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PUBLIC POLICIES FOR COMBATING PIRACY IN BRAZIL*

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PUBLIC POLICIES FOR COMBATING PIRACY IN BRAZIL

The fight against piracy in Brazil has been moving apace in recent decades, but the creation of the National Council against Piracy on 1 October 2004, through MP No. 220/04, certainly constituted a qualitative leap and a milestone in the implementation of public policies in this field. The Council is of mixed membership, with the participation of both the public and private sectors. It comprises representatives of the seven ministries: (Justice; Finance; External Relations; Science and Technology; Culture; Development, Industry and Foreign Trade; and Labour and Employment), as well as the Federal Senate, the Chamber of Deputies, the Federal Police, the Federal Highway Police and the Federal Revenue Department. Membership of CNCP also extends to six private associations representing the audiovisual industry (ADEPI), phonograms (ABPD), software (BSA), publishing (ABDR), tobacco, alcohol and fuel (industrial sector – ETCO) and the Brazilian Intellectual Property Association (ABPI). The creation of the Council gave Brazil a centralizing body responsible for formulating, implementing and evaluating public anti-piracy policies.

Accordingly, the Council's members devised and approved a Plan comprising 99 guidelines for priority action, divided into four components: repression, educational, economic and institutional, and classified as short-, medium- and long-term in nature. Once it had been adopted by a vote of the Council, its activities began, always in accordance with the guidelines set forth in the National Plan.

As its activities developed, it became apparent that the Plan would need to be improved and necessary adjustments made, including the addition of new guidelines. The improvement was always consistent with the principles of the Situational Strategic Plan established by the original Office. At that time it was agreed that the formulation of the National Plan for Combating Piracy would not be immutable, static or "deterministic".

The imperative need for this system derived from the fact that the reality in Brazil today is certainly very different from that in existence when the first version of the National Plan was designed, a reality that changed as time went by and, by the same token, necessitated alterations to the original document.

Hence, throughout 2005 CNCP also developed activities not originally envisaged in the initial guidelines, but which certainly conformed to the central idea of the principles set forth in the 99 priority measures. In this connection, meetings and workshops were held on a regular basis in order to assess the work done up to then, with its mistakes and achievements, to approve the necessary adjustments and to propose new guidelines for the continuation of the actions to combat piracy in Brazil.

The purpose of the workshops for evaluating current public policies and formulating new ones is continually to expand the horizons of anti-piracy measures. It also aims at obtaining results which can have a positive impact on all sectors of civil society affected by piracy, including workers, consumers, businesses and artists, to name but a few. To that end, it has become necessary to open up a channel of direct and democratic participation in which all interested parties can voice their opinions.

In this connection, the main actions carried out in 2005 in each of the four components are set out below:

REPRESSION COMPONENT:

There is no doubt that in 2005 the most outstanding activities pertained to repression, whether in terms of the volume of resources invested by the Federal Government as well as the states and municipalities, or of attracting the most media attention; once each joint operation got off the ground, with the seizure and impounding of illegal products, it became top raw material for news headlines. A case in point is the important role of information reproduced at the end of this report resulting from the stepping-up of the operations of the Federal and Highway Police, the Federal Revenue Department and the regional law-enforcement agencies.

For all that, it should be pointed out that the repression aspect also comprises unpublicized measures that, although not reported in the media, are equally important for doing away with piracy-related crimes. Examples include the creation of a direct complaints channel and the inclusion of the subject of piracy in the Single Public Security System - which occurred when the National Secretariat for Public Security joined the Council - as well as increased expulsions of foreigners involved in piracy, as cited in the CPI Report on Piracy.

In parallel, many representations were made to the states for the creation of specialized delegations, which have already had an effect and recently evolved into the creation of supraministerial organs for the fight against piracy, similar to the National Council. Another crucial development concerning the states and municipalities is the suspension or withdrawal of concessions for public areas where pirated products are sold. Local governments often granted trading licences to small traders without thought to the products they would be selling, a trend that is now being reversed.

At the international level, the Ministry of External Relations has been contacting foreign governments for the exchange of information on the fight against piracy. In 2005, a memorandum of understanding for establishing a bilateral group for intelligence on the subject was signed with Paraguay.

In 2005 several operations involving federal, state and municipal bodies were conducted in various centres noted for selling pirated products. Priority was initially accorded to shutting down points at which such products entered the national territory, stepping up control at strategic border points, such as Ponte da Amizade linking Brazil and Paraguay. Efforts were later made to intensify repressive measures at the points of sale, in the secondary sector, next to large consumer markets, the most successful examples being the operations carried out at StandCenter, PromoCenter and Shopping 25 de Março in São Paulo, Shopping Oiapoque in Belo Horizonte, the Feira de Caruaru in Pernambuco, the Uruguayan Market in Rio de Janeiro, and the Feira dos Importados in Brasilia.

The more recent stepping-up of action close to strategic sales points did not necessarily slow down activities near to borders, which continue as actively as before, even becoming more sophisticated as the perpetrators become more creative and constantly invent new ways of circumventing the controls. Another point of interest is the fact that the police operation carried out at Shopping Oiapoque in Minas Gerais served as the start of joint action by that state's civil and military police.

EDUCATIONAL COMPONENT:

It is essential to inform society of the risks inherent in the consumption of pirated goods if a consistent anti-piracy policy is to be achieved.

Repressive measures are aimed at the supply of illegal products and at increasing the cost of the pirates' wares. Their extensive dissemination by the media serves to make the population aware that piracy is illegal and prevents the idea that persons engaged in practices relating to intellectual property go unpunished from spreading.

On the other hand, educational measures are aimed at demand and are designed not only to alert society to the risks inherent in the use of pirated products - the financing of international organized crime, the fall in employment rates, etc. - but, most importantly, to consolidate a culture of intellectual property in Brazil. Lastly, an attempt is being made to make the consumer opt spontaneously for original products.

In 2005, several seminars, conferences and events on the subject of piracy were held, not exclusively by the National Council against Piracy alone, but also by other entities equally involved in the issue. One example is the joint organization by the Office of the Attorney-General and the CNCP of seminars in some Brazilian states, such as Rio de Janeiro, Bahia, Goiás and Mato Grosso. The same goes for the Brazilian Bar Association (OAB), which has held seminars organized jointly with the departments of Mato Grosso and São Paulo, and the creation of the Special Commission by the Federal Council of OAB in Brasilia and by the departments of São Paulo and Rio de Janeiro to address the issue of intellectual property.

In addition, at the national level, the agreement signed in August 2005 between CNCP and the Department of Consumer Protection and Defence (DPDC) enabled the topic of piracy to be included in training programmes offered to technicians of the state consumer-protection agencies (PROCONS) in the second half of 2005. Training programmes were conducted in Roraima, Espírito Santo, Mato Grosso do Sul, Maranhão, Goiás and Pernambuco, affording important encounters with professionals directly linked to the consumers in various regions of the country.

Another training and upgrading programme for public officials, preparation of which began at the end of the second half of 2005, will be implemented in 2006 and is designed for police officers, experts and agents of the Federal Revenue Department and the states' ministries of finance. There are plans for carrying out, in conjunction with the Intellectual Property Defence Association – ADEPI (a member association of the National Council), training programmes in the Federal District, Rio Grande do Sul, Pernambuco, Minas Gerais and São Paulo, in which representatives of 21 Brazilian states will take part.

In parallel with the seminars and training courses, preparation also began on educational campaigns that directly target the population. The National Council developed, together with SINDIRECEITA (National Union of Federal Revenue Agents), an educational campaign entitled "Pirata: tô fora! Só uso original" (Pirates out! Use originals only). Although the original text of the National Plan had chosen the title "O barato sai caro" (Cheap can be expensive), after marketing studies had been carried out it was decided to use the other title for the campaign in the expectation that it would be more productive. The campaign consists in the transmission of slogans, distribution of educational posters, as well as handouts of caps, T-shirts, ballpoint pens and similar objects. During the first phase of the campaign, the focus

is on fairs and popular events and will be extended to primary and secondary schools, colleges and universities during the second phase.

Along these same lines, the Prefecture of São Bernardo do Campo (a town in the São Paulo area) designed, under the supervision of IMEDES (Institute of the Entrepreneurial Movement for Sustainable Development] of Grande ABC, a primer aimed at consumers in general, entitled “O barato que sai caro” (Cheap can be expensive), supported by various members of CNCP such as ADEPI, ABES, ABPD and ETCO.

These educational actions have all served to familiarize the population with the massive debate that occurred under the aegis of the National Council. In addition to the traditional arguments of risk to consumers’ health and safety, business management, tax evasion, financing of organized crime and disincentives to scientific and cultural production, other issues raised included the formation of prices of original products, with investment in research, creation, payment of taxes and workers’ rights, dissemination, etc.

In addition to the above, efforts are made in all the events and on all the communication media to consolidate a culture of quality rather than of low prices. The purpose is to alert the consumer to the fact that, in informed purchasing, the difference in price of a pirated product is less than the difference in quality and that to buy a cheap product is only worthwhile if that product is of good quality and legal. At the same time, efforts have been made to make known the initiatives of the sectors that launch high-quality original products at popular and competitive prices.

ECONOMIC COMPONENT:

As shown, the aim of repressive measures is to impede and make more costly the logistics of the production and distribution of pirated goods, while ensuring that the large mafias are unable to obtain the quantities needed to satisfy existing demand; in theory, this should force up the prices of the illegal goods. At the same time, and as a complement to repression, activities under the economic component are designed to help make the prices of original products more competitive.

In this connection, taxes have been cut in some affected sectors. One example is Act No. 11.196 of 21 November 2005, which granted tax benefits to computer products to be sold at popular prices, under the digital-inclusion programme. Another similar initiative was the Federal Government’s exemption of blank media from IPI (Tax on Industrialized Products). In addition to this, the publishing sector already enjoyed tax exemption even before the creation of the National Council.

At the same time, CNCP has been doing everything in its power to disseminate private-sector initiatives that take Brazil’s social reality into account and promote the launching of products at competitive prices accessible to all income groups within the population. There are a number of initiatives to that end. A suitable definition of what constitutes a competitive price against piracy may be taken from the example of NIKE, which holds the manufacturing rights for the shirts worn by the Brazilian football team, which reach the consumer at a retail price of about R\$ 170 on the legal market. Following an initial experiment with the manufacture of a simple, but equally official and original, version of the article the retail price fell to around R\$ 39.90, nearly 100 per cent higher than the average price of the pirated version, which is sold for R\$ 20. Even so, NIKE had a successful sales

record, which shows that consumers look for quality and that when the price is within their purchasing power they tend to opt for the original product, because of its quality, even if they have to spend a little more.

Another example in the sports sector is that of Clube Atlético Paranaense, which adopted a policy of incorporating street vendors in the formal economy, creating products aimed at the lower income groups and distributing their shirts through these small entrepreneurs at a final price of around R\$ 30.

In the record industry, mention should be made of the initiative of the singer Ralf, who created the Semi-Metallic Disc (SMD) technology, consisting of a not fully metallized sound medium. As production costs are lower, the product can reach the consumer at a final retail price of around R\$ 4.50 and is also distributed through street vendors. Such initiatives have had a very good reception through street traders, who do not hesitate to opt for the sale of legal products as long as they can find a product that is in demand and at a price accessible to their customers, which gives them a chance of profit.

Also, within this economic component, data regarding the customs undervaluation of inputs used in the production of pirated goods have been collected. In 2005, representatives of the recording and audiovisual sector conducted a study on undervaluation of blank media, the findings of which were submitted to the representatives of the control and enforcement agencies, notably DPF, DPRF and the Federal Revenue Department.

The study served as an additional tool for the authorities to impound blank media attempting to enter the country by fraudulent means. One such case occurred in the port of Itajaí, when, on 23 December 2005, more than seven million blank media were seized when attempts were being made to bring them into the country by fraudulent means. Only initiatives by the affected sectors can put an end to such practices.

INSTITUTIONAL COMPONENT:

The main target of the institutional component is the debate on Brazilian legislation. Although Brazil has modern laws on protection of intellectual property, there is still a need for constant updating of legal texts relating to new technologies that emerge and enable criminals to use increasingly sophisticated ways of circumventing the law.

In addition to the technological aspect, the procedural component of Brazilian legislation has been much discussed with a view to lightening the judicial formalities designed to protect intellectual property rights, which calls for a high degree of coordination among the various bodies involved.

In 2005, the Legislative Issues Working Group (GTAL) of the National Council vigorously debated a number of proposals for legislative change with a view to arriving at a proposal that took the interests of all the sectors involved into account. The discussions will continue in 2006 until the proposal that is best for the country is obtained.

In parallel, Congress is processing a few bills amending specific points of the legislation in force and on which there is consensus, in the area of CNCP, on the need for reform. They are the institution of “expertise by demonstration” and the possibility of “destruction of pirated products before moving on to the judicial process”.

In any event, it is important to point out that Brazilian legislation is one of the most modern in the world regarding matters relating to intellectual property and that the necessary adjustments arise from the constant and increasingly rapid changes in the methods used by criminals.

Expertise by demonstration, for instance, is needed because of the dimensions assumed by piracy in the twenty-first century. Until the 1990s, it was reasonable to conduct expert inspections item by item of seized cargo, since piracy rarely occurred on a large scale. With globalization, piracy began to occur at the retail level, making it impracticable to inspect all the items in a seized container, for instance. Some magistrates have rejected findings arrived at by demonstration, thereby allowing criminals to go unpunished.

The same may be said of the destruction of pirated products before the start of the judicial process. With the large volume of piracy today the world over and, consequently, the enormous amount of products seized, it is becoming increasingly costly to store them in warehouses. There is more and more overcrowding in our public warehouses and even in those of the firms concerned when there is a requirement for the pirated products to be stored safely in depositories. The cost of maintaining such warehouses is prohibitive both for the authorities and for lawful companies.

In addition to ensuring that the legislation keeps pace with the perfection of criminal methods, we must be able to guarantee proper enforcement of the law. In this connection, the growing involvement of the judiciary and the Office of the Attorney General in the piracy issue has been of the greatest importance, as demonstrated by the participation of magistrates, appeal judges, prosecutors and attorneys in the seminars on the subject, consolidating the idea of obtaining a specialized structure within the judiciary for the effective protection of intellectual property.

Together with the judicial structure, the National Council against Piracy has also been working on the creation of specialized structures within the Federal and Highway Police Forces for combating piracy. In 2005, a start was made on developing two projects for the creation of such structures attached to the Ministry of Planning, as well as requests for allocation of resources for strengthening those two bodies' law-enforcement frameworks. Equally important is the increase in the staff of all public bodies involved in fighting piracy.

During the second half of 2005, a public competition was held to fill posts in the Federal Revenue Department: 1,000 auditor posts and 1,820 technician posts. The new public officials are to take up their posts in 2006, increasing the agency's anti-piracy personnel. In addition, in the first half of 2006, there will also be a competition for filling over 400 posts of investigator, analyst and assistant at the National Industrial Property Institute (INPI), the body responsible for administering the registration of trademarks and patents.

Another prerequisite for implementing anti-piracy activities was the inclusion of the topic in the next Pluriannual Plan – PPA (the budget planning tool for the next four years) to be approved in 2007. For the time being, the second half of 2005 already saw the inclusion in the official budget for 2006 of a specific resource allocation for the National Council against Piracy.

Another measure taken in the institutional field was the creation of the *cliquedenúncia* and the establishment of a direct channel of communication within the National Council, the bodies for the protection of intellectual rights, the public law-enforcement agencies and consumer protection bodies. Through this channel, which can be accessed on the CNCP website <http://www.mj.gov.br/combatepirataria>, one can file complaints and transmit information on piracy cases, new methods of counterfeiting, new sales points etc. and keep abreast of the respective investigations. It is also possible to file complaints about corruption in actions dealing with crimes against intellectual property.

Integration of all the bodies involved in the issue at the three levels of Government is also of great importance for refining State action. In this connection, the National Council against Piracy has encouraged and supported the creation of specialized local bodies throughout the national territory. Examples of this initiative are the State of São Paulo, where the Interministerial Committee against Piracy was recently created, and the State of Rio de Janeiro, where work is already under way for the organization of the state organ, which is already in operation and is to be officially launched some time in 2006.

In conclusion, the periodic dissemination of all the work that has been done, with statistics and other data, is also important for refining anti-piracy mechanisms in Brazil and stimulating the involvement of organized civil society, which is vital for achieving increasingly satisfactory results.

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