



CHAMBER OF DEPUTIES OF BRAZIL

SUBSTITUTE BILL TO BILL OF LAW N. 2,126, of 2011

Sets out principles, guarantees, rights, and obligations for the use of the Internet in Brazil.

The National Congress decrees the following:

CHAPTER I

PRELIMINARY PROVISIONS

Article 1. This law sets out principles, guarantees, rights, and obligations for the use of the Internet in Brazil, and establishes guidelines for the Federal Government, the States, the Federal District, and the Municipalities to act regarding the subject matter.

Article 2. The rules on the use of the Internet in Brazil are based upon respect to freedom of speech, as well as on:

- I – the acknowledgement of the global scale of the Internet;
- II – human rights, the development of personality, and the practice of citizenship through digital means;
- III – plurality and diversity;
- IV – openness and collaboration;
- V – free enterprise, free competition, and consumer protection; and
- VI – the social purpose of the Internet.

Article 3. The rules on the use of the Internet in Brazil are set upon the following principles:

- I – guarantee of freedom of speech, communication, and expression of thought, according to the Constitution;
- II – protection of privacy;
- III – protection of personal data, according to the law;
- IV – preservation and guarantee of the neutrality of the Internet;



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V – preservation of the stability, safety, and functionality of the Internet, through technical measures compatible with international standards, and by fostering the use of best practices;

VI – liability of agents according to their activities, as provided by law; and

VII – preservation of the participatory nature of the Internet.

Sole paragraph. The principles expressed in this law do not exclude others laid down in the Brazilian legal system concerning the subject, or in the international treaties to which the Federative Republic of Brazil is a party.

Article 4. The rules on the use of the Internet in Brazil have the following objectives:

I – to promote the right to Internet access to everyone;

II – to promote access to information, knowledge, and participation in cultural life, and in the conduct of public affairs;

III – to promote innovation and to foster wide dissemination of new technologies and models of use and access; and

IV – to promote adherence to open technological standards that enable communication, accessibility, and interoperability among applications and databases.

Article 5. For the purposes of this law, the following definitions apply:

I – Internet: the system constituted of a set of logical protocols, structured on a global scale for public and unrestricted use, aimed at enabling data communication among terminals by means of various networks;

II – terminal: a computer or any device that can be connected to the Internet;

III – autonomous system administrator: an individual or legal entity, duly registered with the national agency in charge of registering and distributing IP addresses geographically related to the country, that manages blocks of specific Internet Protocol – IP addresses and the corresponding autonomous routing system;



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IV – IP address: a code, established according to international parameters, attributed to a network terminal in order to enable its identification;

V – Internet connection: the enabling of a terminal to send and receive data packages through the Internet, by means of the attribution or authentication of an IP address;

VI – connection logfile: a set of data related to the date and time of the beginning and end of an Internet connection, its length, and the IP address used by the terminal to send and receive data packages;

VII – Internet applications: a set of functionalities which may be accessed by a terminal connected to the Internet; and

VIII – logfile of access to Internet applications: a set of data related to the date and time of use of a given Internet application from a given IP address.

Article 6. This law shall be construed by taking into account, in addition to the fundamentals, principles, and objectives herein provided, the nature of the Internet, its specific uses and practices, and its importance in promoting human, economic, social, and cultural development.

CHAPTER II

USER RIGHTS AND GUARANTEES

Article 7. Internet access is essential to the practice of citizenship, and the following rights are ensured to users:

I – inviolability of privacy and private life, the right to their protection and to pecuniary damages or compensation for pain and suffering resulting from their violation being ensured;

II – inviolability and secrecy of their Internet communications flow, except by court order, under the terms of the law;

III – inviolability and secrecy of their stored private communications, except by court order;



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IV – non-interruption of Internet connection, except in case of debt directly resulting from its use;

V – maintenance of the Internet connection quality standard, as contracted;

VI – clear and complete information stated in service provision contracts, with details about the protection system for connection logfiles and logfiles of access to Internet applications, as well as about network management practices which may affect its quality;

VII – non-disclosure to third parties of their personal data, including connection logfiles and logfiles of access to Internet applications, except upon free, express, and informed consent, or in the cases prescribed by law;

VIII – clear and complete information about the gathering, use, storage, treatment, and protection of their personal data, which can only be used for purposes that:

- a) justify their gathering;
- b) are not forbidden by law; and
- c) are specified in service provision contracts.

IX – express consent for the gathering, use, storage, and treatment of personal data, which shall be manifested in a separate contract clause;

X – definitive exclusion, at the termination of the contract and at the users' request, of personal data that they have provided to a given Internet application; and

XI – public and clear policies of use that may be adopted by Internet connection and Internet application providers.

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

Sole paragraph. Contract clauses that violate the provisions of the head paragraph of this article are null and void, such as those which:



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I – violate the inviolability and secrecy of Internet private communications;
or

II – in an adhesion contract, do not offer as an alternative to the contracting party the choice of a Brazilian court to settle disputes derived from services provided in Brazil.

CHAPTER III

PROVISION OF INTERNET CONNECTION AND INTERNET
APPLICATIONS

Section I

Network Neutrality

Article 9. The agent responsible for transmission, commutation, or routing has the duty to treat any data packages equally, with no distinction of content, origin, and destination, service, terminal, or application.

Paragraph 1. Traffic discrimination or degradation shall be regulated by decree and may only derive from:

I – technical requirements essential to the adequate provision of services and applications; and

II – prioritization of emergency services.

Paragraph 2. In the case of traffic discrimination or degradation as set forth in paragraph 1, the agent referred to in the head paragraph shall:

I – refrain from causing damage to users, as prescribed by article 927 of the Civil Code;

II – act in a proportional, transparent, and equal fashion;

III – inform users beforehand about the traffic management and mitigation practices adopted, in a transparent, clear, and sufficiently descriptive fashion; and

IV – offer services in non-discriminatory trade conditions, and refrain from engaging in anticompetitive practices.



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Paragraph 3. In providing Internet connection, whether for a consideration or free of charge, as well as in transmission, commutation, or routing, it is forbidden to block, monitor, filter, or analyze data package content.

Section II

Protection of Logfiles, Personal Data, and Private Communications

Article 10. The retention and disclosure of the connection logfiles and Internet application access logfiles provided for in this law, as well as of personal data and of the content of private communications shall preserve the privacy, private life, honor, and image of the parties directly or indirectly involved.

Paragraph 1. The Internet service provider in charge of the retention of logfiles shall only be required to disclose the logfiles referred to in the head paragraph of this article, autonomously or associated to personal data or to other information which may contribute to the identification of the user or terminal, by means of a court order, according to the provisions set forth in Section IV of this Chapter, in compliance with the provisions of Article 7.

Paragraph 2. The content of private communications can only be disclosed by means of a court order, in the cases and in the manner provided by law.

Paragraph 3. The provisions of the head paragraph do not prevent access, by the administrative authorities that hold legal power for its request, to the records regarding personal information, names of parents, and address, as provided by law.

Paragraph 4. The measures and procedures for safety and secrecy shall be clearly informed by the agent in charge of providing the Internet services, and shall meet the standards set forth in regulations.

Article 11. In any operation of gathering, storage, retention, and treatment of logfiles, personal data, or communications, by Internet connection providers and Internet application providers, in which at least one of these activities occurs in the Brazilian territory, the Brazilian legislation shall be respected, as well as the rights to privacy, to the secrecy of personal data, of private communications, and of logfiles.



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Paragraph 1. The provisions of the head paragraph apply to data gathered within the Brazilian territory and to the content of communications, in which at least one of the terminals is located in Brazil.

Paragraph 2. The provisions of the head paragraph apply even if the activities are carried out by a legal entity domiciled abroad, provided that at least one member of the same economic group is established in Brazil.

Paragraph 3. The Internet connection providers and Internet application providers shall, according to the regulations, provide information that enables inspection related to the compliance with Brazilian legislation, gathering, retention, storage, or treatment of data, as well as to the respect to privacy and to the secrecy of communications.

Paragraph 4. A decree shall regulate the procedures for the investigation of violations to the provisions of this article.

Article 12. The Executive Branch may, by means of a decree, require the providers of Internet connection and applications referred to in Article 11 which perform their activities in an organized and professional manner, and for profit purposes, to install or use structures for storage, management, and dissemination of data in Brazil, taking into account the size of the providers, their sales revenues in Brazil, and the scope of the service offered to the Brazilian public.

Article 13. Without prejudice to other civil, criminal, or administrative penalties, violations of the rules provided in Articles 10, 11, and 12 shall be subject, as the case may be, to the following penalties, applied individually or cumulatively:

I – written reprimand, indicating the deadline for taking corrective measures;

II – a fine of up to ten percent of the gross sales revenues of the economic group in Brazil in the preceding financial year, excluding taxes;

III – temporary suspension of the activities involving the acts provided for in Articles 11 and 12; or

IV – prohibition to carry out activities involving the acts provided for in Articles 11 and 12.



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Sole paragraph. In the case of foreign companies, their branches, subsidiaries, offices, or establishments domiciled in Brazil shall have joint and several liability for the payment of the fines mentioned in the head paragraph of this article.

Subsection I

Retention of Connection Logfiles

Article 14. In the provision of Internet connection, it is the duty of the respective provider to keep connection logfiles, in secrecy, in a controlled and safe environment, for the period of one year, under the terms of the relevant regulation.

Paragraph 1. The responsibility for keeping connection logfiles may not be transferred to third parties.

Paragraph 2. The police, the administrative authorities, or the Public Prosecution Office may require, as a precautionary measure, that the connection logfiles be retained for a period exceeding the one established in the head paragraph.

Paragraph 3. In the case provided for in paragraph 2, the requiring authority shall have sixty days from the date of the request to file a petition for judicial authorization to access the logfiles referred to in the head paragraph.

Paragraph 4. The provider in charge of retaining the logfiles shall maintain secrecy regarding the request mentioned in paragraph 2, which shall lose its effectiveness should the petition for judicial authorization be denied or not be filed within the period established in paragraph 3.

Subsection II

Retention of Internet Application Logfiles in the Provision of Internet Connection

Article 15. In the provision of Internet connection, either for a consideration or free of charge, it is forbidden to retain Internet application logfiles.

Subsection III



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Retention of Internet Application Logfiles in the Provision of Internet Applications

Article 16. In the provision of Internet applications, either for a consideration or free of charge, it is forbidden to retain:

I – the logfiles related to other Internet applications without prior consent from the data holder, with due regard for Article 7; or

II – personal data which are excessive in relation to the purpose consented to by the data holder.

Article 17. A court order may require, for a limited period of time, that Internet application providers retain Internet application logfiles, as long as these logfiles are related to specific facts within a specific period of time, and the disclosure of such information shall comply with the provisions of Section IV of this Chapter.

Paragraph 1. With due regard for the provisions of the head paragraph of this article, the police, the administrative authorities, or the Public Prosecution Office may require, as a precautionary measure, that Internet application logfiles be retained, in accordance with the procedure and periods of time set forth in paragraphs 3 and 4 of article 14.

Article 18. Except for the cases provided for in this law, the option not to retain Internet application logfiles does not imply liability for damage arising from the use of such services by third parties.

Section III

Liability for Damage Arising from Content Generated by Third Parties

Article 19. Internet providers shall not be held civilly liable for damage arising from content generated by third parties.

Article 20. In order to ensure freedom of speech and to prevent censorship, Internet application providers may only be held civilly liable for damage arising from content generated by third parties if, following a specific court order, such Internet application providers do not take steps, within the scope and the technical limits of their service and within the specified period of time, to make the allegedly illegal content unavailable, unless otherwise provided by law.



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Paragraph 1. The court order referred to in the head paragraph of this article shall include, under penalty of nullity, clear and specific identification of the allegedly illegal content, so as to allow unequivocal localization of the material.

Paragraph 2. Application of the provisions of this article to violations of copyright or related rights is conditioned upon a specific legal provision, which shall respect freedom of speech and other guarantees provided for by article 5 of the Federal Constitution.

Article 21. If an Internet application provider has the contact information of the user directly responsible for the content referred to in article 19, it is the duty of the Internet application provider to communicate to the user the reasons and information regarding the blocking of content, including information that will enable the adversary system and the opportunity to be heard in court, unless otherwise provided by law or save for an express and justified judicial order establishing otherwise.

Sole paragraph. Upon request by the user who published the content made unavailable, the provider of Internet applications that carries out this activity in an organized and professional manner, and for profit purposes, shall replace such content made unavailable with the justification or the court order which gave grounds to the content unavailability.

Section IV

Judicial Request for Logfiles

Article 22. The interested party may, for the purpose of gathering evidence in a civil or criminal lawsuit, on an incidental or autonomous basis, request the judge to order the party responsible for the retention of the Internet application access logfiles, or connection logfiles, to disclose such logfiles.

Sole paragraph. Without prejudice to other legal requirements, the request shall contain, under penalty of inadmissibility:

I – solid evidence of the occurrence of the violation;



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II – a reasoned justification for the usefulness of the requested logfiles for the purposes of investigation or presentation of evidence; and

III – the period to which the logfiles relate.

Article 23. The judge shall take the necessary measures to ensure the secrecy of the information received and the preservation of the user's privacy, private life, honor, and image, and the judge may determine secrecy of legal proceedings, including with respect to requests for the retention of logfiles.

CHAPTER IV

THE ROLE OF THE PUBLIC AUTHORITIES

Article 24. The Federal Government, the States, the Federal District, and the Municipalities shall apply the following guidelines in the development of the Internet in Brazil:

I – the establishment of mechanisms of multi-participatory, transparent, collaborative, and democratic governance, with the participation of the government, the business sector, the civil society, and the academic community;

II – the promotion of the rationalization of the Internet management, expansion, and use, with the participation of the Brazilian Internet Steering Committee;

III – the promotion of the rationalization and technological interoperability of e-government services, among the various Branches of Power and levels of the Federation, in order to enable information exchange and speedy procedures.

IV – the promotion of interoperability among various systems and terminals, including among various levels of the Federation and various sectors of society;

V – the preferential adoption of open and free technologies, standards and formats;

VI – the publicization and dissemination of public data and information in an open and structured manner;



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VII – the optimization of network infrastructure, and the fostering of the establishment of centers for storage, management, and dissemination of data in Brazil, promoting technical quality, innovation, and diffusion of Internet applications, without prejudice to the openness, neutrality, and participatory nature of the Internet;

VIII – the development of capacity-building actions and programs for Internet use;

IX – the promotion of culture and citizenship; and

X – the provision of public services to citizens in an integrated, efficient, and simplified form, and through multiple access channels, including remote ones.

Article 25. The Internet applications of Government agencies shall seek:

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

II – accessibility to all interested parties, regardless of their physical, motor, perceptual, cultural, and social skills, in compliance with secrecy issues and legal and administrative restrictions;

III – compatibility with both human reading and automated processing of information;

IV – ease of use of e-government services; and

V – strengthening of social participation in public policies.

Article 26. The fulfillment of the Government constitutional duty to provide education, at all teaching levels, includes capacity-building, integrated with other educational practices, for the safe, sensible, and responsible use of the Internet as a tool for the practice of citizenship, the promotion of culture, and technological development.

Article 27. Public initiatives to promote digital literacy and the use of Internet as a social tool shall:

I – promote digital inclusion;



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II – seek to reduce inequality in the access to and the use of information and communications technology, particularly among the various regions of Brazil; and

III – foster the production and circulation of Brazilian content.

Article 28. The Government shall, from time to time, design and promote studies, as well as establish goals, strategies, plans, and schedules regarding the use and development of the Internet in Brazil.

CHAPTER V

FINAL PROVISIONS

Article 29. The defense of the interests and rights provided for in this law may be exercised in court, either individually or collectively, in accordance with the law.

Article 30. Until the entry into force of the specific law referred to in paragraph 2 of Article 20, the liability of providers of Internet applications for damage arising from content generated by third parties, in the case of breach of copyright or related rights, shall continue to be regulated by copyright legislation in force, applicable on the date of entry into force of this law.

Article 31. This law shall become effective sixty days after the date of its official publication.

Brasília-DF, _____, 2013.