

Internet Regulation in Brazil: Different Scenario at the Global

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I. The Internet regulation in the world

The public debate on regulation of the internet began in 1994, in the United States. Discussions were based on observations made by computer scientist Vint Cerf, who said that the Internet had technical, legal and moral constraints, driven mainly by private interests.

Officially, were children protection initiatives that have resulted in the emergence of the first law to regulate the Internet: the Children's Online Privacy Protection Act (COPPA), which was approved by the United States Congress in 1995 and signed in 1996 by President Bill Clinton. Such law guaranteeing a criminal prosecution for those who spread through Web, pornographic character material involving minors.

In 1995 the companies responsible for the browsers began to produce browsers version that allowed users to filter Internet content. This marked the beginning of the self-regulation idea, promoted in particular by the World Wide Web Consortium (W3C), the IETF (The Internet Engineering Task Force) and the ICANN (Internet Corporation Assigned Names and Numbers). (Tambine, Leonard & Marsden, 2008).

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The self-regulation followers use as main argument the question of architecture “end-to-end” of the Web. The “end-the-end” is a principle based on the idea that the end user, and not the intermediaries, should define how to use the applications available (Van Schewick, 2010).

However, the Internet growth also makes grow control initiatives through policy and regulatory actions that put this issues at the heart of discussions about the regulation of online content (Denicoli & Shah, 2012).

China was one of the first countries that adopted filters for online content. Many countries in the Middle East and North Africa also adopted similar measures. In Oceania, Australia has been trying to regulate the Internet through a content filtering from Internet Server Providers (ISPs). In the United States (US), two controversial projects are under discussion in Congress: the Stop the Online Piracy Act (SOPA) and the Protect IP Act (PIPA). are initiatives that aim to protect copyright. There are still US security-related initiatives, such as the controversial Patriot Act, which also allows monitoring of users (Deibert *et al.*, 2010).

The European Union has been trying to establish integrated actions, having invested € 55 million in the “Safer Internet Programme”, aimed at the protection of minors and the prevention of dissemination of material relating to child sex abuse, grooming and cyber bullying. The European Union also has made policies to control e-commerce (The Electronic Commerce Directive), the distribution of audiovisual content (The Audiovisual Media Services Directive), the copyright (Directive on Copyright and Related Rights and Directive on the Enforcement of Intellectual Property Rights) and security (European Data Retention Directive). There are still isolated initiatives developed by Member States, the most common being those relating to hate speech, which involves issues of xenophobia and terrorism (Tambine, Leonard & Marsden, 2008).

The France has stood out in the European scenario, for being at the forefront in setting laws and other government initiatives geared to the “network society” (Castells, 2002). Some of them have caused controversy such as the law Hadopi (*Haute Autorité pour la diffusion des œuvres et la protection des droits sur internet*), which provides the high authority for the dissemination of creative works and the Copyright Protection powers to police Internet users.

The country also stands out as it is the headquarters of UNESCO, whose intergovernmental actions also have covers the regulation of the Internet. UNESCO is a member of the World Summit on the Information Society (WSIS), which was created by the UN General Assembly, by resolution 56/183, of December 21, 2001. The entity, along with the International Telecommunication Union (ITU) has put in place a number of initiatives to put into action international measures aimed at regulation of the Internet, including the creation of the Internet Governance Forum (IGF). The IGF has held annual conferences involving representatives from various countries, companies, academics, etc. From the beginning of the Forum, have already been carried out dozens of panels and workshops to discuss issues such as freedom of expression on the Internet, the right to information, privacy, security, the importance of using online...

The Brazil has been excelling in the world, because the regulation which is underway has provoked an important popular mobilization, which demonstrate a democratic process issue. Nevertheless, it is known that the party-political spheres are indispensable for the proposals becomes law, whatever poses a risk that could result the deliberations occur around interests contrary to the paths that eventually have been listed in public debates. This fact makes it even more important to an in-depth analysis of the entire process. Anyway, despite the inevitable political management around the theme, the Brazilian model should be viewed carefully in the world context, to demonstrate the concern of the people involved in the debate. Following we will see the designed legislation that involves online content in Brazil.

II. The regulation of the Internet in Brazil

In 2002, the Law School of Fundação Getúlio Vargas (FGV) created the Center for Technology and Society of Law (CTS) to developing interdisciplinary research on the Internet and Digital Technology, as well to assist in institutional development, economic, social and cultural of the Internet in Brazil. The CTS/FGV is recognized as the leading thinker center in Brazil, within the area of the Internet.

Later, in 2009, the CGI.br entered into a partnership with the CTS/FGV, giving rise to the Brazilian Digital Policy Observatory, also called Observatory of the Brazilian Internet (OIB). The OIB works with the observation and identification of public politics for the Brazilian Internet and the proposals of the international Internet governance models that can have an impact in Brazilian policies. Its main areas of activity were connected to intellectual property, free software, privacy and Internet governance. In 2011, the OIB drew up the “Internet policy report-Brazil 2011”, which was the first study from the partnership between the CGI.br and the FGV. The document reported, in depth, all debates and bills concerning the Internet, highlighting the country’s attempts to have on Internet crimes, discipline, principles and rights to promote neutrality.

Result from the revival of a proposed Law in 1996, from Mr Cassio Cunha Lima (PMBD/PB), about government policy, the discussion on online content regulation began in fact, in 1999, with the presentation of the PL 84/99, from Congressman Luiz Piauhyllino (PSDB/SP). Such a project was well known as Law Azeredo, have been reported by the Senator Eduardo Azeredo (PSDB/MG).

The PL 84/99 worked to criminalize, punishable by imprisonment or amercement, various acts performed on the Internet. The proposal has joined the excessive criminalization of conduct believed to be banal or everyday essential for the innovation of the network, with the flag of the fight against paedophilia and child pornography.

The project had a big impact on society because it classify the new crimes into the internet, create obligations of vigilance and empowering the investigative rights of the police. As a result, it was seen as undemocratic law, which soon led to sectors of the press and civil society to classify it as AI-5 like.

Some measures provided for this Law, were:

The collection, processing and distribution, with commercial purposes, private information shall be subject to prior acquiescence of the person to which the data relate.
Is ensured the right to rectification of any private information.
Any person or entity, has the right to summon the owner of computer network or service provider to find out if maintains information about you, and its content.
The services of information or access to databases do not distribute private information relating, directly or indirectly, racial origin, political opinion, philosophical, religious or sexual orientation, and affiliation to any entity, whether public or private, without specific permission of the person concerned.
The unauthorized third-party access by their stakeholders, the private information held in computer networks will depend on prior authorization.
Delete, destroy, modify or otherwise disable all or part of data or computer program, improper or unauthorized manner will be liable to punishment under penalty of imprisonment of one to three years and a fine.
Get undue or unauthorized access, computer or network of computers will be subject to punishment under penalty of imprisonment of six months to one year and a fine.
Delete, destroy, alter, or otherwise disable, password or any other mechanism of access to computer, computer program or data, improper or unauthorized manner will be liable to punishment under penalty of imprisonment of one to two years and a fine.
Obtain, maintain or provide, without authorization or in error, data or computer instruction will be liable to punishment under penalty of imprisonment of three months to one year and a fine.
Get secrets, industry or trade, or personal information stored in the computer, computer network, electronic means of magnetic, optical or similar nature, improper or unauthorized manner will be liable to punishment under penalty of imprisonment of one to three years and a fine.
Create, develop or insert, data or computer program, improper or unauthorized deforms to delete, destroy, disable, or modify data or software or otherwise make it difficult or impossible, in whole or in part, the use of computer or network of computers will be subject to punishment with imprisonment penalty of one to four years and a fine.
Offer pornographic service or information, without displaying previously so easily visible and highlighted, warning about its nature, indicating its content and the unsuitability for children or teens will be liable to punishment under penalty of imprisonment of one to three years and a fine.

When the PL 84/99 was thought, their articulators are based on the Convention of Budapest. Created in Hungary in 2001, by the Europe Council, and active since 2004, after ratification in five countries, the Cybercrime Convention, as is also known, was created as an attempt to combat crime online (ERDELY, 2008)

The priority of the Convention was “a common criminal policy, in order to protect society against crime in cyberspace, in particular, through the adoption of appropriate legislation and the improvement of international cooperation” (ERDELY, 2008).

The main highlight of the Convention was that it sets the cyber crimes within the criminal law, typifying them as offenses against computer data and systems; computer-related offences; infractions related to child pornographic content; and offenses relating to copyright infringement.

The text, however, was not being approved by the Brazilian Government, mainly because the countries that have signed the Convention had already fulfilled the task of regulating the Internet by establishing civil character based on their criminal parameters, while Brazil had not yet approved any regulation of civil character.

The PL 84/99 also left gaps in relation to the topic “protection of personal data”, as there was a threat to basic freedoms of individuals due to the introduction of a monitoring system on the Internet. As a result of this dissatisfaction, was generated a social mobilization that involved, in particular, civil society, the academic community and the industrial sector. The result of this mobilization, which attracted more than 160 signatures in the House of representatives, can be viewed on the online petition “in defense of freedom and of the progress of knowledge in the Brazilian Internet”. This movement eventually materialized in other social mobilization function known as the “Big Not!”.

The popular and social movements have set up a network of digital activism and popular participation in the process of regulating the Internet in Brazil.

The Azeredo Law moved in Congress for 13 years and has undergone several modifications to be sanctioned by President Dilma Roussef, becoming in law 12735/2012, November 30, 2012. The approved project differs completely from the initial project. The most controversial points were removed and the sanctioned Law provides only that “the organs of the judicial police will structure, in terms of regulation, sectors and specialized teams in the fight against gross negligence action in computer network, or computerized communication device”. Therefore, there was no type of crimes committed via the Internet.

From 1999 to 2007, several other Internet-related projects and its regulation were presented by members of the House of Representatives, which led to the need to create a Special Commission devoted just to enjoy such projects. The Commission, which had as rapporteur the Deputy Alessandro Molon, EN Rio de Janeiro, arrived to examine and veto 38 projects.

In April 2013, along with the law Azeredo, the Law 12.737/2012 was signed. The law provides for the criminal typification of computer crimes; amending the *Decreto-Lei* No. 2,848, September 7, 1940 - Penal Code.

The law, in article 154-A, says “invade computer device, or not connected to the computer network, through undue violation of safety and in order to obtain, alter or destroy data or information without express or implied consent of the owner of the device or install vulnerabilities to get illicit advantage: Penalty - detention of 3 (three) months to 1 (one) year and, debates.”

Named as “law Carolina Dieckmann”, it changes the Brazilian Penal Code to typify as infractions a series of conduits in the digital environment, particularly in relation to the invasion of computers. The law also lays down specific punishments for these cases and has been considered unprecedented within the country.

After the attempt to legislate unilaterally on the Internet, taking into account only the political forces, movements generated from the civil society have changed the image of online content regulation in Brazil, becoming more plural and democratic debate.

In January 2007, an article written by professor Ronaldo Lemos, founder and Director of the Center for technology and society School of law at the Fundação Getúlio Vargas in Rio de Janeiro, raised the idea of designing a regulatory framework in Brazil, as an attempt wide regulation through law, of the Internet in the country. The article was called “Internet needs a Civil Regulatory Framework” and criticized severely the law Azeredo, stating that the PL 84/99 typifies them excessive criminal actions, with a writing inaccurate regarding their scope, which could leave questions and generate serious effects in civil society.

In the article, professor Ronaldo Lemos argues that a country which develops first criminal laws rather than civil nominations, severely compromises your innovation process. As a result of an uneven action within a nation, begin to emerge the first disincentives in the creation of private, public and business initiatives.

In 2009, to participate in the international free Software Forum in Porto Alegre, (FISL-X), the President Luís Inácio Lula da Silva launched the proposal for an Internet Civil Regulatory Framework. The proposal would meet the needs of civil society, which called for legislation that would regulate rights and duties of citizens on the Internet.

From that, the CGI.br, with support of civil society, the Bureau of Legislative Affairs of the Ministry of Justice of Brazil-SAL/MJ and the CTS/FGV launched the first phase of an open and collaborative online discussion process, a draft for the creation of a basic law to the Internet.

The proposal for a regulation of the Internet in Brazil worked primarily with two aspects: the procedural and the substantive. The first aspect focused on innovation in the process of consultation, discussion and popular participation through the network and the second focused on the main points discussed in the draft, such as responsibility, guard, foundations, public and other activities.

The Brazilian Internet Civil Regulatory Framework, PL 2126/2011, was built through decentralization and openness to the effective participation of society, using the tools available in the internet. It was through blogs, created in the WordPress platform, which were designed the suggestions and comments on the site Digital culture.

The first discussions took place in the period from October 29 to December 17, 2009, when civil society had access to the text containing the general principles for the regulation on the Internet in the country. The principles were the basis of a resolution of the CGL.br who worked the governance and the use of the Internet in Brazil. This movement lasted 45 days and were recorded more than 800 propositions among emails, comments and discernment in reference sites,.

This text formatted the draft of the proposed Law, which established the debates of the second stage, which took place in the period from April 8 to May 30, 2011.

In the second phase were accounted for 1,200 comments and civil society, were also seen comments from companies and associations linked to cultural and technology industry, national and international, which served to give strength and further legitimize the project.

In addition to the online debates, the SAL-MJ also held face-to-face discussions in various parts of the country, which served as a complement to the development and dissemination of PL.

The Brazilian Civil Regulatory Framework was built, then from a democratic process which included representations of various entities, movements, collectives and academic, national and international organizations.

The text has come a long and unprecedented process of direct participation of society, through various seminars and public hearings in several States of the country. All suggestions received were considered, which contributed to the construction of a modern, balanced text and regarded as essential to establish the rights and obligations in the use of internet in Brazil.

After the compilation of data, the project accounted for 25 articles, divided into six chapters, and brought in its context an extensive list of rights and guarantees for users, in addition to their own definitions of information systems.

The main points of the project are related to: foundations, principles and objectives; users' rights and guarantees; responsibilities of internet service providers; custody of records, network neutrality and actions of the public authorities.

The PL 2126/11 clears in the Brazilian National Congress from 2011 and, since then, has now entered the vote six times in the House of Representatives. The last attempt to vote on the project was made in December 18, 2012, when once again the PL 2126/11 was removed from the voting agenda, taking into account requirements of PTB.

Representatives of DEM, the PMDB, the PSD and the PR argued be removing the voting agenda project under the claim that “would need to perform a General Committee – which is a public hearing in the plenary of the House-to discuss the issue”. Two points, according to the parliamentarians caused the obstacle in the last vote on the project: net neutrality and the log guard, which discusses the privacy of the user.

Recently, in April 17, 2013, the ABERT, Brazilian Association of radio and television, and the law school of Fundação Getúlio Vargas promoted a debate to discuss once again the Bill that deals with Civil Internet Milestone.

The debate served to remember that exactly 17 years ago, the Brazilian surfs the Internet, lawless set; without knowing what can and what cannot on the fastest growing network in the world.

Seminar participants defended the treatment given by the withdrawal of content of the sites at the request of users, without the need for a lawsuit.

Professor Ronaldo Lemos, author of the article that gave rise to the discussion for the implementation of the Internet Regulatory Framework in Brazil, who participated in the seminar, said that failure to vote on the project causes the Brazil miss opportunities, including losing companies, which do not settle in the country on the basis of legal uncertainty.

The project, which is in the House of representatives to vote, will guarantee democracy and freedom on the web, clearly determining the role of the State, which must establish transparent, collaborative and democratic mechanisms for internet governance in the country.

III. Final Considerations

The history of democracy in Brazil is troubled and difficult. Conquered in resistance to military dictatorship, she comes to the late 80, led by members of the PMDB and introducing a new element in the social life of the country: the democratic awareness.

This new scenario get force with organized movements of workers from the cities and fields, students, residents, intellectuals and artists, media and other areas of civil society.

In the 21 century, an unprecedented bond begins to form between political groups and civil society, in an attempt to format a new porch of citizenship in the regulation of the Internet in Brazil.

The Internet scenario speaks for itself. Is increasingly abundant supply of texts, images and sounds, with data and different opinions, disclosed on the network. (Bucci, 2009: 19).

The Brazilian Internet Regulatory Framework work the pillars of this new means of communication, based on the Federal Constitution of 1988 and, recognizing the human rights and the exercise of citizenship in digital media.

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