Draft Bill no. 2.630, of 2020[1]

Establishes the Brazilian Internet Freedom, Responsibility and Transparency Law

The Brazilian National Congress establishes that:

Chapter 1
Preliminary Provisions

Art. 1 This law establishes norms, guidelines and transparency mechanisms for social network and private messaging services providers with the goal of ensuring safety, broad freedom of expression, communication and expression of thought.

First paragraph This law does not apply to social network and private messaging services providers that offer services to the Brazilian public with less than two million registered users, to whom the dispositions in this law will serve as parameters for the introduction of good practices programs, seeking to use adequate and proportional measures in the battle against inauthentic behavior and in the transparency of paid content.

Second paragraph The provision in the heading applies also to social network and private messaging services providers based abroad, as long as they offer services to the Brazilian public or at least one unit of the same economic group has an establishment in Brazil.

Art. 2 The dispositions in this law must consider the principles and guarantees in Laws No 9,504, of September 30th, 1997 - Electoral Statute;

[1] This translation was developed by Ivar A. Hartmann, Yasmin Curzi de Mendonça, Julia Iunes, Lorena Abbas and Bruna Diniz from the Center for Technology and Society at FGV Law School in Rio de Janeiro. Suggestions for improvement are welcome and can be submitted to cts@fgv.br.

No 8,078, of September 11th, 1990 - Consumer Defense Code; No 12,965, of April 23rd, 2014 - Brazilian Civil Framework of the Internet; and No 13,709, of August 14th, 2018 - General Personal Data Protection Act.

Art. 3 This law will be guided by the following principles:

I - freedom of expression and of the press;

II - guarantee of the personality rights, of dignity, of honor and of the individual's privacy;

III - the respect for the user in their free development of political preferences and of a personal worldview;

IV - the shared responsibility for the preservation of a free, plural, diverse and democratic public sphere;

V - the guarantee of trustworthiness and integrity of informational systems;

VI - promotion of the access to knowledge in conduction of public interest matters;

VII - broad and universal access to the communication means and to information;

VIII - consumer protection; and

IX - the transparency in the rules for serving ads and paid content.

Art. 4 This law has as its objectives:

I - the strengthening of the democratic process by means of the battle against inauthentic behavior and against artificial content distribution networks and the fostering of access to diversity of informations on the internet

in Brazil;

II - the defense of freedom of expression and the obstruction of censorship in the online environment;

III - the search for more transparency in the moderation practices of third party content in social networks, with the guarantee of opportunity to respond and broad defense;

IV - the adoption of mechanisms and information tools concerning sponsoring and advertising content made available to users.

Art. 5 For the purposes of this law, the definitions are as follows:

I - identified account: an account the holder of which has been fully identified by the application provider, with confirmation of data previously provided by the holder;

II - inauthentic account: account created or used with the purpose of taking over or simulating the identity of third parties to deceive the public, with the exception of the right to use a social name and a pseudonym in accordance with this law, as well as the explicit humor or parody intent;

III - artificial distribution network: behavior coordinated and articulated via the use of automated accounts or of technology not supplied or authorized by the internet application provider, with the exception of those that employ an application programming interface, with the goal of artificially impacting the distribution of content;

IV - automated account: account predominantly managed by any computer program or technology to simulate or substitute human activities in the distribution of content in social network and private messaging services providers;

V - content: data or information, processed or not, held in any

medium, support or format, shared on social networks or private messaging services, regardless of the form of distribution, publication or transmission used by the internet;

VI - publicity: advertising messages conveyed in exchange for money payment or a value that can be estimated in money to the companies encompassed by this law;

VII - sponsor: increase in the reach of content through money payment or a value that can be estimated in money to the companies encompassed by this law;

VIII - social network: internet application intended to perform the connection of users among themselves and having as its central activity the communication, the sharing and the dissemination of content in a common information system, by means of accounts that are connected or accessible to each other in an articulated fashion; and

IX - private messaging service: internet application that enables the sending of messages to specific and determinate receivers, including those protected by end-to-end encryption, such that only the sender and the receiver have access to its content, excluding those primarily intended for corporate use and electronic mail services.

Sole paragraph For the purposes of this law, content providers consisting of journalistic companies will not be considered social network providers on the internet, in accordance with article 222 of the Federal Constitution.

Chapter 2
Liability and Transparency in the use of Social Networks and Private Messaging Services

Section I
General Provisions

Art. 6 With the goal of protecting freedom of expression, the access to information and fostering the free flow of ideas on the internet, social networks and private messaging services, within their services and respective technical limitations, shall adopt measures to:

I - forbid the functioning of inauthentic accounts;

II - forbid automated accounts not identified as such, meaning those the automated character of which was not informed to the application provider and, publicly, to the users; and

III - identify all sponsored and advertising content the payment for distribution of which was made to the provider of social networks.

First paragraph The prohibitions in the heading shall not imply restriction to expression that is artistic, intellectual, with satirical, religious, political, fictional, literary content or to any other form of cultural manifestation, in accordance with arts. 5, IX and 220 of the Federal Constitution.

Second paragraph The measures to identify sponsored and advertising content covered by this article must be made available in highlighted fashion to users and kept including when the content or message is shared, forwarded or passed on in any way.

Third paragraph The providers of social networks and private messaging services shall develop continuous procedures to improve their technical capabilities for the procurement of the measures established in this article.

Fourth paragraph The providers of social networks and private

messaging services shall enable technical measures to identify accounts that show usage incompatible with human capacity, stressing them in their terms of use and other documents available to users.

Fifth paragraph The providers of social networks and private messaging services shall develop usage policies that limit the number of accounts controlled by the same user.

Section II
Of Account Registration

Art. 7 Providers of social network and private messaging services may require of users and those responsible for accounts, in case of complaints of violations to this law, in case of signs of automated accounts not identified as such, of signs of inauthentic accounts or also in cases of a court order, that they confirm their identification, including by means of presenting a valid id document.

Sole paragraph Providers of social network and private messaging services shall develop technical measures to detect registration fraud and the use of accounts in disagreement with legislation, and are obligated to convey them in their terms of use and other documents available to users.

Art. 8 Private messaging services that offer services tied exclusively to mobile phone numbers are obligated to suspend the accounts of users who have had their contracts rescinded by phone companies or by the users of the service.

First paragraph For the observance of the heading, the private messaging services shall request the phone numbers of rescinded contracts to telephone companies, which will make them available, without the addition of any other registration data, in accordance with regulation.

Second paragraph The heading does not apply to cases in which the users have requested their account be tied to a new phone number.

Section III
Of the Private Messaging Service Providers

Art. 9 The private messaging service providers must establish use policies in order to:

I - design its platforms to maintain the interpersonal nature of the service;

II - limit the possibilities of forwarding the same message to users and groups, as well as establish a maximum number of members per group;

III - institute a mechanism to asses the prior consent from users regarding their inclusion in a message group, a transmission list, or alike mechanisms of forwarding messages to multiple recipients; and

IV - disable the authorization by default to include individuals into groups or transmission lists or similar mechanisms of forwarding messages to multiple recipients.

Art. 10 The private messaging service providers must keep the records of messages sent through mass forwarding, for the period of 3 (three) months, securing the privacy of the messages content.

First paragraph Mass forwarding is defined as the sending of the same message for more than five users, in an interval of up to 15 (fifteen) days, or for chatting groups, transmissions lists or alike mechanisms that groups together multiple recipients.

Second paragraph The records referred to in this heading must have the indication of users that did the mass forwarding of messages,

containing date and time of this forwarding, and the quantitative total of the users that received that message.

Third paragraph The access to these records will only occur with the purpose of determining the liability of mass forwarding illicit content, to constitute evidence in criminal investigation and procedural penal instruction, only by court order, in the terms of Section IV from the Chapter 3 of the Law No 12,965/2014[2].

Fourth paragraph The message recording obligation under this law is not applied to the messages that reach a total quantitative inferior of a thousand users, and must be obliterated in the terms of the Law No 13,709/ 2018[3].

Art. 11 The use and trading of external tools by the private messaging service providers aimed at mass messages forwarding are forbidden, except in the case of standardized technological protocols regarding internet applications interaction.

Sole paragraph The private messaging service providers must adopt policies within and on the technical limits of its service, to cope with the use of these tools.

Section IV
Of the Moderating Procedures

Art. 12 Internet application providers bound by this law must ensure the right to access of information and freedom of expression, of its users within the process of elaborating and applying their terms of use, making mechanisms of appealing and due process available.

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[2] The Law 12,965/2014 is the Brazilian Civil Framework of the Internet that establishes principles, guarantees, rights and duties for the use of the internet in Brazil.

[3] The Law 13,709/2018 is the Brazilian Personal Data Protection Act that establishes the principles and rules for the treatment and management of personal data.

First paragraph In the event of complaint or of a measure applied in function of applications' terms of use in this law, devolved upon content and account in operation, the user must be notified about the grounds, the process of analysis and the application of the measure, as well as about the deadlines and procedures for appealing.

Second paragraph Providers will dismiss users' notice if verified harms of:

I - immediate and difficult to repair harm;

II - information or users' security;

III - violation of children and adolescents' rights;

IV - crimes classified on Law No 7,716/1989[4];

V - major reductions of usability, integrity or stability of the application.

Third Paragraph The right of users to appeal content and accounts made unavailable must be ensured by the provider.

Fourth Paragraph In the case of damage resulting from erroneous designation of content as violator of the applications' patterns of use or of what is determined in the present law, the providers will be responsible for repairing it, within service scope and technical limits.

Fifth Paragraph the defense period will be delayed in cases in which content uses manipulated image or voice, in order to fake reality, with the aim of inducing an error related to the identity of a candidate for public positions, except when encouraged by humor or parody.

[4] The Law No 7,716/1989 details the cases where racial discrimination should be considered as crime of racism.

Sixth Paragraph The decision over the moderation procedures shall ensure the right of response of the offended to the same extent and scope of content deemed inappropriate.

Section V
Of the Transparency

Subsection I
Reports

Art. 13 Social network providers shall produce quarterly reports of transparency, made available in their electronic websites, in portuguese, in order to inform the procedures and decisions over content generated by third parties in Brazil, as well as the measures employed for law compliance.

First paragraph The reports must comprise, at least:

I - the total amount of users that accessed social networks providers through means of connection located in Brazil as well as the amount of active brazilian users in the assessed period;

II - the total amount of measures of account and content moderation in reason of the fulfilment of private terms of use of social networks providers, specifying their motivation and methodology used for the detection of irregularities and the type of measures adopted;

III - the total amount of measures of account and content moderation adopted in reason of the fulfillment of the present law, specifying their motivation and methodology used for the detection of irregularities and the type of measures adopted;

IV - the total amount of measures of account and content moderation adopted and theirs motivations in reason of compliance with a court order;

V - total amount of automated accounts, artificial content distribution networks, detected by the provider, sponsored and advertising content unidentified, along with the corresponding adopted measures and their motivations and methodology of irregularities detection;

VI - total amount of measures of content identification and the types of identification, removal or suspensions that were later reversed by the platform;

VII - general features of the sector responsible for the policies applied to content generated by third parties, including information about the qualification, independence and integrity of the teams of content review by individuals;

VIII - the average time spent between the detection and the adoption of measures in relation to the accounts or content referred to in the itens II, III and IV;

IX – data related to engagement and interactions with content that have been identified as irregulars, including the number of views, sharings and reach; and

X – updates of policies and terms of use made within the quarter, the modification date and the grounds for its adoption.

Second Paragraph Data and report published must be made available along with open technology standards that allow the communication, accessibility and the interoperability between applications and data-sets.

Third Paragraph The transparency report must be made available to the public within 30 (thirty) days after the end of the quarter at issue.

Fourth Paragraph The report and data made available must appoint the relation between the automated accounts that were not identified as

such, accounts and content dissemination, in a way that is possible the identification of artificial networks of content dissemination.

Fifth Paragraph The absence of information made available, as prescribed by the heading, must be accompanied by appropriate technical grounds.

Sixth Paragraph Being the right of personal data protection protected, social network providers must facilitate data sharing with academic research institutions, including disaggregated data.

Subsection II
Of the Sponsoring and Advertisement

Art. 14 Social network providers must identify all sponsored and advertising content, so as to:

I - identify the account liable for the sponsoring or the advertiser;

II - allow the user access contact information related to the account liable for the sponsoring or the advertiser account; and

Art. 15 Social network providers that offer services for sponsoring political advertisement or contents that mentions a candidate, coalition or party must make the entire set of advertisements available to the public for the purposes of enforcement by the Electoral Justice courts and other purposes, and also:

I - the amount expended by the candidate, party or coalition, on advertising on the Internet by sponsoring content on the application provider;

II- the identity of the advertiser, by indicating the Corporate Taxpayer Registry or the Individual Taxpayer Registration of the one liable for contracting the advertisement;

III - broadcasting duration;

IV - identify that the content is related to electoral propaganda, as prescribed by article 57-C of the Law No 9,504/1997[5];

V - general features of paid audience.

Art. 16 Social network providers shall offer tools for the users to obtain information about the pushed and sponsored contents with which the account had contact in the past 6 (six) months.

Art. 17 Social network providers shall require the validation of the identity of the advertisers and those responsible for the accounts that sponsor content, which may include the presentation of a valid identity document.

Sole paragraph Name and identity of advertising and sponsoring contractors must be kept in secrecy by application providers, which may be required by judicial request, as prescribed in the article 22 of the Law No 12,965/2014[6].

Chapter 3
Public Power Action

Art. 18 Social networks accounts used by agencies and bodies of direct or indirect Public Administration and by political agents whose competence is determined by the Constitution are considered of public interest, and are therefore bound to the principles of Public Administration, especially the accounts of the:

[5] The Law No 9,504/1997 refers to electoral norms; Article 57-C details the content that is allowed to be sponsored on the internet.
[6] The Law No 12,965/2014 is the Brazilian Civil Framework of the Internet; Article 22 details the cases where there is the possibility of judicial request regarding the access of internet applications.

I - holders of elective mandates from Federal, State and District, Executive and Legislative Branches,

II- those occupying the following positions on the Executive Branch:

a) Minister of State, Secretary of State, City Secretary, or equivalent;

b) President, Vice-President and Director of direct and indirect Federal, State, District, and Municipal Public Administration; and

c) President, Vice-President, and Counselor of the Federal, State, District and Municipal Courts of Accounts.

First paragraph The accounts identified in the heading of this article cannot limit the access of others accounts to their own posts;

Second paragraph In the case of possessing more than one account within the same platform, the politician shall identify that which officially represents her mandate or position, with the other ones being excluded from the scope of this article.

Art. 19 Direct or Indirect Public Administration agencies and bodies shall make available in its transparency portal the following data about advertising or sponsoring content on the Internet:

I - contract value;

II - data from the contracted company and contracting model;

III - campaign content;

IV - allocation of resources' tools;

V - parameters for defining the target audience;

VI - list of the pages, apps, games, channels and other media in which the resources are applied;

VII - number of impressions and the amount applied to the sum of impression;

Art. 20 Public Administration shall suppress allocation of advertising for websites and social network accounts that perpetrate acts of promoting violence against a person or a group of people specially if in reason of its race, etinics, sex, genetic traits, philosophical convictions, physical, immunological, sensorial or mental disability, for being arrested or by any particularity or condition.

Art. 21 The fulfilment of Government's constitutional duty to provide education in all levels of teaching comprises training, integrated with other educational practices, for the safe, conscious and responsible use of the internet, involving campaigns for responsible use of the internet and fostering transparency about sponsored content.

Art. 22 The public authorities, especially the Prosecution Office and the Judiciary branch, must develop actions to respond to the collective harms which result from conducts defined by this law, including the creation of specialized areas and staff training.

Art. 23 Public entities and other institutions of the Public Administration, whether direct or indirect, must produce internal norms regarding its social communication strategy, as well as a mechanism accessible to the public to attend to requests of posts removal or review.

First paragraph Institutions referred to in this article may establish a good practices manual, in a recommendatory nature, for the use of their employees, exclusively in the exercise of their functions.

Second paragraph The possible removal referred to in this article does not release the entities to make their preservation, regarding the purpose of public acts documentation and transparency, according to the Law.

Art. 24 It is illegal to stalk or in any way to impair public officials due to private nature contents shared by them, out of the exercise of their functions and that do not constitute matters which the Law do not provide to forbid.

Chapter 4
Transparency and Responsibility on the Internet Council

Art. 25 The National Congress will establish, in the 60 (sixty) days after the publication of this law, through a proper act, a council that will have as attribution the conduction of studies, legal opinions and recommendations about freedom, responsibility and transparency on the internet.

First paragraph The Council for Transparency and Responsibility on the Internet is the body responsible for monitoring the measures referred to in this law and it is incumbent to:

I - formulate its internal regiment that, to become valid, must be approved by the Federal Senate Bureau;

II - formulate a Code of Conduct for the social networks and private messages services, to be evaluated and approved by the National Congress, applicable for the guarantee of principles and goals established in the articles 3 and 4 of this law, regarding relevant phenomenons in platform usage by third parties, including, at least, disinformation, hate speech, harm and intimidation;

III - evaluate the data in the reports referred in the article 14 of this law;

IV - publish indicators about the compliance of the Codes of Conduct by the sector;

V - evaluate the adequacy of terms of services adopted by social networks and private messages services;

VI - organize, annually, a national conference on freedom, responsibility and transparency on the internet;

VII - develop studies for the creation of a financing fund of digital literacy in Brazil;

VIII - evaluate the moderation procedures adopted by social network providers, as well as the guidelines for its implementation;

IX - promote studies and debates to deepen the understanding of disinformation and how to combat it, in the context of internet and social networks;

X - certify the self-regulation agency that meets the conditions provided in this law; and

XI - establish guidelines and provide assistance to self-regulation and to the terms of use of social network providers and private messaging services.

Art. 26 The Council for Transparency and Responsibility on the Internet is composed of 21 (twenty-one) counsellors, with a 2 (two) years mandate, and 1 (one) reelection admitted, being:

I - 1 (one) representative from the Federal Senate;

II - 1 (one) representative from the Federal Assembly;

III - 1 (one) representative from the National Justice Council;

IV - 1 (one) representative from the National Council of the Prosecution Office;

V - 1 (one) representative from the Brazilian Internet Management Committee;

VI - 5 (five) representatives from the civil society;

VII - 2 (two) representatives from Academia and the Technical community;

VIII - 2 (two) representatives from providers of internet access, applications and content;

IX - 2 (two) representatives from the social communications sector;

X - 1 (one) representative from the telecommunications sector;

XI - 1 (one) representative from the National Council of Civil Police Chiefs;

XII - 1 (one) representative from the Federal Police Department;

XIII - 1 (one) representative from the National Telecommunications Agency (ANATEL);

XIV - 1 (one) representative from the National Council for the Self-regulation of Publicity (CONAR)

First paragraph The members of the Council for Transparency and Responsibility on the Internet will be approved by the National Congress

among Brazilian citizens over 18 years and with immaculate reputation.

Second paragraph Representatives from private sectors defined in paragraphs VI to XII must have notorious knowledge over matters such as the ones in this law and will be appointed by a procedure defined by their peers, by associations and representative entities from each sector.

Third paragraph The members of the transparency council provide relevant public service and will not receive remuneration for the exercise of their functions under the council.

Fourth paragraph The counsellors cannot be from the Executive, Legislative or Judicial Branches, neither a person who occupies a public office from which could be fired *ad nutum*, as well as a person bound or affiliated to a political party.

Art. 27 The President and Vice-President of the Transparency and Responsibility on the Internet Council will be elected among its members, with a 1 (one) year mandate, admitted 1 (one) reelection.

Art. 28 The Council for Transparency and Responsibility on the Internet, with the presence of the absolute majority of its members, will meet, ordinarily, with the periodicity stated in its internal regiment, in its head office in the National Congress.

Sole Paragraph The extraordinary convocation of the Transparency and Responsibility on the Internet Council can be made by the President of the Federal Senate or required by 5 (five) of its members.

Art. 29 The expenses for installing and maintaining the Council for Transparency and Responsibility on the Internet will be in the Federal Senate budget account.

Chapter 5

Regulated Self-Regulation

Art. 30 The providers of social networks and private messaging services may create an institution of self-regulation, aimed at transparency and responsibility in the use of the internet, with the following attributions:

I. creating and managing procedures on a digital platform aimed at transparency and responsibility in the use of the internet, which contains rules and procedures for deciding on the adoption of information measure, in compliance with the provisions of this law;

II. ensure the independence and expertise of its analysts;

III. provide efficient service for answering and handling complaints;

IV. establish clear, objective and accessible requirements for the participation of social network providers and private messaging services;

V. include in its staff an independent ombudsman in order to receive criticism and evaluate the institution's activities; and

VI. develop, in conjunction with mobile phone companies, best practices for suspending user accounts whose authenticity is questioned or is proven to be inauthentic.

First paragraph The self-regulatory institution must be certified by the Internet Transparency and Responsibility Council.

Second paragraph The self-regulatory institution may prepare and forward to the Internet Transparency and Responsibility Council the quarterly reports in compliance with the provisions of this law, as well as the information about policies for the use and monitoring of the volume of content shared by

the users of private messaging services.

Third paragraph The self-regulatory institution will approve resolutions and summary statements in order to regulate its analysis procedures.

Chapter 6
Sanctions

Art. 31 Without prejudice to other civil, criminal or administrative sanctions, the providers of social network and private messaging services are subject to:

I. a warning, with the appointment of the deadline for adopting corrective measures; or

II. a fine of up to 10% (ten percent) of the income of the economic group in Brazil in its last year.

First paragraph In the application of the sanction, the judicial authority will observe the proportionality principle, regarding the economic condition of the infringer and the consequences of the infraction in the collective sphere as well as its recurrence.

Second paragraph For the purposes of this law, it will be considered as a recurrent infringer, the one who repeats within 6 (six) months a previously sanctioned conduct.

Chapter 7
Final Provisions

Art. 32 The providers of social networks and private messaging services must have their head offices and appoint legal representatives in Brazil, making this information available on their websites, as well as maintaining access to their databases remotely from Brazil, with information referring to Brazilian users and for the content safekeeping in situations prescribed by Law, especially for compliance with orders from Brazilian judicial authorities.

Art. 33 The amounts of fines applied according to this law must be allocated to the National Fund for Basic Education Development (FUNDEB) and will be used in digital education and literacy actions.

Art. 34 Article 1 of the Law No 10,703/2003[7], becomes effective with the following wording:

"**Art. 1** ……...

First paragraph The registration referred to in the heading of this article will be carried out through the user's presence in person or through a digital process, according to regulation, containing, in addition to the full name and address:

I - in the case of individuals, the number of the identity document and the number of registration in the Individual Taxpayer Registry administered by the Federal Revenue Office;

II - in the case of a legal entity, the registration number in the National Register of Legal Entities administered by the Federal Revenue Office.

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Fourth paragraph The regulation of the registration referred to in the first paragraph must include procedures for verifying the veracity of the numbers of the registrations in the Individual Taxpayer Registration or in the National Register of Legal Entities registered in the Federal Revenue used for the activation of prepaid chips.

Fifth paragraph The government agencies involved in the regulation of the registration referred to in paragraph 1º and the telephone operators must maintain constant efforts to control the authenticity and validity of the records, including those that already exist."

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[7] The Law No 10,703/2003 refers to the registry of prepaid cell phone users and makes other provisions. The article 1 of this law establishes that: “It is incumbent upon the providers of prepaid telecommunications services, operating in the national territory, to maintain an updated user registry”.

Art. 35 Article 5 of the Law No 12,965/2014[8], becomes effective with the following amendment in item VIII and added the following items IX and X:

"Art. 5.....

VIII - internet application access records: information regarding the date and time of use of a given internet application by a given IP address and the gate, when network address translation is performed;

IX - Network address translation: the provision of a shared IP to more than one connection or single user, individualized through different gates; and

X - logic gates: devices that operate and work with one or more logic input signals to produce one and only one output."

The heading of article 15 of Law No 12,965/2014[9] has its effectiveness with the following text:

"**Art. 15** The internet applications provider constituted as a legal entity and which carries out this activity in an organised, professional manner and for economic purposes, shall keep the application access logs, including records that individualise an IP user unequivocally, under secrecy, in a controlled and secure environment for 6 months, as detailed in regulation."

Art. 36 This law shall come into force:

I - after its official publication, regarding articles 25, 26, 27, 28 and 29; and

II - after 90 (ninety) days of its official publication, regarding other articles, in accordance with article 16 of the Federal Constitution.

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[8] The Law No 12,965 is the Brazilian Civil Framework of the Internet that establishes principles, guarantees, rights and duties for the use of the internet in Brazil. The article 5 of this law establishes that: "For the purposes of this law, it is considered: (...)".

[9] The Law No 12,965 is the Brazilian Civil Framework of the Internet that establishes principles, guarantees, rights and duties for the use of the internet in Brazil.