MEMORANDUM OF UNDERSTANDING ON INTELLECTUAL PROPERTY RIGHTS BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF PARAGUAY

In the spirit of cooperation, consistent with international standards of intellectual property protection, and in order to strengthen the legal protection and enforcement of intellectual property rights (IPRs) in Paraguay, the Government of the United States of America (United States) and the Government of Paraguay (Paraguay)

Have agreed as follows:

ARTICLE I
Protection of Intellectual Property Rights

Paraguay shall ensure that its intellectual property legal regime complies fully with its obligations under the WTO *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement).

ARTICLE II
Enforcement

Paraguay shall develop and implement effective enforcement mechanisms and practices to significantly reduce the levels of copyright piracy and trademark counterfeiting in its territory, including through the imposition of deterrent penalties.

ARTICLE III
Transparency and Reporting

Paraguay shall improve transparency in the administration and enforcement of IPRs, including through the development of objective means of measuring progress toward improving the protection and enforcement of IPRs and the development of objective criteria for carrying out and reporting IPR enforcement-related activities.

ARTICLE IV
Training and Technical Assistance

Paraguay and the United States intend to develop and implement a program of mandatory professional training for all Paraguayan officials who have a role in the development and maintenance of an effective intellectual property system, including enforcement, on mutually agreed terms, and subject to the availability of appropriated funds. Implementation of this training program may be undertaken in conjunction with, or through, international organizations and the private sector.

ARTICLE V
Consultation and Review

Paraguay and the United States shall consult regarding any matter related to this Memorandum of Understanding (MOU) upon the request of either Government, and, under the auspices of the United States-Paraguay Joint Commission on Trade and Investment, shall meet to review the implementation of this MOU, preferably at six (6) month intervals, but no fewer than three (3) times, between the date this MOU enters into force and December 31, 2009. Additional meetings to review implementation may be held upon the request of either Government.

ARTICLE VI
Obligations not Contingent

Except as otherwise provided in Article IV, implementation of the obligations in this MOU shall not be conditioned on the availability of funds, training, or technical assistance.

ARTICLE VII
Entry into Force and Term

The Annex to this MOU is an integral part of this MOU. This MOU shall enter into force upon signature. It shall terminate on December 31, 2009, unless otherwise agreed in writing by the two Governments.

Signed in Asuncion, Paraguay in duplicate, this April 30th 2008 in the English and Spanish languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

James Cason

James Cason
US Ambassador

FOR THE GOVERNMENT OF THE REPUBLIC OF PARAGUAY

Ruben Ramirez Lezcano
Foreign Affairs Minister

ANNEX

Action Plan

1. Protection of Intellectual Property Rights -- Paraguay shall:

   (a) improve the legal tools available for prosecutors and judges and encourage their use by:

      (i) enacting and implementing revisions to the Penal Code providing for increased penalties in connection with major counterfeiting and piracy cases, *ex officio* authority, and criminalization of the act of circumvention of technological protection measures when that act is done willfully and for purposes of commercial advantage or private financial gain;

      (ii) issuing guidance to all judicial officials to give priority to all levels of piracy and counterfeiting cases, with a special focus on serious cases, and reflecting revisions to the Penal Code referred to above; and

      (iii) issuing a publicly available and legally binding resolution ensuring that the pendency of a trademark application may not be used as a defense in civil or criminal trademark cases and to inform judges that such a defense is contrary to Paraguayan law.

   (b) enhance the protection accorded to right holders by possible consideration of legislation to increase the term of protection for works and sound recordings.

   (c) improve protection for pharmaceuticals and agricultural chemicals by:

      (i) ensuring that Paraguay fully complies, through relevant laws and regulations, with its obligations under the TRIPS Agreement with respect to the protection of undisclosed test or other data from unfair commercial use and disclosure; and

      (ii) undertaking measurable efforts to process pending pharmaceutical patent applications, including by assigning at least two dedicated patent examiners to this task, with a report on progress in this area to be provided by December 31, 2008.

   (d) improve the system for protecting trademarks and geographical indications by:

(i) providing the opportunity for interested parties, including trademark holders, to oppose and/or seek cancellation of a geographical indication that was filed for or registered after the priority date or date of registration of a trademark; and

(ii) including among the grounds for refusing protection of a geographical indication and grounds for opposing and/or cancelling a registration of a geographical indication that the geographical indication is likely to be confusingly similar to a trademark that is registered in Paraguay.

2. Enforcement of Intellectual Property Rights -- Paraguay shall undertake the following efforts to achieve actual, measurable enforcement results:

(a) strengthen border enforcement, including by:

(i) increasing efforts to control the trafficking of pirated optical media products (including CD-Rs and DVD-Rs) and other infringing goods with special emphasis on goods being trafficked across the Parana River and Itaipu waterway;

(ii) increasing use of *ex officio* border enforcement actions with regard to imports;

(iii) expanding *ex officio* border enforcement actions to include goods destined for export and in-transit goods suspected of infringing an intellectual property right;

(iv) enhancing cooperation between customs authorities and private industry on border enforcement matters, and;

(v) developing mechanisms for applying administrative customs fines in cases of trademark counterfeiting or copyright piracy.

(b) undertake enforcement efforts related to optical disc media, including by:

(i) fully implementing Decree No. 603 and forming the Register of Importers of Magnetic and Optical Media and Raw Materials for their Production established therein; and;

(ii) increasing the frequency, number, transparency and quality of official unannounced inspections and audits of optical media plants in Ciudad del Este, and allowing the participation of the Unidad Tecnica Especializada (UTE) and the support of private industry representatives with technical assistance and cooperation.

(c) pursue enforcement actions against piracy and counterfeiting in marketplaces known for the prevalence of the sale and distribution of infringing goods, including:

(i) implementing a sustained enforcement focus on points of sale of pirated or counterfeit products (including recorded music, motion pictures, videogames, business software and books) in tourist and shopping areas, including through stricter conditions on lease arrangements available to vendors in these areas and investigations of such points of sale by the relevant authorities in order to determine the identities of distributors involved in the sale of pirated or counterfeit products. Market areas to be the subject of this sustained enforcement focus are identified in the appendix to this annex; this appendix may be revised periodically upon the mutual agreement in writing of the two Governments.

(d) enhance public awareness, including by:

(i) educating the public, through programs in the schools, use of mass media, and other appropriate means, about intellectual property rights and the infringement and enforcement thereof, and

(ii) permitting and encouraging the public to report, on a confidential basis, potential infringement of intellectual property rights.

(e) implement deterrent penalties, including by:

(i) providing for the seizure of an infringer's assets upon conviction for manufacturing, importing or distributing quantities of pirated or counterfeit goods on a commercial scale; and

(ii) ensuring that intellectual property crimes are subject to imprisonment in accord with revisions to the Penal Code of Paraguay, and that mandatory minimum prison sentences (not only fines) are imposed, and not suspended, on offenders convicted of manufacturing, importing, or distributing pirated or counterfeit goods on a commercial scale.

(f) enhance IPR training, including by:

(i) engaging in sustained and ongoing training of judges, prosecutors, and customs officials, including the provision of information materials and manuals concerning intellectual property laws and the importance of enforcing them;

(ii) promulgating guidelines and procedures for investigations, prosecutions, and sentencing; and

(iii) engaging in sustained and ongoing training of patent examiners in all fields of technology and trademark examiners, including the provision of updated information materials and manuals concerning patent and trademark examination.

(g) combat Internet-based piracy, including by:

(i) working with affected right holders to assess and develop a plan for addressing the enforcement challenges surrounding Internet piracy in Paraguay and evaluating legal or regulatory measures that may be needed to address these challenges.

(h) fully implementing the Paraguay Software Legalization Decree and conducting an audit of public institution software to ensure full compliance with the Decree by July 2008; any extension of this timeframe shall be subject to consultations between the two Governments.

3. Transparency and Reporting – Paraguay, through its Statistics Center under the Ministry of Industry and Commerce, or such other government agency, as appropriate, shall:

(a) collect and make available information[1] on enforcement actions promoted, initiated, or taken by Paraguay for the purpose of tracking enforcement against intellectual property infringement and determining the effectiveness of enforcement-related activities undertaken pursuant to this MOU, including information with respect to the destruction of pirated or counterfeit goods;

(b) generate reports for government and private sector use; and

(c) publish, in a readily accessible medium, enforcement statistics and rulings related to intellectual property to deter the public from committing intellectual property crimes; to keep judges, prosecutors, and the public abreast of all sentences, statistics, and actions taken by government organizations in their efforts to combat intellectual property rights infringement; and to enable appropriate penalties to be assessed against repeat offenders.

4. Training and Technical Assistance - Paraguay shall:

[1] For purposes of this provision, such information is understood to include all relevant government-generated information with respect to border measures, criminal proceedings, civil proceedings, and administrative proceedings.

(a) identify intellectual property administration and enforcement training needs and priorities, and additional opportunities and audiences for training;

(b) use best efforts to engage the private sector in providing technical assistance to address intellectual property crimes;

(c) work with the United States to develop an action plan related to IPR training and technical assistance within nine months of the entry into force of this MOU; and

(d) Make best efforts to develop an administrative and legislative mechanism for improving the financial and operational management of the UTE.

APPENDIX

With reference to paragraph 2(c) of the Action Plan, the following marketplaces shall be the subject of a sustained enforcement focus:

1. Ciudad del Este: Zona Baja area, Gallery La Esperanza, Paseo San Blas

2. Asunción: Mercado 4

3. Pedro Juan Caballero: Shopping West Garden