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How is Brazil reshaping the regulation of digital platforms? We spoke with Francisco Brito Cruz* about the Brazilian Supreme Court's landmark ruling, the recent presidential decrees, the ANPD's expanded regulatory role, and the challenges of building a governance framework capable of protecting fundamental rights while strengthening information integrity.

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***Momentum:* The Brazilian Internet Bill of Rights (Marco Civil da Internet) was internationally recognized as a landmark framework for protecting freedom of expression and defining the responsibilities of online intermediaries. More than a decade later, Brazil's Supreme Federal Court (STF) has reinterpreted key aspects of that regulatory framework. In your view, what has changed in the Brazilian internet since 2014 that made this shift necessary?**

Francisco Brito Cruz: There has been both a qualitative and a quantitative change. On the quantitative side, Brazilians now access the internet much more easily and spend significantly more time online. Back in 2014, only about half of the Brazilian population used the internet, and many people connected only once a week or even once a month. Today, connectivity levels and time spent online are dramatically higher, largely because smartphones are constantly within reach and mobile data plans have become much more accessible.

The qualitative transformation is equally important. Increased data-processing capabilities, the expansion of digital services, and permanent connectivity have resulted in an internet that permeates virtually every aspect of our lives, mediating the way we exercise citizenship.

Of course, the major digital platforms already existed in 2014, and they were already influential. But over the past decade they have become embedded in almost every sphere of daily life. The economy has become digitalized. Media consumption is now almost entirely digital. Everything has become digital to the point that even watching television is no longer just a television experience, it is a digital, multi-screen experience, often accompanied by a smartphone.

As a result, the full complexity of our social problems has migrated into the online environment. Those existing social challenges now intersect with problems that the internet itself may create or amplify, producing a combination of long-standing issues, problems facilitated by digital technologies, and a third category of challenges that emerges precisely from the interaction between the two.

This evolution has made a range of harmful situations and, in some cases, perverse incentives much more visible. It has also highlighted the need for internet companies to take greater responsibility in addressing issues such as harmful and illegal content and its real-world consequences. That, in turn, has gradually fueled debate both in Congress and before the Supreme Court.

The discussion unfolded in both arenas. In Congress, it took the form of legislative initiatives that either advanced or stalled, such as the Fake News Bill and the Digital Child and Adolescent Statute (Digital ECA). In the judiciary, the cases eventually decided by the Supreme Court are actually quite old. One predates the Marco Civil da Internet, while the other was filed after its enactment. One of them is the well-known [Lourdes Pavioto case](#), a small claims dispute involving a fake Facebook profile created about a woman living in the countryside of São Paulo state.

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The Supreme Court's reasoning is that the Marco Civil gradually became unconstitutional over time. That is why several of the opinions refer to a "progressive partial unconstitutionality." It is partial because not every provision is unconstitutional. And it is progressive not because the law went too far, but because it no longer goes far enough. According to this view, the Marco Civil has become partially unconstitutional because it fails to provide sufficient protection for fundamental rights and constitutional interests, as required by the Constitution.

For that reason, the Court seeks to fill this regulatory gap by establishing parameters that can provide the necessary level of protection until Congress decides to legislate. That is the underlying rationale.

Momentum: The Supreme Federal Court's ruling did not formally amend Article 19 of the Marco Civil da Internet, but it significantly changed how the provision will be interpreted and applied. In your assessment, are we looking at a temporary solution crafted by the judiciary in response to the lack of legislative consensus, or does this signal that the Marco Civil itself will need to be revised by Congress in the coming years?

Francisco Brito Cruz: No Supreme Court decision should ever be treated as the final word, just as no statute should be. These developments are never endpoints; they are always the beginning of a new chapter.

The Supreme Court's ruling itself will now have to be interpreted and applied by lower courts. Even if Congress does not take any further action, what we have is the replacement of one legal framework with another. There is still a framework in place, and future cases will continue to be decided within it. So this is certainly not the finish line.

It is also important to remember that the past few years have brought more than just the Supreme Court's decision on the Marco Civil. Congress also enacted the Digital Child and Adolescent Statute (Digital ECA) and assigned the Brazilian Data Protection Authority (ANPD) new responsibilities for implementing that legislation. This introduces a new institutional actor into the debate over platform regulation, including on issues related to online content, since the Digital ECA also addresses that subject.

In other words, there is a broader regulatory process underway that does not depend solely on the Supreme Court's ruling. Even if Congress reacts politically, attempts to reverse some of these developments, or future administrations pursue different approaches, certain elements are likely to remain. The Digital ECA is a good example. Given the subject matter it addresses and the broad social consensus that surrounded its approval, it is a much more difficult piece of legislation to undo.

For that reason, there is a certain inevitability to the fact that, at least with regard to the protection of children and adolescents, digital platforms have now become part of a more specifically regulated sector. In some respects, they were already subject to regulation – for example, under data protection law – but they are now also being regulated with respect to how their digital services operate.

It is also important to view these developments not only through the relationship between Congress and the Executive, but also through the relationship between Congress and the Supreme Court. The Court adopted its legal thesis by a relatively broad majority—seven votes to three. This was not a narrow or accidental majority that could easily be reversed simply because the composition of the Court changes over time.

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Moreover, when ruling on the motions for clarification, the Supreme Court reaffirmed that the Executive Branch may regulate aspects related to the enforcement of the Marco Civil. As a result, any attempt to reverse this process would not involve only a dispute with the Executive, but also with the Supreme Court itself. That is why, even in the face of future political changes, the Court will remain a central institutional actor in this regulatory landscape.

***Momentum:* Recent Decrees No. 12,975/2026 and No. 12,976/2026 assign the Brazilian Data Protection Authority (ANPD) a central role in overseeing and regulating digital platforms. In your view, what does this institutional shift represent for digital governance in Brazil? What opportunities and challenges arise from the ANPD becoming a key actor in this debate?**

Francisco Brito Cruz: The rules introduced by the Digital Child and Adolescent Statute (Digital ECA) and by the decrees implementing the Marco Civil da Internet—such as age assurance mechanisms, notifications concerning illegal content, the accreditation of trusted flaggers, the definition of duties of care, and the identification of systemic failures—require an institution capable of participating in the regulatory process and establishing the standards that the sector will be expected to follow.

Those standards must be grounded in technical expertise and developed from a specialized perspective. At the same time, for this model to function within Brazil’s constitutional framework, the regulator must be independent.

Independence is essential to prevent both political and economic capture. The objective is to ensure that regulatory authority is not used to selectively restrict or expand freedom of expression in favor of particular political or economic interests. This is inevitably a function with political implications, but it must be exercised as a matter of state policy rather than partisan politics.

Historically, Brazil has relied on mechanisms such as fixed terms of office, institutional stability, and safeguards against the arbitrary replacement of senior officials to preserve regulatory independence. At the same time, expertise depends on maintaining a highly specialized technical staff.

Until now, Brazil did not have an authority with these characteristics dedicated specifically to this field. The ANPD was chosen to assume these responsibilities and is, in fact, structured according to the most independent institutional model within Brazil’s public administration: that of a regulatory agency. Its board members serve fixed terms, it operates under specific governance rules, and its institutional design is intended to safeguard independent decision-making.

From a technical standpoint, the ANPD’s transformation into a regulatory agency, together with the recent expansion of its institutional structure, has made it possible to create new positions and recruit professionals who will focus specifically on these issues. At the same time, the Authority has been issuing regulations and guidance documents that help strengthen the normative framework for its activities while providing direction to its technical staff.

We are therefore in the implementation phase of this institutional choice. It is a gradual process, but a necessary one. If laws such as the Digital ECA and judicial decisions such as the Supreme Court’s ruling on the Marco Civil da Internet are to be effectively implemented, it will be unavoidable to establish detailed technical standards. Those standards must be developed by a competent regulatory authority. In that sense, the emergence of a regulator is inevitable. Ideally, that regulator should be both independent and specialized. The decision to assign this role to the ANPD also reflects the fact that it had already accumulated expertise in an area that is central to digital platforms: the processing of

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personal data. Since platform business models rely heavily on the use of data for content recommendation and targeted advertising, that prior experience can make an important contribution to the regulation of digital services.

Although the ANPD is a newer institution than many other regulators, this transition would have required significant institutional investment regardless of which authority had been selected. No existing agency already possessed precisely the mandate, expertise, or trained personnel needed to perform these functions. One way or another, that institutional capacity would have had to be built within the Brazilian state.

For that reason, the debate over which institution should perform this role is both natural and likely to continue. As society becomes increasingly digitalized, public authorities will need to coordinate more closely with one another and manage responsibilities that will often overlap.

***Momentum:* Brazil enters the 2026 elections amid the rapid advancement of generative artificial intelligence, the consolidation of new regulatory powers, and the ongoing legislative debate over digital platforms and AI. Looking ahead, what are the main challenges in building a regulatory framework capable of protecting fundamental rights, preserving information integrity, and responding to rapid technological change?**

Francisco Brito Cruz: The first challenge is to consolidate the ANPD's role as the regulator and clearly define how it will interact with other relevant institutions.

In the electoral sphere, for example, it will be necessary to establish a coordinated relationship with the Superior Electoral Court (TSE). The TSE will continue to exercise its own constitutional and statutory powers, and the Supreme Court's ruling itself explicitly recognizes an exception for electoral matters. In this area, the specific rules of Brazil's electoral legislation and the regulations issued by the Court will continue to prevail.

The same applies to the Administrative Council for Economic Defense (CADE). Even before the adoption of legislation specifically addressing digital markets, CADE was already handling cases involving major platforms, including Apple, Google News, and iFood. Defining the ANPD's role within this broader institutional ecosystem will therefore be an important task.

Strengthening the ANPD, consolidating its technical staff, safeguarding its independence, and developing specialized expertise will be among the central challenges of the coming years.

Beyond that, Brazil will also need to address the debate over artificial intelligence and its regulation. This is a different discussion from that surrounding digital services and liability for third-party content. Regulating generative AI raises a distinct set of issues, including cybersecurity concerns and broader strategic choices regarding the country's technological development.

A third policy agenda is also becoming increasingly important: the regulation of digital markets and competition. This is a debate that differs both from the ANPD's work and from discussions surrounding content moderation. The key question is to what extent Brazil's competition framework will need to be updated to address the specific characteristics of digital platforms.

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But there is also a broader dimension that extends beyond regulation itself. Brazil will need to decide what strategic choices it intends to make for its digital future. That includes innovation policies, industrial policy, and decisions about the role the country wants to play within global value chains. It also requires reflecting on what digital sovereignty should mean for Brazil. This is a concept that lends itself to different interpretations and will not be defined solely through legislation or regulation. To a large extent, it will depend on public investment decisions and the strategic priorities established by the state.

In that regard, initiatives such as PIX and Gov.br illustrate one possible path. They are among Brazil's most important digital public assets. Their impact stems not only from legal frameworks but also from the development of technological infrastructure capable of positioning the country strategically. Ultimately, the goal is to protect fundamental rights while also fostering development. The challenge for the coming years will be to strike the right balance between safeguarding rights, promoting technological innovation, supporting economic growth, and strengthening the institutional capacities needed to govern the digital environment.