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01
Brazilian Context.

ANPD issues guideline on the processing of children's and adolescents' personal data

On May 24th, 2023, the Brazilian Data Protection Authority (ANPD) published a highly expected guideline that addresses one of the most controversial matters of the Brazilian General Data Protection Law (LGPD).

Under a narrow interpretation of the LGPD, children's personal data could only be processed with the consent from one of their parents or legal guardians. According to the new ANPD's guideline, personal data of children and adolescents may be processed for all legal purposes provided for in the LGPD, such as compliance with a legal obligation, enforcement of a contract, protection of life and legitimate interests, as long as this is done in the minor's best interest at all times.

ANPD issues technical note on personal data processing in the pharmaceutical sector

The ANPD published a technical note on personal data processing activities carried out in the pharmaceutical sector, with a special focus on rewards programs offered by pharmacy chains.

In general terms, the ANPD concluded that most practices adopted by the pharmaceutical sector are not in line with the LGPD, especially due to the lack of transparency on processing activities involving customer data from pharmacy chains, as well as purpose deviation in data processing activities performed for purposes other than those that originally justified the collection of personal data.

The ANPD has also analyzed cases of excessive collection of personal data, such as biometric data in processing activities to identify data subjects, and identified discount programs that offer price reduction only if customers provide personal data.

Thus, in cooperation with other bodies, such as the Brazilian Consumer Secretariat (SENACON), the ANPD will focus on monitoring and inspecting the pharmaceutical sector in the coming years.

ANPD clarifies issues regarding the submission of data subjects' complaints and petitions

On April 24th, 2023, the ANPD published details about the requirements, formalities and submission forms of the different requests that may be filed by data subjects; namely, complaints and petitions against controllers.

Aiming to facilitate its contact with civil society, the Authority clarified some of the most recurrent questions about when to file a complaint or a petition. It also indicated the scope of what must be presented in each communication form. The full extent of the discussion and ANPD's forms is available at the following link.

In this scenario, the ANPD highlights that complaints and petitions can be filed if the data subject identifies any possible scenarios of non-compliance with the LGPD. As a result, if the situation in question affects a group of data subjects (such as in data leaks), it is important to file a formal complaint with the ANPD on the matter. On the other hand, if the identified situation directly affects personal data of the requesting data subject only, it is possible to file a petition with the ANPD. To do so, however, data subjects need to prove they have already tried to contact the controller prior to contacting the Authority (thus filing a petition only if no solution was reached in this direct contact with the controller).

Once a petition or complaint is filed, the ANPD may start administrative proceedings to investigate any possible non-compliance with the LGPD, which may be monitored by the data subjects throughout ANPD's analysis of the issues under discussion.

Judicial Branch.

02

Construction company must indemnify client for leaking personal data

The 1st Civil Panel of the Court of Appeals of Osasco, São Paulo, ordered a construction company to pay damages for pain and suffering in the amount of BRL 4,000.00, due to an alleged consumer data leak.

The Plaintiff in question claimed that, after purchasing an off-plan property from the construction company, his personal data were leaked, without his permission, to a company of custom furniture. Judge Juliana Nishina de Azevedo, rapporteur of the case, upheld the judgment, stating that the leak of data by the construction company, the Defendant, has been proven.

The rapporteur emphasized that the data leak occurred due to the construction company's security failures, and lack of care in safeguarding the customer's data, resulting in the company's civil liability.

In a unanimous decision, it was determined that the security failure in safeguarding and preserving the client's personal data violated the personality rights provided for in the Federal Constitution, related to intimacy, private life, honor, and image of people.

Lawyer is fined for filing a motion written by artificial intelligence

In a recent decision, the Superior Electoral Court (TSE) imposed a fine for malicious prosecution in the amount of BRL 2,600 on a lawyer who used ChatGPT to write a petition and requested intervention in an election process as amicus curiae.

Fábio de Oliveira, the lawyer who requested intervention in the process, intended to present the Artificial Intelligence (AI) recommendation to the Superior Electoral Court, in order to demonstrate that the Court should declare Jair Bolsonaro's ineligibility.

His request to join the process as amicus curiae, a remedy that is not allowed in election processes, was presented in the course of an electoral judicial action to investigate the practice of abuse of political power by former president Jair Bolsonaro (PL) in a meeting he had with foreign ambassadors in 2022, with the aim of discrediting the election process.

According to justice Benedito Gonçalves, rapporteur of the case and general inspector of the Electoral Courts, there is a clear violation of the duty to not assert a claim when the lawyer is aware that it is groundless, which gives rise to malicious prosecution.

Court decision maintains that Via Quatro is prohibited from collecting data from passengers

The 8th Chamber of Public Law of the Court of Justice of São Paulo (TJSP) upheld the decision prohibiting Via Quatro, the operator of the Yellow Line of the São Paulo Subway, from collecting passenger data. In addition, it decided to increase the amount of damages for collective pain and suffering to R$ 500 thousand, which will be reverted to the Fund in Defense of Diffuse Rights (FDD).

In a Public-Interest Civil Action filed by the Brazilian Institute for Consumer Protection (IDEC), the lower court entered a judgment against the subway operator, which had been misusing security cameras and capturing images of users for commercial and advertising purposes.

Via Quatro challenged the lower court's ruling, arguing that the Brazilian General Data Protection Law (LGPD) is not retroactive and that detecting images for extraction of statistical information, and not for recognition, does not constitute personal data processing.

The judge rapporteur of the appeal, justice Antonio Celso Faria, considered that the company failed to meet the burden of proof, i.e., failed to refute each one of the facts and arguments presented by the plaintiff. He also stated that it was proven that the images captured were used for advertising and commercial purposes. They also aimed at identifying the main characteristics of people who walked at certain places and times, as well as their emotions and reactions to the advertisements displayed on the equipment.

The decision was unanimous, with the participation of justices José Maria Câmara Júnior and Percival Nogueira, who were also members of the judging panel.

03 Authorities.

Brazil's National Council of Justice will issue an opinion on a request aimed at preventing judges from using ChatGPT

Motivated by the imposition of a BRL 2,600 fine by the Superior Electoral Court for malicious prosecution due to the use of ChatGPT (page 8) , lawyer Fábio de Oliveira Ribeiro took the matter to Brazil's National Council of Justice, specifically to the Information Technology and Innovation Commission, so that the situation could be evaluated.

The Commission, chaired by director Luiz Fernando Bandeira de Mello Filho, will be responsible for issuing an opinion on the need to prohibit Brazilian judges from using ChatGPT technology to render, or give the reasons for, decisions in specific cases on which they are working.

Despite the exponential growth in the use of new technologies all over the world – examples include the automation used to manage repetitive demands by several Brazilian courts; the use, by the Superior Court of Justice, of the "Athos" system for screening cases with the potential to be solved based on qualified precedents; and the use, by the Federal Supreme Court, of the "Victor" system for analyzing the possibility of allowing appeals – the reporting director, João Paulo Schoucair, understands there is no evidence that ChatGPT has been used within the scope of the Judicial Power so far.

In this sense, the rapporteur mentioned National Council of Justice's Resolution No. 332/2020, which determines that Judicial Power' bodies must inform the Council in advance about any research, development, implementation, or use of technologies and/or tools that use AI.
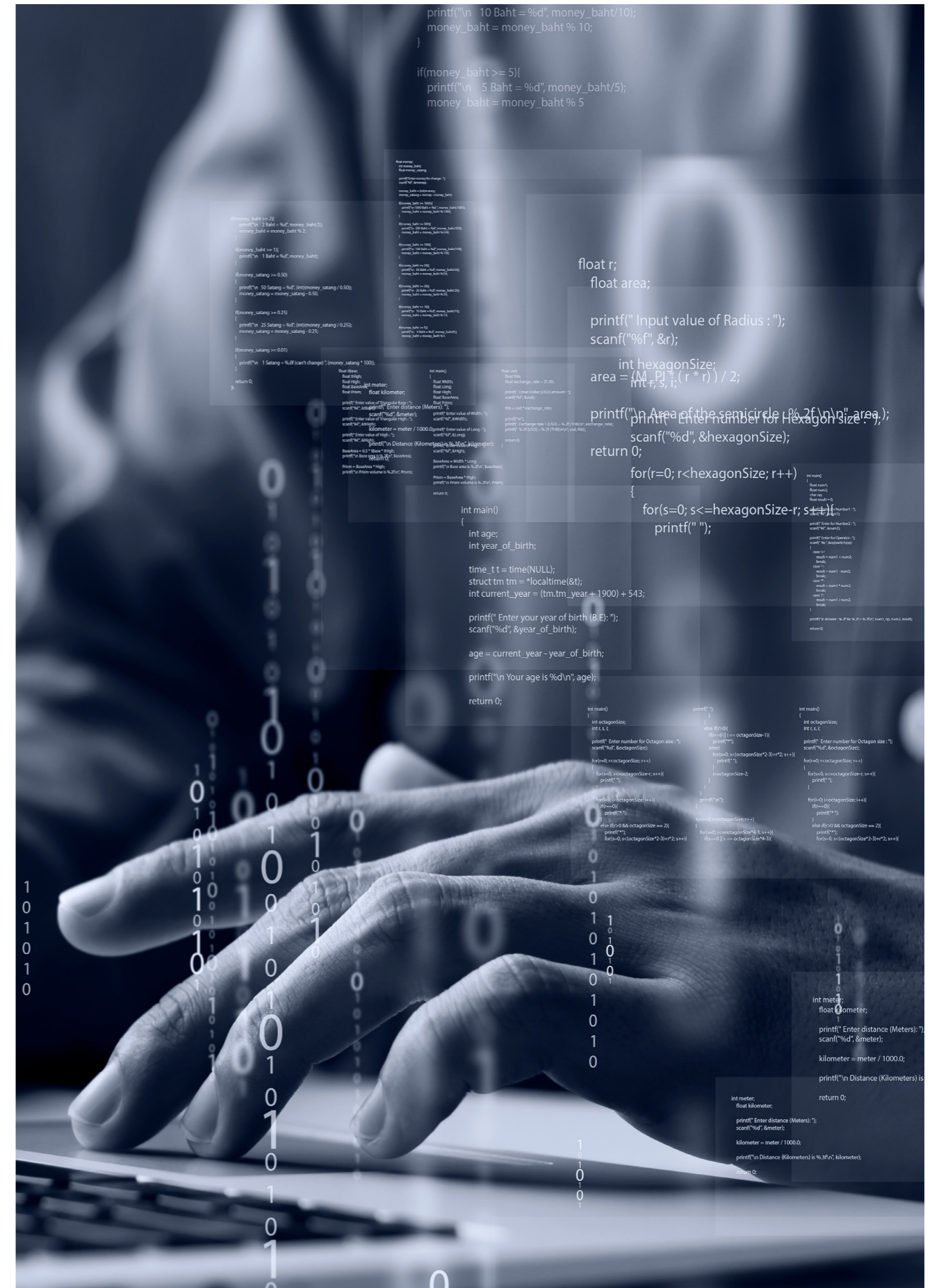
Brazil's Department of Justice and Public Security published an ordinance to prevent the dissemination of illegal content on social media platforms

As illegal and harmful content has been recently circulating on social media platforms with reference to extremism and attacks on school environments, Brazil's Department of Justice and Public Security published an ordinance providing for administrative measures to be adopted.

Seeking balance between freedom of expression, manifestation of thought, protection of children's and adolescents rights', and society in general as consumers of services provided by social media platforms, the ordinance establishes that the National Consumer Secretariat (SENACON) has authority to start administrative proceedings aimed at investigating and holding social media platforms accountable for breaching the general duty of security and care in relation to the dissemination of illegal and harmful content that encourages attacks against the school environment and advocates and incites these crimes or its perpetrators.

SENACON will request the platforms to issue reports about the measures taken to monitor, limit, and restrict such content, and to take proactive measures to limit its dissemination; to fulfill requests made by the competent authorities; to develop protocols for situations of crisis; and to take other appropriate measures.

The National Secretariat for Public Security (SENASP) will coordinate the Safe School Operation, through the Integrated Operations Board. This way, it will ensure the operation is effective, within the limits set forth by the Brazilian Civil Rights Framework for the Internet. The operation intends to manage the sharing, between platforms and authorities, of data that allow for identifying the user or internet connectivity terminal of the person who made the content available. In this context, SENASP will set up a database with content deemed illegal.

Finally, it should be noted that sanctions for non-compliance with the obligations set forth in the ordinance will be imposed within the scope of administrative or judicial proceedings, in accordance with the functions of the competent bodies.

01

Normative Developments.

New law is enacted to include race and ethnicity data in workers' records

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On April 24th, Federal Law No. 14,553/2023 was enacted (please read here), changing the Statute of Racial Equality (Federal Law No. 12,288/10) to determine the inclusion of race and ethnicity data in the records of workers from the private and public sectors. According to such law, the information will be used to subsidize public policies that promote racial equality.

In addition, workers will have to provide the ethnic group and race they belong to on admission and dismissal forms for employment, occupational accidents, registration of insured and dependents at the National Social Security Institute (INSS), Brazilian Institute of Geography and Statistics (IBGE) surveys, registration at the National Employment System (SINE), and the Annual Social Information Report (RAIS).

Legal framework for Artificial Intelligence is presented in Brazilian Senate

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The Bill for the Legal Framework of Artificial Intelligence (AI), Bill No. 2,338/2023, was formally presented to the Federal Senate for evaluation.

The main directives of the Bill, which may still be substantially amended by the Senate's thematic committees and then by the House of Representatives, include provisions on non-discrimination and the rights of users of AI systems in relation to their data. In addition, the text of the Bill for the Legal Framework of AI sets forth hypotheses of civil liability of suppliers and operators of AI systems, including in consumer relations.

05

International Rulings.

Norwegian Data Protection Authority prohibits Statistics Norway from processing data on grocery purchases

The Norwegian Data Protection Authority (Datatilsynet) prohibited Statistics Norway (SSB) from continuing to collect data on grocery purchases from the Norwegian population. Datatilsynet argues that this data processing activity does not rely on a lawful basis. The collection involved information about grocery shopping habits gathered through data from bank transactions and receipts.

Such prohibition occurred because Datatilsynet has received complaints from data subjects. SSB may appeal within a three-week period.

EDPB publishes data protection guide for small businesses

On April 27th, 2023, the European Data Protection Board ("EDPB") published a data protection guide (please read here) to help small businesses comply with the European General Data Protection Regulation ("GDPR") and enhance data protection awareness among these parties.

The guide covers several GDPR topics, from basic concepts to data subject rights and data breaches, in an accessible and user-friendly language. It also contains concrete examples, videos, infographics, interactive flowcharts, and other materials. It is worth noting that this initiative has already been undertaken by ANPD in October 2021, when it published the information security guide for small processing agents, which are subject to the enforcement of LGPD, pursuant Resolution CD/ANPD No. 2/2022.

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