

# Let's Talk **Privacy** IN BRAZIL



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**Keeping up with Brazil's most relevant privacy and data protection news.**

With our regular updates on Brazilian Privacy and Data Protection issues, our objective is to keep you informed on the latest developments in these areas, as well as to provide recent examples demonstrating how companies are already being affected by the new legislation in practice.

# ANPD – Brazilian DPA publishes 2021-2022 Regulatory Agenda

Considering the prolonged silence of the Brazilian authority since its creation and the enactment of the law on September 18, 2020, the publication of the Agenda gives us a first glimpse on ANPD's levels of priority for each matter.

## ▶ From January 2021 to July 2022:

- ANPD Internal Regulations and Bylaws;
- ANPD Strategic Planning;
- Resolution on Initiatives for Small and Medium Enterprises, as well as Individuals;
- Resolution on Administrative Fines;
- Resolution on Incident Reporting and Deadlines; and
- Resolution on Parameters for Impact Assessments (DPIAs).

## ▶ From January 2022 to December 2023:

- Resolution on the Role of the DPO; and
- Resolution on International Data Transfers.

## ▶ From January 2022 to July 2024:

- Resolution on Data Subject Rights.

## ▶ From July 2022 to December 2024:

- Best Practices Guide on the Legal Basis for Data Processing.

A forecast of semi-annual reports to monitor the regulatory initiatives is foreseen in the Agenda, with an express provision allowing for readjustment of the established dates in the 2021 final report. In addition, the ANPD's CEO may also change the goals and dates described above by a resolution of the Board of Directors. In that sense, although the Brazilian data protection community celebrated this news, the scenario is still uncertain and we will keep monitoring the next steps.

The authority was formally initiated in November 2020, and is currently in the process of establishing its directors, staff and basic constitution. It has already started in its function as information provider, and those eager to get basic information about the agency can access the newly established FAQ section on its website. It is worth mentioning that it is only in August 2021 that LGPD (the Brazilian Data Protection law) administrative penalties for non-compliance will start being issued by the ANPD.

# Brazil 's biggest data leak to date: 220 million people affected, a number greater than the country 's population

During January 2021, Brazil experienced what could be its biggest data leak to date, involving the personal data of more than 220 million people and 40 million companies. The number of leaked data is greater than the number of inhabitants in Brazil.

The breach is said to have leaked personal ID numbers (CPF), dates of birth, and full names of nearly all of the Brazilian population, besides their addresses; headshots; credit scores, income and other financial information; individual income tax; telephone service registration data; information on schooling; social payment benefits; data relating to public servants; and LinkedIn information.

At this point it is still unclear who is responsible for the leak. Consumer protection agencies such as Procon and Senacon have already done their part asking for further clarification from Serasa Experian (a company providing information and data services), which has denied that the leak originated from its base. The Federal OAB (the Brazilian bar association) has also filed a request with the ANPD to investigate and assert its position on what happened, but the agency has not yet done so.

It is worth mentioning that in a number of recent incidents, Serasa Experian has been challenged in Brazil for its alleged commercialization of personal data. In the first of these incidents, a Brazilian Federal

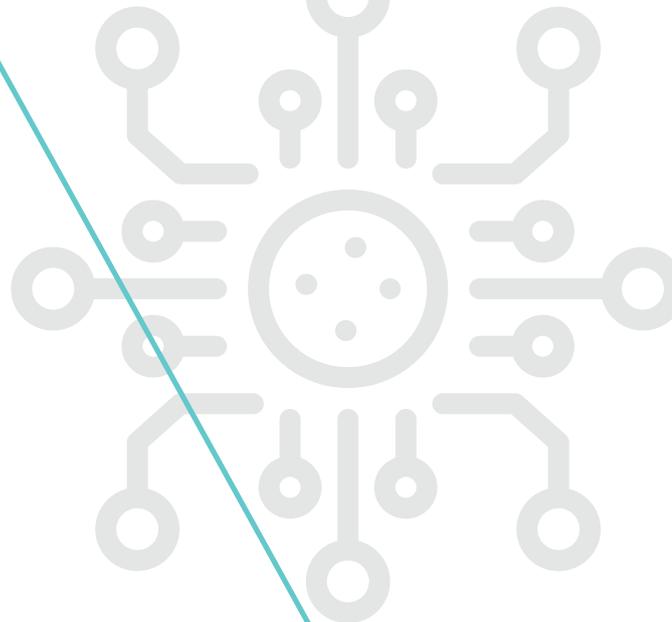
District Court in Brasilia ordered the company to stop selling personal data of consumers, under penalty of a daily fine.

The case involved a civil action taken by the Public Prosecutors Office, alleging that the company's activities violate the LGPD (Brazil's Data Protection Law). The case alleges that the company sells personal profile information (including in packages starting at a cost of R\$1 per registered person) to companies looking to attract new customers, and that it is involved in the trade of the personal data of more than 150 million Brazilians, including names, personal ID numbers (CPF), telephone numbers, location, financial profile, purchasing power, and social class.

The public prosecutor that brought the action argued that the practices also violate other laws, such as the Brazilian Civil Code, the Consumer Protection Law, and the Brazilian Civil Rights Framework for the Internet.

It is clear that in practice, the Brazilian Judiciary is already dealing with a significant overlap between data protection and privacy issues with consumer protection and employment law, as well as other issues considered to be in the public interest. To date, however, these types of actions have had mixed outcomes, generating legal uncertainty, and reinforcing the need for clearer standards in privacy and data protection matters.

# The Brazilian Superior Court of Justice, the Brazilian Electoral Superior Court and the Ministry of Health were all victims of personal data leaks in 2020



The Brazilian Superior Court of Justice's (STJ) was the subject of a suspected ransomware virus attack in November of last year, leading to an interruption of several judgments and suspension of procedural deadlines, due to an invasion by hackers of the STJ systems.

The attack is suspected to have used the same malicious ransomware programs that were already used in various attacks on governments and organizations around the world, which hijack large amounts of data and request a ransom for their release and threaten to leak such data in cases of non-compliance.

It is among the most serious of such incidents to occur in Brazil to date and is reported to affect as many as 12,000 lawsuits pending before the courts. There is a real worry in this case that the material accessed by the hackers is already copied and under their control. This shows the vulnerability of the public systems in Brazil in terms of data protection and the need for urgent measures to be taken by all public authorities in order to prevent such incidents.

Hackers also attacked the Brazilian

Superior Electoral Court system during the period of the municipal elections in November 2020, leading to the leak of significant private data. According to local Brazilian news outlets, the crimes committed were the invasion of a computer device and the establishment of criminal association, as defined by the Brazilian Penal Code, as well as other crimes under Brazilian electoral law. In an international operation, a number of Brazilian and Portuguese hackers have already been arrested.

An invasion of Ministry of Health websites, also during 2020, interfered with the release of data on Covid-19, and is also being linked to the same international group of hackers. Personal information from patients with suspected or confirmed Covid-19 diagnoses was made available on the internet for almost a month after Ministry of Health passwords were posted on an open platform. The passwords allowed access to data such as personal ID numbers (CPF), addresses, telephone numbers and details of pre-existing illnesses of at least 16 million people across the country, including President Jair Bolsonaro and other members of the Government.

# Privacy policy changes by big tech companies subject to scrutiny in Brazil

Following similar developments across the world regarding WhatsApp's new privacy policy, the company is now facing tough questions in Brazil about compliance with the LGPD (the country's Data Protection Law).

The new policy allows for the sharing of key personal data with its parent company Facebook (e.g., phone numbers and other data registered in the user's account, information about the type of handset used, details about the usage patterns of the tool, photos of the users and their meta-data).

The new policy is due to take effect on February 8 and is mandatory for users who wish to continue using the service. It was recently reported that Facebook, was given notice by Procon-SP (the state agency in Sao Paulo dealing with consumer protection issues) requesting more information regarding the legal basis for the sharing of such data under the LGPD, as well as seeking an explanation of why the company allegedly treats customers differently in other regions.

The case highlights the strong connection between data protection and consumer issues in Brazil. Brazilian consumer protection authorities operate independently of the powers given to the Brazilian Data Protection Authority (ANPD) and they are currently taking on an important role in calling Brazilian companies to action by auditing them on data protection compliance and issuing penalties regardless of the fact that administrative penalties will only be issued by the ANPD from August 2021 onwards.



Please get in touch with our Technology, Cyber security, and Data Protection Team if you would like to discuss any matter further.

# OUT TEAM

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**THAMILLA TALARICO**  
thamilla.talarico@daniel-ip.com



**NURIA LÓPEZ**  
nuria.lopez@daniel-ip.com



**ANDRÉ OLIVEIRA**  
andre.oliveira@daniel-ip.com



**RENATO MALAFAIA**  
renato.malafaia@daniel-ip.com



**SOFIA MANDELERT**  
sofia.mandelert@daniel-ip.com

**DANIEL**

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[www.daniel-ip.com](http://www.daniel-ip.com)