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Brazil

TMT

Contributor



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This country-specific Q&A provides an overview of tmt laws and regulations applicable in Brazil.

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Brazil: TMT

1. Is there a single regulatory regime that governs software?

In Brazil, software is primarily governed by Law 9,609/1998 (Software Law) and, secondarily, by Law 9,610/1998 (Copyright Law), where applicable. Additionally, software is subject to various ancillary rules, such as tax and health regulations.

Brazil adheres to the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which was integrated into Brazilian law through Decree 1,355/1994. Furthermore, Brazil is a signatory to the Berne Convention (Paris Act, 1971) and the Patent Cooperation Treaty, both managed by the World Intellectual Property Organization (WIPO).

2. How are proprietary rights in software and associated materials protected?

Law 9,609/1998 (Software Law) governs the protection and commercialization of software in Brazil, defining rights and responsibilities related to licensing and transfer of technology, also specifying penalties for violations. Aligned with the TRIPS Agreement, this law mandates that software, in both source and object code forms, is protected as literary works, thereby invoking the supplementary application of Law 9,610/1998 (Copyright Law) and of the Berne Convention (1971). The protection rules of the Brazilian Software Law encompass the following:

- Software protection extends for 50 years from the year following its publication or creation;
- Authors have the rights to claim authorship and to object to unauthorized modifications;
- Registration is not mandatory, but, if requested, it must comply with the regulations of the Software Law, of Decree 2,556/1998, and of the Brazilian Institute of Industrial Property (INPI).
- Foreigners residing abroad receive Software Law rights if their home countries offer similar protection to Brazilians and foreigners residing in Brazil.

Law 9,279/1996 (Industrial Property Law) expressly excludes software from the patent protection it provides.

3. In the event that software is developed by a software developer, consultant or other party for a customer, who will own the resulting proprietary rights in the newly created software in the absence of any agreed contractual position?

According to the Software Law and to the Copyright Law, creators of computer software are designated as "authors." However, under the provisions of the Software Law, these creators are granted only economic rights related to the software, as opposed to moral rights (excluding authorship rights, meaning the author must be acknowledged). Unless otherwise agreed upon, the ownership rights to software developed by an employee or service provider belong to the employer or contracting party, provided that the development occurred in the course of the corresponding employment contract or service relationship. This applies when such activity is anticipated, expected, or arises naturally from the duties associated with these relationships.

Consequently, the rights to the software belong solely to the employee or service provider if the software is developed outside the scope of employment or service agreements and without using the employer's or contracting entity's resources, industrial and business secrets, technological information, equipment, inputs or facilities.

4. Are there any specific laws that govern the harm / liability caused by Software / computer systems?

The Civil Code (Law 10,406/2002) may be applicable in these cases, as well as the Consumer Protection Code (Law 8,078/1990), which holds suppliers of products or services responsible for any harm caused to consumers. It imposes strict liability not only for errors or defects in products or services, but also for insufficient or inadequate information regarding their use and associated risks.

5. To the extent not covered by (4) above, are there any specific laws that govern the use (or misuse) of software / computer systems?

The Brazilian Software Law establishes that the use of

software must be accompanied by a License Agreement. In the absence of such an agreement, proof of acquisition or licensing can be established through a fiscal document showing the purchase or licensing of a copy.

Violations of software copyright may result in penalties ranging from 6 months to 2 years of detention or a fine. If the infringement involves commercial reproduction of software without explicit authorization from the author or his/her representative, or includes actions such as purchasing, selling, introducing into the Brazilian territory, concealing or storing, for commercial purposes, original or copied software that infringes copyright, the penalties increase to 1 to 4 years of detention plus a fine.

6. Other than as identified elsewhere in this overview, are there any technology-specific laws that govern the provision of software between a software vendor and customer, including any laws that govern the use of cloud technology?

While there is no dedicated regulation specifically for the use of cloud technology, there are scattered rules addressing this subject. The Internet Act (Law 12,956/2014) establishes principles, rights, and obligations concerning Internet use in Brazil. It includes requirements for Internet connection and application providers related to overall cloud computing solutions.

Law 13,709/2018, known as the General Data Protection Act (LGPD), addresses the processing of personal data across all industries and businesses, significantly affecting cloud computing and its providers, when acting as controllers or processors of personal data. This Law specifically addresses requirements related to the processing of personal data and the transfer of data.

Normative Instruction 5/2021 from the Institutional Security Cabinet of the Presidency (GSI/PR) sets out the basic information security standards for the adoption of cloud computing solutions by government bodies and entities within the federal administration.

Moreover, the Brazilian Superintendence of Private Insurance (SUSEP) has established cybersecurity standards through Circular Notice 638/2021, which insurance companies and their service providers must adhere to, including those making use of cloud services.

Additionally, Resolution 4,893/2021 issued by the Brazilian Monetary Council, sets forth cybersecurity policies and requirements for financial institutions when contracting storage services and cloud computing.

7. Is it typical for a software vendor to cap its maximum financial liability to a customer in a software transaction? If 'yes', what would be considered a market standard level of cap?

It is customary and expected in the market for software vendors to seek to limit their financial liability to customers, and such limitation of liability is permissible. However, court decisions show significant variability concerning the potential caps on indemnification related to technology contracts, particularly considering the indemnification provisions outlined in the Brazilian Civil Code.

8. Please comment on whether any of the following areas of liability would typically be excluded from any financial cap on the software vendor's liability to the customer or subject to a separate enhanced cap in a negotiated software transaction (i.e. unlimited liability): (a) confidentiality breaches; (b) data protection breaches; (c) data security breaches (including loss of data); (d) IPR infringement claims; (e) breaches of applicable law; (f) regulatory fines; (g) wilful or deliberate breaches.

As previously mentioned, legal precedents vary significantly concerning potential limits on compensation in technology contracts, allowing parties to negotiate the extent of liability specific to each contract scenario.

Concerns regarding breaches of confidentiality and data protection often lead contracting parties to seek unlimited indemnification, although software suppliers may not always agree to such terms.

Software vendors typically emphasize clauses that exempt them from indemnifying for indirect, incidental, special, punitive, or consequential damages. Regarding direct damages, it is common for companies to restrict compensation to the duration of the contract period.

9. Is it normal practice for software source codes to be held in escrow for the benefit of the software licensee? If so, who are the typical escrow providers used? Is an equivalent service offered for cloud-based software?

Information regarding escrow providers commonly utilized in private software transactions is generally not publicly disclosed.

10. Are there any export controls that apply to software transactions?

Imports and exports of sensitive goods related to nuclear, chemical, biological and missile technology, including equipment, inputs, software, and technologies, along with associated services, require clearance. This clearance is granted by the Ministry of Science, Technology, and Innovation (MCTI) and applies to both public and private entities.

Regarding counterfeit protection, the Software Law stipulates that introducing into the Brazilian territory, for commercial purposes, an original or copied software produced in violation of copyright is a criminal offense. Violators can face penalties of detention ranging from 1 to 4 years and a fine.

11. Other than as identified elsewhere in this questionnaire, are there any specific technology laws that govern IT outsourcing transactions?

In Brazil, IT outsourcing transactions are not governed by specific technology laws.

Due to the lack of specific laws on the matter, the IT outsourcing agreement becomes an important instrument to regulate the relationship between the parties involved. Therefore, the IT outsourcing agreement shall address all relevant aspects affecting the transactions, such as, for example, the scope of activities carried out by IT outsource providers, issues related to data security, and provisions on timely deliveries.

12. Please summarise the principal laws (present or impending), if any, that protect individual staff in the event that the service they perform is transferred to a third party IT outsource provider, including a brief explanation of the general purpose of those laws.

Amendments introduced by Law 13,429/2017, to Law 6,019/1974, which regulates both the outsourced and the temporary labor, allow companies to outsource any of their activities to third-party providers. However, certain limitations, as explained next, end up protecting the individual staff.

Employees dismissed by a company may not provide services to the same company (i.e., to their former employer) as outsource providers' employees until at least 18 months after the dismissal date. Similarly, no

legal entity having as partners individuals who in the previous 18 months have provided services to a company either as employees or workers with no employment relationship, may be contracted as a third-party outsource provider; however, if the partners of the third-party outsource provider are retired individuals, this restriction does not apply.

Decree-Law 5,452/1943 (the Consolidated Labor Laws, which regulates labor in Brazil), in turn, ensures to all employees a series of rights. Therefore, in case of dismissals, the concerned professionals are protected by the applicable provisions of the Consolidated Labor Laws, which sets forth that dismissed employees shall receive severance payments, *pro-rata* Christmas bonus and paid vacation days, in addition to others.

Furthermore, individual employment agreements governing the specific relationships between employees and employers may establish other rights, in addition to those already ensured by the Consolidated Labor Laws.

13. Please summarise the principal laws (present or impending), if any, that govern telecommunications networks and/or services, including a brief explanation of the general purpose of those laws.

The telecommunications sector is basically regulated by Law 9,472/1997 (the General Telecommunications Law, LGT), which sets that the Union, by means of the National Telecommunications Agency (ANATEL) and according to policies established by the Executive and Legislative Branches, organizes the exploitation of telecommunications services, encompassing aspects such as the regulation and inspection of the execution, trade and use of services, implementation and operation of telecommunications networks, as well as the use of orbit and radio frequency spectrum resources, in addition to others.

Law 4,117/1962 (the Telecommunications Code), in turn, is the law that regulates radio and free-to-air television broadcasting services. The policies related to such services are established by the Brazilian Federal Constitution, being developed by the Ministry of Communications and the National Congress.

Pay TV services, which are named conditioned access services in Brazil, are not regulated by the Telecommunications Code, but rather by Law 12,485/2011. This law sets forth the principles of such services and contains provisions regarding the production, programming, packaging and distribution of

content, in addition to other aspects.

Moreover, resolutions issued by ANATEL also stipulate specific rules applicable to each kind of telecommunications service, as well as concerning technical aspects and other issues relevant for the telecommunications sector.

14. What are the principal standard development organisations governing the development of technical standards in relation to mobile communications and newer connected technologies such as digital health or connected and autonomous vehicles?

Similarly to other countries, technical standards related to mobile communications used in Brazil are those set by international standard setting organisations (SSOs) such as the International Telecommunications Union (UIT).

Complementary thereto, ANATEL also establishes telecommunications technical standards, including regarding mobile communications, which are directed to the quality of telecommunications services provided to customers, as well as to the safety and quality of the related products marketed in the Brazilian territory.

Digital health technology rules, in turn, are issued by the Brazilian Ministry of Health, the Brazilian Health Regulatory Agency (ANVISA), the National Supplementary Health Agency (ANS) and the Federal Council of Medicine (CFM).

Brazil has no specific regulation governing the subject of connected, semiautonomous and autonomous vehicles. Semiautonomous vehicles (i.e., those partially automated, in which some actions may be automatically executed with little or no interference from the driver) are already circulating in the country, and up to now, provisions of the Brazilian Traffic Code (Law 9,503/1997) apply.

Depending on the specific connected technology and related features, different laws and regulations issued by more than one organization or authority may concomitantly need to be complied with.

15. How do technical standards facilitating interoperability between connected devices impact the development of connected technologies?

When interoperability between connected devices is facilitated with the adoption of mobile communications'

and connected technologies' technical standards, this allows the connection between many different devices and communication networks, and also avoids interruptions, thus improving the quality of the services provided, as well as of the products marketed.

The widespread adoption of technical standards also facilitates the trading of devices both in the domestic and the international markets. This, in turn, enables a larger number of device users to benefit from and enjoy the connected technologies, opposed to what would be required, for example, if the purchase and use of several different and complementary items were necessary for the developed technologies and features to properly work.

At last, the combination of all these factors leads to the possibility of increased profitability for the involved businesses.

16. When negotiating agreements which involve mobile communications or other connected technologies, are there any different considerations in respect of liabilities/warranties relating to standard essential patents (SEPs)?

Standardized technologies are indispensable for ensuring interoperability between mobile communications systems, different connected devices and related capabilities, consequently enabling the proper enjoyment thereof by users.

Due to their criticality, standardized technologies are usually the object of SEPs existing worldwide, which protect their holders with regard to the invention. In order to allow third parties to use the patented standardized technologies, and also employ them in the development of other innovations, SEPs' holders grant licenses to such third parties, being compensated for their inventions with the payment of royalties.

To enter into an agreement for the licensing of SEP technologies, the concerned parties shall in good faith negotiate, in addition to other aspects, provisions on the matter of liabilities and warranties. For example, agreements shall clearly state that the protected technology has been created by the patent holder without infringing any other third-party rights, that the SEP holder has all rights required for granting the license, and that there are no facts which may prevent the licensee from using the technology. Inclusion of non-disclosure clauses may also be required in order to protect the technology's secrecy.

The parties should also take into consideration that, in addition to SEPs granted abroad, other patents may also have been granted in Brazil, and a thorough verification is then necessary in order to confirm if further representations and warranties are required.

Therefore, the specific technology's features and related patents are of paramount importance and determine which warranties and liabilities are to be addressed in the agreement, thus protecting all the concerned parties.

17. Which body(ies), if any, is/are responsible for data protection regulation?

The National Data Protection Authority (ANPD) is an independent body within the federal public administration, connected to the Ministry of Justice and Public Security, which is responsible for ensuring, implementing, and supervising compliance with the Brazilian General Data Protection Act (Law 13,709/2018 – LGPD) in the national territory. ANPD is an entity of the indirect federal public administration, subject to a special autarchic regime and with its own assets. The main responsibilities of ANPD are the supervision and application of sanctions to organisations that violate LGPD, as well as regulation, guidance, handling of complaints from data subjects, international cooperation and supervision of personal data processing in the country.

18. Please summarise the principal laws (present or impending), if any, that govern data protection, including a brief explanation of the general purpose of those laws.

The Brazilian Federal Constitution (CF/1988) establishes fundamental principles of privacy and data protection. It declares the inviolability of privacy, private life, honour, and image of individuals, ensuring the right to compensation for economic and moral damages resulting from their violation. Constitutional Amendment 115 of February, 2022 explicitly recognized data protection as a fundamental right, amending Article 5 of the Constitution.

Brazil enacted the General Data Protection Act (Law 13,709/2018 – LGPD) in August 2018, with most provisions becoming effective in September 2020 after extensive legislative and executive deliberations. This Law comprehensively regulates the processing, collection, storage, processing, and disclosure of personal data by data processing agents. LGPD mandates adherence to principles such as purpose limitation, transparency, data security, free access by data subjects, prevention of harm, and non-

discrimination. It also requires data processing agents to appoint a Data Protection Officer (DPO) and make their contact details accessible for data subjects to exercise their rights.

In addition to LGPD, Brazil has specific legislation concerning Internet matters, notably the Brazilian Civil Rights Framework for the Internet (Law 12,965/2014, the Internet Law), which sets out principles, guarantees, rights, and obligations for Internet use in Brazil. Decree 8,771/2016 further regulates aspects related to the Internet Law, including the handling of registration data by public authorities, and the security and confidentiality of personal data and private communications.

Brazil has also enacted sectoral laws and regulations protecting privacy and data, including:

- The Civil Code (Law 10,406/2002), which grants general privacy rights and remedies against breaches by third parties;
- The Consumer Code (Law 8,078/1990), which enforces the principles of transparency, information accuracy, and data quality;
- The Wiretap Act (Law 9,296/1996), allowing interception of communications only with judicial authorization for criminal investigations or proceedings;
- The Telecommunications Act (Law 9,472/1997), providing privacy protections for telecommunications consumers;
- The Bank Secrecy Act (Complementary Law 105/2001) mandating financial institutions to maintain confidentiality of financial data, unless ordered otherwise by a judicial authority for investigation purposes;
- The Positive Credit Registry Act (Law 12,414/2011), allowing the inclusion of positive credit information while restricting excessive or sensitive data;
- Complementary Law 166/2019, amending the Positive Credit Registry Act to include individuals and legal entities in positive registration databases without prior request;
- Law 14,129/2021, establishing principles, rules, and instruments for Digital Government and emphasizing compliance with LGPD for data protection and privacy in governmental operations;
- Law 14,510/2022, regulating telehealth services through patient consent.

19. What is the maximum sanction that can be

imposed by a regulator in the event of a breach of any applicable data protection laws?

Under LGPD, the National Data Protection Authority (ANPD) is granted the power to impose fines of up to two percent (2%) of the revenue of the private legal entity, group, or conglomerate in Brazil from the previous fiscal year, excluding taxes. This fine is capped at fifty million Brazilian reais (BRL 50,000,000.00) per violation. Additionally, the following administrative sanctions may be applied:

- Daily fines within the total limit mentioned above;
- Warning, specifying the timeframe for corrective actions to be implemented;
- Publication of the confirmed infringement;
- Temporary blockage of the affected personal data until regularization;
- Deletion of the affected personal data;
- Partial suspension of database operations related to the violation, for up to six months, extendable for the same period pending rectification;
- Suspension of processing activities related to the affected personal data for up to six months, extendable for the same period;
- Partial or complete prohibition of activities related to data processing.

Sanctions are determined based on the severity, nature, and impact on personal rights of the violations, following guidelines outlined in Resolution CD/ANPD 4/2023 for the application of sanctions. ANPD's administrative sanctions do not preclude data subjects from seeking moral and material compensation through legal action against the company, without limitations.

Furthermore, under the Consumer Code, penalties such as imprisonment for six months to one year, fines, or both may be imposed for actions blocking or impeding consumer access to information stored in files, databases, or records, or for failure to promptly correct inaccurate consumer information.

The Brazilian Criminal Code (Decree-Law 2,848/1940), as amended by Law 12,737/2012, imposes penalties of imprisonment ranging from three months to one year, in addition to fines, for unauthorized intrusion into computer devices, whether connected to the Internet or not, with the intent to obtain, alter or destroy data or information, or to install vulnerabilities for gaining illicit advantage.

20. Do technology contracts in your country typically refer to external data protection regimes, e.g. EU GDPR or CCPA, even where the contract has no clear international element?

Usually, the external data protection regimes are mentioned in contracts when one of the parties is a processing agent operating internationally under global rules. Brazilian legislation currently imposes no requirements or prohibitions in this regard, and the principles of Brazilian Contract Law allow parties freedom to negotiate terms, including referencing and adhering to other regulations. It's crucial to emphasize that these regulations must align with Brazilian legislation, whether concerning data protection or any other subject.

21. Which body(ies), if any, is/are responsible for the regulation of artificial intelligence?

So far in Brazil, there is no dedicated organization tasked with regulating Artificial Intelligence (AI), as there has not yet been a law passed to rule on this area.

The Legislative Power started discussing the subject in 2020. Other Powers – Judiciary and Executive – are also dedicating themselves to the matter. The Ministry of Science, Technology and Innovation announced that it intended to deliver a plan for AI in Brazil in June, 2024, based on the Brazilian Artificial Intelligence Strategy, but this is yet to occur. The plan is to have a National Artificial Intelligence Regulation and Governance System (SIA), to monitor compliance with the law on Artificial Intelligence.

22. Please summarise the principal laws (present or impending), if any, that govern the deployment and use of artificial intelligence, including a brief explanation of the general purpose of those laws.

In Brazil, the adoption of Artificial Intelligence (AI) is currently under scrutiny with the introduction of Bill 2,338/2023, also known as the legal framework for artificial intelligence. This Bill aims to promote an environment conducive to the advancement of AI technologies. It consolidates elements from previous Bills: (i) Bill 5,501/2019, focused on establishing AI principles and regulation; (ii) Bill 872/2021, aimed at defining ethical frameworks for AI development and use; (iii) Bill 21/2020, which sought to create a comprehensive legal framework governing AI usage by public entities, businesses, and individuals, outlining principles, rights,

duties, and governance tools.

Bill 2,338/2023 emphasizes key principles such as inclusive and sustainable development; respect for ethics, human rights, democratic values, diversity; privacy protection; ensuring reliability security and transparency. The Bill specifies that AI should uphold principles and respect:

- autonomy of individuals
- safeguarding privacy
- maintaining social bonds
- ensuring comprehensibility and justifiability
- facilitating democratic scrutiny and public debate
- preserving cultural diversity
- incorporating safety measures allowing human intervention, when necessary
- ensuring non-discriminatory decisions
- adhering to governance standards for managing; and
- mitigating technological risks.

The text was presented at the Internal Temporary Commission on Artificial Intelligence in Brazil (CTIA), which is supposed to operate until July, 2024, if it is not further postponed. The Rapporteur received suggestions for changes until May, 2024 and, during a CTIA Meeting held in mid-June, 2024, it was decided that there will be five more public consultations to further discuss the consolidated text.

The current text defines "artificial intelligence system" as a "machine-based system that, with different degrees of autonomy and for explicit or implicit objectives, infers, from a set of data or information it receives, how to generate results, in particular, prediction, recommendation or decision that may influence the virtual or real environment," in addition to listing types of technology, such as generative AI.

With a risk classification system, the document is similar to both the European AI Act and the North American AI Executive Order, with a hybrid approach that involves several areas of the state apparatus. The rules described in the document are not valid for systems developed for private and non-economic use, nor for those developed for purposes of national defence or research activities, and for those in open and free formats, "except those considered high risk".

While specific AI regulations are pending in Brazil, existing laws like data privacy regulations, Internet use guidelines, and consumer protection laws may influence and impose obligations on stakeholders involved in AI

applications.

23. Are there any specific legal provisions (present or impending) in respect of the deployment and use of Large Language Models and/or generative AI?

There is no specific regulation or legal provision regarding this matter, but it is of great concern to the Brazilian legal scenario, since its applications of synthesis or manipulation of ultra-realistic audiovisual content, known as generative artificial intelligence, are of significant apprehension. This is because these systems can create images or videos capable of circumventing identity checks, allowing various frauds to be carried out. They can also be used to commit crimes against the honour, through tampering with records or creating synthetic images and videos, which are practically indistinguishable from real recordings. Thus, they can deceive a large part of the population with a potential to affect electoral processes. Therefore, this must be a topic for great discussion and regulation in the next steps on the legislative work.

24. Do technology contracts in your jurisdiction typically contain either mandatory (e.g mandated by statute) or recommended provisions dealing with AI risk? If so, what issues or risks need to be addressed or considered in such provisions?

At the moment, there are no mandatory clauses pertaining to artificial intelligence, though it is rightly recommended to include them, if such technology is to be used in a given contract. A recommendation would be, although not yet mandatory now, to include clauses for the respect for human rights, alongside privacy rights, which may result in a more specific clause of protection regarding the use of artificial intelligence.

25. Do software or technology contracts in your jurisdiction typically contain provisions regarding the application or treatment of copyright or other intellectual property rights, or the ownership of outputs in the context of the use of AI systems?

Currently, there are no required and/or specific clauses concerning artificial intelligence or its copyrights in contracts, but it is highly recommended to include them if AI is to be used under a given contract. As mentioned above, although not mandatory, it is of extreme importance and highly recommended to include clauses

focusing on respect of human rights and privacy rights as a good practice, which may lead to more specific protection regarding the use of AI.

26. What are the principal laws (present or impending), if any, that govern (i) blockchain specifically (if any) and (ii) digital assets, including a brief explanation of the general purpose of those laws?

Law 14,478/2022 (Cryptocurrency Law) regulates the cryptocurrency market in Brazil. This law defines virtual assets, providers, and addresses crimes involving fraudulent use of crypto assets and their respective penalties. According to this law, a virtual asset is defined as a digital representation of value that can be traded or transferred electronically, used for payments or for investment purposes. Moreover, providers of virtual asset services can only operate in Brazil after obtaining prior authorization from the Central Bank of Brazil (BCB).

The Cryptocurrency Law introduces a new form of fraud into the Brazilian Criminal Code (Decree-Law 2.848/1940), stipulating imprisonment from four to eight years and a fine for those organizing, managing, offering, or facilitating transactions involving virtual assets, securities, or any financial instruments to gain illicit advantage, deceiving or misleading others through deception, trickery, or any other fraudulent methods.

Under the Money Laundering Law (Law 9,613/1998), offenses involving virtual assets are treated as aggravated crimes, carrying penalties of imprisonment ranging from three to ten years, with an enhancement factor of 1/3 to 2/3 of such penalty for repeat offenses. Additionally, companies are required to maintain transaction records to furnish information to law enforcement agencies, aiding in the combat against money laundering and organized crime.

The primary Bills currently under consideration regarding digital assets are:

- Bill 2,681/2022, addressing the regulation of virtual assets by providers, covering their issuance, intermediation, custody, and settlement. It incorporates suggestions from the Bank for International Settlements (BIS). Additionally, the Bill mandates that all companies conducting business in Brazil, regardless of their headquarters' location, must register with the Brazilian National Register of Legal Entities (CNPJ);
- Bill 743/2022 – proposes changes to the Code

of Civil Procedure (Law 13,105/2015) to classify digital currencies such as altcoins as non-seizable assets;

- Bill 462/2022 – purports to modify the Code of Civil Procedure (Law 13,105/2015) to empower the court to issue official requests to crypto brokerage firms (exchanges), seeking information on the existence of crypto assets classified as payment tokens (not considered cryptocurrencies) and altcoins; (digital currency-type crypto assets);
- Bill 50/2022, suggesting establishing a national program enabling the conversion of tax credits into virtual assets, designated solely for the settlement of other taxes, aimed at enhancing the international competitiveness of the Brazilian economy;
- Bill 3,876/2021, with provisions for civil liability concerning cryptocurrency investments in Brazil;
- Bill 3,908/2021, stipulating that a portion of an employee's remuneration may, at their discretion, be paid in cryptocurrencies.

As for regulation of blockchain, the main Bills in progress are:

- Bill 2,987/2023, aimed at revising the Access to Information Law (Law 12,527/2011) to guarantee the auditability, authenticity, immutability and security of information;
- Bill 936/2023, proposing to incorporate blockchain technology into the "Statute of the Artisanal Miner" (Law 11,685/2008) to combat illegal gold mining in Brazil and to facilitate the investigation of illicit activities within the mining sector;
- Bill 2,580/2023, mandating the implementation of a compulsory digital tracking mechanism (blockchain) for operations involving gold.

27. Please summarise the principal laws (present or impending), if any, that govern search engines and marketplaces, including a brief explanation of the general purpose of those laws.

Although currently there are no dedicated authorities responsible for regulating search engines and online marketplaces, providers of search engines and marketplaces in Brazil are required to comply with regulations outlined in several key laws:

- The Internet Act (Law 12,965/2014), which governs Internet use in Brazil, defining

principles, rights, and responsibilities for users and setting guidelines for governmental actions;

- The General Data Protection Act (Law 13,709/2018), which mandates that personal data processing must adhere to legal requirements;
- Decree 7,962/2013, which regulates e-commerce transactions in Brazil;
- The Consumer Code (Law 8,078/1990), the provisions of which must observe the principles such as transparency, information provision, and data quality in consumer transactions;
- Law 9,609/1998, which regulates the protection and commercialization of software and stipulates rights and obligations related to its use.

These laws collectively establish the regulatory framework for search engine and marketplace providers, ensuring compliance with standards related to Internet governance, data protection, software rights, consumer rights, and ecommerce operations.

28. Please summarise the principal laws (present or impending), if any, that govern social media, including a brief explanation of the general purpose of those laws?

The main law that governs social media is the Internet Act (Law 12,965/2014), which establishes principles, guarantees, rights and duties for the use of the Internet in Brazil. This Law defines the responsibility of Internet providers and platforms in relation to content published by users. However, there are other laws that also address the subject, as follows:

- Brazilian General Data Protection Law (Law 13,709/2018 – LGPD): Regulates the processing of personal data by companies and organizations, including those operating social media, guarantying the privacy and protection of user data.
- Statute of the Child and Adolescent (Law 8,069/1990 – ECA): Establishes provisions on the protection of children and adolescents, including aspects related to the exposure and use of social media.
- Brazilian Criminal Code (Law 2,848/1940): this law may be applied to cybercrimes such as libel, slander and other offenses that may occur on social media.

- Copyright Law (Law 9,610/1998): Regulates copyright on content published on social media, protecting the intellectual property of texts, images, videos, music, and others.

Apart from the above list, there are some Bills that also relate to the matter. The main proposal under discussion is Bill 2,630/2020, aiming to implement the "Brazilian Law of Freedom, Responsibility and Transparency on the Internet". This Bill proposes to establish rules on the transparency of social networks and private messaging services, including transparency concerning sponsored content, especially regarding providers' responsibility. The main purpose of this Bill is to prevent the dissemination of fake news that could cause individual/collective damage and threats to democracy. This Bill has already been approved in 2020 by the Senate and is currently being analysed by the Chamber of Deputies. It is crucial to closely monitor the progress of this Bill, as it has the potential to significantly alter the current system in Brazil.

Additionally, there are other Bills under discussion also addressing social media:

- Bill 870/2021 – proposes to amend LGPD to provide for the marketing, provision and sharing of social networks user information by its providers;
- Bill 613/2022 – proposes mandatory user identification on social media platforms and news providers operating on social networks;
- Bill 777/2022 – proposes amending the Brazilian Criminal Code to include that the apology of a crime may occur over the Internet, including on social networks;
- Bill 2,821/2022 – proposes modifying the Internet Act, to limit the dissemination of content that encourages hatred, discrimination or prejudice on social networks and on search platforms;
- Bill 2,120/2023 – proposes the creation of the Legal Framework for Digital Platforms, intended to set forth regulations and principles to uphold freedom, responsibility, and transparency on the Internet, while ensuring the rights of users, with a particular focus on providing comprehensive and prioritized protection for children and adolescents
- Bill 2,532/2023 – proposes to require that Internet service providers and social networks take proactive measures against the unauthorized sharing of intimate content, in order to protect individuals' privacy, dignity, and integrity.

29. What are your top 3 predictions for significant developments in technology law in the next 3 years?

- Artificial Intelligence (AI): the use of AI has been continuously increasing in Brazil, similarly to what is happening worldwide. In fact, AI features have already been broadly adopted by several economic segments, and so have also been machine learning and deep learning capabilities. This scenario has led to the need to discuss how these technologies are to be used and, consequently, to the need of instituting a regulation on AI. In Brazil, Bill 338/2023, the so-called legal framework for artificial intelligence, is presently being discussed in the National Congress, and is expected to be voted as a priority.
- Freedom, Responsibility and Transparency on the Internet: Efforts to fight fake news have been ongoing already for some years. Indeed, Brazil has acknowledged the need to set legislation concerning transparency of social networks, messaging services, responsibility of providers for spreading misinformation, and other relevant aspects; additionally, establishing proper provisions on sanctions for non-compliance with the legislation is also deemed an important matter. On the subject, Bill 2630/2020 is being discussed in the National Congress.
- More recent telecommunications technologies, such as the 5G, are boosting the emergence and advancement of new capabilities of several connected devices. This fact may give rise, in the future, to the need to regulate the characteristics, trading and use of these devices, as well as the liability of the parties which manufacture these devices and make them available on the market.

30. Do technology contracts in your country commonly include provisions to address sustainability / net-zero obligations or similar environmental commitments?

Similarly to other countries, awareness regarding environmental issues has increased significantly in Brazil and several initiatives encompassing environmental commitments have been adopted both in the public and private sectors. For example, research aimed at the development and production of renewable energies has been ongoing for many years now; the use of solar energy and wind power is continuously increasing throughout the country; and strategies aimed at mitigating the negative effects of human and business activities are constantly being discussed.

Reflecting these measures, agreements entered into in Brazil, including technology agreements, usually include clauses dealing with environmental, social and governance (ESG) issues, not rarely also addressing specific matters such as net-zero obligations, being these clauses widely acknowledged to positively diminish the aforementioned impacts on the environment; consequently, they also lead to better reputation of the parties involved and, at last, result in higher profitability.

It is also worth noting that, in Brazil, several environmental obligations are to be complied with by companies. In technology contracts, compliance with the National Environmental Policy (Law 6,938/1981) is commonly required from the relevant parties.

Also recognizing the relevance of environmental issues, certifications such as ISO 14001, ISO 14004, Green Seal and PROCEL have been created and are granted to companies proven to decrease the use of toxic raw materials and implement systems aimed at reducing energy consumption and waste.

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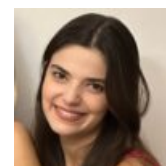
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