



# **Brazil: A new global internet referee?**

**Policy paper on digital freedom of expression in Brazil**

**June 2014**

# ***Brazil: A new global internet referee?***

***Policy paper, June 2014***

Author: Melody Patry

With thanks to Vicky Baker, Sean Gallagher, Jodie Ginsberg, Kirsty Hughes, Rachael Jolley, Alice Kirkland.

With sincerest thanks to the many interviewees both in Brazil and abroad whose expertise was invaluable. Without their time and their knowledge this report would not have been possible.

We are grateful for the support of the Open Society Foundation in producing this report.

Photo credits: cover, page 1, 14 and 18, Melody Patry; page 3, Cristiano Sant'Anna/indecefoto; page 23, NIC.br/ Luís Vinhão and Fernando Torres; page 25, Midia NINJA.

This work is licensed under the Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Unported License. To view a copy of this licence, visit <http://creativecommons.org/licenses/by-nc-sa/3.0/>

## **About Index**

Index on Censorship is an international organisation that promotes and defends the right to freedom of expression.

Index uses a unique combination of journalism, campaigning and advocacy to defend freedom of expression for those facing censorship and repression, including journalists, writers, social media users, bloggers, artists, politicians, scientists, academics, activists and citizens.





# Contents

Introduction

1. Towards an internet bill of rights

2. Digital access and inclusion

3. Internet governance: Brazil taking the lead in international debates

Conclusion and recommendations

Glossary



# Introduction

This policy paper looks at the main challenges and threats to online freedom of expression in Brazil. It also analyses Brazil's increasing role in global internet governance debates, and the international consequences of Brazilian domestic internet policies. Brazil has the potential to become an influential world leader in terms of internet rights and set an example for internet governance, though that will depend on key choices and decisions taken in the coming weeks and months.

By the end of June 2013, more than 105 million people, 52% of the Brazilian population, had internet access at work, home, school or in cyber cafés.<sup>1</sup> Brazilians are among the world's top users of blogs and social networks. However, the judiciary has grown "increasingly aggressive" in its attempts to regulate content and Brazil has in recent years gained attention for ranking among the countries issuing the most takedown demands – requests by courts, governments and others to remove material or search results from the internet. Considerable hopes are being placed on the new Marco Civil bill, which will provide a much-needed progressive legal framework for internet rights. The bill was signed into law on 23 April 2014, making Brazil the largest country in the world to enshrine net neutrality in its legal code. The law also includes stricter privacy standards to fight surveillance, and guarantees freedom of expression online. However, as this paper shows, Brazil still faces considerable challenges in ensuring it can deliver on the promise of the new legislation.

Brazil must address significant inequality in digital access. This paper looks at areas of opportunities for Brazil to tackle socioeconomic factors that restrict access to digital freedom of expression.

The paper is divided into three sections. First, it reviews the needs for a legal framework to protect online freedom of expression, in particular the environment for freedom of expression online and off before the adoption of Marco Civil, the "internet bill of rights". Second, it considers the digital gap in the country and opportunities to push for digital access and inclusion as a development tool to combat poverty, discrimination, or illiteracy, and set an example for other countries. Finally, the paper examines the growing role of Brazil in international debates on internet governance and includes recommendations on how Brazil can match its apparent desire to act as an international role model in good internet governance with genuine leadership at home and abroad.

## A note on methodology

This policy paper draws on research and interviews conducted in Brazil in February 2014 with a range of interviewees from civil society, internet businesses, political figures and journalists.

---

<sup>1</sup> Source: Ibope Media, Número de pessoas com acesso à internet no Brasil chega a 105 milhões, <http://www.ibope.com.br/pt-br/noticias/paginas/numero-de-pessoas-com-acesso-a-internet-no-brasil-chega-a-105-milhoes.aspx>



# 1 Towards an internet “bill of rights”



Protest during a forum on Marco Civil da Internet - Campus Party Brasil 2013, 30 January 2013.  
The sign reads: “#MarcoCivilNow! Brazil belongs to its people, not to lobbyists”  
Photo: Cristiano Sant’Anna/indecefoto

Brazil is a conundrum in terms of internet freedom: on one hand it has come top of Google and others list of takedown requests in recent years, and, as we outline below, there have been court cases pitting the big internet firms such as Google and Facebook against Brazilian complainants on free speech issues.<sup>2</sup> On the other hand, Brazil has just passed a progressive law putting the country on a footing to be one of the world leaders on internet freedom.

On 23 April 2014, President Dilma Rousseff signed into law the Civil Rights Framework for the internet, two years after the bill was first introduced in Congress. The movement that resulted in law n° 12.965, 23 April 2014 – referred to as Marco Civil da Internet or simply Marco Civil – began in 2007. Marco Civil was drafted with three key issues in mind: Net neutrality, freedom of expression and user privacy.<sup>3</sup> The bill was particularly welcomed by Brazilian civil society at a time when the country is still facing many restrictions to free speech online and off.

This section looks at the current state of freedom of expression in the country, and then at the protracted process that led to the adoption of the Brazilian internet bill of rights.

## 1.1 The need for a legal framework to protect internet rights and online freedom of expression

Brazil's Federal Constitution guarantees Brazilian citizens broad access to information from multiple sources. Chapter 5 of the Constitution protects freedom of expression and freedom for the press, and forbids “any and all censorship of a political, ideological and artistic nature”.<sup>4</sup> However, the country still faces traditional restrictions to freedom of expression – where journalists have been threatened and even killed. In the last decade, more Brazilian citizens have become highly active internet and mobile users, yet – in common with other countries – that has often led to a clash between those welcoming and using the new freedoms and those trying to step in to constrain free speech online. Bloggers and web journalists have been threatened with litigation, and attacked or even murdered for expressing their views on the internet.

### Violence against media professionals, including bloggers and online publishers

With 11 journalists killed in 2012, five in 2013, and two since the start of 2014, Brazil is one of the deadliest countries for media personnel and ranks 111 out of 180 in the 2014 World Press Freedom Index.<sup>5</sup> Violence against media professionals is a serious threat to freedom of expression that worsened during the large-scale protests that erupted in São Paulo, Rio de Janeiro and other

<sup>2</sup> A takedown request refers to a demand from copyright owners, government or law enforcement agencies, or even individuals to remove, withhold or restrict access to content from the internet. An increasing number of companies (including but not limited to Google, Facebook, Twitter, Dropbox, Yahoo and Microsoft) have decided to issue transparency reports in order to share information on the number of requests for user information and/or requests for removal/takedown received from governments, law enforcement agencies, copyright owners and sometimes third parties.

<sup>3</sup> Net neutrality or network neutrality is the principle that all internet users should be able to access any web content and use any application they choose without restrictions or limitation imposed by telecommunication providers. It is a founding principle of the internet which guarantees that telecom operators remain mere transmitters of information and do not discriminate between different users, their communication or content accessed. It means that all data should be treated equally and should be sent to their destination with equal speed regardless of who sends them or receives them. The internet rights campaigning group La Quadrature du Net fears that the undermining of net neutrality by operators who develop business models that restrict access may lead to an internet where only users able to pay for privileged access will enjoy the network's full capabilities.

<sup>4</sup> Brazilian Constitution, drafted 5 October 1988, amendments current as of 1998, <http://web.mit.edu/12.000/www/m2006/teams/willr3/const.htm>

<sup>5</sup> Reporters Without Borders, World Press Freedom Index 2014, <http://rsf.org/index2014/en-americas.php>

Brazilian cities in June 2013. The protests were triggered by public transport fare hikes and fuelled by discontent with massive spending on the 2014 Football World Cup and the 2016 Olympics. News providers covering the protests were among those hit by a major police crackdown. The protests also raised questions about the highly concentrated media market after the policing intensified following an editorial published in the national newspaper *Folha de São Paulo* that called for more “force” against protesters.<sup>6</sup> Online journalists, bloggers and citizens used social platforms and internet technologies as an alternative form of journalism in response to large media outlets’ depiction of the protests. The collective *Mídia NINJA*, for example, attracted the attention of thousands of people during the protests for its “no-cuts, no censorship” approach (see sidebar). *NINJA*, which stands for “Independent Narratives, Journalism and Action” in Portuguese, were broadcasting live from the streets and they were the first to break news on police infiltrators and wrongful arrests. However, deprived of the resources of the mainstream media, some members of the collective were targeted by both protesters and the police.

## Case study: *Mídia NINJA*

### Using digital technologies to offer another media narrative: opportunities and risks

Media ownership in Brazil is highly concentrated, with 10 major companies dominating the national media.<sup>1</sup> In many states, local businessmen and politicians also hold TV and radio licenses, which interferes with media plurality and independence.<sup>2</sup> The emergence of the internet and access to the web via mobile phones has facilitated new forms of information sharing and citizen journalism. In the wake of the protests that shook the country in June 2013 onwards, *Mídia NINJA*, a journalists’ collective using social networks as a platform, grew in popularity and influence as it provides a channel for popular discontent with politics – and the media.

*NINJA* mainly use cell phones and other 4G devices to produce its broadcasts. The traction and interest *NINJA* generated became obvious during the protests, when their livecasting of the events reached more than 100,000 viewers.<sup>3</sup> In the meantime, their Facebook page, created in March 2013, has drawn more than 260,000 likes. Bruno Torturra, founder of *Mídia NINJA*, told *Index on Censorship*: “Because of our agility, our national presence and the way we challenge the official media narrative, we were catapulted to fame in days. Hundreds of people joined, we were able to cover more than 100 cities and produce tons of information.”

But the growing influence of these new independent and online journalists comes with risks. Many in the group feel they have been singled out by police for contradicting the official version of events. “We have already taken rubber bullets, tear gas, stones, fragments of grenades. We’ve been sprayed with fire hoses and pepper spray and been verbally threatened. In the whole country, eight reporters have been detained and, in some cases, suffered physical aggression,” said Filipe Peçanha, another *NINJA* collaborator who was detained while filming a protest.<sup>4</sup>

1 Brazil, the country of 30 Berlusconis, *Reporters Without Borders*, 24 January 2013, <http://en.rsf.org/bresil-thirty-berlusconis-south-america-24-01-2013,43938.html>

2 Universal Periodic Review: Brazil must ensure an end to violence against journalists and commit to media pluralism, Article 19, 25 May 2012, <http://www.article19.org/resources.php/resource/3315/en/universal-periodic-review:-brazil-must-ensure-an-end-to-violence-against-journalists-and-commit-to-media-pluralism#sthash.xdmiW71r.dpuf>

3 *Mídia NINJA*: an alternative journalism phenomenon that emerged from the protests in Brazil, Knightcenter, *Journalism in the Americas* blog, 25 July 2013, <https://knightcenter.utexas.edu/blog/00-14204-midia-ninja-alternative-journalism-phenomenon-emerged-protests-brazil>

4 Brazil’s ninja reporters spread stories from the streets, *The Guardian*, 29 August 2013, <http://www.theguardian.com/world/2013/aug/29/brazil-ninja-reporters-stories-streets>

6 *Folha de São Paulo*, Editorial: Retomar a Paulista, 6 June 2013, accessed on 13 February 2014, <http://www1.folha.uol.com.br/opiniao/2013/06/1294185-editorial-retomar-a-paulista.shtml>

Mídia NINJA were by no means the only group to be targeted during the protests, which refocused attention on the brutal methods used by the state military police. Free speech and human rights organisations have denounced excessive use of force against protesters and received complaints about some police officers monitoring social media, asking for Facebook passwords, and then detaining or arresting people for Facebook posts.<sup>7</sup>

Many journalists were injured and apprehended while covering protests. Pedro Roberto Ribeiro Nogueira, a reporter for the website Portal Aprendiz, was among the journalists beaten up and detained by the military police while covering the protests in June 2013. He was first accused of “resistance” and “obstructing” police work. Once at the police station, charges were changed to “vandalism” and “formation of a gang”. Nogueira stayed in jail for three days, until a video showing the police beating him went viral on the web. But even after his release, harassment continued.<sup>8</sup> Nogueira was under house arrest from 8pm to 6am every day for two months – with interdiction to leave São Paulo on weekends. As of writing, Nogueira, whom Index interviewed for this report, is still being prosecuted for “vandalism” and “formation of a gang”. The detention and harassment of reporters trying to do their jobs – whether they work for a large media outlet or not – is of great concern. As of April 2014, in the course of the protests, 166 journalists were the victims of acts of violence, of which more than two thirds were blamed on the police (see visual aside).<sup>9</sup>

According to Reporters Without Borders, violence against news providers also results from the phenomenon of “colonels”: regional politicians who are also businessmen and media owners. This phenomenon constitutes a major obstacle to media pluralism and independence, “turning journalists into the tools of local barons and exposing them to often deadly score-setting”.<sup>10</sup> In addition, organised crimes’ hold on certain regions makes covering subjects such as corruption, drugs or illegal trafficking in raw material very risky. All cases of killings and other forms of violence against media professionals, bloggers, human rights defenders and protesters are serious violations to the rights to freedom of expression and information and should be effectively investigated. Those responsible for such attacks should be held accountable.

Media professionals and citizen journalists also face the prospect of expensive legal proceedings, which undermine the right to freedom of expression and assembly in the country. The internet, including both small news sites and blogs and web giants such as Google, has been particularly hard-hit by judicial censorship. The number of court decisions either ordering content removal or sentencing bloggers and journalists for content published online has escalated. In particular, free speech organisations and associations of journalists have denounced the use of defamation and privacy laws as intimidation and silencing tools, calling some legal decisions “scandalous and anti-constitutional”.<sup>11</sup> With broadly worded defamation laws and in the absence of a specific legislation to regulate online content and protect internet rights, protection of privacy and personal data online have also become a cause for concern.

7 Index on Censorship interview with Abraj, Brazilian Association for Investigative Journalism, free speech NGO Article 19, and independent journalists, 11 and 12 February 2014; Insight: Brazil spies on protesters, hoping to protect World Cup, Brian Winter, Reuters, 5 February 2014, <http://www.reuters.com/article/2014/02/05/us-brazil-protests-insight-idUSBREA141JO20140205>

8 Index on Censorship interview, 11 February 2014

9 Index of Censorship interview with Abraj, Brazilian Association for Investigative Journalism, 11 February 2014. Data updated in April 2014 : [http://www.abraj.org.br/?id=90&id\\_noticia=2793](http://www.abraj.org.br/?id=90&id_noticia=2793)

10 Reporters Without Borders, World Press Freedom Index 2014, <http://rsf.org/index2014/en-americas.php>

11 Index on Censorship interview with NGO Article 19 and Abraj, 11 February 2014; Committee to Protect Journalists report: Halftime for the Brazilian press. Will justice prevail over censorship and violence?, 6 May 2014, <https://www.cpj.org/reports/2014/05/halftime-for-brazilian-press-censorship-violence.php>; Freedom House report: Freedom on the Net 2013, <http://freedomhouse.org/report/freedom-net/freedom-net-2013#.U4XVRZrVWI>; Reporters Without Borders, <http://en.rsf.org/report-brazil,169.html>



# VIOLENCE AGAINST NEWS PROVIDERS DURING PROTESTS

Since the beginning of the protests in June 2013, **79.5%** of intentional violence against journalists has been perpetrated by the police or security forces.



## Rising trend of takedown requests and censorship via the courts

In 2012, Brazil was top of the list of takedown requests worldwide, ahead of the United States and Germany.<sup>12</sup> Brazil has undergone an increase in content takedown requested by government agencies as well as by the judiciary. The breakdown of the Google transparency report – a bi-annual report covering requests received from copyright owners and governments to remove information from Google services – shows that defamation is the leading reason and accounts for 44% of all removal requests. Excerpts of the latest reporting period also show that in many cases, removal orders focus on blog posts criticising public officials. For example, between January and June 2013, Google received a court order to remove 107 blog posts and search results for linking to information that criticised a local government official for allegedly corrupt hiring practices.<sup>13</sup> Court orders went as far as banning writing posts on Facebook about specific issues or preventing people from logging into any social media (see case studies in the sidebar on page 10). Since there was no specific law governing online content, most of the controversial decisions justified the use of censorship under the country's existing defamation and privacy laws.

In 2009, the Brazilian Supreme Federal Tribunal decided to strike down the infamous 1967 Press Law, which imposed harsh penalties for libel and slander.<sup>14</sup> The 1967 Press Law, which had been adopted under the military dictatorship that ruled Brazil between 1961 and 1985, had been used to systematically harass critical journalists. While the elimination of this repressive law was welcome, many Brazilian journalists and citizens can still be jailed for up to two years under criminal defamation laws that remain in the penal code.<sup>15</sup>

Defamation is a crime, which is prosecuted as “defamation” (three months to a year in prison, plus fine), “slander” (six months to two years in prison, plus fine) and/or “injury offending the dignity of another person” (one to six months in prison, or fine), with aggravating penalties when the crime is committed against the president, or against the head of a foreign government, against a public official in the performance of his official duties, or against a person who is disabled or over 60 years old.

The law defines alleged violations in broad terms – “offending the dignity of another person” – that offer room for wide interpretation and exaggeration. The provision on public officials, for example, means that reporters are sometimes prohibited from discussing investigations into political figures. They face libel charges even in obvious cases of public interest, such as investigations on corruption.

Furthermore, the country's election law is restrictive and limits reporting on political issues during an electoral period.<sup>16</sup> The law specifically protects political candidates from content that would “offend their dignity or decorum”.

Both the election and defamation laws have been used to limit or shut down the dissemination of information about public figures – both in the traditional press and online.

Free expression organisation Article 19 notes that in cases of defamation involving politicians, local courts often rule in favour of the plaintiff.<sup>17</sup> This is also true when those who press charges

<sup>12</sup> Google Transparency report, 2013, 2012, <http://www.google.com/transparencyreport/removals/government/BR/>

<sup>13</sup> Between January and June 2013, Google received a court order to remove 107 blog posts

<sup>14</sup> In victory for press, high court strikes down repressive law, Committee to Protect Journalists, 7 May 2009, <https://www.cpj.org/2009/05/in-victory-for-press-brazils-high-court-strikes-do.php>

<sup>15</sup> Articles 138-141 of the Brazilian Penal Code, Código Penal, [http://www.planalto.gov.br/ccivil\\_03/Decreto-Lei/Del2848compilado.html](http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848compilado.html)

<sup>16</sup> Google vs Brazil. Why Brazil heads up Google's list of takedown requests, Columbia Journalism Review, 29 April 2013, [http://www.cjr.org/cloud\\_control/brazilian\\_takedown\\_requests.php?](http://www.cjr.org/cloud_control/brazilian_takedown_requests.php?)

<sup>17</sup> Digital Freedom in Brazil: State of Play, Article 19, 13 September 2012, <http://www.article19.org/resources.php/resource/3435/en/>

for defamation are powerful businessmen or companies, implying that in some cases, judges and politicians/businessmen are closely linked. This phenomenon has come to be known as “judicial censorship”, which refers to the practice of politicians, business people, and celebrities using defamation and privacy laws to silence the media.<sup>18</sup> In May 2013, a journalist from the Brazilian state of Amapá, Alcinea Cavalcante Costa, was ordered to pay a R\$2 million fine (approx. USD 1 million) to Brazilian’s Senate President José Sarney, after someone posted a comment criticising him under an article she wrote on her personal blog in 2006. In this case, Costa was not the author of the comment for which she was condemned, but her blog had hosted it. The fact that she was so heavily fined stirred up controversy over the relations between the judiciary and Brazilian political figures, as Costa’s prosecution appeared as an attempt to shut down political criticism. Likewise in January 2013, a judge in the northern state of Pará ruled that journalist Lúcio Flavio Pinto had to pay local businessman Romulo Maiorana Júnior and his company Delta Publicidade R\$410,000 (approx. USD 205,000). The charges stemmed from a 2005 story in which Pinto alleged that Maiorana’s media group, Organizações Romulo Maiorana, had used its influence to pressure companies and politicians into giving them advertising. Maiorana said Pinto had damaged the Maiorana family’s honour and reputation.<sup>19</sup>

In the past five years, civil society and some internet companies have started to challenge judicial censorship and push back against takedown orders. For example, Article 19 has published a guidebook aimed at journalists and bloggers sued for defamation. At Google, the compliance rate – requests where some or all items are removed – dropped from 82% in 2009 to 21% in 2012. But challenging court orders has its limits. In September 2012, Google’s top executive in Brazil, Fabio Coelho, was temporarily detained by order of a judge from the state of Mato Grosso do Sul for not complying with a court order and “disobedience to the Electoral Code”. The judge demanded the removal of YouTube videos considered offensive against Alcides Bernal, a mayoral candidate in the state capital Campo Grande. Google challenged the court order and refused to take the video down. Since the video was not promptly deleted, Coelho was held responsible. He was questioned by federal police and released shortly after. He later expressed his concern about the episode, saying it had “intimidating effects” on freedom of expression.<sup>20</sup>

Although the government does not employ any technical methods to filter online content, the escalation in government takedown requests and court-ordered censorship highlights a worrying trend to censor political criticism and dismiss free speech arguments. It seems that unlike journalists working for well-established newspapers, bloggers and independent journalists are far more likely to be censored by the courts.<sup>21</sup> While Marco Civil would provide a protection for internet intermediaries by limiting notice-and-takedown procedures, judicial censorship remains a threat to Brazilian internet users.

---

digital-freedom-in-brazil:-state-of-play

18 Halftime for the Brazilian press, Committee to Protect Journalists report, May 2014, <https://www.cpj.org/reports/2014/05/halftime-for-brazilian-press-censorship-violence.php>

19 The Committee to Protect Journalists reports that Pinto also blogs for Yahoo and has reported on drug trafficking, environmental devastation, and political and corporate corruption in the region for more than 45 years. He has been physically assaulted, threatened, and targeted with dozens of criminal and civil defamation lawsuits as a result of his investigative work. Brazilian journalist ordered to pay damages in libel case, CPJ, 31 January 2013, <https://www.cpj.org/2013/01/brazilian-journalist-ordered-to-pay-damages-in-lib.php>

20 Google sees “intimidating effects” in top exec’s detention, Index on Censorship, 9 January 2013, <http://uncut.indexoncensorship.org/2013/01/google-brazil-censorship/>

21 Google Transparency report, 2013, 2012, <http://www.google.com/transparencyreport/removals/government/BR/>



## Controversial rulings about social media, internet content and free speech (non-exhaustive list)

In February 2013, a judge from the Brazilian state of São Paulo barred Ricardo Fraga de Oliveira, founder of the movement “The Other Side of the Wall – Collective Intervention”, from a construction site or even posting on Facebook about it.<sup>1</sup> Oliveira was protesting against a construction project in his neighbourhood. He complained about possible irregularities on the site. Oliveira created a Facebook page and launched an online petition that gathered 5,000 signatures. The construction company, Mofarrej, filed a lawsuit against Oliveira, claiming his protests were slanderous and offensive against a private initiative. They also said he harassed and discouraged potential apartment buyers. The company demanded his Facebook fanpage be suspended and asked for a restraining order banning the engineer from an area of one kilometre around the construction site.

The judge banned Oliveira from visiting the construction area and ordered the shutdown of his Facebook fanpage. After his lawyer appealed the ruling, the judge maintained the restraining order, but determined that only the mentions about the construction works or Mofarrej should be removed from Facebook, or face a R\$10,000 (approx. USD 4,500) fine for each violation. Oliveira ultimately decided to suspend the fanpage, since most of its posts criticised the building or the construction firm.

In April 2013, a judge from the city of Limeira, São Paulo state, banned lawyer Cássius Haddad from logging into any social media platform.<sup>2</sup> Haddad was criminally cited by the state’s Public Ministry for posting attacks against prosecutor Luiz Bevilacqua on the internet. The judge ordered Facebook and Twitter to inform the court if Haddad logged into his accounts. The providers were also asked to send the court monthly reports of all attempts made by the lawyer to access their services.

In July 2013, José Cristian Góes, a reporter from the Brazilian state of Sergipe, was sentenced to seven months and one week in jail under defamation law for writing and posting a fictional short story on local political cronyism on his blog in May 2012.<sup>3</sup> The short story was told from a first person point of view and did not mention location, dates or actual names.

In December 2013, a judge condemned two women for having “liked and shared” a post on Facebook.<sup>4</sup> The case in question involved a Facebook post accusing a veterinarian of negligence. Two women who saw the post liked it and shared it. Both were ordered to pay a R\$10,000 (approximately USD 4,500) fine by José Roberto Neves Amorim, a judge in the state of São Paulo. He explained his decision in the following terms: “there is responsibility for sharing messages.”

<sup>1</sup> Brazilian court gags protester in latest social media ruling, Index on Censorship, 30 May 2013, <http://www.indexoncensorship.org/2013/05/in-brazil-judge-forbids-online-criticism-of-construction-site/>

<sup>2</sup> Ibid.

<sup>3</sup> Brazilian blogger sentenced to jail for writing fictional short story, Knightcenter, 9 July 2013, <https://knightcenter.utexas.edu/blog/00-14121-brazilian-blogger-sentenced-jail-writing-fictional-short-story>

<sup>4</sup> Justiça condena internautas por “curtir” e compartilhar post no Facebook, Olhar Digital, 4 December 2013, <http://olhardigital.uol.com.br/noticia/39175/39175>

In the context of this challenging environment for journalism and blogging, there has been a move to set out a number of protections and rights for the digital world. While this leaves many challenges for journalists offline, the possibility of a progressive online framework could start to transform the free speech and media freedom environment in Brazil. The movement for such a framework – which would soon be known as “Marco Civil da Internet”, literally Civil Rights Framework for the Internet in Portuguese – started in 2007. And in 2009, the ministry of justice partnered with the Center for Technology and Society of the Getulio Vargas Foundation, and with the direct participation of civil society in order to draft a bill.

## 1.2 Marco Civil: Promises and Compromises

The original draft of Marco Civil was aimed at protecting internet freedom of expression, speech and privacy, establishing safe-harbour protections for intermediaries and establishing the principle that access to the internet is a civil right. While largely positive, the approved text adopted and passed into law in April 2014 is substantially different than the version sent to Congress in 2011.

### **Early steps: consultation process – or the success of the multistakeholder approach**

The consultation process at the origin of Marco Civil has been exemplary in many ways. Alessandro Molon, the MP rapporteur of the bill, endorsed a multistakeholder approach and accepted contributions from civil society, internet companies, the tech sector and academics as soon as the policy-making process kicked off. Internet users even had the opportunity to make suggestions via tweets. The participatory consultation process, the involvement of civil society and its influence upon the evolution of the bill, contributed in portraying Brazil as a “champion for transparency and multistakeholder approach”.<sup>22</sup>

### **A series of setbacks and obstacles: copyright, net neutrality, privacy/data localisation**

However, as soon as the bill was first introduced to Congress in 2011, it faced a series of setbacks. First the copyright industry opposed the principle of court orders to take down content, and managed to introduce a provision asserting that notice and takedown procedures would apply for copyright infringement, thus escaping legal oversight. In practice, this would mean that copyright or related rights infringements holders would not require court orders to request content to be taken down and any intermediary who fails to comply could be subject to civil liability damages.

Second, powerful telecom companies have strongly lobbied against the principle of net neutrality. The principle of net neutrality implies that all data should be treated equally and should be sent to their destination with equal speed. Net neutrality also helps to guarantee everyone’s right to express themselves freely within the limits set by the law and to access the content and services they desire, whether free or paid.<sup>23</sup> Under Marco Civil, internet service providers are barred from interfering with connection speeds or content. The framework around net neutrality, strongly backed by civil society, upset the interests of the country’s telecom companies. Their influence inside the Brazilian bicameral congress’s lower house was such that the vote on the bill was postponed and dropped from the legislative agenda on many occasions.<sup>24</sup>

<sup>22</sup> Index on Censorship interview, Centre for Technology and Society, 14 February 2014

<sup>23</sup> The Enemies of Internet. Special Edition: Surveillance, Reporters Without Borders 2013 report, <http://surveillance.rsf.org/en/glossary/>

<sup>24</sup> Brazilian Congress and lobbyists kill world first internet Bill of Rights, Index on Censorship, 28 November 2012, <http://uncut.indexon-censorship.org/2012/11/brazil-internet-marco-civil/>

From 2012 to 2014, the bill was effectively on hold as a result of the telecoms industry's intense opposition to the provision on net neutrality and other battles over intermediary liability, defamation and data retention. The stalemate was such that internet freedom advocates launched several campaigns denouncing telecom companies lobbying and claimed that Marco Civil was "under attack".<sup>25</sup>

The bill did not have a momentum strong enough to bring it back to the top of the political agenda until June 2013. At the time, revelations on mass surveillance and the spying activities of the US National Security Agency (NSA) by whistleblower Edward Snowden had provoked international outrage. Brazil's President Dilma Roussef was particularly vocal and even postponed her official visit to the US after the leaked documents revealed the US agency had been monitoring the president's emails and phone calls, those of Brazil's biggest oil company and the communications of millions of citizens.<sup>26</sup>

Snowden's revelations provided a window of opportunity for the government to push the bill forward and overcome the standstill in Congress. In September 2013, Roussef decided to put Marco Civil into a constitutional emergency process to accelerate its adoption by congress. Under Brazilian law, the congress must give priority to a bill placed under constitutional emergency and cannot examine or pass any other law until the vote on the bill in question is carried out.

While this move to push for the adoption of Marco Civil was very welcome, in the meantime, the government pressed for an amendment of Marco Civil that would oblige big internet companies such as Facebook, Google and other foreign service providers to base servers inside Brazil and be subject to Brazilian law. The set of measures was intended to extricate the internet in Brazil from the influence of the US and its tech giants, and in particular to protect them from the reach of the NSA – claiming to protect Brazilian citizens' privacy. But forcing internet companies to host data pertaining to Brazilian citizens within Brazilian territory was extremely controversial: "forced localisation" sets a bad precedent as it is more often used by authoritarian regimes to block the internet and have access to internet users' data. By offering these proposals, the Brazilian government has led some to draw a parallel with site-blocking in countries such as China, Iran and Bahrain, and many saw these proposals as too strong a remedy for the aim of providing protection from mass surveillance by the UK and US.<sup>27</sup> Broadly rejected by civil society, engineers, companies and several legislators, the proposal was dropped by the government so that voting could take place.

<sup>25</sup> The Brazilian institute for Consumer Protection launched the campaign #MarcoCivilJà (which means Marco Civil Now in Portuguese), condemning the procrastination of the bill at congress (<http://www.idec.org.br/mobilize-se/campanhas/marcocivil>). Access Now launched a online petition called "Hands Off Marco Civil !" (<https://www.accessnow.org/page/s/hands-off-the-marco-civil>). A collaborative documentary project, Freenetfilm, campaigned for net neutrality and made a youtube video that got 83,385 views (<https://www.youtube.com/watch?v=8DdaC93O9Yw&feature=youtu.be>).

<sup>26</sup> Brazilian president postpones Washington visit over NSA spying, The Guardian, 17 September 2013, <http://www.theguardian.com/world/2013/sep/17/brazil-president-snob-us-nsa>

<sup>27</sup> Brazil's controversial plan to extricate the internet from US control, The Guardian, 20 September 2013, <http://www.theguardian.com/world/2013/sep/20/brazil-dilma-rousseff-internet-us-control>



The final wording of the bill enshrines access to the web, guarantees neutrality and puts limits on the metadata that can be collected from internet users in Brazil. It also makes internet service providers not liable for content published by their users and requires them to comply with court orders to remove offensive material. However, it still has its blind spots, in particular the lack of guarantees for deleting data records, the introduction of special courts for defamation cases and the respect of “free business models” as a principle of the bill.

The last two provisions are problematic as they are open to interpretation and might create precedent allowing, respectively

1) special treatment for public figures who want to take down content related to their “honour, reputation or rights of personality” and 2) businesses and particularly telecom companies to challenge the principle of net neutrality if deemed against their “business model”.<sup>1</sup>

<sup>1</sup> Article 20 §3 introduces special courts for cases “that deal with compensation for damages resulting from content on the internet related to the honour, reputation or rights of personality as well as with the takedown of such content by internet service providers”. Article 3 VII ensures that the use of the internet in Brazil has amongst its principles the respect for “free business models promoted on the internet, provided they do not conflict with other principles established in this law”. Geneva Internet Platform, Marco Civil and English translation <http://gi-platform.org/resources/text-brazils-new-marco-civil>

As a whole, Brazil’s “internet bill of rights” is a progressive law and puts the country in another level in terms of freedoms of expression.

Marco Civil is considered by the global internet community as a one-of-a-kind bill, with the inventor of the world wide web Sir Tim Berners-Lee hailing the “groundbreaking, inclusive and participatory process that has resulted in a policy that balances the rights and responsibilities of the individuals, governments and corporations who use the internet”.<sup>2</sup>

<sup>2</sup> Marco Civil: Statement of Support from Sir Tim Berners-Lee, World Wide Web Foundation, 24 March 2014, [http://webfoundation.org/2014/03/marco-civil-statement-of-support-from-sir-tim-berners-lee/?utm\\_source=hootsuite&utm\\_campaign=hootsuite](http://webfoundation.org/2014/03/marco-civil-statement-of-support-from-sir-tim-berners-lee/?utm_source=hootsuite&utm_campaign=hootsuite)

## Marco Civil: A landmark to export and replicate across Brazilian borders?

“Marco” means reference or landmark in Portuguese. The rapporteur of the bill, Alessandro Molon, insists on the potential of the bill to be an example and influence for other countries in Latin America and beyond. Indeed, as soon as Brazil signed Marco Civil into law, it became the largest country to enshrine net neutrality in its legal code, among its other welcome provisions on privacy, intermediary liability and accessibility and openness of the internet. When signing the bill into law on 23 April 2014, President Dilma Rousseff tweeted that Brazilian Marco Civil model “may influence the global debate in the quest towards the guarantee of real rights in the virtual world”.<sup>28</sup>

With Marco Civil passed into law, Brazil, in its domestic law, is asserting itself as a potential world leader in internet freedom. This could both make it a model for other countries to follow, and should give it more credibility and the ability to be one of the leaders on a progressive approach to internet governance at international level. However, aside from the caveats regarding the bill we have discussed above, access remains a key hurdle for Brazil, as we consider in the next section.

<sup>28</sup> “O nosso modelo de #MarcoCivil poderá influenciar o debate mundial na busca do caminho p/ garantia de direitos reais no mundo virtual”, tweet from President Dilma Rousseff official account, 23 April 2014, <https://twitter.com/dilmabr/status/458781317531181056>

# 2

## Digital access and inclusion

Brazil is the world's second-biggest user of both Facebook and Twitter, with already 65 million Facebook users and 41.2 million tweeters and counting. Up to 38 million new users are expected to join as smartphone prices fall and connectivity improves.<sup>29</sup> The internet and social networks have allowed millions of Brazilian people to exercise their right to freedom of expression online. However, the internet came with strong inequalities. Digital access (people having access to the internet) and digital inclusion (people knowing how to use the internet) are a crucial component of the right to access to the internet, which is embedded in Marco Civil.

This section looks at how Brazil's socio-economic gap undermines access to the internet. It also explores some opportunities – both from the public and private sectors – to use the internet as a development tool in the country.

<sup>29</sup> Mediacellular expectations, Smartphone explosion in 2014 will see ownership in India pass US, The Guardian, 13 January 2014, <http://www.theguardian.com/technology/2014/jan/13/smartphone-explosion-2014-india-us-china-firefoxos-android>

## 2.1 The internet and new technologies: lessening or deepening the socio-economic gap?

Brazil is the fifth most wired country in the world. The number of Brazilians with internet access in any environment (home, work, distance learning centres, internet cafes, schools) totals 105 million people or 52% of the population.<sup>30</sup> Because of its growing internet penetration and mobile access to the internet, Brazil is a case where access to freedom of expression can be used as a development tool to combat poverty, discrimination and illiteracy (also see Index's India policy paper: "India: Digital freedom under threat?"). The internet represents an opportunity to fill in the socio-economic gap that strongly divides Brazilian society – especially in terms of education, access to information, and access to freedom of expression. However, the country must first address the digital divide between those with and without access to the internet.

According to Cetic, the Brazilian Centre for Studies on Information and Communication Technologies, 97% of households from the high-income class (Class A) are connected to internet. This figure drops to 6% for households with inferior income, who represent 75% of the population (Class D-E). The gap between Class A and Class D-E speaks for itself but is not the only factor slowing down access to the internet. A study by the Brazilian Institute of Information Science and Technology shows that the differences in access among ethnic groups are large, and the differences between regions are also significant, as are the differences observed between educational levels.<sup>31</sup> In light of the arguments involving the close relationship between digital division and social inequality, Brazil must address digital access as a priority critical for both the Brazilian economy and social inclusion.

**Internet access by household income  
Brazil 2012**

Social class (based on household income)	% with access	% without access
A	97	3
B	78	22
C	36	63
DE	6	94

Source: Cetic.br

\* Excluding access via mobile phone within the household.

Base: 61.3 million of household. Data collected between October 2012 and February 2013.

30 Número de pessoas com acesso à internet no Brasil chega a 105 milhões, Ibope, 3 October 2013, <http://www.ibope.com.br/pt-br/noticias/paginas/numero-de-pessoas-com-acesso-a-internet-no-brasil-chega-a-105-milhoes.aspx>

31 Internet access in Brazil: social context and science and technology professionals, Gilda Olinto, Instituto Brasileiro de Informacao em Ciencia e Tecnologia – IBICT, <http://ridi.ibict.br/bitstream/123456789/53/1/OlintoASIST07.pdf>



### Internet access by living area Brazil 2012

Area	% with access
Urban	44 %
Rural	10 %

Source: Cetic.br

\* Excluding access via mobile phone within the household.

Base: 61.3 million of household. Data collected between October 2012 and February 2013.

### Internet access by level of education Brazil 2011

Years of schooling	% with access
0 - 4	11.8 %
4 - 7	33.0 %
8 - 10	51.2 %
11 - 14	71.5 %
15 +	90.2 %

Source: IBGE (PNAD 2011). Microdata

\* Population of 10 years old or more

Public and private initiatives have already been undertaken to provide greater internet access, faster broadband connections, and IT skills to vulnerable groups. For example, Digital Cities is a government initiative launched in 2011 by the Ministry of Communications that aims to provide full broadband telecommunications infrastructure and internet access to meet the needs of citizens, businesses and public bodies.<sup>32</sup> Digital Cities is a pilot project, which starts out with a selection of 80 municipalities.<sup>33</sup> The project aims to install public internet access points that will be accessible, free of charge and installed in densely populated areas. The project also anticipates the creation of distance learning centres, and the interconnection of all public buildings in the network.

Apart from the socio-economic divide that impedes citizens' access to the internet, another challenge for Brazil is to provide internet access across its wide territory. The country occupies roughly half of South America. The National Broadband Plan (PNLB) launched by the Brazilian government in 2010 was created to ensure greater broadband access for low-income households across the country by installing fibre optic cables. However, the planned expansion of the national network covered mainly Brasilia and 25 state capitals, "ignoring" the northern region of the country. As a result of this unequal distribution, the "Broadband is your right!" campaign was launched to demand universal broadband service with a view to narrowing the digital divide. Indeed for some people living in remote areas – with limited geographical access to the main cities and without official mailing addresses, broadband access is the only way to be "connected". Their email address is their only address. That is also true for people living in very poor urban areas – deprived of a physical mail address – such as the favelas of Rio de Janeiro.

One of the "Broadband is your right!" campaign's proposals was that the former state-owned monopoly operator, Telebras, should offer universal broadband in order to provide access to the most remote areas. The campaign was not successful and then shifted its focus to quality standards of broadband connection, including guaranteed download and upload speed, connection stability and net neutrality at affordable prices. This time, the campaign was successful with Anatel – Brazilian Agency of Telecommunication – approving a number of the suggested criteria.

<sup>32</sup> Citades Digitais. Building a cooperative and innovative ecosystem, Brazilian Ministry of Communication

<sup>33</sup> On 30 May 2014, Brazil's Ministry of Communication added nine cities in the state of Bahia to its Digital Cities programme. <http://www.telecompaper.com/news/brazil-adds-nine-digital-cities-in-state-of-bahia--1016689>

## 2.2 “The social media capital of the universe” and the emergence of mobile access to the internet<sup>34</sup>

23.3% of Brazilians use their phones to access the internet.<sup>35</sup> As of mid-2013, Brazil was home to the largest mobile phone market in Latin America, and news organisation Reuters forecast that Brazil would become the fifth largest smartphone market in the world by the end of 2013.<sup>36</sup> The surge in new smartphone users can facilitate the expansion of internet access for those who do not benefit from broadband at home. It can potentially offer an alternative solution to the difficulty of bringing broadband coverage to the entire country. However, while Brazil's mobile phone market has more than doubled in six years to 272 million connections in a country of 200 million people, network investments have not kept up.<sup>37</sup> The risk of an embarrassing World Cup outage is just one consequence of an explosion in mobile data use outpacing the growth of Brazil's cell network.

38 million Brazilians are expected to be able to access the internet via their mobile phone by the end of the year 2014. As access widens, the push for proper regulation will grow. Marco Civil touches on privacy rights but has left a few grey areas in terms of data retention and government access to data. As more Brazilians connect to the internet and gain necessary computer skills and education about the benefits of the web, civil society is now pushing for stronger frameworks around privacy and data retention.

Article 4 of Marco Civil promotes “the right of access to the internet to all” and article 27 asserts that “public initiatives to promote digital culture and promote the internet as a social tool should: I) promote digital inclusion; and II) seek to reduce gaps, especially between different regions of the country, access and use of information technology and communication”. The debate surrounding the adoption of Marco Civil contributed to raising awareness on internet rights and made it a popular issue. The increase of Brazilian online users may increase demands for privacy, and could lead to more debates around free speech online and offence. How much it leads to demands for media freedom and free speech will depend on the debate about freedoms offline as much as online.

34 Brazil : The Social Media Capital of the Universe, Loretta Chao, The Wall Street Journal, 4 February 2014, accessed 24 February 2014, <http://online.wsj.com/news/articles/SB10001424127887323301104578257950857891898>

35 According to Zenith Optimedia, In Brazil, Facebook, Twitter Battle For Ad Dollars As Social Land Grab Heats Up, AdAge, <http://adage.com/article/digital/brazil-s-big-social-media-land-grab-heats/240061/>

36 Brazil launches 4G wireless service with few smartphone options, Reuters, 17 April 2013, <http://www.reuters.com/article/2013/04/17/brazil-telecom-smartphones-idUSL2N0D32ON20130417>

37 World Cup rush leaves gaps in Brazil cell network, Reuters, 23 April 2014, <http://www.reuters.com/article/2014/04/23/us-brazil-world-cup-telecom-idUSBREA3M0YR20140423>

# 3 Internet governance

**Brazil taking the lead in international debates**



Global Multistakeholder  
Meeting on the Future  
of Internet Governance

**NETmundial**



Key debates are under way at international level on internet governance, with crucial decisions up for grabs that could determine whether the internet remains a broadly free and open space, with a bottom up approach to its operation – as exemplified in part by the multistakeholder approach – or becomes a top-down controlled space as pushed for by China and Russia, supported to some extent by several other countries.

In September 2013, the outrage following the revelations of mass surveillance by the US and UK led President Dilma Rousseff to announce that Brazil would host an international summit – NETmundial – on the future of internet governance in April 2014. This internet governance summit – progressive in appearance – took place just two years after Brazil voted in line with countries that have a tradition of internet control at a major international conference on telecommunications in Dubai.

This section looks at Brazil's attitude in global internet governance debates and the potential contradictions between its domestic and foreign internet policies. In the aftermath of NETmundial and a year before Brazil is to host the 2015 Internet Governance Forum (IGF), this chapter also looks at Brazil's ability to impose itself as a world leader in internet governance debates.

### **3.1 Is Brazil a swing state on global internet governance? Contradictions between domestic and international policies**

What is at stake during the international discussions that shape the evolution and use of the internet has implications for all. The current multistakeholder approach for internet governance supposedly includes civil society and non-governmental actors in decision-making. It is a more bottom-up and multi-layered process, allowing a range of organisations to determine or contribute towards different parts of internet governance. The consultation process at the origin of the Marco Civil law is a possible example of the multistakeholder approach in action: Civil society, private companies, academics, law enforcement officials and politicians participated in the draft.

While Brazil has been pushing for stronger internet freedoms lately, especially at the domestic level, it has a history of going in the other direction. In December 2012, Brazil aligned with a top-down approach lobbied by countries that have a tradition of internet control at the Dubai World Conference on International Telecommunications (WCIT) summit. This meeting brought together 193 member states of the International Telecommunication Union (ITU) in part to decide whether or not and how the ITU should regulate the internet. On one side, EU member states and the US argued the internet should remain governed by an open and collaborative multistakeholder approach. On the other side of the divide, Russia, China and Iran lobbied for greater government control of the net. Brazil, along with the most influential emerging democratic powers (India the notable exception), aligned with this top-down approach.

This decision appeared in total contradiction with Brazil's defence and implementation of the multistakeholder model at home with Marco Civil (see previous section on Marco Civil da Internet). At the time, the rapporteur of Marco Civil, Alessandro Molon, was opposed to the new ITU regulations and regretted that Marco Civil had not been adopted before the vote. While it is not unusual for any government to see a contradiction between domestic and foreign policy, Molon believed that the adoption of Marco Civil would have established without doubt Brazil's policy and support for a transparent and inclusive approach to internet governance.

The reasons behind Brazil's vote at the WCIT are obscure. First of all it is worth noting that most Latin American countries voted in favour of the text adopting new International Telecommunications Regulations (ITRs, see map below). An analysis of the region's vote shows that beyond governments' intentions and goodwill towards the current multistakeholder governance model, to most Latin American governments, the new regulations were not about the internet but about telecommunications.<sup>38</sup> Most of these governments would have looked at the new ITRs to "reap some of the benefits of the ITRs as a whole", especially in terms of technical facilities.<sup>39</sup> Second, like India, Brazil has increasingly expressed its desire to take on the US hegemony over the internet and digital technologies.<sup>40</sup> The clash between the two sides revealed at WCIT 2012 led *The Economist* to call WCIT 2012 a "digital cold war".<sup>41</sup> Brazil's position is, however, more complex. Neither a supporter of the US nor Sino-Russian initiatives, Brazil has been seeking greater recognition in multilateral forums and has called for the rebalancing of international institutions.<sup>42</sup> As one of the new global economic powerhouses alongside Russia, India and China, but considered the most democratic of that group with India, aligning with countries supporting tighter government control was more a statement against internet governance by institutions seen as under US control – namely ICANN (Internet Corporation for Assigned Names and Numbers) – and an assertion of Brazil sovereignty.<sup>43</sup>

**Signatories of the final act at WCIT 2012: signing countries in green and non-signing in red**



38 Beyond Dubai: Post WCIT reflections from an internet governance viewpoint, LSE Network Economy Forum, 4 April 2013, <http://blogs.lse.ac.uk/nef/2013/04/04/postwcit-internet-governance/>

39 Ibid.

40 India wants to take on 'US hegemony' over the internet... by renaming it the equinet, Techdirt, 21 April 2014, <http://www.techdirt.com/articles/20140420/07182126970/india-wants-to-take-us-hegemony-over-internet-renaming-it-equinet.shtml>

41 A digital cold war? *The Economist*, 14 December 2012, <http://www.economist.com/blogs/babbage/2012/12/internet-regulation>

42 Cyberspace and the Rise of the BRICS, *Journal of International Affairs*, Columbia SIPA, Hannes Ebert and Tim Maurer, 11 October 2013, [http://jia.sipa.columbia.edu/online-articles/cyberspace-rise-brics/#\\_ftn14](http://jia.sipa.columbia.edu/online-articles/cyberspace-rise-brics/#_ftn14)

43 Finding a formula for Brazil: representation and legitimacy in internet governance, Milton Mueller and Ben Wagner, Internet Policy Observatory, [http://www.internetgovernance.org/wordpress/wp-content/uploads/MiltonBenWPdraft\\_Final\\_clean2.pdf](http://www.internetgovernance.org/wordpress/wp-content/uploads/MiltonBenWPdraft_Final_clean2.pdf)

The revelations on mass surveillance activities carried out by the US further fuelled Brazil's will to break from US-centric internet. Standing against mass surveillance, Brazil distanced itself from the top-down internet governance approach and called for an "open, multilateral and democratic governance, carried out with transparency by stimulating collective creativity and the participation of society, governments and the private sector."<sup>44</sup>

Shortly after announcing the organisation of an international conference to discuss the future of internet governance in response to the surveillance revelations, President Dilma Rousseff also ordered a series of measures aimed at greater Brazilian online independence and security. But what are the internet governance implications of that opposition to the US spying? By trying to get away from the US dominance of the internet, Rousseff's measures risk taking a regressive stance on the internet. Paradoxically, while asserting internet freedoms, the geopolitics behind Brazil's response to mass surveillance could align it with countries pushing for top-down internet control both nationally and internationally.

### 3.2 After Snowden: Brazil taking the lead and opposing mass surveillance – but at what cost?

In September 2013, President Dilma Rousseff made a strong political response to Snowden's revelations on mass surveillance activities carried out by the United States. In a speech delivered to the UN General Assembly, Brazil's president accused the NSA of violating international law and called on the UN to oversee a new legal system to govern the internet. Rousseff seized the momentum created by Snowden's revelations to question the current multilateral mechanisms in place – such as ICANN – and announced that Brazil would host an international summit to discuss the future of internet governance in April 2014: NETmundial. ICANN has faced growing criticism in recent years about the influence of the US government on its operations. In this context, the efforts of Brazil in promoting digital freedom at domestic level with Marco Civil have helped the country gain a leading role and visibility in internet rights discussions. While India used to appear as a natural leader of the debate, discussions on Marco Civil and internet legislation have reached an international audience to the extent that Indian politicians now say "India has lost its leadership status to Brazil in the internet governance space".<sup>45</sup>

Not only is Brazil one of the countries with emerging influence in the multipolar world but it is also a state whose population is increasingly engaging with the internet. The decision to host NETmundial shows both Brazil's stand against mass surveillance – at least officially – and its ambition to take the lead on internet governance debates.

The opposition to US-led mass surveillance led Brazil to propose a series of ambitious and controversial measures aimed at extricating the internet in Brazil from the influence of the US and its tech giants, in particular protecting Brazilians from the reach of the NSA. These included: constructing submarine cables that do not route through the US, building internet exchange points in Brazil, creating an encrypted email service through the state postal system and having Facebook, Google and other companies store data by Brazilians on servers in Brazil. While the first two were an attempt

<sup>44</sup> Statement by Brazilian President Dilma Rousseff, President of the Federative Republic of Brazil, at the opening of the general debate of the 68th session of the United Nations General Assembly, New York 24 September 2013, [http://gadebate.un.org/sites/default/files/gastatements/68/BR\\_en.pdf](http://gadebate.un.org/sites/default/files/gastatements/68/BR_en.pdf)

<sup>45</sup> As internet matures, India faces a choice on governance, Index on Censorship, 24 March 2014, <http://www.indexoncensorship.org/2014/03/internet-matures-india-faces-choice-governance/>

at developing internet infrastructure in Brazil, forcing tech giants to locate their data centres locally to process local communications would have big implications.<sup>46</sup> Not only would it be very difficult to implement at a practical level, but it would not even protect Brazilians' data from surveillance. On the contrary, data stored locally would be more vulnerable to domestic surveillance. This proposal – even made with good intent – was sending the wrong message, especially to other countries looking to Brazil as a leader in this space. Engineers and web companies, who have their own agenda and economic interests, argued it would have a negative impact on Brazilian competitiveness, would be damaging for its tech sector and pose a threat of “internet fragmentation”.<sup>47</sup> In terms of internet freedom, the measure set a dangerous precedent. Indeed, forced localisation of data relates more to measures undertaken by countries that have a reputation of internet control and repressive digital environments, such as China, Iran and Bahrain.<sup>48</sup>

At a time when Brazil is gaining international exposure for defending internet freedom, it is important to stick to a progressive internet governance approach, including at the international level. The international summit on the future of internet governance – NETmundial – kicked off with Brazil reiterating its commitment to a “democratic, free and pluralistic” internet. The signing of Marco Civil da Internet into law by the Brazilian president onstage set the tone of the event: “The internet we want is only possible in a scenario where human rights are respected. Particularly the right to privacy and to one’s freedom of expression,” said Dilma Rousseff in her opening speech.<sup>49</sup> She added about Marco Civil: “As such, the law clearly shows the feasibility and success of open multisectoral discussions as well as the innovative use of the internet as part of ongoing discussions as a tool and an interactive discussion platform”.

The drafting process of Marco Civil and the inclusive consultation process that has involved civil society and private sector from beginning to end served as a model for the organisation of NETmundial. The unprecedented gathering brought together 1,229 participants from 97 countries. The meeting included representatives of governments, the private sector, civil society, the technical community and academics. Remote participation hubs were set up in cities around the world and the NETmundial website offered an online livecast of the meetings.

However, despite efforts to include civil society and despite Dilma Rousseff’s speech in favour of freedoms online and net neutrality, the geopolitics around the event and pressure from some governments and private sector led to a weak, disappointing outcome document.<sup>50</sup> The final version of the “Internet governance principles” document did not even mention net neutrality – a fundamental principle of the internet architecture. Disappointed and frustrated, many internet activists launched a campaign asking governments to take concrete actions to end global mass surveillance and protect the free internet. Some even came to question the multistakeholder model of internet governance.

46 Brazil's controversial plan to extricate the internet from US control, Amanda Holpuch, The Guardian, 20 September 2013, <http://www.theguardian.com/world/2013/sep/20/brazil-dilma-rousseff-internet-us-control>

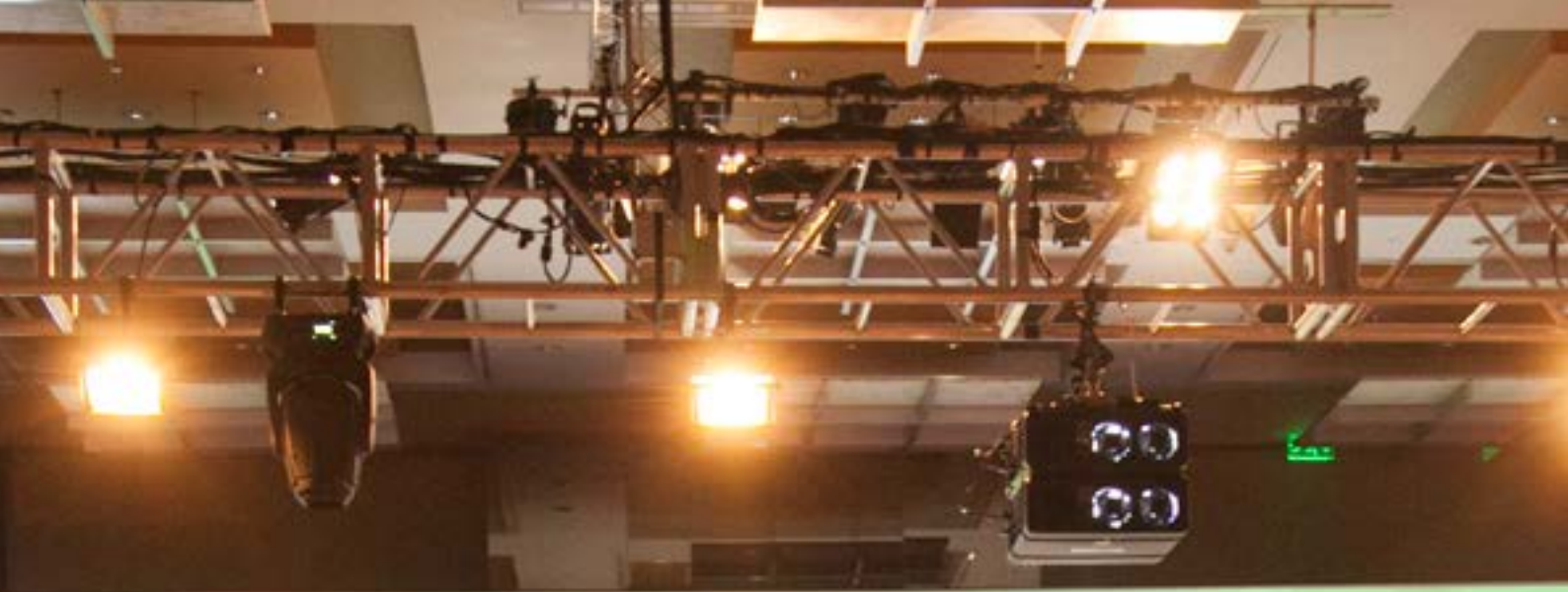
47 Storing data centres in Brazil would require US internet companies operating in Brazil to duplicate infrastructure that they already possess offshore, setting up huge and costly data centres inside the country.” Brazil going too far on internet security, Financial Times, 12 November 2013, <http://www.ft.com/cms/s/0/4d678be2-4bb6-11e3-a02f-00144feabdc0.html?siteedition=uk#axzz319MeWkSs>

48 What will happen if countries carve up the internet? Eugene Kaspersky, The Guardian, 17 December 2013, <http://www.theguardian.com/media-network/media-network-blog/2013/dec/17/internet-fragmentation-eugene-kaspersky>

49 NETmundial – Dilma Rousseff’s Opening Speech, 23 April 2014, <http://netmundial.br/wp-content/uploads/2014/04/NETmundial-23April2014-Dilma-Rousseff-Opening-Speech-en.pdf>

50 Netmundial Multistakeholder Statement, 24 April 2014, <https://www.laquadrature.net/files/NETmundial-Multistakeholder-Document.pdf>





President Dilma Rousseff speaking at the opening ceremony of NETmundial, 23 April 2014  
Photo: NIC.br/ Luís Vinhão e Fernando Torres

### 3.3 The multistakeholder model in question

Although the process for discussion adopted by NETmundial appeared inclusive, the multistakeholder model was criticised by internet activists and described as “oppressive, determined by political and market interests”.<sup>51</sup> The balance of power and weak outcome document of NETmundial led them to call the principles of NETmundial “empty of content and devoid of real power”. La Quadrature du Net, which defends the rights and freedom of citizens on the web, called NETmundial international governance a “farce” and the multistakeholder approach an “illusion”.<sup>52</sup>

Although Brazil made considerable efforts to offer an event open to civil society, academics, private sector and all governments, in reality the power of non-government actors, especially of civil society, is relatively weak next to the dominance of governments, tech giants and other powerful private corporations. And, as attractive as the rhetoric of liberty and freedom might be, intrusive governance is still regarded as acceptable by governments of all kinds – even those with apparently progressive attitudes towards an open internet. This is reinforced by fears of virtual crimes and cybersecurity, which are vital areas of government policy, as recently claimed by the Brazilian minister of communications Paulo Bernardo.<sup>53</sup> In Brazil, as well as in India and other democracies, the balance between freedom and security can generate contradictory positions between international and domestic policies, and security arguments have often been used to justify claims for greater state control over critical internet resources, at the risk of falling into the game of repressive regimes.<sup>54</sup>

The future of internet governance is still being discussed and Brazil is under the spotlight. It is not clear yet to what extent Marco Civil will lead to a safer and better online and offline environment. Meanwhile, Brazil should not support approaches that lead to top-down control of the net or forced local hosting of data. In the aftermath of NETmundial, Brazil appears more as a leader and influencer in the global debates on the future of internet governance. However, the outcome of NETmundial underlined Brazil’s vulnerability to pressure from the US, the EU and industrial interests. Brazil must continue to build on Marco Civil in the international sphere and use its clout to promote internet freedoms.

51 NETmundial: Disappointed expectations and delayed decisions, Simone Marques, Index on Censorship, 30 April 2014, <http://www.indexoncensorship.org/2014/04/netmundial-disappointed-expectations-delayed-decisions/>

52 The “Internet Governance” Farce and its “Multi-stakeholder” Illusion, Jérémie Zimmermann, La Quadrature du Net, <https://www.laquadrature.net/en/the-internet-governance-farce-and-its-multi-stakeholder-illusion>

53 Liberalising internet governance: ICANN and the role of governments, Binoy Kampmark, Index on Censorship, 1 May 2014, <http://www.indexoncensorship.org/2014/05/liberalising-internet-governance-icann-role-governments/>

54 Index policy paper, India: Digital freedom under threat?, November 2013, <http://www.indexoncensorship.org/2013/11/india-online-report-freedom-expression-digital-freedom/>



# Conclusion and recommendations

**With the adoption of a progressive legislation on internet rights, Brazil is taking the lead in digital freedom. Digital technologies have provided new opportunities for freedom of expression in the country, but have also come with new attempts to regulate content and strong inequalities between those with and without access to the internet. Old problems like violence against journalists, media concentration and the influence of local political leaders over judges and other public agents persist.**

**As internet penetration and access to the internet via mobile phone is increasing in the country, it is interesting to see how digital inclusion has created a new space for the exchange of ideas and reshaped the wider debate on freedom of expression. The emergence of independent media such as the collective Midia Ninja demonstrates the impact of digital on the offline free speech environment.**

**Brazil must now build on Marco Civil to ensure the respect of the right to freedom of expression online and offline, and promote internet rights in the international sphere.**

In order for Brazil to provide a safe space for digital freedom and ensure the promise of Marco Civil is met in reality, Index on Censorship offers the following recommendations:

**At the international level, Brazil should:**

- Use its leadership to further promote a free and fair internet by continuing to publicly advocate for fundamental internet principles such as net neutrality, user privacy and freedom of expression in international forums
- Ensure that civil society organisations are deeply involved in the discussions and decision-making process on global internet governance, and that the outcome of international debates adequately reflect their recommendations
- Resist intervention by powerful lobby groups and governments to skew the outcome of multistakeholder gatherings
- Refuse to adopt or sign up to repressive measures and/or international agreements favouring internet censorship, top-down approach of internet governance and tighter government control of the internet

**At the domestic level, Brazil should:**

- Reform defamation and privacy laws to ensure they are not used to prosecute journalists and citizens who express legitimate opinions in online debates, posts and discussions
- Provide proper training to the judiciary and law enforcement agencies on defamation and other freedom of expression-related issues
- Introduce clear guidelines regarding civil defamation lawsuits, especially in regard to the use of content takedown and the setting of indemnification amounts
- Ensure that all cases of killings and other forms of violence against media professionals and human rights defenders are effectively, promptly and independently investigated, and those responsible are held accountable
- Be more transparent about the ongoing work around privacy legislation, including the Data Protection Bill
- Pursue their efforts in promoting digital access and inclusion to all Brazilians by expanding the Digital Cities programme and stick to the target of ensuring 40 million households or 68% of the population are able to access broadband by the end of 2014 as part of the National Broadband Plan



# Glossary

## **ICANN**

The Internet Corporation for Assigned Names and Numbers

## **IGF**

Internet Governance Forum

## **Intermediaries**

'Internet intermediaries' give access to, host, transmit and index content originated by third parties or provide internet-based services to third parties. Intermediaries include Internet Service Providers (ISPs), search engines, and businesses/web companies that host content but do not produce it.

## **ITR**

International Telecommunication Regulations

## **ITU**

International Telecommunication Union

ITU is the United Nations specialised agency for information and communications technologies. It's an organisation based on public-private partnership that allocates global radio spectrum and satellite orbits.

## **ISPs**

Internet Service Providers

## **Net Neutrality**

Net neutrality or network neutrality is the principle that all internet users should be able to access any web content and use any application they choose without restrictions or limitation imposed by telecommunication providers. It is a founding principle of the internet which guarantees that telecom operators remain mere transmitters of information and do not discriminate between different users, their communication or content accessed. It means that all data should be treated equally and should be sent to their destination with equal speed regardless of who sends them or receives them. The internet rights campaigning group La Quadrature du Net fears that the undermining of net neutrality by operators who develop business models that restrict access may lead to an internet where only users able to pay for privileged access will enjoy the network's full capabilities.

## **Takedown request**

A takedown request refers to a demand from copyright owners, government or law enforcement agencies, or even individuals to remove, withhold or restrict access to content from the internet. An increasing number of companies (including but not limited to Google, Facebook, Twitter, Dropbox, Yahoo and Microsoft) have decided to issue transparency reports in order to share information on the number of requests for user information and/or requests for removal/takedown received from governments, law enforcement agencies, copyright owners and sometimes third parties.

## **WCIT**

World Conference on International Communications. It is organised by the ITU.

## **WSIS**

World Summit on the Information Society

# Index on Censorship on the go

Find us in  
the app store  
today! A 30 day  
subscription costs  
just £1.79 and gives  
you access to 6 years  
of archived content.



- Search current issue or archive
- Share pages instantly via e-mail, Twitter, Facebook and other social networks
- Pinch or double-tap pages to zoom
- Use animated thumbnail view to flick through pages
- Swipe page edges to flip to next/previous page
- Sync any issue to your device for offline reading (WiFi)
- Tap links to take you to websites, email addresses, references, maps...
- Tap contents-page links to jump to a particular article

[www.indexoncensorship.org/subscribe](http://www.indexoncensorship.org/subscribe)



**Xindex**  
the voice of free expression