



# Combating Piracy—A Spartan Battle for the Protection of Intellectual Property in Brazil

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**ABSTRACT:** *This article explores the legal and institutional framework for combating piracy in Brazil. It analyzes the challenges posed by industrial property crimes, especially under Article 189 of the Industrial Property Law (LPI). It highlights criminal policy initiatives such as the National Plan to Combat Piracy (2022–2025). Through examining public and private initiatives and judicial and legislative responses, the paper emphasizes the role of education and public engagement in strengthening intellectual property protection. It concludes by underscoring the need for coordinated strategies to reduce piracy and effectively protect innovation and market integrity.*

**KEYWORDS:** *Piracy, Intellectual Property, Criminal Policy, Industrial Property Law, Brazil.*

## INTRODUCTION

Unauthorized reproductions, counterfeiting, or, in a less technical yet widely used term, “piracy,” infringe on third-party intellectual property rights. What still lacks greater social awareness is how significantly this harms consumers, investors, entrepreneurs, and the rights holders or proprietors of such creations. One of the most obvious consequences is a real discouragement to innovation, or the emigration of creative minds abroad, not to mention the broader negative impact on Brazil’s economic and social development. Even though there are substantial figures and several high-impact initiatives such as Operation 404 and the campaigns run during the COVID-19 pandemic by the National Council to Combat Piracy (CNCV), the fight remains far from over. This is why the text references the Battle of Thermopylae: one of the most outstanding examples of a small, resilient army facing a monumental challenge.

The fight against piracy, especially with the rise of e-commerce and the lack of a strong counterculture opposing this practice, can be summarized as an ongoing battle. It requires continuous training, now enhanced by quality equipment and multipliers - such as CNCV members, who include representatives from the Federal Police (PF), Federal Highway Police (PRF), ANCINE, ANATEL, Ministry of the Economy (ME), Ministry of Justice and Public Security (MJSP), Federal Revenue Service, private sector organizations, and essential trade associations - forming a true “army” and a Brazilian symbol in the enduring fight against crimes that affect intellectual property.

In quantitative terms, piracy figures in Brazil remain significantly high. To assess the economic losses caused by the illegal market, the National Forum for Combating Piracy and Illicit Activities in Brazil (FNCP), a non-profit civil association, has conducted annual surveys since 2014. These are based on data provided by various economic sectors and include a conservative estimate of tax evasion. In 2014, the total losses were estimated at approximately R\$100 billion, rising to R\$300.5 billion in 2021 (FNCP, 2021).

Given this context and based on the Brazilian Industrial Property Law (LPI), this article highlights the importance of fighting piracy and the specific challenges posed by this illicit practice. The analysis focuses particularly on Article 189 of the LPI and on targeted anti-piracy actions, such as the National Plan to Combat Piracy, Smuggling, and Tax Evasion, and Offenses Against Intellectual Property (PNCP 2022–2025), which was approved on December 3, 2021, the National Day Against Piracy.

In conclusion, although several public and private initiatives aim to minimize the damage caused by the widespread commercialization of pirated goods, public education and engagement remain essential for the success of this ongoing battle.

### **INTELLECTUAL PROPERTY PROTECTION – CONTEXT AND IMPORTANCE OF ARTICLES 189 AND 190 OF THE BRAZILIAN INTELLECTUAL PROPERTY LAW**

It is important to note that the term "piracy" is not expressly defined in Brazilian legislation. Nevertheless, it has been widely adopted to describe counterfeit goods that evade tax obligations and cause financial and moral harm. Piracy, therefore, serves as a generic term encompassing various related illicit activities, such as counterfeiting, duplication (distinct from counterfeiting as it does not necessarily aim to deceive consumers), tax evasion, smuggling, and customs fraud. Piracy infringes upon the intellectual property rights of third parties- whether they be rights holders, patentees, inventors, or creators- whose intellectual efforts deserve legal protection.<sup>1</sup>

Through intellectual property protection, legislation grants inventors and creators the right to obtain remuneration for their creations, fostering technological development and ensuring consumer security in acquiring goods and services. In this regard, Towersey (2020, p. 134), an auditor of the Brazilian Federal Revenue Service, explains that industrial property rights drive two significant areas of development: technological advancement, through patents and utility models, and consumer security, through trademarks and designations of origin.

In the realm of copyright law, protection is afforded to literary works, films, music, artistic works, architectural projects, and related rights, such as those of performers and phonogram producers, as established under the Copyright Law (*Lei de Direitos Autorais* – LDA). Additionally, computer programs are protected under the Law on Intellectual Property Protection of Computer Programs. Both systems grant protection automatically upon creation or publication, without requiring registration with any competent authority. Brazilian law regulates the right to exploit intangible assets for a specified period within the domain of

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<sup>1</sup> [Intellectual property represents] the sum of rights related to literary, artistic, and scientific works; the performances of performing artists and executions of performing artists; phonograms and broadcasts; inventions in all fields of human activity; scientific discoveries; industrial designs and models; industrial, commercial, and service trademarks; as well as commercial names and trade names, protection against unfair competition, and all other rights pertaining to intellectual activity in the industrial, scientific, literary, and artistic fields" (BARBOSA, 2010, p. 07)

industrial property. This includes trademark registrations, invention patents, utility models, and industrial designs. Each of these rights grants the holder a legally protected monopoly of exploitation, subject to certain limitations.

Protection for inventions is granted through letters patent issued by the Brazilian Patent and Trademark Office (*Instituto Nacional da Propriedade Industrial* – INPI). This system represents a social exchange: the patentee is granted an exclusive exploitation right over an invention or utility model to reward their investment, encouraging further innovation. In return, society benefits from access to the invention once it enters the public domain, 20 years from the filing date for invention patents and 15 years for utility model patents, under Article 40 of the Industrial Property Law (LPI).

It is important to emphasize that the LPI explicitly prohibits violations of industrial property rights, including through criminal provisions. Articles 183, 184, and 185 of the LPI criminalize acts such as the counterfeiting of patented products without authorization and their importation, exportation, or sale. Similarly, Articles 187 and 188 criminalize infringements of industrial designs, including the manufacture or commercialization of products incorporating infringing designs capable of confusing the original. Crimes involving false geographical indications (Articles 192–194) and acts of unfair competition (Article 195) are also addressed.

The LPI also establishes criminal offenses concerning registered trademarks, including unauthorized reproduction or imitation, alteration of a registered trademark on goods already placed on the market, and the import, export, sale, offering, concealment, or stocking of products bearing illicitly reproduced or imitated trademarks or unauthorized third-party packaging, under Articles 189 and 190. As will be analyzed further below, criminal actions concerning industrial property offenses under Article 189 are private, requiring a complaint (*queixa-crime*) by the rights holder. It is also noteworthy that unauthorized reproduction doesn't need to cause actual consumer confusion to constitute a criminal offense against industrial property; mere unauthorized reproduction suffices to characterize the crime (DANNEMANN SIEMSEN, 2013, p. 430).

Moreover, since offenses against industrial property rights may mislead consumers, they may also qualify as crimes against consumer relations under Law No. 8.173/1990, which addresses offenses against the tax, economic, and consumer protection order, as well as under the Brazilian Penal Code.

### *Criminal Policy for Confronting the Issue*

The science of criminal law must be understood as an integrated field comprising Criminal Law, Criminology, Criminal Policy, Dogmatics, Criminal Procedure, and Penal Enforcement (DIAS; ANDRADE, 1992, p. 93). Within this framework, Criminal Policy seeks to identify the most appropriate methods for effectively preventing and repressing criminal conduct. In contrast, criminal law, in its normative dimension, ensures the equal application of the law and the safeguarding of individual liberties (ROXIN, 2002, p. 32).

In this context, the decision to criminalize violations of trademark rights- such as unauthorized reproduction, imitation likely to confuse, or alteration of a registered trademark- reflects a conscious criminal policy choice embodied in Article 189 of the Brazilian Industrial Property Law (LPI). As previously noted, criminal prosecution for such offenses is initiated through a private action, requiring the injured party to file a complaint (*queixa-crime*) against the alleged offender. The applicable penalties range from three months to one year of detention, or a fine,

which may be increased by one-third to one-half under the aggravating circumstances outlined in Article 196 of the LPI. Where a fine is imposed instead of detention, it must be calculated within the range of 10 to 360 daily penalties, under Article 197 of the LPI and by the rules established in the Brazilian Penal Code. Under Article 49 of the Penal Code, each daily fine must amount to no less than one-thirtieth and no more than five times the highest national minimum monthly wage.

Given that the maximum penalty does not exceed two years' imprisonment, jurisdiction lies with the Special Criminal Courts (*Juizados Especiais Criminais*), as provided by Article 61 of Law No. 9.099/1995. Consequently, the application of alternative procedural measures such as penal transactions (*transação penal*) or, where applicable, conditional suspension of the criminal process (*suspensão condicional do processo*) is authorized. However, the Non-Prosecution Agreement (*Acordo de Não Persecução Penal* - ANPP), regulated under Article 28-A of the Code of Criminal Procedure, is expressly precluded when the offense falls under the procedural framework of Law No. 9.099/1995.

Jurisprudential analysis reveals that prosecutions for violations of intellectual property rights rarely reach higher courts, as most cases are resolved through alternative measures at the lower court level, considering the low punitive thresholds involved. Even when judicial review occurs, the offenses provided for under Law No. 9.279/1996 (Industrial Property Law) are frequently subject to statutory limitations, given the three-year prescriptive period arising from the maximum penalty applicable. As a result, even when connected to more serious offenses such as money laundering, intellectual property crimes may become time-barred before trial or even before the filing or receipt of criminal charges.

#### *Aggravation of Penalties for Violations Involving Well-Known, Renowned, Certification, and Collective Trademarks*

The Industrial Property Law (LPI) provides for an increase in penalties by one-third to one-half where the infringed mark qualifies as a renowned, well-known, certification, or collective trademark, as established under Article 196. The rationale behind aggravating sanctions in these cases lies in the preventive dimension of criminal policy. Marks of high renown and notoriety inherently possess elevated economic and symbolic value, making them particularly vulnerable to infringement attempts. Consequently, offenses targeting such marks demand a differentiated preventive response, justified by the need to protect both the investments associated with brand development and consumer trust in the market.

Similarly, certification and collective trademarks serve essential regulatory and associative functions within commerce, guaranteeing specific standards of quality or origin. Infringements affecting these categories harm individual rights and undermine public confidence and fair competition, warranting enhanced legal protection. Thus, the legislator's decision to impose aggravated penalties for these specific categories reflects an effort to bolster intellectual property enforcement mechanisms' preventive and dissuasive effect, aligning with broader objectives of promoting market integrity and safeguarding public trust.

### **THE BATTLE OF THERMOPYLAE AGAINST PIRACY IN BRAZIL**

Brazil has actively engaged in combating piracy through public policies, governmental initiatives, international partnerships, private sector involvement, and civil society engagement. At the federal level, one notable milestone was the establishment of the

Parliamentary Inquiry Commission on Piracy (CPI da Pirataria) in 2003, which aimed to investigate piracy practices and associated tax evasion (QUINTAL, 2003). As a result, in November 2004, the National Council for Combating Piracy and Intellectual Property Crimes (CNCP) was created within the Ministry of Justice and Public Security, bringing together private sector entities and government representatives with equal voice and voting rights.

Other organizations have played a prominent role in the fight against piracy, including the National Forum for Combating Piracy and Illicit Activities (FNCP), the Brazilian Institute of Competitive Ethics (ETCO), the Institute of Intellectual Capital (ICI), the Brand Protection Group (BPG), the Meireles Institute (IPC), the Brazilian Association of Licensing of Brands and Characters (ABRAL), and the Brazilian Association of the Fine Chemicals, Biotechnology, and Specialties Industries (ABIFINA), among others. Within this context, numerous initiatives- both private and governmental- have emerged.

Among the most notable was Operation 404, a major digital anti-piracy initiative led by the CNCP and the Ministry of Justice and Public Security, with significant participation from the Secretariat for Integrated Operations (SEOPI). The operation's name references the HTTP error code "404," indicating a page not found- a fitting metaphor for its objective to render illegal online services unavailable. Operation 404 has executed multiple search and seizure warrants targeting illegal TV streaming sites, IPTV services, and pirate TV box vendors (BRASIL, 2021c).

In the digital arena, following a year of multi-stakeholder discussions and a public consultation, the "Guide of Best Practices and Recommendations to E-commerce Platforms for Combatting the Sale of Counterfeit and Pirated Goods" was approved on April 5, 2020 (BRASIL, 2020). This Guide promotes collaborative self-regulation among intellectual property rights holders, companies (manufacturers, retailers, distribution centers), online platforms, and public authorities. Each actor is assigned specific responsibilities, such as providing mechanisms for reporting counterfeit goods, implementing preventive measures against counterfeit sales, and taking legal actions against infringing sellers.

In early 2021, the CNCP also established two permanent task forces- one focused on combating smuggling, and the other on strengthening the National Directory for Fighting Trademark Counterfeiting, a joint project with the Brazilian Patent and Trademark Office (INPI). Furthermore, special commissions were formed, including one tasked with drafting the National Plan to Combat Piracy, Smuggling, Tax Evasion, and Intellectual Property Crimes (PNCP 2022–2025). This Plan, approved in December 2021 after public consultation and ministerial ratification, presents a systemic vision of piracy and sets forth 62 combat targets across four strategic pillars (BRASIL, 2021c).

The institutional pillar focuses on coordinating various agencies, exploring legislative reforms, and creating specialized police departments. The prevention and protection pillar seeks to strengthen repressive measures through public and private sector collaboration. The training pillar promotes capacity building among public officials and cooperation with academic institutions. Finally, the educational pillar aims to raise public awareness about the damages caused by piracy through outreach campaigns, academic events, and educational materials.

The leadership of SENACON (National Consumer Secretariat) within the CNCP during the pandemic was internationally recognized, as highlighted in the United Kingdom Intellectual Property Office's IP Crime and Enforcement Report 2020–2021 (UKIPO, 2021, p. 109).



Specific campaigns against counterfeit vaccines, such as "No to Pirate Vaccines!" (*Vacina Pirata, Não!*)- were launched (BRASIL, 2021a), involving monitoring thousands of suspicious websites and the creation of a specialized reporting channel. With the support of the UKIPO (BRASIL, 2021b), the "Anti-Piracy Network" (*Rede Antipirataria*) was established to combat health-related counterfeits. As part of another SENACON initiative, Brazil formally joined the international fraud and scams reporting platform *econsumer.gov* in 2021, following the country's participation in the OECD Consumer Policy Committee.

In addition to vaccines, the pandemic witnessed the illicit sale of other counterfeit health products online, such as herbal medicines, dietary supplements, and Traditional Chinese Medicine products. To address this, ABIFINA, supported by SENACON and CNCP, launched the "Guide for the Safe Consumption of Natural Products" in 2021 through the campaign "It's Natural, But It Must Be Legal." Beyond administrative efforts, the judiciary has consistently awarded damages for moral and material harm in intellectual property infringement cases. In cases of trademark counterfeiting, moral damages have been presumed *in re ipsa*, meaning that proof of specific harm is not required, as established by the Superior Court of Justice (STJ)<sup>2</sup>. In the criminal domain, jurisdictional conflicts frequently arise, given that pirated goods often relate to imported consumer products<sup>3</sup>. Consequently, determining whether the Federal or State Court system has jurisdiction depends on whether the origin of the infringing goods can be ascertained.

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<sup>2</sup> As an example, we cite a decision by the Brazilian Superior Court of Justice (STJ) concerning the unauthorized use of a trademark: "Special Appeal. Industrial Property. Unauthorized Use of a Company's Trademark. Similarity in Appearance. Material Damage. Presumption. Moral Damage. Assessment *in re ipsa*. Arising from the Illicit Act Itself. Compensation Due. Appeal Granted. 1. A trademark is any distinctive sign (such as a word, letter, numeral, figure) or a combination of signs capable of identifying goods or services from a supplier, distinguishing them from identical, similar, or related goods or services of different origin. It constitutes an intangible asset, often the most asset of a company, whose protection is intended to guarantee the holder the exclusive privilege of use or exploitation, and it is governed, among other norms, by constitutional principles of consumer protection and suppression of unfair competition. Nowadays, the purpose of a trademark is not merely to secure individual rights or interests of its holder but, above all, to protect purchasers of goods or services by providing means to verify the origin and quality of the products or services. It also aims to prevent illegal client diversion and parasitic economic advantage. 2. Brazilian law and the Superior Court of Justice's case law recognize the existence of material damage in cases of unauthorized use of a trademark, since the mere violation of the right is sufficient to cause harm to the trademark owner's business activity, such as through client diversion and confusion between companies, leading to inevitable loss, the quantum of which, in this case, must be determined in a subsequent liquidation phase. 3. Given the intangible nature of a trademark, moral damage to a legal entity is inherent whenever unauthorized use is proven. The company's reputation, credibility, and image are affected in the market (among customers, suppliers, partners, shareholders, and the community at large), along with the prestige and perceived quality of its products or services, thus evidencing a clear violation of non-material rights and interests. 4. Moral damages arising from the unauthorized use of a trademark are assessed *in re ipsa*; that is, they are presumed from the mere demonstration of the illicit conduct, making proof of concrete harm or effective moral shock unnecessary. [...]. 7. Special Appeal Granted. (REsp 1327773/MG, Reporting Justice: Luis Felipe Salomão, Fourth Panel, judged on 28 Nov. 2017, published in the electronic gazette on 15 Feb. 2018)

<sup>3</sup> Similarly, according to the understanding of the Brazilian Superior Court of Justice (STJ): Criminal Law. Conflict of Jurisdiction. Trademark Infringement. Smuggling. Sale of Counterfeit Goods. Importation. Principle of Specialty. Jurisdiction of the State Court. 1. The conduct under examination concerns the sale of goods bearing illicitly reproduced trademarks, an offense typified under the Industrial Property Law, which establishes the jurisdiction of the State Court, as it allegedly constitutes a mere violation of private interests. 2. The origin of the counterfeit goods, as inferred from the case records, is uncertain, and there is only a supposition that they might originate from abroad. As a result, the argument connecting the trademark crime to an alleged smuggling offense is undermined, and the jurisdiction is not shifted to the Federal Court. 3. Given that the offense qualifies as a minor offense (*infração de menor potencial ofensivo*), the simplified procedure established by Law No. 9.099/1995 must be applied, and the case must be processed before the Special Criminal Courts. 4. Conflict of jurisdiction known and resolved to declare the jurisdiction of the Fourth Special Criminal Court of Goiânia/GO, the court referred to in the claim. (STJ, Conflict of Jurisdiction No. 36398/GO, Reporting Justice: Arnaldo Esteves Lima, Third Panel, judged on 9 Mar. 2005, published in the electronic gazette on 4 Apr. 2005)

An important exception exists for medicinal or therapeutic products, which fall under Article 273 of the Brazilian Penal Code, providing for harsher penalties ranging from ten to fifteen years' imprisonment and a public criminal action<sup>4</sup>. This reflects the principle that when offenses endanger public health, society itself is the primary victim, unlike Article 189 of the Industrial Property Law, where the primary victim is the rights holder, and society is harmed indirectly.

## CONCLUSION

Crimes against intellectual property rights generate multiple negative consequences, impacting consumers, society, and companies and organizations that hold such rights. With the advent of the internet, the expansion of e-commerce, and rapid technological advancements, piracy has gained new dimensions, transcended borders, and made illicit trade increasingly difficult to control. A specific analysis of the Industrial Property Law (LPI) reveals the implications of Article 189, particularly within the criminal justice system. Adopting political-criminal strategies- by criminalizing acts such as the unauthorized reproduction and imitation of registered trademarks- and implementing diversified procedural mechanisms, even with differentiated treatment for medicinal or therapeutic products, demonstrates the level of concern and attention that this matter requires.

Throughout this study, several initiatives aimed at combating piracy have been revisited. However, to advance in this ongoing battle, the educational initiatives outlined in the National Plan to Combat Piracy (PNCP) through 2025 must be pursued through structured action plans. Raising public awareness about the risks and damages associated with purchasing illegal products remains crucial in strengthening enforcement efforts. The "Battle of Thermopylae" against piracy remains vital. Although those fighting against piracy may constitute a "small army" compared to the number of infringers worldwide, it is imperative to persist in this struggle by leveraging the strategic pillars of the PNCP. These pillars reinforce criminal protection mechanisms and promote integrated strategies for combating piracy in Brazil.

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<sup>4</sup> An example is provided by the Ordinary Appeal in Habeas Corpus before the Brazilian Superior Court of Justice (STJ): Criminal Procedure. Appeal in Habeas Corpus. Sale of Counterfeit Products Intended for Therapeutic or Medicinal Purposes. Request for Dismissal of Criminal Proceedings. Exceptional Measure in Habeas Corpus Proceedings. Indictment Compliant with Article 41 of the Code of Criminal Procedure. Existence of Probable Cause for Criminal Prosecution. Defensive Arguments. Prohibition of Reexamination of Evidence. Illegality of Evidence Allegation. Seizure of Products. Inspection Conducted by ANVISA Together with the Federal Police. Situation of Flagrante Delicto. No Unlawful Constraint Established. Appeal Denied. [...] 5. In the present case, the criminal complaint meets the formal requirements set forth in Article 41 of the Brazilian Code of Criminal Procedure, as it describes the conduct attributed to the appellant, indicating how she allegedly contributed to the criminal result, thus enabling the continuation of the criminal prosecution while safeguarding the rights to full defense and adversarial proceedings. 6. The case reveals the existence of probable cause justifying the continuation of the criminal proceedings, as there are indications of a typical criminal act and signs of authorship. Thus, the passive illegitimacy of the appellant cannot be affirmed at this stage, considering it remains to be determined - during trial proceedings - whether the sale of unregistered pharmaceutical products occurred before or after her dismissal as the person legally responsible for the company. 7. The constitutional guarantee of home inviolability is subject to exceptions in cases of flagrante delicto, in which circumstances judicial warrants are not required to enter premises where a crime is occurring. 8. The Federal Supreme Court (STF), through a ruling issued in a case subject to the general repercussion regime, established that "forced entry into a residence without a judicial warrant is only lawful, even at nighttime, when supported by reasonable grounds, duly justified afterwards, indicating that a situation of flagrante delicto is taking place inside the residence, under penalty of disciplinary, civil, and criminal liability of the officer or authority involved, as well as the nullification of any acts performed" (RE 603.616/TO, Reporting Justice Gilmar Mendes, Full Court, published on 10 May 2016). 9. Ordinary appeal denied. (STJ, RHC 56872/PI, Reporting Justice: Ribeiro Dantas, Fifth Panel, judged on 3 Aug. 2017, published in the electronic gazette on 14 Aug. 2017)

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