

CONSUMER SURVEILLANCE AND PERSONAL DATA PROTECTION AS A FUNDAMENTAL RIGHT

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Abstract: The rise of informational capitalism has expanded consumer surveillance, particularly in the digital marketplace, where companies collect and process personal data to target advertisements and customize offers. This paper explores the historical evolution of voluntary exchanges, from early civilizations to the digital age, highlighting the role of technology in reshaping consumer-business interactions. It argues that electronic monitoring has introduced unprecedented risks to consumer privacy, necessitating robust legal responses. The study positions personal data protection as a fundamental right, emphasizing its recognition in Brazil's General Data Protection Law (LGPD) and the proposed constitutional amendment to elevate data protection as a fundamental guarantee. Employing a deductive approach, this research investigates historical and legal frameworks to address the challenges posed by consumer surveillance in the Information Society. The findings advocate for the effective enforcement of data protection laws to safeguard consumer rights and uphold human dignity in an increasingly digitalized world.

Keywords: Consumer surveillance; Personal data protection; Informational capitalism; Digital marketplace; Fundamental rights.

INTRODUCTION

With the rise of informational capitalism, the Internet has assumed a global dimension, particularly in the collection and processing of information. We have transitioned from a crisis of control to a semblance of stability with industrial and technological advancements, although signs suggest a regression to an embryonic state due to the continuous flow of data exchanged online.

It is evident that companies operating in e-commerce exploit consumer data, collected as users navigate the web, to deliver targeted advertising or adjust prices and specific conditions. In other words, the personal data of internet-connected consumers is leveraged by suppliers for market practices such as unauthorized discrimination and unsolicited personalized advertisements. This raises a critical question: how can consumers be legally

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protected from such surveillance, particularly regarding the use of their personal data in commercial offers?

This paper addresses this issue by presenting a brief history of legal transactions, demonstrating how voluntary exchanges are intrinsic to the social fabric of civilizations. This historical perspective underlines how capitalism, as an economic system, has harnessed the Internet to advance e-commerce and, consequently, how electronic consumer monitoring has become a cornerstone of this virtual negotiation environment.

The hypothesis proposed is that the Internet has significantly expanded surveillance and data collection capabilities, exposing consumers to new risks as their consumption habits are scrutinized. This scenario demands novel legal responses to ensure effective protection for individuals in the contemporary Information Society.¹

The study aims to demonstrate that personal data protection, in the context of electronic surveillance, should be recognized as a fundamental right, as affirmed by Brazil's General Data Protection Law (LGPD).² Adopting a deductive approach, the research investigates the historical evolution of consumer relations to highlight the challenges technology poses to the law. Additionally, it conducts a bibliographic and doctrinal analysis, culminating in final considerations to offer a clearer understanding of the highlighted issues.

I. A BRIEF HISTORY OF VOLUNTARY EXCHANGES: FROM THE RISE OF CAPITALISM TO ELECTRONIC TRADE MONITORING

The origins of humanity as social beings date back 2.5 million years, with cognitive evolution beginning 70,000 years ago. This evolution gave rise to culture and, subsequently, to voluntary exchanges³ governed by behavioral

¹ The Information Society is characterized by a historical context in which information takes precedence over the means of production and distribution of goods in society, primarily due to the introduction of networked computers into legal relations. In this vein, since the second half of the 20th century, sociological thought has matured, enabling projections of an information-based society, later referred to as a network society. This concept is rooted in the ideas of early theorists such as Yoneji Masuda and Fritz Machlup in the 1960s and, more recently, Jan van Dijk and Manuel Castells. See Masuda, Yoneji. *The Information Society as Post-Industrial Society*. Tokyo: Institute for the Information Society, 1980; Machlup, Fritz. *The Production and Distribution of Knowledge in the United States*. Princeton, NJ: Princeton University Press, 1962; Van Dijk, Jan. *The Network Society*. 3rd ed. London: Sage Publications, 2012.

² Brazil. *Law No. 13.709/2018: General Data Protection Law (LGPD)*. Accessed December 27, 2024. https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/113709.htm.

³ Harari, Yuval Noah. *Sapiens: Uma Breve História da Humanidade*. Translated by Janaína Marcoantonio. Porto Alegre: L&PM, 2018, 15-16.

rules. As Durkheim explains, these rules are general, external, and coercive.⁴

Voluntary exchanges are social facts because: (i) they occur collectively in micro or macroeconomic contexts; (ii) they are independent of individual wills, as Hayek notes⁵, with economic transactions being a necessity for survival; and (iii) the economic system exerts coercive influence, embedding exchange as a societal norm. Thus, legal transactions have been intrinsic to humanity since its earliest days.

In ancient times (4000 BCE–476 CE), trade relied on labor-intensive activities and limited technological development, with agriculture and craftsmanship dominating the economy.⁶ As Kehoe highlights, Roman commerce was closely tied to land tenancy, with agriculture underpinning much of its economy.⁷

During the Middle Ages (476–1453 CE), the feudal system restructured production, with serfs working the land of nobles in exchange for protection, maintaining agriculture as the primary source of commerce.⁸

The 18th-century Industrial Revolution dramatically expanded trade through technological advancements, increasing production and enabling supply to surpass demand for the first time. This benefited consumers through greater access to goods and entrepreneurs through increased profits for reinvestment.

The Second Industrial Revolution (19th–20th centuries) merged science and production, marked by innovations such as electricity, which lowered costs and made energy widely accessible.⁹ This era also introduced Taylorism and Fordism, optimizing labor cooperation and production efficiency. However, these advancements also led to the rise of monopolies, challenging the traditional balance of voluntary exchanges, as Hayek observed.¹⁰

⁴ Durkheim, Emile. *As Regras do Método Sociológico*. Translated by Paulo Neves. São Paulo: Martin Claret, 2001, 58.

⁵ Voluntary exchanges have been present in civilization for centuries, becoming a habitual practice that transitioned from the rational ontological reality to an instinctive deontological reality. In other words, it evolved from a deliberate human action based on reason to an unconscious action driven by human instinct. Von Hayek, Friedrich August. *Os Erros Fatais do Socialismo: Por que a Teoria Não Funciona na Prática*. Barueri: Faro Editorial, 2017, 19.

⁶ Hobsbawm, E. J. *Da Revolução Industrial Inglesa ao Imperialismo*. 6th ed. Translated by Donaldson Magalhães Garschagen. Rio de Janeiro: Forense, 2014.

⁷ Kehoe, Dennis P. *Law and the Rural Economy in the Roman Empire*. Ann Arbor: The University of Michigan Press, 2007.

⁸ Bendix, Reinhard. *Work and Authority in Industry*. New York: Harper & Row, 1963, 27.

⁹ Dathein, Ricardo. *Inovação e Revoluções Industriais: Uma Apresentação das Mudanças Tecnológicas Determinantes nos Séculos XVIII e XIX*. Publicações DECON Textos Didáticos. Porto Alegre: DECON/UFRGS, February 2003, 23.

¹⁰ Von Hayek, Friedrich August. *Os Erros Fatais do Socialismo: Por que a Teoria Não*

In the Fourth Industrial Revolution, real-world technological advances—such as autonomous vehicles and intelligent robots—are transforming industries.¹¹ Rifkin notes that this era emphasizes sustainability, decentralized energy production, and advanced storage technologies.¹² The preceding Third Industrial Revolution bridged physical and sustainable technologies, with automation and algorithms driving global connectivity and trade.

In the current Information Society, the market increasingly centers on the consumer. Bauman describes this shift as the rise of a "consumer society,"¹³ where the consumer replaces the worker as the central figure in economic systems. Personal consumption has become a defining social metric, turning individuals into commodities themselves.

Therefore, beyond examining the historical role of voluntary exchanges in societal development, it is critical to recognize consumer monitoring as an essential component of modern capitalism, especially within the Internet context.¹⁴ Consumer protection, as enshrined in Article 5, Item XXXII of Brazil's Federal Constitution, is not merely a legal principle but a fundamental right in this new era.¹⁵

II. CIRCULAR FLOWS OF CONTROL: ADVANCES IN CONSUMER MONITORING IN THE INTERNET ENVIRONMENT

As described by Beniger¹⁶, industrialization led to the emergence of technologies designed to capture human desires within consumer relationships. Entrepreneurs recognized the economic benefits of aligning their products with consumer preferences, creating a mutually beneficial dynamic.¹⁷ Early data collection tools, including surveys, newspapers, and

Funciona na Prática. Barueri: Faro Editorial, 2017, 26.

¹¹ Schwab, Klaus. *A Quarta Revolução Industrial*. Translated by Daniel Moreira Miranda. São Paulo: Edipro, 2018, 41-46.

¹² Rifkin, Jeremy. *A Terceira Revolução Industrial*. Translated by Maria Lúcia Rosa. São Paulo: Mbooks, 2012.

¹³ Bauman, Zygmunt. *Vida para consumo: A transformação das pessoas em mercadoria*. Translated by Carlos Alberto Medeiros. Rio de Janeiro: Zahar, 2008.

¹⁴ Castells, Manuel. *The Rise of the Network Society: The Information Age: Economy, Society, and Culture*. 2nd ed. Oxford/West Sussex: Wiley-Blackwell, 2010, 77.

¹⁵ Brazil. *Constitution of the Federative Republic of Brazil of 1988*. Accessed December 27, 2024. https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm.

¹⁶ Beniger, James. *The Control Revolution: Technological and Economic Origins of the Information Society*. Cambridge: Harvard University Press, 1989, 389.

¹⁷ Initially, the supplier and the consumer establish a connection through various mechanisms designed to bring them closer together, creating a mutually beneficial relationship. These mechanisms allow suppliers to understand consumer needs and preferences better, enabling them to tailor their products or services accordingly. At the same

magazines, initiated this reciprocal relationship. These innovations allowed producers to better understand demand (vertical integration) and temporary preferences (horizontal influence). Technologies such as printers, colored paper, and typewriters further enhanced connectivity between producers and consumers.

The internet revolutionized this dynamic, serving as a global platform for consumer-provider interaction. According to the International Telecommunication Union, global internet access rose from 16.8% in 2005 to 53.6% in 2019, marking significant strides in bridging the digital divide.¹⁸ Since 2018, over half the global population has engaged with the virtual world. Devices like smartphones have replaced traditional tools such as calculators, notebooks, and cameras, driving massive investments in connectivity infrastructure and facilitating broader data collection.

According to Lins, the Internet was initially created in the United States to protect a communication network capable of withstanding nuclear attacks. However, it soon began to see demand as a mobile asset within academic communities and government institutions. Later, the advent of dial-up Internet emerged, where connections were established through telephone lines linked to a provider responsible for managing network traffic. Due to the slow speed of dial-up connections, broadband technology was developed to increase connection speeds, initially ranging from 256 Kbps to 2 Mbps.¹⁹

Since then, there has been a global increase in demand for the Internet, as well as the proliferation of technological products aimed at expanding the user base. Accessibility has become an intrinsic feature of connectivity, and major digital companies collect vast amounts of information on consumer preferences. These efforts are facilitated by accessible tools, such as hyperlinks, which direct large numbers of users to websites where they complete questionnaires embedded with checkbox options.²⁰

The Internet has made it easier to collect data about products offered by businesses, along with consumer complaints, suggestions, and praise regarding the goods or services provided.²¹ This feedback loop enables frequent product redesigns, allowing digital suppliers to meet consumer needs or desires, often resulting in a fleeting moment of satisfaction for the consumer. This communication dynamic has saved time by eliminating the

time, consumers benefit from more personalized and efficient solutions that meet their expectations, fostering a dynamic and positive exchange between the parties.

¹⁸ ITU. *World Telecommunication/ICT Indicators Database*, 2019.

¹⁹ Lins, Bernardo Felipe Estellita. "A Evolução da Internet: Uma Perspectiva Histórica." *Cadernos Aslegis* 48, no. 17 (February 2013): 11–45.

²⁰ Lins, Bernardo Felipe Estellita. "A Evolução da Internet: Uma Perspectiva Histórica." *Cadernos Aslegis* 48, no. 17 (February 2013): 11–45.

²¹ Castells, Manuel. *The Rise of the Network Society: The Information Age: Economy, Society, and Culture*. 2nd ed. Oxford/West Sussex: Wiley-Blackwell, 2010, 53.

need for entrepreneurs to distribute surveys to industrial societies or rural areas and reduced costs by avoiding the printing of large volumes of paper.

Considering that humans have existed for approximately 2.5 million years²², the battle against physical distance has only recently been won, further extended by the connectivity of the digital era. Through the global network, companies now collect feedback from various countries, overcoming geographical barriers that previously hindered mobility. Despite challenges such as poor management or excessive taxation that might lead a company to bankruptcy, algorithmic environments enable the collection of valuable data on consumer preferences, product opinions, and production requirements. In this way, the online system serves as a remedy for struggling businesses.

Once collected, data management allows companies to operate with greater stability. For example, during the 1920 recession, General Motors nearly went bankrupt with an 18.8% market share. However, executive Alfred P. Sloan implemented a modern supply-demand control method, effectively optimizing production levels, avoiding financial waste, and boosting the company's market share to 43.3%.²³ At that time, the Internet did not exist to control supply and demand, and data collection methods were rudimentary. Today, in the digital era, companies enjoy an even broader margin of stability through efficient resource management.

Cyber societies are overflowing with algorithms, driving an intense migration of data. This cycle is centered on the sharing of content, including consumer information.²⁴ Digital companies leverage endless virtual questionnaires, storing the collected data in anonymous reservoirs, which are tapped as needed for market interactions. In the digital age, data is never discarded, remaining stored for future commercial operations.

This phenomenon has given rise to "dataism,"²⁵ a concept likened to a religion based on algorithms, where all existing phenomena are measured through data exchange. The outcome of informational capitalism—a system filled with content—is the formation of multinational alliances, where entrepreneurs engage in political partnerships to collect and store consumer feedback through online systems. Consequently, the Internet has expanded alliances for data collection, exposing consumers to new risks and placing them in a vulnerable position, now also informational. This reality demands

²² Harari, Yuval Noah. *Sapiens: Uma Breve História da Humanidade*. Translated by Janaína Marcoantonio. Porto Alegre: L&PM, 2018, 19.

²³ Beniger, James. *The Control Revolution: Technological and Economic Origins of the Information Society*. Cambridge: Harvard University Press, 1989, 312.

²⁴ Castells, Manuel. *A sociedade em Rede*. Translated by Roneide Venâncio Majer. Rio de Janeiro: Paz e Terra, 2018, 22-28.

²⁵ Harari, Yuval Noah. *Homo Deus: Uma Breve História do Amanhã*. Translated by Paulo Geiger. São Paulo: Companhia das Letras, 2016, 370.

appropriate legal responses to protect individuals in this evolving landscape.

III. CONSUMER PERSONAL DATA AND ITS PROTECTION AS A FUNDAMENTAL RIGHT

In Orwellian literature, particularly in *1984*, society is depicted as being controlled by devices called telescreens.²⁶ These devices strip individuals of their autonomy, constantly collecting voices and actions under the watchful eye of "Big Brother." There is no escape; the government possesses everyone's data, enforcing digital surveillance on all.

From fiction to reality, informational capitalism has enabled countless computational systems to collect personal information, not only monitoring business activities but also individuals' preferences, secrets, and private spheres. The sheer volume of data has necessitated improved regulations, transforming data protection from a minimally effective legislative duty into a fundamental right guaranteed to all human beings, regardless of race, gender, color, religion, or beliefs.

The concept of personal data has evolved over time. In the 20th century, personal data was seen as part of personality rights, encompassing physical, mental, and moral integrity. In the 21st century, influenced by the Information Society, personal data is recognized as a fundamental right, reflecting the physical, psychological, moral, and social attributes of individuals. Doneda differentiates personal information (e.g., surname or domicile) from personal data, noting both as vital, fundamental, inalienable, and perpetual human rights.²⁷

The digital era has reshaped society. While the French Revolution of 1789 pursued liberty, the Fourth Industrial Revolution seeks to protect personal data. As digital segregation diminishes, global internet connectivity will lead to the free exchange of personal data with information industries, maximizing profits at the cost of individual privacy. Despite conflicts over data protection, legislative approaches to recognizing personal data as a fundamental right vary widely.

The European Union's General Data Protection Regulation (GDPR) of 2016 strongly influenced Brazil's regulatory framework. The GDPR classifies personal data as a fundamental right, requiring legal and transparent processing for specific purposes. Article 5 outlines principles such as security, proportionality, and data minimization. Violations may result in

²⁶ Orwell, George. *1984*. Translated by Alexandre Hubner. São Paulo: Companhia Editora Nacional, 1998.

²⁷ Doneda, Danilo. "A Proteção dos Dados Pessoais como um Direito Fundamental." *Espaço Jurídico Journal of Law* [EJLL] 12, no. 2: 91–108.

criminal penalties established by member states or the EU.²⁸

In Brazil, Article 5 of the Constitution guarantees fundamental rights, including the inviolability of privacy, private life, honor, and image. This establishes personal data protection as a fundamental right, intrinsically linked to privacy.²⁹ However, the effectiveness of these protections remains limited. Hans Kelsen posited that a constitution represents the supreme norm guiding all legislation, yet in practice, data protection regulations often lack efficacy.³⁰

In 2019, Brazil introduced Constitutional Amendment Proposal 17³¹ to elevate personal data protection to the level of fundamental rights, regulated exclusively by the federal government. Constitutional Amendment 115/2022³² established personal data protection as a fundamental right, explicitly enshrining it in Article 5 of the Constitution. This amendment solidifies the recognition of data protection as essential to the dignity and privacy of individuals, alongside other rights such as the inviolability of privacy, private life, honor, and image. The amendment also assigns exclusive authority to the federal government to regulate matters related to personal data, ensuring a cohesive national framework for its protection. Complementing this, the 2018 General Data Protection Law (LGPD - Law 13.709/2018) governs the processing of personal data, including in digital environments. The LGPD underscores the protection of fundamental rights such as freedom, privacy, and the free development of personality, affirming data protection as a clear fundamental right.³³

The LGPD is based on principles including: (i) Purpose: Data must be collected for specific objectives; (ii) Adequacy: Data cannot be used for purposes other than those initially stated; (iii) Necessity: Only the minimum data required for service provision should be collected; (iv) Security: Data must be safeguarded against system breaches; (v) Free Access: Individuals have the right to access their data and request its deletion.

In this context, particularly concerning consumers, the protection of

²⁸ European Union. *General Data Protection Regulation (GDPR)*. Accessed December 27, 2024. <https://gdpr-info.eu/>.

²⁹ Brazil. *Constitution of the Federative Republic of Brazil of 1988*. Accessed December 27, 2024. https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm.

³⁰ Kelsen, Hans. *Teoria Pura do Direito*. Translated by João Baptista Machado. São Paulo: Martins Fontes, 1987.

³¹ Brazil. *Proposal for Constitutional Amendment No. 17 of March 12, 2019*. Accessed December 27, 2024. <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2210757>.

³² Brazil. *Constitutional Amendment No. 115*. Accessed December 27, 2024. https://www.planalto.gov.br/ccivil_03/constituicao/Emendas/Emc/emc115.htm.

³³ Cots, Márcio, and Ricardo Oliveira. *Lei Geral de Proteção de Dados Pessoais Comentada*. São Paulo: Thomson Reuters Brasil, 2018, 58.

personal data must be recognized as a fundamental right. This recognition is not only critical to fulfilling the state's duty to protect consumers but also serves as a cornerstone for ensuring human dignity in the digital age. The acknowledgment of personal data protection as a fundamental right in Brazil is supported by a robust legal framework, including the Consumer Protection Code (CDC)³⁴ and the Civil Code (CC)³⁵, which together form a microsystem aimed at safeguarding consumers' rights, including those related to their personal data.

The Brazilian CDC, enacted in 1990, is one of the most advanced consumer protection legislations globally. It explicitly outlines consumers' rights to information, privacy, and the protection of their economic interests. Articles 6 and 43 of the CDC establish the consumer's right to access their data and ensure its correction if inaccurate. These provisions align with the broader objective of protecting personal data by addressing transparency, accountability, and the prevention of abusive practices in the digital marketplace.

The Civil Code (CC) complements the CDC by providing a general legal framework that governs civil relationships, including those involving personal data. Article 187 of the CC prohibits the abuse of rights, which can be interpreted as applying to the misuse of consumer data. Furthermore, Article 927 establishes civil liability for damages caused by illicit acts, creating a pathway for holding entities accountable for breaches of consumer data protection.

Together, the CDC and CC operate as an integrated microsystem, reinforced by Brazil's General Data Protection Law (LGPD). The LGPD provides specific regulations on personal data processing and establishes principles such as purpose limitation, data minimization, and security measures.³⁶ The alignment of the LGPD with the CDC and CC ensures a comprehensive approach to consumer data protection, addressing the unique challenges posed by the digital age.

In this context, personal data protection transcends its procedural aspects and becomes a fundamental human right, essential for preserving the dignity, privacy, and autonomy of individuals in their interactions within increasingly data-driven environments. The interplay between these legal frameworks not only reinforces the state's responsibility to safeguard consumer rights but also

³⁴ Brazil. *Law No. 8.078/1990: Consumer Protection Code (Consolidated)*. Accessed December 27, 2024. https://www.planalto.gov.br/ccivil_03/leis/l8078compilado.htm.

³⁵ Brazil. *Law No. 10.406/2002: Brazilian Civil Code (Consolidated)*. Accessed December 27, 2024. https://www.planalto.gov.br/ccivil_03/leis/2002/110406compilada.htm.

³⁶ Martins, Guilherme Magalhães. "Responsabilidade Civil, Acidente de Consumo e a Proteção do Titular de Dados na Internet." In *Proteção de Dados Pessoais na Sociedade da Informação: Entre Dados e Danos*, edited by José Luiz de Moura Faleiros Júnior, João Victor Rozatti Longhi, and Rodrigo Gugliara. Indaiatuba: Foco, 2021, 87.

establishes a robust mechanism to ensure that the economic and technological advancements of the digital era do not come at the expense of human dignity.

IV. INTERNET DOMINANCE AND PERSONAL DATA CONTROL

Beyond the points already discussed, algorithmic industries not only capture consumer preferences but also collect deeply personal data. While many nations are at the early stages of informational capitalism, others lack the technological resources to address these challenges. In developing countries, personal data protection may seem utopian, while in developed nations, it has become a key focus of government agendas.

Countries are striving to mitigate the impacts of a surveillance society by enacting laws to protect personal information. As Harari notes³⁷, laws, much like religions, are societal constructs—mythologies that people collectively believe in. Data protection regulations, especially in common law systems, often function as legal fictions, effective only to the extent of collective adherence. However, these regulations are moderately efficient due to two external factors beyond the agents' control.³⁸

The first challenge is digital illiteracy. Despite over 4 billion people having internet access, understanding how to navigate the online world securely remains a critical hurdle to overcoming the digital divide.³⁹ A 2016 Norwegian study found it would take nearly 32 hours to read the terms and conditions of just 33 mobile applications. Reflecting on these clauses would take even longer, as contracts involve obligations to give, do, or refrain from certain actions. This digital illiteracy can result in significant costs due to a lack of technical and legal understanding.⁴⁰

The second challenge is low comprehension of terms and conditions. Many individuals, regardless of their education level, struggle to understand contractual language. Research by Jensen and Potts analyzing 64 privacy policies revealed that only 6% were accessible to 28.3% of the educationally vulnerable population, while 54% were too complex for 56.6% of online users. Only 13% were comprehensible to individuals with postgraduate

³⁷ Harari, Yuval Noah. *Sapiens: Uma Breve História da Humanidade*. Translated by Janaína Marcoantonio. Porto Alegre: L&PM, 2018, 283-284.

³⁸ Basan, Arthur Pinheiro. "New Technologies in Advertising: Consumer Harassment As Tort". *Brazilian Journal of Law, Technology and Innovation* 1 (1), 2023:73-109.

³⁹ ITU. *World Telecommunication/ICT Indicators Database*, 2019.

⁴⁰ Palazzo, Chiara. "Consumer Campaigners Read Terms and Conditions of Their Mobile Phone Apps." *The Telegraph*. Accessed December 27, 2024. <https://www.telegraph.co.uk/technology/2016/05/26/consumer-campaigners-read-terms-and-conditions-of-their-mobile-p/>.

education.⁴¹

As a result, data protection laws often fall short. Limited digital and legal literacy leads consumers to accept contractual terms for data collection and sharing without genuine consent. This creates a domino effect, with electronic monitoring intruding deeply into personal data spheres. According to Schertel, consent typically takes two forms:

1. Opt-out, where consent is presumed unless explicitly withdrawn.
2. Opt-in, where explicit agreement is required.⁴²

In practice, digital contracts overwhelmingly rely on opt-out models, leaving vulnerable consumers' data exposed and shared for purposes beyond those allowed by data protection laws. This puts the integrity of consumer privacy at significant risk.

CONCLUSION

In contemporary society, individuals often lack a proper understanding of the importance of their personal data. As a result, they freely share vast amounts of information, particularly in virtual interactions. This issue is exacerbated by the intentional practices of companies that draft contracts with technical and complex language, deliberately making it difficult for consumers to comprehend the terms they agree to.

This strategy aims, at least initially, to secure consent for unwarranted electronic monitoring. In other words, companies operating online exploit the vulnerabilities of individuals who expose their data on the web, using personal information primarily for economic purposes to maximize profits.

Such practices run counter to the foundational principles of the Brazilian legal system, which is rooted in safeguarding human dignity across all social domains—whether physical, electronic, or virtual. While the internet has undeniably fostered closer relationships between consumers and suppliers, a significant imbalance persists. Personal data is often misused for commercial purposes without the knowledge or consent of the data owners, leaving them unaware of the consequences or their options to resist these market practices.

Given these circumstances, it is clear that consumers face new risks from electronic monitoring, requiring the legal system to provide fresh responses to protect them in the Information Age. Consequently, the protection of personal data must be recognized as a fundamental right of consumers, as

⁴¹ Jensen, Carlos, and Colin Potts. "Privacy Policies as Decision-Making Tools: An Evaluation of Online Privacy Notices." In *Proceedings of the SIGCHI Conference on Human Factors in Computing Systems*, edited by K. Dykstra-Erickson and M. Tsscheligi, 471–78. ACM, 2004.

⁴² Mendes, Laura Schertel. "O Direito Básico do Consumidor à Proteção de Dados Pessoais." *Revista de Direito do Consumidor* 95 (October 2014): 53–75.

established by Brazil's General Data Protection Law (LGPD). However, the law must achieve the necessary effectiveness and practical application to fulfill its primary purpose, which aligns with the ultimate goal of the legal system: to protect human dignity.

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