

# ARGENTINA

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that Argentina remain on the Priority Watch List in 2025.<sup>1</sup>

**Executive Summary:** Despite some initial positive intellectual property (IP) enforcement and market access actions during President Javier Milei’s first year, sweeping reforms matched with full political prioritization are needed to make meaningful and sustainable improvements to Argentina’s copyright protection and enforcement regime and to tackle its high piracy rates.

Stream ripping, online and signal piracy, and the importation and use of circumvention devices, modified game consoles, and illicit streaming devices (ISDs) continue to persist at high levels in Argentina. Unauthorized reselling of digital accounts, digital counterfeits, and other unauthorized digital goods (UDGs) for video game platforms also remains rampant. Unfortunately, Argentina’s IP enforcement agencies continue to lack the necessary political will and resources to address these significant and long-standing piracy concerns, which have accelerated and diversified in the past several years. Overall, there is a dire need for a national agenda and strategic policy for copyright enforcement and interagency cooperation, especially between prosecutors and law enforcement cybercrime experts. The situation under the new administration showed initial signs of progress last year after the reestablishment of the National Anti-Piracy Roundtable, Argentina’s participation in Operation 404, the shutdown of several popular versions of *MagisTV*, and the establishment of a new cybersecurity initiative. However, the new administration will need to make a wider range of immediate and sustainable changes to Argentina’s copyright enforcement regime to meaningfully reduce piracy levels, create deterrents for piracy operations and operators, and streamline enforcement procedures.

The new administration must also work closely with the other branches of government to ensure executive-led anti-piracy initiatives can be implemented through effective legislation and supported by properly resourced courts. Unfortunately, Argentina still has not established protections for technological protection measures (TPMs) and rights management information (RMI), which are critical for enabling legitimate online business models and products and which Argentina is obligated to provide as a signatory to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively the WIPO Internet Treaties). Additionally, last year saw Argentina enact a controversial bill that expanded exceptions to the public performance right that conflict with the normal exploitation of musical works and sound recordings and broadens the definition of types of public performances. However, while some market access obstacles persist, the removal of the longstanding motion picture quotas and the expiration of the PAIS tax on streaming services were welcome developments in 2024.

## **PRIORITY ACTIONS REQUESTED IN 2025**

### **Enforcement**

- Encourage the new administration to increase political will and resources necessary to combat piracy at the federal level and support enhanced coordination with other IP enforcement entities.
- Promote private sector discussions on cross-industry cooperation to tackle online piracy.
- Provide adequate legal powers and financial resources to the *Dirección Nacional del Derecho de Autor* (Ministry of Justice’s Copyright Office, DNDA) and undertake routine, *ex officio* actions, such as inspections and raids of physical markets to stop commercial piracy, including ISDs.

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<sup>1</sup> 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/2025/01/Appendix-C-2025.pdf>.

- Incentivize the Argentine Customs Office (DGA-AFIP) to prioritize copyright enforcement actions and to monitor and perform border operations.

### Legal Reforms

- Introduce legislation establishing adequate protections for TPMs and RMI and provide legal remedies against their removal.
- Repeal Decree 765/2024 that expanded exceptions to the public performance right.
- Repeal provisions empowering *El Fondo Nacional de las Artes* (FNA, National Endowment for the Arts) to charge fees for the "Paying Public Domain."

### Market Access

- Ensure quotas for motion pictures and television content are not reimposed or extended 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.

## ENFORCEMENT

Piracy remains a very serious concern after continued failures by past administrations to provide the political will and resources necessary to tackle the growing physical and online piracy problems in Argentina. The International Federation of the Phonographic Industry (IFPI)'s Music Consumer Study for 2023 found that Argentina had one of the highest music piracy rates in the world, with 50.7% of internet users aged 16-64 (compared with the global average of 29%) and 62.9% of 16-24-year-olds pirating music on at least a monthly basis. The most prominent form of music piracy in Argentina is stream ripping. Cyberlocker sites also remain a music piracy threat in Argentina, particularly *Krakenfiles.com*, *Hitfile.net* and *Rapidgator.net*. IFPI's study found that 20.5% of all respondents had used cyberlockers to download pirated music in the previous month.

In 2024, Argentina ranked 17<sup>th</sup> in the world for the number of connections by peers participating in the unauthorized file-sharing of Entertainment Software Association (ESA) member video game titles on public peer-to-peer (P2P) networks. By the same metric, Argentina ranked ninth in the world for unauthorized file-sharing of mobile games, 17<sup>th</sup> in the world for console-based games, and 19<sup>th</sup> in the world for PC-based games. Video game content was the second most popular type of content shared on BitTorrent networks, reflecting a 5% growth compared to 2023. The most harmful type of videogame piracy in 2024 was the unauthorized reselling of digital accounts, digital counterfeits, and other UDGs<sup>2</sup> via websites operated by local users in Argentina. While this type of digital piracy is popular on online marketplaces, such as *MercadoLibre* and *Shopee*, the number of websites attempting to join this trend is increasing. Regarding linking sites dedicated to video game piracy, the most popular sites are located overseas and include *FitGirl* and *DODI Repacks*. Physical piracy offered via the Internet, the so-called retro games, or preloaded consoles, are also very popular among e-commerce platforms and websites in the country. These growing piracy

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<sup>2</sup> 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 that otherwise tilt the scales in favor of one player over another. The rise of UDGs and cheat software has 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.

challenges have not only harmed U.S. creative industries, but also have devastated the Argentinian economy, with some estimating the Argentine industry loses US\$ 258 million annually due to piracy.<sup>3</sup>

- **Encourage the new administration to increase political will and resources necessary to combat piracy at the federal level and support enhanced coordination with other IP enforcement entities.**

Since President Milei assumed office in December 2023, IIPA has closely monitored how his administration would address these longstanding and growing piracy concerns that severely harm both local and foreign creative industries. There were some positive developments in his first year.

- In March 2024, Argentina's *Unidad Fiscal Especializada en Cibercriminalidad* (the federal prosecutor's special cybercrime unit, UFEIC) and Federal Police accepted four cases related to local commercial websites offering unauthorized reselling of digital accounts, with such targets being among the most popular in the country's digital game piracy scene. Federal Police concluded the four investigations in June 2024 and referred them to the prosecutor. As of this report, the four cases remain pending and await search warrants and domain seizure court order requests.
- In July 2024, the National Anti-Piracy Roundtable convened for the first time by the Ministry of Security as part of a new Productive Security Program organized by the Ministry of Security. Chaired by the Director of Operations and Deployment Control of the Ministry of Security, participants included the president of the Argentine Civil Anti-Piracy Association and the head of the *Federación de Comercio e Industria de la Ciudad de Buenos Aires. Adherida* (the Chamber of Commerce and Industry, FECOBA) along with representatives from the Argentine Naval Prefecture, National Gendarmerie, Federal Police, and other business associations. The Roundtable had been dormant since its launch in 2017 and ties in with the new administration's general concerns regarding national security. No tangible outcomes have been reported from the roundtable as of this report.
- In September 2024, Argentina participated in the seventh phase of Brazil-led Operation 404, a joint international effort to stop digital piracy in the region. Based on a complaint by the Alliance Against Audiovisual Piracy (*Alianza*), UFEIC blocked 70 domain names related to the reportedly largest illegal Internet protocol television (IPTV) service in Latin America, *MagisTV*, which is also designated as a "Notorious Market" in USTR's 2024 Notorious Markets List.<sup>4</sup> Additionally, UFEIC and Federal Police, following orders by the San Isidro court, conducted raids in Buenos Aires and Misiones to uncover and seize ISDs that had been pre-loaded with the *MagisTV* app and arrested three Argentines and two Brazilians, including the primary operator of the piracy operation.<sup>5</sup> In the *MagisTV* cases, although there are no final sentences, injunctions were granted by courts creating relevant precedents for future cases.
- On January 8, 2025, the Government of Argentina announced the creation of the Strengthening Cybersecurity and Cybercrime Investigation (ForCIC) program.<sup>6</sup> The program is designed to increase the capacity of prevention, detection, analysis, response and investigation of cyber incidents and cybercrime, and to strengthen investigative activities in specific areas of computer crimes dependent on federal police and

<sup>3</sup> See statements by Regional Director for the Southern Cone of La Asociación Interamericana de Empresas de Telecomunicaciones (ASITET) Pablo García de Castro at an October 2024 anti-piracy seminar, available at <https://www.gruposos.com/argentina/la-pirateria-le-cuesta-a-argentina-mas-de-us-258-millones-al-ano-se-dijo-en-jornadas-internacionales-2024/>.

<sup>4</sup> See "Argentine court orders Google to delete IPTV software from Android phones," *Tecmundo*, September 25, 2024, available at <https://www.tecmundo.com.br/software/289977-justica-argentina-ordena-google-apague-software-iptv-celulares-android.htm>; see also The Office of the United States Trade Representative (USTR) 2024 Review of Notorious Markets for Counterfeiting and Piracy (the Notorious Markets List), available at [https://ustr.gov/sites/default/files/2024%20Review%20of%20Notorious%20Markets%20of%20Counterfeiting%20and%20Piracy%20\(final\).pdf](https://ustr.gov/sites/default/files/2024%20Review%20of%20Notorious%20Markets%20of%20Counterfeiting%20and%20Piracy%20(final).pdf).

<sup>5</sup> See "Argentina: Magis TV blocked, its Android app shut down as part of Operation 404," *Piracy Monitor*, September 21, 2024, available at <https://piracymonitor.org/argentina-shuts-down-magis-tv-as-part-of-operation-404-collaboration-with-brazil-and-others/>.

<sup>6</sup> See "The Government created a cybersecurity strengthening program," *24 Hours Worlds*, January 8, 2025, available at <https://24hoursworlds.com/entertainment/901784/>.

security forces, among other goals. Although the scope of the program is not restricted to piracy, IIPA hopes this new ForCIC program is a major step to combating copyright infringement in the digital environment. In February 2022, the previous administration issued Resolution #86/2022 to create a similar ForCIC program. This old program failed to address Argentina's cybersecurity and digital piracy in the years since. Therefore, it is important for the new administration to fully implement their attempt to take meaningful action against cybercrimes, including online piracy.

These initial steps are a welcome development and a hopeful signal that the new administration will make real efforts to tackle Argentina's growing piracy epidemic this year. The Government of Argentina will need to fully prioritize this issue to make any meaningful impact. The new administration has already shown that when an issue is a political priority, for example, illegal online betting, the government is able to make sweeping reforms. For example, in 2024, as part of a comprehensive strategy to combat a growing trend of illicit online betting by youth, the Government of Argentina created national awareness campaigns, instituted access controls with biometric technological measures, and directed the *Ente Nacional de Comunicaciones* (the National Communications Entity of Argentina, ENACOM) to block illegal betting sites. As of September 2024, ENACOM reported blocking a thousand websites dedicated to illegal online betting.<sup>7</sup> This effective political will and allocation of the necessary resources to successfully implement measures to tackle one form of crime should now be mirrored to combat piracy. In doing so, the new administration will need to make a wide range of immediate and sustainable changes to Argentina's copyright enforcement regime in order to reduce piracy levels, create deterrents for piracy operations and operators, and streamline enforcement procedures. It is also important to note that the above successes all originated in the executive branch, and not the legislature or the judiciary, which both play key roles in modernizing outdated legal frameworks and adjudicating anti-piracy cases in view of new technological piracy trends. It will be critical for the new administration to work with all branches of government to have a truly effective solution.

To address the longstanding piracy enforcement challenges in Argentina, and to leverage the opportunity presented by some positive steps by new administration, the Government of Argentina should provide the political will and resources necessary to enact a coordinated, long-term anti-piracy agenda at the federal level to address online piracy, including by making the following changes:

- **Create a specialized 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.
- **Increase prioritization of and resources for IP cases:** Law enforcement authorities should be trained and politically motivated to recognize the importance of online intellectual property rights (IPR) protection as an important part of the Government's efforts to foster the Argentine digital economy. These authorities should also be made aware of the benefits for public security policies resulting from stronger online copyright enforcement. 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 services and piracy groups operating in the country. Further, more investment in investigation and prosecution of IP crime is required.
- **Improve federal and state coordination:** There is general inaction and lack of coordination between federal and state jurisdictions when handling online infringement investigations and cases. For example, when an online IP crime is reported, both the Federal Police and a state prosecutor might independently proceed in processing the case without communicating or sharing data. The Federal Police view copyright infringement as a federal crime, while the state prosecutor views it as a crime involving a local Argentine citizen. These jurisdictional conflicts remain a significant barrier to initiating a successful copyright enforcement case.

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<sup>7</sup> See Viktor Kayed, *ENACOM Reaches 1000 Blocked Illegal Gambling Websites in Argentina*, SBCNews, September 9, 2024, available at <https://sbcnews.co.uk/marketing/2024/09/09/enacom-reaches-1000-blocked-illegal-gambling-websites-in-argentina/>.

- **Impose deterrent sentences:** There are few, if any, instances where sentences are consistently applied at a level that would deter piracy operators in any meaningful way from targeting Argentina and its consumers.
- **Target commercial-scale piracy operations:** Capitalizing on its action against multiple instances of *MagisTV*, the Government of Argentina should prioritize actions against commercial-scale piracy operations by continuing to conduct full-scale raids against piracy websites and apps, stopping the importation of circumvention devices, and ISDs into the country, and taking action against unlicensed retransmission and theft of pay-TV signals. Additionally, cybercrime entities and ENACOM should proactively monitor and perform online operations against high-profile sites and commercial activities occurring in online marketplaces and e-shops. However, based on feedback from the criminal enforcement authorities, it is understood they view any infringing site that makes money through advertising as not making direct profits from copyright infringement, and therefore, safe from criminal prosecution. This narrow interpretation of the law is not compatible with the TRIPS Agreement obligation that parties ensure that criminal enforcement measures are available, at a minimum, against commercial-scale copyright infringement.
- **Promote public-private partnerships:** Law enforcement and administrative authorities are not promoting actions by the private sector, nor are they taking initiative to tackle copyright piracy by securing the assistance of domain name registrars. IIPA urges Argentina's authorities to partner with rights holders to use industry expertise to combat cybercrime.
- **Leverage Argentina's cybercrime initiatives:** Local cybercrime authorities, from police and prosecutors' offices, should recognize IPR crimes as part of a broad cybersecurity landscape and place them on their operational agenda. For example, every person who visits a website designed to distribute or host pirated content, or websites or apps that pirate content, opens themselves up to cybersecurity vulnerabilities that can lead to digital invasions of privacy. Typically, the moment that a website or app designed for piracy is accessed, pop-ups and advertisements calculated to deceive users into downloading viruses and divulging personal information may pose a threat.<sup>8</sup> Even if consumers do avoid pop-ups and deceptive links, downloading pirated content can still open the door for invasion of malware. In 2018, Carnegie Mellon University found that the time users spent on infringing sites directly correlated to their likelihood of downloading malware.<sup>9</sup> A pirated copy of a movie may contain a few lines of code that records the user's keystrokes, captures their screen, or allows a remote connection to be made by a third party.<sup>10</sup> When a pirate webpage requires a user to create an account before accessing stolen content, the user may need to create a password or answer security questions. This type of information can easily be repurposed or sold by pirates to breach bank accounts, social media accounts, and more.<sup>11</sup> According to the Digital Citizens Alliance (DCA), 72% of users who sign up for piracy subscription services with a credit card experience credit card fraud.<sup>12</sup> Using websites designed to circumvent copyright law can lead directly to a serious breach in a user's online safety and create an unprecedented number of cybersecurity vulnerabilities. Additionally, the use and implementation of pirated software would be considered an aggravating factor in the adoption of cybersecurity measures, as it involves not having adequate and authorized software to protect the company's digital assets and data. The use of pirated software runs counter to this objective, as its use is considered a bad practice that also poses a risk to individual rights, due to the exploitation of cybersecurity vulnerabilities and the

<sup>8</sup> See Creative Content Australia, *If you visit pirate websites, even the law can't protect you*, MPA-APAC (Feb. 25, 2020) <https://www.mpa-apac.org/2020/02/if-you-visit-pirate-websites-even-the-law-cant-protect-you/>.

<sup>9</sup> See Rahul Telang, *Does Online Piracy Make Computers Insecure? Evidence from Panel Data*, Carnegie Mellon University (March 12, 2018) p.1., [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3139240](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3139240).

<sup>10</sup> See Alvaro Puig, *Malware from illegal video streaming apps: What to know*, FEDERAL TRADE COMMISSION CONSUMER ADVICE, May 2, 2019, <https://consumer.ftc.gov/consumer-alerts/2019/05/malware-illegal-video-streaming-apps-what-know>.

<sup>11</sup> See Interpol, *Accessing free or cheap content is not the bargain you think it is!*, INTERPOL, <https://www.interpol.int/en/Crimes/Illicit-goods/Shop-safely/Digital-piracy>.

<sup>12</sup> See Digital Citizens Alliance, *Giving Piracy Operators Credit: How Signing Up for Piracy Subscription Services Ratchets Up the User Risk of Credit Card Theft and Other Harms* (June 2023) p. 1., available at <https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/Giving-Piracy-Operators-Credit.pdf>.



malware associated with pirated software. Efforts to mitigate or prevent these types of cybersecurity vulnerabilities could include using this law to provide additional human and financial resources and capacity building to cybersecurity officials to tackle online piracy.

- **Promote private sector discussions on cross-industry cooperation to tackle online piracy.**

Last year, the general absence of government action against online piracy continued to reinforce low levels of compliance by Internet service providers (ISPs) and payment providers used by these illegal services. Obtaining civil injunctive relief against piracy sites remains challenging due to overly lengthy procedures, the often-limited nature and scope of the injunctions, and the vast number of sites that need to be blocked to generate impact in the pirate ecosystem. This being said, civil courts have recently issued and updated several injunctive relief decisions, which is a positive development. For example, 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). Despite the success of the rare blocking actions against *The Pirate Bay* and *Y2mate.com*, 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. Following the *Y2mate.com* decision, in March 2023, a National Court in Buenos Aires issued a dynamic site blocking decision targeting 30 streaming sites following a complaint by *Alianza*. While positive outcomes, these actions had little impact on the overall piracy rates in Argentina.

Administrative injunctive relief against piracy sites remains unavailable because there is no legal basis for such procedures. Rights holders currently need to rely on criminal injunctive relief mechanisms, often linked to enforcement proceedings against the illegal service operator. Within that criminal framework, Argentine authorities are to be commended for their collaboration with Brazilian law enforcement on Operation 404, a major regional antipiracy effort, and for recent enforcement action against *Futbol Libre*, one of Argentina's most popular pirate streaming sites.

The lack of law enforcement actions also presents a challenge for further cooperation as it reinforces the status-quo and provides no safe space for cooperation discussions among stakeholders and supported by authorities. Instead, rights holders continued to directly rely more on cooperation with other actors in the online ecosystem. For example, in August 2022, the Alliance for Creativity and Entertainment (ACE) took down seven Argentina-based piracy domains based in Argentina connected to the *Pelismart/Pelispop* ring, whose websites combined had 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.

Additionally, in a continuing positive development, the video game industry continues to increase its cooperation with *MercadoLibre*'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, *MercadoLibre* successfully completed approximately 5,300 takedown requests, nearly triple the number it completed during the previous year. Furthermore, in 2024, the number of listings offering UDGs and accounts decreased on *MercadoLibre*, due to *MercadoLibre* updating their Terms of Use to prohibit such listings. Additionally, ESA reports a takedown rate of over 99% on *MercadoLibre* and that *MercadoLibre* is proactively filtering and analyzing newly listed products for automated removal if they are found to be infringing.

Emulating the positive outcomes by ACE and ESA, Argentina should create forums to promote cooperation within the private sector. For example, the Government of Argentina should host private sector discussions on potential cross-industry cooperation to tackle online piracy more effectively.

- **Provide adequate legal powers and financial resources to DNDA and undertake routine, *ex officio* actions, such as inspections and raids of physical markets to stop commercial piracy, including ISDs.**

DNDA is underfunded. The Government of Argentina should 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.

- **Incentivize DGA-AFIP to prioritize copyright enforcement actions and to monitor and perform border operations.**

Another potential strategy in the fight against piracy in Argentina is to increase involvement from and coordination with DGA-AFIP. The Government of Argentina should actively involve DGA-AFIP 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, and ISDs entering the country via airports and land borders.

## **LEGAL REFORMS**

- **Introduce legislation establishing adequate protections for TPMs and RMI and provide legal remedies against their removal.**

Argentina continues to lack protections for TPMs and RMI, which are critical for enabling legitimate online business models and products. In addition to protections, Argentina should also enact legislation that provides civil and criminal sanctions for all activities relating to the manufacturing of, or trafficking in, circumvention devices or technologies that circumvent TPMs. The lack of these legal tools creates an obstacle to enforcement against circumventions of protections for copyright works and means that Argentina is not meeting its international obligations as a signatory to the WIPO Internet Treaties. For example, the absence of adequate protections for TPMs in Argentine legislation raises significant concerns regarding the protection of online content, including digital account resale, modified game consoles, and cracked game titles for download, or the ability to prevent the unauthorized copying of music by stream-ripping services.

- **Repeal Decree 765/2024 that expanded exceptions to the public performance right.**

On August 27, 2024, the Government of Argentina issued Decree 765/2024 (Decree 756), which problematically expanded exceptions to the public performance right. Article 1 of Decree 765 amended Article 33 of Decree No. 41,223/34 of 1934 to state that there is “no public representation or performance when it takes place in a private setting, whether permanent or temporary.”<sup>13</sup> The previous narrower provision in the 1934 Decree limited this exception to “one that takes place in any place other than a private home and, even within one, when the performance or representation is projected or broadcast abroad.” Article 1 of Decree 765 also broadens the definition of a public performance as “a musical or cinematographic work, records, sound films, radiotelephone transmissions and their retransmission or broadcasting by loudspeakers... which is carried out by performers or singers, as well as that which is carried out by mechanical, electronic or digital means, including the Internet.”<sup>14</sup>

Rights holders are very concerned that this broader exception, a clear violation of the three-step test, could be seen to permit the unauthorized transmissions of copyrighted content in hotel rooms, private event spaces, convention centers, and the like. In these cases, these institutions that have previously lawfully licensed this content

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<sup>13</sup> See The Official Gazette of Argentina, Intellectual Property, Decree 765/2024, August 27, 2024, available at <https://www.boletinoficial.gob.ar/detalleAviso/primera/312933/20240828>.

<sup>14</sup> See id.

for years in Argentina may now believe they are exempt from performance licenses and payments. This decree should be repealed immediately because the exception conflicts with a normal exploitation of musical works and sound recordings, and potentially with a larger segment of copyrighted works given the now broader definition of types of public performances.

More recently, stakeholder groups in Argentina met several times with government representatives, including Minister of Deregulation responsible for issuing the order (Mr. Federico Sturzenegger), to express their concerns about the detrimental impact of Decree 765 on performance rights' collections from hotels, ballrooms and rented parties (which accounts for more than 30% of total collections in the country). Rights holders found that government representatives are not able to support any amendment or repeal of Decree 765. In view of this situation rights holders filed a constitutional challenge against the order on December 3, 2024, seeking injunctive relief and a declaratory judgment for violation of a constitutional right. This lawsuit was filed jointly by the record producers' local association (CAPIF) and the local CMO representing music performers (AADI). Copyright holders (including composers and publishers) filed a similar lawsuit, represented by SADAIC. The potential outcome of these cases is uncertain but there's no doubt that Decree 765 is causing significant damage to all copyright holders in the music sector in Argentina and is a very negative precedent that has already been held up as an example in other markets in Latin America.

- **Repeal provisions empowering FNA to charge fees for the “Paying Public Domain.”**

Argentina's FNA 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**

- **Ensure quotas for motion pictures and television content are not reimposed or extended to OTT services.**

Since 2004, the Government of Argentina, in particular the *Instituto Nacional de Cine y Artes Audiovisuales* (National Institute of Cinema and Audiovisual Arts, INCAA) and ENACOM, imposed burdensome quotas for motion pictures and television content that distorted the market, discriminated against U.S. audiovisual content, and likely resulted in increased piracy because Argentine consumers were unable to lawfully view sought-after U.S. content. INCAA and ENACOM also received pressure to extend these content quotas to streaming services. In a recent positive development, the new administration enacted Decree 662/2024 (Decree 662) on July 23, 2024, which effectively eliminated the screen quotas originally codified in the Regulation of the National Cinematographic Activity Promotion Law No. 17,741 (2001) and its amendments.<sup>15</sup> This was a very welcome development. However, Article 9 of Decree 662 still allows the President of INCCA to establish future screen quotas. IIPA strongly urges INCCA to not impose new quotas or further efforts to expand potential quotas to streaming services. Additionally, while quotas do not seem

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<sup>15</sup> See The Official National Gazette of Argentina, Promotion of National Cinematographic Activity, Decree 662/2024, July 23, 2024, available at <https://www.argentina.gob.ar/normativa/nacional/decreto-662-2024-401988>.



to be a priority for the current administration, quotas continue to be sought by the other political parties and promoted by the local audiovisual sector.

- **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. In a positive development, the PAIS tax expired 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.