

RESOLUTION N° 245

The rights of children and adolescents in the digital environment

DIÁRIO OFICIAL DA UNIÃO

PUBLISH ON: 09/04/2024 | EDITION: 68 | SECTION: 1 | PAGE: 42

Unofficial translation by Instituto Alana from Portuguese to English (April/2024)

Certified Version

THE NATIONAL COUNCIL FOR THE RIGHTS OF CHILDREN AND ADOLESCENTS - CONANDA, a collegial body formulating, deliberating and controlling actions to promote and defend the rights of children and adolescents, in the exercise of the duties provided for by Law No. 8,242, of October 12, 1991, in Decree No. 11,473, of April 6, 2023 and in Resolution No. 217, of December 26, 2018, which approves its Internal Regulations:

ACKNOWLEDGING art. 227 of the Federal Constitution, which establishes the absolute priority in guaranteeing the rights of children and adolescents in all situations that concern them, including in the digital environment, which applies not only to the Brazilian State and society, but also to the private sector, including digital platforms;

ACKNOWLEDGING the United Nations (UN) Convention on the Rights of Children, promulgated by Decree No. 99,710 of 1990;

ACKNOWLEDGING General Comment No. 25 of 2021, from the UN Committee on the Rights of Children, on children's rights in relation to the digital environment, which links the interpretation of the rights provided for in the Convention on the Rights of Children in the digital environment, as well as the Commentary General No. 14 on children's right to have their best interests considered primarily;

ACKNOWLEDGING the provisions of arts. 2nd, 3rd, 4th, 5th, 15, 16, 53 and 86 of the Child and Adolescent Statute, Federal Law No. 8,069, of July 13, 1990;

ACKNOWLEDGING the provisions of arts. 2nd, sole paragraph, 3rd, VIII, and 4th of Law 13,185, of November 6, 2015, which establishes the Program to Combat Systematic Intimidation (Bullying);

ACKNOWLEDGING the provisions of Law 14,811, of January 12, 2024, which establishes measures to protect children and adolescents against violence in educational or similar establishments and provides for the National Policy for Preventing and Combating Abuse and Sexual Exploitation of Children and Adolescents;

ACKNOWLEDGING the provisions of art. 14 of the General Personal Data Protection Law, Law No. 13,709, of August 14, 2018;

ACKNOWLEDGING the Legal Framework for Early Childhood (Law No. 13,257/2016), in particular its art. 5th, which guarantees the protection of children against all forms of consumerist pressure;

ACKNOWLEDGING the Consumer Protection Code (Law No. 8,078/90), in particular its articles. 1st, 4th, 6th, 8th, 36, 37, 39 and 51;

ACKNOWLEDGING Decree No. 9,579 of November 22, 2018, which provides for the right to adequate advertising;

ACKNOWLEDGING Resolution No. 163 of 2014 of the National Council for the Rights of Children and Adolescents (CONANDA), which addresses the abusive targeting of advertising and marketing communications to children and adolescents;

ACKNOWLEDGING Resolution No. 113, amended by Resolution No. 117, both from 2006 of the National Council for the Rights of Children and Adolescents (CONANDA), which provides for the institutionalization and strengthening of the System of Guarantees for the Rights of Children and Adolescents ; and

RECOGNIZING that digital technologies are vital in today's world and provide opportunities to actualize the rights of children and adolescents, but also pose risks of violations, exploitation and abuse, resolves that:

Art. 1 This Resolution provides for the rights of children and adolescents in the digital environment.

Sole paragraph. For the purposes of this Resolution, it is considered a digital environment information and communication technologies (ICTs), such as networks, content, services and digital applications available in the virtual environment (Internet); connected devices and environments; virtual and augmented reality; artificial intelligence (AI); robotics; automated systems, biometrics, algorithmic systems and data analysis, in line with General Comment No. 25 of 2021, of the UN Committee on the Rights of the Child.

CHAPTER I

The basic principles of protecting the rights of children and adolescents in the digital environment

Art. 2 Guaranteeing and enforcing the rights of children and adolescents in a digital environment is the shared responsibility of public authorities, families, society, including companies providing digital products and services.

Art. 3 The guarantee and enforcement of the rights of children and adolescents in a digital environment is guided by the following principles:

I - Non-discrimination;

II - Prevalence, primacy and precedence of the best interests and rights of children and adolescents;

III - Right to life, to survival and physical, mental, moral, spiritual and social development;

IV - Respect for freedom of expression and of conscience, of access to information, progressive autonomy and listening and participation of children and adolescents;

V - The free development of personality, of dignity, honor and image;

VI - The promotion of a healthy and safe digital environment, free from harassment, discrimination and hate speech;

VII - Encouragement of conscious and responsible use to exercise citizenship in digital environments; and

VIII - data protection, informative self-determination and privacy.

IX - protection against all forms of negligence, discrimination, violence, cruelty, oppression and exploitation, including commercial exploitation.

X - ensuring the rights of children and adolescents through the design of products and services in digital environments.

Art. 4 All children and adolescents must have the right to access the digital environment guaranteed, ensuring that the content and services accessed are compatible with their rights and best interests.

Sole paragraph. Authorities and companies providing digital services must adopt measures to safeguard against digital exclusion, ableism, illegal or abusive discrimination, direct or indirect, based on gender, disability, religious belief and worship, socioeconomic situation, sexuality, ethnic and racial origin, among others, ensuring digital inclusion and accessibility and meaningful connectivity for all children and adolescents.

Art. 5 The best interest must be verified in accordance with the Doctrine of the Comprehensive Protection of the Rights of Children and Adolescents, observing the rights provided for in national legislation and international standards, this being the guiding and primary principle for ensuring the rights and well-being of children and adolescents in the digital environment.

Sole paragraph. Public authorities, private entities and society must ensure that all actions carried out, the design, development and communication actions of any product or service in digital media take into account the rights and best interests of children and adolescents, especially freedom of expression and the rights to seek, receive and disseminate safe, reliable and unabridged information.

Art. 6 Children and adolescents have the right to protection with absolute priority from families, the State, society, including companies, against all violations of rights related to the risks of content, contract, contacts and conduct of third parties that may endanger their life, dignity and integral development, and must be safe from any form of negligence, discrimination, exploitation, violence, cruelty and oppression.

§1 Violations of rights related to content, contract, contact and conduct risks include, among others, violent and sexual content, cyber aggression or cyberbullying, hate speech, harassment, addiction, gambling, exploitation and abuse - including sexual and commercial, incitement to suicide, self-harm, illegal advertising or activities that encourage and/or expose life or physical integrity to risk.

§2 The use of digital equipment and platforms must not be harmful, nor replace or restrict personal interactions between children and adolescents, family members, caregivers and the community in general.

§3 In early childhood, in a social environment, especially in relationships with family members and caregivers, special attention must be paid to the effects of technology and digital environments on the individual's cognitive, emotional and social development.

§4 Public authorities, providers of digital products and services must disseminate information about the healthy, safe and appropriate use of technology by children and adolescents, taking into account the results of research on the respective effects on their social and neurological development, especially in early childhood.

Art. 7 Children and adolescents must actively participate in the development of policies, programs, services and training activities on digital environments, taking into account their needs and degree of autonomy and progressive development of their capabilities.

Art. 8 The promotion and protection of the rights of children and adolescents in the digital environment must be carried out in light of the existing legislation, especially the Federal Constitution, the Convention on the Rights of Children, the Child and Adolescent Statute, Federal Law No. 8,069, of July 13, 1990.

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CHAPTER II

National policy for protecting the rights of children and adolescents in the digital environment

Art. 9 The national policy for protecting the rights of children and adolescents in the digital environment will be developed and coordinated by the National Secretariat for the Rights of Children and Adolescents of the Ministry of Human Rights and Citizenship and by the National Council for the Rights of Children and Adolescents - CONANDA, observing the legal competencies of each entity.

§1 The national policy will comprise joint, integrated and multisectoral actions to combat and eradicate all types of violence, abuse and exploitation of children and adolescents in the digital environment, promoting the balanced and positive use of digital equipment, maintaining and strengthening family ties and community activities, digital inclusion, data protection culture, media education and dissemination of information about rights and safe use of the internet for children and adolescents, family members, caregivers and members of the system that guarantees the rights of children and adolescents.

§2 The national policy for protecting the rights of children and adolescents in the digital environment will be developed within 90 (ninety) days of the publication of this Resolution.

CHAPTER III

Freedom of expression in the digital environment

Art. 10 Children and adolescents must have access to information in the digital environment, right which can only be restricted in the cases provided for by Law and to achieve the objectives set out in the Statute of Children and Adolescents, Law No. 8,069, of July 13 1990.

Art. 11 The right to freedom of expression for children and adolescents in the digital environment includes the freedom to seek, receive and share safe, unabridged and appropriate information, using any tool or service connected to the internet.

§1 Any restriction on the right to freedom of expression in the digital environment must be legal, necessary and proportionate, based on the best interests of the child and adolescent.

§2 The use of digital content moderation and control tools that aim to prevent children and adolescents from accessing harmful content and services must be compatible with respect for their right to freedom of expression and access to information.

CHAPTER IV

The right to privacy and data protection in the digital environment

Art. 12 The privacy of children and adolescents must be respected and protected, by default, in all digital environments and services, including the processing and storage of their personal data.

§1 Only the minimum amount of personal data will be collected for the purposes of using the service, the storage of which must only last as long as necessary for the purpose of collection.

§2 The processing of data covered by this device must comply with the highest standards of protection, security and ethical procedures, which must be aligned with the full and priority protection constitutionally guaranteed to children and adolescents, ensuring the equality of data from children and adolescents to sensitive personal data.

Art. 13 Companies that provide digital services to which children and adolescents have access must inform them about the use of their data, in simple, accessible, appropriate and transparent language.

Art. 14 Whenever the processing of personal data of children and adolescents is carried out based on consent, it must be obtained freely and in advance from those responsible, requested in a specific and prominent way, for specific purposes and, whenever possible, from the child or adolescent, observing their level of maturity and understanding of the effects of the consent.

Sole paragraph. The consent provided by the child or adolescent may be withdrawn at any time, and the decision must be respected by parents, caregivers and other guardians.

Art. 15 The personal data of children and adolescents must not be used for commercial purposes, such as creating and defining behavior profiles, consumption and marketing segmentation, nor for directing advertising or expanding its reach, as provided for in CONANDA Resolution No. 163 of March 13, 2014.

Art. 16 Any type of digital surveillance and monitoring mechanism for children and adolescents, associated with automation tools and personal data processing, must respect their right to privacy and must not be used in an indiscriminate and unjustifiable manner.

Sole paragraph. When security mechanisms are used, justified the guarantee of rights and the best interests of children and adolescents, the least invasive measures must be prioritized, and it is essential that the child or adolescent is aware of how they work and is given the right to express opposition, observing their degree of maturity and understanding.

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CHAPTER V

The duty of care and responsibilities of companies that provide digital products and services

Art. 17 Companies that provide digital products and services used by children and adolescents, operating in Brazil, including those based abroad, are responsible for implementing and guaranteeing the rights of this public, in the digital environments produced and regulated by them.

§1 The liability of companies for violating the rights of children and adolescents in a digital environment is based on current legislation related to corporate obligations and the guarantee of the rights of these individuals.

§2 Provider companies must make efforts to meet the needs of children and adolescents from the conception, development and communication actions of their environments and systems, in accordance with the rights and best interests of this public.

§3 Provider companies must create and improve mechanisms that prevent the use of digital services and environments by children and adolescents whenever their services are not suitable and safe for this public.

§4 The provisions of the caput cannot be used to create obstacles to the right of access to information and participation of children and adolescents in the digital environment.

§5 Technology companies' codes of conduct must include guidelines on how to report risks and suggest improvements to protect the rights of children and adolescents.

Art. 18 Companies must ensure absolute priority to the protection and enforcement of the rights of children and adolescents above any technical or economic considerations, preventing, mitigating, curbing and adopting accountability measures in the face of any form of abuse, violence, discrimination, ableism and dissemination of hate speech and disinformation.

Sole paragraph. For the effective promotion and protection of the rights of children and adolescents, companies must prioritize rapid actions, within a sufficient and timely manner, with a view to preventing risks and illicit practices, including those generated by third parties, within the scope of their services.

Art. 19 Effective age verification mechanisms in services and digital environments accessible to children and adolescents must be made available to prevent children and adolescents from having access to platforms, products, services and content that are illegal or incompatible with their age.

Sole paragraph. Data on children and adolescents obtained through age verification mechanisms and systems may not be used for any purposes other than age verification.

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Art. 20 Companies providing digital environments and services must provide parental mediation mechanisms and actively recommend the participation of legal guardians, as a way of promoting the safe and healthy use of their services in the digital environment.

Art. 21 Provider companies must make available and widely disseminate easily accessible channels in simple, accessible and easy-to-understand language for children, for listening, dialogue and receiving reports of harmful or illegal content, without prejudice to the rights to review decisions and access to information about moderation procedures.

§1 The listening, dialogue and reporting channels must provide, at a minimum, information in a timely and sufficient manner about the progress and results of the complaints made.

§2 For transparency purposes, companies must regularly publish information about:

I - Number of complaints received and categories of offenses and violations;

II - Moderation and governance methods applied in the process of analyzing complaints and in the possible application of sanctions.

§3 Mechanisms for parental mediation, reporting of violations and other forms of justice, protection and security in the digital environment must be continually improved based on evidence and made available in a broad, accessible, free and proactive way for children and adolescents, families, the schools community, public authorities and other responsible parties.

Art. 22 Provider companies are responsible for preventively and diligently identifying, measuring, evaluating and mitigating real or foreseeable risks to the rights and best interests of children and adolescents related to the functionalities, design, management and operation of their services and systems, including algorithmic, social networks, games, applications and other digital environments, especially those related to:

I - mental health, such as addiction, excessive screen time and possible damage to the self-esteem and physical and emotional well-being of children and adolescents;

II - violation of the right to family and community coexistence;

III - dissemination of harmful, damaging and illegal content on digital services and environments;

IV - direct or indirect discrimination as a result of algorithmic systems or the use of sensitive personal data, due to personal characteristics, especially race, color, ethnicity, gender identity, sexual orientation, disability, age, origin, philosophical, political or religious beliefs or for any particularity or condition;

V - non-compliance with the fundamental rights provided for in the Constitution of the Republic, in national legislation and in international treaties to which Brazil is a signatory;

VI - exposure of children and adolescents' image excessively or in a humiliating context;

VII - propagation of content that involves sexual abuse and exploitation of children and adolescents;

VIII - propagation of content that induces, instigates or assists self-mutilation or suicide, in compliance with art. 122 of Decree-Law No. 2,848, of December 7, 1940; and

IX - hate speech, incitement to commit crimes against children and adolescents or condoning a criminal act or the perpetrator of crimes against children and adolescents.

Sole paragraph. Risk grading and assessment must consider content moderation systems, terms and policies of use, advertising and advertising systems and mechanisms, and possible harmful and malicious uses in digital environments and services.

Art. 23 Technology companies must develop protection and violation prevention mechanisms specific to the level of intermediaries that bring together large bases of followers of children and adolescents, such as influencers, streamers, gamers, group and channel administrators, live moderators and similar.

Sole paragraph. Companies must take measures to prevent the radicalization of children and adolescents in the digital environments they regulate, as well as their recruitment into crime, extremism and violent behavior and speech against others or themselves, promoting a culture of peace, democratic coexistence and respect for differences.

Art. 24 Companies must prioritize in their systems, tools, teams and moderation resources, the control of illegal or inappropriate content involving or directed at children and adolescents.

§1 Companies must provide, in their terms of use, a prohibition on posting illegal or inappropriate content involving or directed at children and adolescents, as well as proportional sanctions for violating users.

§2 Companies must provide users with electronic notification mechanisms for illegal or inappropriate content involving or directed at children and adolescents.

§3 Companies must make unavailable illegal or harmful content involving or directed at children and adolescents as soon as its content is verified, regardless of a court order.

Art. 25 Users will have the right to due process of moderation, with notification and the right to clarification and review in a timely manner, without prejudice to the unavailability or rapid removal of content considered illegal, inappropriate or harmful to children and adolescents.

Art. 26 Safeguarding respect for the protection of personal data and other relevant standards in effect, companies providing digital products and services must act to facilitate the sharing of data and evidence with the academic and civil society research community dedicated to understanding the risks and impacts of the digital environment on children and adolescents.

Sole paragraph. Companies must make available, in Portuguese, in simple, accessible and easy-to-understand language for children and adolescents, updated reports, data and evidence on the effectiveness of the measures taken to guarantee the rights of children and adolescents in the digital environments they regulate.

Art. 27 Companies must guarantee accessibility to all children and adolescents in their platforms, services and systems, ensuring universal design under the terms of Law No. 13,146, of July 6, 2015 (Statute of Persons with Disabilities).

Art. 28 For the purposes of compliance with the national legal system, companies must publish, at least annually, reports on:

I - Transparency regarding the operation of its services and systems, including algorithmic ones, as well as the use of data collected during the operation of its services and, at a minimum:

- a. governance measures adopted in the design, development and use of its systems;
- b. details of the methods used to prevent and mitigate risks;
- c. details of sanctions applicable to offenders; and
- d. display of efforts made to educate and promote rights and conscious, healthy and responsible use of digital environments and services.

II - Assessment of risks to the rights and best interests of children and adolescents, in an up-to-date manner, considering the specificities of the Brazilian context and prioritizing assessment prior to the introduction of new services and features; and

III - Independent audit, which assesses compliance with the legal system and compliance with responsibilities and the Duty of Care established by legal and infra-legal regulations in effect in the national territory.

CHAPTER VI

Mobilization and awareness actions about the impact of the digital environment on children and adolescents

Art. 29 The Public Authorities and companies providing digital products and services must promote awareness-raising actions about the rights and risks of children and adolescents in the digital environment, focusing particularly on sectors whose practices have a direct or indirect impact on children and adolescents

§1 The development of educational actions for children and adolescents, family members, guardians and caregivers, public authorities and society in general must be encouraged, to increase knowledge about the rights of children and adolescents, specifically regarding the benefits and risks associated with digital products and services, as well as expanding individual and collective autonomy and critical sense, in regards to decisions related to the development and management of the digital environment.

§2 The actions mentioned in §1 must include information on how children and adolescents can benefit from digital products and services to develop their knowledge, professionalization and digital skills; how to protect privacy; how to prevent victimization and radicalization; how to recognize that a child or adolescent is or has been a victim of violence in the digital environment; and how to provide adequate care to victims.

§3 Professionals who work directly or indirectly for or with children, including in the technology industry, must receive training on the impact of the digital environment on the rights of children and adolescents, the exercise and protection of the rights of this public, and the identification of risks of violation and victimization of children and adolescents in the digital environment.

Final dispositions:

Art. 30 The treatment of violations reports of the rights of children and adolescents in the digital environment received by provider companies must form part of a forwarding flow to the National Human Rights Ombuds' Office (Dial 100), to the bodies of the Rights Guarantee System, especially to Guardianship Councils, the Public Prosecutor's Office, Public Defender's Office, consumer protection bodies, and police authorities, preferably police stations specializing in virtual crimes and protecting the rights of children and adolescents.

Sole paragraph. Delay or omission, whether negligent or willful, in forwarding complaints to the National Human Rights Ombuds' Office may result in the sanctions provided for in Article 70-B, sole paragraph, of Law No. 8,069, of July 13, 1990.

Art. 31 This Resolution comes into force on the date of its publication.

MARINA DE POL PONIWAS
Board Chairman
