

Public Sector and Intellectual Property: The ownership of intellectual property of computer program, created and developed or customized for use in the management of the Judiciary

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Abstract

In a continental country as Brazil, the questions linked with the public administration gain a monumental proportion. Such is with the use of computer programs, each time more and more used in the essential public management like the Justice. The creation of innovations within the Public Administration is increasingly common, as evidenced mainly through the use of new information technologies. To care the intellectual property of this creations is of strategic importance. Considering intangible assets as an important factor in development, and also a promising source of revenue for the State, a legal and economic treatment appropriate for these matters should be sought.

Keywords: Public Administration. Justice and Intellectual Property. Software.

Introduction

At the beginning of the second decade of the 21st century, Brazil has consolidated itself as one of the largest economies in the world and is demonstrably under great expansion at the same time that the economic crisis reaches the central countries in the northern hemisphere. Its strong internal market, its natural resources and its regional leadership role allows it to climb to even higher prominent positions on the world stage. However, the persistence of a huge debt with its population with regard to the implementation of fundamental guarantees - such as infrastructure, health and education - makes it common knowledge that the country is not ready for that position.

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In order to overcome this scenario, the country needs to take advantage of the growth momentum to invest in its own knowledge generation and technology, which can only come about through a higher quality education: “A public policy and the corresponding investment is needed to improve the technological capacity of local research centers that are requiring more resources and a more transparent distribution”.¹

A climate conducive to innovation also requires reconciliation between the public interest and intellectual property rights through an appropriate legal treatment which considers knowledge not only as a factor of economic growth but rather as a cause of improvement in the quality of life of the whole population.

The work presented here is related to an initial study carried out on the grounds of intellectual property as a factor of development and appreciation of creative activity,² both in private initiative as well as within the public sector,³ with the aim of contributing to the doctoral research in progress under the graduate program in Law from the Federal University of Santa Catarina.⁴

Development

An essential element in the information age⁵ the provision of software to the Public Administration acquires an enormous economic and functional importance. Olivo⁶ even states that among so many technological advances registered during the twentieth century, no advance had a greater impact than those that comprise the so-called Information Technology. The continuous advancement of the resources from Information Technology causes new shapes in public administration at every turn.

¹ PIMENTEL, Luiz Otávio. Direito de propriedade intelectual e desenvolvimento. In: BARRAL, Welber (Org.). *Direito e desenvolvimento: um modelo de análise*. São Paulo: Singular, 2005. p. 569. (our translation).

² SILVA, Cláudio Eduardo Regis de Figueiredo e. *Informatização, setor público e propriedade intelectual*. Direito, processo e política: aportes hermenêuticos. Florianópolis: Cerjur, 2013a. p. 1.

³ SILVA, Cláudio Eduardo Regis de Figueiredo e. The ownership of intellectual property of computer program, created and developed or customized for use in the management of the judiciary. In: INTERNATIONAL SEMINAR ON TECHNOLOGY TRANSFER INNOVATION, AND INTELLECTUAL PROPERTY RIGHTS, 2013, Beijing.. *Proceedings...* Beijing: CSAPR, 2013b. p. 2-6.

⁴ SILVA, Cláudio Eduardo Regis de Figueiredo e. *Propriedade intelectual e software na gestão pública*. Rio de Janeiro: Lumen Juris, 2015. p. 1.

⁵ CASTELLS, Manuel. *A sociedade em rede*. A era da informação: economia, sociedade e cultura. 8. ed. São Paulo: Paz e Terra, 1999. v. 1. p. 1.

⁶ OLIVO, Luis Carlos Cancellier. *O jurídico na sociedade em rede*. Florianópolis: UFSC, 2001. p. 23.

Much more than facilitating, the computerization of public services is giving a new profile to management, allowing faster access to information by the user, server and public administrators. In addition to adding quality and speed, it facilitates transparency and increases *accountability* by allowing intercommunication between various government agencies and a greater control over the results, which is for the benefit of all those involved in the process.

Consequently, the provision of software to the Public Administration is fundamental in face of the huge open innovation field and the possibilities of significant gains through business in a continental country like Brazil. Some distinctions are necessary for analysis of the matter: "In hiring computer goods, further distinguish the custom-made software that involves service contracts, the so-called shelf software, which falls into the goods category and must meet the standardization requirements and record of prices (art. 15 of Law No. 8666/93)".⁷

Lupi⁸ recalls that in the preparation of custom-made computer programs, the author must define their goal and outline the appropriate measures to achieve them, taking into account the time required, cost and quality of response and also, the reliability and accuracy of the result of the creative task.

The Brazilian Law gives special treatment to the protection of computer programs by the Law 9609/98, on the Protection of Intellectual Property of Software, its Commercialization in the Country, and Other Provisions:

With each technological leap new ways to protect information should be inevitably considered because the economic system needs legal intervention to ensure exclusivity and ensure the continuous progress of information. In this sense, the information needs (and wants) to be protected. One may, however, choose between two alternatives: the creation of technological measures that artificially ensure exclusivity or establish by adequate mechanisms (doctrine, case law or legislative activity), a specific legal protection.⁹

Paesani advocates the coexistence of two legal systems in the computer field: the protection of the computer itself (hardware) regulated by the Industrial Property (Law 9279/1996), and the computer program (software) regulated by the Copyright Law (Laws 9610 and 9609/1998). And the author adds:

⁷ SOUTO, Marcos Juruena Villela. *Direito administrativo das parcerias*. Rio de Janeiro: Lumen Juris, 2005. p. 136. (our translation).

⁸ LUPI, André Pinto Basto. *Proteção jurídica do software: eficácia e adequação*. Porto Alegre: Síntese, 1998. p. 25.

⁹ BARBOSA, Denis Borges. *A propriedade intelectual no século XXI – Estudos de Direito*. Rio de Janeiro: Lumen Juris, 2009. p. 176. (our translation).

The legal nature of the software is not easy-going. The dominant theory is towards classifying it as a work of ingenuity, a creative character, as an immaterial asset protected by copyright. [...] The problem of classification of the software, an object subject to long jurisprudential and doctrinal controversies, was overcome by most countries that, along the lines of the Berne Convention, established that computer programs are treated as literary works and therefore receive the protection of Copyright.¹⁰

Defined by Law 9609/1998 as a program or an organized set of instructions for computers (art. 1), software is protected for 50 years, with optional registration, at the discretion of the author (art. 3). It is marketable by means of the contract itself, in particular, license, order or assignment (Articles 9 to 11), with foreign-origin software becoming subject to its own rules as to the ownership, movement and transfer of technology (Article 2, § 2, and arts. 10 and 11). Rights are assigned to the company when the creator is an employee (art. 4), with some specifications (referred to in paragraphs). The limitations are of a lesser spectrum (art. 6), given the nature of creation, and copy is permitted for use by the interested party (back up).

Apart from the specific use, the rights are subject to the author and supports and contracts should, alongside their own conditions, contemplate the taxation rules prescribed by law (Article 9 et seq.), for, in the first case, identifying the legal copy and, at last, the protection of users (including the guarantee of operation, technical assistance and subsequent amendments, according to models that are adopted in practice), as contained in articles 7 and 8.

Among the programs created specifically for the purposes of management, the debate established between the use of free software or purchase of proprietary software should be highlighted. To Ferraz Jr.,¹¹ the State has an influence on the market as a producer and consumer of software, or even through its economic regulatory role, and that is why the option that it will make is of utmost importance:

¹⁰ PAESANI, Liliana Minardi. *Direito de informática – Comercialização e desenvolvimento internacional do software*. 7. ed. São Paulo: Atlas, 2010. p. 12. (our translation).

¹¹ FERRAZ JR., Tercio Sampaio. *Direito constitucional*. Barueri: Manole, 2007. p. 263.

This is about an opposition between distinct legal systems for use of computer programs. As it is known, the computer program is protected as copyright, equated to literary works (Law 9609/98, art. 2). This protection covers both the program written in its natural language, which is a set of commands directed to produce a certain operation on the machine (computer), called the source code, and the compiled program in machine language to be run, called code object. In exercising this right as 'owner', the holder authorizes only the execution of the program on the licensee's machine (only gives access to the program already in object code), while in the 'free' use the licensee has access to the code source and has the freedom to study, copy, distribute and develop the program to adapt it or drive it to new solutions.¹²

On 04/15/2004, the Supreme Federal Court suspended the State Law 11871/2002 of the state of Rio Grande do Sul, which provided for the exclusive contracting of free software within the Public Administration of that State. The preliminary decision in the Direct Action of Unconstitutionality, Case No. 3059 MC/RS conducted by the Democrats party, related by Justice Carlos Ayres Britto, contains the following wording:

[...] within the intended purpose of the state law contested, what was done was a preference as stated as anticipated for a type of electronic product: the software of the open kind or completely free from proprietary restrictions. Thus, it was the state law itself that presented an exception to the isonomic character of the tender in order to replace the Public Administration in prejudging the usefulness of a certain computer asset vis-à-vis other competitors. These competitors are numerous and are also characterized by the increasing technological sophistication of their products. It amounts to saying: it is the law itself that was in charge of creating a preference and thus anticipating a concrete administrative or empirical assessment; an assessment that relies on the assumption that a certain software best meets the interests of the Public Administration than others. [...] That the stated preference software can be the one that best matches the interests of the Administration in terms of price, technical and gradual autochthonous appropriation of a recognized cutting-edge technology, among other comparative advantages. But all these virtues can only be measured in the public procurement procedure which the tender consists of.¹³

Entities such as the Brazilian Association of Software Companies, the Association of Information Technology, Software and Internet Companies, and the Brazilian Institute of Policies and Law on Informatics joined opinions and requested to be admitted as "*amici curiae*", which was granted by the Rapporteur.

It is not the purpose here to make any comparison between free and proprietary models of software, neither to question what would be the best model

¹² FERRAZ JR., 2007, p. 262. (our translation).

¹³ BRASIL. Supremo Tribunal Federal. Ação Direta de Inconstitucionalidade 3059. Available at: <<http://www.stf.jus.br/portal/processo/verProcessoAndamento.asp>>. Accessed: 22 Nov. 2010. (our translation).

to be adopted by the Brazilian government, or even raise controversy over the question that is 'sub judice', in an argument in which eminent scholars are already participating. However, the relevance and pertinence of this debate should be mentioned.

Direct contracts or contracts through a bidding process with the Public Administration are also covered with doubts and difficulties - especially when the service involves the procurement of technologies, which can take new and even unprecedented forms.

Inevitably, such situations will require solution by the Judicial System and other controlling bodies. They must be prepared to provide the necessary solution in order that innovation and knowledge are disseminated neither harming the public interest nor violating the individual rights of authors.

The computerization of the Brazilian Judiciary stands out today. All courts are connected to the worldwide web and have a procedural query system online. In order for this gigantic structure to work, a proportionately large informational machine is needed.

Silva, Ruschel & Rover report that half of the 10 Priority Goals set for the year 2010 by the National Council of Justice are directly connected to the electronic government:

Goal 5, 2010, like the goals of 2009, is in the pursuit of continued improvement of management models. Goal 10, 2010, wants the communication between the organs of the Judiciary to make use of what already exists of computerized communications, but with greater emphasis, through the internal networks or the Internet. The goal 7 is the one that aroused a greater interest in the community of the Judiciary itself, i.e., the judge's production ranking, which requires the qualitative detailing of the quantitative aspects presented because the mere presentation of the numbers is not enough, it is necessary to contextualize them. Goal 8 shows the tuning of the Judiciary with the possibilities of ICTs, that is, besides the work of the justice operator in front of the computer, he can also learn news through DLE (Distance Learning Education).¹⁴

The public service has increasingly skilled servants, from the competitive civil service examination that are now part of the national calendar. These public servants do not settle with the answers provided by the existing infrastructure. At every turn, they create solutions and functionalities that may be incorporated into the market too.

¹⁴ SILVA, Cláudio Eduardo Regis de Figueiredo e; RUSCHEL, Aírton José; ROVER, Aires José. O governo eletrônico na gestão do Judiciário. *Revista da ESMESC*, Escola Superior da Magistratura do Estado de Santa Catarina, Florianópolis, v. 17, n. 23, p. 25-44, 2010. p. 32-33. (our translation).

Under the existing administrative decentralization in the Brazilian Judiciary, several programs are currently running, that are classified in general under two models: public and centralized in the Federal Courts and the Labor Courts and the private and decentralized in the State Courts. Atheniense¹⁵ describes the regional differences and the enormous difficulties encountered in the interoperability of these systems, especially on the part of its main users: the lawyers.

Another apparent conflict arises when it is asked who owns the authorship of innovation made on order by the state. The Procurement and Administrative Contracts Law, Law No. 8666/1993, says that the following belongs to the administration:

Art. 111. The administration can only hire, pay, reward or receive a project or specialized technical service provided the author gives in the property rights relating thereto and the Administration can use it according to the rules laid down in the tender or in the adjustment for its preparation.

Sole paragraph. When the project refers to the immaterial work of a technological character, insusceptible of privilege, the assignment of duties will include the provision of all data, documents and relevant information pertaining to design technology, development and fixed in any medium of expression and application of the work.¹⁶

The Software Law, Law no. 9609/1998, determines in its art. 4, that “unless otherwise stipulated, the rights relating to the computer program, developed and produced during the term of contract or statutory relationship will be solely owned by the employer, contractor or public agency”.¹⁷

On the other hand, the Innovation Law, No. 10972/2004, intends to make a more equitable distribution by ensuring a minimum participation of five percent (5%) and a maximum of one third (1/3) of the economic earnings to the creator in its art. 13. At the same time, it allows for contractual provision concerning technology transfer contracts and license agreements for granting the right to use or exploit the creation (art. 6), including exclusive arrangements, provided it is preceded by a bidding process.

For a proper understanding of the problem, it is necessary to distinguish the property rights (economic) from those immaterial rights (strictly personal character). The copyright protection of the intellectual work, such as the crea-

¹⁵ ATHENIENSE, Alexandre. *Comentários à Lei 11.419/06 e as práticas processuais por meio eletrônico nos tribunais brasileiros*. Curitiba: Juruá, 2010. p. 86-87.

¹⁶ JUSTEN FILHO, Marçal. *Comentários à Lei de Licitações e Contratos Administrativos*. 13. ed. São Paulo: Dialética, 2009. p. 894. (our translation).

¹⁷ JUSTEN FILHO, 2009, p. 895. (our translation).

tion of the human spirit, regardless of registration is guaranteed by law (Law No. 9.610/1998), which considers them as unassignable and inalienable rights. The property rights which result there from, are subject to contracts like any others, and may even be negotiated with the Public Administration without this resulting in illegality.

In a recent case that had repercussion in the national media, a former employee of the Legislative Branch had copyrights recognized for a work published without authorization by the Senate printing office, but the amounts paid in the form of compensation for undue use were limited, on the grounds that the material would have been produced during his work as a civil servant, which is denied by the author.¹⁸

Concerning the prohibition set out in article 111 of Law No. 8666/1993, Justen Filho admits the mitigation of the norm by the principle of proportionality to prevent the business from being made unfeasible. Therefore, it is necessary to include the following forecast in the call notice:

The convening act should include the rule. The transfer to the Public Administration of the rights pertaining to authorship is not required, even because these rights are of a strictly personal nature. The legal requirement involves the rights to obtain profits or rights of use. Thus, it prevents the author from claiming his immaterial rights to obstruct the use of the project by the State. [...] The principle of proportionality must be observed when the demand for the transfer of property rights could result in making the business unfeasible.¹⁹

Really, it is not reasonable to require that the author of a book being used in public schools, for example, be required to waive any privilege on the work preventing him from using the same material for other editorial purposes. The public network could not take advantage of products that still have market value, and would be forced to resort to material that is already in the public domain. Add to that the very limited chance of fair use currently in force in Brazilian copyright law (Law 9610/1998), which only allows the use of small portions of works for teaching purposes.

The same legal command would prevent the use of any recent pharmacological discovery by public health authorities, or even the use of computer programs from the most popular computer technology company in any public body, without being given the source code. The companies holding the rights to

¹⁸ MATEUS, Leopoldo. Pirataria no Senado Federal. *Época*, Rio de Janeiro: Globo, n. 726, p. 50-51, 2012.

¹⁹ JUSTEN FILHO, 2009, p. 894. (our translation).

such innovations, which would have invested a great deal in the development process, would not certainly agree to enter into contracts on such conditions.

Based on precedent of the Federal Audit Court, Justen Filho affirms that the handling of the matter by the Copyright Act, subsequent to the Bidding Law, prevents such demands from being made, which applies to specialized technical projects, but also to any intellectual property rights:

Currently, due to the entry into force of Law 9610/98, the copyright now belongs exclusively to the creator of an intellectual work, since the norm was silent as regards custom made works. Thus, to preserve the interests of the Public Administration, acting as a contracting party, the express transfer of these rights is required. In this way, when ordering a work, the entity must be careful to integrate into the contractual instrument the way that the transfer of the rights of the author will be carried out, because otherwise, if there is no express provision, the rights will remain under the ownership of the author. [...] It is for the Government to agree on the transfer of the property rights of the author whenever this measure proves necessary to protect the public interest, in compliance with the rule contained in art. 111 of Law 8666/93 throughout the procurement of intellectual work subject to legal protections granted to the author.²⁰

Conversely, Pereira Jr. advocates a more conservative position and states that the requirement is mandatory due to the public interest involved in procurement:

Regarding the principle of financial law enshrined in art. 57, caput, and § 3, the provisions behind this article prevail. Indeed, if the author of the project or technical service retains, or transmits to his successors, property rights arising out of the creative work contracted by the Public Administration, he could collect them while it made use of this work until it became a public domain. When procuring, however, the Public Administration must match the value of the contract to the financial year and is prevented from doing so indefinitely, what would happen if the author did not assign such rights. Moreover, the Public Administration needs flexibility to make adjustments that the performance of the contract demonstrates to be in the public's interest; and subsequent changes even after the contract has been performed to meet public needs. It would neither be allowed to modify the project without the author's consent, given the very personal nature of the artistic or intellectual work (inalienable right as a product of personality), if the author had not already complied with, under the competition rules and the resulting contract.²¹

²⁰ BRASIL. Tribunal de Contas da União. AC 883/2008, Plenário. Relator Min. Guilherme Palmeira, 2008. Available at: <<https://contas.tcu.gov.br/juris/SvlHighLight?key=41434f5244414f2d4c454741444f2d373037-3936&sort=RELEVANCIA&ordem=DESC&bases=ACORDAO-LEGADO;DECISAO-LEGADO;RELACAO-LEGADO;ACORDAO-RELACAOLEGADO;&highlight=&posicaoDocumento=0&numDocumento=1&totalDocumentos=1>>. Accessed: 22 Sept. 2014. (our translation).

²¹ PEREIRA JÚNIOR, Jessé Torres. *Comentários à Lei das Licitações e Contratações da Administração Pública*. 5. ed. Rio de Janeiro: Renovar, 2002. p. 909. (our translation).

As one can see, the matter is quite controversial, and the discussion remains open because in the Brazilian legal system, there is no rule that specifically addresses intellectual property within the public sector.

One premise is certain: even if the work is resulting from an order (service contract), the arrangement for Law 9610/1998 does not rule out the author's strictly personal right to credit for his creation. The same will happen when innovation arises regardless of the publication of bid invitations or even prior engagements providing for ownership rights, and will nonetheless be harnessed to the benefit of the community. The question arises as to the ownership of these rights and their management by the Government.

In France, the report entitled "The Immaterial Economics - The growth of tomorrow", presented by Maurice Lévy and Jean-Pierre Jouyet to the Ministry of Economy and Finance on November 16, 2006 specifically addresses the matter in an enlightening way. Wording taken from his presentation:

The economy has changed. In recent years, a new component has emerged as the main engine of growth of economies: the immaterial. During the first thirty years of the post-war period, the economic success rested primarily on the wealth of raw materials, on manufacturing industries and on the amount of physical capital available to each nation. That's still true, of course; but increasingly less. Today, true wealth is not concrete, it is abstract. It is no longer material, it is immaterial.²²

There are very clear rules for the economic treatment given to public property, whether movable or immovable, soil or subsoil, forests and waters and even the airspace. Much has been published about it. However, when it comes to the proper care of intangible assets of public property, a considerable gap presents itself primarily with respect to intellectual property. Trademarks, patents and other technological, scientific or artistic creations generated within the government activities have no specific treatment in the legislation.

Nevertheless, the immaterial property is upheld in the Constitution of the Republic in 1988, when ensuring authors of literary, artistic and scientific works the exclusive right to use, publish and reproduce them in item XXVII, art. 5, and when determining, next, in item XXIX of the same article that

²² LÉVY, Maurice; JOUYET, Jean-Pierre. *Rapport Lévy – Jouyet* présenté au nom de la Commission sur l'économie de l'immatériel. 2006. Available at: <<http://www.ladocumentationfrancaise.fr/rapports-publics/064000880/index.shtml>>. Accessed: 8 Aug. 2011.

[...] the law shall ensure the authors of industrial inventions temporary privilege for their use, as well as protection to industrial creations, property of trademarks, names of companies and other distinctive signs, with a view to the interests of society and the technological and economic development of the country.²³

The public domain consists of immaterial property, as pointed out by Caetano²⁴ already in the 1980s: “The artificial public domain comprises: the field of movement; monumental, cultural and artistic field; and also the military field”. Likewise Pereira,²⁵ based on the work of Afonso Queiró, admits the intangible public domain, including immaterial assets, such as works or products of ingenuity - literary, artistic and scientific works, inventions, etc. - and rights as such.

In Brazil, the article 216 of the Constitution of the Republic, 1988 constitutes Brazilian Union patrimony as the assets of material and immaterial nature, taken individually or together, bearing relevance for the identity, action and memory of the various groups that form the Brazilian society, with wording broadened by Constitutional Amendment No. 42, dated 12/19/2003. Barbosa points out mechanisms established for the identification and preservation of these intellectual assets, such as Decree No. 3551/2000, that created the books of registration of the Brazilian Immaterial Patrimony as follows:

- a) Book of Knowledge, containing the records of knowledge, techniques, processes and ways of knowing and doing rooted in the daily activities of the communities;
- b) Book of Festivities, containing the rituals and festivities that mark the collective experience of labor, religion, entertainment and other practices of social life;
- c) Book of the Forms of Expression, containing the literary, musical, plastic arts, scenery and amusement arts; d) Book of Sites, containing information about the places where collective cultural practices are concentrated and reproduced.²⁶

Morand-Deville, in his course of Administrative Property Law, discusses about the intangible realm of management, subject to appropriation and negotiable as the private property of the same kind. Such protection is upheld in the Intellectual Property Code when referring to: literary and artistic works, such as

²³ BRASIL. Constituição (1998). Constituição da Republica Federativa do Brasil. 1988: promulgada em 05 de outubro de 1988. Available at: 20 Nov. 2010 (our translation)

²⁴ CAETANO, Marcello. *Manual de direito administrativo*. 10. ed. 9. reimp. Coimbra: Almedina, 2008. v. II. p. 896. (our translation).

²⁵ PEREIRA, Likewise. *Environmental Governance and Decentralisation*. Massachusetts, USA: Series Editors Wallace E. Oates Henk Polmers, 2001. p. 131.

²⁶ BARBOSA, 2009, p. 108. (our translation).

an audiovisual produced by the administration, industrial property, such as patents, trademarks, industrial designs and software, and commercial customers.²⁷

In the same sense, is the concept of Marques Neto (2009) on public immaterial property that, based on the Brazilian Constitution, in addition to cultural patrimony (art. 216), it covers also the internal market (art. 219), the historical (art. 30), artistic, touristic and landscape (Article 24) patrimonies:

It follows the idea that the plexus of goods comprising its assets will be integrated not only by buildings, land, property, things in its collection, but also by a multitude of immaterial properties belonging to the community and, as such, become the object of the state property. Immaterial assets that can often translate into an ability to use a material good without being confused with it, what is a good example, as provided in the Constitution, the potential for generating electricity (article 20, VIII).²⁸

In May 2006, the Agency of Immaterial Heritage of the State (APIE) was created by France, under the Ministry of the Economy and Budget, for the purpose of valuing an asset which so far the administration did not take much advantage of and also to promote the economic valuation of creations from the state and their management. Its creation was based on the report entitled “The Immaterial Economics” presented by Levy and Jouyet that year.

Examples of this new way of management certainly challenged by many, the assignment of the trademark “Louvre” to the emirate of Abu Dhabi by the sum of 400 million Euros,²⁹ and authorization by Decree 2009-151 dated February 10, 2009, to charge for the use of the image of prestigious French monuments on television and in movies, such as Notre Dame Cathedral, the Eiffel Tower and palace of Versailles, among many others.³⁰

As an example of the tangible public domain, this patrimony is likely to become subject to alienation and economic exploitation. However, such a scheme should provide for specific rules to protect the interests of authors and the community, as well as the proper balance between the economy and the public purposes desired.

²⁷ MORAND-DEVILLER, Jacqueline. *Droit administratif des biens*. 6. ed. Paris: Lextenso, 2010. p. 332.

²⁸ MARQUES NETO, Floriano de Azevedo. *Bens públicos: função social e exploração econômica*. O regime jurídico das utilidades públicas. Belo Horizonte: Fórum, 1998. p. 31-32. (our translation).

²⁹ MORAND-DEVILLER, 2010, p. 333.

³⁰ TRÉZÉGUET, Marlène. Valorisation du patrimoine immatériel de l'État: Silence on tourne! In: VIVANT, Michel (Org.). *Lamy Informatique 68*. Paris: Lamy, 2011. p. 107.

Conclusions and recommendations

At a time when knowledge and development of technologies are of greater value than the production of goods and services, knowing in advance the treatment of intellectual property and copyrights within the complex legal system of administrative contracts in Brazil becomes important for both public administrators and for those wanting to do business with the Public Administration.

The creation of innovations within the Public Administration is increasingly common, as evidenced mainly through the use of new information technologies. Further, there are constant innovations in research and technological development in institutions of higher education, in the promotion of agricultural and cattle raising activities, in the extraction of oil and minerals, in civil and military aviation, public safety and defense, and many areas controlled directly or indirectly by the public sector.

Considering intangible assets as an important factor in development, and also a promising source of revenue for the State, a legal and economic treatment appropriate for these matters should be sought.

It is a leading positioning, which will surely find manifestations in the opposite direction and that naturally will require regulations in order that public interests are preserved and the purposes for which such goods are intended. What is not possible, however, is to continue to neglect a considerable patrimony, such as the public domain immaterial assets without regulation in Brazil.

Setor público e propriedade intelectual: a titularidade da propriedade intelectual de programa de computador, criado e desenvolvido ou personalizado para uso na gestão do Judiciário

Resumo

Em um país continental como o Brasil, as questões relacionadas à administração pública ganham proporções monumentais. É o que ocorre com o uso de programas de computador, cada vez mais utilizados no gerenciamento público essencial, como a Justiça. A criação de inovações na administração pública é cada vez mais comum, como evidenciado, principalmente, no uso de novas tecnologias da informação. Para cuidar da propriedade intelectual dessas criações de importância estratégica, considerando os ativos intangíveis como um importante fator de desenvolvimento e também uma promissora fonte de receitas para o Estado, um tratamento legal e econômico adequado para essas questões deve ser procurado.

Palavras-chave: Administração pública. Justiça e Propriedade intelectual. *Software*.

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