

# CYBER NEWS

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**Tozzini  
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ADVOGADOS

# Index

## 01 BRAZILIAN CONTEXT

.....4

...6

.....6

## 02 GUIDELINES

.....8

.....9

## 03 JUDICIAL BRANCH

.....11

## 04 AUTHORITIES

.....12

.....14

## 05 NORMATIVE DEVELOPMENTS

.....15



# Brazilian Context.

## The Regulatory Quality Badge Program recognizes ANPD's Resolution as Gold Standard

The CD/ANPD Resolution No. 2/2022, which sets forth rules for the application of the Brazilian General Data Protection Law (Federal Law No. 13,709/2018, the LGPD), for small processing agents, was deemed as Gold Standard by the Regulatory Quality Badge Program in late December 2022, highlighting the regulatory quality of the Brazilian Data Protection Authority (ANPD).

The Program is an initiative of the Secretariat for Economic Monitoring (SEAE) of the Ministry of Finance, aiming at providing recognition and visibility to federal regulatory agencies for their performance in adopting international best practices and contributing to Brazil's entry into the Organization for Economic Co-operation and Development (OECD).





## **The Brazilian National Data Protection Authority (ANPD) establishes the Digital Governance Committee**

The CD/ANPD Resolution No. 3, issued on January 25, 2023, sets forth the creation of the Digital Governance Committee as a permanent body responsible for deliberating on issues related to the implementation of digital government actions and the use of Information and Communication Technology (ICT) resources within the scope of the ANPD.

The establishment of such Committee is relevant for the growth of IT initiatives and investments, since one of its competencies is preparing guidelines, rules, and practices about IT within the ANPD.

## **Ministry of Economy publishes a Framework for Privacy and Information Security**

In November, the Digital Government Secretariat (SGD), of the Ministry of Economy (ME), published a Framework for Privacy and Information Security. Aimed at public entities, the document provides guidelines on privacy, data protection, and information security within the scope of the Information Technology Resources Management System (SISP).

The Brazilian government has taken another step into its commitment to privacy and information security, since the Guide proposes guidelines to help public institutions identify, monitor, and fill gaps related to privacy and information security.

Check out the [Framework for Privacy and Information Security](#) (Portuguese only).

# Guidelines.





### **U.S. and EU launch first-ever AI agreement**

The U.S. and the European Commission announced, on January 27, 2023, an agreement to improve and expand the use of AI in various sectors, such as agriculture, healthcare, emergency response, weather forecasting, and electrical grid.

The initiative will give governments access to a more detailed and higher volume of artificial intelligence models to enhance and speed up the efficiency of government operations and services.

Although initially signed between the U.S. and the EU, other countries will be invited to join the partnership within the coming months.

### **EDPB publishes recommendations reports on the use of cloud services by the public sector and cookie banners**

On January 18, 2023, the European Data Protection Board (EDPB) published a Recommendations Report and guidelines for public bodies to procure cloud products and services that are compliant with the General Data protection Regulation (GDPR). This report is essential considering that the processing of personal data by public services must take place with the utmost caution, especially when third parties are involved.

Furthermore, the EDPB has also released a report on the work conducted by the Cookie Banner Task Force, which was established in September 2021 to coordinate responses to requests regarding cookie banners submitted by various European Data Protection Authorities.

The Task Force seeks to promote standardization and sharing of best practices among authorities on cookie banners across Europe. In the report, the authorities agreed to establish a common denominator for interpreting the applicable GDPR provisions, concerning issues like reject buttons, pre-ticked boxes, or banner design.

# Judicial Branch.



## Bank has been ordered to pay compensation for moral damages, after a data leak that resulted in a fake payment slip scam

The 15<sup>th</sup> Chamber of Private Law of the State Court of Justice of São Paulo (TJSP) understood to rule out the claim of exclusive fault of the victim in case of a scam involving a fake bank payment slip sent by WhatsApp to settle a vehicle financing contract.

The scam performed by using the logo of the financial institution, name, CNPJ (Brazilian National Registry of Legal Entities), and address, contributed to the Court not recognizing the exclusive fault of the victim, since the

scam against the consumer was facilitated by the leak of sensitive data, both personal and contractual.

In the judgment of Appeal No. 1001920-96.2022.8.26.0009, it was understood that there was a failure in the banking service and, consequently, objective liability of the bank for damages caused to the consumer. In addition to compensation for the amount of the fake payment slip, it was established the award of R\$ 5,000.00 for moral damages.



## Judiciary decides that sharing unnecessary data for credit analysis purposes without the consumer's consent is an unlawful act

Earlier this month, the TJSP (São Paulo Court of Justice) issued a decision in Appeal No. 1006760-16.2022.8.26.0506, fixing compensation for moral damages, in the amount of R\$ 6,000.00, in case of sharing of personal data without the consumer's permission by a company that manages database of credit information.

The Plaintiff claimed that, by paying a fee, it was possible to consult the company's database and search his data and of many other people, such as CPF (Individual Taxpayer Registration Number), mother's name, address, telephone, e-mail, and professional occupation, among others.

Although the defendant company has argued that all informa-

tion would have been entered by the contractors of the service or by consumers who register, the Court decided to condemn it to pay compensation for moral damages caused to the consumer.

According to the decision, Article 7, X, of LGPD "only allows the processing of data effectively related to credit protection", so "there is no usefulness, regarding the granting of credit, in the information related to the consumer's phone number". In this sense, it was understood to be unnecessary to share data such as telephone number and mother's name for credit analysis purposes. Moreover, it was understood that there was an unlawful act due to the sharing of data without consent.



# Authorities.

## PROCON-SP notifies a social network after a data leak of million of users

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PROCON-SP (Brazilian Department of Consumer Protection in São Paulo) has notified Twitter after the personal data of over 200 million accounts has been leaked on the Internet. The agency seeks to make sure whether the leak actually occurred and verify the reasons why it happened, what measures have been taken to repair the damage, as well as the preventive actions.

On an official note, PROCON-SP requests the company provide technical and organizational measures to be adopted to comply with the General Law of Data Protection (LGPD).



# Normative Developments

## New Law implements the Brazilian National Policy on Digital Education

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On January 11, 2023, President Luiz Inácio Lula da Silva sanctioned the Federal Law No. 14,533/2023, which implements the Brazilian National Digital Education Policy to promote digital inclusion, training, specialization, research, and school education.

According to the new law, the policy aims to boost the development of digital plans for education networks, the training of leaders, the qualification of school professionals, the inclusion of mechanisms for external evaluation of digital education, and the establishment of concrete and measurable goals in the application of the policy, valid for both public and private education.






Furthermore, such Law amends the Law of Directives and Bases of Education (LDB) to establish digital education as a duty of the State through the guarantee of high-speed internet connectivity for all public institutions of basic and higher education.



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