COUNTRY REPORT: **BRAZIL**

Brazil is a fast-growing economy that recognizes the importance of ICT and the digital economy. However, Brazil has not implemented appropriate laws and regulations to facilitate ICT development and faces significant challenges in bringing its laws up to date.

No privacy legislation is in place, for example, and so the lack of privacy protection for any data transferred to Brazil may act as a significant barrier for successful cloud computing. Similarly, Brazil has not implemented cybercrime legislation. Existing criminal laws are seriously out of step with international standards on computer crime and cybercrime.

Brazil also has gaps in intellectual property protection. Brazil has not signed the WIPO Copyright Treaty and has not updated its copyright laws to cover new technology. Online piracy in Brazil is widespread, and prosecutions are rare. Significant court delays add to the problems facing copyright holders in Brazil.

In 2010 Brazil approved the National Broadband Plan — Programa Nacional de Banda Larga (PNBL) — with the aim of providing broadband access to low-income households and in areas where private operators had no commercial interest. Brazil's broadband penetration is the highest in South America.

Q BRAZIL	RESPONSE	EXPLANATORY TEXT
DATA PRIVACY		
1. Are there laws or regulations governing the collection, use or other processing of personal information?	◑	There is no general privacy or data protection law in Brazil.
		Privacy is a guaranteed right under Article 5 of the 1988 Constitution. The Constitution also provides for habeas data, which gives consumers the right to know what data is held about them and to correct it — this right is restricted to 'records or databases of government agencies or of agencies of a public character'.
		Some limited additional statutory protection for privacy can be found in the Consumer Protection Law 1990, including rights to access and correct consumer data.
		Note: A draft Data Protection Bill 2011 is the subject of current discussion, but approval and implementation is delayed.
2. What is scope & coverage of privacy law?	Not Applicable	
3. Is the privacy law compatible with the Privacy Principles in the EU Data Protection Directive?	✖	There is no general data protection law in Brazil. Existing constitutional and consumer protection rights are limited.
4. Is the privacy law compatible with the Privacy Principles the APEC Privacy Framework?	✖	There is no general data protection law in Brazil. Existing constitutional and consumer protection rights are limited.
5. Is an independent private right of action available for breaches of data privacy?	Available	A limited right to challenge inaccurate data and to protest against violations of personal privacy is available under the Constitution and the Civil Code.
6. Is there an effective agency (or regulator) tasked with the enforcement of privacy laws?	None	
7. What is the nature of the privacy regulator?	Not Applicable	
8. Are data controllers free from registration requirements?	✔	There are no data registration requirements in Brazil.
9. Are cross border transfers free from registration requirements?	✔	There are no cross-border data transfer restrictions in Brazil.
10. Is there a breach notification law?	✖	There are no data breach notification requirements in place in Brazil. The draft Data Protection Bill 2011 includes a general data breach notification requirement.

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SECURITY		
1. Is there a law or regulation that gives electronic signatures clear legal weight?	✔	Brazil implemented the Electronic Signature Law in 2001 (also known as Medida Provisória n. 2.200-2, 2001). The legislation establishes regulation for Public Key Infrastructure based digital signatures and also contains some provisions that are technology neutral. Digital signatures used in electronic documents have the same legal effect in communications between private parties or public agencies.
2. Are ISPs and content service providers free from mandatory filtering or censoring?	✔	There is no formal censorship or filtering of online content in Brazil, and free speech is the subject of strong constitutional protections. However, there have been numerous private legal cases that have resulted in specific online material being removed.
3. Are there laws or enforceable codes containing general security requirements for digital data hosting and cloud service providers?	None	There are no enforceable security requirements in Brazil at this stage.
4. Are there laws or enforceable codes containing specific security audit requirements for digital data hosting and cloud service providers?	None	There are no specific legal requirements in Brazil regarding security audits. This issue may be addressed in the future in proposed privacy legislation.
5. Are there security laws and regulations requiring specific certifications for technology products?	No requirements	Brazil has not yet developed security certification or accreditation requirements for technology products.
CYBERCRIME		
1. Are there cybercrime laws in place?	✘	The current law in Brazil does not effectively cover cybercrimes and law reform in this area is still under discussion. A controversial draft Cybercrime Bill was defeated in 2009, following a significant national campaign against the perceived pro-surveillance provisions in the Bill.
2. Are cybercrime laws consistent with the Budapest Convention on Cybercrime?	✘	The current criminal law extends to some computer-related crimes, but does not comprehensively cover cybercrimes.
3. What access do law enforcement authorities have to encrypted data held or transmitted by data hosting providers, carriers or other service providers?	Access with a warrant	Access to all communications data is severely restricted by both the Constitution and the Federal Law No. 9,296/1996. Access without a warrant is generally not available.
4. How does the law deal with extraterritorial offenses?	Comprehensive coverage	Article 7.II.b. of the Penal Code establishes domestic jurisdiction over all crimes allegedly committed by Brazilian nationals — regardless of the place where the crime was committed and of the gravity of the crime. It provides for the application of the internal criminal legislation to all nationals. Brazil also asserts jurisdiction over crimes it is obliged to combat under international conventions — even when the crime occurred in the territory of another State.
INTELLECTUAL PROPERTY RIGHTS		
1. Is the country a member of the TRIPS Agreement?	✔	Brazil became a member of the TRIPS Agreement in 1995.
2. Have IP laws been enacted to implement TRIPS?	✔	Brazil has implemented the provisions of the TRIPS Agreement in local laws.
3. Is the country party to the WIPO Copyright Treaty?	✘	Brazil has not signed the WIPO Copyright Treaty.
4. Have laws implementing the WIPO Copyright Treaty been enacted?	◖	Although Brazil has not ratified the Copyright Treaty it has implemented some very limited laws, which are partly compatible with the Treaty provisions.
5. Are civil sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	◖	Online piracy is widespread in Brazil, especially in relation to music and films. The National Council to Combat Piracy and Intellectual Property Crimes has a mandate to enforce copyright, but has limited resources. Civil sanctions are technically available, and take-down notices can also be effective, but they are rarely used in Brazil.
6. Are criminal sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	◖	Criminal sanctions are technically available, however, in practice there are extensive court delays and prosecutions are rare. Most prosecutions result in suspended sentences and do not appear to act as a deterrent.
7. Are there laws governing ISP liability for content that infringes copyright?	✘	There is no specific law on ISP liability in Brazil. In several civil cases for copyright infringement, ISPs have refused to hand over subscriber details — based on Brazil's constitutional right to privacy. The courts have upheld the ISP's position.

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8. Is there a basis for ISPs to be held liable for content that infringes copyright found on their sites or systems?	✘	There is no history of action or enforcement for content of this type in Brazil.
9. What sanctions are available for ISP liability for copyright infringing content found on their site or system?	Not Applicable	
10. Must ISPs takedown content that infringes copyright, upon notification by the right holder?	✘	Proposed legislation that would establish an 'escalation regime' for copyright infringement was withdrawn in 2009.
11. Are ISPs required to inform subscribers upon receiving a notification that the subscriber is using the ISP's service to distribute content that infringes copyright?	✘	A notification scheme has not been implemented in Brazil.
12. Is there clear legal protection against misappropriation of cloud computing services, including effective enforcement?	No protection	Brazil has been unable, despite several attempts, to update its criminal laws and IP laws to cover online services. As a result, current protection remains very weak.
INTEROPERABILITY		
1. Are there laws, regulations or policies that establish a standards setting framework for interoperability and portability of data?	✘	There are no specific laws or regulations regarding data portability or interoperability in Brazil.
2. Is there a regulatory body responsible for standards development for the country?	✔	The Associação Brasileira de Normas Técnicas (ABNT) <www.abnt.org.br>.
INTERNATIONAL HARMONIZATION OF RULES		
1. Are e-commerce laws in place?	✘	Brazil does not have specific e-commerce law in place. Brazilian general laws are interpreted by the courts as applying to the Internet and e-commerce.
2. What international instruments are the e-commerce laws based on?	Not Applicable	
3. Is the downloading of applications or digital data from foreign cloud service providers free from tariff or other trade barriers?	✘	Brazil imposes a range of tariffs of up to 25% on both software and IT services that are imported or delivered from abroad. The tariffs are calculated on IP royalties. In addition, Brazil applies a tax to the transfer of technology — the social economic interference contribution (CIDS) — that imposes an additional 10% surcharge on many technology remittances.
4. Are international standards favored over domestic standards?	✔	Brazil has a strong commitment to international standards. Local standards in the ICT sector are rare.
5. Does the government participate in international standards setting process?	✔	Brazil is a founding member of the ISO.
PROMOTING FREE TRADE		
1. Are there any laws or policies in place that implement technology neutrality in government?	✘	Brazil does not have a general technology neutral policy framework in place. Some preference has been established in Government procurement guidelines for open source solutions.
2. Are cloud computing services able to operate free from laws or policies that mandate the use of certain products (including, but not limited to types of software), services, standards or technologies?	✔	There are no mandatory product requirements in Brazil.
3. Are cloud computing services able to operate free from laws or policies that establish preferences for certain products (including, but not limited to types of software), services, standards, or technologies?	◑	Brazil has issued government guideline and established initiatives that prioritize solutions, programs and services based on Open Source Software (OSS). The guidelines are widely followed in both the public and private sector, creating a strong preference for open standards software and documents.

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4. Are cloud computing services able to operate free from laws that discriminate based on the nationality of the vendor, developer or service provider?	✖	The Buy Brazil Act (Law 12.349/10 of 15 December 2010) imposes domestic preference requirements at the federal, state and municipal levels as well as for public entities. The law includes ICT products and services. Brazil is not a member of the WTO plurilateral Agreement on Government Procurement.

INFRASTRUCTURE, STATISTICS AND INDICATORS

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1. Is there a National Broadband Plan?	• By 2014, 30 million fixed broadband connections (with a minimum speed of 1Mbps), including homes, businesses and co-operatives, plus 100 000 telecentres.	Currently, Brazil has the highest broadband penetration in South America, followed by Argentina. Brazil has 35 million fixed and mobile broadband subscribers, ranking it among the top ten countries worldwide by total number of broadband users. However, its large population puts Brazil's broadband penetration outside the top-fifty worldwide. To help to improve coverage and reduce the cost of broadband access, the government has begun a broadband infrastructure development initiative, which has set ambitious targets to triple broadband uptake by 2014. In May 2010 Brazil approved the National Broadband Plan — Programa Nacional de Banda Larga (PNBL) — with the aim of providing broadband access for low-income households and in areas where private operators had no commercial interest. This involves a commitment to add 11.9 million broadband connections by 2014 (increasing the total number of fixed broadband connections to 30 million, including homes, businesses and co-operatives, plus 100 000 telecentres), with a minimum speed of 1Mbps — at an estimated cost totaling R$13bn (US$8.5bn). The State-owned Telecomunicações Brasileiras (Telebrás) is responsible for the implementation of the PNBL and for co-ordinating necessary public infrastructure to deliver the project — for example the petroleum company Petrobrás will allow its fiber optic network to be used for the PNBL. However, there is not an established timeline for implementation and in January 2011 it was suggested that Telebrás's budget for implementation has been cut by 50% and that there were other infrastructure delays.
2. Are there laws or policies that regulate the establishment of different service levels for data transmission based on the nature of data transmitted?	Regulation under consideration by government and extensive public debate	Principles of net neutrality are enshrined in the proposed Internet Rights bill. 'Marco Civil' is a proposed civil-rights based legal framework for the use of Internet in Brazil. The Brazilian Ministry of Justice, in partnership with the Center for Technology and Society from Fundação Getúlio Vargas (FGV/CTS) Law School, has launched an online public consultation to determine how Brazilian society is willing to structure rights and responsibilities for using the Internet, as well as providing access and content. The proposed Bill is divided into 3 principles: (1) individual and collective rights (privacy, freedom of speech, and access rights), (2) intermediary parties (net neutrality and civil liability), and (3) governmental directives (openness, infrastructure, and capacity building). In August 2011, it was agreed by the Brazilian president, that after some further amendment, the draft bill 'Marco Civil' would be presented to the Brazilian Congress. <http://culturadigital.br/marcocivil>
3. Base Indicators		
3.1. Population (2010)	194,946,470	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]
3.2. Urban Population (%) (2010)	87%	[World Bank, Data Catalog, Indicators, Urban Population % (2011) <http://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS>]
3.3. Number of Households (2009)	57,650,000	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (2009) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]
3.4. Population Density (people per square km) (2010)	23	[World Bank, Data Catalog, Indicators, Population Density (2011) <http://data.worldbank.org/indicator/EN.POP.DNST>]
3.5. Per Capita GDP (USD 2010)	$10,816	[International Monetary Fund (IMF), World Economic Outlook Database (April 2011) <http://www.imf.org/external/pubs/ft/weo/2011/01/weodata>]
3.6. ICT expenditure as % of GDP (2008)	5%	[World Bank, Little Data Book on ICT (2009) <http://data.worldbank.org/products/data-books/little-data-book-on-info-communication-tech>]
3.7. Personal Computers (% of households) (2010)	35%	In 2010, 34.9% of households in Brazil have personal computers. This is a 11.9% increase since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]

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4. ICT and Network Readiness Indicators		
4.1. ITU ICT Development Index (IDI) (2010) (Score is out of 10 and includes 152 countries)	4.22	Brazil has an ICT Development Index (IDI) score of 4.22 (out of 10), resulting in a rank of 64 (out of 152 economies). The 2010 IDI for Brazil has improved from a rank of 62 since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
4.2. World Economic Forum Networked Readiness Index (2010–2011) (Score is out of 7 and includes 138 countries)	3.90	Brazil has a Networked Readiness Index (NRI) score of 3.9 (out of 7), resulting in an overall rank of 56 (out of 152 economies) and a rank of 8 in the upper-middle income grouping of countries/economies. [World Economic Forum, The Global Information Technology Report (2010–2011) <http://www.networkedreadiness.com/gitr>]
4.3. International Connectivity Score (2011) (Score is out of 10 and includes 50 countries)	5.14	Brazil has a Connectivity Score of 5.14 (out of 10), resulting in a rank of 6 (out of 25) in the Resource-driven grouping of countries/economies. [Nokia Siemens, Connectivity Scorecard (2011) <http://www.connectivityscorecard.org>]
4.4. IT Industry Competitiveness Index (2011) (Score is out of 100 and includes 66 countries)	39.50	Brazil has an IT Industry Competitiveness Index Score of 39.5 (out of 100), resulting in a rank of 39 (out of 66 countries/economies included in the index). The 2011 index score is a 2.6% increase on the 2009 score. Brazil has moved up the ranking by 1 place since 2009. [Business Software Alliance (BSA) / Economist Intelligence Unit (EIU), IT Industry Competitiveness Index (2011) <http://globalindex11.bsa.org>]
5. Internet Users and International Bandwidth		
5.1. Internet Users (2010)	79,343,213	[calculated from 8.3.1. and 8.5.2.]
5.2. Internet Users as Percentage of Population (2010)	41%	In 2010, 40.7% of the population in Brazil used the Internet. This is a 20.4% increase since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
5.3. International Internet Bandwidth (bits per second per internet user) (2010)	12,619	Brazil has increased its International Internet Bandwidth (per Internet user) by 102% since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
5.4. International Internet Bandwidth (2010) (total gigabits per second (Gbps) per country)	1,001	[calculated from 8.5.3 and 8.5.1]
6. Fixed Broadband		
6.1. Fixed Broadband Subscriptions (2010)	14,086,729	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]
6.2. Fixed Broadband Subscriptions as % of households (2010)	24%	Note: this is skewed by business usage (refer to OECD comments about this) [calculated from 8.3.3. and 8.6.1.]
6.3. Fixed Broadband Subscriptions as % of population (2010)	7%	Brazil has increased its Fixed Broadband Subscriptions (as a % of the population) by 33% since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
6.4. Fixed Broadband Subscriptions as % of Internet users (2010)	18%	[calculated from 8.5.1 and 8.6.1]

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7. Mobile Broadband		
7.1. Mobile Cellular Subscriptions (2010)	202,944,033	Note: This figure may be inflated due to multiple subscriptions per head of population, but excludes dedicated mobile broadband devices (such as 3G data cards, tablets, etc) [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]
7.2. Active mobile-broadband subscriptions per 100 inhabitants (2010)	11%	Brazil has increased the number of Active Mobile-Broadband Subscriptions (as a % of the population) by 489% since 2008.
7.3. Number of Active mobile-broadband subscriptions per 100 inhabitants (2010)	21,512,067	[International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]