

# Corporate Rights vs. Sovereign Censorship: The Issue of Online Disinformation in Brazil

Callum McArthur<sup>1</sup>

---

## I. Introduction

The digital paradigm that western society has adopted as technological advances have increased has directly expanded the capacity of internet platforms to play a larger-than-ever role in public action. The contemporary world exists in a unique position in which internet activity is arguably the most potent instrument that can be used to influence social change, and as such, many countries are continuously tasked with the issue of crafting legislation to account for the internet as a platform for speech. One such country that has received much attention in recent months is Brazil, which has undergone many dynamic, widely-publicized, and arguably radical changes in the way they have chosen to approach the issue of free speech in their online environment. Particularly, the Brazilian government adopted legislation centering around the restriction of activity of prominent social media platforms in efforts to combat the spread of disinformation that were believed to be culminating there.

In recent years, Brazil has championed its steady industrial and economic growth with a parallel development in nationwide internet infrastructure. According to the Economist Impact's 2022 Inclusive Internet Index, some 83.2 percent of households have access to the internet, and Brazil has 96.8 mobile subscriptions per 100 inhabitants.<sup>2</sup> Additionally, Brazil appears

---

<sup>1</sup>BS (Cornell) 2028. I am very grateful to Robert McArthur for his help and guidance, and the editors of the UILRC for their very helpful comments and suggestions. All views contained in the article are mine, and any errors are my own.

<sup>2</sup> "The Inclusive Internet Index." Economist Impact. Last modified 2022. Accessed November 4, 2024.

<https://impact.economist.com/projects/inclusive-internet-index/2022/country/Brazil>.

to be showing no signs of slowing down their investment in internet access and quality. In fact, in February 2021, the National Telecommunications Agency (Anatel) approved the rules for a spectrum auction for fifth-generation (5G) technology, and access to 5G technology in all municipalities with a population of 30,000 or more will be implemented gradually in the country by the end of 2029.<sup>3</sup>

To complement and prepare for their investment in internet infrastructure, in 2014, Brazil introduced their *Marco Civil da Internet*, otherwise known as Brazil's *Internet Bill of Rights*. The legislation touches on many subjects from user privacy to net neutrality. However, many of the Articles focus on the issue of free speech on the internet, and what is protected versus what is not.<sup>4</sup> One particular point of interest comes in Article 3, Section 1, which defines the general nature of internet use in Brazil as based on the "guarantee of freedom of speech, communication and expression of thought, in accordance with the Federal Constitution."<sup>5</sup> Another comes in Article 19 that states, "In order to ensure freedom of expression and prevent censorship, the provider of internet applications can only be subject to civil liability for damages resulting from content generated by third parties if, after a specific court order, it does not take any steps to, within the framework of their service and within the time stated in the order, make unavailable the content that was identified as being unfair,

---

<sup>3</sup> Reuters. "Brazil regulator approves 5G spectrum auction rules, no Huawei ban."

Reuters. Last modified February 25, 2021. Accessed November 5, 2024.

[https://www.reuters.com/business/media-telecom/brazil-regulator-approves-5g-spectrum-auction-rules-no-huawei-ban-2021-02-26/#:~:text=Brazil%20regulator%20approves%205G%20spectrum%20auction%20rules%2C%20no%20Huawei%20ban,-By%20Reuters&text=BRASILIA%2C%20Feb%2025%20\(Reuters\),UL\)%20as%20an%20equipment%20supplier](https://www.reuters.com/business/media-telecom/brazil-regulator-approves-5g-spectrum-auction-rules-no-huawei-ban-2021-02-26/#:~:text=Brazil%20regulator%20approves%205G%20spectrum%20auction%20rules%2C%20no%20Huawei%20ban,-By%20Reuters&text=BRASILIA%2C%20Feb%2025%20(Reuters),UL)%20as%20an%20equipment%20supplier).

<sup>4</sup> "Marco Civil Law of the Internet in Brazil." In Presidency of the Republic Civil House Legal Affairs. Last modified April 23, 2014. Accessed November 4, 2024.

<https://www.cgi.br/pagina/marco-civil-law-of-the-internet-in-brazil/180>.

<sup>5</sup> "Marco Civil Law" Article. III, Section I

unless otherwise provided by law.<sup>6</sup>

Thus, Brazil enumerates that primarily its third party platforms on the internet are subject to regulation and legislation from the government, rather than internet service providers, or even the users themselves. This legislation ultimately highlights how free speech in Brazil is more regulated than the traditional American notion of civil liberty, which enjoys more robust and wide reaching protections to political speech that are enshrined in the U.S. Constitution with virtually no qualifications.<sup>7</sup> In contrast, the Brazilian Constitution includes more restrictions, and its Fifth Article that protects free speech, also emphasizes the need to respect the rights of others, but more importantly, public order and national security.<sup>8</sup> Consequently, certain expressions, such as hate speech or speech that incites violence, can be more readily restricted by the Brazilian government.

## II. The Issue of Disinformation

Despite this extensive commitment by the Brazilian government to regulate the internet and digital sector of Brazilian society, the country has faced ongoing concerns about the spread and effect of disinformation on the internet. It is important to distinguish between *misinformation*, which is simply false or inaccurate information, and *disinformation*, which is false information deliberately intended to mislead its audience. The latter of these two became a point of concern for the Brazilian authorities, and led to legal action to regulate much of the content consumed by its citizens and restrict access to certain platforms. More specifically, Brazil's primary concern centers around the use of social media, and its ability to allow for the spread of disinformation at an alarming rate, and to consequently act as a platform to spark activity that could be

---

<sup>6</sup>Marco Civil de Internet, Lei n° 12.965 de 23 de Abril de 2014, <https://legislacao.presidencia.gov.br/atos/?tipo=LEI&numero=12965&ano=2014&ato=93eUTRE9ENVpWTdb6>, Article XIX

<sup>7</sup>U.S. Const. Amend. I

<sup>8</sup>Brasil, Constituição da República Federativa do Brasil, 5 de Outubro de 1988, Art. V

considered disturbing to public order and threatening to national security. Social media platforms such as Facebook and Twitter—and, more recently, closed-messaging platforms such as WhatsApp—play a central role in civic communication in Brazil. However, disinformation campaigns and the prevalence of false and misleading content complicates the use of the platform to mobilize individuals around authentic political causes. Between October and December 2022, for instance, Brazilian-based think tank Instituto Igarapé identified 410 threats to civic space in Brazil; 229 of those were disinformation campaigns, the highest number on record, which mainly attacked Brazil's electoral system.<sup>9</sup>

In response to these concerns, the Brazilian Legislature passed Congressional Bill No. 2630 - Brazilian Law on Freedom, Responsibility and Transparency on the Internet, more commonly known as the *Fake News Law*,<sup>10</sup> which “establishes rules regarding the transparency of social networks and private messaging services, especially regarding the responsibility of providers for combating disinformation and increasing transparency on the internet, transparency regarding sponsored content and the actions of public authorities, as well as establishing sanctions for non-compliance with the law.”<sup>11</sup> This piece of legislation in particular, sets the foundation for government officials and entities, such as the Brazilian Supreme Court, to assume broad authority to order tech companies to remove content and ultimately adhere to their effort to eliminate disinformation on the internet.

---

<sup>9</sup> Instituto Igarapé. "GPS do Espaço Cívico." Instituto Igarapé. Accessed November 4, 2024. <https://igarape.org.br/temas/espaco-civico/gps-do-espaco-civico/>.

<sup>10</sup>France 24. "Telegram Calls Brazil Disinformation Law Attack on Democracy." France 24. Last modified 2023. Accessed November 4, 2024. <https://www.france24.com/en/live-news/20230509-telegram-calls-brazil-disinformation-law-attack-on-democracy>.

<sup>11</sup> Vicira, Alessandro. "Projeto De Lei N° 2630, De 2020." In Senado Federal. Last modified January 7, 2020. Accessed November 4, 2024. <https://legis.senado.leg.br/sdleg-getter/documento?dm=8110634&ts=1712173889308&disposition=inline>.

An example of a utilization of this authority occurred during Brazil's two major attempts to apply these laws and regulate the app *Telegram Messenger*, or *Telegram* for short, which is a cloud-based, cross-platform instant messaging and social media network.<sup>12</sup> The first and most recent of these attempts came in April 2024 at the request of Brazil's Federal Police (PF), Judge Wellington Lopes da Silva who ordered Internet Service Providers to block access to Telegram nationwide, and for Google and Apple to remove Telegram from their app stores in Brazil. The order remained in effect for three days before it was lifted by another federal judge. The PF requested the block during an investigation of extremist violence in Brazilian schools after Telegram had failed to comply with an earlier court order to turn over the personal data of neo-Nazi users on the platform, including the users' contact and financial information. In response to the court's April 2023 decision to block the platform, Telegram head Pavel Durov claimed that it would be "technologically impossible" for the platform to comply with the authorities' request for data.<sup>13</sup> This trend in insisting on transparency from platforms in relation to user data can be seen in multiple instances, as the Brazilian authorities even launched an investigation on Google for similar reasons the following summer. They were, however, met with a similar technological inability to cooperate, raising questions about the legitimacy of the government's concerns and requests.<sup>14</sup>

The second, and most significant, of these two instances of attacks on Telegram came just a year earlier, in March 2023, following the highly controversial 2022 Brazilian presidential election. To give some context, the presidential race was structured around two candidacies: on the right, the

---

<sup>12</sup> Telegram Messenger. "Telegram Messenger - About." Telegram Messenger. Accessed November 5, 2024. <https://telegram.org/faq#q-what-is-telegram-what-do-i-do-here>.

<sup>13</sup> Freedom House. "Brazil: Freedom on the Net 2023." Freedom in the World. Last modified 2024. Accessed November 4, 2024. <https://freedomhouse.org/country/brazil/freedom-net/2023>.

<sup>14</sup> Reuters. "Brazil judge closes coordination probe into Google, Telegram." Reuters. Last modified September 20, 2024. Accessed November 5, 2024.

then-president running for reelection, Jair Bolsonaro from the Liberal Party, and on the left, the former president between 2003 and 2010, Luiz Inácio Lula da Silva from the Workers' Party. Lula was elected in the second round with 50.9 percent of the votes versus Bolsonaro's 49.1 percent, the latter defeated by a small margin of only 2.1 million verified votes. The election resulted in a massive increase in political polarization between the two sides, seen both in the form of growing distance between the two ideologies and a general increase in disaffection between rival groups that shook the stability of the Brazilian public.<sup>15</sup> The following March, under the pressure of the government, Telegram removed a number of accounts and channels spreading disinformation—including accounts belonging to a prominent supporter of Bolsonaro under investigation for such activities—in an effort to avoid a ban imposed by the Supreme Court after the app failed to cooperate with authorities in the lead-up to the election. In compliance with the Supreme Court's orders, the app also removed links to classified information, which had been shared by Bolsonaro, related to an investigation into allegations that the government was using official channels to spread disinformation and sow doubts about electoral integrity. In addition to removing the specified accounts, Telegram committed to monitoring its 100 most popular channels in Brazil, working with local fact-checking organizations to determine the veracity of posts, and establishing a framework to address court requests more promptly, though it remains unclear whether Telegram kept to its pledges or to what degree they did so.<sup>16</sup>

### **III. Threats to National Security and the 2023 Attack on Brasília**

Thus, it is candid that one of, if not the most, significant threats that Brazil believes unregulated social media operation poses to its national wellbeing is the ability for social media to create civil unrest centered around the country's

---

<sup>15</sup> Tanscheit, Talita, and Pedro Barbosa. "A Battle of Two Presidents: Lula Vs. Bolsonaro in the Brazilian Elections of 2022." *Revista de Ciencia Política* 43, no. 2 (2023).

<sup>16</sup> Freedom House

politics, as well as jeopardize Brazilian national security as a whole. Regulation in regard to the upcoming election at the time continued to take prominence in the Brazilian digital sphere. However, it was not until a mob of supporters of Jair Bolsonaro attacked Brazil's federal government buildings in the capital, Brasília, following the defeat of the incumbent President in the election, that the Brazilian government truly recognized the threat posed to it and intensified its efforts to battle disinformation.

False claims about the 2022 election, shared both online and offline, undermined public trust in the vote and contributed to the pro-Bolsonaro political violence in Brasília on January 8, 2023. Many false claims about the election were shared by Bolsonaro and his allies in an intentional effort to influence the online information sphere. Specifically, Bolsonaro and his supporters championed the claim that the 2022 election results were illegitimate and a coercion by those already in power on the left to instate Lula to ensure they are able to retain their authority. According to a survey from December 2022, 82 percent of respondents who voted for Bolsonaro did not have confidence in the outcome of the election.<sup>17</sup>

Efforts to regulate online content, particularly related to this spread of electoral disinformation, intensified in the lead-up to and aftermath of the 2022 elections and the violent, pro-Bolsonaro riots in the capital. During the coverage period, judicial authorities regularly issued orders to remove online content deemed to be false or undermine electoral integrity, and restricted the accounts of social media users who were found to spread such content. Many of these orders were issued or otherwise led by powerful Brazilian Supreme Court Justice Alexandre de Moraes, who became a significant figure in the movement towards more strict online regulation.<sup>18</sup>

To be more specific, Moraes responded to the right-wing violence by

---

<sup>17</sup> Freedom House

<sup>18</sup> Freedom House

actively ordering content takedowns and account suspensions. An unspecified number of individuals had their accounts withheld under his orders, including far-right Congressman and prominent YouTuber Nikolas Ferreira, whose social media accounts were suspended on January 11 and reinstated on January 24.<sup>19</sup> The social media accounts of another far-right member of Congress, Carla Zambelli, were suspended from November 2022 until February 2023 after she posted in support of those seeking to forcibly overturn the results of the election.<sup>20</sup> Many have praised Moraes' actions as decisive in enabling a peaceful transition of power and helping to repel the attack on the capital; however, others have criticized him, saying he used overly broad interpretations of the law to assume outsized powers.<sup>21</sup> This instance is only one of many that Moraes has received backlash for, and he has even gotten international criticism by members of the U.S. Congress for "eroding basic democratic values and stifling debate."<sup>22</sup> While many believe he is a hero peacekeeper, just as many feel that the unstable nature of the Brazilian political climate is made worse by his actions.

The action taken by Moraes and the superior courts in the nation sparked intense dialogue in the Brazilian public about the ultimate role and

---

<sup>19</sup> PODER360. "STF determina reativação de redes sociais de Nikolas Ferreira." Poder 360. Last modified January 26, 2023. Accessed November 5, 2024. <https://www.poder360.com.br/justica/stf-determina-reativacao-de-redes-sociais-de-nikolas-ferreira/>.

<sup>20</sup> O Globo, Agência. "Contas de Carla Zambelli nas redes sociais são suspensas após decisão judicial." Exame. Last modified November 1, 2022. Accessed November 5, 2024. <https://exame.com/brasil/contas-de-carla-zambelli-nas-redes-sociais-sao-suspensas-apos-decisao-judicial/>.

<sup>21</sup> UOL. "Moraes Unblocks Carla Zambelli's Social Media Accounts." UOL. Last modified June 2, 2023. Accessed November 5, 2024. <https://congressoemfoco.uol.com.br/area/justica/moraes-desbloqueia-contas-de-carla-zambelli-nas-redes-sociais/>.

<sup>22</sup> Rocha, Ana Paula. "Deputados dos EUA acusam Moraes de fazer censura ao divulgar decisões sigilosas do STF" [US parliamentarians accuse Justice Moraes of censorship for releasing the Supreme Court's confidential decisions]. Brasil de Fato. Last modified April 18, 2024. <https://www.brasildefato.com.br/2024/04/18/us-parliamentarians-accuse-minister-moraes-of-censorship-for-releasing-the-supreme-court-s-confidential-decisions>.

limitations of the government's actions in regard to regulating content on the internet. For the first time, the danger of insufficient control over the digital sector was presently clear. For some, the events that played out on January 8 in Brasília demonstrated the need for social media companies and possibly even government authorities to monitor and ultimately censor erroneous claims of election fraud. Drawing a direct line from fallacious news stories shared via social media to political violence committed in the heart of the nation's capital, social media companies and government authorities alike in Brazil were feeling immense pressure to intervene as online content moderators.<sup>23</sup> However, others were more hesitant to praise Moraes for his actions, citing the fact that virtually every social media company has some type of content moderation policy. To be sure, many of these platforms quietly go about the business of eliminating certain forms of content—from spam and online nudity to direct threats of violence—without much ado, thus concluding that any further restrictions would constitute an overstep by the authoritative body, and would not actually help to mitigate the violence to any further degree.<sup>24</sup>

#### **IV. X and Elon Musk**

The debate about whether the actions of Justice Moraes and the government constituted a legitimate protection of democracy or simply represented a censorship-crazy power trip remained ongoing throughout much of the rest of the year before eventually simmering down. However, in May 2024 it resurged to prominence in Brazilian socio-political dialogue once more as the

---

<sup>23</sup> Hernandez-Roy, Christopher, and Michael McKenna. "Brazil's Misaligned Censorship Policy Risks Cutting off Free Speech to Spite Disinformation." Center for Strategic and International Studies. Last modified May 25, 2023. Accessed November 4, 2024. <https://www.csis.org/analysis/brazils-misaligned-censorship-policy-risks-cutting-free-speech-spite-disinformation>.

<sup>24</sup> Díaz, Ángel, and Laura Hecht-Felella. "Double Standards in Social Media Content Moderation." Brennan Center for Justice. Last modified August 4, 2021. Accessed November 4, 2024. <https://www.brennancenter.org/our-work/research-reports/double-standards-social-media-content-moderation>.

previously discredited Jair Bolsonaro began to gain in popularity again, this time much to the credit and help of Elon Musk, his social media platform X, and the U.S. Republican Party, all of whom criticized Moraes' efforts to block and regulate social media accounts that belonged to many right-wing pundits, podcasters and federal lawmakers who, in some cases, have questioned Bolsonaro's election loss.<sup>25</sup>

While this development made little headlines in the United States, it had tremendous influence in the Brazilian socio-political landscape, so much in fact, that it shifted that attention of the Brazilian public away from the ongoing investigation of Bolsonaro in relation to his role in the disinformation spreading that culminated in the attack on the Capitol in Brasilia just the year before, to the question of whether Justice Moraes' actions constituted unjustified government overreach once more. However, this in turn led Moraes to view this dialogue as an extension of the same disinformation he was working to combat, and now working with left-leaning President Lula who shared this view, he turned his attention to X which had become the primary platform on which this message had been amplified. Specifically, in August 2024, Brazil's National Telecommunications Agency imposed significant fines and blockages on the platform, as they viewed it as failing to comply with Brazilian content moderation laws.<sup>26</sup>

Following this, a back and forth ensued in which Musk would evade and ultimately speak against the Brazilian government's treatment of X as unjust, while Moraes would continually impose heavier fines and demand the

---

<sup>25</sup> Nicas, Jack. "The New Players in Brazilian Politics? Elon Musk and Republicans." *The New York Times*, May 7, 2024. Accessed November 4, 2024. <https://www.nytimes.com/2024/05/07/world/americas/brazil-politics-elon-musk-republicans.html>.

<sup>26</sup> Magalhaes, Luciana Novaes. "Brazil's Top Court Says X Paid Pending Fines to Wrong Bank." Reuters. Last modified October 4, 2024. Accessed November 4, 2024. <https://www.reuters.com/technology/musks-x-seek-resumption-brazil-service-fines-paid-sources-say-2024-10-04/>.

suspension of more content and accounts from the platform. Musk even went as far as to fire the entirety of X's staff in Brazil and close its Brazilian office later that month. He ultimately said, "the decision to close X offices in Brazil was difficult," but cited that Moraes' moves to ban accounts of his platform was an "abuse of power and violation of free speech that left him no other choice."<sup>27</sup>

This tension continually grew until Moraes ultimately issued an order that would make global headlines, requiring X to remove access to its website in Brazil, or face a daily fine of 5 million reais (\$913,000) until it obeys the order to suspend its service. The order came with an additional daily fine of R\$50,000 set for individuals and companies that use "technological subterfuges to maintain the use of X, without prejudice to other sanctions in the civil and criminal spheres" such as Virtual Private Networks.<sup>28</sup> Musk shortly thereafter complied and X was effectively banned in Brazil.

## V. Resolution and Afterthoughts

The ban itself lasted a little over a month before Justice Moraes and the Supreme Court announced the immediate reinstatement of X in Brazil. This decision came after the company had finally agreed to ban accounts accused of spreading disinformation, pay fines totalling 28 million reais (\$5.1m), and appoint a local representative, as required by Brazilian law in Brazilian Civil Code Law No.10.406/2002.<sup>29</sup> Moving forward, it will be the aforementioned final clause of the agreement, requiring X to appoint a local representative in

---

<sup>27</sup> Derico, Ben, and Ione Wells. "Brazil Lifts Ban on Elon Musk's X after It Pays \$5m Fine." BBC. Last modified October 8, 2024. Accessed November 4, 2024. <https://www.bbc.com/news/articles/c5y06vzk3yjo>.

<sup>28</sup> Supremo Tribunal Federal. "STF Determina Suspensão Do X, Antigo Twitter, Em Todo O Território Nacional." In *Supremo Tribunal Federal*. Last modified August 8, 2024. Accessed November 4, 2024. <https://noticias.stf.jus.br/postsnoticias/stf-determina-suspensao-do-x-antigo-twitter-em-todo-o-territorio-nacional-2/>.

<sup>29</sup> Supremo Tribunal Federal. *STF autoriza retorno imediato do X e determina que Anatel adote providências para retomada do serviço*. Accessed November 4, 2024. <https://noticias.stf.jus.br/postsnoticias/stf-autoriza-o-retorno-imediato-do-x-e-determina-que-anatel-adote-providencias-para-a-retomada-do-servico/>.

Brazil, that may have the greatest effect moving forward. The company ultimately named Rachel de Oliveira Conceicao as the firm's legal representative, and X lawyers in Brazil Andre Zonaro and Sergio Rosenthal confirmed they had submitted her name to the Supreme Court to assume the legal responsibilities for the firm.<sup>30</sup> In essence, this legal representative gives Justice Moraes and the STF far greater control over X and enhances the Brazilian government's ability to impose regulations on the content of the app, without having a quarrel with Musk or the greater American political sphere from overseas.

This entire affair may be a prelude to the kind of questions and issues future legislators will be forced to navigate with the emergence of digital platforms as primary means of communication. It speaks to the complex interplay between the preservation of free speech and ensuring that internet platforms do not become mediums through which ill-intentioned individuals can cause harm. The struggle between the Brazilian Government and X is ultimately representative of a greater indicator that alludes to the increasingly potent role that technology and digital entities will play in shaping the international socio-political landscape on a fundamental level. The absence of any precedent on similar issues exhibits a unique pressure that asks either the government to bend and reduce its restricting legislation, or the digital platform to bend and comply with said laws. In this case, it was X that eventually succumbed to the political and economic pressure, and cooperated with Brazil's requests. While it may seem that the two warring sides of Musk and Moraes have reached an agreement, should the contemporary world continue down the path of our digital age, as we almost certainly will, there is bound to be another instance in which issues of sovereign censorship clash with the protections of free speech, and the exchanges explored here may very well set the precedent for future resolutions.

---

<sup>30</sup> Reuters. "X names Brazil legal representative as it fights ban in the country." Reuters. Last modified September 20, 2024. Accessed November 5, 2024.