

# BRAZIL

	2011	2012
<b>INTERNET FREEDOM STATUS</b>	<b>Free</b>	<b>Free</b>
<b>Obstacles to Access (0-25)</b>	7	7
<b>Limits on Content (0-35)</b>	7	6
<b>Violations of User Rights (0-40)</b>	15	14
<b>Total (0-100)</b>	<b>29</b>	<b>27</b>

\* 0=most free, 100=least free

**POPULATION:** 194 million  
**INTERNET PENETRATION 2011:** 45 percent  
**WEB 2.0 APPLICATIONS BLOCKED:** No  
**NOTABLE POLITICAL CENSORSHIP:** No  
**BLOGGERS/ICT USERS ARRESTED:** No  
**PRESS FREEDOM STATUS:** Partly Free

## INTRODUCTION

For a country with large social and economic disparities, Brazil has made significant gains in expanding internet access and mobile phone usage in recent years. The country first connected to the internet in 1990, and connectivity is now available in most areas through a variety of technologies, though some infrastructural limitations remain.<sup>1</sup> Further, Brazil continues to face low internet penetration and digital exclusion due to infrastructural problems, social inequality, and poor education, among other reasons, but the federal government has executed several policies over the years to remedy this. Nevertheless, in recent years, social network activity and civic participation on the internet have increased remarkably.

The Brazilian government does not employ any technical methods to filter or otherwise limit access to online content. In 2011, the main restrictions to online expression came from civil defamation suits and legal action by the judiciary and government officials following an ongoing trend in which private litigants and official bodies sue internet service providers (ISPs) and other internet companies and send takedown notices to blogging and social-networking platforms. Google's Transparency Report recorded Brazil as having the highest number of government requests to remove content among the countries assessed in 2011.

<sup>1</sup> Robert Hobbes Zakon, "Hobbes' Internet Timeline v8.2," Zakon Group LLC, accessed August 11, 2010, <http://www.zakon.org/robert/internet/timeline/>; Tadao Takahashi, ed., *Sociedade da Informação no Brasil: Livro Verde* [Information Society in Brazil: Green Book] (Brasília: Ministry of Science and Technology, September 2000), <http://www.mct.gov.br/index.php/content/view/full/18878.html>; National Education and Research Network (RNP), "Mapa do Backbone" [Map of Backbone], accessed August 11, 2010, <http://www.rnp.br/backbone/index.php>.

As Brazil rises to the level of leading global economies and slowly comes closer to a networked society, issues such as cybercrimes and distributed denial-of-service (DDoS) attacks, access to public information, election campaigning on the web, and intellectual property protection are gaining the political spotlight. In a positive development, the Civil Rights Framework for the Internet was introduced in Congress in August 2011, which aims to guarantee access to the internet, safeguard freedom of speech and communication, protect privacy and personal data, and preserve net neutrality, among other provisions.

## OBSTACLES TO ACCESS

Despite having a large population of internet users, Brazil still lags behind many developing countries in terms of relative internet penetration, with 45 percent of the population having access to the web in 2011, according to the International Telecommunication Union (ITU).<sup>2</sup> Penetration varies greatly among regions due to a lack of infrastructure that affects large segments of the population in rural areas. For instance, while the household penetration rate was 36 percent in the more urban southeast region in 2010, it was only 11 percent in the poorer and more rural northeast region of the country.<sup>3</sup> High costs and lack of infrastructure hinder the spread of household broadband connections, with the broadband subscription penetration rate reaching 8.6 percent in 2011.<sup>4</sup> While broadband access is increasing as prices fall, the market is still concentrated among major telecommunications and cable companies. Meanwhile, 13 percent of households with fixed internet in Brazil are still connected via dial-up.<sup>5</sup>

Brazil is currently the largest mobile phone market in Latin America. Statistics show an average annual increase of 18 percent in the rate of mobile phone use over the last five years,<sup>6</sup> and mobile phone penetration stood at 123 percent in 2011.<sup>7</sup> According to Nielsen

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<sup>2</sup> International Telecommunication Union (ITU), "Percentage of individuals using the Internet, fixed (wired) Internet subscriptions, fixed (wired)-broadband subscriptions," 2011, accessed July 13, 2012, <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx#>.

<sup>3</sup> Brazilian Internet Steering Committee (CGI.br), "Survey On The Use Of Information And Communication Technologies In Brazil 2010," pg. 402, accessed February 6, 2011, <http://www.cetic.br/tic/2010/index.htm>.

<sup>4</sup> International Telecommunication Union (ITU), "Percentage of individuals using the Internet, fixed (wired) Internet subscriptions, fixed (wired)-broadband subscriptions," 2011.

<sup>5</sup> Brazilian Internet Steering Committee (CGI.br), "Survey On The Use Of Information And Communication Technologies In Brazil 2010," pg. 404-406.

<sup>6</sup> Teleco, "Seção: Telefonia Celular—Estatísticas de Celulares no Brasil" [Section: Cellular Telephony—Statistics of Cellular Telephones in Brazil], February 6, 2012, <http://www.teleco.com.br/ncel.asp>.

<sup>7</sup> International Telecommunication Union (ITU), "Mobile-cellular telephone subscriptions," 2011, accessed July 13, 2012, <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx#>.

Ratings, the sales of smartphones in Brazil increased by 165 percent in the first semester of 2011 compared to the same period in 2010.<sup>8</sup>

Great improvements in the development of information and communication technologies (ICTs) have been made in recent years as the government has initiated dozens of programs to connect the population to the internet. For example, the National Broadband Plan was launched in 2010, which aims to triple broadband access by 2014.<sup>9</sup> In many regions, “LAN (local area network) houses” have become the primary means of internet access for low income Brazilians. Research published by the Brazilian Internet Steering Committee in 2011 showed that nearly 70 percent of people from the lowest income brackets who access the internet do so via commercial venues such as LAN houses, a dramatic increase from 48.1 percent in 2006.<sup>10</sup> The sharp drop in desktop and laptop prices in the last five years has begun to alter this trend, but LAN houses nonetheless still play a key role in internet democratization in Brazil.<sup>11</sup> In February 2012, the government announced that tablets will benefit from a tax incentive<sup>12</sup> and will be distributed to public school teachers.<sup>13</sup>

Among changes to the national legal system brought about by the increase in internet-related ICTs in the last few years is a relevant amendment to the labor legislation that explicitly acknowledges telecommuting. The legislation also guarantees pay in exchange for time spent by employees answering professional emails on their mobile phones, even when outside of the office.<sup>14</sup> As Brazilians at all socioeconomic levels increasingly use the internet, a growing number have taken advantage of the country’s e-commerce, e-government, and online banking services;<sup>15</sup> the latter have proved generally successful, with total online transactions surpassing those by other means, including ATMs, in 2010.<sup>16</sup>

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<sup>8</sup> G1, “Vendas de smartphones crescem 165% no Brasil, diz pesquisa,” August 16, 2011,

<http://g1.globo.com/tecnologia/noticia/2011/08/vendas-de-smartphones-crescem-165-no-brasil-diz-pesquisa.html>.

<sup>9</sup> Ministry of Communications, “Um Plano Nacional para Banda Larga” [A national plan for high bandwidth], accessed August 30, 2012, <http://www4.planalto.gov.br/brasilconectado/pnbl>.

<sup>10</sup> Brazilian Internet Steering Committee (CGI.br), “Survey On The Use Of Information And Communication Technologies In Brazil 2010,” pg. 418.

<sup>11</sup> Anna Heim, “Why Brazilian cyber cafés still matter,” The Next Web, June 19, 2011,

<http://thenextweb.com/la/2011/06/19/why-cyber-cafes-still-matter/>.

<sup>12</sup> Joe Aimonetti, “Apple gets tax incentives in Brazil to begin iPad production,” CNET, January 25, 2012,

[http://reviews.cnet.com/8301-19512\\_7-57366337-233/apple-gets-tax-incentives-in-brazil-to-begin-ipad-production/](http://reviews.cnet.com/8301-19512_7-57366337-233/apple-gets-tax-incentives-in-brazil-to-begin-ipad-production/).

<sup>13</sup> “Primeiros a receber tablets serão professores, anuncia MEC,” *Estadao.com.br*, February 3, 2012,

[http://www.estadao.com.br/noticias/vidae\\_primeiros-a-receber-tablets-serao-professores-anuncia-mec,830914,0.htm](http://www.estadao.com.br/noticias/vidae_primeiros-a-receber-tablets-serao-professores-anuncia-mec,830914,0.htm) [in Portuguese].

<sup>14</sup> “Brazil’s Email Overtime: New Law Counts Checking Smartphones After Hours As Work,” The Huffington Post, January 12, 2012, [http://www.huffingtonpost.com/2012/01/13/brazils-email-overtime\\_n\\_1204343.html](http://www.huffingtonpost.com/2012/01/13/brazils-email-overtime_n_1204343.html).

<sup>15</sup> “Brazil—Internet and Broadband Market,” BuddeCom, May 2011, <http://www.budde.com.au/Research/Brazil-Broadband-Market-Overview-Statistics-and-Forecasts.html>.

<sup>16</sup> Brazilian Central Bank, “Diagnóstico do Sistema de Pagamentos de Varejo do Brasil

Adendo estatístico – 2010,” accessed February 6, 2012, <http://www.bcb.gov.br/htms/spb/Diagnostico-Adendo-2010.pdf> [in Portuguese].

National and international news sources are unrestricted, and Brazilians freely gather information through the internet, mobile phone technology, and other ICTs. Blogs, photoblogs, social-networking platforms, and citizen journalism have proliferated in recent years. As of 2011, Brazilians spend more of their time online (over 18 percent) on social networks and forums than any other people in the world.<sup>17</sup> The Google-owned social-networking site Orkut has been nearly omnipresent in Brazil in the last five years, constantly topping Facebook; however, Facebook finally beat out its rival in December 2011 when it accrued more unique visitors than Orkut (36 million against 34.5 million).<sup>18</sup> Nevertheless, these statistics fail to account for access on public computers and in cybercafes where most low-income individuals go to browse the web. The number of Facebook users has increased dramatically since 2009 as Brazilians have sought to connect with acquaintances outside the country where Orkut is less popular. Twitter's popularity has also grown significantly—40 percent in December 2011 when compared to the same month in 2010.<sup>19</sup> Unlike in previous years, there were no instances during 2011 of advanced web applications like the video-sharing site YouTube or the social-networking platform Orkut being completely blocked by court orders, though individual videos or comments have been removed.

Even though there are no specific legal or economic obstacles restricting the operation of ISPs or other businesses that provide access to digital technologies—which has enabled the number of broadband ISPs registered with the Federal Telecommunications Agency to boom in the last three years, going from a little over 1,000 in 2008 to over 3,000 in 2011<sup>20</sup>—the introduction of new technologies and continuous price drops in ICT services have been significantly impaired by market concentration. As of the third quarter of 2011, four companies (Oi, NET, Telefonica, and GVT) concentrated roughly 90 percent of the broadband market in the country.<sup>21</sup> Six private companies share the mobile phone market, the largest four of which amount to a market share of over 99 percent.<sup>22</sup>

The National Telecommunications Agency (ANATEL) and the Administrative Council for Economic Defense (CADE), an antitrust body, work to ensure that ICTs operate in a free, fair, and independent manner. The two agencies have an agreement of cooperation that

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<sup>17</sup> That is the result presented in a study by: Experian, “The local network: Experian analysis highlights which countries spend longest on Facebook,” September 27, 2011, <http://www.experianplc.com/news/company-news/2011/27-09-2011.aspx>.

<sup>18</sup> “Facebook overtakes Google's Orkut in Brazil – Comscore,” BBC, January 18, 2012, <http://www.bbc.co.uk/news/technology-16611554>.

<sup>19</sup> Jeff Hughes, “Study: Twitter follows Facebook's overseas growth into Brazil,” Yahoo News, February 2, 2012, <http://news.yahoo.com/study-twitter-follows-facebooks-overseas-growth-brazil-060225652.html>.

<sup>20</sup> Teleco, “Seção: Banda Larga—Prestadoras de SCM” [Section: Broadband—Multimedia Communication Service providers], January 20, 2012, [http://www.teleco.com.br/scm\\_prest.asp](http://www.teleco.com.br/scm_prest.asp).

<sup>21</sup> Teleco, “Seção: Banda Larga—Market Share de Banda Larga no Brasil” [Section: Broadband—Market Share of Broadband in Brazil], January 20, 2012, <http://www.teleco.com.br/blarga.asp>.

<sup>22</sup> Teleco, “Seção: Telefonia Celular—Operadoras de Celular, Jun/10” [Section: Cellular Telephony—Cellular Operators, June 2010], January 17, 2012, <http://www.teleco.com.br/mshare.asp>.

defines their competencies. The CADE is authorized by the General Telecommunications Law to have the final word when dealing with antitrust issues, such as market concentration and price setting.<sup>23</sup>

In a pioneering initiative, the Brazilian Internet Steering Committee (CGI.br), a multi-stakeholder organization, was created in 1995 to guarantee transparency and social participation in decisions related to the management of the “.br” country-code top level domain (ccTLD).<sup>24</sup> The CGI has played a substantive role in the Brazilian internet governance and regulation debate over the years;<sup>25</sup> its contributions include reliable and comprehensive yearly reports on the state of internet adoption in Brazil as well as funding for internet governance-related research and academic publications. Committee members come from the government, the private sector, academia, and nongovernmental organizations, with the last group chosen in 2004 in relatively democratic and open elections.

## LIMITS ON CONTENT

The government does not employ any technical methods to filter or otherwise limit access to online content. Nonetheless, legal action by the judiciary and government officials has emerged as a possible barrier to free speech and a means of removing content deemed undesirable. Google’s Transparency Report recorded Brazil as having the highest number of government requests to remove content among the countries assessed in 2011, with 418 requests, followed by the United States and Germany.<sup>26</sup> According to the report, “Government requests for content removal are high in Brazil relative to other countries partly because of the popularity of our social networking website, Orkut.”<sup>27</sup>

<sup>23</sup> Maria Cecilia Andrade, Ubiratan Mattos, and Pedro C. E. Vicentini, “Reforms in Brazilian Telecommunications Regulations and their Impact on Sector Competition,” in *The Antitrust Review of the Americas 2009* (London: Global Competition Review, 2009), <http://www.globalcompetitionreview.com/reviews/9/sections/31/chapters/361/reforms-brazilian-telecommunications-regulations-impact-sector-competition>; Teleco, “Regulation: Legislation Guide,” July, 28, 2010, [http://www.teleco.com.br/en/en\\_legis.asp](http://www.teleco.com.br/en/en_legis.asp).

<sup>24</sup> See the website of the Brazilian Internet Steering Committee, <http://www.cg.org.br/internacional/index.htm>.

<sup>25</sup> See the Committee’s Principles for the Governance and Use of the Internet, accessed February 16, 2012, <http://www.cgi.br/english/regulations/resolution2009-003.htm>.

<sup>26</sup> Google, “Government,” *Transparency Report*, (Mountain View, CA: Google, 2011), accessed February 6, 2012, <http://www.google.com/transparencyreport/governmentrequests/removals/>. Another explanation for Brazil’s peculiar track record on court-ordered content removals is that lawsuits can be filed more easily in Brazil than in many other countries, where other forms of dispute resolution or regulation of online content prevail. See, Danny O’Brien, “Is Brazil the Censorship Capital of the Internet? Not Yet,” CPJ Blog, April 28, 2010, <http://cpj.org/blog/2010/04/is-brazil-the-censorship-capital-of-the-internet.php>.

<sup>27</sup> Google, “Brazil,” *Transparency Report*, (Mountain View, CA: Google, 2011), accessed August 15, 2012, <http://www.google.com/transparencyreport/removals/government/BR/?p=2011-06>.

While the federal and state governments have never sponsored systematic content filtering or online censorship, state efforts to place limits on content have occurred periodically. For example, in April 2011, a federal judge in the state of Tocantins forbade the *Arnaldo Filho* news portal from reporting accusations made by former employees of education institutions in the city of Araguaína.<sup>28</sup> The state's Professional Journalists Union published a statement condemning the court order.<sup>29</sup> In another example in early 2012, the Federal Ministry of Tourism sent a request to a web-hosting company to takedown a “.eu” domain name that associated the word “Brazil” with pornography, claiming that the association inadequately portrayed the nation as a “pole of sexual activities... interfer[ing with] the position and image of the country,” which is a crime punishable by the Brazilian Penal Code.<sup>30</sup> The company took down the domain, which was not being used at the time, but put it back up soon afterward due to Brazil's lack of jurisdiction over the “.eu” domain.

In July 2011, a São Paulo court ordered Brazilian ISPs to block the blog of journalist Paulo Cezar Prado after receiving a complaint from a businessman who the blogger had accused of laundering money.<sup>31</sup> Prado subsequently vowed to mirror his site on different webhosts in other countries to circumvent the censorship and now has his blog hosted in France after it was removed by some American and Brazilian hosts.

In February 2012, the Brazilian Attorney General's office in the state of Goiás filed a suit against the microblogging website Twitter, requiring it to remove accounts that warned drivers about police traps meant to catch speeding and drunk drivers.<sup>32</sup> The state Federal Public Prosecutor's office, however, reacted firmly against the suit, emphasizing the curtailment of freedom of expression imposed by such measures.<sup>33</sup> The incident demonstrates that online censorship by the government is not a pervasive effort in Brazil.

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<sup>28</sup> Natalia Mazotte, “Justiça do Tocantins proíbe site de publicar denúncias” [Court in Tocantins forbids website from publishing accusations], Knight Center for Journalism in the Americas, April 21, 2011, <http://knightcenter.utexas.edu/pt-br/blog/justica-do-tocantins-proibe-site-de-publicar-denuncias> [in Portuguese].

<sup>29</sup> Junior Veras, “Juiz proíbe publicação de material” [Judge forbids publication of piece], Observatório da Imprensa [Press Observatory], April 26, 2011, [http://www.observatoriodaimprensa.com.br/news/view/juiz\\_proibe\\_publicacao\\_de\\_materia](http://www.observatoriodaimprensa.com.br/news/view/juiz_proibe_publicacao_de_materia) [in Portuguese].

<sup>30</sup> Mike Masnick, “Brazilian Government Ordering Web Hosting Firms To Kill Domain Names They Don't Like,” Tech Dirt, February 8, 2012, <http://www.techdirt.com/articles/20120207/03474017680/brazilian-government-ordering-web-hosting-firms-to-kill-domain-names-they-dont-like.shtml>.

<sup>31</sup> Natalia Mazotte, “Judge orders Brazilian internet providers to censor blog that criticizes soccer executives,” Journalism in the Americas (blog), July 20, 2011, <http://knightcenter.utexas.edu/blog/judge-orders-brazilian-internet-providers-censor-blog-criticizes-soccer-executives>.

<sup>32</sup> Gerald Jeffris, “Brazil Wants To Ban Tweets About Police Speed-Traps,” Wall Street Journal, February 10, 2012, <http://blogs.wsj.com/digits/2012/02/10/brazil-wants-to-ban-tweets-about-road-traffic/>.

<sup>33</sup> Ministério Público Federal, Procuradoria da República em Goiás, “MPF/GO contrapõe-se à censura na internet,” February 13, 2012, <http://www.prgo.mpf.gov.br/direitos-do-cidadao/noticias/895-mpfgo-contrapoe-se-a-censura-na-internet.html> [in Portuguese].

Over the last five years, intermediary liability has been the main arena for online free speech protection in Brazil. Facebook recently joined Orkut as the target of civil liability claims, which are made in most cases by people unhappy with the way they are portrayed on those social networks.<sup>34</sup> State courts are largely divided on this issue: some attribute strict liability to crowdsourcing websites and social networks; others have adopted a notice-and-takedown approach that would impose liability only if the intermediary fails to remove the unwanted content after extrajudicial notice. This latter position's origins can be traced to the arrangement established by the Digital Millennium Copyright Act in the United States.

Over the course of 2010 and 2011, two rulings in the Superior Court of Justice, the country's second highest court, demonstrated an apparent shift from a relatively restrictive to a jurisprudential understanding of online free speech. In 2010, one of the court's ministers upheld a lower court order in an appeal that required Google, under penalty of daily fines, to prevent certain "abusive" speech from being made available in the social network Orkut. The court minister's individual ruling called for online prior restraint, pointing out that if it was technically possible in China, it ought to be feasible in Brazil as well.<sup>35</sup> In August 2011, the court again ruled on the issue of Google's liability for content posted on Orkut. This time, however, it established that intermediaries could not be held liable unless they failed to remove content after being given specific notice.<sup>36</sup>

Intellectual property protection is a constant issue of discussion in the Brazilian online public sphere, but is not a great threat to online free speech. Discussions on the reform of the Brazilian Copyright Act has also attracted meaningful online participation, and civil society groups have joined forces with scholars to support or criticize the government and press for a transparent process and a more flexible copyright law.<sup>37</sup> There are still concerns about the bill's potential impact on internet access. The government has not yet introduced the Copyright Act reform for approval in Congress, but the new Minister of Culture, Ana de Hollanda, has declared that the reform would reach the legislators by 2012.<sup>38</sup> Hollanda has also pursued some changes in the ministry's policy regarding intellectual property

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<sup>34</sup> This changed a common pattern in the last 4-5 years where Orkut was almost the sole social network to suffer legal suits. See cases against Facebook in two state high courts: "Offenses causing temporary injunction on Facebook," TJMG, news release, January 1, 2012, <http://www.tjmg.jus.br/anexos/nt/noticia.jsp?codigoNoticia=38138> [in Portuguese]; "Facebook should remove defamatory messages about Christmas shop," Poder Judiciário, notícias, February 3, 2012, [http://www.tjrn.jus.br:8080/sitetj/GerenciadorServlet.do?secaoSelecionada\\_id=9&id=8362&action=GerenciadorWeb&operacao=exibirInternet&exibir=E&registrarLeitura=true](http://www.tjrn.jus.br:8080/sitetj/GerenciadorServlet.do?secaoSelecionada_id=9&id=8362&action=GerenciadorWeb&operacao=exibirInternet&exibir=E&registrarLeitura=true) [in Portuguese].

<sup>35</sup> "Google fine for uncensored dirty jokes," News.com.au, March 24, 2010, <http://www.news.com.au/technology/google-fine-for-uncensored-dirty-jokes/story-e6frfo0-1225844583476>.

<sup>36</sup> Brazilian Superior Court of Justice, *Recurso Especial* no. 1.193.764 – SP, accessed February 7, 2012, <http://www.stj.gov.br/webstj/processo/justica/detalhe.asp?numreg=201000512263>.

<sup>37</sup> See the website of the copyright reform movement at <http://www.reformadireitoautoral.org/>.

<sup>38</sup> Luiz Fernando Vianna, "Ana de Hollanda apressa projeto de reforma da Lei do Direito Autoral," O Globo Cultura, April 20, 2011, <http://oglobo.globo.com/cultura/ana-de-hollanda-apressa-projeto-de-reforma-da-lei-do-direito-autoral-2793479> [in Portuguese].

protection. In February 2011, for example, she had the Creative Commons<sup>39</sup> license taken out of the ministry's website, which was highly criticized and seen as a move favoring the copyright industry.<sup>40</sup> This, along with other political developments and backstage negotiations, has raised concern among civil society and academia that copyright could emerge as a relevant threat to freedom on the Brazilian net.<sup>41</sup>

Past state-initiated censorship attempts have primarily appeared in the context of elections. However, in a positive development following strong political pressure, the Senate in September 2009 approved changes to the electoral law to permit the use of the internet in political campaigns.<sup>42</sup> In addition, new legislation proposed in 2011 would create a legal environment more hospitable for free political speech. Under the draft introduced by Representative Rodrigo Garcia, individuals and parties would be able to carry out online campaigning before TV, radio, and press advertisements are authorized to commence, as long as it is performed freely and without commercial ads.<sup>43</sup> The government has shown, however, that it will not easily give up the regulation of political expression online. Furthermore, campaigning is usually forbidden before July in an election year (elections are held in October), and the Electoral Superior Court ruled in March 2012 that such a restriction was also applicable to political speech on Twitter.<sup>44</sup>

There have been positive developments regarding the issue of access to public information, with the Federal Prosecutor's office announcing that in 2012 it will make available on its website some 700 military court procedures held between 1979 and 1985, including accounts of torture of civilians.<sup>45</sup> Additional examples include projects promoting open

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<sup>39</sup> Creative Commons is a type of copyright license that encompasses different versions of author-given authorizations to copy and distribute content.

<sup>40</sup> Mike Masnick, "Brazil's New Culture Minister Dumps Creative Commons From Ministry's Website," TechDirt (blog), February 11, 2011, <http://www.techdirt.com/articles/20110209/04320213024/brazils-new-culture-minister-dumps-creative-commons-ministrys-website.shtml>.

<sup>41</sup> Marília Macial, "Commons Strategy Group send an Open Letter to Brazilian President: Continue the most progressive culture policy in the world!" *Cultura Livre*, February 8, 2011, <http://www.culturalivre.org.br/wp/en/2011/02/08/commons-strategy-group-send-an-open-letter-to-brazilian-president-continue-the-most-progressive-culture-policy-in-the-world/>.

<sup>42</sup> Even under this more speech-protective framework, political speech by both the parties in power and those in the opposition has been restricted by the Electoral Judiciary. "TSE mantém multa por propaganda eleitoral antecipada em blog a favor de Dilma," Agência de Notícias da Justiça Eleitoral, March 17, 2011, <http://agencia.tse.gov.br/sadAdmAgencia/noticiaSearch.do?acao=get&id=1363510> [in Portuguese]; "TSE aplica multa a PSDB-MG por propaganda antecipada em favor de José Serra," Agência de Notícias da Justiça Eleitoral, November 16, 2010, <http://agencia.tse.gov.br/sadAdmAgencia/noticiaSearch.do?acao=get&id=1345485> [in Portuguese].

<sup>43</sup> Rachel Librelon, "Proposta regula pré-campanha e propaganda eleitoral na internet," Agência Câmara de Notícias, May 13, 2011, <http://www2.camara.gov.br/agencia/noticias/POLITICA/197033-PROPOSTA-REGULA-REGULA-PRE-CAMPANHA-E-PROPAGANDA-ELEITORAL-NA-INTERNET.html> [in Portuguese].

<sup>44</sup> "Candidatos só podem utilizar Twitter em campanha eleitoral a partir de 6 de julho" [Candidates can only use Twitter for electoral campaign starting July 6<sup>th</sup>], Tribunal Superior Eleitoral [Electoral Superior Court], March 2012, <http://www.tse.jus.br/tse/noticias-tse/2012/Marco/candidatos-so-podem-utilizar-twitter-em-campanha-eleitoral-apos-6-de-julho>.

<sup>45</sup> G1, "Documentos da época da ditadura militar estarão disponíveis na internet," June 14, 2011, <http://g1.globo.com/jornal-da-globo/noticia/2011/06/documentos-da-epoca-da-ditadura-militar-estao-disponiveis-na-internet.html>.

access to public information and governmental data,<sup>46</sup> and projects tracking the quality and security of public schools through online platforms and mobile phones. A particularly important event was the enactment of the Right to Information Law, signed in November 2011.<sup>47</sup>

Brazilians use the web for political activism frequently and in a somewhat systematic, community-organized fashion. For example, on October 26, 2011, netizens launched the use of the hashtag “#QualidadeJa” (Quality Now) on Twitter in an effort to pressure the Brazilian federal telecom regulation authority (ANATEL) into changing the minimum actual speed required of broadband internet providers in advance of the authority’s meeting on the matter the next day.<sup>48</sup> Despite pressure from telecom companies to maintain the status quo, the Twitter campaign managed to succeed in achieving its demands.<sup>49</sup>

## VIOLATIONS OF USER RIGHTS

The constitution and federal law protect freedom of speech as well as cultural and religious expression. Specific laws also establish freedom of the press. However, some legislation limits these rights, and the constitution outlines a particularly complex legal framework, with a special effect on online speech.<sup>50</sup> For example, free expression of thought is ensured while anonymity is formally forbidden in the same paragraph. Bill 494/08, currently under consideration in the Senate as of mid-2012, aims to impose a series of obligations on ISPs, websites, and blogs to ensure cooperation with the police in pedophilia investigations.<sup>51</sup>

The Digital Crimes Bill,<sup>52</sup> first introduced in 2005 by Senator Eduardo Azeredo, has raised concerns that it would restrict technologies like open wireless networks, criminalize actions such as unlocking mobile phones, and oblige ISPs to record user information. Following public criticism of the draft—including a petition that gathered over 150,000 signatures—discussion surrounding the bill largely subsided in early 2010 and was substituted by a public

<sup>46</sup> See the website of the civil society group Fórum de Direito de Acesso a Informações Públicas [Forum for the Right of Access to Public Information] at <http://www.informacaopublica.org.br/>.

<sup>47</sup> “Brazil adopts access to information law,” Article 19, November 22, 2011, <http://www.article19.org/resources.php/resource/2862/en/brazil-adopts-access-to-information-law>.

<sup>48</sup> Wikerson Landim, “Idec convida usuários a twittaco por banda larga de qualidade” [Consumer protection authority invites users to tweet in favor of broadband quality], Tecmundo, October 26, 2011, <http://www.tecmundo.com.br/twitter/14737-idec-convida-usuarios-a-twittaco-por-banda-larga-de-qualidade.htm>.

<sup>49</sup> The campaign succeeded in immediately changing the advertised speeds enforced by government from 10% to a minimum of 20% and established that it would rise to 30% in 2012 and 40% in 2013.

<sup>50</sup> An English translation of the constitution is available at <http://www.v-brazil.com/government/laws/constitution.html>.

<sup>51</sup> According to the Brazilian Senate website, PLS Senate Bill, #474, 2008 has been submitted to the Tariff Commission for review as of August 2012. See, [http://www.senado.gov.br/atividade/materia/detalhes.asp?cod\\_mate=88695](http://www.senado.gov.br/atividade/materia/detalhes.asp?cod_mate=88695).

<sup>52</sup> Reporters Without Borders, “Legislators Urged to Oppose Cyber-crime Bill Likely to Threaten Online Free Expression,” news release, July 23, 2008, <http://en.rsf.org/brazil-legislators-urged-to-oppose-cyber-23-07-2008,27917.html>.

debate over the Civil Rights Framework for the Internet, a bill that was introduced in Congress in August 2011. Lauded as a positive development for internet freedom in Brazil, the Framework was formulated through a multi-stakeholder consultation process and aims to guarantee access to the internet, safeguard freedom of speech and communication, protect privacy and personal data, and preserve net neutrality. The Framework also provides for intermediary liability only when service providers fail to comply with a court order to takedown or block access to content.<sup>53</sup> The bill will likely be passed in 2013.

Nevertheless, partly as a result of Brazil's experience with military dictatorship in its recent history, the tradition of guaranteeing freedom of expression is at times tenuous. This is illustrated by the Supreme Federal Court's two-decade delay in invalidating the press-muffling statute enacted during the repressive years that is now completely at odds with the 23-year old rights-oriented constitution. It also explains the ease with which online political speech was restricted prior to the 2008 elections.<sup>54</sup> Lastly, this tradition translates into the continuously aggressive practice of court orders issued to constrain the online speech of bloggers, journalists, and ordinary citizens. In one instance, blogger Noel Júnior had his home office equipment confiscated in October 2011 based on a court order. According to Júnior, the action was a result of critical commentary he posted on his blog about a company that provides services to the local city government.<sup>55</sup>

Bloggers also continue to face defamation lawsuits, sometimes for very high amounts. In February 2011, freelance journalist and blogger Carlos Santos based in Mossoró was ordered to pay roughly US\$3,400 for posting three allegedly defamatory comments about the local mayor on his blog. Santos was also facing 27 other lawsuits and nine arrest orders for offending local officials.<sup>56</sup> In another case, a court in Rio de Janeiro found journalist Paulo Henrique Amorim guilty of defamation in September 2011 for criticizing a lawyer on his blog. Amorim was ordered to pay the lawyer more than US\$54,000 in damages and to publish the outcome of the case on his blog.<sup>57</sup>

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<sup>53</sup> Article 19, "Brazil: Civil Rights Framework for the Internet," legal analysis, July 26, 2012,

<http://www.article19.org/resources.php/resource/3389/en/brazil:-civil-rights-framework-for-the-internet>.

<sup>54</sup> The court's resolution, No. 22.718, determined that electoral campaigns and advertisements could only be posted on a candidate's web page. It barred electoral campaigns from using such tools as Orkut, YouTube, e-mail, and text messaging, and prohibited them from buying advertising space on the internet. See Superior Electoral Tribunal, Resolution No. 22.718, available at <http://www.tse.gov.br/internet/eleicoes/2008/pdf/r22718.pdf>.

<sup>55</sup> Natalia Mazotte, "Brazilian blogger's computer equipment confiscated," Journalism in the Americas (blog), October 31, 2011, <http://www.knightcenter.utexas.edu/blog/brazilian-bloggers-computer-equipment-confiscated>.

<sup>56</sup> "Local Courts to Allow Multiple Lawsuits to be Used to Censor Journalists," Reporters Without Borders, February 25, 2011, [http://en.rsf.org/brazil-local-courts-allow-multiple-25-02-2011\\_39629.html](http://en.rsf.org/brazil-local-courts-allow-multiple-25-02-2011_39629.html).

<sup>57</sup> Adriana Prado, "Blog post accusing lawyer gets Brazilian journalist \$54,000 fine," Journalism in the Americas (blog), September 21, 2011, <http://knightcenter.utexas.edu/blog/blog-post-accusing-lawyer-gets-brazilian-journalist-54000-fine>.

Several legal provisions, including Article 57-D of the recently revised electoral law, place restrictions on anonymity. Users are generally required to register with their real names before purchasing mobile phones or opening a private internet connection, though the use of pseudonyms in discussion forums is common. Nevertheless, there have been no reports of such registration being employed to punish users for their online speech on political or social issues, largely because there are no government efforts to track these who participate in such discussions.

Surveillance of internet activities is not a major concern in Brazil, although government efforts to collect user data have increased in recent years, and illegal wiretapping remains a significant problem. Specific laws allow for surveillance, but only when authorized by judicial orders under due process. In August 2011 alone, the judiciary granted over 17,000 wiretaps, many of them to Voice over IP (VoIP) lines.<sup>58</sup> A special congressional commission was established in 2009 to analyze surveillance issues. The panel's report suggested that many individuals, politicians, and members of the police force should be investigated and condemned for illegal wiretapping. Privacy is also threatened by defamation suits and other such cases.

While Brazil's lead in Google's content removal ranking in 2011 does not fully transpose to the User Data Requests list, which documents government requests for user data from Google services, the country is one of the top contenders in this aspect as well, with 2,318 user data requests recorded in 2011.<sup>59</sup> This stems in part from the fact that judicial orders to remove content in private party disputes are often accompanied by a request to identify the publisher of the information.<sup>60</sup>

Some lawmakers have pushed for requirements to record internet communications from public access points such as LAN houses and to gather data from users to prevent crime. It would also allow LAN houses to avoid liability for acts committed by its users. Legislation of this kind already exists in states like São Paulo. In the state of Paraná, legislation in force since October 2009 requires LAN houses to register and file all their users. The law was passed after the police department released statistics showing that 30 percent of cybercrimes in the state had originated from LAN house computers. Most establishments in Paraná have failed to comply, however, alleging that they were not aware the legislation had been enacted and that the police had not enforced it.<sup>61</sup> On the federal level, draft legislation

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<sup>58</sup> Revista Veja, "Tribunais autorizaram mais de 17.000 grampos telefônicos em agosto," *Veja*, September 19, 2011, <http://veja.abril.com.br/noticia/brasil/justica-autorizou-17-mil-escutas-telefonicas-em-agosto>.

<sup>59</sup> Google, "User Data Requests," Transparency Report (Mountain View, CA: Google, 2011), accessed February 7, 2012, <http://www.google.com/transparencyreport/governmentrequests/userdata/>.

<sup>60</sup> O'Brien, "Is Brazil the Censorship Capital of the Internet? Not Yet."

<sup>61</sup> "Lan houses ignoram lei e não cadastram clients," *Gazeta do Povo*, March 18, 2010, <http://www.gazetadopovo.com.br/vidaecidadania/conteudo.phtml?id=983853>.

introduced in 2004 that was approved by the House of Representatives in 2011 and is currently in the Senate as of early 2012, would regulate LAN houses as “multi-purpose entities of special interest for digital inclusion” and require them to register all users.<sup>62</sup>

While traditional media workers are often victims of violence and death threats in Brazil,<sup>63</sup> such attacks have yet to extend significantly to online journalists, bloggers, and commentators. There were no reports of violence or extralegal intimidation against such groups in 2011.

Cyberattacks are a large problem in Brazil, with targets ranging from online banking sites to energy plants.<sup>64</sup> An increasing amount of hacker instructional material is produced in Brazil, including information on how to conduct illegal mobile phone wiretaps or hack passwords.<sup>65</sup> In June 2011, the hacker group LulzSec undertook an attack of the Brazilian presidency website and several other governmental webpages, in what was seen as the largest cyberattack in the country to date and a part of a larger effort to disrupt governmental websites in several countries. In the endeavor, the group got a hold of allegedly personal data from São Paulo’s mayor and President Dilma Rousseff.<sup>66</sup> In early 2012, the hacker group Anonymous also made a significant impact by launching distributed denial-of-service (DDos) attacks against the websites of different Brazilian banks,<sup>67</sup> including the largest in the country, Banco do Brasil. The attacks have been described as political manifestations against corruption and inequality in Brazil.<sup>68</sup>

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<sup>62</sup> Draft Legislation no. 4361/2004, proposed by representative Vieira Reis, accessed February 7, 2012, <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=268907>.

<sup>63</sup> Maira Magro, “Police Accuse Three Men of Torturing Editor in Northeast Brazil,” *Journalism in the Americas*, June 10, 2010, <http://knightcenter.utexas.edu/blog/?q=en/node/7449>; Maira Magro, “Reporter Who Exposed Death Squad in Brazil Receives Threats,” *Journalism in the Americas*, May 25, 2010, <http://knightcenter.utexas.edu/blog/?q=en/node/7300>; Maira Magro, “Escaped Killer of Brazilian Journalist Turns Himself In,” *Journalism in the Americas*, May 25, 2010, <http://knightcenter.utexas.edu/blog/?q=en/node/7302>.

<sup>64</sup> Dmitry Bestuzhev, “Brazil: A Country Rich in Banking Trojans,” *Securelist*, October 16, 2009, [http://www.securelist.com/en/analysis/204792084/Brazil\\_a\\_country\\_rich\\_in\\_banking\\_Trojans](http://www.securelist.com/en/analysis/204792084/Brazil_a_country_rich_in_banking_Trojans).

<sup>65</sup> For examples of tools and hardware for “do-it-yourself wiretapping,” see ItecDiffusion.com at [http://www.itecdiffusion.com/PT/escuta\\_telemovei.html](http://www.itecdiffusion.com/PT/escuta_telemovei.html); See for example Apostila Hacker [Hacker Toolkit], at <http://www.apostilahacker.com.br/>.

<sup>66</sup> Angelica Mari, “Brazil suffers its biggest cyber attack – yet,” *Itdecs.com*, June 23, 2011, <http://itdecs.com/2011/06/brazil-suffers-its-biggest-cyber-attack-yet/>.

<sup>67</sup> Kenneth Rapoza, “Hacker Group 'Anonymous' Gun For Brazil Banks; Itau Internet Banking Briefly Shut Down,” *Forbes*, February 8, 2012, <http://www.forbes.com/sites/kenrapoza/2012/01/30/hacker-group-anonymous-gun-for-brazil-banks-itau-internet-banking-briefly-shut-down/>.

<sup>68</sup> “Hackers attack website of Brazil’s largest state-run bank,” *Associated Press*, February 1, 2012, <http://finance.yahoo.com/news/Hackers-attack-Brazil-largest-apf-847070693.html>.