Remarks by Matthew Reisman to the Internal Temporary Committee on Artificial Intelligence in Brazil

As Prepared for Delivery

Presidente em exercício Senador Pontes, Distintos Membros da Comissão, Boa tarde. Meu nome é Matthew Reisman e sou Diretor de Privacidade e Política de Dados do Centro de Liderança de Políticas de Informação. Gostaria de agradecer ao senador astronauta Pontes e ao Comitê por me convidarem para testemunhar hoje. Obrigado também por me permitir testemunhar em inglês. Vou continuar nessa língua.

[Acting Chairman Senator Pontes, distinguished members of the Committee, good afternoon. My name is Matthew Reisman, and I am the Director of Privacy and Data Policy at the Center for Information Policy Leadership. I would like to thank Senator Pontes and the Committee for inviting me to testify today. Thank you also for allowing me to testify in English. I will continue to do so in that language.]

CIPL is a global privacy and data policy think tank with offices in London, Brussels, and Washington, DC. We work with policymakers, regulators, industry, academia, and civil society to advance responsible and beneficial use of data.

Artificial Intelligence has been a focus of CIPL’s work since 2018, when we published a study on “AI and Data Protection in Tension.” Since that time, we have researched and engaged with stakeholders on AI policy around the world, including Brazil.

Today, my remarks will draw upon CIPL’s Ten Recommendations for Global AI Regulation, our study benchmarking organizations’ AI governance to the CIPL Accountability Framework, and our ongoing experience working on EU AI Act implementation.

CIPL’s report on **Building Accountable AI Programs**, published in February, documents best practices among 20 leading developers and deployers of AI and classifies them among the seven elements of CIPL’s Accountability Framework.

CIPL’s Accountability Framework contains seven core elements of accountability: leadership and oversight; risk assessment; policies and procedures; transparency; training and awareness; monitoring and verification; and response and enforcement. This framework has been used by global businesses as a model for building comprehensive privacy and data governance programs, and our research captured ways that responsible developers and developers of AI are building comprehensive governance programs consistent with the Framework.

We found that, irrespective of regulations, many **organizations view accountable governance of AI as a smart business investment.** While setting up AI governance programs requires time and resources, many organizations recognize doing so as worthwhile.

Smart AI regulation can foster adoption of accountable practices like those documented in our report.

In October 2023, we published our “Ten Recommendations for Global AI Regulation.” You can download them in Portuguese from our website.

Our report offers recommendations across three segments of public policy:

* At the core are **principle and outcome-based rules**, including a technology-neutral framework, a risk-based approach, and empowerment of individuals, building on existing legal frameworks.
* At the next level, **demonstrable organizational accountability**, with incentives for the adoption of accountable AI practices, like recognizing certifications to codes of conduct as a mitigating factor in enforcement actions.
* And finally, **Robust and Smart Regulatory Oversight**, including a cooperative and coordinated approach.

It was encouraging to see many of these elements present in the most recent draft of Senate Bill 2338.

CIPL is working closely with stakeholders in government, industry, and the third sector to foster effective implementation of the EU AI Act. It is early days for this effort, but a few lessons are already clear:

* Understanding the law’s legal requirements & implementation practicalities will take time for all stakeholders.
* Stakeholders will need to work together to resolve tensions with existing laws.
* There is lots of work ahead to:
  + Create organizational accountability and governance programs consistent with the law.
  + Help regulators to regulate effectively in order to secure AI’s benefits and enable innovation while mitigating harms.

These experiences point to the value of creating clear rules that build on the foundation of existing law.

We now share a few observations on the latest draft of Bill 2338:

* It is good to see the delineation of different tiers of risk (excessive, high risk). The **categorization of activities by level of risk should be flexible** and responsive to the specific circumstances of proposed deployments. The assumption that any specific activity is high risk should be rebuttable, with appropriate evidence.
* **Enforceable** co-regulatory measures like codes of good practice can be part of a results-focused approach to regulation. The bill usefully states that adherence to such codes will be treated as actions of good faith in enforcement actions.
* The proposed Permanent Council for Artificial Intelligence Regulatory Cooperation (CRIA) will be valuable for **coordinating responsibilities across regulatory agencies**.
* The bill provides for the creation of **regulatory sandboxes**. Sandboxes can be useful test grounds for designing regulation in ways that protect people while enabling innovation.
* Can the law provide incentives to use them, such as favorable consideration during enforcement proceedings?
* Section IV, Algorithmic Impact Assessment, says that algorithmic impact assessment of AI systems will be the responsibility of the developer and applicator. It will be important to **clarify the responsibilities of the developer vs. the deployer** for impact assessments.
* The bill proposes creation of a public data of high-risk AI. If the database is created, **access should be subject to appropriate safeguards** to protect the confidentiality of sensitive information that could be exploited by malicious actors.
* Liability for AI harms is a challenging topic. Determining harms and who is responsible for them will require **careful consideration of the circumstances in question**.
* It is important to ensure that regulators and government agencies implementing the legislation are also educated on AI. When regulators understand the technology and its capabilities, they will be best positioned to maximize its benefits while addressing potential harms

In closing, CIPL believes that a **flexible, risk-based law with robust accountability requirements,** including co-regulatory mechanisms with demonstrable and enforceable compliance programs can strengthen protection for individuals and innovation alike.

With that, I conclude my presentation, and welcome your questions.