

Intellectual Property and Standards in Brazil

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An introduction

At the moment we write this paper, there is no Federal public policy² in Brazil dealing with the relations of the Intellectual Property system and Standard-Setting Processes³. This fact will condition our analytical perspective: it is not possible to describe the strategies and methods utilized by the Brazilian Government to care for such relevant theme, but just to sketch the extent and character of the problem that would be the target of such policies, if they were to be created and applied.

Why Brazilian Government is so careless of this relevant problem, whereas other emerging economies have dedicated significant domestic and International efforts to conduct their own policies the same issue? Simple disregard as to the importance of IP and standard-setting procedures is certainly not the cause. Although lacking as yet a uniform Intellectual Property Policy⁴, the Brazilian Federal Government has been striving to create and enforce a coherent Innovation and Development strategy⁵ and standard setting is a relevant portion of this drive⁶

Lack of institutional opportunity for enforcing any integrated policies is also not the cause. (p. 2)

The Brazilian Standard-Setting authority (Inmetro) and the Patent and Trademark Office (INPI) are sister agencies belonging to the same Ministry, and for most of their history sharing the same premises in Rio de Janeiro. This institutional and even physical proximity did not resulted in any common set of policies on the subject of this study.

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Nor can be this lack of policy explained by the irrelevance of the matter in the Brazilian environment. The Interdepartmental Steering Group⁷ has discussed the issue more than once. The Brazilian Foreign Office has furthermore followed closely China’s claims within the WTO system related to standard- setting issues⁸, but without direct interference in the pertinent procedures⁹.

On the other hand, only very recently the interface between Intellectual Property and competition policies has captured the attention of the Brazilian antitrust authorities¹⁰. Prior to this change of perspective, the IP aspects of the rare standard-setting cases were conspicuously sidestepped¹¹. On a study dealing on the standard-setting side of the issue¹² the authors indicate that the Brazilian antitrust authorities have only tackled the connection between standards and competition interests in three cases¹³, and with quite limited results¹⁴

Whatever the reason, no set of policies exist.¹⁵

(p. 3)

...*Open Standards as a policy option*

The Instituto Nacional de Tecnologia da Informação (National Institute of Information Technology) – ITI, is a Federal entity closely linked to the President of the Republic; one of its chief purposes is to create the basis for a Federal policy towards the adoption of open standards software for the Brazilian Federal Government 39. It is a procurement policy.

The Free software in Government movement started in Brazil in the State of Rio Grande do Sul, as a means to overcome budget constraints on procuring, but soon took a more libertarian approach 40. This aspect finds an expression in the words of Sergio Amadeu da Silveira, a former ITI president:

I'd like to register that the purchase of software that preserves the values of openness and freedom is, for the Brazilian government, a subject unavoidably connected to the democratic principle. And as it has been a long and painful path to reach our current democratic developmental stage in this country, we will not walk out [of] our fight. If democracy is a value full of ideology, it will never be an insignificant value. If democracy is a dream, it's the one dream this country will never wake up from. The future is free.⁴¹...

40 Buainain, Antonio M. and Mendes, Cassia I. C., Free Software and Intellectual Property in Brazil: Threats, Opportunitites and Motivations. Review of Economic Research on Copyright Issues, Vol. 2, No. 2, pp. 95-109, 2005. Available at SSRN: <http://ssrn.com/abstract=1145882> and G. Câmara and F. Fonseca, "Information policies and open source software in developing countries," Journal of the American Society for Information Science and Technology, vol. 58, Jan. 2007, p. 121. See also MIZUKAMI, Pedro Nicoletti and LEMOS, Ronaldo, From free software to free culture: the emergence of open business, http://www.law.yale.edu/documents/pdf/isp/a2kbrazil_bkmk.pdf, visited on Sep. 12, 2012. **For a rather critical view of such policies, see Lawrence A. Kogan, "Rediscovering the Value of Intellectual Property Rights: How Brazil's Recognition and Protection of Foreign IPRs Can Stimulate Domestic Innovation and Generate Economic Growth," International Journal of Economic Development, vol. 8, 2006, pp. 17-307.**

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