

## Brazil's online crossroads between authoritarianism and democracy

Despite Brazil's democratic accomplishments, laws used to regulate websites date from the 1960s, giving arbitrary power to the state. A proposed 'Marco Civil da Internet' has the capacity to change this, writes Marcos Todeschini.



Brazil prides itself on having overcome authoritarianism and achieved a vibrant democracy over the last 30 years. Recent local elections held in 5,000 cities in a transparent and fair manner were a striking illustration of this. However, the lack of a thorough understanding of the role of the internet in electoral campaigns still hinders the full consolidation of democracy by unduly limiting freedom of speech.

That is more than evident in the number of judicial orders for Google to remove online content from the web. The search engine has faced over 300 judicial decisions between June and September 2012 requesting that the company take down videos and blog posts that were allegedly insulting candidates.

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In all of these cases, Google refused to withdraw the content – and in one instance incurred harsh consequences. The Brazilian Electoral Justice Court, which regulates elections in Brazil, ordered [the arrest of](#) Fabio José Silva Coelho, Google’s top executive in the country. He was accused of not complying with electoral law as he refused to take down the video attacking Alcides Bernal, mayoral candidate for the capital of Mato Grosso do Sul state. The video featured an ex-partner of his saying that Bernal forced her to have [an abortion in](#) the 1990s. This episode shed light on two key problems of the electoral system in Brazil.

Firstly, the requests show that judges do not understand the role of a search engine like Google. They chose to press charges against the dissemination platforms where the messages are disseminated, not the owners or creators of the messages. Translated into the offline world, this would be as if someone sprayed graffiti on the wall of someone’s house and a judge decided to arrest the owner of the house, not the person who wrote the slanders.

The second problem is that the laws regulating the electoral system date back to the 1960s, when the country was under an authoritarian regime. The dictatorship created laws regulating media companies, such as radio, newspaper and television groups because the communication chains in the country were in the hands of few groups, all of them linked to politicians. The implementation of the law was seen necessary to have some equilibrium during an election campaign and guarantee equality of treatment for candidates.

The judges currently resort to this 1960s law to regulate a new and different communication technology that is the internet. The law regulating television, for instance, states that the candidate should not appear on television, except in journalistic programmes, and they all should have the same exposure time. Applying that law to the internet means that all the regular internet users should follow the same rule: if they produce a video about a candidate, they should produce another one for the opposition. If they do not comply, they are liable to be persecuted by the state. Since they do not have the strong apparatus of support given by lawyers that the traditional media does, people might be afraid of politically expressing themselves.

The old law assumes that the power to produce and disseminate information is still in the hands of a few owners. It ignores the 80 million Brazilians who have access to the internet and are active users and producers of online contents. It also ignores the fact that a right to reply could be exercised by the candidate freely and easily through YouTube, personal websites and blogs.

Following this law leaves space for arbitrary decisions like taking down a website or attacking a search engine because a video would allegedly offend the “dignity and decorum” of a candidate. Forcing an intermediary such as Google or YouTube to withdraw videos or face being blocked, as has happened in some Brazilian cities, seems more like a form of hindering the debate.

The situation illustrates the need for a safe harbour law, a regulation that would give reasonable protection the intermediaries. When hosts are held liable for their users’ actions, incentives to

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freedom of expression are weakened and innovation is undermined.

There is light at the end of the tunnel. Like many countries, Brazil does not have any laws to protect online service providers for hosting third-party speech and content. However, these concerns are now being addressed by the “Marco Civil da Internet”, a regulatory bill that, if passed, would set out the rights and responsibilities of internet use. The hope is that this law would follow the paths of “network neutrality”, adopted by law in Chile and the Netherlands by advancing the principle that the intermediary or host should not be held responsible for content, except in specific cases such as [child pornography](#).

The main advantage of the “Marco Civil da Internet” is that intermediary bodies will be guaranteed some legal safeguards and, by extension, so will freedom of speech. Internet service providers and online hosts will have a legal tool to respond to the arbitrary orders that have threatened to put executives in jail for failing to disclose information, or have forced them to withdraw content from the web. If passed, the law would be a step forward in improving Brazilian democracy and leaving behind the sad legacy of the authoritarian regime.

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