

**COMBATING PIRACY IN BRAZIL**

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## **1. Introduction**

The general objective of this work is to present an overview on the recent experience of Brazil in combating piracy and counterfeiting, an issue that has aroused growing interest worldwide because of their negative impacts.

Moreover, the specific objectives of this study are the identification of the main lessons learned based on the Brazilian experience, and also, signaling some of the main challenges that must be faced by the country in order to make the fight against piracy and counterfeiting increasingly more effective.

However, to support the pursuit of those objectives, it is necessary to present the concept of intellectual property (section 2); talk about the reasons for the protection of intellectual property and, consequently, to combat piracy and counterfeiting (section 3); and contextualize the issue in international perspective (section 4).

So, through the reading of this study it will be possible to realize that the turning point on combating piracy and counterfeiting in Brazil occurred with the Parliamentary Commission of Inquiry (CPI) on Piracy, installed in the Chamber of Deputies on May 30, 2003 with the purpose of investigating facts related to the piracy of products industrialized and tax evasion. The Brazilian government few months later established the National Council to Combat Piracy and Crimes against Intellectual Property (CNCP).

At the end of the work some of the main lessons learned from the recent Brazilian experience in the fight against piracy and counterfeiting are presented.

## 2. Concept of Intellectual Property

According to the World Intellectual Property Organization (WIPO)<sup>1</sup>, intellectual property refers to creations of the mind, and, in general, represents rights that result from intellectual activity in the industrial, scientific, literary and artistic areas.

Intellectual property rights are essentially aimed at protecting the creators and producers of intellectual works. The holders of those rights are guaranteed, for a limited time, the control of the decision on the use of their creations. It is important to stress that these rights do not refer to physical objects for which the creation may be incorporated, but the result of intellectual activity.

Intellectual property is traditionally divided into two categories: 1) industrial property, which includes patents, trademarks, industrial designs and geographical indications; and 2) copyright, which includes literary and artistic works.

In Brazil the term piracy<sup>2</sup> refers to violations of copyright, as counterfeiting is the term used to describe violations of industrial property rights.

However, the word piracy has been popularly used to mean both violations of copyright as those of industrial property.

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<sup>1</sup> See <http://www.wipo.int/about-ip/en/>

<sup>2</sup> The definition of piracy was established at the Presidential Decree n<sup>o</sup>. 5.244, dated October 15, 2004.

### 3. Why combat piracy

According to the World Trade Organization (WTO)<sup>3</sup>, ideas and knowledge represent an increasingly important aspect of trade.

That's because most of the value of some products – like new medicines and other high technology products - is attributable to the amount of invention, innovation, research, design and testing involved to produce them. There are either some products – like films, music recordings, and computer software – whose value lies in the information and creativity they contain.

In that sense, the protection of the right holders' interests has an important role in promoting an environment conducive to innovation and creativity, important factors for the development of a country.

Therefore, the reasons for the protection of intellectual property go beyond the goal of protect individual rights.

Piracy and counterfeiting are activities that affect not only the economic and moral interests of the holders of intellectual property rights, but also undermine national economies and social structures.

According to Interpol<sup>4</sup>, piracy is the crime of the century XXI. There is strong evidence that

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<sup>3</sup> See [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm7\\_e.htm#top](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm#top)

<sup>4</sup> See <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Default.asp>

transnational organized crime groups are highly involved with piracy and counterfeiting. These crimes are linked with money laundering, the illicit trafficking of drug, firearms and other types of organized crime. It is believed also the possibility of financing terrorist activities of paramilitary organizations through the sale of pirated and counterfeit goods.

Under the economic perspective, countries also suffer substantial damage due to the production and sale of pirated and counterfeit products. Examples: losses of revenue by the manufacturers; losses of government revenue; and losses of jobs in the formal economy.

The U.S. Chamber of Commerce<sup>5</sup> estimates that piracy and counterfeiting cause the North American economy losses in the amount of \$ 200 - R \$ 250 billion dollars a year, and the world economy losses of approximately \$ 650 billion dollars per year.

Another aspect of great importance relates to the risks that the piracy and counterfeiting pose to the health and safety of consumers. It is possible to observe the increase throughout the world of the amount of pirated and counterfeited products - such as drugs<sup>6</sup>, cosmetics, surgical equipment, food, cigarettes, alcoholic beverages, and even automotive parts and aircraft - that leverage the risks of dangerous effects on consumers.

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<sup>5</sup> See <http://www.thetruecosts.org/portal/truecosts/getthefacts/default>

<sup>6</sup> According to the World Health Organization (<http://www.who.int/mediacentre/factsheets/fs275/en/>), currently the fake drugs represent about 10% of the world market. In countries less developed, that percentage reaches 20%. The WHO estimates that, by 2010, this trade should rotate approximately USD 75 billion.

#### **4. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)**

According to historians, the first grant of rights on an invention occurred in the Republic of Venice, in the year of 1416. At that time it was claimed the granting of a patent for the construction of windmills moved by the force of water. And the first law on the matter was the Venetian Law, dated March 19, 1474.

In terms of international relations, the first convention was signed in 1883, which resulted in the Union of Paris for the Protection of Industrial Property. In 1886 was established the Berne Union Convention for the Protection of Literary and Artistic Works.

Regarding the discussions about the issues related to the liberalization of international trade, the issue of intellectual property has become effectively treated as a central issue from the Tokyo Round (1973-1979) - seventh round of the General Agreement on Trade and Tariffs (GATT)<sup>7</sup>.

Indeed, given the intensification of trade relations between countries and the consequent increase in overall importance of intellectual property, it became necessary - especially to attend the demands of the industrially advanced countries - the establishment of a new set of rules with a view to the reduction of tensions in international economic relations resulting from varying degrees of protection given to intellectual property.

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<sup>7</sup> Between 1948 and 1994, the GATT (General Agreement on Tariffs and Trade) issued the rules for world trade. In principle, the agreement should be provisional, however, lasted 47 years.

As a result of the Uruguay Round<sup>8</sup> (1986-1994) of multilateral trade negotiations, in 1995 was created the World Trade Organization (WTO), which has managed under the direction of its member countries a comprehensive system of rules for international trade.

One of the agreements administered by the WTO is the Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS), which sets minimum levels of protection that each member country must give intellectual property in order to narrow the gaps in the way these rights are protected around the world. And when there are trade disputes over intellectual property rights, dispute settlement system of the WTO's dispute settlement system is the body responsible for resolving them.

The TRIPS covers five main themes, namely:

1. As the basic principles of the system of trade and other international agreements on intellectual property should be applied;
2. How to give adequate protection to intellectual property rights;
3. As the countries should promote the observance of these rights adequately in their own territories;
4. How to resolve disputes related to intellectual property among WTO member-countries;
5. Transitional provisions special during the deployment of the new system.

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<sup>8</sup> See [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm)



The TRIPS Article 1.1 states:

“Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice”.

According to the transitional rules set by TRIPS in its article 65.2, Brazil should promote the necessary adaptations in its legal system by the year 2000. However, prior to that final term all commitments had already been implemented through the modernization of the Brazilian legislation on intellectual property.

This movement of modernization began with the publication of the Act of Industrial Property (lei nº 9279/96), the Act of Copyrights and Related Rights (lei nº 9610/98), the Act of Softwares (lei nº 9.609/98) and the Act of Cultivating Plants (lei nº 9.456/97).

It is important also note that Brazil has adopted some TRIPS PLUS provisions relatively to copyright and "pipeline"<sup>9</sup> patents.

Japan announced in October 2007 that intends to work closely with trading partners including Canada, the European Commission, Mexico, New Zealand, Republic of Korea, Switzerland

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<sup>9</sup> The Act of Industrial Property (lei nº 9.279/96) introduced a temporary institute called "pipeline" in order to protect inventions whose patents had already been issued abroad, and that in Brazil could not be issued because of the prohibition of the precedent law, relatively to products and process chemicals, pharmaceuticals and food.

and the United States with a view to establishing a new international agreement, the “Anti-Counterfeiting Trade Agreement (ACTA)”.

ACTA’s goal is to provide a high-level international legal framework that strengthens the enforcement of intellectual property rights.

However, it is important to remember that a number of international legal regimes already exist to negotiate intellectual property rights treaties, including the World Intellectual Property Organization (WIPO) and the WTO TRIPS Council.

Besides, part III of the TRIPS Agreement already deals specifically with the enforcement of intellectual property rights, so ACTA represents a duplication of efforts that are regularly coordinated elsewhere.

Finally, developing countries often participate in WIPO and WTO-TRIPS Council negotiations. On the other hand, in ACTA there is no an equality process of representation because it’s negotiation process involves the world’s wealthiest countries banding together and forming a unified block to unilaterally set new global rules for intellectual property rights.

## **5. The pillars of change in combating piracy in Brazil**

Guided by TRIPS provisions, in 2001 the Brazilian government had already created two groups with different tasks related to intellectual property - the Inter-Ministerial Committee to Combat Piracy (CICP) and the Inter-Ministerial Group of Intellectual Property (GIPI).

The CICP - which was replaced by the National Council to Combat Piracy and Crimes against Intellectual Property (CNCP) in 2004 - had an advisory character, and its job was, basically, to propose actions oriented to copyright enforcement. The participation of representatives of the private sector in its work was only possible to occur through convening.

GIPI is the body responsible for proposing government action aimed at reconciling the internal and external policies aimed to foreign trade of goods and services relating to intellectual property.

However, as will be shown below, in 2003 there was a movement in Brazil with the purpose of organizing both public and private actions to combat piracy. There was also, at that time, the need for a more thorough knowledge about the worldwide spreading phenomenon that undermining economies and serve as a barrier to the countries' development.

### **5.1. The Parliamentary Committee of Investigation (CPI) on Piracy**

The turning point on combating piracy and counterfeiting in Brazil occurred with the Parliamentary Commission of Inquiry (CPI) on Piracy, installed in the Chamber of Deputies

on May 30, 2003 with the purpose of investigating facts related to the piracy of products industrialized and tax evasion.

As recorded in the introduction to the CPI's Final Report, the installation of the CPI on Piracy "ran of the fair outcry of Brazilian society represented, mainly, by segments generators of wealth and, by consequence, of jobs and tax revenues, disseminating up this outcry among other segments dedicated to the expansion of national culture, all to demand an effective response by the State to put an end to this disorder whose potential to damage the social and economic order is day after day more devastating".

Despite the elements that led to its creation, the CPI on Piracy was guided by the premise that the Brazilian State has its own reasons for the fight against piracy and counterfeiting. That's because piracy and counterfeiting undermining the governmental actions geared to the welfare of the population as a whole, especially with regard to the equitable distribution of national income and investment priorities in health, education, security, etc.

The Final Report of the CPI on Piracy unveils the reality of piracy in Brazil and consolidate data concerning to the problem, at the same time that lists some legislative and institutional recommendations. Besides it represents the beginning of the identification and dismantling of organized crime groups involved with piracy in Brazil.

## **5.2. The National Council to Combat Piracy**

Among the recommendations made by the CPI on Piracy, it is important to emphasize the

suggestion aimed to the creation of a body to improve the coordination of public entities involved in the crackdown against piracy and counterfeiting.

In this sense, welcoming the recommendation of the parliamentarians, the Brazilian government few months later established the National Council to Combat Piracy and Crimes against Intellectual Property (CNCP). The solemnity of installation of the CNCP occurred on November 24, 2004.

The CNCP is a consultative body in the structure of the Ministry of Justice which aims to draw up guidelines for the formulation of the national plan to combat piracy, the tax evasion resulting from it, and crimes against intellectual property.

The composition of the Council is mixed, with participation of the public sector and the private sector, whose representatives have a two-year period of mandate. The Ministry of Justice has the burden of exercising the presidency of the Council and its Executive Secretariat.

The agency is formed<sup>10</sup> by representatives from the seven Ministries (Ministry of Justice, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Culture, Ministry of Labor and Employment, Ministry of Development, Industry and Trade, and Ministry of Science and Technology), as well as by the Federal Senate, the House of Representatives, the Federal Police, the Federal Highway Police, the National Secretariat for Public Safety and the Federal Revenue Secretariat. CNCP is also formed by seven private associations (Motion Picture Association of America - MPA, Brazilian Record Producers Association - ABPD, Brazilian

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<sup>10</sup> According to the Ministry of Justice Administrative Rule no. 1218, dated July 5, 2007.

Software Enterprises Association - ABES, Brazilian Institute Competitiveness Ethics - ETCO, National Confederation of Industry - CNI, National Confederation of Commerce CNC, and Brazilian Intellectual Property Association - ABPI).

By bringing together private entities and Government representatives in a same Council, with equal rights to voice and voting, the Brazilian Government's attitude is the first of its kind in the world.

It is also important to emphasize the CNCP's consultative character. In other words, the Council can not determine, for example, the conduct of repressive actions, which are in charge of the institutions with powers to police. The CNCP acts as inducer of the national mobilization to combat the problem, by involving, for example, public agencies, civil society organizations and media, based on the National Plan to Combat Piracy.

### **5.3. The National Plan to Combat Piracy**

After its members were sworn in, the CNCP started preparations for the formulation of the National Plan, in line with the goals that gave cause to its creation. Thus, in February 2005 all representatives got together for a three consecutive days meeting in order to an immersion in the subject. The main task was the proposition of actions to combat piracy, forming an articulated plan to serve as a catalyst for efforts of the Public agencies and the private sector. So, the job was based on the analysis of the consequences of the problem of piracy and addressing on the investigation of its causes.

The proceedings of the workshop were conducted by the General Coordination of Planning

Sector of the Ministry of Justice (COPLAN). The job involved all both public and private representatives. The methodology adopted was a tool of public planning called Situational Strategic Planning (PES). The meeting aimed to create all the necessary and sufficient conditions for the preparation of guidelines and proposals of the National Plan to Combat Piracy.

All of these stages were implemented under the optics of dialogue, understanding, and consensus, particularly in validating the work, which is a collective construction of ideas and proposals.

Contrary points of view were debated to exhaustion, and convergent positions revealed. The work dynamic allowed a more constructive reflection on the problem.

At the end of the meeting, as a result, the absolute majority of the Counselors agreed on 99 (ninety-nine) concrete actions<sup>11</sup> that involved all of the claims set forth by the public and private sector representatives present at the Council.

So the Brazilian Government signaled to the Brazilian society and to the international community a public policy aimed at combating piracy and crimes against intellectual property.

The classification of the actions proposed by the National Plan was made according to the nature of each of them, considering three major axes, namely: repressive, economic and educational.

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<sup>11</sup> The stock prioritized can be seen in the first report of activities of the CNCP, dated July 2005, pages 44-49, available at the link <http://www.mj.gov.br/combatepirataria>

This division takes into account that the problem of piracy and counterfeiting is quite complex and requires the adoption of actions designed both to the containment of supply (repressive) of pirated and counterfeit products, but also actions aimed to discourage the demand (economic and educational) for these products.

Therefore, the document represents a paradigm shift because, considering the complexity of the problem of piracy, suggests that the phenomenon should be tackled in various ways, from the union of forces of the State and Society.



## **6. The new reality of combating piracy in Brazil**

In 2000 the American Government started an investigation based on the allegations of the U.S. software, recording, publishing, and audiovisual industries that Brazil was supposedly lenient with the practice of piracy.

Should the investigation confirm the truth of the allegation, Brazil could have been excluded from the Generalized System of Preferences - GSP<sup>12</sup>, which would have entailed losses appraised at about US\$ 3 billion for the country.

However, regardless of that "external threat", Brazil was already convinced for its own reasons on the need for a mobilization to confront the problem of piracy and counterfeiting.

The work done by the Congressional Investigation Committee on Piracy and the establishment of the National Council on Combating Piracy and Intellectual Property Crimes - CNCP created the requisite conditions for the strengthening of the country's piracy combating policy, which, incidentally, has attracted the interest of other countries, owing to the innovative character of the Brazilian strategy that seeks to deter both the supply of and the demand for pirated products. Moreover, the combined efforts of the public and the private sectors are a characteristic that differentiates the Brazilian approach from others.

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<sup>12</sup> Under the WTO agreements, considering the Most-favoured-nation (MFN) principle, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members. But some exceptions are allowed. For example, they can give developing countries special access to their markets, like done by the United States through the Generalized System of Preferences – GSP, defined in the first meeting of the United Nations Conference on Trade and Development - UNCTAD in 1964.

As a consequence of those facts, in January 2006 the United States Trade Representative Office announced that the investigation had been dropped, recognizing the significant efforts that have been undertaken by the Brazilian government and society to combat piracy of copyright and other crimes against intellectual property.

In addition, two other facts illustrate the change occurred in the country.

Firstly, in October 2006 the Ministry of Justice's Executive Secretary and President of the National Council on Combating Piracy and Intellectual Property Crime - CNCP, Luiz Paulo Barreto, received in Miami, United States, the First Anti-piracy Award from the Motion Picture Association of America - MPAA. The award is conferred each year on the public authority of a Latin American country that has demonstrated exceptional leadership in combating piracy.

Finally, in August 2007, during the XXVII National Seminar on Intellectual Property, held in Rio de Janeiro, the Brazilian Software Enterprises Association (ABES), the Business Software Alliance (BSA) and the Entertainment Software Association (ESA) honored the CNCP in recognition of the advances occurring in Brazil.

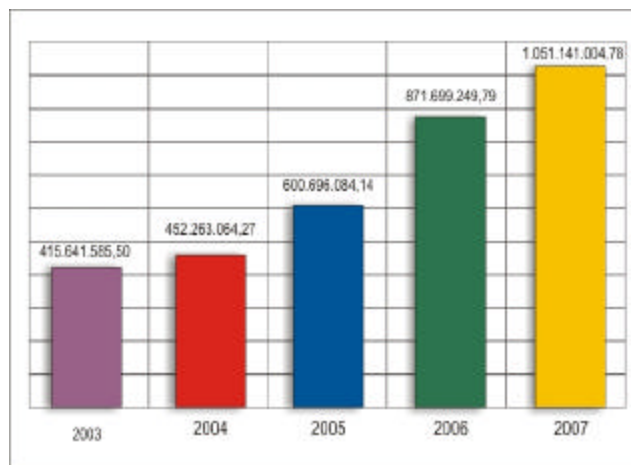
## 7. Major advances occurred in Brazil in combating piracy

As a result of being considered in a specific public policy, the combat to piracy was put in evidence and reached a status of priority in Brazil. This does not mean the solution of the problem, but many initiatives and changes took place as a consequence of the creation of the CNCP, as we shall see below.

### 7.1. Intensification of joint operations in border areas

The year 2005, first under the auspices of the National Plan to Combat Piracy, was characterized by the large volume of pirated products seized. Since then, the country has registered successive records in the quantity of goods seized.

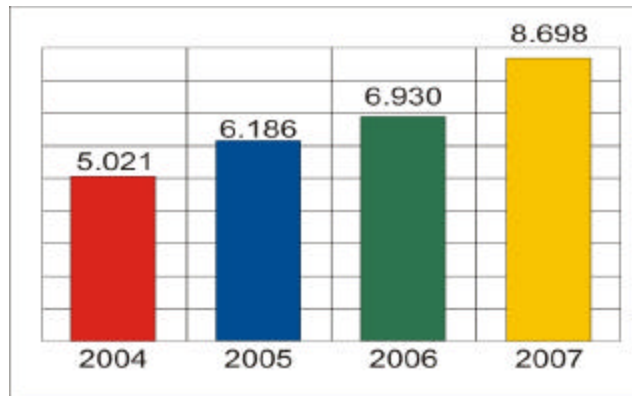
In the following figure are shown the amounts of seizures of goods per year from 2003, according to data from the Federal Revenue Secretariat from Brazil.



It is remarkable that in 2007 the volume of seizures more than doubled over 2004, the year of establishment of the CNCP, owing particularly to coordinated work by the Federal Police, the Federal Highway Police, and the Federal Revenue Secretariat.

Those agencies, with the participation of other bodies with powers to police, intensified joint operations in order to optimize the allocation of resources for this type of activity and maximize the reach of results.

The next figure makes a comparison concerning the number of investigations initiated by the Federal Police, from 2004 to 2007, related to copyright violation, contraband and customs evasion.



The Brazilian Federal Revenue Secretariat estimates that 75% of pirated and counterfeit goods in circulation in the country are from the Southeast Asia.

Considering that Brazil is not characterized as a country producer of pirated goods, but as a large consumer market, special emphasis has been given to the work in the primary zones<sup>13</sup>.

Incidentally, most of the attention has been given to the tri-boarder region which involves Brazil, Paraguay and Argentina. The region around the Friendship Bridge, which connects the cities of Ciudad Del Este, in Paraguay, and Foz do Iguacu, in Brazil, is considered one of the main corridors to the entrance of illicit products in the country. So, that area became a target of intensive joint operations, such as:

a) “Cataratas” (Waterfalls) Operation – this operation was a joint involving the Federal Revenue Secretariat, the Federal Police, the Federal Highway Police, the National Ground Transportation Agency, and the Military Police and the Highway Department of the Parana State. Its main goal was to fight organized crime through the repression to the piracy, smuggling and customs evasion at the border. The operation involved activities of intelligence, surveillance and search and seizure, among others, lasted for a period of 12 months (November 2004 to October 2005). It resulted in the seizure of more than US \$ 60 thousand in goods, representing an increase of 121% compared to the seizures made in the same period in the precedent year.

b) “Comboio Nacional” (National Convoy) Operation – this operation was held together by the Federal Revenue Secretariat, the Federal Police, the Federal Highway Police and the National Ground Transportation Agency. The operation aimed to seize touring buses used to

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<sup>13</sup> Primary areas are those where there are embarkation and disembarkation of passengers or goods to or from another country. They include internal tracks of ports and airports and border areas under the customs jurisdiction.

transport illegal goods coming from Paraguay. The operation was the result of a thorough investigation, in which the vehicles were filmed and photographed while forming convoys with over three hundred vehicles in order to escape the fiscalization on the roads, as can be seen in the following picture.



c) “Fronteira Blindada” (Sealed Border) Operation – this operation replaced the “Cataratas” Operation, however with the same *modus operandi*, which was based on the integration of forces aimed to fight smuggling, piracy and customs evasion. The operation involved the Federal Revenue Secretariat, the Federal Police, the Federal Highway Police, the National Ground Transportation Agency, and the Military Police of the Parana State.

It is important also register the installation of the new Customs facility next to the Friendship Bridge, which has strengthened the partnership involving the Federal Revenue Secretariat, the Federal Police and the Federal Highway Police and, as a consequence, has contributed to reduce drastically the movement of merchandise of an illicit origin between Brazil and Paraguay.

Brazil also had participation in two operations in transnational level, named Jupiter Operations - South America<sup>14</sup> by Interpol. It is relevant to register that Interpol has no mandate to carry out these types of operations, but through its unit responsible for combating crimes against intellectual property seeks to act as a catalyst by facilitation and coordination of activities. In other words, the work is effectively done by the national law enforcement bodies.

The Operation Jupiter I was implemented with the support and participation of the Federal Police of Brazil and the national police forces of Argentina and Paraguay. The Federal Revenue Secretariat of Brazil and representatives of pharmaceutical, music, movies and cigarettes industries also joined to the operation.

The Operation Jupiter II followed up immediately the first one, including Chile and Uruguay. Comparatively, in the second operation was observed a greater involvement of customs bodies from each country. Some prosecutors and luxury industries representatives have participated too, joining to those who participated in the Jupiter Operation I.

## 7.2. Mobilization of states and municipalities to combat piracy

In Brazil there is a growing number of initiatives to combat piracy and counterfeiting conducted at the regional and local levels, in addition to the efforts implemented in the primary zones.

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<sup>14</sup> See <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Cases/Default.asp>

In other words, states and municipalities have been steadily engaged in the fight against piracy and, daily, we can read on the newspapers about anti-piracy raids in well-known marketplaces.

But it is important to remember that Brazil is organized under a federation. The Country counts with 27 states and 5,560 municipalities - politically and administratively autonomous in relation to the central power. Considering those numbers, it is possible to make an inference about the complexity of the task of the national mobilization to fight piracy. However, the advances are visible and encouraging.

The CNCP's reports published in 2005 and 2006 bring a compilation of news on repressive actions undertaken at the state and local levels. Those news are about operations, seizures of goods and, in some cases, arrest of the people involved, conducted in almost all units of the federation. It is interesting to emphasize that a large number of those reported operations were carried out as task-forces with the involvement of public authorities from the Federal level, from the states and from the municipalities.

States have also created in the civil police's structure specialized groups in combating crimes against intellectual property, as can be seen in Rio de Janeiro, São Paulo, Minas Gerais, Bahia and Pernambuco.

Another trend observed is the establishment of state and municipal councils to combat piracy, as the CNCP on the federal level. The states of Rio Grande do Sul, Rio de Janeiro and São Paulo have already created their councils, as well as the city of Blumenau, in the Santa



Catarina State, which was the first municipality in the country to establish a council with a view to fight piracy.

### 7.3. Building capacity of public officials to combat piracy

Many initiatives concerning building capacity of public officials on combating piracy have been implemented in partnership involving both public and private sectors. Such initiatives with a view to a permanent upgrading of knowledge and skills oriented to law enforcement, represent also opportunities for agents of different offices interact and exchange relevant information on the planning of joint operations.

Among the various initiatives implemented, the most remarkable partnerships<sup>15</sup> involve the CNCP, the audiovisual, software and recording industries, as well as the Federation of Industries of the State of São Paulo (FIESP). These partnerships were the result of the strengthening cooperation between public agencies and private sector entities recommended by CNCP.

### 7.4. Draft Bill on the Treatment of merchandize seized for copyright violations

The CNCP has prepared a Draft Bill proposing amendments to the Penal Procedural Code – Decree-law No. 3689 of October 3, 1941, specifically in its articles 530-C, 530-D, 530-F and 530-G, aiming to instill greater agility to the treatment of merchandize seized for copyright violations. The proposal will be forwarded to the National Congress for review and subsequent transformation into Law.

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<sup>15</sup> Detailed information can be found on the third CNCP report of activities, dated December 2006, pages 29-33, available at the link <http://www.mj.gov.br/combatepirataria>

That initiative will stimulate an increase in seizures of goods, because according to the proposal procedures related to the description and inspection will be able to be made by sampling. Today each one of the seized goods must be described and technically analyzed making it difficult to police action.

Moreover, the destruction of goods seized will be able to happen for judicial determination before the final condemnatory sentence, which will allow the emptying of deposits used for storage of goods seized.

#### 7.5. Recognition of the imperative need of mitigating the demand for pirated products

Inline with the National Plan on Combating Piracy and in order to effectively tackle the piracy problem it is important to stress that the deterrence of the demand for pirated and counterfeit products is as relevant as the deterrence of the supply of those goods.

The Brazilian National Plan to combating piracy is also unique because it proposes economic actions (to reduce the differential in prices between original and pirated/counterfeit products) and educational actions (aiming the awareness of consumers), alongside repressive effort. As a consequence, Brazil has received praise at various forums, national and international, for the innovative character of its Plan.

Concerning the importance of educational actions, it is interesting to mention a research conducted recently in the United States, released in October 2007, in order to analyze the behavior of the American consumer. The research was a partnership between the US Chamber

of Commerce and the Gallup Organization<sup>16</sup>. It identified that the purchase of counterfeit products is widespread and is seen as a crime without victims. Also according to the survey, few Americans know the extent of the impact of the pirated and counterfeit products consumption, which has grown sharply since 2005.

In Brazil is no different. Despite the growing volume of seizures of pirated/counterfeit goods and carrying out arrests, the problem, as in any other part of the world, continues to grow, and therefore requires different strategy for their confrontation.

However, despite the National Plan guidelines, in Brazil not too much has been done regarding the containment of the demand for pirated products. Some isolated initiatives towards the reduction of prices of original products have shown very positive results in discourage the consumption of pirated products. In addition, the CNCP has developed campaigns in the major radios of the country in order to alert consumers about the problem of piracy. Those campaigns have been financed only by the federal budget.

#### 7.6. Awakening in the interest of the media on the subject

The fight against piracy has gained a strong ally in Brazil with the engagement of the media, which has enabled greater visibility of the issue to the population. The daily exposure of the issue for society through the media is extremely important in view of its consequences to awareness and education, especially taking into account that the consumption of pirated products is driven also by a cultural motivation, reason for which the National Plan to Combat Piracy intends the clarification of the population on the real risks that piracy represents.

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<sup>16</sup> Information available in <http://www.thetruecosts.org/portal/truecosts/resources/default>

## 8. Lessons and conclusion

From all the above, some lessons can be learned. And these lessons are not found in books about intellectual property, but in daily practice of combating piracy, and should guide the permanent improvement of the strategies formulated to confront the problem.

It is necessary to have in mind that there is no single strategy for all countries aimed at combating piracy, since the phenomenon is complex and characterized as strongly influenced for social dynamics and therefore assumes various facets in time and space.

Thus, in the following points some of the main learned lessons are presented. These lessons show the biggest challenges that must be constantly pursued to combat piracy in Brazil.

- The necessary union of efforts between public and private sectors

Practice has shown that cooperation between the private and public sectors to combat piracy is essential to the success of actions geared to that goal.

For example, the private sector in Brazil has supported the public action with information aimed at combating piracy on the Internet. That support is extended also to the operations, especially in the transport and storage of goods seized, besides the training of public officials to combat piracy.

- The necessary implementation of economic and educational activities, alongside the repressive actions

There is no way to get effective results in combating piracy only through repression. Considered from the perspective of economic phenomenon, piracy necessarily obeys the law of demand and supply.

Therefore, in addition to the enforcement effort intended to put a brake on supply, companies from the private sector affected by piracy should seek the containment of demand for pirated products. In this sense, they should work heavily on the awareness about the real consequences of piracy, and also implement economic actions taking in consideration that a large difference between the original and pirated products prices serves as a stimulus to consumption of the product of illicit origin.

The private sector should play a more active role in order to stop the demand for pirated goods, which may, in fact, be a differential. The private sector should not expect that the "mother government" take care of all the problems alone.

- The necessary evaluation and periodic review of the plans that guide actions to confront the problem

Considering that piracy is a problem associated to the social dynamic and influenced by technological development, policymakers must, periodically and permanently, evaluate the results of their actions and observe the changes in society, with a consequent review of their plans. In other words, learning obtained daily from the practice in combating piracy should serve as a subsidy to the improvement of the initiatives intended to this confrontation.

- The necessary international cooperation

Piracy is also a transnational problem which affects all countries. Because of this, piracy should be object of international cooperation focused on experience exchanges.

In this regard, Brazil and the United States have held bilateral meetings in the context of the Mechanism of Consultation on Trade and Investment, which is developed in good level in the bilateral dialogue, in both political and technical levels, and counts with the proper disposal of the two countries to cooperation, despite the decision of the U.S. government for the maintenance of Brazil in the list of observation ("watch list") of the section "Special 301" the law of trade of the United States<sup>17</sup>.

Finally, considering the international dimension of the phenomenon of piracy, it is important to stress that the disclosure of lists of countries allegedly "problematic" concerning the piracy phenomenon does not contribute to overcome the problem and neither enable the establishment of a solid basis of cooperation between countries.

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<sup>17</sup> Under the "Special 301", from information provided by the private sector North American (pharmaceutical, software, film, publishing, music, among others), the Trade Representative of the United States - USTR publishes each year, three lists of countries that, in view of the Government of the United States, allegedly did not provide adequate and effective protection of intellectual property: (i) list of priority foreign countries ( "priority foreign countries"), (ii) list of countries under observation priority ( "priority watch list "), (iii) list of countries under observation (" watch list ").

## 9. Bibliographic Sources

Websites consulted - from Brazil:

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Websites consulted - from the outside:

World Intellectual Property Organization (WIPO) [www.wipo.int](http://www.wipo.int)

World Trade Organization (WTO) [www.wto.org](http://www.wto.org)

Interpol [www.interpol.int](http://www.interpol.int)

US Chamber of Commerce [www.thetruecosts.org](http://www.thetruecosts.org)

World Health Organization (WHO) [www.who.int](http://www.who.int)

IP Justice International Cyberlaw Clinic <http://ipjustice.org>