

Data Privacy Brasil
Research
Association

“Techno-authoritarianism and violations of fundamental rights in Brazil”

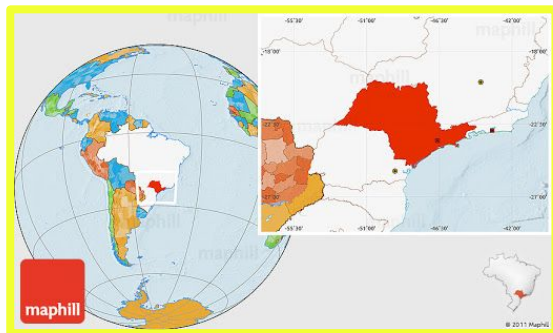
Digital Rights Session
July 13 2022



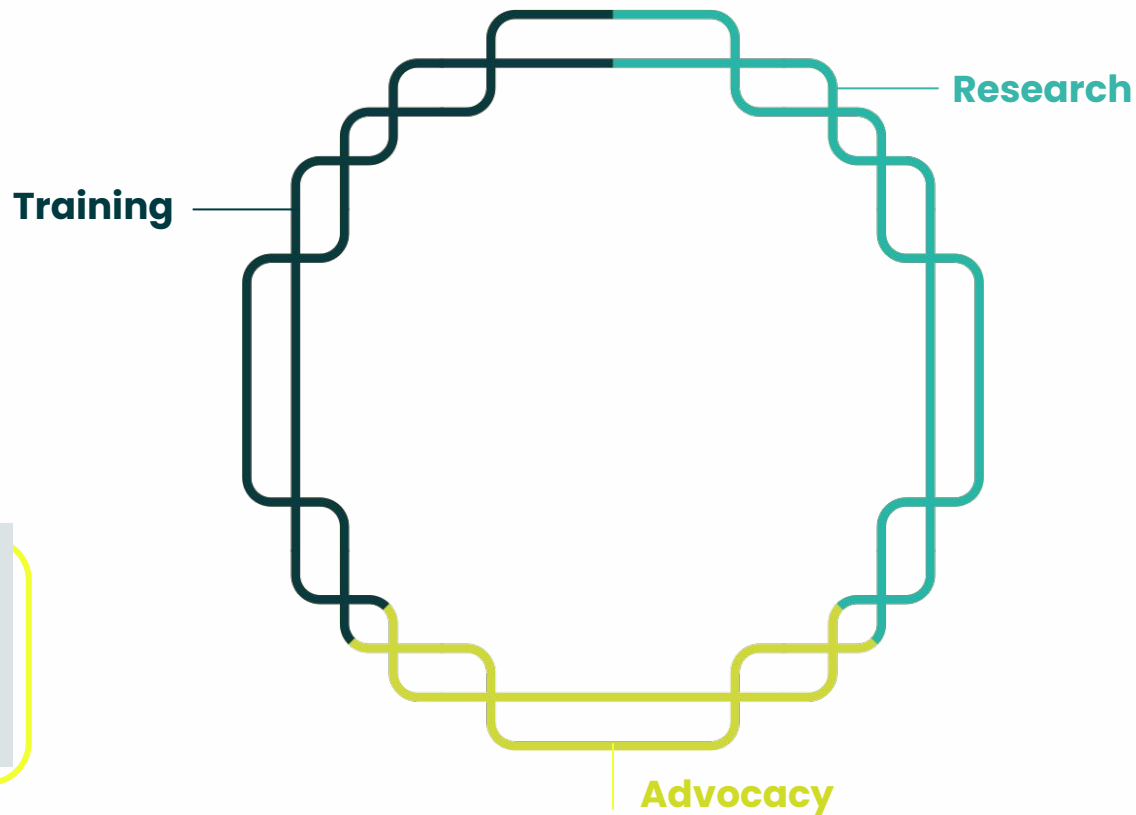
DataPrivacyBR
Research

DATA
RECKONING
& REMEDY
Global Meeting on Law & Society
Lisbon 2022

About us

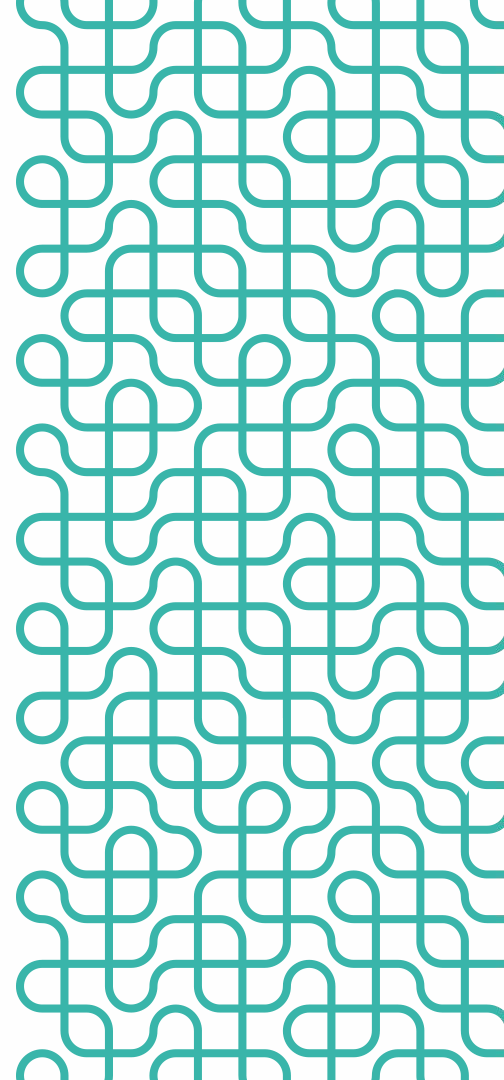


Space of **articulation** between two distinct and complementary organizations: **Data Privacy Teaching** and **Data Privacy Research**



About the NGO

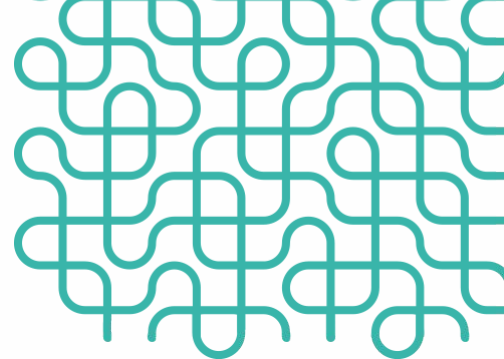
Data Privacy Brasil Research Association is a Brazilian **non-profit civil society organization** founded in 2020 that promotes the protection of personal data and other fundamental rights in the face of the emergence of **new technologies, social inequalities and power asymmetries**. We have a multidisciplinary team from different Brazilian regions that develops public interest research and advocacy



About the Team

Our team is composed by specialists with a strong background of experiences in non-governmental organizations and who were involved in the most important national debates on digital rights:

- (i)** approval and regulation of the Civil Rights Framework for the Internet (Marco Civil da Internet);
- (ii)** multi-sector Internet governance, with an emphasis on Brazilian Internet Steering Committee (CGI.br); and
- (iii)** intense participation in the construction and approval of the national General Data Protection Law (LGPD).



Deep of roots of digital rights activism

We come from a tradition of activism for digital rights and Internet Governance



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Other actions

Besides producing research, Data Privacy Brazil Research Association also:



Participates in the Civil Society Forum of the **Red Ibero-Americana de Protección de Datos Personales**



Participates in the Civil Society Information Society Advisory Council of the **Organisation for Economic Cooperation and Development (OECD)**



Participates in the **Coalition Rights in the Network in Brazil**

Our projects are developed according to our lines of research



Governance and Regulation

This research area aims to advance the understanding of institutional arrangements, dynamics and tools for data protection. In addition to looking at the role of supervisory data protection authorities and their cooperation with other regulatory bodies at national and international levels.



Asymmetries and Power

This research area aims to understand structural processes that create or reinforce asymmetries of power and of rights in the context of automation and advances in information communication technology/ICTs.



Platforms & Digital Markets

This research area investigates the role played by digital platforms in civic life and the central position of personal data in new digital markets, identifying regulatory tensions at both national and global level, and processes of legal intersection of data protection with other regulatory fields.



The Center for Analysis of Freedom and Authoritarianism (LAUT) and Data Privacy Brasil Research Association have released an English translation of the Techno-Authoritarianism Retrospective 2020. The report looks into governmental actions based on increased personal data processing capabilities that may pose some kind of threat to Brazilians fundamental rights and describes thirteen problematic cases that deserve a bigger public attention.

Some of these cases, it's important to mention, have been judicialized in Brazilian courts.

To make the selection, LAUT and Data Privacy made a thorough analysis of noteworthy cases regarding the use of personal data by Brazil's federal government and took in consideration three factors: governmental action; creation and/or sharing of databases; and potential threats to fundamental rights.

Cases such as the production of files on anti-fascist police officers by the Ministry of Justice or unregulated access of driver's license biometric data by the Brazilian Intelligence Agency made the cut. According to the report, these are "worrying incidents" and "indicate a scenario in which the expansion of state power is increasingly rooted in the use of cutting-edge information communication technologies".

It's no wonder that Brazilian civil society and Judiciary Power have strongly reacted against some of these cases – sometimes using the new Brazilian Data Protection Law, LGPD. The Retrospectiva also paints a clear picture of this resistance and shows how it stood against official measures, such as when the federal government tried to get it's hands on the data of telecom's millions of clients for census purposes, and extra official ones, such as the aforementioned files on anti-fascist police officers.

The report is a product of a joint research by Data Privacy Brasil and LAUT that aims to understand how techno-authoritarianism is establishing itself in Brazil and what can be done to stop this. This is an ongoing project.



Information for public policies is so important.
It's so important.

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The rise of techno authoritarianism - The use and employment of technology to violate rights

- **Increase awareness** through multiple forms:
 - Podcast (*Dadocracia*)
 - Webinars
 - Newsletter
 - Instagram Stories
 - Twitter
 - Public classes
 - Papers and reports
 - Materials that can be freely used (Creative Commons)





**Access Now & Data Privacy Brasil Research Association
Joint Submission to the United Nations Human Rights Council
on the Universal Periodic Review 41st Session Fourth Cycle for
Brazil**

31 March 2022

About Access Now

Access Now is an international organization that works to defend and extend the digital rights of users at risk around the world. Through representation worldwide, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. By combining direct technical support, comprehensive policy engagement, global advocacy, grassroots grantmaking, legal interventions, and convenings such as RightsCon, we fight for human rights in the digital age. As an ECOSOC accredited organization, Access Now routinely engages with the United Nations in support of our mission to extend and defend human rights in the digital age.¹

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Recommendations

29. We urge that digital rights and data protection rights become prominent issues in the upcoming UPR review cycle. We therefore recommend that Brazil:

- a. *Ensure the full independence of the National Data Protection Authority and the demilitarization of its personnel;*
- b. *Conduct data protection impact assessments whenever a public policy based on data processing imposes a high risk to the citizens' fundamental rights and civil liberties - such as the deployment of a digital identity centralized system;*
- c. *Ensure that data collected for civil identification are used solely for that purpose;*
- d. *Ensure government regulation restricts the flow of citizen's data between government entities and bodies, in respect of the necessity and proportionality principles that prohibit the abusive secondary use of data;*
- e. *Enhance the security of government databases;*
- f. *Assess, critically, the use of biometric data in government public policies, putting a moratorium on the use of biometric data in the digital identity system until the government proves that it is completely safe, inclusive, not liable to error, and is the only method of authentication available and proportional for the purpose of the system;*
- g. *Ensure accountability and justiciability mechanisms for rights violations in the digital identification implementation process;*

Techno authoritarianism project

- Partnership between Data Privacy Brasil, LAUT and Brazilian Bar Association started in June 2020 (ongoing project)
- Research team of 8 researchers (2021)
 - Political scientists and lawyers
- Data collection/analysis methodology
 - Daily monitoring of news and decrees by LAUT
 - Selection of cases after four months of analysis
 - Legal dossiers for each selected case
 - Participatory research
 - Closed seminars with lawyers of the selected cases
 - Focal groups with activists, NGOs and lawyers

Techno authoritarianism

- Concept that might be useful to describe what is happening in Brazil and other countries
- It is not a description of a *form of State*
 - We reject the approach of Foreign Affairs, which uses the concept to describe China and Russia (Wang, 2021)
 - It is a description of authoritarian practices within democracies (theory of political science about *practices* and *actions*)
- It is not only about *government actions* but also about the *affordances of technologies* (Mireille Hildebrandt)
- Data-driven technologies and Internet applications might increase authoritarian practices and do not necessarily lead to expansion of fundamental rights (Evgeny Morozov)

Possible illustrations of techno authoritarianism

- Centralization of databases and interoperability of personal data (*Cadastro Base do Cidadão*)
 - Similarities with Aadhaar and the Indian approach of centralization of citizens' personal data
 - Biometric data (eyes, fingerprints, way of walking)
 - Lack of due process for secondary uses of data
 - Violation of Fair Information Practices Principles (Marc Rotenberg)
 - Strategic litigation by Brazilian Bar Association
 - Violation of informational self-determination
 - Legality and demonstration of reasonable uses for secondary purposes
- Uses of personal data from drivers licenses to Intelligence
 - Autocratic legalism: uses of *Portarias*, *Resoluções* and many legal norms to establish an architecture in which data could be shared from *Denatran* (regulator of driving rules) to the Intelligence
 - Abusive use of personal data without demonstration of *necessity* and *adequacy* (violation of principles of data protection law)

Possible illustrations of techno authoritarianism

- Intelligence and use of OSINTs
 - Public procurement to use open source intelligence for monitoring social networks, activists and researchers by the Ministry of Justice
 - Harpia Tech (2021)
 - Scrapping of Telegram groups, IRC groups, academic publishing
 - Profiling of targeted citizens and possible uses for digital repression (Steven Feldstein, 2021)
- Data extraction from cell phones
 - Project “Excel” (2022)
 - Agreements with the State-level secretariats of public security by the Ministry of Justice (Secretariat of Integrated Operations)
 - Possibility of using Cellebrite to extract data from cell phones without a decision by a Court
 - Autocratic approach: the decision is made by SEOPI (administrative decision in violation of basic principles of Rule of Law and checks and balances)

What can be learned?

- Techno-authoritarian practices involve affordances and capabilities of data-driven technologies used by the government that might impact fundamental rights
 - Which kind of affordances new forms of data-driven technology generate?
- Techno-authoritarian practices are commonly structured in legal terms but they are embedded in a complex web of legal norms “below” law
 - *Infralegalismo autoritário* (Oscar Vilhena, Ana Barbosa and Rubens Glezer, 2022)
 - Autocratic legalism
- Techno-authoritarian practices involve capabilities offered by new technologies (interoperability systems, OSINTs, profiling softwares) and new forms of power asymmetries that are hardly perceived as human rights violations
 - Reframing the debate beyond privacy: it is about fundamental rights and personal data protection
 - Collective dimension of informational self-determination
 - Due process and positive obligations held by the State: demonstration of necessity, mitigation of harms and why a collective diminishment of rights is properly justified (Supreme Court, ADI 6387, 2020)

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