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ADVOGADOS


# Cybernews.

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1<sup>st</sup> Edition | 2025

This is an informative newsletter  
produced by the **Cybersecurity & Data Privacy**  
practice of TozziniFreire Advogados.

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# EDITORIAL

In this first edition of the Cybernews Bulletin in 2025, we comment on the publication of ANPD's Regulatory Agenda for 2025-2026 and the relevance of ANPD's role in regulating Artificial Intelligence.

In addition, while we wait for the Judiciary Branch to resume trials in this new year, we also highlight the main news on data protection that permeated the end of 2024, such as the decision handed down by the Superior Court of Justice in December, in which the Court stated that companies are responsible for protecting the personal data of their customers, even in case of cyberattacks. The decision held Enel responsible for the leak of a consumer's data after a hacker attack, as the company did not adopt the necessary security measures, as required by the Brazilian General data Protection Law (LGPD).

In addition, the National Consumer Secretary, Wadih Damous, pointed out that it is abusive to make data protection conditional on paying for extra services, which is a violation of both the LGPD and the Brazilian Consumer Protection Code (CDC). He stressed out that data protection must be guaranteed at no extra cost to consumers, an obligation imposed on companies.

Finally, Burger King was reported for violating LGPD during its "Penny Pix" campaign. Idec (Consumer Protection Institute) accused the company of misusing customers' personal data, such as social security number and e-mail, raising serious concerns about digital harassment practices.



# GENERAL NEWS

## **Brazilian Superior Court of Justice rules that companies are responsible for leaked data, even in cases of cyberattacks**

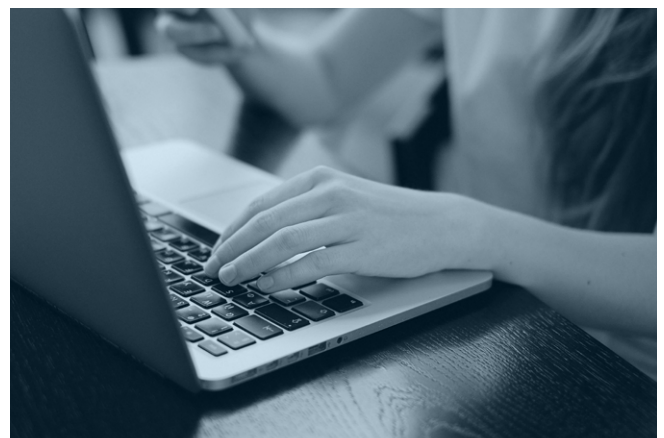
The Superior Court of Justice (STJ) has ruled that companies must protect their customers' personal data, even in the event of cyberattacks. The decision, made unanimously by the 3<sup>rd</sup> Panel, held Enel responsible for the leakage of information, such as a consumer's name, ID, social security number, address, e-mail and telephone number after a cyberattack.

Enel argued that the cyberattack was the act of third parties, which, according to article 43, item III, of the Brazilian General Data Protection Law (LGPD), would exempt the company from liability. However, STJ understood that, as a data processing agent, the company has the legal obligation to adopt adequate security measures to protect personal information, in accordance with the requirements set out in LGPD.

In the court decision that was the subject of analysis by the STJ, São Paulo Court of Justice (TJ-SP) had recognized Enel's responsibility for the leak but concluded that the data exposed was not sensitive and was easily accessible, therefore there was no violation of the consumer's dignity. Thus, it dismissed

Enel from the obligation to compensate the consumer for her losses but ordered the company to inform which entities the data was shared with and to provide a detailed statement on the origin, registration and criteria of this sharing, in compliance with article 19, item II, of LGPD.

On the other hand, Justice Ricardo Villas Bôas Cueva, rapporteur of the case at STJ, pointed out that Constitutional Amendment No. 115/2022 strengthened data protection in Brazil. He emphasized that Enel should have implemented effective security measures, in accordance with the good practices and governance required by LGPD, and that the failure in the company's systems became evident after the hacker attack.



## Making data protection conditional on paying for extra services may infringe LGPD and CDC

The Brazilian General Data Protection Law (LGPD) guarantees the protection of consumers' personal data, establishing that companies and institutions must adopt measures to protect such data, regardless of any additional payment.

This is the position defended by the National Consumer Secretary, Wadih Damous, who argues that personal data protection is a non-negotiable right and must be guaranteed by companies at no additional cost, with any practices to the contrary being considered abusive, in violation of LGPD and the Brazilian Consumer Protection Code (CDC).

If a company provides an extra service aimed at data protection, such as leak monitoring or security notifications, this should not be interpreted as an exemption from its responsibility to protect the data it collects and stores. Charging for this type of service can be seen as abusive or as an attempt to profit from a problem for which the company is already liable, going against the principle of good faith and loyalty in consumer relations established in CDC.

In Wadih Damous' view, companies must ensure that data be handled responsibly and securely, and supervisory institutions must be vigilant in order to combat attempts to profit from the insecurity created by failures to protect consumer information.

Such behavior can be interpreted in two ways: **(i)** abusive practice (art. 39 of CDC) - the attempt to profit from the insecurity generated by failures in data protection can be considered as an abusive practice, as it puts consumers at excessive disadvantage; **(ii)** security failure (art. 46 of LGPD) - if the leak occurred due to the company's negligence, the company is liable for repairing the damage and adopting measures to prevent further incidents, in accordance with LGPD.



## Burger King is accused of violating LGPD in PIX campaign - this could turn into digital harassment

The Consumer Protection Institute (Idec) has filed a complaint against Burger King over the “Penny pix” campaign, which took place in November 2024, accusing it of using customers’ personal data without their consent, violating not only LGPD, but also the Pix rules, so practices such as these can be characterized as a kind of digital harassment.

Idec claims that 19 million transactions were carried out as a result of the campaign, and

that information, such as social security number, e-mail and telephone number, was used improperly.

The complaint was sent to Senacon, the Central Bank and the Digital Rights Department, seeking sanctions against Burger King and Transfeera (the financial institution that made the deposits) for possible irregularities in using the information collected and in using Pix.



# BRAZILIAN LEGISLATION

## Publication of ANPD's Regulatory Agenda for 2025-2026 and the relevance of ANPD's role in the regulation of Artificial Intelligence

### *The Regulatory Agenda*

On December 11, the Brazilian Data Protection Authority (ANPD in Portuguese) published its Regulatory Agenda for the 2025-2026 biennium, establishing **a set of priority actions to be adopted in the next two years**. This document incorporates the contributions of society, made through a public inquiry, and allows for clearer and more predictable monitoring of the activities performed by the Authority.

The Regulatory Agenda covers 16 topics, divided into four phases established according to a strategic prioritization of the most urgent demands. The topics of Phase 1, which includes pending items of the 2023-2024 Regulatory Agenda, are data subjects' rights, the processing of sensitive personal data and children and adolescents' personal data, high-risk data processing, and artificial intelligence (AI), among others.

The inclusion of **AI among the items that need to be regulated as a priority** highlights the relevance of ANPD's role in a context in which this technology not only plays a central role in discussions involving data protection but also where **the authority is also designated to coordinate**, along with other stakeholders, the **Brazilian AI Regulation and Governance System (SIA in Portuguese)**, which is a multidisciplinary body aimed at **supervising the implementation of future AI legislation**.



## ***ANPD's role and the approval of the new AI Bill***

This designation of ANPD as the authority to coordinate SIA is part of the text of the Bill (PL in Portuguese) aimed at regulating AI in Brazil, which was approved by the Federal Senate on December 10.

- **Status of the Bill:** the bill is now sent to the House of Representatives for analysis and voting, and it may undergo further changes. The text under discussion is a substitute prepared by the rapporteur of the matter in the Senate, senator Eduardo Gomes, based on the original text of Bill No. 2,338/2023, presented by senator Rodrigo Pacheco, as well as on the various contributions made by a committee of specialized jurists.
- **Bill's objective and structure:** this bill aims to establish legal standards for the development and use of AI in Brazil, in addition to raising important questions about copyrights, free speech and the potential impact on the labor market. In addition, it maintains a regulatory framework based on the risk classification of AI systems – which can be verified in the law approved in the European Union (EU), the AI Act.

## ***Topics addressed in the AI Bill***

Among the topics addressed in the AI Bill are:

- **Protection of employees' rights:** proposal of guidelines to minimize the negative impacts of AI in the workplace. However, the removal of some protection standards from the initial discussions of the text raises concerns about mass layoffs and the participation of workers in algorithmic impact assessments;
- **Content creators' rights:** guarantee of fair remuneration, the right to object to the use of protected works, and the transparency on the use of such content in the development of AI systems. These provisions are essential in a scenario in which artistic and creative production can be easily manipulated and utilized by algorithms without adequate remuneration;
- **Promoting innovation and sustainability:** the text provides for the creation of an experimental regulatory environment, known as "sandbox," which will allow small and medium-sized companies to test new AI technologies, as well as guidelines aimed at promoting sustainable practices and energy efficiency in AI systems.



However, the approved text raises concerns in civil society, especially regarding any possible setbacks in democratic achievements and the protection of fundamental rights. The suppression of certain rights can affect free speech and the integrity of information, which highlights the need for a balance between technological innovation and the protection of citizens' rights. The discussion about the bill highlights the importance of ensuring that AI regulation not only fosters innovation but also ensures the protection of the rights and interests of everyone involved.

### ***Relevance of ANPD's role in AI discussions***

In this context, ANPD must reaffirm its commitment to be a diligent guardian of

personal data protection and ensure that citizens' rights are respected in an increasingly digital and interconnected environment.

Both ANPD's new Regulatory Agenda and the recent approval of the AI Bill represent valuable opportunities to advance data protection in Brazil. When integrated, these initiatives can contribute to building a safer, more transparent, and fairer digital environment for all citizens. However, the success of these agendas will depend on the ability of ANPD, the legislative branch and other players involved to work together, always keeping an open dialogue channel with society, ensuring that data protection and fundamental rights are respected in an increasingly digital and interconnected world.





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