

May 2024

Regulation of platforms in Brazil: the case of Bill 2.630/2020

Internet Impact Brief

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Executive Summary

This Impact Brief analyzes the Brazilian Law of Freedom, Responsibility, and Transparency on the Internet (Bill 2.630/2020), which proposes regulating digital platforms in Brazil. Based on the Internet Impact Assessment methodology proposed by the Internet Society, this report focuses on how Bill 2.630/2020 could affect the Internet and what it needs to thrive as an open, globally connected, secure, and trustworthy resource for all.

In 2014, Brazil pioneered the establishment of an intermediary liability model through the Brazilian Civil Rights Framework for the Internet. Since then, the country has discussed numerous proposals to update the legal framework, with Bill 2.630/2020 gaining the most traction amid controversy, resistance from various sectors, and four years of processing.

The project received attachments, went through internal committees, was sent to a particular working group, and was the subject of public hearings throughout its development. Several versions of the Bill have been published, amid many others that have never been made public. The Bill reached the eve of being voted on in the Chamber of Deputies in 2023 and again in 2024. Nevertheless, we reached 2024 without a platform regulation.

However, the proposal retains the weight of centralizing efforts of various stakeholder groups that have been interested in the agenda for years. Therefore, this report analyzes the main mechanisms proposed in this Bill with the expectation of contributing to the design of regulation that can preserve innovation and competitiveness in digital markets and guarantee an open, secure, globally connected, and trustworthy Internet.

The Internet Impact Assessment methodology first analyzes the impact of a regulatory change on the critical properties of the Internet, i.e., what the Internet needs to exist. These properties include (i) An Accessible Infrastructure with a Common Protocol, (ii) An Open Architecture of Interoperable and Reusable Building Blocks, (iii) Decentralized Management and a Single Distributed Routing System, (iv) Common Global Identifiers, and (v) A Technology Neutral, General-Purpose Network.

Second, the Internet Impact Assessment methodology also proposes to analyze the impact of regulatory changes on the enablers that make it possible to achieve the goals of an open, globally connected, secure, and trustworthy Internet.

The Brief concluded that Bill 2.630/2020 does not propose mechanisms or regulatory changes that directly impact critical properties. However, the same is not true for enablers. The analysis of the April 27, 2023 version of Bill 2.630/2020 identified negative, positive, and neutral effects on the Internet's full potential.

The main issues mapped relate to four core enablers but also refer to other factors relevant to realizing the full potential of the Internet. Among them are:

- *Collaborative development, management, and governance*: This is the most affected enabler, especially due to (i) the conceptualization of "providers" in a way that differs from the one established by the Brazilian Civil Rights Framework for the Internet; (ii) the establishment of broad exceptions to the current intermediary liability regime through a mechanism called the "Safety Protocol"; and (iii) the absence of a definition of a regulatory body responsible for applying the regulation. On the positive side, the regulatory proposal includes a set of rules that contribute to transparency and due process in content moderation. It ensures users can stay informed about existing changes in services, request reviews of intermediary decisions, also customize content recommendation mechanisms.

- *Accountability*: this enabler is affected by the need for a more defined regulatory body, i.e., the institution responsible for applying the regulation. The format, financial autonomy, and composition of the body are not foreseen. This may compromise its impartiality and autonomy, opening space for political interests to influence its enforcement. On the other side, Bill 2.630/2020 contributes to transparency by requiring service providers to submit semi-annual reports, undergo an independent external audit, and provide free access to disaggregated data for academic research.

Privacy: one of the negative implications of the Bill on this enabler is the potential for instant messaging providers to be held responsible for content moderation on "open to the public broadcast channels". This is a concept not clearly defined in the regulatory proposal, considering some of these channels are protected by the use of end-to-end encryption. Given the significance of encryption for safeguarding communications, this warrants further consideration in the proposal. On the other hand, the Bill emphasizes the importance of personal data protection and information security, especially for children and adolescents.

- *Unrestricted use and deployment of Internet technologies*: the regulatory proposal suggests the temporary suspension of services as one of its administrative sanctions for non-compliance. However, there is no provision for prior notification to users, which could impede their ability to prepare for the interruption of access to services and negatively impact this enabler.

Considering the impact that the mechanisms proposed in Bill 2.630/2020 may have on the critical properties of the Internet and the enablers that allow it to reach its full potential as an open, globally connected, secure, and trustworthy network, ISOC Brazil presents the following recommendations:

1. Broad participation and transparency in the process of drafting regulations related to Internet policies or regulations;
2. Recognition of the complexity of the ecosystem of application providers in the process of regulating the Internet;
3. The technical complexity of the Internet and the particularities of evolving business models must be incorporated so that good legislation withstands over time;
4. Changes to the current intermediary liability regime must be clear, objective, and extensively discussed among various sectors and actors in the digital ecosystem;
5. Regulatory bodies must be known, autonomous, and with well-defined capacities so that they can effectively apply the proposed changes;
6. Standardization and consistency in the use of concepts.

These impacts and recommendations are further detailed throughout the document.

Summary

Based on the mechanisms proposed in the Brazilian Law of Freedom, Responsibility, and Transparency on the Internet (Bill 2.630/2020), this report uses the Internet Society's Internet Impact Assessment Toolkit (IIAT) to analyze how the latest public version of the project may affect the Internet, considering what it is necessary for it to thrive as an open, globally connected, secure and trustworthy resource for all. Impacts were found on the enablers (i) *Collaborative Development, Management and Governance*, (ii) *Accountability*, (iii) *Privacy*, and (iv) *Unrestricted Use and Deployment of Internet Technologies*. Despite the indication that the regulation of platforms in the country will be re-discussed, Bill 2.630/2020 centralized the participation efforts of various stakeholder groups for years. It has gained the most traction among the numerous proposed bills to regulate digital platforms in Brazil, despite controversies, resistance, and four years of processing. Initially designed to combat disinformation with a vigilante and persecutory proposal, the Bill was discussed in public hearings and edited several times. Its latest public version includes obligations of transparency and due process in content moderation, as well as new mechanisms such as a "safety protocol" that comprehensively exempts intermediaries from the liability regime provided for the Internet, and a "duty of care" inspired by European regulations. This document aims to identify the potential negative and positive impacts of the Bill to contribute to the public debate in the country.

Methodology

The Internet owes its strength and success to a foundation of critical properties that, when combined, represent the Internet Way of Networking (IWN). This includes (i) An Accessible Infrastructure with a Common Protocol, (ii) A Layered Architecture of Interoperable Building Blocks, (iii) Decentralized Management with Distributed Routing, (iv) A Common and Global Identifier System, and (v) A Technology Neutral, General-Purpose Network. To assess whether the present proposal has an impact on the Internet, this report will examine its effects on the IWN foundation the Internet needs to exist and what it has to thrive as an open, globally connected, secure, and trustworthy resource.

Besides the critical properties of the IWN, the assessment also considers the enablers that are essential for the Internet. They are defined by the Internet Society (ISOC) as: (I) Easy and Unrestricted Access; (II) Unrestricted Use and Deployment of Internet Technologies; (III) Collaborative Development, Management, and Governance; (IV) Unrestricted Reachability; (V) Available Capacity; (VI) Data Confidentiality of Information, Devices, and Applications; (VII) Reliability, Resilience, and Availability; (VIII) Accountability; (IX) Privacy; (X) Integrity of Information, Applications, and Services.

Context

In the wake of external and internal turbulence, from cases such as Cambridge Analytica to the 2018 General Elections and the COVID-19 pandemic, Brazil is one of the countries in the world that has struggled to define regulation of digital platforms. Despite being a pioneer in establishing a model of intermediary liability through the Brazilian Civil Rights Framework for the Internet, a law enacted in 2014, by the middle of 2024, the country will still be at an impasse regarding how to address intermediary liability.

Among the numerous proposals to update the regulatory framework currently in force, Bill 2.630/2020 was the one that gained the most traction amidst controversy, resistance from different stakeholder groups, and four years of processing. The Bill reached the eve of the vote in the Chamber of Deputies in 2023 and again in 2024, having already received approval in the proposing House, the Federal Senate. Nevertheless, amid controversy over the disclosure of court orders by the Supreme Electoral Tribunal to suspend accounts and content on social media during the 2022 Brazilian Elections and accusations of censorship, the President of the Chamber of Deputies announced that the Chamber would establish a new working group to consider the issue from the ground up.

Notwithstanding the uncertain future and the possibility that the provisions of Bill 2.630/2020 may be retained through other means of *policy-making*, the proposal remains significant because it has centralized the efforts of various interested stakeholder groups on the agenda for years. While there are some aspects evaluated as more or less accurate, entities such as the Brazilian Internet Steering Committee supported preserving the proposal's legacy¹.

The development of Bill 2.630/2020 highlights the difficulty of establishing a regulation that ensures an open, secure, globally connected, and trustworthy Internet, while also promoting innovation and competitiveness in the digital market. It is important to achieve these goals while ensuring that people worldwide can use the Internet safely and effectively. This analysis applies the Internet Society's impact assessment methodology to the latest public version of Bill 2.630/2020, dated April 27, 2023.

The troubled trajectory of this Bill began in May 2020 in the Federal Senate, during the COVID-19 pandemic and a municipal election year. Several competing bills were already being processed in the Chamber of Deputies and the Senate. However, Bill 2.630/2020 emerged from a collaboration between deputies Felipe Rigoni (then of the Brazilian Socialist Party) and Tabata Amaral (then of the Democratic Labour Party), and Senator Alessandro Vieira (Citizenship Party). The two bills previously presented by the parties were combined and resubmitted with the same content in the Senate and in the Chamber of Deputies as part of the activities of the Joint Cabinet. This resulted in a bill with 31 articles, and no mention to topics, such as the remuneration of news content, which would be included later.

¹ The entity's statement can be accessed [here](#).

Designated as Bill 2.630/2020, the process in the Senate was atypically fast and driven by the idea of combating fake news. Between May 13 and June 30, the Bill was voted on, amended, replaced, and subsequently submitted to the Chamber of Deputies, where it has remained until now.

Regarding the legislative process and the substitute report presented by Senator Ângelo Coronel (Social Democratic Party), there were several initial reactions from traditional stakeholder groups of the Internet policy ecosystem. Representing civil society, the Rights in Network Coalition, which comprises about 50 entities, criticized the process for being rushed and lacking civil society participation. They labeled the Bill as the "worst Internet law in the world" and viewed its measures as focused not on combating disinformation, but on mass surveillance and the criminalization of its users. A joint statement from Facebook, Google, Twitter (currently X), and WhatsApp also criticized the resulting version of the proposed legislation. They raised concerns about the requirement of message traceability and identification, the need to store databases in Brazil, legal uncertainties, and disproportionate sanctions.

On June 25, entities such as the ISOC Brazil, private sector representatives, fact-checking agencies, and law firms signed a statement opposing the new text, considered excessive and technically impractical. Despite their opposition, the statement emphasized the importance of combating the misuse of digital platforms for spreading poor-quality information and hate speech. Many critics unfavorably compared the Bill's discussion process to that of the Civil Rights Framework for the Internet. The Senate approved the final version of the legislation on June 30.

There was also criticism from other government sectors, including the government's own base, led by Jair Bolsonaro (then Social Liberal Party), when the approved text arrived in the Chamber of Deputies. Chamber of Deputies' representatives labelled the proposal as an attack on freedom of expression on social media and an attempt to create a "Ministry of Truth" that would target conservative positions. Bolsonaro, known for his intense and controversial use of social media, criticized the Bill in a live broadcast shortly after its approval by the Senate. He indicated that, if approved by the Chamber, he would subject it to a public consultation to assess potential vetoes. In addition, he advocated for "total freedom on social media".

The President had already acted on the intermediary liability regime by issuing a provisional measure, with immediate effects. This provisional measure, which was later withdrawn and reintroduced as Bill 3227/2021, modified the Civil Rights Framework for the Internet and the Copyright Law. ISOC Brazil evaluated these changes, noting their potential impact on the self-regulation of intermediaries concerning content moderation. It also focused on defining which types of materials and accounts could be suspended from online services under the executive authority. The Impact Report of Bill 3227/2021, prepared by ISOC Brazil, is available [here](#).

Throughout the four years of legislative debate on the Bill in the Chamber of Deputies, these two key points of criticism have been present. The Bill received attachments, went through internal committees, was sent to a specific Working Group, and was the subject of public hearings. Since then, there have been several public versions, some of which still need to be submitted and formally published, with one victory and one defeat in the plenary, until it was withdrawn from the agenda indefinitely.

On March 30, 2022, amid a presidential election year, Deputy Orlando Silva (Communist Party of Brazil), the rapporteur of the Bill in the Chamber, released a revised version that would push urgent processing within a week.

Representatives of the private sector continued their criticism, now targeting the remuneration of news content and the references to subsequent regulations. At the same time, various experts disagreed on the proposal. The Rights in Network Coalition maintained several concerns in its public statement on April 5, 2022, including issues related to the news content remuneration model for news content, and risk that parliamentary immunity could "shield" lawmakers content moderation. Nevertheless, the Coalition later viewed the text as a significant advance and a valuable opportunity for platform regulation in the country.

On April 6, 2022, the request for urgency was rejected by nine votes, a decision celebrated by President Jair Bolsonaro, who condemned the project as a vehicle for censorship.

With the rejection, the 2022 presidential elections took place without initial changes to the country's intermediary liability model, with legislation instead focused on disinformation issues. During the year, the Superior Electoral Court issued resolutions on the subject. Shortly after the second round of voting and amid allegations of widespread disinformation content about the electoral process, the Court issued Electoral Resolution 23.714/2022. It expanded the Court's authority, reduced the time for intermediaries to comply with the court orders to two hours, and expanded the ruling to identical content. The resolution sparked controversy and legal disputes, which were ultimately confirmed by the Supreme Court.

Bill 2.630/2020 reemerged at the center of public debate about a year later, in the first quarter of 2023, under a new federal government and legislature. Political events heightened calls for the regulation of digital platforms. On January 8, 2023, seven days after President Lula took office, the headquarters of Brazilian institutions in Brasilia were attacked by supporters of former president Jair Bolsonaro, mobilized and coordinated through social networks and messaging apps. In March, a new wave of violence in schools, which had been escalating since the late 2022, intensified the pressure to resume discussions on Bill 2.630/2020.

This scenario had significant implications for calls to regulate platforms and revise the liability regime for intermediaries, with a focus on linking the civil liability of digital intermediaries to addressing these

issues. Despite the change in federal administration and the legislative setbacks of 2022, Bill 2.630/2020 remained unresolved. One possibility was that the bill could be revived with support from the central government, which was in the minority in the Chamber. Alternatively, it could become obsolete due to actions taken by the federal executive or even the judiciary.

In the absence of a new public version and amid speculation about an informal draft circulating among parliamentarians, the Bill was once again scheduled for urgent consideration. On April 25, 2023, parliament approved the urgent voting through an agreement among party leaders. Despite this decision and the expectation of final approval, the proposal was not immediately put to a vote due to the Brazilian legislative process. As previously noted, the agreement for urgent consideration included a commitment to postpone the final vote until a later session. This delay aimed to allow for a more thorough review of the text and the incorporation of concerns raised by the various party leaders.

The last official version of the text was published on April, 27th 2023. It introduced new provisions, such as a safety protocol and a duty of care. It created new exceptions to the current intermediary liability regime in case of non-compliance and removed the provision for creating an autonomous supervisory entity.

During the session on May 2, the rapporteur addressed the issue of the regulatory body when Silva requested the Bill be removed from the day's agenda. He stated that, following the removal of the provision for an independent supervisory entity, additional time was needed to explore the "alternative methods for implementing an inspection mechanism and enforcing the law, including the application of sanctions". Consequently, he proposed reviewing the various suggestions he had received from party leaders, civil society, and other stakeholders. Furthermore, the decision to withdraw the Bill from the agenda was perceived as a political maneuver to avoid potential defeat in the Chamber, given the anticipated strong opposition from online service providers, government opponents in parliament, and members of the so-called "evangelical group".

Regarding the representatives of stakeholder groups traditionally involved in Internet governance and policy, the Bill has gained increasing support from civil society organizations dedicated to the protection of digital rights with each new version and scenario. Despite some reservations regarding areas needing improvement, the Network Coalition's endorsement, broad campaigns advocating for the Bill, and positive feedback from a wide range of experts in the field occurred in 2022 and particularly in 2023, reinforcing the Bill's importance and merits. Conversely, in April 2022, on the eve of the first urgency vote, the ISOC Brazil assessed that, despite the remarkable efforts of the Parliament, the debate was not yet sufficiently mature. ISOC Brazil called for an impact analysis to assess the potential positive and negative effects for an open, globally connected, secure, and trustworthy Internet.

Despite these endorsements, the Bill still faced opposition from private sector representatives, such as Google and Telegram, and was criticized by journalistic entities and other dissenting voices. On May

1, on the eve of the final vote, platforms mobilized their networks to campaign against the Bill's approval. This mobilization led to actions by Brazilian regulatory agencies, which characterized the efforts as potential abuse of economic power.

Similarly, opponents of the government circulated content contrary to the so-called "Censorship Bill" across different platforms. They framed the project as an attempt to politically censor conservative viewpoints and restrict the sharing of religious manifestations, such as Bible excerpts. The religious allegations were refuted, at the time, by fact-checking agencies.

Amid ongoing turbulence, which continued to be a topic of debate in 2024, uncertainty regarding potential changes to digital content regulation in the country remained unresolved. To address the gap identified by ISOC Brazil in 2022 and contribute to the ongoing debate, the main positive and negative impacts mapped from the latest available version of the text are outlined below.

How Does the Proposed Regulation Affect What the Internet Needs to Exist?

After a first analysis of the documents, the proposed regulatory changes do not directly impact the critical properties that the Internet needs to exist.

How Does the Proposed Regulation Affect the Realization of the Full Potential of the Internet?

Critical properties are necessary for us to have the Internet as we know it, but we need more if we want the Internet to reach its full potential. The analysis must be done through enablers to assess how we can achieve an open, globally connected, secure, and trustworthy Internet, which is essential for attaining aspirational goals.

The analysis of the April 27, 2023 version of Bill 2.630 identified negative, positive, and neutral impacts on the full potential of the Internet. The main issues identified relate to four core enablers and other relevant factors.

Collaborative Development, Management, and Governance

Internet technologies and standards are openly and collaboratively developed, managed, and governed. This collaboration extends to the construction and operation of the Internet and services built on the Internet. The development and maintenance process is based on transparency and consensus and aims to optimize infrastructure and services to benefit users of these technologies.

The most significant impact of the regulatory proposal is on this enabler, which considers the contribution of the proposal under analysis to the development, management, and, most importantly, open and collaborative governance of the Internet. The negative impacts are particularly pronounced because of the high level of risk that the legislation could potentially generate. This reflects gaps in the legislative drafting and policy-making process, which can result in mechanisms that may adversely affect both users and digital intermediaries. On the other hand, the proposal is expected to have a positive impact on the protection of users from service providers by implementing specific mechanisms.

The context described above illustrates the difficulties of regulating digital intermediaries. This dynamic, which is typical of controversial policy-making processes, is particularly strong in the context of this discussion and results in risks that were not sufficiently mitigated in the legislative process and in the final product of Bill 2.630/2020, despite the notable efforts and improvements made by various stakeholders involved.

In Bill 2.630/2020, the issue manifests through two main mechanisms. First, in the definition of the scope of the law, which conceptualizes affected providers differently from the Civil Rights Framework for the Internet. Second, in the provision for changes to the liability regime for intermediaries, which are poorly explained, in particular due to the absence of a defined regulatory body and the introduction of a broad exception mechanism, known as the Safety Protocol.

The first proposed change in the Bill concerns the conceptual definition of the Internet. Article 2 of the Bill introduces a definition of providers that differs from the Civil Rights Framework for the Internet, which traditionally distinguishes intermediaries only as “service providers” or “access providers”. Furthermore, the Bill requires the use of a restricted and particular definition of the types of providers to which it would apply, such as social network and instant messaging providers. The definition of providers to be regulated is based on the number of monthly users (10 million) rather than the economic power of intermediaries.

We believe that, by not referencing the concept already established by law, the Bill may lead to legal uncertainty in its application in conjunction with the Brazilian Civil Rights Framework for the Internet. This should impact the enabler *collaborative development, management, and governance*, as well as the enablers *accountability* and *unrestricted use and deployment of internet technologies*.

It is a fact that the current situation requires a reassessment of existing regulations and the coordination of collective action. It is also essential to understand the regulatory impact at both the local and global levels in order to ensure the legacy of the Internet for future generations.

In this context, terms such as "social media", "search engines" and "instant messaging" reflects specific business models. ISOC Brazil's Decalogue of Recommendations for the Liability of Intermediaries² warned that regulatory proposals relying heavily on such proprietary terminology, rather than focusing on the functioning of the Internet as a whole, can quickly become outdated due to the rapid evolution of technology and business models. This may limit the future application of these regulations. Disagreements in how to classify services could lead to an uneven distribution of responsibility among digital platforms involved in content moderation, potentially impacting users' rights under the proposal.

Regulation focused solely on the specific context of users on specific platforms could potentially stifle the dynamic nature of the ecosystem, limiting innovation and creativity within the globally connected world of the Internet. Therefore, it is essential to recognize the value of a general network that promotes diversity, openness, and constant evolution.

Finally, adopting the criterion of an average number of users, similar to that in European legislation, could be vulnerable to changes over time and may create unequal impacts on service providers. With Brazil's population of 210 million, and 156 million have some level of Internet access, the minimum threshold of 10 million monthly users may not remain as rigid as required by a permanent legal definition. The rapid growth of small service providers raises concerns that, by not considering economic power in holding platforms accountable, the legislation could create legal uncertainty and offer a competitive advantage to the current gatekeepers. This could hinder the development of network technologies.

The use of a more technically robust terminology, such as access provider and service provider, as well as the adoption of more stable criteria that is less susceptible to the temporal fluctuations inherent in a dynamic network like the Internet, promotes an increasingly open Internet.

The second prominent mechanism is the intermediary liability model, where the most significant changes in the latest public version of the Bill are focused. The context of the analyzed proposal shows that the recent introduction of two new exceptions to the existing model in Brazil has not been as thoroughly debated as other aspects of the project. This procedural issue, along with the final form of the text has substantial negative impacts on the Internet, affecting four enablers: (i) *Collaborative Development, Management, and Governance*, (ii) *Unrestricted Use and Deployment of Internet Technologies*, (iii) *Accountability*, and (iv) *Privacy*.

² ISOC Brazil's Decalogue of Recommendations for the Liability of Intermediaries contains ten recommendations for regulatory processes that impact the liability model of Digital Intermediaries established by the Brazilian Civil Rights Framework for the Internet. The full version and the summary version of the document can be accessed at: <https://www.isoc.org.br/noticia/decalogo-de-recomendacoes-sobre-o-modelo-brasileiro-de-responsabilidade-de-intermediarios>

According to the Brazilian Civil Rights Framework for the Internet, established in 2014, Internet connection providers are not held civilly liable for damages caused by third-party content. However, application providers can be held liable if they fail to comply with a court order identifying infringing content.

In Articles 2 and 55 of Bill 2.630/2020, the regulatory proposal introduces exceptions to the above general regime. It establishes that providers of "social media, search engines, and instant messaging" are jointly and severally liable in two cases. The first case involves damages caused by using the platform's advertising tools. The second one is related to meet a new set of obligations, specifically the "duty of care" during a designated period under a "safety protocol" as defined in Article 12.

The first change differentiates between third-party content and identifiable decisions made by the platforms, such as their content recommendation algorithms. However, the second provision brings an insufficiently developed approach to a systemic risk assessment model, turning the Safety Protocol (Section IV, Art. 12) mechanism into one of the measures with the greatest possible adverse effect. The Protocol creates an exceptional period where:

Article 12: When the risks described in Article 7 are imminent, or that the provider's actions are negligent or insufficient, a safety protocol may be implemented for a period of up to 30 days. This protocol may be established without prejudice to other applicable legal measures, under the regulations and by reasoned decision.

Under these conditions, and with serious disagreement over the scope of the newly established obligations and the potential of joint civil liability for intermediaries, the safety protocol becomes a key focus of regulation. The specifics of this protocol, including its implementation and oversight, will be determined later by an administrative authority whose form remains undefined, despite the provision for CGI.br to draw up guidelines.

This lack of clarity around this authority adds to the uncertainty for providers, who require precise parameters to guide their actions and protect themselves from liability. Although the Brazilian Internet Steering Committee (CGI.br) is expected to develop guidelines for the Protocol, its consultative role does not ensure that these will be fully incorporated into the final regulations. Additionally, the technical vocabulary used differs from than that of the Brazilian Civil Rights Framework for the Internet, which has subsidiary liability as a general prerogative. The broad expansion of the Safety

Protocol risks fundamentally altering the model without actually formal changes, potentially introducing characteristics of the *notice and take-down model*³.

Gaps such as those mentioned above in Internet policy mechanisms generate uncertainties and erode users' trust. These gaps allow for extreme applications of the newly established prerogatives, leading to legal ambiguity for both users and providers. This situation poses substantial risks to realizing the full potential of the Internet.

In Brazil, it is harmful for policy processes to be developed without first taking into account the existing regulatory frameworks, particularly the Civil Rights Framework for the Internet and Norm 4. The effective integration of these mechanisms should not be left to subsequent disputes among stakeholders.

On the other hand, implementing defined processes for online content moderation, from the user's perspective, can have positive impacts on *collaborative development, management, and governance*, besides favoring *accountability* and *unrestricted use and deployment of Internet technologies*.

An existing mechanism in this context is the requirement for establishing rules to ensure that users can be effectively informed of existing changes to service usage and can request review regarding intermediary decisions. Such obligations are described in Article 18 of the Bill. Additionally, Articles 21 and 28 aim to enhance user autonomy and manageability while safeguarding commercial and business secrets. The Bill could represent a significant advancement by including provisions for publishing information on recommendation systems and allowing for the customization of these mechanisms.

There is potential for positive outcomes in the fact that the deadlines and mechanisms related to the above provisions are subject to the creation of codes of conduct by intermediaries, guided initially by a supervisory body. However, the only entity with any level of oversight in the latest public version of the project is the Brazilian Internet Steering Committee (CGI.br). As discussed in the following section, the gaps related to the regulatory body and the assignment of expanded functions proposed for CGI.br, such as issuing guidelines and criteria for establishing the safety protocols referred to in this Bill, raise concerns. CGI.br, which is not a state body, lacks the legal or administrative authority to fulfill these responsibilities effectively, potentially distorting its multistakeholder nature. The Bill's initial

³ The "notice and take-down" model is a mechanism that some countries apply to Internet application providers, such as social media platforms. It requires that upon receiving a notification about potentially infringing or illegal content, the intermediary should quickly remove that content or take steps to make it inaccessible. Regarding the complete form of this model, the Brazilian Civil Rights Framework for the Internet requires a specific and justified court order, initially excluding the binding power of extrajudicial notifications, which may or may not be considered by providers.

designation of CGI.br as a complementary entity could be distorted by the absence of other authorities.

Due process mechanisms between the application providers and users, as well as ensuring user autonomy and management capacity within the technical and commercial constraints intermediaries, can enhance user trust by emphasizing transparency and informed decision-making regarding content moderation and review processes. Intermediaries should develop their own codes of conduct, subject to oversight, provided that this process is well defined and managed by an appropriate authority in a transparent manner.

Accountability

Accountability on the Internet assures users that the organizations and institutions they interact with are acting directly or indirectly transparently and fairly. Entities, services, and information can be identified in a responsible Internet, and the organizations involved will be held accountable for their actions.

Bill 2.630/2020 has been discussed for many years in Brazil, but political consensus in the National Congress has not been reached. The latest version of the Bill, resulting from a contentious debate process, covers several provisions to regulate providers' performance. These provisions cover aspects such as remuneration for news or copyrighted content published on social media and the creation of a "safety protocol" for addressing disseminating illegal content that may be considered criminal under Brazilian Law. These mechanisms represent new elements in the Brazilian legislative scenario, and subsequent regulation is expected to ensure the law remains amidst rapid technological advancements.

The main negative impact on the enabler *accountability* is that the latest version of the Bill does not include a regulatory body responsible for regulating and implementing its mechanisms. The section addressing the composition, functions, and procedures of such a body was removed in order to expedite the voting process, but the Bill ultimately did not pass.

The absence of provisions on this regulatory body's format, composition, institutional linkage, and financial autonomy leads to legal uncertainty. It threatens several enablers, including (i) *Accountability*, (ii) *Privacy*, and (iii) *Collaborative development, management, and governance*.

The lack of a normative definition for the regulatory body creates a severe vulnerability in the legislation. This lack of clarity can undermine the body's independence and autonomy, making it susceptible to political influence that could skew the application of the regulations. Such a scenario compromises the impartiality and effectiveness of its decisions, potentially affecting people's privacy and freedom of expression. In addition, amid the fierce and polarized context of the regulation's application, this uncertainty could erode trust and legitimacy in the regulatory decisions, potentially impacting the acceptance and compliance with the legislation.

Under Bill 2.630/2020, the Brazilian Internet Steering Committee (CGI.br) has been assigned new responsibilities concerning the supervision and implementation of its provisions. CGI.br, a multistakeholder committee established by Interministerial Ordinance No. 147 on May 31, 1995, is tasked with coordinating and integrating initiatives related to the Internet's use and operation in Brazil. It is responsible for establishing strategic guidelines for Internet's development, including the registration of Domain Names, allocation of IP Addresses (Internet Protocol) and any other administrative issues pertinent to the ".br" Top-Level Domain.

In Bill 2.630/2020, new responsibilities are assigned to CGI.br. These include presenting guidelines for a code of conduct to assist providers in complying with the regulation, approving providers' codes of conduct, offering guidelines and subsidies for terms of use, and issuing guidelines and criteria for the establishment of safety protocols as outlined in the Bill. However, CGI.br lacks the legal or administrative authority to perform these tasks, as it does not have the powers of a state body to act as a regulatory agency.

The multistakeholder nature of CGI.br, which allows for valuable dialogue and consensus-building, is not in line with the responsibilities of a regulatory agency with the authority to oversee and enforce sanctions. In this scenario, the new attributions could harm CGI.br, altering its multistakeholder character in favor of a *sui generis* entity.

It is worth noting that the Bill has the potential to impact positively the *accountability* enabler by assigning duties related to transparency. These include requiring providers to present semi-annual reports, undergo independent external audits, and provide free access to disaggregated data for academic research.

Bill 2.630/2020 requires providers to produce semi-annual transparency reports that are publicly available, machine-readable, and in Portuguese. These reports should provide information on content and account moderation procedures, actions implemented to tackle illegal activities, significant changes to the terms of use, data on teams responsible for enforcing the terms of use, and other quantitative and qualitative information. Besides contributing to the promotion of the *Accountability* enabler, the positive effects extend to the *unrestricted use and deployment of Internet technologies* enabler. By providing transparency in moderation practices, these reports can help address issues of discrimination and support the promotion of user autonomy and unrestricted Internet use.

The analyzed regulation also provides the free access to disaggregated data for academic research, while respecting commercial and industrial secrets and personal data protection. This provision not only promotes accountability, but also fosters the *collaborative development, management, and governance* enabler. It may facilitate cooperation between providers and researchers, enhancing the network's governance.

Finally, providers are required to hire an independent external auditor to assess compliance with the regulation and the effectiveness in analyzing and mitigating systemic risks. These obligations involve the assessment of the level of efficiency, accuracy, precision, and coverage of the adopted mitigation measures, as well as ensuring non-discrimination and impartiality in content moderation decisions. Thus, the measure enhances both transparency and accountability.

Privacy

Internet privacy is the ability of individuals and groups to understand and control what information about them is being collected and how, as well as how that information is used and shared. Privacy often includes aspects of anonymity, removing connections between data, devices, and communication sessions, and identifying the people to whom they refer.

In Bill 2.630/2020, one of the negative impacts for the *privacy* enabler is the attribution of content moderation obligations to instant messaging providers. The Bill requires instant messaging providers to adopt content moderation measures for "open to the public broadcast channels", including those protected by end-to-end encryption. The lack of a clear definition of broadcast channels that are "open to the public" complicates the understanding of this obligation's scope. It may infringe users' privacy by requiring decryption of messages to identify and remove illegal or harmful content. Civil society groups and information security experts have warned of the risks of breaking encryption, which can make communications vulnerable to cyberattacks, government surveillance, and human rights violations.

On the positive side, the proposed legislation enhances the *privacy* enabler, by strengthening the focus on personal data protection and information security in alignment with the Brazilian General Data Protection Law (Law 13.709/2018). The emphasis on privacy is a guiding principle of the regulation, with particular attention to safeguarding personal data of children and adolescents. Notably, it includes a prohibition on processing such data for advertising.

Unrestricted use and deployment of Internet technologies

Internet technologies and standards are available for unrestricted adoption. This enabler extends to endpoints: the technologies used to connect to and use the Internet do not require permission from a third party, operating system (OS) vendor, network provider, or any other. Internet infrastructure is available as a resource to anyone who wishes to use it. Existing technologies can be combined and used to create new products and services that extend the capabilities of the Internet.

The proposed regulation subjects providers to administrative sanctions who fail to comply with the established duties. These sanctions include warnings, fines, publication of the judicial decision by the offender, prohibition of processing certain databases, and temporary suspension of activities.

However, while the proposal mandates that decisions involving offenders be published, it does not require prior notification to users before imposing a temporary suspension of provider's activities. Given that users rely on these platforms for many daily activities, such as studying, researching,

accessing information, and conducting transactions, a sudden suspension without notice can significantly disrupt their routines. This lack of notice not only undermines the enabler discussed in this section, but also affects the principle of *Easy and Unrestricted Access*, limiting user's ability to prepare for and adapt to service interruptions. .

Similarly, the proposed regulation allows for the suspension of commercial accounts users on messaging applications if they share content that is not deemed "strictly commercial". The term "non-strictly commercial content" is vague and open to interpretation by platforms, which can result in arbitrary decisions and inconsistency in account moderation. This provision raises concerns about restrictions on freedom of expression and could hinder companies' ability to effectively communicate with their customers and to promote their products and services.

Another provision that may negatively impact the *unrestricted use and deployment of Internet technologies* is the imposition of mechanisms to prevent actively the use of services offered by providers in the cases of children and adolescents, if these are not designed for them or are deemed as inadequate to meet their needs. While protecting children and adolescents from harmful content is crucial, it is essential to consider the potential negative impacts of this general obligation on the Internet's open and inclusive nature.

One of the key properties that enables the continuous evolution of the Internet is its universal accessibility. This accessibility allows individuals, regardless of their age, location, or circumstances, to have the freedom to access and explore a wide range of online content and services. Imposing age-based access restrictions risks creating barriers that could limit users' freedom of navigation and undermine the democratic nature of the Internet.

Additionally, implementing these restrictions may require the collection and processing of user's data, raising legitimate concerns regarding data privacy and security, particularly when protecting the sensitive information of children and adolescents.

Another aspect to consider is the potential impact on innovation and the development of new online technologies. Restricting access for specific demographic groups can limit their ability to experience and contribute to the advancement of the Internet. Therefore, while we recognize the importance of protecting young Internet users, it is essential to balance this need for security with preserving the accessibility, utilization, and innovation that underpin the Internet's open architecture.

Recommendations

Based on the analysis conducted on the regulation of providers that is defined by the mechanisms outlined in Bill 2.630/2020, ISOC Brazil, the Brazilian chapter of the Internet Society, presents the following recommendations in this Impact Brief:

1. Broad participation and transparency

Any rule-making process related to Internet policies or regulations must ensure the comprehensive participation of all stakeholders. This process should be conducted openly and transparently, allowing civil society, the private sector, academia, and other relevant actors to be effectively involved.

2. The complexity of the Internet service provider ecosystem must be recognized

We emphasize the importance of recognizing the differences and specificities among various types of existing services and applications, the legal and economic characteristics of different providers, and their roles within in the digital ecosystem. Regulatory frameworks should be tailored to these diverse roles to ensure that legal guarantees are appropriately adapted.

Therefore, we recommend that regulatory proposals consider other factors beyond the number of users when assessing obligations and responsibilities. By considering a broader range of criteria, regulations can be designed to remain relevant and effective over time. This approach will help minimize the risk of regulatory obsolescence and encourage innovation, while avoiding the creation of burdensome or disproportionate barriers.

3. The technical complexity of the Internet and its changing nature must be recognized

Regulatory proposals that rely heavily on terminologies tied to current business models may struggle to adapt to technological advancements over time. Effective legislation must remain resilient and applicable despite rapid changes in technology. To address these challenges, it is essential to base regulations on a thorough understanding of Internet's technical specifics and anticipate the continual emergence of new business models.

4. Intermediary liability model

Changes to the current regime of the intermediary liability model must be clear, objective, and extensively discussed among the various stakeholders in the digital ecosystem. Attention to this decision-making process should be proportional to the high potential impact, positive or negative, that changes in providers' civil liability may generate on the Internet, with special attention to changes resulting from unclear exceptionalities. In this sense, changes in this area are not the only existing resource to promote the responsibility of internet providers.

5. Autonomous and defined regulatory bodies

Regulatory proposals must clearly define the bodies or entities responsible for regulating and enforcing the regulation. To ensure the effectiveness and legitimacy of regulation, these bodies must have a well-defined structure, including composition, functioning, institutional linkage, and financial

autonomy. In addition, they should offer transparent and inclusive mechanisms that allow for broad dialogue with multiple stakeholders regarding the regulations to be implemented.

6. Standardization and consistency in the use of concepts

Regulatory proposals should be based on established concepts and definitions whenever possible. This is essential to ensure the regulation remains consistent and durable over time and aligns with existing legal frameworks, reducing ambiguities and divergent interpretations.

Given the relevance of this debate, ISOC Brazil, in collaboration with civil society representatives, private sector, and academic organizations, has prepared the Decalogue of Recommendations on the Brazilian Model of Intermediary Responsibility on the Internet (<https://isoc.org.br/uploads/download/137>). This document outlines key recommendations to guide the discussion and development of policies related to the liability of intermediaries on the Internet in the Brazilian context.