

# Legislative overview – Brazil

22 February 2021 |



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Intellectual Property, Brazil

## 🔍 Regulation and enforcement

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## Regulation and enforcement

### ***What statutes, regulations or case law govern IP rights in your jurisdiction?***

IP rights are governed by the Federal Constitution, the IP Law and the Copyright Law, as well as various international agreements (see below).

### ***Are there restrictions on how IP rights may be enforced, licensed or otherwise transferred?***

There are restrictions on the recordal of licence agreements when royalties are paid to other countries.

### ***Which authorities are responsible for granting, administering and enforcing IP rights in your jurisdiction?***

The Brazilian Trademark and Patent Office (BTPO) and the Brazilian Copyright Office are responsible for granting IP rights. The state courts are responsible for enforcing IP rights.

### ***What types of legal or administrative proceedings are available for enforcing IP rights in your jurisdiction?***

Both civil and criminal lawsuits are available to enforce IP rights.

### ***What remedies are available in your jurisdiction to a party whose IP rights have been infringed?***

Parties whose IP rights have been infringed may use cease and desist letters or file an infringement lawsuit, which may entail an injunction.

### ***Does your jurisdiction participate in any IP protection treaties or other similar agreements?***

Brazil is a party to the following IP protection treaties:

- the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights;
- the Paris Convention for the Protection of Industrial Property;
- the Patent Cooperation Treaty;
- the Berne Convention for the Protection of Literary and Artistic Works; and
- the Madrid Protocol.

## Trends

### ***What do you consider to be the most significant IP developments to have taken place in your jurisdiction in recent years?***

Recent IP developments include:

- the BTPO's project to reduce the patent backlog by 80% by the end of 2021; and
- the implementation of the Madrid Protocol system in October 2019.

***Are there any major IP developments currently unfolding in your jurisdiction?***

A notable case before the Supreme Court concerns the constitutionality of Article 40 of the IP Law, which provides that the term of a patent is 20 years from the filing date, but no less than 10 years from the date of grant. This article has been challenged because the BPTO often takes longer than 10 years to grant patents, thereby extending their term beyond 20 years. The Brazilian IP Association is a co-defendant in this lawsuit, defending the legality of this provision.

***What are your hopes and expectations for the IP landscape in your jurisdiction in the coming years?***

An increase in the number of patent and trademark filings is expected once the COVID-19 pandemic is under control and the economy has returned to normal.

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