

MEMORANDUM TO CLIENTS

INTELLECTUAL PROPERTY

May 06, 2014

INTERNET ACT IS SANCTIONED Law 12,965 of april 23, 2014

After more than three years in the National Congress, the bill known as the Civil Internet Regulatory Framework was sanctioned on April 23, 2014. Law 12,965/2014 ("Internet Act"), which is to come into force on June 22, 2014, sets forth principles, guarantees, rights and duties for the use of the internet in Brazil.

The guarantee of freedom of expression and the protection of privacy and personal data serve as the guiding principles for the use of the internet in Brazil. Such principles serve as a basis for the right of access to the networks, access to information, innovation and new technologies.

Please find below a brief summary of the most important aspects introduced by the Internet Act.

- **Users' Rights and Guarantees**

Among other rights and guarantees assured by the Internet Act, stands out the inviolability of privacy and intimacy, notably in connection with communications over the internet or those stored privately, which may only be disclosed upon a valid Court order, duly justified by the competent authority. The delivery of personal data to third parties, including records of connections and access to internet applications, may only occur upon free, express and informed consent of the user, except for the cases of breach of confidentiality allowed by law.

- **Net Neutrality**

Net neutrality, a principle which forbids different treatment of internet traffic on the basis of its origin, destination, application or content, has also been assured by Law 12,965/2014. Any discrimination or degrading of data traffic may only occur based on technical requirements essential to the adequate provision of services and applications or to give priority to emergency services. The matter shall be regulated by a presidential decree, upon consultation of the Internet Steering Committee (CGI) and the National Telecommunications Agency (ANATEL).

- **Keeping of Connection Logs and Access to Applications**

The new law establishes that internet access providers must store logs of internet connections for one year. For clarification purposes, access providers are understood as companies that provide value-added services, and which are hired by consumers to permit the connection of user terminals to the world wide web (e.g. NET Virtua, Telefonica's Speedy, etc.). Application service providers, on the other hand, must store access logs for a period of six months. Application service providers should be understood as the owners of websites, blogs, etc.

In both cases, these records must be kept in secrecy and only made available upon receipt of a valid Court order. The minimum retention periods mentioned above may be extended upon request of the competent authorities. It should be noted that it is forbidden (i) for access providers to keep records of access to internet applications, and (ii) for application service providers to keep records of access to other internet applications without the user's consent, or to keep excessive personal data in relation to the intended purpose of the user consent.

The new law imposed significant penalties for those that breach rights of privacy, protection of personal data and confidentiality of private communications and records. Such sanctions range from a simple warning up to a fine of 10% of the offending entity economic group's gross income in Brazil. Temporary suspension and prohibition to conduct business.

- **Civil Liability of Access Providers**

Seeking the respect of freedom of expression and other constitutional guarantees, the new law provides that access providers cannot be held liable for damages resulting from user generated content. However, application service providers shall be held liable for damages resulting from user generated content if, after a valid Court order, it does not take steps to remove the content that was identified as being unlawful.

It noteworthy that the prevailing case law in Brazil admits liability to application service providers, if it receives an extrajudicial notification and fails to remove the content, which is later ruled to be in violation of third parties' rights.

Now, the liability of the application service provider is somewhat lessened, since it only arises after a failure to comply with valid Court order determining removal of content. But there is one exception. Application service providers shall be held liable for breach of privacy resulting from the unauthorized publication of images, videos or other material containing scenes of nudity or private sexual acts if, after due notification, they fail to remove such content.

Another provision that has been removed from the Internet Act was the requirement that data centers were located in Brazil. Thus, such requirement, which had been a matter of great concern to internet companies, social networks etc., does not appear in the final version approved by the National Congress.

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The purpose of this memorandum is to inform our clients about important changes and developments in the area of law. We remain at the reader's disposal for any additional information that may be desired regarding the subject matter herein.

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