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ADVOGADOS

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# Brazilian Context.

## Federal Senate approves Bill establishing the Brazilian Data Protection Day

In the end of 2022, the Federal Senate approved the bill that establishes the Brazilian Data Protection Day to be celebrated each year on July 17.

The date was chosen in honor of the birth date of the jurist Danilo Cesar Maganhoto Doneda, a pioneer and one of the leading experts on data protection in Brazil. The adoption of a national day for data protec-

### Promoting awareness about the rights and protection ensured by the Brazilian Data Protection Law (LGPD)

tion aims at promoting awareness about the rights and protection ensured by the Brazilian Data Protection Law (LGPD).

The Bill of Law No. 2,076/2022 has now been submitted for voting at the House of Representatives. Upon the approval of the House of Representatives, it will be subject to sanction of the President of the Republic.



## SPTrans cyberattack results in data leak of 13 million users of Bilhete Único

On December 15, 2022, SPTrans became aware that its systems had experienced a cyber-attack resulting in the leak of personal data of 13 million users of Bilhete Único, the public transportation card of the city of São Paulo. The exposed data refer to April 2020 and include social name, birth date, Individual Taxpayer Registration (CPF), national ID card, address, phone number, e-mail, student's enrollment, among others.

After the confirmation of the security incident, SPTrans adopted the measures required by the LGPD, such as notifying the Brazilian Data Protection Authority (ANPD) and the data subjects whose data was exposed, as well as providing information about the incident on its social media and informing that the company is reinforcing the security measures to protect personal data in the Bilhete Único system. In addition, the Cyber Crimes Division (DCCIBER) of the Criminal Investigations Department (DEIC) of the São Paulo State Civil Police has also been notified, so that a criminal investigation can be initiated to verify the authorship and origin of the leak.



# Guidelines.

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## Regulatory Framework for Crypto Assets has been published

On December 22, 2022, Law No. 14,478/2022, also known as the Regulatory Framework for Crypto Assets, was published and will come into force in June 2023. The Law sets forth guidelines to be observed in the provision of virtual assets services; amends the Brazilian Criminal Code to add the crime of fraud involving the use of virtual, securities or financial assets; and includes virtual assets service providers under Laws No. 7,492/1986 and No. 9,613/1998, which regulates crimes against the national financial system and money laundering, respectively.

Such law represents an important milestone to ensure greater control and security in the Brazilian digital assets market, in response to the increasing popularization of crypto assets, as well as greater consumer protection, by imposing requirements for companies that provide such services to operate in the national territory.

It is worth noting that the regulatory framework determines that the provision of virtual assets services must observe several guidelines, including information security and personal data protection.

# Judicial Branch.



## **Brazil's Superior Court understood that it could not analyze a case involving data leakage by hacker attack due to the need to reexamine facts and evidence**

Brazilian Superior Court (STJ) has not analyzed a case that discusses the liability of a tour company for data leakage resulting from a hacker attack, as it understood that the company's Appeal in Special Appeal No. 2192605/RJ would make it necessary to reexamine the facts and evidence of the case, which is prohibited by the Court.

Therefore, the judgment rendered by the Court of Justice of the State of Rio de Janeiro was upheld in the sense that the

leak of personal data, even if not sensitive data, due to a hacker attack, is part of the risk of the enterprise, because the company maintains a database with personal information, so that "it should take care of its protection, and even anonymization, and not keep the data active, ready to be accessed by others. Thus, the Court of origin understood to be due the compensation for moral damages in the amount of R\$ 10,000.00.

## **Court of Justice of the State of São Paulo confirms fine imposed by PROCON of R\$ 10.8 million for data leakage**

In 2020, PROCON-SP (Brazilian Department of Consumer Protection in São Paulo) filed an administrative proceeding against the phone carrier Claro and fined the company for violations of Brazil's Consumer Protection Code, due to undue charges, ir-

regular insertion of customer names in the credit protection service, misleading advertising, leakage of registration data, and lack of information on the collection of the technical visit fee. After Claro has filed a lawsuit to cancel the fine, the Court of

Justice of the State of São Paulo confirmed the reasons for which the fine was imposed and upheld the amount of the fine, arbitrated by PROCON at BRL 10.8 million.

The Court considered that the simple solution to the com-

plaints/problems does not prevent the application of penalties by the administrative authority, as well as considered that the company did not mitigate the impacts of the lack of information to their consumers.

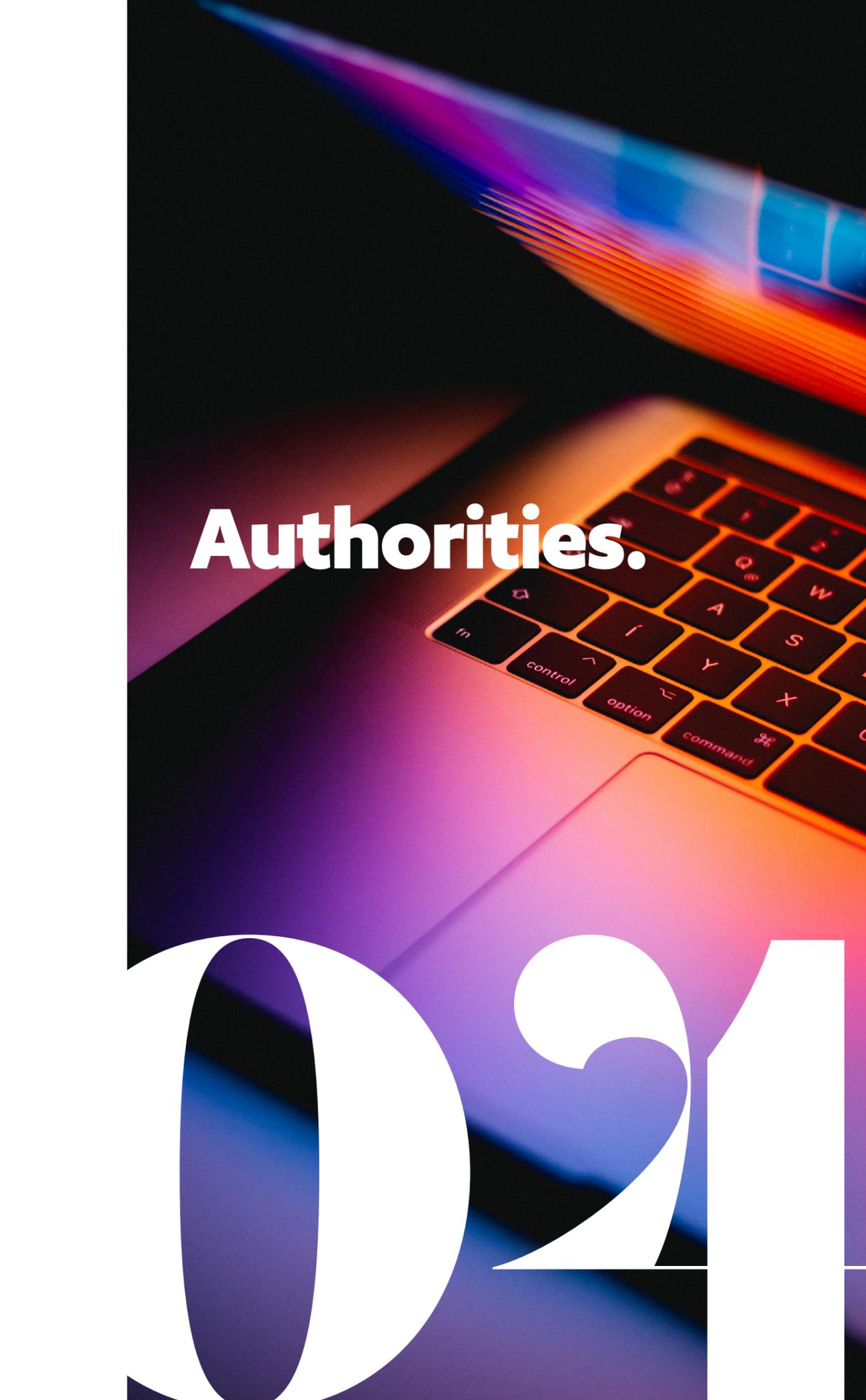
## **São Paulo Court of Justice determines that the subject of personal data has the right to access all medical documents featuring their personal data, according to the LGPD**

The Court of Justice of the São Paulo State reinforced the rights guaranteed by Brazil's General Data Protection Law (LGPD) by condemning an occupational health company for sending the subject of personal data all documentation that specifically mentions her personal data, except for documentation containing anonymized data.

After resistance from the company to submit the documents, the patient filed a lawsuit to obtain access to the

medical tests carried out on her behalf that would corroborate her request for retirement before the INSS (National Social Security Institute).

In addition to the obligation to present the documents, the company was also condemned to pay BRL 10,000.00 as moral damages because it would have created barriers to the presentation of data to which the patient was entitled to.



# Authorities.

## National Council of the Public Ministry promotes the First Ordinary Meeting of Data Controllers

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Several parties of the state Public Ministry met at the headquarters of the National Council of the Public Ministry to discuss the implementation of the General Data Protection Law (LGPD) in the different branches of the institution.

According to the chair of the session, counselor Moacyr Rey Filho, importance of sharing experiences among those in charge of implementing the legislation in the Public Prosecutor's Office is due to the large volume of information that the

agency processes daily, which can represent a difficulty in adjusting to the new law.

The event also featured a priority analysis workshop in the implementation of the LGPD within the Public Ministry, with the aim of helping those in charge of identifying the most urgent issues and which, consequently, should be treated as priorities by public agents.

## Facial recognition system of the São Paulo City Hall is object of representation before the Public Ministry

The Brazilian Consumer Defense Institute (IDEC) and the Public Policy and Internet Lab (LAPIN) have filed a complaint with the Public Prosecutor's Office of the State of São Paulo to investigate the Smart Sampa program, a video surveillance platform in the city of São Paulo launched by the Municipal Secretariat of Urban Security, due to the potential risk of discrimination and increased marginalization.

On the City Hall's website, it is stated that the platform would have more than 20,000 cameras in the city that would have facial identification and motion detection capabilities, with the aim of modernizing and expanding the monitoring of the municipality and taking a step towards the concept of smart cities.

However, there is a concern on IDEC and LAPIN's part about the impact the platform may have on vulnerable populations in an unequal way, given possible errors arising from algorithmic discrimination.

For example, there are other experiences in the cities of Feira de Santana and Rio de Janeiro that are highly criticized, with the Rio de Janeiro pilot project showing a 63% machine error percentage, and no reduction in the main crime indicators in the second phase of the project.

# International Rulings.





## Polish telecom company is fined for failure in the notification of personal data breach

The Polish Data Protection Authority has fined a telecom company for failure to notify the authority and the affected user (i.e., data subject) of a security incident within 24 hours of their awareness – in breach of the Polish Telecommunications Act.

The security incident involved the undue sending of a set of documents regarding a telecommunications contract to the wrong recipient, fact that was pointed out by the recipient on such occasion. According to the authority, the company had two opportunities to

notify the authority and the affected data subject about the incident: at the time of the recipient's communication and when the company received a letter from the Polish Authority requesting clarifications.

From the Brazilian perspective, the data controller must notify both the ANPD and the data subjects about incidents that may lead to relevant risk or harm to data subjects.

## IMcGraw Hill data breach affects personal data of students from different universities in North America

In late 2022, it was brought to light that data of more than 100,000 students and employees was leaked from the McGraw Hill, an educational platform, responsible for publishing educational content, software, and services for audiences from Pre-K to higher education in the U.S. and Canada.

In this occasion, the company became aware of the data leak of more than 117 million files containing personal data, such as name, e-mail address, and grades of university students from different institutions in North America thus making this information available to anyone with access to a web browser.

As pointed out by vpnMentor's Report, the breach was not a result of a cyberattack but of the improper storage of data in a publicly accessible cloud environment. In response to this scenario, McGraw Hill reported that they removed the breached files as soon as they identified it. In any case, this issue is still subject to further analysis by competent authorities to ensure that the neces-

sary measures have been adopted in the management of such breach from a personal data protection perspective.

In line with the Brazilian context, an accidental situation like this one may also be deemed as "data breaches", according to the provisions set forth in the LGPD, provided that the undue exposure of the data subjects results in relevant risk or harm to these individuals. Furthermore, the Brazilian law establishes the need for specific protection for the processing of data related to minors (i.e., children and adolescents). Thus, breaches involving data from this category of data subjects may be classified by the ANPD as scenarios of higher risk due to the vulnerability of this group involving the misuse of their data.

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