

PINHEIRO NETO ADVOGADOS

IT News

HIGHLIGHTS:

Draft Bill seeks to further nationalize television and Internet

Latin American Conference on Open Source Software

Draft Bill revokes benefits granted in privatization

New Normative Ruling issued by ANCINE

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This is a monthly publication of Pinheiro Neto Advogados issued with the intention of providing our clients with news on developments in the legal field that may affect their businesses or personal affairs. For your convenience, this newsletter is also published on our web page.

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FOREWORD

We are glad to offer you the 14th issue of Pinheiro Neto Advogados' *IT News*.

At the close of the year the National Telecommunications Agency - ANATEL, the National Congress, and the Ministry of Culture were still full speed ahead working on various issues, such as the Legislative Bill Draft providing for creation of the National Audiovisual and Movie Agency (ANCINAV), regulation on Pay TV services, and a variety of telecommunications issues.

We envision a 2005 full of discussions on all these and other issues, and hope that our audiovisual and telecommunications regulations develop towards reaching the maturity required by the Brazilian market and international investors.

Happy New Year!

Thanks for joining us another year!

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PAY TV

Draft Bill seeks to further nationalize television and Internet

Draft Legislative Bill 4209/04, presented by Congressman Luiz Piauhyllino, seeks to apply to PayTV and Internet service providers the same rules currently valid for radio and press companies, especially those determining that at least 70% of such companies' capital stock must be owned directly or indirectly by Brazilian citizens or foreigners naturalized for more than 10 years.

If such Bill is passed into law, telephone companies that own Internet service providers will have to adapt to such requirement (which we may say is too difficult to happen), or will no longer be allowed to provide those services in the Brazilian territory.

The Bill also determines that all editors, coordinators and individuals responsible for content selection in PayTV and Internet service companies have to be Brazilians or foreigners naturalized for more than 10 years.

The Bill sets a period of 24 months for companies to adapt to the new changes.

FREE SOFTWARE

Latin American Conference on Open Source Software

On November 8, 2004, the first Latin American Conference on Free Software ("Latinoware") took place at the Iguazu Falls, in the south region of Brazil. The highlights of this event included presentations and discussions about the open source software experiences in Argentina, Bolivia, Brazil, Chile, Nicaragua, Peru, and Uruguay. There were also debates regarding the distribution of such software and its use for educational and administrative purposes.

Another topic discussed at Latinoware was the migration from proprietary software to open source software and how such migration would occur. The event ended on November 10th.

Draft Bill revokes benefits granted in privatization

Another draft Bill that deserves attention is Bill 2922/00. Its purpose is to revoke some benefits granted to winning bidders in privatization auctions, especially with regard to depreciation of the spread (calculated on the basis of the expected profitability of the acquired company) within a 10-year period after its merger or acquisition. This may discourage investors to bid for government-owned companies in future auctions.

The draft bill is currently being analyzed by the Committee on Constitution, Justice and Citizenship Affairs.

New Normative Ruling issued by ANCINE

In November 2004, the National Movie Agency (ANCINE) issued Normative Ruling 33/04, dealing with the registration of audiovisual works, including movies, commercials, etc.

According to such Normative Ruling, all audiovisual works must be registered prior to publication. In order to register, the interested party must pay a fee known as CONDECINE. CONDECINE is payable once a year, and will be calculated based on the market where the audiovisual works will be shown, as per the standards established by ANCINE.

ANATEL launches public consultation regarding Service Quality Plan

In November 2004, ANATEL launched Public Consultation 575/2004, submitting for public comments the General Quality Standards Plan for Electronic Mass Communication Services.

The full text of this regulation is available at ANATEL's website (www.anatel.gov.br); comments may be made until January 10, 2005 through the Internet, or until January 5, 2005 by other means.

The most important change in the proposed regulation relates to creation of the Mass Electronic Communication Subscriber Service, a private telecommunications service that allows unidirectional transmission of telecommunication signals from the provider to its subscribers. This service will comprise, among others, Pay TV services, MMDS services and DTH services. All services encompassed by this project will have to follow the guidelines for service and quality standards attached to the public consultation.

ANATEL's New Regulation 386/04

In November 2004, ANATEL issued Resolution No. 386, approving the terms and conditions related to the public price payable for the right to operate telecommunications services and exploit foreign satellites in Brazil.

Also, Resolution 386/04 establishes that a public price will be due in case of adaptation, consolidation and/or transfer of authorization, concession or permit to provide telecommunications services and to operate satellites in Brazil.

The public price payable for the right to operate foreign satellites in Brazil is calculated in accordance with a specific formula.

All other public prices to be charged as per Resolution 386/04 are stated on its annexes, ranging from R\$ 20 to R\$ 9,000 (circa US\$7 through US\$3,000). Such prices were set based on ANATEL's administrative costs.

As a result of approval of Resolution 386/04, ANATEL will start charging this public price from individuals and legal entities already authorized to provide telecommunications services or offer satellite

ANATEL approves Public Consultation on Subscriber Rights Relating to Mass Communication Service

capacity in Brazil, as well as from adaptation, consolidation or transfer of such authorizations.

The regulations on telecommunications services and satellite operation had already provided for the charge of a public price, but were still pending regulation by ANATEL.

ANATEL is to submit for public consultation a proposed Regulation for the Protection and Defense of Subscribers to Electronic Mass Communication Services (SCEMa), also known as 'Pay TV' services.

The proposal seeks to defend user rights that are not expressly protected under current regulations, such as the need to expressly state that service providers must conform to the Consumer Protection Code (Law 8078 of September 11, 1990) or how subscribers will be reimbursed for interrupted services.

This proposal also aims at harmonizing the treatment accorded to the defense of Pay TV subscriber rights.

ANATEL will receive comments on-line until February 21, 2005.

ANATEL approves new rules for 0300-code and reduces telephone costs by nearly 90%

Pursuant to Resolution No. 388, the National Telecommunications Agency - ANATEL approved, on December 7, 2004, a new Rule on the Conditions for Telephony Services relating to Calls Directed to 0300 Line Subscribers.

Telephone calls directed to 0300-lines were subject to a sole national fee, but the new Rule determined that such calls should be charged as local calls, what represents, in some cases, a cost reduction of almost 90% percent. This measure also ordered that PCS providers should complete all calls directed to such telephone lines (currently, PCS providers are not obligated to complete such calls).

The 0300-lines are open, among others, to services that may cause traffic congestion (such as polling and contests sponsored by television shows), but is not available for consumer assistance services (help lines). Telephone providers will have 120 days to adapt to the new rules approved by ANATEL and 180 days to state whether they intend to maintain their 0300 lines.

*Electronic Certification
for Insurance
Transactions*

The Supervisory Board of the Private Insurance Authority – SUSEP issued Ordinance No. 277 on December 2, 2004, determining that digital signature is valid for all electronic documents relating to insurance, special savings, open-end pensions, provided that all legal rules have been met.

These documents must (i) be certified by ICP – Brasil (the Brazilian official public key infrastructure body), and (ii) be identified with the date and hour of remittance and receipt.

The documents containing this digital signature must be kept by insurance and special savings entities, open-end private pension companies, insurance brokers and life, special savings and pension brokers (whether individuals or legal entities) through any electronic or magnetic recording media that confirms the validation process adopted for such documents (thus dispensing with storage of a hard copy). Document storage periods are the same as those currently valid for printed documents.

*Incentives for scientific
and technology research*

President Lula da Silva sanctioned Law No. 10973 on December 2, 2004, establishing measures to encourage scientific and technology innovation and research in the production sector, with a view to fostering the country's technology independence and industrial development. This Innovation Law, similarly to its US and South Korean counterparts, envisions distinct courses of actions to foster technology innovation, including: (i) the setup of private companies to engage in technology development; and (ii) a partnership between private companies and government-owned scientific and technology institutions (ICTs).

The Executive Branch will have 120 days from publication of Law 10973/04 to forward to the National Congress a bill laying down the criteria for entitlement to tax breaks when pursuing the objectives envisaged by said law.

*ANATEL approves new
regulation on certification
of private telephone
switches*

On December 10, 2004 the National Telecommunications Agency – ANATEL approved a final version of the new Regulation on Certification of Private Telephone Switches (CPCT). CPCTs are switches solely targeted at individuals or legal entities that have acquired the equipment or retained connection or infrastructure

services through a service provider, without the intention of rendering telecommunication services to third parties.

This new regulation sets out the minimum technical requirements for certification of CPCTs linked to operators of the Public Switched Telephone Network (STFC) or other collective interest services.

The ANATEL resolution approving this new regulation will be published in the Official Gazette of the Federal Executive within the next few days. The Brazilian industry will have 120 days to adapt production processes to these new rules.

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THE TELECOM AND IT PRACTICE GROUP

Our Telecom and IT Practice Group gathers professionals skilled in the various fields of information technology, from straight telecommunications regulatory matters through Internet, Computer Law, Software and Industrial/Intellectual Property issues.

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