

DRAFT BILL PROPOSITION

BRAZILIAN INTERNET LAW FRAMEWORK (MARCO CIVIL)

Translators' note: This is an alternate translation of the latest draft of the Marco Civil, based on the official translation provided in the consultation website. While corrections have been made, the substance of the text is adequately conveyed by both the official translation and the present one, which tends to be less literal.

THE NATIONAL CONGRESS decrees:

CHAPTER I

PRELIMINARY PROVISIONS

Article 1. This law establishes rights and obligations concerning the use of the Internet in Brazil, and provides guidelines about this subject for the jurisdictions of the Federal Union, States, Cities and the Federal District of Brasilia.

Article 2. Regulation of the Internet in Brazil shall be grounded on the recognition of the international nature of the Internet, the exercise of citizenship in the digital environment, human rights, the values of plurality, diversity, openness and collaboration, free enterprise and free competition, considering the following principles:

I - freedom of speech, communication and expression;

II - protection of privacy;

III - protection of personal data, in accordance to the law;

IV - the preservation and guaranteeing of net neutrality;

V - the preservation of the stability, security and functionality of the network, by mean of technical practices compatible with international standards and the incentive for the use of best practices;

VI - the preservation of the participatory nature of the Internet.

Sole Paragraph. The principles defined by this law do not exclude others set forth by the national legal system related to the matter, or by the international treaties signed by the Federative Republic of Brazil.

Article 3. The regulation of the use of the Internet in Brazil shall have the following objectives:

I - to guarantee Internet access to all citizens;

II - to promote access to information, knowledge and participation in cultural activities;

III - to strengthen free enterprise and free competition;

IV- to promote innovation and to foster the wide dissemination of new technologies and

models of use and access, and

V - to promote standardization, accessibility and interoperability through the use of open standards.

Article 4. For the purposes of this law, the following definitions apply:

I - Internet: the internationally structured set of means of transmission, switching and routing of data, as well as the protocols necessary for communication between terminals, including the software required for this specific end;

II - terminal: a computer or similar device that connects to the Internet;

III - autonomous system administrator: the legal entity duly registered with the Latin American and Caribbean Internet Addresses Registry (LACNIC), responsible for a specific set of IP (Internet protocol) numbers and by a set of routers, networks and Internet communication lines, which are part of an infrastructure defined by the same protocols and metrics;

IV - Internet connection: the authentication of a terminal for sending and receiving data packages through the Internet, by means of the attribution of an IP number;

V - connection logs: the information referring to the date, time of beginning and ending of an Internet connection, its duration and the IP number used by the terminal for receiving data packages;

VI - Internet services: the set of diverse services that can be accessed through a terminal connected to the Internet, such as, but not limited to, navigation, instant messaging, sending and receiving e-mails, publishing of texts or audiovisual works in digital formats, among others;

VII - Internet service access logs: the information referring to the date and time of use of a particular Internet service by a determined IP number.

Article 5. This law shall be construed taking into account not only the principles, objectives and directives established herein, but also the nature of the Internet, its particular uses and customs, its role in the promotion of human, economic, social, and cultural development, the requirements for promoting the public good, and rights and duties applicable to individuals or groups.

CHAPTER II ON THE RIGHTS AND GUARANTEES OF USERS

Article 6. Access to Internet is a civil right, essential for the exercise of citizenship, of the freedoms of expression, speech and thought, and for safeguarding access to information.

Article 7. Internet users have the right:

I - to the non-violation and secrecy of their communications, except in case of a court order, under the specific clauses determined by law, for the purpose of criminal investigation or under a criminal lawsuit;

II - to the non-suspension and non-degradation of the contracted quality of Internet

connection, as provided by Article 12, except in the case of default in payment, directly related to the use of the service;

III - to obtain clear and comprehensive information included in contracts with providers, expressing the regime of protection of personal data, connection logs and Internet service access logs, as well as information on the adopted practices of network management that might affect the quality of service offered, and

IV - to the non-disclosure or use of connection logs and Internet services access logs, except under express consent or due to a court order.

Article 8. The preservation of the right to privacy and freedom of expression in communications is a condition for the full exercise of the right to Internet access.

Sole Paragraph. Internet users are allowed to adopt safety measures for safeguarding the protection of personal data and secrecy of communications, for the exercise of the rights of privacy and freedom of expression.

CHAPTER III ON THE PROVISION OF INTERNET CONNECTION AND SERVICES

SECTION I General Provisions

Article 9. The provision of Internet connections only imposes the obligation of keeping records of connection logs, under the terms of Subsection I and Section III of this chapter. Connection providers are forbidden to keep records on Internet service access logs.

Sole Paragraph. Internet connection providers shall not monitor, filter, analyze or inspect the content of data packages, except for the technical administration of traffic, under the provisions of Article 12.

Article 10. The provision of Internet services, whether onerous or free of charge, does not oblige the service provider to monitor, filter, analyze or monitor the contents of data packages or to keep records of Internet services access logs, except in cases of specific court order, subjected to the provisions of Article 18.

Sole Paragraph. For the effects of this provision, users who hold powers of moderation of content produced by third parties shall be considered under the same obligations as the Internet services providers.

Article 11. The liability of Internet services providers for damages arising from content generated by third parties is conditioned to the violation of the procedures set forth by Section IV of this chapter.

SECTION II

On data traffic

Article 12. The party responsible for the transmission, switching or routing of data has the obligation of granting equal treatment to every data package, content, terminal or application, and is prohibited to engage in any discrimination or degradation of traffic not related to technical requirements aiming the preservation of the contracted quality of service.

SECTION III

On data records

Subsection I

On the storage of connection logs

Article 13. The storage and disclosure of records on connection logs regulated by this law must preserve the privacy, intimate life, reputation, and image of the parties directly or indirectly involved.

Article 14. The provision of Internet connection imposes the administrator of an autonomous system the obligation to keep records on connection logs confidentially, in a secured and controlled environment, for the maximum term of 6 (six) months, as specified by further administrative regulation.

Sole Paragraph. The obligation to maintain records on connection logs cannot be transferred.

Article 15. Concerning the storage of connection logs:

I - connection logs can only be disclosed to third parties by means of a court order or after prior written permission of the respective users;

II - user data can only be disclosed and linked with connection logs by means of a court order;

III - management, safety and confidentiality procedures and practices related to the storage of connection logs records and user data must be clearly informed to the users.

Sole Paragraph. The security procedures necessary for preserving the confidentiality and integrity of the connection logs and user data referred in this article must follow adequate standards, to be defined by further regulation.

Subsection II

On the storage of Internet service access logs

Article 16. The storage of Internet service access logs shall depend on the express authorization of users and shall be bound by the following provisions, without prejudice of other norms and directives related to the protection of personal data:

I - users must be given prior information about the nature, objectives, period of storage,

safety policies and destination of the recorded data, and granted access to data, as well as the opportunity to correct and update it when requested;

II - users must be given prior informed consent and knowledge about the management, disclosure to third parties or the publication of the information recorded;

III - data that allows identification of users can only be disclosed and linked to Internet services access logs by means of a court order.

Article 17. The damages caused to the holders of personal data must be compensated on the terms of the law.

Subsection III On the secrecy of Internet Communications

Article 18. The procedures for intercepting, wiretapping, or making available the content of Internet communications only apply for the purposes of criminal prosecution and will be ruled by the law that deals with the interception of telephone communications and telematic data.

SECTION IV On content removal

Article 19. Internet connection providers will not be held liable for damages resulting from content generated by third parties.

~~**Article 20.** Internet service providers may only be held liable for damages arising out of content generated by third parties if the provider was notified and did not take the steps within its competence, in a reasonable term, to make unavailable the content identified as infringing.~~

~~§ 1. Internet service providers must maintain at least one clearly identifiable electronic channel for receiving notifications and counter notices.~~

~~§ 2. Internet service providers may create automated mechanisms in order to conform to the procedures described in this Section.~~

Article 20. Internet service providers may only be held liable for damages arising out of content generated by third parties if, after receiving a court order concerning the content, do not take action to, within the scope of their services and within the indicated term, make unavailable the content indicated as infringing.

~~**Article 21.** The notification mentioned in Article 20 shall contain, under penalty of invalidation:~~

~~**I** - the identification of the notifying party, including full name, civil registry and fiscal identification numbers and current contact information;~~

~~**II** - date and time of transmission;~~

~~**III** - clear and specific identification of the content indicated as infringing, allowing the~~

~~unequivocal identification of the material;~~

~~IV - a description of the relationship between the notifying party and the content indicated as infringing; and~~

~~V - legal justification for removal.~~

Article 21. The court order mentioned in Article 20 shall contain, under penalty of invalidation:

I - the identification of the notifying party, including full name, civil registry and fiscal identification numbers and current contact information;

II - clear and specific identification of the content indicated as infringing, allowing the unequivocal identification of the material

III - a description of the relationship between the notifying party and the content indicated as infringing; and

IV - legal justification for removal.

~~**Article 22.** After blocking access to the content, Internet service providers shall report this action to the user who has produced the content, quoting the reasons for removal as raised by the notification, and establishing a reasonable deadline for permanent removal.~~

~~**Sole Paragraph.** If the user responsible for the infringing content is not identifiable or cannot be located, and if the requirements for notification have been met, the service provider must keep the content unavailable.~~

Article 22. Whenever the user responsible for the infringing content is identifiable, after blocking access to the content, Internet service providers shall report this action to the user who has produced the content, informing the user of the terms court order.

~~**Article 23.** The user who has produced the content may counter notice the Internet service provider, properly attending the requirements of Article 21, in order to make the content available again. By doing so, the counter notifier assumes sole responsibility for any damages caused to third parties. In response to the counter notice, the service provider will be required to restore access to the blocked content and to inform the party who presented the notification that it has been restored.~~

~~**Sole Paragraph.** Any other interested party, be it individuals or legal entities, may present a counter notice, properly attending the requirements of Article 21. By doing so, the party assumes responsibility for the content's availability.~~

Article 23. Users who possess moderation powers over content produced by third parties will be treated as Internet service providers for the purposes of this Section.

~~**Article 24.** Both notifier and counter notifier will be held responsible for any false or erroneous information they provide, as well as for abusive behavior or behavior in bad faith, in accordance to the law.~~

~~**Article 25.** Users who possess moderation powers over content produced by third parties will be treated as Internet service providers for the purposes of this Section.~~

SECTION V
On the judicial request for logs

Article 26. Interested parties may, for the sole purpose of gathering evidence in legal proceedings, request a judge to dispatch an order requesting the party responsible for storing the records to disclose Internet service access logs or connection logs.

Sole Paragraph. In the application for a judicial order, the party shall include:

I - the detailed description of evidence concerning the occurrence of an illegal act;

II - the unavoidable need for accessing the requested logs for the purposes of investigating the illegal act, and;

III - the period to which the records refer.

Article 27. The judicial order for providing records will follow the applicable procedural rites, in observance of the following:

§ 1. The request for providing Internet service access logs will be subjected to the proof that the responsible party stores such records with the express authorization of users, in compliance with the provisions of Article 16.

§ 2. If the provision of Internet service access logs is not needed for investigation, the judge shall limit the request to connection logs only.

§ 3. The judge is responsible for taking the necessary steps to ensure the secrecy of communications and to preserve the intimacy, privacy, honor, and image of users, and for determining whether the information should be kept under secrecy in court records.

CHAPTER IV
ON THE ROLE OF PUBLIC AUTHORITIES

Article 28. The Federal Union, States, Cities and Federal District of Brasilia shall be guided by the following directives in the development of the Internet in Brazil:

I - the establishment of transparent, collaborative, and democratic mechanisms of governance with the participation of the various sectors of society;

II - the promotion of interoperable technology for e-government services in the different levels of the

Federation, in order to allow the exchange of information and streamlining of procedures;

III - the promotion of interoperability between different systems and terminals, especially among different levels of the Federation and several sectors of society;

IV - the preferential adoption of open technologies, standards and formats;

V - the disclosure and dissemination of public data and information in an open and structured manner;

VI - the optimization of network infrastructure, the promotion of technical quality, innovation, and the dissemination of Internet services, without impairing the open, neutral and participatory nature of the Internet;

VII - the development of initiatives and education programs concerning the use of the

Internet;

VIII - the promotion of culture and citizenship, notably by providing more dynamic and efficient public services;

IX - the efficient use of public resources and the efficiency of digital services made available to citizens, and

X - the provision of public services for citizens in integrated, simplified fashion, through multiple communication channels.

Article 29. Government sites and portals shall strive for:

I - the compatibility of e-government services with the various terminals, operating systems and applications used to access them;

II - accessibility for all interested parties, regardless of their physical, motor, cognitive, cultural, and social skills, provided that confidentiality issues and legal and administrative regulations are respected;

III - compatibility with both human reading and machine processing;

IV - ease of use of electronic government services, and

V - the strengthening of participatory democracy.

Article 30. Providing training for the use of the Internet as a tool for citizenship and for the promotion of culture and technological development are part of the constitutional duty of the State to promote education at all levels.

§ 1. Without prejudice of governmental duties, the State shall incentivize private initiatives that promote the Internet as an educational tool.

§ 2. Internet training should be integrated with other educational practices.

Article 31. Public initiatives to promote digital literacy and the use of Internet as a social tool must:

I - seek to minimize inequality of access to information, especially between regions;

II - promote the digital inclusion of the entire population, especially low-income individuals.

Article 32. The State must seek, formulate and promote periodical research, as well as set objectives, strategies, plans regarding the use and development of the Internet in the country.

CHAPTER V FINAL PROVISIONS

Article 33. The interests and rights of Internet users shall be exercised either individually or collectively, in accordance to the provisions of Articles 81 and 82 of Law 8.078 of September 11, 1990 *{Note: Brazilian Consumer Rights Code. These provisions refer to collective action.}*

Article 34. This Law shall enter into force upon its publication.