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

Internet Impact Brief

Brazilian Chapter of the Internet Society
Intermediary Liability Working Group

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

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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 public versions have been made, including some that must be submitted and published. 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 centralized efforts of various sectors 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 constructing a regulation that can preserve the innovation and competitiveness of the digital market and guarantee an open, secure, globally connected, and trustworthy Internet.

The Internet Impact Assessment methodology takes a comprehensive approach to analyzing the impact of regulatory change, considering both the Internet's critical properties and essential enablers.

In this context, the methodology first analyzes the impact of regulatory change on the critical properties of the Internet, i.e., what the Internet needs to exist. These 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*: it is the enabler most affected, especially because: (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 "Security 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 that users can be informed of existing changes in using services, that they can request reviews of intermediary decisions, and that they can 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. It may compromise its impartiality and autonomy, opening space for political interests to influence the application of the rule. Additionally, Bill 2.630/2020 contributes to transparency in providing services by requiring providers to submit semi-annual reports, undergo an independent external audit, and provide free access to disaggregated data for academic research purposes.

Privacy: one of the negative implications of this enabler is the potential for instant messaging providers to be held responsible for content moderation on "open to the public broadcast channels". It is a concept not clearly defined in the regulatory proposal, despite the use of end-to-end encryption. Given the significance of encryption for safeguarding communications, 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 suspending temporarily the provider's activities as one of the 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, the 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: *collaborative development, management and governance, accountability, privacy, and 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 sectors 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 reformulated several times. Its latest public version includes obligations of transparency and due process in content moderation, as well as new mechanisms such as a "security 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 on the issue 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: an accessible infrastructure with a common protocol, a layered architecture of interoperable building blocks, decentralized management with distributed routing, a common and global identifier system, and 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 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, the country will reach the middle of 2024 still at an impasse over how to deal with 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 sectors, and four years of processing. The Bill reached the eve of the vote in the Chamber of Deputies in 2023 and again in 2024, when it already had the seal of approval in the proposing House, the Federal Senate. Nevertheless, the President of the Chamber of Deputies recently indicated that the Chamber would form a new working group to discuss the issue from scratch, amid controversy over the disclosure of court orders to suspend accounts and content on social media during the 2022 Brazilian Elections, followed by accusations of censorship.

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 is still important as it centralized the efforts of various interested sectors in the agenda for years. While there are some aspects as more or less accurate, entities such as the Brazilian Internet Steering Committee supported the preservation of 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 path followed by the 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). The two bills previously presented by the parties were combined and resubmitted with the same content in the Senate and the Chamber of Deputies as part of the activities of the Joint Cabinet. This resulted in a bill with 31 articles, and no mention of topics, such as the remuneration of journalistic content, which would be included later. Designated Bill 2.630/2020, the

¹ The entity's statement can be accessed at: <https://cgi.br/esclarecimento/nota-publica-do-cgi-br-sobre-a-regulacao-das-plataformas-digitais-pelo-congresso-nacional-e-a-tramitacao-do-pl-2630-20/>



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 later approved by the Chamber of Deputies, where it remained.

Regarding the legislative process and the substitute report presented by Senator Ângelo Coronel (Social Democratic Party), there were several initial reactions from traditional sectors of the Internet policy ecosystem. Representing civil society, the Rights in Network Coalition, which comprised 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 Brazilian Chapter of ISOC, 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 of these critics compared unfavorably the discussion process of the Bill and with 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 when the approved text reached the Chamber of Deputies, such as from the government's base, led by Jair Bolsonaro (then Social Liberal Party). Deputy leaders of the federal government in Parliament called the proposal an attack on freedom of opinion on social media and an attempt to create a "Ministry of Truth" that would act against 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 Chamber. He indicated that, if approved by the House, he would submit it to a public consultation to evaluate possible vetoes. In addition, he positioned himself for "total freedom on social media". The President had already acted on the intermediary liability regime by issuing a provisional measure, with immediate effects. Such a provisional measure, which was later withdrawn and reintroduced as Bill 3227/2021, modified the Civil Rights Framework for the Internet and the Copyright Law. These changes were evaluated by ISOC Brasil, and they could potentially impact the self-regulation of intermediaries in terms of content moderation. It also concentrated on the definition of what types of materials and accounts could or could not be suspended from online services under the executive's authority. The Impact Report of Bill 3227/2021, prepared by ISOC Brasil, can be accessed [here](#).

In the three years that the Bill has been in the Chamber of Deputies legislative debate, these two focal 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, a presidential election year, the rapporteur of the Bill in the Chamber, Deputy Orlando Silva (Communist Party of Brazil), published a new version that would promote a request for urgent processing less than a week later. Representatives of the private sector continued to criticize the Bill, now focusing on criticism of the remuneration of journalistic content and the reference to subsequent regulations. At the same time, various experts disagreed on the proposal. Some points previously raised by the Rights in Network Coalition were also maintained in the entity's public statement on April 5, 2022, such as the remuneration model for journalistic content, the creation of a type of crime related to the dissemination of disinformation, and the risk that the provision of parliamentary immunity would "shield" parliamentarians from the content moderation process, but the new text was evaluated by the entity as an advance and subsequently as an excellent opportunity for the regulation of platforms in the country. On April 6, 2022, the request for urgency was rejected by nine votes, a parliamentary decision celebrated by President Jair Bolsonaro, who reinforced the categorization of the project as a promoter of censorship, also targeting the political field of rapporteur Orlando Silva.

With the rejection, the 2022 presidential elections took place without initial changes to the country's intermediary accountability model, and legislation focused on disinformation issues. During the year, the Superior Electoral Court issued resolutions on the subject. Shortly after the second round and under allegations of strong circulation of disinformation content about the electoral process, the Court issued Electoral Resolution 23.714/2022. It expanded the Court's powers, reduced the time for intermediaries to comply with the court order to two hours, and expanded the decision to identical content. The action also divided opinions and was the subject of a country's legal dispute, which was confirmed by the Supreme Court.

Bill 2.630/2020 would only return to the center of public debate about a year later, in the first quarter of 2023, under a new federal government and legislature. Once again, political events have reignited demands for the regulation of digital platforms. On January 8, 2023, seven days after 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 episode of the wave of violence in schools, which had been going on since the end of 2022, increased the pressure for the resumption of the vote on Bill 2.630/2020.

This scenario was of significant consequence for the calls to regulate platforms and alter the liability regime for intermediaries. This was done from the perspective of linking the civil liability of digital intermediaries to the mitigation of the problems in question. Under the federal administration's ascension and the legislative setback in 2022, the Bill 2.630/2020 remained undecided. One possibility was for the bill to be revived with the backing of the central government, which was in the minority in the Chamber. Another was for it to become obsolete in the face of measures taken by the federal executive or even the judiciary.

In the absence of a new public version and amidst speculation about the informal circulation of a new version among parliamentarians, the Bill was once again sent to a vote the vote to be processed urgently. On April 25, 2023, it was approved by parliament through an agreement between party leaders. Despite this result and the indication of final approval, the proposal was not immediately sent to a vote on the merits within the Brazilian legislative procedure. As previously stated, the party agreement for urgent approval was followed by a commitment to postpone the final vote until a later session. This was intended to allow for a more comprehensive understanding of the text and the incorporation of points raised by the leadership.

The last official version of the text introduced new provisions, such as a security 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.

The rapporteur mentioned the regulatory body issue in the session on May 2, when Silva requested the withdrawal of the Bill from the agenda of the day. According to him, after the withdrawal of the provision for the creation of an autonomous supervisory entity, time was needed to evaluate the "alternative ways for the law to have an inspection mechanism and to enforce the law by even applying sanctions". Consequently, he proposed an evaluation of the various suggestions he had received from party leaders, civil society, and representatives of other sectors. Furthermore, the withdrawal from the agenda was perceived as a political strategy to avoid potential defeat in the Chamber, given the anticipated strong opposition from online service providers, members of parliament opposed to the government, and members of the evangelical group.

Concerning the representatives of sectors more traditionally involved in Internet governance and policy spaces, the Bill has garnered greater support among civil society involved in digital rights claims with each new scenario and the modifications from each version. Although there were some reservations regarding points to be improved, the Network Coalition, general campaigns for the bill's approval, and positive demonstrations by a wide range of experts in the field took place between 2022 and 2023. These events reinforced the bill's importance and merits. On the other hand, in April 2022, on the eve of the first urgency vote, the Brazilian chapter of ISOC assessed that, despite the remarkable efforts of the Parliament, the debate was not yet sufficiently mature. ISOC Brasil proposed an impact analysis to assess the potential positive and negative effects for an open Internet, globally connected, secure and trustworthy.

Even so, the Bill still faced opposition from private sector representatives, such as Google and Telegram, and was criticized by journalistic entities, among other divergent actors. On May 1, on the eve of the final vote, platforms mobilized the networks against the Bill's approval. This action generated procedures from Brazilian agencies against what was classified, at the time, as an abuse of economic power.

Similarly, opponents of the government circulated content contrary to the so-called "Censorship Bill" on different platforms. They associated the project with an attempt to political censorship, conservative

viewpoints, and restrict the sharing of religious manifestations, such as excerpts from the Bible. The religious allegations were denied, at the time, by fact-checking agencies.

In the context of ongoing turbulence, which was again a topic of debate in 2024, the uncertainty surrounding potential changes to the regulation of digital content in the country remained unresolved. In order to address the gap identified by ISOC Brasil in 2022 and contribute to the ongoing debate, the main positive and negative impacts mapped from the latest available version of the text are presented 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 mapped 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 end up creating mechanisms that could harm 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, through the implementation of specific mechanisms.

The context described above illustrates the difficulties of regulating digital intermediaries. It is typical of controversial policy-making processes. This dynamic is evident when presented 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 actors who were involved.

In Bill 2.630/2020, the issue arises in two main mechanisms. Firstly, in the definition of the scope of the law, where the affected providers are conceptualized in a way that diverges from the Civil Rights Framework for the Internet. Secondly, in the provision for changes to the liability regime for intermediaries, which are poorly explained, in particular due to the lack of definition of a regulatory body and the creation of a broad exception mechanism, the Security Protocol.

The first proposed change in the Bill concerns the conceptual definition of the Internet. Article 2 of the bill reflects the option for a definition of providers that differs from the Civil Rights Framework for the Internet, which traditionally distinguishes intermediaries between service providers and access providers. Furthermore, the law necessitates the use of a restricted and determined definition of the types of providers to which it would apply, such as social network and instant messaging providers. The definition of regulated providers is based on the number of monthly users (10 million) and not on the economic power of intermediaries.

We believe that the not referencing the concept already established by law may lead to legal uncertainty in the 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 *accountability* and *unrestricted use and deployment of internet technologies* enablers.

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 level in order to ensure the legacy of the Internet for future generations.

In this context, the use of terms such as "social media", "search engines" and "instant messaging" incorporates proper terminology to specific business models. As cautioned by ISOC Brasil's Decalogue of Recommendations for the Liability of Intermediaries² regulatory proposals that heavily rely on proprietary terminology for existing services rather than on the functioning of the Internet can quickly become

² ISOC Brasil'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>

outdated due to the rapid evolution of technology and business models. This could lead to limitations in their future application. In cases of disagreements in classifying each service, it may result in an imbalance of responsibility among digital platforms that are involved in content moderation. This could also impact the rights of users affected by the proposal's implementation.

Regulation based on the specific contextual of users on specific platforms could potentially hinder the dynamic ecosystem, limiting innovation and creativity in the globally connected world provided by the Internet. Therefore, it is necessary to acknowledge 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 adopted in European legislation, may present vulnerabilities to the passage of time and additional risks of unequal impact on service providers. With a population of 210 million Brazilians, of whom 156 million have some level of access to the Internet, the minimum criterion of 10 million monthly users may not be as inflexible as a permanent legal definition requires. The rapid growth of small service providers has concerns that, not taking economic power into account as a criterion for holding platforms accountable, may result in legal uncertainty in the application of legislation and a competitive advantage to the current gatekeepers. This could hinder the development of network technologies.

The use of more technically robust terminology, such as access provider and service provider, as well as the adoption of more stable criteria that are 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, which is where the most impactful changes in the last public version of the bill are concentrated. As evidenced by the reconstruction of the context of the analyzed proposal, the recent addition of two new exceptions to the model currently in force in Brazil has not been thoroughly debated compared to the rest of the project. This procedural characteristic and the final form of the evaluated text have substantial negative impacts on the Internet, affecting (i) *Collaborative development, management, and governance*, (ii) *Unrestricted use and deployment of Internet technologies*, (iii) *Accountability*, and (iv) *Privacy*.

According to the Brazilian Civil Rights Framework for the Internet, established in 2014, internet connection providers are not 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 adds exceptions to the general regime. It establishes that providers of "social media, search engines, and instant messaging" are jointly and severally liable in two cases. The first is related to damages caused by using the platform's advertising tools, while the second is related to the failure to comply with a new set of obligations: the failure to comply with the "duty of care" during a specific period in the security protocol 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 security 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, the security protocol ends under the prospect of later definition by an administrative authority whose form is unknown, despite the provision for Brazilian Internet Steering Committee (CGI.br) to draw up guidelines. Such indefiniteness resulted in disagreement about the extent of the obligation created, with a direct impact in establishing civil liability for intermediaries.

This lack of clarity creates legal uncertainty for providers, who need precise parameters to guide their actions and protect themselves from joint civil liability. Although CGI.br is expected to develop guidelines for the Protocol, its consultative role does not guarantee that these will be fully incorporated into the final regulations. In addition, a different technical vocabulary is used than that of the Brazilian Civil Rights Framework for the Internet, which has subsidiary liability as a general prerogative. The excessive expansion of the Security Protocol implies the risk of completely changing the model without actually changing it, inaugurating characteristics of the *notice and take-down model*³.

Gaps such as those mentioned above in Internet policy mechanisms generate uncertainties and undermine users' trust. These gaps leave room for extreme applications of the prerogative created, leading to legal uncertainty to users and providers and posing substantial risks to the full potential of the Internet.

When it comes to Brazil, it is harmful for policy processes applied to the Internet to be developed without first considering the regulatory frameworks in the country, especially the Civil Rights Framework for the Internet and Rule 4, and that the effective inclusion of these mechanisms needs to be the subject of a subsequent dispute between the sectors.

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.

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 is the provision for the establishment of a set of rules to ensure that users can be effectively informed of existing changes in the use of services and can request review procedures in the face of decisions by intermediaries. Such obligations are described in Article 18. In addition, we highlight Articles 21 and 28, which aim to contribute to the guarantee of user autonomy and manageability while preserving commercial and business secrets. The Bill can represent a significant advance by including the publication of information on recommendation systems and by providing the customization of this mechanism.

There is potential for positive outcomes in the fact that the time provisions and mechanisms related to the above provisions are subject to the creation of codes of conduct by intermediaries, under the initial guidance of a supervisory body. However, the only appointed body with any level of oversight in the latest public version of the project is the CGI.br. As elaborated in the following section, the gaps related to the regulatory body and the assignment of expanded functions for CGI.br, which would issue guidelines and criteria for establishing the security protocols referred to in this law, raise concerns. CGI.br is an entity that lacks the legal or administrative authority to carry out the responsibilities that the Bill imposes, under the risk of distorting CGI.br and its multisectoral nature. This is because the CGI is not a state body. The original inclusion of CGI.br in the Bill as a complementary entity may be weakened by the absence of other authorities.

Due process mechanisms between the application provider and the user, as well as ensuring their autonomy and management capacity within the technical and commercial constraints of the intermediary, increase user trust by focusing on transparency and informed decisions about content moderation and review processes. The intermediaries themselves should create codes of conduct, under some supervision, provided that this process is well defined and overseen by an appropriate authority transparently.

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 there has been no political consensus to approve it in the National Congress. As a result of the troubled debate process, the latest version of the Bill covers a series of provisions to regulate providers' performance. This includes the provision of remuneration for journalistic or copyrighted content published on social media and the creation of a "security protocol" to deal with disseminating illegal content that may constitute a crime under Brazilian Law. These are new mechanisms in the Brazilian legislative scenario, and subsequent regulation is



expected due to the importance of creating a regulation that can be applicable even with the rapid advancement of technologies.

The main negative impact on the enabler *accountability* is that the latest version does not include a regulatory body responsible for regulating and implementing the mechanisms outlined in Bill 2.630/2020. The section dealing with 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 normative definition creates a severe vulnerability in the legislation. It can compromise the independence and autonomy of this body, allowing political interests to influence significantly the application of the rule. This could have negative impacts on the impartiality and effectiveness of its decisions, as well as on people's privacy and freedom of expression. In addition, amid the fierce and polarized context of the regulation's application, it is expected to undermine the legitimacy and trust in the decisions made within the regulatory proposal's scope, potentially impacting the acceptance and compliance with the legislation.

Regarding the supervision and application of the mechanisms provided for in Bill 2.630/2020, the CGI.br has been given new responsibilities. It is a multistakeholder organization responsible for coordinating and integrating initiatives related to the use and functioning of the Internet in Brazil. Created by Interministerial Ordinance No. 147 on May 31, 1995, CGI.br is responsible for establishing strategic guidelines related to the use and development of the Internet in Brazil and guidelines for the execution of the registration of Domain Names, allocation of IP Addresses (Internet Protocol) and administration 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 that helps providers in complying with the regulation, approving providers' codes of conduct, providing guidelines and subsidies for terms of use, and issuing guidelines and criteria for the establishment of security protocols as outlined in the Bill. However, CGI.br does not have the legal or administrative authority to carry out these tasks, as it lacks the powers of a state body to act as a regulatory agency.

The multisectoral 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 multisectoral 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 the presentation of semi-annual reports by providers, the requirement for an independent external audit, and free access to disaggregated data for academic research purposes.

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. The presentation of the reports can contribute to confronting discrimination in the moderation of content. This is in line with the promotion of user autonomy and unrestricted use proposed by the latter enabler.

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

Finally, providers must hire an independent external auditor to assess compliance with the regulation and the efficiency in analyzing and mitigating systemic risks. These obligations involve the assessment of the level of efficiency, accuracy, precision, and coverage of the mitigation measures adopted, as well as the actions of non-discrimination and lack of bias in content moderation decisions of providers. Thus, the measure contributes to 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 the proposition of 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" makes it difficult to understand the scope of this obligation. It may violate users' privacy by requiring encryption to be broken to identify and remove illegal or harmful content. Civil society 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 other hand, it should be noted that, as a positive effect on the *privacy* enabler, the proposed regulation reinforces the importance of personal data protection and information security under the terms of the Brazilian General Data Protection Law (Law 13.709/2018). In addition to being a principle that guides the proposed rule, there is a particular emphasis on protecting the personal data of children and adolescents, especially the prohibition of data processing 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 if they fail to comply with the established duties. These sanctions include warnings, fines, the publication of the judicial decision by the offender, the prohibition of processing certain databases, and the temporary suspension of activities.

Although the proposal requires the publication of the offender's decisions, it does not even requires prior notification to users when determining the temporary blocking of the provider's activities.

Considering that people use these platforms for many daily activities, which may include study, research, access to information, and sale of products and services, among many others, the temporary suspension of activities without prior notice can have a significant impact on users, limiting their ability to prepare for service interruption and adapt to possible changes. Besides harming the enabler discussed in this section, there are also impacts on promoting Easy and Unrestricted Access , given that it restricts the accessibility of the Internet and its services.

Similarly, the proposed regulation establishes that users of commercial accounts in messaging applications may have access to the suspended provider if the content shared is not strictly commercial. The ambiguity of the term "non-strictly commercial content" leaves room for varying interpretations by platforms, which can result in arbitrary decisions and inconsistency in account moderation. In addition, the measure raises concerns about restrictions on freedom of expression and impairments of the ability of companies to communicate effectively 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, whenever they are not developed 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, which allows anyone, regardless of their age, location, or circumstances, to have the freedom to access and explore a wide range of online content and services. By imposing access restrictions based on age, there is a risk of creating barriers that limit users' freedom of navigation and undermine the democratic nature of the Internet.

Additionally, the effective implementation of these restrictions may require the collection and processing of user's data, which raises legitimate concerns regarding data privacy and security, especially 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 certain demographic groups' access to specific platforms 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, we must balance ensuring their security without compromising the accessibility, utilization, and innovation that support the Internet's open architecture.

Recommendations

Based on the analysis conducted on the regulation of providers, based on the mechanisms outlined in Bill 2.630/2020, ISOC Brasil, 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 of the different types of existing services and applications, the legal nature and economic size of the other providers, and their positioning in the digital ecosystem, to guide the development of legal guarantees adapted to their roles. In this sense, we recommend that regulatory proposals consider other factors besides the number of users as a criterion for assigning obligations and duties to be fulfilled when acting. This measure may reduce the risk of obsolescence of regulations and promote innovation without creating regulatory barriers that may be burdensome or disproportionate.

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

Regulatory proposals that are excessively dependent on terminologies restricted to current business models may be poorly resilient to the effects of time, since good legislation must remain applicable even

in the face of rapid technological changes. Amid the challenges of this field, one must start from a specialized understanding of the technical specificities of the Internet's functioning and the constant possibility that new business models will always emerge.

4. Intermediary Liability Model

Changes to the current regime of the intermediary liability model must be clear, objective, and extensively discussed among various stakeholders in the digital ecosystem. Attention to this decision-making 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 arena are not the only existing resource to improve the responsibility of internet providers.

5. Autonomous and defined regulatory bodies

Regulatory proposals must include clear provisions on 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, these bodies should provide transparent and inclusive mechanisms that allow for broad dialogue with the multiple sectors of society regarding the regulations to be adopted.

6. Standardization and consistency in the use of concepts

Regulatory proposals should be built based on already established concepts and definitions whenever possible. This is essential to ensure that the regulation is consistent and long-lasting over time, as well as compatible with existing legal frameworks. It also avoids ambiguities and divergent interpretations.

