

Importance of registering a software in Brazil

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We are currently surrounded by software and apps in our daily routine and new ones appear every day with the aim of making our lives easier, whether in our personal life, professional life or even in our leisure time. This has become so common that it is hard to remember what everyday life was like without them.

From the moment we wake up with our phone's pre-programmed alarm with a song of our choice, checking our daily e-mails and appointments with the online agenda, ordering an uber or a meal by app, paying our bills and checking our banking accounts, each of these tasks is available thanks to programming and creation of technology.

Creating and innovating are part of our daily life, being important to protect our creations and innovations, especially for newly developed companies, such as *Startups*, as software is the best-known example of an Intangible Asset, for example any SaaS platform.

In Brazil, software is considered a copyright and is protected under the local Copyright Law (Federal Law No. 9.610/98) and Software Law (Federal Law No. 9.609/98).

Article 7, I, of the local Copyright Law defines that all works created from the spirit, expressed by any means, or fixed in any support, tangible or intangible, known or invented in the future, are considered as software. Additionally, article 1 of the Software Law states that a software is the expression of an organized set of instructions in natural or coded language, contained in physical support of any nature, for use in automatic information-processing machines, devices, instruments, or peripheral equipment, based on digital or similar means, to make them work in a certain way and for specific purposes.

In this regard, the creations must be original, although in some cases the created works may have the same functionality, but they cannot be the same, being developed independently, that is, they have different source codes (they are different in their writing).

In Brazil, it is possible to file for the registration of a software before the Brazilian Patent and Trademark Office ("INPI"), and the protection has the duration of 50 (fifty) years counting as from January 1 of the year after the publication date, or in the absence thereof, the date of the software's creation.

Considering that confidentiality is very important for the software industry, the registration of a software before the INPI is done without the software holder sending any documentation to file the request, not even the source code must be sent to the INPI – only an encrypted algorithm through hash code, all documentation being kept in the custody of the software owner.

Although under Brazilian law registration is not mandatory, there are certain advantages to registering software, such as: (i) creating a portfolio of intellectual property assets that can be used in venture capital and other funding programs; (ii) pre-constituted proof of authorship, avoiding incurring all the difficulties and costs to produce evidence in the event of a legal dispute; (iii) framing conditions for government procurement and funding programs.

An important observation relates to the myth that software is constantly updated and it would be very expensive to register all of them with the INPI. Under common practice and our expertise, we do not deem it necessary to register each update in the software, but only those that are very significant. The main object of registration is the source code of the program, and it turns out that it is not necessary for this registered source code to be entirely the same; provided that this code contains enough snippets that match the source code of the disputed software. However, substantial updates or new versions of the software must be registered.

In addition to these advantages, the software registration available with the INPI also has the possibility to record songs, screens, videos, sounds, game characters (if they are created by the user) along with the software source code. That is, in a single registration it is possible to protect all these mentioned assets, as they are all protected by copyright under Brazilian law.

Considering that Brazil is a member of the Berne Convention (1886), foreign companies and individuals can apply for the registration of their software with the INPI, enabling such companies and individuals to enforce their software rights under Brazilian territory and courts.

Therefore, if you have developed a software or its most up-to-date version, it is advisable to apply for registration with the INPI. As previously noted, the registration guarantees greater legal certainty to its holder and the protection of an important asset of its business, generating economic benefits for your company.

Montaury Pimenta, Machado & Vieira de Mello - Pablo Torquato

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