



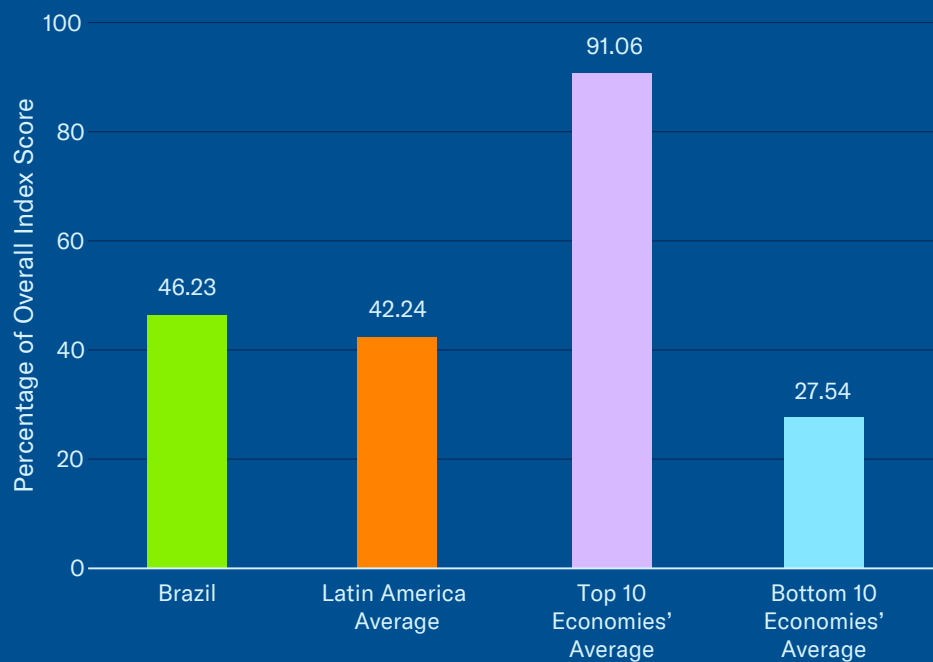
Brazil

Rank
34/55

Category Scores



Overall Score in Comparison





Key Areas of Strength

- New Law 3,696/2023 gives the National Cinema Agency, ANCINE, copyright enforcement powers; pilot action programs were announced in 2024
- “Operation Copyright” and “Operation 404 against piracy” continued in full force in 2024; these key enforcement efforts with Brazilian police and international authorities disable access to infringing content online
- Joined the Hague Agreement in 2023
- INPI’s 2019 patent backlog plan, Plano de Combate ao Backlog de Patentes, seeks to eliminate long-standing registration backlogs
- In 2021, INPI released its first study of IP-intensive industries’ national economic impact in Brazil
- Law No. 14.195/2021 changed Brazil’s IP Law so that ANVISA’s prior consent on patent applications is no longer required

Key Areas of Weakness

- No special IP incentives for orphan medicinal product development
- Article 40 invalidation by the Supreme Court in 2021 weakens Brazil’s patenting standards, retroactively targets the biopharmaceutical industry, and affects thousands of patent applications; this remained unaddressed in 2024
- Compulsory licensing amendments for health emergencies broaden existing emergency powers and authority, potentially generating legal uncertainty
- Key life sciences IP rights are missing, including patent term restoration and RDP, causing an overall challenging patentability environment
- Limited participant in international IP efforts—only a full contracting party to two of nine treaties is included in the Index

Indicator	Score	Indicator	Score
Category 1: Patents Rights and Limitations		Category 7: Enforcement	
1. Term of protection	1.00	29. Direct government intervention in setting licensing terms	0.50
2. Patentability requirements	0.00	30. IP as an economic asset	0.50
3. Patentability of CILs	0.00	31. Tax incentives for the creation of IP assets	0.33
4. Plant variety protection	0.74	Category 8: Systemic Efficiency	
5. Pharmaceutical-related enforcement	0.00	32. Physical counterfeiting rates	0.52
6. Legislative criteria and use of compulsory licensing	0.00	33. Software piracy rates	0.53
7. Pharmaceutical patent term restoration	0.00	34. Civil and precedural remedies	0.25
8. Membership of a Patent Prosecution Highway	1.00	35. Pre-established damages	0.25
9. Patent opposition	0.50	36. Criminal standards	0.50
Category 2: Copyrights and Limitations		37. Effective border measures	0.50
10. Term of protection	0.63	38. Transparency and public reporting by customs	0.75
11. Exclusive rights	0.50	Category 9: Cutting-Edge Innovation	
12. Expeditious legal remedies disabling access to infringing content online	0.75	39. Coordination of IP rights enforcement	0.75
13. Cooperative action against online piracy	0.00	40. Consultation with stakeholders during IP policy formation	1.00
14. Limitations and exceptions	0.50	41. Educational campaigns and awareness raising	0.75
15. TPM and DRM	0.25	42. Targeted incentives for the creation and use of IP assets for SMEs	1.00
16. Government use of licensed software	0.25	43. IP-intensive industries, national economic impact analysis	1.00
Category 3: Trademarks Rights and Limitations		Category 10: Membership and Ratification of International Treaties	
17. Term of protection	1.00	44. IP incentives for orphan medicinal product development	0.00
18. Protection of well-known marks	0.50	45. IP incentives for orphan medicinal product development, term of protection	0.00
19. Exclusive rights, trademarks	0.50	46. Restrictions on the effective use of existing IP incentives for orphan medicinal product development	0.00
20. Frameworks against online sale of counterfeit goods	0.25	Category 5: Trade Secrets and the Protection of Confidential Information	
Category 4: Design Rights and Limitations		23. Protection of trade secrets (civil remedies)	0.50
21. Industrial design term of protection	1.00	24. Protection of trade secrets (criminal sanctions)	0.50
22. Exclusive rights, industrial design rights	0.50	25. Regulatory data protection term	0.00
Category 6: Commercialization of IP Assets		Category 10: Membership and Ratification of International Treaties	
26. Barriers to market access	0.75	47. WIPO Internet Treaties	0.00
27. Barriers to technology transfer	0.50	48. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	0.50
28. Registration and disclosure requirements of licensing deals	0.00	49. Patent Law Treaty and Patent Cooperation Treaty	0.75
		50. Membership of the International Convention for the Protection of New Varieties of Plants, act of 1991	0.00
		51. Membership of the Convention on Cybercrime, 2001	1.00
		52. The Hague Agreement Concerning the International Registration of Industrial Designs	1.00
		53. Post-TRIPS FTA	0.00

Percentage of Overall Score: 46.23%

Total Score: 24.50

Spotlight on the National IP Environment

Past Editions versus Current Score

Brazil's overall score has increased from 23.26 out of 50 indicators in the twelfth edition to 24.50 out of 53 indicators. This reflects score increases for indicators 12 (expeditious legal remedies disabling access to infringing content online) and 51 (membership of the Convention on Cybercrime, 2001) and a score decrease for indicator 32 (physical counterfeiting rates).

Patent Rights and Limitations

2. Patentability requirements and 3. Patentability of computer-implemented inventions (CIIs):

In 2024, rightsholders continued to face challenges in registering and protecting patent-eligible subject matter in Brazil. In the Brazilian Senate, deliberations continued regarding Bill 2210/2022. Originally introduced in the Chamber of Deputies in 2018, this bill has undergone significant changes over the years. In 2024, a series of amendments introduced in the Senate would change the way patent examination takes place and, specifically, examination timelines used by the Brazilian Patent and Trademark Office, INPI. At the time of research, the bill was still pending and under review in the Science, Technology, Innovation, Communication and Information Technology Committee. However, neither this bill nor any other proposals actively being considered would effectively address the current lack of a TRIPS-compliant minimum term of patent protection in Brazil. Given INPI has historically had a backlog of patent applications ranging from 10 to 13 years—depending on the field of technology—until 2021, the Industrial Property Law had provided innovators in Brazil with a guaranteed minimum term of exclusivity and protection of 10 years from grant for standard patents.

Article 40 of the law stated that the term of protection shall “not be less than 10 (ten) years for an invention patent and 7 (seven) years for a utility model patent, beginning on the date of granting, unless the INPI has been prevented from examining the merits of the application by a proven pending judicial dispute or for reasons of *force majeure*.”

For years, Article 40 provided rightsholders with a proverbial floor of exclusivity and insurance against patent delays. In a series of decisions in the spring of 2021, the Brazilian Supreme Court removed this floor. The court declared that Article 40 was unconstitutional and would no longer be available or applicable, and it stated that the ruling should be retroactively applied to granted patents in the biopharmaceutical and health-related fields. As noted over the past few years, the ruling is a step backward in improving Brazil's national IP environment with thousands of biopharmaceutical rightsholders being put at a disadvantage and exclusivity periods cut short. Through this decision, the Brazilian Supreme Court has weakened Brazil's standards of patent protection, and the selective retroactive application of the ruling to one field of technology and innovation violates Article 27(1) of the TRIPS treaty and established international principles of nondiscrimination. Since this ruling, legislative proposals have been presented in the Brazilian Chamber of Deputies that would provide a period of patent term restoration due to administrative delays during patent examination and prosecution. However, to date, no legislative action has been taken. The Index continues to urge the Brazilian Government and lawmakers to immediately address this issue.

The Index recognizes INPI's continued commitment to reducing processing times, as stated in the *Strategic Plan 2023–2026*, but large application backlogs and long application processing times are not unique to Brazil or INPI, and a variety of mechanisms can more effectively address this. Such mechanisms could include, for example, the introduction of a new statutory defined variable term of adjustment—as proposed in the Chamber of Deputies—or a patent validation mechanism with other major IP offices. As noted in past editions of the Index, Brazil also lacks many essential biopharmaceutical IP rights, including patent term restoration and a defined term of RDP. As a result of the weakening of the patenting environment and rightsholders' inability to continue to secure a 10-year minimum period of patent protection—noting that the TRIPS defined term is 20 years—Brazil's score for indicators 2 and 3 was reduced to 0 in the tenth edition of the Index and will remain at zero until this issue is resolved. The Index will continue to monitor these developments in 2025.

8. Membership of a Patent Prosecution Highway (PPH):

As noted over the course of the Index, since 2019, INPI has actively pursued PPH agreements around the world. To date, INPI has signed agreements with all IP5 offices: the Korean Intellectual Property Office, the United States Patent and Trademark Office, the Japan Patent Office, the European Patent Office, and the China National Intellectual Property Administration. These positive efforts continued in 2024 with INPI joining the Global Patent Prosecution Highway (GPPH). The GPPH provides the opportunity to request an accelerated examination and to secure early patent grants in its 28 participating offices. PPH initiatives and increased cooperation among IP offices are among the most tangible ways in which the administration and functioning of the international IP system can be improved and harmonized to help inventors and rightsholders.

Copyrights and Limitations

11. Legal measures, which provide necessary exclusive rights that prevent infringement of copyrights and related rights (including web hosting, streaming, and linking); and 12. Expeditious legal remedies disabling access to infringing content online:

In 2024, several concrete efforts were made to improve the copyright environment in Brazil. On the enforcement side, operations continued under “Operation 404 against piracy” (*Operação 404 contra pirataria*), which launched in 2019. Spearheaded by a special police enforcement unit (SEOPI), the Ministry of Justice, and with international support from the United States Embassy and UK police, this special enforcement effort has had direct and tangible results. In its first four years of operation, over 2,000 websites and applications offering copyright-infringing content were shut down, more than 100 search and seizure warrants were issued and executed across 20 Brazilian states, and several arrests have been made. In late 2023, rightsholders announced that an additional 600 websites had been disabled in both Latin America and Europe. In 2024, Operation 404 entered its seventh phase, which resulted in the suspension of an additional 675 websites and 14 illegal streaming applications.

Similarly, two important developments occurred on the legislative side. To begin with, in May 2024, Law 14,852 was enacted. Dedicated to defining and incentivizing the video and electronic gaming industry, the new legislation provides a powerful statement that the gaming industry is a central part of Brazil's burgeoning creative sector and the national economy. From an IP perspective, the new law does not introduce any new forms of IP rights and protections or greater enforcement through existing statutory rights.

The video game industry has long noted that both online piracy of video games and the trade in pirated and modified video games and devices remain key piracy challenges in Brazil. Several markets in São Paulo have been included in the USTR's *Review of Notorious Markets for Counterfeiting and Piracy*, including in the latest edition.

The video game industry is one of the fastest-growing areas of the creative sector and is responsible for a growing proportion of economic output. Commissioned by the Entertainment Software Association, the 2020 study, *Video Games in the 21st Century: The 2020 Economic Impact Report*, found that, as a whole, the industry contributed an estimated \$90 billion in total economic output supporting close to half a million jobs in the United States. Given the growing importance of video and computer game technology to people all around the world, it is vital that this industry be better protected in Brazil. At the time of research, no further details had been published on how the law would be implemented and applied.

In a separate development, President Lula enacted bill 3,696/2023 earlier in the year. Although the law is primarily concerned with the continued requirement of local content quotas on domestic film distributors, it provides a potential breakthrough for the creative sector. Article 3 of the law gives the National Cinema Agency (ANCINE) the power to “determine the suspension and cessation of unauthorized use of protected Brazilian or foreign works.” Under Subparagraph 2, these powers are broadly defined: “Measures to suspend and cease unauthorized use of protected works are those that prevent their issuance, dissemination, transmission, retransmission, reproduction, access, distribution, storage, hosting, display and availability and any other means that imply violation of copyright.” In September, ANCINE announced that it would apply its new powers in two pilot applications, disabling access to the dissemination of audiovisual content and live sporting events.

These efforts build on those taken by the Brazilian National Telecommunications Agency, ANATEL. As noted last year, ANATEL launched a dedicated campaign against illicit IPTV set-top boxes and their streaming applications online. These are all positive developments and, as a result, the score for indicator 12 has increased by 0.25.

14. Scope of limitations and exceptions to copyrights and related rights:

The Brazilian Senate recently approved legislation, Bill 2338/2023, regulating AI and machine learning technologies. The AI Bill, which is now pending approval in the Lower House, is the first legislative initiative in Brazil that seeks to establish a framework for the national development and application of AI and machine learning technologies. These technologies are important areas of future economic activity as advances in computational power and new technological advancements allow for scientific breakthroughs and innovation to take place through the analysis of large volumes of data and information. Although Article 42 of the draft law states clearly that text and data mining of copyrighted works by qualifying organizations must not “unjustifiably harm the economic interests of the holders” or “compete with the normal exploitation of the works,” the explanatory note states that “in line with international law, it [the bill] establishes guidelines for conforming copyright and intellectual property rights to the notion that data should be a common good.” However, given the existing dynamics of the internet and the volume of infringing content available online—much of it made available without rightsholders’ permission or even their knowledge—as well as the ability of scraping technologies to access rightsholders’ content without their permission, it is essential that traditional safeguards enshrined in decades of copyright law and legal practice be strictly adhered to and that rightsholders can enforce their rights. The Index will continue to monitor developments in 2025 as the bill passes through approval procedures in the Lower House.

Incentives for Cutting-Edge Innovation

44. Special market exclusivity incentives for orphan medicinal product development; 45. Special market exclusivity incentives for orphan medicinal product development, term of protection; and 46. Restrictions on the effective use of existing market exclusivity incentives for orphan medicinal product development:

In 2014, the Ministry of Health promulgated Ordinance 199, the National Policy for Comprehensive Care for People with Rare Diseases. The ordinance introduced a national framework and definition of rare diseases, including the right to comprehensive health care. With respect to incentives to R&D and the development of new treatments and technologies, Article 8 (VII) of the ordinance states that the law should “promote the exchange of experiences and stimulate the development of studies and research that seek improvement, technological innovation and the dissemination of knowledge aimed at health promotion, prevention, care and rehabilitation/habilitation of people with rare diseases.” The ordinance does not include any reference to or definition of any special IP-based market exclusivity incentives for orphan medicinal product development.

Membership and Ratification of International Treaties

51. Membership of the Convention on Cybercrime, 2001:

In late 2022, Brazil became a full contracting party to the Convention on Cybercrime by depositing its instrument of accession. The convention entered into force in 2023. As a result, the score for this indicator has increased by 1.00.