

ARTICLE 19

Digital Freedom in Brazil: State of Play

August 2012

Country Report

ARTICLE 19 is an international non-profit organization, founded in London in 1986 with the aim of protecting and promoting the right to freedom of expression and access to information as provided by Article 19 of the Universal Declaration of Human Rights; hence, the organization's name. This work and the importance of the issue led to the opening of regional offices in Brazil, Mexico, Kenya, Senegal and Bangladesh, which allowed the organization to participate actively in the political life of the country and the region in which it is based and to get a better understanding of the reality of these countries, their practices and laws. As a result of this experience, the organization has the capacity to contribute to research, studies and publications.

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This Country Report has been published with support of the Adessium Foundation of The Netherlands, as part of their wider support for ARTICLE 19's work on freedom of expression and internet communications technology.



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Executive Summary

The development of information and communication technologies in the past few decades has revolutionised the way in which people communicate and express their ideas. The Internet is now part of everyday life for millions around the world and has thus become a basic requirement for the meaningful exercise of the right to freedom of expression. At the same time, new forms of censorship have appeared which threaten the free flow of information online. The infrastructure needed to access the Internet and the skills necessary to operate online can lead to the exclusion of some groups from this revolution. Faced with these challenges, national legislation and policies can either promote the free flow of information and ideas online or stifle it. This report addresses these crucial issues for freedom of expression in the context of Brazil.

Freedom of expression is a fundamental right which is recognised in many international human rights instruments. These international standards are fully applicable both offline and online. Any restriction on freedom of expression online must therefore be provided by law, pursue a legitimate objective, and be necessary and proportionate. In addition, international standards have been developed to address more specific issues raised by the Internet, such as the right of access to the Internet and the net neutrality principle.

In Brazil, information and opinions online are not immune to censorship. Although there is no mandatory filtering of the internet, intermediaries such as Google are regularly requested by government agencies to remove content deemed 'offensive'. The courts also frequently order content to be taken down, mostly in the context of defamation cases. Social media companies, such as Facebook, are also been known to remove content they consider inappropriate. Bloggers and journalists have been threatened with litigation, and more worryingly, attacked or even murdered for expressing their views on the Internet. This environment creates a climate of self-censorship, which is deeply disturbing.

Although there is no specific legislation in Brazil which regulates online content, there are several draft laws which, if approved, would have a strong impact on freedom of expression online. One example of a particularly pernicious proposal is the Cybercrime Bill, which would force Internet service providers to monitor and report alleged violations of criminal law online, essentially turning them into a police force. Another area of concern is copyright law reform, which could lead to the adoption of severe copyright enforcement measures. Other proposed laws, however, are more salutary, like the Civil Rights Internet Framework (or "Marco Civil"), which was drafted after a broad consultation process with different stakeholders, or the plans for increased protection of privacy and personal data online.

The meaningful exercise of the right to freedom of expression also requires access to the Internet, sufficient bandwidth and appropriate IT skills. The Brazilian Government is implementing a number of policies to close the digital gap that divides affluent and urban people from rural and economically disadvantaged individuals and communities. However, more resources and a better allocation of the ones already available are necessary to fully extend the potential of the Internet to Brazilian society as a whole.

This country report seeks to contribute to the improvement of digital freedoms in Brazil in line with international standards of freedom of expression. It is also hoped that it will be a useful resource for local stakeholders in the policy-making process currently taking place in this area. The brief, first, sets out the basic international standards of freedom of expression online. Second,

it examines various aspects of online censorship in Brazil. Third, it outlines the key challenges for the protection of freedom of expression, in particular current legislative proposals in this area. The last part is concerned with internet access, broadband and digital inclusion policies.

ARTICLE 19 believes that by integrating international standards of freedom of expression online in draft legislation regarding the internet, refraining from interfering with online expression and establishing the right policies to improve access to the Internet, Brazil could become a regional leader for the protection of digital freedoms. Civil society has a key role to play in effecting these changes by advocacy, campaigning and engaging in dialogue with the Government and other stakeholders.

I. Introduction

The rapid development of information and communication technologies has dramatically changed the way in which people search for, receive and share information and ideas. Far from being passive recipients of information, Internet users have become active publishers of content, notably through participation and collaboration on electronic social platforms and groups. Billions of websites provide information and opinions on any subject in several different languages at the click of a mouse. The Internet has thus enabled freedom of expression to realise its full potential, creating a vibrant cultural environment on a scale never before imagined. It is no exaggeration to say that the internet has become an essential aspect of everyday life for millions of individuals across the planet.

As an organization that seeks to defend the rights to freedom of expression and freedom of information around the world, ARTICLE 19 has been at the forefront of the protection of Internet freedoms worldwide. Based on international human rights standards for the protection of freedom of expression, we have analyzed a number of laws or draft laws in the field of information communication technology (ICT) in several countries in different continents, including in Bolivia,¹ Venezuela,² Iran³, Pakistan⁴ and Tunisia⁵. In Brazil, we commented on the Draft Cybercrime Bill in January 2012⁶ and the Civil Rights Framework for the Internet in July 2012.⁷ We are therefore well-placed to examine the current state of freedom of expression online in Brazil against international standards.

With its growing economic status and geopolitical influence both regionally and on the international scene, Brazil's decisions in the area of internet policy are likely to have important ramifications worldwide. As Brazil is set to adopt key legislation in this area, it is a golden opportunity for this country to show leadership by standing up for the protection of digital freedoms.

However, there have been several developments in Brazil that have become a great cause for concern. A number of draft laws that would severely undermine Internet freedom have recently been laid before Congress. In particular, the Draft Cybercrime Law, if adopted, would turn intermediaries into an Internet police. Copyright reform is currently headed towards stronger enforcement online and the criminalization of breaches of digital rights management. The most

¹ ARTICLE 19, Analysis of the Bolivian Law of Information and Communication Technologies, February 2012, available at: <http://www.article19.org/resources.php/resource/2950/en/bolivia:-law-on-telecommunications-and-information-and-communication-technologies>.

² ARTICLE 19, Analysis of the Social Responsibility Act for Radio, Television and Electronic Media in Venezuela, December 2011, available at <http://www.article19.org/resources.php/resource/2894/en/venezuela:-law-on-social-responsibility-of-radio,-television-and-electronic-media>

³ ARTICLE 19, Analysis of the Computer Crimes Law of the Islamic Republic of Iran, January 2012, available at: <http://www.article19.org/azad-resources.php/resource/2921/en/islamic-republic-of-iran:-computer-crimes-law>.

⁴ ARTICLE 19, Analysis of the Telecommunications Act in Pakistan, January 2012; available at: <http://www.article19.org/data/files/medialibrary/2949/12-02-02-pakistan.pdf>

⁵ ARTICLE 19, Analysis of online freedom in Tunisia, March 2012; available at: <http://www.article19.org/resources.php/resource/3014/en/tunisia:-internet-regulation>

⁶ ARTICLE 19, Analysis of the Draft Cybercrimes Law of Brazil, January 2012; available at <http://www.article19.org/resources.php/resource/2946/en/brazil:-draft-cybercrimes-law>.

⁷ ARTICLE 19, Analysis of the Civil Rights Framework for the Internet, July 2012, available at: <http://www.article19.org/resources.php/resource/3389/en/brazil:-civil-rights-framework-for-the-internet>

recent Google Transparency report clearly shows that the Brazilian government has continued to demand the removal of online content and suggests that the courts have taken a very restrictive approach to freedom of expression online in defamation claims.⁸ Furthermore, community guidelines are increasingly relied upon to restrict freedom of expression on social networks, while numerous bloggers have received death threats and are regularly silenced by the threat of litigation.

This, however, is only part of the story. Although the government has announced plans to give greater access to the internet to low income households, those living in the more isolated regions of the North and Northeast are unlikely to benefit from them. The digital divide remains a serious challenge for the government. Similarly, more sustained and integrated efforts are needed to ensure the success of several initiatives aimed at educating people about the Internet and giving them access to a computer.

On a more positive note, Congress is poised to adopt the Civil Rights Framework for the Internet (“Marco Civil”), which is on the whole a progressive piece of legislation that would make Brazil the second country in Latin American to give statutory protection to the net neutrality principle.

For these reasons, it is vital that civil society takes action in formulating recommendations for better policy-making and drawing attention to the best practices around the world to ensure that internet freedom is preserved. It is with this in mind that ARTICLE 19 has prepared this report, which we hope will prove useful for our partners and policy makers in drawing up the future of the Internet.

The report is divided into four parts. First, it sets out the basic international standards of freedom of expression online. Second, it examines various aspects of online censorship in Brazil. Third, it outlines the key challenges for the protection of freedom of expression, in particular current legislative proposals in this area. The last part is concerned with internet access, broadband and digital inclusion policies.

⁸ Google Transparency Report, Brazil, July – December 2010; available at: <http://www.google.com/transparencyreport/removals/government/BR/?p=2010-12>

II. International standards on freedom of expression online

The right to freedom of expression and information is a fundamental and necessary condition for the promotion and protection of all human rights in a democratic society. With the fast-growing development of new technologies, the Internet has become essential for the meaningful exercise of this right in modern societies. What is important to bear in mind at the outset is that the general principles that apply to freedom of expression offline remain applicable online. This section identifies the basic international and regional standards on freedom of expression online.

Universal Declaration on Human Rights

Article 19 of the Universal Declaration of Human Rights (“UDHR”) guarantees the right to freedom of expression as follows:

Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and the right to seek, receive and impart information and ideas through any media and regardless of frontiers.

The UDHR, as a UN General Assembly Resolution, is not directly binding on states. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.⁹

The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (“ICCPR”) elaborates upon and gives legal force to many of the rights articulated in the UDHR. The ICCPR binds its 167 states party to respect its provisions and implement its framework at the national level. Brazil ratified the ICCPR on 24 January 1992 and is therefore legally bound to respect and to protect the right to freedom of expression as contained in Article 19 of the ICCPR:

1. Everyone shall have the right to freedom of opinion
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

In September 2011, the UN Human Rights Committee (“HRC”), the treaty monitoring body for the ICCPR, issued General Comment No. 34 in relation to Article 19 of the ICCPR.¹⁰ General Comment No. 34 constitutes an authoritative interpretation of the minimum standards guaranteed by Article 19 ICCPR. ARTICLE 19 considers General Comment No._34 to be a progressive clarification of international law related to freedom of expression and access to information.¹¹ It is particularly instructive on a number of issues relating to freedom of expression on the Internet.

⁹ *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).

¹⁰ See, CCPR/C/GC/3; available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>,

¹¹ ARTICLE 19’s statement on UN Human Rights Committee Comment No. 34; available at <http://www.article19.org/resources.php/resource/2631/en/un:-article-19-welcomes-general-comment-on-freedom-of-expression>.

Importantly, General Comment No. 34 states that Article 19 ICCPR protects all forms of expression and the means of their dissemination, including all forms of electronic and Internet-based modes of expression.¹² In other words, the protection of freedom of expression applies online in the same way as it applies offline.

At the same time, General Comment No. 34 requires States party to the ICCPR to consider the extent to which developments in information technology, such as Internet and mobile based electronic information dissemination systems, have dramatically changed communication practices around the world.¹³ In particular, the legal framework regulating the mass media should take into account the differences between the print and broadcast media and the Internet, while also noting the ways in which media converge.¹⁴

The American Convention on Human Rights

The American Convention on Human Rights (“ACHR”) is the regional instrument that protects freedom of expression in the Americas. In particular, Article 13 protects freedom of thought and expression and in its relevant parts reads as follows:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. respect for the rights or reputations of others; or
 - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

In 1999, the OAS Special Rapporteur for Freedom of Expression stated that the protection of freedom of expression under Article 13 of the ACHR also applies to freedom of expression online.

More recently in January 2012, the OAS Special Rapporteur and the UN Special Rapporteur on Freedom of Opinion and Expression renewed their call for stronger protection of freedom of expression on the Internet. In particular, they pointed out that:

The laws governing the Internet should take into account the special characteristics of the Internet as a unique and transformative tool that allows billions of individuals to exercise their right to freedom of thought and expression, as well as enforcing a range of other human rights.

As a signatory to the ACHR, Brazil is required to ensure that its national laws governing freedom of expression online comply with Article 13 ACHR as interpreted by the OAS Special Rapporteur.

¹² UN Human Rights Committee General Comment No.34, para. 12.

¹³ *Ibid.*, para. 17.

¹⁴ *Ibid.*, para. 39.

Limitations to the right to freedom of expression

While the right to freedom of expression is a fundamental right, it is not guaranteed in absolute terms. Article 19(3) of the ICCPR permits the right to be restricted in the following cases:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order, or of public health or morals.

Restrictions on the right to freedom of expression must be strictly and narrowly tailored and may not put the right itself in jeopardy. Determining whether a restriction is narrowly tailored is often articulated as a three-part test. It is required that restrictions are: (i) provided by law; (ii) pursue a legitimate aim; and (iii) that they conform to the strict tests of necessity and proportionality.¹⁵ The same principles apply to permissible restrictions under the ACHR.

The Joint Declaration on Freedom of Expression and the Internet (2011)

In June 2011, the four international special rapporteurs for freedom of expression, namely for the UN, OAS, OSCE and ACHPR, signed a Joint Declaration on Freedom of Expression and Internet, which sets out basic human rights principles governing freedom of expression online. Specifically, they emphasised that regulatory approaches in the telecommunications and broadcasting sectors cannot simply be transferred to the Internet.¹⁶

In the Joint Declaration 2011, special rapporteurs recommended the development of tailored approaches for responding to illegal content online, while pointing out that specific restrictions for material disseminated over the Internet are unnecessary.¹⁷ They also promoted the use of self-regulation as an effective tool for redressing harmful speech.¹⁸

Intermediary liability

Intermediaries, such as Internet service providers (“ISPs”), search engines, social media platforms and web hosts, play a crucial role in relation to access to the Internet and the transmission of third party content. They have come to be seen as the gatekeepers of the Internet. For Internet activists, they are key enablers of the meaningful exercise of the right to freedom of expression, facilitating the free flow of information and ideas worldwide. For law enforcement agencies, they are central to any strategy to combat online criminal activity.

Given the huge amount of information available online that could potentially be unlawful, e.g. copyright law, defamation laws, hate speech laws, criminal laws for the protection of children

¹⁵ *Velichkin v. Belarus*, Communication No. 1022/2001, U.N. Doc. CCPR/C/85/D/1022/2001 (2005).

¹⁶ See Joint Declaration on Freedom of Expression and the Internet, June 2011, available at: <http://www.article19.org/data/files/pdfs/press/international-mechanisms-for-promoting-freedom-of-expression.pdf>.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

against child pornography, Internet intermediaries have had a strong interest in seeking immunity from liability for infringements committed by their users.

In many Western countries, Internet intermediaries have been granted immunity for third-party content.¹⁹ They have also been exempted from monitoring content.²⁰ However, they have been made subject to 'notice and take-down' procedures, which require them to remove content once they are put on notice by private parties or law enforcement agencies. This system can be found, for example, in the E-commerce directive in the EU and the Digital Copyright Millennium Act 1998 (the so-called 'safe harbours') in the US.

A number of problems have been identified concerning such 'notice and take-down' procedures. First, they often lack a clear legal basis. Second, these procedures lack fairness. Rather than obtain a court order requiring the ISP to remove unlawful material (which would, in principle at least, involve an independent judicial determination that the material is indeed unlawful), ISPs are required to act merely on the say-so of a private party or public body. This is problematic because intermediaries tend to err on the side of caution and take-down material which may be perfectly legitimate and lawful. As the UN Special Rapporteur on freedom of expression recently noted:²¹

42. [W]hile a notice-and-takedown system is one way to prevent intermediaries from actively engaging in or encouraging unlawful behaviour on their services, it is subject to abuse by both State and private actors. Users who are notified by the service provider that their content has been flagged as unlawful often have little recourse or few resources to challenge the takedown. Moreover, given that intermediaries may still be held financially or in some cases criminally liable if they do not remove content upon receipt of notification by users regarding unlawful content, they are inclined to err on the side of safety by overcensoring potentially illegal content. Lack of transparency in the intermediaries' decision-making process also often obscures discriminatory practices or political pressure affecting the companies' decisions. Furthermore, intermediaries, as private entities, are not best placed to make the determination of whether a particular content is illegal, which requires careful balancing of competing interests and consideration of defences.

Accordingly, the four special rapporteurs on freedom of expression recommended in their 2011 Joint Declaration on Freedom of Expression and the Internet that:²²

¹⁹ See, for example, the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, the 'E-commerce directive' in the EU. See also the Communications Decency Act 1996 in the US, and in Singapore, the Electronic Transaction Act 2010 which gives strong protection to innocent providers.

²⁰ See Article 15 of the E-commerce directive. In the recent case of *SABAM v. Scarlet Extended SA*, the Court of Justice of the European Union (CJEU) considered that an injunction requiring an ISP to install a filtering system to make it absolutely impossible for its customers to send or receive files containing musical works using peer-to-peer software without the permission of the rights holders would oblige it to actively monitor all the data relating to each of its customers, which would be in breach of the right to privacy and the right to freedom to receive or impart information. The court noted that such an injunction could potentially undermine freedom of information since the suggested filtering system might not distinguish adequately between unlawful content and lawful content, with the result that its introduction could lead to the blocking of lawful communications.

²¹ See UN Special Rapporteur on Freedom of Expression (A/HRC/17/27), 16 May 2011, para. 42; available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/449/78/PDF/N1144978.pdf?OpenElement>.

²² See *supra* note 16.

- (i) No one should be liable for content produced by others when providing technical services, such as providing access, searching for, or transmission or caching of information;
- (ii) Liability should only be incurred if the intermediary has specifically intervened in the content, which is published online;
- (iii) ISPs and other intermediaries should only be required to take down content following a court order, contrary to the practice of notice and takedown.

Similarly, the UN Special Rapporteur on freedom of expression stated that:

[C]ensorship measures should never be delegated to a private entity, and that no one should be held liable for content on the Internet of which they are not the author. Indeed, no State should use or force intermediaries to undertake censorship on its behalf.²³

He further recommended that, in order to avoid infringing upon the right to freedom of expression and the right to privacy, intermediaries should:²⁴

[O]nly implement restrictions to these rights after judicial intervention; be transparent to the user involved about measures taken, and where applicable to the wider public; provide, if possible, forewarning to users before the implementation of restrictive measures; and minimize the impact of restrictions strictly to the content involved.

Lastly, the Special Rapporteur stressed the need for effective remedies for affected users, including the possibility of appeal through the procedures provided by the intermediary and by a competent judicial authority.²⁵

The right of access to the Internet

The Internet has become a basic requirement for the exercise of freedom of expression. It is also necessary for the meaningful exercise of other rights and freedoms, such as freedom of assembly. States are therefore under a positive obligation to promote and facilitate access to the Internet. The UN Special Rapporteur on Freedom of Expression, Frank La Rue, thus recently stated:²⁶

Given that the Internet has become an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress, ensuring universal access to the Internet should be a priority for all States.

The Special Rapporteur recommended that States should draw up concrete policies involving all stakeholders with a view to ensuring universal access, i.e. make the Internet widely available, accessible and affordable to all segments of the population. In particular, he suggested that States should work in partnership with the private sector to ensure Internet connectivity in all inhabited localities, including in remote rural areas. He further noted that States could subsidise Internet services and low-cost hardware.

²³ *Supra* note 21, at para. 43.

²⁴ *Ibid.*, para 47.

²⁵ *Ibid.*

²⁶ *Ibid.*, para. 85.

Similarly, the four special mandates on freedom of expression have articulated a number of principles relating to access to the Internet in their 2011 Joint Declaration on Freedom of Expression and the Internet, which reads as follows:

6. Access to the Internet

a. Giving effect to the right to freedom of expression imposes an obligation on States to promote universal access to the Internet. Access to the Internet is also necessary to promote respect for other rights, such as the rights to education, health care and work, the right to assembly and association, and the right to free elections.

b. Cutting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds. The same applies to slow-downs imposed on the Internet or parts of the Internet.

c. Denying individuals the right to access the Internet as a punishment is an extreme measure, which could be justified only where less restrictive measures are not available and where ordered by a court, taking into account the impact of this measure on the enjoyment of human rights.

d. Other measures which limit access to the Internet, such as imposing registration or other requirements on service providers, are not legitimate unless they conform to the test for restrictions on freedom of expression under international law.

e. States are under a positive obligation to facilitate universal access to the Internet. At a minimum, States should:

i. Put in place regulatory mechanisms – which could include pricing regimes, universal service requirements and licensing agreements – that foster greater access to the Internet, including for the poor and in ‘last mile’ rural areas.

ii. Provide direct support to facilitate access, including by establishing community-based ICT centres and other public access points.

iii. Promote adequate awareness about both how to use the Internet and the benefits it can bring, especially among the poor, children and the elderly, and isolated rural populations.

iv. Put in place special measures to ensure equitable access to the Internet for the disabled and for disadvantaged persons.

f. To implement the above, States should adopt detailed multi-year action plans for increasing access to the Internet which include clear and specific targets, as well as standards of transparency, public reporting and monitoring systems.

From a comparative perspective, it should also be noted that some western countries have expressly recognised a right of access to the Internet in their national legislation or otherwise. For example, the French *Conseil constitutionnel* declared that Internet access was a fundamental right in 2009. In Finland, a decree was passed in 2009 which guaranteed every household an Internet connection with a speed of at least one Megabit per second. Access to the Internet has also been recognised as a basic human right in Estonia since 2000.

Network Neutrality

The principle of network neutrality demands that all Internet traffic should be treated equally, without discrimination based on content, device, author, source or destination of the information. This implies that neither Internet service providers nor Governments should use their control over the infrastructure of the Internet to block content, prioritise or reduce the speed of access to certain applications or services. This principle seeks to keep the Internet as a neutral space where all information is treated in an equal fashion.

For this reason, the four Special Rapporteurs on Freedom of Expression adopted a set of principles regarding network neutrality in their Joint Declaration of 2011 on Freedom of Expression and the Internet. In particular, they stated²⁷:

5. Network Neutrality

a. There should be no discrimination in the treatment of Internet data and traffic, based on the device, content, author, origin and/or destination of the content, service or application.

b. Internet intermediaries should be required to be transparent about any traffic or information management practices they employ, and relevant information on such practices should be made available in a form that is accessible to all stakeholders.

The adoption of any rules of net neutrality at the national level should reflect these standards. In this sense, the recent Chilean law on network neutrality provides a positive example since it includes strong safeguards against discriminatory practices by providers.²⁸ Specifically, it is important to ensure that there are sufficient protections against discrimination between different types of Internet services such as broadband and mobile. For example, ARTICLE 19 criticised the rules adopted by the Federal Communications Commission of the United States in December 2010 for failing to provide sufficiently robust safeguards in this respect.²⁹ The European Union is currently considering the adoptions of rules ensuring network neutrality.

ARTICLE 19 believes that for the Internet to remain a vibrant space for the exchange of information and ideas, the above standards should be fully reflected in Brazil's legislation and policies regarding the Internet. This, in our view, would be the best way to guarantee freedom of expression online for all Brazilians.

²⁷ *Supra* note 16.

²⁸ Law on the Internet and Net Neutrality, Chile, August 2010; available at http://www.subtel.gob.cl/prontus_subtel/site/artic/20100826/pags/20100826145847.html.

²⁹ ARTICLE 19, Net Neutrality: Stronger rules needed in the US and EU, November 2011; available at: <http://www.article19.org/resources.php/resource/2824/en/net-neutrality-stronger-rules-needed-in-us-and-eu>.

III. Online censorship in Brazil

As already noted above, the Internet has radically transformed the way in which people receive and share information and ideas. From passive recipients of information, Internet users have become active publishers of content, creating a vibrant cultural environment on a scale never before imagined. With the Internet, the potential for freedom of expression to transform societies has taken on a whole new dimension.

At the same time, the Internet has allowed views to be published that governments, businesses and others dislike. It therefore comes as no surprise that new forms of censorship have emerged that seek to filter, block or remove 'undesirable' content online. The centrepiece of this new puzzle are internet intermediaries such as internet service providers and search engines like Google, who have technical control over what goes through their networks. They have increasingly been asked by governments, copyright holders and - in the best case scenario - courts to remove content. Simultaneously, private actors offering social networking services, such as Facebook, have taken it upon themselves to filter and remove content that fails to comply with their terms of conditions. In addition, more traditional, but not less problematic, forms of censorship remain. Bloggers have become the targets of physical attacks and death threats which, in the past, were aimed at journalists. In this part of our report, we examine how these forms of censorship play out in Brazil.

Content removal

Government requests

In Brazil, the Government does not employ any technical methods to filter online content.³⁰ Nor is there any special law regulating online content. However, the Public Attorney's Office (*Ministerio Publico*) has entered into a mutual cooperation agreement with the non-profit organization Safernet Brasil to tackle undesirable online content.³¹ Safernet encourages internet users to report links which disclose apparent criminality or human rights violations online.³² The report is then analysed by the organisation's technical and legal team. If the team concludes that the claim of alleged criminality is sufficiently well-founded, it is passed on to the Federal Police and the Public Attorney's Office. When legal behaviour is thought to constitute a human rights violation, the organization notifies the relevant Internet Service Provider - directly if it is based in Brazil - and requests the removal of the content in question. The organization keeps records of its complaints.

Although no specific information about what constitutes a 'government' request is available from Google's transparency report, it seems likely that this would include requests from the Public Attorney's Office which have been made on the basis of Safernet reports. At any rate, Google's Transparency Report makes clear that the Government has not shied away from taking action to remove content, as documented in Google's transparency report.³³ Since 2009, Brazil has led the

³⁰ Freedom House, *Freedom on the Net 2011: Brazil, 2012*, p. 68; available at http://www.freedomhouse.org/sites/default/files/inline_images/Brazil_FOTN2011.pdf

³¹ For more information about Safernet Brasil, see: <http://www.safernet.org.br/site/>

³² For more information about Safernet Brasil reporting procedures, see: <http://www.safernet.org.br/site/colaborar/divulgue>

³³ Google Transparency Report, *Brazil*, available at: <http://www.google.com/transparencyreport/removals/government/BR/?p=2010-12>

world rankings for government content removal requests. In the first half of 2010, during the presidential election campaign, the Government made no less than 398 such requests. After the election, in the second half of 2010, there were 263 such requests, i.e. a total of 661 requests in 2010. 2011 saw a drop in the number of content removal requests, with a total of 418. Yet, Brazil was still responsible for the third highest number of government removal requests in that year.

The number of items requested to be removed is also worth noting, although the data available concerns removal requests made by both government and the courts. In particular, 19,806 items were requested to be removed in the first half of 2010, while 12,363 such requests were made in the second half of the year. In 2011, the number of items requested to be removed dropped sharply to 1,246.

It should also be emphasised that the highest number of removal requests concerned the social network Orkut, YouTube, and the blogging platform Blogger. The vast majority of content removal requests concerned defamation claims. In 2011, 603 out of the 1,246 items that were requested to be removed involved such claims.

Although there is no other available data about content removals in the country, Google's statistics are highly relevant, especially since its products, such as Orkut and YouTube, are among the most visited websites in Brazil. The data strongly suggests that the Brazilian government is not very tolerant of online criticism of public officials. The lack of accountability of Safernet as a private body cooperating with public officials is equally a source of concern. While tackling online criminality and human rights violations is legitimate, ARTICLE 19 strongly opposes any private forms of censorship and notice and takedown procedures operating outside the rule of law.

Court orders

The courts have also been responsible for a significant number of content removal requests. While this in itself is greatly preferable to notice and takedown mechanisms, the number of court orders issued in 2011 – no less than 286 – suggests that the Brazilian courts are prompt to decide in favour of claimants and dismiss free speech arguments. Of all the many reasons cited for content removal orders, defamation lawsuits are by far the most numerous. In particular, the following cases are worth mentioning:

- In March 2011, the blog *A perereca da vizinha* published an article about a High Court judge, Milton Augusto de Brito Nobre, who had been able to rent a state property below market value.³⁴ Days later, the author of the blog post was summoned to appear before the court and served with an interim injunction requiring him to remove the article and related comments from his blog. The order further enjoined the blogger to ensure that the name of the judge would not be mentioned anywhere on his blog, including in the comments section. If found in breach of the order, he would be liable to pay a daily fine of R 3,000.
- On 30 January 2012, the website *Congresso em Foco* ("Congress in Focus") was the subject of a court action after a series of reports were published alleging that politicians, government officials and judges would be receiving wages in excess of the constitutional limit. According to the executive director of *Congresso in Foco*, Rodolfo Lago, the site was a defendant in approximately 50 lawsuits due to the publication of the reports. However, it has been cleared in over 30 of them.

³⁴ For more information about this case, see: <http://pererecadavizinha.blogspot.co.uk/2011/05/nota-de-esclarecimento-da-perereca-da.html>

- On 21 March, 2012, the State of Pará court ordered Maria de Souza Franssinete Florenzano, a journalist, to remove comments she had made about a supposed declaration by councilmen Morgado, according to which he would have said that he did not care about the death of construction workers on a building site in 2011.
- In April 2011, Governor Beto Richa filed a lawsuit against Mr. Moraes, a blogger, accusing him of launching a 'hate campaign' against him on his blog. A court ordered the blog to be removed for 75 days. The most interesting aspect of this case, however, is that the removal of the blog resulted in such public outcry that, on the eve of the 40th day of censorship of his website, Esmael was able to publish his writings through a solidarity network of blogs, news portals and social networks such as Twitter and Facebook.

Several content removal orders have also been issued in the context of elections. In its latest biannual report, Google reported that it had received an electoral court order that resulted in the removal of four orkut profiles for content related to political campaigns.³⁵

Finally, the content removal order issued against spoof blog *Falha de S. Paulo* (Failure of São Paulo) should be mentioned. *Falha de S. Paulo* is based on the newspaper *Folha de S. Paulo* which filed a lawsuit against the blog, alleging misuse of their trademark. In September 2010, a court ordered the removal of the entire site and that its domain name be frozen together with a daily fine of R\$ 10,000.00 payable if found in breach of the order. The blog *Falha de São Paulo* tried to resist the injunction but failed. It is now awaiting judgment on appeal before the Court of Justice (TJ-SP).

ARTICLE 19 notes that unlike journalists working for well-established newspapers, bloggers and independent journalists appear to be far more likely to be censored by the courts. More often than not, bloggers are held to a much higher standard of journalism than journalists working for large media houses, despite the fact that they do not have the same resources to check their facts. While the Internet has allowed the easy and effective organization of campaigns in response to content removals perceived as unfair, this is often not enough. For this reason, ARTICLE 19 supports initiatives such as the one organized by the Center for the Study of Alternative Media Barão de Itararé which has put in place a legal support group for bloggers with the help of the state and national and regional bloggers.

Private censorship

Restrictions on content online are not the preserve of public authorities. Social media platforms often remove content on the basis of their own Terms & Conditions and internal policies. Automated filtering is not unheard of. Facebook, for example, uses automated filters to scan photos depicting pornographic images, which it then removes. In Brazil, thousands of women took to the streets in May 2012 to protest against sexual violence against women and to speak against the blaming of victims of sexual violence in a 'SlutWalk'. Many women had their breasts uncovered. Photos of these women which had been posted on Facebook were removed. They were only restored on the social network after the offending material had been blacked out. Below are some pictures taken from the site:

³⁵ See Google Transparency Report, *Brazil*, July-December 2011, available at: <http://www.google.com/transparencyreport/removals/government/BR/?p=2010-12>



While these incidents may currently be uncommon, private censorship may become far more entrenched if the Supreme Court upholds the decision of the Court of Appeal in the Google v Cleide Vieira case. The case concerned the creation of a 'I hate my teacher'-type of group on the blog platform Orkut, one of Google's products. The Court of Appeal held that Google was responsible for content posted by third parties on its platforms and that it should monitor content online to prevent the publication of material deemed to be offensive or in breach of its Terms & Conditions. The case is now pending before the Supreme Court and will have major implications for freedom of expression online in Brazil.

Self-censorship

The threat of litigation is another powerful tool which has been used by both public and private figures to silence jokes and criticism. In 2012, the spoof blog *Ego Estagiário* (Trainee Ego) - a parody of the Globo's Group website Ego - received a letter from the Globo Group's lawyers threatening it with prosecution. The blog was taken down with the following message being posted instead:



(Translation: we have unfortunately been censored; we will explain this incident soon. Thank you for your understanding. Against censorship #LeaveEgoEstagiarioAlone egoestagiario@gmail.com)

The website was restored a few days later following a successful campaign on Twitter with the hashtag "#leaveEgoEstagiarioAlone" and a dedicated website, www.GloboLiberaoEstagiario. The site now explains that it is a parody of the website Ego and that all its content is entirely false.

Worryingly, the threat of litigation - especially defamation claims - has also been made easier to a certain extent by the rise of content posted on social networks. The story of Rodrigo Cresti, a 24-year old mechanical engineer, is a case in point. At the end of 2011, Rodrigo posted that the Mayor of Porto Feliz owned a property worth R 2 million on his Facebook page. In a separate post, he said that "funds which had been allocated for the restoration of the city museum had not been used." A week later, he was summoned to testify in a court case. The mayor had filed a criminal complaint in light of his comments. In a video posted on the Internet, Rodrigo said that he had never accused the mayor of having committed a crime or of having acquired the property illegally. In February 2012, it was reported that City Hall had been using social networks to 'monitor' critical citizens in the city of Porto Feliz - SP.

While it is easy enough to see how public authorities and private companies may monitor content on public social networks such as Twitter, it is often hard to know how the monitoring takes place on social platforms with security settings such as Facebook. Presumably and again depending on privacy settings, the content must be reported by 'friends.' This, however, may only lead to classic defamation claims, such as in the above story. Just as statements made in an e-mail may be defamatory and as such actionable, so are comments posted on Facebook. At the same time, any incentive given by the authorities or an employer to 'befriend' someone with a view to monitor critical comments such as in the above story, are deeply disturbing. The same is true of employers demanding passwords. The upshot of such practices is to create a climate of self-censorship. While it may be legitimate for the authorities to monitor public social networks for the purposes of preventing crime, monitoring of private content on social networks is a form of surveillance which should only be permitted subject to the safeguards of legality, necessity and proportionality under international human rights law.

Attacks on journalists and bloggers

With the advent of the Internet and citizen journalism, journalists are unfortunately not alone in being the targets of physical attacks, death threats and murders for what they say. One of the most high profile cases in Brazil is that of journalist and blogger Mário Randolpho Marques Lopes, who was kidnapped with his partner Maria Aparecida Guimaraes on 9 February 2012 in the city of Barra do Pirai in Rio de Janeiro state. Their bodies were later found dumped next to a highway. They had been shot dead. Mário was the editor-in-chief of the news website *Vassouras na Net* and frequently wrote about the corruption of local officials.³⁶ His most recent article accused local judges and courts of being corrupt. He had survived a previous attack on his life in the course of which he had been shot five times by unknown gunmen. According to information posted on the deceased's website, no progress has been made in the investigation and no evidence found as to the possible identity of the perpetrators of this crime.

Similarly, on 15 June 2011, blogger Ednaldo Figueira was shot dead by three unidentified men while he was leaving his workplace. Figueira was also a local politician in Serra do Mel in the northern state of Rio Grande do Norte. It was reported that fellow bloggers suspected that his death was linked to a survey Figueira had posted on his blog which questioned the accountability of city officials.³⁷

³⁶ See Guardian, *Brazilian journalist and girlfriend kidnapped and murdered*, February 2012, available at: <http://www.guardian.co.uk/media/greenslade/2012/feb/11/journalist-safety-brazil>

³⁷ Natalia Mazotte, 'Blogger, political party leader shot to death in Brazil', *Journalism in the Americas Blog*, 22

Blogger Ricardo Gama was more fortunate. He survived a brutal attack in the Copacabana area of Rio de Janeiro on 23 March 2011. Gama was shot three times in the head and chest by an unknown person in a black car. Although he stayed alive after the attack, he was in critical condition and partially lost sight in one eye. Gama was well known for his outspoken criticism of local government and the police force on his blog.³⁸

Sadly, these are not isolated examples.³⁹ According to Reporters Without Borders (also known by its French acronym, 'RSF'), the surge in violence levelled against journalists and bloggers in 2011 was responsible for Brazil falling 41 places down to 99th out of 179 in the latest RSF press freedom index published in January 2012.⁴⁰ ARTICLE 19 has long condemned threats and attacks against journalists and human rights defenders and called on States to put programmes in place to protect them. We believe that bloggers carrying out journalistic activity should benefit from the same protection. Moreover, bloggers' deaths should be investigated promptly and independently in accordance with human rights law.

As the brief overview above demonstrates, interferences with freedom of expression online are many in Brazil. These range from content removal and self-censorship to physical attacks on bloggers and journalists alike. It is therefore essential that the Brazilian Government adopts a legal framework and internet policies which encourage rather than stifle freedom of expression online.

June 2011, available at: <http://knightcenter.utexas.edu/en/node/6332>.

³⁸ Folha de S. Paulo, *Blogueiro Ricardo Gama é baleado no Rio*, 23 March 2011, available at <http://www1.folha.uol.com.br/cotidiano/892903-blogueiro-ricardo-gama-e-baleado-no-rio.shtml>.

³⁹ For further information on other cases, see ARTICLE 19, *Report on Violations of Freedom of Expression and Information*, 2011-2012, available upon request.

⁴⁰ See Reporters Without Borders, *Press Freedom Index*, 2011-2012, available at: <http://en.rsf.org/press-freedom-index-2011-2012,1043.html>

IV. Protecting freedom of expression online: the challenges ahead

There is no specific legislation in Brazil that seeks to regulate online content. The same laws that apply to content offline apply to content online, e.g. defamation laws. However, this does not mean that other aspects of the Internet cannot be regulated. In particular, several draft bills have been laid before Congress recently that could have a negative impact on freedom of expression online, such as the Cybercrime Bill and its alternative, PLC 35/2012. Proposals for tougher online copyright enforcement that would adversely restrict the free flow of information on the Internet are also on the table.

On a more positive note, Congress is currently examining the Civil Rights Framework for the Internet, also known as the 'Marco Civil', which aims to protect the rights of Internet users. Similarly, a draft data protection law would give the right to privacy statutory protection for the first time. In this section, we examine each of these proposals.

Draft Cybercrime Bill

The Draft Bill on Cybercrime, also known as the *Azeredo Law*, is the oldest internet bill under discussion in the House of Representatives. ARTICLE 19 has previously warned that if adopted, the Draft Bill would severely curtail the right to freedom of expression and information online by, among other things, turning Internet service providers (ISPs) into an Internet police force.⁴¹ Under the bill, ISPs would be required to monitor and report alleged violations of criminal law online. They would further be made subject to criminal or civil liability for failing or refusing to do so. In addition, the bill seeks to criminalise unauthorized access to computer data and provides for various offences against the integrity of computer systems. However, its provisions are drafted in such a hopelessly vague language that it would almost inevitably result in the criminalization of everyday computer use. ARTICLE 19 submitted detailed comments on the draft law warning that several of its provisions were in breach of the right to freedom of expression.

Notwithstanding severe criticism from civil society, the Draft Bill was approved by the House of Representatives and the Brazilian Senate, although subject to amendments. The Draft Bill is now back in the House of Representatives for further scrutiny. It was recently approved by the ICT committee of the Chamber of Deputies and has now been referred to two other committees for consideration. It is worth noting that the original author of the Draft Bill was also the rapporteur in the ICT Committee. In that capacity, he suggested a number of amendments that would significantly improve the Bill. Nonetheless, a number of concerns remain.

In another political twist, the House of Representatives approved an alternative bill, PLC 35/2012, put forward by Deputy Paulo Teixeira and others at the end of 2011. The PLC 35/2012 bill does not deal with intermediary liability or content monitoring but focuses on offences against the confidentiality and integrity of computer systems. Although preferable to the Azeredo Law, the PLC 35/2012 bill still falls short of international standards of freedom of expression in a number of respects. ARTICLE 19 has provided a detailed analysis of the bill which is due to be examined in the Senate in August 2012.⁴²

⁴¹ See *supra* note 6.

⁴² See ARTICLE 19's analysis of the PLC 35/2012, available here:

Civil Rights Internet Framework

In parallel to the Cybercrime bill, the Ministry of Justice has been working in partnership with the Center for Technology and Society (CTS) Getulio Vargas Foundation in Rio de Janeiro, with a view to establishing a rights and obligations framework for the Internet in Brazil. The first phase of this collaborative process was launched in October 2009. This resulted in the Civil Rights Internet Framework (“Marco Civil”), currently being discussed in the Brazilian Parliament.

The Civil Rights Internet Framework deals with Internet users’ rights and guarantees, intermediary liability for third-party content, data retention, net neutrality and access to the internet. ARTICLE 19 commented on the Framework in April 2012 and concluded that, on the whole, it is a progressive piece of legislation with generally satisfactory safeguards for the protection of freedom of expression and the right to privacy on the Internet. However, the Framework has only just been laid before Parliament as draft bill 2126/2011. It is therefore in the early stages of parliamentary scrutiny and could be substantially amended.

Nonetheless, it is worth noting the positive aspects of the bill. Most significantly, it would mean that Internet Service Providers may only be held liable for failing to comply with a court order requiring them to takedown or block access to third-party content. Moreover, it stipulates that internet users may only be identified and their communications data disclosed following a court order and this for limited purposes, namely criminal investigations and criminal proceedings. Lastly, if the bill is adopted, Brazil will be one of the first countries to guarantee net neutrality in South America, an important step in securing internet freedom in the continent as a whole.

The Marco Civil Bill is not only a progressive piece of legislation (in its current form), but also an example of the importance and great potential of the involvement of multiple stakeholders in policy formulation. It is noteworthy that this collaborative process has culminated in the presentation of draft bill 2126/2011 before the House of Representatives. At any rate, it is a welcome counterbalance to legislative proposals that, if adopted, would unduly restrict freedom of expression and undermine the openness of the Internet.

Copyright and intellectual property

In many ways, copyright law seems to be at a crossroads in Brazil. The main copyright law statute was adopted in 1998. When President Lula came to power, a national policy for culture and copyright was launched, which, among other things, embraced creative commons licensing.⁴³ Many were hopeful that Brazil would lead the recasting of the terms of copyright reform in the modern world⁴⁴. However, copyright law reform dragged on for several years with the first Draft Copyright Law being published for consultation only in June 2010.⁴⁵

By January 2011, the new administration of Dilma Rouseff had taken office, marking a clear shift in the direction of Brazilian cultural policy.⁴⁶ Since then, several revised versions of the Draft

<http://www.article19.org/resources.php/resource/3432/en/brazil:-draft-computer-crime-bill>

⁴³ See Techdirt, *Brazil's Copyright Reform: The Good, the Bad and the Confused*, 23 December 2011, available at: <http://www.techdirt.com/articles/20111221/04514917157/brazils-copyright-reform-draft-bill-good-bad-confused.shtml>.

⁴⁴ Ibid.

⁴⁵ See IP Watch timeline, available at: <http://www.ip-watch.org/2011/05/12/brazil%E2%80%99s-copyright-reform-are-we-all-josef-k/>.

⁴⁶ See Ronaldo Lemos, *A Legacy at Risk: How the new Ministry of Culture in Brazil reversed its digital agenda*, 14 March 2011, available at: <https://freedom-to-tinker.com/blog/rlemos/legacy-risk-how-new-ministry-culture-brazil->

Copyright Law have been published or leaked suggesting stronger copyright protection in the digital environment. While the copyright lobby seems to consider that the new proposals do not go far enough,⁴⁷ several commentators have expressed concern about the introduction of new notice and takedown procedures to deal with alleged copyright infringements and anti-circumvention measures⁴⁸. A public consultation on a revised version of the draft copyright law is expected to take place later this year.

In the same vein, a sweeping private member's bill was introduced last year that would have given the Brazil Internet Steering Committee (CGI.br) - the body responsible for domain name registration and internet policy - the power to block or remove websites allegedly in breach of copyright for up to five days. The CGI.br would also have been able to order ISPs to block access to these sites and search engines to de-index them. The Bill, which earned the nickname of Brazilian SOPA because of its severe measures, was eventually withdrawn following civil society's outcry.⁴⁹

While these measures are deeply problematic from a freedom of speech perspective, they are certainly in keeping with the copyright lobby's action plan on copyright enforcement online.⁵⁰ These developments are also consistent with the recent practices of the Central Bureau of Collection and Distribution (ECAD), which, in early 2012, sent threatening messages to some Brazilian bloggers warning them that they should pay a monthly fee of R 352.59 per month for posting copyrighted YouTube videos without permission on their blogs or websites. These practices have been met by a robust online opposition. The blog "unsaved" held a protest on social networks in response:



[reversed-its-digital-agenda/](#)

⁴⁷ The International Intellectual Property Alliance has recommended that Brazil should remain on its IP Watch list 2012. For more information, see International Intellectual Property Alliance (IIPA), *BRAZIL: 2012 Special 301 Report on Copyright Protection and Enforcement*, available at: <http://www.iipa.com/rbc/2012/2012SPEC301BRAZIL.PDF>.

⁴⁸ See Pedro Paranagua, *Inside Views: Brazil's Leaked Copyright Reform Draft Bill Shows Latest Thinking*, 12 December 2011, available at: <http://www.ip-watch.org/2011/12/12/brazils-leaked-copyright-reform-draft-bill-shows-latest-thinking/>; see also Techdirt, cited above at note 18.

⁴⁹ The Stop Online Piracy Act was a bill that, if adopted, would have introduced draconian copyright enforcement measures online. The bill was famously defeated in the US Congress after thousands of websites, including Wikipedia, went dark in protest.

⁵⁰ For more details about IIPA's agenda for 2012, please see note 47 above.

(“Singing Adele? Do you know who will pay for this? Someone like you.”)

In much the same way, the closure of the Megaupload website and clampdown on Youtomb sparked several protests in the country, showing Brazilians’ dissatisfaction with existing copyright laws. It is telling that Brazil was ranked one of the worst copyright regimes for consumers in the world in a recent research study by Consumers International.⁵¹

In response to Brazil’s unsatisfactory copyright laws, the movement Musica Para Baixar (MPB) was created on 8 July 2009 with the support of artists like Leoni, Teatro Magico and Leo Jaime. This movement seeks to promote flexible copyright laws for sharing music and fostering content diversity (hence its title “Music To Download”). It argues that free music to download on the internet is a better and cheaper way of advertising and gaining recognition among independent producers online. The movement has won the support of over 900 signatories. Its manifesto reads as follows:

What was once a market defined by a few officers, holders of the monopoly of the media, today has become a huge diversity of wildlife, providing opportunities and wealth for national music - not only from the standpoint of the artists and producers, but also from the point of view of the user. In this spirit, we formed a movement called Music to Download (Música para Baixar): gathering artists, producers, activists and users of the music networks in defense of freedom and free circulation of music in all formats and online. Those who download music are not pirates, they are broadcasters! Free seeds for music projects.⁵²

MPB is a paradigmatic example of artists and other participants in the culture industry embracing the many opportunities for the promotion of culture that the Internet offers without impeding the free flow of information and ideas online.

Content producers have to re-think business models that are no longer fit for the digital age. Several proposals were recently discussed among various stakeholders at the second Brazilian Internet Forum, held in July 2012. One such proposal was that a sector fund should be created to stimulate the production of content. The fund would be financed by the fees paid by internet service providers and telecommunications companies as well as money collected through advertising on videoblogs such as YouTube and Vimeo.

Protection of privacy and personal data

Following the same collaborative process with CTS as the one followed for the Civil Rights Framework, the Ministry of Justice opened a public consultation on the protection of privacy and personal data in 2011. Several roundtables were held between various stakeholders on a draft proposal.⁵³ The Ministry of Justice is currently drafting a bill to be presented to the House of Representatives.

⁵¹ See Consumers International Press Release, *Brazil, Egypt and United Kingdom among worst copyright regimes in the world, new study reveals*, 18 April 2011, available at: <http://www.consumersinternational.org/news-and-media/press-releases/2011/04/brazil,-egypt-and-united-kingdom-among-worst-copyright-regimes-in-the-world,-new-consumer-study-reveals>

⁵²The manifesto can be seen at <http://blog.colunaextra.com.br/2009/07/quem-baixa-musica-nao-e-pirata-e.html> Access on June 25th 2012

⁵³ ARTICLE 19 participated in this process by sending suggestions on how to balance privacy and freedom of expression.

The purpose of the proposed Bill goes beyond data protection and the protection of online privacy. Nonetheless, the collection and retention of personal data is at the heart of the bill. The debate is still in its initial stages in Brazil. One of the major implications of the bill concerns advertising and its online business model. It is likely to determine what kind of advertising can or cannot be done on the Internet.

ARTICLE 19 welcomes the consultation on the protection of privacy and data protection. In our view, robust protection of user data online is long overdue, especially in light of the growing number of user data requests received by intermediaries such as Google.⁵⁴

As this brief overview of current legislative proposals demonstrates, the regulatory environment for the Internet is a challenging one for freedom of expression. In particular, it requires careful balancing with other rights and interests such as the right to privacy, intellectual property rights and national security.

Recommendations:

- The Brazilian Civil Rights Framework should be approved immediately, taking into account recommendations to improve compliance with international standards of freedom of expression;
- The Draft Bill on Cybercrimes should be rejected by the House of Representatives in its entirety;
- The PLC 35/2012 bill should be amended to meet international standards of freedom of expression;
- The Ministry of Justice should present the draft law on the protection of privacy and personal data before the House of Representatives as soon as possible;
- The Ministry of Culture should respect the right to freedom of expression and access to information in the reform of copyright law by encouraging the exchange and sharing of cultural information;
- ECAD should stop the practice of sending threatening letters asking internet users to pay large sums of money on the basis of mere allegations of copyright infringement.

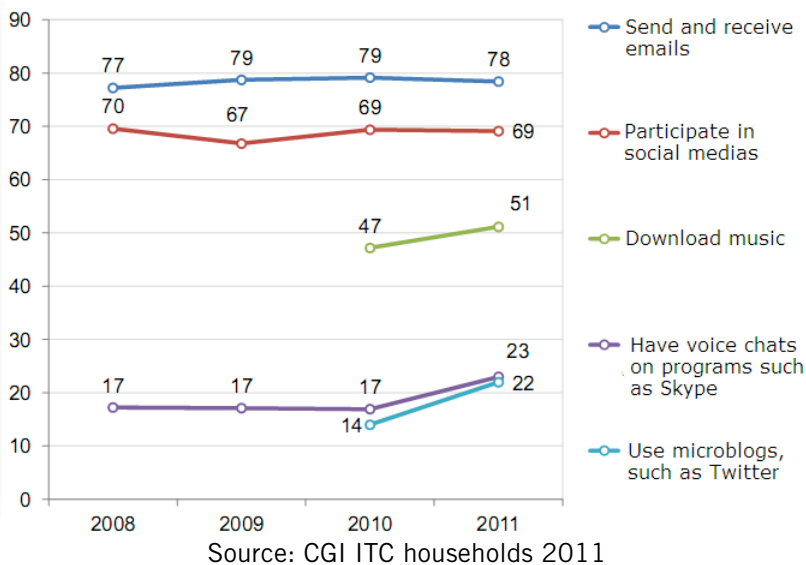
⁵⁴ According to Google's Transparency Report, in the second half of 2011, Brazil ranked third in the world rankings of user data requests with 1615 such requests, only behind the United States of America (6321 requests) and India (2,207 requests). With regard to data requests for user/specific account data in the same period, Brazil also stands in third place (2222 requests in the last half of 2011), with India in second place (3427 requests) and, finally the U.S. with 12,243 requests: www.google.com/transparencyreport/

V. Internet access, broadband and digital inclusion

The Internet is not only essential for the fulfilment of the right to freedom of expression. It has also become vital as an engine for economic development. In the last few years, Brazil's economic growth has been matched with a sharp increase in Internet use. However, the digital divide between those with and those without access to the internet remains a serious problem. Providing greater Internet access, faster broadband connections, and IT skills in 'last mile' areas and for vulnerable groups are both critical for the Brazilian economy and social inclusion. While the government has taken some encouraging steps towards addressing these issues, sustained efforts are needed to close the digital divide.

The digital divide in Brazil

Brazil is the fifth most wired country in the world.⁵⁵ The number of Brazilians with Internet access in any environment (home, work, distance learning centres, internet cafes, schools) totals 82.4 million people,⁵⁶ i.e. 42% of the population. The average time spent online by Brazilians is 47 hours per month. The applications that are most commonly used are social networking sites and emails:



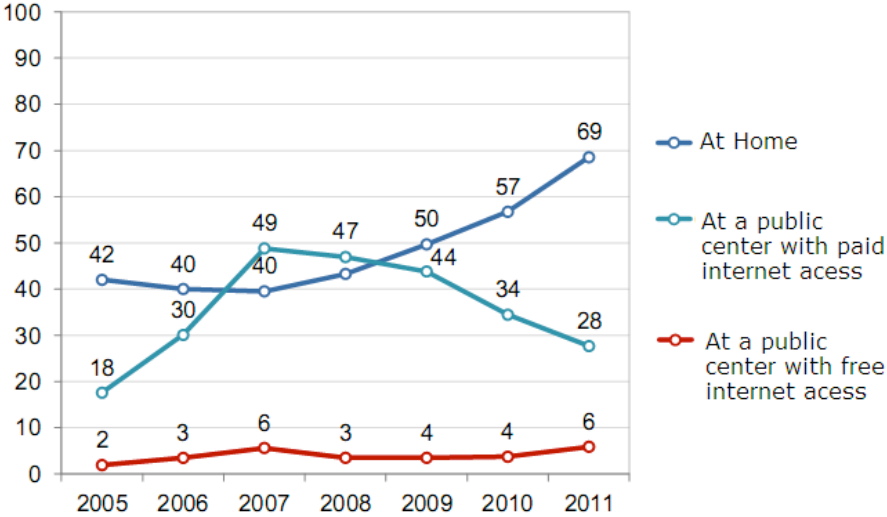
According to a 2011 survey of ICTs in Brazilian households carried out by CGI.br⁵⁷, the number of people with Internet access at home is growing, while the use of internet cafes has decreased. By

⁵⁵ See survey carried out by the *Partido dos Trabalhadores* (PT)'s committee in the Senate, commented on here: <http://agenciabrasil.ebc.com.br/noticia/2012-04-22/vendas-do-comercio-eletronico-cresceram-de-r-540-milhoes-para-r-18-bilhoes-em-dez-anos>.

⁵⁶ See Ibope Nielsen Online; <http://exame.abril.com.br/tecnologia/noticias/82-milhoes-de-pessoas-tem-acesso-a-internet-no-brasil>.

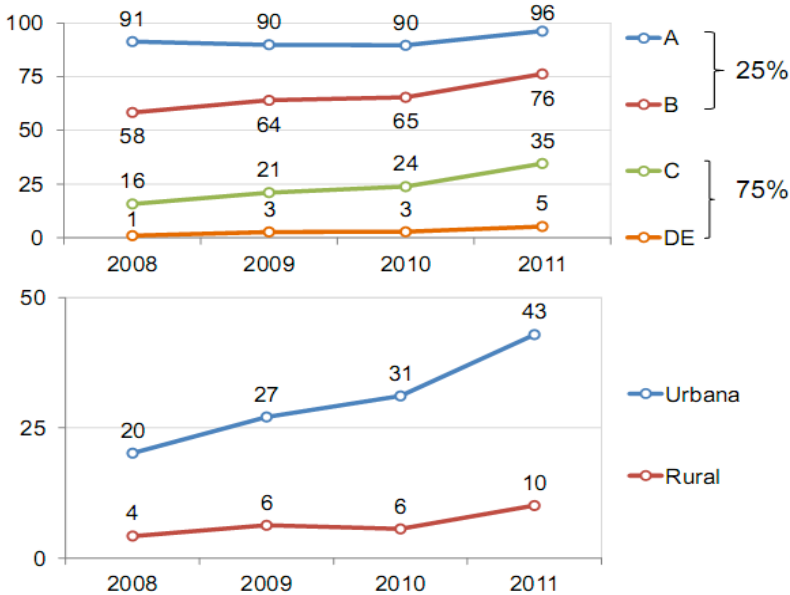
⁵⁷ See ICT households study published in 2011 : <http://cetic.br/usuarios/tic/2011-total-brasil/apresentacao-tic-domicilios-2011.pdf>

contrast, the percentage of telecentres that are government funded has remained constant.⁵⁸ According to the survey, they are used by about 4.4 million people. There are two main reasons why many Brazilians do not have Internet access: 48% of them blame the high prices set by Internet Service Providers while 25% cite the lack of access available in their area of residence.



Source: CGI ITC households 2011

Notwithstanding a relative increase in internet access in Brazil, the divide between those who have access to the internet and those who do not remains a serious problem. The following chart shows the proportion of individuals with Internet access at home, by area (urban or rural) and social class. It is worth remembering that classes A and B represent only 25% of the population, while C and D represent 75%.



Source: CGI ICT households 2011

This digital divide is also apparent when looking at the percentage of households with access to the internet per Brazilian state. The Southeast leads the number of households with online access (49% of the total inhabitants of the region), followed by the South (45%) and the Midwest (39%).

⁵⁸ Ibid.

In stark contrast, only 22% of households have internet access in the Northern region and 21% in the Northeast⁵⁹. The photo below shows the distribution of internet providers in Brazil.



Source: CGI ICT internet providers 2011

Broadband internet access

Broadband internet access or 'broadband' is a form of high-speed Internet access that allows users to access the Internet and Internet-related services at significantly higher speeds than those available through "dial-up" Internet access services.⁶⁰ For consumers, broadband means the possibility of new services and ways of communicating, such as high definition video or two-way video communication. It also holds the promise of greater social inclusion for vulnerable groups which can benefit greatly from new methods of communication and access to vital information about health and education.

In May 2010, the Brazilian government announced the National Broadband Plan (PNBL),⁶¹ which aims to ensure greater broadband access for low-income households. Under the PNBL, broadband will be provided to 11.9 million homes - up to 40 million homes by 2014 – with a broadband price/performance target of R35 per month for a maximum 1 Mbps connection. Internet broadband access will be delivered by installing fibre optic cables. The planned expansion of the national network is featured below.

⁵⁹ See the ICT households study published in 2011 : <http://cetic.br/usuarios/tic/2011-total-brasil/apresentacao-tic-domicilios-2011.pdf>

⁶⁰ See U.S. Federal Communications Commission (FCC): <http://www.fcc.gov/guides/getting-broadband/>

⁶¹ Details of the PNBL are available at: <http://www.mc.gov.br/acoes-e-programas/programa-nacional-de-banda-larga-pnbl>.

National network

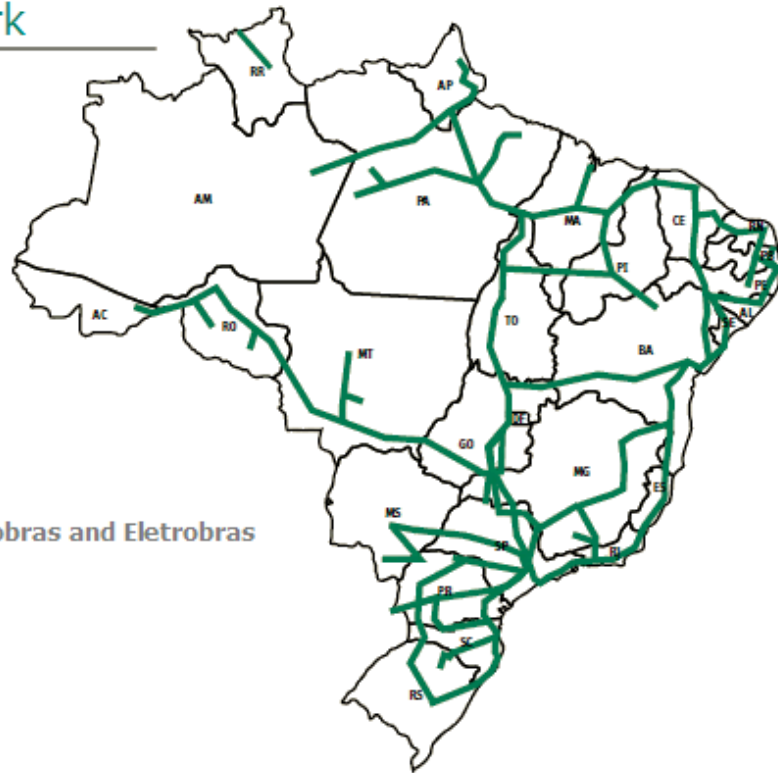
Estimate
2014

Coverage

Brasilia + 25 capitals

Use range

30.803 Km (Brazil)

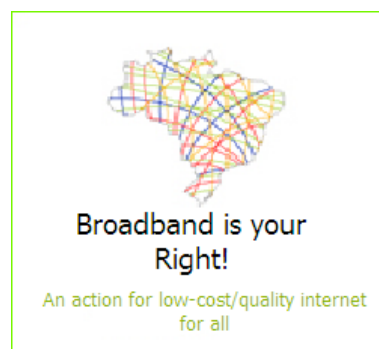


Optic fibers: Petrobras and Eletrobras

Source: Planalto.gov.br

Unfortunately, as is apparent from the map above, the Northern region of the country will gain little benefit from the program compared to the other regions of the country.

For this reason, the "Broadband is your right!" campaign was launched to demand universal broadband service with a view to narrow the digital divide.⁶² The campaign demands quality broadband access at reasonable rates for all consumers.



One of the campaign's proposals was that the former state-owned monopoly operator, Telebras, should offer universal broadband in order to provide access to the most remote areas, the so-called last mile. In addition, it was suggested that Telebras should intervene in the market if necessary.

⁶² ARTICLE 19 has joined the campaign. For more details, see: <http://campanhabandalarga.org.br/>.

This proposal was fiercely resisted by large private operators which have criticized the entry of a state-funded entity into the market. The campaign was defeated with the final version of the PNBL not making any commitment to universal broadband service. The campaign then shifted its focus to quality standards of broadband connection, including guaranteed download and upload speed, connection stability and net neutrality at affordable prices. This time, the campaign was successful with Anatel approving a number of the suggested criteria.⁶³

In addition to the PNBL, the Federal Government launched the Broadband in Schools Programme (PBLE) in 2008.⁶⁴ The programme aims to provide free broadband access to approximately 55,000 schools in its first year of implementation, reaching 84% of the country's students. The target after full implementation of the project, which is due in 2025, is to provide broadband access to 37.1 million students. While the programme is to be commended, it will still fail to meet domestic demand according to a survey on ICT Education produced by CETIC.br (CGI) in 2011.⁶⁵ The survey highlights that Brazil is still lagging behind in terms of use of ICT tools in schools and pedagogical practice. For example, most public schools still lack broadband, even if they have some points of connection to the Internet.

Digital inclusion

Digital inclusion is a crucial component of the right to access to the internet. It is about technological empowerment. Digital inclusion means that individuals should be given the necessary computer skills and education about the benefits of the internet to enable them to make full use of its potential.

Although there are several *ad hoc* programmes and initiatives for digital inclusion in Brazil, there is no comprehensive and integrated policy in this area. One of the main government programmes is the National Support Programme for Community Inclusion, telecentros.br.⁶⁶ The Federal Government's scheme promotes the creation of new public and community areas of digital inclusion. Financial support is offered to 'supervisors' who give ICT training to internet users at telecentres.

Universities and state and local governments also implement digital inclusion initiatives across the country. For example, in 2011, the "Digital inclusion for rural youth" initiative was launched with 38 projects being selected by Federal Universities and Federal Institutes of Education, Science and Technology with a view to promoting digital inclusion for young people in rural areas.⁶⁷

In the State of Pernambuco, the Secretary for Education, Culture and Sport launched the Informática para a Comunidade initiative, which aims at improving digital literacy in state schools by training the teachers and installing computer labs and educational software. Similarly, in 2000, the state of Sao Paulo established its programme Acesso São Paulo which promotes digital inclusion by providing free internet access in 706 centres scattered across the state.

⁶³The quality criteria that were ultimately approved are available at <http://www.anatel.gov.br/Portal/exibirPortalPaginaEspecialPesquisa.do?acao=&tipoConteudoHtml=1&codNoticia=24094>

⁶⁴ For more information about the Broadband in Schools Programme, see http://portal.mec.gov.br/index.php?Itemid=823&id=15808&option=com_content&view=article.

⁶⁵ The CGI survey about ICTs in education is available at <http://www.cetic.br/educacao/2011/index.htm>.

⁶⁶ See the Digital inclusion program website <http://www.inclusaodigital.gov.br/>.

⁶⁷ For comprehensive list of digital inclusion programmes in Brazil, see: <http://inclusao.ibict.br/index.php/iniciativas-no-brasil>.

Local authorities have also been trying to foster digital inclusion by implementing different projects. For example, the Council of Vitória has the programme Internet para Todos which seeks to provide local communities with Internet access. It also promotes exchanges of experiences with other communities. The Council of Campinas implemented the programme Jovem.Com with a view to use digital inclusion to reintegrate vulnerable young people. This project seeks to provide youths in vulnerable situations with IT skills which might help them to develop their careers.

While these projects are very valuable, most of them face one or more of the following structural problems:

- Poor quality of the donated equipment;
- Lack of technical assistance for maintenance of the available equipment;
- Poor quality of internet connection bandwidth;
- Supervisors lacking training;
- Delays in financial aid payments;
- Delays in the implementation of the projects and logistical problems;
- Perceived lack of commitment to the full implementation of the projects after the elections;

This does not mean that the various initiatives for the promotion of digital inclusion and access to the Internet should be cancelled. Telecentres, for example, are very important because trained supervisors teach users various ICT skills, such as the use of spreadsheets and text editors. However, the structural challenges identified above need to be addressed. Moreover, this should be done bearing in mind that, according to CGI.br data, internet cafes continue to provide crucial internet access to the general population.⁶⁸

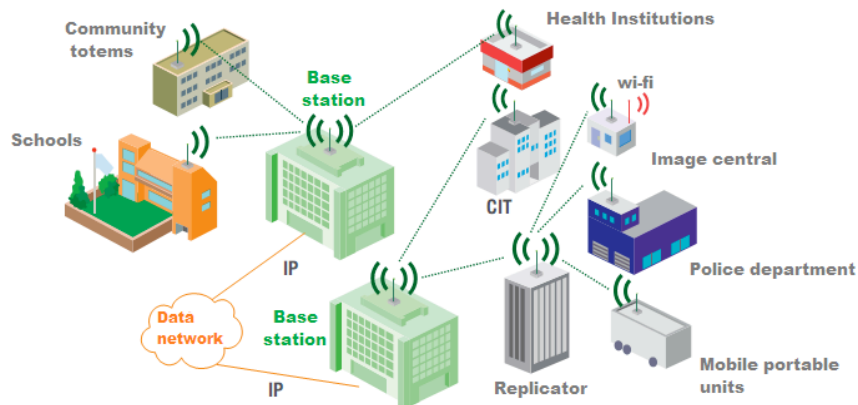
Finally, it is worth noting that digital inclusion initiatives are not confined to state actors. Private companies and non-profit organisations also implement and manage projects to bridge the digital divide. Garagem Digital was created by HP in partnership with the Abrinq Foundation. It provides young people between 14 and 24 years old with IT skills. The Abrindo os Olhos project, a joint initiative of IBM with the Centro Cultural Sao Paulo, tries to give visually impaired people access to the Internet. Another noteworthy example is the O Criança do Café na Escola programme which offers IT training to the children of rural workers in remote coffee plantations. The programme is managed by the Brazilian Chamber of Coffee Exporters.

Other Initiatives

Digital cities are a government initiative that aims to provide full broadband telecommunications infrastructure and Internet access to meet the needs of citizens, businesses and public bodies. In Brazil, the Digital Cities project was launched in 2011 by the Ministry of Communications.⁶⁹ Among other things, the project aims to install public internet access points which will be accessible free of charge by the population in densely populated areas. The project also anticipates the creation of distance learning centres, and the interconnection of all public buildings in the network. The image below shows a schematic interconnection network in a digital city.

⁶⁸ According to the CGI survey on ICTs in Brazilian households mentioned above, 28% of the population accessed the internet through an internet café in 2011, while 6% accessed it through a distance learning centre.

⁶⁹ For more information about digital cities, see: <http://www.in.gov.br/imprensa/visualiza/index.jsp?jornal=1&pagina=117&data=29/03/2012>; or http://www.mc.gov.br/o-dia-a-dia-do-ministerio/apresentacoes/cat_view/17-editais/7-chamada-publica/43-01-2012-projeto-cidades-digitais.



Source: CPqD

Foundation⁷⁰

The design of digital cities provides an opening of the Internet signal in public buildings for the population, through networks which vary from city to city using WI-FI, WIMAX (WiMAX is characterized by a larger signal coverage compared to WI -FI) and mixed signals (using wireless or optical infrastructure to form the core of the network, and using the wireless access to reach the end users).

The main weakness, however, of some digital cities projects is that access is only provided to government portals (E-gov).⁷¹ In our view, the internet access provided in digital cities should not be restricted to government sites, applications and services. If government offers access to the internet free of charge, there is no reason in principle why it should not provide access to all types of content. Indeed, it would be more consistent with government's obligations to promote diversity of content and pluralism to offer unrestricted internet access.

As demonstrated above, the Internet is already widely used in Brazil. However, there are still inequalities in terms of geographical access, available bandwidth, and digital empowerment. In order to achieve social inclusion and to have a citizenry fully integrated into the digital world, these disparities should be addressed. While there are many initiatives implemented at all levels of government to improve in these areas, more work is still needed to fully realise the potential of the Internet.

Recommendations:

- The government should put in place a National Plan for Digital Inclusion, covering all levels of government, and observing the complementarities between telecentres and internet cafes;
- The government should address the structural challenges of digital inclusion policies;
- The government should make sustained efforts to ensure universal broadband service throughout the country, including in remote areas;
- Digital cities' networks should not be restricted to government content.

⁷⁰ For more information about the CPqD Foundation, see: <http://www.cpqd.com.br/>.

⁷¹ E-gov is the name given to describe the set of government services available on the Internet at municipal, state or federal level. This is not a new form of government, but a new way of providing the population with access to existing services. E-gov services include, for example, the issuance of documents, tax payments, queries and refunds of taxes, among others, all of them available over the internet. For more information, see: <http://www.governoeletronico.gov.br/>.

VI. Conclusion

Over the last few decades the advance in information and communications technologies has revolutionised human interaction and expression. The Internet has become a powerful tool for seeking and disseminating information and plays a key role in the exchange of ideas and opinions in the twenty first century. Despite the Internet being a formidable vehicle for free expression, its potential can be stifled by inadequate legislation, inappropriate policies and repressive institutions.

Brazil is a country full of promise. As the Internet is a crucial component of economic, political, social, scientific and cultural progress, Brazil's policy choices in this area are likely to be decisive for its development. At the same time, Brazil must ensure that it meets its obligations under international law.

This report has outlined some of the main challenges to freedom of expression online in Brazil, including new forms of censorship, restrictive draft legislation regarding the internet and the digital divide. We have also indicated ways in which these can be addressed in line with international standards of freedom of expression.

Draft laws, such as the Azeredo Law, which would restrict the free flow of information online and damage the open nature of the internet should be amended or dropped. By contrast, the Civil Rights Framework for the Internet is a positive piece of legislation which should be adopted and, if possible, improved. More integrated policies to increase internet access, improve the bandwidth and promote digital inclusion should be implemented. Existing policies should be subject to regular review to ensure their effectiveness.

Sound internet policy can only take place with the full participation of all those concerned. In particular, civil society has a leading part to play in ensuring the protection of digital freedoms in Brazil. It is hoped that this report will contribute to shaping the debates that are currently taking place in this area so that the Internet remains the open, pluralistic, vibrant, space it is today.

Annex I – Map of the actors

There is a range of actors who discuss and debate issues around the internet and freedom of expression online in Brazil. Some Brazilian civil society organizations, government and private companies related to this scope of interest, are listed below with a brief description of how they have worked in this area.

Civil Society

FGV

The Getulio Vargas Foundation, recognized for its quality and excellence in education, has become frequently involved in issues related to the Internet in Brazil. FGV was directly involved with the formulation of public consultation and the Brazilian Civil rights Framework, as well as the wording of the draft bill on protection of personal data. Working constantly in the legal field, FGV has also exerted actions related to copyright issues and Internet governance. The FGV also holds the CTS (Centre of Technology and Society), an organization with the institutional mission to study the legal implications stemming from the social and cultural advancement of information technology and to develop projects related to those areas.

NUPEF

The Institute NUPEF (Center for Research, Studies and Training) aims at addressing issues related to information technology and communication policies and their relations with human rights, sustainable development, democracy and social justice. Its action is justified through activities that promote reflection and analysis of freedom of expression, privacy, cultural diversity, access to knowledge and information among other fundamental rights.

Safernet

The Safernet is a civil association that is organized to fight the misuse of the Internet to direct practices that violate human rights. Through projects that range from the center of the allegations of cyber crime efforts in the areas of education and association prevention, it has helped ensure that human rights will be guaranteed in the virtual environment

IDEC

The Brazilian Institute of Consumer Protection's mission is to raise awareness of society about their rights as consumers, besides promoting the defense of ethics in consumer relations. In this sense, IDEC has played a central role in the debate with respect to broadband in the country as well as intellectual property, organizing campaigns and advocacy actions. It has also been a protagonist in the Internet Steering Committee, as a representative of Brazilian civil society.

Proteste

The Protest is also an organization dedicated to the area of consumer protection. They have been active in telecommunications interface, focusing on the issues of broadband.

Intervozes

Intervozes is a collective that strives to guarantee the right to communication in Brazil. It operates mainly focusing on the impact on broadcasting and telecommunications policies. It has played a central role in the National Broadband Campaign.

Barão de Itararé

The Center for the Study of Alternative Media Barão de Itararé works primarily with left-wing bloggers in the country. It promotes meetings with national, state and regional bloggers with an

agenda that ranges from themes related to the writers' interests to issues related to the state of the art political left debates. It supports the National Broadband Campaign. The group wants to form a cooperative of attorneys to provide support to bloggers who suffer lawsuits motivated by the expression of their opinions.

Instituto Bem Estar Brasil

Instituto Bem Estar Brasil is focused on promoting social and digital inclusion through the offering of free technological services. It develops projects related to the installation of community internet providers and digital cities. It supports the National Broadband campaign. . .

Coletivo digital

Coletivo Digital is a non-governmental organization conceived in late 2004 to carry forward the experience of its members in the areas of digital inclusion. Since then, the Digital Collective has worked in various projects that were active on different fronts of the digital inclusion movement. As an example we have the installation of distance learning centers.

Transparência hacker

The group is active in the interface of technology and access to information, politically focusing on defending open government data. They also work with technology appropriation.

Casa de Cultura Digital e Fora do Eixo

They are a collective focused on the production of alternative multimedia content, with a great interface with the internet. They also work with technology appropriation.

Rede Mocambos

Rede Mocambos is a media network that connects through the information and communication technologies in ex-slave quilombola communities in rural and urban areas. The project action takes place in the search for partnerships in various sectors to collaboratively and collectively enable the reunion of different programs, projects and actions aimed at human, social, economic, cultural, environmental development and the preservation of historical heritage of those communities.

Índios online

Índios Online is a network composed of indigenous groups seeking the human, cultural, social and economic development of their nations without distinction of nationality, ethnicity or beliefs. In order to facilitate information and communication for many indigenous peoples and to society in general, the project promotes the connection to the Internet in Indian villages, houses, Lan Houses, schools and universities, forming an alliance of study and work groups for the benefit of native communities and of the planet.

Government

Anatel

Linked to the Ministry of Communications, Anatel's mission is to promote the development of telecommunications in the country and to provide a modern and efficient telecommunications infrastructure. Anatel is responsible for the regulation of telecommunications.

Ministry of Communications

The Ministry of Communications created by Decree-Law 200 of February 25th, 1967, is responsible for the incompetence of broadcasting services, postal services and telecommunications, as well as having responsibility for formulating and proposing national policies in these areas. Within the scope of the internet, besides being responsible by Anatel, the

Ministry of Communications is responsible for digital inclusion policies. Therefore, issues related to broadband and distance learning centers are held by this organization.

The Brazilian Ministry of Science and Technology

The Ministry of Science and Technology (MCT) created on March 15th, 1985 has strategic functions regarding the development of research and studies, which result in the generation of new forms of knowledge and technologies, as well as in the creation of products, processes, management structures and national patents. MCT is responsible for issues related to technological innovation, in addition to playing a role in inclusion policies.

Ministry of Culture

This area of culture, previously put together with Education, earned its rightful autonomy and importance on March 15th, 1985, with the creation of the Ministry of Culture. As regards its action on the subject of the Internet, the Ministry performs duties in the preparation of a digital culture and in supporting cultural productions in digital media.

Businesses

ANID

The National Association for Digital Inclusion, created in 2007, has as main objectives the promotion of digital inclusion in Brazil. It is characterized as an association of small providers in northeastern Brazil.

Sinditelebrasil

The National Union of Telephone Companies and Mobile Services and Personnel (SINDITELEBRASIL) was established and has been operating since September 2003 for the purpose of coordination, advocacy and legal representation of businesses in the category of mobile and fixed telephone services nationwide. The union intends to be heard by the government and to seek their participation in the development of standards and legal provisions that concern the sector.

Abranet

The main objective of Abranet is to provide support to Brazilian companies and providers of access services, information, research, development and other professional activities related to Internet and Information Technology, including academia and researchers working in the areas of Internet and Information Technology in the country.

Besides the organizations mentioned, we consider the large corporate institutions that operate in the Internet business in Brazil. Hence, we put together a list of the 10 most visited websites in Brazil during 2011, according to a research by "Alexa Internet Inc", an Internet service owned by Amazon that measures the amount of users visiting a specific domain.

1. Brazilian Google
2. Facebook
3. International Google
4. Youtube
5. UOL
6. Windows Live
7. Globo.com
8. Blogspot
9. Orkut

10. Yahoo

It is also worth remembering that institutions with the greatest number of hits, such as Google and Facebook, have headquarters in Brazil, and that they have political concerns. There are specific sectors within these companies to do "advocacy", that is, to discuss public policy from the perspective of their corporate interests.

Internet Steering Committee

The CGI, created in May 1995, is nowadays the agency responsible for coordinating the activities of the Internet, and for registering and managing domains (sites) in Brazil. The agency is independent of government, and its members are rotating and chosen by elections happen every 2 years. Moreover, it is important to highlight the election model implemented by CGI, since their representatives are elected by their peers, that is, civil society votes for civil society, for example.

Brazilian Internet Forum

The Internet Forum in Brazil was convened by CGI.br in October 2011 to debate issues related to the internet in Brazil and worldwide⁷². 830 people gathered for the Forum from the public and private sectors, universities, civil society organizations, technicians, student and independent individuals. The Forum was based on a discussion of the internet governance principles defended by CGI.br⁷³. The resulting report is one of the most important documents for understanding the challenges of online freedom of expression.⁷⁴

⁷² ARTICLE 19 composed, along with other organizations, the Forum Mobilization Committee. The second edition occurred from July 3rd to July 5th. It was impossible to incorporate the results in this report.

⁷³ Full version of the principles for internet governance: <http://www.cgi.br/regulamentacao/pdf/resolucao-2009-003.pdf> access on June 29th 2012

⁷⁴ For a complete version of the I Internet Forum, please access <http://forumdainternet.cgi.br/forum2011/relatoria/>