

# **Sapos Piramidais nas Guerras Virtuais**

**Episódio VIII : Lições da SCO**

**FISL6.0 - 2005 - PUC - Porto Alegre**

<http://www.cic.unb.br/docentes/pedro/sd.htm>

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# Episódios da Série 'Sapos Piramidais'

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

<http://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** – Cincinnati 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](http://www.washingtontimes.com/commentary/20050508-101115-9559r.htm)

# Movimentação de Tropas

Andrew Orlowski, 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.”*

[http://www.theregister.co.uk/2004/11/19/microsoft\\_wto\\_winning\\_without\\_firing/](http://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.””*

<http://news.zdnet.co.uk/0,39020330,39172608,00.htm>

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

<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](http://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: [http://www.theregister.co.uk/2003/12/09/microsoft\\_fat\\_patents\\_could/](http://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 fight 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.*

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

# 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: <http://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](http://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”

<http://www.cic.unb.br/docentes/pedro/trabs/wipo-stats.html>

**Abr 05**- IIM- 17 ONGs ad-hoc participam: 16 apóiam DA.  
DA detalhada, mais adesões, 2 contrapostas. Deliberação  
sobre DA e lista de membros IIM no 22º aniversário: 20 + 22 + 05



# 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)  
[http://www.businessweek.com/magazine/content/05\\_22/b3935001\\_mz001.htm](http://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 US\$ 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”

<http://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. Bolefe?

<http://www.grokdock.net/index.php/SCO:Blepptalk>

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

<http://www.groklaw.net/article.php?story=20040620053051348>

<http://www.groklaw.net/article.php?story=20040726085048643>

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

<http://www.groklaw.net/article.php?story=2004061602050961>

Investidor de risco BayStar ameaça SCO por quebra de contrato

<http://www.eweek.com/article2/0,1759,1627186,00.asp>

# Estratégia de Desgaste

**Ago 04** – IBM pede sentença declaratória sobre status do Linux

<http://www.groklaw.net/article.php?story=20040817180409152>

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

<http://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

<http://www.groklaw.net/article.php?story=20040930074317160>

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

<http://www.groklaw.net/index.php?page=58>

Novell promete não usar suas patentes contra software livre

<http://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](http://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](http://groklaw.net/article.php?story=20041118224916429) | [20041118073308709](http://20041118073308709)

**Dez 04-** SCO nega ter repudiado a GPL

<http://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](http://www.groklaw.net/article.php?story=20050210085656462#c275283)

SCO demanda mais código da IBM para sua “teoria-escada”  
<http://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

<http://www.groklaw.net/article.php?story=2005011407083826>

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

Assessoria e treinamento em licenciamento/litígio c/ FOSS

<http://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](http://www.groklaw.net) de responsável pela irrisória receita com “licenças SCOSource”; Ameaça investigar identidade da autora. [http://www.sltrib.com/business/ci\\_2660520](http://www.sltrib.com/business/ci_2660520)

**Mai 05** – Pamela Jones, do site [groklaw.net](http://www.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. <http://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  
[http://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”  $\Leftrightarrow$  Santa inquisição**

internet  $\Leftrightarrow$  imprensa de Gutemberg

pirataria  $\Leftrightarrow$  heresia

hackerismo  $\Leftrightarrow$  bruxaria

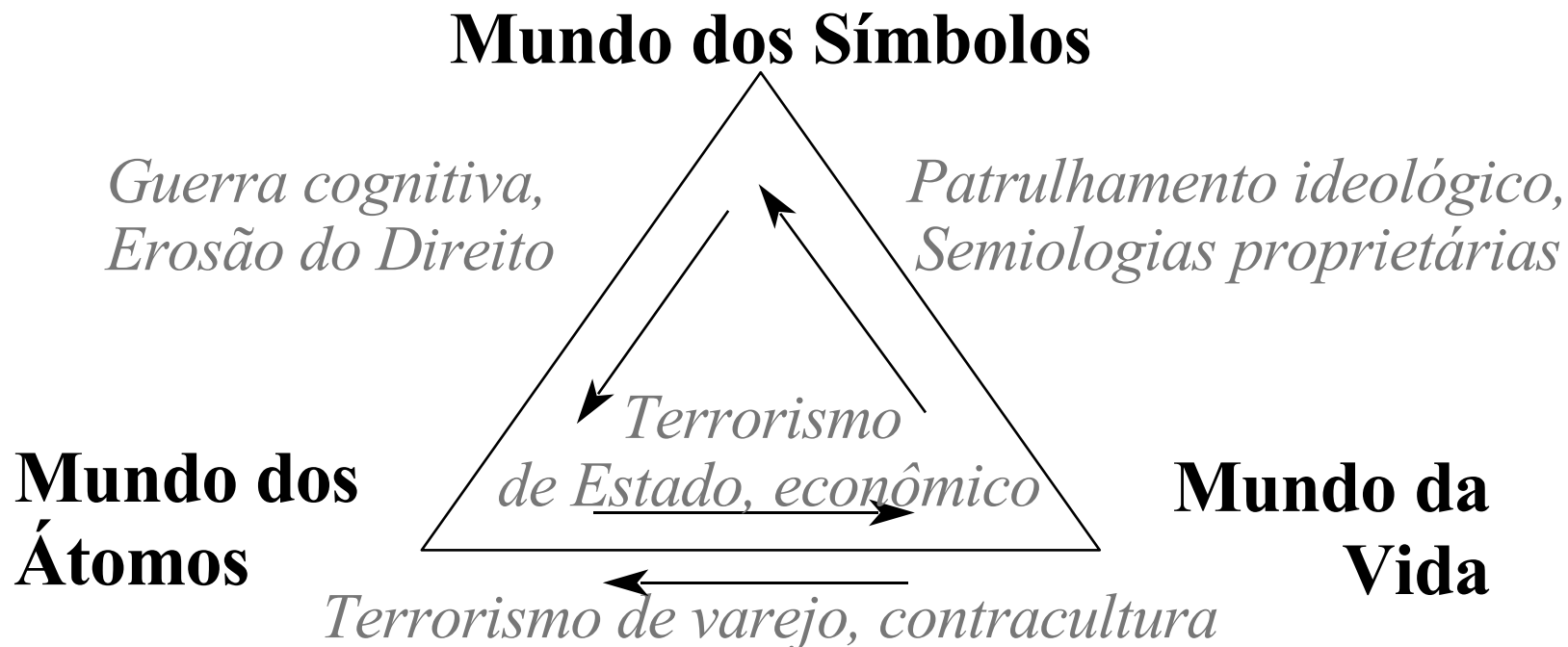
software livre + open source  $\rightarrow$  comunismo  $\Leftrightarrow$  satanismo

escritórios de patentes + lobbies  $\Leftrightarrow$  tribunais de inquisição

mídia corporativa + tubos de TV  $\Leftrightarrow$  fogueiras dos autos-de-fé

# O teatro das guerras virtuais

Liberdade do conhecimento  
vs Liberdade do capital



# O Sapo Piramidal

