background to digital businesses for authors, performers and phonogram producers; (2) implement protection and remedies/sanctions for technological protection measures (TPMs) and rights management information (RMI); (3) extend the scope of reproduction right to explicitly protect temporary copies; (4) extend the term of protection for sound recordings to 70 years from publication as well as extend the term for juridical persons; (5) increase the minimum penalty for piracy (currently 1 month) up to at least 2 years in order to apply deterrent sanctions; (6) create statutory damages provisions in civil infringement cases; (7) provide clear guidelines regarding liability for ISPs (Internet service providers), and include notice and takedown provisions, and, (8) adopt provisions on border measures to provide for *ex officio* actions.



- Reintroduce and enact legislation to increase criminal sanctions for copyright piracy.
- Support efforts to issue an executive decree that would require government legalization of current business software programs within a balanced and neutral system to select the technical solutions and improve procurement practices.
- Support legislative vehicles that would create and fund specialized intellectual property prosecutors.

ARGENTINA										
Estimated Trade Losses Due to Copyright Piracy										
<i>(in millions of U.S. dollars)</i>										
and Levels of Piracy: 2004-2008 ¹										
INDUSTRY	2008		2007		2006		2005		2004	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Sound Recordings & Musical Compositions ²	75.1	60%	84.7	60%	82.0	60%	69.5	60%	41.5	55%
Business Software ³	265.0	75%	222.0	74%	182.0	75%	109.0	77%	63.0	75%
Motion Pictures ⁴	NA	NA	NA	NA	NA	NA	318.0	90%	30.0	45%
Books	NA	NA	NA	NA	4.0	NA	4.0	NA	4.0	NA
Entertainment Software ⁵	NA	NA	NA	NA	NA	65%	NA	NA	NA	80%
TOTALS	340.1		306.7		268.0		500.5		138.5	

Argentina has been a beneficiary country of the U.S. Generalized System of Preferences (GSP) trade program which provides Argentina with preferential market access. Notably, the GSP program requires beneficiary countries to provide “adequate and effective” protection to U.S. copyrighted materials. During 2008, \$1.4 billion in Argentine products entered the U.S. under the GSP duty-free code.

COPYRIGHT PIRACY IN ARGENTINA

Internet piracy: Internet piracy in Argentina has grown dramatically in recent years. Argentina now has over 2.6 million broadband connections and 20 million Internet users. Argentina’s Internet penetration is twice as high as the world average, and the Argentine broadband market is one of the most developed in South America, with penetration second only to Chile. With the increased availability of broadband in homes, Internet cafés, and public telephone call center/LAN houses, Internet piracy is having significant prejudicial consequences on the sale and distribution of legitimate materials. Increased broadband penetration has altered Argentina’s Internet piracy landscape, making the rapid proliferation of peer-to-peer (P2P) file-sharing sites (including BitTorrent and eDonkey), hash link sites and sites offering links to download movies from Free File Hosting sites more problematic than traditional hard goods websites.

The recording industry reports that file sharing in Argentina using P2P networks is the most predominant form of Internet piracy affecting its industry operations. For example, the recording industry reports that a third party survey performed between 2006 and 2007 places the total level of illegal downloads in Argentina at about 600 million songs per year (up by 50% from 400

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in Appendix B of IIPA’s 2009 Special 301 submission at www.iipa.com/pdf/2009spec301methodology.pdf. For information on Argentina under Special 301 review, see Appendix D at <http://www.iipa.com/pdf/2009SPEC301USTRHISTORY.pdf> and Appendix E at <http://www.iipa.com/pdf/2009SPEC301HISTORICALSUMMARY.pdf> of this submission. For more on IIPA’s global issues, see IIPA’s 2009 cover letter to this 301 submission at <http://www.iipa.com/pdf/2009SPEC301COVERLETTER.pdf>.

² RIAA reports that the estimated levels of pirate product in 2004, 2005 and 2006 are based on a third-party survey to improve accuracy of the statistics.

³ BSA’s 2008 statistics are preliminary and represent the U.S. software publishers’ share of software piracy losses in Argentina. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. and follow the methodology compiled in the Fifth Annual BSA and IDC Global Software Piracy Study (May 2008), available at www.bsa.org.

⁴ MPAA’s 2005 estimates used a methodology that analyzed both physical/“hard goods” and Internet piracy.

⁵ ESA’s estimated piracy rates for Argentina in 2006 reflect the piracy rate for handheld products, which may differ from and often underestimate overall piracy levels in-country. ESA’s reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry “losses.”

million songs discovered in a similar survey performed at the beginning of 2005). A survey carried out by Knack Consulting at the request of the local industry group showed that about 38% of all downloads are taking place at cybercafés. The 600 million illegal downloads dwarfs the legitimate distribution of an estimated 150 million songs, taking into account both physical and online deliveries.

Argentina remains notorious for “home delivery” of all kinds of pirated copyrighted products. For example, the motion picture industry reports that hard goods piracy, burned from copies originally downloaded from the Internet, continues to be a serious problem in Argentina, representing approximately 20-25% of local film piracy.

For the business software industry, the Internet offers local packages of pirated and counterfeit software, including compilations containing dozens of computer programs. The Business Software Alliance (BSA) notes that, in general, most of the local ISPs help to stop these kinds of offers from the various e-commerce websites, but for every site removed, more appear. Argentina plays an important role as a distributor of subtitled and dubbed films for the rest of Latin America; in fact, some of the top visited websites in Argentina are subtitle sites.

Hard goods piracy, including street piracy and local burning: Blank optical media products, mostly from Southeast Asia, continue to enter the Argentine market via Uruguay or Paraguay. This media serves as the basis for the local “burning” of copyrighted materials on these discs, a widespread phenomenon that adversely affects the legitimate markets of almost all the content industries. According to official statistics provided by Argentine Customs, in 2008 over 46.1 million CD-Rs and 105 million DVD-Rs entered the country.

Thousands of street vendors sell locally burned CD-Rs. A most notorious street location is the “La Salada Fair.” This market area is about 2 million square feet, and approximately 50,000 consumers visiting daily. Some industry representatives fear that La Salada is coming close to the organization and size of Ciudad del Este’s piracy and counterfeiting. There are organized groups operating around La Salada, providing raw materials for piracy and recording, storing and distributing pirate products. This problematic situation is well known by the police but the local government and the flea market administrators simply do not cooperate with private sector on raiding actions and refuse to close this market. The Motion Picture Association (MPA) reports that the situation for pirate audiovisual products in La Salada worsened in 2008. Furthermore, the interior of the country remains plagued with street vendors selling pirate product (like cities of Tucuman and Santa Fe). Pirate stands are often seen around train stations and other high traffic areas. MPA reports that in 2008 some newspaper stands started distributing pirate DVDs and music with street vendors and small black markets have increased their presence.

The largest concentration of pirate product for the motion picture and recording industries is in the greater Buenos Aires district, but the industries face serious challenges in larger cities throughout the provinces. According to a study by the American Chamber of Commerce, DVD piracy increased by 16% in 2008 over 2007 and the local video board estimates that 68% of the video market is pirate. Pirates often have new film releases more than a month before local theatrical release and, on average, more than 6 months before the official home video release in Argentina. Unfortunately, video rental stores are also an important distribution channel for pirate products, especially in smaller cities. Furthermore, unauthorized photocopying of compilations and full academic works continues on and around major university campuses.

The recording industry reports that although physical piracy in the form of burned CD-Rs continues to plague the Argentine music market, the most harm comes from Internet piracy. The level of physical music piracy was 60% in 2008, causing an estimated \$75.1 million in losses due to piracy. The most recent estimate shows about 25 million units of pirate product in the market, representing close to 60% of all sale units. The local legitimate recorded music market is declining; unit sales decreased by 12% in 2008 compared to a 5% increase in 2007.

BSA reports that there was no major improvement in the software piracy situation in Argentina during 2008. It is still easy to find hardware dealers selling computers with illegal OEM versions or simply illegal copies pre-installed on computer hard disks. Piracy of business software programs among end-users, the most damaging form of piracy, remains quite high, especially in small and medium-sized organizations. This problem involves the federal, provincial and municipal government offices as well as a number of private companies. The industry continues to support any effort by the Argentine federal, provincial or municipal levels of government to legalize business software programs currently installed on government computers and improve their procurement practices.⁶

⁶ According to a January 2008 report issued by BSA-IDC called [The Economic Benefits of Reducing PC Software Piracy](#), the information technology sector’s contribution to the Argentine economy could be even bigger if Argentina’s PC software piracy rate were to be lowered 10 percentage points over

Academic book publishers continue to suffer from unauthorized photocopying of materials in and around university campuses. Copyshops convenient to campus copy entire books or unauthorized compilations of chapters from different books, at student or teacher request, decimating the market for academic publishers. Steps should be taken to encourage use of legitimate products on campuses, crack down on for-profit copyshops and foster appropriate licensing agreements for academic compilations.

COPYRIGHT ENFORCEMENT IN ARGENTINA

The music, film and business software industries all report continued good cooperation with the Argentina's police forces, particularly the Gendarmerie (the national police agency) and border officials. While there has been significant support from the Federal Police Cyber Crime division on Internet cases, few prosecutions are pursued and few criminal cases reach final judgment. This same problem with few prosecutions continues to occur with hard goods cases. Federal and state police forces still lack sufficient resources to provide expert reports on seized product, which delays processing of cases. Furthermore, there is no dedicated police force to handle piracy cases. In addition, civil infringement actions, often brought by the business software community, also faced roadblocks with long delays and non-deterrent damage awards.

Actions in the Internet space: The recording industry has been active in Internet piracy enforcement in Argentina. The 2008 anti-piracy campaign conducted by APDIF Argentina (the local organization of the recording industry) produced the following results from January to December 2008: 20 Cyber-cafes raided, 22 home delivery operations taken down, 3,390 pre-release products removed, 86,076 cyber-lockers-links removed, 4,427 web pages/forums taken down, and 329 pirate products removed from auction sites. MPA reports that by year's end, it had achieved the following Internet actions: take-downs of 325 linking sites, 464 cyberlockers, 3,505 auction sites and 1 P2P servers (1), plus the issuance of 1,847 cease and desist notices.

Another new problem is the development of social sites allowing registered users to post links to illegal music files. This is a growing problem and the police cyber crime unit should take action against those social networking sites that have some commercial purpose (such as selling advertising). An example of this phenomenon is the site "Taringa" where thousands of users post complete albums to be downloaded for free. The site "Taringa" was already notified by APDIF Argentina about the illegal activities performed by its registered users and there have been no positive actions taken to resolve this problem.

Inter-industry cooperation on Internet piracy cases: Local ISPs are slowly beginning to collaborate in certain limited circumstances, such as taking down infringing sites in very specific instances. In this aspect, the recording industry reports that cooperation with ISPs on specific actions did improve during 2008.

There is, however, much room for improvement. Over a year ago, the local recording industry, led by APDIF Argentina, approached CABASE (Argentine Trade Organization of ISPs) to establish a voluntary framework to fight the Internet piracy problem. Unfortunately, CABASE refused to cooperate. In early 2008, APDIF filed for preliminary injunctions against two ISPs in Buenos Aires, asking the judge to order the ISP to adopt technical measures (port blocking) to impede the exchange of music files using P2P networks. Both injunctions were granted but the ISPs appealed the first instance decisions and the injunctions got stuck in the judicial system, leaving no remedy in force. The government should promote a climate that incentivizes meaningful cooperation between the parties, and that encourages negotiations between rights holders and ISPs to reach and implement robust solutions to this problem. A roundtable of the various stakeholders organized by the Secretary of Communications would be a first step in this important effort.

The sound recording and film industry sectors also have been trying to get broader voluntary cooperation with Argentine ISPs on Internet piracy matters, but to-date this undertaking has been challenging and little progress has been made.

Criminal actions involving hard goods: The industries active in anti-piracy enforcement report good cooperation with law enforcement authorities conducting raiding operations.

four years. This would create an additional 3,900 jobs, \$630 million in local industry revenues and \$81 million in additional tax revenues for federal, regional, and local governments. This report is posted on BSA's website at <http://www.bsa.org/idcstudy>.

The film industry worked with police authorities in Mar del Plata in October 2008 to conduct a major raid against a downtown business that sold, copied, and distributed pirate movies to street vendors. Approximately 3,500 pirate DVD-Rs were found, ready for distribution, and over 20 DVD burners, plus computers and other equipment were seized. Each pirate copy had a street value of US \$7-10. MPA reports the following results for 2008. Working with the police, raids were conducted against the following number of targets: burner labs (11), optical disc distributor (2), Internet site operator–hard goods (3), Internet café (4), street vendor (41), retailer (29), rental store (94). These actions resulted in the following volume of seizures: burned discs (321,210), burners (80), computers (39), printers (18), art inlays (5,038,487). Criminal actions/charges were filed against the following: burner lab operators (9), optical disc distributor (2), Internet site operators–hard goods (2), Internet cafés (3), street vendors (37), retailers (26), and rental store operators (68). Last year, courts issued convictions in 56 of MPA's cases, specifically: burner lab operator (1), Internet site operator – hard goods (1), street vendor (14), retailer (7), and rental store operators (33). In fact, one of the convicted street vendors was sentenced in June 2008 to 10 months in jail (a long sentence in Argentina).

The recording industry (IFPI–APDIF) also has taken aggressive actions against street piracy. For example, in mid-October 2008, the Economic Crime Unit of the Coast Guard executed search warrants on several warehouses in the La Salada market area. This year-long investigation targeted imported products entering the Port of Argentina using false invoices and undervalued goods. In this action alone, over 5 million album covers of music and film product, 175 thousand music and film CD-Rs/DVD-Rs, 63 burners, 2 industrial printers and 200 master plates used to replicate album covers were seized. The recording industry reports that the number of raids decreased significantly from 2007 to 2008 (832 versus 523). The number of seized products also dropped in 2008 to 3.2 million units (down from 4.6 million). Last year 53 criminal piracy cases were initiated, resulting in three arrests and indictments; there was only one conviction in a music piracy case in all of 2008.

BSA reports that the various agencies (including the Federal Police, Gendarmería, etc.) are improving their technical capacities to support the courts in the investigation of computer crimes (including piracy) and the provision of technical reports, which is useful evidence in judicial cases. BSA does not generally use the criminal process in Argentina because criminal copyright enforcement in software cases has consistently proven to be ineffective. In smaller provinces, the police are not trained in computer crimes. However, preliminary injunctions and searches performed by court officers and the police under instructions from civil courts have been effective to obtain the legalization of the commercial software used as well as the payment of damages by a number of end-user companies.

Slow prosecutions and non-deterrent judgments: Argentina's current criminal provisions for copyright infringement are totally inadequate to address the piracy problem. The minimum penalty is only one month (per Article 72*bis* of the Criminal Code); this minimum penalty should be increased to a minimum of two years (see legal reform discussion below). While certainly some criminal sentences have been issued, the industries are not aware of any major, deterrent sentences issued last year. The recording industry reports that no convictions for music piracy were issued in 2008, only the few criminal cases that received decisions were suspended because of the low level of penalties. MPA reported one 10-month sentence (see above).

Furthermore, the average criminal piracy case takes two to four years to reach a verdict in the first instance, and that usually results in no jail time or jail time is suspended because the judges do not consider intellectual property crimes as serious offenses. MPA notes that although the Argentine criminal system is slow and unsatisfactory (most cases take no more than three years), there seemed to be some slight improvement in speeding up the process in 2008.

Border enforcement: The Argentine customs, through the unit called "Fraude Marcario", has seized shipments of blank CDs; these activities are directed to act against tax evasion. During 2008, Customs seized 2.4 million blank optical discs, a 140% percent increase over 2007. During 2008, Argentine Customs (*Administración Nacional de Aduanas*) authorities have been more supportive and alert to piracy and blank media imports. Customs has provided a useful forum for exposing each month the problems of the private sector with the importation of blank media.⁷

BSA has not pursued interdiction of border entry of blank media or components; however, both problems are reported to continue at least at the same level as in recent years. Finally, given the depth of the problem involving piracy and counterfeiting in the triborder area, Argentina should forge a working plan with Brazilian and Paraguayan customs officials to inspect goods in-transit for potential pirate product.

⁷ The government's customs website (AFIP - La Administración Federal de Ingresos Públicos) is <http://www.afip.gov.ar/aduana/foro/foroMarcario.asp>.

Delays and weak damages in civil infringement cases: During 2008, the business software industry continued to rely on civil enforcement in Argentina, given the systemic problems with criminal enforcement. Even so, there remain significant problems, especially with procedural delays in obtaining and conducting civil searches in business piracy cases. While this situation has improved in the courts of the city of Buenos Aires, civil actions are still weakened by the lack of statutory damages and extensive delays. BSA has achieved some positive results despite the problems with enforcement, relying primarily on the process of mediations required by the civil procedure, which facilitates the resolution of cases. Another problem is caused by the unavailability of deterrent civil damages; this important problem could be corrected if Argentina were to introduce an effective statutory damages system (see discussion in legal reform, below).

Industry trainings and public awareness efforts: MPA provides training to law enforcement authorities around the country on a regular basis. Film industry training focuses on how to apply the existing law to cases of infringement and how to identify pirate product. In 2008, this training was expanded to include anti-camcording training to cinema employees. Orientations were provided on how to identify camcording and how to gather the evidence necessary to contribute to successful prosecutions. Last year, the recording industry (IFPI / APDIF) gave 11 training courses to judicial and enforcement authorities in Buenos Aires, Córdoba, Misiones, Entre Ríos, Santa Fe and Tucuman, all of which are focused on digital piracy cases and the identification of illegal material. This industry also has participated in the creation of a handbook for the Judicial Power called *Conocimientos Teóricos y Prácticos en material de marca y propiedad intelectual en la República Argentina*, which was also coordinated by the U.S. Department of Justice.

COPYRIGHT LAW REFORM AND CERTAIN MARKET ACCESS ISSUES IN ARGENTINA

1993 Copyright Act, as amended: Argentina's Copyright Act has been under review for many years and full implementation of the WIPO Treaties is still needed into national legislation. For example, legal deficiencies in the copyright law include:

- express protection for the "communication to the public" and "making available" rights;
- explicitly extend the scope of the reproduction right to clearly cover temporary copies;
- protect against the circumvention of technological protection measures and removal or alteration of electronic rights management information;
- increase criminal penalties for piracy (the current minimal penalty is only 1 month, and this should be increased to a much more deterrent level, such as a minimum of 2 years);
- establish *ex officio* border measures;
- establish statutory damages;
- explicitly provide for the seizures of infringing equipment;
- establish provisions on ISP liability and procedures for notice and takedown;
- extend the term of protection for phonograms to 70 years from publication. This also would include making the term of protection uniform for all genres of copyrighted materials;
- provide equitable and balanced treatment for all rights holders, including those who are juridical entities.

Efforts to amend the Copyright Law to increase sanctions and expand infringements: Legislative efforts to strengthen criminal enforcement measures in Argentina have not gained much traction in recent years. Several years ago a bill (Bill 1546-S-05) to amend the criminal chapter of the Copyright Act was introduced in the Senate, but it lost legislative status at the end of 2007.

The recording industry resubmitted a new bill in 2007 (1987-S-2007) which was pending in the Senate Judiciary Committee on Criminal Justice. In the fall of 2008, the motion picture and recording industries met with Senate staffers to recommend that additional provisions on criminal conspiracy be added to the copyright amendment package. However, this bill did not gain the approval of the General Legislation Commission so it too lost legislative status at the end of 2008. This bill was aimed at addressing the following issues; for example, it would have:

- provided for criminal sanctions for the circumvention of technological protection measures (TPMs) and the modification or suppression of digital rights management (RMI);
- created statutory damages (in Article 4) by creating a minimum (1,000 pesos, US\$285) and maximum (1,000,000 pesos, US\$285,600) level for each infraction, depending on a number of factors;

- clarified the existing remedy of preliminary injunctions by eliminating the onerous requirement to produce evidence before presenting a full case based on arguments of merit;
- empowered the courts' process to impose fines to force the execution of the sentences issued.

Bill creating a IP prosecutor: Two years ago, a bill proposed to create a special public prosecutor devoted to trademark protection. At that time, the copyright industries believed that a similar proposal should be developed for copyright, or at least that pending current bill should have been expanded to include the copyright sector. Reports seem to indicate that this bill (5509-D-2006) has since lost its legislative status. Argentina should support the development of specialized IP prosecutors.

Government software legalization: With respect to government legalization efforts, the business software industry continues to call upon the Argentine government (in particular, the *Subsecretaría de la Gestión Pública*—the Undersecretariat for Public Administration) to issue an executive decree that would require government legalization of current business software programs on computers and improve procurement practices. While several “standards” have been issued by the *Subsecretaría*, the Argentine government has not taken action toward legalizing its software inventories.

Customs duties affecting audiovisual works: The Argentine Customs Valuation Code requires that all audiovisual works, excluding computer software, must pay an ad valorem customs duty based on the value of the “authors’ rights”, that is, on the potential royalty generation of the film, rather than solely on the value of the physical materials which are being imported. MPA opposes this burdensome practice, which is a form of double taxation since royalties are subject to remittance, withholding and income taxes. Customs duties should be based on specific fees, such as weight or length, or, if *ad valorem*, be based on the value of the carrier medium only. Because of this duty, MPA member companies import negative prints on a temporary basis and copy positive prints locally. There have been no new developments in this matter in 2008.

Withholding taxes and royalties on computer software: The software industry continues to report a problem regarding the withholding that local licensees must perform when wiring royalties to foreign licensors. The local tax collection authority, AFIP, refuses to apply the special rules that the Income Tax Law provides for “authors rights” international transfers. AFIP contends that the legal nomenclature “author” is limited to physical persons, and that a legal person (e.g. a corporation) cannot be an author and, as a result, cannot hold these “authors rights.” Only two cases so far have been presented to courts: in one case, the Court agreed with AFIP, and in the other, the Court rejected AFIP’s position. Both cases are at Federal Supreme Court (*Corte Suprema de Justicia de la Nación*) level now; pending of final resolution. This creates much uncertainty, and could create high economic liability for taxpayers if the AFIP position prevails. This problem could be solved by amending the Income Tax Act to establish a concrete withholding rate for software license payments, similar to what was done for music and motion pictures several years ago.

Proposed Broadcast Law: The Executive Branch circulated a draft “Law on Audiovisual and Communications Services” bill in 2008 that would have superseded the current Radio and TV Law. The content of the bill was never revealed and the administration became abandoned its announced plan of achieving expedited approval of the bill in Congress. However, it is widely believed that the bill included an objectionable TV screen quota for locally produced content, limits on advertising, and other potentially damaging measures. In late 2008, government officials resumed public discussion of this bill, and signaled that it would be a high agenda item in 2009.