

ARGENTINA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2024 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Argentina be maintained on the Priority Watch List in 2024.¹

Executive Summary: Argentina has long lacked the resources and political will needed to match high rates of piracy, which accelerated and diversified in the past several years. However, the new Administration may provide a fresh start. Argentina must recognize at the highest levels the need to foster a digital market that is free from illicit content within its highly connected population. There is a dire need for an agenda and strategic policy for enforcement and interagency cooperation, especially between prosecutors and law enforcement cybercrime experts. Pirate sites operating out of Argentina have expanded to other Spanish-speaking countries. Satellite and signal piracy also persists in Argentina. Hard goods piracy remains rampant through both importation and production and is linked to organized crime groups. Market access obstacles persist, even as proposals for additional quotas and taxes emerge, including film and television quotas and high taxes on copyrighted content. Unauthorized digital goods (UDGs) for video game platforms are rampant, with purveyors having taken advantage of the e-commerce boom generated by the COVID-19 pandemic to consolidate the market among local game consumers. The offer of unauthorized physical copies of new releases remains a significant problem for the Argentine recording industry.

IIPA urges the Government of Argentina to make use of the Coordination Center to Combat Cybercrime (*Centro de Coordinación de Combate al Cibercrimo*, known as C4) within the Cybercrime Investigations Directorate in the Ministry of Security to combat rampant online piracy in conjunction with its anti-cybercrime efforts. The new Administration should strengthen the Penal Code and should be urged to revisit efforts to improve the enforcement landscape for copyrighted works.

PRIORITY ACTIONS REQUESTED IN 2024

Enforcement

- Leverage the opportunity presented by the new Administration (December 2023), increasing resources and political backing for a coordinated, long-term anti-piracy agenda at the federal level to address online piracy.
- Partner with rights holders to maximize industry expertise in the fight against cybercrime, develop a well-defined public policy that supports the sector in handling copyright infringement cases, and host private sector discussions on potential cross-industry cooperation to tackle online piracy more effectively.
- Engage cybercrime entities and the National Communications Entity (ENACOM, Argentina's telecommunications regulator) to monitor and perform online operations against high-profile sites and commercial activities occurring in online marketplaces and e-shops.
- Continue to apply the Civil and Commercial Code to Internet service provider (ISP) liability cases, including for storing infringing content.
- Create a specialized Intellectual Property (IP) Prosecution Office and establish federal jurisdiction over copyright crimes.
- Assign adequate legal powers and financial resources to the Ministry of Justice's Copyright Office (*Dirección Nacional del Derecho de Autor*) and undertake routine, *ex officio* actions, such as inspections and raids of physical markets to stop commercial piracy.

¹ For more details on Argentina's Special 301 history, see previous years' reports, at <https://iipa.org/reports/reports-by-country/>. For the history of Argentina's Special 301 placement, see <https://www.iipa.org/files/uploads/2024/01/Appendix-B-2024.pdf>.

- Actively involve the Argentine Customs Office (DGA-AFIP), with whom the U.S. Embassy is increasingly engaged, in copyright enforcement actions and to monitor and perform border operations.

Legal Reforms

- Facilitate introduction of legislation in the renewed Congress as of 2024 for the adequate protection for technological protection measures (TPMs) and rights management information (RMI) and provide legal remedies against their removal.
- Repeal provisions empowering *El Fondo Nacional de las Artes* to charge fees for the "Paying Public Domain."

Market Access

- Remove quotas for motion pictures, television content, and electronic devices, and refrain from extending quotas to over-the-top (OTT) services.
- Reject customs duties on audiovisual works based on the potential royalty value of the work rather than on the value of the carrier medium, as well as other customs duties and taxes that burden foreign rights holders.
- Amend legislation to adapt the split of performance rights collections of music performers and phonogram producers to the 50-50 international standard, instead of the currently inequitable split of 67% to performers and 33% to producers.
- Reject other legislative or regulatory proposals that burden the creative industries or unfairly target foreign rights holders.
- Reject Executive Order No. 600/19 that imposes an obligation to unify performance rights tariffs for hotels and establishes a governmental control system over tariff rates.

ENFORCEMENT

- **Leverage the opportunity presented by the new Administration (December 2023), increasing resources and political backing for a coordinated, long-term anti-piracy agenda at the federal level to address online piracy.**

In 2023, in the absence of significant enforcement improvements to promote a legal online environment, Argentina experienced rapid expansion of already high levels of piracy. The levels of online piracy of copyright works in Argentina worsened in the past year. The country's Internet penetration rate of over 87% is the highest in the region, with 38.02 million users,² but a robust legitimate online content market cannot take hold until the government makes concerted efforts to address the country's rampant and increasing digital piracy via stream ripping and the use of cyberlockers. IFPI's Music Consumer Study 2023 found that 47.9% of all Internet users aged 16 to 64 used stream-ripping sites and services to illegally download music from sites like YouTube in the month before the survey. Data from SimilarWeb reinforced the popularity of stream ripping in Argentina with *ssyoutube.com* being one of the top 100 most popular web sites of any kind in Argentina.

Argentina, like the region as a whole, continues to see an increase in the usage of Piracy Devices (PDs). In particular, Android boxes, such as the HTV box and Kodi boxes, are used to stream illicit copies of films and television content. In recent years, IIPA has also seen an increase in consumption of films and television through piracy mobile apps and add-ons. Law enforcement authorities suffer from a severe shortage of the resources and coordination needed to efficiently monitor and control digital piracy and the use of illicit streaming devices (ISDs). Reforms in enforcement efforts are needed to stop the import of ISDs into the country, conduct full-scale raids against piracy websites and applications, and take actions against unlicensed retransmission and theft of Pay-TV signals.

² Tiago Bianchi, Statista, *Internet usage in Argentina - Statistics & Facts*, October 18, 2022, available at https://www.statista.com/topics/6709/internet-usage-in-argentina/#topicHeader_wrapper.

The illegal distribution of physical and online video games and entertainment software in Argentina continued, and during the COVID-19 pandemic, video game piracy spread over an even greater diversity of formats, including: BitTorrent game content available on Spanish-language illegal linking and download sites, increased availability of online UDGs,³ and an increase of illegal consoles and devices available from small, local businesses. In 2023, Argentina ranked 14th in the world for the number of connections by peers participating in the unauthorized file-sharing of ESA member video game titles on public peer-to-peer (P2P) networks. By the same metric, Argentina ranked eighth in the world for unauthorized file-sharing of mobile games.

In 2022, through Resolution #75/2022, the Ministry of Security updated the Federal Plan for the Prevention of Technological Crimes and Cybercrimes 2021-2024 to redouble efforts to prosecute cybercrime that occurred, especially in the finance sector and in the public sector. In February 2022, the Argentine Ministry of Security issued Resolution #86/2022 that creates the ForCIC—Program for Strengthening Cybersecurity and Cybercrime Investigation. The Program aims to coordinate, assist, and provide advice on digital infrastructure security techniques and investigation techniques for cybercrime and crimes involving technology or the use of technology. Although the scope of the program is not restricted to piracy, it is an important step in combating copyright infringement in the digital environment.

Finally, Resolution #139/2022 created, within the framework of ForCIC, the CICAT (High Technology Cybercrime Investigation Center). The objective of the Center is to train, prevent, analyze, and investigate cybercrimes, focusing on digital forensics and federal regional units, among others. Within the framework of this plan, the Ministry of National Security called for a Federal Public Awareness Campaign on Cybersecurity and Cybercrime Prevention, through Resolution #731/2022, in which it invited the Provinces and the City of Buenos Aires to join the campaign. The Specialized Cybercrime Unit (UFECI) also reported an increase in cybercrime. Between April 2022 and March 2023, more than 35,000 cybercrimes were registered in Argentina, a number that is equivalent to an increase of 38% in cases compared to the previous 12 months, according to a report carried out by UFECI.⁴

Rights holders have reported very few significant cases of copyright enforcement actions by Argentina's law enforcement authorities in 2023. One positive development was Argentine law enforcement's participation in the latest round of Brazil's Operation 404. However, much more investment in investigation and prosecution of IP crime is required. General inaction and lack of coordination in online infringement investigations and cases between federal and state jurisdictions remain major concerns. For example, when an online IP crime is reported, both the Federal Police and the State Prosecutor might independently proceed in processing the case without communicating or sharing data. The federal police view copyright infringement as a federal crime, and the state prosecutor views it as a crime involving a local Argentine citizen. Argentine officials should leverage the opportunity presented by the new Administration, increasing resources and political backing for a coordinated, long-term anti-piracy agenda at the federal level to address online piracy.

- **Partner with rights holders to maximize industry expertise in the fight against cybercrime, develop a well-defined public policy that supports the sector in handling copyright infringement cases, and host private sector discussions on potential cross-industry cooperation to tackle online piracy more effectively.**

³ Unauthorized digital goods (UDGs) are unauthorized sales of in-game digital items. They have become a growing concern for the entertainment software industry. Closely related to these in-game items are software products (collectively known as "cheat software") that enable the unfair and rapid collection and aggregation of virtual goods, such as bots, hacks, and "cheats," or which otherwise tilt the scales in favor of one player over another. The rise of UDGs and cheat software have a negative impact on video game companies and consumers in the following ways: (1) sellers of UDGs and cheat software divert significant revenue away from video game developers and publishers; (2) sales of digitally delivered items, like in-game digital items, have the potential for consumer fraud (such as stolen payment methods or compromised accounts) and the facilitation of money laundering schemes; (3) the unchecked sales of cheat software can threaten the integrity of game play, alienating and frustrating legitimate players; and (4) video game publishers and developers are forced into a perpetual virtual "arms race" to update their products and security technology before the sellers can update theirs.

⁴ See <https://www.fiscales.gob.ar/ciberdelincuencia/la-unidad-fiscal-especializada-en-ciberdelincuencia-senalo-un-alza-continua-de-los-delitos-informaticos-en-su-informe-de-gestion-2023/>.

Law enforcement and administrative authorities are not promoting actions by the private sector, nor are they taking any initiative to tackle copyright piracy through securing the assistance of domain name registrars. IIPA urges Argentina's authorities to partner with rights holders to use industry expertise to combat cybercrime.

In 2023, in the absence of government action, rights holders continued to rely more on cooperation with other actors in the online ecosystem. The video game industry has increased its cooperation with *Mercado Libre's* regional office, based in Buenos Aires, as a strong partner through which UDGs and other infringing video game items are removed from listings, as well as to combat commercial game piracy in the entire region. ESA reports that from 2022 to 2023, *Mercado Libre* successfully completed approximately 5,300 takedown requests, nearly triple the number it completed during the previous year.

Argentina should create forums of cooperation with the private sector and to accelerate law enforcement actions against the increasing problem of online crime in Argentina. Indeed, at the beginning of 2023, through Resolution #1/2023, the Argentine government called for a public consultation regarding the document on the Second National Cybersecurity Strategy. The Government of Argentina should host private sector discussions on potential cross-industry cooperation to tackle online piracy more effectively and to support the development of the local digital economy.

In August 2022, the Alliance for Creativity and Entertainment (ACE) managed to take down seven piracy domains based in Argentina. The *Pelismart/Pelispop* ring comprised several websites that, combined, see over 27 million visits per month. Due to ACE's actions, the operator agreed to take down the content, transfer the domains to ACE, and enter into a settlement agreement. However, it is important to note that this enforcement action was undertaken by a private entity (ACE), and not by the Argentine government.

In October 2022, the Supreme Court ordered a Buenos Aires lower court to investigate a complaint for illegal broadcasting of audiovisual content of the Premier League of England. The complaint is from the Football Association Premier League and maintains that "unknown persons" are illegally broadcasting audiovisual content of football in England. The case, initiated several years ago, will now be processed by the National Criminal and Correctional Court 18. The Premier League's claim maintains that the images are "limited access" and that the retransmission to the detriment of the firm is done through the method of continuous download or "streaming."

- **Engage cybercrime entities and the National Communications Agency (ENACOM, Argentina's telecommunications regulator) to monitor and perform online operations against high-profile sites and commercial activities occurring in online marketplaces and e-shops.**

Based on feedback from the criminal enforcement authorities, it is understood that they view any infringing site that makes money through advertising as not making direct profits from copyright infringement, and therefore, ineligible to be criminally prosecuted. This narrow interpretation of the law is not compatible with the TRIPS Agreement obligation that its parties ensure that criminal enforcement measures are available, at a minimum, against commercial-scale copyright infringement.

In November 2022, the National Court of Original Jurisdiction in Civil Matters issued a decision ordering ISPs to effectively block access to the stream-ripping site *Y2mate.com*. This was the first time ISPs in Argentina had been ordered to block a stream-ripping website. Prior to this, ISPs were ordered to block *The Pirate Bay* by the National Court of First Instance in Civil Matters No. 64 (Case 67,921/13). This decision remains in full force and effect.

Despite the success of the blocking action against *The Pirate Bay*, it should be stressed that, due to the time required to prepare the evidence and information gathering for the action to move forward, as well as the jurisdictional disputes that arise in ordinary civil and federal procedures, improved criminal enforcement is still required. Instead, cybercrime entities and ENACOM should monitor and perform online operations against high-profile sites and commercial activities occurring in online marketplaces and e-shops.

- **Continue to apply the Civil and Commercial Code to Internet service provider (ISP) liability cases, including for storing infringing content.**

Other procedural challenges in Argentina include defaults in the evidence chain of custody for cybercrime cases and the characterization of profit and economic benefits from online advertisements. The Government of Argentina should continue to apply the Civil and Commercial Code to ISP liability cases, including for the storing of infringing content.

Enforcement actions against piracy linking and direct download sites require complex investigations involving data requests to multiple service providers, who, in turn, require the support of judicial authorities for the requested actions. Unfortunately, because law enforcement authorities generally fail to prioritize online copyright infringement cases, rights holders must instead rely on self-help measures. While there are some positive examples of private sector cooperation, there are no clear incentives from the government to generate cooperation between the private and public sectors, causing a shortage of voluntary and beneficial initiatives.

- **Create a specialized Intellectual Property (IP) Prosecution Office and establish federal jurisdiction over copyright crimes.**

The Government of Argentina should establish greater cooperation among federal enforcement agencies to address online piracy as a united front by creating a specialized IP Prosecution Office and establishing federal jurisdiction over copyright crimes. Argentine law enforcement authorities need to be trained to recognize the importance of online IP protections as an important piece of Argentina's digital economic development and its collateral benefits for public security policies. Additionally, law enforcement authorities should take further concrete steps to establish an agenda that reflects short- and long-term goals for tackling illegal sites and piracy groups operating in the country.

- **Assign adequate legal powers and financial resources to the Ministry of Justice's Copyright Office (*Dirección Nacional del Derecho de Autor*) and undertake routine, *ex officio* actions, such as inspections and raids of physical markets to stop commercial piracy.**

The Ministry of Justice's Copyright Office (*Dirección Nacional del Derecho de Autor*) is underfunded. The Government of Argentina could strengthen the Office's ability to respond to commercial piracy by assigning it adequate legal powers and financial resources. Moreover, the Government of Argentina should undertake routine, *ex officio* actions, such as inspections and raids of physical markets to stop commercial piracy.

- **Actively involve the Argentine Customs Office (DGA-AFIP), with whom the U.S. Embassy is increasingly engaged, in copyright enforcement actions and to monitor and perform border operations.**

Another potential tool in the fight against piracy in Argentina is with more involvement from the Argentine Customs Office (DGA-AFIP). The Government of Argentina should actively involve the Customs Office in copyright enforcement actions and engage customs authorities to monitor and perform border operations against counterfeit, high-value products, such as circumvention devices and modified game consoles, entering the country via airports and land borders.

LEGAL REFORMS

- **Facilitate introduction of legislation in the renewed Congress as of 2024 for the adequate protection for technological protection measures (TPMs) and rights management information (RMI) and provide legal remedies against their removal.**

Argentina lacks legislation establishing protections relating to TPMs and RMI, which are critical for enabling legitimate online business models and products. The lack of these legal tools is a further obstacle to enforcement against circumventions of copyright works. TPMs and RMI serve as critical mechanisms for safeguarding digital content. The absence of adequate TPM and RMI provisions in Argentine legislation raises significant concerns regarding the protection of online content, including issues like stream ripping.

TPMs and RMI are integral to ensuring that content creators and rights holders can control the distribution and usage of their intellectual property in the online environment. The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively the WIPO Internet Treaties) mandate the implementation of remedies against the removal of TPMs and RMI. These treaties reflect global recognition of the importance of these tools in the digital era and the need for legal frameworks to protect it. Argentina is a signatory to the WIPO Internet Treaties, which require contracting parties to provide adequate protection and legal remedies against the removal of effective technological measures. Argentina should introduce legislation to meet this important commitment.

- **Repeal provisions empowering *El Fondo Nacional de las Artes* to charge fees for the “Paying Public Domain.”**

Argentina’s *El Fondo Nacional de las Artes* (FNA, National Endowment for the Arts)—is an autonomous body within the Ministry of Culture of the Nation, that has the power to collect fees for copyright works that have fallen into the public domain. According to Law No. #1,224 and Resolution #15,850/77, FNA’s main source of funding is the Paying Public Domain (“DPP”). The DPP is a fee (not a tax) that must be paid in Argentina for the use of a work authored by a national or foreign creator who died more than 70 years ago (the copyright term in Argentina is the life of the author plus 70 years). In 2022, Argentina adopted Resolution #662/2022, extending FNA’s authority to charge fees against DPP rights used in the digital environment. Since the enactment of Resolution #662/2022, the video game industry reports receiving invoices from the FNA for using adaptations of stories from the public domain, including centuries-old mythologies, in video games. This highly unusual practice, rather than furthering the arts, discourages creative expression by introducing unwarranted uncertainty and financial and administrative burdens for the creative sector. The recent enforcement of the PDD reflects the funding pressures the FNA faces; indeed, the legislature recently proposed to close the agency due to budgetary restraints. If Argentina is to continue FNA’s mission to encourage the creative arts, it should do so without burdening the creative community it seeks to support.

MARKET ACCESS

- **Remove quotas for motion pictures, television content, and electronic devices, and refrain from extending quotas to over-the-top (OTT) services.**

Media Law #26.522 (promulgated through Regulatory Decree #1225/2010) established a registry of national films at the National Film and Audiovisual Arts Institute (INCAA) from which Pay-TV programmers select productions to comply with the quotas imposed by Article 67 of Media Law #26.522. The list includes both existing and yet-to-be-filmed productions. Both INCAA and ENACOM have yet to establish compliance procedures for Pay-TV programmers. The decree presents several problems, such as whether channels with highly specific content will be able to find suitable content in the registry and whether programmers are subject to fines if they do not broadcast productions that ultimately fail to be completed.

Local filmmakers increased pressure on INCAA and ENACOM to enforce existing quotas⁵ and to modify Media Law 26.522 to extend quotas to streaming services. Another proposal by local interest groups would modify the

⁵ Resolution #4773 E/2017, mandating certification of compliance with the screen quota provisions set forth in Section 67 of the 2009 Media Law and its accompanying regulation (Decree #1225/10) went into effect on January 1, 2018, but it has never been enforced. The quota regime requires free television licensees to air eight Argentine feature films per calendar year. Likewise, non-national (retransmitted) subscription television services that show primarily fiction programs

1994 Law #17.741 for the Promotion and Regulation of Film production (also known as the Film Law) to implement screen quotas on digital platforms and subscription-based media for which more than 50% of broadcast content is fiction, documentary, or animation programs: 35% must consist of nationally produced audiovisual content by companies or studios not associated with or part of the exhibitor, 75% of which should be at most two years old. All audiovisual broadcasting services including free-to-air television signals and mobile telephony with video platforms would also be required to produce at least 20 hours of national audiovisual productions per year. There appears to be an increase in proposals to regulate streaming services by introducing content quotas and imposing taxes (bills include #3951-D, #5735-D, and #6716-D). IIPA cautions against proposals for additional quotas or imposing quotas on streaming services because they negatively impact non-Argentine content industries and impact the competitiveness of audiovisual ecosystems where cross-border services are subject to local content quota requirements.

- **Reject customs duties on audiovisual works based on the potential royalty value of the work rather than on the value of the carrier medium, as well as other customs duties and taxes that burden foreign rights holders.**

Argentina assesses customs duties on audiovisual works based on the potential royalty value of the work rather than on the value of the carrier medium. This runs counter to international best practice and is a form of double taxation, as royalties are subject to withholding, income, value-added, and remittance taxes.

In December 2017, the government passed a tax reform law that imposes a 35% customs duty on imported video game consoles, which negatively impacts the entertainment software industry as consumers resort to “unofficial importation” to avoid paying the extra charges. Moreover, the law also imposed a 21% Value Added Tax (VAT) on OTT services as well as on a range of services provided by companies in the “collaborative economy.” Then, in December 2019, the Fernandez Administration imposed a 30% Social Solidarity and Productive Reactivation Tax (PAIS Tax) over OTT services, including video game, music, and movie services. The PAIS tax is currently in force and will expire on December 31, 2024. Additionally, on September 19, 2020, Argentina’s Central Bank imposed a 35% fee on foreign credit card charges, which has a negative impact on Internet and streaming services such as online game platforms that operate in the country and use foreign currency. These laws contradict international norms and should be amended or repealed.

- **Amend legislation to adapt the split of performance rights collections of music performers and phonogram producers to the 50-50 international standard, instead of the currently inequitable split of 67% to performers and 33% to producers.**

Argentina’s current law, approved in 1974, establishes that collections on behalf of music performers and phonogram producers shall be distributed 67% to performers and 33% to producers. This unfair distribution rule, imposed by law, goes against international practice and basic fairness. IIPA urges Argentina to consider legislation that establishes a more balanced distribution of 50% to performers and 50% to producers. This unfair situation can be changed only by legislation. As of October 2023, this disproportionate split in the distribution of revenue from performance rights remains the same.

are required to allocate 0.5% of the previous year’s annual turnover to acquire, prior to filming, the broadcast rights to independent Argentine film and TV movies. Moreover, in July 2018, INCAA published a resolution (Resolution #1050/2018) regulating content quotas for movie theatres, which came into force on July 10, 2018. Domestically produced films must represent 30% of the volume of content shown, for the entirety of one week per quarter where there is a dedicated screen. While that 30% content quota was in effect previously, under the prior regulatory regime, the screen could be shared with another film. Under the new regulation, should the exhibitor share the screen with another movie, it will be considered a partial fulfillment, and the local production must be shown for two weeks (a minimum of one screening per day for at least one additional week) or until the full quota is fulfilled. Also in July 2018, ENACOM announced Resolution #4513 establishing that a 30% local content quota would be enforced on free-to-air TV in urban areas (10-15% for lesser populated markets). IIPA recommends that this quota provision be eliminated, as quotas distort the market, discriminate against U.S. audiovisual content, and are likely to result in increased piracy because Argentine consumers are unable to get sought-after U.S. content.

- **Reject other legislative or regulatory proposals that burden the creative industries or unfairly target foreign rights holders.**

There are currently four bills that seek to modify the legislative framework for OTT services: the law on “Audiovisual Communication on Digital Platforms,” the law on “Federal Audiovisual Promotion,” the “Federal Law for Production and Industry,” and the law establishing the “Creation of a Fund for AV Industry Workers.” The common themes in all these bills respond to two demands from the entire sector: that platforms pay tribute to the Development Fund and that a portion of their catalogs be dedicated to national films, series, and documentaries.

The bill that has the broadest support, a measure developed by the National Audiovisual Space (EAN), is a new Cinema Law focused on global platforms for funding the local audiovisual sector. The proposals for content quotas also include an obligation to invest in national productions, and that the productions in the catalog be current, no more than two years old, and in part independent. In addition, “proportional visibility” ensures that algorithms establish a prominence ratio of 20% of national productions. Another bill requires 25% and a brand must be identified as “Argentine content.”

- **Reject Executive Order #600/19 that imposes an obligation to unify performance rights tariffs for hotels and establishes a governmental control over tariff rates.**

On September 23, 2019, the music industry filed a judicial review action challenging the constitutionality of the Executive Order #600/19 (Order) that created a single public performance tariff for all hotels and established a governmental control over tariff rates. The action claims that the Order is an unconstitutional and confiscatory measure because it deprives rights holders of the freedom to set rates according to the nature and specifics of different uses and to enter freely negotiated agreements with users’ associations. In 2022, the case was still pending for resolution before an administrative court of first instance in Buenos Aires.