



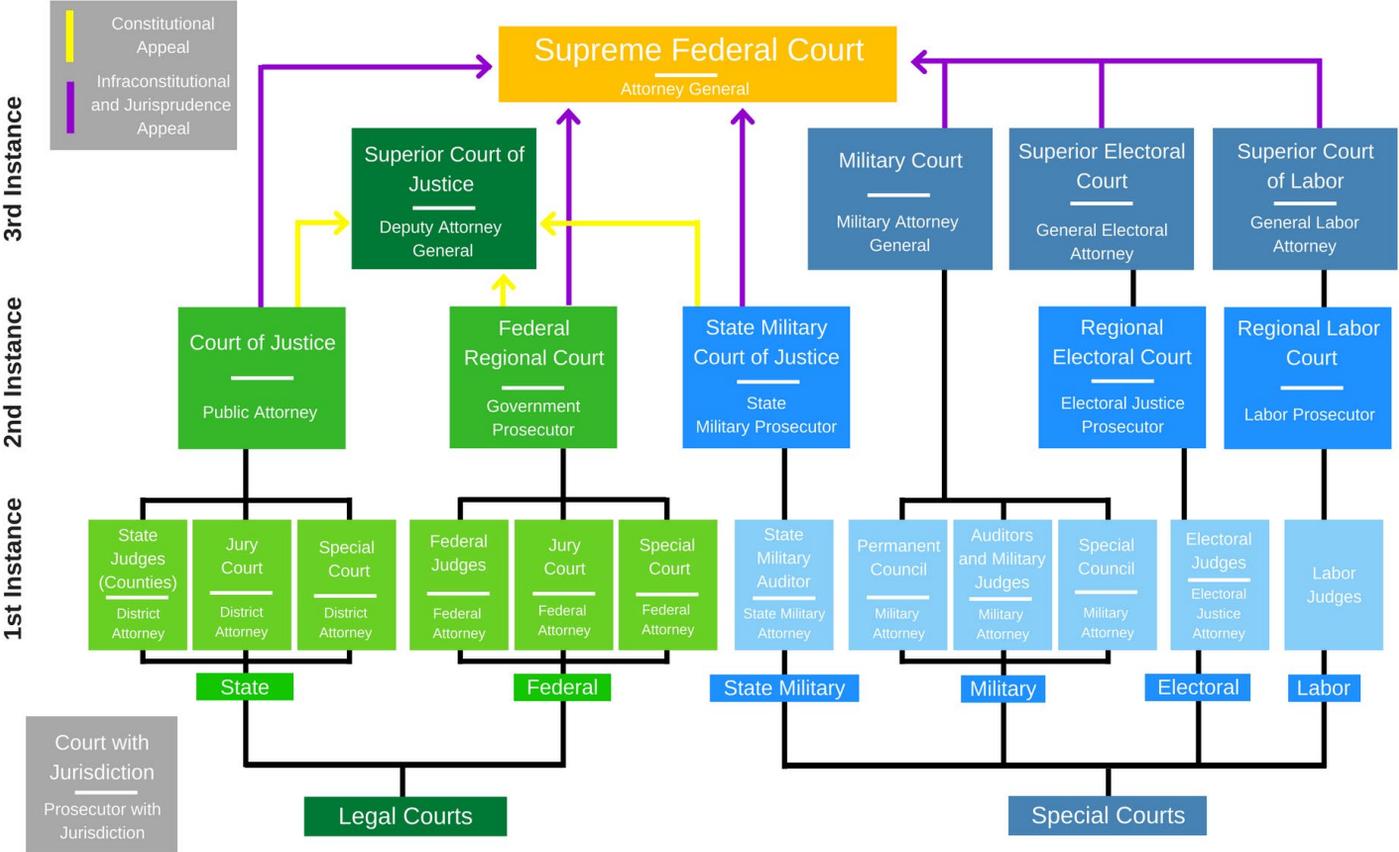
SRA INTERNATIONAL
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Intellectual Property and Data Protection in Research

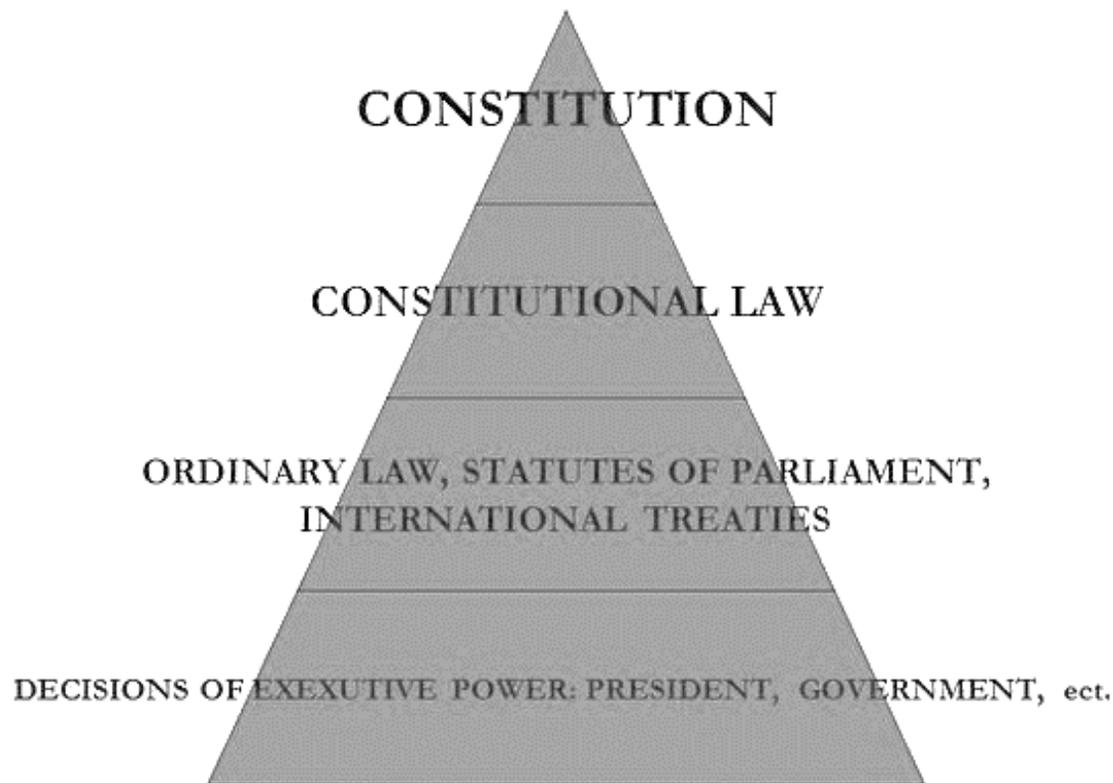
A Comparison Between Brazil and U.S.

Introduction: Overview of the legal system of Brazil

Brazilian Judicial System



H. KELSEN: “grundnorm” and pyramid and legal norms



Intellectual Property

IP Rights in the U.S.

	Patent	Trade Secret/Know-How/ Conf. Info.	Trademark	Copyright (including moral rights and right to publish)
Protected	Functional Inventions	Secret Business Info/Experience, knowledge, Skill/Non-public info	Consumer recognition + goodwill	Expression in fixed medium
Requirements	Novel, Non-obvious, useful, enabled, described	Trade secrets must have independent economic value and reasonable steps taken for secrecy	Use in commerce	Originality
Duration	20 years from filing	Open-ended	Open-ended	Earlier of 95 years from publication or 120 years from date of creation
Prohibited Conduct	Making, using, selling, offering to sell, importing	Misappropriation	Creating likelihood of confusion	Copying

IP Rights in Brazil

Brazilian IP legislation

Law 9,279/96
addresses Industrial
Property (LPI).

Law 9,610/98
addresses copyright
for other artistic
intellectual creations.

Law 9,609/98
addresses copyright
for computer
programs.

Law 9.456/97 protects
cultivars by regulating the
use of plants, and their parts
for reproduction or
multiplication.

	Patent	Register Law 9.610	Trade Secret / Know-how / Conf. Infom.	Trademark	Copyright	Register Law 9609
Protected	Invention and Utility Model,	Industrial Design	Secret Business Info/Experience, Knowledge, Skill/ Information that cannot become public	I - for goods or services; II - Certification mark; III - Collective mark.	creations of the mind.	computer program
Requirement	inventions: novelty + industrial applicability utility model: practical use + industrial application.	Aesthetic + industrial manufacture purpose.	There are no legal requirements for what is considered a Trade Secret	Visually perceptible distinctive signs.	Originality.	A set of instructions, data, or programs that enable machines or devices to perform specific tasks.
Duration	inventions: 20 years from the filing date utility model: 15 years from the filing date.	10 years Possibility of Renewal (max 25y)	Defined by contract	10 years from the date of grant, renewable.	moral rights perpetual economic rights 70 years ¹ audiovisual and photographic works 70 years ²	Fifty years ³ ,
Prohibited Conduct	producing, using, offering for sale, selling, or importing.	producing, using, offering for sale, selling, or importing.	Defined by contract	Exclusive use throughout the entire national territory.	Exploiting economic rights without express authorization.	authorizing or prohibiting commercial rental, sale, or license.

Foundations of IP and Negotiation Challenges at the Proposal Stage

- Authorship
 - Ghostwriter
 - Economic and moral rights in Brazil
 - Authorship by AI?
- Assignment v. Licensing

Moral Rights in Brazil and the U.S.

- Economic right to publish under copyright
 - Assignable and negotiable in the U.S. and Brazil
 - Special higher education concerns
- Basic moral rights
 - 1. Name attribution (paternity) – the right to claim authorship or anonymity
 - 2. Work Integrity – right to ensure integrity of the work
- Moral rights are assignable and negotiable in the U.S.
- Only the economic right is assignable or negotiable in Brazil

Moral Rights of the Author in Brazil

Have their name, pseudonym, or conventional sign indicated as the author when the work is used

Ensure the integrity of the work, opposing any modifications or acts that may harm or affect the work or the author's reputation or honor

Withdraw the work from circulation or to suspend any form of authorized use when such circulation or use may damage the author's reputation or image

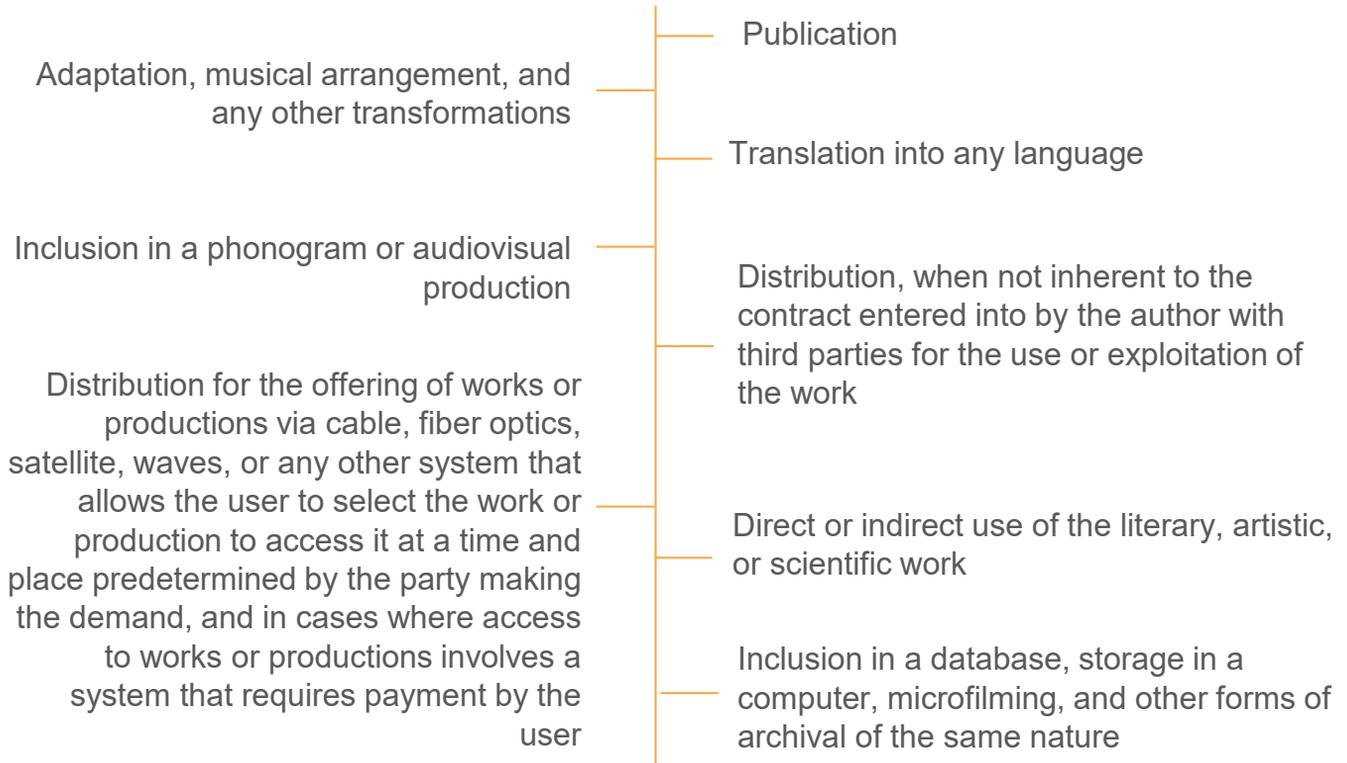
Claim authorship of the work at any time

Keep the work unpublished

Modify the work, whether before or after it has been used

Access a unique and rare copy of the work, when it is legitimately in the possession of another party, for the purpose of preserving its memory through photographic or similar means, or audiovisual processes.

Economic Rights of the Author in Brazil



IP cases in Brazil

Judgment of the lawsuit requesting authorship recognition for the ghostwriter of the book "The Sweet Poison of the Scorpion"

Allegation of plagiarism by rapper Emicida against "Bauduco" for using elements from the rapper's album name, visual identity, and the title song in the brand's rebranding campaign.

Data Protection

Introduction

- Brazil

- The approval and enactment process of LGPD
- Federal regulation

- United States

- The Federal Law discussion
- State regulation

Impacts on Scientific Research

- Autonomous right v. Right to privacy
- Academic research in Brazil (Brazilian General Data Protection Law, articles 4.II.b, 7.IV and 11.II.c)
- University and Research Entities Adjustments
- International data sharing

Contracts

- New contract terms:

Arises the need to include clauses regulating the processing of personal data in compliance with the provisions of the LGPD.

International data sharing

- Standard contractual clauses establish minimum safeguards and valid conditions for carrying out international data transfers.
 - The resolution has set 12 months for contracts to be adapted to the new clauses. ([Resolution CD/ANPD No. 19 of August 23, 2024](#))
- Negotiation of contracts under different legal systems:

International data sharing

- For the recognition of the adequacy and validity of these clauses, they may not be altered.
- The ANPD may recognize the equivalence of standard contractual clauses from other countries or international organizations.

Data Protection Clauses in Research Agreements

- DP Clauses are increasingly common in research / research – related agreements
 - EU - GDPR clauses in agreements to U.S. entities
 - U.S. State clauses have appeared in agreements received by European entities
 - What has your experience been? For the Q&A / discussion at the end
- Exercise **educated due diligence** in reviewing such clauses from outside entities – DP state laws in the U.S.A. are rapidly changing so stay on top of the latest developments – No overarching U.S. Government statute yet
- Close consultation with faculty and general counsel is critical
 - What is the nature and role of data in your project?
- DP clauses may be like “troublesome” like other global ones:
 - IP
 - Culture & time zone differences
 - Liability & indemnification
 - Governing Law / Venue / Jurisdiction

Research Ethics

- The role of Institutional Review Boards
- The new Brazilian Law on Research Ethics
- Jurisdiction
 - Research involving human subjects
 - Personal data usage
- Collaboration with other departments
 - Data Protection Officer (DPO)
 - Legal department
- Cases and discussions
 - Public data in general
 - Rights of the data subject

Q&A

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