



Brazil ▶
GAMING
BYTES



Keeping up with the most relevant legal news for **Creative Industries in Brazil**

With our regular Creative Industries Brazil Bulletin our objective is to keep you informed on the latest developments in these areas, as well as to provide recent examples demonstrating how companies are already being affected by the new legislation in practice.

This (our first) Bulletin focuses on the areas related to Video Games and E-commerce.



The Circumvention of Technological Protection Measures (TPMs) in Brazil

It is not new that offenders are using the Internet as an instrument for copyright infringement. The possibility of mass sharing work online made these violations increase exponentially, requiring ever more sophisticated tools and protection strategies. New Tech solutions are seen as a vital means to address this problem.

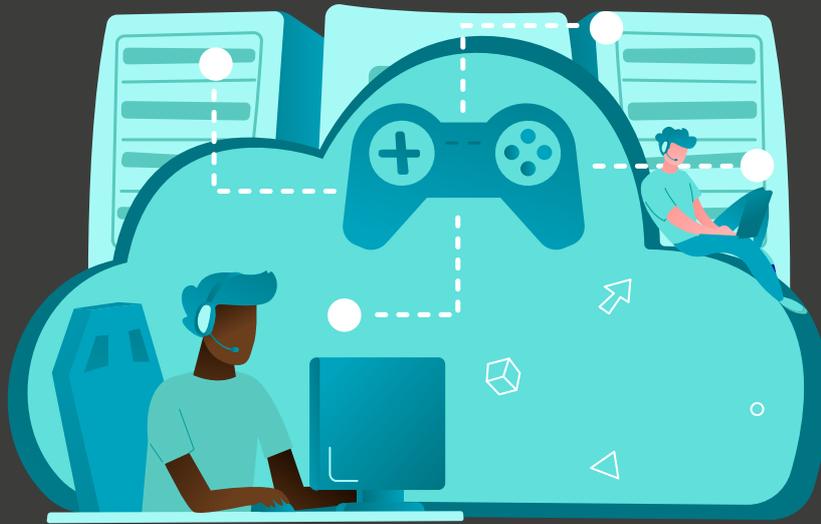
The issue is no different when it comes to computer games, where it is common to find games available online for illegal download. In response, gaming companies have started to develop their consoles in a way that implements technological locks, preventing the operation of illegally downloaded games.

However, new methods to circumvent such protection measures and to unlock the game consoles are being created, in clear violation of national and international copyright laws. Although there is no consolidated jurisprudence in Brazil on this subject, the legislation is clear on the illegality of such acts, providing legitimacy to plaintiff's to take action against the offenders in the courts.

It is also possible to take extrajudicial action, by for example, sending notifications and mapping the commercialization of the devices on the Internet, to ground any possible complaints against the referred sellers in the specific marketplaces.

In addition, it is possible to collaborate with the relevant police authorities that focus on the repression of violations on the network (for example Cyber Gaeco, the Brazilian Special Branch for the Repression of Organized Crime).





Age Classification for Games in Brazil

Following international standards and laws for the protection of children and adolescents within the scope of the games industry, Brazil is also making specific provision for indicative classification in line with the IARC - International Age Rating Coalition.

In Brazil, such age classification is conducted by the Ministry of Justice, which will perform an analysis on each part of the content to determine its age classification, indicating an age that can be applied to all the parts of the game in which this classification is found.

In terms of the procedure for games that are physically distributed in Brazil, it is enough to make an application to the Ministry of Justice, which can be processed, online, for free, within a period of 30 days.

For games distributed exclusively online, it is also possible to carry out a process of self-classification, in addition to the above-mentioned procedure. This process is carried out based on Brazilian legislation and through the IARC system.

Finally, it is important to remember that the age rating must be disclosed on the packaging of the game and on any website, platform or location where the acquisition of the media containing the game is available to Brazilians.

It must also be made available on the website for the Brazilian Ministry of Justice.



Loot boxes in Brazil. Are they allowed?

Gambling is not permitted in Brazil. Although there are different interpretations about whether loot boxes are considered as gambling activity, there is currently no specific legal provision in the country about this type of monetization. Therefore, it is quite possible that administrative and judicial bodies will find such practices illegal.

The greatest concern in terms of loot boxes, actually stems from the strong protection of consumer rights in Brazil, which includes far reaching provisions on areas such as the right of regret in online shopping, and the duties of transparency and due publicity in making offers.

Such strong legal provisions make it difficult to make certain monetization actions available, including loot boxes. For this reason, a number of companies have already positioned themselves differently in Brazil, withdrawing certain monetization actions due to the potential problems that could arise from this application.

One such e-company is Activision, which in 2018 changed its campaign in the country, after facing problems with its consumers.

In addition to these mentioned issues, there are still significant other challenges for the use of loot boxes in Brazil, for instance the necessary precautions that must be taken in terms of data protection, regulatory issues concerning banking, and legislation to protect children and adolescents, to name just a few examples.





Crossing the legal hurdles for Commercial Promotions in Brazil

Commercial promotions are often an essential part of companies' marketing strategies, as a way of getting noticed and bringing more emotion to the relationship with the user. Despite significant societal and technological development, the Brazilian legislation regulating commercial promotions is from 1971, and provides for a quite traditional and bureaucratic approach in this area.

Regardless of how they are executed (through social media, in webinars or otherwise), commercial promotions must follow the exact same authorization procedure in Brazil. The only exceptions are promotions made by the government or related to cultural contests, which do not need approval.

The good news is that the process is carried out entirely online. Therefore, any tax compliant company, engaged in commercial,

industrial or real estate activity, may request approval of its commercial promotion before the relevant body (the Secretaria de Avaliação, Planejamento, Energia e Loteria - SECAP).

Ideally, the request should be made between 40 to 120 days before the starting date of the promotion, considering that the company will only be able to start the promotion once the certificate has been issued. In fact, the certificate number must always appear in a legible manner in all advertising materials for the campaign.

It is important to pay attention to the requirements of the legislation at all times, as the activities are subject to inspection by the competent body and penalties may be applied for non-compliance.



Please get in touch with our team if you would like to discuss any matter further.



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