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# Data Protection in Highly Regulated Environments: Brazil

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## General rule

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Under the Brazilian Federal Constitution of 1988:

- Privacy, private life, honor and image of persons are inviolable.
- Secrecy of correspondence and of telegraphic data and telephone communications are inviolable (except, in the case of telephone communications, by court order).
- Personal information contained in data bases of public bodies can be accessed or rectified (*habeas data*).

And under the Brazilian Civil Code of 2002:

- Privacy of individuals is inviolable and the courts must take measures necessary to prevent or curb any action contrary to this rule, upon request of the interested party.

## No data privacy law

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Today:

- no specific law regarding data protection;
- no data protection agency.

But scattered legislation on data protection is abundant:

- banking secrecy;
- tax secrecy;
- telecommunications;
- medical data.

## Data sharing and transfer

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- Given the absence of a data privacy law it is possible to share employee information among companies of the same economic group and there is no restriction on the transfer of data outside the country.
- It is best practice, however, to impose certain restrictions on the processing and availability of sensitive and personal information, such as medical, religion, sex, gender and race.

## Data privacy in a digital environment

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- Privacy laws were adopted before the Internet was available.
- Internet regulation in Brazil is limited and several legal issues are therefore uncertain.
- In the meantime, courts take the lead.

## How Brazilian courts deal with data privacy issues?

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Courts have evolved throughout the years and have acknowledged, for example, that:

- e-mails are accorded the same confidentiality as regular correspondence;
- IP protocol is private data.

And generally courts have ruled that:

- law offenders do not enjoy the confidentiality of their private data by means of the Internet, and
- Internet Service Providers must deliver private data if so authorized by a court of law or contract.

## How Brazilian courts deal with data privacy issues?

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More recently, the Supreme Court of Justice have ruled that an ISP:

- is not strictly liable for illegal content posted by third parties;
- cannot be compelled to exercise prior control on content posted by its users;
- must immediately remove content once the ISP becomes aware of unequivocally illegal content;
- must have a system capable of identifying its users.

## Specific laws and regulations on data privacy

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- However, data privacy issues are secondary questions in a court case.
- Generally the main reason to seek access to private data is related to criminal prosecution or libel.
- Very rarely plaintiffs seek compensation for unlawful disclosure of private data.
- Awareness of data protection and privacy issues is not necessarily growing, but requests for removal of content or disclosure of private data is frequent.

THE ASSOCIATED PRESS April 26, 2010, 8:52PM ET

## Brazil: Google data gives bad censorship rap

By BRADLEY BROOKS

RIO DE JANEIRO

Brazilian prosecutors said Monday a new Google tool showing government requests for data on users of the Internet giant's services or the removal of content is giving their country a bad rap.

Google Inc. released an online tool last week showing where it faces the most government pressure to remove material and turn over personal information about its users.

Brazil led the roughly 100 countries in which Google operates by making 291 requests to remove data and 3,663 requests for information on users during the last six months of 2009, the period analyzed.

**Bloomberg  
Businessweek**

## Initiatives on data protection

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The Brazilian Ministry of Justice released in 2011 for public consultation a draft bill on data protection.

The objective is to introduce principles adopted in other countries:

- Prior notice
- Right to review
- Minimum data gathering
- Restricted purpose
- Security and prevention
- Liability

Plus a data protection agency to monitor and enforce the law.

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