

# COUNTRY: BRAZIL

SCORE: 44.09 | RANK: 22 / 24

Brazil is a fast-growing economy that recognizes the importance of ICT and the digital economy. However, some gaps in law and regulation have acted as barriers to ICT innovation in Brazil.

For example, no privacy legislation is in place, and Brazil has some 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.

Brazil finally passed modern cybercrime legislation in 2012, and this has had a very positive impact on its score in the 2013 report.

Brazil continues to make good progress in the implementation of its National Broadband Plan — Programa Nacional de Banda Larga (PNBL) — and its broadband penetration remains the highest in South America.

Based on the changes to its cybercrime and IP laws and improved infrastructure, Brazil moved up two spots to 22nd in the 2013 Scorecard rankings.

Q BRAZIL	RESPONSE	EXPLANATORY TEXT
<b>DATA PRIVACY</b>		
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 them. 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 has been under discussion for some time, but approval and implementation are delayed.
2. What is the scope and 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 in 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 includes a general data breach notification requirement.

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<b>SECURITY</b>		
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 law 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, numerous private legal cases have resulted in specific online material being removed. A proposed Internet Bill of Rights — Marco Civil da Internet — failed to attract parliamentary support and was withdrawn in late 2012.
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?	✗	Brazil has not yet developed security certification or accreditation requirements for technology products.
<b>CYBERCRIME</b>		
1. Are cybercrime laws in place?	✓	In late 2012 both houses of Brazil's Parliament approved new cybercrime legislation (Law 12737 and Law 12735) to amend Brazil's Criminal Code to incorporate a wide range of cybercrime offenses. The legislation was signed by the president in December 2012 and is now in force.  Law 12737 contains the core offence provisions. Law 12735 contains provisions relating to investigation and enforcement.
2. Are cybercrime laws consistent with the Budapest Convention on Cybercrime?	✓	The new cybercrime law provides comprehensive coverage of cybercrimes. The law is very new, and the Council of Europe has not yet assessed whether the law is compatible with the Cybercrime Convention.
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 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 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 another state.
<b>INTELLECTUAL PROPERTY RIGHTS</b>		
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 WIPO Copyright Treaty, it has implemented some very limited laws, which are partly compatible with the treaty provisions. In 2012, Brazil restated its opposition to the WIPO Copyright Treaty on the grounds that it considers access to knowledge, science, and education should be afforded greater protection than is provided for in the current treaty.
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 its resources are limited. Civil sanctions are technically available and take-down notices can also be effective, but they are rarely used in Brazil.

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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 — based on Brazil's constitutional right to privacy — have refused to hand over subscriber details. The courts have upheld the ISPs' position. An attempt to clarify the requirements for ISPs to cooperate through an Internet Bill of Rights (Marco Civil da Internet) failed to attract wide support, and the proposal was withdrawn from Parliament in late 2012. The proposed Bill of Rights was controversial as it required ISPs to cooperate with copyright holders only following presentation of a court warrant.
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 take down content that infringes copyright, upon notification by the right holder?	✘	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?	Limited protection (criminal activity only)	Brazil has been unable, despite several attempts, to update its IP laws to cover online services. As a result, current IP protection remains very weak. The new cybercrime laws are an encouraging development and will provide an important layer of protection for cloud services.
<b>SUPPORT FOR INDUSTRY-LED STANDARDS &amp; INTERNATIONAL HARMONIZATION OF RULES</b>		
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) < <a href="http://www.abnt.org.br">www.abnt.org.br</a> >.
3. 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.
4. What international instruments are the e-commerce laws based on?	Not applicable	
5. 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.
6. Are international standards favored over domestic standards?	✓	Brazil has a strong commitment to international standards. Local standards in the ICT sector are rare.
7. Does the government participate in international standards-setting process?	✓	Brazil is a founding member of the ISO.

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<b>PROMOTING FREE TRADE</b>		
1. Are 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. The guidelines are widely followed in both the public and private sectors, creating a strong preference for open standards software and documents.
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 December 15, 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.
<b>ICT READINESS, BROADBAND DEPLOYMENT</b>		
1. Is there a national broadband plan?	<ul style="list-style-type: none"> <li>By 2014, 30 million fixed broadband connections (with a minimum speed of 1Mbps), including homes, businesses, and co-operatives, plus 100,000 telecenters</li> </ul>	<p>Currently, Brazil has the highest broadband penetration in South America, followed by Argentina. Brazil has 48 million fixed and mobile broadband subscribers, ranking it among the top 10 countries worldwide by total number of broadband users. However, its large population puts Brazil's broadband penetration outside the top 50 worldwide.</p> <p>The Brazilian government has begun a broadband infrastructure development initiative, which has set ambitious targets to triple broadband uptake by 2014.</p> <p>The National Broadband Plan (Programa Nacional de Banda Larga (PNBL)) aims to provide 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 telecenters), with a minimum speed of 1Mbps. However, there is no detailed timeline for implementation.</p>
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 were included in the proposed Internet rights. However, the "Marco Civil" Bill was defeated in Parliament in November 2012. No other provisions are in place relating to net neutrality.
<b>3. Base Indicators</b>		
3.1. Population (2011)	196,655,014	In 2011, the population of Brazil increased by 0.9%.  [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < <a href="http://www.itu.int/ITU-D/ict/publications/world/world.html">www.itu.int/ITU-D/ict/publications/world/world.html</a> >]
3.2. Urban Population (%) (2011)	85%	[United Nations, Department of Economic and Social Affairs, Population Division (2012). World Urbanization Prospects: The 2011 Revision, < <a href="http://esa.un.org/unup/CD-ROM/Urban-Rural-Population.htm">esa.un.org/unup/CD-ROM/Urban-Rural-Population.htm</a> >]
3.3. Number of Households (2011)	58,663,000	In 2011, the number of households in Brazil increased by 2.4%.  [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < <a href="http://www.itu.int/ITU-D/ict/publications/world/world.html">www.itu.int/ITU-D/ict/publications/world/world.html</a> >]
3.4. Population Density (people per square km) (2010)	23	[World Bank, Data Catalog, Indicators, Population Density (2012) < <a href="http://data.worldbank.org/indicator/EN.POP.DNST">data.worldbank.org/indicator/EN.POP.DNST</a> >]
3.5. Per Capita GDP (US\$ 2011)	\$12,594	In 2011, the per capita GDP for Brazil increased by 2.7% to US\$12,594.  [World Bank, Data Catalog, Indicators: GDP per capita, current US\$ (2012) < <a href="http://data.worldbank.org/indicator/NY.GDP.PCAP.CD">data.worldbank.org/indicator/NY.GDP.PCAP.CD</a> > and GDP growth, annual % (2012) < <a href="http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG">data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG</a> >]

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3.6. Public Cloud Services Market Value (2011) (Billions of US\$)	1.43	Gartner has calculated the value of the public cloud services market in Brazil in 2011 to be US\$1.43 billion. This is a 19% increase from 2010 and ranks Brazil 10 (out of 20 countries) in the forecast. Gartner has projected the five-year compound annual growth rate (CAGR) to 2016 to be 25% and this ranks Brazil 8 (out of 20 countries) for growth in the value of the market for public cloud services to 2016.  [Gartner, Forecast Overview: Public Cloud Services, Worldwide, 2011-2016 (August 2012 Update) < <a href="http://www.gartner.com/id=2126916">www.gartner.com/id=2126916</a> >]
3.7. Personal Computers (% of households) (2011)	45%	In 2011, 45.4% of households in Brazil had personal computers. This is a 30.3% increase since 2010 and ranks Brazil 75 out of 182 countries surveyed. The growth from 2010 is above the five-year CAGR from 2006 to 2011 of 15.5%.  [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < <a href="http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx">www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx</a> >]  Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may update this indicator for prior years.
4. ICT and Network Readiness Indicators		
4.1. ITU ICT Development Index (IDI) (2011) (Score is out of 10)	4.72	Brazil's ITU ICT Development Index (IDI) for 2011 is 4.72 (out of 10), resulting in a rank of 60 (out of 161 economies). The 2011 IDI for Brazil has increased by 13.2%, and the IDI ranking has improved by seven places from a rank of 67 since 2010.  [International Telecommunication Union (ITU), Measuring the Information Society (2012) < <a href="http://www.itu.int/ITU-D/ict/publications/idi/2012">www.itu.int/ITU-D/ict/publications/idi/2012</a> >]  Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may adjust this indicator, both for 2011 and prior years.
4.2. World Economic Forum Networked Readiness Index (NRI) (2012) (Score is out of 7)	4.32	Brazil has a Networked Readiness Index (NRI) score of 4.32 (out of 7), resulting in a rank of 53 (out of 142 economies) and a rank of 9 (out of 39) in the upper-middle income grouping of economies. The 2012 NRI for Brazil has increased by 10.8% and improved from a rank of 56 since 2011.  [World Economic Forum, Global Information Technology Report (2012) < <a href="http://www.networkedreadiness.com/gitr">www.networkedreadiness.com/gitr</a> >]
4.3. International Connectivity Score (2011) (Score is out of 10)	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) < <a href="http://www.connectivityscorecard.org">www.connectivityscorecard.org</a> >]
4.4. IT Industry Competitiveness Index (2011) (Score is out of 100)	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 one place since 2009.  [Business Software Alliance (BSA) / Economist Intelligence Unit (EIU), IT Industry Competitiveness Index (2011) < <a href="http://globalindex11.bsa.org">globalindex11.bsa.org</a> >]
5. Internet Users and International Bandwidth		
5.1. Internet Users (2011)	88,494,756	[calculated from 8.3.1. and 8.5.2.]
5.2. Internet Users as Percentage of Population (2011)	45%	In 2011, 45% of the population in Brazil used the Internet, resulting in a ranking of 80 out of 199 countries surveyed. This is a 10.7% increase since 2010. The growth from 2010 is above the five-year CAGR from 2006 to 2011 of 9.8%.  [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (December 2012) < <a href="http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx">www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx</a> >]  Note: There may be some variations as to how countries calculate this. Some countries base this upon all or part of the population, such as between 16 and 72 years of age.  Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may adjust this indicator, both for 2011 and prior years.
5.3. International Internet Bandwidth (bits per second per internet user) (2011)	29,041	Brazil's International Internet Bandwidth (per Internet user) has increased by 130% since 2010.  [International Telecommunication Union (ITU), Measuring the Information Society (2012) < <a href="http://www.itu.int/ITU-D/ict/publications/idi/2012">www.itu.int/ITU-D/ict/publications/idi/2012</a> >]
5.4. International Internet Bandwidth (2011) (total gigabits per second (Gbps) per country)	2,570	Brazil has increased its International Internet Bandwidth by 157% since 2010 to 2,570 Gbps and is ranked 7 out of 188 countries surveyed. The growth from 2010 is above the five-year CAGR from 2006 to 2011 of 84.8%.  [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < <a href="http://www.itu.int/ITU-D/ict/publications/world/world.html">www.itu.int/ITU-D/ict/publications/world/world.html</a> >]

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6. Fixed Broadband		
6.1. Fixed Broadband Subscriptions (2011)	16,884,127	Brazil has increased the number of fixed broadband subscribers by 27% since 2010, to 16,884,127, and is ranked 9 out of 182 countries surveyed. The growth from 2010 is below the five-year CAGR from 2006 to 2011 of 28.8%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < <a href="http://www.itu.int/ITU-D/ict/publications/world/world.html">www.itu.int/ITU-D/ict/publications/world/world.html</a> >] Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may adjust this indicator, both for 2011 and prior years.
6.2. Fixed Broadband Subscriptions as % of Households (2011)	29%	[calculated from 8.3.3. and 8.6.1.] Note: This may be skewed by business usage in some countries (refer to OECD comments about this).
6.3. Fixed Broadband Subscriptions as % of Population (2011)	9%	Brazil has increased its fixed broadband subscriptions (as a share of the population) by 26% since 2010, which is below the five-year CAGR from 2006 to 2011 of 27.6%. This ranks Brazil 9 out of 187 countries surveyed. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (July 2011) < <a href="http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx">www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx</a> >]
6.4. Fixed Broadband Subscriptions as % of Internet Users (2011)	19%	[calculated from 8.5.1 and 8.6.1]
7. Mobile Broadband		
7.1. Mobile Cellular Subscriptions (2011)	244,357,507	In 2011, Brazil increased the number of mobile cellular subscriptions by 24.1% and is ranked 6 out of 195 countries surveyed. The number of subscriptions account for 124% of the population. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < <a href="http://www.itu.int/ITU-D/ict/publications/world/world.html">www.itu.int/ITU-D/ict/publications/world/world.html</a> >] 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 and tablets).
7.2. Active Mobile Broadband Subscriptions per 100 inhabitants (2011)	21%	Brazil has increased the number of active mobile broadband subscriptions (as a % of the population) by 98% since 2010. This ranks Brazil 55 out of 144 countries surveyed. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < <a href="http://www.itu.int/ITU-D/ict/publications/world/world.html">www.itu.int/ITU-D/ict/publications/world/world.html</a> >] Note: This refers to the sum of standard mobile-broadband and dedicated mobile-broadband subscriptions to the public Internet. It covers actual subscribers, not potential subscribers, even though the latter may have broadband-enabled handsets. Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may adjust this indicator, both for 2011 and for prior years.
7.3. Number of Active Mobile Broadband Subscriptions (2011)	41,114,405	In 2011, Brazil has increased the number of active mobile broadband subscriptions by 99% and is ranked 55 out of 145 countries surveyed. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < <a href="http://www.itu.int/ITU-D/ict/publications/world/world.html">www.itu.int/ITU-D/ict/publications/world/world.html</a> >]