

# Intellectual Property Rights Toolkit

The United States Mission in Brazil recognizes the importance of strong intellectual property rights (IPR) protection for American companies doing business overseas. Pirated and counterfeit goods undermine investment opportunities and can significantly impact market share for U.S. companies. This IPR Toolkit was developed by the U.S. Mission to provide background information to U.S. businesses on the current IPR laws and regulation in Brazil.

## **Disclaimer**

The information provided in this toolkit by no means constitutes legal advice and should not be a substitute for advice of counsel. Its intended purpose is to provide an overview of the Brazil's IPR environment. It is recommended that U.S. companies seeking to do business in Brazil, or facing IPR infringement issues, retain qualified U.S. and/or Brazilian legal counsel and pursue their rights through the Brazilian legal system.

## **Patents**

### ***i. Applicable Laws***

Patents are regulated by Federal Law No. 9279 of May 14, 1996 (IP Law) – Articles 6 to 87 and Articles 183 to 186. [English version](#) [Portuguese Version](#)

### ***ii. Need for Registration***

Patent rights may only be acquired in Brazil through registration before the National Institute of Industrial Property (INPI). US patent rights are not recognized in Brazil. Patent applications are analyzed on a first-to-file basis, regardless of the date of creation or invention. A minor exception applies<sup>1</sup>. Priority under the Paris Convention may be claimed, and the Patent Cooperation Treaty system may be used.

The patent application will be kept confidential for 18 months, counted from the filing date, or from the earliest priority date, if any. After that period, the application will be published, with the exception of the case provided for in Article 75<sup>2</sup>. The publication of the application may be anticipated under the applicant's request. (Articles 7, 16 and 30)

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<sup>1</sup> Article 45 - A person who, in good faith, prior to the date of filing or the date of priority of a patent application, exploits its object in this country, will be guaranteed, without onus, the right to continue the exploitation (...).

<sup>2</sup> Article 75 - A patent application originated in Brazil, which object is of national defense interest, will be processed in secrecy and will not be subject to the publications provided for in this law.

### ***iii. Who is eligible to obtain a patent***

A patent may be applied for by the author of the invention or utility model<sup>3</sup>, his/her heirs or successors, or the assignee who the Law, or the employment or service contract, determines to be the owner. If the invention or utility model has been jointly developed by two or more persons, the patent may be required by all or any of them, upon appointment and qualification of the other(s). (Article 6)

### ***iv. What can be patented***

Any invention that meets the requirements of novelty<sup>4</sup>, inventive step<sup>5</sup> and industrial application<sup>6</sup> can be patented.

When filing an application, the party may choose from one of the three available types of titles:

- Invention Privilege (PI) – the invention must meet the requirements of novelty, inventive step and industrial application to have its respective patent granted;
- Utility Model (MU) - new form or arrangement involving an inventive act, which results in a functional improvement to the object;
- Certificate of Addition to an Invention - an improvement that has been developed in relation to an applied for or a previously granted PI patent. (Articles 8, 9, 11, 13 to 15)

### ***v. What cannot be patented***

Discoveries, scientific theories and mathematical methods; purely abstract conceptions; diagrams, plans, business, accounting, financial, educational, advertising, raffle and surveillance principles and methods; literary, architectural, artistic and scientific or aesthetic creations; computer programs per se (for specific information on those, please refer to “G - Computer Software”, below); presentation of information; the rules of a game; operative or surgical techniques and methods, and therapeutic or diagnostic

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<sup>3</sup> For information on the differences between an invention and a utility model, please refer to “iv. What can be patented”, below.

<sup>4</sup> According to Article 11, inventions and utility models are considered new when they are not included in the state of the art. In general terms, “state of the art” is what is made available to the public, anywhere in the world, before the patent filing date.

<sup>5</sup> According to Articles 13 and 14, there is inventive step in an applied for patent if it is not a clear, obvious, ordinary or a vulgar consequence of the state of the art for a technician on the subject.

<sup>6</sup> According to Article 15, there is industrial application if the applied for subject matter can be used or produced in any kind of industry.

methods, for application in human or animal bodies; the whole or part of natural living beings and biological materials found in nature, even if isolated from it, including the genome or germplasm of any natural living being, and any natural biological processes.

According to the Brazilian IP Law, the following subject matters are non-patentable: those which are contrary to morality and safety, public order and health; materials, substances, mixtures, elements or products of any kind, and the modification of their physic-chemical properties, and their processes of production or modification, when resulting from transformation of atomic nucleus; the whole or part of living beings, except transgenic microorganisms that meet the three requirements for patentability, and which are not a mere discovery. (Articles 10 and 18)

#### **vi. Where to register**

National Institute of Industrial Property (“Instituto Nacional de Propriedade Industrial”)

<http://www.inpi.gov.br>

Rua Mayrink Veiga, 9 – Centro  
20090-910 – Rio de Janeiro, RJ  
(55-21) 2139-3000

#### **vii. Basic Costs**

The chart below displays the main official fees due on a patent registration/maintenance process. For a complete cost list of patent services provided by INPI, please check “[Tabela de Retribuições](#)” - available only in Portuguese.

<b>Description of Services</b>	<b>Cost 1</b>	<b>Cost 2</b>
Single Patent Application – for an Invention Privilege, an Utility Model, a Certificate of Addition and for entering the National Phase of PCT	R\$ 200,00	R\$ 80,00
Examination Request for an Invention Privilege (up to 10 claims)	R\$ 500,00	R\$ 200,00
Examination Request for an Invention Privilege (from 11 <sup>th</sup> to the 20 <sup>th</sup> claim)	R\$ 50,00 (each claim)	R\$ 20,00 (each claim)
Examination Request for an Invention Privilege (from 21 <sup>st</sup> to the 30 <sup>th</sup> claim)	R\$75,00 (each claim)	R\$ 30,00 (each claim)
Examination Request for an Invention Privilege (from 31 <sup>st</sup> claim on)	R\$100,00 (each claim)	R\$ 40,00 (each claim)
Examination Request for an Utility Model	R\$ 320,00	R\$ 128,00
Examination Request for a Certificate of Addition	R\$ 160,00	R\$65,00
Complying with an Office Action	R\$100,00	R\$ 40,00
Letter-patent/Certificate of Addition issuance	R\$ 200,00	R\$ 80,00
Annual fee for a pending Invention Privilege	R\$ 250,00	R\$ 100,00
Annual fee for a granted Invention Privilege (from the 3 <sup>rd</sup> to 6 <sup>th</sup> year)	R\$ 660,00	R\$ 265,00

Annual fee for a granted Invention Privilege (from the 7 <sup>th</sup> to the 10 <sup>th</sup> year)	R\$ 1030,00	R\$ 410,00
Annual fee for a granted Invention Privilege (from the 11 <sup>th</sup> to the 15 <sup>th</sup> year)	R\$ 1390,00	R\$ 555,00
Annual fee for a granted Invention Privilege (from the 16 <sup>th</sup> year on)	R\$ 1690,00	R\$ 675,00
Annual fee for a pending Utility Model	R\$ 170,00	R\$ 70,00
Annual fee for a granted Utility Model (from the 3 <sup>rd</sup> to 6 <sup>th</sup> year)	R\$ 340,00	R\$ 135,00
Annual fee for a granted Utility Model (from the 7 <sup>th</sup> to the 10 <sup>th</sup> year)	R\$ 680,00	R\$ 270,00
Annual fee for a granted Utility Model (from the 11 <sup>th</sup> year on)	R\$ 1020,00	R\$ 410,00
Annual fee for a pending Certificate of Addition	R\$90,00	R\$ 35,00
Annual fee for a granted Certificate of Addition (from the 3 <sup>rd</sup> to 6 <sup>th</sup> year)	R\$ 200,00	R\$ 80,00
Annual fee for a granted Certificate of Addition (from the 7 <sup>th</sup> to the 10 <sup>th</sup> year)	R\$310,00	R\$ 125,00
Annual fee for a granted Certificate of Addition (from the 11 <sup>th</sup> to the 15 <sup>th</sup> year)	R\$ 400,00	R\$ 160,00
Annual fee for a granted Certificate of Addition (from the 16 <sup>th</sup> year on)	R\$ 510,00	R\$ 205,00

*Cost 1: Regular Filing Fees*

*Cost 2: Filing fees with an approximate 60% reduction provided to the following applicants: individuals; individual micro-entrepreneurs; small companies and cooperatives as defined by Law; educational and research institutions; nonprofit organizations and public entities, when related to their own acts.*

Please consider that these amounts do not include attorney fees.

***viii. Granted Rights***

Patent owners have the right to prevent unauthorized third parties from manufacturing, using, offering for sale, selling or importing, for any of the fore mentioned purposes, a product that is the subject of the patent, or a process or product directly obtained by a patented process. The titleholder may, as well, prevent third parties from helping others to practice such acts.

The above rights do not apply in the following circumstances:

- acts privately practiced, without commercial purposes, provided they do not result in prejudice to the economic interests of the patentee;

- acts practiced with experimental purposes, related to studies or to scientific or technological research;
- acts of preparation of a medicine, according to a medical prescription for specific cases, executed by a qualified professional, as well as the medicine thus prepared;
- a product manufactured in accordance with a process or product patent that has been placed on the internal market directly by the patentee or with his/her consent;
- in the case of patents related to living matter, to third parties who use, without economic purposes, the patented product as the initial source of variation or propagation for obtaining other products;
- in the case of patents related to living matter, to third parties who use, place in circulation or commercialize a patented product that had lawfully been introduced in the market by the patentee or his/her licensee, provided that the patented product is not used for commercial multiplication or propagation of the living matter in question;
- regarding patented inventions, to acts performed by non-authorized third parties which aim exclusively the production of information, data and test results directed to procure commerce registration, in Brazil or in any other country, to allow the exploitation and commercialization of the patented product, after the termination of the terms provided for in Article 40. (terms of protection – for further details, please refer to “ix. Loss of Rights”, below)

The patentee has also the right to obtain compensation for the unauthorized exploitation of the patent subject matter, including exploitation which occurred between the publication date and the patent granting date. (Articles 42 and 43)

### **ix. Loss of Rights**

The patent titleholder shall lose rights over the patent:

- On the protection-term expiration date. An Invention Privilege has a 20-year legal term, and an Utility Model, a 15-year legal term, counted from the filing date.
- If there is a waiver by the patentee, without prejudice to the rights of third parties;
- forfeiture<sup>7</sup>;
- non-payment of the annual fee, within the periods provided for in § 2 of Article 84<sup>8</sup> and in Article 87<sup>9</sup>;

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<sup>7</sup> According to Article 80, the patent forfeits, *ex officio*, or at the request of any party with a legitimate interest on it if, after two years from the granting of the first compulsory license, such period has not been sufficient to prevent or correct the abuse of rights or disuse - which have caused such compulsory license - , unless there are legitimate reasons for such patentee's behavior. As per Article 80 first paragraph, a patent will become forfeit when, on the date of application for forfeiture or of the *ex officio* commencement of the forfeiture process, its exploitation has not been initiated.

<sup>8</sup> Article 84 - The applicant and patentee are subject to the payment - of annual fees, as from the beginning of the third year from the date of filing. (...)

§ 2 - The payment should be effected within the first 3 (three) months of each annual period, but may still be effected within the following 6 (six) months, independently of notification, by payment of an additional fee.

<sup>9</sup> Article 87 - A patent application and a patent may be restored, if the applicant or patentee so requests, within 3 (three) months counted from notification of shelving of the application or extinction of the patent, on payment of a specific fee.

- the foreign individual or entity does not maintain a fully qualified attorney residing in Brazil for his/her legal and administrative representation regarding registration issues. (Articles 40 and 78)

## **Industrial Designs**

### ***i. Applicable Laws***

Industrial designs are regulated by Federal Law No. 9279 of May 14, 1996 (IP Law) – Articles 94 to 121 and Articles 187 to 188.

### ***ii. Need for registration***

The ownership of an industrial design is acquired by means of its registration before the National Institute of Industrial Property (INPI). A minor exception applies<sup>10</sup>. Paris Convention priority may be claimed.

The application may be kept confidential for up to a hundred and eighty days, counted from the filing date, upon applicant's request.

Applications are published and automatically granted by INPI, if (i) there is no formal lapse on the documents presented; (ii) there is no moral offence or necessary form to the object to be protected; and (iii) the application has up to twenty variations (for further details on these requirements, please refer to "iv. What can be registered" and "v. What cannot be registered", below).

At any time during the validity of the registration, the titleholder may require INPI's examination of the registered object, as to its novelty and originality. If the examiner finds that the registered design lacks at least one of these aspects, an *ex officio* industrial design nullity request will be filed. (Articles 94, 99, 106, 109, 111 and 112)

### ***iii. Who is eligible to obtain a registration***

The author of the industrial design, or other individuals or companies holding rights over it. (Article 94)

### ***iv. What can be registered***

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<sup>10</sup> Article 110. The person who, in good faith, before the filing or priority date, operated the object in the country, will be guaranteed the right to continue such operation without charge, in the conditions and forms set forth in this Law.

The ornamental form of an object, or set of ornamental lines and colors that can be applied to a product, having a new - i.e., not in the state of the art - and original - combination of known elements included - visual result in its external configuration, which can be used in industrial manufacturing.

The registration will be granted to a single object with up to twenty variations of it, provided that all such variations are for the same purpose, and have the same main distinctive characteristic. (Articles 95, 96, 97 and 104).

**v. What cannot be registered**

Any work which has a purely artistic character to it. IP Law also sets forth that it is not possible to have an industrial design registration for objects which are contrary to morals and morality, or which offend the honor or image of people, or infringe upon the freedom of conscience, belief, worship or religious idea, and feelings worthy of respect and veneration; and also the common form of the object, or a form that is determined essentially by technical or functional needs. (Articles 98 and 100)

**vi. Where to register**

National Institute of Industrial Property (“Instituto Nacional de Propriedade Industrial”)  
<http://www.inpi.gov.br>

Rua Mayrink Veiga, 9 - Centro  
20090-910 – Rio de Janeiro, RJ  
(55-21) 2139-3000

**vii. Basic Costs**

The chart below displays the main official fees due on an industrial design registration/maintenance process. For a complete cost list of industrial design services provided by INPI, please check “[Tabela de Retribuições](#)” - available only in Portuguese.

Description of Services	Cost 1	Cost 2
Industrial Design Application	R\$ 200,00	R\$ 80,00
Voluntary industrial design examination	R\$ 300,00	-
Complying with an Office Action	R\$ 100,00	R\$ 40,00
Five-yearly fee for the maintenance of the registration	R\$ 320,00	R\$ 130,00

Renewal fee	R\$ 160,00	-
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*Cost 1:* Regular Filing Fees

*Cost 2:* Filing fees with an approximate 60% reduction provided to the following applicants: individuals; individual micro-entrepreneurs; small companies and cooperatives as defined by Law; educational and research institutions; nonprofit organizations and public entities, when related to their own acts.

Please consider that these amounts do not include attorney fees.

### ***viii. Granted Rights***

Industrial design owners may prevent non-authorized third parties from manufacturing, using, offering for sale, selling or importing, for any of the fore mentioned purposes, a product that is the subject of the industrial design. The titleholder may, as well, prevent third parties from helping others to practice such acts.

The above rights do not apply in the following circumstances:

- acts privately practiced, without commercial purposes, provided they do not result in prejudice to the economic interests of the titleholder;
- acts practiced with experimental purposes, related to studies or to scientific or technological research;
- a product that has been placed on the internal market directly by the titleholder or with his/her consent. (Article 109)

### ***ix. Loss of Rights***

The industrial design titleholder shall lose rights over the industrial design if:

- there is a voluntary waiver by the titleholder, without prejudice to the rights of third parties;
- the term of the registration expires. The registration is valid for a period of ten years counted from the filing date, and it is renewable for three successive periods of five years, each;
- lack of payment of the renewal fee when due (please see item above), and the maintenance fee, which shall be paid every five years counted from the application date;

- the foreign individual or entity does not maintain a fully qualified attorney residing in Brazil for his/her legal and administrative representation regarding registration issues. (Articles 108, 119 and 120)

## **Trademarks**

### ***i. Applicable Laws***

Trademarks are regulated by Federal Law No. 9279 of May 14, 1996 (IP Law) – Articles 122 to 173 and Articles 189 to 191. [English version](#) [Portuguese Version](#)

### ***ii. Need for registration***

Trademark rights may only be acquired in Brazil through registration before the National Institute of Industrial Property (INPI). US trademark rights are not recognized in Brazil. Trademark applications are analyzed on a first-to-file basis, taking into consideration any possibly claimed Paris Convention priority. Some minor exceptions apply<sup>11</sup>. (Articles 126, 127 and 129)

### ***iii. Who is eligible to obtain a registration***

For a private entity to obtain a trademark registration on a given product or service, it must be effectively and lawfully engaged in a related activity, being such engagement direct or through companies that it controls directly or indirectly.

For collective marks, only the legal representative of the collectivity is entitled to obtain the registration. Certification marks can be obtained only by persons without direct commercial or industrial interest in the certified product or service (for further information on collective and certification marks, please refer to “iv. What can be registered”, below). (Article 128)

### ***iv. What can be registered***

Any sign which is “visually perceptible” can be registered as a trademark.

When registering such a sign, the applicant may choose from one of the three available types of titles:

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<sup>11</sup> Article 129 Paragraph 1 sets forth that every person who, in good faith, on the date of filing or on the priority date, had been using an identical or similar mark in Brazil, for at least for six (6) months, to distinguish or certify identical, similar or related product or service, will be entitled to precedence of the record. Also, Article 126 establishes that the well-known mark in its field of activity, in the terms of Article 6a (I) of the Paris Union Convention for Protection of Industrial Property, enjoys special protection, whether previously filed and registered in Brazil or not.

- Service and product trademarks - used to distinguish a good or service from others which are identical or similar in nature, but have a different origin;
- Certification marks - to certify the conformity of a product or service with certain standards or specifications;
- Collective marks - to identify products or services by the members of the registering entity. (Article 122 and 123)

**v. *What cannot be registered***

Any sign which has no visual perception on it – such as sent and sound marks – may not be registered.

Brazilian IP Law also forbids the registration of a number of visual signs. To facilitate navigation, such cases have been sorted out by theme:

Public administration: Public, national, foreign or international coats, arms, medals, flags, emblems, badges and official monuments, as well as their names, picture or imitation; the name or symbol of a public entity or agency, when not required by the entity or agency itself; the name or symbol of an official or officially recognized sports, artistic, cultural, social, political, economic or technical event, unless authorized by the competent authority or entity promoting the event; the reproduction or imitation of title, insurance, currency and bank note.

Distinctiveness: isolated letter, number and date, unless if it is presented with enough distinctive features; a generic, necessary, common, vulgar or merely descriptive sign, or that is commonly used to designate a characteristic of the product or service; the nature, nationality, weight, value, quality and time of the good production or the service provision, unless if covered with enough distinctiveness; colors and their names, unless arranged or combined in a peculiar and distinctive way; the necessary, common or ordinary form of a product or packaging, or the one that cannot be separated from a technical effect; technical term used in industry, science and art, which have a relationship with the product or service to be distinguished.

Deceiving signs: the reproduction or imitation of the distinguishing feature of a company name belonging to a third party, when likely to cause confusion; a geographical indication, and its imitation, when likely to cause confusion; signal that induces a false indication of origin, nature, quality or usefulness of the product or service; reproduction or imitation of a signal that has been registered as a collective or certification mark by a third party; civil name or signature, name and patronymic of the family or image, except with consent; pseudonym or well known nickname, individual or collective artistic name, except with consent; literary, artistic or scientific work, as well as the titles which are protected by copyright and are likely to cause confusion or association, except with the consent; imitation or reproduction, in whole or in part, of a registered third party

trademark to distinguish or certify identical or similar product or service; object that is protected by a registered industrial design by a third party; signs that mimic or reproduce, in whole or in part, mark which the applicant clearly cannot be unaware of because of his/her activity.

Other restrictions: word, figure, design or any other sign contrary to the morality or which offends the honor or image of people, or which infringes upon freedom of conscience, belief, religious sentiment, or idea or feeling worthy of respect and veneration; sign or expression used only as a means of propaganda. (Article 124)

#### **vi. Where to register**

National Institute of Industrial Property (“Instituto Nacional de Propriedade Industrial”)  
<http://www.inpi.gov.br>  
 Rua Mayrink Veiga, 9 - Centro  
 20090-910 – Rio de Janeiro, RJ  
 (55-21) 2139-3000

#### **vii. Basic Costs**

The chart below displays the main official fees due on a trademark registration/maintenance process. For a complete cost list of trademark services provided by INPI, please check “[Tabela de Retribuições](#)” - available only in Portuguese.

Since 2006, an electronic filing system for trademarks is operating at INPI under the name “e-marcas”. The use of “e-Marcas” has at least one advantage over the presentation of paper-version petitions: it allows the applicant to pay lower official fees, as indicated in the chart below.

Description of the Service	Track 1		Track 2		Track 3	
	Cost (1)	Cost (2)	Cost (1)	Cost (2)	Cost (1)	Cost (2)
Trademark Application	R\$ 300,00	R\$ 120,00	R\$ 350,00	R\$140,00	R\$ 400,00	R\$ 160,00
Complying with an Official Action	R\$ 60,00	R\$ 25,00	-	-	R\$ 80,00	R\$ 30,00
Presenting an Opposition	R\$ 300,00	R\$ 120,00	-	-	R\$ 400,00	R\$ 160,00
Final Fees	R\$ 630,00	R\$ 250,00	-	-	R\$ 630,00	R\$ 250,00
Renewal Fees	R\$ 900,00	R\$ 360,00	-	-	R\$ 900,00	R\$ 360,00

*Track 1:* Applications submitted through *e-Marcas* and which specification of goods and services is limited to items in the Nice International Classification list.

*Track 2:* Applications submitted through *e-Marcas* in which the applicant freely describes the goods and services to be covered by the brand.

*Track 3:* Petitions submitted in paper forms.

*Cost 1:* Regular Filing Fees under each track.

*Cost 2:* Filing fees with an approximate 60% reduction provided to the following applicants: individuals; individual micro-entrepreneurs; small companies and cooperatives as defined by Law; educational and research institutions; nonprofit organizations and public entities, when related to their own acts.

Please consider that the amounts displayed do not include attorney fees.

To utilize *e-Marcas*, interested parties or their legal representatives must first register at INPI, to receive an electronic ID. Both procedures can be done at <http://www.inpi.gov.br/menu-superior/e-inpi> (available only in Portuguese).

### ***viii. Granted Rights***

The owner of a registered trademark has the exclusive right to use the brand in Brazil. In most cases, this right applies to goods or services which are similar or identical to the goods or services covered in the registration. The only case in which the exclusive use right encompasses all goods and services is when the brand reaches the famous status – for that, it needs to be declared so by a court decision or by an INPI administrative decision.

The titleholder of the trademark registration may assign it, license it, and take any due measure to ensure its integrity and reputation. In assignment agreements, the contract must encompass all registrations and/or applications of identical or similar marks, which identify identical or similar products or services.

On the other hand, the owner of the trademark may not prevent traders or distributors who use distinctive signs of their own to combine them with the brand of the product, for its promotion and marketing. Also, the brand owner may not prevent manufacturers of accessories to use the mark to indicate the destination of their products, nor prevent the free movement of product placed on the internal market, by the titleholder himself/herself, or by others with his/her consent. Finally, the titleholder may not prevent the citation of the mark in speeches, literary or scientific works or any other publication, provided that there is no commercial connotation or prejudice to its distinctive character. (Articles 125, 129, 130, 132 and 135)

### ***ix. Loss of Rights***

The trademark owner shall lose rights over the trademark if:

- the term of the registration expires without the due renewal. Trademarks are registered for ten year terms, counted from the registration date;
- there is a voluntary waiver for the protection over all or some of the goods or services covered by the registration;
- if the registration is forfeited due to lack of use. A request for forfeiture can be filed by any third party with legitimate interest on the brand, five years counted from the registration date, if (i) the trademark use has not been initiated in Brazil yet; (ii) such use has been interrupted for more than five consecutive years; or (iii) the brand has been used with modifications on its original distinctive character. The trademark owner will have the right of response to any forfeiture application, when he/she must present evidence of the trademark use, or justify its lack of use for legitimate reasons.
- if the foreign individual or entity does not maintain a dully qualified attorney residing in Brazil for its legal and administrative representation regarding registration issues. (Articles 133, 142 and 143)

## **Domain Names (.br)**

### ***i. Applicable Laws***

Domain names are regulated by the Ministry of Communications and the Ministry of Science and Technology Inter-ministerial Ordinance N° 147 of May 31, 1995, Federal Decree No. 4829 of September 3, 2003, and Resolutions CGI.br No. 001/2005, of October 21, 2005, CGI.br/RES/2008/008/P of November 28, 2008, and GBI.br/RES/2010/003/P of May 7, 2010.

### ***ii. Need for registration***

The ownership of a domain name is acquired by means of its registration before the Center of Information and Coordination of the Dot BR-NIC .br (“Núcleo de Informação e Coordenação do Ponto BR-NIC .br”)

Applications are analyzed on a first-to-file basis.

### ***iii. Who is eligible to obtain a registration***

Individuals or entities legally represented or established in Brazil, which have a registration at the Treasury Ministry (“Ministério da Fazenda”).

Foreign companies may apply for a “provisional registration”, as long as they present the following documents: (i) Notarized, Legalized and Sworn-in Translated Power of Attorney, granting full representation powers over the domain name to a legal representative legally established in Brazil; (ii) Notarized, Legalized and Sworn-in Translated Declaration of the Company’s Activities, with full contact information on the applying company; (iii) Notarized, Legalized and Sworn-in Translated Declaration of the Company committing to definitely establish its activities in Brazil within 12 months from the application. (Article 6 of the Resolution CGI.br/RES/2008/008/P)

#### ***iv. What can be registered***

“Non-existing” domain names, which are those not already registered by the time the new application is filed.

Domain names that have not been renewed in due course, which have been cancelled under the titleholder’s request, or which have been cancelled due to inaccuracies on the titleholder’s registry, may be registered by means of the “release process”.

The Brazilian Domain Name Authority periodically sets up “release processes”. By means of it, specific time frames are set for all interested candidates to apply for domain names that are no longer valid due to one of the reasons indicated in the above paragraph. When applying as a candidate on the “release process”, the party may indicate if it has a registered trademark or a business name which corresponds to the domain name in question.

If a given domain name receives no application during the “release process”, it will be considered available to any interested party from the end of the “release process” on. If the domain name in question has just one interested candidate, or one amongst all the interested candidates which is also the titleholder of a related trademark or businesses name, such candidate will be notified to present any relevant document to the Domain Name Authority. Afterwards, the candidate will be given the title over the domain name.

#### ***v. What cannot be registered***

It is the applicant’s responsibility to choose a domain name that abides by the Law, which does not induce third party confusion, does not violate third parties rights, that is not an abusive term, that does not symbolize the acronyms of States and Ministries, nor violates any other rule set forth by the Domain Name Authority. (Article 1, 1<sup>st</sup> paragraph of the Resolution CGI.br/RES/2008/008/P)

The domain name registration system will not accept domain names which have less than two and more than twenty-six characters – being the categories .com.br, .edu.br, org.br, etc excluded from this calculation - ; domain names composed only by numbers; domain names which start or finish with and hyphen; domain names that are composed of anything but letters going from “a” to “z”, numbers going from “0” to “9”, an hyphen, or the following signs: à, á, â, ã, é, ê, í, ó, ô, õ, ú, ü, ç.

The system equally does not accept domain names which are equivalent to third party domain names.

Additionally, domain names that have not been renewed in due course, which have been cancelled under the titleholder’s request, or which have been cancelled due to inaccuracies on titleholder’s registry cannot be registered before the “release process” is over (for further information on the “release process”, please refer to “iv. What can be registered”, above).

#### ***vi. Where to register***

Center of Information and Coordination of the Dot BR-NIC .br. (“Núcleo de Informação e Coordenação do Ponto BR-NIC .br”)

<http://www.registro.br>

Av. Nações Unidas nº11.541, 7º andar  
4578-0 – São Paulo, SP  
(55 11) 5509-3500

#### ***vii. Basic Costs***

The chart below displays the main official fees due on a domain name registration/maintenance process. For a complete cost list related to domain names, please check <https://registro.br/dominio/valor.html> (available only in Portuguese).

<b>Description of the Service</b>	<b>Cost</b>
Registration Fee	-
Maintenance fee (for minimum period of 1 year)	R\$ 30,00
Maintenance fee (for minimum period of 4 years)	R\$ 111,00

Please consider that the amounts displayed do not include attorney fees.

#### ***viii. Granted Rights***

The titleholder has the right to have its domain name published and granted to him/her; the right to have its data bases integrally maintained; to have his/her domain name cancelled or transferred when dully requested to the Domain Name Authority; to receive

publication or e-mail notices of the renewal deadline and/or changes on the procedures and functioning of Domain Name Authority fifteen days prior to their implementation, among others.<sup>12</sup>

### ***ix. Loss of Rights***

The domain name owner shall have its registration cancelled:

- if there is a waiver by the titleholder;
- if the maintenance fee is not paid in due course;
- by court order;
- if there is any inaccuracy in the registry of the domain name titleholder. In that case, the titleholder will be notified and will be given fourteen days to correct the problem before the cancellation.
- in case of a “provisional registration”, if the foreign company does not start operating in Brazil within one year (for further information on the “provisional registration”, please refer to “iii. Who is eligible to obtain a registration”, above) (Article 9 of the Resolution CGI.br/RES/2008/008/P)

## **Geographic Indications**

### ***i. Applicable Laws***

Geographic indications (“GIs”) are regulated by Federal Law No. 9279 of May 14, 1996 (IP Law) – Articles 176 to 182 and Articles 192 to 194.

### ***ii. Need for registration***

Registration is not mandatory, but obtaining it will provide GI owners with a relevant document in case of disputes. Registration is particularly and strongly recommended for foreign GIs, which may not be widely known in Brazil.

### ***iii. Who is eligible to obtain a registration***

Producers and service providers set in the geographic area in question. (Article 182)

### ***iv. What can be registered***

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<sup>12</sup> These are set forth in the standard “Contract to Register a Domain Name under “.br”, available at <https://registro.br/dominio/contrato.html> (available only in Portuguese)

Brazilian IP Law sets forth two types of GIs: Indications of origin – geographical name of the country, city, region or locality which has become known as the center of extraction, production or manufacture of a product, or for providing a particular service. Designations of origin - geographical name of the country, city, region or locality that designates a product or service which qualities or characteristics are exclusively or essentially due to the specific geographical environment, including natural and human factors. (Articles 176 to 178)

**v. What cannot be registered**

Geographical names that have become of common use to designate a certain type of product or service. (Article 180)

**vi. Where to register**

National Institute of Industrial Property (“Instituto Nacional de Propriedade Industrial”)  
<http://www.inpi.gov.br>  
Rua Mayrink Veiga, 9 - Centro  
20090-910 – Rio de Janeiro, RJ  
(55-21) 2139-3000

**vii. Basic Costs**

The chart below displays the main official fees due on a GI registration/maintenance process. For a complete cost list of GI services provided by INPI, please check “[Tabela de Retribuições](#)” - available only in Portuguese.

Description of the Service	Cost 1	Cost 2
Indication of Origin Application	R\$ 500,00	-
Designation of Origin Application	R\$ 1800,00	-
Complying with an Office Action	R\$ 100,00	R\$ 40,00
Final Fees	R\$ 1000,00	-

Cost 1: Regular Filing Fees

Cost 2: Filing fees with an approximate 60% reduction provided to the following applicants: individuals; individual micro-entrepreneurs; small companies and cooperatives as defined by Law; educational and research institutions; nonprofit organizations and public entities, when related to their own acts.

Please consider that the amounts displayed do not include attorney fees.

**viii. Granted Rights**

The protection covers the GI name and also the graphical, figurative, and geographical representation of the area.

GI holders may take due measures against those who manufacture, import, export, sell, offer, expose for sale or have in stock product with a false geographic indication. Additionally, measures can be taken against those who use in products, containers, wrappings, tapes, labels, invoices, posters or other means of dissemination or propaganda the GI combined with the words "type", "kind", "gender", "system", "similar", "substitute", "equal" or "equivalent", without displaying the true origin of the product. (Articles 179, 192 and 193)

### ***ix. Loss of Rights***

IP Law does not set a validity term for the GI protection.

Hence, in principle, it will remain in force while the GI features are maintained (see "iv. What can be registered", above), and the name has not become of common use (see "v. What cannot be registered", above).

## **Copyrights**

### ***i. Applicable Laws***

Copyrights are regulated by Federal Law No. 9610 of February 19, 1998 (Copyrights Law). Such law covers both author's rights – which emerge with the creation of literary, artistic or scientific works -; and neighboring rights – rights of performers, producers of phonograms and broadcasting organizations. [English version](#) [Portuguese version](#)

### ***ii. Need for registration***

Copyright protection is independent of registration, being such a formality optional to the person entitled to such right. Nevertheless, a Certificate of Registration will provide rights holders with a relevant document in case of disputes. With the registration, their authorship is presumed, if there is no evidence in contrary. (Articles 18 and 19)

### ***iii. Who is eligible to obtain the rights***

The author, that is, the natural person who created the work.

The person who adapted, translated, arranged or orchestrated a work which has passed into the public domain is also considered an author, but he/she may not object

to any other independent adaptation, arrangement, orchestration or translation of the same work under public domain.

Co-authorship is allowed, but those who have merely assisted the author in producing the work by reviewing it, bringing it up to date, or by supervising or directing its publication or presentation in whatever form will not be considered as co-authors.

In audiovisual works, those who have developed the scenario or the literary, musical or dramatic-musical subject matter, the director, and the creators of the drawings used in cartoons are considered the co-authors. (Articles 11, 14, 15 and 16)

#### ***iv. What can be protected***

Creations of the mind, whatever their mode of expression or medium, such as: the texts of literary, artistic or scientific works; lectures, addresses, sermons and other works of the same kind; dramatic and dramatic-musical works; choreographic and mimed works which stage performance is organized in writing or otherwise; musical compositions with or without lyrics; audiovisual works, with or without accompanying sounds, including cinematographic works; photographic works and other works produced by a process analogous to photography; drawings, paintings, engravings, sculptures, lithographs and works of kinetic art; illustrations, maps and other works of the same kind; drafts, mock-ups and three-dimensional works relating to geography, engineering, topography, architecture, park and garden planning, stage scenery and science; adaptations, translations and other transformations of original works, presented as new intellectual creations; computer programs (for specific information on those, please refer to “G - Computer Software”, below); collections or compilations, anthologies, encyclopedias, dictionaries, databases and other works which, by virtue of the selection, coordination or arrangement of the subject matter, constitute intellectual creations<sup>13</sup>, a copy of a three-dimensional work made by the creator of the said work; the title of an intellectual work, provided that it is original and not liable to be confused with that of a work of the same nature disclosed earlier by another author.

In the field of science, protection shall be conferred on the literary or artistic form of the work, but it shall not cover its scientific or technical content. (Articles 7, 9 and 10)

#### ***v. What cannot be protected***

The following are excluded from copyright protection:

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<sup>13</sup> In this case, the protection shall not extend to the information or the contents of the document in itself.

- ideas, normative procedures, systems, methods or mathematical projects or concepts as such;
- diagrams, plans or rules for performing mental acts, playing games or conducting business;
- blank forms intended for completion with scientific or other information, and the instructions appearing thereon;
- the texts of treaties or conventions, laws, decrees, regulations, judicial decisions and other official enactments;
- information in common use such as that contained in calendars, diaries, registers or subtitles;
- names and titles in isolation;
- the industrial or commercial exploitation of the ideas embodied in works. (Article 8)

***vi. Where to register***

Literary Works

[Copyrights Office of the National Library Foundation \(EDA – “Escritório de Direitos Autorias da Fundação Biblioteca Nacional”\)](#)

Rua da Imprensa nº 16, 12º andar - sala 1205  
20030-120 - Centro - Rio de Janeiro - RJ  
(55 21) 2220-0039 or (55 21) 2262-0017

Musical Works

[School of Music of the Federal University of Rio de Janeiro \(“Escola de Música da Universidade Federal do Rio de Janeiro”\)](#)

Rua do Passeio, 98 - Lapa  
20021-290 Rio de Janeiro - RJ  
(55 21) 2221-7382

Art Works

[School of Fine Arts of the Federal University of Rio de Janeiro \(“Escola de Belas Artes da Universidade Federal do Rio de Janeiro”\)](#)

Av. Ipê, 550  
Prédio da Reitoria, sala 723  
Cidade Universitária - Ilha do Fundão  
21941-590 Rio de Janeiro - RJ  
(55 21) 2598-1653 or 2598-1654

Engineering, Architectural and Agronomical Works

Federal Council of Engineering, Architecture and Agronomy (CONFEA – “Conselho Federal de Engenharia, Arquitetura e Agronomia”)

SEPN Quadra 508, Bloco B – Ed. Adolfo Morales de Los Rios Filho  
70740-542 Brasilia - DF  
(55 61) 3348-3700

*Applications for registration shall be forwarded to CONFEA through its Regional Councils (CREA).*

**vii. Basic Costs**

The chart below displays the main official fees due on copyright application:

Type of Art	Cost	Link to complete cost list
Literary Works	R\$ 20,00 (natural person) or R\$40,00 (entity)	<a href="http://www.bn.br/portal/arquivos/pdf/tabela.pdf">http://www.bn.br/portal/arquivos/pdf/tabela.pdf</a>
Musical Works	R\$ 15,00	<a href="http://www.musica.ufrj.br/index.php?option=com_content&amp;view=article&amp;id=97&amp;Itemid=129">http://www.musica.ufrj.br/index.php?option=com_content&amp;view=article&amp;id=97&amp;Itemid=129</a>
Art Works	R\$ 80,00	<a href="http://www.eba.ufrj.br/index.php?option=com_content&amp;task=blogsection&amp;id=5&amp;Itemid=55">http://www.eba.ufrj.br/index.php?option=com_content&amp;task=blogsection&amp;id=5&amp;Itemid=55</a>
Engineering, Architectural and Agronomical Works	R\$ 120,00	<a href="http://normativos.confea.org.br/ementas/visualiza.asp?idEmenta=501&amp;idTipoEmenta=5&amp;Numero=">http://normativos.confea.org.br/ementas/visualiza.asp?idEmenta=501&amp;idTipoEmenta=5&amp;Numero=</a>

**viii. Granted Rights**

There are two sets of granted rights: moral and economic rights.

Moral rights of the author encompass the following rights:

- to claim authorship of the work at any time;
- to have his/her name, pseudonym or conventional sign indicated or announced, as that of the author, when the work is used;
- to keep the work unpublished;
- to ensure the integrity of the work, by objecting to any modification or any act liable in any way to have an adverse affect on the work, or that can be prejudicial to his/her reputation or honor as author;
- to amend the work either before or after it has been used;

- to withdraw the work from circulation or to suspend any kind of use that has already been authorized, when the circulation or use of the work is liable to have an adverse affect on the reputation or image of the author;
- to have access to the sole or a rare copy of the work that is lawfully in a third party's possession, with a view to preserving the memory thereof, by means of a photographic, audiovisual, or similar process, in such a way that the least possible inconvenience is caused to the possessor of the work, who shall, in any event, be indemnified for any damage or prejudice suffered.

In an audiovisual work, the director shall exercise the moral rights. The moral rights are inalienable and irrevocable. Performers enjoy the moral rights of integrity and authorship of their performances.

Economic rights are the exclusive rights of using, deriving benefit, and disposing of the work. Such rights include, but are not limited to, the right to prevent non-authorized third parties to do reproductions publications, adaptations, and translations etc. of the work.

The right to exploit writings published in the daily or periodical press, with the exception of signed articles, and those containing a reserved rights notice, belong to the publisher, unless otherwise agreed. The author of an original manuscript, that is no longer the legal possessor of his/her work, has the irrevocable and inalienable right to collect a minimum of five per cent of any gain in value that may derive in each resale of the original work.

Unless otherwise provided for in the pre-nuptial contract, the author's economic rights shall remain his/her exclusive property, with the exception of the revenue derived from the work's exploitation.

The economic rights in collective works, as a whole, shall belong to the organizer.

Broadcasting organizations shall have the exclusive right to authorize or prohibit the retransmission, fixation and reproduction of their broadcasts, and the communication of those broadcasts to the public, by television, in public places, without prejudice to the rights of the owners of the intellectual property embodied in the programs.

Some limitations to copyrights apply. The titleholder may not prevent third parties from:

- the reproduction (a) of news or informative articles, published in the daily or periodical press, with a mention of the author's name, if the article is signed, and with the indication of the publication from which the work has been taken; (b) of speeches given at public meetings of any kind, in newspapers or magazines; (c) of portraits or other forms of image representation, produced on commission, when the reproduction is done by the owner of the commissioned subject matter, and the person represented or his/her heirs have no objection to it; (d) of literary, artistic or scientific works for the exclusive use of the visually impaired, either in Braille or by means of another process using a medium designed for such users, provided that the reproduction is done without profit purpose;

- the reproduction in one copy of short extracts from a work, for the private use of the copier, provided that it is done by him/her and without profit purpose;

- the quotation in books, newspapers, magazines or in any other media, of portions of a work, with the purposes of study, criticism or debate, to the extent justified by the purpose, provided that the author is named and the source of the quotation is given;

- note taking in the course of classes given in educational establishments, by the persons for whom classes are intended, being their complete or partial publication prohibited without the express prior authorization of the person who gave the class;

- the use of literary, artistic or scientific works, phonograms and radio and television broadcasts in commercial establishments for the sole purpose of demonstrating to customers the reproduction equipments, provided that said establishments markets the materials or equipment that make such use possible;

- stage and musical performance, when carried out in the family recess or exclusively for teaching purposes in educational establishments, and when devoid of any profit purpose;

- the use of literary, artistic or scientific works as evidence in judicial or administrative proceedings;

- the reproduction of short extracts from existing works in any new work, regardless of their nature - or of the whole work, in the case of a work of three-dimensional art -, as long as the reproduction is not in itself the main subject matter of the new work, and does not jeopardize the normal exploitation of the work reproduced, nor unjustifiably damages the author's legitimate interests.

- paraphrases and parodies, if they are not the actual reproduction of the original work, and are not in any way derogatory to it.

- works permanently located in public places may be freely represented by painting, drawing, photography and audiovisual processes. (Articles 17, 22, 24, 25, 27, 28, 29, 36, 38, 39, 46, 47, 48, 92 and 95)

### ***ix. Loss of Rights***

The following moral rights are lost once the author deceases:

- right to amend the work either before or after it has been used;
- right to withdraw the work from circulation or to suspend any kind of use that has already been authorized, when the circulation or use of the work is liable to have an adverse affect on the reputation or image of the author;
- right to have access to the sole or a rare copy of the work that is lawfully in a third party's possession, with a view to preserving the memory thereof, by means of a photographic, audiovisual, or similar process, in such a way that the least

possible inconvenience is caused to the possessor of the work, who shall, in any event, be indemnified for any damage or prejudice suffered.

The author's economic rights shall be enforceable for a period of seventy years counted from the first day of January of the year following his/her death. This term is also applicable for posthumous works.

If the work was produced by co-authorship and it is not divisible, the term of protection shall be calculated from the death of the last surviving co-author.

The economic rights in audiovisual and photographic works shall be enforceable for a period of seventy years from the first day of January of the year following that of their disclosure. Also, in the following cases, economic rights no longer/do not apply:

- the author deceases without heirs;
- in works of unknown authors, subject to the legal protection of ethnic and traditional lore.

The term of protection of neighboring rights is seventy years from the first day of January of the year following the fixation of the phonogram, the transmission of the broadcasts for broadcasting organizations, and of public performance in other cases.

The titles of periodical publications, including newspapers, shall be protected for a period of one year from the publication of its last issue, except in the case of annual publications, in which case the period of remaining protection shall be of two years. (Articles 10, 24, 41, 42, 44, 45 and 96)

## **Computer Software**

### ***i. Applicable Laws***

Computer software, or computer programs, are regulated by Federal Law No. 9609 of February 19, 1998 (Computer Software Law), Federal Law No. 9610 of February 19, 1998 (Copyrights Law), and Federal Law No. 9279 of May 14, 1996 (IP Law) – Article 10, and Articles on Patents, when applicable (for this later case, please refer to “A - Patents”, above). [English version](#) [Portuguese version](#)

### ***ii. Need for registration***

Registration is not mandatory, but obtaining it will provide software creators with a relevant document in case of disputes. With the registration, their authorship is presumed, if there is no evidence in contrary.

The portions of the program and other data which characterize the software as an independent creation, and which are displayed in the application, are confidential in

nature and may not be disclosed except by court order or by the author's request.  
(Articles 2 and 3 of the Computer Software Law)

### **iii. Who is eligible to obtain a registration**

Any person or entity may file a registration. In case of entities, since they cannot create computer software independently, a document binding them to the creator, or an assignment document, must be submitted along with the application.

### **iv. What can be registered**

According to the law, what is considered computer software and can be protected as such is the expression of an organized set of instructions in natural or codified language, contained in a physical support of any kind, which use is necessary in automated machines for processing information, devices, or peripheral equipment, based on digital technology or similar, so that they work in the manner and for the pre-established purposes. (Article 1 of the Computer Software Law)

### **v. What cannot be registered**

According to IP Law, computer programs *per se* cannot be registered as *patents*. Nevertheless, INPI has considered patentable certain objects (equipments/systems/processes) that include computer programs and, as a whole, show a new technical effect, but cannot be treated as a software in themselves. For such cases, patent law applies. On the other hand, for computer programs *per se*, the Computer Software Law applies.

### **vi. Where to register**

National Institute of Industrial Property ("Instituto Nacional de Propriedade Industrial")  
<http://www.inpi.gov.br>  
Rua Mayrink Veiga, 9 - Centro  
20090-910 – Rio de Janeiro, RJ  
(55-21) 2139-3000

### **vii. Basic Costs**

The chart below displays the main official fees due on computer program registration/maintenance process. For a complete cost list of software services provided by INPI, please check "[Tabela de Retribuições](#)" - available only in Portuguese.

<b>Description of the Service</b>	<b>Cost 1</b>	<b>Cost 2</b>
Applications Fee for Computer Programs in electronic format (CD/DVD)	R\$ 300,00	R\$ 120,00
Research on database by	R\$ 50,00	-

object (title holder, author, title, filling date, etc)		
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Cost 1: Regular Filing Fees

Cost 2: Filing fees with an approximate 60% reduction provided to the following applicants: individuals; individual micro-entrepreneurs; small companies and cooperatives as defined by Law; educational and research institutions; nonprofit organizations and public entities, when related to their own acts.

**viii. Granted Rights**

The IP protection regime for software is identical to the one established by the Copyrights Law for literary works (please refer to “viii. Granted Rights” under the “Copyrights”, above).

Nevertheless, provisions relating to moral rights do not apply to computer software, except that, at any time, the author will have the right to claim the paternity of the software, and he/she has the right to oppose unauthorized changes, when they involve distortion, mutilation or other modification of the computer program which adversely affects his/her honor or reputation.

The titleholder also has the exclusive right to authorize or forbid the software’s commercial leasing, observing that this right shall not be exhausted by the sale, licensing or any other form of transfer of a software copy.

On the other hand, IP rights over computer software are not infringed if:

- a third party makes a single copy of a legally purchased copy, provided it is intended to be a safeguard copy or for electronic storage, in which case the original will be the safeguard;
- a third party quotes the software in part, for educational purposes, provided that the computer program and the owner of its rights are identified;
- there is a similarity of the software to a preexisting other, when such similarity happens due to their functional and implicational characteristics, or because they comply with the same normative and technical standards, or because of a limitation on alternative forms for its expression;
- there is an integration of the software, keeping its essential features, to an application or operating system, technically essential to the needs of the user,

provided it is for the exclusive use of those who made such integration. (Articles 2 and 6 of the Computer Software Law)

### ***ix. Loss of Rights***

Protection is given for a period of fifty years, counted from the first day of January of the subsequent year of its publication or, failing that, of its creation. (Article 2 of the Computer Software Law)

## **Plant Varieties**

### ***i. Applicable Laws***

Plant Varieties are regulated by Federal Law No. 9456 of April 25, 2007 ([Plant Variety Protection Law](#)).

### ***ii. Need for registration***

A plant variety protection is acquired by means of its registration before the National Service of Plant Variety Protection (SNPC). The application will be published up to sixty days from its filing date. (Articles 2 and 16)

### ***iii. Who is eligible to obtain a registration***

The person or entity who has obtained the new plant variety, or his/her heirs, successors or assignees, upon presentation of the relevant document(s).

When the obtaining process is conducted by two or more persons, in cooperation, the protection may be applied for by the group or individually, as long as the name and qualification of each party involved is disclosed. (Article 5).

### ***iv. What can be registered***

A new plant variety or an essentially derived variety of any genus or species is eligible for protection.

A plant variety can also be registered, even if it does not meet the mentioned standards, but has been offered for sale before the date of the application, if the two following conditions are met: (a) the application for protection is submitted within 12 months from the time limits set by the SNPC – the entity sets a different time limit for each vegetal species; (b) the first commercialization of the plant variety has not occurred more than ten years before the application date. In this case, the protection is limited in scope and time. Regarding the scope limitation, it will be effective only for the purpose of use of the

plant variety to obtain essentially derived varieties. As for the time limitation, it will be protected only for the remaining period of protection of the specific plant variety, being the reference date the one of the first commercialization (for information on period of protection, see “viii. Loss of Rights”, below). (Article 4)

**v. Where to register**

National Service of Plant Variety Protection (“Serviço Nacional de Proteção de Cultivares”)

Esplanada dos Ministérios - Bloco D - Anexo A - Sala 251

Brasília - DF - Brasil

(55 61) 3218-2547 / 3218-2549

**vi. Basic Costs**

The chart below displays the main official fees due on plant variety registration/maintenance process. For a complete cost list of plant variety services please visit: [SNPC](#), (available only in Portuguese).

<b>Description of the Service</b>	<b>Cost</b>
Application Fee	R\$ 200,00
Provisional Certificate of Protection	R\$ 600,00
Annual Maintenance Fee	R\$ 400,00*

Please consider that the amounts displayed do not include attorney fees. For further information on the Provisional Certificate and the annual maintenance fee, please check “viii. Loss of Rights”, below.

**vii. Granted Rights**

The protection covers the material for reproduction or vegetative multiplication of the whole plant.

The titleholder will have the right to make the commercial reproduction of the plant in Brazil, excluding non-authorized third parties from conducting the production for commercial purposes; and for offering for sale the propagating material of the plant variety.

On the other hand, the titleholders of a plant variety protection may not prevent a third party to take any of the following actions:

- reserve and plant seeds for their own use, in self-owned business or establishment owned by another party, which the planting party possesses;

- use or sell the product of his planting as food or raw material, as long as it is not for reproductive purposes;
- use the plant variety as source of variation in genetic breeding or in scientific research<sup>14</sup>;
- if the small rural producer<sup>15</sup> multiplies seeds for donation or exchange with other small rural producers, in the context of funding programs to support small rural producers conducted by public agencies, or by non-governmental organizations authorized by the government.

For sugar-cane varieties, specific and more restrictive rules on the limitations of the titleholders' rights apply. (Articles 9 and 10)

### ***viii. Loss of Rights***

The plant variety owner shall lose rights over the plant variety if:

- the legal term of protection expires. The plant variety protection is effective from the granting date of the Provisional Certificate of Protection<sup>16</sup>, for a period of 15 years. For vines, fruit trees, forest trees and ornamental trees, the protection term is 18 years;
- the voluntary waiver of the titleholder, without prejudice to third parties' right;
- the cancellation of the Certificate of Protection under any of the provisions of Article 42<sup>17</sup>. (Articles 11 and 40)

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<sup>14</sup> Article 10 - §2 For the purposes of this item:

I –if the repeated use of the protected variety is essential to produce the new plant variety or hybrid, the holder of the second plant variety has to obtain the permission of the owner of the first protected variety;

II – if a plant variety may be characterized as essentially derived from a protected plant variety, its commercial use is subject to the authorization of the holder of the protection of this protected plant variety.

<sup>15</sup> Article 10 - § 3 (...) To qualify as small producer, it is necessary to meet all the following requirements:

I - explore parcel of land as its owner, settler, tenant or partner;

II - keep up to two permanent employees, being allowed the recourse to the aid of others, when the seasonal nature of agricultural activity so requires;

III - has not, under any title, property area of more than four tax modules, measured according to the Laws in force;

IV - has at least eighty percent of his/her gross annual income from agriculture or extractive exploitation; and

V - live at the property or in rural or urban center nearby.

<sup>16</sup> Article 19. Once the application is published, provisional protection will be granted, under the Provisional Certificate of Protection, ensuring the holder the right of commercial exploitation of the plant variety, under this Law.

<sup>17</sup> Article 42. The Certificate of Protection will be cancelled "ex officio" or by means of an application by any person with legitimate interest in any of the following cases:

I - for the loss of homogeneity or stability;

II - in the absence of payment of the annuity – due from the year following the issuance of the Certificate of Registration on (Article 26);

III - if the requirements of Article 49 are not met - within thirty days from the application date, the required certificates relating to this Law must be provided, as long as they are regularly required and the due collections paid;

III - if the requirements of Article 50 are not met - the natural or legal person domiciled abroad must appoint and maintain an

## **Technology Transfer Contracts**

### ***i. Applicable Laws***

Federal Law No. 9279/96 (IP law), Federal Law No. 3470/58 (Income Tax), Federal Law No. 4131/62 (Use of foreign capital and remittances of values to other countries), Federal Law No. 4506/64 (Taxes due over proceeds of any nature), Federal Law No. 8383/91 (Income Tax), Federal Law No. 8661/93 (Tax incentives for technological improvement for industry and agriculture), Federal Law No. 8884/94 (Prevention and repression of violations against the economic order), Federal Law No. 8955/94 (Franchising Contracts), Central Bank Circular Letter No. 2819/98 and Decree No. 3.000/99.

### ***ii. Need for registration***

For a full economic implementation of technology transfer contracts in Brazil, they must be filed with INPI (for further information on what qualifies as a technology transfer contract, please refer to “iv. What can be registered”, below). Such recordation will enable the remittance of royalties to foreign countries, when applicable, and the tax deduction of the amounts paid as royalties by the local company.

The registration also sets constructive public notice of the agreement. (Articles 61, 62, 68, 121, 139, 140 and 211 of the IP Law, Central Bank Circular Letter No. 2819/98 and Decree No. 3.000/99).

### ***iii. Who is eligible to obtain a registration***

The application for recordation may be filed either by the assignee or the assignor of the contract.

### ***iv. What can be registered***

INPI records contracts involving technology transfer, which are understood to be:

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attorney, duly qualified and domiciled in Brazil, with powers to represent him/her, and receive administrative notifications and judicial summons, from the application date and during the validity of the same, under penalty of revocation of the rights of protection;

IV - the failure of keeping the specimen alive, as stated in Article 22 – Once the Certificate of Protection or the Provisional Certificate of Protection is granted, the holder is obliged to maintain, during the period of protection, a living specimen of the protected plant variety at the disposal of the responsible body, under penalty of cancellation of the certificate if, notified to do so, the titleholder does not submit the specimen within sixty days;

V – there is evidence that, after marketing, adverse impact to the environment or human health has been caused by the plant variety.

- the licensing of rights, that is, exploitation of patents and industrial designs, and the use of trademarks;
- the acquisition of technological knowledge, that is, supply of technology and provision of technical and scientific assistance;
- franchising contracts. (Articles 139, 140 and 141 of the IP Law, and Normative Act No. 135/97)

**v. *What cannot be registered – limitations to registrable contracts***

Agreements on certain specialized technical services do not need to be registered at INPI, for they are not considered to involve technology transfer.

INPI's website provides certain examples of those cases: support of purchase contracts, including logistics services; contracts on products processing; approval and certification of quality of Brazilian products for export; consultancy in the financial, commercial, legal, and participation on biddings fields; studies of economic feasibility; marketing services, software maintenance services without visit of technicians to Brazil, provided, for example, through a help-desk, etc. (Article 211 of the IP Law).

Concerning registrable contracts, certain limitations apply:

For licensing of rights, the contract must clearly specify the number of the applied for/registered IP rights to be licensed, if the license is exclusive or not, and if sublicenses are allowed. The payment of royalties will only be possible after the IPR registration is granted by INPI. Once such protection is granted, interested parties shall require an adjustment to the Registration Certificate, enabling the retroactive payment of royalties, from the inception of the license.

In case of linked companies, when one of them owns the majority of the other's capital, there are specific limits on tax deductibility, set by Law.

The contract registration period is linked to the IPR protection period.

For franchising contracts, it is necessary that the parties clearly state in their contract the applied for/registered trademarks involved, if it is an exclusive agreement or not, if subfranchising is allowed, and if services will be provided. The franchising contract registration period is linked to the trademark registration period.

For acquisition of technological knowledge, two situations apply:

- for supply of technology contracts, it is necessary that the parties clearly indicate the product and/or process, and the industrial sector in which the technology will be applied. In case of linked companies, when one owns the majority of the other's capital, there are legal limits on tax deductibility. In general, these contracts are recorded for a period of 5 years, renewable for an extra 5-year

period. INPI will make its evaluation on the registration timeframe based on the licensee's needs;

- for contracts of provision of technical and scientific assistance, it is necessary that the document to be registered clearly defines the services which will be rendered. The amounts to be paid to the licensor shall be explained based on clear information on the man/hour value, or day value of the technician who will render the service, also providing an estimated total cost for the service. In case of linked companies, when one owns the majority of the other's capital, there are legal limits on tax deductibility. The document will be registered for the foreseen timeframe for the accomplishment of the service, or based on the proofs that the service has already been rendered.

#### **vi. Where to register**

National Institute of Industrial Property ("Instituto Nacional de Propriedade Industrial")  
<http://www.inpi.gov.br>  
 Rua Mayrink Veiga, 9 - Centro  
 20090-910 – Rio de Janeiro, RJ  
 (55-21) 2139-3000

#### **vii. Basic Costs**

The chart below displays the main official fees due related to the registration of technology transfer contracts. For a complete cost list related to technology contracts, please check "[Tabela de Retribuições](#)" - available only in Portuguese.

<b>Description of the Service</b>	<b>Cost 1</b>	<b>Cost 2</b>
Application for Registration of a Know-How Contract	R\$ 1900,00	R\$ 760,00
Application for Registration of a Technical Service Contract	R\$ 1900,00	R\$ 760,00
Application for Registration of a Trademark Use Agreement	R\$ 1900,00*	R\$ 760,00
Application for Registration of a Exploration of Patent Agreement	R\$ 1900,00*	R\$ 760,00
Application for Registration of a Franchise Agreement	R\$1900,00	R\$760,00
Application for Invoice recordation	R\$ 960,00	R\$385,00
Complying with Office Action	R\$ 100,00	R\$40,00

\* Official filling fee for up to 15 IPR registrations and applications. Above this number, an additional amount of R\$ 155,00 (or, in case of Cost 2, R\$ 75,00) will be charged per registration/application.

*Cost 1: Regular Filing Fees*

Cost 2: Filing fees with an approximate 60% reduction provided to the following applicants: individuals; individual micro-entrepreneurs; small companies and cooperatives as defined by Law; educational and research institutions; nonprofit organizations and public entities, when related to their own acts.

Please consider that the amounts displayed do not include attorney fees.

## **IP Enforcement**

### ***i. Applicable Laws***

Federal Decree-Law No. 2848 of December 07, 1940 (Criminal Code), Federal Law No. 9279 of May 14, 1996 (IP Law), Federal Law No. 9610 of February 19, 1998 (Copyrights Law), Federal Law No. 9609 of February 19, 1998 (Computer Software Law), Federal Law No. 11484 of May 31, 2007 (Semiconductor Integrated Circuit Layout Designs Law) and Federal Law No. 9456 of April 25, 2007 (Plant Variety Protection Law).

### ***ii. Authorities***

In 2004, Brazilian Federal Government established the National Council to Combat Piracy and Crimes against Intellectual Property – CNCP (“Conselho Nacional de Combate à Pirataria e Delitos contra a Propriedade Intelectual”), under the Ministry of Justice. The Council coordinates national actions on the fight against IPR crimes, and works in cooperation with representatives from both public and private sectors. For further information, please visit CNCP’s website at:

<http://www.mj.gov.br/combatepirataria>

In the Federal sphere, three different agencies are directly involved on the IPR enforcement work:

- Federal Revenue (“Receita Federal do Brasil”) – *Obs: Customs Authorities are within Federal Revenue.* Contacts in each State can be found at by visiting the following website on “[Unidades de Atendimento.](#)”
- Federal Police (“Polícia Federal”) – contacts in each State can be found by visiting the following website on “[PF pelo Brasil.](#)”
- Federal Highway Police (“Polícia Rodoviária Federal”) – contacts in each State can be found at by visiting the [Federal Highway Police website:](#)

Additionally, some State Civil Polices have Units dedicated to the IPRs enforcement:

### ***State of Bahia***

Grupo Especializado de Proteção a Propriedade Intelectual (GEPII)  
Departamento de Crimes Contra o Patrimônio (DCCP)  
Praça Treze de Maio, S/N, 1º andar,  
Prédio Sede da Polícia Civil  
40060-300 – Salvador - BA  
(55 71) 3116-6550 / 3116-6551

***Brasília – DF***

Departamento de Atividades Especiais – DEPATE  
depate@pcdf.df.gov.br  
SAI Sudoeste - Bloco A - Edifício Sede  
70610-200 – Brasília - DF  
(55 61) 3362-5713 / 5939 / 5801

***State of Minas Gerais***

Delegacia Especializada de Falsificações e Defraudações  
Av. Nossa Sr.ª de Fátima, n.º 2855,  
Carlos Prates  
30710-020 – Belo Horizonte - MG  
(55 31) 3212-3002 / 3201-2985 / 3201-5892

***State of Pernambuco***

Delegacia Policial de Prevenção e Repressão aos Crimes Contra a  
Propriedade Imaterial  
Rua Imperial, 1770, Bairro de São José  
50090-000 – Recife - PE  
(55 81) 3301-8717 / 3301-8727 / 3301-8754

***State of Rio de Janeiro***

Delegacia de Repressão aos Crimes Contra a Propriedade Imaterial (DRCPIM)  
drcpim@pcerj.rj.gov.br  
Rua do Lavradio, 155 – 3º andar  
20230-070 – Rio de Janeiro - RJ  
(55 21) 3399-3816 / 3399-3817 2332-9981/ 3852-6654 / 2224-4496  
Fax (55 21) 2332-4497

***State of São Paulo***

Delegacia de Propriedade Imaterial - DIG - 1º DEL DIG  
Avenida Zaki Narchi, nº 152, Carandiru  
02029-000 – São Paulo - SP  
(55 11) 6221-3637

All the named police authorities, both in the Federal and State levels, may receive complaints and proceed with temporary seizures of suspect infringing goods.

***iii. Jurisdiction***

IPR cases are judged by the Brazilian Judicial System. The Federal Court of the Second Region has within its jurisdiction any contested decision issued by the National

Institute of Industrial Property (INPI). On the appeal level, such Court has panels specializing in IP matters.

State Courts are in charge of judging IPR infringement cases.

#### ***iv. Penalties***

There are three main sets of applicable penalties: seizure of goods, fine/recovery of damages, and imprisonment. Each of these penalties may be applied to offences against the following IPRs as follows:

Seizure of Goods: patents (Article 201 of the IP Law); trademarks (Articles 198 and 202 of the IP Law); geographic indications (Article 202 of the IP Law); copyrights (Articles 102, 103 and 106 of the Copyrights Law); software (Articles 13 and 14 of the Computer Software Law); plant varieties (Article 37 of the Plant Variety Protection Law).

Fine/Recovery of Damages: patents (Articles 183 to 186 and 197 of the IP Law); industrial designs (Articles 187, 188 and 197 of the IP Law); trademarks (Articles 189, 190 and 197 of the IP Law); geographic indications (Articles 192 to 194 of the IP Law); copyrights and neighboring rights (Article 184 of the Criminal Code and Articles 102, 103, 105, 107, 108 and 109 of the Copyrights Law); software (Articles 12 and 14 of the Computer Software Law); layout designs (Article 54 of the Semiconductor Integrated Circuit Layout Designs Law); plant varieties (Article 37 of the Plant Variety Protection Law)

Imprisonment: one to eighteen months – patents (Articles 183 to 186 and 196 of the IP Law), industrial designs (Articles 187, 188 and 196 of the IP Law), trademarks (Articles 189, 190 and 196 of the IP Law); one to three months – geographic indication (Articles 192 to 194 of the IP Law); three months to four years - copyrights and neighboring rights (Article 184 of the Criminal Code); six months to four years – software (Article 12 of the Computer Software Law); one to six years – layout design (Article 54 of the Semiconductor Integrated Circuit Layout Designs Law).

### **International Treaties**

The following International Treaties on the IP field are currently in force in Brazil: Berne Convention (since February 9, 1922), Madrid Agreement on Indications of Source (since October 3, 1896), Nairobi Treaty (since August 10, 1984), Paris Convention (since July 7, 1884), Patent Cooperation Treaty (since April 9, 1978), Phonograms Convention (since November 28, 1975), Rome Convention (since September 29, 1965), Strasbourg Agreement (since October 7, 1975), UPOV Convention – 1978 Act (since May 23, 1991) and the WIPO Convention (since March 20, 1975).

## **Available Assistance**

- **National Intellectual Property Rights Coordination Center**

The National Intellectual Property Rights Coordination Center (IPR Center) stands at the forefront of the U.S. Government's response to global intellectual property theft. The IPR Center serves as the clearinghouse for investigations into counterfeiting and piracy -- crimes that threaten the public's health and safety, the U.S. economy, and our war fighters.

The IPR Center encourages members of the general public, industry, trade associations, law enforcement and government agencies to report violations of intellectual property rights.

Homeland Security Investigations  
National IPR Coordination Center  
2451 Crystal Drive, STOP 5105  
Arlington, VA 20598-5105

Online referrals: <http://www.ice.gov/iprcenter/iprreferral.htm>

Email: [IPRCenter@dhs.gov](mailto:IPRCenter@dhs.gov)

Phone: 1-866-IPR-2060

- **International IPR Advisory Program**

The U.S. Department of Commerce, in cooperation with the American Bar Association's (ABA) Section of International Law and the Coalition Against Counterfeiting and Piracy, has established the International IPR Advisory Program, which allows American small and medium size enterprises (SMEs) to receive a free, one-hour consultation with an experienced volunteer attorney regarding the protection of intellectual property rights (IPR) in Brazil and other foreign countries.

To request a free consultation with a volunteer attorney visit the ABA Section of International Law web site: [www.abanet.org/intlaw/intlproj/iprprogram.html](http://www.abanet.org/intlaw/intlproj/iprprogram.html).

For questions on the Program please contact the International Projects Coordinator, at [introl@staff.abanet.org](mailto:introl@staff.abanet.org) or 202-662-1675.

- **U.S. Mission in Brazil**

The US Embassy and Consulates in Brazil are available to assist on IPR issues. For guidance on such matters or additional information, please contact:

Office of the Regional IPR Attaché  
U.S. Consulate General  
Av. Presidente Wilson, 147  
20030-020 Rio de Janeiro – Brazil  
Phone: (55 21) 3823-2497  
Email: [usptobrazil@trade.gov](mailto:usptobrazil@trade.gov)

- **Additional Resources**

For information on available U.S. government resources for protecting and enforcing IPR abroad, please visit: <http://www.stopfakes.gov> or call: 1-866-999-HALT.

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