

Legal 500 Country Comparative Guides 2024

El Salvador

TMT

Contributor

ECIJA



Alfredo Navas Duarte

Managing Partner | anduarte@ecija.com

Carlos Gil

Partner | cgil@ecija.com

Carlos Quintanilla

Partner | cquintanilla@ecija.com

Nathania García Prieto

Legal Advisor | ngarciaprieto@ecija.com

This country-specific Q&A provides an overview of tmt laws and regulations applicable in El Salvador.

For a full list of jurisdictional Q&As visit legal500.com/guides

El Salvador: TMT

1. Is there a single regulatory regime that governs software?

In El Salvador, software regulation falls under the Intellectual Property Law.

2. How are proprietary rights in software and associated materials protected?

Proprietary rights are protected through copyright. Copyright includes moral and economic rights

3. In the event that software is developed by a software developer, consultant or other party for a customer, who will own the resulting proprietary rights in the newly created software in the absence of any agreed contractual position?

According to the provisions of the newly enacted Intellectual Property Law, the software developer is the holder of the moral and economic rights of the work. However, if the developer performs the work under the instructions of a company, this must be proven through a service contract and a contract transferring the economic rights at the time of depositing the work.

4. Are there any specific laws that govern the harm / liability caused by Software / computer systems?

To this date, in El Salvador there are no laws that specifically regulate damages caused by software or computer systems. However, Article 1417 of the current Civil Code could substitute this provision, and can be applied.

5. To the extent not covered by (4) above, are there any specific laws that govern the use (or misuse) of software / computer systems?

N/A

6. Other than as identified elsewhere in this overview, are there any technology-specific laws that govern the provision of software between a software vendor and customer, including any laws that govern the use of cloud technology?

In El Salvador there is no specific regulation regarding relations between software vendor and customer, it will be handled under the general rules of contracts and will be governed by the legislation of the country that is adopted in the contract.

7. Is it typical for a software vendor to cap its maximum financial liability to a customer in a software transaction? If 'yes', what would be considered a market standard level of cap?

In accordance with article 17 of the Consumer Protection Law and jurisprudence of the Consumer Defender's Office, these can be considered abusive clauses from the perspective of the B to C (Business to Customer) relationships and under the spectrum of B to B (Business to Business) relationships, the limits are set by the parties under the principle of contractual freedom, contained in article 23 of the Constitution of the Republic and the principle of autonomy of private freedom, contained in article 1416 of the Civil Code.

8. Please comment on whether any of the following areas of liability would typically be excluded from any financial cap on the software vendor's liability to the customer or subject to a separate enhanced cap in a negotiated software transaction (i.e. unlimited liability): (a) confidentiality breaches; (b) data protection breaches; (c) data security breaches (including loss of data); (d) IPR infringement claims; (e) breaches of applicable law; (f) regulatory fines; (g) wilful or deliberate breaches.

The issue of financial limits on the responsibility of the software provider towards the client in El Salvador is not specifically regulated, however we can see it from the perspective of the B to C (Business to Customer) relationship in which this type of clauses can be

considered abusive, in accordance with article 17 of the Consumer Protection Law and jurisprudence of the Consumer Defender's Office and on the other hand, under the spectrum of B to B (Business to Business) relationships, in which the limits are set by the parties under the principle of contractual freedom, contained in article 23 of the Constitution of the Republic and the principle of autonomy of private freedom, contained in article 1416 of the Civil Code. There are no specific limits on any of the items listed.

9. Is it normal practice for software source codes to be held in escrow for the benefit of the software licensee? If so, who are the typical escrow providers used? Is an equivalent service offered for cloud-based software?

The practice is not common in any scenario in El Salvador, however, it is not prohibited either for License or SaaS or Cloud based software.

10. Are there any export controls that apply to software transactions?

At this point it is important to mention that the software industry in El Salvador is in an expansion phase. This process of promoting the creation and export of software began in the late 1990s and is currently at its peak with the promulgation of bodies of law that promote this activity, the main one being the Law for the Promotion of Innovation and Technological Manufacturing. Software development in the country is classified within the category "Computer Services and related services". Among the controls to which the software sector is subject, we can mention that El Salvador has signed International Treaties, including CAFTA (Dominican Republic, Central America -Costa Rica, El Salvador, Honduras, Guatemala and Nicaragua- and the United States of America), Mexico, Taiwan, Chile, Colombia and the ADA (European Union Central American Association Agreement) and each of these FTAs includes a section under the name "Cross-border trade in services" in which the measures ratified by countries and that affect the service provider of each of the parties. These FTAs seek to control, eliminate or reduce those measures that the FTA signatory countries have and that affect the service provider. In addition to the above, in terms of controls for the export of software, it is necessary to talk about quality certifications, which grant international recognition and prestige to the manufacturer that has said certificate or quality standard and provide it with credibility and also a competitive advantage necessary to position itself as an

exporter of technology.

11. Other than as identified elsewhere in this questionnaire, are there any specific technology laws that govern IT outsourcing transactions?

For attaining tax exemptions El Salvador's International Services Law, provides a definition of IT Outsourcing services and transactions that can be granted with such tax benefits. IT outsourcing is defined as: "Services provided by a company... to persons domiciled outside the national territory of El Salvador, consisting of designing and development of computer software, systems, and applications. These sorts of contacts fall within the "Services Contract" category, regulated on El Salvador's Civil Code and Commerce Code. In relation to the intellectual property rights related to software development, El Salvador's Intellectual Property Laws mandate that all IT Outsourcing companies must assign in writing their rights in favor of the person who hires their services.

12. Please summarise the principal laws (present or impending), if any, that protect individual staff in the event that the service they perform is transferred to a third party IT outsource provider, including a brief explanation of the general purpose of those laws.

There are no laws present or impending that apply to the question, but as explained before on one of the software questions (8), our legal framework is based on the principle of autonomy of private freedom, contained in article 1416 of the Civil Code, then the parties included in a transaction will agree on the rights and obligations contained in the commercial relationship they enter into, including the subcontracting of third parties and its effects on the main relationship.

13. Please summarise the principal laws (present or impending), if any, that govern telecommunications networks and/or services, including a brief explanation of the general purpose of those laws.

The current regulatory framework is help up upon the General Superintendence of Electricity and Telecommunications bill, the Telecommunications Law (LT) and its Regulations, the Competition Law (LC), the Consumer Protection Law, as well as the Regulation for the provision of subscription television broadcasting

services by wire or wireless means. On the other hand, international organizations such as the Inter-American Telecommunications Commission (CITEL), the Latin American Forum of Telecommunications Regulatory Entities (REGULATEL), the Regional Telecommunications Technical Commission (COMTELCA) and the International Telecommunications Union (ITU), issue regulations and non-binding regulations, but that contribute to the development and modernization of the sector. Regarding the issue of infrastructure and the relationship with the Municipalities, the Municipal Code grants independence to each municipality, for the establishment of taxes, rates and special contributions, so that each Municipality where antennas or telecommunications towers are installed will have by through decrees and ordinances regarding the relationship with telecommunications companies.

14. What are the principal standard development organisations governing the development of technical standards in relation to mobile communications and newer connected technologies such as digital health or connected and autonomous vehicles?

The development of technical standards for mobile communications and newer connected technologies, such as digital health and connected autonomous vehicles, is governed by several principal standard-setting organizations (SSOs). One of the most significant is the International Telecommunication Union (ITU), a specialized agency of the United Nations that coordinates global telecommunication standards and policies. The ITU plays a crucial role in establishing the framework for mobile communications standards, including those related to International Mobile Telecommunications (IMT) classifications. Another key organization is the 3rd Generation Partnership Project (3GPP), which is essential for the development of technical specifications and standards for mobile systems, including 4G and 5G technologies. 3GPP brings together various telecommunications organizations to ensure that mobile communication technologies are standardized and interoperable. In El Salvador, there are no specific standard setting organizations for telecommunications, other than the ISO standards, but as subscribers to the United Nations, we could implement those standards imposed by the ITU. As to the 3GPP, taking it on could be an innovative approach to the world of telecommunications, and could favor the homogenization of an international network.

15. How do technical standards facilitating interoperability between connected devices impact the development of connected technologies?

Technical standards give developers and manufacturers a precise framework within which goods must operate, which eliminates complexity and uncertainty. By enabling businesses to concentrate on creating new features and services rather than allocating resources to guarantee compatibility with other devices, this clarity promotes innovation. Furthermore, as users are more inclined to accept technologies that are recognised to function effectively with current systems, standards contribute to the development of consumer trust. Standards in the field of digital health, for example, guarantee that medical equipment can interface with health information systems, improving patient monitoring and data administration. Furthermore, technical standards can stimulate market growth by creating a level playing field for competition. They enable multiple vendors to offer compatible products, which can lead to economies of scale and lower prices for consumers.

16. When negotiating agreements which involve mobile communications or other connected technologies, are there any different considerations in respect of liabilities/warranties relating to standard essential patents (SEPs)?

Generally, there are special considerations for liabilities and warranties when negotiating agreements pertaining to mobile communications or connected technologies, especially those that contain Standard Essential Patents (SEPs). The need that SEP holders grant fair, reasonable, and non-discriminatory (FRAND) licenses for their patents is a major source of concern. This pledge aims to avoid instances where patent holders seek astronomical royalties after implementers have made investments in goods that follow the standard, a practice known as patent hold-up. Legal ramifications, such as accusations of antitrust violations, may arise from breaking FRAND commitments, especially in countries where the Sherman Act is in effect, such as the United States. In El Salvador, there are no particular considerations in respect of liabilities or warranties at this moment. Nonetheless, due to the global nature of connected technologies and mobile communications, agreements need to take into account the various legal frameworks regarding SEPs in different nations. These frameworks can have an impact on the enforcement of obligations and warranties because different legal systems may interpret FRAND and

antitrust laws differently.

17. Which body(ies), if any, is/are responsible for data protection regulation?

There is no entity designated by law for the protection of personal data; however, consumer data is protected through laws such as the Consumer Protection Law and the Law Regulating Information Services on the Credit History. The entities responsible under these laws are the Consumer Protection Office and Courts.

18. Please summarise the principal laws (present or impending), if any, that govern data protection, including a brief explanation of the general purpose of those laws.

Consumer Protection Law and its regulations: to protect consumer rights in order to ensure balance, certainty, and legal security in their relationships with suppliers. Law on Regulation of Information Services on Credit History: to guarantee the right to honor, personal and family privacy, and self-image regarding the reliability, truthfulness, updating, and proper management of consumer or client data related to their credit history, incorporated or capable of being incorporated into a data information agency managed by a legal entity duly authorized under this Law. Creceer Juntos Law aims to guarantee the full exercise and enjoyment of the rights of every girl, boy, and teenagers and facilitate the fulfillment of their duties, regardless of their nationality, for which purpose a National System of Comprehensive Protection for Early Childhood, Childhood, and Adolescence is established with the participation of the family, society, and the State. Provisions have been included to protect the personal data of children, their parents, and/or guardians.

19. What is the maximum sanction that can be imposed by a regulator in the event of a breach of any applicable data protection laws?

According to the Consumer Protection Law, in case of violation of consumer rights related to data protection, coercive fines of up to one hundred monthly urban minimum wages in the industry can be imposed (urban monthly minimum wage in the industry is USD 365.00). In relation to the provisions of the Law on Regulation of Information Services on Credit History, in case of infringements, fines will be imposed ranging from two hundred monthly minimum wages up to five hundred monthly minimum wages in the commerce and services sector (minimum wage in the commerce and services

sector is USD 365.00). The amount of the fines will be imposed according to the following parameters: severity of the infringement, the harm or number of damages caused, the duration of the infringement, and the economic benefit obtained by the infringer from the act.

20. Do technology contracts in your country typically refer to external data protection regimes, e.g. EU GDPR or CCPA, even where the contract has no clear international element?

Due to the lack of a specific law that protects personal data in El Salvador, the provisions of the GDPR are applied as a supplementary measure (best practice) as it represents the most specific and comprehensive regulation.

21. Which body(ies), if any, is/are responsible for the regulation of artificial intelligence?

In El Salvador there are no laws in force that regulate the creation or use of artificial intelligence, thus, there are no regulation entities. However, on the event that an artificial intelligence software uses personal data from users it must comply with consumer protection regulations, and on that case the Consumer Protection Office will be the regulation body in charge to enforce consumer protection laws.

22. Please summarise the principal laws (present or impending), if any, that govern the deployment and use of artificial intelligence, including a brief explanation of the general purpose of those laws.

For tax exemption purposes Artificial Intelligence is defined by El Salvador's Regulation of the law for the promotion of innovation and technology manufacturing as an "Automated processes that, through the development of algorithms and other models, allow computers to process large amounts of data and, from them, develop tasks such as learning, perception, reasoning and problem solving, decision making autonomously that influence real or virtual environments."

23. Are there any specific legal provisions (present or impending) in respect of the deployment and use of Large Language Models

and/or generative AI?

Not at the moment.

24. Do technology contracts in your jurisdiction typically contain either mandatory (e.g. mandated by statute) or recommended provisions dealing with AI risk? If so, what issues or risks need to be addressed or considered in such provisions?

There are no mandatory legal regulations that must be complied with in contracts related to artificial intelligence. However, since our legal system is based on party autonomy, international best practices that can regulate the relationship between the parties during the entire term of the contract (including the risk related to AI) can be integrated into contracts (such as those related to AI).

25. Do software or technology contracts in your jurisdiction typically contain provisions regarding the application or treatment of copyright or other intellectual property rights, or the ownership of outputs in the context of the use of AI systems?

Regardless of whether the contracts are for proprietary software, SaaS (and any other type of software related to the use of IA), the rules of the intellectual property law and its regulations, the consumer protection law and its regulations and the commercial code of El Salvador shall apply to them.

26. What are the principal laws (present or impending), if any, that govern (i) blockchain specifically (if any) and (ii) digital assets, including a brief explanation of the general purpose of those laws?

The legal framework in El Salvador with respect to blockchain is currently composed of: a) the bitcoin law and its regulations, b) the law for the issuance of digital assets and its regulations. With the entry into force of the bitcoin law, the main objective was to convert bitcoin into legal tender in El Salvador. The strategy to turn El Salvador into a financial hub in terms of cryptoassets, led the central government to promote the implementation of the Law of Issuance of Digital Assets, whose main purpose is to provide the country with a special regulation that allows not only the generation of DeFi models at a general level, but also the creation of a specialized regulatory body in the field of cryptoassets

(the National Commission of Digital Assets). All this becomes the anchor that gives legal certainty to local and foreign investors seeking new funding models, capital raising or investment in general (public and private).

27. Please summarise the principal laws (present or impending), if any, that govern search engines and marketplaces, including a brief explanation of the general purpose of those laws.

Any investor wishing to promote a business under the e-commerce model must take into account the consumer protection law, its regulations, as well as the e-commerce law. In general terms, the aim is to provide a solid base that must be formally complied with in every ecommerce business (e.g. terms and conditions of use, privacy policy, etc.). Legal certainty, whether in the analog or digital world, is important, since it generates a solid legal framework that allows the parties to formally and materially understand their rights and obligations and how to claim and enforce compliance.

28. Please summarise the principal laws (present or impending), if any, that govern social media, including a brief explanation of the general purpose of those laws?

Social media companies are considered advertising agencies where businesses advertise their goods and products through their platforms. Therefore, under such treatment, companies need to comply with the Consumer Protection law to protect consumers against misleading advertising through social media. In many cases aggressions are made through social media from identity theft or phishing. The Special Law Against Cybercrime in El Salvador sanctions these sorts of criminal conducts with a penalty of imprisonment. A malicious actor that illegally acquires personal information and uses it for identity fraud for fraudulent purposes and unlawful activities will be penalized under Article 22 of the Special Law Against Cybercrime. Social media businesses must comply with data privacy protection, intellectual property rights, content moderation, and advertising to avoid legal issues and reputational damage.

29. What are your top 3 predictions for significant developments in technology law in the next 3 years?

In the legal services industry in El Salvador, we can currently see the implementation of technological tools,

for example in relation to systematization, information processing and the way of communicating with clients, but we are in a moment of technological revolution, and I consider that in the next 3 years we will be witnessing the implementation of project tokenization, the use of artificial intelligence and the regular use of new and diverse data center modalities. The National Congress recently approved the so-called Law for the Promotion of Innovation and Technology Manufacturing, through which it seeks to transform El Salvador into the technology and digitization hub of Latin America. The law grants national and foreign investors exemptions in national and municipal taxes through the certification of their projects, for up to 15 years.

30. Do technology contracts in your country commonly include provisions to address sustainability / net-zero obligations or similar environmental commitments?

Recently, at the beginning of 2022 and under the United

Nations Development Program (UNDP), El Salvador presented the update of its Nationally Determined Contributions (NDC) to the United Nations Framework Convention on Climate Change (UNFCCC), in compliance with the Paris Agreement, to which we are subscribers and to which in 2015 world leaders agreed to strengthen climate action to control temperatures more effectively, among other aspects. The NDCs updated by El Salvador present climate change adaptation measures for various new sectors that were not previously included and establishes priorities to promote adaptation in the Biodiversity and Ecosystems, Cities and Water Resources Sectors, among others. The foregoing has expanded the items and industries that require compliance with regulations and the obtaining of specific permits for their operation. In this sense, El Salvador is implementing a culture of care and environmental responsibility, and this has generated that it becomes more and more habitual and is well regarded to include in contracts clauses that establish that the contractual relationship will be conditional on both parties being respectful and compliant with environmental regulations, as well as good corporate practices related to this issue.

Contributors

Alfredo Navas Duarte
Managing Partner

anduarte@ecija.com



Carlos Gil
Partner

cgil@ecija.com



Carlos Quintanilla
Partner

cquintanilla@ecija.com



Nathania García Prieto
Legal Advisor

ngarciaprieto@ecija.com

