Doing Business in Brazil

GAMES INDUSTRY

2023

b/luz

Summary

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About this guide

Doing Business in Brazil: Games Industry (2023) is a guide for international companies interested in operating in the Brazilian games industry. Here, you will find a fast and introductory summary with vital information to consider when starting or investing in a game company in Brazil.

We will present legal insights regarding the Brazilian gaming sector, addressing loot boxes, eSports, intellectual property, data protection, streaming, consumer claims, and more. Later, in the second chapter, we will present a short overview of the legal and political structure of the country, presenting some specific legal matters on Tax, Labor, and Corporate.

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About us

Founded in 2004, Baptista Luz Advogados is a full-service legal boutique that covers all areas of Corporate Law, with prominent practices in diverse sectors of the economy, such as technology, internet, games, financial institutions, advertising, entertainment, real estate, transportation, retail, and agribusiness, among others. We have extensive experience with cross-border negotiations, and our branches are present in São Paulo, Florianopolis, Porto Alegre, Londrina, and Miami.

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Introduction

The last few years have been a period of strengthening for the Brazilian gaming sector. It is estimated that 2.5 billion dollars were generated by it – which places the country as 10th in the world ranking of revenues from game consumption – accumulating a total of 92,4 million players.

Research indicate that, as for Brazilian gamers' profile, 51% are women, most gamers are between 16 and 29 years old, and smartphones are gamers' favorite platform (48,3%). Although 24.6% of players stated that they did not spend anything on gaming equipment over the last year, there is still an almost correlated portion (22.6%) who invested at least up to R$ 499.99 in gaming products, and another large audience (19.9%) who spent between BRL 500 and BRL 1,250 on gaming equipment.

In short, games are among Brazilians' primary forms of fun and entertainment. With the increase and cheapening of the quality and capacity of smartphones and consoles, as well as a more significant offer of games, the tendency is for Brazilians to play and consume even more. By understanding this trend, companies have been investing more and more in the sector.

Overall, in 2022 there were 1.009 game companies in the country, an expansion of 152% compared to 2018. With the growing development of the sector, not only in Brazil but internationally, it is vital that companies interested in expanding their gaming business into the country - whether by opening companies or investing - have minimal knowledge to plan their business and proceed with confidence within the Brazilian market.

This document provides access to some key concepts and sensitive points analyzed by our expert lawyers, with particular attention to the Brazilian games industry.

Chapter I

Brazil's legal scene in the games industry

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HOW TO SUNSET A GAME IN BRAZIL

Everyone likes to tell success histories, but sometimes failure is inevitable. Regardless, losses do not need to become a disaster. Strategy and care are crucial to mitigate problems and shutting a project down. For those who do not know what sunset is, you may be the lucky ones! To sunset is to create a plan for suspending or terminating something. Companies may sunset products, services, servers, and anything that will not be provided anymore.

Here we will discuss some Brazilian legal aspects that must be considered in a sunset procedure for games as a service. We will talk about the typical situation for the sunset: a publisher chooses to discontinue a game. There may be other possibilities for the sunset, such as legal prohibition or a court's ruling, but these may require specific legal advice and will not be explored in this article.

First, to provide your online game in Brazil, you must provide your players' standard documents, such as end-user license agreements (EULAs), terms of use, and privacy policies that comply with the Brazilian Consumer, Privacy, and Internet Framework laws. Beyond the obligatory content, companies may also regulate other aspects of their relationship with the client, such as terminating the agreement with the players.

These termination clauses usually describe situations that may lead the player to a suspension or even ban from the game. However, it is essential to add to this clause the possibility of terminating the relationship between the player and developer if the developer decides not to continue providing its game.

There are no specific rules regarding sunsetting services in Brazil, so the recommendations described here are based on the Brazilian Consumer Defense Code (CDC) principles.

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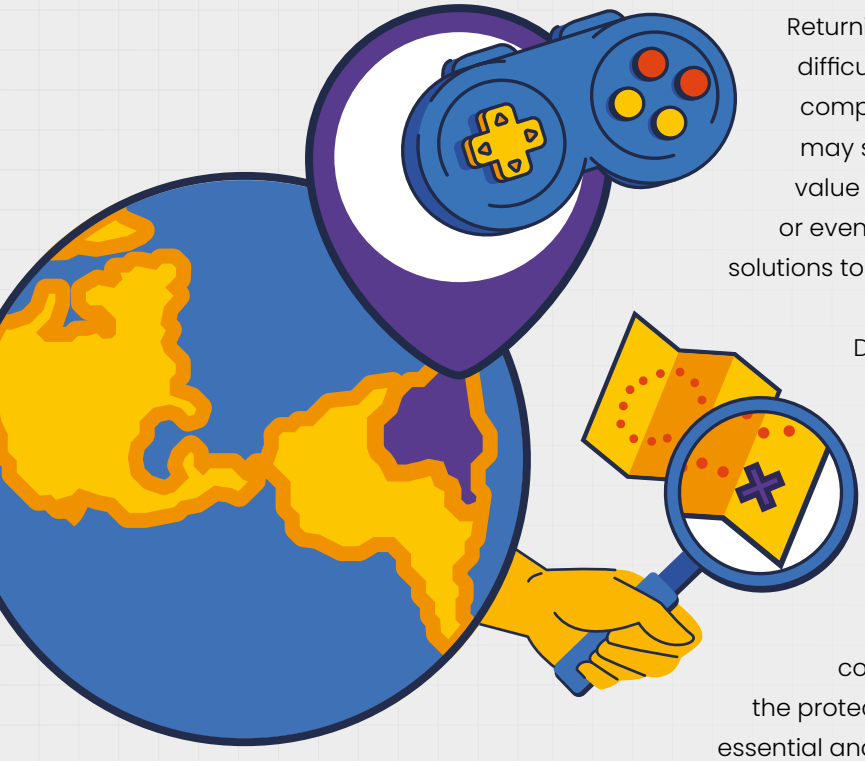
Transparency is one of those principles, so it is vital to let your players know soon as possible and with much information as possible when and how the shutdown will be performed.

In Brazil, there are many cases of players suing developers for being banned or suspended from the game because of the amount of time and money that the player spent and now is lost because of the suspension/ban. If the terms of use of the game foresee that, in the case of violation by the user, the player will lose the account and the in-game products related to it, the Brazilian court has frequently understood that the players do not deserve compensation by the developer – the chapter on consumer law offers a further explanation on this topic.

But, in the case of sunset, the logic is quite different since there is no infringement of the terms of use by the gamer. Many games uses hard currency, which is the in-game token that can be obtained by spending "real world" money and spent with in-game purchases. Brazilian courts usually do not oblige developers to refund the players for the hard currency already spent on the game. But, if the player still has the hard currency in its "game wallet", then in recommendable to offer some kind of compensation for these unspent tokens.



Returning these values to the players may be too difficult or even impossible. So, it is advised to compensate for the hard currencies that the player may still have in his game wallet. Providing a similar value in other game titles owned by the developer or even credit on an online game store may be solutions to mitigate suits and further complaints.

Depending on the case, such mitigation may be essential, considering that, in Brazil, consumer protection organizations, such as PROCON, may raise more and more attention to the sunset and increased media coverage and impacts in courts.

Beyond termination clauses, other common strategies are critical to increasing the protection of the developers during sunsetting. An essential and standard clause in terms of use and EULAs is that the game is only temporarily licensed to the players, including any in-game items that the game may provide. So, in case the game needs a sunset, the temporary aspect of the license increases the protection of the developer from players' claims regarding losses since those items and players' avatars cannot be considered their property.

There are also some concerns regarding privacy and data protection that must be addressed in a sunset procedure. Games as a service must provide a privacy policy that must comply with the Brazilian Protection of Personal Data Law ("LGPD") to operate legally in the country.

In Brazil, there is a legal basis called legitimate interest, according to which the data controller may process personal data if it is within the user's expectation and does not jeopardize the subjects'

fundamental rights. For example, the developer may send game updates via e-mail to their active players. Still, the developer cannot use the players' e-mail to offer services unrelated to their game activities.

Players' personal data may be processed by observing the Brazilian legal basis for doing so. However, it is also essential to present specific clauses regarding the termination of such processing.

Considering that, with the sunset, the game will no longer be available for a determined group of players (or all of them), it is challenging to argue that the developer, as a data controller, may still process the personal data of previous players.

So, it is essential in this process to have a plan to also sunset the databases containing all those players' personal data. Such procedures must be consistent to avoid data subjects or even data protection authorities' claims against the developer.

Above are some of the leading legal aspects that must be considered when performing a sunset operation of a game as a service in Brazil. It is important to remember that the number of players in Brazil and the impact of the game shutdown may call for different strategies and approaches toward the sunset.

LOOT BOXES AND BRAZILIAN LEGISLATION

On November 17, 2017, Star Wars fans rushed to the stores to purchase the game "Star Wars: Battlefront 2" released by Electronic Arts, but they were immediately surprised by the peculiar way that Electronic Arts was using the loot boxes: the digital mystery boxes ("loot boxes") containing a random selection of items that are revealed when players open them. The system resembles sticker packs: in 99% of the time, players get ordinary stickers, but it is possible to win ultra-rare stickers, which makes the moment more exciting and surprising. Loot boxes are usually purchased with real money, digital currency, credits built up within the game, or any combination.

Although loot boxes have been used in video games for years, most of these games only used the mechanism for purely aesthetic purposes, i.e., they did not reward gamers' performance. "Star Wars: Battlefront 2", on the other hand, practically blocked all the content, including certain critical items used in the game, and offered them in loot boxes, so if a gamer wanted to continue to play, she/he had to purchase these mysterious boxes.

At the time, it was predicted that for a gamer to unlock all "Star Wars: Battlefront 2" content, he/she would spend approx. 4,500 in gameplay hours, or US$2,100 in loot boxes. After being severely criticized, Electronic Arts made changes to the system. However, such event drew the attention of certain authorities to loot boxes.

The point is: for some time now, these mechanics have raised controversies in the world of digital games because many claim that they are addicting children and teens to gambling.

A study carried out in the UK by the Universities of Plymouth and Wolverhampton discovered that out of 93% of children playing games, practically 40% used loot boxes, and 12 out of the 13 survey reports compiled in the study suggest that there are similarities between the mechanics used in loot boxes and gambling.

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>> ECONOMIC ANALYSIS OF LOOT BOX MARKET

Despite the controversies, the loot box market is among the most profitable in the gaming universe. Mystery boxes allow free-to-play games to be developed without monetization via ads, for example.

Also, it is more common to see loot boxes in mobile games than in the desktop version, precisely because mobile games are mostly free to play. A study conducted by Research Snapshot found that 58% of the top games offered on the Google Play store contained loot boxes, and regarding the games offered by iPhone and Steam, the percentages were 59% and 36%, respectively. According to a survey by gamesindustry.biz, games are expected to rake in more than $20 billion in revenue by 2025 with loot boxes alone.

>> WHY ARE LOOT BOXES CONTROVERSIAL?

Concerns have been raised about whether loot boxes are a form of gambling. According to some, the purchase of loot boxes is like a game of chance. Many claim loot boxes may be addictive and lead to the compulsion to buy them in video games. Because of that, in 2020, one of the co-founders of Epic Games requested that loot boxes be banned from the developer's games.

With increasing pressure from the population and authorities, in August 2019, US publishers and platforms committed to publishing the odds of getting a specific item in loot boxes. This guarantees that players will know the odds of the likely outcome before purchasing the loot box. The issue is even more delicate when children and teens are involved because this public is increasingly exposed to electronic games via tablets and mobile phones at an early stage.

Studies show that 93.1% of games designed for Android contained loot boxes, and 94.9% of games intended for iPhones featuring this mechanism were considered adequate for 12-year-olds. Age rating was more conservative for desktop games: only 38.8% of games containing loot boxes were available to children 12+.

Videos and news about children spending hundreds of dollars on their parents' cards on game items have become more common in recent years, and certain headlines have published some roaring values: for example, there was a case of a child spending approx. $82,000 on "Sonic Force" items, a game offered on App Store; in a similar matter, a child spent EU$ 6,000 on their parents' card on App Store games.

>> THE STATUS OF LOOT BOX REGULATION AROUND THE WORLD

Political and legal restrictions on loot boxes are increasingly growing, and several jurisdictions have taken steps along these lines. Below, we have highlighted some examples of the existing regulations:

▷ Japan

Japan was the first country to take regulatory actions against these mechanics. In 2012, Japan's Consumer Affairs Agency announced that "gacha games" were illegal. This game mode is a variation of the loot box where individuals pay money to receive a random reward.

▷ **China**

In 2016, China approved a law changing how the mechanics of loot boxes worked. According to it, games with such mechanics need to publish the name of all the possible rewards besides the probability of a player receiving such rewards.

▷ **Belgium**

According to Belgium authorities, loot boxes are an illegal form of gambling. The decision had far-reaching implications. Some developers, such as Valve, changed their games and removed the loot boxes. Nintendo, however, stopped selling two of its mobile games in the country: Animal Crossing - Pocket Camp and Fire Emblem Heroes.

▷ **Germany**

A Bill submitted in 2021 states that any game containing loot box mechanisms should be rated R 18+.

▷ **Australia**

The same thing happened in Australia in 2022.

>> THE STATUS OF LOOT BOX REGULATION IN BRAZIL

Although Brazil does not have specific legislation on loot boxes, there are general laws that apply to them:

▷ **Law No. 8,078/1990 (the Brazilian Consumer Code - CDC):** online purchase of loot boxes may be considered a consumer relationship because there is a connection between the consumer, the supplier, and the product. It is important to note that even if the virtual games are free, the Consumer Code still applies;

▷ **Law No. 8.069/1990 (Brazil's Children and Adolescent Act - ECA):** its enforceability in this sector is clear because teens and children are a strong public of virtual games, and they are considered "hyper vulnerable consumers" due to their level of psychological, social and emotional maturity if compared to adults;

▷ **Law No. 12,965/14 (the Brazilian Civil Rights Framework for the Internet) and its regulating Decree No. 7.962/2013 (E-commerce Law):** considering the very definition of electronic games, it is inevitable that rules relating to the Internet and e-commerce should apply, especially concerning the understanding of certain legislators who consider that consumers are more prone to fraud in electronic environments;

▷ **Decree n. 3,688/1941 (Misdemeanor Criminal Law):** finally, one of the central discussions involving loot boxes is whether it is considered a game of chance, that is still considered illegal in Brazil, per Decree-Law No. 3,688/1941 (Criminal Misdemeanors Act), Section 50.

It is essential to mention that Brazilian Deputy Heitor Freire submitted a Bill in 2019 - Bill No. 4,148 stating that loot boxes in games offered to the Brazilian public should include information about the exact probabilities of receiving the items. Also, such Bill includes penalties for noncompliance with the law. However, since 2019, the Bill has been awaiting the Rapporteur's Opinion at the Committee of Work, Administration and Public Service Committee (CTASP).

Also, the Public Prosecutor's Office recently issued a favorable opinion on a lawsuit filed by the National Association of the Centers for the Defense of Children and Adolescents (ANCED) prohibiting loot boxes from being sold to children and adolescents in Brazil. The main argument used by ANCED is that loot boxes are a form of gambling, which, as previously mentioned, is illegal in Brazil. It is important to note that companies will not be required to immediately remove their games containing loot boxes, as the lawsuit is still pending judgment.

>> ALTERNATIVES

As mentioned above, although loot boxes represent an essential source of income for game developers, the current model has raised controversies when it is targeted at children and adolescents. Although in Brazil, the issue of whether the sale of loot boxes could be compared to gambling is still under discussion, certain game developers have already decided to implement best practices to provide transparency to the mechanics used in the mistery boxes.

- unlockable loot box using virtual currency: an alternative is that loot boxes would be purchased using in-game credits, thus allowing players to get the items without needing to use money. An example of such strategy is Blizzard's game "Overwatch";

- aesthetic items only: the loot boxes would only offer aesthetic items, thus excluding the risk of gamers' performance incentives by purchasing mistery boxes;

- reduction of special effects: reduce visual and sound stimuli when a player opens the box to reduce the alleged incentive to the player's addiction when he/she purchases a loot box;

- transparency: games containing loot boxes and microtransactions involving money would include warning notices to inform the public about such practices.

Considering that the legal nature of loot boxes and their impacts on children and adolescents is still under study and consideration, it is still early to encourage the total ban of such a mechanism because it is an essential source of income for game developers.

The dissemination of good practices or even adopting a specific regulation determining the minimum transparency requirements has been an exciting alternative.

IS ESPORT A SPORT IN BRAZIL?

2023 began with good news for the Brazilian eSports market. The Brazilian Ministry of Sports said: "In my opinion, eSports is an entertainment industry, it is not a sport.". Beyond philosophical discussion about what a sport is, this definition is crucial for Brazilian law. Some countries barely regulate sports, but this is not the Brazilian case. Since Vargas's dictatorship in the 1930s, Brazil has been promoting laws, regulations, and financing programs to promote sports. This is one of the many reasons why Brazilian football is so famous.

Considering this regulatory tendency, the Brazilian Congress has been trying to regulate eSport as a sport since 2015. Such regulation includes rules for exchanging players, resignation to private sports organizations, and even how to structure championships. Besides the fact that the Brazilian regulation for sports presents a broad definition that could include in eSports, such an interpretation disregards the main difference between these two sectors: ownership.

No one owns a sport.

All leagues and private sports organizations only promote and standardize practices, but anyone can practice those activities freely. On the other hand, the eSport practice depends on an electronic game that a developer and/or publisher owns.

Such differences enlighten why the rationale behind the sport's regulation is inappropriate to regulate a property-oriented market. Developers own the software, the characters, the music, the character names, and trademarks. Even to play the games, a player must agree with the terms of use, privacy policy, and end-user license agreement (EULAs).

However, such discussion did not diminish eSport's growth in the country. Brazil has one of the world's biggest game consumers in the world, being the 10th biggest audience for it,

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and has a massive audience for eSports as well, taking the 3rd spot of active players in 2022. Also, Brazil hosts national eSports championships, such as the CBLOL (League of Legends), Free Fire Brazilian League and the R6 Brasileirão (Rainbow Six Siege), and international competitions as well, like Intel Extreme Masters Rio Major 2022 and Valorant Champions Tour 2022.

So, eSports in Brazil has thrived despite regulatory discussions over the last decade. During this period, one subject has been gathering attention from game companies and teams.

>> WORKING WITH PROFESSIONAL PLAYERS

In eSports, we have different formats of tournaments. They may be open for anyone to compete; they can be closed for a select group of teams or a mix of both forms. Such formats mean that eSport is not only for professional players, but casuals may also participate in such competitions and bring new strategies and gameplay for the established meta.

But how is the relationship between teams and developers with these players?

In Brazil, an eSport team may establish a relationship with a player by signing an agreement, a labor agreement, or a special athlete agreement. Let us explain the differences.

The Decree-Law No. 5452 from May 1, 1943 (Labor Laws Consolidation - CLT), presents the elements which constitute a labor relationship:

- onerosity, which means to receive a salary for the services rendered;
- personality, only that specific person must perform a given task;
- subordination of an individual to someone else; and
- habitually, which is to render services on a determined frequency.

Anyhow, for more details about Brazilian labor law, please access our text **"Labor Law" on page 48.**

The Brazilian labor law states that when discussing the existence of a labor relationship, reality prevails over any agreement. This means that if the 4 elements described above are found in any relation, then it is a labor relationship, including all the legal implications.

So, a team may want to contract a player as a contractor, but to do so, they cannot employ the 4 elements described above in their relationship with such player. On the other hand, if the team wants to keep the players, it may sign a labor agreement.

Also, other kinds of labor agreements can be found in specific regulations. Here we highlight the **special athlete agreement.**

According to paragraph 1 of the Pelé Law section 3, performance sports may be organized and practiced professionally, characterized by the remuneration agreed upon in a formal labor contract between the athlete and the sports practice entity.

It can be translated as a "special sports employment contract" based on sections 26, 28, and 30 of the Pelé Law. These sections provide many rights and rules that benefit the players. But this particular contract does not apply to all athletes since the Pelé Law affirms, in its section 94, that all the rules described in the specific sports employment contracts are obligatory just for football athletes. So, they are entirely optional for the

teams.

Some eSports teams in Brazil have been using a particular sports employment contract with its players, considering the similarities with an athlete routine. It is essential to highlight that this is just optional. Teams may use any agreement if not resulting in the 4 elements of employment relation. In this case, an employment contract must be performed.

The relationship between the event promoters/developers and the players requires caution and depends on how the tournaments are developed. These companies must deal with the equilibrium between verifying if the teams established legal and legitimate relations with their players and keeping the autonomy of such relationships.

This approach may change given the model adopted for the tournament and must be analyzed in a case-by-case scenario.

>> STILL GROWING...

The eSport scenario in Brazil is still growing spite the discussions regarding its regulatory definition. Also, the current regulatory discussions may be suspended, considering that Brazilian lawmakers are discussing a new legal framework for traditional sports and excluded eSports from such drafting, and election in 2022 changed the lawmakers responsible for the previous bill laws discussions.

DATA PRIVACY LAW IMPLICATIONS ON GAMES

The gaming industry increasingly depends on the collection of personal data of its players and use this data in various ways. In this context, being aware of the obligations and limits imposed by data protection legislation is crucial for the success of a game.

>>WHY ARE PLAYERS' PERSONAL DATA ESSENTIAL?

Prior to the era of smartphone and apps, the main business model of the games was based on selling the game itself for profits. However, monetization models are more diverse these days, in part because players' personal data can be used as an important asset. Current gaming business models include:

1. **Free Model:** users do not pay to play, but the app earns revenues by displaying advertisements.

2. **Freemium Model:** users do not pay to play, but can make in-app purchases for premium features, additional content, subscriptions, limited items, digital goods etc.

3. **Subscription Model:** users pay to access certain game content.

4. **Paymium Model:** players pay to download the game and can also purchase additional content.

These examples clearly demonstrate the importance of personal data use, whether to optimize the use of in-game advertisement, to increase sales of the company's own products or even to obtain information about the profile of players (target audience by profiling). Business models also demand active player engagement and, in order to achieve this goal, it is important to analyze players' personal data to understand what makes users engage.

Both Google and Apple app platforms incentivize developers to use players' personal

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data by providing app developer analytics tools to better understand their player audiences, but they also privately enforce data protection regulations by requiring that developers implement privacy safeguards to publish their games in official stores.

For example, both Apple and Google require "privacy labels" (Google names them as "data security"), so developers must have a clear and precise section in the apps detailing activities involving user data processing. Games on Android and iOS mobile operational systems must also require permissions to track users and must not process personal data of children.

>> LEGAL REQUIREMENTS AND PLAYERS' DATA PROTECTION RIGHTS

Companies that offer games to the Brazilian market must comply with the local legislation, as players located in Brazil (data subjects) have a set of rights provided for in the Brazilian General Data Protection Law ("LGPD"), such as:

i. the right to access personal data;

ii. the right to request deletion of personal data;

iii. the right to obtain a copy of personal data being processed; and

iv. the right to oppose or request anonymization of data considered excessive, unnecessary or whose processing violates the LGPD.

The LGPD requires that any personal data processing activity must rely on an adequate legal basis (consent, legitimate interest, performance of a contract etc.). Depending on the legal basis chosen, the company must satisfy different obligations. For example, if the processing is based on consent, as is common in many apps, it is necessary that the data subject is properly informed in advance about the processing and with whom the data is shared - the use of generic information or statements like "your data is shared with our business partners to improve our services" may invalidate the consent.

>> CHILDREN AND TEENAGERS

Another important topic in gaming industry is the fact that many companies have children and teenagers as its core users. The LGPD establishes special requirements for processing personal data of these categories of data subjects, determining that any processing of personal data of children and teenagers must consider their best interest.

In 2022, the Brazilian Data Protection Authority ("ANPD") published a preliminary study assessing the legal basis applicable to the processing of personal data of children and teenagers, highlighting 3 possible interpretations:

1. Consent of parents or legal guardian as the only possible permitted basis;

2. Application of the legal basis provided for the processing of sensitive personal data (personal data of children and teenagers is considered sensitive data); and

3. All legal basis provided for in the LGPD can be applied to the processing of children and teenagers' personal data.

In its final remarks, the ANPD stated that the third interpretation should be the most adequate considering the data protection system brought by the LGPD. This interpretation opens a range of possibilities for games developers, eliminating technical berries of certain legal bases, and thus facilitating the growth of the sector in Brazil, especially regarding this young target audience.

Advertisements for children is also a controversial topic in Brazil. Some civil society organizations and federal government agencies, such as the National Council for the Rights of Children and Teenagers ("Conselho Nacional dos Direitos da Criança e do Adolescente"), have a restrictive legal interpretation of the use of this type of advertising. In another sense, the National Advertising Self-Regulation Council (CONAD) defends the possibility of its use.

>> FINAL REMARKS

Considering the importance of personal data in the gaming industry, it is essential that companies operating in Brazil evaluate the level of adequacy of their practices and processes to local data protection legislation, increasing the confidence of its users and strengthening their image in a competitive advantage logic.

STREAMING AND INFLUENCERS

Relationships between users and digital games have significantly changed since the new content platforms emerged. Games are no longer just virtual environments where people gather to play. Nowadays, people spend hours and hours watching other players or sharing gaming content and experiences, such as in the League of Legends, Fortnite, and Counter-Strike, to name a few. In this sense, several gamers have become famous for producing and publishing gaming content, gaining thousands, some even millions, of followers.

Channels producing this content, professionally or not, are top-ranked in the digital scenario and amongst the most-subscribed YouTube channels worldwide. For example, the famous and pioneer gaming channel PewDiePie has circa 111 Million subscribers.

With all this popularity, this sector attracted the attention of big brands because, besides incorporating ads into their structure, games have gotten closer to "reality" and have become the preferred place for ad strategies: for example, promoting significant online events like the release of singer Travis Scott's song on Fortnite, or the monetization of sponsorship spaces on players outfits during "FIFA 20".

However, this new market configuration requires attention to certain legal aspects of the relevant parties' relationship.

>> GAMES AND STREAMING PLATFORMS

Intellectual property

Streamers commonly encounter a particular obstacle: third-parties rights. After all, any content developed by streamers is based on digital games created by third parties, whose rights are protected by authorship rights. These rights – further detailed in the chapter on Intellectual Property - apply to different elements of the game, such as characters,

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setting, soundtrack, trademark, and other creative aspects permeating them.

These rights are proprietary to third parties or, often, to big corporations. So, streamers should be authorized to stream videos, including those materials.

However, these authorizations are often not requested, which has led to retaliation from companies. In 2013, Nintendo used notification and deletion tools provided on the platforms to report streamers with renowned profiles. As a result, it obtained part of the remuneration from the monetization received from ads linked to these videos.

Also along this line, since 2007, YouTube has used an algorithmic system called Content ID to monitor and fight misused materials, protected by authorship rights, in videos published on the platform. When a new video is uploaded, YouTube's system matches the content in other materials (videos, images, and sounds) stored in its database, and if it fits with a third-party material, the third party is notified and may file a "Content ID Complaint".

It is important to mention that this feature also applies to live streaming. In this case, whenever third-party content is identified, the platform inserts a symbol in the streaming until the system can no longer match the content. In certain situations, the platform will even stop broadcasting it. However, the channel owner may prevent this problem if it immediately stops broadcasting the concerned third-party content upon receiving the platform's notification. On the other hand, if the infringing content continues to be broadcasted, the platform may block access to the platform's streaming features.

However, like most algorithms, the Content ID system does not always make the right decisions. The strike tool is not fraud-proof: it has often been ill-used by network users to harm specific channels deliberately. In certain cases, profiles got strikes from the platform based on groundless complaints, i.e., the use of the work was authorized under the Copyrights Act, or the video did not have protected content.

Bunches of gamers migrated to Twitch because of platform misuse, or the strict rules imposed by YouTube. Amazon acquired Twitch in 2014, and Twitch is today one of the leading live streaming tools used in the gaming community, the largest public, and niche.

Although Twitch's method to penalize copyright infringement resembled that of YouTube, Twitch was not so harsh. However, in 2021, Twitch announced new penalties on copyright infringement so, today, if the user gets three strikes, the account can be banned.

Personality rights

Also, it is essential to mention that using content including third-party's personality rights (e.g., name, image, voice, biographic data, and interpretation of people) also falls under this context. It is widespread to see games inspired by real people or "memes" with people's images to seem funnier. These rights, as well as Intellectual Property rights, are proprietary to the owner, meaning that their use requires authorization.

People appearing in the video might feel offended or disapprove linking their image or any other element of their personality to that content. Therefore, such elements should be avoided, or the owner's authorization should be requested if the intention is to use them in video productions.

Streamers' authorship rights

It is also being discussed whether the content created by streamers – their game performance recordings or comments made during the program and/or recorded, for example - are protected by copyrights, as they represent their creative expression. Certain people compare the character's movements during the game to a choreography, an intellectual work protected by copyright.

This is problematic because these materials, from the intellectual property rights perspective, could be classified as derivative work, as they stem from third parties work. One could allege that playing a game is merely a way to perform the work, not creating one. The discussion is complex, and it still needs to have a unanimous understanding.

Hate speech

Another legal aspect of streaming platforms is the rise of hate speeches among gamers and libelous statements or defamation against streamers and viewers. Chat boxes and comment spaces in those networks, or the videos themselves, end up incorporating a common toxic element into the culture of the gaming community: verbal insults, which are often racist, misogynistic, and discriminatory.

Certain users do it systematically, harassing others using threats and offenses called cyberbullying. They are called trolls, and they often target the female audience. The platforms ban these offensive attitudes, usually in their terms of use and community guidelines, with penalties imposed on users and channels carrying out or promoting this practice.

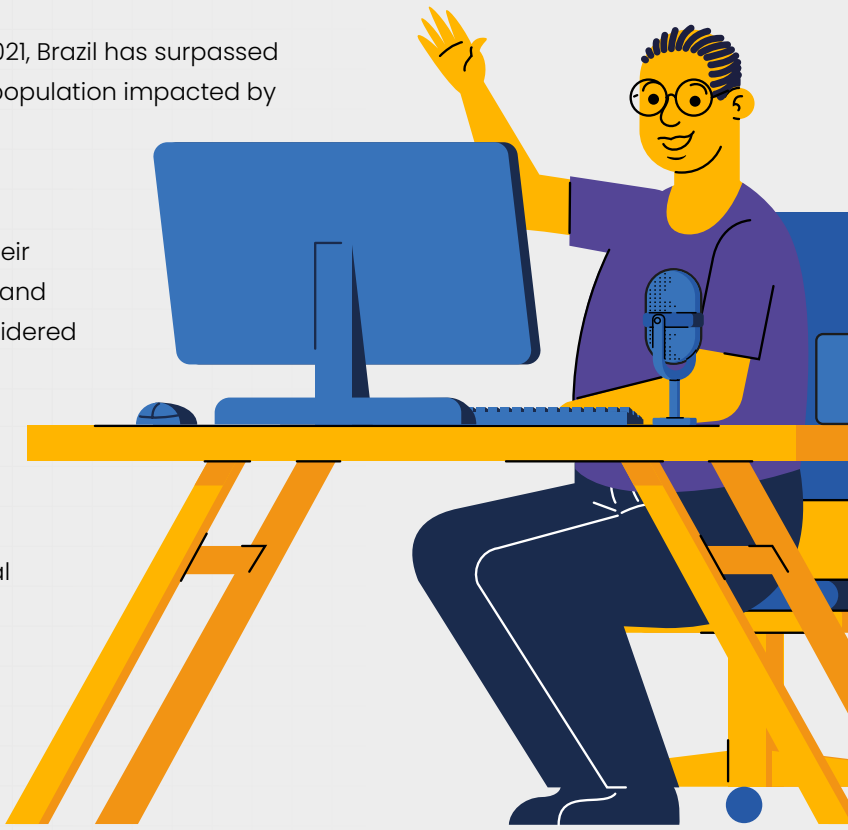
Regardless of the differences between the streamer's and user's relationship for producing videos and interacting with the platform, content creators and viewers should always follow the platform's terms of use and any other guidelines issued by the platform beside the applicable laws.

Gamers influencers

According to the Global Consumer Survey, since 2021, Brazil has surpassed China's mark. With more than 40% of the Brazilian population impacted by influencer marketing, it is today no. 1 globally.

The success of Influencer marketing comes from the influencers' ability to build a connection with their public and earn their trust. Their personal opinions and impressions about products and services are considered an expert's validation, which can influence the public more than traditional ads. No wonder Brazilian streamers received, between 2019-2021, US$ 22 Million from Twitch.

This phenomenon also occurs in the world of digital games. Influencer gamers - people who became famous for playing games or making comments on the internet about video games – now have crowds following them on YouTube, Instagram, Twitter, and Twitch, among others.



The audience, especially youngsters, consider these professionals a quality endorser, and they impact their purchase decisions. As a result, game developers often hire influencers to publicize their new products and talk about them on their channels.

Gamers influencers are considered a separate market, and companies specialize in managing them. Besides the digital gaming market, they are also hired for other industries, such as energy drinks, fashion, and beauty.

For example, Hershey partnered with gamers DrLupo and Ninja to advertise its new Reese's Pieces chocolate bar on the Twitch platform. They promoted the product during a joint live, reaching circa 70,000 synchronized viewers together.

Hiring influencer gamers

Influencer marketing has an organic language, and when it is placed between gameplays, it creates a closer connection between the influencer's audience and the advertised brand. However, this format cannot disguise the marketing aspect of communication.

The Brazilian Consumer Code and the Self-Regulation Code issued by the Brazilian Advertising Self-Regulation Council (or CONAR) require all advertising communications to be easily identified. Thus, influencer gamers need to inform whether they are giving their spontaneous opinion about a product or if they are committed to a commercial partnership with the brand.

CONAR's Advertising Guide for Digital Influencers provides the rules and guidelines to be followed by these professionals when they promote products and services, besides recommendations on how they should inform the public that the communication is an advertising piece, depending on the format.

To hire an influencer, while speed and informality are common characteristics in this kind of negotiation, it is crucial to adopt legal measures to ensure that the influencer fulfills his/her obligations and prevents brand damage.

Therefore, it is essential to write an agreement that, even a simple one, clearly determines the influencer's obligations (and/or the agency's, as applicable), such as the duty to identify the advertisers and respect third parties' copyrights. The agreement should also:

- detail the deliverable(s);
- provide for confidentiality and ethical conduct;
- establish the metrics to verify the result of the posts;
- establish the terms for the assignment of intellectual property and the authorizations for using influencers' personality rights, such as image, name, voice, and interpretation.
- Influencers shall strictly comply with the platform's instructions where the Ad will be published, such as the platform's terms of use, advertising guidelines, community guidelines, and any other applicable document establishing conducts that, if breached, the advertiser may have to remove or change the ad.

It is also necessary to pay attention to the tax aspects applicable to the partnership, such as the rate and means to pay income tax (IR) and services tax (ISS), which vary according to the content, place, and type of agreement entered with the influencer and/ or agency.

It is also essential to ensure that the agreement signed with the influencer does not include obligations that could be considered an employment relationship between the influencer and the company. This is

especially important in medium- and long-term partnerships. To this end, the four elements in employment relationships should be avoided. They are the provision of regular, personal, subordinated, and paid services. It is recommended to include contractual provisions stating that the parties are autonomous and independent and that there is no employment relationship between them.

Another sensitive aspect regarding influencers' activities, especially in the digital gaming universe, refers to the ads seen by children and teens, who constitute an essential part of the influencer's audience. Brazilian laws and CONAR provide special treatment regarding ads targeted at minors to protect their dignity and sound development.

CONAR's Self-Regulation Code forbids linking children's and teens' images with firearms, alcoholic beverages, and other illegal products. It also prohibits using indirect advertising or merchandising containing elements intended to capture children's attention, including hiring child actors or using elements connected to children's universe.

Finally, when young influencers are engaged, the negotiations with this category of digital influencers deserve special attention, and it is crucial to verify the labor aspects involved, as they are protected by the Brazilian Child and Adolescent Act (ECA). To participate in advertising campaigns, they must obtain court-issued authorization and approval from the legal guardians for the activities practiced.

You can learn more about hiring influencers by accessing our Legal Guide on Digital Influencers or by asking our specialists to provide information about our online training.

CONSUMER'S CLAIMS

Although game companies are not the target of a significant volume of consumer lawsuits, they have been called to Court with increasing frequency to respond to complaints from gamers in Brazil. Among the most discussed topics in Court is the effectiveness of the Terms of Use and the penalties imposed on gamers for noncompliance with conduct policies.

>>PROHIBITION OF CONDUCTS

In games involving online competition, it is common for players to offend each other. Sometimes, these offenses can be discriminatory and undermine the honor of those involved. For platforms, preventing this type of attitude from happening in matches can be challenging.

Aiming to create healthier competitive environments in which all players feel comfortable, some companies have developed routines that match players with similar personalities and behaviors to prevent the pairing of players with mismatching profiles that can lead to overly aggressive encounters.

Another typical behavior between players is the use of automation tools that alter the game's functioning, such as hacks and cheats that interfere with the software activity and are used to enhance a player's performance and/or harm others. Practices like these are often prohibited in the game's Terms of Use or Community Rules and may be subject to some types of penalties imposed by companies.

Some game developers have approached the issue differently: League of Legends, for example, had an internal "Court" named "The Tribunal", between 2011 and 2014. It was responsible for judging users' behavior and defining applicable disciplinary measures. Users could report other players who have violated community policies, and the Court, in its sole discretion, would determine whether there had been a violation and suspend or

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block the player's account. Nowadays, League of Legends uses an algorithm to analyze the users' complaints since it makes the procedure quicker.

However, the penalties may not be well received by users, primarily because some terms of service – such as the League of Legends itself – provide that, in the event of the player's account deletion, the player will no longer have access to any of its elements. This can mean losing items purchased in the game, paid for with "real money" through microtransactions. In its Terms of Use, League of Legends declares that it is not obliged to offer a refund, nor does it assume any liability to the player.

>> JUDICIAL SYSTEM

Gamers have already questioned the legality of such disciplinary measures in Court. There are lawsuits in which gamers requested compensation, claiming that the game's rules of conduct and their interpretation can be too subjective and demanding that the game company return the investments in items, loot boxes, skins, etc., made by the player.

The Rio de Janeiro State Court of Justice judged some of these lawsuits, recognizing the game companies' prerogative to impose such sanctions. Evidence of players' misconduct was analyzed and claims for damages were thus rejected. In a specific case, it was also confirmed that the company had no duty to repair the player for the unused game assets, such as items and skins. Nevertheless, the Court also found that the Terms of Use clauses that exonerate or attenuate the company's liability for defects in the service provision or that imply a waiver, by the player, for compensation resulting from these defects are null.

Differently, when analyzing a case involving another company, the same Court recognized the player's innocence, given that the company was not proving the player's use of bots to benefit him/her in the matches. Thus, his/her re-entry into the game was determined, with the reactivation of his/her account, preserving the characteristics that his/her character had at the time of the ban. In this case, moral damage to the player was also recognized. The Court found an offense to the player's dignity, due to public exposure, for a period considered excessive, of his/her virtual name in the list of community-banned profiles. The player banning was interpreted as equivalent to negative creditors' records.

Similar cases were analyzed by other Brazilian Courts, such as in São Paulo and Minas Gerais. In general, the Court's conclusions have expressed similar understandings and, in their majority, resulting in the rejection of the players' requests.

>> CONCLUSIONS

Although we have samples of how the judiciary has been deciding these cases, it should be noted that there still needs to be fully consolidated and coherent jurisprudence on the subject. However, as described above, we can identify some trends:

- the recognition of companies' autonomy in defining the rules applicable to their games, especially imposing disciplinary measures on their players;
- the inability of companies to use documents such as Terms of Use to exempt themselves from typical service providers' responsibilities; and
- the existence, in the "virtual world", of typical rights of the "physical world", such as the protection of the individual's honor and image.

INTELLECTUAL PROPERTY

>> SOFTWARE

When evaluating the intellectual property aspects of a game, the first point that requires legal attention is to define who will own the ownership and the patrimonial rights connected to the program – the right of use, sale, and distribution, among others – and to guarantee that the company or person formally possesses these rights.

According to art. 4 of Law no. 9609/98 ("Software Law"), these rights will belong to the employer or contractor when the software is developed during the contract or employment relationship term.

However, considering the substantial work involved in this step, it is recommended to formalize, through a term or agreement, the assignment of rights over that work with everyone involved in the production – the creator, designer, programmer, or other. Because of this, administrative and judicial disputes may be avoided in addition to transparency on the subject for all parties involved, even making the game more attractive for investments.

In parallel with the assignment of rights to the parties involved, it is also possible to register the game as software at the National Institute of Industrial Property ("INPI"). As the software is protected by "direito de autor" (the Brazilian legal system similar to "copyright"), such registration is not mandatory, and the law understands that the software is already protected from its disclosure.

Even though, in software, registration is not mandatory for intellectual protection to exist, the registration serves as proof of the state in which the game was at the time of launch and creates strong evidence of its ownership, avoiding (or at least making it difficult) claims from third parties for the ownership of the game, as well as offering greater legal security to the holder.

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>> TRADEMARK

The registration of a trademark is also done at the INPI. However, contrary to the protection in "direito de autor", the trademark will only receive complete protection after its formal registration, according to art. 129 of Law no. 9,279/96 ("Industrial Property Law").

In this context, filing the registration request before making any information about the game available to the public, especially concerning its name and images that will be used for the sale, is recommended. In addition to ensuring the protection of such words and figures through registration, it is recommended to check that no other companies and people are using a similar or identical trademark for other games before registration, preventing the name and commercial disclosure strategy from having to be changed after release.

According to art. 122 of the Industrial Property Law, all "visually perceptible" signs can be registered, including names, images, and three-dimensional symbols (such as the Coca-Cola bottle). This includes the name of the company that makes a game, the name of the game, and the images that will be used to sell the game.

In addition, there is also the habit, although such elements sometimes cannot be classified as a trademark, of registering the name of characters or items from the universe of games when these become so famous that they end up being used to exploit other products. If the registration is granted, the trademark holder will have exclusive rights over using that name and/or logo. Thus, it becomes easier to prove and prevent any reproduction or imitation carried out by third parties, to request compensation for material and moral damages in the event of a violation, and to give greater freedom for its licensing and sale.

>> DIREITO DE AUTOR

"Direito de autor" (provided for in Law n. 9.610/1998) is an essential protection for most game companies, being an adequate tool to protect game property due to its ease of use and versatility. It is valid to remember that "direito de autor" is a legal protection similar to the "copyright" system, although both have some differences.

The "direito de autor" law protects original works of human authorship, which are contained in any tangible (e.g., a pen-drive) or intangible (e.g., a computer file) medium, for a limited time, which in Brazil corresponds to the author's life plus 70 years after his death.

Direito de autor protects literary, dramatic, musical, and artistic works, including poetry, novels, movies, music, software, architecture, video games, and even fictional characters. At the end of the period of intellectual protection, works previously protected by direito de autor enter the public domain and become free for anyone to use and explore, as long as the moral rights of the authors are observed.

In the universe of games, direito de autor covers stories, characters, settings, music, graphics, and even the source code itself. However, it is important to stress that direito de autor protects the expression of ideas, not the ideas themselves. This has two consequences: first, game ideas gain protection once fixed in some medium (as source code, or in a word file, for example).

Second, similar ideas adopted in different games do not necessarily infringe the direito autoral of others. Thus, for example, if an FPS shooting game is registered, there will be no violation of the registrant's right if another person also registers an FPS shooting game with different elements. That is to say: there is a fine line between the idea/inspiration and the intellectual work itself.

Another essential feature is that direito de autor grants the holder the right to prevent others from exploiting his work. Direito de autor is also easy to invoke and does not require registration, existing from when the game is created. In contrast, patents and trademarks have complex registration systems, and trade secrets require specific steps to be followed within the company, with constant vigilance to protect the right. Even if registration is not necessary to invoke direito de autor, it is recommended, as it is an efficient way of proving authorship and precedence in case of disputes.

Several licenses can be acquired to produce a game using third-party direitos de autor. For example, obtaining the right to make a derivative work can be complex. For instance, in 2001, Electronic Arts (EA) developed the first "Battle for Middle Earth" game based on a film license from director Peter Jackson. Under this license, EA could only produce game content or derivative works (adaptations) of Jackson's films.

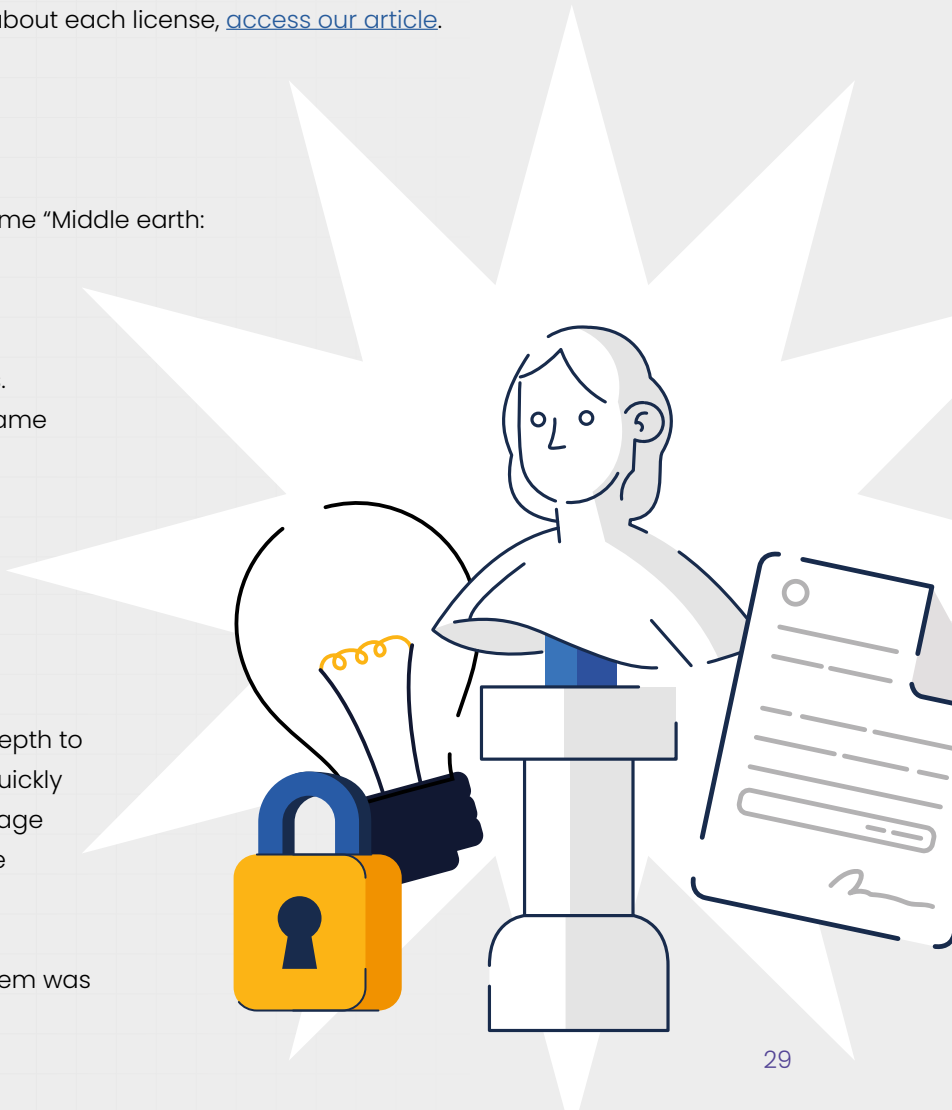
However, in 2005, while creating the sequel to "Battle for Middle Earth" and other games derived from the "Lord of the Rings" trilogy, EA acquired a license to produce a game based on the published works of Tolkien, author of the books in which Jackson's films were based on. This opened up many possibilities for developing new content, such as parts of the story and characters not mentioned in the movies.

When creating game content, developers must be careful not to infringe on the work of others. This may require, in some cases, a good understanding of direito de autor legislation and the limitations on intellectual property that the law itself brings in its article 46 (Lei n. 9,610/98).

It is important to remember that several developers use resources available through Creative Commons (CC) licenses, a licensing model created to freely share any content or intellectual production on the internet based on the use of public rights. The CC license is established in advance and according to the needs of each author. To learn more about each license, access our article.

>> PATENT

The Nemesis system, introduced in the game "Middle earth: Shadow of Mordor" and later improved in the sequel "Shadow of War", placed an innovative and creative twist on the randomly generated enemies. Rather than fighting nameless bots, the game introduces to the player many different members of Orc society, and each enemy is unique, having an affinity relationship with each other with personalized stories.



This way, each Orc will remember their encounters with the player to add more depth to the fight and narrative. This mechanism quickly became a significant competitive advantage of the Action-RPG series from Monolith, the game's developer. Many wondered why the innovative tool was not adopted in other games, which is because the system was

patented. After several years of trying, Warner Bros Interactive Entertainment has successfully patented the Nemesis system, meaning that the appearance of a similar mechanism outside of games produced by Warner Bros Games is unlikely.

While extremely important for technology companies, patents are not commonly used in the context of games. Yet every year, major patent litigation arises in the gaming industry.

Although the games industry as we know it today is just over thirty years old, its relationship with Intellectual Property rights, especially patents, has witnessed considerable development and change in recent years. A patent remains one of the most robust forms of protecting an intellectual right, offering the owner the exclusive right to exploit his invention. The patent holder has an almost absolute monopoly for twenty years, during which he will have the right to make, use, license, and sell the patented invention.

The patent application must be filed with the INPI and meet a strict set of requirements for it to be granted. To be eligible for a patent, an invention must meet the following conditions:

- **novelty:** it must be new, that is, it must demonstrate characteristics that are not known by society (called "state of the art") in its technical field;
- **inventive activity:** cannot be obvious or involve something that can be deduced by a person with "average" knowledge in that technical field;
- **industrial application:** must have a practical use or industrial application capability.

And, as in the cases of trademarks and direitos de autor, patents grant the right to prevent others from using the invention without express authorization. In other words, a patent confers the right to prevent others from creating, using, selling, or importing an invention.

Patents do not usually protect the games, as patentability criteria are generally unmet. However, there are a growing number of patents relating to elements within a game, often in hardware, engines, and digital distribution.

>> TRADE SECRETS AND CONFIDENTIAL INFORMATION

Finally, it is essential to ensure that no confidential information or data about the game, which may or may not be protected by the other forms of intellectual protection already mentioned, is disclosed to the public or competitors.

If there is no way to register such elements, the company (i) must sign an individual agreement or term with the collaborators and/or companies with access to information about the software and (ii) guarantee the security of such data or information.

Concerning formalization using a term or agreement, clauses must be included defining what constitutes confidential information of the company, making it clear that such information is its property, and including a commitment that the person and/or third party who receives the information will not disclose it.

Regarding security, this is a more technical and less legal aspect, ensuring that all systems and equipment used to develop and store the games have the minimum levels of security. This includes not only protection against attacks by third parties, such as viruses and crackers, but also the implementation of governance

mechanisms in the company itself, conducting training with employees, limiting, and controlling access to sensitive materials etc.

To summarize the types of protection and the respective materials that can be protected, here are some examples:

Copyright	trade secrets	marks	patent
music	customer email list	Company Name	technical hardware solutions
source code (software registration)	pricing information	company logo	invested elements of the game
history	publisher contracts	game title	technical innovations such as software or database design

>> HOW CAN THE COMPANY PREVENT POSSIBLE VIOLATIONS OF THIRD-PARTY RIGHTS?

In addition to ensuring that your rights are protected, it is also essential to understand when, for intellectual property, an "inspiration" in a competitor's game will be considered an infringement of the intellectual property rights of others.

Regarding the software, it must be made clear to everyone involved in its development that codes already used in other games cannot be used.

Also, such a statement must be included in the same term in which the assignment of rights over the work between the employee and the company is formalized. In such a clause, the employee will ensure that everything that was developed for the company is original and created by him/her so that, if one day the company is sued in this regard, it may claim compensation from the employee.

The exception to the above is public licenses (such as Creative Commons). In these licensing modalities, the developer can use a pre-established code, only having to indicate the license and the hyperlink to the legal text. In these situations, it is only essential to check the specifics of the license modality to guarantee that it is possible to use it for the purposes desired by the developer.

Concerning trademarks, it is vital to ensure that no other company or person uses the same names and symbols before the game is released and obtain registrations for identical or similar trademarks in the same segment. Such research can be carried out with the INPI and search for pages and networks.

In the same sense, if the company develops a patentable invention, it must carry out a prior verification at the INPI and other patent databases to ensure that no identical or similar invention has already been patented. It

should be noted that, in the case of patent infringement, it is unnecessary to show that there was an intention to copy a third-party invention. It is enough to verify that the technical solution is the same.

About direitos de autor, it is essential to understand that elements from other games cannot be copied. This includes, for example, the game's graphic design, script, characters, and soundtrack.

It is valid to point out that this prohibition does not apply to common ideas or themes, such as hero narrative, sports tournament simulation, etc. However, it is crucial to verify that the elements associated with this story, both graphically and in its script, are not copying specific aspects from other games.

HOW META-VERSE IS CHANGING THE GAMING INDUSTRY

>> INTRODUCTION

While many believe that the Metaverse will be, in the future, the extension of our reality, others are more skeptical and claim that the "new virtual universe" will not prosper, basing their opinions on different reasons, such as cultural and socio-economic issues; technological barriers; high costs, etc. Regardless of the different views, the Metaverse has created hype (and, indeed, business opportunities!).

Although the Metaverse does not yet have a universal legal definition, people have accepted the definitions conceptualized by certain authors, like Matthew Ball, who explains that the Metaverse is "a massive scales and interoperable network of real-time rendered 3D virtual worlds that can be experienced synchronously and persistently by and effectively unlimited by an unlimited number of users, each with an individual sense of presence". ("sic").

In brief, the Metaverse promotes immersive and realistic experiences. Let's imagine, for instance, a car manufacturer: besides the Ads with just photos and information about the cars, the company could create content to provide users an authentic experience in the "virtual world", so they could feel that they are inside the vehicle, even driving it.

Although this technology still seems vague and unclear to most people and perhaps even challenging to size it, certain products and services providing similar experiences have been around for some time, such as the Xbox console: it has a sensor (Kinect, launched in 2010) that captures players' movements and voice and reproduce them in the games. There are also augmented reality apps and items that have this type of interaction.

VR oculus is an interesting example because they allow users to be immersed in the virtual world. Companies like Meta, Apple, and Samsung are already in this sector. Some of them already sell their branded oculus; others

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will do it soon, besides other devices for the Metaverse.

It is worth mentioning that the gaming industry has already been widely using VR oculus to provide user's experience in their games, such as The Walking Dead and Horizon Call of the Mountain. It is forecasted that VR gaming will have exponential growth over the next few years and reach US$ 2.4 Billion in revenues by 2024, thus reinforcing the expansion of this tech trend.

>> MARKET OVERVIEW

After Facebook changed its name to "Meta" and informed that the company was no longer a social media platform but a Metaverse company, several other market players began to pay more attention to this topic.

After two years and many millions of dollars in investments, and although several brands bet on the Metaverse, including having hired "chief metaverse officers", the metaverse economy decelerated due to several reasons: the pandemic, Russia- Ukraine War, inflation, among others, that also affected the tech industry as a whole.

Nevertheless, Meta still plans to create a cyberspace where avatars can navigate across different universes, view content, and participate. Meta announced its initial investment for this project - $50 million – and more recently, disregarding many criticisms, the company announced an additional US$ 2,5 Billion in assets to support independent academic research to study risks and opportunities in the Metaverse.

However, a few tech companies remain skeptical about this technology. Microsoft, for instance, has decided to abandon the project it was developing for the Metaverse and dismissed the responsible team.

So, after the initial buzz around the Metaverse when it was released, there was a slowdown in investments. But the fact is that Metaverse is here to stay. Maybe we still need to get the necessary technologies to exploit all its potential, but with the new devices being developed, we will undoubtedly witness exciting developments of this disruptive technology.

Verified Market Research, a survey company, published a report saying that the metaverse market, valued at $27.21 billion in 2020, will reach $824.53 billion by 2030. Also, Citi GPS's "Metaverse and Money's report" show that the Metaverse may attract up to 5 billion users by 2030.

So, it is vital to be attentive and monitor the Metaverse's possible business opportunities, new trends, and impacts!

>> GAMES

Regarding games, it is interesting to note that the idea behind this technology is familiar to the gaming industry. Many games released in the early 2000s, such as "Second Life", had already promised immersive experiences to their users.

Today, successful games like Roblox, Minecraft, Fortnite, Animal Crossing, and World of Warcraft prove that immersive virtual worlds can be trendy and profitable. However, even for users who already had immersive experiences in the gaming world, the Metaverse offers mind-blowing experiences where users fully live the experience as if they were in real life.

But, when this immersive experience becomes technically possible and accessible, what would be the legal challenges?

▷ **tax and fiscal issues:** most transactions carried out in the Metaverse are characterized by immediacy. Given this, what taxes would be levied? How? Would international transactions be taxed and supervised? Another aspect being considered is that the structuring of a parallel world also implies the creation of a parallel economy that, due to its particularities, may require specific regulation;

▷ **intellectual property:** if the Metaverse is considered an extension of the real world, how will legislation involving trademarks, trade secrets, "direito de autor", and patents be enforced? Also, how can one protect intellectual property rights over products created in virtual environments by several players?

▷ **data protection:** given the new dynamics introduced by the Metaverse, we should reflect on how users will grant affirmative consent because of the multiple functionalities and technologies to which they will be exposed in the Metaverse. Also, anonymized users might become a bigger problem in the Metaverse – like children, for example, they could use fake adult avatars – which may require efficient identity verification mechanisms.

CRYPTO AND GAMES

The first electronic games were created before the 2000s – around 1970 – in which the famous arcades led the scenario. With widespread interest growing more and more, several companies began to invest in this market, improving sound, image, and technology quality.

In the early 1980s, gaming market revenue already exceeded 5 billion dollars. Among others, Pac-man and Mario Bros showed that this sector was here to stay and that, far beyond children and adolescents, it reached the most diverse age groups. Thus, over the following decades, with the evolution of the internet and the emergence of new companies investing in the market, "playing" became an act of interaction at a global level.

From this perspective, as has been happening with other market sectors, there are movements for the world of games to gain decentralized environments, marked by new modalities such as play-to-earn and non-fungible tokens (NFTs) becoming part of this universe.

In the play-to-earn modality in decentralized environments, there is a union of decentralized finance (DeFi) and the games themselves. In other words, the network rewards players with cryptocurrencies (from the network itself) as the player advances in stages or meets goals and/or performs tasks within the game (for example, creating and cultivating virtual creatures, buying items, competing between players, etc.). These activities can provide the player with more items or expand the ones they already have.

Thus, players can buy assets in the game, trade them, and store them in a cryptocurrency wallet. All digital assets that a player has in the game belong to them, and they can, for example, transfer their investments from one game to another and even sell them on other markets. This means that even if a game ceases to exist, it is not synonymous with the loss of funds invested by the player.

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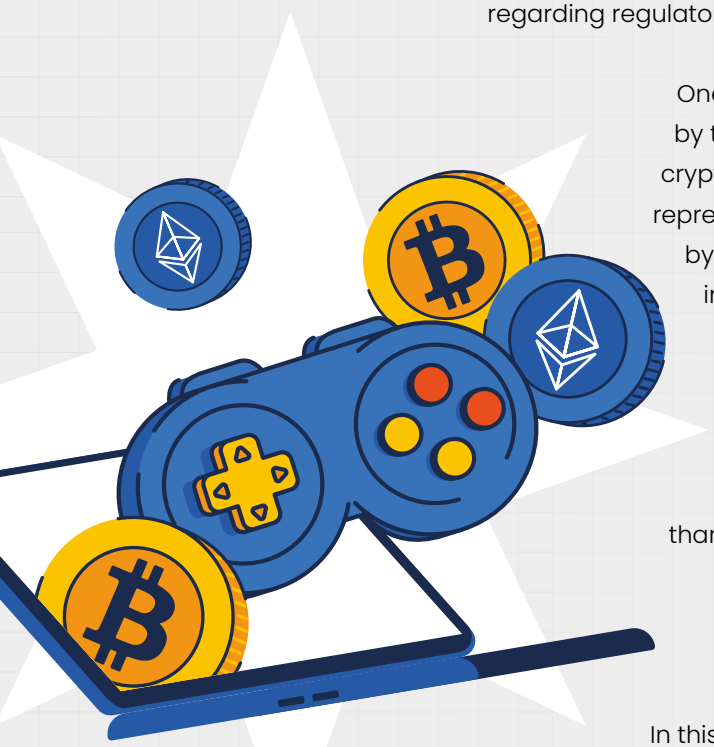
NFTs are unique and exclusive items that players can purchase and trade on NFT marketplaces, exchanges, or directly between players' digital wallets within decentralized games. One of the most famous decentralized games is Decentraland: a virtual world built on blockchain where the gamer can play to earn NFT. The platform has its cryptocurrency, and all game assets are based on the Ethereum blockchain.

Players see these possibilities positively, especially in acquiring and exchanging credits/virtual currencies, skins, avatars, and game items, or even being able to use the balance of digital currencies in the development of the game itself and the creation of negotiable items, being able to transact cryptocurrencies on other platforms.

>> LEGAL CHALLENGES

At the end of last year, the Legal Framework for Crypto assets – Law n. 14,478/2022 – was sanctioned and, as a result, will regulate certain aspects of the market involving crypto assets.

Until now, there was no specific legislation to regulate activities in the virtual asset market, so the Legal Framework for Virtual Assets presents changes in the regulatory framework, especially regarding regulatory, compliance, consumer, and criminal aspects.



One of the first points of attention concerns the concept brought by the normative device in Article 3, which conceptualizes crypto-assets as "virtual assets are considered to be digital representations of value that can be traded or transferred by electronic means and used to make payments or for investment purposes".

In this definition, crypto-assets in the figure of a "virtual asset", capable of being traded or transferred electronically and used for payment or investment purposes, end up encompassing something much greater than the very definition of a crypto-asset in the way it is usually propagated. Thinking about the universe of games, they could even incorporate the credits acquired for in-game purchases.

In this case, the companies that create games, items, and/or services would have their activity regulated and dependent on authorization to operate by the responsible body. Such a situation would bring greater regulatory complexity to projects with business models involving the acquisition of credits/virtual currencies for use in the game.

However, it is worth mentioning that, in the same article, there is a section that excludes certain assets from this definition, among them: "III - instruments that provide their holder with access to specified products or services or the benefit arising from these products or services, such as loyalty program points and rewards". This means that, in principle, the credits acquired for the most diverse purchases of items in the games are excluded from this definition of virtual asset.

WHAT ARE THE TERMS OF USE FOR?

It is common that when using an application or service available through the internet, the user is faced with Terms of Use or Terms of Service. The reason for those Terms of Use or Terms of Service is that someone owns the rights to that software or technology, and some service is to be provided to the user free of charge or for a fee. In other words, both parties will enter into a legal relationship. Because of that, an agreement must be signed for legal certainty in this relationship, defining both parties' rights, obligations, and responsibilities.

All in all, Terms of Use or Terms of Service are nothing more than license agreements for using some software or technology available online.

However, unlike agreements concluded outside the internet environment, which result from negotiation between the parties, Terms of Use or Terms of Service are subscription contracts, to which users have no room to negotiate their terms and accept them. Their rules apply to all users.

That is why in Brazil, the user's acceptance is of extreme importance for legal purposes.

For Brazilian legislation, if there is a vice in the user's consent to the platform, the Terms of Use or Terms of Service or some of its clauses may be considered abusive and, therefore, possibly nullified. This sanction is justified by applying the Consumer Defense Code, as the parties have a consumer relationship.

Below are two types of Terms of Use or Terms of Service and some best practices to be considered valid under Brazilian law:

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>> TYPES OF AGREEMENTS

clickwrap agreements:

What is it: clickwrap agreements are those that demand active conduct from the user, such as clicking with the mouse on the checkbox, indicating that he/she consents to the terms of use;

browse wrap agreements:

What is it: browse wraps are those where the mere navigation of the user on the platform presupposes the acceptance of the Terms of Use.

>> CARE AND GOOD PRACTICES

- easy visualization of the Terms by the users;
- allowing the user's consent to be given from direct action;
- making the Terms of Use available before allowing interaction with the platform;
- presenting all the restrictive rights terms prominently; and
- avoiding confusing and unclear language.

Particular attention should be given to browse wrap agreements, as their validity will depend on whether the user has actual or constructive knowledge of the terms and conditions presented by the application, site, or platform.

INDICATIVE RATING

Electronic games are considered audiovisual works by the Ministry of Justice and, therefore, are subject to the indicative rating obligations imposed by the National Secretariat of Justice (SNJ), which has the competence to regulate the subject.

>>WHAT IS THE INDICATIVE RATING?

The indicative rating is intended to safeguard children and adolescents' healthy development. In short, it is an audiovisual work categorization that gives an age group gradation based on the gravity of their content. For the classification, six categories are considered: free, 10, 12, 14, 16, and 18 years old.

>> HOW IS IT MEASURED?

This measurement evaluates violent situations, drug use, and sexual practices. Graduations are high as such elements are represented in a more complex, recurrent, intense, and/or impacting manner, and the combination of one or more components may be an aggravating factor in the classification. Recently, the Ministry of Justice published the Ministerial Decree n. 502/2021, regulating and establishing the procedure to measure the indicative rating of public exhibits, TV shows, radio, movies, electronic games, apps, role-playing games (RPG), and streaming services.

The Ministry also updated its indicative rating manual to make it more flexible to evaluate the factors mentioned above when in the presence of mitigating or aggravating classification indicators. Thus, an aggravating factor (such as violence) is considered within the illustrated context, pondering its relationship with the plot, frequency, and form of presentation. This analysis contemplates several aspects of the work's composition, such as framing, special effects, editing, and character construction.

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The classification also includes the content descriptors, which represent a synthesis of the primary indication patterns present in the classified work (e.g., inappropriate language and extreme violence). Electronic games are also considered interactive elements, i.e., mechanisms that may cause youth excessive exposure in the virtual context or result in real money spent. Interactive elements are the possibility of location sharing, online shopping, and user interaction.

>> WHO DOES THE RATING?

The Ministry or the distributors of the work may make the indicative rating. Games and applications sold in physical media must be submitted to the classification by the Secretariat before their distribution. The evaluation is free and performed confidentially. It requires sending the Ministry a technical file, synopsis, and copy of the game or comprehensive gameplay video with content relevant to the rating. Within 30 calendar days, the rating assigned to the game is published in the Union Official Journal.

The IARC (International Age Rating Coalition) is a mechanism developed by international classification bodies that allow classifying the work submitted according to classification standards of different nationalities. The process is carried out almost immediately, from the completion of questionnaires, being a tool to facilitate the games in various locations around the world. Electronic games and applications distributed only digitally are exempt from a prior request to the Department for the Promotion of Justice Policies if they are self-classified in the IARC system or by another means authorized by the Ministry of Justice and Public Security.

However, in this case, the Department for the Promotion of Justice Policies may initiate a reclassification process if there is any inadequacy in the self-classification. The final decision is published in the Union Official Journal or published electronically within the IARC system. According to the Decree above, once the IARC system module for analyzing games and applications on physical media has been implemented, this segment can also be analyzed through the self-classification process. The indicative classification of this segment involves some relevant specificities. We list below some of them:

- competitions or events held between users of electronic games, broadcast, televised, or open to the public, must present the complete rating equivalent to the game or application displayed;
- audiovisual content produced by users of internet applications, whether paid or not, is not subject to indicative classification; and
- classifying games and applications made available only in non-locally stored internet browsers is not mandatory.

Finally, it is essential to point out that role-playing games (RPG), even if available in digital format, are subject to a preliminary analysis by the Ministry, requiring the presentation of an application containing: a technical classification sheet; a detailed synopsis of the work; a full copy of the game.

>> WHERE TO DISPLAY IT?

The indicative rating should be present not only on digital games packaging (when sold in physical media) but also in all forms of its dissemination, whether in physical formats such as posters, flyers, banners, displays (cubes, boxes, silhouettes, totems, etc.); printed media (newspapers, magazines, comic books, pamphlets); websites for the digital games distribution and download services for computers, smartphones; ads in electronic media (television, cinema, radio, and internet), such as television clips, etc.

GAMES AND PUBLIC POLICY

Since 2011, public policies aimed at developing the Brazilian games market have been presented as expansions of public policy related to the audiovisual sector and, even more broadly, to the cultural sector itself. At the federal level, such policies are managed by the Audiovisual Secretariat, currently part of the Ministry of Culture, and by the National Film Agency – "Ancine".

At the state and municipal levels, their respective Culture Secretariats centralize such policies, together with other specific public bodies - in the city of São Paulo, for example, "SPCine", a municipality public company created with the objective of developing the city's audiovisual industry, also operates in the games market. In addition to their own direct actions - such as publications, awards and festivals - these public bodies also carry out promotion policies, providing resources for the development of the Brazilian market, in direct and indirect formats.

▷ **Direct promotion policies** are those in which the State applies public funds (proceeds from taxes, i.e. the Contribution to the Development of the National Film Industry - Condecine, fines, etc.) to enable the production of movies and games. A good example of direct promotion are the public notices published by Ancine to transfer funds from the Sectorial Audiovisual Fund ("FSA") to private productions.

▷ **Indirect promotion policies** are those in which the State waives the collection of a certain tax, provided that the taxpayer chooses to apply the respective amount (or part of it) in a project previously approved by a competent public agency. It is, therefore, a triangular relationship, which links the game producer (the one who presents the project), the public agency in charge of the public policy in question and the taxpayer. This mechanism is usually called "cultural tax incentive".

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If the incentive mechanism is federal (like those created by Ancine), the tax will also be federal (basically Income Tax or Condecine); if the incentive is a state mechanism, the tax will be the ICMS (state tax); and if the tax incentive mechanism in question is municipal, the tax to which it refers will be municipal (ISS and IPTU).

Important:
in order to access public funding, game producing companies must be regularly incorporated in Brazil, have most of the voting capital of Brazilians and not be linked to broadcasting companies or electronic mass communication by subscription companies. Depending on the mechanism that is used, other requirements will also need to be met, such as time of existence.

It is essential to be clear that the tax benefit of the indirect promotion mechanism applies to those who allocate funds to games projects, and not directly to those who develop the games - the latter will only receive the resources and develop the project. The relationship between these two parties must be regulated in contract, which will establish, among other topics, responsibilities, schedule and fund transfer format.

Depending on the incentive mechanism, different formats of transfer can be used, such as donation (transfer which aims only to contribute to the production of the game, without any return beyond the tax - as occurs in the Federal Law of Culture Incentive); sponsorship (when the sponsor has an interest in actively promoting his brand within the game - as is the case with the mechanism of article 1A of the Audiovisual Law); and investment (when the investor, in addition to publicizing his brand and obtaining tax benefits, also seeks the game profit share - as is the case with the "FSA" and section 1 of the Audiovisual Law).

As it involves - directly or indirectly - public funds, the promotion mechanisms will always demand from the game producer the presentation of accountability documents to the public agency, detailing both technical aspects of the game's production as well as accounting and tax aspects related to the use of the transferred funds.

Public policies aimed at games seek to strengthen the capacity for innovation, generate local technologies, enable the internationalization of companies and boost the exportation of games. On the other hand, they represent a decrease in tax collection and demand an active positioning of governments - in times of economic recession and public debt, the tendency is that investments in culture and, consequently, in games, are downgraded.

Chapter II

Brazil: an overview

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CORPO-RATE LAW

Corporate Law in Brazil is mostly regulated by Federal Law No. 10.406 of January 10th, 2002 ("Brazilian Civil Code") and Federal Law No. 6.404 of December 15th, 1976, both as amended. The regulation that shall be applied will depend on the company's corporate type. For that reason, we will present the most common corporate types and important legal aspects regarding each of them.

>> CORPORATE TYPES

There are two main types of companies that are used in most business in Brazil:

- Sociedade Anônima ("S.A."); and
- Sociedade Limitada ("Limitada")

Depending on the company's characteristics, a different corporate type will be more suitable for its operation. The choice between each type should consider variables such as the company's income, if it wishes to access capital markets, its tax structure, among others.

The following sections describe the main features and characteristics of Limitada and S.A. companies:

limitada

- Limitadas are governed by the Brazilian Civil Code.

- They are organized by the Contrato Social (in English usually named as Articles of Incorporation) and can be incorporated by one or more shareholders.

- Shareholders may be individuals or legal entities (Brazilian or otherwise).

- The Limitada's capital stock is divided into "quotas" (which are portions of the capital stock, similar to a share of a corporation), but its par value is usually related with a portion of the capital stock,

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with no agio, considering the existence of taxation of agio in Limitadas.

▷ All quotas of a Limitada give their holders the right to vote in general shareholders' meetings, being required, in most cases, the approval of the majority of the capital stock.

▷ The responsibility of each shareholder is limited to the value of their quotas of the capital stock, but the shareholders are all jointly liable for the full payment of the capital stock.

▷ The management of a Limitada is exercised by one or more Officers resident in Brazil or abroad, if the Limitada is supplementary ruled by Law No. 6,404. In case that such officer is not a Brazilian fiscal resident, such individual needs to appoint a Brazilian resident as his/hers legal representative in Brazil.

▷ The Brazilian Civil Code provides the boundaries to which the Articles of Incorporation should be drafted, but within those limits the shareholders are free to choose the rules that shall apply to their company.

▷ The Articles of Association may authorize a Limitada to distribute profits to its shareholders in a proportion that is different from the equity held by each of them in the company.

▷ The shareholders of a Limitada may execute a private Shareholders' Agreement to regulate matters such as distribution of profits, transfers of quotas, non-compete obligation and other matters.

sociedade anônima

▷ Sociedades Anônimas or simply S.A. are governed by Law No. 6.404 of December 15th, 1976, as amended.

▷ They are organized by their Estatuto Social (in English usually named as Bylaws).

▷ 2 or more shareholders (individuals or legal entities, Brazilian or otherwise) are necessary for the incorporation of a S.A. The only exception to this rule is the wholly owned subsidiary ("subsidiária integral"), which is a S.A. that has another Brazilian company as sole shareholder. Wholly owned subsidiaries must be incorporated by public deed. Alternatively, an existing S.A. can be converted into a wholly owned subsidiary through the acquisition of all its shares by another Brazilian company.

▷ At least 10% of the capital stock must be paid up by the shareholders at the time of the incorporation of a S.A.

▷ The capital stock is divided into shares. There are three main types of shares most commonly issued: (i) common shares, which provide standard financial and voting rights; (ii) preferred shares, which may provide their owner political and economic privileges within the company, such as priority in the distribution of profits and capital stock repayment; and (iii) preferred shares with privileges as item (iv) above, but with restricted voting rights or even no voting rights.

▷ Preferred shares – and, exclusively in privately held S.A., common shares – can be divided into different classes, each providing different benefits and restrictions.

▷ Each shareholder must pay in the total price for their shares and their liability is limited to that

amount. However, they are not liable for the full payment of the capital stock (unlike the members of a Limitada).

▷ Usually, decisions must be made by shareholders representing more than half of the shares with voting rights present at the shareholders' meeting. However, the Bylaws and/or a shareholders' agreement may require supermajority for certain decisions to be made.

▷ A S.A. can only distribute profits to its shareholders in the proportion to their equity in the company.

▷ The administration of a S.A can be carried out by one or more Officers, individuals fiscal resident in Brazil or abroad, but in that last case he/she must appoint a legal representative with residency in Brazil.

▷ At the discretion of the shareholders, a S.A. may also have a Board of Directors ("Conselho de Administração") with powers to vote and decide on several corporate matters (in some cases, such as for publicly held S.A., the existence of a Board of Directors is mandatory).

▷ The Bylaws must provide for an Audit Committee ("Conselho Fiscal"), which will supervise the administration of the company (namely the actions taken by its Officers and Board of Directors). The Audit Committee may function permanently or only during specific fiscal years (as decided by the shareholders).

▷ The S.A. shall publish its corporate documents as well as its annual financial statements. The general rule is that such publications must be made via a newspaper with broad circulation on the region of the S.A.'s headquarters, both in the printed and digital versions, with great costs for the companies. Exceptionally, privately held S.A. with annual gross revenue below BRL 78 million may choose to publish such corporate documents through Brazilian Federal Revenue Service's Digital Public Bookkeeping System (aka SPED), with no costs for the companies.

▷ The shareholders of a S.A. may execute a Shareholders' Agreement to regulate matters such as voting rights, transfer of shares, non-compete obligations etc.

▷ A S.A. must keep and update corporate books to register information such as share ownership, share transfers, minutes of shareholders, Officers, Audit Committee and Board of Directors meetings.

LABOR LAW

>> LABOR AND EMPLOYMENT MATTERS

In Brazil, labor and employment matters are ruled by Federal Constitution and Brazilian Labor Code (Consolidação das Leis do Trabalho – "CLT"), which are supplemented by other federal, state, municipal and social security legislations, court decisions and collective bargaining and collective labor agreements.

Therefore, this doing business intends to provide an overview of employment and labor law regarding the most important topics to do business in Brazil.

Furthermore, it is important to point out that besides the strong labor and employment legislation in force in Brazil, according to Brazilian labor principles, factual findings also play an important role throughout employment rights, since they are often more important than formal documents to establishing employees' rights and obligations.

>> GOVERNING LAW

Any labor contract is governed by the law of the country in which the services are rendered, according to the territoriality principle or lex loci executionis. Thus, if all workers are based in Brazil and perform their activities in Brazil, they are all subject to Brazilian legislation.

However, if services are rendered part in Brazil and part abroad, Brazilian law may be applicable depending on factual findings. The issue such as whether Brazilian law is or is not the governing law is based primarily on where the activities are performed. Facts are therefore essential to establish whether an activity is performed in Brazil or abroad, especially in a case of remote working.

In this sense, Law No. 7,064/1982 sets forth rights applicable to employees of Brazilian companies working abroad. Such rights

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include employment rights in the jurisdiction where the work is being carried out, and any right under Brazilian Law, whichever is more beneficial to the employee.

>> LABOR AND EMPLOYMENT LAW APPLICABLE TO EMPLOYEES

Brazilian labor law acknowledges an individual as an employee if he/she renders services to a company on a personal and habitual basis, with subordination and upon compensation.

The concept of employee is provided in section 3rd of the Brazilian Labor Code:

Section. 3rd An employee is considered to be every person [natural person only] who renders services [on a personal basis] of a non transitory nature [habitual basis] to an employer, on its facilities [subordination] and through payment of salary [compensation].

Both officer, services provider and emplloyee render services on a personal and habitual basis and through monthly payment of compensation. Consequently, the main difference is whether he/ she works under subordination or not.

Case law and scholars understand that the meaning of "subordination" is not based on objective criteria or facts. This subjectivity raised different understandings of the meaning of subordination. However, as a major understanding, there will be "subordination" when the worker must follow orders from another individual who is in a higher position in the company's hierarchy.

Therefore, if the individual does not perform his/her activities with subordination to any other individual, he/she shall not be considered an employee of the company, to the extent that the main element of an employment relationship, i.e., subordination, would not exist.

>> EMPLOYMENT REGISTRATION

The hiring of an employee requires a registration on the "employment booklet" (Carteira de Trabalho e Previdência Social – "CTPS"), in which must contain information such as the employer's name, date of hire, remuneration, job positions, salary increases, vacation periods and union dues. The registration of it is mandatory, under penalty of R$ 3,000.00 per employee not registered, also applied in case of recurrence.

Similar annotations must be made in the company's books.

>> BASIC LABOR RIGHTS

a. **Limit on working hours:** The Federal Constitution sets forth that regular working hours are limited to eight hours per day and forty-four hours per week. However, the Brazilian Labor Code provides that the eight-hours wok day may be extended to up to two hours per day. It is important to point out that in certain occupations and professional categories the working hours are limited to six hours per day and thirty hours per week;

b. Thirteenth salary or Christmas bonus: Employees are entitled, by law, to a thirteenth salary equivalent to the salary of December of each year. The payment is usually made in two equal installments, the first being accrued with vacation payment or in November and the second installment necessarily to be paid up to December 20th;

c. Vacation: The Brazilian labor legislation determines that after twelve months of work (the "acquisition period") employees are entitled to at least thirty days of vacation. The company decides when the employee will be on vacation, which must be within the twelve months immediately after the acquisition period. The employee may choose to sell ten days of vacation to the company. The company may split the vacation period in up to three periods, one of which may not be less than fourteen consecutive days and the others cannot be less than five consecutive days, each. Moreover, Federal Constitution grants employees with a vacation bonus equivalent to one-third of the vacation payment;

d. Guarantee fund for length of service: All companies shall deposit in an account named Guarantee Fund for Length of Service (Fundo de Garantia por Tempo de Serviço – "FGTS") the amount equivalent to 8% of employees' monthly remuneration. The respective amount is kept in this account and can only be withdrawn by the employee in special circumstances such as to buy a house, in case of serious illness and termination of the employment agreement without a cause;

e. Other benefits: Collective Bargaining Agreements are binding and may grant additional labor rights and benefits to employees, such as annual salary increase, meal vouchers, food baskets, special prior notice etc. Benefits may vary depending on the business category and location of the company.

>> OVERTIME

In case the employees carry out overtime during business days (Monday to Saturday), overtime must be paid with an additional allowance of at least 50%. For work carried out on Sundays and holidays, the additional premium is equivalent to 100%. However, the rates can be increased by collective bargaining agreements, employment agreement or as a result of the company's practices.

>> SEVERANCE PAYMENTS

According to Brazilian labor law any employee may be dismissed without a cause at any time, provided that the employee receives prior notice of thirty days and the due severance payment. The severance payment may vary according to the circumstances of the termination; however, if the employee is dismissed without cause, he/she shall be entitled to:

I. Balance of due salary (for period worked);

II. Credit deposited in the FGTS account during the period he/she worked for her/his employer; iii. Fine corresponding to 40% of the total amount deposited in the FGTS account;

III. Prior notice of at least thirty days plus an additional three-day salary indemnification for each full year of employment up to the limit of 90 days;

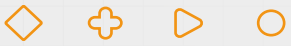
IV. Accrued vacation based upon one month's compensation per year of employment. When termination occurs before the full year is completed, vacation time is calculated on a pro-rata basis;

V. Vacation bonus which must be equal to one-third of the amount due as accrued or regular vacation;

VI. Christmas bonus which is equal to 1/12 of the employee's monthly compensation per month of employment (or a fraction of at least 15 days) counted from January 1st to the date of termination.

>> AMENDMENTS TO THE EMPLOYMENT AGREEMENT

The Brazilian Labor Code provides that an amendment to an employment agreement can only be made by written and mutual consent and if such amendment is not detrimental to the employee.



TAX LAW

The Brazilian Tax System is very complex, having several specific norms and resolutions. For that reason, we will briefly explain some of the most common corporate taxes and how they work. As previsouly commented, the Brazilian Constitution provides many guidelines for the Tax Law System. The several tax regulations obey what was previously determined by the Constitution. Complementary to that, Federal Law nº 5.172 of October 25th, 1966 also helps provide general rules.

>> CORPORATE INCOME TAXES (IRPJ AND CSLL)

- Companies domiciled in Brazil are subject to 2 Federal Corporate Income Taxes, the Imposto de Renda de Pessoa Jurídica ("IRPJ") and the Contribuição Social sobre o Lucro Líquido ("CSLL"). All companies have the right to calculate both taxes on their taxable income. The taxable income is the net income of the company pursuant to the Generally Accepted (in Brazil) Accounting Principles (the Brazilian GAAP), with some adjustments (additions and reductions) provided for by the law. This is the so-called "real profit regime".

- Tax losses incurred by companies (in the "real profit regime") may be carryforward. However, tax losses carryforward can only be used to offset taxable incomes of subsequent fiscal year up to a maximum of 30% of each year's taxable income.

- There is no State or Local Income Tax in Brazil.

- The IRPJ is calculated at a tax rate that ranges between 15% and 25% according to the amount of taxable income produced by the company in the respective fiscal year.

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▷ The CSLL is calculated at a flat rate of 9%.

▷ Alternatively, both taxes may be calculated with basis on a "presumed income", which is the product of the multiplication of the company's revenues by certain presumed profit margins set forth in the Tax Law (different activities have different presumed profit margins). Such regime is called the "presumed profit regime" and is only applicable to companies that have expressly chosen to submit themselves to such special regime. Once a company has chosen to pay its Corporate Income Taxes under the "presumed profit regime" it cannot go back to the "real profit regime" before the end of the respective fiscal year.

▷ Not all companies may choose to pay their Corporate Income Taxes under the "presumed profit regime". For instance, companies with annual revenues higher than R$78.000.000,00 and/or companies that has any profits or gains arising from abroad may not benefit from such regime.

▷ The presumed profit margin set forth by Brazilian law is of approximately 8% for activities like retail, wholesale, manufacturing and sale of real estate.

▷ A 32% presumed profit margin is applicable to services in general and real estate leasing, as well as intermediation activities. It is important to emphasize that this regime cannot be applied to certain activities, requiring the use of the real profit regime, especially the companies that have profits, income or capital gains from abroad.

▷ In summary, companies which actual profit margin is higher than the profit margin presumed by the tax law will actually have a benefit if they choose to adopt the "presume profit regime". Companies with a lower actual profit margin (or with losses) should choose the "real profit regime".

>> THE SOCIAL INTEGRATION PROGRAM (PIS) AND THE SOCIAL SECURITY TAX ON REVENUES (COFINS)

▷ The Programa de Integração Social ("PIS") and the Contribuição para o Financiamento da Seguridade Social ("COFINS") are both federal taxes created to fund the Brazilian social security.

▷ They are both calculated on the companies' gross revenues on a monthly basis.

▷ There are two basic regimes for the calculation of such taxes: the value-added regime and the "old" regime.

▷ The value-added regime was created in 2002 and is today the standard regime, i.e., is the regime that applies to all companies, except for those that have been kept in the old regime by the law.

▷ The value-added regime allows companies to deduct from their revenues the cost of certain acquired goods and hired services, provided that such goods and services are acquired from/provided by a Brazilian company and are used by the acquiring/hiring company to produce goods or the provision of services.

▷ In the value-added regime, the PIS and COFINS rates are respectively 1.65% and 7.6%.

▷ In the old regime, which is much simpler, companies calculate the PIS and the COFINS on the amount

of their revenues at tax rates of 0.65% and 3% respectively.

▷ Because in the value-added regime the allowed deductions from the revenues are not so broad as expected and the tax rates are substantially higher, to many companies (especially services companies) the old regime is preferable to the value-added one.

▷ As a rule, companies that pay the Corporate Income Taxes in the "presumed profit regime" are automatically obliged to pay the PIS and the COFINS in the old regime.

▷ There is no assessment of PIS or COFINS on revenues from exportation of goods and services.

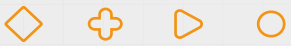
>>MUNICIPAL TAX ON SERVICES (ISS)

▷ Most services are subjected to the Imposto Sobre Serviços ("ISS"), a Municipal Tax that is calculated on the revenues of services companies.

▷ Since the ISS is a Municipal tax its rates may vary from city to city but its minimum and maximum rates are 2% and 5%.

▷ As a rule, the ISS is owed to the Municipality in which the provider has the infra-structure necessary to provide the services.

▷ Since taxes in Brazil can only be created by law, ISS is instituted by the legislative of each Municipality.



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