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Brazil

TMT

Contributor

Azevedo Sette Advogados

Ricardo Barretto Ferreira da Silva

Senior Partner | barretto@azevedosette.com.br

Lorena Pretti Serraglio

Coordinator | lserraglio@azevedosette.com.br

Ingrid Bandeira Santos

Associate | isantos@azevedosette.com.br

Sylvia Werdmüller von Elgg Roberto

Associate | selgg@azevedosette.com.br

Bruna Evellyn Pereira Bigas

Associate | bbigas@azevedosette.com.br

Carolina Simioni Perdomo

Associate | cperdomo@azevedosette.com.br

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

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

Software in Brazil is mainly regulated by Law 9609/1998 (Software Law) and, subsidiarily, by Law 9610/1998 (Copyright Law), where applicable.

Software is also subject to sparse rules, such as tax and health regulations, for instance. Brazil must comply with the World Trade Organization (WTO)'s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which was incorporated in the Brazilian legal system through Decree 1355/1994. Moreover, Brazil is a contracting party to the Berne Convention (Paris Act, 1971) and to the Patent Cooperation Treaty, both administered by the World Intellectual Property Organization (WIPO).

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

Law 9609/1998 (Software Law) regulates software protection, its commercialisation in Brazil, establishes rights and obligations, including pertaining to licensing and technology transfer, and stipulates violations and penalties. This law follows the TRIPS Agreement by establishing that software, whether in source or object code, shall be protected as literary works, leading to the subsidiary application of Law 9610/1998 (Copyright Law) and of the Berne Convention (1971).

Under the Brazilian Software Law, the protection rules include:

- protection of the software for 50 years from the year after the year of its publication or creation;
- rights of the author to claim authorship and to oppose unauthorized modifications;
- no requirement of registration. Registration, if requested, must observe the rules and procedures of the Software Law, of Decree 2556/1998 and of the Brazilian Institute of Industrial Property (INPI);
- granting of the Software Law rights to foreigners domiciled abroad if their countries of origin provide equivalent protection to Brazilians and foreigners domiciled in Brazil.

Law 9279/1996 (Industrial Property Law) excludes software from the protection granted to patents.

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 considered "authors", but, as specifically provided by the Software Law, such creators only have economic rights associated to the software, in opposition to moral rights (except for authorship rights, i.e., the author must be recognized). Unless otherwise agreed, the proprietary rights in the software created by an employee or by a service provider belong to the employer or to the party contracting the software development, assuming the development occurred during the term of the corresponding employment or service relationship, and when such activity is foreseen or expected or when it derives from the nature of the duties arising from such relationships.

Accordingly, the rights on software belong exclusively to the employee or service provider when the software is developed outside the scope of employment or service agreements and without recurring to resources, technological information, industrial and business secrets, inputs, facilities or equipment of the employer or contracting entity.

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

computer systems?

The Consumer Protection Code (Law 8078/1990) regards suppliers of products or services

liable for harm caused to consumers. The standard is of strict liability for error or defects of products or services, as well as for insufficient or inadequate information on their use and risks. The Civil Code (Law 10406/2002) may also apply.

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

Under the Software Law, the use of software in Brazil shall be subject to a Licence Agreement or, if non-existent, its acquisition or licensing regularity may be proved with a fiscal document demonstrating acquisition or licensing of a copy.

Offenses against software copyright may subject the violator to penalties of detention from 6 months to 2 years or fine. If the violation consists of reproduction of software for commercial purposes without express authorization of the author or their representative, or if the violation involves selling or exposing for sale, introduction in the Brazilian territory, purchasing, hiding or maintaining in storage, for commercial purposes, original or copy of software produced in violation of copyright, the penalties are of detention from 1 to 4 years and 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?

Although there is no specific regulation applicable to the use of cloud technology, there are sparse rules on the matter. The Internet Act (Law 12956/2014) provides for principles, rights and obligations regarding the use of the Internet in Brazil, with obligations for Internet connection and application providers relevant for cloud computing solutions in general.

Law 13709/2018 (General Data Protection Act or "LGPD") sets forth rules on the processing of personal data, regardless of the type of industry or business. This law impacts cloud computing and providers, as controllers or processors of personal data, in particular regarding requirements for processing personal data and for data transfers.

Normative Instruction 5/2021 of the Institutional Security Cabinet of the Presidency (GSI/PR) establishes the minimum information security requirements for the use of cloud computing solutions by the governmental bodies and entities in the federal administration.

Furthermore, the Brazilian Monetary Council issued the Resolution 4893/2021, establishing the cybersecurity policy and requirements for contracting cloud computing and storage services for financial institutions.

In addition, the Brazilian Superintendence of Private Insurance ("SUSEP") has issued standard cybersecurity rules under Circular Notice 638/2021, which must be observed by insurance companies and their service providers, applicable also to cloud services in general.

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 expected and a very common market practice that a software vendor wishes to cap its financial liability to a customer and limitation of liability is not forbidden. However, case law varies considerably regarding the possible caps to indemnification in connection with technology contracts, especially considering the rules of indemnification foreseen 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 mentioned above, case law varies considerably regarding the possible caps to indemnification in connection with technology contracts, leaving margin for the parties to debate, in each specific context, the level of liability in each private contract.

In practice, issues related to breaches of confidentiality and data protection are usually pushed by the contracting parties so that there is no limitation of indemnity, but the software supplier does not always accept such condition.

Software vendors always prioritise the inclusion of clauses that exclude indemnities for indirect, incidental, special, punitive or consequential damages. With regard to direct damages, it is quite common for companies to limit the amount of compensation to the 12-month contract period, for example.

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?

Information on escrow providers typically used in private software transactions is not publicly available.

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

Yes. Imports and exports of sensitive goods of specific or of double use related to nuclear, biological, chemical and missile areas (equipment, inputs, software and technologies) and services directly linked thereto require clearance. Public and private entities are subject to this requirement. Clearance is granted by the Ministry of Science, Technology and Innovation ("MCTI").

In terms of counterfeit protection, under the Software Law, introduction in the Brazilian territory, for commercial purposes, of original or copy of software produced in violation of copyright is a crime and subjects the violator to penalties of detention from 1 to 4 years and fine.

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

There are no laws specifically governing IT outsourcing transactions.

Therefore, the IT outsourcing agreement is a means to regulate the relationship between the concerned parties and, as such, shall address all aspects relevant to the transactions, including, but not limited to, those related to the scope of activities to be carried out by IT outsource providers, data security and 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.

According to the amendments introduced by Law no. 13,429, dated March 31, 2017, to Law no. 6,019, dated January 3, 1974 (which regulates both the outsourced and the temporary labor), a company may outsource any of its activities to third-party providers.

Even though the outsourcing of activities is allowed, certain limitations apply. Very important in this regard, employees dismissed by a company may not provide services to the same company (i.e., to their former employer) as employees of outsource providers until at least 18 months have elapsed since the date of their dismissal. 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, might be contracted as a third-party outsource provider; however, this restriction does not apply in case the partners of the third-party outsource provider are retired individuals.

Moreover, Decree-Law no. 5,452, dated May 01, 1943 (the Consolidated Labor Laws, which regulates labor in Brazil) 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 set other rights supplementary to those already ensured by the Consolidated Labor Laws.

13. Which body(ies), if any, is/are responsible for the regulation of telecommunications networks and/or services?

The National Telecommunications Agency (ANATEL) is the body which regulates and supervises telecommunications in Brazil, setting forth rules concerning fixed switched telephone services, personal mobile services, multimedia communications services (such as fixed broadband), pay TV (named conditioned

access services in Brazil) and others, as well as the technical aspects related thereto and equipment requirements.

The Ministry of Communications is the authority which controls radio and free-to-air television broadcasting services. However, regulations issued by ANATEL are also applicable with regard to the technical aspects, radio frequency use and compliance of equipment related to broadcasting activities.

The National Cinema Agency (ANCINE) is the body which regulates audio-visual contents in terms of registration of works and implementation of government policies aimed at the development of the Brazilian cinematographic sector.

Since telecommunications services providers and broadcasters are subject to the legislation concerning the prevention and repression of violations of the economic order, in particular Law no. 12,529/2011 (the Antitrust Act), acts of concentration or which imply in violation thereof must be submitted to the Administrative Council of Economic Defence (CADE), which is the authority that enforces antitrust regulation and promotes competition.

14. 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 no. 9,472, dated July 16, 1997 (the General Telecommunications Law, LGT), which sets that the Union, by means of 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 no. 4,117, dated August 27, 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.

However, pay TV services (named conditioned access services in Brazil) are not regulated by the Telecommunications Code, but rather by Law no. 12,485, dated September 12, 2011, which 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.

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

The Brazilian General Data Protection Act (Law No. 13,709/2018) defined the National Data Protection Authority (ANPD) as a public administration body responsible for ensuring, implementing, and supervising compliance with this law throughout the national territory. The ANPD will be responsible for defining the minimum level of security, data portability rules, application of sanctions and other factors in the LGPD. In June 2022 a Provisional Measure No. 114/2022 was published to transform ANPD into an entity of the indirect federal public administration, subject to a special autarchic regime and with its own assets.

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

The Brazilian Federal Constitution (“CF/88”) sets forth the core principles of privacy and data protection. According to the CF/88, privacy, private life, honor, and image of individuals are inviolable, and the right to be compensated for economic and moral damages resulting from violation thereof is ensured. In February 2022, Constitutional Amendment No. 115 changed the Brazilian Constitution to insert in the list of article 5th, expressly, the data protection as a fundamental right.

Brazil enacted, in August 2018, the General Data Protection Act (Law No 13,709/2018 – “LGPD”), most provisions of which came into force in September 2020, following legislative and executive discussions on the issue. The articles that provide for the administrative sanctions applicable to non-compliance agents came into force in August 2021, through Law No. 14,010/2020.

LGPD provides a wide regulation for data protection,

including collection, storage, registration, monitoring, processing, and disclosure of personal data processing agents. The LGPD requires that personal data processing activities comply with several principles, such as purpose, transparency, security, free access by the data subject, prevention of damages, and non-discrimination. In addition, the legislation requires processing agents to appoint a Data Protection Officer (DPO) and to disclose in an accessible and transparent manner their contact details so that data subjects can exercise their rights.

In addition to all the specific data protection framework, Brazil also has legislation on Internet matters. Currently, one of the most important sectoral laws is the Brazilian Civil Rights Framework for the Internet (Law No. 12.965/2014, the "Internet Law") which establishes principles, guarantees, rights, and obligations for the use of the Internet in Brazil. Besides, Decree No. 8,771 of May 11, 2016, which regulates the Internet Law, sets forth the rules related to the request of registration data by public administration authorities, as well as the security and confidentiality of records, personal data, and private communications.

There are other sectorial laws and regulations concerning rights to privacy and data protection, including, but not limited to:

- Civil Code (Law No. 10,406/2002) grants general privacy rights to any individual and the right to claim against any attempt to breach such rights by any third party;
- Consumer Code (Law No. 8,078/1990) provides for the principles of transparency, information, and quality of data on its provisions;
- Positive Credit Registry Act (Law No. 12,414/2011) permits databases of 'positive' credit information (i.e., fulfillment of contracted obligations) but prohibits the registry of excessive information (i.e., personal data which is not necessary for analyzing the credit risk) and sensitive data;
- Complementary Law No. 166/2019 that amends the Positive Credit Registry Act, authorizing the inclusion of natural persons and legal entities in positive registration databases, without their prior request;
- Telecommunications Act (Law No. 9,472/1997) grants privacy rights to consumers about telecommunications services;
- Wiretap Act (Law No. 9,296/1996) establishes that interception of communications can only occur by court order upon request by police authorities and the Public Prosecutor's Office for purposes of criminal investigation or discovery in criminal proceedings;
- Bank Secrecy Act (Complementary Law No. 105/2001) requires that financial institutions (and similar entities) hold financial data of individuals and entities in secrecy, except under judicial order issued for purposes of investigation of any illegal acts or discovery in criminal proceedings;
- Law No. 14.510/2022, which establishes the practice of telehealth, through the patient's free and informed consent;
- Law No. 14,129/2021 provides for principles, rules, and instruments for Digital Government and the increase of public efficiency, and foresees data protection and privacy as a governmental principle, mentioning the compliance with LGPD.

17. What is the maximum sanction that can be imposed by a regulator in the event of a breach of any applicable data protection laws?

As per the LGPD, the ANPD may apply a fine of up to two percent (2%) of the turnover of the legal entity subject to private law, group or conglomerate in Brazil in the last fiscal year, excluding taxes, limited to the aggregate amount of fifty million Brazilian reais (R$50,000,000.00), per infringement. Also, others administrative sanctions may be imposed:

- A daily fine, observing the total limit referred to above;
- Warning, with an indication of the period for the adoption of corrective measures;
- Publication of the infraction after duly ascertained and confirming its occurrence;
- Blocking of the personal data to which the infraction refers until its regularization;
- Deletion of the personal data to which the infraction refers;
- Partial suspension of the operation of the database to which the violation refers for a maximum period of 6 (six) months, extendable for the same period until the controller's regularization of the processing activity;
- Suspension of the exercise of the processing activity of the personal data to which the infraction refers for a maximum period of 6 (six) months, extendable for the same period;
- Partial or total prohibition of the exercise of activities related to data processing.

The violations will be evaluated and ranked according to severity, nature, and personal rights affected. Monetary sanctions will be defined according to the parameters presented in the Regulation on How to Proceed with Application of Sanctions (Resolution CD/ANPD No. 4).

The application of an administrative sanction by the ANPD to the company does not prevent the data subject from seeking moral and material compensation in the courts against the company, and for that there are no limits.

The Consumer Code determines a penalty of six months to one-year imprisonment or fine, or both, to those who block or hinder access by the consumer to respective information contained in files, databases or, records, or those who are expected of knowing that information relating to the consumer as contained in any file, database, record or registration is incorrect and, nevertheless, fail to immediately rectify it. The same statute sets forth administrative penalties imposed by the authorities in charge of protecting consumer rights, and such penalties include fines, intervention and, counter-advertising.

The Brazilian Criminal Code (Decree-Law 2.848/1940), as amended by Law 12.737/2012, sets forth the penalty of three months to one-year imprisonment and a fine for those who invade another computer device connected or not to the internet through improper breach of security mechanism and for the purpose of obtaining, tamper or destroying data or information without the explicit or tacit authorization of the device owner or installing vulnerabilities to gain an illicit advantage.

18. 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?

Not necessarily. Mention of external personal data protection regimes generally occurs when one of the parties is a processing agent that operates internationally and has global rules on the matter. There is no requirement or prohibition in the current Brazilian legislation in this sense, so that the parties are free to negotiate, including with regard to the mention and compliance with other regulations. However, it is important to note that these regulations do not conflict with the provisions of the Brazilian legislation (whether on data protection or any other matter).

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

Up to this point, in Brazil, there is no specific body responsible for the regulation of artificial intelligence, since there is still no approved law regulating the matter. A Bill that aims to regulate the matter could be presented by any parliamentarian (deputy or senator), individually or collectively, by any committee of the Chamber of Deputies, the Federal Senate or the National Congress, by the President of the Republic, the Supreme Court, the Superior Courts, and the Attorney General of the Republic. The Brazilian Constitution also provides for the popular initiative for laws, allowing citizens to submit bills to the Chamber of Deputies, provided that they meet the requirements established in §2º of art. 61.

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

The use of artificial intelligence (AI) is currently being discussed in Brazil through Bill No 2.338/23 (known as the legal framework of artificial intelligence), which establishes the “Use Artificial Intelligence”, with the goal of stimulating the formation of a favourable environment for the development of technologies in AI. This bill is the result of a union of other previous bills that discussed the topic:

- Bill No 5,501/2019 – intended to establish the principles for the use of AI and regulate its use;
- Bill No 872/2021 – intended to provide for the ethical frameworks and guidelines that underlie the development and use of AI; and
- Bill No 21/2020 – intended to create the legal framework for the development and use of artificial intelligence by public authorities, companies, and individuals, and the text established principles, rights, duties, and governance instruments for AI.

Bill No 2.338/23 establishes as its core principles:

- inclusive and sustainable development;
- respect for ethics, human rights, democratic values and diversity;
- protection of privacy and personal data; and
- transparency, security, and reliability.

The bill also states that AI should:

- respect people's autonomy;
- preserve people's intimacy and privacy;
- preserve the bonds of solidarity between people and different generations;
- be intelligible, justifiable, and accessible;
- be open to democratic scrutiny and allow for debate and control by the population;
- be compatible with maintaining social and cultural diversity and not restrict personal lifestyle choices;
- contain safety and security tools that allow human intervention where necessary;
- provide traceable decisions without discriminatory or prejudiced bias; and
- follow governance standards that ensure ongoing management and mitigation of potential technological risks.

Pending the regulation of AI in Brazil, since there are no specific laws about the matter, other legislation may impact the way AI is used and may dictate rules and obligations for the parties involved, such as data privacy rules, internet use, and the Consumer Protection Code, for example.

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

Bill No 2.338/23 did not approach the use of generative AI, which has grown in Brazil by the year 2023. Experts on the subject believe that it will be necessary to debate important amendments to update the text of the law and bring it more in line with global trends.

22. Which body(ies), if any, is/are responsible for the regulation of blockchain and / or digital assets generally?

Up to this point, in Brazil, there is no specific body responsible for the regulation of blockchain, since there is still no approved law regulating the matter.

However, in December 2022, Law No. 14,478/2022 ("Cryptocurrency Law") was sanctioned regulating the cryptocurrency market in Brazil, establishing the definition of virtual assets, providers, and the crime of fraud with the use of cryptoactive assets and respective penalties. The law defines a virtual asset as a digital representation of value that can be traded or transferred by electronic means and used to make payments or for investment purposes.

According to the new law, virtual assets service providers can only operate in Brazil after prior authorization from the Brazil Central Bank (BCB). Decree no. 11. 563/2023, enacted in June this year, regulates the matter by defining the powers of the BCB, which, among other activities:

1. will establish conditions and deadlines for the adjustment to the project's rules by the virtual assets service providers that are in activity;
2. will authorize the operation and the transfer of control of the brokerage houses and supervise their operation;
3. will cancel, ex-officio or upon request, the authorizations; and
4. will determine the hypotheses in which the activities will be included in the foreign exchange market or will have to be submitted to the regulation of Brazilian capital abroad and foreign capital in Brazil.

The law also adds a new type of swindling to the Brazilian Criminal Code (Decree-Law 2.848/1940), assigning imprisonment from 4 (four) to 8 (eight) years and a fine for those who organize, manage, offer or distribute portfolios or intermediate operations involving virtual assets, securities or any financial assets in order to obtain illicit advantage, inducing or keeping someone in error, through artifice, trickery or any other fraudulent means.

In the Money Laundering Law (Law No. 9,613/1998), the text includes crimes committed through the use of virtual assets among those with an aggravating factor of 1/3 to 2/3 of the penalty of imprisonment from 3 (three) to 10 (ten) years, when committed repeatedly. In addition, companies must keep a record of transactions in order to provide information to law enforcement agencies and fight organized crime and money laundering.

Prior to this, there was a normative instruction issued by the Brazilian Federal Revenue Service – No. 1,888/2019 – which instituted the obligation to provide information regarding transactions carried out with cryptoactive products to the Special Secretariat of the Brazilian Federal Revenue Service.

23. 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?

On the subject of blockchain the main bills in progress

are:

- Bill No. 2987/2023 – intends to amend the Access to Information Law (Law No. 12.527/2011), to ensure immutability, auditability, authenticity and security of information;
- Bill No. 936/2023 – intends to include in the "Statute of the Garimpeiro" (Law No. 11.685/2008) the use of blockchain as a way to combat illegal gold extraction in Brazil, besides helping in the investigation of illegalities in the activity of mining;
- Bill No. 2580/2023 – provides for the requirement of implementing a mandatory digital tracking mechanism (blockchain) for operations involving gold extraction in Brazil.
- Regarding digital assets the main bills in progress are:
- Law No. 14,478/2022 – "Cryptocurrency Law" (former Bills No. 2303/2015 e 4401/2021), which came into force in June 2023, regulating the cryptocurrency market in Brazil, providing guidelines to be observed in the provision of virtual assets services and in the regulation of virtual assets service providers, besides including cryptocurrencies in the list of payments controlled by the Brazil Central Bank and creating new criminal types;
- Bill No. 2681/2022 – provides for the issue, intermediation, custody, settlement of virtual assets by virtual assets service providers, contemplating recommendations from the Bank of International Settlements (BIS). The bill also proposes that all companies operating in Brazil must be registered with the Brazilian National Register of Legal Entities (CNPJ), even if their headquarters are abroad;
- Bill No. 743/2022 – which amends the Code of Civil Procedure (Law No. 13,105/2015) to include digital currency type cryptoactive assets (altcoins) in the list of unseizable assets;
- PL 462/2022 – which amends the Code of Civil Procedure (Law No. 13.105/2015) to authorize the court to send an official letter to cryptoactive brokerage firms (exchange), in order to obtain information about the existence of cryptoactive assets of the digital currency type (altcoins) and cryptoactive assets not considered cryptocurrencies (payment tokens);
- PL nº 50/2022 – proposes the creation of a national program that allows the conversion of tax credits into virtual assets, to be used exclusively in the payment of another tax, with the objective of recovering the international competitiveness of the Brazilian economy;
- PL nº 3876/2021 – provides for civil liability regarding investments in cryptocurrency in Brazil;
- PL 3908/2021 – establishes that part of the employee's remuneration may, optionally, be paid through cryptocurrencies.

24. Are blockchain based assets such as cryptocurrency or NFTs considered "property" capable of recovery (and other remedies) if misappropriated?

Even before the enactment of Law No. 14,478/2022 – "Cryptocurrency Law", the Brazilian judiciary was already facing several lawsuits related to incidents with digital assets, either in the civil or criminal sphere, given its economic expression. However, until the enactment of the referred law, there was a big discussion about the applicability of the Brazilian criminal law to crimes involving cryptocurrencies: on one side, a current understood by the inapplicability, since there was no express provision in the law; on the other side, they defended the application of analogical interpretation to the criminal types of fraud and/or embezzlement provided in the Penal Code also to crimes involving digital assets.

With the enactment of the Cryptocurrency Law, besides the inclusion of digital assets in the list of payments controlled by the Brazil Central Bank, which will bring more legal certainty, the law created two new criminal types, namely, the crime of fraud when it involves virtual assets, securities or any financial assets in order to obtain an illicit advantage and an aggravated penalty when money laundering occurs through the use of virtual assets.

In this sense, we highlight two bills in progress that are related to the topic: Bill No. 1536/2023 and Bill No. 2451/2023 that provides for the provision of virtual assets services (Law No. 14,478/2022), in order to prevent fraud against its investors and to expedite the immediate recovery of these assets, in case of deviations and fraud, with the creation of new mechanisms for tracking and identification of the actors involved and the amounts invested and accountability of partners of brokerage firms and digital investment platforms (exchanges).

25. Which body(ies), if any, is/are

responsible for the regulation of search engines and marketplaces?

In Brazil, there is no specific body responsible for the regulation of search engines and marketplaces.

26. 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.

Search Engines and Marketplaces providers must comply with the rules set out in the:

Internet Act – (Law No 12,965/2014) disciplines the use of the internet in Brazil by providing principles, guarantees, rights and duties for those who use the network, as well as determining guidelines for state action;

The General Data Protection Act (Law No 13,709/2018) establishes that the processed data of individuals must be used in compliance with the law;

Law No 9,609/1998 regulates software protection, its commercialisation, and stipulates rights and duties regarding its use

Consumer Code (Law No. 8,078/1990) provides for the principles of transparency, information, and quality of data on its provisions;

Decree No 7,962/2013, regulates purchases through ecommerce.

27. Which body(ies), if any, is/are responsible for the regulation of social media?

Platform providers must comply with the rules set out in the Internet Act, especially regarding the storage of access records to Internet applications for specific periods. For internet application providers, the respective records of access must be kept confidential, in a controlled and secure environment, for the period of six (6) months, under the regulation's terms. Also, they must comply with the LGPD in relation to data privacy.

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?

Currently, the main legislation that addresses the subject is the Internet Act. According to the Internet Act, the platforms may only be held liable for damages arising from content generated by third parties if, after a specific court order, it fails to take steps, within the scope and technical limits of its service and within the appointed timeframe, to make the content indicated as infringing unavailable. However, taking into account the context of the evolution of social media platforms and the content published on them, some bills aim to change this scenario.

Currently, the main proposal under discussion is the Bill No. 2630/2020 – known as the "Brazilian Law of Freedom, Responsibility and Transparency on the Internet" or popularly as "Fake News PL", which try to establish rules regarding the transparency of social networks and private messaging services, especially regarding the responsibility of providers for combating disinformation and increasing transparency on the Internet, transparency regarding sponsored content and the actions of public authorities, as well as establishing sanctions for non-compliance with the law. This Bill can considerably change the system currently in force in Brazil, so following its development is extremely important

There are other Bills that also relate to the matter, although they do not have the same visibility as the Fake News PL:

- Bill No. 3683/2022 – intends to alter criminal, electoral, and administrative improbity legislation to increase penalties and sanctions for already typified crimes and other illegal conducts, and to create new criminal types, especially when practiced on the internet;
- Bill No. 870/2021 – proposes to amend the LGPD to provide for the marketing, provision and sharing of social network user information by its providers;
- Bill No. 2821/2022 – amends the Internet Act, to curb dissemination of content that incites hatred, discrimination or prejudice on social media and search platforms;
- Bill No. 613/2022 – makes user identification mandatory on social media outlets and news providers on social networks.
- Bill No. 777/2022 – proposes to amend the Criminal Code to provide that apologia for crime can be perpetrated over the internet, including social networks;
- Bill No. 2120/2023 – proposes the creation of the Digital Platforms Legal Framework, aimed

at establishing rules and guidelines to ensure freedom, responsibility, and transparency on the internet, as well as guaranteeing users' rights on the internet, including full and priority protection of children and adolescents;
- Bill No. 2532/2023 – establishes the obligation of internet service providers and social networks to act preventively against the unauthorized disclosure of intimate content, aiming to protect the privacy, dignity, and integrity of people.

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

- Artificial Intelligence: the growing use of Artificial Intelligence by different segments of the economy and in a simpler and more intuitive manner indicates that, despite being a hot topic in 2023, it will continue to be one throughout the years, with the exponential development of machine learning and deep learning. Moreover, in Brazil, Bill No. 2.338/2023 (known as the legal framework for artificial intelligence), which seeks to regulate the use of AI in Brazil, is pending approval.
- Freedom, Responsibility and Transparency on the Internet: During the Brazilian presidential elections in the year 2022, the fight against Fake News has become a hot topic in the legislative power. Bill No. 2630/2020 is in progress, establishing rules regarding the transparency of social networks and private messaging services, especially regarding the responsibility of providers to combat misinformation and increase transparency on the Internet, transparency regarding sponsored content and the actions of public authorities, and establishing sanctions for non-compliance with the law.
- After the publication by the ANPD in February 2023 of Resolution CD/ANPD No. 4 (How to Proceed with Application of Sanctions), it is estimated that the National Authority will begin to act more incisively in Brazil, inspecting and applying fines.

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

In Brazil, companies must comply with several environmental obligations, and it is common to establish in Technology contracts that the parties will comply with Law 6.938/81 (National Environmental Policy).

Furthermore, the Green Technology (Green IT) movement has been quite present in Brazil among technology companies. The mobilization aims to reduce the environmental impact through the manufacture and consumption of technological resources.

In this scenario, certifications have been created for companies that decrease the use of toxic raw materials and implement systems to reduce energy consumption and waste. The most popular are: ISO 14001; ISSO 14004; Green Seal; PROCEL; RoHS.

This movement, despite not being a legal obligation, has been applied in contracts and negotiations, demonstrating concern with the environment and the development of technologies, generating good marketing and sustainability for companies.

Contributors

Ricardo Barretto Ferreira da Silva
Senior Partner
barretto@azevedosette.com.br

Lorena Pretti Serraglio
Coordinator
lserraglio@azevedosette.com.br

Ingrid Bandeira Santos
Associate
isantos@azevedosette.com.br

Sylvia Werdmüller von Elgg Roberto
Associate
selgg@azevedosette.com.br

Bruna Evellyn Pereira Bigas
Associate
bbigas@azevedosette.com.br

Carolina Simioni Perdomo
Associate
cperdomo@azevedosette.com.br