

Policy and legislation update in Brazil

Bill nº 2338/2023 –
legal framework for
Artificial Intelligence

Brazil's Artificial Intelligence (AI) Framework

- The AI Bill was approved by Brazil's Senate will now be reviewed by the Chamber of Deputies, before potential presidential sanction.
- Disputes exist between Lula's government and Bolsonaro-aligned politicians, with compromises made on "information integrity" but maintaining copyright compensation for AI training data.
- The Bill emphasizes respecting human rights, non-discrimination, environmental sustainability, privacy, transparency, and human oversight in AI development and use.
- AI systems are categorized by risk levels, with high-risk categories requiring stricter governance and transparency standards.
- Regulatory authorities will ensure compliance and impose sanctions.
- AI systems using copyrighted material for training must compensate rights holders, including retroactive payments for unauthorized data scraping.
- Individuals have the right to be informed about AI decisions, contest outcomes, request human intervention, and opt out of data use.
- Violations could lead to fines of up to R\$50 million and bans on AI system testing for up to five years, rendering non-compliant AI illegal in Brazil.

AI Framework

Brazilian lawmakers are currently debating a Bill proposing the creation of an Artificial Intelligence (AI) Framework.

The text of the Bill was approved on Tuesday (10/12/2024) during a Senate plenary session, marking progress for what could become one of the first laws in the world to regulate AI. Now, the text will proceed to the Chamber of Deputies for further review. Only if approved by both chambers can the bill be sent for presidential sanction.

The Artificial Intelligence Bill No. 2338/2023, introduced by Senator Rodrigo Pacheco, establishes guidelines for the responsible development, implementation, and use of AI systems in Brazil. The bill aims to protect fundamental rights, ensuring AI systems are secure, transparent, and accountable, promoting human dignity and democratic values.

The approved text is a substitute proposed by Senator Eduardo Gomes, based on Bill 2,338/2023, originally introduced by Rodrigo Pacheco, the President of the Senate. This project, in turn, originated from a draft proposal prepared by a commission of jurists. Before reaching the Senate Plenary, the matter was reviewed by the temporary committee on the topic, where 14 public hearings were held with the participation of civil society and various sectors (both public and private), as well as technology and innovation experts.

Context

The debates over the Bill have included a dispute between on the one side lawmakers aligned with former president Jair Bolsonaro and Big Tech, and president Lula da Silva's government on the other. The government conceded by removing the concept of "information integrity" from the the Bill—but the payment of copyright fees for content used in AI training, another government priority, was retained in the text. Another victory for the opposition was the removal of internet platforms from the list of AI systems classified as high risk, which would subject them to stricter regulations.

The Bill's rapporteur, Senator Eduardo Gomes (PL-TO), accepted an amendment by Senator Marcos Rogério (PL-RO) that excluded curation, dissemination, recommendation, and automated content distribution systems from the high-risk category. These are the algorithms used by companies like YouTube, Google, X, TikTok, and Meta to distribute and recommend content.

Discussions on the AI Framework began in 2022, but it wasn't until 2023 that a committee was formed to gather information, hold public hearings, and consult experts to draft the bill.

Key provisions

Principles: AI must respect human rights, non-discrimination, environmental sustainability, and privacy. The law mandates transparency, fairness, and human oversight.

Rights: Individuals affected by AI decisions have the right to be informed, understand decisions, contest outcomes, and demand human intervention.

Risk Categories: AI systems are categorized by risk levels. High-risk systems (e.g., healthcare, justice, and autonomous vehicles) must meet strict governance, transparency, and safety requirements.

Governance: Developers and operators must conduct risk assessments, document processes, and ensure fairness. AI systems posing excessive risk are banned.

Regulatory Oversight: An authority will supervise compliance, impose sanctions, and ensure transparency. Sanctions include fines up to 50 million reals.

The bill designates two oversight bodies: the National System for AI Regulation and Governance (SIA) and the National Data Protection Authority (ANPD).

SIA will conduct internal audits to ensure AI compliance, maintaining confidentiality for trade and industrial secrets. It determines if an AI system conforms to the law.

Copyright

It also includes copyright remuneration for data and content used to train AI models.

The report outlines that copyrighted content may be used in text-mining processes for developing AI systems by institutions such as research bodies, journalism outlets, museums, libraries, archives, and educational organizations. However, this use must be legitimate, non-commercial, and strictly limited to the purpose of the activity. The primary goal cannot be to reproduce, display, or distribute the content, and the rights holders' economic interests must not be unjustifiably harmed. Rights holders retain the authority to prohibit the use of their content in contexts outside these specified scenarios.

For AI systems that are commercially available, the use of copyrighted material during their development, training, or mining processes will require compensation for the rights holders. The Bill includes retroactive provisions—authors whose content was previously “scraped” without authorization for AI model training would be entitled to remuneration.

Additionally, when AI systems use individuals' images and voices, they must respect personality rights as defined by the Civil Code. This includes obtaining prior consent and avoiding harm to a person's honor, reputation, or privacy, with potential legal consequences for violations.

Definitions

The Bill defines AI Systems as algorithms, models, or software that operate autonomously and can generate predictions, content, or recommendations based on data sets. This definition is distinct from general-purpose AI systems (models trained on data capable of performing various tasks, including those they were not specifically designed for) and generative AI systems (models that can modify or create content using information generated by the model itself, such as ChatGPT).

The Bill guarantees certain rights for individuals affected by AI systems. These include knowing if their data is being used to train or feed AI models and the ability to remove or opt out of having their data used, similar to the General Data Protection Law (LGPD).

Additionally, individuals negatively impacted by AI, regardless of risk level, can seek legal explanations for AI actions. The bill does not specify potential judicial reparations, fines, or penalties for personal harm caused by AI systems.

Violations of the law could result in fines of up to R\$50 million and a ban on testing the technology for up to five years, effectively making the AI illegal in Brazil.

Momentum