Brazil

Despite boasting some of the most progressive and comprehensive legislation on digital rights, internet freedom in Brazil is undermined by the proliferation of false information, including through the apparent coordination of people connected to the government; the introduction of problematic legislation that undermines both freedom of expression and privacy rights; and violence and intimidation against digital reporters, activists, and others.

General elections in 2018 tested Brazil’s democracy and public debate. Far-right candidate Jair Bolsonaro of the Social Liberal Party (PSL) secured the presidency in October 2018 after defeating the Workers’ Party (PT) candidate, Fernando Haddad. Pledging to wipe out corruption and violent crime, Bolsonaro’s aggressive campaign was also marked by attacks on media and homophobic and racist rhetoric, which continued following his inauguration. High levels of harassment and violence, coupled with impunity, continue to threaten independent journalists and civil society activists.

**Key Developments, June 1, 2019 - May 31, 2020**

- Competition among internet service providers (ISPs) has grown in recent years, with regional ISPs capturing over 30 percent of the market by September 2019 and offering service equivalent to or better than that of Brazil’s traditionally dominant providers (see A4).
- The website of Women on Waves, a reproductive rights organization, was blocked during the coverage period by two of the country’s main ISPs (see B1).
- On Christmas Eve, a right-wing group attacked the offices of a comedy troupe whose Netflix Christmas special had depicted Jesus Christ as a gay man. Neither Bolsonaro nor the minister of justice spoke out against the attack. Shortly after, in January 2020, a Brazilian judge ordered Netflix to remove the Christmas special, but Netflix was permitted to keep the film on its platform after appealing to the Supreme Court (See B2 and B4).
- A problematic “fake news” bill introduced in May 2020 and approved by the Senate after the coverage period would seriously undermine internet freedom, including by criminalizing certain content, creating identification requirements for social media and communications platforms’ account holders, and obliging private-messaging apps to retain communications (see B2, C1, C2, C4, and C6).
- In May 2020, the Supreme Federal Court reported that it had identified the existence of a criminal association dedicated to the coordinated spread of false news, led in part by one of President Bolsonaro’s sons. Another allegation arose about a publicly funded “office of hate” within the government whose employees attack critics of the president online (see B5).
- At least two journalists who worked online and covered local news—Leonardo Pinheiro, who reported locally from the city of Araruama, and Romário Barros, who covered local news in Rio de Janeiro State—were shot and killed during the coverage period, possibly in connection with their work (see C7).
In September 2019, the online magazine AzMina reported on securing an abortion in Brazil. The article generated considerable backlash, including attacks over Twitter and Facebook, and the AzMina website was inaccessible for a few hours (see C8).

While internet penetration has increased in recent years, access varies along geographic and socioeconomic lines. Regional internet-service providers (ISPs) have grown in popularity, reaching over 30 percent of the market by September 2019.

A1 1.00-6.00 pts 0-6 pts

Do infrastructural limitations restrict access to the internet or the speed and quality of internet connections?

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While some 75 percent of households have access to the internet, according to the 2020 Inclusive Internet Index, Brazil’s access rates remain below average compared to many North American, European, and even some Latin American countries like Argentina and Chile. There has been a notable growth in cable and fiber-optic use in recent years. On the other hand, 20 percent of households with internet access still reported connection speeds under 5 Mbps in 2018, according to the most recently available data.

Mobile penetration has grown significantly, and mobile-broadband connections have quickly become a primary means for Brazilians to access the internet. The 2020 Inclusive Internet Index reported that Brazil had 99 mobile subscriptions per 100 inhabitants. According to data from 2018, the most recently available, some 56 percent of users accessed internet exclusively via mobile phone. However, there has been a slight drop in the number of mobile subscriptions over the past years.

The number of smartphones with fourth-generation (4G) technology for mobile networks has increased since it was introduced in April 2013. In 2019, Brazil also improved 4G availability. The country’s level of 4G access continues to grow at a rapid pace, particularly from the operator TIM, whose networks have the greatest capability of reaching 4G availability, according to a July 2019 report by Opensignal. The quality and speed of 4G services in Brazil have also improved, though better results are concentrated in wealthy urban centers in the southeast, such as Belo Horizonte, Rio de Janeiro, and São Paulo. Claro led the market in speed, with an average 4G download speed of 27.2 Mbps, while its 3G download speed is 5.4 Mbps. Oi, the main mobile operator in the Northeast Region, has an average download speed of 2.8 Mbps for 3G, and 12.7 for 4G.

The use of public access points is still relatively low, but has increased in the past four years, thanks to the expansion of free Wi-Fi hotspots and public policies promoting free internet access in public spaces, mainly urban areas. Mobicare, which is responsible for Oi and Claro’s hotspots, registered more than 6 million hotspots with 2 million monthly active users as of October 2019. In comparison, Brazil’s telecommunications regulator, the National Telecommunications Agency (Anatel), had registered around one million hotspots in the country in 2016.
Brazil’s federal government has implemented a number of internet expansion and improvement programs since 2010, including the National Broadband Plan (known as PNBL). Although there have been improvements in internet access since its launch, the PNBL was criticized by civil society organizations for the low quality of broadband connections offered at popular prices. Critics also noted the plan’s poor or nonexistent conditions in rural areas.

In 2017, the Ministry of Science, Technology, Innovation and Communications (MCTIC) launched a public consultation for a new national connectivity plan, Internet para Todos (Internet for All), to expand access to underserved areas and improve fixed- and mobile-broadband infrastructure in the country, including by providing satellite-broadband connectivity via Brazil’s first defense and strategic communications satellite, launched in May 2017. After a lengthy legal dispute, in May 2019 the contract between state-owned Telebrás and the global telecommunications firm Viasat was finally approved to continue to roll out high-speed internet services via the satellite. The companies said that over 3,000 schools were connected in 2019, benefiting students especially in rural or remote areas. As reported in May 2020, the satellite connects 11,450 points, most of them public schools. In the same month, the government froze public spending by Telebrás and announced plans to privatize the company.

In April 2020, Bolsonaro signed Decree 10.282/2020, which defined telecommunication services and internet access as “essential services” that must be provided during the COVID-19 crisis. In October 2019, Bolsonaro signed Law 13.789/2019, which reforms the 1997 telecommunications law. Instead of a concession system, in which telecommunication assets are returned to the government and companies pay fees, the legislation shifts to providing authorizations for telecommunication services, enabling providers to directly own these assets. As providers are thus able to sell assets, the project is seen as a major driver of investments to expand internet coverage; it also releases companies from their obligation to invest in the maintenance of public telephones and fixed-telephony infrastructure. The law also promotes investment in broadband infrastructure, particularly in more remote areas. As of June 2020, the MCTIC was crafting implementing guidelines for the new law.

A2 1.00-3.00 pts

| Is access to the internet prohibitively expensive or beyond the reach of certain segments of the population for geographical, social, or other reasons? | 1.001 |
| | 3.003 |

Geographic and socioeconomic disparities in internet access persist in Brazil. The most recently available study, from 2018, shows that internet use is lower in rural areas (49 percent) and the North and Northeastern Regions (64 percent), as well as among lower-income groups. Price is considered a main barrier: in 2018, 61 percent of households that did not have any access said it was because it was too expensive. In April 2020, though, a court decision determined that consumers could not lose internet access if they did not pay their bill. Anatel’s appeal of the ruling was rejected.

Limited mobile plans that include zero-rating agreements—which provide free internet access under certain conditions—for unlimited access to certain platforms are common in Brazil. Some observers viewed this as a
contributing factor in the spread of disinformation via WhatsApp during the 2018 elections.30

Sharing internet connections is a common practice in Brazil, particularly in poorer neighborhoods. In 2018, the national telecommunications regulator, Anatel, stated it may allow the blocking of TCP/IP ports of “home providers” who shared their residential connections.31 According to the regulator, this would not violate the net-neutrality principle. However, as of July 2020 the regulator had not followed through on the suggested policy.

Higher data usage poses additional costs, and lower-income users tend to have connection plans with low data caps. According to Anatel, 55 percent of mobile internet connections were prepaid in March 2020, typically with low data caps. The freedom-of-expression organization Intervozes has urged regulators to prohibit disconnection after data caps are reached.32 Before becoming president, Jair Bolsonaro presented in 2017 a draft bill that would reform an article in the Marco Civil, the country’s civil rights framework for the internet, and prohibit data caps for broadband internet access.33 However, in February 2019 the government announced that such a reform was not a priority.34

A3 1.00-6.00 pts 0-6 pts

| Does the government exercise technical or legal control over internet infrastructure for the purposes of restricting connectivity? | 6.006 6.006 |

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.

Judicial orders have at times blocked communications apps for not fully complying with information requests as part of criminal investigations, although no new such cases emerged during the past year. In 2015 and 2016, service providers temporarily blocked WhatsApp on three occasions in compliance with judicial orders (see B1).35 There was also a judicial threat to block Facebook in March 2018 if the platform failed to swiftly remove “false information of criminal content” related to the murdered politician Marielle Franco, but the order was not implemented.36

Concerns have been raised regarding the army’s authorization to use “jammers” during the Olympic Games and other operations.37 According to authorities, the use of such equipment would primarily target drones,38 but using them to block mobile phones was not discarded.39 The measure was criticized for lack of transparency (the act that authorized the army to use jammers was deemed “secret”) and the absence of specific legislation regulating their use.40 The armed forces were also authorized to use jammers during Independence Day celebrations on September 7, 2018.41 In October 2019, Anatel approved the use of jammers in areas where Bolsonaro and Vice President Hamilton Mourão are located. The authorization is valid until 2022, and the purpose of the jammers is reportedly to prevent the remote activation of explosive devices. In addition, the jammers’ use is to be limited to discrete situations and must be based on concrete evidence.42

Over the past decade, private backbone infrastructure, such as that of Oi, GVT and Embratel, has expanded in
Brazil. In 1998, the state-owned company Embratel, which was responsible for building the internet backbone, was privatized and acquired by the US company MCI; it was later acquired by the Mexican telecom América Móvil in 2003.

Internationally, undersea cables connect to Brazil from North America and Europe. In April 2017, the Spanish and Brazilian governments confirmed plans to build the first undersea fiber-optic cable linking Brazil to Europe, set to be completed in 2020. Part of the impetus for building these connections is related to a desire to avoid reliance on US infrastructure after revelations of pervasive US spying on Brazilians in 2013, although there are still ongoing projects to construct cables connecting Brazil to the United States.

In 2004, the Brazilian Internet Steering Committee (CGI.br) launched the PTT Metro initiative to create internet exchange points (IXPs) across Brazil, and it has expanded ever since. As of March, the IXPs counted about thousands of participants, including ISPs, telecommunications operators, content providers, content delivery networks, academic networks, and research, government, and business customers.

A4 1.00-6.00 pts 0-6 pts

| Are there legal, regulatory, or economic obstacles that restrict the diversity of service providers? | 5.005 6.006 |

Score Change: The score improved from 4 to 5 due to the growth in recent years of regional internet-service providers (ISPs), which have gained over 30 percent of the market and offer service that is comparable to or better than that of the dominant providers.

There are no significant legal or economic barriers for companies competing in the ISP, mobile, or digital technology sectors. Concentration in the mobile market remains high, though the situation is improving: as of January 2020, three large private companies—Oi, Claro and Vivo (Telefônica Brasil)—represented nearly 70 percent of the country’s broadband market, down from almost 80 percent in 2017. As of January 2020, four large private companies—Vivo, TIM, Claro, and Oi—held around 97 percent of the mobile market. Such high market concentration could make it very difficult for other providers such as Algar and Nextel to compete in the mobile sector. Moreover, recent changes to the 1997 telecommunications law could pave the way for Oi to merge with another company, such as TIM.

As of 2018, regional ISPs were responsible for almost 20 percent of the broadband market share in Brazil, but they face several growth barriers, particularly, high taxes. In 2018, some states started to reduce taxes applicable to local ISPs. The measure was poorly received by big telecommunications companies, which claimed that it threatens competition.

Nonetheless, regional ISPs have grown at a fast rate, creating more competition in the broadband sector. A September 2019 survey showed that regional ISPs, composed of more than 14,000 providers, had captured a market share of 31.5 percent. The quality of these ISPs’ services are reportedly equal to or higher than those of the traditionally dominant companies. Moreover, regional providers have filled demand in small and medium-sized cities, while the licensing process has become easier. Consequently, these providers are market leaders in about 3,500 municipalities, compared
to around 2,500 in 2017 (Brazil has a total of 5,570 municipalities).\textsuperscript{55} Anatel data from the third quarter of 2019 also revealed that, over the last year, there was a 34.59 percent rise in subscribers to small ISPs, which are increasingly strong in the countryside.\textsuperscript{56}

However, organizations supporting the development of community networks in the country face challenges, particularly due to excessive bureaucracy to register and various spectrum-management policies in place.\textsuperscript{57}

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<th>Do national regulatory bodies that oversee service providers and digital technology fail to operate in a free, fair, and independent manner?</th>
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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.\textsuperscript{58}

Anatel is administratively and financially independent, and not hierarchically subordinate to any government agency. Its decisions are only subject to judicial review in national 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.

Anatel has received some criticism for aligning with private interests. For example, in 2016, Anatel supported policies establishing data limits on home-broadband internet, but backtracked following public criticism. A study from 2015 found that many of Anatel’s former regulators joined the telecommunications industry following their mandates.\textsuperscript{59}

More recently, in a move that has allowed more small and regional ISPs to compete in the market, Anatel simplified licensing processes and other requirements (see A4).\textsuperscript{60} Moreover, in November 2018, Leonardo Euler de Morais was appointed as president of the agency, marking the first time the role went to a career civil servant.\textsuperscript{61}

The government also created the Brazilian Internet Steering Committee (CGI.br) in 1995, a multistakeholder 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 the Civil Rights Framework for the Internet (Marco Civil) mandate that the government consult with CGI.br, and in various instances directly involve the committee, in policymaking and implementation of Marco Civil processes, but a clear mechanism has not yet been established.

CGI.br’s members are government officials and representatives from the private sector, civil society, and science and technology community.\textsuperscript{62} 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. In June 2009, CGI.br published Principles for the Governance and Use of the Internet, which include online freedom, privacy, human rights, and net neutrality as a foundation for the Brazilian
Many of these principles were adopted into Brazilian law through the Marco Civil in 2014. In April 2019, the government issued a decree abolishing several participatory spaces in the federal government. The announcement raised doubts as to how it would affect CGI.br. However, according to CGI.br member Flávia Lefèvre, a government representative said the CGI.br would not be affected. In 2017, there was an outcry after the government proposed a public consultation to advance significant changes in CGI.br’s representation and election mechanisms, without prior dialogue with the multistakeholder community. Some critics said the government had sought to increase its control over the body. Following these events, CGI.br itself proposed a broader public consultation with representatives of various sectors at the end of 2017 and continued to support a multistakeholder approach.

The website of a reproductive-rights organization was blocked during the coverage period, while Netflix successfully appealed a judge’s order to remove a film by a Brazilian comedy group that depicted a gay Jesus. A problematic fake news law introduced in May and passed by the Senate after the coverage period violates the current legal framework on intermediary liability. The spread of disinformation was prevalent, some of which reportedly originated from a criminal organization connected to one of Bolsonaro’s sons.

Score Change: The score declined from 6 to 5 because the website of a reproductive-rights organization was blocked during the coverage period.

There are no proven indications that Brazilian authorities filter messages or engage in widespread blocking online. Social networks, communication apps, and video-sharing platforms such as Facebook, Twitter, YouTube, Vimeo, and Vevo are for the most part freely accessible, and are widely used in Brazil. However, an October 2019 report by the Open Observatory of Network Interference (OONI) found that the website of Women on Waves, an organization that promotes reproductive rights, was likely blocked by several networks in Brazil, including two of the main ISPs, Claro and Vivo. Abortion is outlawed in the country except in cases of rape, when the pregnant person’s life is threatened, or if the fetus has a rare and likely fatal brain deformity.

The Intercept noted that Censored Planet, a research lab based at the University of Michigan, had also confirmed OONI’s findings. The Intercept also reported in December 2019 that Women on Waves remained inaccessible on Claro, but was available on Vivo. The latter, though, reportedly blocked the site intermittently.

There have been no new judicial orders to block WhatsApp in recent years. There were four such cases in 2015 and 2016, in which telecom companies were asked to temporarily block access to the app after they failed to comply with information requests as part of criminal investigations. One order was suspended before the app was blocked, and three shutdowns were implemented. WhatsApp argued that requests to turn over information were technically
impossible due to its end-to-end encryption system (see B3, C4).  

B2 1.00-4.00 pts 0-4 pts

| Do state or nonstate actors employ legal, administrative, or other means to force publishers, content hosts, or digital platforms to delete content? | 2.002 4.004 |

Lawsuits and legal threats have been frequently used, particularly by politicians and political authorities, to restrict the circulation of content criticizing them. Certain legal provisions criminalizing defamation and blasphemy and restricting speech around elections continue to put constraints on content online. Brazilian cybercrime legislation also limits certain online content.

In January 2020, a Brazilian judge ordered Netflix to remove comedy group Porta dos Fundos’s Christmas special, which depicted Jesus Christ as a gay man and had been the subject of extensive criticism in Brazil. Netflix was permitted to keep the film on its platform, after appealing to the Supreme Court. (see B4).

During the 2018 election campaign, ABRAJI recorded at least 500 legal attempts by Brazilian politicians to hide critical social media posts, online news articles, or blog posts. Jair Bolsonaro was among the most active proponents of such judicial actions, filing at least 31 cases. In half of overall cases, judges ruled in favor of removing the content. In some of these cases, requests also sought to prevent the future publication of certain content. Most of the requests cited defamation or violations of electoral laws. Some 70 percent of reported cases targeted content on Facebook.

In the run-up to the 2018 general elections, several initiatives sought to tackle the proliferation of offensive or false information online. A resolution on electoral propaganda issued in December 2017 was invoked to order the removal of content disclosing "facts that are known to be untrue" about candidates. In June 2018, the Superior Electoral Court (TSE) issued its first decision on the matter and gave Facebook 48 hours to remove several posts linking presidential candidate Marina Silva to corruption investigations.

Between January and June 2019, Google received 494 government requests for content removal, most of them for defamation (218) and privacy and security (146). During this period there was a request for removing two blog posts with critical content against the work of federal judges; the posts were removed, and 18 URLs were delisted, though Google indicated it had appealed the court order. Another request related to reporting on corruption by a businessman; two URLs were delisted based on a court’s ruling in favor of the right to be forgotten and their classification as “fake news.” Facebook’s Transparency Report indicates that around 1,000 pieces of content were restricted between January and June 2019, “in compliance with orders from local courts related to civil, criminal, and electoral proceedings;” the affected content decreased compared to 2018. The government issued 33 removal requests to Twitter during the second half of 2019, and the company complied with 45.4 percent.

B3 1.00-4.00 pts 0-4 pts
Do restrictions on the internet and digital content lack transparency, proportionality to the stated aims, or an independent appeals process?  

Brazil’s Marco Civil da Internet, the civil rights framework for the internet in Brazil known as the “Internet Constitution,” has clarified issues related to intermediary liability to protect freedom of expression, grant due process, and prevent prior censorship, establishing that service providers are only held liable for third-party content if they fail to remove content after a specific court order.82 Despite boasting some of the most comprehensive legislation on digital rights, Brazil’s Marco Civil was used as a key argument for disproportionate orders to block WhatsApp. Bills in Congress have proposed to restrict the power of judges to order blockings of such magnitude,83 but none had advanced as of June 2020.

In response to the spread of disinformation during the 2018 election campaign, social media companies took a more proactive role in removing accounts and pages that evidenced “coordinated inauthentic behavior” and violated their terms of service.84 Some of these actions prompted concern from civil society organizations and activists, given the lack of transparency and due process mechanisms. In July 2018, Facebook said it had removed a network of 196 pages and 87 accounts that were being used by a right-wing activist group “for the purpose of sowing division and spreading misinformation.”85 Facebook’s action led the most-affected group to demand that the Supreme Court order a presidential norm regulating which content may be removed from online platforms.86 The request was denied. Again, in August 2018, Facebook removed 74 groups, 57 accounts, and five pages for violating its real-name and spam policies.87

In October 2018, during the second round of the presidential election, WhatsApp banned several accounts after reports alleged that the platform was being illegally used by Jair Bolsonaro’s campaign (see B5).88 In January 2019, WhatsApp decided to globally restrict the possibility of forwarding messages through its app to a maximum of five groups or individuals in response to the spread of misinformation.89

In June 2020, after fast-tracked procedures, the Senate approved draft bill PL 2630/2020, dubbed the “fake news bill.” (see C1, C2, C4).90 The proposed act would sanction platforms that fail to provide transparency reports, label bots, or highlight corrections from independent fact-checkers. According to its text, internet platforms must apply “responsible verification” instead of moderating and removing content. Civil society groups sharply criticized lawmakers’ move to rush the bill through Senate procedures, as well as the bill itself for violating the Marco Civil’s provisions on intermediary liability.91 If the legislation is passed by the Chamber of Deputies, it must then be approved by Bolsonaro.

The WhatsApp blocking orders in 2015–16 resulted in two legal actions at the Constitutional Court; the Supreme Federal Court held its first public hearings on the matter in June 2017.92 A claim for violation of constitutional rules (Arguição de Descumprimento de Preceito Fundamental) argues that the decisions to block WhatsApp were illegal because they breached the right to communication and disproportionately affected millions of consumers and internet users.93 On the other hand, a Direct Unconstitutionality Action (Ação Direta de Inconstitucionalidade), argues that the Marco Civil’s provisions used for the blockings are illegal under Brazilian constitutional law. Article 12 of the
Marco Civil establishes sanctions for violations of Articles 10 and 11, which require application providers to disclose the content of private communications exclusively under judicial orders. Some critics argue that a “temporary suspension” would violate the same right to communication established by the Constitution. Several experts have argued that Article 12 of the Marco Civil does not allow for the entire blocking of sites and applications, but only concerns data collection and treatment activities mentioned in Article 11. The case resumed in May 2020 at the Supreme Federal Court and focused on the encrypted nature of WhatsApp (see C4).

Intermediary liability issues have been settled by a case law established by the Brazilian High Court of Justice (STJ) and by statutory provisions enacted by the Marco Civil in 2014. 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 the dissemination of sexually explicit photos or videos without the consent of the individual appearing in them. In cases pertaining to the latter, the user’s notification alone is enough to make the intermediary liable, should it refuse to make the content unavailable in a short time.

However, in 2018, the Supreme Court agreed to consider an appeal filed by Facebook Brasil on the constitutionality of Article 19 of the Marco Civil, which holds that service providers are liable for third-party content only if the content is not removed after a court order. A lower court in the state of São Paulo had ruled that a fake profile of the plaintiff must be removed but declined to grant compensation for damages. An appeals court, however, judged that the social media platform was required to compensate the plaintiff. Several organizations that were denied permission to participate as amicus curiae, including InternetLab and CGI.br, met with court ministers to explain the importance of Article 19, leading the court’s president to postpone the case and schedule a public hearing in March 2020, which was postponed due to the COVID-19 pandemic.

An October 2019 decision by the STJ set an important precedent in intermediary liability. The case appealed a previous ruling that compelled the e-commerce company Mercado Livre to remove advertisements from its platform. Mercado Livre argued that it was not responsible for the content of advertisements and could not remove them because the URLs were not provided. The STJ sided with Mercado Livre and stated that the URLs must be provided in removal requests, which should come from a private notification or a court order. The decision helps limit removal requests based only on broad complaints, such as claims that content violated someone’s honor.

Other cases on content removal were settled during the coverage period. In March 2020, Justice Luiz Fux, from the Supreme Court, suspended a decision by a court in Amazonia that ordered the withdrawal of a lawyer’s social media publication, which alleged that a state magistrate was absent during working hours. Fux noted that the removal order could constitute prior censorship.

In October 2019, the investigative outlet Repórter Brasil won a legal case that had asked it to remove an article from its website about slave-like conditions for bricklayers that allegedly offended the plaintiff’s honor. The court sided with the outlet, noting the constitutional right to free press and that removal would constitute censorship. The judge also recognized that the investigation was factually correct at the time of publication. Repórter Brasil had also won a similar case that September.
In November 2016, the STJ unanimously ruled that the “right to be forgotten” cannot be imposed on search engines such as Google. However, in May 2018, it reversed the decision when in a lawsuit against Google, Yahoo!, and Microsoft, it granted the “right to be forgotten” to a public prosecutor whose name appeared in search results associated with fraud allegations in a public tender. Although four 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 debated, and no substantive discussions on the bills was held during the coverage period.

B4 1.00-4.00 pts 0-4 pts

Do online journalists, commentators, and ordinary users practice self-censorship? 3.003 4.004

Threats and violence against online journalists and independent bloggers in certain areas of the country have contributed self-censorship (see C7). The climate of intimidation escalated during the polarized 2018 election campaign which saw President Bolsonaro’s rise to power, as both the leader and his followers launched online intimidation campaigns against critics. He has continued to intimidate journalists since his election.

A January 2020 report by the National Federation of Journalists (Fenaj) recorded 208 attacks against media outlets and journalists that occurred in 2019—with “attacks” meaning physical assaults, verbal harassment, and legal harassment. The group said that Bolsonaro was responsible for 121 of the offenses, most of which were instances of harassment in official statements from the office of the president. During the same period, Brazil registered a 54 percent increase in attacks. The rise in harassment and assaults has contributed to self-censorship by online journalists and outlets.

In a country where LGBT+ people are at significant risk of being the targets of violence, homophobic attacks can encourage self-censorship. A Christmas Eve attack was perpetrated against the comedy group Porta dos Fundos in 2019. A right-wing group firebombed the production company’s office in response to its Christmas special on Netflix, in which Jesus Christ was depicted as a gay man. Neither Bolsonaro nor the minister of justice spoke out against the attack.

In a separate incident that could encourage self-censorship, Bolsonaro, when questioned at a press conference in December 2019 about a corruption scheme involving his son, directed homophobic remarks at the reporter.

Among journalists, there was also an increased feeling of self-censorship around the use of Telegram after the Intercept reported in June 2019 on a series of leaks of Telegram messages between the prosecutor and judge on the corruption case against former president Lula; the chats showed unethical conduct by the judge. The investigation ultimately led to the revelation that the Telegram accounts of many state officials had been hacked, and four people unconnected to the Intercept were arrested on hacking charges in July. In addition, Greenwald and other Intercept staff were threatened and in January 2020 charged with participating in the hacking. Amid heavy criticism, the charges were later dismissed due to lack of sufficient evidence (see C3).
Additional incidents that could encourage self-censorship among online journalists occurred near the end of the coverage period. On May 25, newspapers *Folha de São Paulo* and *O Estado de S. Paulo* decided to suspend their coverage at Palácio do Alvorado, the official presidential residency because Bolsonaro supporters were constantly threatening journalists, calling them "garbage," "rats," and "communists." On May 3, World Press Freedom Day, Brazilian journalists were attacked, insulted, and expelled from a Brasília demonstration in favor of the government and against Congress and the Supreme Federal Court. A photographer from Dida Sampaio, was knocked off a small ladder and beaten.

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<th>B5 1.00-4.00 points</th>
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<td>Are online sources of information controlled or manipulated by the government or other powerful actors to advance a particular political interest?</td>
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*Score Change: The score declined from 2 to 1 due to allegations that the Bolsonaro government has a publicly funded "office of hate" used to attack critics of the president online. In addition, a Supreme Court investigation named a son of Bolsonaro as an organizer of a criminal association focused on the coordinated dissemination of false news.*

Manipulated content is common in the Brazilian online environment, with a notable proliferation of fake news during the 2018 election campaign. The problem has become worse since then, as judicial reports have pointed to the existence of a fake news network allegedly organized by a criminal organization believed to include one of Bolsonaro's sons. Moreover, a former ally of Bolsonaro has come forward with claims that the president is directing funds to a so-called office of hate, in which employees attack Bolsonaro’s critics online.

In a report released in May 2020 as part of an investigation into pro-Bolsonaro criticism of the Supreme Federal Court on social media, the court said it had identified the existence of a criminal association dedicated to the spread of false news. In the investigation, the federal police named Carlos Bolsonaro, a son of President Jair Bolsonaro, as an organizer of the scheme. In what may have come as a response to the investigation, President Bolsonaro dismissed federal police director Maurício Valeixo, which in turn prompted the resignation of Justice Minister Sergio Moro in protest of what he called Bolsonaro’s inappropriate political interference in police operations.

Separately, in December 2019, former ally of president Bolsonaro, Joice Hasselmann, accused the administration of having an "office of hate." Equipped by a so-called "digital militia" comprised of publicly funded civil servants, the office reportedly serves as a center from which to attack enemies of the president online, including politicians and journalists. Bolsonaro has denied the existence of such an office.

In July 2020, Bolsonaro, through the attorney general's office, filed a lawsuit against the Supreme Court protesting the decision in May of Justice Alexandre de Moraes ordering Twitter and Facebook to remove accounts of influencers, businesspeople, and politicians supportive of Bolsonaro due to disinformation campaigns. The justice reaffirmed the decision in July. Facebook adhered to the order in August, blocking 12 accounts.
Separately, in July 2020, Facebook removed dozens of fake accounts linked to the Bolsonaro family, saying the accounts violated the platform’s policies, and that some promoted hate speech and political attacks. In all, 35 Facebook accounts, 14 pages, and 38 Instagram accounts were removed.122 Earlier, in March 2020, two posts from Bolsonaro in which he called for social distancing to end and endorsed the unproven treatment hydroxychloroquine for COVID-19 victims were removed from Twitter for violating its policies on COVID-19.123

Social media was a prominent playing field for political campaigning during the 2018 elections, as new rules allowed sponsored political advertisement online.124 Despite efforts to prevent and curtail the spread of fake news,125 disinformation proliferated on various platforms, with the mission of international observers sent by the Organization of American States (OAS) calling the rate of disinformation “unprecedented” and mainly linked to the use of private communication platforms, notably WhatsApp.126 The app among other things was frequently misused to send bulk-messages to multiple numbers obtained through scraping software.127 A study analyzing 110 open groups on WhatsApp detected evidence of total or partial automation in the sharing of messages and images.128 (The use of automation software to spread messages is prohibited.)

In October 2018, Folha de S. Paulo reported that Jair Bolsonaro was benefiting from a network of big businesses using undeclared funds to disseminate pro-Bolsonaro messages via WhatsApp.129 Bolsonaro denied the accusations, qualifying the bulk messaging as “voluntary support.”130 The scheme was denounced to the electoral court and remained under investigation.131 In June 2019, Fernando Haddad’s team renewed demands to investigate alleged illegal campaigning after new evidence emerged suggested that Brazilian companies contracted a Spanish marketing agency to promote political messages in favor of Bolsonaro on WhatsApp.132 Although there is no hard evidence of Bolsonaro’s involvement, undeclared donations are considered illegal according to Brazilian electoral law.

Candidates and elected authorities were also key in spreading disinformation online. Bolsonaro’s son Flávio, who was elected a senator in 2018, was central in pointing out an alleged fraud in the electronic voting system that would benefit Fernando Haddad in the first round. His brother Eduardo, also a senator, supported the information even after the electoral court said it was false.133 In a climate of great polarization, such messages heightened tensions surrounding election results. The president repeated similar allegations at an event in the United States in March 2020, which was countered by a member of the Superior Electoral Court.134

In July 2019, Congress established a committee to investigate the use of fake news in the 2018 campaign.135 In August 2019, the Superior Electoral Court organized an international seminar about fake news and elections.136 It was also announced that the official records of the meetings held by the Consultative Council on Internet and Elections will only be released in 2023. The secrecy was decreed in a November 2018 ordinance signed by the then secretary-general of the Presidency of the Superior Electoral Court.137

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<td>Are there economic or regulatory constraints that negatively affect users’ ability to publish content</td>
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Regulatory and economic constraints are relatively minor in Brazil.

Brazil lacks a regulatory framework around the use of public funds for state advertisement in media outlets, including online media. Discriminatory use of state advertisement for political control remains a concern at the federal and local levels in Brazil. In 2017, the institution responsible for monitoring information about state advertisement was closed. In 2017, the institution responsible for monitoring information about state advertisement was closed.

Data from the presidency’s communication secretariat, obtained through freedom of information requests by O Globo, show that between January 2017 and July 2019 over 28,000 advertisements by Petrobras and Eletrobras were aired on YouTube channels, including that of blogger Allan dos Santos, a Bolsonaro supporter who is under investigation in a Supreme Court inquiry. Another database revealed that 11 websites and channels received over 390,000 ads from the government between June and August 2019.

During his electoral campaign, Bolsonaro threatened to cut off state advertisement from a newspaper that had been reporting on irregularities in his campaign. After taking office, he said that the government would cut advertisement to media as a strategy to guarantee independence. These declarations came in conjunction with criticism against the press for its “partiality.”

While historically much of the advertising budget has been directed at television, priority has increasingly shifted to online platforms. In February 2019, according to Folha de S. Paulo, channels aligned with Bolsonaro’s government complained about the lack of state advertisement. In April 2019, however, quarterly data showed a 63 percent increase in advertisement expenditures, compared to the previous year. The main beneficiary was a channel led by a bishop, which had explicitly supported Bolsonaro during his campaign.

Since the approval of the Marco Civil, the net neutrality principle 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. Any notice of violation of said principle by companies may be investigated and sanctioned. However, zero-rating is still a common practice among mobile internet companies.

Brazil’s online sphere is vibrant, featuring many frequently updated websites and social media pages that examine the issues of the day from a variety of perspectives. However, many users have limited access to information beyond social media platforms given the widespread practice of zero-rating agreements for mobile plans, and some regions lack robust local coverage. Some popular right-wing websites are subjects of the Supreme Court investigation of the alleged...
criminal network spreading false news, involving Bolsonaro’s son.

Many Brazilians are dependent on online sources of information, mostly via social networks and chats. Social-networking platforms have become important instruments for citizen journalists and others to access information, defend civil rights, and express political points of view in Brazil. Brazilians can read news from national and international sources without government restriction.

A December 2019 survey by the Chamber of Deputies and the Senate identified WhatsApp as the main source of information for a large part of the population. Of the 2,400 people interviewed by phone, 79 percent said they “always” received news from the platform. Other popular online news sources included YouTube, Facebook, news sites, and Instagram. As of August 2020, the most visited YouTube page from Brazil, KondZilla, created by a funk producer from Rio de Janeiro, had nearly 60 million subscribers. The YouTube channel Spartakus, which focuses largely on pop culture, discusses topics like white privilege, meritocracy, and LGBT+ issues, and the Instagram account of Ana Paula Xongani, with over 200,000 followers, covers themes like Black entrepreneurship and Black feminism.

However, many users have limited access to information beyond social media platforms given the widespread practice of zero-rating agreements for mobile plans. According to a recent study mapping news producers in Brazil, some areas of the country have limited or no local news coverage, especially in the north and northeastern regions, which have comparably large Indigenous and Afro-Brazilian populations. By February 2020, around 62 percent of Brazilian municipalities (covering 37 million people) did not have any local news media outlets, either online or offline. Some 19 percent of municipalities had only one or two outlets.

In recent years, new online, right-wing media outlets have emerged, like Allan Dos Santos’s Terça Livre and groups focused on “alternative information” like Folha Política or Mídia Sem Máscara. Many of these outlets are being investigated by the Supreme Court inquiry (see B5).

**B8 1.00-6.00 pts**

| Do conditions impede users’ ability to mobilize, form communities, and campaign, particularly on political and social issues? | 6.006 |

Social media platforms such as Facebook and Twitter—and more recently closed messaging platforms such as WhatsApp—play a central role in civic activism in Brazil. However, the use of these platforms to mobilize around political causes is complicated by campaigns to spread disinformation and hoaxes.

Some restrictions against demonstrations took place during the coverage period, but not directly on digital platforms. However, in January 2020 several journalists, including an online reporter clearly displaying press credentials, were struck by police during a protest in Rio de Janeiro, though they did not appear to have been targeted directly.
Citizens can engage with lawmakers online to express opinions and shape the design and implementation of legislation.\textsuperscript{158}

**C Violations of User Rights**

*While Brazil’s Marco Civil Law established a framework for internet users’ rights, users can face prosecutions for online activity under a number of provisions. The fake news bill approved by the Senate after the coverage period would criminalize certain content, allow social media and communications platforms to require identification from users, and oblige some apps to retain communications. High levels of violence and intimidation persisted during the coverage period.*

C1 1.00-6.00 pts 0-6 pts

| Do the constitution or other laws fail to protect rights such as freedom of expression, access to information, and press freedom, including on the internet, and are they enforced by a judiciary that lacks independence? | 4.004 6.006 |

The Brazilian constitution forbids anonymity but protects freedom of the press and freedom of speech, including cultural and religious expression.\textsuperscript{159} The groundbreaking Marco Civil, a framework for internet user rights signed into law in 2014,\textsuperscript{160} 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. However, constitutional protections and those in the Marco Civil are undermined by defamation and other laws that can be misused to criminalize legitimate speech. Free-speech advocates have expressed concerns about potentially restrictive provisions in a draft law meant to regulate “fake news” that was introduced after the coverage period; meanwhile, Bolsonaro in early 2020 unsuccessfully attempted to suspend freedom-of-information requests, in part by invoking the COVID-19 pandemic as a pretext.

A decree regulating the Marco Civil was enacted in 2016, containing specific rules regarding net neutrality and data protection.\textsuperscript{161} A case about the constitutionality of Article 19 of the Marco Civil sat before the Supreme Court as of the end of the coverage period. Analysts have noted that the court might declare that the article, which relates to intermediary liability, clashes with consumer protection rules.\textsuperscript{162}

Several legal provisions, such as laws criminalizing defamation and blasphemy and restricting speech around elections, continue to threaten users’ rights online, including a November 2019 amendment to the electoral code criminalizing “slanderous denunciation” (see C2).\textsuperscript{163} Multiple attempts have been made at the legislative level to change and weaken guarantees on freedom of expression, privacy, and access to the internet. To respond to and resist multiple draft bills, civil society organizations engaged in digital rights created a coalition in 2016 that has been actively monitoring and engaging with Congress on these issues.\textsuperscript{164}
Approved by the Senate in June 2020, draft bill 2630/2020 aims to tackle the problem of fake news, but is seen to conflict with the Marco Civil and the constitutional protection of freedom of expression; it would amend the former, along with the General Law on Data Protection, and consumer protection and election laws. Civil society organizations have openly criticized the bill, claiming that it will enhance mechanisms of control of individuals online and might create chilling effects for platforms (see B3, C2, and C4).165

Freedom of expression has also been undermined by Bolsonaro. For example, in July 2019 he verbally attacked and threatened jail time for journalist Glenn Greenwald, who had investigated the corruption scheme known as Lava Jato and the improper relationship between former judge and now-former justice minister Sérgio Moro and prosecutors. In response, Edison Lanza, Special Rapporteur on Freedom of Expression for the OAS’s Inter-American Commission on Human Rights (IACHR), commented that "Brazil’s president unfortunately seems to have forgotten about the Constitution and international treaties on freedom of expression of which Brazil is a signatory."166 Additionally, in March 2020 at an IACHR thematic hearing, Brazilian civil society organizations denounced the Bolsonaro government for systematic violations of freedom of expression in the country.167

In March 2020, Bolsonaro issued a provisional measure that suspended deadlines for public bodies to respond to information requests, prohibited appeals for negative responses to such requests, and stipulated that pending requests be presented again after the COVID-19 pandemic passed. The Supreme Federal Court suspended the measure, reasoning that it would make the exception—confidentiality of public information—into the general standard.168

Impunity for crimes against users, such as harassment and threats, persists.169 Most investigations and prosecutions still only target the direct perpetrators of crimes, allowing planners and other accomplices to escape justice.170 In September 2018, communicators were included in the human rights defenders’ protection program together with environmentalists.171 The measure was welcomed by press freedom groups, though deemed insufficient to address structural violence against journalists.172

C2 1.00-4.00 ptso-4 pts

Are there laws that assign criminal penalties or civil liability for online activities? 2.002 4.004

Brazil has continued to see instances of local officials suing bloggers and online journalists for defamation, which is a crime punishable by six months to two years in prison or a fine according to the penal code.173 In June 2019, the government enacted a reform to the Electoral Code that establishes a two-to-eight-year prison sentence for anyone falsely accusing a political candidate for the purpose of affecting his or her candidacy; though President Bolsonaro vetoed a provision that would have equally punished anyone disseminating the false accusations via any means.174 In August, however, Congress rejected his veto.175 The reform was ultimately enacted by Bolsonaro in November.176 Lawmakers have proposed to extend criminal penalties for honor offenses online—there were at least three draft bills on the subject in Congress during the coverage period.177

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 religion in the media or in other publications.\textsuperscript{178} 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.

Brazilian cybercrime 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.\textsuperscript{179}

As of June 2020, over 50 draft bills on fake news were sitting with the Chamber of Deputies.\textsuperscript{180} For instance, draft bill 2284/2020, proposed in April by Alexandre Frota, would require social network users to register with a photo; existing accounts that went unidentified after six months would be blocked.\textsuperscript{181}

Draft bill 2630/2020, also referred to as the “fake news bill” and approved by the Senate in June 2020 defines fake news as “content, in part or in whole, unequivocally false or misleading, verifiable, placed out of context, manipulated or forged, with the potential to cause individual or collective harm,” exempting humor and parody. The bill also alters money laundering and criminal organization laws so those who use inauthentic accounts or botnets will see increased penalties if they are found to be members of an organization.\textsuperscript{182} Moreover, those who generate or circulate content that undermines the undefined “social peace or to the economic order” would face one to five years’ imprisonment, while the use of “manipulated” content to “ridicule” political candidates would be punishable by a maximum 10 million Brazilian reals ($1.9 million) fine to the affected candidate.\textsuperscript{183}

Concerns have also been raised about proposed antiterrorist legislation. There are around ten bills pending approval to amend the existing law.\textsuperscript{184} Two draft bills notably propose to criminalize incitement of a broadly defined concept of terrorism, with penalties that would reach up to eight years’ imprisonment.\textsuperscript{185} One of them specifically mentions online media.

C3 1.00-6.00 ptso-6 pts

| Are individuals penalized for online activities? | 4.004 6.006 |

Online journalists and bloggers reporting on corruption or controversial topics frequently receive legal threats, including over alleged defamation.

In August 2019, the journalists Donizete Bernardo dos Santos and Josias Brito da Silva were sentenced to four months' imprisonment and a fine, which was ultimately commuted to community service. They had been charged with defamation under the electoral code after Jaquelini Gois, a former mayoral candidate, filed a complaint about a 2016 article describing a corruption investigation into Gois. It was republished on the online news site Planeta Folha, where both journalists worked at the time.\textsuperscript{186}
A complaint was also filed in September 2019 by the minister for women, family, and human rights against journalists from the online magazine AzMina, which had reported on abortion in Brazil, including safe ways to secure one. Alleged to have promoted a crime, the journalists face up to six months in prison under Article 287 of the criminal code. The criminal process was still ongoing as of June 2020, and the reporter behind the story was interviewed by law enforcement agents. There have also been attempted hackings of AzMina’s newsletter (see C8).  

Glenn Greenwald, a founder and journalist of the online outlet the Intercept, was investigated during the coverage period. In June 2019, the Intercept published an investigation, based on leaked Telegram messages between a former judge and prosecutors, about the corruption case against former president Lula. The messages suggested collusion between the judge, Sérgio Moro (who resigned as the justice minister during the coverage period for unrelated reasons) and the prosecutors. In January 2020, Greenwald was charged with cybercrimes, including for communicating with the hackers and guiding them on how to dispose of files. However, the following month, a federal court rejected the charges because a Supreme Court judge had ruled in August that Greenwald could not be criminally investigated for the hacking. At the same time, the federal judge noted that Greenwald was “an instigator of the conduct of the other [alleged hackers] and not merely a receiver of illegal content.”

C4 1.00-4.00 pts 2.002 4.004

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 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 internet protocol (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 common. Lawmakers have pushed for restrictions on anonymity with regard to public access points such as local-area network (LAN) houses in order to prevent cybercrimes. Legislation of this kind already exists in states such as São Paulo, and a bill under consideration would oblige cybercafés to maintain updated records of their users, including full name, date of birth, and identity document number. Other proposed bills aim to oblige users to identify when accessing the internet or social media.

There are no restrictions on the use of virtual private networks (VPNs) and Tor browsers in Brazil. The government is also not entitled to demand official documents. However, there are bills that seek to require personal documents (registration of individuals) to access internet applications. The narrative that it is necessary to identify people has
been intensified by the Fake News Advisory Council of the Electoral Court and by the work of the Parliamentary Committee of Inquiry. Scholars have reacted and published opinions in defense of the right to anonymity.\textsuperscript{195}

Amid public discussions about fake news and the Supreme Court investigation, different draft bills have been proposed that would require mandatory identification of users. The fake news bill (Pl 2630/2020) allows social networks and private messaging apps to identify each user through verification of their national identity cards. Companies can then demand this in efforts to identify suspected bots or upon observing suspected identity theft or other inauthentic behavior. Private messaging apps are also required to link users to a cell phone number and to delete accounts if the number is deregistered.\textsuperscript{196}

Brazilian law does not place restrictions on encryption, but in 2018 a draft bill proposed to oblige internet companies to provide encryption keys for law enforcement authorities.\textsuperscript{197} Law enforcement authorities have also increased pressure to access encrypted content for criminal investigations. Court orders to block the encrypted communications app WhatsApp in 2015 and 2016 were questioned at the Supreme Court, which held a public hearing on encryption in 2017.\textsuperscript{198} Law enforcement representatives stated that the company should cooperate in investigations even if this would imply changing the app’s architecture or encryption protocols. On different occasions, authorities have suggested government hacking as an option for access to encrypted content.

The WhatsApp case continued in May 2020,\textsuperscript{199} when Justices Rosa Weber and Edson Fachin ruled out any interpretation of the Marco Civil that allows companies to provide access to the content of encrypted messages from end-to-end WhatsApp through a court order.\textsuperscript{200} According to the justices, the law only authorizes the provision of information not protected by confidentiality, the so-called metadata, regarding the user and the use of the device. The justices also considered any judicial determination that could weaken the cryptographic protection of internet applications to be unfeasible. For Justice Fachin, the protection of privacy is not just an individual protection, but the instrumental guarantee of the right to freedom of expression.\textsuperscript{201} Justice Alexandre de Morais asked to review the case. There is not clear deadline for it to be resumed once again.

The General Data Protection Law (LGPD) provides for the principle of security\textsuperscript{202} and strengthens the adoption of encryption policies. The top management of federal public administration bodies and entities is responsible for the governance of information security, establishing an information security management system. Among the tasks of article 17 of Decree 9.637/2018 is "the use of cryptographic resources appropriate to the degrees of confidentiality required in the treatment of information and the access restrictions established for the sharing of information."\textsuperscript{203}

C5 1.00-6.00 pts| Does state surveillance of internet activities infringe on users’ right to privacy? | 3.003 6.006 |

Brazil has a history of improper surveillance of private communications, particularly targeting social movements and activists. Civil society organizations have continuously denounced the lack of transparency on how the government uses surveillance, which is frequently justified as a tool to combat crime.\textsuperscript{204}
Despite the existence of several safeguards in the telephone interception law n. 9.296/1996, there are concerns regarding their judicial interpretation and implementation.\textsuperscript{205} Infiltration through online platforms and political monitoring of social networks are common practices and there is still no legislation regulating online personal data gathering by law enforcement authorities and intelligence agencies.\textsuperscript{206}

There are reports that the Brazilian Information Agency conducts constant monitoring of social networks. In June 2020, the Justice Ministry’s Secretariat of Integrated Operations (SEOPI) allegedly produced a report on "Actions by Antifa Groups and Anti-Fascist Policemen." Monitoring of 579 federal and security officials, along with three university professors, known to be critical of Bolsonaro, and the compilation of dossiers consisting of names and some photos and social media accounts was carried out by the little-known Justice Ministry unit. The unit is headed by a delegate from the Civil Police of the Federal District and has an Intelligence Directorate. SEOPI, classified as part of the country’s intelligence system, shared the report with bodies including the Brazilian Intelligence Agency, the presidency, and the National Public Security Force.\textsuperscript{207}

An April 2020 report by InternetLab analyzed eight mobile applications developed by the public administration in response to the COVID-19 pandemic and their respect for consent, necessity, transparency, and security. None of the apps were classified as entirely low risk, but the World Health Organization’s was lauded for a clear and complete privacy policy. The federal government’s Coronavirus SUS app was criticized for, among other things, transferring small amounts of data unencrypted and lacking a privacy policy. Coronavirus SP, from the state government of São Paulo, allows data to be shared for judicial, police, and administrative cooperation, while Saúde Osasco, created by the municipality of Osasco, in São Paulo state, requests camera and microphone access.\textsuperscript{208}

An October 2019 presidential decree issued in the absence of debate or public consultation establishes a Citizen’s Basic Register, which consists of a centralized database of citizens’ data held by federal bodies, ranging from health records to biometric information. Permission from Brazilians to share their data among various federal agencies is not required, nor are they able to track their information. No limits were imposed on the sharing of citizens’ health information, and the Central Data Governance Committee, which regulates the register, lacks representatives from civil society, academia, and businesses. Critics say the register threatens privacy rights, in conjunction with existing surveillance technologies.\textsuperscript{209}

Prior to the coronavirus pandemic, the Brazilian government often justified its increasing capacity for surveillance by claiming the systems were necessary if the country was to continue hosting major sporting and other events. In response to an information request, the Ministry of Defense reported it had spent 68 million Brazilian reals (\$21 million) between 2014 and 2016 on surveillance equipment.\textsuperscript{210} There is little clarity on how these technologies have been used since the 2016 Olympic Games.\textsuperscript{211}

Brazil has no regulation on the use of malware for lawful surveillance practices, however leaks from Hacking Team showed the Brazilian Federal Police was authorized to use its software to infect 17 targeted phones.\textsuperscript{212} Evidence emerged about the use of NSO Group’s Pegasus (a spyware that allows almost complete control of an infected mobile device) in Brazil between August 2016 and August 2018.\textsuperscript{213} The software is supposedly only sold to governments.
In April 2019, the newspaper *Estado de São Paulo* reported that the government had hired a firm to monitor conversations about Bolsonaro on social networks. Services included identifying possible viral posts that would hurt the government and monitoring hashtags and most commonly used words. As of April 2020, it was unclear how the data was being used.  

During 2013 demonstrations, police and intelligence forces monitored online personal data and social media activity of people who participated in the protests, affecting their rights to privacy and freedom of expression.  

### Are service providers and other technology companies required to aid the government in monitoring the communications of their users?

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| Are service providers and other technology companies required to aid the government in monitoring the communications of their users? | The Marco Civil 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 six months.  

Regulations decreed on May 11, 2016, 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.  

Other retention measures are present in the Brazilian legal framework beyond Marco Civil. Law 12.850 on organized crime obliges telecommunications companies to retain data regarding the origin and destination of phone calls for five years.  

Anatel resolutions also establish obligations on the retention of metadata by landline and mobile service providers.  

The fake news bill (PL 2630/2020) would require private messaging applications to retain information about communications that have been “massively forwarded” for the purpose of potential criminal investigation or prosecution.  

In March 2020, during the COVID-19 pandemic, the city of Rio de Janeiro signed an agreement with TIM that would permit the provider to transmit users’ geolocation data to local authorities in order to monitor compliance with isolation rules. TIM stated that identifying information would be removed in line with data-protection rights.  

Draft bill 2418/19, introduced in April 2019, would oblige ISPs to monitor user data for potential terrorist activities and heinous crimes, and share relevant information with the authorities. In addition, intelligence and security agents would be able to access phone and internet networks to analyze information about terrorist and potential attacks, with authorization from the military justice. The bill had not moved forward as of August 2020.  

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Digital-rights advocacy organizations have largely supported new data-protection legislation. After significant delay, the General Data Protection Law (LGPD) was finally approved by Congress in August 2020, after the coverage period, and was set to take effect two weeks later. However, enforcement will not begin until August 2021.\textsuperscript{224}

Over two years ago, in July 2018, the Senate had approved the act (Bill 53/2018), which former President Michel Temer signed in August.\textsuperscript{225} However, the president vetoed several items of the text, presenting a new version for them in December 2018. Affected items included the creation of an independent National Data Protection Authority (DPA) which was introduced in the text with more limited autonomy.\textsuperscript{226} After review by Congress, the law still provides that the DPA will be subordinate to the office of the president, although the legal nature of this administrative body may be reviewed within two years.\textsuperscript{227} During congressional discussions, new exceptions for data-protection rules were added to the initial law. Changes were approved in July 2019.\textsuperscript{228} The new rules will regulate the use, protection, and transfer of personal data such as name, address, e-mail, age, marital status, and property status, but it does not apply to the use of intelligence and law enforcement authorities of citizens’ personal data.

Bolsonaro vetoed several of the changes approved in July, including protections for the personal data of citizens who required access to information and the sanctions of partial or total suspension of data operations and processing if in violation of the law.\textsuperscript{229} The latter veto was overturned by Congress in September.\textsuperscript{230}

Concerns about the LGPD persisted during the coverage period, particularly regarding delays in implementation, as it was originally set to go into effect in February 2020. Moreover, while an interim DPA has been established, Bolsonaro has limited its ability to sanction those found in violation.\textsuperscript{231}

In December 2019, the Supreme Court ruled that internet application providers must store users’ logical port data, which can be used to identify them, and provide such data if there is a court order. However, providers will be able to submit evidence on the technical feasibility of this requirement.\textsuperscript{232}

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Threats, intimidation, and violence against online journalists and bloggers constitute a major restriction on freedom of expression and human rights in Brazil. In recent years, hostility against journalists and the media has escalated in a context of deep polarization.\textsuperscript{233} In May 2020, Leonardo Pinheiro, who owned the Facebook page A Voz Araruamense, which reported locally from the city of Araruama, was killed by an unknown gunman. Pinheiro had announced his opposition candidacy for city council, and was interviewing sources for a story when he was killed.\textsuperscript{234} In June 2019, in the state of Rio de Janeiro, Romário Barros, the owner and journalist of the news site Lei Seca Maricá, was shot and killed by an unknown man. Because nothing was stolen, it was suspected that the killing was deliberate. Lei Seca Maricá reported on local news, including crime and politics.\textsuperscript{235}
Intimidation and harassment also remain a serious concern in Brazil. In August 2019, the journalist Adecio Piran, who had reported on a collaborative plan among businesses to dismiss employees, was threatened over messaging applications. A leaflet about Piran, who writes for the print and online outlet Folha do Progresso, also circulated around the northern city of Novo Progresso, accusing him of spreading false news to undermine the city’s reputation.236

During the elections, newspaper *Folha de S. Paulo* requested the Federal Police investigate threats against its journalists after publishing a report about illegal private support for misinformation campaigns against presidential candidate Fernando Haddad.237 In July 2019, UN experts expressed concern about death threats against journalist of the Intercept Brazil Glenn Greenwald and his family (including his husband, Brazilian lawmaker David Miranda), following the publication of information regarding wrongdoings by the current minister of justice when he was responsible for the case against former president Luiz Inácio Lula da Silva, who was imprisoned in 2018.238

During the coverage period, Bolsonaro and his supporters used social media to harass journalists, including Vera Magalhães of *O Estado de São Paulo*239 and journalist Patrícia Campos Mello, of *Folha de São Paulo*. In February 2020, for example, while providing testimony to Congress on fake news, the former employee of a digital marketing agency, Hans River do Nascimento, insulted Campos Mello by claiming she was willing to offer sex in exchange for information. His statement led to numerous sexist attacks against her over Facebook and Twitter, including from Bolsonaro’s son and congressman Eduardo Bolsonaro, and two other lawmakers. Bolsonaro himself echoed Nascimento during a public speech by insinuating that she was willing to offer sex in exchange for derogatory material about the president.240

Are websites, governmental and private entities, service providers, or individual users subject to widespread hacking and other forms of cyberattack?

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</tr>
</thead>
<tbody>
<tr>
<td>Cyberattacks are frequent and often target political advocacy groups and journalists, but also public utilities providers and businesses.</td>
<td>1.001</td>
<td>3.003</td>
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</tbody>
</table>

In September 2019, the online magazine AzMina reported on securing an abortion in Brazil. The article generated considerable backlash, including attacks over Twitter and Facebook, and the AzMina website was inaccessible for a few hours.241 According to one of the founders, the outlet was attacked through newsletter spamming, which causes problems with the site’s cloud server. Thousands of subscriptions were created (from an IP in Russia) using the names of real people, leading these people to notify the mail server that the mailing list was spam. This led to the newsletter getting taken down automatically.242

During the 2018 election campaign, several cyberattacks against political groups and journalists were reported. In September 2018, the Facebook group Mulheres Unidas contra Bolsonaro (Woman United against Bolsonaro) had its name and content changed to support the candidate, and its moderators received direct threats; the administrator's
personal Facebook and WhatsApp accounts were also hacked. Journalist Patrícia Campos Mello was also targeted after she reported on possible illegalities on Jair Bolsonaro’s campaign. Some of her messages were deleted and pro-Bolsonaro messages were sent to her contacts.

In May 2020, websites of secretariats, corporations, and municipalities of the government of Mato Grosso do Sul suffered from attempted cyberattacks. Electrical company Energisa, which controls electricity distributors in 11 Brazilian states, had several services to customers taken down in early May 2020, after suffering a cyberattack. Globoplay, Globo’s streaming service, suffered a hacker attack in May 2020. Globo’s streaming service commented on the attack and reassured users by clarifying that hackers had no access to any personal data from subscribers.

Brazilian authorities have made some efforts to increase cybersecurity and invest more resources in overcoming current obstacles. Since 2008, Brazil has engaged in a multistakeholder 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.

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