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By Electronic Filing

Mr. Rodrigo Santana dos Santos
National Data Protection Authority (ANPD)
General Coordination for Standardization
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Edifício Venâncio 3000, Bloco "A", 9º andar,
Brasília, DF, 70.716-900

RE: Brazilian ANPD's Public Consultation on the Processing of Personal Data of Children
and Adolescents

Dear Mr. Santos:

The Entertainment Software Association (ESA) is submitting these comments in response to the Brazilian National Data Protection Authority's (ANPD) request for public input on the "Public Consultation: Processing of Children's and Adolescents' Personal Data."

I - Best interests principle

1. In addition to the aspects addressed in ANPD Statement No. 01/2023 and in the Guidelines on the legal hypothesis of legitimate interest, what issues related to the best interests principle require specific guidance or regulation by the ANPD?

The Entertainment Software Association (ESA) is the U.S. trade association representing nearly all of the major video game publishers and manufacturers of video game consoles and handhelds. ESA's members deliver high-quality, interactive experiences that promote storytelling, competition, and communication, while maintaining the safety of all video game players, including children and adolescents, as a top priority. For at least thirty years, the industry has engaged in continuous voluntary efforts to develop and offer tools to assist parents, caregivers, and players in creating a safe online game experience, as detailed in the attached Trust and Safety document (Attachment: The Video Games Sector Prioritizes Trust and Safety).

In Brazil, the Indicative Classification system (Classind), created in 1990, assigns age and content ratings to video games. Under the attribution of the Ministry of Justice, Classind has six age rating categories (free, not recommended for under 10, 12, 14, 16 and 18 years of age), content descriptors to explain the reasons behind the indication assigned, and interactive elements to highlight features such as in-game purchases or user communication. Classind is part of the International Age Rating Coalition (IARC), a coalition made up of authorities from different countries. The Classind ratings system provides families with the information needed to choose the appropriate video game experience, including information essential for shielding children and adolescents from inappropriate content. It also defines criteria for analyzing audiovisual works and observes the principles of the Statute of Children and Adolescents (ECA).

ESA shares ANPD's goals of protecting children and adolescents and recommends that ANPD consider the issues of transparency and data minimization as key indicators of respect for the best interests of children and adolescents in the digital environment. ESA's members have been leaders in ensuring transparency in how personal information is processed for online gaming experiences and in offering tools to make informed decisions about privacy settings, including for parents and caregivers to manage their child's entertainment choices and ensure age-appropriate experiences in video games. We provide further information on transparency under III.1 below. In support of data minimization, many ESA members also use privacy-protective default settings for minor players, including for example limiting data collection, disabling chat and other in-game communications, requiring parental permission to add friends or play multi-player games, and turning off the collection of location data by default.

ESA encourages ANPD to support continued flexibility in protecting children and adolescents rather than adopting a one-size-fits-all approach. Specifically, ESA recommends that ANPD publish voluntary compliance guidance on the best interest principles (including transparency and data minimization) instead of adopting prescriptive regulation that could disincentivize continued innovations to protect children across technologies, platforms and contexts. Given the potential that regulations would have to disrupt a variety of popular consumer-facing technologies if the differences in the use of technology in platforms and sectors are not thoroughly

taken into account, ESA strongly recommends that ANPD allow stakeholders to review and provide comment on any draft formal regulations before they become finalized.

Finally, ESA encourages ANPD to ensure that such guidance is consistent with other initiatives. For example, at the national level, ANPD should coordinate with Brazil's other agencies engaged in the issues of children's safety and wellness, such as those involved in the Social Communications Secretariat at the Presidency, which is presently conducting a consultation on screen time. ANPD should also engage with lawmakers seeking to legislate in this space to avoid creation of conflicting policies. Globally, aligning new data protection measures with global data protection frameworks, such as the European Union's General Data Protection Regulation (GDPR) and in the United States, the Children's Online Privacy Protection Act (COPPA). ESA understands such alignment would promote compliance further.

2. Are there specific situations or contexts in which the personal data of children and adolescents is processed that require greater attention and detail on the best interests principle? If so, indicate which situations or contexts have been identified and the main issues to be addressed.

The video game industry prioritizes children's safety and seeks to minimize data collection from minors while ensuring the appropriate collection of personal information to administer online trust and safety efforts and ensure that the environment for players is age appropriate. Some of these practices are detailed below and in the attached Trust and Safety document (Attachment: The Video Games Sector Prioritizes Trust and Safety), and ESA encourages ANPD to support these efforts as part of the best interests principle, including where such practices may require certain data collection.

ESA member companies have developed and deployed technologies and measures to help keep players safe; prevent hate, harassment, and other inappropriate behaviors; and empower players and their caregivers. Some companies, for instance, have implemented automated chat monitoring, auto-mute, and/or human moderation to limit or filter undesired content or behavior and, where appropriate, take action against bad actors to enforce game community standards or their terms of service to protect other players. Some video game companies also use machine learning to

identify cheat behaviors and ensure players can engage in fair, competitive, and positive game play.

ESA's members also take several steps to combat child exploitation. Some companies deploy machine-learning technologies to detect, address, and report online predators who attempt to target minors. The video game industry partners with trusted third parties, such as the National Center for Missing and Exploited Children (NCMEC), a non-governmental organization based in the United States, and law enforcement, to combat inappropriate images and content. For example, some member companies that allow users to upload images use image-hashing technology to combat child exploitation. Digital signatures, or "fingerprints," of known images of child exploitation are obtained from NCMEC for the purpose of identifying and detecting such images before they can be posted. The video game industry takes seriously its responsibility to share relevant information about child exploitation with NCMEC and law enforcement to support the investigation of any newly identified images.

Educational games also provide another example of efforts to support a safe, age-appropriate environment for learning. For example, an educational game could process gameplay data to recognize that the player is struggling with math, while doing well in reading, and recommend more math-related content in response. It is critical that video game companies continue to have flexibility to support and innovate on these and other efforts going forward.

II – Consent

1. What criteria or parameters must be observed in order to obtain "specific and prominent" consent from parents or legal guardians?

We encourage ANPD to provide additional voluntary guidance (not formal regulation) on potential approaches for obtaining "specific and prominent" consent from parents or caregivers. This guidance should be practical and adaptable for a variety of technologies and experiences and consistent with other global frameworks such as GDPR and COPPA. Any such guidance should also avoid prescribing specific consent mechanisms, language, timing, placement, or cadences. Prescribing only certain kinds of technologies places a heavy burden on companies to devote resources to

potentially ill-fitting standards, while restricting their freedom to create or adopt more efficient technologies to obtain consents.

As also mentioned under II.2 below, the relationship between video game platforms (e.g., mobile, PC, consoles, and handhelds) and video game publishers, some of which may offer multiple games across different platforms, is unique to the video game industry. ESA encourages the ANPD to allow platform operators and video game publishers to voluntarily consider solutions that are appropriate in light of the technical functionality of the platform and the available games, whether that means (a) implementing platform-based consent mechanisms, (b) relying on the consent mechanisms implemented by publishers of the games on their platforms, or (c) some combination of the two. ESA encourages ANPD to support the flexibility to develop any such approaches. By offering guidance that permits video game providers to calibrate the combination of these mechanisms that is appropriate for their specific services, ANPD can assure parents and caregivers that the overall principle of consent is in place while maintaining their ability to decide the type of system that is best for the children and adolescents in their care. This type of flexibility has proven to be successful in the United States, where multiple approved methods of obtaining parental consent are provided for under COPPA.

2. Considering good practices, available technologies, and the principles of the LGPD, in particular the principles of purpose, necessity, and appropriateness, as well as the legal requirement to adopt "all reasonable efforts," what measures and mechanisms should controllers adopt, especially in the digital environment, to enable and verify that consent has been provided by the child's parents or guardians?

ESA suggests that ANPD consider publishing voluntary guidance regarding the key characteristics that should be recognized in obtaining consent, rather than requiring specific technological measures and mechanisms that might be exclusive to certain industries or types of platforms, or subject to change in light of future technological innovations.

In addition, ANPD's guidance and policy recommendations should remain flexible to adapt to good practices, available technologies and mechanisms, as well as the legal requirement to adopt "all reasonable efforts" to ensure valid parental consent from the child's parents or caregivers. This is important to ensure that the video game industry

continues to have the ability to innovate and improve upon online safety and protect underage privacy for players over time and across different platforms and types of games.

As stated in more detail in II.1 above, the relationship between video game platforms (e.g., mobile, PC, consoles, and handhelds) and video game publishers, some of which may offer multiple games across different platforms, is unique to the video game industry. ESA encourages the ANPD to allow platform operators and video game publishers to voluntarily consider solutions that are appropriate in light of the technical functionality of the platform and the available games, whether that means (a) implementing platform-based consent mechanisms, (b) honoring the consent mechanisms implemented by publishers of the games on their platforms, or (c) some combination of the two. ESA encourages a flexible approach to consent because the viability of any consent mechanism will be highly dependent on the specific technical requirements of the platform and associated games.

3. In the case of adolescents, should consent be obtained, especially in the digital environment, in accordance with the provisions of civil law regarding civil capacity, following the general rule of representation and the assistance of parents or guardians? Or is it possible to consider, in line with the best interests principle, the progressive autonomy of these data subjects to, in certain contexts and situations, provide consent to the processing of their personal data without the need for representation or assistance from parents or legal guardians?

ESA encourages ANPD to support some additional autonomy for older teens as they engage with video games. Policymakers have recognized the importance of honoring parents' choices with respect to their young children's personal information, and the rights of teens to exercise these rights more directly.

III - Games and Internet Applications

1. What principles, parameters, and safeguards, including design measures, should be observed in the processing of personal data of children and adolescents by digital platforms in order to ensure respect for their best interests, promote and ensure high levels of privacy and protection of personal data and mitigate the risks arising from the use of these platforms?

ESA members have been committed to promoting transparency about data processing practices in the industry, and to minimizing the collection of data from minors. These two principles should be the focus of any guidance from ANPD, and such guidance should be voluntary to encourage parents and caregivers to make informed decisions while promoting the development of innovative tools.

ESA and its members provide tools to inform parents to help them understand and manage their children's and adolescents' interactions with their video games, consoles, and handheld devices. In addition, ESA's members have been leaders in ensuring transparency in how personal information is processed for online gaming experiences and in offering tools to make informed decisions about privacy settings, including for parents to manage their child's entertainment choices and ensuring age-appropriate experiences in video games. Informing parents and caregivers, including through privacy notices and by providing easily accessible information about ClassInd age ratings and descriptors to explain the reasons behind the indications assigned, empowers them to make informed decisions before making privacy setting and game selections.

ESA members support data minimization principles and seek to collect and process only the data about minors that is strictly necessary to ensure player safety and an age-appropriate environment. As part of these efforts, many ESA members use privacy-protective default settings for minor players, disabling chat and other in-game communications, requiring parental permission to add friends or play multi-player games, and turning off the collection of location data by default.

As mentioned in the response to I.2, above, ESA member companies have also developed and deployed technologies and measures to help keep players safe; prevent hate, harassment, and other inappropriate behaviors; and empower players and their caregivers. Some companies, for instance, have implemented automated chat monitoring, auto-mute, and/or human moderation to limit or filter undesired content or behavior and, where appropriate, take action against bad actors to enforce game community standards or their terms of service to protect other players. These important trust and safety efforts may at times require some processing of personal data about minors, and ESA members seek to limit such processing to that which is strictly necessary.

More details on design measures and other safeguards. Video game design measures vary depending on the type of features and functionality offered within the game or platform, underscoring why any voluntary guidance from ANPD should be flexible enough to be practical across contexts. For example, many games and consoles offer privacy protective defaults for minor players and parental controls that limit access to in-game communication and other interactive features. This type of industry self-regulation and innovation should be encouraged.

Video game platforms have already implemented robust privacy tools, parental controls, and other safeguards, e.g., limiting the amount of time kids can spend playing video games, restricting online communications with other users, managing the amount of money kids can spend in games, instituting password or PIN parental controls so that children cannot circumvent safety settings, and more. Because these tools are available at the device level, ANPD should allow for game publishers to rely on the privacy and parental control selections that are made on consoles, PCs and mobile devices. This system encourages and supports parents and caregivers to make consistent and informed decisions in a simplified manner. At the same time, publishers can be free to take additional measures to protect minors' privacy and safety.

Building on its deep experience, ESA urges ANPD to ensure that any guidance aimed at the protection of personal data and mitigation of risks arising from the use of digital platforms remain flexible to accommodate important differences (a) across industries and contexts, (b) among consumers' preferences and reasonable expectations, (c) among privacy tools and parental control settings that already exist in video game platforms (i.e., if a company develops a game that can only be played on a particular platform, and such platform already has implemented these parental controls and privacy protective features, then the game developer should not have to incorporate these controls as native to the game because the players/parents/caregivers can access these controls on the platform), and (d) in ever-evolving technologies. Such guidance should also remain consistent with global frameworks such as GDPR and COPPA.

2. Considering that the processing of personal data must be limited to that which is strictly necessary for the purpose for which it is intended, what good practices and techniques are available and suitable for verifying the age of users of digital platforms?

ESA urges ANPD to adopt a flexible approach to age verification on digital platforms, allowing for a range of suitable techniques that effectively protect children and adolescents (e.g., (a) a company should carry out a mandatory risk assessment of the intended process, and (b) implementation of effective measures to ensure data minimization). A neutral age gate is also one method to estimate users' age that is less burdensome to families than other age estimation techniques that require hard identifiers. We recommend that ANPD provide clear, voluntary guidance on acceptable methods that can address privacy, security, and user convenience preferences.

Importantly, the ANPD should look with skepticism upon recommendations of overly prescriptive approaches, such as requiring users to provide government-issued IDs to play video games. This approach is unnecessary, can be overly intrusive and burdensome for users, and creates additional privacy concerns (including the privacy of both the children and adolescents as well as the parents and caregivers). In short, a requirement for companies to engage with identification credentials would violate the principle of data minimization, which holds that providers should only handle data that is strictly necessary to achieve the business purpose. By embracing flexible and practical solutions, ANPD can ensure robust protection for young users without creating unnecessary barriers for families.

In addition, ESA cautions against the use of age estimation techniques with respect to intended audience. While seemingly well-intentioned, such techniques are potentially privacy-invasive and inadvertently could lead to operators collecting more personal information from consumers than they otherwise would need to provide the service and would be challenging to implement in practice. ESA also cautions against reliance on user reviews and the age of users on similar sites and services as evidence of audience composition or intended audience. Neither of these data points serve as reliable evidence of user age. User reviews of a video game, for example, could conflict with one another and may change throughout time as the game becomes popular with different audiences and becomes more nostalgic over time. Additionally, two services can be similar without both being directed to the same audience. For example, a car racing game could be targeted to older players based on its visual and audio design while another could be targeted to children.

3. What specific limitations should be observed in the collection of personal data from children and adolescents by digital platforms, considering the provisions of Art. 14, §4, of the

LGPD and, among other aspects, the nature of the data collected and the purpose of the processing, such as the formation of behavioral profiles?

Continued flexibility to address specific contexts is especially important for video games.

For several decades, ESA members have strived to develop appropriate data minimization processes, privacy settings, and parental controls, including default settings, that are tailored to the video game industry. They seek to accommodate the different contexts in which video game companies might process personal information and the different game functionality that consumers might choose to use. We encourage ANPD to continue to support such efforts.

ANPD should not impose any outright prohibitions on collecting certain categories of data. Depending on the context, a provider may have an interest in carrying out data collection and retention for the purpose of identifying inappropriate behavior. For examples of related trust and safety initiatives, see the attached Trust and Safety document (Attachment: The Video Games Sector Prioritizes Trust and Safety). Instead of specific limitations, ANPD should reinforce the general principle of data minimization, which holds that providers should only handle data that is strictly necessary to achieve the business purpose.

4. What mechanisms and good practices can be adopted to increase parents' and guardians' control over the processing of children's and adolescents' personal data in the digital environment?

As noted in the response to III.3, the US video game industry has developed tailored privacy settings and parental controls that accommodate the different contexts in which video game companies might process personal information and the different game functionality that children and their parents or caregivers might choose whether to use.

Many ESA members use mechanisms such as privacy-protective default settings for minor players, including minimizing data collection, disabling chat and other in-game communications, requiring parental permission to add friends or play multi-player games, and turning off the collection of location data by default to increase parents' and caregivers' control over the processing of children's and adolescents' personal

data in the digital environment. These parental controls are typically pin or password protected to ensure they are used by parents only and not circumvented by children.

5. What good practices related to transparency and the provision of information in a simple, clear, and accessible manner can be observed by digital platforms when processing the personal data of children and adolescents?

ESA's members are committed to providing consumers with transparency and control over their personal information. Together with its members, ESA has been at the forefront of promoting the privacy and safety of consumers, including minors, for nearly three decades. Through voluntary practices and in compliance with existing law, video game providers provide players and caregivers disclosures about data collection that are easily accessible and clearly written. Where appropriate, privacy notices are tailored to the age of the audience, for example for younger audiences, notices are kid-friendly and written in easy-to-understand language.

6. Are there any other issues relating to the processing of children's and adolescents' personal data that merit clarification or additional regulation?

ESA appreciates ANPD's ongoing efforts to create a safe and supportive environment for children in the digital space. As a key stakeholder in this space, ESA has witnessed the industry's development of reliable practices that provide innovative tools for parents.

ESA members' established practices, which have proven to be both safe and adaptable, have shown that the flexibility granted to the industry has been instrumental in fostering these advancements. This flexibility allows companies to continue evolving and creating new solutions that meet the needs of both parents and children, while still aligning with the goals of the data protection legislative framework.

We firmly believe that continued innovation in this area is essential. To achieve this, it is crucial to avoid overly prescriptive regulation that could complicate compliance as time and the industry evolves. Instead, we advocate for an approach that promotes innovation while ensuring adherence to regulatory goals.

We support ANPD's approach to consult with society about this important topic. We kindly urge ANPD to consider the importance of maintaining a flexible approach in

establishing voluntary guidance on this important matter. Adequate protection of children' and adolescents' personal data and their access to appropriate content in digital platforms has been under discussion in several jurisdictions (e.g., U.S.A., U.K., France, Ireland), specifically on the matter of age assurance. Given the variety of methods and technologies currently available, ESA urges that ANPD adopts an educational approach rather than a regulatory approach to such matters and not issue a formal regulation that could demand a review every few months due to changes in technology and business considerations regarding the most effective and efficient means of promoting privacy-protective data processing.

ESA urges ANPD to (1) publish voluntary guidance on minimally accepted standards of age verification (e.g., (a) a company should carry out a mandatory risk assessment of the intended process, (b) implementation of effective measures to ensure data minimization) and (2) conduct additional studies and engage stakeholders further regarding age verification and assurance while fostering best practices on data protection in digital platforms. ANPD could also foster a data protection culture by taking steps to engage parents and caregivers and encourage them to stay educated as practices evolve.

ESA and its members are deeply committed to the goals of protecting the data of children and adolescents and ensuring transparency, effective age verification, parental control and best practices. We look forward to working with ANPD in its assessment of potential voluntary guidance in these areas.

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