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PRIVACY, DATA PROTECTION AND DIGITAL MARKETS

Digital ECA: ANPD's new Guidance

Scope of application and duty of prevention: what changes for technology products and services providers.

October 2026

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BACKGROUND

What the ANPD has published

On October 28, 2026, the Brazilian National Data Protection Agency (ANPD) published the Guidance **“Information Technology Products or Services Providers: Scope and General Obligations under the Digital ECA”**.

The document sets out the Agency’s interpretation of Law No. 15,211/2025 (Digital ECA), around two core questions:

1

To whom does it apply?

The scope of application of the law and the concept of “likely access” by children and teenagers.

2

What is required?

The duty of prevention and its practical implications for providers.

Read on for the key points and their practical implications.

SCOPE OF APPLICATION

Who is subject to the law

The Guidance adopts a **functional and technology-neutral criterion**: what matters is how the product or service operates, its purpose and its impact.

3 ELEMENTS THAT DEFINE AN IT PRODUCT OR SERVICE:



Remote provision



Electronic means



Individual request

\+ **directed at children and teenagers** or **likely to be accessed by them**

THE FOLLOWING DO NOT EXCLUDE APPLICATION OF THE LAW:



Headquarters abroad

The Digital ECA applies regardless of the provider's place of incorporation or physical presence in Brazil.



Apparent gratuity

Business models monetized through advertising or data are equally covered by the Digital ECA.

KEY TAKEAWAY FROM THE GUIDANCE

The concept of likely access

The Digital ECA also extends to **services not designed for children and teenagers**, provided that three cumulative requirements are met:

1 **Attractiveness**
Likelihood of use and attractiveness of the product or service to children and teenagers.

+

2 **Ease of access**
Considerable ease of access and use by this audience.

+

3 **Significant degree of risk**
To the privacy, safety or biopsychosocial development of children and teenagers.

=

LIKELY TO BE ACCESSED → the Digital ECA applies

All three requirements must be met simultaneously. If any one is absent, there is no likely access.

LIKELY ACCESS

Statutory presumption

The following categories are subject to a statutory presumption of likely access. As a rule, no test is required for them:

- **Social media**
- **App stores**
- **Operating systems**
- **Electronic games**
- **Services with editorial control**
- **Adult content providers**
- **Generative AI**
- **E-commerce of products prohibited to minors**

Rebutting the presumption?

Only on reasoned grounds, where one or more requirements are in fact absent in the specific case.

Other services?

Apply the likely-access test flowchart in Annex III of the Guidance to determine whether the law applies.

GENERAL OBLIGATIONS

The duty of prevention

The obligation to act **proactively and diligently** throughout the entire product life cycle to prevent or mitigate risks to the rights of children and teenagers.

FOUR DIMENSIONS

- **Prevention in the strict sense**
- **Protection**
- **Information**
- **Security**

IN PRACTICE: ACT BEFORE HARM OCCURS

1. Identify and assess risks arising from functionalities, resources and systems
2. Assess content to ensure it is appropriate for the users' age range
3. Adopt by default the most protective settings, designed to prevent compulsive use
4. Demonstrate the effectiveness of measures through documented evidence

Why does it matter?

Self-assessment is not binding on the ANPD

The Agency may conclude otherwise based on the actual features of the product or service.

Age assurance does not exclude the law

Compliance measures do not remove a service from the scope of the Digital ECA.

Effectiveness must be demonstrated

Adopting measures is not enough: they must be substantiated by tests, data and metrics.

Calibrated obligations

According to the provider's size, number of users and degree of interference with content.

The ANPD is already enforcing the Digital ECA.

Administrative sanctions remain subject to the updated regulation on the calculation of penalties, but the Agency is already adopting preventive measures, such as the suspension of features.

CONTACT OUR TEAM

Privacy, Data Protection and Digital Markets

Our team is available to assist your company in assessing applicability of, and compliance with, the Digital ECA.

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