

CLIENT ALERT



Brazil introduces Statute establishing the Legal Framework for the electronic games industry and amends Law #9,279/1996, inserting a new mode of registration to protect industrial property

May 7, 2024

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This Monday, May 6, 2024, Law #14,852, of May 3, 2024, was published in the Federal Register establishing the Legal Framework for the electronic games industry in Brazil. This statute amends Law #8,313/1991 ("Federal Culture Incentive Statute"), Law #8,685/1993 ("Audiovisual Statute"), and Law #9,279/1996 ("Brazilian Patent Statute").

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According to the definitions outlined in new law, the following fall under the category of “electronic games” (Article 5):

- i. interactive audiovisual works developed as a computer program, as defined in Law #9,609/1998, in which images are changed in real time based on player’s actions and interactions with the interface;
- ii. central devices and accessories designed for private or commercial use, specifically intended for running electronic games; and
- iii. software intended for use as mobile applications and/or websites, as well as video game console games, virtual reality, augmented reality, mixed reality, and extended reality games, consumed through either download or streaming.

The Legal Framework, aligning with the global trend of sector regulation¹, aims to foster the advancement of technology, culture, innovation, and research essential for the creation and development of electronic games. It seeks to provide increased legal certainty for investments in the industry and to regulate a market that, until now, lacked specific guidelines. To achieve these goals, the new law introduces various mechanisms to support developers and investors while regulating the manufacturing, importation, commercialization, development, and commercial use of electronic games in Brazil.

Regarding IP rights, Article 20 of the Legal Framework for electronic games establishes a new registration mode to be granted by the Brazilian Patent and Trademark Office (“BRPTO”) – the “electronic games registration grant”, by including Item VI into Article 2 of the Brazilian Patent Statute. However, it lacks specific regulations defining its scope, determining ownership entitlements, outlining terms of protection, and addressing other essential requirements necessary for the practical implementation and effective granting of this registration by the BRPTO. Consequently, the primary challenge lies in implementing this legislative amendment concerning this novel form of registration.

On the other hand, if the lawmakers’ intention in creating the electronic games registration was to enhance IP rights protection, alongside the absence of regulation hindering the implementation of the registration mode by the BRPTO, it is clear that such protection was already ensured by the Brazilian legal system. This can be observed in Article 7, Item VI, of Law #9,610/1998, and Articles 3 and 5 of Law #9,609/1998, which address the protection of intellectual property rights for computer programs.

In this context, while the Legal Framework for electronic games holds the potential to advance various aspects of the game development sector, particularly by fostering innovation and providing new incentives for developers and investors, it does not introduce significant changes to the existing IP protection landscape. This is due to the creation of a registration mode without accompanying regulations, particularly when the subject matter is already addressed by other legislation.

An example of recent regulation in the gaming industry is the European Parliament Resolution of November 10, 2022, on electronic sports and video games (2022/2027(INI)), which can be accessed at: <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:52022IP0388>.

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