

Momentum

Journalism & Tech Task Force

Authorship: Bruno Fiaschetti

Proofreading: Francisco Brito Cruz & Ester Borges

Translation proofreading: Mariana Valle

The Brazilian Internet Bill of Rights and the new liability framework for digital platforms

The intense public debate around social media led the Brazilian Supreme Federal Court (STF) to resume, at the end of 2024, an essential trial concerning the Marco Civil da Internet (Brazilian Internet Bill of Rights) – a [federal law](#) that sets forth guarantees, rights, and duties for the use of the internet in Brazil. The trial, concluded in mid-June 2025, modified the liability regime for platforms about user-generated content, thereby reshaping one of the pillars of what was once considered [pioneering regulation in Latin America](#).

The matter reached the Supreme Court through two cases that occurred nearly a decade ago: one lawsuit against Facebook for creating a fake profile and another against Google for defamatory content shared on Orkut. In both cases, the discussion centered on the possibility of content removal and the platforms' duty to compensate individuals harmed by the content.

At the center of the debate was Article 19 of the Internet Bill of Rights, which specifically addresses the liability regime of platforms. Before the ruling, the law established liability only in cases where companies failed to remove the content in question after receiving a court order. In other words, under the previous framework – now changed by the ruling – the decision about whether content should be removed and the assessment of potential damages belonged to the judiciary, not the platforms. This meant companies were free to adopt their own content moderation policies and were not obligated to compensate users who felt harmed by certain content.

New Paradigm

The majority of justices (8 votes to 3) ruled for the partial and progressive unconstitutionality of Article 19, which means, broadly speaking, that part of the regulation was upheld while another part was modified, arguing that the provision did not sufficiently protect users' fundamental rights. In practice, this amplifies platforms' responsibility for the content circulating on their networks and will require the adoption of new protocols, moderation, and reporting policies.

The previous paradigm – in which platforms could only be held liable if, after a court order, they failed to remove the content – still applies in some instances, such as crimes against users' honor, including slander, insults, and defamation. For other crimes and in cases involving the dissemination of already-illegal content, the Court ruled that – until Congress enacts new legislation – platforms will be liable if, after receiving an extrajudicial request for removal, they fail to act. This rule, which institutes a "notice and action" model, also applies to cases involving fake accounts.

The decision also established platforms' obligation to self-regulate in terms of content moderation. Beyond providing accessible and well-publicized user support channels, platforms must implement a notification system, due process mechanisms, and publish annual transparency reports regarding extrajudicial notices, ads, and boosted content.

Other key points include the requirement that companies operating in Brazil must have a local headquarters and a legal representative, as well as the recognition of platforms' duty of care regarding systemic risks involving a set of serious crimes. This list includes, for example, content related to coup attempts, terrorism, racism, homophobia, and crimes against women and children. As such, platforms must act proactively and promptly to remove such content.

The Debate

Beyond the practical changes, the discussion around Article 19 reflects a broader public debate in Brazil about freedom of expression. Political polarization and the use of this concept by both progressive and far-right actors gave the question of platform liability a broader dimension – not surprisingly, some analysts referred to the Supreme Court’s ruling as the “trial of the century.”

Supporters of changing the law’s framework argued that today’s reality is very different from when the law was drafted. The influence of social media on politics and new user behaviors justify a shift in this paradigm. A key example is the promotion of content through ads and monetization by platforms – something much less common in 2014, when the law was passed. In these cases, the argument for platform liability is based on the idea that such content is (or should be) subject to prior moderation by companies that profit from it.

Critics of the Court’s new interpretation of Article 19 highlighted the risk that expanding platform liability could lead to censorship and restrictions on freedom of expression. In other words, this argument cautions against transferring the authority to define the limits of free speech from the Brazilian State to private, mostly foreign, companies. Companies argued that the paradigm shift could pose a threat to their business models, since it would require them to develop new systems and infrastructures for moderation.

Implications for Journalism

With the Supreme Court's decision, platforms cease to be mere intermediaries and begin to exercise direct power over what may or may not circulate online. For journalism, this new scenario presents both risks and opportunities.

The preemptive removal of content, whether through automation or after notification, even before a court decision, may affect legitimate reporting on sensitive or politically controversial topics, such as abortion or public security. In a context already marked by polarization, there is a risk that journalistic content will be silenced due to political pressure or errors in moderation. This risk may be amplified in the Global South, where power asymmetries with major tech companies are more pronounced.

On the other hand, new transparency obligations, the need for robust appeal mechanisms for platform decisions, and accountability requirements, although limited, create opportunities for media outlets to position themselves as reliable and distinctive sources in the digital ecosystem. A strategic response by the journalism sector in this direction can reinforce its social role as a cornerstone of democracy.

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