



LEGAL RETROSPECTIVE

VIDEOGAMES | BRAZIL 2020 – 2021

DIAS CARNEIRO
ADVOGADOS



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LEGAL RETROSPECTIVE | VIDEO GAMES

INTRODUCTION

The Covid-19 pandemic is still a challenge for most industries and markets. Sports cinematographic and musical events were no exception. In spite of such a dismal background and many setbacks, the gaming industry rose to the challenge of meeting gamers demand as an increasing number of gamers turned their attention to video games in these difficult times. It's no surprise that Brazil – which already was the Latam's largest players and e-Sports fans' country carrying most of the revenues of games in Latam – followed this trend.

Newzoo's latest research on the Brazilian market points that in 2021, video game companies increased their annual revenue by 5,1%, reaching US\$ 2,3 billion. Also, Pesquisa Game Brasil or PBG

– an entity which carries out annual research about gaming in Brazil highlighted that 72% of interviewees play some games regularly and most of them point out that, in 2021, gaming was their main daily entertainment. Lastly, according to the Google for Games' report *Beyond 2021* Latin America was one of fastest growth regions in number of gamers and game spending. Furthermore, due to its financial accessibility and comparable low cost of entry to gamers, mobile games represent 48% of game spending's in LATAM, reaching an up to US\$ 3,5 billion.

Brands are aware of the ever-growing potential of the Brazilian gaming and eSports scenario, and this is being reflected in investments in the Brazilian scenario.

For example, the Premio eSports Brasil, an event that awards the most prominent players and influencers in Brazil, as well as national eSports championships are currently sponsored by global companies which considerable investments.

The video game hype in Brazil also hit television and streaming apps. A Comscore research indicates that Brazil is the second largest consumer market in Twitch. Daily, famous influencers like Gaules, Casimiro and Alanzoka show that Portuguese-speaker streamers are often among the most watched in the platform.





LEGAL RETROSPECTIVE | VIDEO GAMES

INTRODUCTION



Nonetheless, it would be a mistake to believe that the gaming audience is just a niche entertainment in Brazil. In the land of Pelé and soccer, TV channels are broadcasting soccer matches as well as eSports championships and videogame matches. Traditional sports channels, such as ESPN and SportTV now frequently broadcast eSports tournaments and have regular gaming commenting shows.

In fact, traditional Brazilian soccer teams saw the potential associated with eSports and the gaming industry and are creating or managing eSports branches and partnerships. Famous teams such as Flamengo, with about 38 million fans, Corinthians, with 30 million fans, and

Santos F.C , with over 6 million fans, associate themselves with eSports teams.

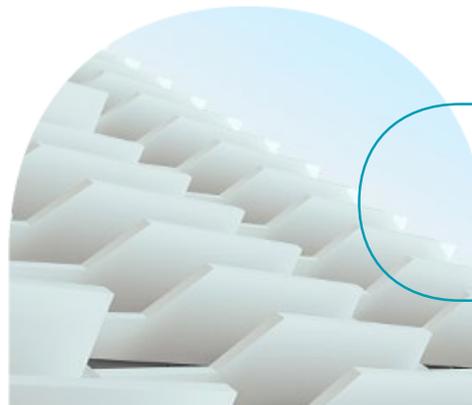
Over the last few years, the video game industry has flourished in Brazil and research indicate that it is not just a hype. Games are becoming an important market and community within the Brazilian society. However, alongside the opportunities that this market generates, come new legal and regulatory challenges.

This report summarizes the most impressive legal aspects on the matter in 2020/2021, as a brief overview of the current Brazilian gaming law and its latest developments.



Enjoy your reading!

**Technology team &
Vanessa Pareja Lerner**
Partner





ESPORTS

CURRENT SCENARIO OF ESPORTS IN BRAZIL

Different from some other countries, until recently Brazil's sports scenario has never been structured as a sports franchise system. In fact, sports franchise models like NBA and NFL were odd to the Brazilian meta. Everything changed with the growth of eSports.

Free Fire launched its own franchise model in 2019. In the following year, Riot Brazil declared that they would launch a franchisee model for the Brazilian League of Legends championship (CBLOL) in 2021. And with that, and much excitement, we had the starting point of eSports franchise in Brazil.

The eSports franchise model seems to be standing very well and will likely pave the way

for other Brazilian eSports tournaments. Publishers, sponsors, and teams are developing their business and network to construct a solid eSport scenario in Brazil. But what do Brazilian congressmen think about such novelty?

To understand the developments on the regulatory discussions concerning eSports in Brazil in 2020/2021, first you need to understand why you should follow-up this matter closely. Historically, sports have been heavily regulated in Brazil. We have laws that regulate specifically the rights and obligations of each member of the national sports system (including leagues, confederations, and national sports authorities), as well as those related to the players and teams.

In fact, even match broadcasting rights are regulated, being a prerogative of the team to negotiate directly with the channels.

Just from this, anyone from the industry can already start to understand our concerns. eSports, as a proprietary sport which the very *right to play* is restricted, and all other non-proprietary sport (like soccer, basketball, etc.) are in essence two completely different things, and regulating them equally, creates a world of problems.





ESPORTS

CURRENT SCENARIO OF ESPORTS IN BRAZIL

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On the other hand, we have legislators that seem to be very eager to regulate this thriving new industry in Brazil, but that not often see that they are introducing eSports to a framework it does not belong to.

So, in summary, why should you care about the regulation of eSports in Brazil?

Because publishers that promote amateur or professional videogame tournaments may have their activities directly affected in Brazil.



In 2020/2021 the two bills of law of concern were Senate bill PLS 383/2017, which aims to regulate eSports, and Senate bill PLS 68/2017 which aims to unify, in one law, the entire sports

legislation of Brazil (General Sport Law).

With both, the discussions were very similar, they both try to make eSports fit a regulatory framework that was not designed to regulate it.

In 2020, there were public hearings in the Senate regarding the videogame industry.

As in the past Senate Hearings, the participants mixed the subjects and tried to debate about eSports, gaming, educational games, violence in games all together.

The main difference was that this time teams' executives and staffs were summoned to speak. Their contributions were more grounded and objective, pointing out some problems that may arise from the sports law application to eSports.

Since then, there were no major updates regarding gaming regulation, though there are rumors that there may be an executive decree that may try to regulate eSports.

In 2022 general elections will be held in Brazil, which could potentially change the debate. As a spoiler, candidates have already been seen talking about videogames and making appearances in tournaments.



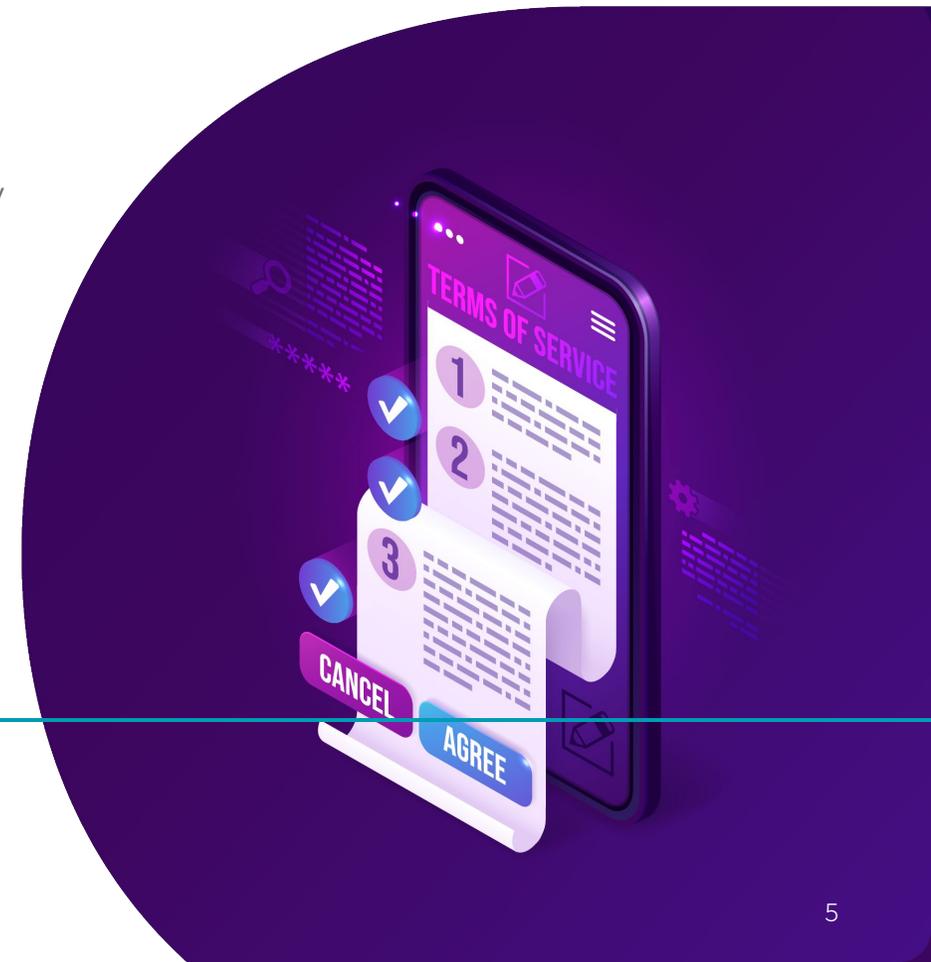
VIDEOGAMES

AGE OF CONSENT FOR AGREEMENTS, EULA, AND TERMS OF SERVICE

First thing to know of Brazil, it does not have a digital age of consent, meaning, the general rules regarding civil capacity will apply, which are:

- Those under sixteen years old have no civil capacity. Which means that they cannot exercise their rights, assume obligations, or take part in legal acts by themselves, without proper representation.
- Those aged between sixteen and eighteen years old have relative civil capacity. In other words, they may personally enforce their rights, assume obligations, and take part in legal acts, as long as they are properly assisted.

Consequently, when videogame companies present their users with legal documentations such as, without limitation, agreements, terms of use, end-user license agreement and privacy policies, they must consider the implications related to the civil capacity of users to enter into such agreements.





VIDEOGAMES

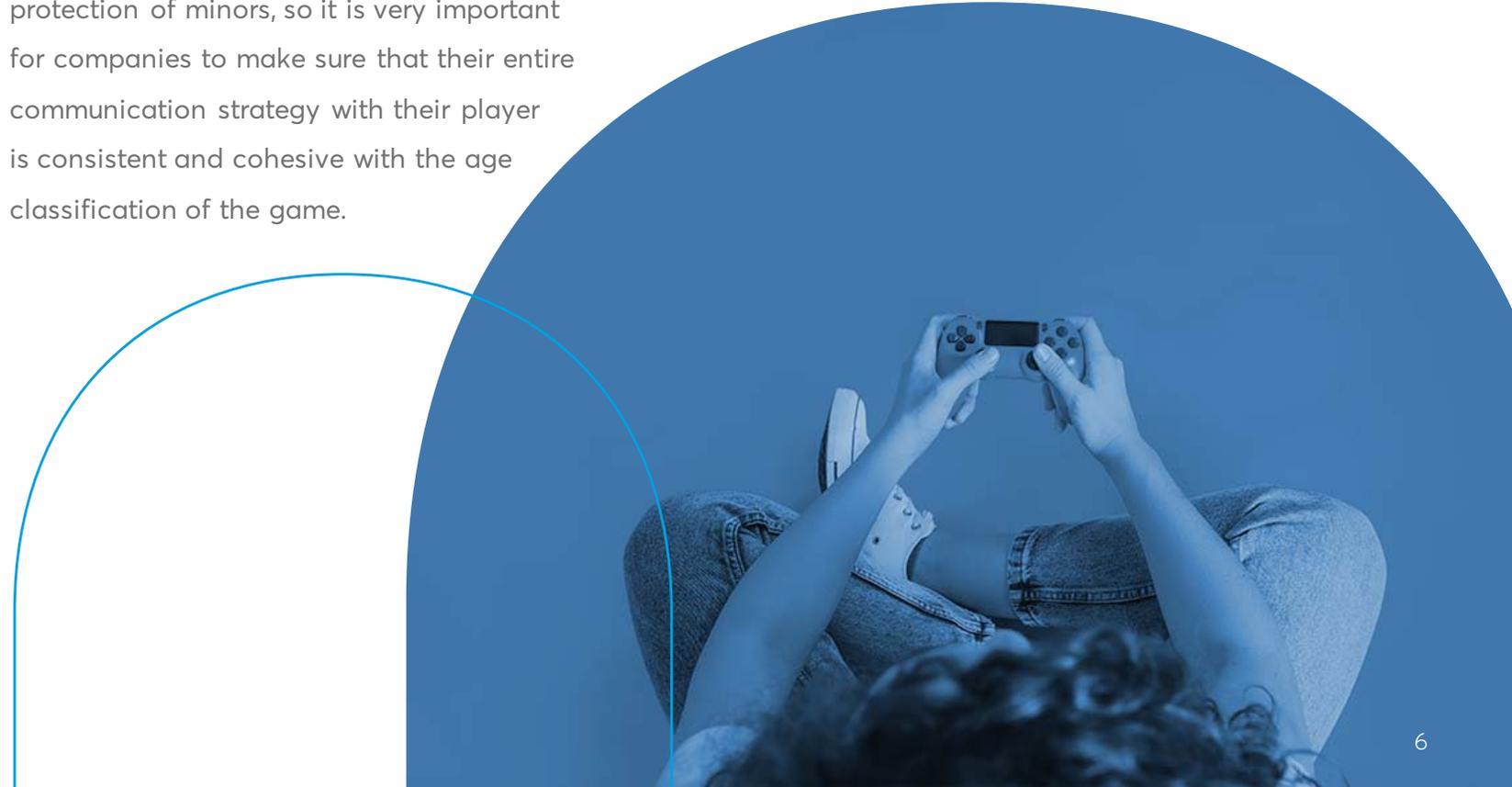
AGE GATE MECHANISMS

Brazil currently does not have any guidance on the age gate mechanisms that should be used to verify the age of players.

Largely, the standard market practice is still the declaratory system, whereby age requirements are displayed to users and he/she declares to abide them.

As we will show next, the Data Protection Legislation has imposed some additional requirements to such consent, but again, so far, we have no guidance on the interpretation of its requirements.

It's important to note that in 2020/2021 we have seen the continuation of a movement towards a conservative view on the protection of minors, so it is very important for companies to make sure that their entire communication strategy with their player is consistent and cohesive with the age classification of the game.





VIDEOGAMES

DATA PROTECTION IN GAMES

Although the Brazilian General Data Protection Law (Lei 13.709/18) came into effect in 2020, the penalties for non-compliance with it only became applicable in 2021. In the same year, the Brazilian National Data Protection Authority (ANPD) was created and finally started its operations.

The LGPD's wording, structure and rationale resembles the GDPR's. In this regard, it enshrines the concepts of data controller and processor, principles for data processing such as data minimisation, lawfulness, and accountability.

Regarding the gaming industry, the LGPD establishes that minors' data can only be processed if it is in the best interest of the child/adolescent. Moreover, the LGPD's wording is not very clear, but it seems to point out to a limited number of lawful basis for processing minors' data, which would prevent controllers from justifying data processing in their best interest.



Companies are expected to adjust their data processing operations to comply with the LGPD, including companies within the gaming industry. In this regard, lack of compliance with the LGPD may lead to the imposition of both pecuniary and non-pecuniary sanctions.

Pecuniary sanctions include daily or simple fines of up to 2% of the company's annual turnover in Brazil, limited to BRL 50 million, whilst non-pecuniary sanctions include the obligation to make the infraction publicly known, as well as an obligation to erase the data to which the infraction refers.

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VIDEOGAMES

DATA PROTECTION IN GAMES

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In 2021, there has been no record of any sanctions applied by the ANPD against companies in the gaming industry.

Likewise, the ANPD has so far not published any opinions or guidelines on specific aspects of the application of the LGPD to the gaming industry and it has not so far issued any regulations on the processing of minors' data.

The ANPD has been active on data breaches, having structured a communication channel to notify breaches and taking a public stance on particular instances.

From the one technical opinion, we have seen ANPD issue in 2021, we had a glimpse that it may intend to compare data protection practices companies adopt in the EU to those applied in Brazil. So, to the extent the company

has discrepancies between its Privacy Policy and practices used for Brazil a those applied to the EU, it needs to have an adequate justification for such.

In 2022 we are likely to see ANPD continue with its regulatory agenda, issuing opinions and resolutions related to data subject rights, the role of the DPO, international data transfers and lawful basis for processing personal data.





VIDEOGAMES

ADVERTISEMENTS WITH INFLUENCERS

Advertising in Brazil is mainly regulated by the Consumer Protection Code (**CDC**) and the National Council of Self-Regulatory Advertising (**Conar**).

The CDC establishes important principles that must be observed in any advertisement, prohibiting **misleading or abusive advertising**.

The interpretation of such concepts is quite wide and allows room for discussions, especially when dealing with new medias.

Now Conar, one of the few successful self-regulatory examples of Brazil, is formed by market stakeholders to oversee the ethics of advertising in Brazil, providing objective and specific rules for advertisements in Brazil.

In fact, they have issued the Advertising Self-Regulatory Code embodying such rules.

One of such rules, for example, is that an advertisement must be easily identified as such (this means an influencer must disclaim when they receive consideration to interact with a product and/or service).

Conar has the prerogative to rule on claims presented against any particular advertising, with the sole power to issue warnings and recommendations and/or rule on the removal of advertisement pieces. Additionally, a negative ruling by Conar is often interpreted by consumer Courts as very strong indication of the possible unlawful nature of an

advertisement. According to Conar's data, 73,5% of all cases analysed in 2020 were related to internet content and 19,3% of those claims are related to the failure to identify content as an advertising. Many of those cases involved influencers. >

According to the law, **misleading** is any advertisement that communicates information that is partially or fully false, or in any other way, including omission, is capable to induce the consumer to be mistaken about a product or service nature, characteristics, quality, quantity, proprieties, origins, price and any other information about it. And the **abusive** one is any advertising, which content is discriminatory, incites violence, utilizes fear or superstition, takes advantage on any lack of reason or children lack of experience, disrespect the environment, or that is capable to induce the consumer to behave in any menacing way or jeopardizes his/her own health and safety.



VIDEOGAMES

ADVERTISEMENTS WITH INFLUENCERS

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TO CLARIFY THE DO'S AND DON'TS FOR BRAZILIAN INFLUENCERS, CONAR LAUNCHED IN 2021 A SPECIFIC GUIDE ON THE SUBJECT, WHICH HAS A VERSION IN ENGLISH. WE WILL TRY TO LAY-OUT BELOW SOME OF THESE REQUIREMENTS.



Conar considers that influencers are doing marketing campaigns if

- i. the content includes the promotion of a product or service, or any element related to them;
- ii. the influencer received any kind of compensation or is in any kind of business relationship with the party responsible for the product/service; and
- iii. an advertisement agency or the advertiser has editorial control over the influencer's content.

The guide also enshrines an obligation that influencers must make it clear that the posted content has marketing purposes.

The use of expressions like *ad*, *adpost*, or *advertisement* is recommendable in such cases.

Also, if the platform allows it, the influencer must use any advertisement identification tool available. These requirements must be carefully observed (in addition to specific rules) when the content is targeted to children and adolescents (defined as anyone under 18 years old).

Regarding gifts to influencers (such as trips, visits to gaming houses, early access to new games) the guide defines such actions as 'activated messages', which are not subject to editorial control. Consequently, Conar does not consider them advertisements. Nonetheless, general consumer obligations still apply.





VIDEOGAMES

ADVERTISEMENTS WITH INFLUENCERS



If the publisher chooses to engage the influencer's followers with benefits, challenges, or sweepstakes, then the Brazilian regulations on free prize distribution must be observed, in addition to the Conar's code.

Strictly spontaneous posts are of course excluded from the Conar regulations, but should the affected brand retweet this content, then the material, as any other advertisement, will be subject to the general rules applied to such content.

Conar does not have an extensive list of rulings on gaming influencers. However, there are some other cases regarding influencers, ruled in 2021, that might be helpful to shed light on Conar's standards and rationale.

CASE 010/21

An influencer made video, in which he/she reviewed positively a mask from a brand. A consumer reported the video to Conar. The entity contacted the influencer and the brand and found out that they did not have a business relationship. The case was archived.

CASE 192/21

Juju Teofilo is a kid influencer who promoted new collectible toys. She was notified by Conar since her content was not identified as an advertising. Additionally, Conar claimed that the fact that she was promoting collectible toys posed an unethical appeal for children to keep consuming the products. After such notification, the influencer presented her defence, in which she alleged (I) the post was changed, including by adding proper advertising identification; and (ii) the fact that the product is a collectible toy should not in itself be considered unethical. Conar accepted the defence.



VIDEOGAMES

GAMING LITIGATION

Brazil is often thought of as a very litigation prone country for the video game industry. As the number of players in Brazil, according to New Zoo, rised from 81.2 million, in 2020, to 94,7 million in 2021, the tendency is that we will see an increase on litigation as well.

FOR THAT MATTER, WE HAVE ANALYSED THE 2020/2021 CASE LAW INVOLVING THE INDUSTRY TO PROVIDE A VIEW ON THE MOST LITIGATED ISSUES IN BRAZIL:

- Banning/Suspension of players due to cheats/hacks: players litigate to reinstate their accounts or requesting indemnification for material (in-game items obtained in the game) and sometimes moral damages.

- Banning/Suspension of players due to toxicity: players litigate to reinstate their accounts or requesting indemnification for material (in-game items obtained in the game) and sometimes moral damages.
- Other issues with player accounts: players litigate due to issues that have affected their account or game play, without fault of the player.
- Use of Image in games: mostly derived from soccer videogame cases, soccer players litigate claiming unlawful use of their biographic data and image, requesting indemnification for alleged

The lawsuits filed before the Courts of small claims must have low complexity and maximum value of around BRL 40,000.00 (approx. USD 7,200.00).



THE NUMBER OF VIDEO GAME PLAYERS IN BRAZIL RISED FROM 81.2 MILLION (2020) TO 94,7 MILLION (2021).

We identified that most lawsuits underway dealing with videogames in Brazil were filed before regular civil Courts, and not before the **small claims courts**. One possible reason for that is the impossibility of having a technical expert examination performed in a case being processed before the small claims courts. We also find that a considerable portion of the players request to be exempt from paying court costs (due to alleged lack of financial means to do so), meaning they will not have costs to file or if they lose the action.



VIDEOGAMES

GAMING LITIGATION

SUSPENSIONS & BANS

Most of the cases litigated by players in Brazil regard suspensions and bans of players due to toxicity and use of cheats and hacks.

The great majority of Brazilian case law has affirmed the lawfulness of the players ban when the publishers present sufficient evidence that such player indeed violated the game's T&C.

The Brazilian case law gives a great importance to the clarity of the provision about the possibility of ban/suspension by the game's terms and conditions, as well to the evidence of actual violation of such terms by the player. So, it is very important to make sure your T&C and practices in Brazil are in line with local consumer laws and reflect adequately issues particular to the market.

TO SUCCESSFULLY LIGATE WITH PLAYERS IN BRAZIL IT IS VERY IMPORTANT TO:

- i. nationalize your T&C, making sure you are aware of possible vulnerabilities (like it may be unlikely that foreign jurisdiction will be accepted for Brazilian players, since it may affect their access to justice);
- ii. make sure your practices are in line with local consumer laws, including with the possibility of a possibly shift of the burden of proof;
- iii. train your local support team to ensure players receive correct and clear information on their demands;
- iv. deal with litigation, even of small amounts, as strategic, since one loss might lead to an incorrect judicial precedents that might be used in other cases;
- v. review EULA/ T&C from time to time in light of previous litigations to understand if adjustments should be made to Brazil.



VIDEOGAMES

GAMING LITIGATION

SOCCER PLAYERS VS SOCCER GAMES

There are currently over 2000 lawsuits filed by soccer players against videogame publishers pending before Brazilian Courts. As indicated before, the complaints argue that publishers are violating the players' rights by unduly using their biographic data and image without previous authorization for doing so. In general terms, the cases regard the questioning of the validity of agreements executed with third parties and the need of individual authorization of each athlete.

Most cases have been time-barred, with Courts stating that the 3-year statute of limitation term starts when the game with soccer player is first distributed, so many cases were dismissed.

Regarding cases that are not time-barred, athletes were successful in securing indemnifications in lawsuits in which there is evidence of the misuse of the soccer players' image. The Superior Court of Justice (STJ – the highest Brazilian Court dealing with non-constitutional matters) has not yet rendered any decisions on the merits of these cases. In 2022 we expect the first case to be trialled.

Due to the high number of cases on this subject, a São Paulo Trial Court Judge started an incident of repetitive lawsuits. This incident is established by the Brazilian Code of Civil Procedure (CPC) and may be initiated if there is an actual repetition of lawsuits about the same

controversy of law. If the incident is admitted and processed, it will be ruled by the Appellate Court, and the decision will be binding to all Judges and Justices under the jurisdiction of that Appellate Court.

This incident is currently pending the scheduling of a date for the judgment session by the São Paulo Appellate Court, which should happen in the first semester of 2022.



VIDEOGAMES

CONTENT REMOVAL, AND SUSPENSION/BLOCKING OF USERS' ACCOUNTS

In 2014, the Civil Rights Framework for the Internet (Federal Law 12.965/14: *Marco Civil da Internet* or MCI) was enacted in Brazil. Amongst others, it enshrines obligations and rights for both internet service providers and internet content providers regarding third-party content. It also defines the general rules for liability for third-party content.

Article 18 of the MCI establishes an exemption of liability for content service providers (CSP) with regards to third-party content.

Consequently, CSPs will only be liable for third-party content if they do not remove an infringing content in breach of a court order.

Article 21 foresees an exception to this general rule, as content providers must remove third-

party content prior to receiving a court order in case of unauthorized pornographic images or videos. Failure of timely removal of such unlawful content would result in liability.

Last year, President Jair Bolsonaro initiated a debate on the abovementioned rules. He aimed at preventing social media platforms from being able to remove content that constituted fake news or disinformation. In September 2021 he presented the Provisional Measure n.1068/21, that sought to include a definition of social media in the MCI, as well as to include article 8, on content removal.

According to the proposed changes, 'social media' would be defined as an internet

application the aimed at allowing users to exchange information. Every content provider which fell into the definition of social media would have to observe stricter rules for removal of third-party content, as well as suspension of accounts and services for users in general.

In sum, social medias would only be allowed to remove infringing content, as expressly listed in the proposed Article 8-C of the MCI. Some of the following would be considered due cause for content removal:

- NUDITY
- DRUG APOLOGY, DRUG USAGE OR DRUG TRAFFICKING
- THIRD-PARTY INTELLECTUAL PROPERTY INFRINGEMENT
- CRIME APOLOGY, CONTENT WITH VIOLENCE, OR THREATENING BEHAVIOUR
- DISSEMINATION OF MALWARE, RANSOMWARE ETC.





VIDEOGAMES

CONTENT REMOVAL, AND SUSPENSION/BLOCKING OF USERS' ACCOUNTS



Moreover, article 8-B listed the following as causes for account suspension/blocking:

- Fake accounts aimed at deceiving the public.
- Fake accounts managed by software or automated computer programmes.
- Lack of payment by the user to the CSP.
- Offering of products or services that may breach third-party intellectual property rights.

Although the changes would directly affect social media such as Facebook, YouTube, Twitter and TikTok, the proposed definition of *social media* contained broad and unclear terms. Consequently, there would be room to

argue that video games with social tools such as forums, boards for exchanging communication between users, and direct messages, also fell under the proposed definition of social media.

If video games were considered *social media* under the definition of the MCI, publishers would not be allowed to remove user content (including messages, posts etc.) or to block or suspend users' accounts without due cause. As such, the proposed changes to the MCI had the potential to limit the publishers' autonomy to tackle toxicity in the video games' environment.

For example, if a user was engaging in toxic behaviour, but did not commit any acts explicitly listed in articles 8-A to 8-D, the publisher would not be allowed to remove the toxic content or to suspend/block the infringing user account.

The proposed alterations to the MCI were rejected by the Congress in 2021. Nonetheless, Bolsonaro still wants to limit social media's autonomy to remove content. Thus, it is likely that this year the Congress will engage into further discussions on MCI's provisions and possible changes to it.



NFTs

CURRENT SCENARIO OF NFTS IN BRAZIL

Like most countries in the world, in the last few years the use and popularity of NFTs in Brazil has increased drastically, mainly because they guarantee the ownership and uniqueness of non-fungible digital assets.

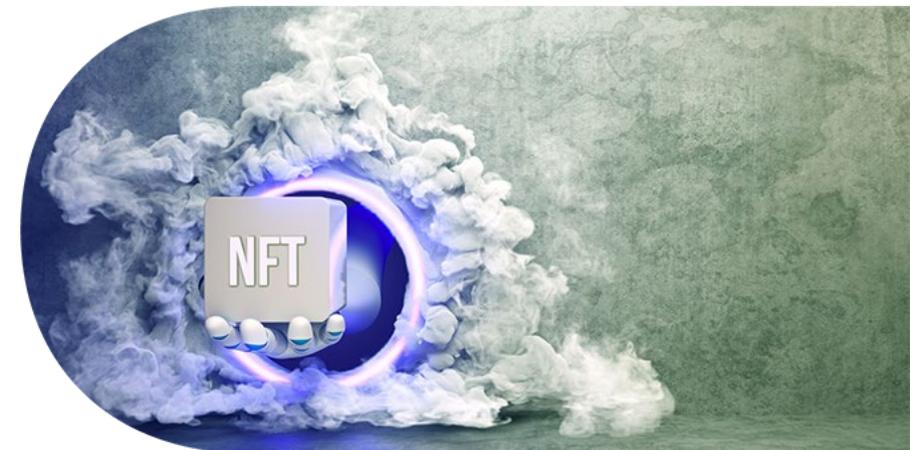
NFTs have been heavily exploited by Brazilian artists, that tokenized their works to sell them online. In fact, we even have Brazilian marketplaces, such as *nftrend*, created for the commercialization of NTFs in Brazil.

Such outstanding popular interest inevitably led to the use of NFTs in the videogame and e-Sports industry. In fact, in the Brazilian 2021 e-Sports Award *Prêmio eSports Brasil 2021* they sold NFTs containing the illustration of some

of Brazil's biggest names in the eSports community, such as Marcelo *coldzera* David from CS:GO, Felipe *Brtt* Gonçalves from League of Legends and Bruno *Nobru* Goes from Free Fire.

NFT's quickly created an impact in the games industry, with new developments such as the programming of game items as NFTs, creation of marketplaces by publishers and the expansion of some pay-to-earn games. However, even if Brazil does not have a specific regulatory framework to digital assets such as NFTs, we must take into consideration other legal aspects and setbacks that may follow.

We will break our rule of only providing a retrospective of relevant legal issues in the industry in Brazil in 2020/2021 when analysing NFTs. This is a fairly new theme, and we know there is still a lot of doubt on how this will be handled in Brazil by courts and government agencies, so we will provide a very brief overview on the matter.





NFTs

BRAZILIAN REGULATION OF CRYPTO ASSETS

Considering the recent popularization of crypto assets in the world, including NFTs, we saw an increase in discussions regarding the need for regulation to provide greater safety and to avoid the use of such technology for unlawful purposes (such as fraud and scams in general). Brazil still does not have a specific regulation for such assets. In 2020 and 2021 the bills of law of concern regarding NFTs were PL 2303/2015, PL 3825/2019 and PL 3949/2019.

We will provide further information regarding such proposed legislation, but first we highlight that the current understanding is that NFTs are assets created based on blockchain technology and similarly to Bitcoin and Ether, NFTs are based on a decentralized and cryptographed network.

However, although the matter is fairly new, for now, similarities end there, and it is unlikely that NFTs will be regarded as cryptocurrencies. The original draft of bill PL 2303/2015 was composed solely by 3 articles. However, during its analysis by the House of Representatives, the bill of law was complemented.

Among other things, the revised draft of the bill that aims to create a supervisory authority that will be responsible for controlling and authorizing the operation of companies that provide services related to virtual assets. Also, it establishes certain guidelines and obligations that must be observed by such companies and by the virtual assets market in general.

Additionally, it defines “virtual assets”, which may be interpreted to include NFTs in its scope. Nonetheless, it also provides that the definition may be later specified and narrowed down by the competent authority. Finally, the bill criminalises the use of virtual assets for fraudulent purposes.





NFTs

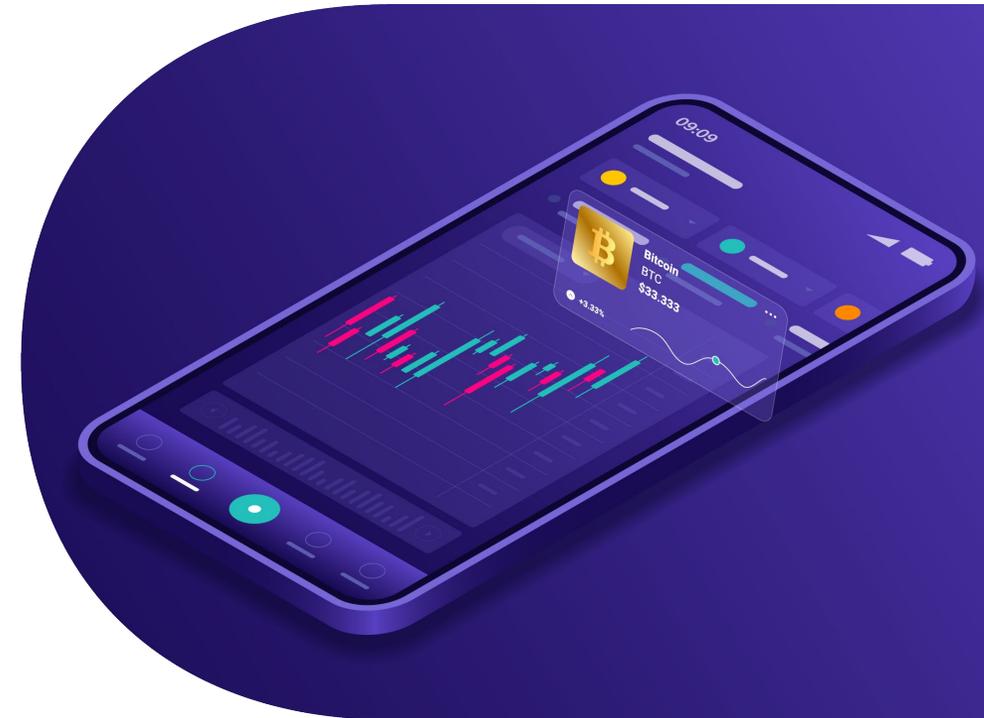
BRAZILIAN REGULATION OF CRYPTO ASSETS



The bill passed the House and is pending approval by the Senate. Regarding the other bills, PL 3825/2019, PL 3949/2019 and PL 4207/2020, they are all very similar, thus they are being jointly analysed by the Brazilian Senate. They currently focus on the regulation of virtual currencies and intermediary companies for operations carried out with crypto assets. These bills of law also provide a specific definition for virtual currency and crypto assets. It is worth noting that they have a special focus on crypto assets and not on NFTs per se.

Lastly, a new bill was presented before the Brazilian Senate in 2021 (PL 4401/2021). It also, aims to establish guidelines and regulate the provision of services related to virtual assets. This bill of law is very similar to PL 2303/2015 from the Brazilian House of Representatives and also aims to regulate crypto assets.

The bills of law mentioned above, however, are still being discussed in the Brazilian Senate and, if approved, will be later be analysed by the House.





NFTs

TAX OVERVIEW

As of 2021, there is no clear legal provision regarding the imposition of taxes on crypto assets.

However, the matter has been under discussion in the Brazilian Congress, mostly through PL 3949/2019, which extends the capital gains taxation rules to crypto assets.

It is important to mention that, until clear income tax rules on crypto assets are enacted, the Brazilian Revenue Service understands that the nature of the income arising from transactions with crypto assets is of capital gain (according to Consultation Ruling No. 214/2021).

For individuals, income tax on capital gain is calculated based on progressive rates, ranging from 15% to 22.5%. Monthly transactions of up to BRL 35,000 are exempt from taxation.

On the other hand, as for now, there are no discussions on the imposition of Transaction Taxes (e.g., Value-Added Taxes; Services Taxes) on said operations.





NFTs

INTELLECTUAL PROPERTY ASPECTS

INTELLECTUAL PROPERTY IMPLICATIONS RELATED TO NFTS ARE ALSO A PRESSING ISSUE. WE PROPOSE TO DO A QUICK IP X-RAY OF NFTS IN LIGHT OF LOCAL LAWS:

So first, we have the Brazilian Copyright Law (Federal Law 9.610/98) that regulates works of authorship in Brazil. Works of authorship are subject to both economic and moral rights, being that moral rights may not be waived or assigned. Also, we do not have work-for-hire in Brazil, so even if works are created by demand, you will need to specifically secure assignment of the work.

On the other hand, according to the Brazilian Intellectual Property Law (Federal Law 9.279/1996), trademark ownership and the right to its exclusive exploitation are only guaranteed, in the Brazilian territory, when the trademark is registered before the Brazilian Patent and Trademark Office (BPTO). Such registration is provided in a *first come first served* basis before the BPTO.

Additionally, the Brazilian Civil Code protects a person's image as a personality right, that can only be used upon their authorization, and it cannot be transferred or waived.

It should also be considered that in most cases, platforms used for the creation of NFTs transfer liability over violation of IP or property rights and regulations to the user. In this sense, now more than ever, content creators and NFT sellers, buyers and distributors must take such legal implications into consideration, since their violations could result, among others, in indemnifications and penalties.





NFTs

NFTS AS PRIZES

2021 opened multiple opportunities for the use of NFTs, such as prizes in sweepstakes and tournaments, including in eSports tournaments. Among such tournaments is the Brazilian Series of Poker – which will provide both physical and NFT versions of the trophy.

However, except for video game tournaments that are solely skill based, the use of NFTs in this scenario may have other implications including, the need to abide by the Brazilian regulations on tournaments and sweepstakes.

There are multiple Brazilian regulations for tournaments and sweepstakes, including, Federal Law 5.768/71 and Federal Executive Decree 70.951/72. This regulation implies several obligations and restrictions to contests and sweepstakes in Brazil, so before proceeding with such events in Brazil, you should first ensure compliance.



NFTS AND CONSUMER LAW

It's important to remember that in Brazil consumers are considered as an underprivileged party. So, it will be up to the publishers to provide clear and ostensive information as to the workings and characteristics of the NFT.

EXAMPLE 1

You should make it clear what (if any) IP rights the NFT grants upon its owner. In fact, should it not imply a license to further use work embedded in the NFT, our advice is that for now, this should be disclaimed specifically; and

EXAMPLE 2

To prevent problems, you may consider informing the blockchain where the NFT is hosted, so the user understands its trading possibilities.



RECENT LEGISLATIVE DEVELOPMENTS

Some bills were presented and discussed in the last few years to further regulate aspects related to videogames

SUBJECT	BILL OF LAW	ORIGIN	SUBJECT
TAX	PEC 51/2017	Senate	Tax immunity for games and consoles.
	PLP 202/2019	Senate	Applicability of tax for services of any nature over the organization, administration, or exploitation of electronic games
	PL 2059/2021	House of Representatives	Establish the tax rate e for industrialized products over videogames accessories of the same nature.
	PL 7320/2010	House of Representatives	Prohibition of the production, import, commercialization, lease, and use of medias with games and other applications for video games and computers for public use, with content containing nudity, sex, paedophilia, violence, and other incitement to crimes against humans.
	PL 1795/2019	House of Representatives	Establishes an obligation for videogame console manufacturers, among other companies, to disclose an alert on their products indicating the possible damages that the prolonged use may cause.
	PL 1070/1995	House of Representatives	Criminalizes the exhibition, disposal, lease, commercialization, transfer, or provision of ay title that contains obscene sound or images to those below 18 years old.



RECENT LEGISLATIVE DEVELOPMENTS

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SUBJECT	BILL OF LAW	ORIGIN	SUBJECT
CHILDREN AND ADOLESCENTS	PL 5261/2020	House of Representatives	It sets multiple guidelines for the provision of videogames to children and adolescents, mainly regarding the use of their personal data and in-game interaction with other users.
GAMES OF CHANCE	PL 213/2017	Senate	Regulates operations with credit and debit cards in games of chance.
	PLS 186/2014	Senate	Regulates games of chance in the Brazilian territory.



RECENT LEGISLATIVE DEVELOPMENTS

Some bills were presented and discussed in the last few years to further regulate aspects related to videogames

SUBJECT	BILL OF LAW	ORIGIN	SUBJECT
E-SPORTS	PL 68/2017	Senate	Create a general framework for the regulation of sports in Brazil. However, there still is a discussion if this law would be applicable to eSports.
	PL 3450/2015	House of Representatives	Modification of the current general framework for the regulation of sports in Brazil, including eSports in the definition of sports.
	PLS 383/2017	Senate	Regulation of some aspects of eSports, defining it as a sport In Brazil.
	PLS 11/2022	Senate	Inclusion of the Brazilian confederation for Eletronic Sports in the National Sports System (implying the understanding that eSports are sports under Brazilian law).
	PL 70/2022	House of Representatives	Definition of the "Dia Nacional do Esporte Eletrônico no Brasil". Regulation of some aspects of e-Sports, defining it as a sport In Brazil.
VIDEO GAMES INDUSTRY	PL 2796/2021	House of Representatives	Creation of a legal framework for the videogame industry.



RECENT LEGISLATIVE DEVELOPMENTS

Some bills were presented and discussed in the last few years to further regulate aspects related to videogames

SUBJECT	BILL OF LAW	ORIGIN	SUBJECT
EDUCATION	PL 1324/2021	House of Representatives	Institutes the National Policy for the Gamification of Education.
ACCESSIBILITY	PL 4052/2021	House of Representatives	Guarantees the existence of accessibility to videogames.
LOOT BOXES	PL 4148/2019	House of Representatives	Regulation of loot boxes in videogames in Brazil.



RECENT LEGISLATIVE DEVELOPMENTS

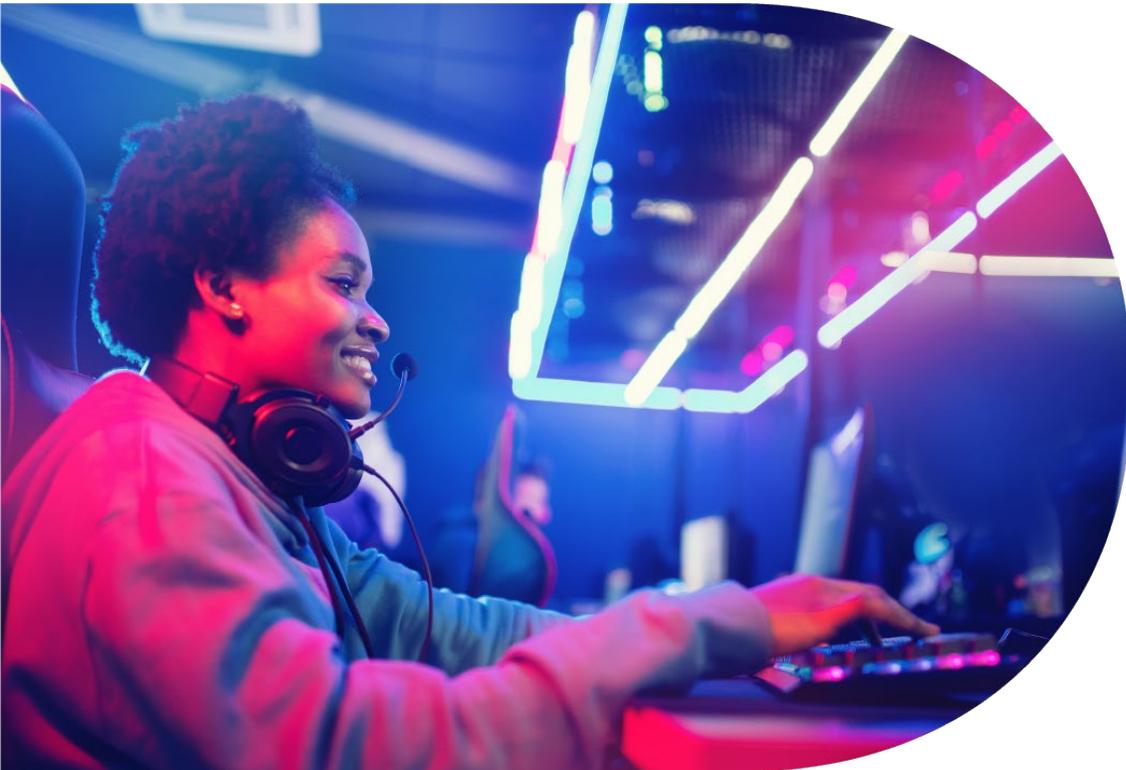
Some bills were presented and discussed in the last few years to further regulate aspects related to videogames

Please keep in mind that this list is not limited and there are many other bills of law that discuss such matters, however, we highlighted the ones that, in our opinion, are the most important

All the bills of law mentioned above are still being discussed by Brazilian legislators, with no concrete estimate deadline for the issuance of a final decision. Moreover, there are also older bills related to the videogame industry which are still being discussed by the Brazilian Congress.

Considering the processes related to the current bills of law being discussed, it seems that the Brazilian legislators are beginning to see the importance of the videogame and eSports industry; they even created a dedicated special committee in the House of Representatives for the subject.





CONTACT US

The technology and data protection team at **Dias Carneiro Advogados** continues to monitor the legal developments in the gaming industry.

We hope that our e-book has helped to clarify the main points of the law and its application in the gaming industry. If you still have any questions or would like to have more information about the matter, please contact us.



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