INTELLECTUAL PROPERTY & INFORMATION TECHNOLOGY

CLIENT ALERT

APRIL/2020

A PROVISIONAL MEASURE IS PUBLISHED AUTHORIZING THE SHARING OF PERSONAL DATA BETWEEN TELECOMMUNICATIONS COMPANIES AND IBGE (BRAZILIAN INSTITUTE OF GEOGRAPHY AND STATISTICS)

Last Friday (17), the provisional measure (PM) No. 954/2020 was published, providing for data sharing between telecommunications companies in brazil and IBGE. The PM will make viable the national household sample survey (*PNAD Contínua*) in the midst of the public health crisis resulting from COVID-19.

The PM, edited by President Jair Bolsonaro, allows IBGE to have access to the names, telephone numbers and addresses of all customers of the main telecom operators, whether individuals or companies. According to ANATEL (National Telecommunications Agency), Brazil currently has 226.67 million active mobile phone numbers.

The PM's objective is to enable IBGE to conduct the National Household Sample Survey (*PNAD Contínua*), which measures unemployment figures in the country. This is a measure adopted as a result of the emergency public health situation caused by Covid-19.

According to the PM, data from users will be used by IBGE only for the purposes of official statistics, and the agency will also conduct non-presential interviews to complement the information. The procedure for data sharing has not yet been defined between the presidency of IBGE and ANATEL, which should occur in the next few days.

After defining how such transfer will take place, the telecommunications agencies will have 7 days to provide the first data requested by IBGE; and 14 days, for future requests. In addition, the PM adds that the shared data will be confidential and will only be used for the purpose of carrying out research by IBGE, so that they may not be disclosed by the agency to any other companies or public or private entities.

The PM determines that IBGE will be obliged to inform, at its website, in which situations the data were used, as well as to disclose the personal data protection impact report, both in accordance with the Brazilian General Data Protection Law

PRACTICE AREA

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(LGPD), sanctioned in 2018 and which is expected to come into force in August this year.

Finally, the PM concludes that, once the current international health crisis is overcome, all data obtained during this period of the epidemic should be excluded from IBGE databases.

Since its enactment, the Brazilian Federal Supreme Court (STF) has received four Direct Actions of Unconstitutionality (ADIs) against the PM. The lawsuits were filed by the Federal Council of the Brazilian Bar Association (ADI 6387), the Brazilian Social Democracy Party - PSDB (ADI 6388), the Brazilian Socialist Party - PSB (ADI 6389) and the Socialism and Freedom Party - PSOL (ADI 6390).

Although the protection of personal data does not yet figure in the constitutional text as a fundamental right in an express manner, the ADIs base their claims on the shared understanding that the protection of personal data, justified in the expression, prospecting, valuation and application of freedom, equality and dignity of the human person and their fundamental rights, emanates directly from items X and XII of art. 5 of the Federal Constitution.

Among the various arguments used in the ADIs, the following stand out:

- The general perception that the PM is restricted to a generic purpose, showing no evidence about the types of research that will be carried out, with what frequency or for what purpose, nor the justification of data sharing;

- The authors' concern with the drafting of an impact report after the sharing of personal data, preventing the effective assessment of risks to the fundamental rights of individuals and of security mechanisms to be employed to minimize the risk of access and misuse of personal data in the face of the pressing threat of leakage of personal data by public databases;

- The absence of an element of urgency and the necessary link between the purpose of the treatment and the situation of public health emergency, since the PM does not affirm that the personal data will be used exclusively to carry out urgent research to assist in the confrontation with COVID-19, and even if it did, the research would not have resulted in time to be applied in a timely manner; and

- The fact that the inherent feature of the *PNAD Contínua* research method, statistical sampling, would have its objective fulfilled without the need to share the types of personal data intended, at this level of detail

Our Intellectual Property & Information Technology area is attentive to the developments and remains available to clarify any questions regarding the subject.

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