

Sapos Piramidais nas Guerras Virtuais

Episódio VIII : Lições da SCO

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Episódios da Série 'Sapos Piramidais'

I	3° SSI	Out01-	Paradoxos da PI para a Segurança
II	3°FISL	Mai02-	O Futuro do Software
III	4° SSI	Nov02-	TCPA Palladium
IV	4°FISL	Jun03-	O Caso SCO vs IBM
V	5° SSI	Nov03-	O Bazar e a Catedral
VI	5°FISL	Jun04-	Guerra Cognitiva
VII	6° SSI	Nov04-	Engenharia Social Difusa
VIII	6°FISL	Jun05-	Lições da SCO

Reconhecendo o Terreno

“Yet there was a general view at the conference that ...we hurt developing nations, for example, if we give them knowledge for free.

*They should have to **pay for the truths we create.** It weakens them, the argument went, if they can just take what we have discovered. Better to encourage **their industry of science** than to **destroy it by simply spreading the truths** that science here has created.”*

Lawrence Lessig, sobre conferência comemorando 25 anos da Kopinor = { 5 associações de editoras + 16 assoc. de autores }

www.lessig.org/blog/archives/002906.shtml#002906 – 20 Maio 05

“Pay for the truths we create”

Algumas patenteadas, do bioma brasileiro:

Andiroba - Rocher Yves, FR (cosméticos); Morita M., JP (repelente)

Ayahuasca – Int. Plant Medicine Corp., USA (medicamentos)

Bibiri - Biolink, CAN (anti-concepcional); GB (anti-tumor)

Copaíba - Technico-Flor, FR + JP (cosméticos, conserv. alimentos)

Cróton – Shaman Corp., USA ? (medicamentos)

Cumaniol - Biolink, CAN + USA (anti-coagulante cirúrgico)

Cupuaçu – Asashi Foods, JP (alimentos); Body Shop, GB (cosméticos)

“Pay for the truths we create”

Algumas patenteadas, do bioma brasileiro:

Curare - USA, GB (anestésico cirúrgico)

Epipedobates - Abbott, USA (analgésico)

Espinheira Santa – Mektron, JP (anit-inflamatório)

Guaçatonga – JAPAN (anti-cancer [Unesp])

Guaraná – Cincinati U., USA (anti-coagulante cirúrgico)

Jaborandi – Merk (anti-asma, artrite); ALEMANHA (anti-glaucoma)

Jararaca – Bristol Myers-Squibb (anti-hipertensivo)

“Pay for the truths we create”

Algumas patenteadas, do bioma brasileiro:

Jenipapo – Aveda Corp., (cosméticos [\$ guaranis-caiovás])

Muirapuama – Taycho Pharmaceutical, JP (afrodisíaco)

Pau-Rosa – EUA, GP, FR, AL, BEL (cosmético)

Phyllomedusa – 10 patentes (antibióticos, analgésicos [- Kaxinawá])

Páfia – Wakunaga & Roto., JP (anti-tumor)

Quinino – Novatek, etc. (anti-malária [-xavantes, etc])

Stevia – JAPAN (adoçante [-guaranis])

“The target?”

Ken Adleman, emb. EUA na ONU p/ Reagan, 8-5-05

*“Brazil is far from acting like a normal trading partner; its rampant **theft of our intellectual property** must top Miss Rice's agenda. This issue is too serious to grin about. **“The IP Axis of Evil”** -- that's what **Brazil, India and China** were cleverly dubbed by former President George Bush, ...should get the message that the Bush administration means business now. The stakes of this modern piracy are high. IP theft has already cost the U.S. some 750,000 jobs. It costs our businesses a whopping \$200 billion yearly, the U.S. Customs Service says. This war is waged on many fronts: music, **software**, films and pharmaceuticals the most flagrant...”*

www.washingtontimes.com/commentary/20050508-101115-9559r.htm

Movimentação de Tropas

Andrew Orłowski, The Register, 19-11-05

*“So it's in Microsoft's long-term strategic interests to make writing GPL software and using it illegal. Microsoft has already indicated that it can **build up its IP patent stream without opening fire**. In an interview published last week, Microsoft's director of licensing David Kaefer noted that Microsoft could no longer "look the other way" when companies used its IP. But Kaefer also noted that "... Marshall Phelps built IBM's intellectual property business without filing a single lawsuit.". Phelps is the IBM attorney who built up its patent revenues from zero to a billion dollar business in the 1980s. He joined Microsoft last summer.”*

www.theregister.co.uk/2004/11/19/microsoft_wto_winning_without_firing/

Movimentação de Tropas

Ingrid Marson, ZDNet UK, 4-11-04

“Microsoft's volume licensing indemnification commitment covers damages costs, in addition to legal defense costs,” said the Microsoft spokeswoman. “To truly stand behind its software, Microsoft pays for damages, settlement costs, and, if there were an injunction, Microsoft would either obtain for its end-users the right to use the software, fix or replace the infringing code, or, as a last resort, refund to the end-user the amount they paid for the software.”

Movimentação de Tropas

“But Richard Penfold, a partner in the IP law firm DLA, told that this statement is confusing and needs clarification. "In my view Microsoft's statement raises more questions than it answers. It is vague – I'd like to see the exact details . I'm sure their policy is actually quite prescriptive on when, where and how it would pay out. I can't believe it is as wide and open-ended as they imply.”

news.zdnet.co.uk/0,39020330,39172608,00.htm

Microsoft has applied to **patent the IS NOT operator**

appft1.uspto.gov/netacgi/nph-Parser?

[Sect1=PTO1&Sect2=HITOFF&d=PG01&p=1&u=%2Fnetacgi%2FPTO%2Fsrchnum.html&r=1&f=G&l=50&s1=](http://appft1.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PG01&p=1&u=%2Fnetacgi%2FPTO%2Fsrchnum.html&r=1&f=G&l=50&s1=)

[%2220040230959%22.PGNR.&OS=DN/20040230959&RS=DN/20040230959](http://appft1.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PG01&p=1&u=%2Fnetacgi%2FPTO%2Fsrchnum.html&r=1&f=G&l=50&s1=%2220040230959%22.PGNR.&OS=DN/20040230959&RS=DN/20040230959)

Estratégias de Defesa

The Public Patent Foundation - www.pubpat.org

*“Pubpat's mission is to advise and counsel people who object to patents that threaten to "restrict civil liberties and free markets", Dan Ravicher tells us. The options include filing friend of the court briefs on behalf of defendants, and broader education. He's keen to encourage companies form "disarmament treaties", too. "We're going to undermine those we believe are posing a threat," he said. "Phelps can't bring over this business model of twenty years ago that he created at IBM. **Pubpat is to give the communities a voice**, a defender.”*

Orlowski: www.theregister.co.uk/2003/12/09/microsoft_fat_patents_could/

Estratégias de Defesa

The FAT Patent – Preemptive Patents (cont)

“Ravisher said: "I have a hundred pieces of prior art which were not reviewed by the [patent] examiner. We have them under review." As several have pointed out, the FAT file system was not an innovation, and bears close resemblance to CP/M file systems.

*However, as Dan points out, **you can't patent functionality.***

PubPat does not approve the common tactic, employed by cryptographer Lucky Green, to file pre-emptive patents.

[Green's claim prevented TCPA from being implemented].

" if you fight fire with fire, everything burns. "It's difficult to criticize unreasonable opponents if you're using same tactics."”

Estratégias de Defesa

Eben Moglen, Harvard Journal of Law & Tech: **GPL** 23-02-04

He who goes to court to fights with us, will have a choice. We will say to the judge, "Judge, Mr. Defendant has used our copyrighted work, copied it, modified it and distributed it without permission. Please make him stop." One thing that the defendant can say is, "You're right. I have no license." Defendants do not want to say that, because if they say that they lose. So defendants, when they envision to themselves what they will say in court, realize that what they will say is, "But Judge, I do have a license. It's this GNU GPL. At which point, because I know the license reasonably well, and I'm aware in what respect he is breaking it, I will say...

Estratégias de Defesa

"Well, Judge, he had that license but he violated its terms and under Section 4 of it, when he violated its terms, it stopped working for him." But notice that in order to get there in a lawsuit over free software, it is the defendant who must wave the GPL. It is his master key to a lawsuit that lasts longer than a nanosecond. This, quite simply, is the reason that lies behind the statement you have heard -- that there has never been a court test of the GPL.

To those who like to say there has never been a court test of the GPL, I have one simple thing to say: Don't blame me. I am ready, it was the defendants who didn't want to do it.

Vassalagem Infiltrada

Brasil Insiste em Quebrar Patentes, diz 'Financial Times'

VINICIUS ALBUQUERQUE, Folha On-Line, 14-9-2004

eco: PEDRO ALEXANDRE SANCHES, CRISTINA AMORIM

“O Brasil, a Argentina e a Bolívia planejam apresentar proposta conjunta que pode institucionalizar a quebra de patentes criadas nos países desenvolvidos, diz a edição de hoje no jornal britânico

"Financial Times". O diário britânico lembra a "agenda do desenvolvimento" (DA) que será apresentada pelos três países latino-americanos na reunião anual da Organização Mundial de Propriedade Intelectual (OMPI), que acontece neste mês.”

Moglen: www.gnu.org/philosophy/moglen-harvard-speech-2004.html

Agenda Desenvolvimentista PI

Brasil propõe à OMPI reforma em Tratados de Patentes

Set 04 - Brasil e Argentina propõe DA em assembléia anual: Mais 12 países aderem. DA aceita para deliberação no IIM da OMPI.

www.wipo.int/documents/en/document/govbody/wo_gb_ga/pdf/wo_ga_31_11.pdf

Fev 05- Reunião *ad-hoc* no Marrocos tenta isolar Brasil, Índia; OMPI recusa *ad-hoc* ONGs no IIM. Brasil não assina “carta”

Mar 05- Abaixo assinado: 5 linguas, 1200+ pessoas, 63 países: Pede credenciamento ONGs p/ IIM, contra “carta do marrocos”

www.pedro.jmrezende.com.br/trabs/wipo-stats.html

Abr 05- IIM- 17 ONGs ad-hoc participam: 16 apóiam DA. DA detalhada, mais adesões, 2 contrapostas. Deliberação sobre DA adiada para dois IIM pré assembléia: **20 a 22 jun 05**

www.wipo.int/edocs/mdocs/mdocs/en/iim_1/iim_1_4.pdf

Desdobramentos do caso SCO x IBM

23 Mai 03 - SCO processa IBM, pede US\$ 1 bi de indenização:
“misappropriation of trade secrets, unfair competition, breach of contract and tortious interference with SCO's business.”

Jun 03 - SCO ameaça processar 1500 grande usuários Linux

Jul 03 - Acordo secreto revelado: Sun paga “por PI do Unix”
SCO: *“acordo sepulta a questão de quem é dono do Unix”*

Ago 03 – IBM pede 1-reconvenção: SCO viola patentes, GPL;
2-arquivamento da ação / liminar contra chantagem a clientes

Red Hat processa SCO: difamação do OSI, Linux, Red Hat

Extorsão e Chantagem

Set 03 - Mídia pressiona distros Linux por proteção a clientes

Out 03 – Baystar investe U\$ 50 milhões na SCO.

Nov 03 – SCO contesta a legalidade da GPL.

IBM intima jornalistas e analistas que abusam do FUD.

SCO intima FSF pelos emails dos projetos gerenciados

Dez 03 – Juiz dá 30 dias para SCO apresentar provas, tipificação

SCO expande acusação: *violação de copyrights*

Jan 03 – SCO descumpre prazo contra IBM;

abre ação contra Novell em disputa por copyright dos Unixes

Sinuca de Bico?

Fev 04 - SCO acusa hackers do SL p/ ataque myDoom (shadowcrew)
www.businessweek.com/magazine/content/05_22/b3935001_mz001.htm

Mar 04 – SCO processa AutoZone, Chrysler por usar Linux;
SCO descumpre segundo prazo para apresentar provas;
investidor S2 -> vice-presidente SCO, de 12/10/02:
"As negociações não foram muito divertidas, mas a Microsoft nos trouxe U\$ 86 milhões, incluindo a BayStar"

Abr 04 – IBM pede novamente arquivamento do processo.
Banco do Canadá quer dinheiro de volta da BayStar-SCO
SCO retira acusações de violação de segredo, ilegalidade da GPL

Mai 04- Ken Brown, IadT: *"Linux é m.p. derivativo do Minix"*
Tanenbaum (autor do Minix): *"Linux não é derivativo do Minix"*

Estratégia de Desgaste

Jun 04 - SCO quer ver mais código AIX para “cadeia de derivação”

www.groklaw.net/article.php?story=20040602184949894

Executivo da SCO diz, na Alemanha, ter pasta com provas: milhões de linhas de código do Unix estariam no Linux. Blefe?

www.grokdoc.net/index.php/SCO:Blepptalk

Erro na “Arvore genealógica” do Unix que a SCO usou no processo

www.groklaw.net/article.php?story=20040620053051348

www.groklaw.net/article.php?story=20040726085048643

Jul 04 - SCO gasta US\$ 2 bi em Wall Street manipulando suas ações

www.groklaw.net/article.php?story=2004061602050961

Investidor de risco BayStar ameaça SCO por quebra de contrato

www.eweek.com/article2/0,1759,1627186,00.asp

Estratégia de Desgaste

Ago 04 – IBM pede sentença declaratória sobre status do Linux

www.groklaw.net/article.php?story=20040817180409152

SCO estabelece acordo com sócio-advogado (Boies, Schiller & Flexner LLP) para limitar despesas processuais

www.groklaw.net/article.php?story=20040831183432157

Set 04 – Patente do sistema de arquivos FAT

concedida à Microsoft é anulada, a pedido de pubpat.org

www.groklaw.net/article.php?story=20040930074317160

Out 04 – Kodak consegue estorquir Sun com patente: U\$ 92 mi

www.groklaw.net/index.php?page=58

Novell promete não usar suas patentes contra software livre

www.groklaw.net/article.php?story=20041012103234348

Estratégia de Desgaste

Nov 04 – Novell processa MS por prática monopolista predatória:
Wordperfect www.groklaw.net/article.php?story=20041112184610953

MS vende indenização contra efeitos da guerra de patentes,
e ameaça países com políticas preferenciais para o FOSS
groklaw.net/article.php?story=20041118224916429 | 20041118073308709

Dez 04- SCO nega ter repudiado a GPL
www.groklaw.net/article.php?story=20041202100118892

“Suicídio”: Rob Penrose, CIO da Canopy, holding da SCO, após
pressão para assinar misterioso NDA, à saída do CEO R. Yarro.
www.groklaw.net/article.php?story=20050210085656462#c275283

SCO demanda mais código da IBM para sua “teoria-escada”
www.groklaw.net/article.php?story=20041230064032628

Estratégia de Desgaste

Jan 05 - IBM doa 500 patentes para software livre.

Estudo mostra que 30% das patentes são dúplices

www.groklaw.net/article.php?story=2005011407083826

Fev 05 – Criado o *Software Freedom Law Center*.

Assessoria e treinamento em licenciamento/litígio c/ FOSS

www.softwarefreedom.org

Mar 05 –Canopy Group, controladora da SCO, rompe c/ SCO.

'Suicidato' de Val Kriedel, Filha, herdeira da Canopy.

[groklaw.net/comment.php?mode=display&sid=20050225223848129
&type=article&pid=292048#c292098](http://groklaw.net/comment.php?mode=display&sid=20050225223848129&type=article&pid=292048#c292098)

(4 meses após 'suicídio' do CIO Robert Penrose, 10 meses após 'suicídio' de William Zunes, executivo da Acrylis, processado junto com a SCO)

[groklaw.net/comment.php?mode=display&sid=20050804095846895
&type=article&&pid=346232#c346302](http://groklaw.net/comment.php?mode=display&sid=20050804095846895&type=article&&pid=346232#c346302)

Estratégia de Desgaste

Abr 05- Ao prestar contas do balanço trimestral, Diretor da SCO, acusa site www.groklaw.net de responsável pela irrisória receita com “licenças SCOSource”; Ameaça investigar identidade da autora. www.sltrib.com/business/ci_2660520

Mai 05 – Pamela Jones, do site groklaw.net, declara que nunca irá se suicidar, depois da devassa no seu anonimato publicada por uma 'jornalista' (MOG) no e-zine LinuxJournal da SysCon. www.groklaw.net/article.php?story=20050509145744287
(CIO da Canopy, Penrose, 'suicidado' após sumiço de backup)

Jun 05- KPMG encerra prestação de serviços de auditoria à SCO
[www.cbronline.com/article_news.asp?
guid=4B425174-AE78-4335-AF0D-AB73E2746500](http://www.cbronline.com/article_news.asp?guid=4B425174-AE78-4335-AF0D-AB73E2746500)

Neo-inquisição

Propriedade intelectual “forte” <=> Santa inquisição

internet <=> imprensa de Gutemberg

pirataria <=> heresia

hackerismo <=> bruxaria

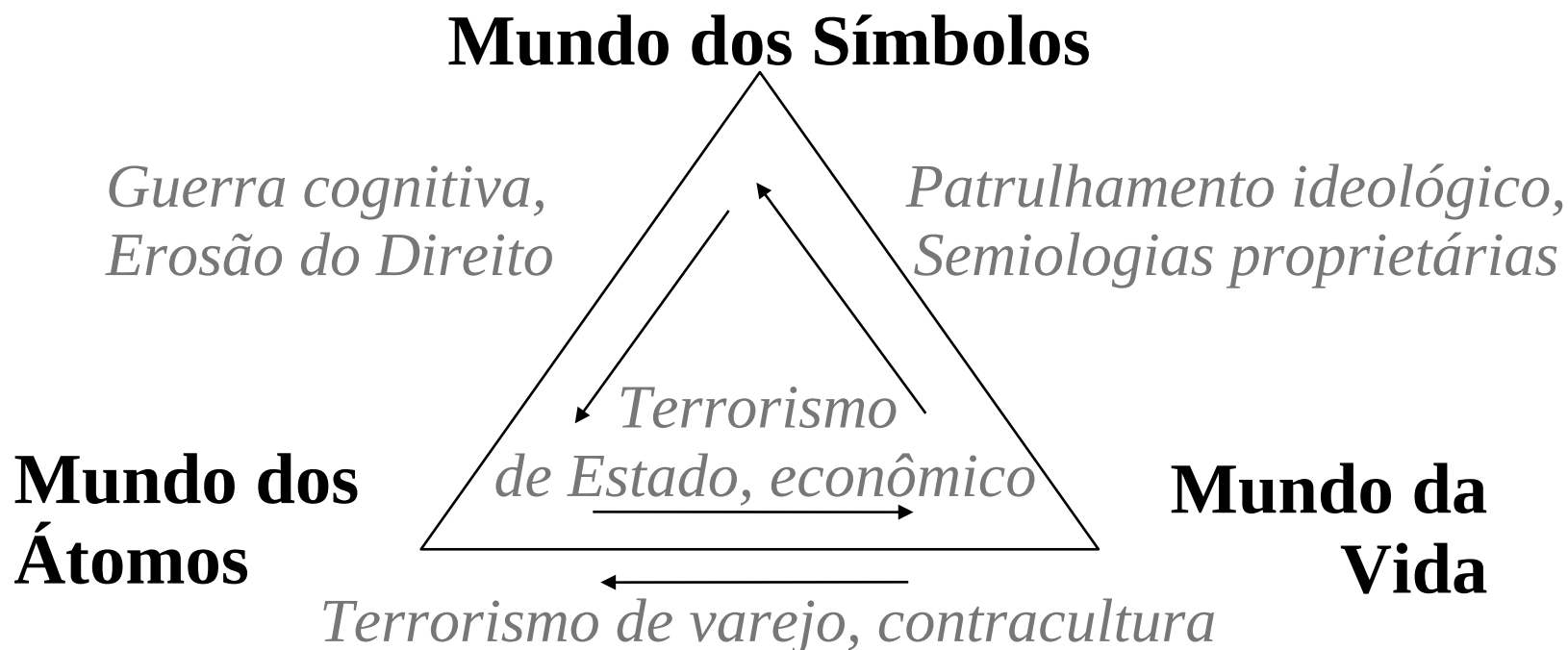
software livre + open source -> comunismo <=> satanismo

escritórios de patentes + lobbies <=> tribunais de inquisição

mídia corporativa + tubos de TV <=> fogueiras dos autos-de-fé

O teatro das guerras virtuais

Liberdade do conhecimento
vs Liberdade do capital



O Sapo Piramidal

