Revista ARACÊ
ISSN: 2358-2472

PRELIMINARY ANALYSIS ON THE CIVIL LIABILITY OF APPLICATION PROVIDERS IN BRAZIL

https://doi.org/10.56238/arev7n3-022

Submitted on: 02/03/2025 **Publication date:** 03/05/2025

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ABSTRACT

This article examines the relationship between Law No. 12,965/2014, the Civil Rights Framework for the Internet and the regulation of the virtual environment, focusing on the characteristics of the civil liability of application providers. The growing influence of the internet in contemporary society, the setting for discussion on the legal and ethical challenges faced by digital intermediaries, finds in the Marco Civil the basic structure of a regulation that establishes rights and duties for users of the virtual environment, highlighting its principles of net neutrality, privacy and multisectoral collaboration. In this context, the civil liability of internet providers, with the implications of their performance in content moderation, is an important tool to prevent violations of rights in the virtual environment, and the objective of this work is to clarify the criteria of this regulation. The analysis highlights the relevance of evolving jurisprudence in defining the liability of application providers, with emphasis on the discussion on the constitutionality of article 19 of Law 12,965/2014, in the search for a balance between freedom of expression, the protection of individual rights and the liability of digital intermediaries. Through the deductive approach, making use of descriptive and qualitative research, with consultation of primary and secondary sources, of bibliographic and documentary character, this work observes how the Civil Rights Framework for the Internet shapes internet governance in Brazil, influencing the performance of application providers and the challenges faced in content moderation.

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Revista ARACÊ
ISSN: 2358-2472

Keywords: Civil Rights Framework for the Internet. Liability. Internet Application Providers. Regulation of the digital space. Control of Constitutionality.

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ISSN: 2358-2472

INTRODUCTION

The growing global interconnection driven by technological advancement has provided profound transformations in contemporary society, shaping new patterns of interaction, communication, and economy. In this context, the internet emerges as a powerful means of interconnection and collaboration, crossing physical borders and transcending cultural barriers.

However, this digital revolution also brings with it a series of challenges and dilemmas, especially about the civil liability of application providers, fundamental subjects in the virtual ecosystem.

Given this scenario, this article proposes to explore the nuances of the civil liability of application providers in the light of the Civil Rights Framework for the Internet in Brazil, the name by which Law No. 12,965/2014 is better known, which established basic guidelines for the use of the network in the country, providing fundamental guarantees to users and outlining principles that guide the performance of the various agents involved.

One of the central issues addressed by this legislation refers to the civil liability of application providers, who act as intermediaries in the provision of online content.

Such a discussion gains relevance in the face of the clash between freedom of expression, access to information, and the need to curb abuses and infractions in the digital environment, which was more evident during the period of isolation resulting from the COVID-19 pandemic, when the world wide web became one of the only sources of information and communication for a large portion of the population, laying bare the diversity of threats and risks of the virtual environment.

For contextualization purposes, it is important to observe the impact of technological evolution on the way of life of the average Brazilian. A survey by the Brazilian Internet Steering Committee (CGI.br) called "ICT Households 2024", made available in October 2024, attested that there was a great evolution in the share of the Brazilian population with internet access, jumping from 58% of Brazilians in 2015 to 84% in 2024 (Figure 1). This percentage is equivalent to a figure of 159 million Brazilians connected to the world wide web, a level that has been maintained since then.

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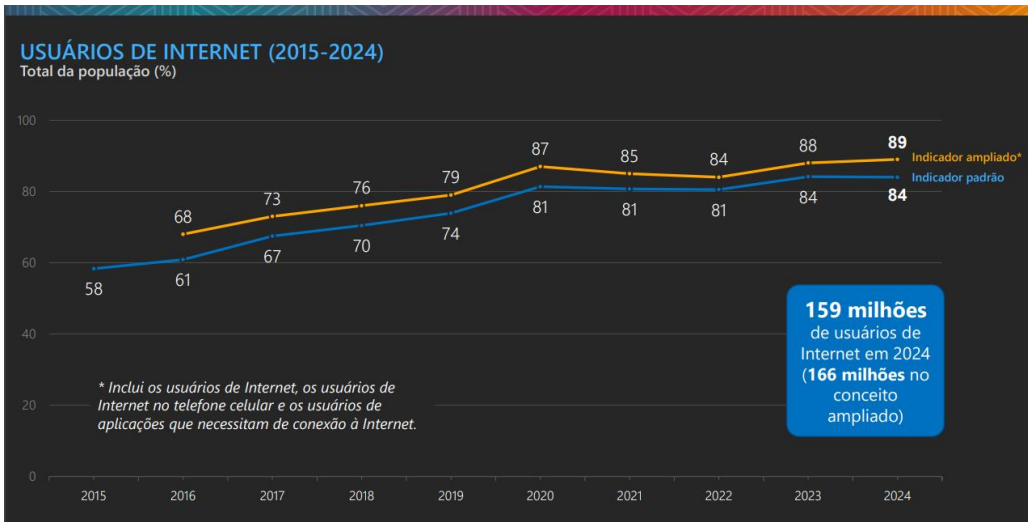
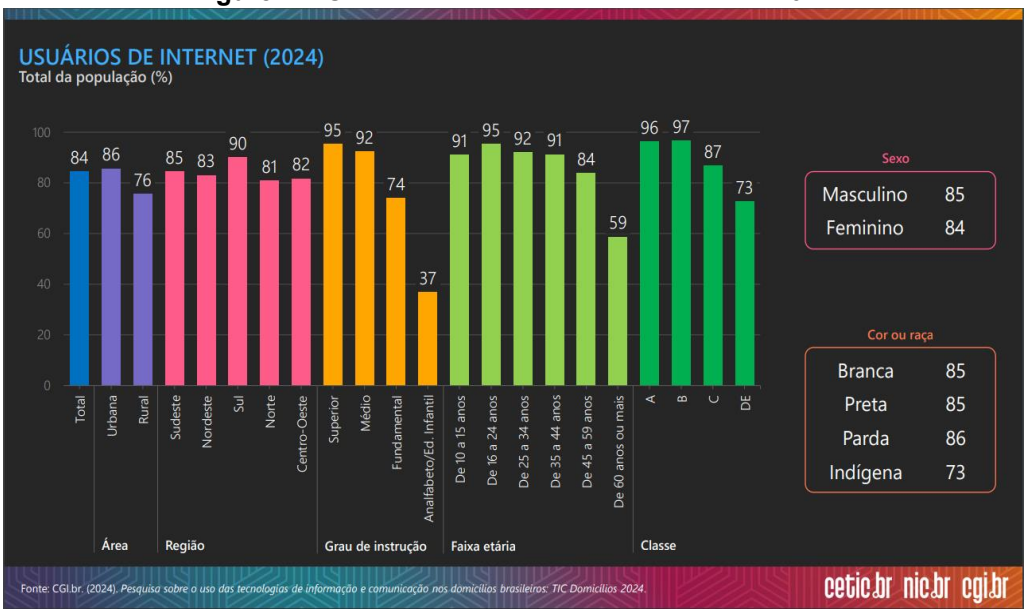
Figure 1 – Households with internet access in Brazil from 2015 to 2024



Source: CGI.br (2024). Research on the use of information and communication technologies in Brazilian households: ICT Domiciles, 2024. Available at: https://cetic.br/pt/pesquisa/domicilios/analises/ Accessed on 10 Feb. 2025.

Figure 2 – Users with internet access in Brazil in 2024



Source: CGI.br (2024). Research on the use of information and communication technologies in Brazilian households: ICT Domiciles, 2024. Available at: https://cetic.br/pt/pesquisa/domicilios/analises/ Accessed on 10 Feb. 2025.

This implies that, in five years, a little more than half of the Brazilian population uses the internet went from four out of every five Brazilians making frequent use of the world wide web. And this proportion is even higher when analyzing the higher social classes, reaching 96% in class A and 97% in class B.

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As can be seen, the volume of virtual activity is unprecedented, with the active participation of the vast majority of the Brazilian population, with communication between users in various aspects, even more intensified after the pandemic period.

The performance of application providers on the internet is essential for the efficient and dynamic functioning of the network, since they are responsible for hosting platforms that enable interaction and the exchange of information between users.

However, this intermediation brings with it the complex problem of civil liability, raising questions about the limits of the performance of these agents in moderating and removing illicit or harmful content.

Given this, it is crucial to analyze how the Civil Rights Framework for the Internet addresses this issue, seeking to understand the legal implications and practical challenges that involve the performance of application providers[4].

This study also addresses the controversy surrounding the constitutionality of article 19 of Law 19.965/2014 (Civil Rights Framework for the Internet), which deals with the civil liability of application providers. The analysis of this specific point gains relevance given the discussions about the compatibility of the rule with the fundamental guarantees provided for in the Brazilian Constitution.

In this context, the present work unfolds into five distinct topics, seeking to provide information that may allow the characterization of the main elements of the civil liability of internet providers, especially the so-called application providers.

After this introduction, the second topic explores the panorama of the Marco Civil da Internet, discussing its principles, objectives and scope.

Then, the third section is dedicated to an analysis of the civil liability of application providers, elucidating the criteria that guide their performance and the challenges faced in determining their liability in content generated by third parties.

The constitutionality of article 19 of Law 19,965/2014 was analyzed in the fourth topic, shedding light on the arguments for and against this normative provision, as well as the possible consequences of its application.

[4] An internet application provider is technically defined as any legal entity or individual that offers functionalities accessible through the internet, being responsible for the storage, transmission and processing of information made available by users. These providers enable interaction and access to digital content, without necessarily providing the connection infrastructure. The legal definition is provided for in article 5, item VII, of the Brazilian Civil Rights Framework for the Internet, which establishes that application providers are those that offer a set of functionalities accessible through an IP address or domain on the Internet. Examples include social networks, email services, streaming platforms, marketplaces, and instant messaging systems (Brasil, 2014).

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In the last topic, in a brief recapitulation, the main points discussed throughout this work are revisited, with reinforcement for the importance of balancing virtual freedom, responsibility of application providers and protection of individual and collective rights in the context of the digital environment.

In general, this article aims to address the main aspects of the civil liability of application providers, now governed by the Civil Rights Framework for the Internet in Brazil. Regarding its methodological aspects[5], this work, with a deductive approach, consists of a descriptive research, of a qualitative nature, making use of bibliographic survey, through books and articles, and documentary, consulting the pertinent legislation and jurisprudence.

FOUNDATIONS AND PRINCIPLES OF THE CIVIL RIGHTS FRAMEWORK FOR THE INTERNET

The Civil Rights Framework for the Internet is defined by Gonçalves (2021, p. 43) as "a kind of Internet Constitution for establishing principles, guarantees, rights, and duties for the use of the Internet in Brazil, both for users and for Internet connection and application providers".

Established in Brazil by Law No. 12,965/2014, it represents a pioneering and innovative regulatory framework that seeks to establish principles and guidelines for the use of the world wide web in the country.

Inspired by the values of freedom of expression, privacy, net neutrality, and collaboration, this legislation outlines a legal framework that aims to ensure the fundamental rights of users, while establishing responsibilities for the various actors involved in the virtual ecosystem (Carvalho, 2014).

The norm emerged in a global context of profound technological transformations, in which society is increasingly dependent on digital tools to interact, communicate, undertake and access information. Its emergence was guided by the need to balance online freedom with the guarantee of protection of individual and collective rights, a scenario in which the boundary between the virtual and the real becomes increasingly tenuous (Carvalho, 2014).

As a precursor agent in the process of drafting the standard, the Brazilian Internet Steering Committee – CGI.br, approved Resolution "CGI.br/RES/2009/003/P - Principles

[5] For methodological support, this work uses the guidelines of Gustin, Dias and Nicácio (2020).

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for the Governance and Use of the Internet in Brazil", called the[6] "Decalogue of the CGI.br", one of the inspiring elements for the creation of a civil framework for the Internet (Goulart; Silva, 2015).

The ten principles present in the Resolution were:

1) Freedom, privacy and human rights; 2) Democratic and collaborative governance; 3) Universality; 4) Diversity; 5) Innovation; 6) Net neutrality; 7) Non-imputability of the network; 8) Functionality, safety and stability; 9) Standardization and interoperability; and 10) Legal and regulatory environment (Brazilian Internet Steering Committee, 2009).

Based on these principles and acting in collaboration, the Secretariat of Legislative Affairs of the Ministry of Justice (SAL/MJ) and the Rio de Janeiro Law School of the Getúlio Vargas Foundation initiated, in 2009, the joint development project of the Civil Rights Framework for the Internet in Brazil[7]. As of June 23, 2014, Law 12.965/14, widely known as the "Civil Rights Framework for the Internet", came into force.

To arrive at the final text, the normative went through a broad debate, carried out through internet forums, in which specialists, researchers, jurists, parliamentarians and government representatives participated in the process of creating and improving the normative (Carvalho, 2014).

Article 1 of Law No. 12,965/2014 makes clear the intention of the legislators:

> Art. 1 This Law establishes principles, guarantees, rights and duties for the use of the Internet in Brazil and determines the guidelines for the action of the Union, the States, the Federal District and the Municipalities about the matter. (BRAZIL, 2014a)

In its article 3, the principles that govern the normative are explained, in line with the Decágolo of the CGI.br and with the public discussion held to establish its main points:

> Art. 3 The discipline of the use of the Internet in Brazil has the following principles:
> I - guarantee of freedom of expression, communication and expression of thought, under the terms of the Federal Constitution;
> II - protection of privacy;
> III - protection of personal data, by the law;
> IV - preservation and guarantee of net neutrality;
> V – preservation of the stability, security and functionality of the network, using technical measures compatible with international standards and by encouraging the use of good practices;

[6] The full text of the CGI.br Resolution is at the link: https://cgi.br/resolucoes/documento/2009/003/.
[7] More information about the opening event of the public consultation for the discussion on the Civil Rights Framework for the Internet can be found at the link: https://direitorio.fgv.br/eventos/marco-civil-da-internet-evento-de-abertura.

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> VI – accountability of agents by their activities, under the terms of the law;
> VII – preservation of the participatory nature of the network;
> VIII – freedom of business models promoted on the internet, provided that they do not conflict with the other principles established in this Law. (Brazil, 2014a)

The need for a civil regulatory framework has counteracted the trend of establishing restrictions, condemnations or prohibitions related to the use of the Internet. Despite the objective of establishing rights and duties related to the use of digital media, that is, a means of structuring a governance model for the virtual environment, the focus of the Marco Civil was the creation of legislation not to restrict freedoms, but to guarantee rights, which is evident when observing its principled framework (Oliveira, 2014).

The predominant understanding among the participants of the Marco Civil project was the importance of freedom of expression for the internet, and there should be protection of the user's freedom to communicate and express his opinion, a right enshrined in the Federal Constitution of 1988, in its article 5, IV (Brasil, 1988).

Even so, since rights violations were frequent in this environment, the solution given by the project was to hold the user individually responsible for the consequences of their manifestation in a virtual environment, thus avoiding the liability of the digital platform that this user used, which would inevitably lead to a process of contingency of the dynamics of communication in cyberspace (Oliveira, 2014).

Another basic principle of the Marco Civil is net neutrality, which establishes that connection providers must treat all data equally, without discrimination as to content, origin or destination.

This principle seeks to ensure that the internet continues to be an open and democratic space, in which the circulation of information is not controlled by commercial or political interests. Net neutrality is one of the pillars that support freedom of expression and the plurality of voices on the internet (Goulart; Silva, 2015).

Another neuralgic point of the legislation is the privacy of users. It establishes clear guidelines for the collection, storage, and sharing of personal data, to protect the intimacy and autonomy of individuals, curbing possible abuses by those who hold this data.

For this reason, there is a normative provision requiring informed consent to collect and use personal information, as well as facilitating access to information about the data processing carried out by companies and organizations (Oliveira, 2014).

In addition to the ostensible protection of its three most cherished principles, freedom of expression, user privacy and net neutrality, the Marco Civil also establishes

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rules for the liability of internet intermediaries, such as application providers, who are current in the availability of online content.

Not coincidentally, these intermediaries play a fundamental role in the dynamics of the internet, since they are the facilitators of interaction and exchange of information by Internet users.

However, in an attempt to curb abuses in the virtual environment and, at the same time, maintain respect for freedom of expression, the law establishes criteria for the removal of content considered illegal or harmful, a point that will be addressed in a later topic (Oliveira, 2014).

Even before its creation, through the legislative drafting project that led to its genesis, the Marco Civil was involved in a process of collaboration and participation of civil society, widely represented by several of its institutions. For this reason, it is not surprising that this participatory model is an important precept of the regulatory framework, reflecting the importance of involving society in decisions that directly impact the digital environment (Goulart; Silva, 2015).

By involving different sectors of society, including companies, academia, civil society and the government itself, in the definition of policies and guidelines for the internet, the regulatory framework materializes the principle of multistakeholderiality as one of its most distinctive characteristics, also allowing the avoidance of concentrations of power in decision-making, promoting a more inclusive and transparent governance (Goulart; Silva, 2015).

The democratic approach to the process of drafting the standard and the range of guidelines established to determine the state's action in the management of the network have made the Marco Civil an international reference in the development of legislation that seeks to balance the rights and duties of the various actors in the virtual environment.

Even so, it is important to avoid infractions and abuses, which requires working with digital intermediaries, providers of all kinds that allow the configuration and materialization of cyberspace as it currently stands. Holding these actors accountable or, at least, establishing mechanisms to curb violations, is the issue addressed in the next topic.

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CIVIL LIABILITY OF INTERNET PROVIDERS: INTERMEDIATION AND CHALLENGES IN THE DIGITAL ENVIRONMENT

Gonçalves (2021, p. 12) teaches that civil liability is a successive legal duty that arises to compensate for the damage resulting from the violation of an original legal duty. It is the result of voluntary conduct that violates a legal duty.

In general, any activity that results in damage will generate liability, meaning that the agent must bear the consequences of this activity. However, according to the basis on which civil liability is structured, fault will or will not be considered a necessary element to configure the duty to recover the damage, that is, the duty to indemnify (Gonçalves, 2021).

If fault is a necessary element for the configuration of civil liability, there is the so-called subjective liability. In it, once the agent's fault for the damage caused is not characterized, there is no duty to indemnify.

On the contrary, the irrelevance of fault for the characterization of civil liability is typical of the so-called strict liability, used mainly to compensate for vulnerabilities of those who suffered the damage in the relationship with the agent, as in the case of harmful acts originating from state agents or consumer relations protected by the Consumer Protection Code (Gonçalves, 2021).

In the digital age scenario, the performance of internet providers plays a crucial role in facilitating interaction and exchange of information between users. These intermediaries play an increasingly relevant role in the dissemination of online content, which raises complex questions about their civil liability in the face of any damages or wrongdoings committed by third parties on their platforms.

For a long time, the definition of the type of responsibility that such relationships would have was not settled. In this context, it is important to explore the contours of the civil liability of internet providers, considering both the principles of the Civil Rights Framework for the Internet and the complexities inherent to the nature of digital intermediation.

Such complexities are presented from the multiplicity of actors among the so-called internet providers. The civil liability of internet providers is a multifaceted topic, which involves the analysis of different types of intermediaries, such as connection providers and application providers (Leonardi, 2005).

For this reason, one of the central aspects of the civil liability of internet providers is the distinction between connection providers and application providers. The doctrine

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understands that, while the former only enable access to the internet, the latter offer services and platforms that enable the creation and sharing of content. This differentiation is relevant to define the levels of responsibility of each type of intermediary about the content hosted or transmitted on their networks (Leonardi, 2005).

Before the advent of the Marco Civil, the Superior Court of Justice (STJ) settled the understanding, through Special Appeal 1.337.990/SP, of the need for extrajudicial notification to the application provider for any content that violated rights or was illegal, as observed in the judgment of the aforementioned appeal:

> [...] 3. Controversy surrounding the civil liability for omission of the internet provider, which is not objectively responsible for the insertion of illicit data on the site by third parties. 4. Impossibility of imposing on the provider the obligation to exercise prior control over the content of the information posted on the site by its users, as it would constitute a modality of prior censorship, which is not admissible in our legal system. 5. Upon becoming aware, however, of the existence of data on a website managed by it, the internet provider has a period of 24 hours to remove it, under penalty of being liable for the damages caused by its omission (Brasil, 2014b).

Once notified, the internet application provider should respond within 24 hours to the request for removal of content, under penalty of incurring joint and several liability for the unlawful act.

Thus, the provider would not make any analysis of the notification, and should only proceed with the preventive suspension within the stipulated period, thus avoiding any liability, which would remain linked to the author of the content (BRASIL, 2014b).

For this reason, the figure of subjective civil liability was active in the national territory, as fault was an element to be considered in the liability of the application provider (Gonçalves, 2021).

Considering the power enclosed in a simple extrajudicial notification, the legal approach adopted by the Civil Rights Framework for the Internet aimed to balance the need to protect individual and collective rights with the preservation of freedom of expression and technological innovation (Oliveira, 2014).

First, it established a definition of several terms in its article 5, allowing us to also understand the difference between connection providers and application providers:

> Article 5 For this Law, the following shall be considered:
> [...]
> V – internet connection: the enabling of a terminal to send and receive data packets over the internet, through the assignment or authentication of an IP address;

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> VII – internet applications: the set of functionalities that can be accessed through a terminal connected to the internet; (Brazil, 2014a)

The law also defined, in its arts. 18 and 19, specific criteria to determine the liability of providers about content generated by third parties, which established a paradigm shift in the legal conduct of potentially illegal content in the case of application providers.

Initially, in its article 15, the regulatory framework determines the responsibilities of telecommunications, Internet connection and application service providers, as well as hosting service providers and content search engines, among others.

About connection providers, the Civil Rights Framework for the Internet establishes, in its article 18, that they cannot be held responsible for content generated by third parties. This provision reflects the understanding that connection providers have a passive role in the transmission of data, acting as mere technical intermediaries. Thus, the law seeks to preserve net neutrality and avoid indiscriminate censorship of information (Flumignan, 2018).

On the other hand, the responsibility of application providers is more specifically outlined. It is in article 19 of the normative provision that one of the elements that allow the confrontation of rights violations is presented, in the figure of the civil liability of internet application providers, as can be seen below, *in verbis*:

> Article 19. To ensure freedom of expression and prevent censorship, the internet application provider can only be held civilly liable for damages arising from content generated by third parties if, after a specific court order, it does not take the measures to, within the scope and technical limits of its service and the indicated period, make the content pointed out as infringing unavailable, except as otherwise provided by law. (Brazil, 2014a)

Article 19 of the Brazilian Civil Rights Framework for the Internet establishes that these providers can only be held liable for damages arising from content generated by third parties if they do not comply with certain conditions, such as not removing the content after a specific court order.

This approach aims to encourage self-regulation and responsible moderation by providers, without compromising freedom of expression. And it followed the trend of similar legislation in other countries.

In the United States, the legislation does not require service providers to establish active surveillance of the content made available by users on their platforms. This is the *so-called notice-and-takedown system*: there is no liability on the part of the provider if, once

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notified of the infringing content of copyright, it is removed from the air within a reasonable period (Faria, 2022).

It is exactly the conduct of the Brazilian norm on the subject. Based on the interpretation existing in the *notice and takedown*, a specific form of liability is created that is based on agreement with the disclosure in case of omission in the removal of the illegal content, thus configuring the existence of the illegal act that generates civil redress. This is a form of subjective liability conditioned to the non-compliance with prior notification (Ricbourg-Attal, 2014).

However, setting criteria for removing illegal or harmful content creates practical and legal challenges. The Marco Civil da Internet sought a delicate balance between the need to combat abuses and the protection of freedom of expression. The precise identification of illicit content, the efficiency of notification, and the possibility of recourse by affected users are aspects that require thorough analysis (Flumignan, 2018).

In this context, jurisprudence plays a relevant role in the interpretation and application of the provisions related to the liability of internet providers. Emblematic cases, such as lawsuits involving the removal of content on social networks or video-sharing platforms, have contributed to outlining the parameters of the performance of providers in the face of lawsuits (Flumignan, 2018).

In light of technological transformations and changes in the dynamics of online communication, the civil liability of internet providers continues to evolve. The application of the principles of the Marco Civil da Internet faces constant challenges, including the emergence of new technologies and platforms.

The critical analysis of the performance of internet providers from the perspective of civil liability is essential to understand the intersection between freedom of expression, the protection of individual rights, and the guarantee of security and integrity in the digital environment.

Despite trying to establish a balance between these rights, Law No. 12,695/2014 undergoes an evaluation of the constitutionality of its article 19, as demonstrated in the following topic.

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(UN)CONSTITUTIONALITY OF ARTICLE 19 OF LAW 12.695/2014: BETWEEN PRINCIPLES AND CONTROVERSIES

Article 19 of Law 12.695/2014 of the Brazilian Civil Rights Framework for the Internet, which deals with the civil liability of application providers, has been the subject of intense debates and questions regarding its constitutionality.

This article establishes that internet application providers are civilly liable for content generated by third parties, if they do not comply with certain conditions, such as not removing the content after a specific court order (Brasil, 2014a).

However, its application and scope have generated controversies and reflections on its compatibility with constitutional principles and the dynamics of the internet. Article 19 of Law 12,695/2014 represents a change in what had already been defined jurisprudentially by the higher courts, as well as reduces the influence of the Consumer Protection Code in the context of the liability of application providers (Faria, 2022).

The legislator's choice, asserts Faria (2022), was to privilege freedom of expression about the rights of third parties that may be violated in the context of internet applications.

It is a fact that its adoption establishes a predominance of freedom of expression to the detriment of other personality rights, but the scope of the rule is less sensitive than versions present in foreign legislation of the same category, such as the NetzDG,[8] the German Internet Enforcement *Act*.

Under German law, application providers with more than 2 million users are responsible for evaluating, when provoked by an extrajudicial notification, the existence of illicit activity in the content of a third party, under penalty of, in case of non-compliance, being civilly liable and also paying millionaire fines (Cavalcante Filho, 2018).

Even so, the constitutionality of article 19 of Law 12,695/2014 was questioned in two judgments of the Federal Supreme Court, RE 1,037,396 and RE 1,057,258, giving rise to Topic 987 of the STF (Brasil, 2019), which led to a call for a public hearing to discuss the controversy:

> Justices DIAS TOFFOLI and LUIZ FUX, Rapporteurs, respectively, of RE No. 1,037,396/SP and RE No. 1,057,258/RJ, (...) CONVENE A PUBLIC HEARING to hear the testimony of authorities and experts on i) the liability regime of application or internet tool providers for user-generated content, and ii) the possibility of removing content that may offend personality rights, incite hatred or spread fraudulent news based on extrajudicial notification. The aforementioned hearing concerns topics 533 and 987 of management by themes of the general

[8] The German legislation can be consulted, in full, at the link: https://perma.cc/7UCW-AA3A.

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> repercussion system. (...) The operation of the public hearing will follow the provisions of article 154, III, sole paragraph, of the Internal Regulations of the Federal Supreme Court. (Brazil, 2019)

The controversy largely refers to the tension between freedom of expression and the responsibility of application providers. While the legislation seeks to create a safer digital environment protected from abuse, it is essential to consider whether the provisions of article 19 of Law 12,695/2014 can result in scenarios of excessive censorship or unjustified restrictions on the expression of ideas (Cavalcante Filho, 2018).

Part of the criticism, as Thompson (2012) adduces, is the legislator's decision to favor service providers to the detriment of the user, who he understands to be the vulnerable party. The jurist already defended this even when the legislative process that would give rise to the normative was taking place:

> What the Marco Civil brings, therefore, is an instrument that promotes the unreasonable and irresponsible conduct of internet service providers. This is because, even service providers who act with negligence — or even malice — in maintaining content of whose existence they are aware, cannot be held liable in any way, except for non-compliance with an extemporaneous and, often, jurisdictionally distant court order. [..] The Marco Civil, in other words, transforms the defense of the private life and honor of Brazilian citizens — not to mention the rights of children and adolescents in cases that do not involve pornography — into mere matters of corporate social responsibility. (Thompson, 2012, p. 215)

Miguel Reale Júnior has a similar stance on the matter, arguing that putting freedom of expression precedence over other fundamental rights is, above all, unconstitutional, since the CRFB/88 itself attests to the weighing of rights:

> I do not share the Enlightenment dream that freedom of expression, as Ayres Brito wants, has a constitutional precedence that imposes itself in any concrete situations, nor that freedom naturally leads to responsibility. The Constitution itself, in its article 220, establishes that freedom of expression is full, observing the provisions of the Constitution itself, that is, it submits it to composition or subjection to other values, in particular, in my view, to the dignity of the human person, which constitutes a source, nuclear value, whose disrespect prevents the enjoyment of any other fundamental right. (Reale Jr, 2011, p. 144)

This issue acquires even more relevant contours in the context of the constant evolution of platforms and the challenges in determining the fine line between licit and illicit content.

One of the main arguments raised by critics is that article 19 of Law 12,695/2014 could imply prior and constant monitoring of content hosted by application providers. This

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perspective raises concerns about the invasion of users' privacy and the potential excessive filtering of information, which would go against the principles of net neutrality and free flow of data (Faria, 2022).

In this sense, it is argued that the imposition of indiscriminate liability on providers could hinder creativity, diversity and innovation on the internet. On the other hand, defenders of the provision argue that it is a fundamental tool to combat the dissemination of illegal, harmful or copyright-infringing content on the internet.

The civil liability of providers, as provided for in article 19 of Law No. 12,695/2014, could encourage more active and effective content moderation, promoting a safer and more secure virtual environment (Faria, 2022).

However, the practical application of this principle faces technical and operational challenges, such as the accurate identification of problematic content and the determination of criteria for its removal.

The jurisprudence about article 19 of Law 12,695/2014 is still incipient, which increases the complexity of the debate on its constitutionality. Court cases involving the liability of application providers are just beginning to reach the courts, and the analysis of these cases will be fundamental to define the contours and limits of the application of this article.

It is important to note how the courts will interpret the interaction between the provisions of the Marco Civil da Internet and constitutional principles, such as freedom of expression and the protection of privacy (Flumignan, 2018).

In addition, the controversy also involves broader issues of harmonization with international treaties and conventions. The globalization of the internet implies the consideration of international norms and standards in the definition of policies for the responsibility of application providers. This requires a delicate balance between the specificities of the Brazilian digital environment and integration with the global context (Faria, 2022).

The interpretation and application of this normative provision must consider not only the protection of individual rights, but also the preservation of freedom of expression and the diversity of voices on the internet. Finding the balance between these interests is a fundamental challenge for the construction of effective and fair regulation in the digital environment (Carvalho, 2014).

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The discussion of the limits of freedom of expression and its conflict with the fight against the violation of rights is salutary, being present in many analyses on the subject, without, however, having a pacified understanding.

Proof of this is TSE resolution 23,732, published on February 27, 2024, which establishes several requirements and parameters for the accountability of internet application providers in their "social function and duty of care" to minimize the use of their services in the practice of electoral offenses.

In a superficial analysis of this Resolution, it can be inferred that there is a *position contra legem* in the imposition of active action by providers regardless of judicial notification, in apparent contravention of what is established in article 19 of the Civil Rights Framework for the Internet, which, despite being a possible target of unconstitutionality before the Federal Supreme Court, as cited elsewhere, maintains its integrity and presumption of legality/constitutionality.

However, in an exegetical deepening of Law 12,695/2014, the Federal Supreme Court, through topic 987, in a judgment not yet concluded, began to list an exhaustive list of crimes[9] that must have direct action by the internet application provider, regardless of judicial or extrajudicial notification, of which the following are listed in the terms of the vote of the Reporting Minister:

> 3.4. when they constitute practices provided for in the following exhaustive list: (a) crimes against the Democratic Rule of Law (CP, art. 296, sole paragraph; art. 359-L, art. 359-M, art. 359-N, art. 359-P, art. 359-R); (b) acts of terrorism or preparatory to terrorism, typified by Law No. 13,260, of 2016; (c) crime of inducement, instigation or assistance to suicide or self-mutilation (CP, art. 122); (d) crime of racism (Law No. 7,716, of 1989, articles 20, 20-A, 20-B and 20-C); (e) any kind of violence against children, adolescents and vulnerable persons, including the crimes provided for in arts. 217-A to 218-C of the Penal Code, as amended by Laws No. 12,015, of 2009, and No. 13,718, of 2018, and in Law No. 8,069, of 1990, and in compliance with Law No. 13,257, of 2016, and CONANDA Res. No. 245, of 2024; (f) any kind of violence against women, including the crimes of Law No. 14,192, of 2021; (g) sanitary infraction, for failing to execute, hinder or oppose the execution of sanitary measures in a situation of Public Health Emergency of National Importance, under the terms of article 10 of Law No. 6,437, of 1977; (h) trafficking in persons (CP, art. 149-A); (i) incitement or threat to commit acts of physical or sexual violence (CP, art. 29 c/c arts. 121, 129, 213, 215, 215-A, 216-A, 250 and 251 c/c art. 147); (j) dissemination of facts that are notoriously untrue or seriously decontextualized that lead to incitement to physical violence, threats against life, or acts of violence against socially vulnerable groups or members; (k) disclosure of facts that are notoriously untrue or out of context with the potential to cause

[9] In spite of the controversial creation of an exhaustive list of crimes "punishable" ex officio by internet applicators, the Federal Supreme Court has already taken a similar position in other hypotheses, *e.g.* Topic 506, that the STF exhaustively delimited the maximum amount of marijuana to make the conduct of article 28 of Law 11,343/2006 an atypical fact.

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> damage to the balance of the election or the integrity of the electoral process (Res. No. 23,610/2019, articles 9-C and 9-D); (Brazil, 2024a).

In the same sense, the votes of the other members of the Supreme Court have also positioned themselves in the direction of listing an exhaustive list of evidently criminal content, of which there must be direct action by the responsible provider, according to the vote of Justice Luiz Fux:

> "(...) 2. Content generated by a third party that links hate speech, racism, pedophilia, incitement to violence, apology for the violent abolition of the Democratic Rule of Law and apology for the coup d'état is considered illegal (item 1). In these specific cases, there is a duty of active monitoring for the provider companies, with a view to the efficient preservation of the Democratic Rule of Law." (Brazil, 2024b)

Therefore, it can be seen that the Federal Supreme Court has taken a position in the sense that article 19 of Law 12.695/2014 "does not exclude the possibility of liability of internet application providers for content generated by third parties", especially when this content, *juris tantum*, is criminal, so that the current technology based on algorithms has sufficient technical foundation to assess such a desideratum.

Let's see that the constant updating of internet algorithms, a topic still in need of more in-depth research, provides the opportunity to create information bubbles where the people who are there are increasingly bombarded with that type of content that theoretically would interest them. On the other hand, any dissemination of hate speech, when comfortable in the eyes of the Internet user, tends to be increasingly repeated if the vicious cycle is not interrupted.

This is because, the longer one stays in the information bubble (*filter bubble*), the more it is filled with information that corroborates the convictions of the Internet user, bringing him more and more certainty of his thought, even if it is based on fragile bases. As Han (2022, p. 54) concludes, "only a few opinions and views about the world that conform with me are shown to me. Other information is retained. Filter *Bubble* thus involves me in a permanent 'looping-of-the-self'."

In the Brazilian case, the improvement of the Civil Rights Framework for the Internet, through concentrated control of constitutionality, comes under the desideratum of mitigating the crisis in modern democracy, especially because this is a crisis of attentive listening (Han, 2022), to block the adverse effects of disinformation triggered and repeated through the directions of algorithms.

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FINAL CONSIDERATIONS

The present study sought to explore the theme of civil liability of internet application providers in the light of Law 12.695/2014 (Civil Rights Framework for the Internet) in Brazil, where an overview was drawn that covered from the introduction of the principles and objectives of the Civil Rights Framework to the analysis of the constitutionality of one of its articles, culminating in reflections on the balance between freedom of expression, the protection of individual rights and the need for regulation in the digital environment.

In this regard, the analysis of the civil liability of internet providers revealed fundamental nuances of this issue, especially because the Civil Rights Framework for the Internet established a paradigm that aims to ensure the effervescence of communication and innovation on the internet, while seeking to curb abuses and violations. To this end, the conceptual distinction between connection providers and application providers reflects the understanding of the diversity of roles in this scenario, equating the interests of different agents.

In this vein, therefore, concepts hitherto unclear gave rise to relevant controversy about the constitutionality of article 19 of Law 12,695/2014, so that the debate has highlighted the need to consider a variety of perspectives. The tense relationship between the responsibility of providers and freedom of expression raises debates that go beyond the national level, involving international discussions on the regulation of the internet and digital platforms, such as the recent decision of the META group to end the fact-checking policy[10], a controversial attitude in the control of cybercrimes. As court cases and jurisprudence emerge, continuous monitoring will be essential to define consistent and balanced parameters.

What can be inferred, in short, is that the current constantly evolving scenario of the internet imposes future challenges that will require a continuous adaptation of policies and regulations, in addition to jurisprudential adjustments or specific legislative interactions. Rapid technological innovation, the emergence of new platforms, and the expansion of online forms of communication will require flexible and responsive governance, in which the institutions of the justice system play a key role in regulation. In the same sense, collaboration between sectors of society, academia, companies, and governments becomes even more urgent to keep up with these changes.

[10]https://exame.com/tecnologia/meta-abandona-programa-de-verificacao-de-fatos-por-ser-muito-tendencioso-politicamente/

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In the Brazilian context, the hypothesis is no different, which leads us to believe that the civil liability of application providers will continue to be a field of intense discussion and analysis. As jurisprudence develops and the principles of the Marco Civil da Internet are tested, building a balance between responsible moderation, freedom of expression, and the protection of individual rights will be crucial for creating a healthy and democratic digital environment.

As society advances in the digital landscape, the search for solutions that protect individual rights and freedom of expression must be continuous and iterative. The discussion promoted in this article reflected only one moment of this trajectory, inviting reflection, debate and the search for a virtual environment that reconciles innovation, security and plurality of voices. Internet governance is a challenge that requires constant analysis, adjustment, and collaboration to ensure harmony between democratic principles and technological evolution.

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