

BRAZIL

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Brazil remain on the Watch List in 2025.¹

Executive Summary: While Brazil continued to enhance its enforcement efforts against a wide variety of piracy operators, and in some cases exemplified best practices to its Latin American neighbors, Brazil's withdrawal of commitments to ratify and implement the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties), proposals that interfere with Brazilian audiovisual and digital music markets, existing and proposed burdensome taxes, sheer level of rampant piracy across creative sectors, and delays implementing critical online anti-piracy tools unfortunately overshadow many of last year's successes.

IIPA again commends Brazil's excellent progress on a number of enforcement actions against online piracy this past year, including the seventh phase of Operation 404, which took down roughly 689 websites and applications providing pirated content across Brazil. Last year's campaign also included a growing number of local and regional partners, including for the first time law enforcement officials from Paraguay. 2024 also witnessed the first Operation 404-related prison sentence where an Internet protocol TV (IPTV) operator was sentenced to more than five years in prison. While the number of piracy actions prosecuted by Brazilian federal authorities continues to increase, most only take place during the phases of Operation 404. After five years of successful Operation 404 campaigns, the Government of Brazil should now implement more consistent and continuous anti-piracy operations throughout the year. Brazilian enforcement agencies, including during Operation 404 phases, should also target piracy operations that offer hacking tools, circumvention devices, and mod installation services, and that develop tools that specifically support video game piracy and circumvention of technological protection measures (TPMs). Additionally, while São Paulo DA's cybercrime unit, *CyberGaeco*, continues to support the video game industry by successfully targeting circumvention devices, and the National Telecommunications Agency (ANATEL) significantly increased efforts to block pirate pay-TV channels and seize piracy devices (PDs) this year, the Brazilian Film Agency (ANCINE) decision to delay the implementation of its now codified site-blocking authority with respect to online services, granted in January 2024 by Law No. 14,815/2024, is a growing concern for rights holders. Additional political support and increased human and financial resources are also needed across Brazil's criminal, civil, and administrative IP enforcement agencies at all levels, as well as efforts to improve public-private and private-private partnerships that are necessary to tackle Brazil's piracy challenges.

Brazil's failure to ratify and implement the WIPO Internet Treaties is one of the primary concerns for rights holders in all of Latin America, as Brazil is one of the largest markets in the region for all creative industries. Moreover, the Federal Administration's recent decision to withdraw the WPPT's ratification process before the Brazilian Congress was an especially troubling development as the 30th anniversary of these treaties will be celebrated in 2026. Furthermore, IIPA members remain extremely concerned about Brazil's 2019 proposed amendments to the Copyright Act that still remain under consideration. Under the last version of the text publicly available, the proposed bill would create new royalty remuneration obligations for advertisements and news material, a new collective royalties remuneration for any on-demand distributions, a new remuneration right for holders of copyright and related rights in addition to the exclusive right that they already enjoy, and problematic definitions of communication to the public and public performance. This 2019 proposal was put forward without proper consultation with stakeholders or a meaningful impact assessment as to its effect on the local music and audiovisual markets. It is therefore essential for Brazil to reassess its latest copyright amendment proposals and instead ratify and fully implement the WIPO Internet Treaties to ensure its legal framework is interpreted in line with global standards. Moreover, in late 2024, Senator Randolfe

¹ For more details on Brazil's Special 301 history, see previous years' reports at <https://iipa.org/reports/reports-by-country/>. For the history of Brazil's Special 301 placement, see <https://www.iipa.org/files/uploads/2025/01/Appendix-C-2025.pdf>.

Rodrigues introduced bill # 4968/2024, proposing a similar wording to the aforementioned 2019 Copyright Act reform. With this legislative activity, IIPA expects discussions regarding additional remuneration rights and other concerning topics will gain renewed traction in 2025.

Regarding market access barriers, unfortunately, taxes on video game consoles and accessories continue to be significant, and IIPA encourages Brazil to reduce the burden on this sector of the economy as it completes overall tax reform. IIPA also continues to be concerned about potential new taxes and regulation for video-on-demand (VOD) services, such as permitting accounting sharing, as well as digital services taxes (DSTs). Moreover, it is important that Brazil does not implement network fees.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Support the Ministry of Justice and Public Security's (MJPS) coordination with the Department of Intelligence and Integrated Operations (DIOPI) to establish a clear and on-going copyright enforcement structure to expand on the success of Operation 404's multiple waves.
- Ensure that ANCINE implements Article 3 of Federal Law No. 14,815/2024 and provides administrative enforcement against the illegal transmission of audiovisual content.
- Ensure that ANATEL continues deploying administrative blocking for piracy of pay-TV channels and preventing the importation and distribution of PDs.
- Encourage state courts nationwide to assign specialized courts or judges to uniformly handle IP cases and implement a long-term national program to train judges, prosecutors, and police officers.
- Ensure the *Conselho Nacional de Combate à Pirataria* (National Council to Combat Piracy, CNCP) and the Interministerial Group on Intellectual Property (GIPI) continue to have strong political support and greater human and financial resources to engage in cross-industry efforts against copyright infringement and online piracy.
- Improve border controls against the importation of counterfeit video game hardware, PDs, modified consoles, and circumvention devices.

Legal Reforms

- Ratify and fully implement the WIPO Internet Treaties.
- Reject proposals to introduce new measures that would disrupt the growth of the Brazilian audiovisual and digital music market, such as the unnecessary and ineffective additional remuneration right for holders of copyright and related rights and unclear definitions for the scope of communication to the public and public performance.
- Ensure legislative proposals related to artificial intelligence (AI) meet the standards related to intellectual property (IP) protection set forth by the G7 Hiroshima AI Process.
- Follow through with revisions to the Customs Law to clarify that the retention of counterfeit or any other illegal products by customs authorities does not require a court order.

Market Access

- Enable industry growth by reducing high tariffs and taxes placed on video game products.
- Mitigate imposition of the VOD tax on movies and TV programming delivered on demand and refrain from developing excessively burdensome VOD or digital platforms regulations.
- Reform the collective management organization (CMO) system, while still allowing for rights holders to license music directly.
- In alignment with recommendations from the Organization for Economic Cooperation and Development (OECD), refrain from establishing a digital services tax, which would significantly increase operational costs and act as a market access barrier.
- Refrain from implementing network fees, which are harmful to competition, to network neutrality, and ultimately, to consumers' rights.

ENFORCEMENT

Piracy in Brazil is extensive. At a recent anti-piracy program hosted by the Brazil National Institute of Industrial Property (INPI) in December 2024, INPI President Júlio César Moreira shared the Government of Brazil lost over US\$80 billion in revenue in 2024 due to piracy.² According to the International Federation of the Phonographic Industry's (IFPI's) 2023 Music Consumer Study, the music piracy rate in Brazil stood at 47% of all Internet users—one of the highest in the world. In the same study, 42% of respondents shared they engaged in stream ripping using websites such as *SSYouTube* or *SaveFrom* or through mobile apps such as *SnapTube*, an Android mobile app used by more than one-in-five of all Brazilians to pirate music. Additionally, 25% of respondents said they used cyberlockers such as *4Shared* and *Krakenfiles* and 21% said they used BitTorrent sites such as *The Pirate Bay* and *1337x* to download pirated music. These numbers are slightly lower than reported in previous years. Online piracy (VOD and pay-TV) available through devices, Internet applications, and sites are also a major cause of concern. Reports show that 36.8% of Brazilian households with broadband access consume pirated materials online.³

Digital piracy remains the dominant format for the unauthorized access of video game products in Brazil. In terms of audience and content availability, the two most prevalent formats for video game piracy continue to be linking sites, with an approximately 15% increase on the overall visits to active sights accumulated in Brazil though November, followed by commercial websites (digital counterfeit via game account resale), with an over 48% increase on accumulated monthly visits through November, compared to January of the same year. The usage of BitTorrent sites for video game piracy has increased in 2024 by approximately 25%, the first time there has been an increase since 2022. As such, Brazil's overall picture relative to global video game piracy levels remains bleak. For example, in 2024, Brazil ranked fifth in the world for the number of connections by peers participating in the unauthorized file-sharing of Entertainment Software Association (ESA) member video game titles on public peer-to-peer (P2P) networks (ranking even higher, and first in Latin America, for certain video game titles). By the same metric, Brazil ranked first in the world for unauthorized file-sharing of mobile games, third in the world for pirated console-based games, and fifth in the world for pirated PC-based games. Additionally, preloaded game consoles are considered affordable options among customers given their low prices and the variety of available titles, offering older game titles preloaded in generic hardware consoles, sometimes in thousands of titles per console. These illicit consoles are not stopped by Customs and become available primarily in illegal shops and outlet booths in street markets. Furthermore, particularly damaging to the market for legitimate video game play in Brazil is the proliferation of digital account resales, an unauthorized practice where pirates circumvent protection measures to sell access to a single game account to multiple different users via websites dedicated to this illegal commercial activity. These video game or console accounts are typically loaded with games, in-game items, or enhanced statuses to provide advantages in gameplay.

The increase in digital game piracy is related to the high demand from users and the profitability associated with these illegal operations. Through the use of legitimate and familiar payment intermediaries, site operators are able to maintain the appearance of a supposed legitimate commercial website and mask their illegality to the end user, the success of which encourages the expansion of the illegal website market across the country. Low compliance levels with Know Your Business Customer (KYBC) policies from e-commerce platforms and payment providers facilitate the operation of these commercial websites.

- **Support the Ministry of Justice and Public Security's (MJSP) coordination with the Department of Intelligence and Integrated Operations (DIOPI) to continue to establish a clear and on-going copyright enforcement structure to expand on the success of Operation 404's multiple waves.**

While the overall levels of piracy in Brazil remain high by global standards, enforcement efforts are having a notably positive impact, especially Operation 404 executed by MJSP's cybercrime unit CIBERLAB in coordination with

² See <https://www.gov.br/inpi/pt-br/central-de-conteudo/noticias/inpi-sedia-oficina-regional-sobre-delitos-contr-a-propriedade-intelectual>.

³ See <https://telesintese.com.br/wp-content/uploads/2024/12/Informe-de-Alianza.pdf>.

DIOP. On September 19, 2024, Operation 404 conducted its seventh phase, blocking 675 websites and 14 illegal streaming apps, deindexing content on search engines, removing social media profiles selling or advertising pirated content, conducting 30 search and seizure warrants, and making six arrests in Brazil and three in Argentina. Since Operation 404's inaugural action in November 2019, it has taken down 2,040 websites and 1,377 illicit streaming apps, removed more than 400 social media profiles, and resulted in the arrest of 55 people connected to piracy operations in Brazil and Argentina.⁴ These targets have included commercial digital piracy sites, download sites dedicated to video game piracy, applications with pirated audiovisual content, games, music, and sports events, MP3 download and stream-ripping sites, and more. Equaling its anti-piracy achievements, Operation 404 also succeeds by bringing in new partners including regional neighbors. Besides Brazil, the seventh campaign included Argentina, Peru, the United Kingdom, and, for the first time, Paraguay.⁵ This year also saw the first Operation 404-related prison sentence. In March 2024, based on a 2020 Operation 404 case brought by the Alliance Against Pay Television Piracy (ALIANZA), an IPTV operator was sentenced to prison for five years and four months for copyright violations and crimes against consumers. IIPA commends the Government of Brazil for growing Operation 404 into one of the world's leading online anti-piracy criminal enforcement campaigns.

After five years of successful Operation 404 campaigns, the Government of Brazil should now have the confidence and expertise to implement more consistent and continuous anti-piracy operations throughout the year. Additionally, Brazilian enforcement agencies, including during Operation 404 phases, should also target piracy operations that offer hacking tools, circumvention devices, and mod installation services, and that develop video game emulators and other tools that specifically support video game piracy and circumvention of TPMs. The Government of Brazil should also not overlook the significant work being conducted by the Office of the São Paulo DA's cybercrime unit (CyberGaeco). The success of CyberGaeco, which included the prosecution of more than 35 illegal game sites in 2024 alone, should be supported and encouraged to be replicated in different states by other special cybercrime units.

- **Ensure that ANCINE implements Article 3 of Law No. 14,815/2024 and provides administrative enforcement against the illegal transmission of audiovisual content.**

On January 16, 2024, Brazil enacted Law No. 14,815/2024, Article 3, that empowers ANCINE to “determine the suspension and cessation of unauthorized use of Brazilian or foreign protected works” by “prevent[ing] their issuance, diffusion, transmission, retransmission, reproduction, access, distribution, storage, hosting, exhibition, availability, and any other means that imply copyright infringement.” This law was a welcome development as a potentially powerful anti-piracy tool that rights holders could rely on outside of Operation 404 campaigns to block illicit audiovisual content transmitted through websites, streaming devices, and apps. In addition, Article 3 empowers ANCINE to not only enforce copyrights related to the theatrical industry by blocking pirate streaming sites, but also against camcording at theaters themselves. Unfortunately, ANCINE has yet to issue implementing regulations and this critical tool remains on the sidelines of the fight against piracy.

In the meantime, the lack of enforcement initiatives by the audiovisual content regulator ANCINE to address infringement pose an existing and ongoing risk to the creative industry and to the Brazilian economy and consumers.

⁴ More information on year-by-year Operation 404 campaigns can be found here: <https://www.gov.br/mj/pt-br/assuntos/noticias/operacao-internacional-contra-pirataria-tira-do-ar-675-sites-e-14-aplicativos-de-streaming>.

⁵ The seventh Operation 404 campaign included a number of local and foreign law enforcement agencies and intellectual property (IP) protection associations including Unidad Fiscal Especializada en Investigación de Ciberdelitos (UFEIC), from Argentina; City of London Police – Police Intellectual Property Crime Unit and Intellectual Property Office (IPO), in the United Kingdom; U.S. Department of Justice and Department of Commerce; National Institute for the Defense of Competence and Protection of Intellectual Property (INDECOP), from Peru; Premier League; Alliance for Creativity and Entertainment (ACE); Brazilian Pay Television Association (ABTA); Alliance Against Pay Television Piracy (ALIANZA) – Latin America; National Council to Combat Piracy (CNCP); Association for the Protection of Intellectual and Phonographic Rights (APDIF); Motion Picture Association (MPA) - Latin America; International Federation of the Phonographic Industry (IFPI); Entertainment Software Association (ESA); European Union Intellectual Property Office (EUIPO); and National Directorate of Intellectual Property (DINAPI) and Unidad Especializada en Hechos Punibles Contra la Propiedad Intelectual (Specialized Unit for Crimes Against Intellectual Property) from Paraguay. It also included a number of local law enforcement agencies including the Directorate of Operations and Intelligence (DIOP), the National Public Security Secretariat (SENASP), the Civil Police of Espírito Santo, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Paraná, Pernambuco, Rio de Janeiro, Rio Grande do Sul and São Paulo and the Public Prosecutor's Offices of São Paulo (CyberGaeco) and Santa Catarina (CyberGaeco).

This is especially concerning as online piracy options for VOD continue to evolve and expand. The lack of ANCINE's engagement also hurts the theatrical exhibition sector by diminishing their audiences and the value-chain of movie releases. IIPA strongly encourages ANCINE to fully implement Law No. 14,815/2024, Article 3 and make certain Brazil provides a mechanism that ensures Internet service providers (ISPs) can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities.

- **Ensure that ANATEL continues deploying administrative blocking for piracy of pay-TV channels and enforcing laws preventing the importation and distribution of PDs.**

Audiovisual content piracy continues to impact local and foreign rights holders in Brazil and represents a complex threat to be addressed by enforcement authorities and legislators within the country. The strong approach adopted by the telecommunications regulator ANATEL in 2023 regarding the seizure and site blocking against devices delivering pirated pay-TV channels was a positive development.

IIPA is pleased that ANATEL has sustained its initiatives in 2024 to inspect and seize PDs (also known as illicit streaming devices or ISDs) throughout the Brazilian territory, including searches performed within marketplaces' storage facilities. For example, ANATEL reported seizing more than 1.5 million IPTV boxes in the first half of 2024, with most arriving via the Port of Barcarena in the state of Pará, and others entering through Argentina, Paraguay, and Uruguay.⁶ ANATEL has also launched its own antipiracy lab, which supports the Agency's blocking measures against non-authorized pay-TV channel transmissions. ANATEL reported permanently blocking 623 IP addresses and roughly 10 URLs and is monitoring 9,280 IP addresses and 1,514 URLs.⁷

- **Encourage state courts nationwide to assign specialized courts or judges to uniformly handle IP cases and implement a long-term national program to train judges, prosecutors, and police officers.**

While exceptions exist, such as the specialized commercial and criminal courts in São Paulo and Rio de Janeiro, too much of Brazil's judicial system continues to lack adequate understanding of IP matters. This results in inconsistent prioritization of IP cases, limited capacity to manage complex piracy cases, unharmonized procedures, and non-deterrent remedies across the nation. For example, the video game industry reports that seeking and obtaining support from Brazilian authorities varies greatly state by state, especially relating to complex claims regarding TPM circumvention. To more effectively harmonize the handling of IP cases to address Brazil's growing piracy challenges, IIPA strongly urges Brazil to take the following actions:

- commit sufficient resources and political will to assign well-trained tribunals throughout the country by training its judges, prosecutors, and police in best practices to effectively address the country's rampant piracy problem, as well as on technical training on modern and often transnational online piracy operations, TPMs, and anti-circumvention technologies, and on public policy training on the impact of copyrights and piracy to Brazil's economy and society, including related to consumer protection;
- encourage state courts to assign specialized courts or judges to handle IP cases;
- enhance collaboration between cybercrime and IP specialized police units and prosecutors;
- amplify the already implemented framework in use with *CyberGaeco* (state of Sao Paulo) and other prosecutors that are part of other cybercrime units in different states;
- provide more support to the *Conselho Nacional de Justiça* (National Council of Justice, CNJ) and other state magistrate academies;
- provide deterrent penalties against pirates, especially for repeat infringers;

⁶ Mariana Toledo, "To strengthen the fight against piracy, Anatel wants to automate operations," Tele Time, August 20, 2024, available at <https://teletime.com.br/20/08/2024/para-refor-car-combate-a-pirataria-anatel-quer-automatizar-operacoes/>.

⁷ See *Id.*

- ensure the Brazilian Financial Intelligence Unit (COAF) investigates suspicious financial transactions resulting from piracy commercialization and reports its intelligence to competent enforcement authorities tasked with initiating actions against money laundering and organized crime; and
- support the work of the Association at the Parliamentary Front in Defense of Intellectual Property and Anti-Piracy, launched on April 30, 2024, for advancing improvements in IP legislation and efforts to enhance how IP cases are adjudicated across Brazil.

In positive news, judicial actions against music piracy continue to improve. On August 10, 2021, the Tribunal of Justice of the State of São Paulo issued a permanent blocking order against 14 stream-ripping sites in the criminal case initiated by the industry's anti-piracy body, *APDIF DO BRASIL (APDIF)*. The decision was the first of its kind in Brazil against music piracy services and confirms the legal power of Brazilian courts to order permanent injunctions in cases against foreign sites with a significant audience in Brazil. The decision is part of the campaign developed by *APDIF* and *CyberGaeco*. Following this decision, a series of further successful blocking applications were filed by *APDIF* and *CyberGaeco* in 2022, 2023, and 2024 and consequently over 300 stream-ripping sites have been blocked in Brazil. Furthermore, in December 2023, ISPs were ordered for the first time to block access to the cyberlockers *Dbree.org* (and related mirror site *Dbree.me*) following an application by *APDIF* and *CyberGaeco*.

- **Ensure CNCP and GIPI continue to have strong political support and greater human and financial resources to engage in cross-industry efforts against copyright infringement and online piracy.**

Even with positive enforcement advancements over the last few years, especially with Operation 404, Brazil still suffers from a lack of specific norms and regulations regarding the enforcement of copyrighted works over the Internet and a lack of resources and staff to support enforcement actions considering the reach and amount of content piracy in the region. In June 2020, the Brazilian government launched a consultation with private sector institutions and rights holder organizations to design a National Strategy on Intellectual Property (ENPI). Part of this work included empowering CNCP, within the MJPS, to promote public-private and private-private enforcement partnerships. Audiovisual industry stakeholders, including MPA and the Brazilian pay-TV Association (ABTA), video game industries, including ESA, and the music industries, including IFPI's national group Pro-Música Brazil, play an active role in CNCP and in the Ministry of Economy's GIPI. These initiatives are designed to engage all rights holders and other players in the Internet ecosystem (including ISPs, hosting providers, domain name registrars, search engines, advertising networks, payment providers, etc.) to develop better standards and effective voluntary agreements to fight online piracy, including against repeat infringers.

The success of these public-private and private-private IP enforcement partnerships has been mixed. The takedown rate under some existing private-private partnerships, such as the one in place between ESA and *MercadoLibre* was roughly 99%. With this specific example, the partnership includes the filtering and analysis of new products for automated and proactive removal by the platform, thereby reducing the volume of infringing listings found and removed by ESA in Brazil by nearly 3,500%. At the same time, removals on relatively new platforms, such as *Shopee*, remain low, and collaboration is poor. As for local e-commerce platforms used by commercial websites, such as *Loja Integrada* which is responsible for 43% of all cases related to illicit account resale, engagement by the platforms remains regularly active and levels of collaboration are increasing due to intermediation by local authorities. However, platforms still need to improve their KYBC policies and actions to avoid high volumes of illegal activities related to video game and other types of piracy. Additionally, some platforms still need to understand how commercial-level video game digital piracy occurs and include digital accounts resale as a direct and explicit infringement for further proactive copyright protection measures. The resale of digital accounts is an increasingly lucrative illicit business for piracy operators and platforms (and users-customers) and there is resistance from some platforms to ban these commercial activities, including by Chinese-backed platforms such as *Shopee*, which are actively lobbying the Government of Brazil to avoid this responsibility.

IIPA encourages MJPS to increase CNCP's human resources and funding necessary to support and grow these important public-private and private-private IP enforcement partnerships in order to combat the growing number of online enterprises dedicated to copyright infringement in or targeting Brazil.

- **Improve border controls against the importation of counterfeit video game hardware, PDs, modified consoles, and circumvention devices.**

Brazil needs to improve border controls to stop the influx of counterfeit video game hardware, PDs, modified consoles, circumvention devices, and ISDs, often manufactured in and exported from China. In 2023, ANATEL seized over 1.4 million ISDs, and it is important that these efforts continue.⁸ However, despite evidence that modification (mod) chips, circumvention devices, and mod installation services exist in Brazil, and over ten industry training sessions in 2024 for customs authorities, the video game industry reports a lack of raids or customs seizures related to modified consoles or involving mod chips or circumvention devices. Authorities currently focus efforts on simpler targets, such as preloaded game consoles or counterfeit merchandise. One video game console maker reported four customs seizures in 2024, with all seizures involving consoles preloaded with unauthorized video game software. Moreover, the Government of Brazil should encourage regional Federal Revenue enforcement units (DIREPs) to maintain anti-counterfeiting raid actions in the so-called secondary zones (in the local market). Another suggestion to enhance border security is increasing collaboration between Brazil's Foreign Trade Integrated System (SISCOMEX) and ANATEL, which should allow SISCOMEX to prevent even the export of PDs and ISDs while they are still at their exit ports abroad.

LEGAL REFORMS

- **Ratify and fully implement the WIPO Internet Treaties.**

Brazil is one of the largest markets in the region for all creative industries, but it has yet to ratify and fully implement the WIPO Internet Treaties. In 2019, the Government of Brazil announced it would accede to the WIPO Internet Treaties and on July 20, 2022, a bill was submitted to Congress to ratify the WPPT (but not WCT). Unfortunately, not only has no subsequent action been taken since to accede to these treaties, but the Federal Administration has recently decided to withdraw the WPPT's ratification process before the Brazilian Congress. Instead, Brazil's last attempt to amend its Copyright Act, the now over five-year old Bill 2370/2019 that is still under consideration, proposed several problematic amendments, failed to publish its final text, and had inadequate public discussions with rights holders.

As the 30th anniversary of these critical copyright treaties approaches, it is evermore essential for Brazil to ratify and fully implement the WIPO Internet Treaties in order to foster a vibrant legitimate market for Brazilian and foreign creative content. IIPA urges the Government of Brazil to consult with rights holders on any proposed copyright reform measures and ensure that it does not over-regulate or create broad exceptions and limitations to copyright. IIPA makes the following recommendations for the potential new law:

- codify the exclusive right of making available for both sound recordings and audiovisual works;
- codify the sound recording producers' separate, exclusive right of making available to the public, or as an alternative, ensure that interactive uses of sound recordings fall under Article 93(II) of the existing law rather than under the public performance right;
- amend Articles 98 and 99 to enable rights holders to: (1) determine whether to license their rights individually or collectively, which should be a voluntary decision; and (2) if they so choose, become direct members of the

⁸ See <https://www.tecmundo.com.br/mercado/267348-anatel-apreendeu-1-4-milhao-tv-boxes-piratas-2023.htm>

Escritório Central de Arrecadação e Distribuição (Central Bureau for Collection and Distribution, ECAD), a private umbrella CMO, and enjoy fair and balanced representation on its governing bodies;⁹

- clarify that the making available right, including the exclusive rights in interactive streaming, are excluded from ECAD's default mandate and mandatory collective rights management;¹⁰
- amend Article 103 to expressly allow rights holders to choose the method of calculation of damages and include damage/losses suffered, an account of the infringer's profits, and a reasonable royalty as methods of the calculation of damages;
- ensure that any amendment to the definition of communication to the public is aligned with the WPPT.
- amend Article 105 to confirm: (1) injunctions, including catalogue-wide injunctions where applicable, are available against all types of copyright infringement, circumvention of TPMs, and dealing in circumvention devices, circumvention software and/or components including installation and modification; and (2) injunction recipients bear the burden of ascertaining what they must do to avoid infringement;
- amend Article 107 to encompass all forms of access and copy control technologies as well as dealing in circumvention devices and to include deterrent sanctions and penalties for the violations of TPMs;
- codify intermediary liability for inducing or encouraging infringement under certain circumstances, including advertisements placed on pirate sites;
- criminalize signal theft in the pay-TV and non-authorized streaming at VOD sectors;
- ensure that any exceptions and limitations comply with the three-step test;
- ensure the availability of meaningful compensation is commensurate with the harm suffered by rights holders and at a level that will deter future infringements.

IIPA strongly urges the Government of Brazil to focus on the above needed amendments to strengthen protection and enforcement for rights holders and to ratify and fully implement the WIPO Internet Treaties. This is especially important as negotiations on the Mercosur-EU Free Trade Agreement recently concluded on December 6th, 2024, which includes an IP chapter potentially including a number of the recommendations noted above.

- **Reject proposals to introduce new measures that would disrupt the growth of the Brazilian audiovisual and digital music market, such as the unnecessary and ineffective additional remuneration right for holders of copyright and related rights and unclear definitions for the scope of communication to the public and public performance.**

In addition to the number of concerning legislative proposals and gaps in Brazil's most recent attempt to amend their Copyright Act, Bill 2370/2019 and Bill 4968/2024 also intend to create a new additional remuneration layer for rights holders of copyrights of audiovisual, musical and literary-musical works, and of related rights in phonograms, performances or broadcasts used by providers of streaming services, which would be subject to by-default collective management. It is especially noteworthy to point out that Bill 4968/2024 was tabled on the last day of the 2024 session of the Brazilian Senate, again without holding any consultations with rights holder or conducting an impact assessment.

⁹ Brazilian authorities should also seize this opportunity to urge *Escritório Central de Arrecadação e Distribuição* (Central Bureau for Collection and Distribution, ECAD) to amend its fixed split of the revenue collected from the single tariff to the considerable disadvantage of producers. For example, music producers receive only 13.8% of total distributions despite their significant investments. Article 99(1) of the Copyright Law (introduced in law in 2013), which provides for a "one right holder one vote" rule within ECAD, should also be amended. This is not in line with international good practices and does not ensure that all rights holders whose rights are managed by ECAD are guaranteed fair and balanced representation in ECAD's governing bodies.

¹⁰ In 2017, the Superior Tribunal Court (STJ) issued a decision in the *ECAD v Oi FM* case that held interactive and non-interactive streaming (including simulcasts) are separate acts, each requiring the separate consent of the right holder. In this regard, the decision is correct as it confirms that online simulcasting is a separate act of exploitation from the terrestrial broadcast, and as such requires a separate license. However, the decision was problematic in that the Court did not make any distinction between interactive and non-interactive streaming (including simulcasts), and held that both involve the public performance right, which falls under ECAD's rights management mandate. The decision undermines the music industry's practice (which is in accordance with the international treaties on the subject matter), and the accepted interpretation of existing law: that interactive streaming is deemed to involve acts which fall within the producers' exclusive distribution right, and interactive streaming services are licensed directly by record companies. Indeed, if interactive uses of sound recordings are deemed to fall under the public performance right (as opposed to the right of distribution, enshrined in Articles 93(II) and (V) of the Law, which has been the practice for many years), the licensing of such uses would fall under the default statutory mandate granted to ECAD (in accordance with Article 98 of the Copyright Law). In today's industry, streaming services are at the core of the business of the recording companies. Although right holders can opt-out of the default mandate granted to ECAD, collective management interference in a core area of the music business is unjustified and a substantial limitation to the ability of record companies to conduct their operations in a free market environment.

Moreover, pursuant to this draft's language, it would seem that previous agreements preventing the applicability of the remuneration right would not be sustained. The bill also introduces an obligation for phonogram producers to apply a deduction to the license payment agreed with digital service providers (DSPs) equivalent to the remuneration right paid by the latter. Of note, failure to comply with this obligation would be subject to sanctions of up to 10% of turnover. Also, DSPs could be required to disclose information about their revenues and about the frequency of reproduction of works.

The wording of these provisions, notably when read in conjunction with the explanatory notes, is confusing. However, it could be understood to introduce a remuneration right for holders of copyright and related rights in addition to the greater exclusive right that they already enjoy. The proposal is likely inspired by the additional remuneration right for performers that exists in Spain. However, as the Spanish experience shows, these "solutions" benefit mainly the performers' CMOs that manage this remuneration, and not the performers themselves. Even in Spain, where the local CMO is subject to the strict EU collective rights management framework, approximately 50% of collections are not distributed to performers due to deductions to account for management costs and the funding of social, cultural, or educational programs, and, more importantly, to the inability of the CMO to correctly identify or locate the rights holders for whom the amounts are collected.

This initiative, as well as similar ones in the region, need to be strongly opposed as they have a greatly disruptive effect on the digital market, investment in the region, and do not serve the purpose of improving performers' remuneration (in fact, studies and data suggest the contrary). It is concerning that the Group of Latin American and Caribbean Countries (GRULAC) at WIPO has been quite supportive of these initiatives. IIPA suggests that a more effective way for the countries in this region to improve performers' remuneration is to provide an adequate copyright framework, including adequate scoping of exceptions and limitations, a strict collective rights management framework, and, more importantly, effective enforcement mechanisms to combat piracy.

Finally, it should be stressed that Bill PL 2370/2019 also includes unclear provisions on the scope of communication to the public and public performance that could be understood to mean that interactive exploitations are considered an act of public performance and, as a consequence, subject to default collective management by ECAD, thus de facto downgrading the exclusive right to a mere remuneration right. Bill 4968/2024, on the other hand, also includes a problematic definition of communication to the public that departs from WPPT.

- **Ensure legislative proposals related to artificial intelligence (AI) meet the standards related to IP protection set forth by the G7 Hiroshima AI Process.**

On several occasions throughout 2024, the Government of Brazil discussed regulating AI. For example, the Brazilian Congress is currently discussing roughly 60 bills intending to regulate AI, some of which are related to copyright. The main bill under discussion is Senate Bill 2338/2023, which passed at the Upper House at the end of 2024, and aims to create a General Artificial Intelligence Framework. Among other provisions, it includes a transparency obligation for AI developers that use copyright protected works and other subject-matter for AI training purposes, a copyright exception for text and data mining to the benefit of certain institutions and organizations, and language that would allow for issues related to remuneration and other commercial terms to be subject to implementing regulation, thus potentially interfering with the freedom of contract and the exercise of right holders' statutory rights. As Brazil looks to possibly regulate AI, IIPA strongly encourages the Government of Brazil to look towards certain provisions of the G7 Hiroshima AI Process, which set forth important rules of the road related to IP protection for the development of AI systems.

For example, the International Code of Conduct for Organizations Developing Advanced AI Systems includes the following: "Organizations are encouraged to implement appropriate safeguards, to respect rights related to privacy and intellectual property, including copyright-protected content." The International Guiding Principles for Organizations Developing Advanced AI Systems includes the following principle: "Implement appropriate data input measures and protections for personal data and intellectual property." In the recent G7 Ministers' Declaration on Culture, the Common Good of Humanity, and Common Responsibility on September 20, 2024, the G7 recognized in the Declaration's section

on Culture and Creativity in the Age of AI “the crucial role of creators in emerging technologies,” recalled the importance of “advancing the Hiroshima AI Process outcomes that encourage organizations developing advanced AI systems to comply with applicable legal frameworks and to respect intellectual property rights, including copyright,” and stated “organizations developing advanced AI systems should comply with applicable legal frameworks, and are strongly encouraged to implement appropriate safeguards, to respect rights related to privacy and intellectual property, including copyright-protected content.”

- **Follow through with revisions to the Customs Law to clarify that the retention of counterfeit or any other illegal products by customs authorities does not require a court order.**

The Government of Brazil should revise the Customs Law to clarify that customs authorities do not need a court order to be confirmed to retain counterfeit or other illegal products that they have seized.

MARKET ACCESS

- **Enable industry growth by reducing high tariffs and taxes placed on video game products.**

Brazil’s high tariffs and taxes on video game products and entertainment software are a long-standing concern and remain so moving into 2025. In August 2022, then-President Bolsonaro reversed reductions of industrial tax (IPI) that had been applied earlier in the year for over 100 products, including video game consoles, whose rates have now returned to the burdensome level of 20%. As of July 2022, under the authority of the Foreign Trade Chamber (CAMEX) of the Economy Ministry, import taxes (II) for consoles that do not have embedded screens as well as peripherals and accessories remain at 12%.

The combination of IPI and II taxes targeting the video game console ecosystem continues to act as an incentive for the proliferation of infringing games in Brazil, which ranks third in the world for the number of connections by peers participating in the unauthorized file-sharing of ESA member console-based video game titles on public P2P networks. These barriers also inhibit the growth of a legitimate video game industry in Brazil, including the growth of small local businesses offering legitimate imported game accessory products.

Under a 2013 interpretation of the law that considered customized software a service, tariffs and taxes began to be calculated based on the imputed “copyright value” of a video game title itself (i.e., the distribution and marketing fees paid to the copyright holder), rather than on the much lower value of the import medium, which continued to be applied to off-the-shelf, physical software. However, the taxation of off-the-shelf software, such as video games, is widespread, including the IPI, II, federal social contributions (PIS and COFINS), and the municipal services tax (ISS). The overall heavy tax burden on such software therefore marginalizes the legitimate market (since illegal physical copies or digital counterfeit versions are not subject to these fees). IIPA urges the reconsideration of this problematic interpretation from 2013.

With broad tax reform underway, the video game industry hopes legislative efforts will soon result in an overall simplification of the tax regime, ending its cumulative character, and provide for an overall rate reduction for video game products that face an unjustifiably high tax burden given the unnecessarily adverse effect on consumers. In the meantime, executive action could quickly and easily resolve the burden of Brazil’s current IPI and II taxes on the video game sector.

- **Mitigate imposition of the VOD tax on movies and TV programming delivered on demand and refrain from developing excessively burdensome VOD or digital platforms regulations.**

The Brazilian Congress is currently discussing several proposed legislative measures to regulate VOD (Bill 2331/2022, Bill 8889/2017, Bill 1994/2023, Bill 2497/2023, Bill 3299/2023, Bill 1153/2024, among others). If the most

detrimental bills on VOD regulation are approved, VOD platforms would have to comply with several new obligations, such as mandatory investment, catalogue quotas, CONDECINE tax of up to 6% of the annual gross revenues, prominence obligations, general duties to provide the regulatory body with information about their activities, and limiting or prohibiting measures taken by online subscription service providers to prevent account sharing among their users (ex: geolocation restrictions, additional fares, etc.). These initiatives would not only impact providers' revenues and general contract freedom but also would weaken copyright enforcement.

Since the end of 2022, ANCINE's board has been publicly positioning itself in favor of greater regulation for the VOD segment and included in its Strategic Agenda the publishing of new regulatory instruments that would require market players to provide the Agency with more information about their businesses. The Agency intends to require extensive information on the segment, including, for example, on the number of platforms' subscribers, users, and transactions, on the platforms' direct investments in works, and on exclusive licensing agreements. So far, no new regulations have been issued, but it is possible that they will be issued in the short or medium term. IIPA urges the Government of Brazil to refrain from developing excessively burdensome VOD or digital platforms regulations, which would discourage the entry of new competitors in the Brazilian market. If such regulations are to be implemented, it is essential that they respect contractual and economic freedom and trade secrets.

- **Reform the CMO system, while still allowing for rights holders to license music directly.**

The Government of Brazil should reaffirm that CMOs can assert rights to collect royalties for acts of communication to the public only in cases where authors and performers in audiovisual works have specifically mandated the CMOs do so, and only where the relevant rights have not already been assigned to producers of audiovisual works. Additionally, Brazil should remove the by-default one-stop-shop collective management system for broadcasting and public performance, which is managed by ECAD, and in any case, ECAD should be subject to good governance rules, in particular to guarantee fair and balanced representation in ECAD's governing bodies of all rights holders whose rights are managed by ECAD. In that sense, the "one right holder one vote" rule of Article 99(1) should be deleted. Finally, ECAD's policies and strategies towards music DSPs (trying to impose additional payments for neighboring rights on interactive uses of phonograms without a mandate or clear legal basis) have been a source of uncertainty and abusive behavior for years. These practices should be stopped.

- **In alignment with recommendations from OECD, refrain from establishing a digital services tax, which would significantly increase operational costs and act as a market access barrier.**

Bill 2,358/2020, Bill 131/2020, and Bill 218/2020 aim to create new taxes specifically for digital platforms and services. These bills are of great concern because, if approved, they could substantially increase the tax burden on existing digital platforms operating in the country and create a barrier to entry of new competitors into the Brazilian market. However, IIPA understands that these taxes are unlikely to be approved.

- **Refrain from implementing network fees, which are harmful to competition, to network neutrality, and ultimately, to consumers' rights.**

In 2024, ANATEL released a second round of calls for contributions that discussed, among other issues, the possibility of creating network fees, to be paid by application providers to connection providers, to fund telecommunications infrastructure. More recently, Bill 2,804/2024 was introduced to require online service providers (OSPs) to make payment agreements with ISPs when they are deemed responsible for over 3% of networks' bandwidth. Moreover, OSPs whose yearly gross revenues surpass US\$10 million would also have to contribute to the Fund for the Universalization of Telecommunication Services. On the other hand, Bill 469/2024 was introduced at the Lower House to prohibit charging any network fees within Brazil. This Bill has staunch support from value-added service (VAS) providers operating in Brazil, including relevant members from the Open Internet Alliance ("AIA"). If network fees are implemented, they would have a detrimental effect on digital platforms activities, not only from a financial

standpoint, but also because such fees are harmful to competition and to network neutrality, and ultimately, to consumers' rights.