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BETWEEN COURTS AND CONGRESS: MARCO CIVIL DA INTERNET AND THE FUTURE OF PLATFORM REGULATION IN BRAZIL

Ivar Alberto Martins Hartmann
Insper

Beatriz Kira
University of Sussex

Introduction

On 30 August 2024, Brazil's Supreme Court Justice Alexandre de Moraes ordered the suspension of X (formerly Twitter) in the country, a nation-wide block that was in place for several weeks. The Justice took this measure after the company failed to comply with several court orders related to removal of content and suspension of accounts all while deliberately avoiding being legally served in Brazil (Jost & Brito Cruz, 2024). The order followed months of escalating tensions between digital platforms and Brazil's democratic institutions, including allegations that platforms were used to coordinate and facilitate an attempted *coup d'état* to remove president-elect Lula da Silva from office in January 2023. These events and their fallout in courts have highlighted the limitations of the country's 2014 internet governance framework, the *Marco Civil da Internet* (MCI).

Growing concerns have existed since at least 2018 that the MCI, meant to establish rights and principles for internet use, is no longer sufficient for platform regulation (Machado et al, 2019). The framework was not designed as a tool to hold accountable content-recommending social media or encrypted one-to-many messaging apps whose reach and power over the digital public sphere has grown exponentially in the last decade (Keller, 2021; Douek). Brazil now stands at a critical juncture as 78% of Brazilians favour stricter regulation of platforms (Nexus, 2025) and the Supreme Federal Court (Supremo Tribunal Federal - STF) deliberates on a decision that could fundamentally reshape platform liability and digital governance in Latin America's largest democracy.

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Research question and methodology

This paper examines the STF's pending ruling on the constitutionality of Article 19 of the MCI—the cornerstone provision establishing the intermediary liability regime in Brazil—against the wider legal and policy context. Through analysis of the legal framework against which the STF will make a decision—including examining the opinions that three out of eleven Justices have already handed down—and broader political economy considerations, we address the following research question: what impact will the Supreme Court's forthcoming decision have on the future of platform regulation in Brazil?

Most Justices have either publicly claimed or signalled that existing civil liability mechanisms in the MCI are insufficient to adequately address the nature and functioning of modern information and communication systems controlled by the largest digital platforms (see, for example, Barroso & Barroso, 2023). It is therefore crucial to scrutinise the current platform governance debate and potential implications of the ruling.

Our methodological approach comprises three components. First, drawing from a political science and media studies literature, we conduct a law and political economy analysis examining how evolving platform business models and Brazil's political context shape the stakes of this decision, identifying the key stakeholders and the milestones in the debate around platform regulation in Brazil.

Second, we develop a detailed examination of the potential outcomes of the two cases before the STF: the *Aliandra Case* (general repercussion theme 533, RE 1057258), which questions whether platforms should proactively monitor and remove offensive content without judicial intervention; and the *Lourdes Case* (general repercussion theme 987, RE 1037396), which directly challenges the constitutionality of Article 19 of the MCI. The Court has chosen to decide both cases with *erga omnes* effect, meaning this ruling will be the new law of the land.

Third, we assess the implications for the platform regulation debate, mapping how this decision might either constrain or enable the development of additional layers of platform regulation in Brazil, considering specifically the possibility of a new regulatory regime grounded on the idea of duties of care, as was proposed in Bill 2630/2020, the most prominent proposal in Congress to reform platform regulation.

Institutional dualism in Brazil's platform regulation: Congress and the Courts

Perhaps more so than any other large jurisdiction, Brazil's approach to platform regulation has been shaped by the interplay between legislative framework and judicial interpretation (Keller, 2021). The MCI, adopted in 2014 through a praised multistakeholder process, established a distinctive intermediary liability regime that positions courts as central actors in platform regulation (Zingales, 2015). This framework charts a middle path between US and European approaches: unlike the broad immunity granted by the US Communications Decency Act (CDA), the MCI does not provide blanket protection for platforms; yet it differs from European

notice-and-takedown systems by requiring judicial orders before platforms can be held liable for third-party content, except in the case of image-based sexual abuse and copyright infringements.

The court-centric framework, while suitable for individual disputes, proved inadequate for addressing the challenges posed in Brazil by industrial-scale content moderation and recommendation systems that now govern online speech, as well as by the complexities of one-to-many encrypted messaging apps (Ribeiro and Ortellado, 2018).

A majority of bills in recent years proposed liability standards less favourable to platforms (Hartmann and Lunes, 2020), while others, especially Bill 2630/2020, aimed to reform the MCI by adding new regulatory layers. However, Brazil's polarised political environment, combined with intensive platform lobbying, has resulted in legislative stalemate, with no reform being approved despite widespread recognition of the need for change (Cruz et al, 2025). With legislative reform stalled, the judiciary—particularly the Superior Electoral Court and the STF—has increasingly filled the regulatory void restricting expression (Jost & Brito Cruz, 2024). Notably, the STF has conducted inquiries into online disinformation, especially following events like the January 2023 storming of Congress (Da Ros and Taylor, 2022).

Preliminary findings

Our analysis so far has pointed to three key conclusions. First, we note the limitations of intermediary liability laws in holding platforms accountable. Regardless of the specific outcome of the STF's decision about Article 19, the focus on civil liability for individual content removal following court orders (or other triggers) is insufficient to address contemporary platform regulation challenges. The original MCI framework, while innovative for its time, lacks mechanisms to address wider, systemic risks posed by modern platform business models, particularly those arising from recommendation systems and content amplification practices.

Secondly, and relatedly, effective platform governance in Brazil will require regulatory approaches beyond liability reform. While the Court's ruling will significantly impact platform accountability, judicial review alone cannot adequately address issues like algorithmic amplification of harmful content and behaviour, systemic misinformation, and the broader societal impacts of platform business models.

Finally, potential paths forward for reforming platform accountability in Brazil need to acknowledge both the constraints of judicial review (including the gaps that the STF's decision will inevitably leave) and the broader political economy context, including the capacity of existing Brazilian institutions to serve as digital regulators. Our findings so far emphasise the importance of developing complementary regulatory frameworks that can work alongside whatever liability regime emerges from the STF's decision.

Overall, we will argue that while the STF's ruling on the constitutionality of the MCI's intermediary liability regime will significantly impact the future of platform regulation in Brazil, it represents just one component of a necessary broader (and urgent) reform agenda. Overarching platform governance in Brazil has historically been shaped by

Congress with lower courts constantly weighing in on the legality of different types of content. The ruling will mark the first time the STF decides on a key platform regulation disposition with systemic impact. The novelty of this dual influence will be crucial as the country develops more comprehensive approaches to platform regulation.

Our conclusions hold important implications for both scholarly understanding of platform governance and practical approaches to regulatory reform, particularly in the Global South. The Brazilian case offers valuable insights for other jurisdictions grappling with similar challenges, especially in contexts of political polarisation and limited regulatory capacity. Our approach, combining legal analysis with political economy perspectives, demonstrates the importance of considering legal and institutional frameworks as well broader political economy aspects when developing policy and regulatory proposals.

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