



# **International Conference for Least-Developed and Developing Countries on Copyright and Management of Public Sector Information**

*A Brazilian experience*



# Principles of Public Administration in Brazil

- ▶ Lawfulness/legality
  - ▶ Impersonality
  - ▶ Morality
  - ▶ Publicity
  - ▶ Efficiency
- 



# Constitution of the Federative Republic of Brazil (1988)

- ▶ Article 5. XXVII – the exclusive right of use, publication or reproduction of works rests upon their authors and is transmissible to their heirs for the time the law shall establish;
- ▶ Article 5. XXXIII – all persons have the right to receive, from the public agencies, information of private interest to such persons, or of collective or general interest, which shall be provided within the period established by law, subject to liability, except for the information whose secrecy is essential to the security of society and of the State;
- ▶ Article 37. Paragraph 3. II – the access of users to administrative records and to information about Government initiatives, with due regard for article 5, items X and XXXIII;
- ▶ Article 216. Paragraph 2. It is incumbent upon the Government, in accordance with the law, to manage the keeping of the governmental documents and to make them available for consultation to whomever may need to do so.




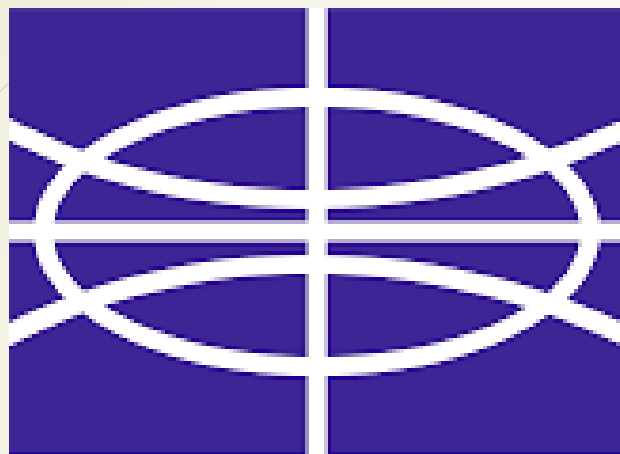
# Copyright and Neighboring Rights

- ▶ Law n° 9610 (1998) on Copyright and Neighboring Rights
  - ▶ Article 6. Works that are merely subsidized by the Union, the States, the Federal District or the municipalities shall not be in their domain.
  - ▶ Article 8. The following shall be excluded from copyright protection within the meaning of this Law:
    - IV. the texts of treaties or conventions, laws, decrees, regulations, judicial decisions and other official enactments; (...)



# Copyright and Neighboring Rights

- ▶ There are, however, a few situations under which the Public Administration may become a copyright holder:
    - ▶ Cultural development activities;
    - ▶ Hiring someone to produce intellectual work;
    - ▶ Producing intellectual work through public servants.
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But also:





... among others.



# Law n° 12.527 (2011): the Freedom of Information Act



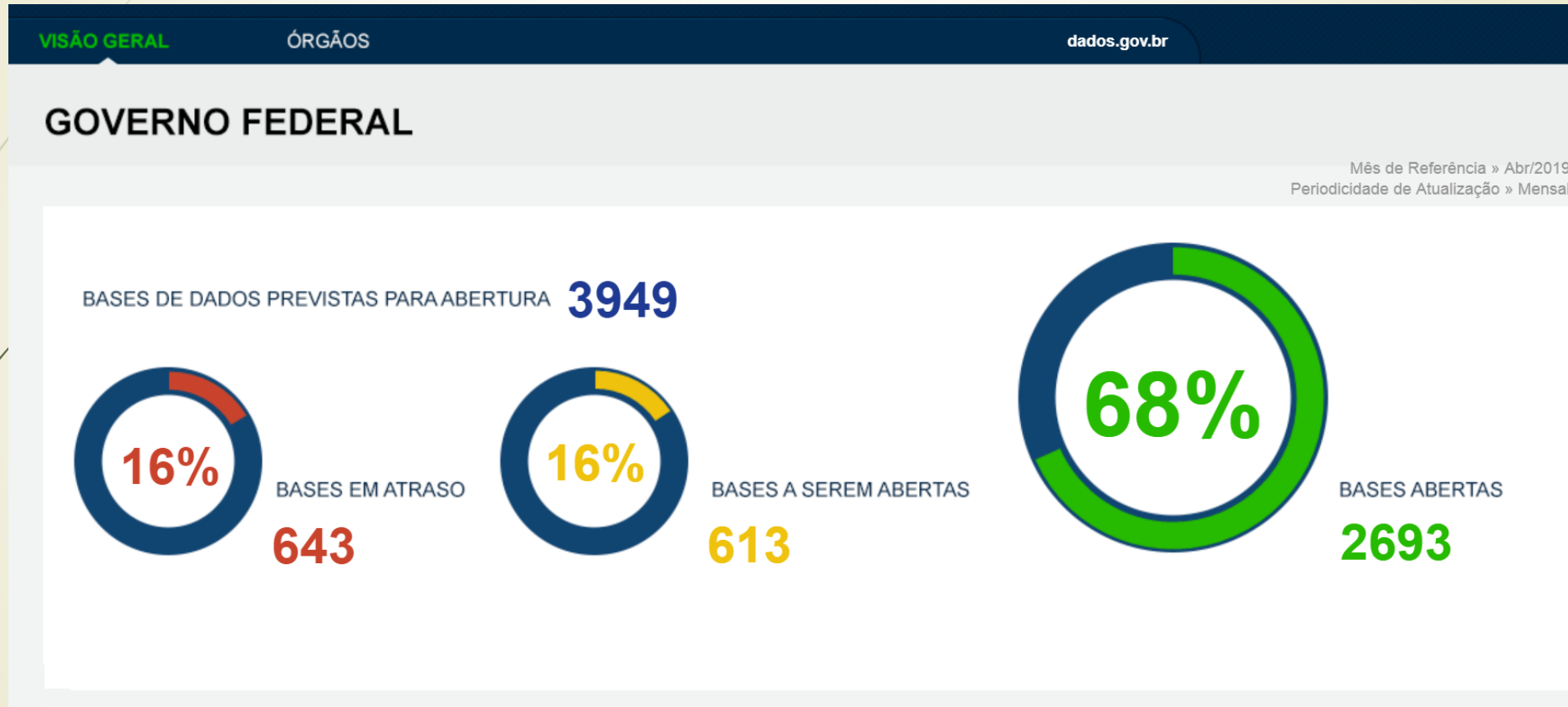
- ▶ Article 7. The right of access to information disciplined by this Law comprises the right to obtain:
  - ▶ I – orientation on the proceedings related to information access, as well as the coordinates on where to find or obtain the requested information;
  - ▶ II – information contained in records or documents, produced or held by different bodies or entities, either stored or not in public archives;
  - ▶ III – information either produced or held by an individual or private entity because of their relation with selected bodies or entities, even if such relation has been terminated;
  - ▶ IV – primary information that is original, authentic and updated;
  - ▶ V – information on the activities performed by bodies and entities, including those related to their internal policies, organization and services;
  - ▶ VI – information concerning the administration of public property, the use of public resources, government bidding and contracting; and
  - ▶ VII – information related to:
    - ▶ a) the implementation, monitoring and results of programs, projects and activities carried out by public bodies and entities, as well as their proposed goals and indicators;
    - ▶ b) the results of inspections, audits and rendering of accounts performed by bodies of internal and external control, here included the rendering of accounts related to previous financial years.

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- ▶ Paragraph 1. The access to information as established in the caption of this article does not comprise information related to research projects and scientific and technological development whose secrecy is crucial to social and State security.
  - ▶ Paragraph 2. When full access to information is not authorized because such information is partially classified, the access to the non-confidential part is granted by certificate, extract or copy, concealing the portion under secrecy.
  - ▶ Paragraph 3. The right to access documents or the information they contain, which support decision making and administrative acts, will be ensured with the issuance of the respective decision act.
  - ▶ Paragraph 4. The wrongful denial of access to requested information by the bodies and entities mentioned in Article 1 shall submit the responsible workforce member to the sanctions foreseen in Article 32.
  - ▶ Paragraph 5. If the interested party is notified that the requested information has been lost, he/she is entitled to initiate a competent authority request for immediate inquiry into the disappearance of the respective documentation.
  - ▶ Paragraph 6. In the event of information loss as provisioned in Paragraph 5, the person responsible for the custody of the missing information must explain the incident and appoint witnesses to support their claim within ten days.



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- ▶ Article 8. Regardless of external requests, public bodies and entities shall promote the disclosure of the information they either produce or keep, be it of collective or general interest, in a location of easy access under their jurisdiction.
    - ▶ Paragraph 1. The disclosure of the information referred to in the caption of this article shall include, at least:
      - ▶ I – records of the jurisdiction and organizational framework, addresses and telephones of the respective units and their standard operating hours;
      - ▶ II – records of any total or partial transfer of financial resources;
      - ▶ III – records of expenditures;
      - ▶ IV – information related to bidding proceedings, including bidding rules and results, as well as all signed contracts;
      - ▶ V – general data for the monitoring of public bodies and entities programs, activities, projects and construction works; and
      - ▶ VI – answers to society's most frequently asked questions.
    - ▶ Paragraph 2. To ensure the observance of the provisions established in the caption of this article, public bodies and entities shall use all the legitimate means and instruments at their disposal to guarantee the mandatory disclosure of information in official sites on the World Wide Web (Internet). (...)

# Open Data Plan (Decree nº 8777/2016)





# A few other examples:

- ▶ Acesso à Informação (Freedom of Information):  
<http://www.acessoainformacao.gov.br/>
- ▶ Frequently Asked Questions (Itamaraty):  
<http://www.itamaraty.gov.br/en/faq>
- ▶ The Legislative Branch - The Madrid Protocol:
  - ▶ *Câmara dos Deputados* (The Chamber of Deputies):  
<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2164129&ord=1>
  - ▶ *Senado Federal* (Federal Senate):  
<https://www25.senado.leg.br/web/atividade/materias/-/materia/135526>



# Sources:

- ▶ Constitution of the Federative Republic of Brazil (1988):  
<http://english.tse.jus.br/arquivos/federal-constitution>
- ▶ Law nº 9.610 on Copyright and Neighboring Rights (1998):  
<https://wipolex.wipo.int/en/text/125393>
- ▶ Law nº 12.527, Freedom of Information Act (2011):  
<http://www.mpf.mp.br/atuacao-tematica/sci/normas-e-legislacao/legislacao/legislacao-em-ingles/law-12.527>
- ▶ *Manual de Direitos Autorais*, by Carolina Panzolini and Silvana Demartini:  
<https://portal.tcu.gov.br/lumis/portal/file/fileDownload.jsp?fileId=8A81881F624F27220162AB7D5B074EBE>



# Thank you!

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