

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



**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.

## Brazilian DPA Administrative Sanctions now apply!

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On August 1st, the LGPD (Brazil's data protection law) finally came into full effect. This means that Brazilian companies that do not comply with this legislation may be subject to sanctions by the Brazilian DPA (ANPD).

These may include (i) warnings; (ii) disclosure and publicization of an infraction; (iii) blocking, suspension, deletion and prohibition of the personal data processing; and (iv) fines up to two percent (2%) of yearly revenues in Brazil, up to a total maximum of R\$ 50 million (approximately USD 10 million) per infraction.

However, the Brazilian DPA has already issued declarations affirming that sanctions will only be possible after the approval of specific regulations on the administrative sanctioning process. This step is expected to happen in the coming weeks. The DPA is also still discussing methodologies for calculating administrative fines.

As discussed in our recent [post](#), the Brazilian Judiciary has already been dealing with diverse actions based (at least partly) on the new law. This is because there is significant overlap with other areas of Brazilian law, for example in cases related to consumer, employment, and public interest law.

With the beginning of the ANPD compliance activities, it is likely that the number of such actions will increase.

You can access [more](#) information about the ANPD's sanctioning powers [here](#).

# Standard Contractual Clauses for International Data Transfers?

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During the recently held 11th Internet Forum in Brazil, the Director of the Brazilian DPA (ANPD) Miriam Wimmer confirmed that the authority is likely to choose the standard contractual clauses model for international data transfers as one of the authority's first steps.

The Director announced they intend to do so firstly by issuing standard contractual clauses, but also implied that the Brazilian clauses will follow New Zealand's model, with shorter, simpler clauses, instead of the European guidelines.

It seems that the ANPD is taking a pragmatic approach by opting to handle such movements in a manner that is cost effective for companies of different sizes and with an understanding that such movements are an essential element in e-commerce transactions.

## ANPD Guidelines on Data Processing Agents

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In May, the Brazilian DPA issued its first guidelines on the roles of Data Processing Agents (Controller/Processor) as well as on the role of the Data Protection Officer.

The authority's guidelines closely resemble those of the European Data Protection Board on the same subject. As the LGPD is strongly inspired by the GDPR, similar guidelines on the subject and content are expected to be announced in the upcoming months.

The ANPD is also currently accepting comments from the public about the guidelines and these will be updated in future based on the consultation process.

While the initial guidelines are non-binding in nature, they provide welcome clarity in relation to these different positions.

## The LGPD and Cookies

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In Brazil, Law 12.965 (known as the Internet Civil Framework) previously regulated the use of Cookies on websites. While such practices were considered legal, the user had to be informed in a clear and precise manner. Further, express consent in advance was already required for the “third party type Cookies”.

The LGPD now provides for a broad definition of personal data, and following the European approach, most Cookies will certainly fall under its remit (unless the user is not identifiable or in situations where such data stays completely anonymous).

The use of Cookies in Brazil therefore requires careful consideration of the rules in the LGPD, including the principles of purpose, adequacy, free access, quality, necessity, security, prevention, non-discrimination, and accountability (Article 6).

Under the law, the purpose for which the data is collected and processed must be legitimate and strictly necessary, and the data subject must be clearly informed of such purpose.

# In the News...

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## Nearly 30m in Fines for Brazilian Banks!

The National Consumer Secretariat at the Ministry of Justice (SENACON) recently imposed significant fines on 5 Brazilian banks, based on alleged breaches of the Brazilian Consumer Defense Code, the Internet Civil Framework and the LGPD.

It was alleged that the banks in question used personal data of elderly persons to harass them with credit proposals through their representatives. It was further alleged that consumers were not informed of the use of data and its registration.

The total amount of fines in these cases reached an astonishing R\$29,900,000.00 (respectively, Itaú 9.6m, BMG 5.1m, Pan 8.8m, Crop 2.4m, Cetelem 4m).

## Brazil's Credit Lending Companies in the Spotlight!

Having already applied heavy fines on numerous Brazilian banks recently (see previous item) the National Consumer Secretariat at the Ministry of Justice (SENACON) has now turned its attention to an investigation of major players in Brazil's financial credit lending industry.

The investigation is focused on the companies' activities in collecting and selling personal data, which are regulated by the Brazilian Consumer Defense Code and the Internet Civil Framework.

The allegations mainly concern questions of consent in terms of the companies' collection and use of personal data before the enactment of the LGPD.

In such actions, it is interesting to observe that in

addition to applying sanctions, SENACON also sends these cases for further assessment to the ANPD, which highlights the extensive overlap and cooperation between the different Brazilian authorities acting in respect of these type of matters.

It is important to highlight that the ANPD already has technical cooperation agreements signed with SENACON, the Information and Coordination Center of dot.BR ('NIC.br'), and with the National Antitrust Authority (CADE), which allow for the development of joint actions.

## Data Leak Affects 227 Million People!

Cyber specialists recently reported that personal data affecting over 227 million Brazilians (both living and deceased) were leaked and put up for sale on the Internet, including names, dates of birth, addresses, details of gender, and photos.

The presence of images in the leak is significant as it means that the data were likely used as part of an authentication system, a process often used in banking or other financial services.

The origin of the leak is still uncertain.

## Enjoyed Our Updates?

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With all the recent changes for privacy and data protection matters, companies must stay vigilant in all transactions involving personal data, especially sensitive data (i.e., data which helps to identify people).

With these updates we intend to keep you informed of the latest privacy and data protection matters in Brazil.



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

# OUR TEAM

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