

**“OPERATION 404”: THE BRAZIL – UK – US TRILATERAL
LESSONS FOR INDIA TO GLOBALLY TACKLE DIGITAL PIRACY OF INDIAN CONTENT**

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REPORT SUMMARY

- The advancement of internet services and the emergence of technology has enabled digital copying and sharing of online content by internet users.
- Easy copying and sharing of content have led to the challenge of increasing digital piracy faced by the Media & Entertainment sector globally. In the first 8 months of 2022, MUSO recorded 141.7 billion visits to piracy sites across industries, marking a 21.9% increase over the same period of 2021.
- Brazil's Operation 404 serves as an important case study for stakeholders in the Media and Entertainment industry to understand the significance of *International Public Private Partnership* as an effective means to improve global IP enforcement and facilitate the creation of a safer environment for intellectual property stakeholders and benefit millions of creators, their livelihoods and job sustainability
- Based on the salient features of Brazil's Operation 404, this report provides key lessons and recommendations for India to effectively tackle the challenge of online piracy of Indian content globally, especially in markets like the US, UAE, Saudi Arabia, Malaysia, UK where there is high consumption of content of Indian origin.

1. Introduction

Audio-visual piracy costs Brazil an estimated USD 5 billion annually and has a direct impact on its socioeconomic development.¹ Historically, the economic situation of the country, low per capita income, and lack of IP awareness played a major role in the large-scale piracy.² Thus, there were significant concerns observed by the Brazilian Government with respect to the high levels of counterfeiting and online piracy affecting right holders.

Hence, in 2019, Brazil's Ministry of Justice and Public Security initiated a campaign titled "Operation 404" (codenamed after the famous HTTP error titled "Error 404") which aimed at combating IP crimes across the country.

¹ https://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_15/wipo_ace_15_6_prov.pdf.

² https://www.wipo.int/wipo_magazine/en/2006/05/article_0003.html.

Over 4 phases, Brazil’s “Operation 404” campaign involving around 100 search and apprehension orders, has resulted in the blocking of over 1000 websites and 700 apps that were streaming illegal content.³ Operation 404 is considered by many, including U.S. stakeholders, to be an international model in the fight against digital piracy.⁴

This campaign has proven to be an effective means in improving IP enforcement and creating a safer environment for intellectual property. The campaign also demonstrated that collaboration is key and serves as an important case study for M&E stakeholders.

2. Brazil’s Operation 404 as a Case Study

Launched initially in 2019 with an announcement by Brazil’s Ministry of Justice and Public Security, “Operation 404” is aimed at tackling IP crime across Brazil. The campaign is coordinated by the Secretariat of Integrated Operations (SEOPI) from the Ministry of Justice in Brazil, in collaboration with the UK IPO, the Police Intellectual Property Crime Unit (PIPCU), the Brazilian Civil Police, and the United States Department of Homeland Security. The operation also receives support from various local anti-piracy groups including ANCINE (National Film Agency), ANATEL (National Telecommunications Agency), and the National Council for the Fight Against Piracy (CNCP). So far, the campaign has only scaled up and recently completed its 4th phase in 2022.

OPERATION 404	Phase 1	Phase 2	Phase 3	Phase 4
Date	As of 1 st December, 2019	As of 5 th November, 2020	As of 8 th July, 2021	As of 21 st June 2022
States	12	10	8	11
Search and Apprehension Orders	30	25	11	30

³ Refer to *Table: 4 Phases of Operation 404* on pg. 3.

⁴ <https://www.whitehouse.gov/wp-content/uploads/2022/04/FY21-IPEC-Annual-Report-Final.pdf>.

Blocked Sites	210	252	334	226
Blocked Apps	100	65	94	461

Table: 4 phases of Operation 404

Phase I: Under the first phase of the operation, the Brazilian authorities carried out 30 search-and-seizure warrants across 12 states, leading to the suspension of 100 illegal content streaming applications and 210 websites.

Phase II: In November 2020, Brazil’s Ministry of Justice and Public Security launched the second phase of Operation 404, carrying out 25 search-and-seizure warrants across 10 federal states ⁵that led to the blocking of 65 illegal content streaming applications and 252 Brazilian websites, as well as 27 British and 3 American websites.⁶ The second phase was targeted at digital copyright fraud, specifically, but not exclusively, relating to music.⁷

Phase III: The third phase was announced in July 2021 and showed better results than in 2020, indicating progress. Brazilian enforcement authorities, with international support, blocked or shut down 334 websites, 94 piracy apps, and 20 IP addresses while making five arrests.⁸ Further, the US Department of Justice helped Brazilian authorities to take down three domains and the UK law enforcement assisted in taking down another 27 domains. Some of the blocked sites include The Pirate Bay, RARBG, 1337x, YTS, and EZTV.⁹

Phase IV: The Ministry of Justice and Public Security on 21st of June 2022 announced the fourth phase of Operation 404. The fourth phase included, in addition to audio-visual piracy targets, channels that were illegally streaming music.¹⁰ During this edition, Brazilian authorities blocked 266 websites, removed 461 pirate music streaming apps, suspended 15

⁵ *Id.*

⁶ <https://www.gov.br/mj/pt-br/assuntos/noticias/ministerio-da-justica-e-seguranca-publica-coordena-operacao-404-fase-2>.

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1017790/ip-crime-2021.pdf.

⁸ <https://torrentfreak.com/brazils-anti-piracy-operation-404-leads-to-arrests-shutdowns-and-site-blocking-210712/>.

⁹ *Id.*

¹⁰ <https://www.ifpi.org/brazilian-authorities-coordinate-large-scale-action-against-infringing-music-services/>.

social media accounts and issued 30 search and seizure warrants against pirates in Brazil.¹¹ The sanctioned infringing music apps were observed to have generated more than 10.2 million downloads collectively.¹² In addition to this, actions were also taken outside Brazil, with the issuance of 53 warrants in the UK and 6 warrants in the US respectively.¹³

Additionally, the fourth phase also saw anti-piracy actions in the metaverse. As per a press release by the Brazil Ministry of Justice and Public Security, the authorities took down four channels with illegal broadcasts relating to the metaverse.

As per Melissa Morgia, IFPI's Director of Global Content Protection and Enforcement, "These actions have seen the highest number of unlicensed music services disrupted as part of the Operation 404 campaign."¹⁴

3. Digital Piracy and Challenges faced by the Media and Entertainment Sector Globally

In an increasingly interconnected and digital world, which has enabled easy sharing of content, digital piracy has also been emboldened and continues to be a major challenge for the M&E sector. While the M&E sector has seen substantial growth on recovering from losses suffered during the pandemic, digital piracy continues to be on the rise and affects all sectors of the media industry globally. In the first 8 months of 2022, MUSO recorded 141.7 billion visits to piracy sites across industries, marking a 21.9% increase over the same period of 2021.¹⁵

The top countries for piracy website visits worldwide were the United States (15.4 billion), Russia (8.2 billion), India (7.9 billion), and China (4.7 billion) in 2022.¹⁶ Further, India was the top source of traffic in terms of film and music industry. In 2021, music piracy in India was observed to be more than twice the global average of 30%,¹⁷ resulting in INR 217 Cr. to INR 300 Cr. annual loss to the Indian recorded music industry.¹⁸

¹¹ <https://torrentfreak.com/operation-404-hit-so-many-piracy-apps-its-surprising-there-are-any-left-220716/>.

¹² <https://www.ifpi.org/brazilian-authorities-coordinate-large-scale-action-against-infringing-music-services/>.

¹³ <https://www.gov.br/mj/pt-br/assuntos/noticias/operacao-404-chega-a-4a-edicao-com-buscas-no-metaverso-suspensao-de-4-canais-e-90-videos-retirados-do-ar>.

¹⁴ <https://www.ifpi.org/brazilian-authorities-coordinate-large-scale-action-against-infringing-music-services/>.

¹⁵ <https://www.muso.com/magazine/piracy-data-overview-january-2022-to-august-2022>.

¹⁶ *Id.*

¹⁷ <https://indianmi.org/wp-content/uploads/2022/03/Digital-Music-Study-Report-2021-ONLINE.pdf>.

¹⁸ <https://indianmi.org/a-case-for-free-market-economics-in-the-indian-recorded-music-industry/>.

IP enforcement thus faces a significant challenge domestically as well as globally. While each country has its own set of structures and mechanisms to deal with digital piracy, the borderless nature of the crime invites a unique set of problems. The scale of piracy, anonymity of the hosts and distributors of pirated content, the redirection of pirate websites to a mirror website immediately after the original takedown, and lack of a uniform, systematic international mechanism to resolve jurisdiction issues, ensure the “stay down” of pirated content, and promote information sharing, are just some of the difficulties faced in addressing piracy.¹⁹

These challenges necessitate a unique solution and the aforementioned case study highlights the importance of public-private partnerships which should be implemented for tackling the concerns of online piracy.

4. Importance of Public - Private Partnerships as an Effective Means to Curb Online Piracy

4.1. Knowledge Sharing and New Strategies: Effective Copyright Enforcement

Operation 404 is distinguished by a confluence of efforts from international government agencies as well as their global private partners. The operation saw a collaboration between PIPCU, Brazilian Civil Police, US enforcement agencies, ANCINE (Brazil’s Movie Agency), ANATEL (Brazil’s Telecommunications Agency), collectives like the Alianza Group, consisting of several members including pay-tv operators, Alliance for Creativity and Entertainment, MPA, IFPI, and organisations like Transnational Alliance to Combat Illicit Trade (TRACIT) and American Apparel & Footwear Association (AAFA). This has helped the stakeholders to combat IP crimes and has resulted in effective enforcement of IP rights and prevention of IP piracy.

Throughout the four phases of Operation 404, in addition to the results obtained, the united international response emerging from the public-partnership has also contributed to knowledge sharing, operational effectiveness and the development of new strategies to fight online piracy.²⁰ The CNCP facilitated public-private agreements to tackle online piracy through an MoU to prevent advertisement placement on infringing sites and to introduce guidelines on

¹⁹ https://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_14/wipo_ace_14_7-annex1.pdf.

²⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1017790/ip-crime-2021.pdf.

best practices for Internet Platforms and for the implementation of anti-piracy measures by the Government, Right Holders, Payment Service Providers and Intermediaries.²¹

Another example of knowledge sharing is NagraVision, a technology provider for anti-piracy services and a partner of Alianza anti-piracy group, whose app detection program that targets apps that facilitate access to pirated content, contributed significantly to the efforts of Operation 404.²²

4.2. Consistent and Combined Efforts Deter Pirates

Public - Private partnerships help to reduce online piracy over time since the combined resources allow for consistent and streamlined efforts against piracy apps and websites. While mirror apps or websites may become available immediately after a takedown, as is usually the case, the effort it takes to rebuild momentum and re-engineer the platform may act as a deterrent for pirates.²³ Such partnerships allow an effective unified response that prevents IP crime in addition to enforcing copyright, and may start at the very root of consultation and continue up to the stage of active enforcement.

This is demonstrated by Brazil's National Council on Combating Piracy and Intellectual Property Crimes, which is composed of representatives from executive branch ministries and the private sector, as it works to discuss ongoing IP enforcement issues, propose public policy initiatives, and organise public awareness workshops.²⁴ ANCINE has also signed cooperation agreements with main online marketplaces in Brazil to prevent their registered users from advertising illegal IPTV lists and illegal streaming devices, which has resulted in the removal of more than 30,000 illegal advertisements.²⁵

4.3. Reduced Burden on Judiciary

The Indian copyright and online intermediary framework provides for various means of copyright enforcement such as the notice-and-take-down mechanism, and various other civil and criminal remedies. However, these measures have become ineffective against the ever-

²¹ https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159553.pdf.

²² https://www.conar.cl/wp-content/uploads/2021/11/2-Alianza-Pirate-App-Detection-August-2021-Report_v1.0.pdf.

²³ <https://torrentfreak.com/operation-404-hit-so-many-piracy-apps-its-surprising-there-are-any-left-220716/>.

²⁴ [https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20(final).pdf).

²⁵ https://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_15/wipo_ace_15_6_prov.pdf.

evolving and advanced form of online piracy present today. This leads to increased litigation which adds to the financial and time costs of enforcing IP in India, burdening the judiciary as well as the rights owners.

As of March 2022, there were 4,09,85,490 cases pending in District and Subordinate courts and 59,55,907 cases pending in the 25 High Courts across the country.²⁶ Further, as of August 2022, 71,411 cases were pending before the Supreme Court.²⁷ Furthermore, after the abolition of the Intellectual Property Appellate Board in 2021, 3000 IP matters were transferred to the Delhi High Court adding on to the previously pending 2500 commercial suits. Similarly, after the abolition of IPAB, approximately 400 IP matters were transferred to the Gujarat High Court adding to nearly 4000 pending IP matters before the court.²⁸

In light of the abovementioned, the private sector in collaboration with government agencies can reduce the burden of the judiciary, as it combats piracy at the root and avoids the economic, administrative and social costs of litigation, where in most cases the defendants are anonymous and cannot be traced.

4.4. Improved IP Enforcement equals Improved Investment Climate

A synergy between the public and private sectors would ensure a lucrative investment climate in the M&E sector as well as provide for a speedy redressal mechanism in terms of IP enforcement. Hence, the need of the hour is a solution in the form of voluntary cooperation systems between public bodies and private bodies representing M&E stakeholders.

It is crucial for India to take into consideration some of the best practices from other markets to deal with digital piracy and adopt a robust, efficient and swift administrative anti-piracy framework.

²⁶ <https://www.livelaw.in/top-stories/over-71000-cases-pending-in-supreme-court-59-lakhs-in-high-courts-law-minister-tells-rajya-sabha-205784>.

²⁷ <https://main.sci.gov.in/statistics>.

²⁸ <https://www.lexology.com/library/detail.aspx?g=de105e62-1b85-445e-a7eb-9b167a656cdd>.

5. Recommendations and Conclusion: Lessons for India

Following are some of the key recommendations in order to achieve the goal of implementing an effective and efficient Public - Private Partnership model in India:

5.1. International Cooperation

The global nature of online piracy demands an international response. Administrative cooperation amongst countries at the global level enables shutting down pirate operations and acting against various forms of online piracy that originate from other countries. The collaboration of Brazilian authorities with the UK IPO, PIPCU and United States Homeland Security for Operation 404 is an exemplary illustration of the value of international collaboration against IP Crime.

International collaborations such as the Memorandum of Understanding (MoU) signed between the British Consulate in São Paulo with the Intellectual Property Office of the UK and the Public Prosecutors Office of the State of São Paulo²⁹ facilitate sharing of expertise and increase the efficiency of anti-piracy initiatives, as evidenced by the success of Operation 404.

5.2. IP Crime Body in Police Forces

Operation 404 involved cooperation between the Brazilian Ministry of Justice and Public Security, cybercrime police units from 11 states in Brazil, Homeland Security Investigations (US) and the Police Intellectual Property Crime Unit, City of London Police (UK). The success of Operation 404 signifies that the growing menace of online piracy is not limited to the boundaries of a nation or state, and hence it becomes crucial for police departments to establish a dedicated cyber-crime unit to effectively enforce intellectual property rights within their respective jurisdictions.

In India, 'Police' and 'Public Order' are State subjects as per the Seventh Schedule of the Constitution of India. Therefore, States and Union Territories are primarily responsible for the prevention, detection, investigation and prosecution of cyber-crimes including online piracy through their law enforcement agencies.

²⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1017790/ip-crime-2021.pdf.

Presently, the Maharashtra Intellectual Property Crime Unit (MIPCU) and the Telangana Intellectual Property Crime Unit (TIPCU) have been set up to deal with complaints on online piracy. MIPCU is a public-private initiative and is attached to the Maharashtra Cyber Cell. MIPCU has the mandate to undertake actions against IP related crimes, including digital piracy.

Therefore, the establishment of police departments similar to the MIPCU and TIPCU in all States and Union Territories in India to enforce intellectual property rights is imperative to ensure integrated tactical response against digital piracy.

5.3. Initiatives by the Ministry of Home Affairs to combat the cyber-crime of piracy

Under the Ministry of Home Affairs (MHA), the Cyber and Information Security (C&IS) Division, which deals with matters pertaining to cyber security and cyber-crime, has launched the Indian Cybercrime Coordination Centre (I4C) Scheme to deal with all types of cyber-crimes in a comprehensive and coordinated manner.

The Indian Cybercrime Coordination Centre acts as the nodal point in the fight against cybercrime and has seven components.³⁰ However, none of the components under the I4C specifically address the cyber-crime of piracy whereas cyber-crimes like online stalking/harassment, domain thefts, or online financial frauds find frequent mention.³¹

The free dissemination of unauthorized music content is used to bait internet users into clicking on links that download bundled malware onto their computers or ask the user for sensitive personal details under the guise of payment gateways or as a requirement to make a free account. According to a report by the Digital Citizens Alliance, a user is 28 times more likely to get malware from a content piracy website than on similarly visited mainstream websites or licensed content providers.³²

³⁰ National Cyber Crime Threat Analytics Unit, National Cyber Crime Reporting Portal, National Cyber Crime Training Centre, Cyber Crime Ecosystem Management Unit, National Cyber Crime Research and Innovation Centre, National Cyber Crime Forensic Laboratory Ecosystem and Platform for Joint Cyber Crime Investigation Team.

³¹ <https://www.cybercrime.gov.in/Webform/CrimeCatDes.aspx>;

<https://pib.gov.in/PressReleasePage.aspx?PRID=1845321>;

https://www.mha.gov.in/sites/default/files/CIS_AdvisoryCyberCrime_14112019_0.pdf.

³² <https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/digitalbait.pdf>.

Online piracy not only negatively impacts content creators but also facilitates criminal enterprises that fund and support organised crime, and therefore, home ministries must actively undertake initiatives to curb piracy. The involvement of Homeland Security Investigations (U.S. Department of Homeland Security) in the successful phases of Operation 404 underlines the significant role that MHA can play to combat cyber piracy in India. Through the extension of its I4C scheme to cyber piracy, the MHA can provide assistance to local law enforcement agencies, supplement the anti-piracy initiatives of States and Union Territories, and coordinate anti-piracy actions on both the national and state level.

5.4. Awareness through warnings on seized domains

US Law Enforcement assisted Brazilian Law Enforcement in Operation 404 by taking down digital piracy apps and websites through the execution of seizure warrants. Visitors to these seized domains would find a banner with the logos of US and Brazilian Law Enforcement agencies, informing them that the domain names were hosting pirated content and therefore have been seized by federal authorities. Moreover, the warning also informs the visitor that wilful copyright infringement is a federal crime and states the prescribed punishment for the same.³³



People who know the meaning and consequences of piracy are 2.48 times less likely to stream or download illegal content in India than the ones who claimed they did not know or were not

³³ <https://br.usembassy.gov/united-states-assists-brazil-in-action-against-digital-piracy/>.

sure about the meaning and consequences of piracy.³⁴ Moreover, visitors of websites hosting pirated content are more likely to redirect their search to legitimate websites when the nudge pop-up framed piracy as a criminal activity when compared to messages framed with references to data breach or loss to the creative community.³⁵

Therefore, such warnings on seized domains can serve as a means to raise awareness amongst the public on the consequences and ill effects of consuming pirated content, which would prompt them to abstain from indulging in such rouge websites and apps.

5.5. Administrative copyright enforcement through a centralized public body

Administrative enforcement, which is also prevalent in certain key EU markets such as France, Italy and Greece has proven to be an effective and time-efficient means to curb digital piracy. To ensure a robust anti-piracy mechanism, it is imperative that the Ministry of Electronics and Information Technology (MeitY) coordinates with the Department of Telecommunications (DoT) and the Department for Promotion of Industry and Internal Trade (DPIIT) to establish an administrative body empowered to enforce the intellectual property rights of content holders via administrative site blockings to address online copyright infringement.

The functions of this centralized public body would entail maintenance of a Pirate Website List (PWL) or Infringing Websites List (IWL) in addition to the issuance of directions to Internet Service Providers (ISPs) and other intermediaries including app stores to block such websites and applications. Such a body could consist of executives from the aforementioned ministry and departments as well as representatives from the industry.

As an alternative to the establishment of an administrative body to undertake copyright enforcement, the DPIIT could also consider expanding the functions of The Cell for Intellectual Property Rights Promotion and Management (CIPAM) to enable administrative copyright enforcement in India.

CIPAM is a body under the aegis of the DPIIT, that organizes and spearheads the government's efforts to simplify and streamline IP processes, increase IP awareness, promote

³⁴ <https://indianmi.org/wp-content/uploads/2022/04/Preventing-music-Piracy-through-Nudge-effect-Final-1.pdf>.

³⁵ *Id.*

commercialization, and enhance enforcement. CIPAM has launched an “IPR Enforcement Toolkit”³⁶ for the police in association with the Federation of Indian Chambers of Commerce & Industry (FICCI) for aiding police officials in dealing with IP crimes, in particular counterfeiting and piracy. CIPAM could further be equipped to play an instrumental role in tackling piracy and counterfeiting through administrative efforts.

³⁶ http://cipam.gov.in/wp-content/uploads/2017/10/IPR_EnforcementToolkit_06January2017.pdf.