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## SNOWDEN'S LEAK, BRAZILIAN CIVIL RIGHTS FRAMEWORK FOR THE INTERNET AND THE THREAT TO IBM'S BUSINESS MODEL

### O vazamento de Snowden, o Marco Civil da Internet e a ameaça ao modelo de negócios da IBM

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#### Abstract

In 2013 Internet Bill was under discussion in the Brazilian Congress, but after Edward Snowden leaked National Security Agency (NSA) espionage on several top officials of many governments, among them Brazil, President Dilma decided to completely change the Bill and asked to the Congress “constitutional urgency” to vote it. Fabio Rua, Head of Government and Regulatory Affairs at IBM Brazil, faces the challenges of dealing with a new government proposal that could jeopardize IBM's new business model based on cognitive solutions. This case provides a complex setting that allows to discuss connections between corporate strategy and corporate lobby, nonmarket strategies, stakeholder analysis, business-government relations and corporate diplomacy.

**Keywords:** strategy, lobby, business-government relations, corporate diplomacy.

#### Resumo

Em 2013, o Marco Civil da Internet estava em discussão no Congresso brasileiro, mas depois que Edward Snowden divulgou a espionagem exercida pela Agência Nacional de Segurança norte-americana (NSA) sobre vários altos funcionários de muitos governos, entre eles o Brasil, a presidente Dilma decidiu mudar completamente o projeto de lei e pediu ao Congresso “urgência constitucional” para votá-lo. Fabio Rua, Chefe de Relações com Governo e Assuntos Regulatórios da IBM Brasil, enfrentou o desafio de lidar com uma nova proposta que poderia comprometer o novo modelo de negócios da empresa baseado em soluções cognitivas. O caso traça um cenário complexo que permite discutir conexões entre estratégia corporativa e lobby corporativo, estratégias de não-mercado, análise de *stakeholders*, relações empresa-governo e diplomacia corporativa.

**Palavras-chave:** estratégia, lobby, relações governamentais, diplomacia corporativa.

#### Introduction

On November 2013, Fabio Rua, Head of Government and Regulatory affairs at IBM Brazil was deeply concerned about the future of the company in Brazil. After Edward Snowden leak of the PRISM (Planning Tool for Resource Integration, Synchronization, and Management) President Dilma asked the Congress “constitutional urgency” to discuss the Civil Rights Framework for the Internet with provisions that increased state sovereignty over the Internet. Government proposed bill could jeopardize IBM's new business focus on cognitive solutions. He wondered how could he strategize a way out this complex situation.



## **About IBM Brazil**

International Business Machine (IBM) was incorporated in the State of New York in 1911 Computing Tabulating Recording Company (CTR) after the merger of Tabulating Machine Company, with its automatic tabulating machines and card recorders machines known as Hollerith.

CTR opened its first foreign subsidiary in Brazil in 1917 supplying data process services to Brazilian government. In 1925 the company changed its name to IBM. Over the 1930s the company expanded its operation opening offices in several cities like Porto Alegre, Belo Horizonte, Salvador, Recife and Niteroi. In 1939 the company opened the first factory outside the United States in Rio de Janeiro.

Between the 1950s and 2014 IBM focused in data processing and programming solutions developing new machines with higher data processing capacity. In the 1970s large data processing required large machines but in the 1980s cheaper and faster processors allowed the creation of IBM's personal computers (PCs). In the 1990s IBM entered in the e-Business providing solutions to large companies. In the 2000s large data processing in the internet highway led the company to start to explore cognitive solutions, on other words solutions to structured and non-structured data.

In the 2000s IBM also realized that data processing was becoming a commodity therefore, the company slowly started to shift their business to services with more added value. The current focus of the company in cognitive solutions, among them the Watson artificial intelligence, is largely based on cloud computing which is a network of remote servers hosted over the internet instead of local servers or computers.

IBM believes that over the next years competitive advantage will be created through data and analytics, business models will be shaped by cloud, and individual engagement will be powered by mobile and social technologies. At the core of their corporate strategy is the understanding that data is the new natural resource, almost like a commodity. Therefore, the challenge for all companies is to capture value from data. The game changer is the application of artificial intelligence to bring actionable insights from data. Up to 2013 the company invested \$24 billion to build big data analytics capabilities. While industries are remade by data the IT infrastructure is being transformed by cloud computing, in other words the delivery of IT and business process as digital service. Cloud computing uses a network of remote servers hosted on the Internet to store, manage, and process data, rather than a local server or a personal computer. On other words, a data produced in Brazil is virtually stored in several servers around the world. Finally, data and cloud is aligned with increasing mobility and social sharing with entails a new approach for the company to relate to new ecosystems like the startup ecosystem.

## **Fabio Rua**

Fabio Rua is Head of Government & Regulatory Affairs at IBM Brazil since June 2013. Before joining the company, he worked with government relations in several large multinational companies such as General Electric, Embraer and Vale. He holds a B.A in International Relations from FAAP and Master in International Management from FGV-EBAPE. He is a seasoned corporate diplomat with extensive knowledge of politics and business.

At IBM he manages corporate relations with Brazilian Congress, Federal, state and municipal governments as well as trade associations and non-governmental organizations. He is responsible to plan and implement strategies on government relations. He answers to IBM Brasil President, Marcelo Porto, enjoying a high degree of autonomy in government affairs.

### **The Snowden Affair**

Edward Snowden is American IT (information technology) professional which worked at the CIA (Central Intelligence Agency) and under as subcontractee of NSA (National Security Agency) in a Dell contract. He was assigned to Hawaii to Yokota base (near Tokyo) and later on to NSA base in Hawaii advising the agency in cybersecurity threats and in finding ways to break into internet and telephone communications in order to collect data.

In 2013, after quitting Dell, he was hired by Booz Allen Hamilton and returned to Hawaii's NSA base. He illegally copied thousands of files and in May of the same year he fled to Hong Kong where he started to leak the documents. In the following months the press around the world started to publish the documents.

Snowden leaked details about the Global Surveillance programs run by the NSA. PRISM was the first program to be leaked. It allowed court approved access to millions of email accounts at Yahoo and Google among other providers. On October of 2013 Snowden leaked that NSA was spying several to government officials of friendly countries such as Mexico, France, Germany, Spain, Brazil among other several countries.

The documents leaked that NSA was spying emails and phone talks of President Dilma and its ministers. This espionage caused a severe diplomatic crisis between Brazil and the United States.

After leaking several documents Snowden fled to Russia where he stayed for over a month in the Airport and later on the government granted temporary asylum.

### **The Brazilian Civil Rights Framework for the Internet**

The project for an Internet Bill in Brazil was launched back in 2009 when the Ministry of Justice and the Center for Technology and Society of the Law School of the Fundação Getulio Vargas (FGV) created a partnership to draft a proposal to the Congress. The first draft was developed with the collaboration of the civil society. Between October and December of 2009, more than 800 contributions were received through blog posts, emails, and other sources.

Following the first round of discussions, the draft was published and a second phase of public debates and collaboration took place between April and May 2010. On August 24, 2011, with full support of President Dilma Rousseff and its ministries of justice, science & technology, planning and communications, the bill was sent to the Congress.

In the Congress, several bills related to Internet were already under discussion. Rep. Alessandro Molon from Partidos dos Trabalhadores – PT (Worker's Part, government party) lead a special commission that rejected 38 bills and supported the government's bill with little change.

Everything changed on June 2013 when Snowden leaked that the National Security Agency (NSA) was monitoring Brazil's telecom network and was even monitoring President Dilma's cellphone and emails as well as the communication of other authorities such as the Ministry of Energy and the President of Petrobras.

The first reaction of President Dilma was to cancel an official visit to Washington planned to take place in end of October and to call President Obama demanding explanations. Later on, she also demanded a public official apology from him before rescheduling a visit.

Snowden leaked the program PRISM, as the main surveillance program of NSA collecting internet communication. In June 2013, President Dilma created a working group centered on the Ministry of Justice to establish a Brazilian cyber-security policy. Following Snowden's episode President Dilma felt the need to increase the technological sovereignty and to accelerate the discussions of the Internet Bill.

Therefore, on September 2013 the President requested that the Internet Framework Bill receive "constitutional urgency" status. A political request by the President to Rep. Molon

(Bill's rapporteur) made him introduce an article on datacenters localization in his substitute text to the Bill 2126/11. That modification required that every data produced by a Brazilian citizen to be at least replicated in a Brazilian datacenter.

New government proposal had several provisions to enhance state security and sovereignty:

- Datacenter localization: it establishes that the President may issue a decree, determining that Brazilian generated data must be stored in datacenters located in Brazil.
- Network neutrality: it prohibits the sale of data packages that alter the transmission speed depending on the accessed content. Telecom companies heavily advocated for exceptions to the rule.
- Privacy protection: it protects personal user data and sets the rules for the government's access to data.
- Log retention: it obliges that administrator of an autonomous system to keep confidential records of connection logs in a secured and controlled environment for the period of one year.
- Respect for Brazilian Legislation: it establishes that irrespective of the location of the service provider, the provision of any internet service in Brazil must be subject to Brazilian legislation.

To reinforce the datacenter provision, government issued legislation in favor of national service providers and manufactures of various sectors. Thus, datacenter localization also suits the government's broader development policy.

On November 2013, government issues a presidential decree demanding that all government communications in all levels must be operated in a property email system called Expresso created by the government IT company SERPRO. The government also demanded that all software acquired by the government should be subject to an auditing of the source code for identification of back doors.

The above changes in the Civil Rights Framework for the Internet pushed by President Dilma through its Ministry of Communications, Paulo Bernardo, mobilized several actors in the private sectors such as FIESP (São Paulo State Industry Federation), Amcham (American Chamber of Commerce), Confederation of Services, Camara E.Net (main body of representation of the digital economy) and BRASSCOM (Brazilian Association of Information Technology and Communication Companies).

One of the main concerns of the private sector was the question of localization of datacenters. With limited infrastructure, data centers prices could be dramatically increased threatening hundreds of companies' businesses. Moreover, datacenter replication could technically kill the advantages of cloud computing (especially if other governments copy the measure if approved in Brazil). Moreover, to completely open the source code of software is unthinkable for many companies since this is exactly their source of competitive advantage, their intellectual property.

Towards the end of 2013, IBM and other Brazilian and multinational ICT (Information and Communication Technology) companies faced a survival threat that could generate a domino effect on national legislation of other countries since Brazil was the first country in the world to discuss a comprehensive framework for internet.

The main challenge of IBM and other ICT companies is to convince the Brazilian Government as well as the pro-Government Congress to keep the internet free and, at the same time, somehow answer governments concerns on security and privacy. Fabio Rua has to quickly assess stakeholders, strategize and implement a strategy to prevent Congress approval of a bill that could threat IBM business in Brazil. He has no more than one month to articulate strategy and actions since the Bill may be taken to vote before March 2014.

**Annex 1. Timeline of the Brazilian Civil Rights Framework negotiation**

