

Open letter in defense of Free Speech on the Internet

Brazil is about to make an important decision about the future of the internet in the country. Built on the basis of a consultation process with thousands of contributions, Article 19 of Brazil's Internet Bill of Rights (Law No. 12.965/2014) created a liability regime for providers such as social networks, video sites, encyclopedias, messaging apps, and any platform (including news) that contains comments and contributions from its users.

Pursuant to Article 19, it is incumbent on the Courts – and not technology companies – to decide whether content is legal or illegal, holding application providers liable only if they do not comply with a court order that requires the removal of text, photos or video. Before that, Brazilian courts used to rule in many different ways, sometimes holding a provider liable just because content was shown, sometimes because it did not comply with a private notification. This uncertainty concerning the liability regime was prejudicial to anyone who wanted to start an internet business, put up a website or launch an app.

The Federal Supreme Court will now decide on the constitutionality of Article 19. Without this legal provision in place, websites that gather criticism from consumers may be required to remove comments if the vendor makes a simple report. News sites will take down content as soon as someone sends a notification that the material is damaging to someone's reputation. Startups will think twice before letting their users upload content onto their platforms.

Large providers may have the economic power and legal knowledge to litigate these cases; for all other companies, organizations and individuals, however, this is a scenario that discourages innovation, hurts the economy and the creation of jobs linked to the internet in the country. Protecting freedom of expression has important economic impacts.

Similarly, civil society organizations may see their activities hindered by being forced to remove content posted by third parties after a simple notification.

As Article 19 itself states, it was created "in order to ensure freedom of expression and prevent censorship." To go back to the regime that existed before 2014 would be to launch Brazil into a scenario of legal uncertainty, encouraging providers to take down content as soon as they receive a complaint. The risk we run is creating a less diverse internet, in which any critical comment would be removed for fear of liability.

The text of Brazil's Internet Bill of Rights has broad international support, from the father of the World Wide Web himself, Sir Tim Berners-Lee, to the rapporteurs for freedom of expression of the United Nations (UN) and the Organization of American States (OAS). The process by which the Brazilian law was created has been an inspiration for the Declaration of Internet Rights, passed by the Italian Parliament. Its regime of protecting freedom of expression was also referred to in an important ruling of the Supreme Court of Argentina regarding liability on the internet.

The 2011 Joint Declaration on Freedom of Expression and the Internet establishes that “No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so (‘mere conduit principle’).”¹ In the same regard, the Office of the Special Rapporteur for Freedom of Expression (OAS) maintains that subsequent liability should be imposed upon the authors of the speech in question rather than on the intermediaries.²

Therefore, the signatories of this letter encourage everyone to participate in the defense of Article 19 of Brazil’s Internet Bill of Rights, in order to ensure freedom of expression, access to information and innovation on the web, based on a balance between rights and responsibilities, for the full exercise of democracy and citizenship in Brazil.

The signatories hope these points will be taken into consideration by the Brazilian Supreme Court and that, in line with the defense of freedom of expression which has been a cornerstone for the Court’s jurisprudence in light of the Federal Constitution, it will decide in favor of the constitutionality of Article 19.

Signatures:

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¹ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression; the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media; the Organization of American States (OAS) Special Rapporteur on Freedom of Expression; and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. “Joint Declaration on Freedom of Expression and the Internet” (06.01.2011). <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=849&IID=1>

² http://www.oas.org/en/iachr/expression/docs/publications/INTERNET_2016_ENG.pdf

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