Brazil

Key Developments: June 2015 – May 2016

• Popular communication application WhatsApp was temporarily blocked on two occasions during this period, in December 2015 and May 2016, after Facebook, which owns the encrypted messaging service, was unable to comply with requests to turn over data pertaining to users under criminal investigation. While higher courts quickly overturned these orders, they disproportionately impacted users across Brazil (See Blocking and Filtering).

• Some of the largest internet service providers in Brazil announced that they would introduce data caps for fixed broadband, prompting widespread outrage and several bills in Congress to limit practices that are deemed to be unfair to consumers (See ICT Market).

• A report by a Parliamentary Investigation Commission proposing a series of cybercrime bills caused significant backlash among civil society and scholars (see Legal Environment).

• Since the adoption of the so-called “Constitution for the Internet” in April 2014, secondary legislation enacted in May 2016 further refined rules for net neutrality and security measures regarding connection logs stored by providers (see Legal Environment).
Introduction

Brazil’s internet freedom environment declined during this period, as decisions by regional judges to temporarily block WhatsApp disproportionally affected users across the country.

Hailed as a civil rights framework for the internet, Brazil’s Marco Civil Law (Marco Civil da Internet) contains key provisions governing net neutrality and ensuring strong privacy protections. In May 2016, right before the beginning of impeachment procedures that suspended President Dilma Rousseff from office, a decree regulating the Marco Civil further clarified rules concerning the scope of application of net neutrality, as well as security measures to be adopted by providers for collecting and storing connection logs. However, despite boasting some of the most progressive and comprehensive legislation on digital rights, internet freedom in Brazil remains constrained by violence against independent bloggers, criminal defamation laws, restrictions on anonymity, and restrictive limits on content related to elections.

Several orders to block WhatsApp have especially raised concerns about an ongoing judicial trend within the country, and draw attention to unforeseen effects of Marco Civil enforcement. Both temporary blocking orders in December 2015 and May 2016 were linked to ongoing requests to turn over information as part of criminal investigations by the police. WhatsApp has repeatedly argued that it cannot provide information it does not have, especially because it encrypts messages and does not store them on its servers. While both decisions were quickly overturned by higher courts, digital rights advocates have criticized this trend as a disproportionate misinterpretation of the Marco Civil, which includes a sanction of “temporary suspension of activities” for providers that violate Brazilian law. Brazilian authorities have repeatedly clashed with WhatsApp over access to user data, even leading to the arrest of the Latin American Vice President of Facebook, which owns WhatsApp, in March 2016.

Concern also grew that Congress may pass laws that could change key aspects of the Marco Civil. In March 2016, a report by a Parliamentary Inquiry Commission proposed a package of cybercrime bills which threatened to undermine several privacy rights in favor of wider powers for criminal investigators, and erode the Marco Civil’s judicial notice and takedown system. While several of the initial points were dropped after significant backlash from civil society and activists, the final proposals approved by the commission in early May continued to generate debate among digital rights activists.

On the other hand, while internet penetration rates have been increasing modestly, social media and its potential for mobilization has taken center stage in Brazil. Issues that have garnered particular interest in discussions on social media over the past year range from concerns surrounding the Zika epidemic and its public health consequences, especially in the lead-up to the 2016 Rio Olympics, to polarized debates surrounding the political and economic situation. Online discontent over corruption scandals are often taken to the streets, as protests reached record levels in March 2016.

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1 “Brazil will make Olympics safe from Zika virus: WHO official,” Reuters, February 23, 2016, [http://reut.rs/1UlXYHp](http://reut.rs/1UlXYHp).
2 “Record Brazil protests put Rousseff’s future in doubt,” Reuters, March 14, 2016, [http://reut.rs/1TY0c0Q](http://reut.rs/1TY0c0Q).
Obstacles to Access

Although internet and mobile penetration rates have increased steadily in Brazil, significant regional disparities in access persist. Three of the largest ISPs in Brazil caused uproar when they announced data caps for fixed broadband by 2017, and several bills proposed to limit such practices. Millions of users were also affected when the messaging service WhatsApp—the most popular communication app in Brazil—was blocked on two occasions during this period of coverage.

Availability and Ease of Access

Despite economic growth in recent years, Brazil’s access rates remain below average compared to many North American and European countries. The International Telecommunications Union (ITU) estimates that Brazil’s internet penetration rate reached 59 percent in 2015, compared to 55 percent in 2014 and 51 percent in 2013. According to the Center of Studies on Information and Communication Technologies (CETIC), some 50 percent of households did not have access to the internet as of March 2015, an improvement from 60 percent in 2013. Various obstacles continue to prevent many households from accessing the internet, such as high prices—a problem that extends to fixed broadband, wireless, and 3G and 4G technologies—and persistent social inequalities. A significant digital divide and disparities in infrastructure are evident between various geographical regions, as well as between urban and rural areas.

According to the Brazilian Institute for Geography and Statistics, 31 million households had internet access in 2015, accounting for 49 percent of the population. Of these, 98 percent connected via broadband and only 2 percent had dial-up connections. Data from the National Telecommunications Agency (ANATEL) shows a fixed-broadband subscription penetration of around 12 percent at the beginning of 2016. By the end of 2015, Akamai measured Brazil’s average internet connection speed at 4.1 Mbps, up from 3.4 Mbps in the first quarter of 2015.

Although household access is one of the most common means of connection for those with slightly higher incomes, LAN Houses (public paid access centers) remain relevant to digital inclusion in Brazil, particularly in the country’s impoverished northern regions. Legislative initiatives such as the bill on “Centers for Digital Inclusion” consider LAN Houses as “public interest facilities,” in line with existing internet access strategies implemented by the Ministry of Telecommunications in the past years.

While national wireless networks are still small compared to other countries, ANATEL registered over one million hotspots in Brazil as of July 2015.
Mobile penetration has grown significantly over the last few years and mobile broadband connections have quickly become a dominant means for Brazilians to access the Internet. Overall, mobile penetration rates increased from 88 percent in 2009 to 126 percent (or around 259 million phone subscriptions) by the end of 2015. However, the number of subscriptions has decreased over the past year, falling from 281 million (or 139 percent) in 2014, according to ITU data. This drop has been attributed to Brazil’s economic crisis and stricter credit policies imposed by operators.

The supply of smartphones with 4G services has significantly increased since its introduction in April 2013, but high prices and limited network still constitute challenges. As of May 2016, nearly 135 million users (approximately 48 percent) had 3G services. According to the consultancy company Teleco, Brazil had 36.5 million active 4G subscriptions by May 2016, representing an increase of approximately 208 percent compared to the same period as of May 2015. Such advanced internet services, however, are heavily concentrated in wealthy urban centers such as São Paulo.

Brazil’s federal government has been implementing a number of internet expansion and improvement programs since 2010, including the National Broadband Plan (Plano Nacional de Banda Larga or PNBL). According to statistics from the Brazilian Telecommunications Association, broadband connections increased by 308 percent between October 2014 and October 2015. The government estimates that 94 million individuals gained broadband access since the adoption of PNBL in 2010. But specialists have criticized these figures; after almost four years, only 1.8 million (7.9 percent) of the 23 million fixed broadband subscriptions were contracted through PNBL. PNBL covered only 0.6 per cent (800,000) of the total 128.5 million individuals who accessed mobile internet.

A Special Taxation Regime (REPNBL) has sought to complement the PNBL by encouraging investment in existing telecommunications networks to expand broadband and mobile internet capabilities and offer internet access to the population at equitable prices, coverage and quality. Under this initiative the Ministry of Communications and mobile companies have launched projects in 2015 to improve high-speed internet access in rural areas of the country. In February 2013, Decree

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16 “Cidade de SP é o 5º maior mercado da América do Sul, diz Fecomercio” [São Paolo is the Fifth Largest Market in South America, Says Fecomercio], O Globo, January 1, 2014, [http://glo.bo/1JqVyg].
18 Associação Brasileira de Telecomunicações, “Banda larga 4G cresce 308% em 12 meses, diz Telebrasil” [4G Broadband Connections increased 308 percent over 12 months, according to Telebrasil], December 7, 2015, [http://bit.ly/2ba1ivk].
19 “Em 2018, 70% dos brasileiros terão acesso à banda larga” [In 2018, 70 percent of Brazilians will have access to broadband], Portal Brasil, October 22, 2015, [http://bit.ly/2bPmpo].
20 Luciana Bruno, “Programa de banda larga se aproxima do fim cheio de críticas,” [Broadband program nears end with criticism], Exame, September 30, 2014, [http://abr.ai/1QvPXxG].
7.981/2013 established tax incentives for the ICT sector by exempting certain categories of smartphones from taxation, namely those produced with national content, Wi-Fi connectivity, email access, and open source code for developers.\(^{24}\)

**Restrictions on Connectivity**

The government does not place limits on bandwidth, nor does it impose control over telecommunications infrastructure. There have been no reported instances of the government cutting off internet connectivity during protests or social unrest. However, millions of users were temporarily unable to access messaging service WhatsApp after its parent company Facebook did not comply with information requests as part of criminal investigations (see Blocking and Filtering).

Most of the backbone infrastructure for the internet is privately owned in Brazil. In 1998, the state-owned company Embratel, which was responsible for building the internet backbone, was privatized and acquired by the U.S. company MCI; it was later acquired by the Mexican telecom América Móvil in 2003. Over the past decade, private backbone infrastructure, such as that of Embratel, GVT and Oi, has expanded in Brazil. With the PNBL, however, Brazil is expected to expand government-owned infrastructure—including underutilized fiber-optics—to allow for low-cost connections. The significant increase in wired broadband subscriptions from 2010 to 2013 is at least somewhat attributable to the expansion of the state-owned backbone. Since the PNBL was initiated, over 612 Brazilian municipalities, which contain around 40 percent of the population, received service from the state-owned Telebras network.\(^{25}\)

Internationally, undersea cables connect to Brazil from North America and Europe. Brazil has announced plans to create new undersea cable connections with South Africa and the Caribbean, as well as Portugal. Some of the impetus for building these connections is related to a desire to avoid reliance on U.S. infrastructure after revelations of pervasive U.S. spying on Brazilians in 2013.\(^{26}\)

In 2004, the Brazilian Internet Steering Committee (CGI.br) launched an initiative called PTT Metro to create internet exchange points (IXPs) across Brazil, starting with their first IXP in São Paulo. As of April 2013, there were 22 IXPs in operation, covering 16 of Brazil's 26 states.\(^{27}\) Currently, Brazil has at least 25 IXPs installed in the country.\(^{28}\)

**ICT Market**

Although there are no significant legal or economic barriers for companies competing in the ISP, mobile, or digital technology sectors, the Brazilian ICT market is highly concentrated. As of May 2016, three large private companies—Oi, Claro and Vivo (Telefônica Brasil)—represented over 84 percent of the country’s broadband market.\(^{29}\) In January 2014, the Brazilian competition authority approved

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\(^{26}\) Anna Edgerton and Jordan Robertson, "Brazil-to-Portugal Cable Shapes Up as Anti-NSA Case Study," Bloomberg Business, October 30, 2014, [http://bloom.bg/1q0GlDz](http://bloom.bg/1q0GlDz).


the merger of Oi and Portugal Telecom into CorpCo. This merger was completed in 2015 and ranked CorpCo as the leading telecommunication company in Portuguese-speaking countries worldwide.\(^{30}\) Also in 2014, the acquisition of Vivendi’s GVT by Telefônica Brasil resulted in a merger of two of the country’s larger broadband services in 2016 – GVT and Vivo – further contributing to market share concentration.\(^{31}\)

By mid-March 2016, Vivo, Claro and Oi announced that fixed broadband internet would operate under a limited data cap business model by the beginning of 2017, similar to measures adopted for mobile internet access.\(^{32}\) This announcement caused widespread uproar among users, politicians and internet-dependent businesses,\(^{33}\) since broadband internet in Brazil has been consistently regarded as costly and of low quality.\(^{34}\) ANATEL’s then-president João Rezende addressed the controversy by supporting the decision and blaming users for high usage of bandwidth. However, ANATEL subsequently prohibited all major ISPs from adopting such measures for 90 days until they provided detailed motives. Several bills also proposed to limit such practices that are deemed to be unfair to consumers,\(^{35}\) including one legislative proposal from a petition that gathered over 20,000 signatures within two weeks.\(^{36}\)

According to the most recent data regarding Brazil’s mobile market in May 2016, four large private companies—Vivo, TIM, Claro, and Oi—held 96 percent of the market.\(^{37}\) Such high market concentration could make it very difficult for other providers such as Algar and Nextel to compete in the mobile sector.\(^{38}\) Despite such concentration, Brazil has the largest smartphone market in Latin America.\(^{39}\)

### Regulatory Bodies

Two regulatory agencies oversee Brazilian ICTs: the Brazilian Agency of Telecommunications (ANATEL) and the Administrative Council for Economic Defense (CADE), an antitrust agency that is focused on reviewing mergers and anticompetitive practices in telecommunications markets. Additionally, in 1995 the government created the Brazilian Internet Steering Committee (CGI.br), a multi-stakeholder independent organization in charge of coordinating and integrating all internet service initiatives in Brazil, as well as promoting technical quality, innovation, and the dissemination of services. Provisions in Marco Civil mandate that the government consult with CGI.br, and in various instances directly involve the Committee, in the policy-making and implementation of Marco Civil processes.\(^{40}\)

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\(^{32}\) Gabriel Luiz, “Empresas querem vender Internet fixa como pacote de dados” [Companies want to sell fixed internet with data package], G1, March 19, 2016, [http://glo.bo/2c813JC](http://glo.bo/2c813JC).

\(^{33}\) Angelica Mari, “Brazilians protest against fixed broadband data cap,” ZDNet, April 13, 2016, [http://zd.net/2c4dCGR](http://zd.net/2c4dCGR).

\(^{34}\) Helton Gomes e Thiago Reis, “Velocidade da banda larga no Brasil varia entre taxas de Líbia e Japão” [Broadband speed in Brazil varies between rates in Libya and Japan], G1, May 13, 2015, [http://glo.bo/2bBP5JW](http://glo.bo/2bBP5JW).


\(^{40}\) Marco Civil, Art. 24, II.
ANATEL is administratively and financially independent, and not hierarchically subordinate to any government agency. Its decisions can only be appealed in courts. From the Ministry of Communications, ANATEL has inherited the powers of granting, regulating, and supervising telecommunications in Brazil, as well as much of its technical expertise and other material assets. While both ANATEL and CGI.br are entrusted with ensuring the free, fair, and independent operation of ICTs, the General Telecommunications Act also empowers CADE to issue decisions on matters such as price setting and collusion. In May 2012, the new Brazilian Antitrust Act (Law No. 12.529 of November 30, 2011) came into force, introducing a pre-merger control regime in Brazil. Under this act, mergers must have pre-approval by CADE before they can proceed. The act also expands CADE’s substantive enforcement power regarding cartel and unilateral business practices that affect competition as well as consumer rights and benefits.

CGI.br is formed by elected members from government, the private sector, academia, and nongovernmental organizations. CGI.br’s contributions include comprehensive and reliable annual reports on internet use in Brazil, funding for internet governance-related research, and the promotion of conferences such as the annual Brazilian Internet Governance Forum, and the international NetMundial conference, which was organized in Brazil in 2014. In June 2009, CGI.br declared the “Principles for the Governance and Use of the Internet,” which include the goals of online freedom, privacy, human rights, and net neutrality as a base for the Brazilian information society. Many of these principles were adopted into Brazilian law through the Marco Civil in 2014.

Limits on Content

Several orders to block WhatsApp have raised concerns about an ongoing judicial trend within the country. While content removal requests filed before local courts continue to pose significant challenges to social media companies in Brazil, a notice and takedown provision in Brazil’s Marco Civil Law has clarified intermediary liability. Brazilians’ use of social media tools for civic action and activism continues to increase, particularly in the wake of the intense protests against and in favor of Dilma Rousseff’s government and anti-corruption demonstrations that took place through 2015 and early 2016.

Blocking and Filtering

In keeping with the country’s push to modernize and expand access to ICTs, Brazil’s digital information landscape remains largely unrestricted. There are no proven indications that Brazilian authorities are filtering messages or engaging in widespread blocking online. Brazilians freely gather and disseminate information via the internet and mobile phone technologies. They have access to a wide array of national and international news sources, blogs, social networking platforms, and citizen journalism, the latter of which has proliferated over the past year.

Social networks, communication apps, and video-sharing websites such as Facebook, Twitter, and

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YouTube are—for the most part—freely accessible and widely used in Brazil. On two occasions during this coverage period, however, telecom companies were ordered to temporarily block the popular communication tool WhatsApp after failure to comply with information requests in criminal investigations.

- On December 16, 2015, a lower court in the state of São Paulo ordered wireless carriers to shut down WhatsApp for 48 hours, because the company did not cooperate with a criminal investigation. The decision was overturned 12 hours later through a temporary injunction issued by the Court of Justice in the state of São Paolo, following an appeal by the company.\(^{45}\)

- On May 2, 2016, a judge in Sergipe state ordered operators to block WhatsApp for 72 hours.\(^{46}\) Similarly, the decision was linked to WhatsApp's failure to comply with a court order to access users' messages for the purpose of a criminal investigation linked to drug trafficking in the city of Lagarto. Earlier in March, the same judge had ordered the arrest of Facebook's Vice-President in Latin America, Diego Dzodan, as a means of coercing the company into obeying its request (See “Prosecutions and Detentions for Online Activities”). A different judge from the state court cancelled the ruling the next day, following an appeal by WhatsApp's lawyers.\(^{47}\)

- In a more recent instance on July 19, 2016,\(^{48}\) a judge ordered providers to block WhatsApp for an indefinite period of time, again for not turning over requested information sought in the course of a criminal investigation. The Brazilian Supreme Court overturned the measure later that day through a preliminary injunction, stating that “the suspension of the service apparently violates the basic principle of freedom of expression and communication, enshrined in the Constitution, as well as prevailing legislation on the matter.”\(^{49}\)

Another order was issued prior to this period, in February 2015, but it was suspended and the application was not blocked.\(^{50}\) The decisions to block the app were based on Marco Civil's statutory provisions, notably Article 12 which provides for the “temporary suspension of activities” of connection providers and internet application providers that violate Brazilian law, including the right to privacy, the protection of personal data, and the secrecy of private communications. Digital rights specialists have argued that these decisions were not only disproportionate, but also constituted a misinterpretation of the law, notably because it does not specifically mention the suspension of applications or services.\(^{51}\)

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\(^{45}\) Rafael Barifouse, Fernando Duarte, Guilherme Barrucho, “Por que o bloqueio do WhatsApp não vingou – e como isso afetará a briga entre empresas de internet e Justiça” [Why the blocking of WhatsApp did not succeed – and how this will affect the fight between internet companies and Justice], BBC Brasil, December 17, 2015, [http://bbc.in/1mboCmp](http://bbc.in/1mboCmp).

\(^{46}\) “WhatsApp Ordered Blocked Again in Brazil Over Data Dispute,” Bloomberg, May 2, 2016, [http://bloom.bg/1rsCA8y](http://bloom.bg/1rsCA8y); See also: “Tribunal de Justiça de Sergipe emite nota sobre bloqueio do WhatsApp” [Court of Sergipe issues note on blocking of WhatsApp], G1, May 2, 2016, [http://glo.bo/2dXjbd1](http://glo.bo/2dXjbd1).


\(^{48}\) This event occurred outside the period of coverage of this report.


On the other hand, these temporary shutdowns have added fuel to the public debate around law enforcement’s ability to access tech companies’ encrypted data. WhatsApp has repeatedly argued that “we cannot provide information we do not have,” because it encrypts messages locally and does not store them on its servers. Especially since expanding end-to-end encryption for all users’ communications in April 2016, WhatsApp has insisted that such requests to turn over information are technically impossible. While millions of users were affected by these decisions, WhatsApp’s main competitor, Telegram, gained over seven million new users from Brazil within 24 hours in May 2016, in turn highlighting the significant repercussions for businesses within the country.

Content Removal

While the enactment of Marco Civil has been hailed as a progressive landmark for internet governance, certain legal provisions criminalizing defamation and blasphemy and restricting speech around elections continue to put some constraints on internet freedom online. Brazil’s controversial Electoral Act of 1997 has faced intense scrutiny particularly because its broad terms harbor the potential to constrain freedom of expression both online and offline, as it continues to limit certain content deemed to be injurious to candidates during electoral periods. An amendment to the law in 2013 created new and specific restrictions to online content concerning candidates and political parties.

These restrictions on content resulted in the state issuing hundreds of content-removal requests in late-2014 and early-2015. After the electoral period ended in Brazil, companies reported a considerable reduction in content removal requests, highlighting the Electoral Law’s impact on state-initiated censorship in Brazil. Removal requests issued to Twitter almost halved in July to December 2015 compared to the previous year. From July to December 2015, Twitter received 15 removal requests from Brazilian courts. The company withheld a total of 107 tweets and 1 account from view in Brazil. But with municipal elections scheduled for October 2016, such requests threaten to proliferate again.

Lawsuits have also led Brazilian courts to ban some individuals from posting online in certain cases. Blogger Marcelo Auler was requested to remove several articles published on his website between November 2015 and April 2016, after they were found to contain accusations that harmed the reputation of police officers involved in overseeing investigations into the “car wash” (Lava Jato) corruption scandal. He was also prohibited from publishing future reports that “could be interpreted as offensive to the officers.” The rulings of the federal courts of state of Paraná have been strongly criticized for establishing a “prior censorship” measure constraining any future content published by the blogger.

Brazilian law also limits certain online content through cybercrime legislation. The “Azeredo Act” was

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54 Restrictions include liability of servers with regard to early online campaigning; unsubscribe mechanisms for electoral advertising; elevation of fines due to violations of online electoral conduct; and the criminalization of hiring people in order to perform online bashing of candidates. See: Law 12.891 of 2013, http://bit.ly/1my5W1I.
enacted in November 2012 after major changes to its original, highly controversial proposal. In its final form, it establishes the creation of specialized teams and sectors structured by the judicial police to fight against cybercrimes and to take down racist content (other defamatory content is not directly covered by the act). In the case of cybercrimes and racist content, takedowns require a judicial notice, but can be issued before police investigations have begun.

Intermediary liability issues have been settled by a case law established by the Brazilian Superior Court of Justice (STJ) and by statutory provisions enacted by Marco Civil in 2014, which establishes that internet providers shall not be held liable for civil damages resulting from content created by third parties, and that application providers will only be held liable for civil damages resulting from content generated by third parties should they refuse to follow a court order requesting specific removal of said content. In recent years, case law was slowly built around a similar understanding, with the Brazilian STJ ruling towards a judicial notice-and-takedown model. Exceptions were made for copyright infringement and “revenge porn,” such as dissemination of sexually explicit photos or videos without the consent of the individual appearing in them. In cases pertaining to revenge porn, a court order is not required for content removal, and the user’s notification alone is enough to make the intermediary liable should it refuse to make the content unavailable in a short time.

Between late 2015 and early 2016, courts rejected several requests pertaining to intermediary liability and filtering of content. In both cases, intermediaries were requested to monitor and filter certain keywords and content deemed to be economically harmful to specific enterprises, such as bad reviews or massive social gatherings in shopping malls organized through social media. Courts argued against such requests, based on constitutional rights to freedom of expression and on Article 19 of the Marco Civil, as well as freedom of expression and access to information established by Articles 2, 3 and 4 of the Law.

On the other hand, the STJ ruled in March 2015 that news providers are liable for failing to preventively control offensive posts by their users. Judges held that, unlike technology companies such as Google and Microsoft, news portals have a duty to ensure that their platforms are not employed to disseminate defamatory content or violations of the privacy and intimacy of third parties, since their primary activity is providing accurate information to the public. Although there were no reported

61 See Law 12.965 (Marco Civil da Internet), Art. 18: The provider of connection to internet shall not be liable for civil damages resulting from content generated by third parties. Art. 19: In order to ensure freedom of expression and prevent censorship, the provider of internet applications can only be subject to civil liability for damages resulting from content generated by third parties if, after a specific court order, it does not take any steps to, within the framework of their service and within time stated in the order, make unavailable the content that was identified as being unlawful, unless otherwise provided by law.
62 The case law evolved to a notice and takedown model, which means internet providers and content providers were requested to remove the alleged infringing or offensive material within 24 hours upon judicial order. See for instance STJ, Educacional/Yahoo, Resp 1.338.214/MT, decision as of November 13, 2013; STJ, Sassaki/Google, Resp 1.338.214/MT, decision as of December 12, 2012.
64 Court of Justice of the State of Mato Grosso do Sul, Civil Appeal Nº 0816829-25.2014.8.12.0001, decision as of January 26, 2016.
65 Court of Justice of the Federal District. Interlocutory Appeal Nº 20150020218878AGI (0022263-35.2015.8.07.0000), decision as of November 25, 2015.
66 Brazilian Superior Court of Justice (STJ), Appeal to the Superior Court No. 1352053 / AL (March 24, 2014), http://bit.ly/1MP9esA.
charges against media organizations based on this precedent, the ruling may encourage online newspapers and other media to preemptively delete their comments sections to avoid liability.

Although ISPs are not responsible for prescreening content, the STJ consolidated a number of precedents establishing that intermediaries must comply with court-issued notice and takedown requests within 24 hours.\(^\text{67}\) Accordingly, in a June 2014 case, the court issued a decision ordering Google to compensate a user of the former Orkut social network (previously owned by Google) for moral damages, since the company did not immediately comply with an order to remove defamatory content related to false accounts in her name.\(^\text{68}\) Although two bills to create a so-called “right to be forgotten” were proposed in Brazil’s Congress, by which search engines would be required to remove links to personal data upon requests by users, legislative proposals had yet to be brought up for debate.\(^\text{69}\)

### Media, Diversity, and Content Manipulation

As of January 2016, over 99 million Brazilians had active Facebook accounts and 88 million were using the social network via mobile technology.\(^\text{70}\) Blogs and social networking platforms have become important instruments for citizen journalists and others to access information, defend civil rights, and express political points of view. Brazilians can read news from national and international sources, without government restriction. Within such a diverse media landscape, some content providers are neutral and others show bias towards or against the government.

Although self-censorship is less pervasive in Brazil than in some neighboring countries, the ongoing use of threats, intimidation, and violence against online journalists and independent bloggers in certain areas of the country has contributed to pockets of self-censorship (see Intimidation and Violence).\(^\text{71}\)

New blogs in Brazil have no significant difficulty in maintaining themselves online. The Brazilian government has a past history of collecting high taxes on any service, thus bringing the costs of internet and host providing services slightly higher than the international average.\(^\text{72}\) There are no sanctions for not following a specific editorial orientation. According to Article 19 of Marco Civil, website owners can only be held liable for content generated by third parties if, after specific judicial order, they do not comply with the requested measures in a timely manner.\(^\text{73}\)

Ever since the approval of the Marco Civil, the principle of Network Neutrality has been incorporated
into Brazilian law. Enacted in May 2016, a new decree regulating the Marco Civil solidified the rules that prohibit the discrimination or degradation of traffic for commercial purposes while permitting it for emergency and public calamity situations.\textsuperscript{74} Zero-rating and Facebook’s Free Basics program\textsuperscript{75} are thus considered to be barred by this new legislation, and any notice of violation of said principle by companies may be investigated and sanctioned.\textsuperscript{76} However, zero-rating is still a common practice among larger mobile internet companies.\textsuperscript{77}

**Digital Activism**

Social media platforms such as Facebook and Twitter continue to play a central role in civic activism in Brazil. Following a historically tight presidential election in 2014, general frustration over the economy and a massive corruption scandal involving the state-run oil company has contributed to widespread discontent with the government since late 2014. Catalyzed by social media, massive protests in early 2015 brought millions of citizens to the streets to express their political positions, both for and against the government in office.

New protests brewed with the development of a criminal investigation involving the former president Luiz Inácio “Lula” da Silva and the suspension of President Dilma Rousseff from office. In March 2016, Brazil had one of its largest demonstrations, attracting over six million citizens to city streets all over the country, asking for Rousseff’s impeachment.\textsuperscript{78} All major groups involved in the protests, such as “Movimento Brasil Livre” and “Vem Pra Rua,” had very active profiles on social media, which have been crucial to the wide publicity around the demonstrations. On the other hand, the movement in favor of President Rousseff was also supported by social media platforms, with demonstrations all around the country.\textsuperscript{79}

Citizen activism, however, is not merely limited to organizing street protests. Citizens increasingly engage with formal government platforms to express opinions and shape the design and implementation of legislation. For example, the regulation phase of Marco Civil has been marked by high levels of public consultation and democratic participation online—elements that were also present during the drafting of the original legislation. The Ministry of Justice launched the second phase of a public consultation in January 2016 to assess views from citizens, academics, businesses and civil society organizations, concerning the first draft regulation of the Marco Civil. The platform garnered more than 1,500 comments and contributions within 30 days, with roughly 10,000 visits in total. During the first phase of the debate the platform received more than 60,000 visits and close to 1,200 comments.\textsuperscript{80}

\textsuperscript{74} Decree 8.771, May 11, 2016, \url{http://bit.ly/2c7Jgoq}.
\textsuperscript{75} Internet.org changed its name to Free Basics in September 2015.
\textsuperscript{76} Pedro Vilela, “O que muda com o decreto de regulamentação do Marco Civil?” [What changes with the decree regulating Marco Civil?], Instituto de Referência em Internet e Sociedade, May 13, 2016, \url{http://bit.ly/2bLHR39}.
\textsuperscript{77} Rafael Bucco, “América Móvil reavalia oferta de zero-rating no Brasil,” [America Movil reevaluates zero-rating in Brazil], \textit{Telesíntese}, August 2, 2016, \url{http://bit.ly/2crx2sB}.
\textsuperscript{78} For an interactive map of the protests, see: “Map of demonstrations against Dilma, 12/03,” Globo.com, accessed May 30, 2016, \url{http://bit.ly/1R6RTk}.
\textsuperscript{79} Simon Romero, “Protesters Across Brazil Call for President Dilma Rousseff’s Ouster,” \textit{The New York Times}, March 13, 2016, \url{http://nyti.ms/1rPLzoO}.
\textsuperscript{80} “Começa 2ª fase da Consulta Pública do Decreto do Marco Civil da Internet,” [Second phase of the public consultation on the Marco Civil decree begins], \textit{Jota}, January 30, 2016, \url{http://bit.ly/1R5VCvD}.
See also: Ministry of Justice, “Debate sobre o decreto do Marco Civil da Internet finaliza com mais de 1.500 comentários,” [Debate on Marco Civil Decree ends with more than 1,500 comments], March 3, 2016, \url{http://bit.ly/2cE2Jtz}. 

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Brazil is also a founding member of the Open Government Partnership—a global effort to increase transparency and accountability—and, as part of this effort, has significantly improved standards of access to public information in recent years, establishing a system whereby citizens are entitled to request information through an electronic system.\(^8^1\)

### Violations of User Rights

*Brazil's Marco Civil Law established a framework for internet users' rights, but other legal provisions—such as criminal defamation laws and those restricting certain speech during elections—contribute to a legal environment where individuals can face prosecutions for what they write online. High levels of violence in Brazil's urban centers, coupled with impunity for many crimes, have contributed to one of the highest rates of violence against journalists in the region. In addition to attacks on print and broadcast journalists, at least two bloggers were killed between June 2015 and May 2016.*

### Legal Environment

Although Brazil adopted some of the most progressive legislation in the world related to internet governance with the enactment of Marco Civil, several competing legal provisions, such as laws criminalizing defamation and blasphemy and restricting speech around elections, continue to threaten users' rights online (see Content Removal).

The Brazilian Federal Constitution forbids anonymity but protects freedom of the press and freedom of speech, including cultural and religious expression.\(^8^2\) Brazil made noteworthy progress in establishing a foundation for internet user rights with the passage of the Marco Civil Law, a so-called “Constitution for the Internet,” signed into law in April 2014.\(^8^3\) The groundbreaking legislation establishes the right to freedom of expression online, offers detailed privacy protections pertaining to personal data, guarantees net neutrality, and promises to uphold the participatory nature of the internet. On May 11, 2016, during her last hours in office before the impeachment process that suspended her from power, Dilma Rousseff signed into law the decree regulating the Marco Civil law.\(^8^4\) The decree contains specific rules regarding net neutrality (see Media, Diversity, and Content Manipulation) and data protection measures (see Surveillance, Privacy, and Anonymity).

Nevertheless, Brazil continued to see instances of local officials bringing charges of defamation—which is a crime punishable by six months to two years in prison or a fine according to the penal code—against bloggers and online journalists.\(^8^5\) In October 2014, Article 19, a civil society organization, launched a campaign in Brazil to press for the decriminalization of defamation.\(^8^6\)

Brazil has a long history of laws that combat discriminatory speech. Although people are rarely charged or imprisoned for racist or discriminatory speech, Brazilian law establishes penalties ranging from two to five years in prison for practicing or inciting discrimination based on race, ethnicity or

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religion in the media or in other publications.\textsuperscript{87} The “Azeredo Law,” passed in November 2012, extended these penalties to online speech.\textsuperscript{88} The Criminal Code further outlines punishment for vilifying or mocking religion, with penalties ranging from one month to one year in prison, although it is unclear whether these penalties have been applied online. In June 2015, representatives introduced a legislative initiative to Congress that seeks to increase the penalty for vilifying religion to four to eight years in prison.\textsuperscript{89}

In April 2013, a Brazilian cybercrime law commonly referred to as the “Carolina Dieckmann Law” came into force. Nicknamed after actress Carolina Dieckmann, this legislation took center stage after nude photos of her were distributed online in early 2012.\textsuperscript{90} The law criminalizes breaches of digital privacy such as computer intrusion, the “installation of vulnerabilities,” and editing, obtaining, or deleting information—including credit card numbers—without authorization. The distribution, sale, production, or offer of programs or devices meant to facilitate these actions, or to interrupt ICT services, are also categorized as crimes. Associated punishments vary from fines to up to five years imprisonment.

In March 2016, significant criticism also surrounded the approval of a report by a Parliamentary Inquiry Commission, which proposed a series of bills related to cybercrimes. The bills included changes to the original text of the Marco Civil, and were seen by civil rights activists as a threat to freedom of expression, privacy and several other digital rights.\textsuperscript{91} On May 4, 2016, the Parliamentary Commission adopted the final report with 17 votes in favor and six against.\textsuperscript{92} While some of the initial proposals were dropped after significant backlash from civil society and activists, several of the six remaining bills continued to raise concerns among digital rights activists, including a proposal that would enable courts to order the blocking of websites and applications hosted outside the country that are primarily dedicated to crimes punishable with a minimum sentence of two years imprisonment (although the final text clarified that instant messaging apps such as WhatsApp would not be subject to blocking). Another proposal included broadening the scope of the computer intrusion crime under the “Carolina Dieckmann Law,” which would punish any form of unauthorized access into a third-party device.\textsuperscript{93}

**Prosecutions and Detentions for Online Activities**

Prosecutions for defamation continue to pose a threat to freedom of expression online in Brazil. In April 2014, the blogger Paulo Henrique Amorim was convicted of defamation for insulting Merval Pereira, a journalist for *O Globo*, whom he called a “bandit journalist.” Although originally convicted to serve jail time, Amorim’s jail sentence was commuted in favor of a fine of ten times the minimum


salary to be paid to a public or private social impact institution. Amorim’s lawyer stated that her client would appeal the decision. More recently in July 2015, blogger Paulo Cezar de Andrade Prado was arrested after the president of a local soccer club filed a complaint against him. During the investigation, police reportedly found that he had not served a previous criminal defamation conviction for criticizing a lawyer in a blog post and calling him incompetent. As a result, he was sent to jail for four months.

In the midst of ongoing tensions between WhatsApp and Brazilian law enforcement, Facebook’s Vice-President in Latin America, Diego Dzodan, was arrested and briefly detained on March 1, 2016. A judge in the state of Sergipe issued the order, after the company did not comply with multiple requests to hand over WhatsApp user data linked to an organized crime and drug trafficking case. The judge had imposed fines of around US$ 12,500 and then US$250,000 to Facebook, which stated that its use encryption on the app’s messages made compliance with the order virtually impossible. As Dzodan later defended, “The way that information is encrypted from one cellphone to another, there is no information stored that could be handed over to authorities.” The detention did not last long, as a higher instance judge ordered Dzodan’s release the following day. In May 2016, however, the same judge involved in this case ordered the blocking of WhatsApp for 72 hours (see Blocking and Filtering).

### Surveillance, Privacy, and Anonymity

The Brazilian Constitution explicitly forbids anonymity. Although in practice, anonymous speech online is common, judges have occasionally referred to the constitution as a basis for limiting certain instances of anonymous speech. Other judges, however, have upheld anonymous speech on the grounds that it is important for free expression and privacy, ruling that anonymous posts online are protected as long as it is possible to technically trace the speech through IP addresses. The Brazilian Superior Court of Justice (STJ) has held that identification through IP address is a “reasonably effective means for identification” and corresponds to “average diligence” expected from internet providers.

Several legal provisions also place restrictions on anonymity in Brazil. Real-name registration is required for individuals or legal entities in order to purchase mobile phones or to access private internet connections, although the use of pseudonyms in discussion forums across the web is quite common. Lawmakers have urged further restrictions on anonymity with regard to public access points such as LAN houses, suggesting that internet communications should be recorded in order to prevent cybercrimes. Several pieces of legislation of this kind already exist in São Paulo and Rio de Janeiro.

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97 “Polícia prende vice-presidente do Facebook na América Latina em SP” [Police arrests vice-president of Facebook in Latin America], G1, March 1, 2016, http://glo.bo/1TOtu4.
99 See Brazilian Superior Court of Justice Appeals to the Superior Court of Justice No. 1192208-MG, REsp 1186616-MG and REsp 1300161-RS.
de Janeiro,¹⁰¹ and a bill under debate in the Senate would require LAN houses to register all users and keep a directory of individual identification for an unspecified amount of time.¹⁰² The Marco Civil requires internet service providers such as LAN houses to confidentially store connection records in a safe, controlled environment, for at least one year following the provision of the service.¹⁰³ Perhaps the most restrictive legislative proposal during this coverage period was introduced in July 2015, seeking to amend Marco Civil to require users to register their real-name and national registration number to post on social media or blogs.¹⁰⁴ Although the project was rejected in December 2015, it serves as an example of the significant tensions surrounding anonymity in Brazil.

Facebook's Government Requests Report states that between July and December 2015, the company received 1,655 requests for data related to 2,673 separate accounts and produced data for 41 percent of these requests.¹⁰⁵ Brazil consistently figures among the list of countries that send the most requests for user data to Google and Twitter, following the United States and Japan.

Marco Civil Law treats privacy and data protection as fundamental rights, bans the disclosure of users' personal data to third parties—with the exception of police and judicial authorities—and requires providers to make privacy policies and terms of use clear and understandable.¹⁰⁶ Digital rights activists had raised some concerns about Marco Civil's data retention mandate, which imposes obligations on internet connection providers to keep records of their users' connection logs for 12 months, and for application providers to keep records of access for 6 months.¹⁰⁷ Regulations decreed on May 11, 2016 further clarified security measures to be taken by providers regarding log-keeping, including how authorities must request users’ data from intermediaries, the level of technical security said intermediaries must adopt to safeguard logs from being leaked, and other identification and security procedures to be undertaken by the professionals responsible for handling said data, such as the obligation for individual identification and for the use of two-factor authentication.¹⁰⁸

In addition to the Marco Civil and the recent decree passed on May 11, a Privacy and Data Protection Bill is at an earlier stage of development. It aims to establish comprehensive data protection legislation with clear user rights regarding both government and private sector collection and use of data, and intermediary liability regarding the collection, storage and treatment of personal data. Like similar legislation overseas, such as the EU Data Protection Directive,¹⁰⁹ the bill calls for the establishment of a national Data Protection Authority. Unlike many data protection laws in other countries, however, this law specifically mentions internet data protection alongside more general provisions for personal data.¹¹⁰ The latest draft for the bill was prepared following the debate on the enactment of Marco Civil, and after ten months of public consultation promoted through an interactive and

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open platform created by the Brazilian Ministry of Justice, which received over 1.3 million contributions from a variety of civil society sectors. On May 13, 2016 the draft bill was sent to Congress and has undergone discussion within several commissions.

The Brazilian government also seems to be increasing its capacity for surveillance, including national production of surveillance equipment. The country’s defense budget forecast a US$10 billion expansion before 2020, partly investing in technology such as drones. The government, which has invested US$900 million dollars in security equipment, mostly because of the World Cup of 2014, hopes to continue using such equipment for widespread surveillance for the 2016 Olympic and Paralympic Games and beyond.

Intimidation and Violence

Threats, intimidation, and violence against online journalists and bloggers still constitute a major restriction on freedom of expression and human rights in Brazil. At least two bloggers and three other journalists were killed during the coverage period, and many other journalists and online activists reported harassment, threats, censorship, and physical assault.

Most of the murder victims were reportedly targeted for covering local corruption-related scandals. On November 13, 2015 blogger Italo Eduardo Diniz Barros was murdered as he walked on a major road of his town, Governador Nunes Freira, in the state of Maranhão. Diniz was a press officer for the town mayor and had been blogging about scandals and wrongdoings by other local politicians, and his acquaintances reported that he had been receiving death threats since 2012. On April 9, 2016, Manoel Messias Pereira, the owner of news portal sediverte.com, was also shot dead in the state of Maranhão. More recently, on July 24, 2016, João Miranda do Carmo, a crime reporter who owned local news website SAD Sem Censura, was shot outside his home in the state of Goiás. He had reported threats linked to his reporting.

Brazil has kept the 11th position on the Committee to Protect Journalists’ Impunity Index, which tracks countries where journalists are murdered and killers run free. In a meeting with a CPJ delegation in 2014, President Dilma Rousseff committed to support legislative initiatives to federalize the competence for judging crimes against freedom of expression and to adopt a “zero tolerance” policy. Since then, the conviction in 2015 of the murderers of José Roberto Ornelas de Lemos, the administrative director of the daily Hora H, has been considered a benchmark for justice and human rights. Lemos was shot at least 41 times in 2013 after writing about the spread of militias allegedly led by corrupt police officers in the suburb of Nova Iguaçu. In November 2015, police arrested six...
people accused of running a militia believed to be directly linked to Lemos’ murder. The arrests also resulted in the creation of a new homicide division in the city. However, most condemnations still only target the direct perpetrators of these crimes, allowing their planners to escape justice.

Harassment during political coverage is also a serious concern in Brazil. Online bloggers and journalists who work in poor or rural areas and are not linked to major urban media outlets may face more harassment because they lack visibility and support. Under such circumstances, authorities feel little pressure to solve attacks on the provincial press. Unsolved attacks on journalists may in turn dissuade local reporters from investigating crime and corruption in their regions.

**Technical Attacks**

Although the government has made efforts to strengthen cybersecurity, Brazil remains the top source and target of cyberattacks in Latin America. While their peers elsewhere usually concentrate on trans-border, global attacks, Brazilian hackers favor local operations, relying on a perception of impunity and on an expansive basis of potential victims. They mostly use surface web, forums, social networks and apps to facilitate their activities, and share know-how, ranging from malware development to phishing, banking fraud activities and botnets. Attacks seemed to escalate during the coverage period, as national hackers have been developing underground connections with more experienced criminals, especially in Russia and Eastern Europe.

In September 2015, Reporter Brasil, a nonprofit association of journalists, reported cyberattacks to its platform and website. A series of investigative reports on the fight against forced labor and complaints against major companies in the food industry were altered or deleted.

The financial sector was the main target for hackers, followed by the chemical, manufacturing and mining industries. A report published by the Brazilian Banking Federation in December 2015 found that, despite an investment of some US$500 million to fight cybercrime, banks have borne an equal amount of electronic fraud-related losses. Traditional attacks related to phishing and malicious downloads run in tandem with more specific vulnerabilities such as pernicious extensions or plug-ins for Google Chrome and Mozilla Firefox, the most popular internet browsers in Brazil. Mobile phones, tablets, wearables and smart home appliances have also grown as a common target for offenders, since users tend to be more reckless in providing protective tools for such products.

120 “Brasil é o terceiro país que mais realiza ataques cibernéticos no mundo,” [Brazil is the third country that carries out the most cyberattacks in the world], August 19, 2015, http://bit.ly/1YwiDrV.
The National Agency of Telecommunications (ANATEL), Brazil’s main regulatory body for the telecommunication sector, suffered a major DDoS attack at the end of April 2016, remaining offline for over 24 hours. The attack followed the announcement by major ISPs that they would introduce data caps for fixed broadband, causing major uproar among all sectors of Brazilian society.\^127

Brazilian authorities have made some efforts to increase cybersecurity and invest more resources in overcoming current obstacles. Since 2008, Brazil has engaged in a multi-stakeholder debate to develop its cybersecurity agenda, which resulted in the opening of a National Cyber Defense Command, and a National School for Cyber Defense aimed at preparing military personnel for the use of cyber tools on national defense.\^128
