



Closing the Series: Digital Law in Brazil - Hot Topics | Risk, Innovation and Regulation

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Brazil | February 25 2026

Amid the various transformations experienced in the digital landscape, over the past month the article series “**Digital Law in Brazil - Current Hot Topics**”, written by different professionals from the firm **Montaury Pimenta, Machado & Vieira de Mello**, has sought to map the issues that have most mobilized legislators, courts, regulators, and legal practitioners in the field of Digital Law.

From the regulation of artificial intelligence to privacy policies, including the liability of digital platforms, unfair competition in the digital environment, protection of biometric data, the protection of children and adolescents online, and cybersecurity, each of the seven published articles emphasized a distinct — yet equally relevant — aspect of the regulatory and case law framework under construction. Thus, the present article brings together, from a panoramic perspective, the main points of each contribution, highlighting their relevance for professionals, companies, and society as a whole.

The first article in the series sought to explore, in a concise manner, the main aspects of Bill No. 2,338/2023 (the “Bill”), which establishes the regulatory framework for Artificial Intelligence (AI) in Brazil. With a human-centered approach and through a classification based on the risk and impact of AI use, the article aimed to demonstrate the reconciliation pursued by the Bill between fostering innovation and safeguarding fundamental rights, also establishing a civil liability regime that weighs the degree of autonomy of the system, the nature of the agents involved, and the possibility of reversing the burden of proof in light of the complexity of the AI system’s operation.

In turn, the second article analyzed the landmark decision of the Brazilian Federal Supreme Court that declared the partial unconstitutionality of Article 19 of the Brazilian Civil Rights of the Internet Act, inaugurating a tiered model of diligence and liability for digital platforms. With this decision, the Court began requiring a preventive stance from digital service providers operating in Brazil, varying according to the type of content, in order to determine the applicable liability. The article highlights the need for such providers to strengthen internal procedures, such as content moderation and the demonstration of “effective diligence” in relation to unlawful content, in order to mitigate damages and manage systemic risks.

Next, the third article addressed the recent understanding of Brazilian courts regarding unfair competition practices in sponsored link services, a topic situated at the intersection of Intellectual Property and Digital Law. By distinguishing between exact match and broad match keyword correspondence, the article demonstrated how this distinction directly impacts the recognition (or not) of unfair competition, particularly in scenarios in which the keyword coincides with a weak trademark or a descriptive term of the relevant market niche. The topic is highly relevant for anyone operating in the digital advertising environment, helping to delineate the boundaries more precisely between fair and unfair competition.

The fourth article explored the advances, risks, and regulatory trends related to the use of facial biometrics in light of the Brazilian General Data Protection Law. This technology has become increasingly widespread in authentication and access control systems and, as it involves the processing of sensitive personal data, requires evidently greater caution, with proper grounding in specific and robust legal bases, which ultimately restricts the alternatives available to those intending to carry out such processing. Although there is still no specific regulation, the issue is already on the agenda of the Brazilian Data Protection Authority (ANPD) and requires companies to adopt a preventive and strategic stance to mitigate risks and damages.

The fifth article analyzed Law No. 15,211/2015 — the so-called “Digital ECA” — an unprecedented regulatory framework in Latin America for the protection of children and adolescents in the digital environment. The text addresses the broad obligations established for technology developers, application providers, social media platforms, streaming services, marketplaces, electronic games, and other players in the digital ecosystem, with several requirements that will certainly result in structural changes to business models with a significant presence of minor users.

Furthermore, the sixth article addressed cybersecurity, demonstrating that, following the transformation of the ANPD into a regulatory agency, with expanded powers of supervision, rulemaking, and sanctioning, security incidents will become subject to active oversight and more rigorous application of penalties. In this scenario, public and private organizations will need to demonstrate concrete evidence of governance, risk management, and integration between technology and respect for fundamental rights, under penalty of facing not only financial sanctions but also reputational and operational damages.

The seventh and final article focused on the essential elements of a privacy policy in compliance with the Brazilian General Data Protection Law, highlighting how this document constitutes a central component of a data governance strategy, and offering the “must-haves” required in well-structured policies. Observing these elements allows organizations to translate legal requirements into operational clauses, reducing regulatory exposure and strengthening transparency toward data subjects.

Taken together, the published articles demonstrate that Brazilian Digital Law is undergoing a period of institutional and regulatory maturation, moving from a merely reactive posture toward changes in the digital ecosystem to a model of proactive governance and risk management. Companies wishing to operate in Brazil must pay close attention to these transformations in order to mitigate risks and turn compliance into a strategic advantage, bearing in mind that, in a context of increasing regulatory complexity, anticipating trends and obtaining specialized legal support become indispensable to ensure operational security and the protection of digital assets.

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