

2015 Special 301 Report

United States Trade Representative

April 2015

SECTION II. COUNTRY REPORTS

PRIORITY WATCH LIST

ARGENTINA

Argentina remains on the 2015 Priority Watch List, as it continues to present a number of very long-standing and well-known deficiencies in IPR protection and enforcement, and has become an extremely challenging market for IPR-intensive industries.

A major challenge in Argentina is the lack of effective IPR enforcement by the national government. Argentine police do not take ex officio actions, prosecutions stall, cases wallow in excessive formalities and, even if a criminal investigation reaches final judgment, infringers do not receive deterrent sentences. In terms of physical piracy, the Notorious Market La Salada is one of the biggest open-air markets in Latin America offering counterfeit and pirated goods, and it continues to grow. Open twice a week, La Salada attracts over one million people a day who browse and buy literally millions of illegal goods each year. Recent efforts by the City of Buenos Aires to combat increasing lawlessness in the market received little assistance from the national government. In fact, Argentina has thousands of smaller markets known as “Saladitas” that offer pirated and counterfeit goods, and vendors can be seen on the streets of Buenos Aires and other big cities selling illicit works with impunity.

While optical disc copyright piracy is widespread, Internet piracy is a growing concern. Internet piracy rates approach 100 percent in several content areas. For example, Argentine-run Notorious Market cuevana.tv—offering pirated movies and TV shows—is the 75th most popular website in the country, with an estimated 150,000 visitors each day. As a result, IPR enforcement in Argentina consists mainly of rights holders trying to convince cooperative Argentine online providers

to agree to take down specific infringing works, and attempting to seek injunctions in civil cases. Criminal enforcement is nearly nonexistent.

Argentina does not provide adequate protection against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical or agricultural chemical products, nor does Argentina provide an appealing environment to patent owners in terms of pendency, scope and term of protection, or meaningful enforcement options. Rather than providing protection for pending patents, Argentina only provides patent protection from the date of the grant of the patent. There is a substantial backlog of patent applications which results in long delays in registering rights. Argentina rejects patent applications with claims for common pharmaceutical products. To be patentable, Argentina requires that processes for the manufacture of active compounds disclosed in a specification be reproducible and applicable on an industrial scale. It is unclear whether these restrictive guidelines also apply to biotechnology products. These restrictions limit the ability of companies investing in Argentina to protect their IPR, and are inconsistent with international practice.

Finally, rights holders complain of widespread use of unlicensed software by Argentine private enterprises and the government. The Argentine government's imposition of currency exchange restrictions and the prohibition on payment of dividends and royalties to foreign parties make it difficult for Argentine companies seeking proper software licenses to obtain the currency needed to pay for such licenses. This presents yet another significant market access barrier for IPR intensive companies who consider investing in Argentina.

FULL REPORT: <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>