

## The Brazilian Internet Bill of Rights Finally Entered into Force

After some years of discussion at political and academic level, the Internet Bill of Rights ([Law on the Use of the Internet](#) nr. 12.965 of 23 April 2014) has been approved by the Brazilian Congress and signed by the President of the Republic Ms. Rousseff on 23 April 2014. The law entered into force at the end of June 2014.

### *The main principles and users' rights*

The Internet Bill of Rights sets principles, safeguards, rights and duties for the use of the Internet in Brazil and establishes guidelines for their implementation by the public authorities at federal, State and municipal level.

The basic principle and pillar of the Marco Civil is that the use of the Internet shall guarantee the respect for the freedom of expression, together with other foundations, including the recognition of the social function of the Internet.

The canons that govern the use of the Internet in Brazil include the respect for privacy and data protection rights, the net neutrality, the security of the Internet, the defence of the participative nature of the Internet and the business freedom on the net.

The Internet Bill of Rights is a very progressive text in the sense that it recognises *inter alia* the right of every person to have access to the Internet, provided that such access is fundamental to exercise citizens' rights, and the duty of public authorities to promote the use of open source software and tools.

One of the most substantial parts of the law is devoted to the users' rights related to the access and use of the Internet, namely:

- The privacy right and the right to obtain compensation in case of violation of this right;
- The recognition that the flow of communications through the Internet and the content of private communications that have been stored (in our view, including those stored on the Cloud or on any server not under the direct control of the user) are inviolable, except in case of judicial order;
- The users' right not to have their access to the net suspended, except in case of debt with the access provider related to the provision of this service - the law therefore recognises that the access to the Internet is not necessarily for free and that providers can charge fees;
- The obligation for the access providers to maintain the quality levels agreed with the users - the Marco Civil is to our best knowledge one of the few laws to explicitly acknowledge the existence of and role played by Service Level Agreements;
- The duty for Internet service providers to provide users with clear and complete information including information about access data storage;
- The prohibition for access and service providers to share users' personal data with third parties except in case of free, explicit and informed consent by the user or if allowed by law;
- The obligation for access and service providers to provide users with clear and complete information about the processing of their personal data. The law states that such processing is allowed if the purpose (a) justifies the processing, (b) is not prohibited by law, (c) is specified in the service agreement or in other contracts with the users;
- The principle that personal data can be processed only with the explicit consent of the user, to be given in an ad hoc box separate from the other contractual provisions;
- The users' right to have their data deleted at their request at the end of the contractual

relation with the provider;

- The rule that use policies set forth by access providers and service or application providers must be public and clear;
- The users' right to accessibility (most probably to the Internet, although the law does not clearly specify the object of this right) taking into account *inter alia* the physical, intellectual and mental conditions of the users concerned;
- The applicability of consumers' rights as provided under Brazilian legislation.

Contractual provisions conflicting with these principles are void.

#### *The Marco Civil and the net neutrality*

Net neutrality is another key principle of the Marco Civil. Internet providers cannot discriminate the processing of any data on the net based on the content, the origin, the destination, the service provided etc., unless if such discrimination is justified for technical reasons or to give priority to emergency services.

#### *The applicability of the Brazilian Marco Civil*

The Brazilian Internet Bill of Rights is primarily applicable to all processing operations where at least one of the following acts take place in Brazil: the collection, storage, custody, processing of records, personal data or communications by Internet access providers or Internet service providers.

However, the law is applicable also in the following cases:

- When the data or communications are collected in Brazil and at least one of the sending or receiving terminals is located in Brazil;
- When the activities above are performed by a foreign legal entity not established in Brazil and this legal entity offers services to Brazilian users or at least one company of the economic group to which the entity belongs is established in Brazil. In this case the sanctions for the violation of the law are up to 10 % of the income of the economic group in Brazil in the last tax year.

#### *Data retention obligations in the Marco Civil*

The Marco Civil sets forth specific obligations regarding data retention periods:

- The retention period for data regarding the users' access to the Internet is set at 1 year, but the police, the competent public authorities and the public prosecutor can ask providers to retain the data for a longer period;
- The retention period for data regarding the users' access to Internet services, such as e-mail and other applications, is set at 6 months (and the abovementioned exception applies).

#### *The liability of providers*

The Marco Civil contains provisions directed to limit the liability of providers, similarly to the options followed by the lawmaker in Europe and in the US. As far as Internet access providers are concerned, they are not responsible for damages arising from third parties' content.

Similarly Internet service providers are not liable for damages arising from third parties' infringements except when a judicial order was issued to remove or make inaccessible the infringing content.

#### *Conclusions*

The approval and entry into force of the Marco Civil is a very important milestone in the consolidation of the national IT legal framework in Brazil. Before the Marco Civil, for instance, Brazil did not have a coherent set of rules that govern the processing of personal data in Internet environments.

At the same time it is remarkable that Brazil recognises the crucial importance of the Internet for business and for the society as a whole and set rules aimed to make the Internet a space of democracy, free competition and social and cultural development.

As far as the relations between Brazil and EU are concerned, however, the adoption of the Marco Civil does not necessarily mean that Brazil will be recognised to have an adequate level of data protection by the European Commission. This because the Law on the Use of the Internet applies only to data processing activities related to the Internet and Brazil does not have yet a comprehensive data protection legal framework.

Since the entry into force of the Marco Civil we noticed a dramatic evolution of the policies applied by Brazilian companies to their users, which are often based on the models adopted by European providers. Such a progression is coherent with the fact that the data protection provisions in the Marco Civil have been inspired by the EU privacy legislation.

Furthermore we expect that the Marco Civil will facilitate business in Brazil for IT companies due to the existence of a developed and clear legal framework that sets users' duties and providers' obligations.

From a different perspective we welcome the fact that the Marco Civil, although drafted as a Bill of Rights, contains not only general guidelines but also objective and directly applicable provisions. For these reasons the Marco Civil is likely to have positive effects to open the country to foreign Internet business, including SMEs. At the same time Brazilian providers will be facilitated to sell their services abroad since they will be more and more used to adopt higher standards, primarily as regards data protection and data retention, consistent with those required to operate in the European or American market.

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