

The experts' point of view

 Technology

Investments in Artificial Intelligence are expected to grow in 2024 at the same time as litigation over the use of the technology emerges

Experts estimate that M&A operations have focused on acquisitions of startups and technology companies that integrate Artificial Intelligence (AI) solutions into their daily operations

Exclusive interview with our partners on the panorama of the sector

Business Barometer: opportunities and points of attention in the market

Lefosse

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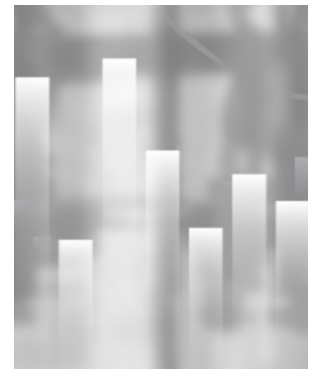
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BUSINESS BAROMETER

Stay ahead in the market: check out the opportunities and points of attention in the technology sector.



INTRODUCTION

The main prospects for the technology sector in Brazil for those who want to stay ahead in the market.

The review from **The experts' point of view: Technology** offers a complete overview of the sector, with analysis and insights from our experts on the regulatory, tax and litigation fronts.

In the **cover story**, partners **Paulo Lilla**, in the Technology, Data Protection and Intellectual Property practice, **Emmanuel Abrantes**, in the Tax practice and **Julio Neves**, in the Dispute Resolution practice analyze the increase in litigation over the use of Artificial Intelligence (AI) and the concentration of M&A transactions on the acquisition of startups and technology companies that integrate AI solutions, despite the lack of regulation.

In a **full interview with our experts**, we present the tech industry landscape for the next two years, including the outlook for the AI regulatory sandbox and data protection. The partners also comment on the role of the Judicial branch in lawsuits related to new technologies.

From a tax perspective, they analyze the impacts of the Tax Reform (EC 132/2023) on the sector. Finally, they discuss the Equal Pay Act in terms of privacy and data protection and the application of the General Data Protection Act (LGPD) by the National Data Protection Authority (ANPD).

In the **business barometer**, you will find the main opportunities and points of attention in the Technology sector so you can prepare for what is to come.

Enjoy your reading!



Investments in Artificial Intelligence are expected to grow in 2024 at the same time as litigation over the use of the technology emerges

Experts estimate that M&A operations have focused on acquisitions of startups and technology companies that integrate Artificial Intelligence (AI) solutions into their daily operations.



Brazil is still taking its first steps in the development and use of AI compared to other countries, but the application of this technology has fertile ground for growth and should attract investment by 2024. The scenario, on the other hand, takes place amid uncertainties about the approval of Bill 2.328/2023, which proposes the regulation of AI systems, by the National Congress, as well as a potential increase in litigation related to the use of certain systems, especially in the year of municipal elections.

According to Paulo Lilla, a partner in the Technology, Data Protection and Intellectual Property practice, M&A operations have focused on acquiring startups and techs that use AI, especially generative AI, such as Chat-GPT-4, which demonstrates the growing incorporation of these solutions into everyday life. The outlook for the year, he says, is for an injection of resources into new technologies aimed at sustainability, in line with the ESG [environmental, social and corporate governance] agenda.

“There are companies, for example, that provide data center services, which involves a lot of pressure to use renewable energies and hardware to reduce the impact of greenhouse gas emissions. The companies that hire these solutions will put pressure on technology suppliers to adopt cleaner energies to provide their services”, he says.



COVER STORY



In line with the ESG agenda, companies that contract data center services should pressure technology suppliers to adopt cleaner energies for the provision of services.”

Paulo Lilla

Julio Neves, a partner in the Dispute Resolution practice, points out that the other side of the development coin is the emergence of disputes that must set limits on the use of technologies. He mentions an ongoing dispute in the United States that could soon reach Brazil, related to the sharing with third parties of data generated by applying the Internet of Things to map and interact with driver behavior.

“It’s the order of the day to look at this scenario, learn from the litigation curve abroad and already improve practices in Brazil to avoid losses”, he says.

While the discussions for a general regulation of Artificial Intelligence are not progressing, Brazilian authorities have entered the subject to close loopholes. The Superior Electoral Court (TSE), for example, banned the use of deepfakes in campaigns for the 2024 municipal elections in February. The technology makes it possible to alter videos, photos and audio using Artificial Intelligence.

In parallel, the National Data Protection Authority (ANPD) is preparing to open a regulatory sandbox to design rules at the intersection of data protection, privacy and the use of AI.

“The idea is for the sandbox to strike a balance between innovation and the development of new AI-based technologies, while at the same time ensuring the protection of fundamental rights, especially privacy and data protection.

We need to wait and see how it will be implemented in practice”, explains Lilla.

In terms of sanctions, the partner classifies the ANPD’s actions as “modest” but lists relevant issues on the Authority’s regulatory agenda that should guide the market from 2024 onwards.



Main issues on the ANPD’s current regulatory agenda

- Regulations on the international transfer of data, expected to be published soon;
- Rules on the processing of children’s and adolescents’ data on platforms;
- Rights of data subjects and the position of DPO [Data Protection Officer].



COVER STORY

On the tax front, the reform of the system for paying taxes on consumption, approved in 2023, tends to have different effects on technology companies, depending on the segment, explains Emmanuel Abrantes, a partner in the Tax practice.

Cybersecurity and Information Security were included in a special regime and will have a 60% reduction in the rate of IBS and CBS - the taxes that will replace the current ones. The other segments of the technology sector are likely to suffer an increase in the current tax burden on their products and services. The increase in charges is particularly sensitive in B2C structures, since the costs pass-through can end up impacting companies' margins, depending on the elasticity of prices.

In B2B, the possibility of taking out credit tends to reduce the impact of the increase in charges.

“Although the expectation is for an improvement in the business environment, from the point of view of the tax burden, the practical result of the reform tends to be bad for local technology companies. The government will need to strengthen incentive measures for the sector”, he says.



Companies must revisit their structures, business models, contracts and pricing to be ready for the new scenario.”

Emmanuel Abrantes





INTERVIEW

What do **our experts** have to say about the main **innovations in the sector?**

In the interview below, partners **Paulo Lilla**, in the Technology, Data Protection and Intellectual Property practice, **Emmanuel Abrantes**, in the Tax practice, and **Julio Neves**, in the Dispute Resolution practice, share their analysis of the current scenario in the sector, including the prospects for the AI and data protection regulatory sandbox, and the actions of the Judicial branch involving new technologies. They also analyze the impacts of the Tax Reform (EC 132/2023), the Equal Pay Act in terms of privacy and the application of the LGPD by the ANPD.



How do you assess the scenario for the technology sector in 2024 and 2025?

Paulo Lilla: There's a lot of focus on AI hype. I see a very profound advance in technologies based on machine learning systems and AI in general. This was driven by the emergence of ChatGPT-4 at the end of 2022 and generative Artificial Intelligence. I see M&A operations focusing on the acquisition of startups and techs that use AI.

Before, we had AI performing very specific tasks for equally specific uses – facial recognition and chatbots, for example. As soon as we have a breakthrough in generative AI, we start to see Artificial Intelligence as a technology capable of creating unprecedented texts and images.

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APPLICATION OF THE GENERAL DATA PROTECTION LAW AND THE WORK OF THE ANPD



Paulo Lilla

Technology, Data Protection and Intellectual Property Partner



INTERVIEW

There is thus a problem of deepfakes, which has even permeated discussions on the electoral scene in Brazil. It will be a topic of intense discussion in the upcoming elections.

But we must not forget other technologies too. The Internet of Things is evolving very quickly and attracting investment. And with the future of 6G, we'll see the expansion of Internet of Things technologies, such as a fridge sensor that tells you when you've run out of milk and automatically connects to an e-commerce supplier that delivers the product to your home. There are a lot of things involving the Internet of Things, some of them really interesting and which will attract many consumers.

When we talk about technology, there's a lot of hype. Many of these hypes end up not moving forward. It seems that developers or investors are trying to force the massification of technologies, and often this doesn't work. One example was the metaverse. I've been saying since 2022 that this was something very niche, specific to the games market, and that companies were trying to get in to mark their territory, but that we would not see this technology become widespread very quickly. This is exactly what happened, unlike generative AI which was quickly adopted by the population. People are using technology for their day-to-day tasks. With this, we see debates about how it will affect jobs, for example.

I also believe that there will be a return to the discussion of blockchain optimization. Combined with AI and the Internet of Things, I would say that these are sustainable technologies.

We will see a lot of discussion about the adoption of new technologies, especially in ESG because there are commitments to reduce greenhouse gas emissions. There are companies, for example, that provide data center services, which involves a lot of pressure to use renewable energies and hardware with

a lower emissions impact. The companies that hire these solutions will put pressure on technology suppliers to adopt cleaner energies to provide services. That's why I think we will have to invest in technology aimed at sustainability.



As soon as we have a breakthrough in generative AI, we start to see Artificial Intelligence as a technology capable of creating unprecedented texts and images, in addition to its specific use in facial recognition and chatbots.”

Paulo Lilla





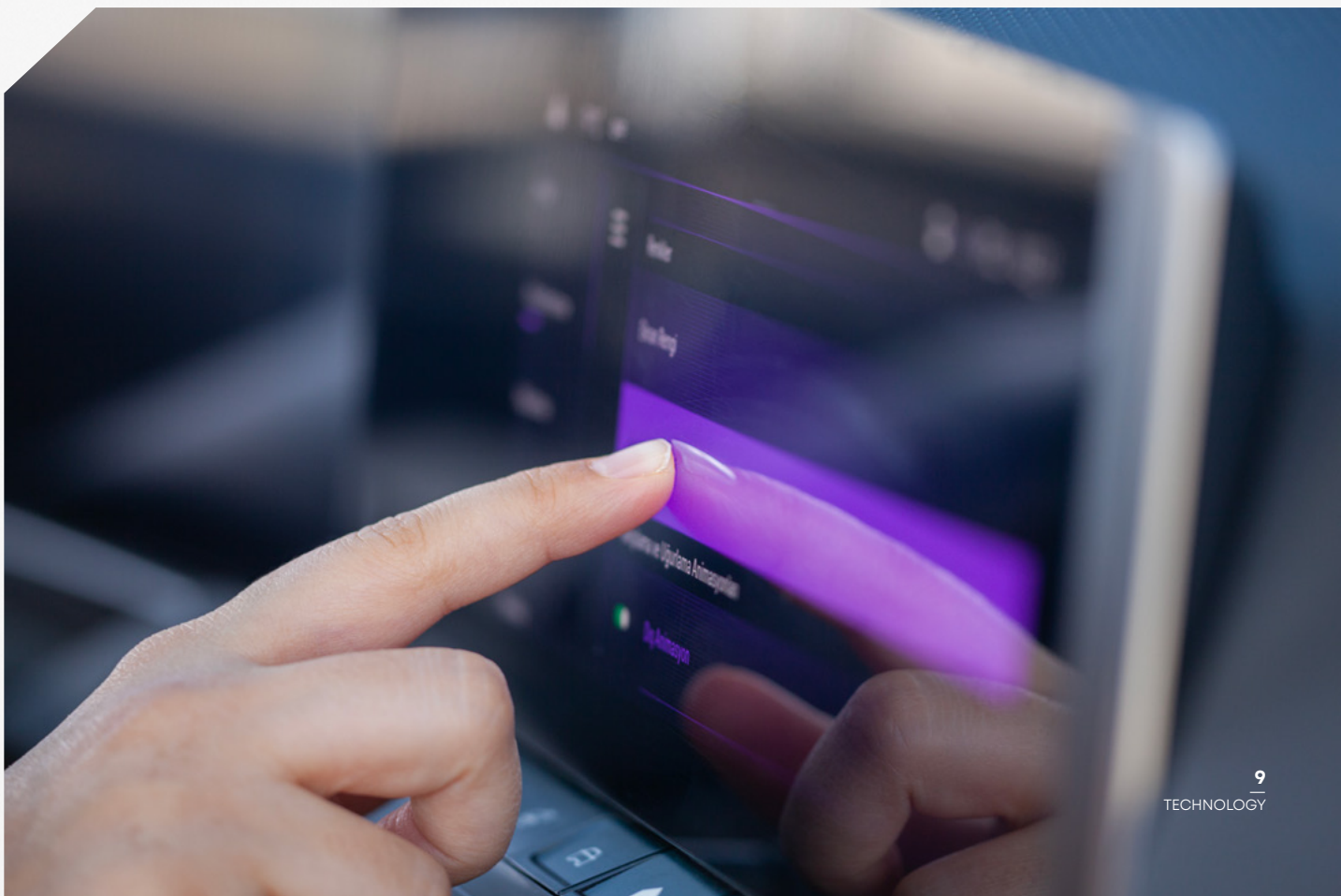
INTERVIEW

What is the other side of the coin, in other words, what points of attention do you see for the sector this year?

Julio Neves: Regarding the Internet of Things, there is a dispute that has not yet exploded in Brazil, but I think there is an element of knowledge about the implications that are still maturing in Brazilian society. Companies must be well prepared for this litigation. We closely followed a class action in Florida (USA), which is the closest thing to a public civil action in Brazil, brought against an automobile company. The company has launched a tool, applied to the cars it manufactures, in which the consumer opts-in when buying the vehicle. This tool “gamifies” driving, i.e. it congratulates the driver if they have saved fuel or warns them to brake more lightly. With this, the tool guides the steering and rewards or reprimands the driver’s behavior.

In the company’s terms of service there was a very general authorization for this data to be shared with third parties and they even went with insurance risk brokers. It happened that some customers spent a year driving their cars satisfied with the feedback they received and found that the price of their insurance doubled, tripled or quadrupled because the insurers received a report saying that a particular driver had braked sharply so many times in a year or had driven above the speed limit so many times in a year. This possibility was not clear, according to the plaintiff of the class action.

This is the Internet of Things applied to the monitoring of everyday behavior with the costly transmission of damage to interested third parties, generating a super discussion about privacy. It is the order of the day to look at this scenario, learn from the litigation curve abroad and improve practices in Brazil to avoid losses.



INTERVIEW

There is a second discussion, this one already presents in Brazil, on the control of the legality of activities on social networks. The background is the control of fake news, the instrumentalization of social networks by some illegal actors and how this relates to the responsibility of providers and the tools that the legal system must respond to this type of offense. Can I delete a specific post? Can I hold a user financially responsible for a particular post? Can I take down an entire social network profile? To what extent is it prior censorship to silence a person on the social network prospectively and not just remove a problematic or illegal message from the past? These are points that the Brazilian judicial branch has been delving into because of the application of fake news in elections.



**Julio
Neves**

Dispute
Resolution
Partner



There is a second discussion, this one already present in Brazil, on controlling the legality of activities on social networks. Being in an election year, we must tackle this discussion on a large scale.”

Julio Neves

This being an election year, we must tackle this discussion on a large scale. The type of illicit activity that the judicial branch has been trying to fight is likely to multiply, at the same time as questions arise about the intervention of this Branch. We will see these tensions developing in the country.

In the United States, there is a first case of electoral deepfake. It was a fake call from Joe Biden, the US president, to voters in a specific state telling them not to vote in the primaries. It's false, but it's a perfect call from the point of view of technological precision. And it was a disinformation tool to disengage voters whose participation was uninteresting to the opposing party. The chain of accountability is unclear. In the context in which we see tensions rising, we will have this new layer of litigation.

INTERVIEW

**How do you assess, in general, the performance of the judicial branch in judging disputes generated by new technologies and controlling publications on social networks?**

Neves: The judicial branch has a very thankless task that no other technical professional has. The judicial branch cannot say “I don’t know”. If I ask an Artificial Intelligence engineer about a specific aspect of the system’s development, they may say that they are unclear about certain aspects. This is true for any other specialty - such as a physicist or a doctor. Every time we set out to assess the response of the judicial branch to a profoundly new, poorly regulated and socially unstable challenge, we have to take this starting point into account.

It is clear that there is a great deal of tension over the growing curve of control of social media content by the judicial branch, but the most strident phenomena are the exception to the rule. Technology companies operating in Brazil have responded to judicial demands with agility, without a general perception that there is a coordinated attack on business models or freedom of expression.

Of course, depending on the level of assertiveness of a particular case, of a particular judge, the company may be more or less critical. But we need to look at the forest and not the trees.



It is clear that there is a great deal of tension over the growing curve of control of social media content by the judicial branch, but the most strident phenomena are an exception to the rule.”

Julio Neves



INTERVIEW

We don't feel a sense of being under siege by the Judicial Branch from our interlocutors in the market, which doesn't mean that the Judicial Branch doesn't have to tread carefully in this exercise. What generates news is, of course, what's on the fringes of the scene. The functioning of the industry at the judicial branch interface is normal.

What impact will tax reform have on the technology sector? Will there be an increase in the tax burden?

Emmanuel Abrantes: We are facing a real revolution in the Brazilian tax system. There was skepticism about approving the proposal because it involved not only a technical discussion, but also a political one. In Brazil, we have a Federative Republic with municipalities, states and the Union sharing powers of collection and with a very high level of autonomy. This imposes immense difficulties in the debate and alignment of interests for a reform that aims to unify taxes that are currently levied by each of these public entities.

Over the last few decades, we have seen the tax base of municipalities increase with an economy that is increasingly focused on services rather than industry. By pure accident, this tax burden was directed more towards the municipalities, which are responsible for the ISS. At the time the current system was designed, with the 1988 Constitution, the base of the economy was much more industrial, and the tax burden was more concentrated in the federal and state governments, with the ICMS and IPI, as well as taxes on income. The ISS was the ugly duckling, so to speak. But with the growth of the digital economy, there was a shift towards services and the ISS base grew.

In the IT sector, for example, there was a major dispute between states and municipalities as to whether software licenses should be taxed by

ISS or ICMS, an issue that was recently resolved in favor of the municipalities, which retained the right to charge ISS on these operations.

Currently, the service sector, and this includes a large part of the technology sector, is taxed at ISS rates ranging from 2 to 5%, depending on the municipality where the provider is located. Each municipality sets its own rate. Despite the relatively low nominal rate (compared to ICMS, for example, which can reach 18%), ISS is a cumulative tax. If there are several service stages in the chain, one tax is added to another, which generates a multiplication of the tax burden. It's a very inefficient tax.



**Emmanuel
Abrantes**

Tax
Partner

INTERVIEW



The idea of tax reform is to avoid tax waste along the chain. It's a system designed to tax consumption, not companies."

Emmanuel Abrantes

In addition to the ISS, the PIS/Cofins levied on company revenues is also another tax that is relevant to the technology sector and will be affected by the reform. PIS/Cofins can be levied cumulatively (where there are no credits), at a rate of 3.65%, or non-cumulatively (with the possibility of crediting certain expenses incurred), at a rate of 9.25%. The application of one or other regime depends on certain factors (e.g. applicable IRPJ/CSLL calculation regime, type of activity, etc.). Today, many software houses (SH) calculate PIS/Cofins using the cumulative system, at a rate of 3.65%. However, PIS/Cofins is probably one of the most contentious taxes in the country today, with complex legislation full of catches.

The idea of the tax reform is to simplify this system and introduce a value-added tax (VAT) model. In Brazil, there will be two: the IBS [of states and municipalities] and the CBS [federal]. The system will be completely non-cumulative. The ISS that was accumulating in the chain is added to the ICMS, the PIS/Cofins, and becomes non-cumulative. The company can take credit for the supplier it hires and the person who hires the company will take credit for the service provided. Thus, the tax is passed down the chain until it reaches the consumer. The idea of the reform is to avoid tax waste along the chain. It's a system designed to tax consumption, not companies.

But there is a difficulty. The general rate being proposed, 26.5%, is very high compared to the rates we currently have for the sector.

What effect has this change had on the technology sector?

Abrantes: Although the expectation is for an improvement in the business environment, from the point of view of the tax burden, the practical result of the reform tends to be bad for local technology companies. The government will need to strengthen incentive measures for the sector.

Technology companies that provide services or license software are currently subject to ISS of 2% to 5% and PIS/Cofins of 9.25% or 3.65% (for local software developers). A software license produced in Brazil will go from a base tax of 3.65% plus 2% or 5%, to 26.5%.

The increase in the tax burden is particularly sensitive to B2C structures. In B2B, the contracting party can take credit for the IBS and CBS levied, which makes it more feasible to discuss passing on the tax increase in the price. When the relationship is with the end consumer, on the other hand, there is a very high chance that an increase in the tax burden will end up affecting companies' margins, since price elasticity is limited, especially when you consider the global competitive scenario in this sector.

Companies must revisit their structures, business models, contracts and pricing to be ready for the new scenario.



INTERVIEW

What are the sensitive points for the sector in the regulation of Constitutional Amendment 132/2023?

Abrantes: Technology companies are, as a rule, subject to the general IBS and CSB regime. For these taxpayers, the sensitive points of the regulation are those that broadly touch on the reform, such as the system for calculating taxes, crediting and reimbursing credits.

One point that deserves attention is the reduction in the tax rate for companies that work with cybersecurity and information security. Constitutional Amendment 132/2023 established the possibility of a 60% rate reduction for services related to cybersecurity and information security.

For those who work with anti-fraud tools and information security, it's important to look in-house to see if your activities, in your current business model, will be included in this hypothetical reduction. The discussion about regulating this rule is now taking place in PLP 68/2024 being processed in Congress. The current wording of the PLP, as approved by the Chamber of Deputies, limits the right to the benefit to those companies that have a Brazilian partner with at least 20% of the share capital, which could be a big problem for subsidiaries of foreign groups operating in this segment in Brazil. PLP 68/2024 was approved by the Chamber, but will still be analyzed by the Federal Senate, so there is room for change.

In the case of fintechs, the financial services provided by the companies may be subject to the specific regimes established by Constitutional Amendment 132/2023 and which are being regulated by PLP 68/2024. There are several regimes, and it is not appropriate to go into the details of each one, but this is a sector that should certainly follow the reform regulation work very closely.

Is there still room in the regulations for the sector to be included in a rate reduction?

Abrantes: Yes, if the business is connected to Cybersecurity or Information Security, if it is a fintech or if it is a technology solution added to a health plan or to a sector that is already covered by a specific tax regime. Beyond what the Constitution established, the doors are closed now. We are now at the point of mapping the impacts and understanding which routes the company can take.



INTERVIEW

What should emerge from the ANPD's recent public consultation on the sandbox on artificial intelligence and data protection? And how might this project relate to the proposal to regulate AI under discussion in the Senate [PL 2.338/2023]?

Lilla: Since the beginning of the discussions on Bill 2.338/2023, the ANPD has made the political move of placing itself as a leading authority in the enforcement of a future law regulating AI. There is a reason for this, which is that Artificial Intelligence systems use an astronomical amount of data when training algorithms and when operating these systems - especially biometrics and facial recognition, for example. And the idea of regulating Artificial Intelligence seeks to protect fundamental rights, including privacy, data protection and equality.

It is not yet clear who will be responsible for monitoring this future law. The ANPD takes on this role considering the impacts of the use, development and optimization of Artificial Intelligence systems on data protection, especially when personal data is used to train the algorithm, as well as the risks of discriminatory biases that these systems can generate, including racial discrimination.

There are cases of facial recognition, with cameras in public spaces, for public security purposes, in which errors have occurred, confusing black or brown people with people who are wanted by the courts.

The algorithm ends up making mistakes for various reasons. Whether it's the bias of the programmers or a lack of care in the selection of data that ends up reflecting a history of discrimination in our society. All the information used to train the algorithms reflects a view of our own society.

ANPD's sandbox comes from the emergence of new technologies, mainly by startups and fintechs that are very intensive in their use of data, and from the inspiration of other bodies, such as the Central Bank and the CVM [Securities and Exchange Commission], which have already used the sandbox as a regulatory instrument.

So far, there has only been a public consultation. There are still no regulations on how this will work. But the idea is that startups and fintechs can apply to work in the secure environment to test their technologies. And with this, we can see what the real impact is in terms of privacy and data protection and collect information that will be used to implement public policies.



The ANDP sandbox comes as a result of the emergence of new technologies, mainly by startups and fintechs that are very intensive in their use of data.”

Paulo Lilla

INTERVIEW

The idea is very good. This is being done in other countries, such as the United States and the European Union, with some success. In these jurisdictions, the Artificial Intelligence ecosystem is much more advanced. Here, our AI ecosystem is still in its infancy. We don't yet have the right environment for innovation, but the idea is that the sandbox will allow us to strike a balance between innovation and the development of new AI-based technologies, while at the same time guaranteeing the protection of fundamental rights. We'll have to wait and see how it is implemented in practice.

Is this something that could go hand in hand with the future regulation of AI by a Bill?

Lilla: Exactly. I still see that this Bill will take a while to be discussed more intensively. At the end of 2023, a committee of lawyers proposed a text very similar to the European Union's AI Act. The European law is based on risk. The idea is to categorize the different applications into risk levels. With the low risk, the use is free as long as it meets the criteria of transparency and other requirements. Medium risk requires a series of accountability measures on the part of companies to minimize risks - not only for the developers of the technology, but also for its users. And finally, AI of excessive risk, concerning themes that exploit the vulnerabilities of children, the disabled and the elderly, and even the very use of facial recognition cameras in public spaces for public safety purposes.

The risk of using the European model, and I believe the discussion will deepen in Congress in this context, is that the law passed could become obsolete very quickly.

This happened in the European Union itself at the end of 2022. When the final text of the AI Act was approved, the generative AI

revolution took hold. This prompted the European Parliament to revise the text to address specific risks of generative AI.

But how to include it in these risk categories? Because its use is generally low risk. But it can potentially result in high-risk situations such as disinformation, deepfakes and copyright and image infringement.

There is a lot of discussion about the use of authored texts to train the algorithm. There is a case of the New York Times in the United States suing Microsoft and OpenAI for using the newspaper's texts to train their algorithm.

Google recently included a ban on using videos for algorithm training in YouTube's terms of service. We'll see all this intellectual property discussion as well.



The idea is for the sandbox to strike a balance between innovation and the development of new technologies, while at the same time guaranteeing the protection of fundamental rights.”

Paulo Lilla

INTERVIEW

How do you think the discussion should be addressed in Brazil?

Lilla: The Bill currently being considered in Brazil was based on the previous version of the AI Act, which does not include generative AI. Is this the ideal model for the country, which is in its infancy in the Artificial Intelligence ecosystem? Wouldn't it be better to have principle-based legislation that encourages so-called regulated self-regulation, supervised by the government?

The sandbox itself is an instrument of regulated self-regulation. Ideally, we should take a step back and discuss the ideal model for Brazil before copying Europe's model.

In your view, has the prospect of having regulations for the use of AI in Brazil become more distant?

Lilla: There is pressure to get it out quickly. But I don't see a consensus in Congress at the moment. The current political scenario does not favor the regulation of AI.



The risk of using the European model to think about AI regulation in Brazil is that the approved law could become obsolete very quickly."

Paulo Lilla

We see specific infra-legal regulations, such as those of the TSE in elections. The mistake of these regulations is that they assume that AI is bad and evil. It is usually used for good and can even help in elections. But there is always a fear that it will, like deepfakes, interfere with democracy and the electoral process itself. As we don't have a general law on AI, there are infra-legal regulations to deal with situations.

I see the same problem we have with the Fake News Bill [PL 2.630/2020]. It was done a bit hastily, based on the European Union's Digital Service Act. It will talk about transparency, how algorithms are used, the liability of platforms for content generated by third parties when it is passively distributed by algorithms, and how platforms make money from this. There is a discussion about changing the regulatory model in relation to platforms compared to what was possible in the Brazilian Internet Law [Law 12.965/2014].



INTERVIEW

As this involves a lot of ideological and party-political discussion, it ends up getting in the way of debating the issue. The discussion could be more constructive if it were about which regulatory model is best and which has the least impact on technological development. The environment is not conducive to passing these laws at the moment.

What has been the guidance, in terms of privacy and data protection, for companies that need to adapt to the Equal Pay Law (14.611/2023) - and Decree 11.795/2023?

When the debate started, the great fear was that the disclosure of salaries would jeopardize workers' privacy. It would end up unduly exposing employees in such a way that they would be susceptible to scams, property damage and even moral damage. On the one hand, the law must protect privacy. On the other hand, it must ensure a more gender-equal environment in terms of positions and salaries.

The law stipulates that the disclosure of the report must comply with the LGPD [General Data Protection Law], including the concept of anonymization, i.e. that the data be anonymized.



The Equal Pay Act, on the one hand, must protect privacy. On the other hand, it must ensure a more gender-equal environment in terms of positions and salaries.”

Paulo Lilla

In the end, we saw that the model report released by the Ministry of Labor and Employment contains information aggregated in a way that makes it very difficult to identify people. The report brings together groups of positions with average salaries, which has partly mitigated the problem.

There are also specific risks of re-identification when there is only one person in a position. Depending on the size of the company, and how this is organized internally, it may result in some risk of identification.

There are legal disputes about this. There are injunctions freeing companies from disclosing the report and not providing information on salaries. But there are also rulings to the contrary, saying that releasing the report does not violate the LGPD.

But, in our opinion, the model report provided information in a more aggregated way in order to prevent violations of the law.

Neves: Regulation is one of the most eloquent examples of optimal intentions, because it is clear that promoting equal pay is an objective that should be shared by everyone. It is provided for in the Constitution. But the good intention led to a very problematic execution. At first, the LGPD issue was the most serious of all, in our view. The Ministry of Labor and Employment stated that it should disclose, line by line, the position, remuneration and benefits. All of us private agents would be equated with civil servants. It would end financial privacy in Brazil. At the very least, assuming that the majority have all or most of their income from wages, which is the reality for the overwhelming majority of the Brazilian population. It's as if you took the income tax return, which is confidential, and gave it to the primary source for everyone to consult. It was a staggering violation of privacy.

INTERVIEW

What exists today is a great aggregation of data, which has removed this risk, which is calamitous. But when we look at certain companies, structures and positions, it's possible, with reverse engineering, to easily get to the specific information.

It's normal for the judicial branch to behave inconsistently at this time. The issue has just come up, it's the first wave of decisions. Decisions have more often dismissed the duty to publish [the report] than upheld it, but we can't say that this is the prevailing position. The higher courts will ultimately decide the matter.

How do you assess the application of the General Data Protection Law (LGPD), especially after the first fines imposed by the National Data Protection Authority (ANPD)?

Lilla: It's still a modest performance. There was only one case where a fine was imposed, on a micro-enterprise. All the others involve the public sector, with warning penalties.

On the other hand, the ANPD is acting more swiftly to regulate aspects of the LGPD that are still open. It has also been working on publishing guidelines and directives for interpreting the law, such as the use of legitimate interest on a legal basis, the use of children's and adolescents' data and criteria for reporting security incidents.

We are eagerly awaiting the regulation of international data transfer, which should come out soon. It's on the Authority's regulatory agenda.

There should also be rules on the processing of children's and adolescents' data on platforms, on the rights of data subjects and on the position of DPO [Data Protection Officer].

There are inspection cases that the Authority is working on, such as the CPF request in pharmacies. It's a topic from 2018 that you've recently revisited in order to carry out a sectoral investigation.

The modest performance is explained by the fact that the ANPD still has insufficient human and financial resources for more intense action.





INTERVIEW

How does Central Bank Resolution 342/2023 differ from the LGPD when it comes to security incidents? Who exactly are the obligations of the standard aimed at?

Lilla: It only deals with the obligation of financial and payment institutions to notify the Central Bank and data subjects affected by security incidents involving PIX.

The big difference is that, in the case of the Bacen Resolution, any incident involving PIX must be notified, regardless of who is responsible. It's because of the risk of fraud that those affected may suffer. Under the LGPD, the data controller has a duty to assess whether a given incident could lead to a significant risk or harm to data subjects. Only then does notification have to be made.





Stay ahead of the market:

check out the opportunities and points of attention in the Technology sector



Opportunities

- _ Acquisitions of startups and techs that use Artificial Intelligence (AI);
- _ Development of AI systems, Internet of Things and blockchain optimization;
- _ Adoption of new ESG technologies;
- _ Reduction of the 60% tax rate for the Cybersecurity and Information Security segments.



Points of attention

- _ Increase, in an election year, in litigation over the use of AI and control, by the Judicial Branch, of content published on social networks;
- _ Disputes related to the application of the Internet of Things, which are emerging abroad;
- _ Lack of political consensus to regulate the use of AI in Brazil;
- _ Potential increase in the tax burden for the sector;
- _ Regulation of the international transfer of data by the ANPD.



ABOUT LEFOSSE

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Lefosse is a full-service law firm of excellence, with experience and a track record in emblematic cases in the most varied segments. Our partners and lawyers have in-depth knowledge of our clients' contexts, which makes us an innovative, dynamic and multidisciplinary ally for your business challenges.

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