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CIVIL LIABILITY FOR UNLAWFUL ACTS AND ABUSES OF *INSTAGRAM* USERS IN BRAZIL: THE LINE BETWEEN FREEDOM OF EXPRESSION AND ABUSES AGAINST PERSONALITY RIGHTS

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ABSTRACT

The general objective of this work is to analyze the civil liability of *Instagram* users in the protection of personality rights in the virtual environment, aiming to understand how the legal and normative instruments of this digital platform influence the interactions and behaviors of users. It is known that social networks are "free" environments, in which a good part of users cultivate hatred, injury, defamation and are hardly held civilly liable. However, this reality has been changing in recent years. Regarding the methodology, it is a descriptive and explanatory research, with a qualitative approach, using the instruments of bibliographic research, books, articles and other documents already published. After the research, it was found that there is a lack of specific laws to combat different virtual crimes, as the speed with which new criminal practices emerge is higher than the volume of laws that are created. Thus, it is believed that new effective measures and legislation can and should emerge to ensure that people are not victims of these almost invisible criminals.

Keywords: Civil liability. Freedom of expression. Abuse. *Instagram*. Brazil.

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INTRODUCTION

The choice of the theme is justified by its social, legal and academic importance, where the interaction between technology, virtual relationships and the damage caused raise complex discussions. In this context, civil liability seeks to promote the protection of personality rights, aiming to develop a consistent and fair interpretation of the law in relation to the activities of users on digital platforms, such as the social network *Instagram*.

Civil liability is subject to the provisions of the Brazilian Civil Code, as well as to the jurisprudence of the courts, making it possible for *Instagram* users to be held civilly liable for damages caused to third parties as a result of their activities on the platform. These damages can be material or moral in nature and can arise from various conducts, such as defamation, copyright infringement, invasion of privacy, hate speech, among others.

Brazilian jurisprudence has been increasingly used to resolve issues related to civil liability in the digital age. Courts have recognized the importance of ensuring the protection of people's rights and dignity on the Internet, imposing responsibilities on users who abuse their freedom of expression or cause harm to others.

The work presents the following problem: are the Civil Code and Brazilian laws sufficient to define criteria for civil liability in relation to interactions on social networks?

In view of this question, this research is considered opportune, which has the general objective of analyzing the civil liability of *Instagram users* in the protection of personality rights in the virtual and digital environment, aiming to understand how the legal and normative instruments of this digital platform influence the interactions and behaviors of users. Thus, the following specific objectives are highlighted: to present considerations about digital law, such as some crimes that occur in the virtual environment; to understand freedom of expression and abuses against personality rights in social networks; to analyze the hypotheses related to the civil liability of users, highlighting the obligations and restrictions imposed by the *Instragram platform*.

Regarding the methodology, the literature review was used as the main source of information and data collection. This is a descriptive and explanatory research, with a qualitative approach, using bibliographic research instruments, books, articles and other documents already published

The work is structured in three sections. In the first section, some considerations about digital law were presented, as well as some crimes that can occur in the virtual environment. The second section focuses on freedom of expression and abuses against personality rights, emphasizing the origin of social networks and more specifically,

Instagram. The third section refers to the civil liability of *Instagram* users in Brazil, as well as the civil liability of users in Instagram's terms of use.

BRIEF CONSIDERATIONS ON DIGITAL LAW

Digital or Cyber Law is an area of law that aims to provide the norms and regulations for the use of digital environments by people, in addition to offering protection of information contained in these spaces and in electronic devices (Fachini, 2020).

The field of Law, which corresponds to legal issues related to the use of information technology and the international computer network, involves extremely relevant topics today, such as cybercrime, data protection, online privacy and civil liability on the Internet (Rosa; Santos, 2018).

It is evident that in the contemporary scenario, people depend on electronic mechanisms for storing information, whether referring to intimate or professional life. This dependence can allow the growth of virtual crimes. Thus, it becomes relevant to define computer crime, as can be seen below:

Digital, Cyber Law or Information Technology Law covers the regulation of crimes such as *hacking*[3], information theft, electronic fraud, online defamation and cyberbullying. It also involves the investigation and punishment of these crimes that seem to be increasingly present in the daily lives of Brazilians.

Over the years and the natural evolution of humanity and its technologies, the digital planet, at the beginning of the millennium, was an enigma for ordinary people, but with its popularization, the use of the internet expanded and with it came concerns about the security of the information that would be shared *online*, not only by government agencies, but by all its users (D'URSO, 2017).

It is clear that the expansion of the virtual and digital environment has brought with it criminal activity that involves the use of computers, computer networks, or electronic devices connected to the internet. Then comes the figure of the Hacker[4] who uses his intelligence to carry out thefts and frauds in financial institutions or even individuals. In addition, cyberbullying has also occurred**:** The use of technology to harass, intimidate, or threaten others, usually through messages, social media posts, or sharing personal information (Scherchter, 2016).

[3] Action that compromises digital devices and networks through unauthorized access to an account or system. Hacking is associated with illegal activities and data theft by cyber criminals.
[4] Individual with advanced computer skills who exploit vulnerabilities in computer systems to gain unauthorized access, steal information, or cause damage

Data protection is an important aspect of Cyber Law, where regulations and laws have been established in many countries to ensure that users' personal information is collected, stored, and processed properly and securely. This includes the user's consent to the use of their data and the obligation of companies to protect this information from leakage or misuse.

Privacy in the digital environment is another relevant topic, as Cyber Law addresses issues such as monitoring online activities, interception of electronic communications, and misuse of personal information. In addition, Cyber Law addresses civil liability on the Internet. This means that individuals and businesses can be held liable for damages caused by their actions on the network, such as copyright infringement, dissemination of illegal or harmful content, and violation of online contracts. In summary, Cyber Law is a constantly evolving field that seeks to regulate activities and ensure the safety and protection of users in the virtual environment.

With the digital age and the computerization of things, a natural problem arises in the midst of this development: where there is more technology, there are also more risks of virtual attacks, theft, leakage and destruction of data and hacking of information relevant to people, companies and governments. The creation of rules and procedures for the protection of people attacked and the punishment of conduct that harms third parties digitally, therefore, is also a natural path to follow. Obviously, Brazil still has little legislation specifically aimed at digital law, but over time the Brazilian legal system has tried to correct this lapse (Fachini, 2020, p.13).

Another point to be mentioned is the lack of security in the use of the Internet, as the measures adopted to protect information systems and networks against cyber threats require the implementation of policies, technologies and strategies to prevent, detect and respond to security incidents on the network. In the absence of transparency of the rules, this lack of punishment or legal consequences for the perpetrators of cybercrimes can generate impunity for scammers.

Therefore, there are no specific laws or sufficient technical resources to investigate and prosecute all suspects. On the other hand, the legislation on cybercrime involves the creation and implementation of specific laws that have been gradually emerging to combat crimes that occur on social networks, that is, in the virtual environment. These laws aim to define criminal conduct, establish appropriate penalties, facilitate investigation and prosecution, and promote international cooperation in the fight against this type of crime.

FREEDOM OF EXPRESSION AND ABUSES AGAINST PERSONALITY RIGHTS ON SOCIAL NETWORKS

The conflicts between freedom of expression and personality rights have intensified in the face of the expansion of digital platforms, which provide the instant dissemination of content, often offensive or defamatory.

In this context, the occurrence of abuses under the justification of exercising freedom of expression is observed, which demands a thoughtful action by the Judiciary in order to harmonize the rights in tension, making use of the principles of proportionality and the dignity of the human person (Paskin Neto, 2015).

The majority doctrine and the national jurisprudence recognize that freedom of expression cannot be used as a shield for illicit practices, such as injury, slander, defamation or hate speech. The protection of personality rights is supported by article 5, items V and X, of the Magna Carta, which guarantee the right to compensation for material or moral damage resulting from the violation of these rights, as well as the inviolability of intimacy, private life, honor and image.

Therefore, the collision between these fundamental rights requires a contextualized analysis, which considers the social relevance of the discourse, the veracity of the alleged facts, the presence of malice or *animus caluniandi*, as well as the scope of the disclosure. The role of the legal interpreter is fundamental to avoid both the undue curtailment of freedom of expression and impunity for conduct that violates individual dignity (Rosa; Santos, 2018).

In view of this, it is clear that the effectiveness of the right to freedom of expression presupposes its compatibility with personality rights. The freedom to communicate ideas must be exercised with responsibility and respect, so as not to become an instrument of moral aggression or personal disqualification. The consolidation of a democratic society requires, therefore, not only the guarantee of freedom of expression, but also the effective protection of the dignity of the human person, a basic principle of the Federal Constitution of 1988.

It is considered extremely opportune to analyze the conflict between freedom of expression and abuses against personality rights. However, there are precautions to be taken so as not to be legally liable for inappropriate acts and inconsequential actions. The Brazilian Federal Constitution seeks to point out the limits of this freedom. Bulos (2014, p. 580) states that: "Freedom of intellectual, artistic, scientific and communication expression is not an absolute right". Article 5, X, guarantees the inviolability of the private life, intimacy,

honor and image of people, whose disrespect entails compensation for material and moral damages.

Freedom of expression is a fundamental right guaranteed by the Federal Constitution of Brazil. In Brazil, freedom of expression is protected by article 5, item IV, of the Federal Constitution of 1988. The text of article 5, item IV, states the following: "The expression of thought is free, and anonymity is prohibited" (Brasil, 1988).

The aforementioned article ensures the right of Brazilian citizens to express their opinions and ideas freely, as long as they do not violate other rights equally protected by the Constitution, such as defamation, slander, incitement to violence or hate speech. In addition, the Federal Constitution also protects freedom of the press, an important aspect of freedom of expression, which allows media outlets to carry out their work of informing society without prior censorship, as established in article 220 of the Constitution (Barroso, 2018).

The recognition of the dignity of the human person as the foundation of the Democratic Rule of Law imposes the protection of personality rights as a condition for the full enjoyment of freedom of expression (Sarlet, 2021). Thus, although the free expression of thought is essential, it cannot override other fundamental rights in an absolute way.

In this sense, the Federal Supreme Court has affirmed the need to weigh the fundamental rights in conflict. The Federal Supreme Court understood that racist speech, even if an ideological manifestation, is not protected by freedom of expression, as it undermines the dignity of the human person (Machado, 2021).

Justice Cármen Lúcia, in a vote spoken in RE 1.010.606/SP[5], highlighted that: "There is no freedom of expression that serves as a shield for the spread of hatred, intolerance and prejudice." The filing of this type of appeal contributes to remedying conflicting understandings between judging bodies of the Superior Court of Justice itself.

The STF decided that the right to be forgotten cannot be used in an abstract way to prohibit the dissemination of true facts. If someone is a victim of abuse, they can appeal to the Judiciary, which will analyze the specific case to reconcile the exercise of the right to freedom of expression and press with other important rights, such as intimacy and private life (Machado, 2021).

Similarly, the STJ has reiterated the understanding that the disclosure of information offensive to honor, especially on social networks, gives rise to the duty to indemnify. In the

[5] RE 1.010.606/RJ. Topic 786 - Applicability of the right to be forgotten in the civil sphere when it is invoked by the victim himself or by his relatives. February 16, 2021.

judgment of REsp 1.660.168/RJ, [6]the Fourth Panel decided that "freedom of expression does not override the right to honor, when exercised with abuse and without factual support" (STJ, 2021).

In view of the data, it is observed that, although freedom of expression is a fundamental right, it is not absolute and must be exercised responsibly, respecting the legal limits established to protect other rights and legitimate interests of society. It is worth noting that it is the responsibility of the laws and regulations of each country to find an appropriate balance between personality rights to protect both people's privacy and freedom of expression.

ORIGIN OF SOCIAL NETWORKS

Social networks emerged at the end of the twentieth century, with the emergence of the internet and the growing desire of people to connect virtually. It all started more than three decades ago. With the advancement of mobile technology, social networks have evolved to meet the demands of users on the go. With its sharp growth, crimes have also emerged that have become increasingly common, such as leaks of intimate videos and images, fraud, theft of social network passwords, invasion of the internet network in computers, emails and operating systems, misrepresentation, invasion of privacy and violation of copyright, among other crimes typified as crimes against honor, instigation to suicide (Menezes, 2017).

Zenha (2018) comments that the online social network can be defined as an environment that exists in the digital world and that uses an interface in which users create profiles, write posts, and share messages with photos, videos, and formatted text. In a social network, people organize themselves according to affinities in terms of thoughts and that often occur by categories of subjects with pets, comic books, or even in more specific groups focused on travel, for example.

In the early 2000s, social networking took a significant leap forward with the launch of Friendster in 2002, followed by MySpace and LinkedIn. Friendster was a pioneer in popularizing the idea of online friendship hookups, attracting millions of users within a few months. MySpace, in turn, brought similar features and LinkedIn stood out as a professional social network (Correia; Moreira, 2015).

One of the first social networks was Orkut, a social networking site created by an engineer who worked at Google at the beginning of 2004. according to its creator, Orkut

[6] REsp 1.660.168/RJ was a special appeal that questioned whether internet providers could be required to delete negative records about a person. The appeal was judged by the Superior Court of Justice (STJ).

would be an online community that would have the purpose of creating online friendships, and in which the user could interact with different people, but that people shared hobbies and interests in common. In cute, it was also possible to create online communities where members discussed the most varied topics (Ferreira, 2018).

The launch of Facebook (Facebook's first name was Facemash) which was created by Mark Zuckerberg in 2004 is one of the most significant milestones in social networks, as it quickly became the most popular social network in the world, surpassing 2.7 billion monthly active users. Facebook's rise was followed by other social networks such as Instagram, which focuses on images, and WhatsApp, which is aimed at exchanging messages, which were later acquired by Zuckerberg (Portal G1, 2014).

Currently, social networks continue to diversify, with thematic platforms such as Pinterest demonstrating the evolution of the digital world, with the existence of billions of users around the world, social networks have become an essential part of everyday life, shaping the way people relate and interact in the virtual environment. This evolution of social networks also reflects the advancement of technology, marked by the human need for connection and social interaction, thus transforming the way people share information, express themselves and relate digitally (Gabriel; Kiso, 2020).

Instagram

Initially, it all starts with the creation of a platform, that is, the basic technology of a computer's operating system. A software designed to be installed on mobile devices and run on different operating systems. However, in its daily social use and in the changes that have occurred over the years it has managed to expand quickly and surprisingly. Among the most popular social networks in the world, *Instagram* is certainly one of them. In Brazil, together with Facebook, it is the most accessed (Finco, 2018).

The impact of social networks is visible, in the case of *Instagram*, the development and deconstruction of the personality of users is perceived so that the mental health of individuals sees a reality outside their cultural, structural and social context. Social networks produce an idea of socialization with the other that is very harmful, bringing damage to the personification of the individual in the idalization of himself (Ferraz, 2019).

Thus, it is important to identify networks as a greater potential in the contribution of individuals. In short, both *Instagram* and other social networks generate a great influence on the structure of the individual, as it is considered to be a foundation in the communication and identification of social phenomena. Not everyone knows how to just watch, but they want to comment, criticize and attack (Karhawi, 2017).

The growth of social networks, the excessive consumption of applications and other Internet content is almost impossible to go back. Thus, it is up to the authorities that control this type of service and the government to create legal mechanisms, public policies, and efficient legislation to combat any crimes that occur in this environment and, consequently, find and punish those responsible.

CIVIL LIABILITY OF *INSTAGRAM USERS* IN BRAZIL

First, it is defined that civil liability is an obligation that incumbents on the agent the duty to repair the damage caused to another person, or even the obligation that may be incumbent on one to repair the damage caused to another, by his own fact, or by the fact of people or things that depend on him (Guerra; Benacchio, 2015). In a broader approach, civil liability is objective, dispensing with the demonstration of intent or fault, and, consequently, generates the obligation to indemnify the damage.

Law and technology operate together, with interdependence. What can be said that crimes committed in the virtual environment or facilitated by it, is a growing intersection between physical and virtual reality, making civil liability in the digital environment gain extreme relevance, since technology is already part of our daily lives.

In this context, civil liability is obliged to support the victims of false and/or offensive content on the Internet, obliging the author of the abusive messages to repair the damage caused to third parties, since the limit of respect has been exceeded, thus proving that the right is not totally absolute and that civil or even criminal liability is due to those who exceed the limits when expressing themselves.

The Civil Code of 2002 (Law No. 10,406/02) recognizes personality rights as fundamental protection for the person. These are the rights that are permanently linked to the person and that are essential for their fair and equal treatment (Brasil, 2002). The Federal Constitution of 1988 itself, in its article 5, also safeguards the fundamental rights of the Brazilian citizen, including freedom of expression, the inviolability of intimacy, private life, honor and image:

In the Constitution, the concept of "image" must be interpreted in such a way as to encompass not only a person's physical traits, but also the way in which they are recognized in society (Cavalieri Filho, 2017).

Law No. 12,965/2014, better known as the Civil Rights Framework for the Internet, was created to regulate the rights, guarantees, and duties in the use of the Internet, with principles that aim to make the digital environment in Brazil safer and more democratic, regardless of the platform used.

Therefore, each and every person who has their personality right violated has the legal support to seek judicial redress, either through compensation for material or moral damages, or through judicial measures to protect their right, since personality rights are essential to safeguard the dignity of the human person and ensure that each individual can live freely and autonomously, thus ensuring the non-violation of their individuality. In this sense, it is up to the State and the Judiciary to ensure the effectiveness of these rights and to apply reparatory measures when violated (Campos, 2018).

USERS' LIABILITY UNDER INSTAGRAM'S TERMS OF USE

Instagram*'s Terms of Use* (Meta Platforms) establish that **users are fully responsible for the content they publish** on the platform. This includes text, photos, videos, comments, and any other shared material.

This implies that, **in case of moral or material damage caused to third parties**, the user may be **held civilly liable**, based on arts. 186 and 927 of the Brazilian Civil Code (Brasil, 2002). It is worth noting that *Instagram* expressly prohibits content that infringes on the rights of others, including **honor, image, privacy, and dignity** — all components of personality rights.

If this occurs, the victim can file a lawsuit for damages **against the direct author of the publication**, and, in certain cases, also **against the platform itself**, if there is no removal of the content upon notification (under the terms of the Civil Rights Framework for the Internet – Law No. 12,965/2014).

Although *Instagram* (Meta) claims exemption from liability for content posted by users, this clause does not exclude the application of Brazilian legislation, especially with regard to subsidiary or joint liability in certain cases.

However, article 19 of the Civil Rights Framework for the Internet establishes that the platform may be held liable if, after judicial notification, it does not remove the offensive content. Brazilian jurisprudence has expanded this understanding even to clear and well-founded extrajudicial notifications.

Instagram may apply administrative sanctions to users who fail to comply with the Terms, such as: Warning, restriction of features, temporary suspension and permanent deletion of the account. Such measures are autonomous and do not replace any civil or criminal sanctions applicable before the Judiciary (*Instagram*, 2025).

The Terms provide that any disputes must be resolved based on the laws of the state of California (USA), home of the Meta company. **However, in Brazil, the Consumer**

Protection Code and the Federal Constitution of 1988 apply, ensuring the prevalence of the rule most favorable to the user, especially in cases involving fundamental rights.

In short, *Instagram* transfers to users the primary responsibility for any legal violations committed on the platform. However, in light of the Brazilian legal system, especially the Civil Rights Framework for the Internet and constitutional principles, the platform can respond civilly in cases of omission in the face of clear and specific notifications.

FINAL CONSIDERATIONS

In Brazil, the confrontation of situations of abuse on social networks and actions that bring civilly responsible the user who practices some type of crime, depends on the enactment of specific laws, which address issues of unauthorized access to devices and the unauthorized dissemination of intimate images and videos.

Little has been done, but there are already laws that typify crimes on the Internet, changing the Penal Code and instituting penalties for crimes such as computer invasion, dissemination of viruses or codes to steal passwords, the use of credit and debit card data without the authorization of the holder.

Evidently, from the advent of social networks and the ease of virtual communication, the propagation of offensive and defamatory speeches has become common, often shielded under the argument of freedom of expression. This misuse of the right reveals the need to balance free expression with respect for individual rights. It cannot be tolerated that the freedom of one is an instrument of violation of the moral and emotional integrity of the other.

In the legal sphere, the Brazilian legal system provides for protection mechanisms against these abuses, but it seems insufficient in the face of the bad behavior of users. The Federal Constitution of 1988 guarantees, in its article 5, both freedom of expression and personality rights, which imposes on the Judiciary the arduous task of weighing conflicting values. The challenge is to curb excesses without unduly restricting free thought.

Therefore, it is essential to promote education for the responsible use of freedom of expression, as well as to strengthen legal instruments for the protection of human dignity. Free speech should be encouraged, as long as it does not turn into hate speech, humiliation or disrespect. True freedom is realized when accompanied by empathy and responsibility.

It is precisely the lack of specific laws that allow impunity and similar crimes continue to occur, because the speed with which new crimes emerge is much higher than the volume

f new laws that are created to combat it. Therefore, it is considered that new measures and specific legislation can and should be created in order to better prevent this type of crime so that people are not hostages of this almost invisible enemy.

In view of the facts, it is believed that the problem was answered and the general objective achieved, as it was possible to analyze the civil liability of *Instagram* users in the protection of personality rights in the online environment, aiming to understand how the legal and normative instruments of this digital platform influence the interactions and behaviors of users. Thus, it is not intended to exhaust the theme, but to make it more discussed in the academic sphere, among professors, law students and Brazilian society in general.

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