NEGATING NEUTRALITY: THE MARCO CIVIL DA INTERNET, INFORMATIONAL CAPITALISM AND CONTESTING DIGITAL RIGHTS AT THE PERIPHERY

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Abstract

This dissertation critically examines the development of one of the world's first civil rights frameworks for Internet users, the *Marco Civil da Internet*, created in Brazil 2009-2014. This bill of digital rights was the object of international acclaim as it purported to represent a robust set of protections for citizen users in the face of state and corporate abuses of power. One of the central arguments advanced in this dissertation is that for the Marco Civil to serve as an effective safeguard for citizen users it must confront the exploitations and inequities of the greatest concentration of power wielded on and through the Internet: that of informational capitalism. Chronicling how and why the Marco Civil failed in this regard – and examining the implications of its emergence in a society at the periphery of the global system of informational capitalism - is the principal contribution represented by this study.

In order to present this critique of the Marco Civil, this dissertation marries together a discourse and political-economic analysis to chart the symbolic and material dimensions of power present within informational capitalism, that in turn shaped the formation of this bill of digital rights.

The conceptual and theoretical foundation of this dissertation is comprised of: an analytical framework for informational capitalism that accounts for its logics, mechanics and its global political-economy; a genealogy of digital rights that analyses how the dominant paradigm has been established in a manner conducive to the workings of informational capitalism; a history of communication technologies and policy in Brazil and their relationship to Brazil's status within the global capitalist system.

The case study chapters examining how the Marco Civil was created are based on semi-structured elite interviews with representatives of the principal economic, civic and government stakeholders, document analysis of all iterations of the bill and the records of public consultation, and discourse analysis of the key discursive interventions including blog posts, speeches and editorials.

This dissertation presents the concluding argument that in order for digital rights to provide a meaningful check on the exploitations of informational capitalism they must be premised on collectivist, public and structural principles and must be sensitive to socio-cultural and political-economic particularities as opposed to a homogenizing approach.

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The conceptual genesis of this dissertation occurred in 2012, I conducted field research in Brazil in 2014 and 2015, intermittently wrote these chapters between 2016-2020, and prepared the manuscript for defence in 2021. During the span of these 9 years, I have also become a father three times (to three remarkable girls), taught dozens of courses, and muddled my way through a global pandemic. As such, this PhD has at times felt like an interminable undertaking. The fact that we do now arrive at its conclusion is only possible owing to the contributions of some important people that merit acknowledgement here.

I should begin by recognising the generous financial support of SSHRC, York University and the Sasakawa Peace Foundation, which provided me the time and resources necessary to carry out such an ambitious project. The travel funding provided by the latter group allowed me to carry-out three weeks of field research in Brazil: a vital endeavor for this dissertation, as well as providing some of my fondest memories of recent years. That research trip allowed me to travel across a beautiful, fascinating country and meet a cast of people – protagonists in the story of the Marco Civil – whose gracious willingness to talk to me and introduce me to others made telling this story possible.

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PART I

Chapter 1 - Introduction

The *Marco Civil da Internet:* Informational capitalism, the digital discourse and the empty promise of a civic Net

> "*Values of individual freedom and societal justice are not, however, necessarily compatible*"
>
> (Harvey 2005, p.41)

Figure 1

Activists hold up banner in the Brazilian Congress in 2014 in support of the Marco Civil da Internet.

Prolegomenon to a critique

On April 23rd, 2014, in a packed conference hall in São Paulo, and amidst rapturous applause, the Brazilian President, Dilma Rousseff signed her presidential seal onto a legal framework of digital rights, the *Marco Civil da Internet*. Surrounded by prominent Brazilian technologists and civil society organizers, as well as foreign dignitaries such as European Commission Vice President, Neelie Kroes, World Wide Web inventor, Tim Berners-Lee and President of ICANN, Cherine Chalaby, Rousseff

heralded the law for guaranteeing "the rights and duties for the use of the Internet in the world" (McCarthy 2014).

Outside of the signing ceremony, international reaction to the framework of digital rights was similarly celebratory, as the *Marco Civil da Internet* (hereafter simply the 'Marco Civil') was heralded as a global template; a "Magna Carta for the web" (Economist 2014). The codification of digital rights had indeed mushroomed in the preceding decade, with more than thirty charters drafted by activists and policymakers since 1999 (Gill, Redeker & Gasser 2015). These started to proliferate in the early to mid-2000s – "a veritable digital rights movement" (Isin & Ruppert 2015, p.161) - in response to the myriad measures by governments and corporations to control user communication online. Efforts to codify civic safeguards for Internet users seemed especially urgent in the wake of Edward Snowden's revelations about the global scope of electronic state surveillance (Greenwald 2015). The prospect therefore of any country legislating a framework of civic values for the Internet - based on a conceptual trident of network neutrality, freedom of online expression and digital data privacy - did indeed seem like cause for celebration.

Certainly, when I stumbled out of the doors to the Brazilian Chamber of Congress late at night just one month earlier, at the conclusion of the historic vote which converted the Marco Civil into law, I shared the sense of achievement. Watching the bill's rapporteur, Alessandro Molon, locked in a victorious embrace with members of Brazil's civil society organizations, my feelings too were those of having witnessed an unlikely triumph. During five years of bitter political conflict, and relentless interest group lobbying, the prospect of the Marco Civil ever becoming law had seemed vanishingly small.

But it was in the process of trying to understand how the Marco Civil could have been approved in the face of such formidable opposition - undertaking a critical policy analysis mapping those disputes - that I called into question the premise for celebration. Did the Marco Civil in fact represent a *civic* framework of rights, one that safeguarded the Internet as a medium that nourished rather than undermined Brazil's democracy? And could the bill truly be considered *universal*, a globally transferable legislative blueprint? Instead, the contrarian contention at the heart of this study, is that while the Marco Civil does indeed constitute a framework of digital rights, it is neither substantively civic, nor universal.

The argument that I develop in this thesis is that the law in fact did little to secure a medium of democratic communication for Brazil's Internet users. The safeguards prevalent in the globally dominant paradigm of digital rights as well as the Marco Civil are oriented around the values of expression and participation (at the expense of justice and equality), are built atop a foundation of consumption (rather than civics), premised upon individualist, technical, market-based fixes (instead of collectivist, political-economic and structural reforms) and were heavily influenced by dominant economic actors such as web platforms, the telecoms sector and Brazil's media giants (and thus agnostic to the Internet's commercialism, control and concentration). Moreover, rather than a universal template, the Marco Civil needs to be understood as contingent upon the political-economic and socio-cultural context of Brazil's status at the margins of global capitalism.

It is essential to question the dominant assumptions around the Marco Civil because of the Internet's significance as a potentially democratic medium of communication, and the faith placed in the Marco Civil, and similar digital rights frameworks, by civil society organizations and governments around the world as a means to realise that "vulnerable potential" (Coleman and Blumler 2009, p.9). Concerns amongst lawmakers, citizens and activists around online disinformation, platform monopolies and data privacy have achieved unprecedented visibility, and the Marco Civil appears to represent a plausible solution.

It is also essential to ask the question, what could this have been but ultimately was not? This is not an exercise in pedantry, but a fundamental requirement to understand how we arrive at our common-sense understandings, in this case of civic communication online, and what possibilities are precluded in the process. Identifying these untrodden paths and the rationale for their elision offers nothing less than an alternative and potentially much more substantive vision of what can constitute a civic Internet. The prefix to this study's title, '*Negating* Neutrality', rather than 'network neutrality', is indeed a marker of the dissident orientation of this research - contesting the dominant understanding of the Marco Civil as a substantive set of civic safeguards for Internet users.

More than simply contrarian, however, this study is animated by a set of questions that aims to produce deep insights into the general and the particular dimensions of this instance of Internet policymaking: into the broad set of forces that constrain the civic potential of digital rights, and the

manner in which those forces materialised in the particular context of Brazil's history, culture and political-economy, and how those in turn shaped the form and significance of the Marco Civil.

What then is the framework that allows us to pursue these enquiries? How can we appreciate how the dominant paradigm of digital rights has seen its civic value neutered? What is the nature of the threats posed to Internet users/qua citizens that digital rights are supposed to rebuff, that were evident in a particular manifestation in Brazil, and in a general form across the world?

I contend that when the object of dispute (and analysis) is the Internet, a globally diffused information network that underpins the economic interests of the world's largest corporations and nation states, then the panorama that presents itself most clearly is that of informational capitalism; It is both an observable empirical phenomenon as well as an analytic schema. It is a lens through which many scholars have sought to assert the salience of information to contemporary capitalism and describe how the circulation and commodification of information impact upon social justice and democracy (Castells 2000; Fuchs 2010; Cohen 2019).

Informational capitalism represents a prominent – perhaps the dominant one when we consider the informationalisation of industrial processes – mode of production and accumulation within the global economy. It manifests continuities with earlier forms of capitalism, in terms of its logics and inequities, but also exhibits significant novelties in terms of the primacy of immaterial commodities. Web platforms, content production and telecommunications companies operate at the vanguard of the system, but the financial services, pharmaceutical and agri-business sectors, are also heavily 'informationalised', while even traditional manufacturing is increasingly dependent on information as an input into production (Dyer-Witheford 2015; Cohen 2019).

A succinct definition of informational capitalism is offered by one of its foremost theorists: "In the informational mode of capitalism, surplus value production and capital accumulation manifest themselves increasingly in symbolic, ''immaterial,'' informational commodities and cognitive, communicative, and cooperative labor. The accumulation of capital, power, and definition-capacities on a transnational scale is strongly mediated by new media" (Fuchs 2009, p.393).

It is under the conditions of this economic system that the development of any set of digital rights for the Internet would be contested, a system in which the logics of profit and control prevail, a system in

which an information network truly harnessed for civic ends would be anathema. Moreover, this particular set of disputes occurred in Brazil, a society and a market at the periphery of this system, a reality that shaped the nature of the Marco Civil and complicates the triumphant claims that its contents represent a *universal* framework of civic values for the Internet. In effect: “write once, run anywhere”.[1]

I am not, of course, the only researcher that identified in the Marco Civil a fascinating object of study. Many Brazilian scholars have produced rich and detailed accounts of the Marco Civil’s tumultuous five-year journey from a cherished vision of Brazilian technologists and activists to its passage into law, via unprecedented online consultations, intense corporate lobbies and indefatigable civil society advocacy. These accounts centre alternately on the legal novelties of the bill (Brito 2015; Santarém 2010), its innovative policy development (Papp 2014; Abramovay 2017), and the role played by civil society activism (Solagna 2015). The Marco Civil has also formed part of other works by international scholars focused on the significance of the Internet in Brazil’s democratic practices (O’Maley 2015). The common thread that runs through these works is, to varying degrees, in framing the Marco Civil as an improbable triumph for a ‘free and open’ Internet.

The uniqueness therefore of this account is that I contend that the digital rights of the Marco Civil accommodate, rather than challenge, the systemic inequities of the Internet, that in turn derive from the logics of informational capitalism. I identify that informational capitalism is a system advanced through discursive and material power, and that we need to be attentive to both dimensions in order to understand how it sustains itself. As such, I lay out my dual analytical approach for using discourse and political-economic analysis to examine how the Marco Civil was denuded of genuine civic potential. Finally, I present my argument that as informational capitalism is an uneven global system, we need to understand how it manifests itself at the periphery in order to appreciate how the Marco Civil was not a smoothly replicable template, but a fiercely contested and highly contextual phenomenon.

These arguments will be developed through a chronological analysis of the Marco Civil’s policy development, and based upon interviews with key actors in all of the relevant stakeholder organizations – government, civil society, technical community, corporate sectors – as well as other

[1] A prominent saying within the software community that describes the broad application of particular programming languages.

primary sources such as political speeches, blog posts and media articles and secondary sources in the form of academic research. The results of this study reveal the civic deficiencies of the dominant framing of digital rights, challenges their perceived universality, and provides new insights into the particular characteristics and adaptations of informational capitalism at the margins of the system.

Defining *digital* rights

The fact that digital rights elude ready definition is one of the few things on which scholars of the topic concur (Isin & Ruppert 2015; Goggin et al 2017; Karppinen & Puukko 2020). The panoply of applicable names reveals the uncertainty: user rights; Internet rights; Internet-related human rights; rights of the digital era (Pettrachin 2018). Partly, the lack of clarity derives from uncertainty around their intellectual lineage. Do they represent a reimagining of venerable rights such as freedom of expression and assembly for the Internet-era, or a set of 'digital native' rights such as 'the right to be forgotten'? Is there a direct line to be drawn to the 'human rights' tradition, or does the moral, political and technological scope of digital rights represent a radical disjuncture? Do the champions of digital rights build upon the 'communication rights' movement of the 1970s, or is that history largely disregarded? Can 'network neutrality' be conceptualised as a right at all? These questions are important, and will all be addressed in the pages of this dissertation, but for now it suffices to delineate the concept of digital rights as it applies in this study.

What is undisputed is that the codification of digital rights – by civil society and government actors – represents *a programmatic response to the exercise of repressive power within informational capitalism*. Hintz and Milan (2011) chronicle the transition within cyberspace from "policies of liberation" to "policies of control" that included the rapid rise of digital state surveillance, the blocking of websites by authoritarian governments and the throttling of web traffic by telecoms companies. 'Netizens' developed a commensurate awareness that excessive state and private power over and through the Internet should be checked by advancing an agenda of 'user rights'.

As Karppinen and Puukko (2020) insightfully observe, the recourse to rights was not inevitable, "debates on these issues could conceivably rely on other normative frameworks, such as the public interest, social justice, democracy, or welfare". Crucially also for the perspective of this study, "the term "right" is itself indeterminate, so its uses and effects depend on who gets to fill it with meaning" (p.307-308). The 'who' of that statement, I argue, include precisely those state and private actors

whose repressive power is supposed to be checked by the exercise of digital rights. I elaborate that point in the following chapter, but it suffices to note here that the agenda of digital rights, by the time of writing, has become a cascade of initiatives, enumerated at over 50 by a recent large-scale content analysis (Pettrachin 2018).

There is a huge variety in the type of initiatives that advance an agenda of digital rights – described by Gill, Redeker and Gasser (2015) as "digital constitutionalism" – from manifestos devised by advocacy organizations (eg. The *Association for Progressive Communication*'s 'Internet Rights Charter' in 2006), to inter-governmental statements (the 'Charter of Rights and Freedoms for the Internet' by the *Internet Governance Forum* in 2014), to national legislation (eg. Brazil's the 'Marco Civil da Internet' in 2014). Moreover, a small cluster of groups has emerged within civil society whose principal remit is the advancement of digital rights. These include the international *Access Now* group, the Pakistani *Digital Rights Foundation*, and the *Digital Rights Centre* in Canada. Other better-established civil society organizations (CSOs) that possess a more varied agenda, but also advocate for digital rights, include the *Electronic Frontier Foundation*, Pirate Parties and *Article 19* (with the latter two prominent in the case of the Marco Civil). Within this complex network of organizations and initiatives, there is more diversity than coherence. As Isin and Ruppert (2015) note, "if there is indeed a digital rights movement, it is itself dispersed, decentralized and heterogeneous, involving many groups, tactics, visions and demands" (p.163).

Research shows, however, that there appears to be a dominant paradigm in terms of the nature of the digital rights that are promoted (Padovani, Musiani & Pavan 2010; Gill, Redeker & Gasser 2015; Isin & Ruppert 2015; Pettrachin 2018). I provide more detail on this in the next chapter, however, for now it suffices to note that a dominant framework for digital rights has emerged that combines a reimagining of traditional civil rights for the Internet, in the form of privacy and freedom of expression, with digital native rights in the form of access, openness and innovation. This agenda also exhibits an uneasy tension between rights claims based upon the figure of the 'citizen', and those focused upon the 'consumer'. More critically, we can also identify that it is a framework characterised by "the trope of freedom" (Franklin 2013, p.143), and is populated by individualised liberties, and technical and market-based fixes. Although these can broadly be interpreted as efforts to safeguard individuals against the repressive potential of power exercised on and through the Internet, the essence of my critique is that while this dominant imaginary of digital rights is bound up in a damage limitation paradigm (rather

than attempting to actually establish a civically-oriented Internet) it still fundamentally fails to check the exploitations and inequalities wrought by the greatest concentration of power in the digital age: that bound up within the system of informational capitalism. The fact and the causes of this failure is a critique I develop throughout these pages, particularly in the next chapter.

Theory and methods: tracking power through structure and symbols

Before proceeding further, we must establish the theoretical and methodological approaches required to unpick the entwinement of the digital rights paradigm and informational capitalism in the case of the Marco Civil. To do this, we must first take a step back and identify what it is that lies at the heart of this study, the life force that flows through this corpus and animates its distinct elements. When we attempt that diagnosis, we recognise that this is fundamentally a story about power: an examination of how it is exercised by actors when an object in dispute - the Internet – one that possesses great economic and civic value, is opened up for contestation to an array of interests. From this recognition it follows that we must find the means to provide the fullest possible account of that power, across both its structural and symbolic dimensions.

Theoretical approach

One analytical toolkit that takes the study of power as its defining focus is critical political-economy. Defined by Mosco as "the study of the social relations, particularly the power relations, that mutually constitute the production, distribution, and consumption of resources" (Mosco 2009, p.24), or by Smythe as research on "the power processes within society" (1960, p.563). A critical political-economic analysis implies a commitment to grasping the social totality and as such is both explanatory and prescriptive. One subset of the 'mother discipline', the political-economy of *communication*, is attentive to both the ownership structures of particular media, and also the way in which beliefs and myth are presented therein that challenge or reinforce particular sets of social relations (Mosco 2005).

The political-economy of communication is therefore particularly apt for analysing the phenomenon of informational capitalism. It not only permits an appraisal of the economic power of actors such as web companies and media conglomerates, but then also to theorise the implications of those inequities for social relations writ large.

Although a founding tenet of the political-economy of communication is that it attends to both "the symbolic *and* the material" (Comor 2011, p.44), the fact that its primary units of analysis tend to be institutions means that it tilts heavily toward a macro-level focus that can elide the micro-level processes that underpin them. Mosco indeed warns that this zealous focus on institutions can mean that the "presumed power of media giants takes on its own mythic characteristics" (2005, p.163).

One way to address this imbalance is to employ a discursive analysis alongside the political-economic, one more attentive to the symbolic dimension of power. This is essential for this study for two reasons. The first is because I need to establish how informational capitalism sustains and legitimates itself through discourse, and particularly how the dominant paradigm of digital rights has been shaped by this dimension of power. The second is the need to analyse the particular discourses that were present in the development of the Marco Civil because, as Streeter (2013) notes "policy discourse is properly understood, not just as a kind of mystification of power relations coming from elsewhere, but as a *constitutive* part of those power relations" (p.495).

Although many scholars operating in the political-economy and discourse traditions might consider the two approaches to be incommensurate, others have noted their potential complementarity. Franklin (2013), for instance, makes a case for "the intersection of the macro-analytical modes of reasoning used to apprehend global political issues with micro-level modes such as those preferred in cultural studies" (p.10). The work of Russell Newman (2013; 2019) examining the contestation of network neutrality in the United States, and Thomas Streeter on communication policy (1996) and the cultural construction of the Internet (2011), both pair discursive and political-economic analysis to great effect and enjoy a prominent place in this thesis. Efforts have indeed been made by the likes of Sum and Jessop (2003) to codify this pairing into a coherent and structured research model, a 'cultural political-economy'. I, however, do not recognise the necessity to adopt a grand theoretical model that intertwines the material and the symbolic. Instead, and following Couldry and Mejias' (2019) approach in their survey of data colonialism, I accept the value of an eclectic analytical approach for a dynamic object of study, selecting from a box of lenses to achieve the sharpest focus.

Accordingly, I draw from Critical Discourse Analysis (CDA) (Fairclough 2003; Wodak & Meyer 2009) and post-Marxian discourse analysis (Dahlberg 2010; Laclau & Mouffe 2001) in order to appreciate the constitutive role of discourse in this study. The former school demands a critical interrogation of social

life in “moral and political terms” and with particular concern for “social justice and power” (Fairclough 2003, 15). As Wodak & Meyer (2009) also make clear “discourse is structured by dominance; that every discourse is historically produced and interpreted, that is, it is situated in time and space; and that dominance structures are legitimated by ideologies of powerful groups” (p.3). The manner in which the dominance of informational capitalism is legitimated through discourse is indeed a foundational component of this study.

According to post-Marxian discourse analysis, meanwhile, discourse functions as a mechanism of power by creating a moment of closure within the ‘discursive field’, to assign a preferred set of meanings to otherwise empty ‘signifiers’ and to exclude alternative interpretations (Laclau & Mouffe 2001). This latter approach sensitises my analysis to the role of meta-signifiers such as ‘freedom’, ‘openness’, ‘efficiency’ and ‘neutrality’ that are central to the discourse of digital rights in general, and the Marco Civil in particular. Indeed, my appreciation of the role of such signifiers owes a foundational debt to Erin Fisher, whose analysis of the ‘digital discourse’ (2010) has done much to guide my own thinking. Finally, adopting a focus on discourse is especially apt owing to the centrality of interviews to my methodological approach.

Methodology

This research project seeks to harness the benefits of triangulation with the application of three different qualitative methodologies: discourse analysis, semi-structured elite interviews and document analysis. These methodologies are applied to events from a time period from 2009-2014 and are structured in a sequential exploratory research design (Cresswell 2009), with the insights gained from each phase informing the execution and analysis of the one that follows. This combination of methodologies was harnessed fruitfully by Sara Schoonmaker (2009) in her excellent study of Brazil’s informatics policy, a work that was influential in guiding my own research.

***Phase 1*.**

Qualitative semi-structured elite interviews represent my primary methodology. I first traveled to Brazil for a period of exploratory research in Brasília in March 2014 in which I developed my initial network of contacts and held informal conversations with protagonists in the Marco Civil. It was at this time that the bill received its assent from Congress, and I was fortunate enough to have been granted

access to the Lower Chamber to witness the vote on March 25th. I then returned to Brazil for a three-week period in July 2015 to carry out my fieldwork.

During this time, I conducted 18 interviews of 30-90 minute duration with protagonists selected from the principal stakeholder groups responsible for the development of the Marco Civil, as well as a further 4 background interviews with academic and legal observers[2]. I also conducted one additional interview with an individual – Guilherme de Almeida, Secretary of Legislative Affairs at the Ministry of Justice, who was studying in the United States during my fieldwork in Brazil - in February 2018 using video-conferencing software. The in-situ interviews took place in Rio de Janeiro, São Paulo and Brasília and were conducted in either Portuguese or English, both languages in which I am fluent. All translations of Portuguese language interviews and source documents in this text are my own.

The interviewees were identified using a purposive sampling strategy (those expected to yield the richest insights) based on their responsibilities within organizations that were prominent in the Marco Civil process. This initial approach was supplemented by a "snowball sample" in which those individuals I identified initially, recommended other contacts who had similar levels of input and insight into the Marco Civil process. Given the relatively narrow band of stakeholders around the Internet in Brazil, as well as the celebrated openness and congeniality of Brazilian society, this proved to be a successful strategy. My interview sample included representatives of civil society organizations, telecommunications, media and web companies and government ministries. With two exceptions, all of these individuals agreed to be named. In the case of the anonymous participants, we agreed that I would refer to them in this work simply as 'senior executives' in their respective industries (the web technology sector and telecommunications respectively).

The interviewees were comprised of three principal groups:

- (Group A) From civil society, seven individuals:
  Three researchers from the research laboratory *Centro de Technologia e Sociedade* (CTS) at the think tank, *Fundação Getulio Vargas* (FGV); one founding board member from Brazil's Internet Steering Committee (CGI); two directors and one campaigner from communication and consumer rights organizations that advocated for the Marco Civil (*Intervozes, IDEC* and *Proteste*); and one independent activist who led early campaigns to establish civil rights for the Internet.

[2] A full list of these interviewees, as well as interview transcripts, can be found in the appendices to this dissertation.

- (Group B) From the corporate sector, five public policy executives/in-house counsel:
  Two from the media sector (*Grupo Globo* and *Grupo Folha*); one from the web technology sector (US web company); two from the telecommunications sector (one from the long-distance carrier, *Embratel* and one from the industry association, *Sindetelebrasil*).

- (Group C) From within government, seven individuals:
  The Marco Civil's Congressional rapporteur (Congressperson); the National Secretary for Information Technology Policies of the Brazilian government; a senior policy advisor at the state telecoms regulator, *Anatel*; the public consultation manager for the Marco Civil at the Ministry of Justice; a senior technology policy advisor for the Workers' Party (PT); and two holders of the office of Secretary of Legislative Affairs at the Ministry of Justice

Using an interview guide with a list of the key issues to be explored, allowed me to reap the rewards of a free format dialogue in terms of range and depth, without the risk of losing focus. I probed the interviewees around the agendas they sought to promote in the policymaking process, the key events in the development of the bill, and their interpretation of the practice and agendas of the other participant groups and the respective power relationships.

More specifically, from Group A, the researchers at FGV were some of the architects of the initial drafts of the Marco Civil, they co-designed the public consultation process, and had first-hand knowledge of the influence wrought by civil society and corporate stakeholders. My questions were designed to explore their experiences in all of these aspects of the Marco Civil process. The campaigners and activists from civil society were amongst the most prominent advocates for the Marco Civil during its fraught four-year journey through the Brazilian House of Congress. Accordingly, I was primarily interested in which of the provisions of the bill corresponded to the communication or consumption priorities of these advocacy groups, as well as how they formed alliances or antagonisms with the principal economic groups. The material from these interviews is most evident in Chapter 4 as the bill was initially drafted in conjunction with civil society partners.

The individuals in Group B operated within some of the most powerful economic entities in Brazil and exerted a commensurate influence on the form of the Marco Civil, especially during the Congressional phase of the bill's development. My interviews with them were focused on gaining insights into how

they leveraged their economic power, the rivalries with other corporate stakeholders, and how the digital rights within the Marco Civil were shaped by their operational agendas.

Finally, the elected representatives and civil servants that comprised Group C were instrumental in steering the Marco Civil through the legislative process. These individuals were responsible for translating the government's policy priorities into provisions within the bill, for negotiating with civil society and corporate actors, and for drafting the seven different iterations of the bill that passed through the house 2011-2014. As such, I probed these individuals for their unique insights into the nature of the internal and external pressures that drove many of the changes to the bill during its legislative journey, the junctures at which the Marco Civil deviated from the government's agenda, and finally how the tension was negotiated between domestic and foreign policy priorities with regards to the Marco Civil, as well as between the PT's progressive and neoliberal policy commitments.

I based this approach on similar methodologies applied by Chan (2014) in her analysis of the One Laptop per Child program in Peru, as well as Takhteyev's (2012) work on software development in Brazil and Schoonmaker's study of Brazilian informatics policy (2009) Although the former two were founded in an ethnographic tradition, all of these used interviews as their primary methodology with the researcher situated as an 'outsider' in relation to the community being studied. Moreover, the interview material in all these studies was integrated with other primary source material in the form of blog and bulletin board posts, media texts, government reports etc. as well as secondary theoretical and empirical accounts. In my own use of this interview material, the insider accounts that they provided filled the blind spots and added vital details to more formal reports of how the Marco Civil process unfolded.

***Phase 2*.**

Critical discourse analysis as a method represents an obvious and productive overlap with the theoretical framework of this research project. This method allows me to identify the discourses propagated by the principal actor blocks that participated in the development of the bill (civil society, the state, telecommunications companies, web service companies, media companies) to identify the agendas, or 'logics', brought to bear on the process; in essence the *politics* of Internet policymaking. The CDA focuses on a dataset comprised of mainstream press articles generated through a keyword search of *Marco Civil da Internet/Marco Civil* of the *Folha de São Paulo* and *O Globo* newspapers from 2009-2014 using the Factiva database, as well as a selection of blog posts, press releases, op-eds,

public speeches and records of public online participation. The results of this CDA and the earlier interviews then informed the subsequent and final phase.

Phase 3.

According to Bowen's (2009) classification of document analysis as a method, 'tracking change and development' (p.30) is one of five major ways in which it can serve a research project. In this case by tracking the codification of the Marco Civil through its various legal drafts from the initial framework jointly proposed by the Ministry of Justice and the Getulio Vargas Foundation in 2009, to the final text approved by the Brazilian Senate in April 2014. By overlaying the data yielded by the preceding two phases of analysis I am able to chart how particular provisions in the bill were changed according to the agendas pursued by the different actor blocks - as well as the impacts wrought by external events (such as the NSA surveillance revelations) - ultimately showing how the logics of informational capitalism were manifested in the digital rights of the Marco Civil.

Overlapping all of these three phases, I apply a political-economic analysis to the findings that emerge, assessing how and why key economic sectors attempted to influence the scope and form of the Marco Civil, and how they correspond to the logics and mechanics of informational capitalism. Political-economy becomes, therefore, the glue than binds my three methodologies into a coherent whole.

Before proceeding to signpost the chapters ahead and the structure of this thesis, we will pause for a brief interlude. Given the complexity of the policy development of the Marco Civil that I chart in detail in the second part of this study, it may be useful to the reader to survey a sketched history of the bill here, to retain a bird's eye view for when we wade 'into the weeds'.

The Marco Civil (in miniature)

The Marco Civil was first conceived in opposition to a piece of punitive cybercrime legislation, the Lei Azeredo. Proposed in the Brazilian Congress in 1999, the bill infamously demanded that ISP's monitor the activity of Internet users on behalf of the police and would even criminalize the maintenance of open Wi-Fi networks as well as the act of unblocking an iPhone. These measures were advanced in the interests of the international IP rights lobby, as well as the Brazilian financial services industry and security state, and they presaged a wave of criticism. The fact that the Lei Azeredo evoked memories of the civil repression of Brazil's military dictatorship meant that it catalysed vigorous opposition from

a loose coalition of technologists, activists and academics. The civil society resistance received a sympathetic audience from the incumbent left-wing PT government, and while the Lei Azeredo was effectively frozen, the nascent project of the Marco Civil was given sudden impetus.

In order to convert the Marco Civil into a concrete legislative reality, the project was placed in the hands of the *Secretaría de Assuntos Legislativos* (SAL), a department within the Ministry of Justice. The group at this time was occupied by a cadre of young IP lawyers, enthusiastic about technology and its democratic possibilities. As such, a multi-stage policy development process was constructed, entailing two phases of online public consultations, a concurrent and loose form of 'multistakeholderism' in which corporations, civil society organizations and state entities were invited to contribute their recommendations, all in advance of Congressional debate and approval.

The first phase of public consultation began in October 2009 and was based on citizens providing opinions online on a pre-established framework of user rights as well as government and intermediary obligations. A second phase seeking reaction to a first draft of the Marco Civil legislation was launched in mid-2010.

Following the contributions presented during the two phases of consultation, the first draft of the Marco Civil created a framework of rights and principles for the Brazilian Internet whose tripartite structure remained largely constant through the multiple iterations of the bill that emerged once it formally entered Congress in 2011. Its three pillars were: network neutrality, limited third-party liability for web services, and digital data protection. Despite the low-key involvement of economic stakeholders in the consultation phase, interest group lobbying became intense once the Marco Civil entered Congress for debate 2011-2014. In August 2011 the Marco Civil formally entered Congress as Project of Law 2.126.

In 2012 and the first half of 2013 the Marco Civil was scheduled for a Congressional vote and approval on eight separate occasions. On each occasion, however, the vote was cancelled because a substantial number of the Members of Congress acted to block the process. This was widely interpreted to be the result of intense lobbying by powerful economic forces that considered their interests under threat: the traditional media in tandem with the IP industry, and even more forcefully, the telecoms sector.

The opposition mounted by the telecoms sector over the inclusion of network neutrality threatened to stymie the bill's passage. Even after the media and IP interest groups were brought on side by favouring their concerns about online content removal, the Marco Civil was subject to 10 aborted votes in 2013 and a further 14 in 2014: a clear metric for the strength of the telecoms sector's political influence.

By the middle of 2013, the various forces disputing the Marco Civil had arrived at a deadlock and the bill appeared in danger of never becoming law. This all changed, however, on September 1st, 2013, when Globo published proof, provided to them by Edward Snowden via Glenn Greenwald, that the NSA had intercepted the official communications of President Dilma Rousseff.

The Marco Civil constituted a readymade riposte to the American practice of surveillance, as it was designed as a framework of user rights, and just ten days after the revelations, President Rousseff declared the Marco Civil an issue of 'constitutional urgency' meaning that no other legislation could be passed before it. This helped to propel the Marco Civil to its eventual approval by Congress on March 25th, 2014.

The road ahead…

This study will be divided into two parts. The first serves two related ends: establishing the empirical context for the study in terms of the particular history of media and communications in Brazil, and a laying out of the required theoretical tools for studying informational capitalism and discourse. The second part of the study is where I take up these tools in my examination of the case of the Marco Civil.

To establish the context for this study, **Chapter 3** serves double duty as both a literature review, and an analytical framework to understand the functions and scope of informational capitalism. There are four principal sections. The first examines the **logics** of informational capitalism – grouped into two broad brackets of commodification and control – showing that for all of its variety, the system possesses a coherent core and a set of internal drives. These demonstrate that the civic safeguards codified in the Marco Civil do not imply a significant disruption of informational capitalism but facilitate its expansion. I identify also the core sectors within informational capitalism, that overlap with 'stakeholder'

categories in Internet policymaking. This provides a template to evaluate the actions of key actors on the Marco Civil, how they advocated for or resisted elements of the bill, and why.

The **dynamics** of informational capitalism is the second principal focus and refers to the tensions and synergies that exist between the various blocks of actors that inhabit the system. This takes into account the 'mechanics' employed by these actors to further their interests, as well as forms of resistance adopted by actors outside of the system that sometimes impede the fulfillment of these interests. The resulting tensions can explain many of the material manifestations of informational capitalism, and particularly the divergent positions adopted within the Marco Civil policy development.

Accounting for the **zones** of informational capitalism is the third principal section; an effort to address the most significant gap within existing accounts of the system: that of its core-periphery nature. I therefore address how informational capitalism is most fully understood as a system with a core, and not one, but multiple peripheries. This is crucial to understand for this study because Brazil's status at the periphery of informational capitalism, and its enduring position at the margins of global capitalism generally, is a defining factor in shaping the manner in which the Marco Civil process unfolded, and the particular significances that can be ascribed to the provisions within the law.

In the final section of Chapter 3, I switch lenses to establish how informational capitalism sustains and legitimates itself through **discourse**, and particularly how the dominant understanding of digital rights has been shaped by this dimension of power. I trace the development of digital rights in a broadly chronological analysis to show how alternate conceptualizations of digital rights (based on a social critique of capitalism) became marginalized. This endeavour is essential because it shows the trajectory of digital rights can be traced to the Marco Civil, and how its tenets cohere with the logics of informational capitalism.

The purpose of **Chapter 3** is to chart Brazil's historical status at the periphery of global capitalism - from its colonial origins to the present day – and to demonstrate how the diffusion of ICTs and the development of media systems in Brazil has constituted an integral component of this peripheral relationship. This material reveals the historical trajectory by which Brazil presently finds itself at the margins of informational capitalism, the junctures at which Brazil sought to establish technological sovereignty, and reveals the origins of the local discourses that were so influential in shaping the Marco Civil.

Overall, this chapter focuses on the interrelated themes of technological dependency and sovereignty, cultural imperialism, media democracy and the repressed status of communication rights. It is divided into four chronological sub-sections: independence to the 1964 military coup; the dictatorship era to the 1985 transition to democracy; neoliberal reforms to election of a PT government 2002; and the Lula years, 2002-2010. The last section leads us to the start of the Marco Civil process chronicled in the second part of this study.

Part II of this study is comprised of three chapters that present a chronological account of the policy development of the Marco Civil, examining - with an alternate discourse/political-economic focus, and based on interview material and secondary sources - the contestation of digital rights at the periphery of informational capitalism. Here I operationalize the analytical framework and historical themes laid out in Chapters 2 and 3.

Chapter 4 primarily adopts a discourse focus in order to understand the narratives that were formative in delimiting the Marco Civil's civic potential from its inception. I pick up the threads laid out in the final section of Chapter 2 to show how cyber-utopian discourses valorizing user freedom and expression used by blogger-activists were prominent in the Marco Civil's pre-history. These championed web companies, guided a focus toward the perils of state censorship, but precluded focus on the Internet's political-economy. I also identify the technocratic and neo-liberal discourses that constituted the bill's unofficial genesis.

When the Marco Civil became a government project, I examine how an 'interpretive community' (Streeter 1996) of young IP lawyers further circumscribed the bill's civic potential, and how the *decálogo* - an earlier template for digital rights in Brazil used to create the Marco Civil - can be traced back to the WSIS process and the dominant framing of digital rights described in Chapter 2. Finally, I critically interrogate the processes of public and multistakeholder consultation that imbued the bill with democratic legitimacy, showing how the debate was framed in a way that precluded any genuine challenge to the logics of informational capitalism, how Brazil's status at the periphery shaped participation, and how radical proposals by actors like the Pirate Party were effectively marginalized.

I switch lenses for **Chapter 5** to predominantly focus on the material power exerted by the core actors of informational capitalism to shape the bill according to their sectorial interests as it reached the Brazilian Congress. I operationalize the 'mechanics' and 'dynamics' of Chapter 2 to show how the

telecoms sector, web companies, broadcast media and the IP rights lobby alternately formed alliances of convenience, or advanced bitter rivalries, with regards to the core provisions in the Marco Civil.

In this chapter, I focus particularly on network neutrality and limited third-party liability (safe harbours). In the former case I show how the telecoms sector fiercely resisted network neutrality in order to be able to offer 'zero rating' mobile plans – now ubiquitous in the global South. I contend that the paradox of network neutrality is that the more fiercely the telcos resisted the measure, the more civil society groups were convinced it was a core civil right and occluded more substantive alternatives. I also chart the contestation of safe harbours and argue not only that it serves as a shallow proxy for freedom of online expression but reveal how its limited civic value was further diminished in order to win the support of the Globo media group. In this chapter, there is also a discursive focus, as I examine how Brazil's social inequality and the historic fear of communism were contested by civil society and economic actors in their disputes over the Marco Civil.

To conclude Part II, **Chapter 6** examines how the Marco Civil was finally freed from Congressional deadlock by the Snowden revelations of US surveillance in Brazil, with President Rousseff using the bill as a core plank of her policy response. This sparked an intensification of conflict between rival sectors of informational capitalism as all interested parties sought to secure their agendas during the bill's 'end game', resulting in a further dilution of the Marco Civil's civic value.

A defining tension in this period was how the government advanced the contradictory policies of 'data sovereignty' and digital rights. The former was a resurrection of a recurring narrative of 'technological sovereignty', analysed in Chapter 2, and a legacy of Brazil's peripheral status. It focused on political-economic and infrastructural measures to advance Brazil's power within informational capitalism, but came into conflict with the expressive and individualist digital rights of the Marco Civil. Web companies particularly were threatened by 'data sovereignty' and I reveal how they were willing to sabotage the bill in order to avoid building new data infrastructure in Brazil. I also show how Brazil's security services, and the telecoms sector, were able to secure coveted amendments for data retention and future business models, constituting major new restrictions on the civic rights of Brazil's Internet users.

The concluding **Chapter** 7, recaps the principal contributions offered by this thesis: an analytical framework for informational capitalism; a genealogy of digital rights; a legislative history of the Marco Civil; and an emphasis on understanding both the political-economic and socio-cultural particularities of the periphery, as well as the articulations of dominant policy discourses with local narratives. This

chapter also presents the opportunity to consider the early legacy of the Marco Civil, and its relationship to political and policy developments that occurred between the end of this thesis' analytical timeframe in 2015, and the time of completion of this dissertation (2021). Moreover, by evaluating the Marco Civil in the context of the widely chronicled 'techlash' that unfolded in 2020, we can reflect on the evolution of the digital rights paradigm and contemplate how civic safeguards can adapt to the next evolutionary phase of global capitalism.

Research questions and contributions

The specific enquiries that guide this study are the following:

- *What were the circumstances that explain how and why the Marco Civil was passed into law, and what was the influence of the material and discursive power of informational capitalism?*
- *What is the origin of the dominant paradigm of digital rights, and how can it be conceptualised in relation to informational capitalism?*
- *What are the particular political-economic characteristics of informational-capitalism at 'the periphery', and how do these influence the form and significance of digital rights?*
- *How do dominant, global policy discourses articulate with subaltern, local narratives to produce new structures of meaning, and how can these influence the process of communications policymaking?*

In pursuing these research questions, and by interrogating the phenomenon of the Marco Civil within the framework of informational capitalism – by insisting on the salience of information and its economic significance in these events - I can identify those actors whose interests were at stake in the deliberations, fathom their logics, follow their lines of manoeuvre and weigh the outcomes accordingly. This focus makes it possible to move beyond the simplistic frame of 'money corrupting politics' to glean a deeper understanding of power in motion, and the agendas that drive it. In refusing to examine this purely as an example of innovative Internet policymaking, I remain attentive to the deeper levels of discursive meaning that shaped these events, as opposed to fixating solely on the mechanics of the policy process. And adopting a critical rather than a celebratory lens means that I am more attentive, not less, to the civic dimensions of this law; my concern lies with the circumscribed potential, how it could have gone further but did not. Ultimately, contextualizing the Marco Civil

within informational capitalism allows one to look through and beyond some of the more hyperbolic accounts of its significance and to connect it instead to larger political-economic structures and dominant discourses.

In terms of the specific contributions that this study can offer to academic knowledge, one of the principal goals is to build a conceptual bridge between the fields of the political-economy of communication and discourse studies, and to demonstrate how the two approaches can be fruitfully combined in future studies of communication policy. These two fields may appear incommensurate with one another, but I contend that they in fact offer complementary focuses and tools that this study has shown can be harnessed in tandem.

Another principal contribution represented by this study is to identify and theorise some of the less-heralded dimensions of informational capitalism, and to challenge the system's presentation as a monolithic entity. Shining a light on its zonal political-economy, as well as the tensions and synergies between its principal sectors represent the salient contributions in this regard. Following Crain's (2013) assertion that "the point of critical analysis is not to theorize the domination engendered by capitalism, but to clarify its dynamism in order to support and work toward forms of intervention" (p.254), this greater understanding of informational capitalism should permit more effective academic analyses, civic strategies and policy interventions.

In terms of the Marco Civil more specifically, this study will represent the first detailed, English-language, account of its policy development. This will be a valuable resource for scholars and practitioners in the adjacent fields of Internet governance, communications policy, the political-economy of communication and international communication.

Chronicling the tortuous legislative development of the Marco Civil should also provide insights that allow government and civil society actors to anticipate the myriad obstacles and resistances to the enactment of digital rights in other legislatures. Indeed, it is one of the founding rationales of this study that Internet policymaking is not "neutral and technocratic" (Streeter 1996, p.40), but instead constitutes a "battleground of information" (Jordan 2015, p.143), one from which we can glean a multitude of valuable insights. These concern, for instance, the manner in which distinct economic sectors impel their particular agendas for the Internet, how they cohere and conflict with one another, and how the systemic needs of informational capitalism contradict a civic logic for the Internet.

Fundamentally, there is much that the Marco Civil can tell us about informational capitalism - as a system that while global does not settle evenly *across* the globe and manifests particular characteristics and hybridities in its peripheries, in places like Brazil - and conversely much that informational capitalism can tell us about the Marco Civil; as a process in which the understanding of the Internet's civic potential was circumscribed discursively from the outset, as well as being buffeted by the material power of informational capitalism's cast of actors. In sum, both general system and particular process were mutually-constitutive, locked in a dialectical embrace.

Informational capitalism meanwhile, as precisely that matrix of forces which forecloses the civic potential of the Internet, demands greater insights in order to better understand both the covert and overt ways in which it influences those legislative efforts that aim to steer the Internet away from its preferred ends. It is imperative also that we understand informational capitalism not as a monolith, but as a hydra, that while possessing consistent logics and coherent goals, adapts to local conditions and satisfies its systemic needs in particular ways. This in turn demands a conceptualization of not one, universal set of digital rights, but multiple *particular* adaptations that safeguard informational resources and communication processes for the common good. As per Isin and Ruppert's (2015) assertion about digital rights charters, they would have "more performative if not legal force if they arose *from not only a universal commitment but also regional commitments* [emphasis added] to understanding how the figure of the citizen is being articulated differently in cyberspace…" (p.178). By challenging the common-sense presumption amongst digital rights advocacy groups, for instance, that a techno-policy instrument like network neutrality is a universal panacea for an open Internet, and instead identifying how it would intersect with local political-economic and socio-cultural realities in the context of specific national Internets, this may permit civic and state actors the opportunity to better realise the rich democratic potential of digital rights.

Chapter 2 - Literature Review

An Analytical Framework for Informational Capitalism: Logics, Dynamics, Zones and Discourses

> "Is ours a new kind of society, as was [industrial] capitalism, or is it just a form of capitalism, perhaps to be called informational capitalism?"
>
> (Mosco 2009, p.3)

The first task for this thesis is to draw the fullest picture possible of the present phenomenon of informational capitalism. It is, after all, the core argument of this study that the proper context for understanding the significance of the Marco Civil is the system of informational capitalism: to advance that argument, we must know what that system is.

The salience of information and communication to contemporary capitalism has been addressed by multiple theorists, and yielded a slew of prefixes: cybernetic capitalism (Robins & Webster 1988); digital capitalism (Schiller 1999); informational capitalism (Castells 2000); communicative capitalism (Dean 2005); networked capitalism (Fisher 2013); cognitive capitalism (Moulier-Boutang 2011) platform capitalism (Srnicek 2017); surveillance capitalism (Zuboff 2018).

Selecting Castells' coinage of 'informational' for the purposes of this study appears almost arbitrary; most of the concepts in the above list recognise the centrality of information commodification and communication networks to capitalist processes of production and accumulation, and draw our attention to the concentrations of power and social harms that follow. Most, in fact, could be operationalized effectively to account for the context and significance of the Marco Civil, and my selection is not intended to advocate the superiority of one over the others.

I do find the concept of 'informational capitalism' - particularly as developed by Christian Fuchs (2009; 2010) - to be the most analytically satisfying, however. I agree with Cohen (2019) that fixating on particular means of surplus extraction, for instance in the case of 'surveillance capitalism', "threatens to diminish the underlying transformative importance of the sociotechnical shift to informationalism as a mode of development" (p.6). Informational capitalism indeed does not limit its focus to web or technology companies, but encompasses any actor that primarily relies on informational resources, including media conglomerates, telecoms companies, state actors etc. It also explicitly recognises how the technological infrastructure of the Internet has been shaped according to the principals of

neoliberalism in order to facilitate accumulation. Ultimately, the concept of informational capitalism enables a wide field of vision that includes the myriad economic sectors, actors and technologies that together need to be accounted for when analysing this regime of accumulation.

The following tract from Fuchs (2009) discussing the spatial dimension of informational capitalism merits attention as it signals some of the system's defining characteristics and demonstrates its importance as the analytical frame for this study:

> A global space is constituted by the interaction of global technological systems and transnational (economic, political, cultural) organizations and institutions (cf. Amin 2004). This space is characterized by global flows of capital, power, and ideology that create and permanently recreate a new transnational regime of domination (p.395).

The interrelationship between the technological apparatus of informational capitalism and its social-structural forms is a key dimension to understand. In the case of the Marco Civil, one of the reasons that it represents such a rich case study in the functioning of informational capitalism is the way in which different 'institutions' – 'political' (various ministries and agencies of the state), 'economic' (media, telecoms and web companies) and 'cultural' (civil society organizations) – battled to shape the Brazilian Internet according to their preferred values and logics.

Informational capitalism is a 'global space' and establishes a 'transnational regime of domination'. This observation is also integral to this study as Brazil exists at the periphery of an exploitative system from which power is wielded primarily from the centre. Finally, Fuchs notes the that the system is characterised by flows of *capital*, *power* and *ideology*. It is indeed one of the foundational arguments of this thesis that informational capitalism must be analysed across both its material and symbolic dimensions – 'capital' and 'ideology' – and a framework for doing so is presented in this chapter. Moreover, the flows of 'power' and resulting 'domination' underscore the importance of digital rights and their potential to serve as a safeguard against the exploitations of informational capitalism, while at the same time remaining highly vulnerable to the material and discursive power exercised within the system.

The panorama of contemporary capitalism described by the theorists identified above is comprised of multiple vignettes, and I draw from all of them in this framework. Some accounts use the lens of class and labour (Dyer-Witheford 2015; Fuchs 2010; Scholz et al 2012), discourse analysis (Fisher 2013), the

political-economy of telecommunications (Schiller 1999, 2010), or critical legal studies (Cohen 2019) Not one of them, in isolation, however, provides the refracted perspective that I require for this study. That is, a broad spectrum analysis of the system of informational capitalism, one that can reconcile its multiple dynamics, identify its key actors, examine its core logics, and appreciate the co-constitution of its political-economy and discourses; to account as far as possible for its totality.

Partly, we can attribute the absence of such an account to the expansive nature of the system, and the fact that its activities overlay numerous academic fields: intellectual property, software platforms, immaterial labour etc. Informational capitalism thus lends itself to a siloed analysis. But, in the absence of the proper tool, sometimes we must build our own. To that end, what follows is a provisional attempt at a schematic of informational capitalism, one that performs double duty as a literature review and a theory chapter, engaging with the key accounts in such overlapping fields as critical legal studies, political-economy of communication, critical media studies, surveillance studies and critical discourse analysis, tracking the trajectories of these ideas when necessary. In sum, this chapter represents a strategic collapse of theory, history and method.

There are four principal sections to this framework:

- Logics;
- Dynamics;
- Zones;
- Discourses.

The ***logics*** of informational capitalism – grouped into two broad brackets of commodification and control – show that for all of its immense variety, the system possesses a coherent core, a set of internal drives that impel it “further in its flight into the future” (Dyer-Witheford 2015, p.188). These must be well-established for this study in order to demonstrate that the civic safeguards codified in the Marco Civil do not imply a significant disruption of informational capitalism, but in fact, facilitate its continued expansion.

The ***dynamics*** of informational capitalism refers to the tensions and synergies that exist between the various sectors that comprise the system. This takes into account the *mechanics* employed by these actors to further their interests, as well as the forms of *resistance* adopted by actors outside of the

system – activists, civil society organizations, social movements - that sometimes impede the fulfilment of those interests. Although the broad logics of informational capitalism remain consistent, the manner in which they are advanced by different actors is not always complementary. The resulting tensions can explain many of the material manifestations of informational capitalism, and particularly the divergent positions adopted within the Marco Civil's policy development.

Accounting for the ***zones*** of informational capitalism is an effort to address the most significant gap within existing accounts of the system: that of its core-periphery nature. While the notion of 'core-periphery' is well-established within theories of global capitalism generally (Wallerstein 1974), the manner in which this tiered structure also defines the system of informational capitalism is inadequately addressed by theorists. Thus the penultimate section of this chapter will address how informational capitalism is most fully understood as a system with a core - consisting of the United States and its stable of technology, media, web companies at the epicentre and an outer core comprised China as well as many nations of the global North – and not one, but multiple peripheries. This is crucial to understand for this study because Brazil's status at the periphery of informational capitalism, and its enduring position at the margins of global capitalism generally, is a defining factor in shaping the manner in which the Marco Civil process unfolded, and the particular significances that can be ascribed to the provisions within the law.

Finally, I switch lenses to establish how informational capitalism sustains and legitimates itself through ***discourse***, and particularly how the dominant understanding of digital rights has been shaped by this dimension of power. I draw upon Fisher's (2010) contribution of the 'digital discourse': his identification of a weave of narratives based on the material characteristics of networked ICTs that serves to legitimate new modes of accumulation and the social atomization of neoliberalism. It emphasizes networked autonomy, expression, participation and openness.

Then, in a broadly chronological analysis – from NWICO, through WSIS, and the first Internet rights charters of the early noughts - I trace the discursive construction of digital rights. I demonstrate how the digital discourse was decisive in shaping the development of digital rights in a way that accommodated, rather than challenged, the operational logics of informational capitalism. This endeavour is essential because it shows the trajectory of digital rights through to the Marco Civil, and how its tenets go 'with the grain' of informational capitalism.

Before building out these struts, however, I begin with a brief account of the emergence of informational capitalism. This is essential in order to appreciate the economic and political forces that enabled the system's genesis, and formed its core characteristics.

The informational turn in contemporary capitalism

By the 1980s, three decades of embedded liberalism, class compromise and Keynesian economics (Harvey 2005) were beginning to be usurped by "a set of liberalization policies called the Washington Consensus: fiscal austerity, market-determined interest and exchange rates, free trade, inward investment deregulation, privatization, market deregulation, and a committment to protecting private property" (Centeno and Cohen 2012, p.319).

As Harvey makes clear, the mission to envelop multiple spheres of pre-capitalist activity into the domain of the market "requires technologies of information creation and capacities to accumulate, store, transfer, analyse, and use massive databases to guide decisions in the global marketplace. Hence neoliberalism's intense interest in and pursuit of information technologies" (2005, p.3). From the mid-1980s corporate investment in data processing networks boomed in the United States (Schiller 2010, p.79) and successive waves of liberalization prompted greater investment and technological development, in a virtuous cycle (p.83). Corresponding processes of digitization and media convergence in the early 1980s heralded deregulation of cable television and telephony enabling massive mergers and industry concentration (Mattelart 2000, p.83).

With the election of the two principal architects of neoliberalism, Reagan and Thatcher, and the subsequent elevation to orthodoxy of market-based regulation, there began in the early 1980s an all-out assault on the legitimacy of the non-commercial provision of information (Harvey 2011; Schiller 2010). This was premised on the enormous economic promise of informational commodification, as Streeter makes clear, **"**From the point of view of the power structure of capitalism, information had the extraordinary advantage of being something that you could imagine as thing like and therefore as property, as something capable of being bought and sold" (2011, p.76). Such indeed was the 'breadth' of this appeal, that Schiller describes it as a 'general imperative' (2010, 39).

One of the central elements of this strategic shift was the focus on the protection and enforcement of intellectual property. In *Digital Capitalism,* Schiller indeed affirms that this radical reformulation of information's social status, outlined above, was undertaken in the service of 'adjusting' IP law (1999,

p.76). The first salvo in what would become a barrage was the US reformulating its trade laws in the 1990s to impose sanctions on countries that contravened its IP laws (Drahos & Braithewaite 2002, p.20), a move motivated by recognition that its booming software industry was worthy of protection. These developments reached their apogee in 1994 with the establishment of the WTO and the TRIPS agreement.

As we trace these developments into the 1990s, we observe a familiar dynamic of domestic American communications policy being transposed to the international arena as a means to facilitate the global growth of information products and services seen as imperative to US economic renewal. Many governments in Western Europe and Japan were willing partners in this market liberalization of telecommunications (Harvey 2005; Mattelart 2000, 89; Schiller 2010, 41) while for other less obliging states, changes were imposed aggressively by US agencies and the World Bank (Powers & Jablonski 2015, 41; H Schiller 1989, 116; Schiller 1999, 47) .

Although corporations whose primary function was the provisions of informational goods and services were at the vanguard of these developments, broad swathes of the corporate sector stood to benefit from this extraordinary surge in network development and deregulation and "by the late 1990s for the first time since the nineteenth century, worldwide communications-system development was bolted to corporate-commercial foundations." (Schiller 2010, 83).

Despite its well-chronicled, non-commercial origins with the ARPANET pioneers (Abbate 1999; Streeter 2011) the Internet by the mid-90s became the "central production and control apparatus of an increasingly supranational market system" (Schiller 1999, Xiv). As Dyer-Witheford recounts, "In the 90s changes in US state policy steadily created a privatized, deregulated, business-friendly information-superhighway…These high-level changes sent commercial ventures cascading through the entire system (2015, 89).

Accompanying the commercialization of the Internet was the rise and consolidation through corporate mergers of the 'Big Five' US movie studios to create "a genuinely global system of cultural production" bound by an IP regime that permits it "an iron grip on informational assets capable of being deployed and transformed in many ways for exploitation in different kinds of markets" (Drahos & Braithwaite 2002, p.179). The strength of this entertainment cartel and their capacity to control entire markets has been well-chronicled (Herman & Chomsky 2002; H. Schiller 1989).

While Reagan and Thatcher may have passed their respective batons to Clinton and Blair during the 1990s, there was little disruption in terms of the trajectory of market-driven policymaking. Landmark legislation of this era that further sedimented the corporate control of communications was the 1996 Telecommunications Act that served to entrench a monopoly market in the apparent service of greater competition (McChesney 2013, p.110; Wu 2010, p.244), and the Digital Millenium Act in 1998 designed to protect the IP assets of digital media companies (Lessig 2006).

In the frenzy of speculative technology investment that comprised the 'Dot Com Bubble', approximately 1995-2001, it was e-commerce ventures that grabbed the headlines and the emergence of AOL and Amazon saw the replacement of "dot.communism by dot.commercialism" (Van Dijk 2013, p.10). As Dyer-Witheford pointedly remarks, one of the basic flaws of the dot.com bubble was that people did not consume enough online to sustain the valuations (2015, 90). Accordingly, "the real legacy" from this period was that it provided the necessary conditions for the construction of a digital advertising infrastructure in which the tracking and profiling of consumers begat the formation of a surveillance-based Internet economy (Zuboff 2015).

Having sketched out this brief history of the emergence of informational capitalism, and before we dive into an analysis of the system proper, let us pause for a moment to consider an alternate, and highly influential, attempt to make sense of these developments. The theory of the 'information society' was an ahistorical, apolitical, technologically deterministic set of ideas that served to legitimate and disguise the transformations occurring within late capitalism. Its high profile provided the springboard for the more critical accounts that collectively comprise the analytic schema of informational capitalism, and therefore merits consideration here.

The Information Society (and its discontents)

Bell's 'The Coming of Post-Industrial Society', published in 1976, is oft-signalled as the launch-pad for theories of the information society (Schiller 2010, Streeter 2011), a tract that argued that we were approaching the emergence of a radically new society premised on the "economy of information" rather than the "economy of goods" (1976).

A crude summary could be constructed around the following: the emergence of the means of digitally distributed information heralded radically new social and economic arrangements in which symbolic goods and data would usurp industrial goods and commodities as the mainstays of our society.

Moreover, information possesses unique characteristics that render it anomalous from industrial commodities leading to power structures built around the industrial economy being replaced by a new topography of class. The empirical basis of these claims was centred on the rise of computing, data processing, communication networks and shifts in employment towards the service industries (Bell 1976; Drucker 1969; Porat 1977).

What these claims obfuscate is the possibility of the many continuities that exist between the processes of industrial and so-called information societies, most notably the organizing principle of a capitalist market-based system (Fuchs 2010). Indeed, as Harvey (1989) suggests, the information revolution, does not usurp the mode of production, but acts as an accelerator. Robins & Webster (1989) tout a recurring critique, that "what is missing in most accounts of the 'information society' is an understanding of the way in which knowledge/information mediate relations of power" (69). The absence of this essential component of social relations serves an ideological purpose by legitimating the construction of a new regime of capitalist accumulation.

In reaction to the perceived deficiencies of Information Society theory, some scholars sought to stake out analytic territory that embraced a dialectical approach to the growing primacy of information networks and the logics of capitalism, and to connect this new locus of accumulation to older capitalist forms. Rooted in a political-economic tradition, informational capitalism as an analytical schema is highly attentive to structures of power within social relations and how these are influenced by the growing economic importance of information and communication technologies. Although it engages with the novelties these bring, it rejects hyperbolic claims of social rupture in favour of tracing the lines of continuity from earlier phases of capitalism. Indeed, the central logics of commodification and control I explore below are inherent to capitalism of all vintages, but driven by the twin motors of ICT development and neoliberal policy arrangements, the informational aspect of capitalism has experienced an intense acceleration, propelling it to the forefront of the present system.

Indeed, it is important to establish early on that a focus on informational capitalism should not be equated with any form of 'informational exceptionalism'; it does not negate the existence of other modes of capitalist accumulation. As Zuboff acknowledges in her early work on surveillance capitalism, "New market forms emerge in distinct times and places. Some rise to hegemony, others exist in parallel to the dominant form, and others are revealed in time as evolutionary dead ends" (2015, p.77).

And as Cohen (2019) similarly notes, “the relationship between industrialism and informationalism is not sequential, but rather cumulative” (p.6). Here it suffices to assert that when the socio-economic contestation of a networked communication technology is the object of study, informational capitalism is the most appropriate analytical lens.

The logics of informational capitalism: Control and commodification

A parsing of the various prominent accounts (eg. Robins & Webster 1993; Schiller 1999; 2007; Dean 2004; Fuchs 2009) that seek to explain the ‘informational turn’ in contemporary capitalism reveals a range of processes that facilitate production, accumulation and the consolidation of power. I call these the ‘mechanics’ of informational capitalism, and according to the schema that I will develop here, they correspond to the two central logics of informational capitalism: the tendency to control information, with the goal of commodifying it. In other words, enclosure and marketization.

Accordingly, I will bifurcate these mechanics (and with due recognition of the overlap between them) into just two broad groupings: commodification and control. It is important to understand that these logics do not represent an either/or proposition, instead they are always both in operation. Appreciating their duality is akin to a figure/ground illusion; when you cast your gaze on one logic, the other fades from view, although it is still demonstrably present.

Identifying these as the core logics of the system is not only an analytical expedient, it forces one to be cognizant of the exploitation and injustice inherent to this mode of accumulation. The control of information - extracted from both the public and private spheres - and its conversion into a commodity form for the purposes of profit creation, leeches the democratic virtue from communication, impoverishes the commons, and robs citizens of their agency. This is why properly understanding the system of informational capitalism constitutes such an urgent task.

Commodification: IP, datafication & informationalised production

It would seem perverse to begin any account of commodification without reference to Marx. According to his foundational analysis, ‘objects of utility’ become commodities “only by means of the relations which the act of exchange establishes directly between the products, and directly, through them, between the producers” (Marx 1918, p.44; cited in Curran et al 2012, p.82).

Another useful general definition is offered by Harvey (2005): "Commodification presumes the existence of property rights over processes, things and social relations, that a price can be put on them, and that they can be traded subject to legal contract" (p.165). In other words, the process of commodification "refers to the process of how use value is transformed into exchange value" (Powers & Jablonski 2015, p.20) while for a general good to become a commodity it needs to contain "defining linkages to capitalist production, and secondarily to market exchange" (Schiller 2010, p.21). This dual character of the commodity, in terms of its relationship to production and exchange, is built upon by Schiller as he describes it in the context of information: "First there are those instances where information is the final product; second are those in which information is an intermediate component of production. In either case…we should scrutinize especially the means whereby capitalist social relations are accepted or insinuated into what had been earlier noncapitalist forms" (2010, p.21*)*.

Some argue meanwhile that one of the essential components of informationalized capitalism is that information has been "dis-articulated…from the commodity" in the production process and "has been accorded a separate value" (Berry 2008, p.45). This is particularly the case with branding and its special economic significance in contemporary capitalism. This can largely be seen as a reformulation rather than a rebuttal of Schiller's point, however, and while the processes of commodification constitutive of informational capitalism are myriad, this distinction made by Schiller will prove to be a defining one as we proceed through this section.

Intellectual property

The codification of property rights in the form of the Intellectual property regime is one of the core aspects of the commodification of information and "the legal form of the information age" (Boyle 2008, p.xiv) This might not, however, be readily apparent if one confined one's reading to communication studies and the political-economy of communication. Zukerfeld (2017) makes this point quite forcefully in his analysis of the varied accounts of capitalism's most recent transformation: "changes in the regulation of access to knowledge, especially the role of intellectual property (IP) regimes, tend to be overlooked" (p.244). Honourable mentions should accrue, however, to Schiller (2010), Berry (2008), Fuchs (2009) and Cohen (2019) for whom IP occupies a significant part of their analysis of the informational aspect of capitalism. It is in the field of critical legal studies,

unsurprisingly, where one notes the significance of IP most keenly (Boyle 2008; Drahos & Braithwaite 2002; Lessig 2006). It should be noted from the outset that featuring IP under the heading of 'commodification' rather than 'control' is a matter of analytical expedience that does not negate the dual character of the IP regime as both the enclosure and marketization of information.

The classical arguments invoked in favour of intellectual property in its *ideal* form, are succinctly explained by Boyle (2008): in sum they provide the means for a self-regulating information marketplace. More specifically, patents encourage technological innovation, copyright supports a vibrant public sphere, while trademarks enable the production of high-quality consumer goods (p.6-7). The analyses that contribute to our understanding of informational capitalism, however, chronicle the many ways in which the reality of IP law and its enforcement fall far short of these laudable ideals, and serve instead to reinforce a system of capital accumulation that results in critical damage to the "commons of society" (Fuchs 2011 p.89).

The propertization of information through the Intellectual property regime is indeed integral to the functioning of informational capitalism as a system of accumulation. It is a rote claim, but bears repetition here, that information as a good is non-rivalrous in nature. One person's consumption does not diminish the capacity of another to enjoy it. This scenario becomes especially vivid when we consider the digitization of information and the ability to reproduce it at near zero cost (Benkler 2006) and how this problematizes the enormous profit potential of immaterial goods. As Drahos & Braithwaite (2002) explain:

> From the point of view of individual profit-making, knowledge is the ideal object of propertization since it is non-rivalrous in supply. The same knowledge can be endlessly recycled to many generations of consumers, each new generation having to pay for its use. The incentives for individuals to seek profit through a redefinition of the intellectual property rules that form the basis of the knowledge economy are great (p.216).

Scarcity must be therefore imposed in order to effectively commodify or marketize information and this becomes the essential function of IP. And in what amounts to a vicious cycle of commodification, as the economic value of informational commodities steadily increases, so too does the incentive to further extend the legal protections presented by property rights.

Cultural works are commodified through the application of evermore stringent copyright protections leading to "corporations in effect…owning and controlling culture" (Berry 2008, 37). It is the manifestation of what Drahos & Braithwite (2002) term the 'private interest perspective' of copyright in the name of giant technology and media companies such as Disney, IBM, EMI, Sony and Polygram (p.169). They go on to emphasize the zeal of these copyright holders in protecting their 'rights' in a digital age: "Even the most fleeting cascade of electrons is being claimed by them as part of their income stream...The authority and coercive apparatus of the criminal law is brought in to legitimate a morality of ownership which completely ignores the communal origins and value of knowledge" (p.186).

Patents meanwhile are now applied to an almost exhaustive range of informational resources, from software (Boyle 2008) to genetic sequences in food seed and drugs (Drahos & Braithwaite 2002; Schiller 2010). The internationalization of these norms in such form as the TRIPS agreement and WIPO represents the legal framework of capitalist accumulation (Berry 2008; Drahos & Braithwaite 2002). As Cohen reminds us, although platforms may sometimes view algorithmic control as more effective than IP, platforms still wield copyright and patent law in an innovative way and "are in an important sense intellectual property entrepreneurs, working to refine and propagate appropriation strategies that serve their economic interests (2019, p.46). Such an extension of property rights is a tremendous boon for the media industry, agribusiness and the pharmaceutical sector – overwhelmingly represented by corporations in the global North, and especially the United States (Mirrlees 2016) - but constitutes an enormous impoverishment of the resources previously held in common by humanity.

The alternative to this process of commodification is indeed the information commons, a trove of intellectual resources made available for everyone to access freely. Previously it was simply 'the commons' or the 'public domain', but in the context of diffuse digital networks this space has become the 'ideas commons' (Lessig 2002), the 'e-commons' (Boyle 1996) or the 'digital commons' (MacKinnon 2013). Wittel (2013) characterises it as "a space that enables counter-commodification – not just on a personal but on a global level. It demonstrates how creative work can flourish without the chains of intellectual property regulations" (p.331). In his efforts to create a theory of 'information politics', Jordan (2015), meanwhile, has developed the concept of a distributive commons premised on the 'simultaneous complete use' of information that fully negates its commodification (p.206).

The construction of institutional support for this space, in the form of the Creative Commons, was undertaken in 2001 with the founding principle of expanding the availability of creative works while still securing recognition and rights for the creators. As a counterpoint to the proprietary maximalism of state and corporate-devised IP law, the Creative Commons is championed notably by the likes of its founders, Laurence Lessig (2006) and James Boyle for its "distributed creativity" (2008, p.184), while Benkler (2006) lauds its "commons-based peer production". The approach has not found universal favour, however, and several critical voices note its inadequacies as an alternative to IP-based commodification (Berry 2008; Fuchs 2011; Taylor 2014).

Söderberg (2008), for instance, highlights the shaky foundation of 'informational exceptionalism' on which Creative Commons is based, arguing that it strives too hard to mollify capitalist interests by presenting itself as compatible with broader systems of marketization (70). He claims that "as long as there is a point of closure somewhere in the system, a looser IP regime will count for little more than faster circulation of capital and intensified exploitation of users and audiences" (p.85).

Datafication

The other principal form of commodification, as mode of exchange and input into production, that comprises informational capitalism is associated with a different set of actors. Whereas the commodification of information inherent to IP is a core business strategy pursued by the major content producers and copyright holders – movie and recording studios, digital games producers and publishers – as well as agribusiness, technology and pharmaceutical corporations, we now need to turn our attention to the entities that profit from the commodification of data. These are the figureheads of 'new media': Google, Facebook, Microsoft, Apple and Amazon, and theirs is a business model predicated upon the capture and storage of the traces of digital acts performed by Internet users. This data is then converted into a commodity tradable between companies to facilitate online advertising and marketing. Data also corresponds to Schiller's 'intermediate component in production', as it is used to guide the provision of services in order to amass even more data. Information, in this context, has indeed become "the new oil of the Internet and the currency of the digital world" (Powers & Jablonski 2015, p.96).

With incredible foresight, Robins & Webster (1996) stated that the trajectory of 'cybernetic capitalism' was leading to a scenario in which "potentially all social functions are to be incorporated and metamorphosised into information commodities" (p.66) and moreover where "people will be increasingly relegated to the status of data: their actions and transactions will be recorded as digits and ciphers by the ubiquitous and always-watching information machines" (p.67).

Written one year later, Elmer (1997) also shows how "techniques of mapping and solicitation on the Internet" (p.190) were used to collect users' "demographic and psychographic data" (p.182). It is though another claim made by Robins & Webster that underscores one of the key shifts from this early phase of informational capitalism, and one that they did not accurately foresee, that "through data banks and information services we will have to buy the information to function in a complex industrial society" (1996, p.66). What they failed to envisage is that the trade-off of online services for personal data is the commodity exchange par excellence of contemporary informational capitalism. It represents, as Dyer-Witheford, argues "a classic strategy of recuperation" in which "these companies made the very voluntary and unpaid practices that had frustrated Web 1.0 capital into a new form of cybernetic accumulation" (2015, p.91). How though, precisely, does this process of data capture and commodification occur?

The process of 'datafication' - one where actions are converted into quantifiable, digital forms - is key to answering this question. In their enthusiastic account of the rise of Big data, Cukier & Mayer-Schönberger (2013) offer a compelling definition of (and rationale for) datafication as a process which involves "taking all aspects of life and turning them into data. Google's augmented-reality glasses datafy the gaze. Twitter datafies stray thoughts. LinkedIn datafies professional networks. Once we datafy things, we can transform their purpose and turn the information into new forms of value" (p.36). Although 'commodification' was likely discounted by the authors as an appropriate descriptor for their project, that is clearly the process they portray.

While datafication can be applied in any field of human endeavour, it is those actions that occur in the digital domain that are particularly apt for this conversion as they are already rendered into binary format, because they take place on platforms that are designed to facilitate total data capture. It is, after all, a commonplace observation that the users of Google are not its customers, but its product (Vaidhyanathan 2013, 3) and it is similarly widely understood that on Facebook "friendship is the

currency that drives the network" (Freedman 2012, p.82). Taylor (2014, p.14) though provides the pithiest summary: "What is social networking if not the commercialization of the once unprofitable art of conversation?"

Van Dijk (2013) also offers some useful insights here. She coined the term 'connectivity' to describe the economically valuable resource generated by users of social media platforms, as their digital actions, particularly the "affective traffic coming from 'like' and 'favourite' buttons" (p.162), are converted into economic capital for the owners of the sites. It is a concept that stands in contradistinction to, and indeed is a distortion of, the idea of 'connectedness' or the timeless human desire to be in contact with other people. In her damning assessment, the commodification of information through social networking sites derives from "a culture where the organization of social exchange is staked on neoliberal economic principles" (p.21).

Another valuable perspective is offered by Jordan (2015) in his efforts to map out a theory of information politics. In his analysis, the essential characteristic of digital information is the generation of 'differences' produced by users through their digital actions, which are then captured by platform owners. These differences then can only realise substantive economic value when they are 'recursed' by the platforms to generate yet more data based on the relationships between multiple users and their actions. This then becomes a 'web of difference' which can be used to target marketing resources more efficiently. The most important point here is that Jordan thus points towards the necessarily social dimension of this form of information commodification, as the data of an isolated individual holds little value, but in aggregate form it contributes to large scale recursion. Dean (2012) offers a similar account of the commodification of social relations. The concept of the "biopolitical public domain" from Cohen (2019) offers another useful way to think about dataficaton as a form of commodification. Described as "an act of imagination tailored to the political-economy of informational capitalism" (Cohen 2019, p.50) it refers to the extraction of raw materials in the form of "data identifying or relating to people" (p.48).

In sum, data is converted into an economic resource. It can be used in a general sense for the "the description, processing, and management of populations" as per Cohen's concept of the 'biopolitical public domain' (2019, p.48). More specifically, it can be sold to giant databrokers such as Axciom, compiled into 'master profiles' and used to facilitate highly targeted 'behavioural advertising' (Crain

2013). The data is both sold directly as a commodity and is used as a means to “refine the process of delivering audiences…to advertisers” (Mosco 2009, p.137), thereby also functioning as ‘an intermediate component of production.’ The fortunes derived from these practices are great and the likes of Facebook, Google and LinkedIn command jaw-dropping market capitalizations.

The implications for users of this process of datafied commodification are profound and are explored in depth by a number of theorists. Returning to Isin & Ruppert (2015), “it is through datafying digital actions that citizens are made into subjects of power and knowledge in cyberspace” (p.114). They argue this because recursed data is used to formulate predictive algorithms which channel certain behaviours online and, for example, to formulate credit and insurance profiles that imply serious consequences for the individuals denied service. A flurry of accounts have emerged in recent years identifying the oppressive and discriminatory potential of data-based, algorithmic systems for already marginalised peoples (Eubanks 2019; Noble 2018; O’Neil 2017). Perhaps the most sweeping assessment of data commodification and its implications is evident in Couldry and Mejias’ coinage of ‘data colonialism’ (2019): a system in which a cabal of interconnected technology companies - ‘the social quantification sector’ - “capture and translate our life into data as we play, work and socialise...that can be used to sell our lives back to us, albeit in commodified form” (p.68).

Another prevailing concern amongst political-economists with regard to this commodification of information is the phenomenon of ‘immaterial labour’. Whereas the phenomena of ‘user-generated content’ (UGC) and open source software production have garnered plaudits celebrating the empowerment of ‘prosumers’ (Bruns 2008), theorists contributing to the informational capitalism thesis recognise these activities as processes of valorization and exploitation. Ross (2013) asserts for instance that “the most substantial rewards are allocated, on an industrial basis, to those who design and build the technologies of extraction, who hold the system’s intellectual property, and who can trade the aggregate output of personal expression as if it were some bulk commodity like grain or beets” (p.19).

Jordan, however, disagrees with the charge of exploitation because it imposes a treatment of personal information as exclusive property and thus reduces the critique to the same rules of ownership imposed by the platforms (2015, p.192). A final word should go to the more oblique challenge to the charge of exploitation implied by immaterial labour that comes from Zuboff in her landmark book

Surveillance Capitalism. According to Zuboff, the exploitation implied by digital platforms transcends labour: “At its core, surveillance capitalism is parasitic and self-referential. It revives Karl Marx’s old image of capitalism as a vampire that feeds on labor, but with an unexpected turn. *Instead of labor, surveillance capitalism feeds on every aspect of every human’s experience* [emphasis added]” (2019, p.10).

Informationalised production

We can start this sub-section with a caveat, as Couldry and Mejias (2019) remind us that it is easy to overstate the economic importance of the ‘social quantification sector’ in relation to the broader economy. The revenues of the Toyota corporation, for instance, were nearly 3x those generated by Google in 2006 ($237 billion compared to $89.5 billion). However, they do also point out how in terms of market capitalization and rate of growth, technology companies had usurped manufacturing and resource companies to dominate the global top five list by 2018 (p.54). Moreover, the main purpose of this subsection is to underscore the importance of information to broader processes of capitalist accumulation.

Any broad consideration of the commodification processes of informational capitalism requires us to return to Schiller’s point regarding its dual character, and the importance of information as ‘an intermediate component of production’. Schiller himself (1999, 2010) and Dyer-Witheford (2015) have done more than most to demonstrate how the ability of corporations to capture, store and transmit information instantly and without regard to distance has enabled a globalised regime of capitalist accumulation. According to the latter’s description, “electronic value chains, high-tech agribusiness and speculative electronic commodity markets” (p.121) constitute key elements of informational capitalism and indeed he cites data showing that the marginal economic worth of the ICT sector relative to agriculture, resource extraction, retail etc. demonstrates “the real significance of ICT capital is what it has done for capital *in general* [emphasis added]” (p.141). Accordingly, the financial sector cannot be ignored as Cohen (2019) notes, “within the political-economy of informational capitalism, (as) the financial sector has … grown in size and economic power, many other, ostensibly more tangible activities have come to be understood as sites of financialization— as inputs to the extractive activities of finance capital” (p.26).

The integration of data processing technologies into manufacturing represents a potent case study of the importance of information as an intermediate part of the production process. As Cohen (2019) observes: "information technology assumes an increasingly prominent role in the control of industrial production and in the management of all kinds of enterprises" (p.6) Meanwhile, Srnicek (2017), in his typology of forms of platform enterprises, names industrial platforms as one of the key emerging forms. The 'industrial internet of things' involves the embedding of sensors into every part of the manufacturing apparatus to allow for complete data capture and automation. In this nascent form of industrial production "material goods become inseparable from their informational representations" (p.65).

In sum, then, we can observe how the architects of informational capitalism - identified primarily as the copyright holders, web corporations and high-technology industry – commodify information in the form of culture and technology through the framework of intellectual property, the datafication of personal expression and social relations online, the harnessing of immaterial labour and how the global, instantaneous flows of information through digital networks facilitate accumulation across the totality of capitalism. We turn our attention now to the other foundational logic of informational capitalism – control - and how it is employed by the actors identified above, as well as one hitherto under-examined in this section: the state.

Control: IP law; surveillance; code

As the essential logics of informational capitalism exist in a co-constitutive relationship with one another, dialectical would not be an apt description as the dynamic is one of mutual benefit as opposed to tension. Control, in the form of restrictive IP law, surveillance and the enclosure of digital spaces through code all facilitate the commodification of information, while the ensuing accumulation strengthens the interest of those actors that seek to impose yet more control. As we will see in short order, the equation is complicated a little when we introduce the variable of the state. Its role as a facilitator of commodification – by compelling global legislation strengthening the IP regime, deregulation of the telecoms industry, conducting industrial espionage or funding high-technology enterprises – is a means to further entrench control in the form of geopolitical hegemony.

The IP regime

Venturing now into the specifics of control, we can commence this section as we did the last, by examining intellectual property. Whereas the earlier references to IP centred on the *fact* of commodification, here we concern ourselves with IP's application in order to control the *flow* of these commodities, in such a way so as to maximize remuneration accruing to rights holders. The topic of the 'commons' was identified earlier as a potential counterpoint to the commodification of information inherent to current formulations of IP law, although the precise nature of how that commons should be safeguarded is a matter of some dispute. Where the most liberal and critical voices do achieve harmony on the subject of the information commons, however, is in condemning the tendency of the IP-regime towards enclosing it.

It is noteworthy that two of the most prominent works criticizing the excesses of the IP regime are entitled *Information Feudalism* (Drahos & Braithwaite 2002) and *The Public Domain: Enclosing the Commons of the Mind* (Boyle 2008). Both are inspired by the parallels between earlier historical phases and their practices of unjust enclosure, with those imposed upon the contemporary information commons through IP law. Patent law is described by Drahos & Braithwaite as "one of the main mechanisms by which public knowledge assets have been privatized" (2002, p.150), while Boyle (2008) rails against the diffusion of control mechanisms as "Intellectual property is now in and on the desktop and is implicated in routine creative, communicative, and just plain consumptive acts that each of us performs every day" (p.52). There are two principal mechanisms of control highlighted here: one facilitated by law, the other by technology. It is to the latter that we will turn first.

According to Lessig's famous maxim in *Code 2.0,* (2006) "Code can and will displace law as the primary defence of IP in cyberspace" (p.175). His overall thesis pertains to the implications for democracy from the capacity for mechanisms of communicative control to be covertly engineered into the Internet. The words above, however, were written specifically in response to the copyright protection provisions, featured in the US Digital Millennium Copyright Act in 1998. These included technology that imposed digital rights management upon copyrighted works, "technical copy protection" that when infringed, would result in harsh legal penalties (Gillespie 2007). Indeed, the prospect of building mechanisms of control into digital artifacts and platforms in order to protect the 'rights' of IP holders

generated alarm amongst observers within critical legal studies and the political-economy of communication.

Schiller, for instance, claimed that "exclusionary corporate control over information as private property is predicated on interweaving police powers throughout the tissue of social life" (2007, p.52), while it prompted Boyle (2008) to claim that "as copying costs approach zero, intellectual property rights must approach perfect control…In other words, we must make this technology of the Internet…into a technology of control and surveillance" (p.61). Finally, the work of Lessig (2006) and Gillespie (2007) coincides with Berry (2008) in that ultimately, "the owner of the copyright will no doubt assert the right to control the shape and direction of technologies" (p.12).

The means of this control takes various forms. Benkler (2006) offers a useful 5-tiered 'institutional ecology' model that shows how control can be exerted over the various layers of digital communication in order to favour the interests of copyright holders. It consists of: physical transport; physical devices; logical transmission protocols; logical software; content (p.395). Berry, meanwhile distills the schema to offer us the '3 Cs' of control: copyright, code and contract (2008, p.36). Isin & Ruppert (2015) also signal the importance of the contract as a means of control as they offer an extensive theorisation of 'openings' and 'closings' for digital citizenship. They consider the latter as emerging from 'state-security' and 'corporate-legal' apparatuses which require "submitting to end-user licenses and user contracts that not only severely restrict actions but also appropriate their results as data…(with) increasing zoning, appropriation, sequestration, and enclosure through closed conventions" (p.154).

Code

This last quote provides us with a segue out of code as IP control into a discussion of code and enclosure as a means of control within informational capitalism more generally. Deleuze's (1992) notion of the 'society of control' and how it manifests itself in a "continuous network" (p.6), as opposed to specific instances of institutional discipline, has proved foundational to many subsequent analyses. Galloway's (2006) *Protocol: How Control Exists after Decentralization* for instance, is one that owes it an existential debt. Indeed, Galloway's was a notable corrective to the torrent of accounts classifying the Internet as a technology of freedom and argues convincingly that through the TCP/IP protocol, control is hardwired into the Internet.

An important counterpoint to the implied novelty of code as a form of capitalist control is offered by several scholars: Robins & Webster (1996, p.65), Soderberg (2006, p.88-89) and Kiss & Mosco (2005) all argue in similar fashion that since the advent of industrial capitalism, technology has always been used as a means to control labour, it has just become more diffuse and extensive. It behooves us to retain focus on Soderberg here as, unlike Galloway, he offers a clear rationale for the control that is engineered into the Internet by the forces of informational capitalism, one based on three objectives: "To protect the commodity form (to prevent infinite reproducibility and identify violations), to speed up commodity circulation and to prevent users from acquiring technical know-how…"(Soderberg 2006 p.90). This last point – the control engendered through maintaining users' ignorance of the way online platforms function - is an important one that we will return to later as we examine the issue of surveillance.

Control is also coded into other forms of information and culture beyond the Internet's weave of servers and cables. The integration of digital rights management (DRM) software into the physical media of DVDs and CDs has been assiduously analysed by Tarleton Gillespie in *Wired Shut* (2007). Although these physical embodiments of culture may appear archaic in 2020, the essence of Gillespie's argument represents an enduring critique of the way that the architects of informational capitalism seek to control information at the expense of civic agency, as well as a profound insight into the relationship between commodification and control. As Gillespie argues:

> To the extent that such technological interventions impact some participants more than others, or normalize certain practices and marginalize others, they are likely to shift the structures of participation and culture more generally. They are a revised road map for the movement of information, tightly regimented to ensure that, first and foremost, cultural goods are always and already commodities, and that being commodities trumps all other considerations
>
> (2007, 12).

In addition to engineering control into technical architectures through code, web companies employ political-economic means to control lucrative markets through monopoly. According to McChesney (2013) the exploitation of network effects, technical standards and patent acquisition "explain how the profitability of the digital giants is centred on establishing proprietary systems for which they control access and the terms of the relationship, not the idea of an Internet as open as possible" (p.135). He goes on to detail the growing efforts by technology companies to obliterate "the boundary

between hardware and software" in order to create perfect closed ecosystems, or digital enclosures by another name, in order to maximize the profit potential of users (p.140). Apple's 'walled garden' of mobile devices tethered to particular marketplaces of proprietary content is emblematic of such a strategy of enclosure. Coded architecture is complemented by legal constructs as Cohen argues that "the combination of scale, asserted contractual control, and technical control enacts enclosure of both data and algorithmic logics as an inexorable reality of twenty-first century networked commercial life (2019, p.45)

Jordan (2015) is one that builds upon Galloway's argument to show how, in contrast to the many claims of the anti-hierarchical nature of the Internet's structure, it is a requirement of packet-switching technology that IP numbers are assigned and stored, and this facilitates total capture of user data (p.19). It is this 'control protocol' therefore, that facilitates what is one of the most diffuse and pervasive forms of control that occurs within informational capitalism, one that can both serve the core processes of commodification, as well as the geopolitical requirements of state hegemony: surveillance.

Surveillance

Once again, for our starting point we find ourselves returning to the analysis of Robins & Webster (1996) who address both aspects of surveillance: that which is carried out in service of corporate accumulation, and state power. The 'panopticon' was the archetypal mode of surveillance control identified by Foucault that functioned within modernist hierarchies (Foucault 1977). Robins & Webster argue that digital networks within post-Fordist societies offer "the same dissemination of power and control, but freed from the architectural constraints of Bentham's brick and stone prototype" (p.59). It is indeed a core argument of these authors that it is the extensity of the means of surveillance, not its existence, which is the fundamental novelty of cybernetic capitalism. This results in a grim prophecy where people will "be increasingly relegated to the status of data" (p.67) as their behaviours are recorded and stored for commercial and political uses. The result of this process is that subjects become "visible and knowable to the different computerized 'inspective forces'" (p.60).

Subsequent analyses have extended these lines of reason. Campbell and Carlson (2002) characterise surveillance as the 'commodification of privacy', as a concept previously conceived as a civic right is now traded by citizens as a means of exchange for digital services. In *Profiling Machines*, Elmer (2004)

also moves beyond Foucault's model of the panopticon to highlight this key novelty of online data capture, one which the term 'surveillance' does not adequately convey, and that is the *requirement* of users to divulge their data as a condition of passage for online services.

This insight is further developed by Andrejevic in *iSpy* (2007) as he invokes the familiar opposition of commons and enclosure to characterise the implications for those who "submit to particular forms of monitoring in order to gain access to goods, services and conveniences" (p.3). The digital enclosure results, in the political sphere, a means of "centralized control" as detailed data profiles provide the means for a meticulously 'managed' democracy (p.200), while in the commercial realm the ultimate conclusion is the "privatization of public space" (p.133).

The asymmetry of this ubiquitous digital surveillance is one of its fundamental characteristics and one flagged repeatedly by Andrejevic; while individual citizens become increasingly transparent to the 'watchers', the means and extensity of the capture remain stubbornly opaque. This imbalance necessarily engenders control as the impotence of the surveilled is compounded by their ignorance. Jordan (2015) also argues that these systemic forms of obfuscation, particularly through the impenetrable language of EULAs (end user licensing agreements) that often provide the legal basis for monitoring and data capture, represent a form of exploitation (p.211). As a final contribution to this idea, it is worth noting Couldry and Mejias' reflection on one of the key paradoxes of digital data surveillance by the so-called 'social quantification sector': that at the same time as the means of surveillance erase distance between user and platform (through wearable tech, for instance), the distance in terms of unaccountable power between these two ends of the surveillance relationship remains vast (2019, p.129).

Crain (2013) identifies the architects of this digital surveillance infrastructure as the 'data-marketing complex', comprised of the familiar names of Google, Microsoft and Facebook, as well as an extensive network of more obscure data collection entities (p.251). In his thesis he underscores two dynamics of control related to this form of surveillance: one concerns the proprietary, enclosed digital spaces that are built to facilitate data capture – a la Facebook's social network - the other is the ensuing process of individualized commercial targeting, one that increasingly atomizes individuals and results in "the reproduction of social discrimination in new contexts and the enactment and institutionalization of new forms of prejudice based on intersectional difference" (p.252).

All of the above analyses have only so far *alluded* to one of the principal motors of surveillance within informational capitalism: the needs of the surveillance state. Although the 'market surveillance' detailed above coheres clearly with the commodifying needs of informational capitalism, the rationale for including the state within this brief review of surveillance as control may not appear as intuitive. As was made readily apparent at the outset of this chapter, however, the state has always been a core actor within processes of capitalist accumulation and as will become clear in the remainder of this section, the roles of the state and those of corporations with regard to surveillance are utterly intertwined.

History instructs us that the covert collection of information has always been an essential component of maintaining political power, and certainly the monitoring of citizens by governments has been standard practice for centuries: from spies eavesdropping in public spaces to the wiretapping of telephony (Greenwald 2014, 3). As has been revealed in exhaustive detail by NSA whistleblower Edward Snowden, in conjunction with journalist Glenn Greenwald (2014), the US government worked in partnership with US Internet companies – Google, Microsoft, Yahoo, Facebook, Apple – in a program called Prism in which the National Security Agency availed itself of full access to these companies' servers and their trove of user data (p.21). This represents, as Jordan neatly characterises it, the transition of data "from one enclosure to a nation-state security force's enclosure" (2015, p.110). In the context of the United States, the relationship between the US military and the nation's communication technology sector could rightly be described as symbiotic. Many coinages exist to label this entwinement, including: the 'Military-Internet-Complex' (Harris 2014); the 'Information-Industrial Complex' (Powers & Jablonski 2015); a 'Military-Digital-Complex' (McChesney 2013); or the 'Data-Intelligence-Complex' (cited in Mosco 2014, p.184).

State surveillance is not dependent on corporate complicity and access to metadata, however, because, agencies such as the NSA can, and do, use the information freely disclosed by citizens on social networking sites to build detailed "threat profiles" (Andrejevic 2007, p.175). Indeed, as theorised by Jordan (2015) the architecture of the Internet favours the openness of communication and amongst Western governments, securitisation measures exploit this and base their techniques on a dual strategy of total data capture and recursion-based profiling. State surveillance, as such, goes 'with the flow' of information power. This is in contradistinction to the methods primarily employed by

authoritarian governments to block, filter and censor online content that go 'against the flow' and are well chronicled by the likes of Diebert (2013; 2020) and Morozov (2011).

If the means of state surveillance are well chronicled what though of its ends? Governments are highly complex entities that require extensive informational inputs in order to function, indeed, according to Vaidhyanathan (2011), "Every incentive in a state bureaucracy encourages massive surveillance" (p.97), but why specifically should the state covet this data and the means of its recursion? There are three main rationales: securitisation, domestic political management and geopolitical advantage.
The concept of 'securitisation' is an essential one to grasp in the context of state surveillance. It signals the invocation by government of an extraordinary security threat in order to justify the exercise of particular security measures. Terrorist attacks such as those events of 9/11 are the most familiar pretexts for securitisation. In the specific context of the Internet, however, terrorism is joined by narcotics, pornography and arms as the so-called 'Four Horsemen of the Infopocalypse', as (often spurious) justifications for the implementation of state security measures online. According to Jordan (2015), in this context "existential fears often drive a 'do what it takes' mentality among government agencies, information power underpins a way of incriminating everyone and creating the desire for more information so that incrimination can proceed more accurately" (p.116).

Another motor of state surveillance can be identified in the context of the scale of the national security apparatuses. Certainly within the United States it is so vast as to imbue it with its own momentum. McChesney (2013) hints at this as he notes that "over 850,000 people have top-secret clearances. Some 1,300 government agencies and 2,000 private companies are collecting intelligence" (p.161). Hirst, Harrison & Mazepa (2014) go further still to label this apparatus a 'surveillance economy' that is "driven by government initiatives that draw in private capital" (p.307).

The use of government surveillance for the purposes of managing public opinion is less important for this study but still merits mention here as it is undertaken in conjunction with web companies and corresponds to the logic of control that is a defining feature of information capitalism. Elmer, Langlois & McKelvey (2012) interrogate the notion of the 'permanent campaign' and although they do not mention surveillance specifically, they do highlight the "constant vigilance" (p.15) required to monitor and manipulate the circulation of digital 'objects' (memes, videos, blog posts etc.) in order to influence the flow of information within the public sphere to their best advantage.

The final rationale for state surveillance as a means of control within informational capitalism relates to the efforts to secure geopolitical advantage. Shane Harris in *@War* (2014) demonstrates, that in addition to overt tactics of aggression between states, electronic tools are essential for covert information gathering as “surveillance is an essential precursor to attack” (p.74). Moreover, sensitive spying operations against both America’s friends and foes glean the information necessary to conduct diplomatic and military manoeuvres. Examples of this include the hacking of the President of Mexico, Felipe Calderon’s, private email account in 2010 (Harris 2014, 75) or the President of Brazil, Dilma Rousseff’s, personal communications as revealed by Edward Snowden (Greenwald 2014).

The use of electronic surveillance for industrial espionage is also widespread. China is frequently cited as one of the main protagonists of this form of surveillance as it is accused of a systematic infiltration of US corporate networks in order to obtain trade secrets (Harris 2015, p.178). Canada has also found itself at the eye of the storm with revelations that it had targeted the Brazilian Ministries of Mines and Energy for electronic surveillance (CBC 2013).

In all of these examples of state surveillance, we should note the extent of the entwinement with economic actors; not only in terms of the means of surveillance, but the also the ends. Within the context of informational capitalism, the executive/legislative state from the system’s core places itself at the vanguard of efforts to reform policies and laws in ways that facilitate corporate practices of information commodification. The state interprets the prosperity of its corporate sector as a proxy for national economic vigour and as a means to increase its own geopolitical standing. Harvey’s claim regarding the neoliberal state offers a useful template here in that it “persistently seeks out internal reorganizations and new institutional arrangements that improve its competitive position as an entity vias-a-vis other states in the global market” (2005, p.65). These are thus legislative and policy manoeuvres that correspond to the logic of facilitating commodification for the purposes of securing greater control within the global political-economy.

In sum, we can argue that control is the handmaiden of commodification, as the multiple means by which it is exerted – IP law, enclosure through code, monopoly and surveillance – all protect and facilitate modes of private capital accumulation. In all these instances, the fundamental tendency is towards securing control over the circulation of information in order to maximize its profit potential.

The state, as another foundational actor within the system of informational capitalism, demonstrates that the requirement for control is based also on the need to protect national security, further its geopolitical ambitions and to advantage its economy. As we close this sub-section in reference to the state, this provides a useful segue into the next sub-section as we take a concerted look at the 'dynamics of informational capitalism', or the principal sectors within the system, and the synergies and tensions that characterise their relationships.

The dynamics of informational capitalism: Sectors, synergies, tensions and resistance

The preceding section evidences the fact that there is no unified theory or homogenous account of informational capitalism. Whether it is intellectual property or immaterial labour, different theorists suggest particular emphases and perspectives. Similarly, the *system* of informational capitalism is no monolith. I may have identified commodification and control as its central logics, but this does not negate the tensions and contradictions that also exist within it. Intra-capitalist competition remains a defining aspect of capitalism of all vintages, and this most contemporary version is no different.

Within and between the distinct sectors that together constitute the system of informational capitalism, contradictory mechanics to commodify information may be employed. For instance, the commodification of cultural goods through IP law benefits media conglomerates, while search engines generate more profit if those same commodities are freely accessible through the web so that advertising revenue can be accrued.

Indeed, even within each sector, the drive to capital accumulation, to maximize one's share of finite spoils, ensures antagonism. To provide one very specific example, the Telecommunications Act of 1996 in the United States was a pivotal moment in the deregulation of the industry. That should not lead us to believe, however that the telecommunications sector presented a united front. McChesney characterised it as "a turf war between the regional Bell monopolies and the long-distance carriers" (2013, p.106) while Newman described it as "neo-liberalism at war with itself" (2013, p.56). The tensions that one can observe within sectors of informational capitalism should not negate, however, a consistent adherence to the system's core logics.

Although we identified many of the principal actors within informational capitalism in our examination of logics, it is necessary now to understand them in the form of sectors; economic categories defined by shared activities, interests and business models. It is through a concerted examination of these

sectors, the mechanics they employ to impel the system's core logics, and the synergies and tensions between them – as well as sometimes within them - that we can fully appreciate the dynamics that co-constitute the system of informational capitalism. These dynamics form the 'texture' of informational capitalism and help to explain many of its uneven material manifestations.

Moreover, informational capitalism is not a static system. As new technologies, policies and business practices emerge, tensions between sectors might evolve into synergies, or vice-versa. The case of the web companies and the telecoms companies being staunchly opposed on the matter of network neutrality in the United States was resolved by a famed agreement between Google and Verizon in 2010 that saw the latter concede mobile network discrimination, creating an improbable synergy between the previous antagonists (Stiegler 2013, 44).

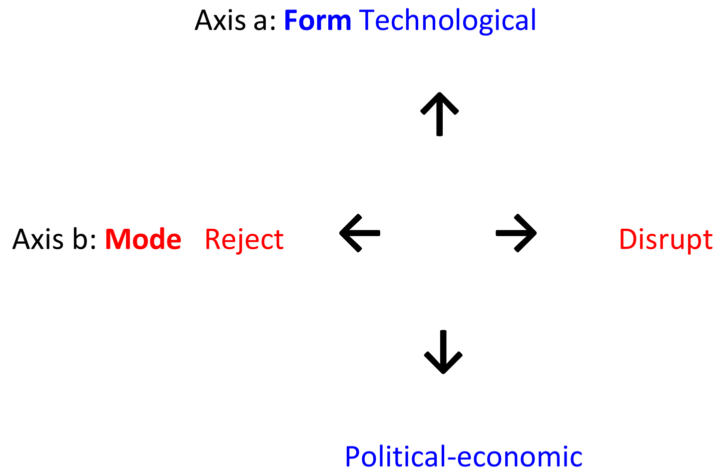
Resistance

It is also important to recognise that the logics of informational capitalism do not run unopposed. As Boltanski and Chiapello argue, in the *New Spirit of Capitalism*, forces of repression and resistance always exist in a form of dialectical tension within capitalism (2007). Resistance though is a distinct analytical category from the 'tensions' that I also identify in this section. Those tensions are *endogenous* to the system and represent competing means to impel the system's core logics. Resistance, however, is exogenous to informational capitalism and must come from actors external to the system, who contest the logics of control and commodification. These actors include civil society organizations, social movements, activists and hackers.

Their resistance manifests itself in myriad forms, but can be usefully categorised across two axes (Figure 1.). One is the *form* of resistance: whether it is predominantly *technological* in nature, or *political-economic*. The other is the *mode* of resistance: whether it seeks to *reject* the logics of informational capitalism by creating an alternative to them or represents an effort to contest or *disrupt* those logics.

Figure 2

The axes of resistance to informational capitalism



The following is a non-exhaustive list of examples of resistance that occupy various positions across these axes:

Policy activism that contests new restrictions around IP (Sell 2013) or efforts from the telecoms sector to control the flow of information online eg. In the network neutrality debates (Stiegler 2013); the Free Software movement that presents an alternative to the commodification of code (Soderberg 2008); media piracy that challenges the commodity form of culture (Mueller 2019); whistleblowers and leaks that reveal the obscure infrastructures of government surveillance (Lyon 2015); platform co-operativism that operates outside of the enclosure and monopoly of web companies (Scholz 2013); the construction of alternative communication infrastructures, such as mesh networks, that provide non-commercial, un-surveilled spaces for the circulation of information and culture (Price 2014); strikes at sites of hardware manufacturing that disrupts the exploitation of labour (Dyer-Witheford 2015); encryption of communication flows that obstructs state surveillance (Hellegren 2017); 'hacktivism' in which platform user interfaces are hacked in order to challenge modes of online commercial surveillance, what Galloway calls "counter-protocological attacks" (2004).

These forms of resistance operate with varying degrees of efficacy, some constituting a direct challenge to the logics of informational capitalism, while others tinker with its mechanics, and are readily co-opted into the system. There are indeed many observers who are sceptical of any effective

form of resistance being waged using platform technologies. Morozov (2011) argues that distraction and surveillance negate the efficacy of online activism, while Dean (2005) laments that the symbolic overload of communicative capitalism dilutes effective resistance and “forecloses the antagonism necessary for politics” (p.62).

Forms of resistance that make use of the infrastructure of informational capitalism are indeed vulnerable to scrutiny and control. Cohen (2019) notes that “platform-based, massively intermediated environments magnify the effects of distributed, peer- produced cultural, social, and political activity but also co-opt the processes and outputs of distributed production in the service of data-driven profit strategies” (p.250) Finally, as Couldry and Mejias (2019) also contend, even more skeptically, “the thesis that datafication technologies can have democratic potential should be treated with extreme suspicion...they are in fact weakening and corrupting our conceptualization of what a “civic space” must be” (p.102).

It is not feasible to present an exhaustive account of all of these dynamics because of the scale and complexity of the system. However, I contend that by examining one core sector in detail - the web/technology companies - we can appreciate some of these dynamics at work. Indeed, because web/technology companies intersect to some degree with all other sectors in the system, profiling only this one actually permits a satisfying cross-sectional analysis of the dynamics of informational capitalism.

Analysing the dynamics of informational capitalism is an essential endeavour for this project because the Marco Civil da Internet was a fiercely contested multistakeholder initiative and this analysis provides a foundation to understand how the actions and agendas of those actors relates to their roles within the complex dynamics of informational capitalism. Moreover, it is important to consider what constitutes effective ‘resistance’ in the context of informational capitalism, because I contend that the efforts of civil society actors to defend the Marco Civil accommodated rather than challenged the system’s central logics.

Web and technology companies: Synergies, tensions and resistance

The sector of informational capitalism that can be classified as web and technology companies encompasses those enterprises that have emerged with and are reliant upon the Internet, and are dependent upon “an extractive apparatus for data” (Srnicek 2017, p.48) for their business operations.

Srnicek (2017) indeed offers a categorisation of platforms that is useful here. ‘Advertising platforms’ are those that datafy user behaviour and use that information to sell targeted advertisements (eg. Google and Facebook), ‘cloud platforms’ (eg. Amazon Web Services) own massive computing infrastructures and sell IT services to other digital businesses, while ‘lean platforms’ like Uber or AirBnB offer a digital interface and logistical services that leverage individually owned assets. The examples listed here represent the best-known examples of web and technology companies, however, there is a larger ecosystem of advertising networks, on-demand service providers, mobile software developers and streaming services that are also reliant on IT and data and can be encompassed within this sector. A classification of these small actors within the ‘social quantification sector’ is offered by Couldry and Mejias (2019) as hardware, software, platforms, data analytics and data brokerage (p.50).

Google, Amazon, Facebook, Microsoft and Apple have secured virtual monopolies in search, e-commerce, social networking, operating systems and music downloads respectively, leading to huge concentrations of power commensurate with their status as ‘digital sovereigns’ (MacKinnon 2012). The strategy of these monopolists has been underpinned by core processes of information control: aggressive patent protection to secure software and mobile hardware (Google, Apple), closely-guarded proprietary software (Google, Microsoft) and the creation of enclosed platforms that negate the foundational open vision of the Web (Facebook, Apple) (McChesney 2013; Wu 2010; Diebert 2020).

Moreover, the commodification of personal information within these controlled enclosures also represents a shared logic: by “aggregating and processing data into targeted personalization strategies, they create value from data” (Van Dijck 2013, 47). Even those companies like Apple that rely principally on hardware sales (Marsden 2016, 69) and therefore do not systematically sell access to their users’ information, effectively commodify that data by using it as an intermediate component in production; to guide optimization of their various products and services.

Web and technology companies exist at the vanguard of the system of informational capitalism. This is evidenced by a number of metrics, not least by the size of market capitalization, a list which in recent years has been dominated by Microsoft, Amazon, Alphabet (Google), Facebook as well as two of the Chinese tech giants, Alibaba and Tencent. Moreover, these companies are platforms, and as such constitute the primary scaffold of informational capitalism, one on which billions of users rely on for communication and information services, and an entire ecosystem of smaller technology companies, and behavioural advertising is based (Srnicek 2017).

The manner in which this dominance is maintained implies synergies and tensions with other key sectors within informational capitalism, notably the security state, telecoms, media and content production. Finally, we must also consider the forms of resistance that are employed by various actors against web/technology companies in order to contest their logics of commodification and control.

The interoperability of distinct technical systems is widely recognised as being a constitutive feature of the digital economy (Palfrey & Gasser 2012). As Van Dijck observes, "all companies have a vested interest in making the online ecosystem uniformly accessible and shareable" (Van Dijck 2013, p.58). Although web and technology companies often seek to create proprietary enclosures of commodified data, those same groups are dependent upon content created by other organizations and users, as well as third-party applications. For these companies to generate advertising revenue, as well as to effectively surveil their users around the web, an information environment characterised by 'free flow' is essential.

The American state apparatus, as the epicentre of informational capitalism, exhibits a particular and long-standing synergy with the operational imperatives of web giants such as Google and Facebook, with regards to 'free flow'. As early as 1869, the American state ring-fenced the 'free flow of information' and access to foreign markets as essential goals of its foreign policy (Winseck & Pike 2009, p.15). The 'free flow doctrine' was imbued with an ideological dimension during the Cold War (Nordenstreng 2012) and was even used as a pretext to withdraw from the UN's NWICO discussions (Carlsson 2002). The free flow of information has remained a touchstone of American policy to this day, as the state seeks to leverage its corporate power to impose a global system of economic imperialism in lieu of military expansion. Google et al represent the latest generation of corporate emissaries capable of leading this mission, and therefore "the US campaign for an uncensored and free flow of information on an unrestricted Internet backed by Google and other platforms...has been clear proof of the collaboration between the government and transnational corporations..." (Jin 2015, p.92).

As Secretary of State, Hilary Clinton's 'Internet Freedom doctrine', announced in 2010 as a core plank of America's '21st Century Statecraft' policy, placed emphasis on the connections between the consolidation of human rights worldwide and Internet diffusion, especially the 'freedom to connect'. Powers & Jablonski (2015) offer a concerted analysis showing how the US state's boosterism of

Internet Freedom and its corporate emissaries is driven by economic and geopolitical considerations rather than any touted ethical imperative. It certainly provides the means to exert the 'soft power' widely understood as necessary post-9/11 to consolidate US hegemony worldwide (Freedman 2008, p.209). Web companies contribute to such policy initiatives by virtue of their tremendous lobbying efforts – in 2012 Google spent $16m and Facebook $4m on lobbying the US government (Mosco 2014, p.114). Indeed, according to Julian Assange, "by tying itself to the US state, Google thereby cements its own security, at the expense of all competitors." (cited in Powers & Jablonski 2015, p.75).

More generally, the role of the US Department of Defence in the rise of the Internet and Silicon Valley has been well-documented (Dyer-Witheford 2015). What is less well-known is the continuing nature of that relationship, to the extent that, according to McChesney, "it's almost impossible to separate any American-made technology from the American military" (2013, p.101). Everyday technologies such as GPS, voice-recognition, touchscreens, as well as the anonymity-enabling software Tor, all owe their existence in part to military funding (Taylor 2014, p.223). Another synergy largely hidden from view is the volume of military-trained cyber-security personnel who transition to work for financial institutions and other corporations (Harris 2015, p.203), creating in effect an elaborate state subsidy for informational capitalism. The extent of the 'Military-Internet-Complex' does not end there, however, as it constitutes the nexus of US state surveillance. The infamous Prism program and its exposure by Edward Snowden rendered visible a set of relationships that had hitherto only been guessed at. In their wake, Lyon (2015) characterised the relationship between government departments and web companies as one of "mutual dependence".

Although the congruence around 'free flow' between web companies and states from informational capitalism's core is clear, the need for other powerful sectors to enclose and control information results in one of the defining tensions within the system.

The content production sector is reliant on a system of information control that protects the commodity form of culture through international IP regimes. Web companies, exemplified by Google, benefit from the free flow of cultural commodities, from which they generate enormous advertising revenues. The nature of this tension between IP rights holders and web companies was underscored in the conflict over the proposed SOPA legislation in the United States, one that pitted web companies against IP rights holders (Anderson 2013, p.208).

Although the tension between free flow and copyright might appear to be irreconcilable, there is an important congruence that we must consider. Haggart and Powers (2017) make the case that the "free flow of information creates markets by exposure to intellectual properties, while copyright secures economic benefit to copyright holders from the flow" (p.103). This potential for complementarity between the two mechanics should ultimately be judged by degree. As these mechanics exist in a form of uneasy symbiosis, maximalism on either pole harms the potential for both mechanics to be employed in tandem for the advancement of informational capitalism.

We can, however, also observe a clear synergy between web/technology companies and the content production sector in terms of the architecture of commercial surveillance online. McChesney (2013) identifies "a synergy of interests between the commercial forces that want to monitor people surreptitiously online to better sell them to advertisers and the copyright holders who want to monitor people online to see who might be using their material without permission" (p.126). Those user/infringers can then be targeted with the punitive dimension of IP law.

The state in many parts of the world also favours information enclosure for the purposes of domestic political control and/or national security. In China for instance, web companies from the core of informational capitalism, most notably Facebook, Twitter and Google, are prohibited from operating because their emphasis on information flow undermines the hegemony of the state (Jin 2013). Although Jordan (2015), for instance, considers enclosure as going 'against the flow of information power' (112), building a national information enclosure allowed Chinese web companies such as Alibaba and Bytedance to dominate their domestic market and become globally significant (Jin 2013, p.86). In this instance, information control by the Chinese state serves a dual purpose of advancing its geopolitical standing, and limiting the diffusion of domestic dissent.

States that are not reliant on authoritarian control also contest the favoured information flow of web companies as democratic governments also impose punitive measures against web companies over the flow of content deemed to incite terrorism or hate crimes, for instance.

Other commercial sectors within informational capitalism also seek to impose restrictions on the flow of information, to impose control in order to nullify political and economic threats. In Canada, for instance, the telecoms carrier Telus famously blocked user access to the site of supporters of the Telecom Workers Union, then deadlocked in strike negotiations with the corporation (Barratt and

Shade 2007). Perhaps more commonly, telecoms companies engage in network management practices that discriminate against rival applications in order to protect their share of the commodity of network access (Marsden 2017).

The telecoms sector has maintained a long-running and acrimonious rivalry with web companies over the use of network infrastructure. The CEO of AT&T famously articulated this core tension within informational capitalism when he stated that “Now what they would like to do is use my pipes free, but I ain’t gonna let them do that because we have spent this capital and we have to have a return on it” (quoted in Stiegler 2013, p.86). Indeed, traffic from web companies operates outside the purview of the ITU’s interconnection and pricing framework which means that telecoms companies struggle to generate revenue from it (Winseck 2017). The conflict that arose over network neutrality regulation in the United States therefore saw web companies and the telecoms sector take up opposing positions on the issue, as the former group recognised the grave threat that traffic management by carriers represented for the free flow of information. For the telecoms sector, meanwhile, the imposition of network neutrality regulation would signify ceding control over how they could commodify communication to their best advantage, for instance in creating pay-to-play Internet fast lanes, and favouring proprietary applications through ‘zero-rating’ models (Hoskins 2019).

Despite the enormous power and reach of the web companies, effective resistance to their exploitative mechanics comes in multiple forms. These can be plotted along the axis of ‘form’, between political-economic and technological. In the former category, for those actors that Srnicek (2017) describes as ‘lean platforms’, ‘platform co-operativism’ has emerged as a potentially potent form of resistance. It represents a political-economic mode of organization in which participants attempt to negate the exploitation of platform enterprises by establishing alternatives that are collectively owned and controlled, and that employ equitable labour practices (Scholz 2016). These co-ops eschew the central logics of commodification and control by operating outside of the enclosure and monopoly of web companies.

On the technological side, some activists have attempted to hack platform user interfaces in order to challenge modes of online commercial surveillance, what Galloway calls “counter-protocological attacks” (2004). Researchers at the University of Waterloo developed an application called Facecloak, for instance, that generated false personal information for upload to the Facebook servers, and

populated user accounts with the correct information only for visibility to 'friend' accounts (Luo, Xie & Hengartner 2009). Other forms of encryption and obfuscation, such as the use of the Tor server, or the TrackMeNot browser extension, also serve to disrupt the surveillance infrastructure of web and technology companies. Finally, in a mode of resistance that bridges the technological and political-economic, alternative architectures for social networking, such as diaspora*, that are not funded by venture capital firms, or based on data extraction and targeted advertising, offer users a means to experience a form of online sociality that is not thoroughly commodified and exploited.

These latter forms of resistance base their efficacy on the aggregate value of user/citizen actions. Every individual that opts out of providing Facebook with their personal information, for instance, denies the corporation a source of commodifiable data. And moreover, the phenomenon of network effects (albeit extremely weak in the context of a nascent SNS) means that every new user to a non-exploitative SNS alternative makes that network more attractive to other potential converters.

Section summary

We have surveyed here the dynamics of informational capitalism. Specifically, we have: identified that groups of actors can be coherently classified into sectors that employ the same means to achieve the ends of commodification and/or control; that those sectors are not, however, homogenous, and will compete with one another even as they observe the same logics; that particular sectors exhibit synergies and tensions with one another, while never negating the central logics of the system; that resistance is exerted by actors external to the system, that it can be classified by its *form* as technological or political-economic in nature, and by *mode*, as disrupting or rejecting the logics of informational capitalism.

The following table (1) is an attempt to catalogue some of the dynamics of this complex system. Once again, this is not an exhaustive survey. I have, for instance, omitted mention of certain sectors that are intrinsically important to the system - such as financial services, pharmaceutical, agri-business, advertising/PR and software development - because they are tangential in the case of the Marco Civil.

Similarly, although I provide examples of the types of mechanics employed by particular sectors – for instance, surveillance and enclosure in the case of the telecoms sector – as well as instances of tensions and synergies between sectors, these are prominent examples but are not exhaustive.

Finally, the particular instances of the dynamics catalogued here correspond to those observed most prominently in the Marco Civil's contested development, especially the tension between the web companies and the telecoms sector, and the synergy between the legislative state and the content production/cultural industries.

Table 1

The Dynamics of Informational Capitalism

Sector	Actors	Mechanics	Tensions	Synergies	Resistance
Legislative state	Trade missions/ ministries	International trade & IP law	Security state	Security state	Policy activism
Security state	Military/ intel agencies	Surveillance/ securitisation	Legislative state/Comms hardware	Web companies	Leaks/ encryption
Web/technology companies	Google, Facebook, Amazon	Datafication/ enclosure	Telecoms/ media co's	Security state	Platform co-operatives/ hacktivism
Content production/cultural industries	Media co's, recording movie & games studios	IP law	Web companies	Legislative state/ telecoms	Media piracy
Telecoms	América Móvil	Surveillance/ enclosure	Web/tech companies	Security state/content production	Autonomous infrastructure/ policy activism
Communication hardware	Samsung, Apple, Huawei	IP law/ datafication	Security state	Web/tech companies	Manufacturing strikes

The next dimension of informational capitalism that must be accounted for in developing an analytical framework fit for this study is a reckoning of its global nature.

The global political-economy of informational capitalism: Core and peripheries

Informational capitalism operates as a system of accumulation premised on relationships of exploitation, and as such it is founded upon inequities in power. To date we have only inspected these inequities in the abstract context of exploited users qua citizens and those system actors that direct the exploitation. A crucial step for this study now is to transpose our reckoning of the logics and mechanics of informational capitalism onto a global political-economy. In so doing we can appreciate

the many implications of informational capitalism's inequities on a global scale. This is essential for this study because the Marco Civil as a framework of digital rights can only be properly understood within the context of Brazil's status at the periphery of this global economic system.

We should not imagine that this is virgin analytic territory, of course. Much of the heavy-lifting in theorising systemic global inequities has already been performed by scholars working within world systems theory, international political-economy, cultural imperialism and governmentality studies. The insights gained from this work have not been leveraged for the schema of informational capitalism, however, at least not in any systematic way, and the manner in which they could be transposed is not straightforward. As such, it behooves us to conduct a brief review of these efforts, to assess what can be repurposed, and what needs to built anew.

In the 1960s and 1970s Marxist World Systems theorists proposed the notion of a global political-economy structured upon a capitalist core concentrated in the west and a raft of peripheral nations where low-skill labour and resource extraction was exploited for the core's benefit (Wallerstein 1974). Such an approach was disrupted by the emergence in the 1970s and 1980s of manufacturing zones in East Asian and Latin America, as well as the later rise of the BRICS nations (Dyer-Witheford 2015, p.127). Of a similar vintage and intellectual lineage, cultural imperialism emerged as a theory to explain the hegemony of the United States through domination of international institutions and media flows (Mirrlees 2016).

The later dissolution of the Soviet Empire and the emergence of a multi-polar, globalised world inspired a new set of analyses that challenged the continued relevance of cultural imperialism and world-systems theory. Appadurai's (1990) 'global cultural economy' and analyses of multidirectional cultural flows and new global media centres, especially in the BRICS nations, (Nordenstreng and Thussu 2015) proved influential. Emerging at a similar time, although inspired by the diffusion of ICTs rather than geopolitical shifts, network theory as expounded by Castells (2000) attempted a global geography based on techno-social networks.

Such varied accounts emphasizing the diffusion of ICTs as well as the dispersal of cultural and political power have proven inadequate, however, to reckon with the rise of neo-liberalism as global political-economic orthodoxy. In turn, therefore, the pendulum swung away from celebrations of Southern cultural agency, towards a new reckoning of their exploitation. Hardt & Negri's (2000) extensive

theorisation of the post-modern bio-politics of Empire was one of the most prominent efforts to engage with the global expansion of neoliberal logics. Their proposal of a 'smooth space' of capitalism that belied differentiations in the experience of the South, however, prompted critical reactions from scholars within those societies, (Dyer-Witheford 2015, p.128).

An altogether more satisfying array of explanations emerged out of critical political-economy to account for the globalised nature of neoliberalism, with a common thread emphasizing the notion of coherent capitalist logics alongside local adaptations. In a hugely influential work, Harvey (2011) emphasizes "the complex interplay of internal dynamics and external forces" (p.117) and the attention that "must be paid to contextual conditions and institutional arrangements" (116). Freedman (2008), in turn, underscores the notion of "diversity within convergence" in his study of the global neoliberalisation of media policy (p.43) while Schiller (2010) in a similar context describes how "an omnipresent capitalist logic" and an "overarching congruence…do not necessarily generate global uniformities…" (p.121).

Another valuable perspective comes from governmentality studies. Ong (2007) is a prominent voice from that school and critiques the tendency within political-economy to evoke a "Neoliberalism with a big "N"' (p.7) that effectively flattens local context. Brenner, Peck, and Theodore (2009) in response note the failure of governmentality studies to properly detect the many commonalities present within globalized neoliberalism (p.205) and, as a critical response, propose the construct of 'variegated capitalism'. This offers a means to conceptualize neoliberalism as the "*systemic* production of geoinstitutional *differentiation* [emphasis added]" (2009, p.185). In other words, variegation focuses on the systematic capacity of neoliberalism to mutate and adapt to a wide array of regulatory, economic and socio-cultural environments.

How though has this broad sweep of efforts to theorise global economic inequities been applied to the more limited project of analysing informational capitalism? Fuchs (2010) and Jin (2013) both advocate for an updating of Lenin's analytical framework to understand the functioning of imperialism in the 21st century, one that can be understood as 'informational' or 'platform imperialism', respectively. Mirrlees (2016) takes Schiller as his muse instead to argue convincingly that cultural imperialism is alive and well in the 21st century and is propagated by the United States with an updated suite of tools. Couldry and Mejias' concept of 'data colonialism' (2019) is worthy of mention here given its explicit

focus on the exploitation of the global South, but data colonialism is not synonymous with informational capitalism. None of these accounts indeed offer any means to understand the scales and differential extension of informational capitalism, however, beyond affirming the existence of an exploitative core and an exploited periphery.

In sum, while 'core-periphery' relations are invoked in analyses related to informational capitalism they are not sufficiently developed to account for the tensions arising from the coherence *and* variability of the system on a global scale. Informational capitalism is not reducible to neoliberalism, but it does follow many of its contours and as such the political economic analyses of its spread, particularly that of zonal capitalism, offers *partial* promise as a template. The shortcoming exists in the fact that it implies homogeneity, a too neat, static compartmentalisation that belies the messy dynamics at play. Conversely, 'variegation' on *its* own does not adequately convey the *systemic* nature of informational capitalism, nor the continuity of its inequities with older global political-economies. These blind spots can be addressed through if we combine an appreciation of the systemic nature of informational capitalism with a concerted emphasis on its adaptation. Thus, fusing a zonal and a variegation analysis together, does justice to the uneven yet systemic global nature of informational capitalism. What follows therefore is an effort to merge these approaches together into a hybrid platform of 'zonal variegation'.

Zonal variegation

The functioning of informational capitalism can indeed be much more clearly appreciated when we cease to imagine it in an abstract sense and attempt to map its global geography: one apportioned into zones based on the directionality of relations of power and exploitation. For the particular cartography of informational capitalism, if we resurrect the spatial metaphor favoured by world-systems theorists (Wallenstein 1974; Amin & Luckin 1996) of the core and periphery, then to that hierarchy we may usefully add the categories of epicentre and outer-periphery.

The epicentre is that configuration of actors – not simply nation-states - in which the economic and political power of informational capitalism is most concentrated, where the technological innovations that drive it are developed, and that in combination are used to orient the relationship with other zones to further consolidate its advantage. In terms of the metrics of informational capitalism, the dominance of the United States is unequivocal. Accordingly the epicentre is occupied by a nexus of the

security and legislative dimensions of the US state as well as those private sector actors (listed in the previous section) based within its borders, primarily: the IP lobby, traditional media, web corporations and technology companies.

The core is well-endowed with power and resources but comparatively less so than the epicentre, and is rarely the subject of exploitation. The periphery is comprised of those places where their integration into informational capitalism is based on representing sites primarily of extraction. The level of integration into the system, and the degrees of exploitation and resistance implied in these processes of accumulation, in turn conditions the level of peripherality. The outer-periphery is occupied by those places almost completely unconnected from the production, transmission and consumption networks of informational capitalism. These classifications are not static, however, and growing economic power can advance the status of a particular national market. The rise of China's BAT software giants, and Huawei in the web technology and communication hardware sectors, could see it challenge America's sole occupancy of the epicentre.

Moreover, in industries and market sectors that are largely outside of informational capitalism's circuits of accumulation, and comprise capitalist formations of older vintage, some global sites may constitute regional hegemons, and bely their peripheral status within informational capitalism. Brazil, according to the analysis of Zibechi (2014) represents a "sub-imperial power" owing to the market power of its multi-national enterprises (MNEs)throughout South America. For instance, of Brazil's top 20 MNEs, 12 are from the energy, food manufacturing or transportation equipment sectors. The remaining 8 are based in textiles, mining, metals and chemicals (FGV 2015, p.5). While these industries contain a significant informationalized component – patented manufacturing processes and ICT-based supply chains – they are defined primarily by their close connection to raw commodities.

This zonal system should not be misinterpreted as a structure of *domination*, however, as processes of adaptation and resistance at the periphery are integral to the functioning of informational capitalism as a global system. In other words, exploitation and resistance exist in dialectical tension, to varying degrees and in distinct modes between the zones. For example, to the extent that exploitative differential pricing mechanisms and punitive IP law are imposed upon countries in the global South, media piracy operates in a parallel illicit market as a form of resistance. We must also account for local actors in the periphery, such as Globo in Brazil, or Televisa in Mexico, that employ the logics of

commodification and control, that are capable of exerting regional dominance, and while fully integrated into the global system of informational capitalism, cannot of themselves negate the peripheral status of their national base. In sum, the fact that informational capitalism extends itself globally in a fundamentally uneven manner, highly contingent upon local conditions, is why it should also be understood as 'variegated'.

Relationships of exploitation are substantiated through the major mechanics of informational capitalism detailed above. The manner in which these mechanics are calibrated establish zones, through the production, consumption, transmission and storage of information and associated technologies, primarily as sites where value is extracted, or where it accumulates. The degree of inequity and therefore the zonal classification can be measured using particular metrics, such as:

- **IP** (royalties & patent registrations)
- **Trade and manufacturing** (market dominance in informationalized industry sectors; trade balance in informational assets & high-technology exports)
- **Infrastructure** (Internet and telecoms penetration & submarine cables)
- **Policy and politics** (degree of confluence between national policy and the systemic needs of informational capitalism; influence within global policy forums).

The directionality of the flow of IP royalties is a clear indicator of the zonal classification of informational capitalism: the greater the derived benefits, the higher the status. not only do IP royalties constitute an important drain on the limited resources of peripheral societies, but they create a form of 'knowledge divide' that perpetuates their peripherality. As Haggart & Jablonski (2017) explain, "disparities in income level across the globe create discontinuities where only the comparatively richer can access protected information" (p.115). The number of patent applications filed by national residents is also correlative with a high degree of information-intensive economic activity, and is thus suggestive of a country's zonal status within informational capitalism.

In terms of trade and manufacturing, it should be noted that for orthodox economics, a high proportion of high-tech exports is a positive indicator for a country's upward developmental mobility. Critical political-economic research argues vehemently, however, that low-wage manufacturing of high-technology goods – especially electronics – is the product of a relationship of exploitation. Dyer-Witheford (2015) for instance, recounts the "explosion" of Silicon Valley as "different shards of its

division of labour were broken off, externalised and offshored, creating new specialized international centres" (p.71). Citing the example of electronic manufacturing in Ciudad Juárez, Mexico, he describes the "low wages, environmental pollution, lack of social services, an absence of labour protections and substandard housing" (2015, p.71). Qiu (2016), meanwhile, chronicles the brutal conditions of the "manufacturing iSlaves" in Foxconn's Chinese factories that assemble Apple's iconic iPhone.

The flow of cultural and media products also constitutes an important component of trade within informational capitalism. Media conglomerates based in the United States remain some of the globally dominant actors in the content production sector (Birkinbine et al 2017). Other analyses have shown that 'asymmetrically interdependent' cultural and media industries exist outside of the United States, particularly in South Africa, Brazil, South Korea etc. (Nordenstreng & Thussu 2015).

Such is the dominance of these regional media giants - for instance Brazilian telenovelas in Mozambique (Pota Pacamutondo 2014) or Indian movies in Pakistan (Thussu 2014) that these can be considered as media sub-imperialisms (Boyd-Barrett 2015). The global flow of commodified cultural products within informational capitalism tends to follow its zonal structure as they are exported down through the zones, from epicentre to core, core to periphery, and periphery to the outer-periphery. Although 'reception studies' (Liebes & Katz 1990) and theories of cultural hybridity and counter-flow (Kraidy 2002) may challenge the extent to which these media flows constitute a form of *cultural* domination, there is little to dispute the extent to which regional media giants such as the Globo Group in Brazil (Straubhaur 2017) or Naspers in South Africa (Wasserman 2018) achieve *market* domination in select peripheral markets through trade in their commodified cultural exports.

The mechanics of datafication, surveillance, enclosure and market monopoly are the principal means by which commercial web services operate, and in so doing, advance the core logics of informational capitalism. Google, Amazon, Apple, Netflix and Facebook indeed collectively lead the world in web services: search, e-commerce, social networking, mobile operating systems and OTT streaming services. Jin (2013) considers this to represent a distinct technological divide that comprises one dimension of 'platform imperialism'.

National markets at the periphery offer a tantalising potential for growth that web giants in saturated markets such as the United States clearly covet (Powers & Jablonski 2015, p.110). The continued controversy around Facebook's global connectivity programs - eg. Free Basics - demonstrates the

importance that the corporation places on penetrating peripheral markets where a lack of incumbent technology companies eases the path to monopolistic dominance, and the continued economic growth coveted by its shareholders (Hoskins 2019). In 2012, for instance, Brazil represented the fourth largest market in the world for IT expenditures, with a total market value of USD233 billion (Convergência Digital 2013). The economic opportunities for penetration into Brazil are therefore tremendously attractive for technology titans in the system's core, as the significance of safeguarding zero rating models for the telecoms sector during the Marco Civil attested.

Another important dimension of trade is that the global South constitutes a form of *terra nullius* for data extraction by actors from informational capitalism's core with "multinational corporations scrambling to profile billions of potential new consumers" (Taylor 2017). The conceptual overlap with earlier patterns of imperial extraction is widely noted. Coleman notes a '21st century scramble for Africa' (2018), while Isin and Ruppert (2019) analyse the reach of 'data's empire' from metropole to colony. Similarly Cohen (2019) describes a "post-colonial two step" in which policing and development represent the initial form of extraction and data collection and analysis follows as "global networked elites seek to harness the power of populations worldwide" (p.59).

In terms of infrastructure, the Internet is often conceptualized as a layered system (Zittrain 2008). There is little doubt, as noted above that at the upper levels of content and code, web and technology companies from the United States - the epicentre of the system - dominate. Below that level, the situation is not radically different. Over 95% of all global Internet traffic is transported by submarine cables (NOAA 2020), a global system of fibre-optics that was laid in large part during the dot com boom of the 1990s (Telegeography 2021). Although Winseck (2017) makes a sound argument that recent investments in this backbone of the Internet's infrastructure mirrors an increasingly multipolar world, and should no longer be considered as a contribution to the thesis of US 'internet imperialism', there is little in the data he presents that refutes the existence of a core-periphery system within informational capitalism.

Winseck indicates that a surge of investment in submarine cables since 2008 has not been driven by the United States, but predominantly by BRICS countries (p.241). These are mostly accounted for by four major Asian projects. In all of these, Chinese capital is predominant, with Huawei indeed emerging as a major player in new cable projects, connecting under-served peripheral countries such

as Pakistan and Kenya (Akita 2019). Moreover, major US web companies including Google, Facebook and Amazon possess ownership stakes in major Asian projects, such as the Asia Pacific Gateway (Sawers 2018). The core of informational capitalism is therefore amply represented in this new infrastructure. Even if it was not, pre-existing submarine infrastructure - estimated at around 400 cables worldwide - is overwhelmingly owned by telecommunications companies from the system's core. Over 90% of those 400 cables were laid by SubCom based in the United States, NEC from Japan and France-based ASN (Akita 2019).

As well as submarine cables, another core component of the Internet's infrastructure are backbone providers, or autonomous systems (AS). These too are concentrated amongst a handful of corporations from the US, Japan and Europe. According to analysis by Ruiz and Barnett (2014), these AS represent "a very sparse network, where very few companies control the international Internet...". Indeed, just ten companies share 77% of the network and with the exception of India's communication giant, Tata, are comprised of corporations from the system's core, seven from the US, and one each from Japan and Sweden.. As per these researchers' network analysis, the United States represents the most 'central' nation in backbone architecture, with a 39% share of network ownership (Ruiz & Barrett 2014).

Although these corporate-owned AS are considered the 'public Internet', a fast-growing segment of the Internet's infrastructure is dubbed the 'private Internet' and is comprised of content delivery networks (CDNs). Ownership of these networks is also extraordinarily concentrated, with the top 4 companies accounting for 93% of all such traffic. Three of those are based in the United States and one in China (Winseck 2017, p.242). Ultimately, as Couldry and Mejias observe, "the Global North still assumes the role of gatekeeper, as it did in the days of the telegraph and the telephone, and data flows continue to replicate the movement of resources from colony to metropolis" (2019, p.103).

Another major consideration when assessing the structural disparities in the global political-economy of informational capitalism is the role of policy, and how presence and influence in important multi-national institutions permits some nations to direct flows of power and capital to their advantage, and relegates others to the margins. The significance of national policy for informational capitalism is succinctly explained by Powers and Jablonski thusly: "put simply, the greater congruence between

regulatory environments and technical standards, the more able Western corps are to expand confidently into new markets and turn investments into revenue" (2015, p.108).

The most prominent forums of Internet governance such as ICANN represent key sites of contestation for control of the Internet's technical resources, and exhibit the global imbalance between core and periphery that is characteristic of informational capitalism. The Internet Company for Assigned Names and Numbers (ICANN) coordinates policy related to the Internet's global system of unique identifiers, such as the domain name system, or 'DNS'. ICANN was established by the Clinton administration in 1998, with the US corporation Verisign designated as the authority over the master root server and owner of the .com and .net top-level domains. Accordingly, the US government decided that critical Internet resources would be controlled by "a private organization located in their own territory and without substantial participation of governments - except themselves" (Opperman 2018, p.33). It was therefore formed as "an expression of unilateral globalism" (Mueller 2010, p.62).

One of the consequences of this, as Mueller also reminds us, is that "ICANN's monopoly over the root of the Internet's identifiers makes it a gatekeeper to parts of the Internet services market that can provide significant leverage over users" and is therefore "one of the few globally centralized points of control over the Internet" (2010, p.61). As well as this point of control, authority over the DNS also constitutes a tremendous opportunity for commodification. As Purkayastha and Bailey (2014) explain, "the bulk of billions of dollars of virtual real estate is "owned" by registries in the United States and other developed countries. Verisign has revenue of over a billion dollars...created by the U.S. enclosure of the global domain name system".

Given both its importance, and its status - as a private corporation beholden to the sovereign power of the United States - it is not surprising that ICANN has been a lightning rod for criticism for those peripheral nations frozen out of the forum. Its de facto control by the American government made it a subject of intense criticism during the WSIS debates (Mueller 2010), as well as the later IANA transition period (Purkayastha and Bailey 2014). Brazil was one of those countries that in 2012 backed an ITU initiative to wrest control away from ICANN and in so doing to align international telecoms systems more closely with the needs of peripheral nations. The tension between this goal and Brazil's commitment to multistakeholder Internet governance is explored extensively in Chapter 6 of this dissertation.

The global political-economy of informational capitalism is enormously complex, but by focusing on a few key metrics such as IP, trade & manufacturing, infrastructure, and policy, we can capture many of the dimensions of exploitation and resistance that occur between the core and periphery of the system, as well as its variegated nature. As we proceed into the second part of this study, many of the facets of this globalized inequity will become apparent in the way in which the digital rights of Brazil's Marco Civil were contested at the margins of informational capitalism.

The discourses of informational capitalism: Legitimation, power and the genealogy of digital rights

In the introduction to this dissertation, I emphasized that at its heart, this was a study about power; about how fundamental rights are contested in the context of a disputed socio-technical system (the Internet), and an exploitative and inequitable global political-economy (informational capitalism). I also observed that power is exercised across the material and discursive realms, and that in order to present the most substantive analysis possible of this case study, I needed to "explore the interconnected semiotic and structural aspects of social life" (Fischer 2017, p.14).

Thus far, we have focused on the material dimension of power, establishing how we can analyse the systemic functions of informational capitalism with a political-economic lens. Now we must readjust our gaze, and establish how discourse functions as a corollary to material power, and how it co-constitutes social life. More specifically, we must appreciate how discourse serves to legitimate particular socio-economic arrangements, and forecloses alternate possibilities, to delimit the 'cultural horizon' (Feenberg 1995). For the purposes of this study, this is essential because one of my foundational arguments is that the discursive construction of digital rights - one based on the legitimation discourse of informational capitalism (Fisher 2013) - was a decisive factor in shaping the Marco Civil, and in producing a framework of digital rights that would ultimately facilitate rather than challenge the exploitative logics of informational capitalism.

This final sub-section therefore constitutes the last piece of my analytical scaffold, one that can, in its totality, account for the systemic functions of informational capitalism. I build-out this strut across three phases. I begin by establishing my approach to studying discourse, and justifying the significance of doing so. I introduce the various strands of thought that comprise the heterogeneous school of Critical Discourse Analysis, as well as the post-Marxist approach to discourse theory (Laclau and Mouffe 2001) and identify the elements of each that I will integrate into this study.

The second step is to narrow our focus and to show how discourse works to legitimate capitalism, and how it functions specifically in the context of informational capitalism. Here I draw particularly on the work of Erin Fisher (2013) to examine what he calls the 'digital discourse': that weave of narratives based on the material characteristics of networked ICTs - that responds to the artistic critique of capitalism - and serves to legitimate new modes of accumulation and the social atomization of neoliberalism. It emphasizes networked autonomy (freedom) expression, participation and openness.

In the third and final step, I develop Fisher's argument to show how the 'digital discourse' has shaped the dominant conception of digital rights. I present a truncated genealogy of digital rights to demonstrate how informational capitalism's legitimation discourse has produced a common-sense understanding of digital rights that prioritizes individual freedom, creativity, expression and, ultimately, a set of depoliticized, market-based, technical fixes. This is manifested in a set of first order rights - network neutrality, digital data protection and freedom of online expression - that fail to adequately challenge the systemic logics of informational capitalism in such a way as to secure civic rights of Internet users and a medium of genuinely democratic communication. The manner in which digital rights have been discursively constructed demonstrates their contingency: on the influence of dominant discourses that advance the values of powerful sets of economic/political actors, and the possibilities for an Internet oriented around civic communication and democracy that has been marginalized along the way.

The matter of discourse

Since the advent of the 'linguistic turn', a plethora of approaches have emerged that focus on the study of linguistics and discourse. However, for the purposes of this study the only two that are sufficiently critical in their perspectives are critical discourse analysis (CDA) and post-Marxist discourse theory. I will draw from both of these resources in devising my thesis and as such they need to be properly presented at the outset. Before doing so, however, we need to explain what fundamentally is meant by discourse, and why so many researchers contend that we must take account of it.

Discourse is described by Fisher as an "episteme", or "a body of knowledge that is inextricably intertwined with technological reality, social structures and everyday practices." (2013, 15). According to Fairclough, discourses are reproduced within the semiotic realm as "representations of how things

are and have been, as well as imaginaries and representations of how things might or could or should be"(Fairclough 2001, p.231). Finally, from a post-Marxist perspective, a discourse is a "socially contingent, taken-for-granted system of meaning defining a set of concepts, objects and practices" (Dahlberg 2010, p.334).

The study of texts therefore provides an entry point into discourse as it is comprised of language, but it is never reducible to it. As Fairclough and Wodak recount in a popularly attributed definition, discourse is "language use in speech and writing" but it is also "a form of social practice". This position "implies a dialectical relationship between a particular discursive event and the situation(s), institution(s) and social structure(s) that surround it. The discursive event is shaped by them, but it also shapes them" (1997, p.258). Appreciating the dialectical relationship between discourse and social structures of power is indeed an essential aspect of this study.

Fundamentally, discourse creates the conditions for the way we act; it delimits the boundaries of the possible by establishing what counts as common sense. Such structuring of the semiotic order can then result in hegemony: "which sustains relations of domination" (Fairclough 2001, 232). Or as Bourdieu explains, terms and values established in discourse "sanction and sanctify a particular state of things, an established order…" (1991, p.119). This is why the study of discourse is so important; because discourse constitutes an essential mechanism of power and is therefore socially productive. As Foucault put it so succinctly, discourses are "practices that systematically form the objects of which they speak" (1972, 54).

The heterogeneous school of Critical Discourse Analysis scholars emerged in the early 1990s (2009, 3), and owed a founding debt to the theorists of the Frankfurt School who imbued CDA with its 'critical' dimension, conveyed via the Critical Linguistic scholars of the 1970s. Perhaps the essential distinction that separates CDA from the plethora of competing approaches to discourse and linguistic analysis is that it demands a critical interrogation of social life in "moral and political terms" and with particular concern for "social justice and power" (Fairclough 2003, p.17).

As Wodak & Meyer also make clear, as well as CDA's defining critical dimension, three concepts loom large in the foreground of any analysis that makes use of it: power, history and ideology (2009, 3). A focus on these elements ensure that CDA researchers avoid the deterministic trap of social constructivism and instead understand that "discourse is structured by dominance; that every

discourse is historically produced and interpreted, that is, it is situated in time and space; and that dominance structures are legitimated by ideologies of powerful groups."

Another major theoretical resource to draw from in this endeavour is post-Marxian discourse theory, particularly as developed by Ernest Laclau and Chantal Mouffe (2001). According to Laclau and Mouffe, discourse functions as a mechanism of power by creating a moment of closure within the 'discursive field', to assign a preferred set of meanings to otherwise empty 'signifiers' and to exclude alternative interpretations (2001). This act of 'discursive closure' becomes ideological because it attempts to create a fixity of meaning around a particular 'nodal point', one that legitimizes a particular social order (Zizek 1989). So-called 'floating signifiers' are imbued with meanings as a result of their connection to the 'nodal point' (Jorgensen & Phillips 2002, p.28). These represent the macro-level signifiers on which a post-Marxian discourse theory approach must identify and account for, in contrast to the micro-level textual analysis more common within CDA.

A parallel endeavour to marking the preferred boundaries of discursive inclusion, is to identify an antagonistic "other" against which the enclosed discourse can further solidify its boundaries (Laclau 2005). This act of enclosure is never complete, however, and while it attempts to obscure the multiple competing alternatives – the "heterogeneous excess" – these continue to exist and provide the raw material for resistance and possible contestation of dominant discourses. Conversely, when a dominant discourse does succeed in disguising its contingency, it becomes commonsensical and thus rises to the level of hegemony (Mouffe 2008).

A final concept within discourse analysis that needs to be considered for this study is that of articulation. As has already been mentioned, discourse is not a static, settled field: discourses are always in competition with one another, to dominate the conceptualization of big ideas, to imbue key signifiers with meaning. However, as Kimball reminds us "Despite its always transitory nature, discursive construction does come together in particular times at particular sites to suggest a stability and coherence." (2015, 35). One of the principal ways that discursive stabilisation occurs is through what Stuart Hall terms 'articulation'. This is the process by which distinct (but related) discourses link together in a stable 'discursive coalition'. As Hall himself explains "the so-called unity of a discourse is really the articulation of different, distinct elements which can be re-articulated in different ways because they have no necessary 'belongingness'. The 'unity' which matters is that linkage between

that articulated discourse and the social forces with which it can, under certain historical conditions, but need not necessarily, be connected” (Grossberg 1986, p.53).

In the context of this study, articulation is a vital concept to grasp because the central legitimation discourse of information capitalism - the ‘digital discourse’, that we will explore in detail shortly - like the system of informational capitalism itself, does not settle uniformly across the world. It articulates with endogenous discourses to create distinct systems of meaning that can legitimate particular social and political-economic conjunctures. For instance, in the case of the Marco Civil, in some instances of the law’s development, the digital discourse could be observed to articulate with local discourses such as neo-developmentalism, sovereignty and social inequality to create new discursive articulations that legitimated particular conceptualizations of digital rights in Brazil.

In sum then, I embrace a hybrid framework that is comprised of the dialectical and historical emphases of CDA combined with the post-Marxist approach to understanding the role of macro-signifiers in producing hegemony, as well foregrounding the importance of articulation.

The legitimation of capitalism, and the digital discourse

As a system that relies on consent for it to work, capitalism needs to make itself appear worthy of ordering human affairs, to earn our trust and to legitimate itself in the eyes of those who might seek to replace it. Tom Streeter offered a pithy description of this phenomenon when he wrote that “Capitalism may not require pure markets…but it does need some kind of legitimacy, some mechanism by which it can be made to feel right, or at least worth acquiescing to, among broad swathes of the population” (2011, p.166).

Arguably, one of the most productive frameworks for understanding how capitalism makes itself ‘feel right’ is offered by the French theorists Boltanki & Chiapello and their work on what they call the ‘Spirit of Capitalism’ (2007). Capitalism produces a discursive essence that proclaims its capacity to deliver fairness, security and excitement. One of the main ingredients in this spirit, is the incorporation of critique.

It is a mainstay of Western political thought that capitalism has catalysed two major forms of critique – artistic and social. The former is provoked by alienation and emphasizes “an ideal of liberation and/or of individual autonomy, singularity and authenticity” (Boltanski and Chiapello 2005, p.176), while the

latter addresses material inequalities and is concerned with "inequalities, misery, exploitation and the selfishness of a world that stimulates individualism rather than solidarity" (p.176). As the two theorists propose, capitalism *needs* its many critics in order to integrate their quest for justice so as to remain socially legitimate. Indeed, in this quest to maintain legitimacy, capitalism effects transformative change in its 'spirit': "the ideology that justifies people's commitment to capitalism, and which renders this commitment attractive" (2005).

Boltanski & Chiapello note that this change occurred in the transition from Fordist capitalism to 'late-capitalism' beginning in the 1970s. The counter-culture of the 1960s and 70s had railed against the alienation generated by Fordism and, in response, an epochal shift occurred in the 'spirit' of the emergent form of 'late capitalism'. This new legitimation discourse focused on the ability of late capitalism to address the many failings of Fordism from a humanist perspective. Most notably this included the capacity to promote individual fulfilment and creative expression (2005).

The great theoretical advance offered by Erin Fisher was to introduce technology into this equation and to show how capitalism legitimates itself discursively using the technological form that underpins it. As many other scholars, like Mosco (2009), Nye (2007) and Leo Marx (1997) have shown, technology enjoys a privileged place in society: it is ubiquitous, rational, even sublime. It is intuitive therefore that the architects of capitalism would harness the social status of technology to advance their project. Technology provides a material basis for market metaphors. To put it in crude terms, technology's killer app is the legitimation of capitalism.

Fisher shows how the mechanical and centralized nature of its underlying technology formed the basis of the legitimation discourse of Fordism (2013). This discourse responded to the social critique of capitalism by showing how Fordism's mechanical centralization could address exploitation through the welfare state, the tenured worker and the hierarchical corporation.

Fordist capitalism later shifted into a new mode of production that was informational and networked. Unlike Fordism it was decentralized, flexible and it demolished the social compact of labour, state and capital. This liminal capitalism incorporated the dominant artistic critique, as well as the material form of information networks, to produce a new technology legitimation discourse; what Fisher calls the digital discourse. In his words it "translates many of the neoliberal tropes into a digitalistic language" (2013, p.75). Fisher is buttressed in this claim by Cohen (2019) who asserts that "the dominant forms of governmentality associated with informational capitalism are neoliberal" (p.7).

The digital discourse is shorthand for the multiple narratives that serve to legitimate informational capitalism (what Fisher calls 'networked capitalism') in those encounters between network technologies and various sets of social and economic practices. These narratives translate tenets of neoliberal orthodoxy and its accompanying 'spirit' into a technologistic language that renders them politically neutral, socially legitimate, and grounded in an indisputable material reality.

The digital discourse champions market-led re-regulation, globalization and precarious employment. And it legitimates these new socio-economic arrangements by showing how networked ICTs produce autonomous, creative and expressive individuals. This has become what Nancy Fraser calls a 'facilitating shell', an enduring meta-discourse that delimits common sense in multiple realms of human existence (2009, p.118). This is what I understand to constitute the legitimation discourse of informational capitalism, and it provides the foundation we need for understanding the congruence between the rise of informational capitalism and the construction of digital rights.

The Discursive Construction of Digital Rights (or How Internet Freedom eclipsed Information Justice)

In this section I will show how the digital discourse has been decisive in shaping the dominant conceptualization of digital rights. I argue that the tenets of the technology legitimation discourse of informational capitalism are acutely evident in the digital rights of freedom of online expression, network neutrality and digital data privacy. These first order digital rights all prioritize individual autonomy, creativity, expression, and they constitute depoliticized, market-friendly, technical fixes. This dominant paradigm of digital rights, rather than establishing safeguards, may instead have facilitated the larger system based on the commodification of data, and of users themselves.

I contend that it is through examining the discursive construction of digital rights that we can begin to understand why they are inadequate to advance social justice, and to identify the beneficiaries of this failure. Perhaps most importantly, by examining the dominant discourses at work, we can also recognise the alternative discourses that have been marginalized along the way. These in turn signal how a more substantive reckoning of digital rights is possible, one that might realign digital communication to serve rather than undermine democracy. A crude shorthand for this discursive struggle lies in the above subtitle: Internet freedom vs information justice.

I will probe that juxtaposition with a crudely historical analysis. I will conduct a 'discursive tracing' (Turcotte 2016, p.210-211) of digital rights between two nodal points: the proposals to reshape the

global media system during the debates of the New World Information and Communication Order (NWICO) in the 1970s, and another quite distinct consideration of global communication governance in the early 2000s, the World Summit on the Information Society (WSIS).

Although both of these events were focused on media and communication policy, rather than explicitly establishing rights-based frameworks, both NWICO and WSIS were emblematic of their time and revealed how the dominant discourses of the day helped to shape a common-sense understanding of how ICTs and media systems could advance a common good. As Isin and Ruppert also observe, "the importance of WSIS is that it draws its imaginary force from the UDHR and institutes parallels between those rights and digital rights" (2015, p.170). Ultimately, this analysis will demonstrate the contrast between those foundational assumptions about media and communication as grounded in a social critique of capitalism (NWICO), and when based in an artistic critique (WSIS, and beyond).

Building on Pickard's observation that "NWICO and WSIS bookend a 30-year ascendance of neoliberal logic in global communications" (2007, 120), this analysis will show how the rise of neoliberalism and informational capitalism, co-constituted by the digital discourse, shaped the emergence of a plethora of digital rights initiatives from the mid-2000s. It is one embedded within a social vision "in which individual freedom of choice is the most highly privileged value, and...downplays the importance of collective values and goals" (Mansell 2012, p.46), and is ultimately agnostic to the political-economic inequities of the internet.

It is not just the policy fora themselves that merit analysis, however, but the decades in-between NWICO's dissolution and WSIS' emergence, when key episodes of socio-technical contestation signalled the birth of a first generation of digital rights (presaging their post-WSIS codification into rights charters). I will therefore examine the struggles that occurred around encryption, network access and freedom of online expression. These episodes reveal the early influence of neoliberalism and the digital discourse in forming the dominant paradigm of digital rights, one that decisively circumscribed the Marco Civil, and produced a framework of digital rights that failed to constitute an adequate civic safeguard for Brazil's Internet users.

These events also demonstrate one of the ways that informational capitalism responds to resistance; by discursively co-opting a threat to its systemic logics. This fact complicates the observation made by Pickard (2007) that "according to many accounts, global communication governance is characterized by recurring tensions between the neoliberal imperatives advanced by a powerful Western state–

corporate alliance on one hand, and communication rights championed by developing nations and civil society groups on the other." (p.119). My perspective, advanced throughout this study, is that such conventional thinking is too limited a dichotomy. What we also must pay heed to is the extent to which civil society initiatives in the realm of digital rights are delimited by capitalist legitimation discourses, and how as a result activists and reformers do confront a 'state-corporate alliance', but find themselves rallying behind causes eviscerated of genuine resistance.

NWICO (and the social critique of capitalism's last hurrah)

The New World Information and Communication Order refers to a series of inter-governmental discussions that occurred during the 1970s and early 1980s, mostly at the level of UNESCO in the United Nations. These focused on possible reform of the global media and communication system. It was driven by a newly assertive block of post-colonial states - one that corresponded broadly to the Non-Aligned Movement - that sought a more equitable distribution of communication resources favouring national development, technological sovereignty and economic security (Powers & Jablonski 2015, p.42; Rosa 2019, p.207; Carlsson 2003).

The 1970s represented a liminal historical period in many respects. The core east-west rivalry of the Cold War was beginning to be accompanied by a new geopolitical antagonism, between the North and South. Economic instability in the developed world, and a more assertive Southern block made systemic change appear possible. Moreover, neoliberalism as an economic doctrine had emerged, but was not yet entrenched as orthodoxy: "then, unlike now, elites in developing countries were not fully invested in a largely neoliberal alliance" (Pickard 2007, p.122). The 'spirit of capitalism' was also undergoing an epochal transition, from one based on a social critique, to an artistic one. However, according to Boltanski and Chiapello's periodisation, it was not until the 1980s that this discursive shift was complete (2005, p.6).

In sum, the conditions were still ripe for a reform agenda for media and communication that was grounded in a social critique of capitalism. This was certainly reflected in the nature of the NWICO debate. Concretely, the proposals involved reforming satellite communication systems, addressing unequal media flows and foreign ownership of infrastructure (Powers & Jablonski 2015; Pickard 2007). These proposals implied systemic reform of the global media system, and were collectivist in nature (featuring states as the site of change). As Carlsson (2003) notes, "we find many more references to "the right of every nation" (national sovereignty, self-determination, cultural identity, relations

between nations) than to individual rights and freedoms" (p.42). The NWICO demands were explicitly redistributive and addressed the political-economy of the media system, as well as the issue of national sovereignty in media and culture. Indeed, the '4 Ds' that were widely used as a shorthand for the NWICO demands reveals their nature: democratization; decolonization; demonopolization; development. As we will discover, rights claims filtered through the digital discourse lose all of these emphases.

Moreover, the NWICO agenda was explicitly devised in juxtaposition to the doctrine of free flow, one that had been the dominant trope of American communication policy since the 19th century (Winseck & Pike 2009). Under the ideological camouflage of 'freedom of expression', the policy goal of free flow has always been to secure the commercial advantage of American communication and media firms in foreign markets, and to advance the political power of the American state (Haggart & Jablonski 2017). The systemic imbalance implied by the doctrine was certainly evident to the authors of the MacBride Report who noted that "the theory of 'free flow' is invalidated by the overwhelming preponderance of information circulated from a small number of industrialized countries into the huge areas of the developing world" (cited in Rosa 2019, p.209).

For their part, the US and its allies as portrayed free flow as "a life-or-death struggle for commercial press freedom. This trope served not only as a rallying cry but also as the dominant rhetorical and policy line for Western powers suddenly caught in an unlikely defensive position" (Pickard 2007, p.123). The contested signifier of 'freedom' was thus imbued with the liberal value of free expression by the Northern alliance, while the Southern block construed 'flow' as an inundation of cultural material that compromised autonomy and sovereignty. The contention over free flow was only one of several discursive battles that occurred as part of the NWICO process, as Northern and Southern actor blocks contested the meaning of important signifiers and discourses.

For instance, UNESCO changed the concept of "*international* information order" to "*world* information order" at the behest of America and its allies. The former is political and implies relations between states, while 'world' connotes 'fuzzier' associations of general global cooperation, as in the 'global village' (Carlsson 2003, p.42). A similar lobbying effort from the Western powers resulted in the inclusion of 'communication' in the title of the mass media declaration adopted by the UN in 1978 (Carlsson 2003, p.43), a resolution that represented the high-water mark of the NWICO movement. This can be interpreted as an effort to dilute the rhetorical power of an "*information* order".

Information society theory was operating at the peak of its influence in the late 1970s (Bell 1976; Porat 1977). The result was a pervasive elite discourse promoting information as a "panacea" for the ills of the global economy (Mattelart 2000, p.73). Indeed, as Streeter goes on to explain: "From the point of view of the power structure of capitalism, information had the extraordinary advantage of being something 'thing-like'…that could be bought and sold" (2011, p.76). Communication, conversely is a social process, and not nearly as ripe for commodification. The addition of 'communication' in the NWICO declaration was thus a defensive measure to prevent the global North's preferred meaning of information as commodity being repurposed by the Southern reformers.

The concluding act for NWICO proved to be the withdrawal from UNESCO of both the UK and the USA by 1985. The favoured agenda for the departing powers at this time indeed constituted a harbinger for the coming paradigm of digital rights: a suspicion of collective rights, a fetishization of 'freedom' advantageous to US corporations, and a preference for depoliticized, practical solutions to communication policy questions (Carlsson 2002, p.52-53).

Between the demise of NWICO, and the start of the WSIS process, epochal shifts in both the material and semiotic realms need to be accounted for that presage the dominant conceptualization of digital rights. These are the consolidation of neoliberalism as socio-economic orthodoxy, the rise of informational capitalism as the ascendant mode of accumulation, and the accompanying emergence of a new spirit of capitalism.

Neoliberalism ascendant, and the slippery signifier of freedom

It is at the beginning of the 1980s that Boltanski and Chiapello identify the emergence of a new 'spirit of capitalism' (2002, p.7). They consider the tenets of this new spirit to be networks, meritocracy, mobility, innovation and creativity. These are the means by which this new mode of capitalism legitimates itself and promotes its capacity to provide fairness, security and excitement. The values of creativity and innovation, and the freedom and mobility offered by networked forms of organization, constitute the antithesis to the hierarchical, mechanized and controlling nature of the Fordist capitalist apparatus. These novel features can be interpreted as a slowly percolated response to the artistic critique of capitalism that gained prominence in the counter-culture of the late 1960s and early 1970s.

The congruence between emergent network technologies and the artistic critique of capitalism created an entwinement that the architects of neoliberalism could repurpose to legitimate their own political

project. As Streeter argues (2011) “from 1983 to at least the late 1990s *technology* and *freedom* together would be popularly associated with conservatism” (p.78). The microcomputer became a metaphor for autonomy in the marketplace; an icon of capitalist success based not only on the individual achievement of its entrepreneur creators, but crucially also on the *autonomous satisfaction* derived by its millions of new users. In those important respects it bolstered perhaps the core value of neoliberalism: free market individualism. The value of freedom is certainly porous enough that it easily transmutes between freedom of expression, and freedom in the marketplace. As Castells explains in the context of hacker culture: “Paradoxically, it is because of this principle of freedom that many hackers also claim the right to choose commercial development of their innovations” (2002, p.47).

David Harvey offers a concerted explanation for the discursive significance of ‘freedom’ in this context. Neoliberalism needed to find a way to sell itself to a mass audience. As Harvey notes wryly, “an open project around the restoration of economic power to a small elite would probably not gain much popular support” (2011, p.40). What he identifies instead as the chosen selling feature for neoliberal socio-economic reforms was the notion of individual freedom. This catch-all concept was chosen to permit a systematic conflation of market freedom with personal liberty. Used properly, “a programmatic attempt to advance the cause of individual freedoms could appeal to a mass base and so disguise the drive to restore class power” (2011, p.40).

Alongside the embrace of freedom by the architects of neoliberalism, critical human rights scholars have chronicled an associated development in which human rights were co-opted from the 1970s onwards in a manner conducive to the spread of neoliberalism and the geopolitical ambitions of the global North (Moyn 2012; Dehm 2018; Slaughter 2018). In this development, the dominant discourse of human rights propagated by Western governments, inter-governmental organizations and NGOs embraced “an internationally authorised claim of the individual against the state, rather than recognizing that this configuration of rights is itself historically contingent and the product of social struggles” (Dehm 2018, p.874). One of the principal, and quite deliberate, consequences of making the suffering of individual political prisoners the “palpitating heart of its moral economy” (Slaughter 2018, p.767) was to delegitimise efforts at national self-determination emanating from the global South that imagined a collective, national vision of human welfare, one that challenged the prevailing neoliberal economic order. Ultimately, human rights have been used as a means to repress radical politics (Moyn 2012). Returning once more to Slaughter’s eviscerating critique:

> the turn to personal stories of political prisoners not only tends to restrict the moral focus to the singularized spectacular suffering of an individual victim (and, in so doing, to obfuscate the systemic effects of neoliberal globalization on human rights and the more ordinary suffering it causes); it also individualizes the receiver of the story, tending to atomize (or privatize) the empathetic response, and turning the relationship between sympathizer and sufferer into a singular problem of ethics, rather than a collective problem of politics and the redistribution of resources. (2018, p.768)

Given the conceptual overlap between human and digital rights (Padovani, Musiani & Pavan 2010; Jorgensen 2013) the above accounts, and the developments they describe, offer insights that are of clear relevance to this study. The fact that rights-based frameworks are vulnerable to neoliberal co-optation is one such lesson, and reveals a possible reason why digital rights initiatives have flourished: because they are malleable enough to cohere with the systemic logics of informational capitalism. If digital rights claims in their dominant form represented a genuine threat, then they would likely be subject to more concerted resistance. As Karppinen and Puukko (2020) note, human rights appeal to a broad range of actors, including states and corporations, because the "language of rights possesses symbolic capital and credibility that *makes it seem almost* [emphasis added] nonpolitical: rights convey an impression of absolute moral principles, which transcend different ideologies and political projects" (p.308). Moreover, as we will see, the atomised individualisation of human rights, its universalist narrative and the commensurate dismissal of collectivist, redistributive politics present a clear value template for the dominant paradigm of digital rights.

Finally, in another related development, Schiller (2010) recounts how "during the 80s and 90s corporations advanced increasingly systematic claims to what they now succeeded in relabelling 'IP rights'. These 'rights' were then strengthened and generalized spatially to cover the Earth, and socio-culturally to confer additional corporate control over an expanding array of products and labour processes" (p.46). Even when establishing stringent IP restrictions, the notion of 'freedom' was equated with robust property rights through a discursive sleight of hand. Borrowing from the discourse of traditional liberalism, "the propriety of the self and its autonomy is tied to the idea that freedom is contiguous with and inseparable from an individual's freedom to make contracts, sell their labor, and

secure their property (Coleman & Golub 2008, p.268). Streeter (2011) adds another dimension to this analysis by explaining the significance of this co-optation of the term 'rights' :

> "Putting the word *rights* front and centre had a crucial ideological impact at the time...the word *rights* harnessed technology and pro-market enthusiasms to work in broad currents in American culture. Technology and modernity were no longer on the side of...the public good or an example of what democratic government could accomplish; they were on the side of *rights*, and government was their enemy" (79).

Cohen (2019) similarly notes that "the turn to neoliberal governmentality has produced forms of rights discourse that invite cooptation by corporate entities seeking to privilege their own profit- making activities" (p.239). I argue that the imbuing the signifier of 'rights' with technocratic and pro-market associations, and for identifying government as the antagonistic 'other', also played a large role in determining that digital rights were conceptualized in a way that would facilitate rather than challenge informational capitalism.

Fisher (2013) draws all of these threads together to identify how the precepts of neoliberalism cohere with Boltanki and Chiapello's' new spirit of capitalism, as well as the material characteristics of data networks, to form the technology legitimation discourse for informational capitalism; the 'digital discourse' (2013). The tenets of this discourse centres on the capacity of digital networks (and by extension informational capitalism) to produce dehierarchized social relations and individual emancipation based on the cultivation of creativity, entrepreneurship and expression (2013). It is this discourse that I argue was pivotal in producing the dominant paradigm of digital rights, one that reached a nodal point in the WSIS summits.

Digital rights 1.0

Before examining the WSIS summits themselves, we need to analyse the initial emergence of digital rights in the context of the massive neoliberal restructuring of media and communication that enabled the ascendance of informational capitalism. We can do this by focusing on three episodes of socio-technical contestation in which the Internet and digital software represented the material object of dispute, and the signifier of 'freedom' - once again - the site of discursive struggle.

All of these episodes represented civic responses to the exercise of repressive power through the Internet. And all of them also exhibited the influence of the digital discourse, either from their inception, or through co-optation, as potential challenges to informational capitalism were deflected away from the political-economy of the Internet and focused instead on depoliticized individual rights of expression and participation; thus creating a certain path dependency for digital rights that can be traced through WSIS and beyond. It should certainly be noted that a formative issue for digital rights claims at this time is that they were challenging a neoliberal model of communication at the height of its orthodoxy; the proposed 'solutions' are therefore tempered by the scale of the challenge, and the civic imaginary stunted from birth.

These moments of contention were: the struggle for digital data privacy by both cypher-punks and consumer advocates; the establishment of 'safe harbours' for websites; the open access debates in the United States (that presaged network neutrality). Crucially for the purposes of this study, these three instances also represent the conceptual trident that structured the Marco Civil – digital data privacy, network neutrality and freedom of online expression (through safe harbours) - so we can observe here the early origins of Brazil's foray into digital rights and the nature of their discursive construction.

Missing the forest for the trees: The individualisation of digital data privacy.

Privacy is a venerable concept with a lineage that can be traced back to ancient Greece. In a modern workaday sense, privacy concerns the rights of the individual to control the information that is disseminated about herself. Data privacy had been elevated to a major political concern in Germany and Australia during the 1980s regarding national census and identification schemes, but it was digital data collection through the Internet that became the locus of concern from the mid-1990s (Bennett 2010, p.134).

Privacy as a public interest issue was indeed digitized most prominently along two paths in the US during the mid-to-late 90s, a time when neoliberal and cyber-libertarian discourses were pervasive. On one path the 'Crypto Wars' saw a group of online rights activists - the Electronic Frontier Foundation (EFF) - and cryptography advocates - known as 'cypherpunks' - petition the American government for their right to use public key cryptography to protect the privacy of their online communication from the security state. The origins of the EFF are significant in this instance as we can trace their ideational lineage to the WELL, the fountainhead of cyber-libertarian rhetoric (Turner 2006). Accordingly, the EFF

advocated for encryption as a guarantor of individual freedom, considered the state to represent a mortal threat to privacy and considered "encryption technology as the only real solution to uphold these individual rights" (Hellegren 2017, p.10).

The EFF and other cypherpunks provided legal support to a Berkley doctoral student who was being blocked from disseminating details of an encryption algorithm by the US Department of Justice in 1995 because they considered it be 'war materiel'. The ensuing court case resulted in a landmark legal ruling that protected code as a form of speech under the First Amendment, and recognised online rights for the first time (Bennett 2010). The fact that this precedent was established in the context of a discourse that valorized privacy as an *individual* right guaranteed *against the state* through *technology*, helped to preclude any later reckoning of online privacy as a *collectivist*, *positive* right defended against *corporate actors* through *systemic reform*.

Certainly, the manner in which these actors framed encryption and privacy was pivotal to later conceptualizations of digital data privacy in the dominant paradigm of digital rights. As Hellegren goes on to argue "while strengthening individual rights to privacy, crypto-advocates' discursive strategies may actually serve to undermine efforts to construct positive meanings of Internet freedom...to *uphold* democratic principles of transparency, accountability, and public participation, while also safeguarding personal data" (Hellegren 2017, p.17).

The other battle front for digital data privacy was contested at the same time by consumer privacy advocates that petitioned the legislative state to provide safeguards against the commercial practices of online advertising pioneers such as DoubleClick. In his doctoral thesis on the online advertising industry, Crain (2013) notes that "privacy issues were one of the few entry points for organized civic intervention into online advertising's development and indeed, commercial internet development at large" (p.195). Although these public interest advocates secured some notable victories, including the COPPA bill in 1998 safeguarding children from intrusive online advertising, for the most part the online advertising industry continued unabated (2013).

Although in contrast to the cypherpunks, these privacy advocates sought legislative rather than technological solutions, and the locus of their concerns was the data collection practices of private companies rather than the state, I contend that the manner in which they framed the issue of digital data privacy was also a major contributor to its later conceptualization within the paradigm of digital rights. As Crain observed:

> the range of acceptable debate was circumscribed. Discussion was largely restricted to issues of consumer awareness, limited notions of user empowerment, and the personal character of the data being collected...*The social desirability of online advertising, consumer surveillance, or the commercial structure of the internet more broadly were never on the table* [emphasis added]. Opt-in measures, the most progressive proposed legislation, still did not approach structural issues. (2013, p.239)

The focus on the rights of consumers over citizens, the emphasis on the individual over the collective, and the occlusion of systemic reform were all, I argue, shaped by the dominant discourses of neoliberalism and cyber-libertarianism.

Open access < network neutrality.

Another fight against the swift creep of informational capitalism's systemic logics was taking hold in the United States at this time. In this case it was a dispute over access to information and communication resources. Dubbed the 'open access debates', these pitted media reform advocates and independent ISPs against the incumbent broadband oligopoly. The dispute was catalysed by AT&T's refusal to allow small ISPs access to their networks, as well as the cable merger between AT&T and Media One, first proposed in the late 90s, that allowed the former to control nearly half of the national broadband market (Fung 2014). These moves against open access networks signalled the death knell for what had briefly been a "vibrant, competitive market for internet access" (Pickard and Berman 2019, p.48).

As well as the failed outcome of these efforts, what is most significant for this analysis is how this debate was framed, and what it transmuted into.

The defenders of open access were, as Newman (2016) notes, concerned with "the nature of the Internet itself as it took shape" and its increasingly hyper-commercial character (p.5975). Advocates of open access promoted the concept of a structural separation framework by cleaving "infrastructure management from service provision" (Kimball 2013, p.38). This was not therefore a single-issue consumer campaign, but a debate around the political-economy of the Internet, and a push for systemic reform.

The manner in which these claims were contested by the telecoms sector and their political allies also attests to the nature of the threat that they posed. As Pickard and Berman (2019) note, by "invoking

such phrases such as “forced access”, “forced entry” and “infrastructure socialism”, opponents of open access framed their opposition in libertarian terms, as an unwarranted intrusion on the property rights of internet service providers...the market is the fount of liberty and the state is an instrument of unjust hierarchy, centralization, and coercion.” (p.50-51).

The manner in which these open access debates were eclipsed by concerns over network neutrality offers another potent example of the neutering of a genuinely oppositional, civic discourse, by the legitimation discourse of informational capitalism.

Newman (2013) offers a compelling account of how this transition occurred, one that hinged upon Tim Wu’s milestone essay in 2003 that coined the term ‘network neutrality’. According to Newman’s analysis, Wu’s emphasis on network neutrality lauding “a Darwinian competition among every conceivable use of the Internet so that only the best survive” (Wu 2003, p.142) meant that at the term’s genesis, he connected net neutrality to the precepts of neoliberalism, equating a ‘neutral’ Internet with a “calculative engine to ferret out the best and eliminate the rest” (Newman 2016, p.5975). Wu indeed explicitly favoured network neutrality over “structural remedies such as open access” (Kimball 2013, p.38). Wu’s ‘evolutionary model of innovation’ was thus a laissez faire vision for the Internet that implicitly discounted the importance of public or civic resources online. This view is buttressed by Cohen (2019), who notes that “the “net neutrality” rubric is itself a neoliberally inflected way of answering questions about economic power and public access, because it assumes that market forces operating on an intraplatform basis will produce services of adequate variety and quality as long as access providers are prevented from blocking or throttling such services” (p.176).

In discourse terms, ‘neutrality’ is another grand signifier. As Pickard and Berman (2019) and Kimball (2013) note, its innately technical and benevolent nature made it a problematic rallying cry for activists. Its ambiguity also likely accelerated the struggle to imbue it with meaning, as it was contested vigorously by activists, corporations, economists and technologists. The discursive flux did largely settle upon the preferred value-set of informational capitalism. As Powell and Cooper (2011) discovered, innovation, competition and free speech were the most frequently raised topics in the US network neutrality debates (p.319 & p.321), all of which are tenets of the digital discourse. Moreover, “the language of economics framed the debate”, as ‘citizens’ became ‘consumers’, and ‘consumer interests’ eclipsed the ‘public interest’ (Anderson 2013, p.205).

Indeed, it is worth returning to Fisher's description of the digital discourse, and noting its coherence with the term 'neutrality': "a placid and technocratic political discourse of a classless society, devoid of contradictions and anatagonisms" (Fisher 2013, p.9). Building on that idea, it behooves us to return to an earlier generation of communication policymaking to appreciate how 'network neutrality' represented more comfortable terrain for the forces of - and adjacent to - informational capitalism. In reference to the practice of commercial broadcast policymaking at the FCC, Streeter observed that:

> "the fact that it is broadcast *policy*, not broadcast *politics*, then, implies that what goes on in the FCC and related arenas is a neutral, technocratic activity. That the inhabitants of this world consistently refer to what they do as "policy" implies they are, by their own definition, specially qualified experts dealing with technical matters, not politicians dealing with matters of social value" (1996 p.126).

The arcane, technical nature of 'network neutrality' clearly aligns better with the desire to be seen to be undertaking an obscure technocratic activity, than the many 'social value' implications of open access. Finally, as Kimball (2013) also observes, the fact that 'neutrality' brought with it many positive associations, meant that it became an effective vehicle to 'sell' a neoliberal project for the Internet: "Neutrality as a signifier brings with it important connotations of impartiality, equality, fairness, justice that have proven to be powerful conceptual vehicles for this discourse" (p.36).

That neoliberal project occluded any focus on the political-economy of the Internet, the commercialism that permeated the system, and corrupted its civic potential. Network neutrality was in this regard both divisive and diversionary, as Dolber explains: "Rather than uniting around a broad conception of a democratically controlled communications infrastructure, media reformers, labour unions and some components of the African-American political community became divided from each other as they articulated their concerns alongside the visions of competing components of the corporate class" (2013, p.148). We will observe a similar dynamic in the case of the Marco Civil, as the telecoms sector tried to leverage legitimate concerns around social inequality to argue that enforcing network neutrality would in fact further disenfranchise the most impoverished Brazilian mobile Internet users.

Newman (2019) most succinctly describes the significance of the transition from the open access debates to a dispute over network neutrality when he writes: "The ability of the broad systemic critique of the *commercialization* of broadband networks itself to slip past all concerned in the network neutrality debates (or be covered more obliquely) in favor of arguments about *innovation, about*

individual freedom and consumer rights [emphasis added] signals significant implications and new problematics" (p.29).

One cannot dispute that the e2e principle is a hugely important dimension of the Internet's architecture. Without it, much of the access to information and innovation that characterise the Internet would be negated. However, the significance of network neutrality's elevation to a top tier digital right - by converting it into the 'First Amendment of the Internet' (Anderson 2013, p.202) - is how platforms become proxies for users, and how another *consumer* protection sucks the oxygen out of other more substantive rights claims.

Freedom on the march? The portentous conflation of commerce and speech.

By the late 1990s, a particular policy vision for the Internet had been established in the United States, it "was locked in as guiding orthodoxy: that the Internet should undergo market-led development to the maximum possible extent" (Schiller 1999, p.71). The 'Framework for Global Electronic Commerce' policy white paper devised by the White House in 1997 was a milestone in this regard. President Clinton declared of the framework that the Internet "should be a place where government makes every effort...not to stand in the way" (quoted in Schiller 1999, p.70). Thus a particular neoliberal conceit of freedom was mobilised to guide the Internet's diffusion. Elsewhere, a pitched battle was already underway to safeguard this vision of laissez-faire 'Internet freedom', the result of which would establish an enduring entanglement of freedom of online expression, and electronic commerce within the digital rights paradigm.

What Pickard and Berman (2019) describe as the "creeping influence of corporate libertarianism over telecommunications policy" had resulted in the passage of the Telecommunications Act in 1996 (p.25). Amidst the many consequential changes in this law - including the classification of the Internet as a lightly regulated 'information service' (a move mirrored by Brazilian regulators) - was the inclusion of the Communication Decency Act (CDA). This was a reaction to the moral panic around 'cyberporn', and Section 223 of the CDA established punitive measures for the transmission of indecent material online.

The fact that the CDA imposed "substantial criminal liability on telecommunications service providers..." (Lee 2006, p.87) would compel ISPs to monitor and likely censor online communication. The ensuing threat to both freedom of online expression and the business interests of a burgeoning

Internet sector, catalysed a marriage of convenience between civil liberties groups and a coalition of technology, telecoms and media companies, including Apple, AOL and Time Warner (Lee 2006 p.88).

At the forefront of opposition to the creation of strict ISP liability in the CDA was the Electronic Frontier Foundation (EFF). The legislation was a "nightmarish threat...to the Net and to the First Amendment" according to EFF's in-house counsel, Mike Godwin (2003, p.326). As noted above, the EFF was a key protagonist in the crypto-wars and, most significantly, a bastion of cyber-libertarianism (Flichy 2007; Marwick 2013). Indeed, it is notable that Godwin called up Howard Rheingold, a prominent cyber-libertarian mouthpiece (Dahlberg 2010), as one of the expert witnesses in the group's court challenge against the CDA (Goodwin 2003, p.331).

It should not therefore be surprising that akin to the crypto-wars, the solution to the challenge of cyberporn presented by the anti-CDA coalition was for the individual user to apply technology in a manner that facilitated the free flow of information, as this tract from one of the group's first web posts makes clear: "The power and flexibility of interactive media offers a unique opportunity to ...*leave the flow of information free* [emphasis added] for those adults who want it" (quoted in Lee 2006, p.90). This anti-CDA alternative was codified by allied Senators in a proposed amendment, whose name signaled the ideational tenor of the move: 'The *Internet Freedom* [emphasis added] and Family Empowerment Act' (Lee 2006, p.91).

A ruling by the Supreme Court in June 1997 struck down the contested Section 223 of the CDA, declaring that it "trampled on the First Amendment and amounted to illegal government censorship" (Brekke 1997). Although the ruling was widely celebrated as a civic triumph, its most important safeguard for freedom of online expression came in the preservation of Section 230 - a safe harbour provision that "nearly entirely eliminated the liability of Internet content platforms under state common law for bad acts, such as defamation, occasioned by their users" (Zittrain 2017).

As Gillespie (2018) notes, safe harbour provisions were intended for an earlier generation of websites, did not anticipate the platforms' later conflation of conduit and content, and moreover were presented as a "gift" without any public service obligations (p.43). Safe harbours certainly also marked the start of an enduring conflation of online free speech with the economic interests of web companies.

As Schiller argues persuasively "Speech and commerce...become increasingly entangled. Where the Internet is concerned, rulings that are ostensibly about the former cannot but harbour portentous consequences for the latter. There is no question that the US Supreme Court's decision to overturn the Communications Decency Act marked a victory for civil liberties. Yet the same verdict simultaneously rendered *a camouflaged preferment for electronic commerce* [emphasis added]" (2000, p.72).

I contend that Schiller's observation could be generalized to many digital rights 'victories', including the Marco Civil. And I build upon his point to argue that there is a paradox at the heart of making platforms a proxy for citizens in the form of Section 230's portentous safe harbour provisions. This is because protecting individual freedom of expression is only a secondary effect of securing the invulnerability of web platforms. The primary beneficiaries of these arrangements are web platforms, and they use that benefit to commodify and surveil users, even as those users gain access to a speech platform to express themselves. Moreover, this conflation of speech and commerce is legitimated by the digital discourse. Gillespie indeed recognises that safe harbours were enacted "when the promise of openness, neutrality, meritocracy and community was powerful and seductive, resonating deeply with the ideals of network culture..." (2018, p.40). Cohen (2019) similarly notes that the early Internet intermediaries were "invoking the familiar idea of media technologies as technologies of freedom, they prophesied that a broad grant of immunity would promote both the spread of online commerce and the flowering of public discourse" (p.97). As the expressive capacities of netizens were sublimated within the cyber-libertarian discourse - as the online world supposedly nullified the old media gatekeepers and empowered autonomous 'prosumers' to create and express themselves - the legacy of this discursive conjuncture is that the newfound and extraordinary power of the platforms is obfuscated. The right to free expression in this context does not address these structural, political-economic constraints, but instead becomes a legitimating principle of informational capitalism.

The last major event that we need to account for in the discursive construction of digital rights is the WSIS. This was a nodal point at which the discourse of cyber-libertarianism 2.0 (Dahlberg 2010) helped to establish the nascent paradigm of digital rights, one that that marginalized more substantive visions of civic communication online and became crystallised in multiple frameworks and charters, including the Marco Civil.

Web 2.0, WSIS and beyond

In the wake of the dot.com bust, the emergence of Web 2.0 by the mid-2000s was accompanied by a particular rhetoric celebrating its communicative, technical and economic affordances (Dyer-Witheford 2015; Dahlberg 2010). This rhetoric was advanced by a cadre of boosters, exemplified by the likes of Tim O'Reilly, and popularised in the mainstream press. The celebration of Web 2.0 extended beyond the digerati of Silicon Valley and as Marwick explains "in intellectual circles, the ideas of Lessig, Doctorow, Kapor and academics like Henry Jenkins and Yochai Benkler became mainstream. 'Free culture', 'participatory culture' and the 'networked information economy' were hot" (2013, p.70). I argue that this new iteration of the digital discourse - drawing upon the tenets of the discourse of Web 2.0 lauding the 'prosumer' and the 'networked citizen' - played a major role in consolidating the digital rights paradigm that became dominant in the wake of WSIS.

The World Summit on the Information Society was first proposed in the late 1990s, but did not convene into a physical summit until 2003 in Geneva, Switzerland. The organizational structure behind WSIS was provided by the International Telecommunications Union (ITU). The ITU was an entity that, as the prominent communication rights activist and scholar, Sean O' Siochrú, argued, had already become a neoliberal institution, one that had 'swallowed undigested the ideologically-driven claims for the "information society"' (2004, p.213).

The summit was based on a multistakeholder model involving representatives from government, business and civil society. Although multistakeholder governance implies a consensus-based model with diverse actors deliberating on an equal footing (Powers and Jablonski 2015), the reality that materialised at WSIS was far removed from that ideal. In reality, only state actors were permitted a voice in proceedings, while civil society representatives were relegated to parallel discussion fora. As many others have observed, regarding WSIS and and multistakeholder forums generally, the most significant role that civil society actors play is to legitimate the agenda of powerful economic and political interests (Burrell 2012; Powers & Jablonski 2015; Franklin 2013). And that only refers to the groups considered for inclusion. As McLaughlin and Pickard (2005) also note, "however much they might satisfy the legitimation imperative, pluralistic approaches eventually corrode into the marginalization of groups whose aims do not coincide with the demands of the neoliberal economic imperative" (p.368).

With the above critiques in mind, it is hardly surprising that its multistakeholder format indeed became one of the chief legacies of WSIS. A broad range of issues up for debate was distilled into an (often esoteric) discussion about Internet Governance. Delimiting a plethora of concerns about the global media system into such a narrow debate placed the WSIS agenda on safe terrain for informational capitalism. McLaughlin and Pickard's observation about the official WSIS statements bears this out as every draft of the "Declaration of Principles and Plan of Action appeared more technocratic and oriented to market-led solutions to development than its predecessor" (p.364).

This approach marginalised other more substantive visions for reforming the global media and communication system. For instance, a parallel and independent civil society forum in Geneva called 'WSIS? WeSeize!' "promoted the development of autonomous and civil-society-based media infrastructures. Participants rejected state- and business-led privatization and control policies, criticized state censorship and surveillance as well as the privatization of ideas through intellectual property law, and discussed the exploitation of intellectual and informationalized labor" (Hintz & Milan 2011, p.235).

The civil society declaration that emerged from the Tunis WSIS demonstrated a significant divergence from the official statements. O' Siochrú showed how it confronted "excessive copyright protection and monopolies on intellectual products, concentration of media ownership, censorship and the limitations of a purely market driven approach" (2003). However, civil society groups at WSIS were bifurcated: radicals were marginalized (especially those advocating for communication rights, like CRIS), while the voices made to matter towed the summit line on the information society. Tellingly, a proposal to include the 'right to communicate' in a new list of human rights, backed by the CRIS campaign, was in fact strongly opposed within the WSIS Human Rights Caucus, particularly by the free expression advocacy group, Article 19, because it might in fact "undermine long-established media freedoms" (Jorgensen 2010, p.98).

We can observe therefore that "Instead of focusing on underlying social inequities and political solutions, WSIS seeks to shore up the existing system by limiting debate to technical issues. This overall narrowing of discursive boundaries reflects the ascendance of neoliberalism" (Pickard 2007, p.136). This 'narrowing of discursive boundaries', I argue, delimited the horizon for digital rights in an enduring

way. As Padovani et al (2010) contend, “the WSIS (2003) has been a turning point in the identification of issues pertaining to human rights in the digital age” (p.367).

Before examining the emergence of a “veritable digital rights movement” (Isin & Ruppert 2015, p.161) it is useful to classify the principal differences in digital/communication rights claims, when founded in one or other critique of capitalism, that we have observed between the bookends of NWICO and WSIS. Table 2 does not by any means represent an exhaustive accounting of the characteristics of these two approaches, however the juxtaposition of some of the most salient values illustrates the divergence between them.

Table 2

Rights attributes according to critique of capitalism

Social critique (communication rights)	Artistic critique (digital rights)
Systemic change	Incremental change
Collectivist	Individualist
Equity	Expression
Political	Neutral
Justice	Freedom
Democratic/public	Open
Political-economic	Humanist
Redistributive	Technical/legal
Positive	Negative

The codification of digital rights

At WSIS, therefore, a pivotal discursive fork occurred: Communication rights – substantive but marginalized – in one direction - digital rights – compromised but dominant, in the other. And with the change in prefix, a fundamental shift in their characteristics. It is this latter path that became the dominant response to the exercise of repressive power on and through the Internet, and led to the creation of more than 50 statements, manifestos and charters by 2018 (Pettrachin 2018).

Padovani, Musiani and Pavan (2010) identify 5 core concerns in their discourse analysis of human rights in the digital age: freedom, diversity, inclusion, participation and a knowledge commons (p.374). Researchers at the Berkman Centre for Internet in Society examined 30 charters of digital rights and identified 7 broad groupings: Fundamental freedoms; limits on state power; Internet governance; privacy rights and surveillance; access and education; openness and stability of networks; economic rights and responsibilities (Gill, Redeker & Gasser 2015). In Pettrachin's large scale content analysis of digital rights declarations from 1997-2015, she notes that freedom of expression, privacy, access and internet governance are the issues included with most frequency (2018, p.347). Finally, as Isin and Ruppert concur in their own work on the emergence of the digital citizen (2015) "three rights – expression, access and privacy – have emerged as the most often debated digital rights. To these, openness and innovation have recently been added. All together, these five rights have come to constitute digital rights in cyberspace" (p.159).

One of the most valuable frameworks for understanding the tenor rather than simply the composition of digital rights declarations is provided by Karppinen and Puukko (2020). In their analysis, the researchers identify four principal discourses that comprise the 'digital rights movement'. These are: negative rights; positive rights/state obligations; information justice; platform affordances.

The negative rights discourse can be traced back to the genesis of cyber-libertarianism, with the precepts that the liberties and expressive capacities for individual users must be safeguarded, notably from the restrictions of the state. The positive rights/state obligations discourse is largely utilitarian in scope, but intersects directly with the human rights tradition (in those instances where digital media can help to realise those rights), recognises the 'citizen' as the subject of digital rights, and affords the state a productive role as their guarantor. Information justice, meanwhile, expands the concept of digital rights in depth and breadth as "a vehicle to contest and alter existing mechanisms and relations of power" (p.317) by recognising structural inequities within the digital media environment and the need to intersect with broader claims of distributive justice. Finally, the platform affordances discourse is propagated principally by web companies, see rights as embedded within technological infrastructure, and the subject of those rights as platform users.

Combining Karppinen and Puuko's analysis, with the research identified earlier, one can observe that the codification of digital rights most closely corresponds to the negative and positive rights frameworks. There is a clear emphasis on individual rights and freedoms, especially in terms of

expression and privacy, realised through technical and market-based solutions, such as network neutrality. Although the state is assigned duties as guarantor of a limited array of rights, the influence of the negative rights approach sees the state more often framed as a threat to the expressive capacities of individuals, as censor and spy.

Although Karpinnen and Puukko do not directly analyse the broader discursive and ideological foundations of their four approaches, they do observe that "rights are not only a neutral tool for the protection of individuals, but also have a more ambivalent function as a form of power, which not only open up possibilities but also circumscribe and channel them" (308). This observation corresponds closely to my central argument that the legitimation discourse of informational capitalism has effectively neutralised the dominant paradigm of digital rights as a form of countervailing power.

The coherence between the tenets of the digital discourse – expression, freedom, participation, openness, innovation – and the defining features of the digital rights paradigm are striking. Fundamentally, informational capitalism's core logics of commodification and control are unchallenged when the subject of rights claims are atomised individuals, and the liberties they safeguard in fact serve as fuel for a system of accumulation and exploitation. Newman's (2013) analysis of network neutrality legislation in the United States encapsulates this paradox: "individual freedoms online exist uncomfortably next to the extant desires of capitalist expansion" (2013, p.63).

Marianne Franklin didn't develop her observation that digital rights are "encapsulated by the trope of freedom" (2013, p.92), but I argue that the 'empty signifier' of freedom serves a dual purpose in charters of digital rights. On one hand it permits the easy conflation of individual rights with the free flow of data essential for informational capitalism to operate. On the other it forestalls more substantive measures; if we can realize *freedom* through these rights, then why go further?

What is omitted from this dominant digital rights paradigm is just as important as what is included. Conspicuously absent are any connection to broader social justice concerns, any focus on the Internet's hyper-commercial character, or on public provision of content or services. Although a quantitative approach only provides a partial account, it is telling that in Pettrachin's (2018) detailed content analysis of 58 digital rights charters, the values most closely associated with the social critique of capitalism such as 'justice', 'power', 'concentration', 'public', 'discrimination' and 'commodity' are not prominent enough to receive mention. As Hintz and Milan (2011) pointedly observed, the

fundamental concerns of 'netizens' for communications policy are "free and unobstructed activities by individuals" that "overshadows notions of a "public interest" (p.235).

Similarly, Padovani, Musiani and Pavan (2010) argue in their research on discourses of human rights in the digital age, that "60 years of fundamental rights do not appear to be fully acknowledged in the digital-oriented discourse". The omissions include minority rights, peace, security and environmental concerns (2010, 374). The overlap with Jørgensen's research on human rights in global media discourses from WSIS onwards merits mention here (2011) as she concludes that "the concrete use of human rights is often limited to either a general framework without specific human rights analysis or referencing the right to freedom of expression and the right to privacy only" (Jorgensen 2011, p.100).

Certainly, the tunnel vision on expression and privacy identified by Jørgensen is quite evident in the dominant digital rights paradigm. Moreover, in Franklin's (2013) account of the development of the IGF's 'Charter of Human Rights and Principles for the Internet', she writes that it "would put human rights issues squarely on what had been predominately technocratic and techno-centric agendas" (2013, 143). I contend that while the general framework of human rights may have been transposed to the digital rights movement, those 'technocentric' agendas – favouring technical fixes over substantive reforms - remain highly influential. This is a point I develop in the next chapter in the context of the Marco Civil.

There are other important features of the human rights tradition that have influenced the dominant approach to digital rights in a way germane to this study. Following Slaughter's (2018) critique of the Western discourse of human rights - and as discussed above - the emphasis on the individual over the collective is also much in evidence within digital rights charters. Isin and Ruppert also note that the figure of the citizen "disappears from the charters claiming digital rights and instead is replaced by the 'human rights' of individuals" (2015, p.175). Finally, the explicit universalism of human rights is also a core feature of the digital rights paradigm, and corresponds to one of my core arguments regarding the Marco Civil: that it should not be uncritically presented as a global legislative template, but instead needs to be understood as contingent upon its political-economic and socio-cultural context.

As Isin & Ruppert (2015) as well as Jørgensen (2013) have documented, digital rights are most often presented as *human*, rather than *civic* rights. This is a key distinction as the former serves to frame digital rights as "static and universal" as opposed to "historical and situated and arising from social

struggles" (Isin & Ruppert 2015, p.10). This dominant framing therefore often fails to acknowledge how digital rights would intersect with local political-economic and socio-cultural realities.

Accordingly, it has become commonplace for charters of digital rights to be drafted and advocated for as initiatives with universal scope. Karpinnen (2018) notes that the majority of declarations that she analysed invoke an explicitly global scale (p.349). These include the Internet Governance Forum's (IGF) *Charter of Human Rights and Principles for the Internet* (Franklin 2013, p.141), the Association of Progressive Communication's *Internet Rights Charter* disseminated in 20 languages worldwide (Hintz & Milan 2011, p.235) and the Web We Want Foundation's vision of an Internet 'Magna Carta'.

Isin & Ruppert's (2015) critique of the universalism of digital rights is worthy of inclusion here as it buttresses my own analysis of the Marco Civil: "they (charters) would have more performative if not legal force if they arose *from not only a universal commitment but also regional commitments* [emphasis added] to understanding how the figure of the citizen is being articulated differently in cyberspace…" (p.178). Also, "there must be a reflexive sensitivity about *differentiated* [emphasis added] experiences, and it should guide our understanding of digital citizens" (p.176).

The occluded possibilities for digital rights are represented in Karppinen and Puuko's discourse of 'information justice' (2020). The alternative claims therein, that are collectivist, connect to wider social justice agendas and require systemic change to the online environment have been articulated in numerous concrete proposals. These include: a data tax (Powers & Jablonski 2015); government provision of online public journalism (McChesney 2013; Pickard 2016); platform cooperativism (Scholz et al 2017); municipal/community broadband networks (Pickard 2016); 'sustainable culture' (Taylor 2014); a 'Human Knowledge Project' (Vaidhyanathan 2012); a distributive digital commons (Jordan 2015); and data justice (Taylor 2017).

Outside of the academic realm, NGOs such as the Internet Social Forum (initially proposed in 2015), and the Just Net Coalition, advocate for similarly substantive measures to address the exercise of repressive power on and through the Internet. While within the political sphere, Pirate and Green Parties around the world have integrated values of 'information justice' into their platforms, with the goal of "not only protecting existing legal rights, but also the contestation and alteration of hegemonic structures" (Karpinnen and Puukko 2020, p.319).The connection to the Pirate Party is indeed significant for this study. That is because the Brazilian Pirate Party made proposals for the Marco Civil that corresponded closely to the 'information justice' approach to digital rights. Accordingly, this shows

that such ideas were being discussed in Brazil, at the time, by actors closely involved with the Marco Civil process. They therefore represented a viable, but untrodden, path for digital rights in Brazil.

Some may claim that measures within the information justice approach fall outside of the purview of a rights-based framework. However, I would argue that if techno-legal policy instruments such as network neutrality, safe harbour provisions and data finality measures are commonplace within digital rights charters, then why should it be inconceivable to include structural reforms establishing public broadband provision or a data commons?

We should turn to Cohen here, and note her argument that "In the networked information era, preserving fundamental rights and freedoms for all people requires an institutional foundation that encompasses not only rights to speak, to access information, and so on *but also other structural safeguards* [emphasis added]—safeguards designed to preserve a well-functioning networked public sphere…" (2019, p.252)

Moreover, it is worth returning to the 'communication rights' approach for a vital corrective to any misapprehension about the 'proper' purview of digital rights. Communication rights represent a programmatic attempt to establish a communication environment that promotes both social equity and a substantive democracy. It is an approach that employs a wide-angle lens to encompass systemic reform *alongside* individual rights. Calls from the Communication Rights within the Information Society (CRIS) campaign advocate for freedom of expression and privacy, but vitally, *in conjunction with* calls for a global knowledge commons, media literacy and basic communication skills, pluralism of media sources and diversity in the systems we use for retrieving information.

As we prepare to move from the general to the specific of this study, we should pay heed to a vital point of connection between this genealogy of digital rights, and the Marco Civil. One of the charters comprising the "explosion" of Internet rights initiatives (Hawtin 2011), that remained largely unheralded outside of Brazil, was the *Decálogo*; finalised in 2009 by the Brazilian Internet Steering Committee (CGI). The so-called 'Ten Commandments' for governance of the country's Internet was the product of two years of multistakeholder development, and became the template for Brazil's Marco Civil. This framework of principles - explicitly conceived as a set of digital rights – and devised in the ideational slipstream of WSIS, provides thediscursive link between the nodal point of WSIS, through the digital rights movement, and to the Marco Civil.

Conclusion

The purpose of this chapter was to establish, to the fullest extent possible, an analytical framework for informational capitalism; to assess the form, modes and scope of the system's power. This, in turn, represents a vital contribution to this study because it enables us to understand the deficiencies of the Marco Civil as a bill of digital rights, and the particularities of its development at the system's periphery.

To do this, I have parsed some of the most notable accounts that contribute to our understanding of informational capitalism and taken stock of the most relevant insights. Although these have been drawn from a wide variety of academic literatures - including surveillance, platform and policy studies - two fields stand out as the most prominent: the political-economy of communication and critical discourse analysis. Each is characterised by particular emphases, as well as blind spots, that I have endeavoured to account for in this framework.

The political-economy of communication shines a light onto the structure and functions of informational capitalism. Schiller (2000; 2010; 2014), Dyer-Witheford (2015) and Fuchs (2009; 2011) represent some of the key contributors to this framework, identifying the varied forms of production and accumulation that drive informational capitalism forward. Overlapping accounts from critical legal scholars such as Cohen (2019) and Berry (2008) that focus on IP and cyber-law are also vital for understanding the means of extraction and enclosure that are pivotal to the workings of informational capitalism.

The framework that I have presented here also addresses some of the most notable omissions from these literatures. The wide-angle lens I employ captures the broad array of actors that comprise informational capitalism, including the media and telecoms sectors and state actors, thereby evading the narrow focus on web platforms and data extraction that has characterised more recent accounts (Srnicek 2017; Zuboff 2019; Couldry & Mejias 2019). The global political-economy of informational capitalism is similarly a core component of my framework that is largely occluded in the literature. Although, it is widely observed that the global South represents a site of extraction/exploitation within analyses of the IP regime (Drahos & Braithwaite 2002), big data analytics (Taylor 2017), global media flows (Mirrlees 2016), technology supply chains (Qiu 2016) etc., and while mentions of the 'periphery' abound in a somewhat abstract sense, there is a dearth of systematic efforts to conceptualise the zonal

geography of informational capitalism, to relate the periphery to the core. I address that omission here.

Finally, the ideational dimensions of informational capitalism are largely neglected by the political-economy of communication. The discourses that legitimate informational capitalism, that are constitutive of the policies, laws and media framings that in turn shape the social and political-economic conjunctures of the system are essential to understand. In order to address this blind spot within political-economy research , I have drawn from the wealth of insights provided by scholars of discourse – most notably Fisher (2013), Dahlgren (2010) and Kimball (2013) – to identify the legitimation discourse of informational capitalism and to show how it has indelibly marked the dominant paradigm of digital rights.

Although it must be observed that some scholars have fruitfully transcended the disciplinary boundaries between communication policy research, political-economy and discourse analysis – particularly Streeter (2011), Newman (2019) and Schoonmaker (2009) to whom I all owe a special debt – they represent outliers, and so the dual focus on the structural and symbolic dimensions of informational capitalism offered by my framework represents an important contribution to the existing scholarship.

Specifically, the framework elaborated in this chapter identifies the core **logics** of informational capitalism as commodification and control. These are advanced through a series of **mechanics** that include intellectual property, datafication, surveillance, code and informationalised production.

Although the logics of informational capitalism are defining and coherent features of the system, it is essential to recognise that the manner in which those mechanics are advanced implies conflict and contradictions, as different sectors compete for advantage. Accordingly, the second major strut of this framework identifies the **dynamics** of informational capitalism. This involved categorising the principal sectors – notably the web technology, content production, telecoms, security state etc. – and identifying how their preferred mechanics to commodify and control information create tensions and synergies within the system. By singling out one sector in particular for analysis, I reveal the many forms these dynamics can take. We must also recognise the capacity for **resistance** from actors outside of informational capitalism, and as such I mapped out the forms that may take, from interventions classified as technological or political-economic, and the modes of resistance along on an axis between rejection and disruption.

The unequal and exploitative global political-economy of informational capitalism represents the penultimate strut of this framework. The directionality of power defines the **zones** of informational capitalism, from the core to the peripheries. The highly uneven and adaptable nature of informational capitalism, and the manner in which relationships of exploitation and resistance are in constant flux requires us to overlay the zonal structure with the concept of 'variegation'. In order to classify places as belonging to the peripheries, core or epicentre, I identify four broad and overlapping metrics: IP; trade and manufacturing; policy; and infrastructure.

Finally, it is a core conceit of this study that for the exercise of power to be fully understood we must study it along its material and symbolic dimensions. Accordingly, the final section of this analytical framework examines the discourses of informational capitalism. Borrowing Fisher's (2013) concept of the technology legitimation discourse of capitalism – the digital discourse – I conduct a genealogy of sorts between NWICO and WSIS that traces the dissolution of communication rights claims grounded in a social critique of capitalism, to the creation of the dominant paradigm of digital rights. I show how this paradigm is marked by the tenets of the digital discourse to produce a common-sense of digital rights that coheres with the systemic logics of informational capitalism.

In Part II of this study - a case study of the policy development of the Marco Civil - I operationalize the analytical framework examined in this chapter, identifying the manifestation of the logics, dynamics, zones and discourses of informational capitalism in the Brazilian context.

The next chapter, in which we examine the historical trajectory by which Brazil finds itself at the margins of informational capitalism, concludes Part I of this study

Chapter 3 - History

A history of media diffusion and policy in Brazil: Exploitation, resistance and adaptation at the periphery of global capitalism

The purpose of this history chapter is twofold. The first is to recognise how the development of media systems and associated policies in Brazil occurred in a way that has undermined communication/civil rights, eroded democracy, and produced enormous concentrations of economic and political power. The second is to reveal the trajectory by which Brazil presently finds itself at the margins of informational capitalism, the junctures at which Brazil sought to transcend the periphery by establishing ‘technological sovereignty’, and the central place that communication technologies have always held in mediating Brazil’s relationship to global capitalism. Establishing these histories is essential because they help to reveal the origins of the discourses that were so influential in shaping the Marco Civil, explain the agendas of the principal actors that contested the bill’s development, and demonstrate the many important continuities that characterise Brazil’s current status within informational capitalism.

Contributions

This chapter offers several specific contributions to this study. The first shows how some of the principal powerbrokers in informational capitalism in Brazil - notably the telecoms and broadcasting sectors - gained the economic and political power that proved decisive in shaping the Marco Civil. Effectively, it is the history of how concentration and commercialization became the default settings for media and communications in Brazil. By establishing how that power was accumulated helps to explain the rationale for these actors’ interventions in the Marco Civil, as well as the means by which they did so. It also illustrates in the case of the Marco Civil why the Internet became, for a small but committed group of activists and advocates, a last redoubt for a potentially democratic media in Brazil.

In a closely related point, the history of ICT diffusion examined in this chapter shows how communications media have always represented an essential component of Brazil’s relationship to global capitalism: the roll-out of telegraph was dictated by the needs of imperial capital and access to Brazil’s natural resources; broadcast media were deployed as a tool of fascist nation-building and to build a national consumer market favourable to both domestic and global capital; while telephony and informatics were developed aggressively by the junta of the Fifth Republic in order to boost Brazil’s

standing within the global system of post-Fordist capitalism. The Internet in the context of this study represents a clear continuation of that trend as it represents the infrastructure by which Brazil has been integrated into the global circuits of informational capitalism (even as the Internet's diffusion has also represented a key part of a national neo-developmentalist political agenda). Essentially, global capital has consistently intervened in the construction of communication infrastructure in Brazil in order to better control and commodify Brazil's resources: material, economic, and, most pertinent to our current enquiry, informational.

Media and ICTs have also played a key historical role in how political projects of nationalism, developmentalism, technological and cultural sovereignty have been advanced in Brazil. These projects represent attempts to change the terms of Brazil's status within global capitalism, and the success of these projects in leveraging communication technologies influence the degree of its subordinance therein. The Internet in the case of the Marco Civil represents a continuation of that trend, as it was implicated in projects of neo-developmentalism and 'data sovereignty'.

The history of Brazil's peripheral status within global capitalism also helps to explain some of the contradictory dimensions of the Marco Civil's legislative development. On one hand, the influential narrative of 'data sovereignty' that emerged in the latter stages of the Marco Civil process, and helped to impel the bill's progress, contained deep historical resonances in Brazil. Conversely, the fact that Brazilians have become conditioned over hundreds of years to technology arriving from the core of global capitalism also bore a deep imprint on the Marco Civil; particularly the limited concern for the commercial dominance of US web companies.

The history of media policy in Brazil also exhibits a certain path dependency, one that was highly evident in the Marco Civil. This path is marked by a consistent disregard for the public interest, in favour of private gain. Sectors of the domestic media and communication industry have frequently set aside commercial rivalries in order to unite and successfully shape media policy to suit their agendas. In the face of this pressure, the state has proven itself to be at best acquiescent, and at worst complicit.

Analysing the involvement of civil society actors in media policy formation - invariably in the post-transition environment - reveals similar trends. A tendency towards 'pragmatic' moderation, one that coheres with the 'common-sense' established by state and industry actors, and that ultimately betrays the public interest, is evident as much in the Marco Civil as it is in earlier instances of media

policymaking. Similarly, although civil society in Brazil demonstrates an uneasy 'political interdependence' (Avritzer 2017) with the state, civil society actors have at the same time displayed a deep suspicion of it - born of the centralized control imposed by the dictatorship - that has inadvertently played into the hands of neoliberal projects for media and communication governance. This too was a defining characteristic of civil society involvement in the Marco Civil.

Finally, the historical review in this chapter amply demonstrates how communication rights have consistently been disregarded in Brazil. During the military junta, those civil rights were systematically crushed, while even since the return of democracy, the minimal protections that have been established, have been weakly enforced. I contend that this unfortunate history helps to explain a core contradiction evident in the Marco Civil; why civil society organizations fought so hard to protect such a tepid set of rights. Moreover, by examining the history of media democracy and the civil/ communication rights of Brazilians, how they advance in inches, and are then repelled in yards, we gain essential insights into the particular significance of the digital rights of the Marco Civil.

Themes

In order to develop the above contributions, this chapter is based around three interrelated themes.

The first is to examine the policy and political-economy of media and communication technologies in Brazil: to identify which actors directed their diffusion, and how they gained advantage. The second is the relationship between the manner in which media and ICTs were diffused andregulated, and the democratic rights of Brazilian citizens. The final core theme relates to how Brazil's status within global capitalism has been influenced by the

diffusion and use of media and communication technologies.

It should be noted that although these themes are interrelated, they may sometimes point in contradictory directions. For example, during the period of the military junta (1964-1985), systematic and effective attempts to develop technological sovereignty marched in lockstep with the aggressive repression of civil/communication rights.

I divide the following material into four chronological sections:

The first is independence until the beginning of the military dictatorship (1822 – 1964), when the diffusion of the telegraph, and then broadcast media, were substantially influenced by the needs of global capital;

The second examines the policies of the military junta (1964-1985), how broadcast media were harnessed for the project of fascist nation-building, and telecoms and informatics policy were used to advance Brazil's status within the global economy;

The third focuses on the transition to democracy (1984-2002), and the tensions that materialised within media policy frameworks between the consolidation of democratic rights for Brazilians and theadoption of modes of neoliberal governance;

The final section centres on the first two terms of the Workers Party government (2003-2010) under President Lula da Silva, and the contradictions therein between a mode of governance focused on neo-developmentalism, and the cause of democratic media reform.

Nation-building and networks in the shadow of empire (1822-1964)

Build-out of telegraphy worldwide was undertaken as a means to coordinate the extraction of raw materials necessary for imperial capitalist accumulation, both by transmitting news to local elites and facilitating transactional logistics (Mattelart 2000). Brazil acquired independence from imperial Portugal in 1822, approximately a decade before the first commercial telegraph lines were established in Britain and the US (Clayton & Conniff 1999). As such there was no imperial imperative to build-out telegraphy within Brazil, unlike in India, for instance, where the British established a telegraph network in the 1850s (Headrick 2010). Even as an independent nation, Brazil's local elites were economically dependent upon exports to Europe of raw agricultural materials, notably coffee, sugar and rubber (Clayton & Conniff 1999, p.199). Moreover, France and Britain constituted a neo-imperial presence in Brazil in the 19th and early 20th centuries in their efforts to secure access to these valuable Brazilian commodities (Guedes-Bailey & Barbosa 2008, p.46). Given that the development of telegraph lines required high capital costs, only diverse industrialised markets would merit such investment. The unsophisticated nature of Brazil's monoculture did not qualify in this regard and instead, railways and ports constituted the necessary infrastructure for its export economy (Costa da Silva 2011, p.52). As Mattelart explains, this first instance of the development of transport networks in Brazil demonstrated the priority of neo-colonial extraction over coherent domestic development: "Railway standards was a

hotchpotch in the colonies as imperial powers built them on a penetration model from ports into the hinterland. Brazil had both French and British standards and at the end of the 19 century there were 5 autonomous local networks" (2000, p.9).

In what constituted an early template for the diffusion of communication technologies in Brazil, when telegraphy was eventually embraced by Brazilian elites, the rationale was primarily one of nation-building, rather than profit (Costa da Silva 2011, p.53). The political needs of the Brazilian emperor in uniting a diffuse territory under his rule was the principal motivation for the development of a domestic telegraph system. In the words of Maciel (2001), the telegraph would make the symbolic presence of the emperor more palpable, made more efficient through the diffusion of his words, orders and acts to all corners (of the nation) (p.21). The telegraph was indeed widely heralded in the South American press as a means to achieve modernity and as a tool for nation-building (Winseck & Pike 2008, p.21).

In what is another defining characteristic of nations at the periphery of the capitalist system, Brazil was reliant upon the innovation centres, Britain and France in this case, for the financial and technological resources to install the most sophisticated elements of a communication system; namely submarine cables. The first submarine cable connecting Brazil to Europe was laid in 1874 (Winseck & Pike 2008), making South America the last continent to be connected to the global system (Costa da Silva 2011, 60), a fact that underscores the region's peripherality within imperial capitalism. The concession to construct and operate this line, as well as submarine cables interlinking all of its coastal cities, was provided by Brazil to British engineering companies. This placed Britain in the position to control communication for the entire continent, and according to the analysis of Costa da Silva (2011), it was done to shore up political control for Dom Pedro II and to integrate Brazil more closely into the global economic system (p.60). Certainly, European engineering firms offered "grandiose visions of South American countries taking their rightful place in the world of nations" (Winseck & Pike 2008, p.22).

'Integration' into the global economic system really signified placing Brazil's communication system in the hands of a monopolistic neo-imperial enterprise in the form of the Western Telegraph Company. Through submarine cables, European news agencies were able to dominate the supply of foreign news to South American markets (Winseck & Pike 2008, p.11). So, in what represented a familiar manifestation of the tension within peripheral nations between the desire to establish national autonomy, and the reality of being dependent upon the centres of the global capitalist system, Brazil

along with other South American nations implemented two major policy shifts: the development of state-owned telegraphy, and opening access to the international cable system (Winseck & Pike 2008, p.22).

As the United States arose to challenge Great Britain's global imperial hegemony in the first half of the twentieth century, and especially in South America, it began to assume what would become a familiar mantel of dominance over the communication arrangements of the continent. With its acquisitions in Latin America circa 1920, the US' IT&T became a global telecommunications giant (Winseck & Pike 2009, p.44). Also in the wake of WWI, the American news agency UPI wrested control of the South American news market from Reuters (Mattelart 2000, p.42).

Formidable articulations of media and power also arose endogenously within Brazil at this time, that would go on to define the concentrated, controlled and commercial nature of the Brazilian media landscape until the present day. Beginning with newspapers, but then moving inexorably outward to create enormous media networks, the Frias family founded the Folha Group in 1921, the Marinho family the Globo Group in 1925, the Saads founded Grupo Bandeirantes in 1937 and later, the Civita Family, Grupo Abril in 1950. The fact that these families remain at the helm of these media giants prompted Paiva, Sodré and Custódio (2015) to define this system as 'media patrimonialism' (p.110).

Broadcasting in Brazil: Nation-building, consumerism and concentration

Radio was the next major communication technology to rise to prominence, and the manner of its diffusion owed a formative debt to the United States. Indeed, the trajectory of radio from amateur endeavour to commercial enterprise in Latin America tracked that of the United States, detailed in McChesney (1992) and Streeter (1996). Mastrini & Becerra (2002) describe a medium that emerged in the 1920s and was quickly marked by a "commercial logic" and the "rapid concentration of stations and networks" (p.3). The work of Martín-Barbero (1993), meanwhile, shows how throughout the continent, radio played a pivotal role in the development of mass commercial culture and nationalism. The pursuit of both those objectives was amply evidenced in the development of radio in Brazil.

In the 1920s and early 1930s, radio in Brazil broadcast highbrow cultural content for its predominately upper and middle class audience as it began life as a distinctly niche medium (MacLachlan 2003, p.173-5). In 1937, the formation of the *Estado Novo*, a corporatist, quasi-fascist state model under President Vargas, proved a pivotal event (Clayton & Conniff 1999, p.328). Nation-building, industrialisation and

mass consumption were now complementary projects under Vargas' dictatorship and all could be well-served by radio. Vast distances, endemic poverty and widespread illiteracy had previously hampered the construction of a cohesive sense of national identity, but the affordances of this new technology could transcend those obstacles, but crucially without any effort to address their social causes (MacLachlan 2003, p.173; Fox 1995).

Under Vargas, culture became the vehicle to spread the regime's nationalist values, and radio was the means of its transmission (Guedes-Bailey & Barbosa 2008, 48). A national system to control all communication was created in 1939 to facilitate that process, and a national radio station broadcast content throughout the country designed "to imbue it with a national identity" (Fox 1995, p.530). All commercial stations were also mandated to broadcast an 'Hora do Brasil' program created by the government (1995, p.530). During this period, newspapers were censored harshly for publishing material prejudicial to the regime, but were also encouraged to expand their media operations - often with the aid of American capital – to help consolidate Vargas' project of national, capitalist modernity (Paiva, Sodré and Custódio 2015, p.112). Thus continued the symbiosis of media diffusion with the interests of both the domestic elite and global (American) capital.

The fact that radio's emergence as a technology coincided with the 1930 revolution that brought Vargas to power drew broadcasting and Brazilian nationalism together in an enduring way (Guedes-Bailey & Barbosa 2008, p.52). The use of broadcasting as a tool of nation-building was not, however, incompatible with either its increasing commercialization, or growing American influence. Although Vargas' regime retained complete control over broadcast content, its regulation of the sector in 1931 made explicit provisions for American investment in order to rapidly develop the domestic network (Paiva, Sodré and Custódio 2015, p.113). The original Brazilian Broadcasting Regulations Act in 1931 was indeed modelled on American law, but adapted to the "authoritarian and elitist traditions of Brazilian social, political and economic structures" ((Paiva, Sodré and Custódio 2015, p.58). In this respect, one can observe an interesting parallel with the Marco Civil, as core provisions such as network neutrality and limited third-party liability were also modelled on laws passed in the global capitalist core, but were contested and adapted according to local, peripheral concerns.

Brazilian broadcast regulation also included numerous key provisions for the strengthening of commercial over public television. These included the 'trusteeship' model whereby the President

could grant licenses to private interests and political allies, and the generous provision of 25% of air time to advertisements (Paiva, Sodré and Custódio 2015, p.53*).*

The Estado Novo's national industrialisation policies also required a base of domestic mass consumption and by the 1940s renewed faith that radio could facilitate this goal resulted in a massive increase in both advertising content, and content favourable to advertisers. Major American advertising agencies such as McCann Erickson were alerted to this possibility and aggressively targeted radio as an entry point for American consumer brands into the Brazilian mass market (MacLachlan 2003, p.175). The technology for radio broadcasts, as well as content from the networks NBC and CBS, were imported from the US and constituted integral elements of the national system (Fox 1995, p.530). Indeed, beginning during WWII, throughout the region the US government made concerted efforts to facilitate the spread of American media content and corporate influence. These activities "had a profound effect on Latin American media" (Fox 1995, p.529).

The close ties forged during this period likely contributed to the fact that in 1950 Brazil became the 6th country in the world to have a television broadcasting system (Guedes-Bailey & Barbosa 2008, p.51). The high cost of television sets meant that in its first decade in Brazil, television mirrored radio's niche origins as a purveyor of esoteric content for the elite (MacLachlan 2003, p.177). Towards the end of the 1950s, however, the consolidation of consumer capitalism under the economic development programs of President Kubitschek (1956-1960) heralded an extended reach and commercial importance for the new medium. In the 1960s, domestic production of television sets lowered their cost, assisting the medium's rapid diffusion (Guedes-Bailey & Barbosa 2008, p.51). Meanwhile, the policies of Kubitschek created a national market for the import of US cultural products (p.51). These factors attracted significant in-flows of advertising (Fox 1995, p.534), helping to cement television's commercial character and resulting in a scenario in which "the concept of the audience in the ethos of the new arrangement was that of 'consumer' rather than 'citizen' (Guedes-Bailey & Barbosa 2008, p.52).

A truly pivotal moment for Brazilian media democracy arrived in 1962 with the formation of TV Globo. This would go on to become the media behemoth, the Globo Group/Rede Globo. The tale of its adaptation from the de-facto media arm of a military junta, to a 21st century conglomerate, contains the essence of Brazil's national experience with media democracy, defined as it is by repression, concentration and the decisive influence of the core of global capitalism.

The Globo network indeed came of age under the auspices of the generals, but once again, American technology and capital was decisive. The American media giant, Time-Life, partnered with Globo - providing it with technical and financial support - to get it on air by 1965 (Fox 1995, p.534). This was a story played out across the region: Latin American bourgeoisie proving reluctant to invest, with foreign capital, and the three American networks – CBS, NBC and ABC - stepping into the breach (Mastrini & Becerra 2002, p.3).

It is important to note that as per Straubhaur's observation, "Time-Life did not gain much from the deal" (1984, p.228). A negotiated cancellation of the agreement occurred in 1968, before the network became profitable. As such, Globo gained access to interest-free capital and expertise with little in the way of reciprocal obligations. Although it was not the straightforward imposition of media imperialism that is oft-portrayed, the organization of Globo according to US corporate standards decisively re-shaped Brazilian TV market according to US principles and certainly helped to create a national consumer market conducive to US corporate interests (Pait & Straubhaur 2018). This indeed corresponds to one of Herb Schiller's key arguments in 'Not yet the post-imperialist era' (1991), that the imposition of neo-imperalism by the United States into Latin America is less about media content, than it is about the adoption of the commodity system. A similar line of reasoning is pursued by the younger Schiller, who contends that "accelerated commodification...does not necessarily generate global uniformities in programming or in the specificities of national regulatory frameworks but they work toward an overarching congruence, in that systems of provision are reshaped by an increasingly omnipresent capitalist logic (2010, p.121).

Two years prior to the coup, 1962 also marked the passage into law of the *Código Brasileiro de Telecomunicações* (CBT). This was Brazil's first unified communications framework including TV, radio and telecoms. It is important to note that even before the generals deposed the civilian government of João Goulart, the military was a major influence on the design of the telecoms and media system in Brazil. Carvalho (2006) reveals that the CBT was built upon a series of recommendations by the Armed Forces, that sought greater centralization and national cohesion in Brazil's telecoms system (p.51).

The influence of the newly-founded broadcast industry association, ABERT (Brazilian Association of Radio and Television Broadcasters), was also decisive in shaping the CBT. This would prove to be a recurring theme in the history of the media in Brazil - including the development of the Marco Civil - as industry sectors set aside competitive rivalry to collectively pressure an acquiescent state to secure a

regulatory framework favouring private over public interests. Indeed, as per the analysis of Carolina Matos, "The relationship between the public media and the state has always been an uneasy one in the history of broadcasting in Brazil, with the former having been constructed more as a state model media than a proper public communication platform" (2012, p.186).

Censorship and sovereignty: media under dictatorship 1964-1985

The fear that circulated amongst the generals of the Brazilian military, as well as within the American foreign policy establishment, that President João Goulart's economic reforms would convert the country into 'another Cuba', were used to justify a military coup on April 1st, 1964. With the support of American forces, factions of the Brazilian army deposed the President and established the 'Fifth Republic'; a "quintessential national security state" (Clayton & Conniff 1999, p.502) characterised by rapid economic development and fascist repression of civil rights that would endure for two decades.

The Brazilian press almost uniformly supported the coup d'etat (Paiva, Sodré and Custódio 2015, p.112). Globo skillfully positioned themselves as supporters of the regime's project of conservative modernisation and as a result were championed in turn as its official mouthpiece (Fox 1995). The media system in general was assiduously controlled by the generals in order to limit the flow of information that might foment civil unrest, in conjunction with "a brutal and systematic smashing of all forms of political opposition" (Guedes-Bailey & Barbosa 2008, p.54). Television indeed was seized upon by the Brazilian generals as a means to consolidate the project of national identity formation, one conducive to military rule, capitalist development and mass consumption (Porto 2012).

Other major TV stations were systematically undermined by the regime in order to facilitate Globo's dominance (Paiva, Sodré and Custódio 2015, p.116). One expanding media group, TV Excelsior, indeed saw its parent company broken up by edict of the generals (Straubhaur 1984, p.227). Concentration of media ownership was considered an asset rather than a liability and although a decree was passed on the issue in 1967 (and in fact remains the only law on media ownership in Brazil), the junta channelled public resources into strengthening incumbent networks rather than fomenting competition. Between 1965-1978, the generals granted around 60% of television broadcasting licenses to its allies (Fox 1997).

The long durée of development communication

Another motor for the diffusion of television throughout Brazil during the 1950s and 60s was the Cold War agenda of the United States. In an effort to forestall the spread of communism, especially in its own 'backyard', the theory and practice of 'development communication' was zealously promoted by the United States (Fox 1995, P.542-545). 'Modernization theory' was coined by teams of US sociologists, notably those led by Daniel Lerner, working under government patronage in the 1950s. It was a way of seeing the world that compartmentalized it into developed and under-developed, and advocated intervention in order to hasten the transition from the former group to the latter. These interventions were based on lessons learned from WWII psychological warfare as well as domestic marketing, with literacy and media diffusion seen as the main indices of development (Mattelart 2000, P.54-55).

The allure of modernisation theory was that it promised the means to improve the development levels of entire societies and thus make them both less susceptible to communism (Fox 1995, P.542), and more open to the mass consumption of American goods and services. It remained a dominant paradigm for nearly twenty years, and is considered by many to represent the intellectual patrimony for the later ICT4D and 'Internet Freedom' policy frameworks (Powers & Jablonski 2015, P.11). Indeed, the legacy of the modernization worldview being seeded in Brazil was the way that a 'peripheral' perception of technology was established. This view, paradoxically, sees technology as both indispensable to national development, *and* a resource that necessarily originates from capitalism's core. As we will discover, this perception played a significant role in how the Marco Civil developed.

As Medina, Marques, Holmes & Cueto (2014) claim, within the greater context of Latin America, the perception of technology arriving in the region from the global North stems from the paradigm of 'modernization and development': "These perceptions endure, as seen in Latin American press coverage of Apple iPads…Facebook or Twitter that assumes that all design decisions about and the supply of such increasingly vital technology will come from elsewhere" (P.2). As Dantas (2013) similarly notes, the turn towards neoliberal market opening from the mid- 1980s in Brazil signified that the era of exporting "sugar, gold and coffee and the import of clothes, bides and tiles" would be replaced by the export of "ethanol, soy and iron, and the import of iPods, tennis and Hollywood films" (p.158).

Under the banner of 'development communication' the United States made large investments in the communication systems of Latin American countries (Fox 1995, p.542). What was unforeseen by the

US government was that promotion of 'development communication' fed into existing social currents within Latin American countries protesting the income inequality and authoritarianism endemic in the region. These were also opposed to the tightly controlled, commercial and American-influenced national media systems (Fox 1995, p.544). Within Brazil, Paulo Freire and his critical pedagogy proved highly influential in boosting those movements who sought greater representation for the poor in their national media (Paiva, Sodré and Custódio 2015, p.118).

A further unintended consequence of modernisation's drive to develop communications infrastructure in the global South was that a broad group of nations now possessed the means and motivation to discuss inequalities in the global distribution of communications resources with one another (Powers & Jablonski 2015, p.11). Certainly, the statistics bore out such concerns: in Latin America by the 1970s, US material comprised 50% of TV broadcast content and approximately 70% of international news (Fox 1995, p.545). A similar proportion of foreign to domestically produced audio-visual content was evident in Brazil by the mid-1970s (Dantas 2013, p.167).

The dominance of American cultural content in Brazil, as in elsewhere in the developing world led to the emergence of theories of cultural or media imperialism. In the United States, Herbert Schiller (1976) was the most visible figure, though it is to Latin American scholars such as Beltrán (1976), that the theory owes a foundational debt. As dependency theory became the dominant paradigm for imagining science and technology in Latin America during the 1960s and 70s, it informed policy formation across the political spectrum as technology was seen as central to the project of national development by Marxists in Chile, as well as fascists in Brazil (Medina, Marques, Holmes & Cueto 2014, p.9-10). The echoes of such a bifurcation could also be observed in Brazil during the formation of the Marco Civil, as discourses of 'developmentalism', and later 'data sovereignty', were articulated by both conservative and leftist figures in relation to the significance of the Internet in Brazil.

Brazil's military government was clearly influenced by a seemingly incommensurate combination of the discourses of technology and information sovereignty circulating amongst governments of the global South, as well as theories of modernisation and development communication seeded in Latin America by the US government. This was evidenced in a raft of policies from the mid-1970s designed to encourage national cultural production and technological development; policies that were explicitly intended to address Brazil's status at the periphery of global capitalism.

Technological autonomy (but no civil rights)

It is essential that in tracing these policies we are cognizant of their contradictory nature: at the same time as they were designed (and indeed very effectively so) to advance Brazil's economic development, and standing within the system of global capitalism, they were antagonistic (or at best agnostic) to the democratic rights of its citizenry. As Marinoni (2015) explains in the context of broadcast media, the private, commercial and oligopolistic standard of broadcasting was established in an integral way with Brazilian monopoly capitalism, consolidated by the military dictatorship to promote an industry of consumer goods...maintaining a conservative political-economic system socially excluding wide sections of the lower classes (p.14-15).

Indeed, the goal of the junta was to harness media and communication technologies to accelerate the growth of national industrial capital and a domestic mass consumer market in such a way that would benefit a contradictory 'triple alliance' (Evans 1979) of multinational, state and local capital interests. Crucially, this would occur without any equitable distribution of this growth to the larger population. As Saad-Filho and Morais note (2017), the junta's was "an authoritarian accumulation strategy based on a concentrating and internationalising ISI…" that included "much greater penetration of foreign productive and financial capital…an incipient financialisation and the concentration of income and wealth, sustained by variable levels of repression" (p.22). Accordingly, it is reasonable to surmise that any improvements in quality of life experienced by Brazilians as the result of having access to a telephone line or consumer electronics goods were the incidental effects rather than the primary goal of the junta's strategy of technological autonomy.

Another central tension prompted by the military policy of achieving technological autonomy, was the extent to which it united the aspirations of two political groups with seemingly incompatible ideologies. Adler (1987) notes how conservative nationalists (and supporters of the military junta), as well as *egalitarian* nationalists (who sought "developmental autonomy and greater equality at the international level") "shared a growing, and mutually reinforcing, awareness of the linkage between scientific and technological development and technological dependency" (p.152). This cohesion in the interests of two politically opposed groups was later mirrored in the resurrection of the narrative of 'data sovereignty' in the latter stages of the Marco Civil's development, as President Rousseff attempted to placate both traditional nationalists and progressive nationalists with policy responses to Edward Snowden's revelations of NSA surveillance in Brazil.

There were two interrelated dimensions to the meta-policy goal of technological sovereignty pursued by the military dictatorship: the diffusion of media content (and the enabling technologies) conducive to the formation of a fascist national identity and a mass consumer market; and the development of domestic capacity in data processing, computing and telephony. We will examine both here.

One of the first acts of the junta had been the creation in 1965 of a national trunk telecoms company, Embratel, that could build the national infrastructure sorely needed in Brazil (Código Brasileiro de Telecomunicações, 1962). This would serve a dual purpose of connecting peripheral regions of Brazil and drawing them into a project of nation-building and development, as well as deposing any foreign telecoms firms operating in Brazil that represented a threat to the generals' national security doctrine (Carvalho 2006, p.51). Through heavy investment in this recently created state telecoms corporation, the military regime also created the necessary infrastructure for Globo to become a ubiquitous presence throughout the nation (Mastrini & Becerra 2002). Other core policies that created the conditions for the massive diffusion of television were tax breaks and credit schemes for television sets (Guedes-Bailey & Barbosa 2008, p.55). Within the broadcasting sector, the junta established measures to shield its favoured TV Globo from foreign competition, as well as to subsidize domestic content production.

Indeed, in 1974, the Minister of Communications, de Oliveira, lamented the significance of the fact that 57% of television content in Brazil was imported (principally from the United States): "commercial television imposes on children and youth a type of culture that has nothing to do with Brazilian culture…TV is playing the role of privileged vehicle of cultural importation and it is denaturalizing Brazilian creativity" (Dantas 2013, p.168). De Oliveira was accompanied by other Cabinet Ministers decrying the glorification of violence in US programming (Straubhaur 1984, p.230). Given the military dictatorship's concerted (and often violent) efforts to suppress the civil rights of Brazilians, these purported concerns likely represented a veil over the more pressing desire to consolidate a sense of national identity conducive to military hegemony and the mass consumption of domestic industrial products. Indeed, as Pait & Straubhaur (2018) have noted, Globo availed itself of lax regulation to implement a massive level of product placement in its programming that even exceeded that permitted in the United States.

The result of the military government's protectionist policies for media content production resulted in several interrelated developments. One was the creation of a national cultural industry of creators,

producers and technicians that served as a bulwark against cultural dependency on the United States. Another was an enduring preference amongst Brazil's vast TV audience for domestically produced content. Such was the success of these efforts that by 1985, and the end of the military regime, Globo had become the 4th largest TV network in the world, with over 80 million viewers and over 90% of its content produced in Brazil (Fox 1995, p.543). Finally, robust production of local media content resulted in the vicarious symbolic changes that accompany the material expansion of capital in the socio-territorial spaces in which it advances (Dantas 2013, 169). This last point was by far the most significant for the junta as it facilitated the mass consumption of Brazilian products. In a curious paradox, it is worth noting that even as the regime used Globo as a vehicle to consolidate its hegemony, many of its most prominent novella writers were in fact communists. Their introduction of themes such as '*educação popular*' in the telenovelas likely hastened the democratic transition (Pait & Straubhaur 2018).

The other main prong of the military strategy for media and ICTs centred on the development of domestic capacity in data processing, computing and telephony; what we might consider the realization of 'technological autonomy' (Knight 2014, p.20). In 1972, the Brazilian government established an agency, CAPRE, in order to coordinate its purchase of foreign computers (Takhteyev 2012, p.107). This agency was staffed by Brazilian engineers influenced by the prominence of 'dependency theory' and were described as "anti-dependency guerillas" by Adler (1986). The agency sought to develop a local computer industry and through the implementation of a 'market reserve' for locally manufactured components, and mandating technology transfers from foreign companies resulted in the emergence of several national computing companies (Takhteyev 2012). These efforts were indeed highly successful at increasing domestic technological capacity, and under the auspices of a second wave of ISI (import substitute industrialisation), Brazil developed innovation and production capabilities in data processing and electronic components that - given the growing economic significance of these technologies - would call into question, for the first time, its peripheral status within global capitalism.

Military investment in national telecoms was also core to this approach. One important development was the nationalisation in 1972 of multiple ineffective state telecoms companies under one national umbrella, to be named Telebras. This system was comprised of 24 local state companies, one long distance carrier (Embratel), and a Centre for Research and Development (CPqD). These were intended

to diffuse basic telephony throughout Brazil (Larangeira 2004, p.82). Indeed, an ambitious program of expanding telephone service throughout the country through Telebras, was likely only matched by the actions of AT&T in the United States in the early part of the century. However, the beneficiaries of this expanded service were overwhelmingly members of the middle and upper classes (Larangeira 2004, p.153). This belied any claim of 'universalization' and was indeed characteristic of the type of inequitable development endemic to Brazil at this time.

The creation of Telebras coincided with the launch of a National Data Transmission Network through Embratel in 1975 (Knight 2014, p.19). This became known as Transdata, and when it became operational in 1980, was in fact the first network for data communications on the continent (Embratel 2010). In order to consolidate the diffusion of these technologies in Brazil, and to ensure a flow of innovation - sufficient to sustain a domestic telecoms and data processing industry - the Brazilian government under the rule of General Geisel (1975-79) approved the founding of a major telecoms research centre in 1976. The CPqD operated under the auspices of Telebras and employed around a thousand scientists and engineers. According to Laranjeiras (2004), its creation revealed the determination of the junta to achieve "technological autonomy under the import-substitution industrial policy" (p.82).

Over the course of the next ten years, the centre was responsible for technical advances in fibre optics, telephone sets and computing stations, innovations that sustained a domestic telecoms industry, with annual revenues around USD4 billion and employing over 120,000 people (Dantas 2013, p.155). In spite of the damage wrought on this nascent industry by the policies of neoliberal deregulation implemented from the mid-1980s, the policies of the junta help to explain the scale and power of the telecoms sector observable in contemporary Brazil and that shaped the Marco Civil da Internet so decisively.

The rationale for the military government's focus on developing technological sovereignty was made evident by public statements on the matter. In a 1979 report on transborder data flows by the Brazilian SEI (Special Secretariat of Informatics), the body declared that "the lack of information resources in a country can generate a serious dependence parallel to that in the area of natural resources" (Schoonmaker 2002, p.49). The body's Executive Director, Lt. Gen Oliveira, made a similar claim a year later: "The country that does not concern itself with the control of strategic information that it uses runs the risk of becoming intolerably dependent, through telecoms, on the interests of

political and economic groups outside its borders." (Knight 2014, p.21). The oil price shocks of the 1970s also meant that the government was wary of diverting its limited foreign currency reserves to expensive imported technologies, while the Brazilian navy had expressed concerns at the use of foreign computers in its ships (Takhteyev 2012, p.108) and the broader state communications apparatus was considered vulnerable for the same reason. Brazil was indeed one of the few countries involved in the NWICO debates that implemented policies commensurate with the rhetoric. However, it also behooves us to remember that, as stated in this introduction, in common with many post-colonial states demanding reform of the global media system, Brazil practiced brutal domestic repression of its citizens (Aouragh and Chakravartty 2016).

As well as the various measures detailed above, Brazil joined the Intergovernmental Bureau of Informatics in 1978, a body designed to promote global South data networking within UNESCO, and it approved the adoption of OSI (Open Systems Interconnection) rather than TCP/IP as the standard protocol for the early Internet. This was because TCP/IP was promoted by the US and adopting it in Brazil was considered by the Generals a "reaffirmation of American hegemony" (Knight 2014, p.20-21).

Indeed, in spite of the many advances detailed here with regard to Brazil's technological autonomy that occurred from the 1970s through to the mid 1980s, appreciation of these events amongst the Brazilian population has been limited. Dantas describes it as a history that is zealously obscured from Brazilians (2013, p.149) while according to the Brazilian press "the future arrived" when the national communications infrastructure was handed over to multinational corporations as part of neoliberal market reforms. Although Dantas does not stretch to make this point, it is intuitive that because these otherwise laudable initiatives were implemented by a military regime reviled by many in Brazil's technical community, there is a commensurate failure to acknowledge them. The resulting depreciation of Brazil's history of technological sovereignty, and a fetischisation of foreign technology and expertise, would also prove influential in the development of the Marco Civil.

It is evident from these various policy measures that Brazil was following a template for national technological development that had been firmly established in the capitalist core. Countries such as Germany and Japan also promoted state telecoms monopolies, protected markets, and subsidized technological innovation. As we will examine in the next section, Brazil's first civilian administrations from 1985 onwards continued to adopt policy frameworks established in the core of global capitalism. The new model of privatization and market-led re-regulation formed in the United States and the

United Kingdom was antithetical, however, to the goal of technological development and data sovereignty for Brazil. Although newly privatized media and communications giants in the system's core were strong enough to adapt to a newly liberalized global market, Brazil's nascent communications sector was not.

The next major chapter in the development of communication technologies and the media in Brazil coincides with the country's return to democracy in 1985, as well as the global ascendance of neoliberal economic doctrine and informational capitalism. As such, the next section will examine the transition to democracy, until the election of the country's first PT government under Lula da Silva. We will focus particularly on the liberalization of Brazil's telecoms market and the continued failure to enact meaningful reform of Brazil's media system.

Neoliberal democracy, informational capitalism, and the path back to the periphery (1985-2002)

By the mid-1970s, developments in Brazil created the conditions for economic upheaval and social unrest: rapidly rising external debt, exacerbated by the oil crisis of 1978-79, as well as hyperinflation. Protests rose up in the industrial hub of Sao Paulo, and the junta's reputation for preserving economic and social stability was shattered. Economic conditions worsened further when an IMF loan in 1982 to Brazil was accompanied by restrictive conditions, catalysing a descent into stagflation (Pio 2013). Under these conditions the military regime initiated a gradual transition to democracy.

These changes had been presaged from the early 1970s by a paradigm shift in the global economy. In the context of a toxic mix of high unemployment, a crisis of excess production and rampant inflation, governments and private capital interests, most notably in the United States and Britain, seized upon a new regime of accumulation enabled by a combination of telecommunications build-out, deregulation, the commodification of information, and neoliberal dogma (Dyer-Witheford 2015; Freedman 2008; Harvey 2005; Schiller 2010). Collectively, these established the foundation for the emergence of informational capitalism.

Following mercantilism and Fordism, informational capitalism represented the next major phase of global capitalism. Brazil would become integrated into its circuits of accumulation through the construction of private telecoms networks by international corporations and the diffusion of a commercial Internet; developments enabled by the neoliberal reforms detailed below. These reforms thus represent the origins of Brazil's relegation to the periphery of informational capitalism.

The high-water mark of technological sovereignty: The Informatics Law

One of the first pieces of legislation enacted during the democratic transition was the Informatics Law (Lei No. 7232) in 1984. It represented indeed the highwater mark of Brazil's efforts to shake off the shackles of technological dependency on the global capitalist core. This legislation created a market reserve for certain types of computer hardware and software, severely restricting the import of foreign informatics goods and services in those instances when nationally produced equivalents existed. The intended purpose of the legislation was to "limit Brazil's dependence on foreign informatics companies" and to "acquire the manufacturing capability to supply the Brazilian market" and possibly even to become "a major competitor in the world market" (Stuber 1984, p.310).

As Schoonmaker demonstrates (2002), the law was passed within "an oppositional, nationalist discourse infused with cultural values of technological development and national sovereignty" (2002, p.123). It was also one of the first laws passed by the Brazilian Congress and as such constituted "a kind of rebirth of Brazilian economic and political power" (p.90). As we will discover, however, this discourse and its accompanying policy orientation would quickly fall prey to the neoliberal market reforms that accompanied Brazil's transition to democracy.

As well as marching out of step with the reshaping of the global economy, the Informatics Law was short-lived because it provoked the ire of the US IT industry, and by extension, the US government. The latter estimated that the former would lose USD13 billion over the lifetime of the policy (it was set to expire in 1992) (Schoonmaker 2002, p.84-85). Another dire dataset was presented by the International IP Association which estimated that the US "lost about USD35 billion per year from unauthorised duplication of software in Brazil" (p.83). Based on Schiller's (2000) analysis that the US strategy to shore-up its flagging economy through its high-technology sector began in the mid 1980s - the birth of informational capitalism - it is therefore hardly surprising that in 1985 the Reagan government initiated a '301' trade dispute against the Brazilian law. Despite intense pressure from US authorities, Brazil's transitional government retained the law until the election of the Federative Republic's first civilian President, Collor de Mello.

Brazil's fledgling democracy was consolidated in 1988 with a new national constitution. This included provisions for civic rights, as well as media reform. Civil society groups, such as the Fórum Nacional pela Democratização da Comunicação (FNDC) were instrumental in establishing a raft of social welfare and citizen rights. Although the Constitution offered rich potential to establish substantial

improvements for media democracy and communication rights in Brazil, according to many observers, the document was flawed in its design and implementation.

Indeed, the entire democratic apparatus devised in the Constitution is described damningly by Saad Filho and Morais as “fragile by design” (2017, p.45) owing to the manner in which political power was unevenly distributed, creating an innately – even deliberately - dysfunctional system. Specifically with regards to the treatment of broadcast media in the Constitution, the provisions on licence distribution is characterised by Matos as maintaining an enduring thread of “clientelistic practices, political patronage and censorship control rather than concerns with the public interest” (2011, p.187). Even the junta-era, highly repressive, Press Law escaped scrutiny in the Constitution. The provisions therein to protect the “honour, privacy and image of persons” proved a useful tool for politicians to restrict the work of journalists, and was not overturned by the Supreme Court until 2009 (Hervieu 2015, p.17).

According to other observers, the failure to actually implement the constitutional provisions was decisive. The “citizen rights enshrined in the Constitution were implemented grudgingly, if at all” according to Saad-Filho & Moraes (2017, p.67). Godoi describes the provisions on media and social communication as a “huge practical failure for the absence of the regulation and posterior applicability of its devices” (2004, p.89). Saravia (2008) also decries the failure to regulate civic communication rights, while Lima (2007) notes how provisions on public service content were never approved by Congress. It is indeed important to understand the Marco Civil in the context of the Constitution’s stymied civic potential; it resulted in both an unaddressed appetite for further civic communication rights in Brazil, as well as establishing a certain institutional path-dependency for promising but not delivering ambitious reforms of the communications sector.

After the Consitution was ratified, Fernando Collor de Mello beat Lula da Silva in the country’s first set of direct presidential elections since 1960, to become President in 1989. With a turbulent backdrop of hyperinflation, Collor campaigned and won on a program of major economic reform (Schwarcz & Starling 2020). As stated at the outset of this section, the global economy had pivoted toward neoliberalism as its organizing principle. Collor recognized the global economic headwinds and aggressively touted the virtues of neoliberal economic reforms in Brazil. Despite his administration only lasting for two years before impeachment proceedings cut his mandate in half, Collor’s adoption of a neoliberal policy agenda was transformative for Brazil’s telecoms, IT and media sectors.

One of the Collor administration's first steps was to dismantle the market reserve policy that protected Brazil's informatics sector, as well as the government agency, the SEI, in charge of implementing it (Schoonmaker 2002, p.124). The process of Brazil's democratic government abandoning ISI policies and replacing them with neoliberal reregulation corresponded to Sassan's concept of 'incipient denationalization' wherein policies are adopted by governments to accommodate the needs of global capital (1999). There were, however, long-standing reservations amongst Brazil's economic and political elite that ISI would not be viable in the context of a global 'information society'. As Saad-Filho and Morais (2017) explain,

> the neoliberal reforms were justified by the presumed exhaustion of ISI and the developmental state and the imperatives to control inflation...These tasks gained urgency because of the perception that the neoliberal world economy was undergoing a technological revolution in the fields of ICT, immaterial labour, new materials and new sources of energy. It was widely accepted that ISI could not support catching-up under these circumstances… (p.55).

According to Dantas, the tragedy of this (mis)calculation for Brazil was that this moment in time offered a window of opportunity for peripheral nations to make a technological leap into the core by continuing to develop and protect their domestic capacities, as the examples of Finland and Japan showed. Brazil, however took precisely the opposite path: it let its national industry of televisions, computers, telecoms equipment be destroyed, giving up on a coherent political project to enter, with some chance of success, into this new phase (2013, P.157).

Part of the reason that the Collor administration was able to carry out such a seemingly self-destructive set of policies was owing to the extraordinary power of the discourse of neoliberalism; one that was adopted with near uniformity by the country's media, business leaders, and politicians. As Schoonmaker describes it, "Everyone from the doorman to the President used the same language, accepting free trade as the most rational approach to economic policy. A key part of the shift to a neoliberal economic regime thus involved the rise of neoliberalism as a cultural discourse with the power to define reality, truth, and normalcy both for government officials and for people in the street" (2002, P.126). Dantas too observed the remarkably uniform way in which political, business, and particularly media actors, championed neoliberal reforms as the only possible saviour for Brazil's moribund economy (P.158), while Font (2003) describes how "the Brazilian political establishment *as a whole* [emphasis added] warmed up to the idea of opening and liberalizing the economy" (p.164).

Moreover, the conversion of neoliberal dogma into a form of *common-sense* in Brazil created the necessary conditions for the *digital discourse* to later shape public discussions about the civic value of the Internet. This will become apparent as we follow the development of the Marco Civil in the second part of this study.

Networking neoliberalism: protocols for Brazil's nascent Internet

Coinciding with the dismantling of the informatics reserve policy, another development occurred that accelerated Brazil's integration into the nascent global system of informational capitalism. In 1988 and 1989, the first network connections occurred between Brazilian universities and academic institutions in the United States (Knight 2014, p.24). Initially these connections occurred using the x.25 and OSI protocols that were supported by the ITU and officially sanctioned by the Brazilian government. However, academic Internet pioneers such as Demi Getshko and Carlos Afonso (Caf) - who would go on to become founding members of the country's Internet Steering Committee (CGI) - later established the country's first Internet connections illegally using TCP/IP. This was the protocol favoured by US institutions and banned by the Brazilian military government because of its perceived contribution to US hegemony. This seemingly minor technical decision would have seismic consequences for Brazil's technological sovereignty. It reveals the uneasy cohesion between the goal of pursuing decentralized media systems in order to circumvent a repressive state, and an unwitting embrace of a neoliberal model of telecoms and consequent relegation to the peripheries of informational capitalism.

O'Maley (2015) indeed describes the repercussions of the decision to adopt the TCP/IP protocol as eventually playing into "emerging Brazilian neoliberal projects to dismantle the state-owned telecommunications system" (32). This is in part because it precipitously globalized Brazil's data transmission networks, making the state monopoly on telecoms appear anachronistic and thus more vulnerable to privatising reforms in which international telecoms companies quickly dominated the Brazilian market. Moreover, those initial Internet connections from Rio de Janeiro and São Paulo established a template for reliance on US network infrastructure for Brazil's data transmission needs that is characteristic of Brazil's peripheral status and continues to be evident to this day.

Finally, the decision by entities within the Brazilian government to adopt OSI as the state's official networking protocol was not only motivated by geopolitical considerations, but also, as Carvalho reveals (2006), a matter of industrial policy. According to his research, the adoption of OSI and its open system architecture was considered an important hedge against the possibility that globally dominant

IT firms would use proprietary systems to stymie Brazil's quest for technological autonomy. This need was especially acute in the context of the end of the Informatics Law and its market reserve policy; a development which would open Brazil's IT domestic market to foreign manufacturers (p.43).

Between the public interest and neoliberal hegemony: The Cable Law

A final development in Brazil's media and communication sector that was initiated under the ill-fêted presidency of Collor was a new set of regulations for the rapidly growing cable TV sector. The *Lei de Cabo* (Cable Law) in fact became the first piece of legislation passed by Collor's successor, Cardoso, in 1995. It is worthy of mention here for a number of reasons. The first is that the development of the bill bore witness to a familiar episode in Brazilian media policy: the creation of a powerful industry association in order to pressure the government into concessions against the public interest. It was a move that mirrored the creation of the broadcast association, ABERT, in the 1960s to mould the CBT (Brazilian Telecoms Code) to its advantage, as well as the later resurrection of the telecoms industry association, Sinditelebrasil, in order to dispute the Marco Civil. In this case, Globo and two other market leaders formed ABTA (Brazilian Association of Subscription Television) in 1994 in order to dispute the Cable Law (Lima 2015, p.23).

The second is that, similarly to the Marco Civil, there was intense civil society involvement in the creation of the bill, with the concessions won by those actors widely celebrated (Intervozes 2013), but with the bill as a whole clearly favouring the interests of industry over the public. In the case of the *Lei do Cabo*, the FNDC (National Forum for Democratic Communication) was heavily involved in advocacy work on the bill, aiming to avoid cable TV being legislated in the same way as telecommunications, and therefore without any public interest focus.

The principal concession won by the group was for community and non-profit channels to be classified as 'must carry' with any cable subscription (Intervozes 2013). Although this fact was a positive development for media pluralism in Brazil, it should be noted that was only a partial democratic advance given that it did not apply to open television, but instead only for the cable TV services that remained unaffordable for the majority of Brazil's population. Moreover, the oligopolistic control of the market by the two domestic incumbents - the Globo and Sky groups - was in fact consolidated by the Lei do Cabo's restrictions on foreign capital entering the sector (Lima 2015). Finally, the fact that the FNDC rallied against the prospect of the state telecoms carrier, Telebras, maintaining a monopoly on the wired infrastructure, advocating instead for private control of the network but with a public

mandate (Intervozes 2013), was the first major blow against public ownership of the network (Dantas 2013, p.192) The resonance between the FNDC's position in this regard, and the Brazilian Internet pioneers' choice of networking protocol is striking. In both cases, a desire to avoid the centralized control of the Brazilian state, in fact advanced the interests of capital.

Indeed, Dantas (2013) classified the position of the FNDC on behalf of civil society as pragmatic and consonant with the broad hegemony of the neoliberal project as well as a heterodox political position given the traditional union calls for public ownership of infrastructure (p.191). According to communications researcher and advocate, Evelin Maciel, the concession of any public interest concerns in the legislation was done with the ultimate interest of "the construction of hegemony". Business interests "maintained their privileged position within the power play" given their continued control over the network, and no restrictions on market concentration (quoted in Brittos 2001, p.230/231). The most significant outcome of the Lei do Cabo was ultimately the consolidation of Globo's dominance within Brazil's communication landscape, a fact that would have a marked impact on the Marco Civil.

Accelerating back to the periphery: Telecoms reforms and the privatization of Telebras

Although it was President Collor de Mello who spearheaded the neoliberal reforms for the Brazilian economy, that work was maintained with some zeal by his successor, Fernando Henrique Cardoso and his Minister of Communications, Sérgio Motta. Both men made the privatization of the state-run Telebras telecoms system a political priority. The first step along that path was in fact heavily influenced by the Internet pioneers, Caf and Getshko, who, owing to their status as 'founding fathers' of the Brazilian Internet, had significant access to Motta (Solagna 2015, p.40; Knight 2014, p.32).

As a high profile figure within Brazil's burgeoning post-dictatorship civil society, and an exile during the years of tyranny, Caf fervently believed in the virtues of decentralization as a political philosophy. Accordingly, he promoted the idea of Internet service being wrested from the state monopoly of Embratel and being offered by multiple small ISPs. Getshko advocated for a similar end, though for technical reasons; "a decentralized system he felt made more sense for the Internet" (O'Maley 2015, p.34). In another instance of a recurring theme within media policymaking in Brazil, civil society concerns about centralized state control over communications, helped to ease in neoliberal modes of market control over those communication resources.

The end result of telecoms reform certainly aligned with the goals of the 'pioneers'' influence: a series of edicts in 1995 issued by Motta heralded the birth of the commercial Internet in Brazil (Solagna 2015, p.40). These norms and ordinances collectively permitted independent ISPs to access the Embratel backbone, prevented Embratel from offering Internet services to individuals, and defined Internet access as a "value-added service" over which there would be no monopoly (Knight 2014, p.31-32).

A multistakeholder entity devised to oversee the technical management for the Internet was also created at this time. The Brazilian Internet Steering Committee (CGI) would go on to exert significant influence on the Marco Civil through one of its founding documents: a set of ten principles for the governance of the Internet. CGI was formed under heavy pressure from Net pioneers to prevent the complete corporate capture of the Internet by the telecoms sector. It was also one of the world's first multistakeholder bodies for governance of the Internet, and it "reflected characteristics of post-transition Brazilian politics: heavily state-driven but including powerful representatives of neoliberal corporations" (O'Maley 2015).

These reforms of the telecoms system initially resulted in a multitude of independent ISPs offering access to municipalities throughout Brazil (Knight 2014) - which would appear to be a boon for the communication rights of Brazilian citizens. However, it is worth noting that within a few years the system experienced "a larger process whereby a number of small ISPs were purchased by the large telecommunications companies that had emerged in the wake of neoliberal reforms, and which increasingly recognized that providing Internet service to households was a lucrative business venture" (O'Maley 2015, p.38).

It is also important to consider Dan Schiller's appraisal of a similar regulatory approach by the United States. In Schiller's judgement, the FCC's decision in the early 1970s to regulate data networks as a "value-added" service "helped to constitute the deliberately nebulous and constantly receding boundary of US regulated telecommunications" (2000, p.11). Which is to say that the fact of regulators embracing "the fiction that computer networks...could be treated as if they existed independent of that infrastructure" (p.5) allowed for public service considerations for the nascent Internet to be minimized, and a neoliberal market approach to be established from the outset.

A vital antecedent to the sell-off of Telebras was reform of the telecommunications law in Brazil. In 1998 the *Lei Geral de Telecomunicações* (LGT) was issued, establishing a new system based around the American model (Larangeira 2004, p.82). The law was formulated within just 3 months, subject to no public scrutiny or discussion, and in the words of Brazilian communications scholar, Valério Brittos (2001), was based on the idea that 'naturally the logic of the market entails development' (p.190).

The LGT created a duopoly system with the 12 former Telebras carriers bound by public service obligations, and new entrants free to operate without them. A newly created independent regulator, Anatel, would oversee them all. The fact that the telecoms regulator was created as part of a set of radical neoliberal reforms is an important point to retain given its remit to defend the public interest and to encourage competition. Indeed, the agency is widely understood to be 'captured' by powerful economic interests. Knight's analysis is one that is widely held, that Anatel is weakened by paltry funding and "pressure brought to bear... by powerful incumbents" (2014, p.35). It should not therefore be surprising to note, as we follow the legislative journey of the Marco Civil in later chapters, the way that Anatel's supposedly independent interventions were often aligned with the interests of the telecoms sector.

Crucially, in the new telecoms framework, there would be no restrictions on foreign capital (Larangeira 2004, p.83), permitting the transnational telecoms companies operating from the core of informational capitalism to effectively colonise the Brazilian market. It is also important to note that the LGT replaced the *Código Brasileiro de Telecomunicações* (CBT), a broad-ranging law issued in 1962 that dealt with the "transmission, emission or reception of symbols, characters, signals...by wire, radio, electricity optical means..." (Código Brasileiro de Telecomunicações 1962). But at a moment in history when 'convergence' was the preeminent technical buzzword, pressure from broadcasters - notably the Globo Group - resulted in broadcasting being omitted from the newly formulated LGT (Souza Lima 2015, p.32; Mizukami et al 2014, p.89). This was because the incumbent media giants benefited enormously from the concentration of ownership and resources that the CBT permitted.

Finally, despite the overwhelmingly pro-market nature of these reforms, one unambiguously civic component of the bill was apparent: a fund for the universalization of telecoms services throughout Brazil (FUST), to be maintained through the diversion of a small percentage of telecoms revenues. Unfortunately, more than 10 years after it was founded, the FUST has yet to be used. This has led some

to suggest that Brazil's leaders "were not fully committed to the universal principal of the law, and possibly more in tune with the interest of international capital supported by the IMF" (Pretto and Bailey 2010, p.267). Future efforts at 'universalizing' telecoms provision in Brazil - during Lula da Silva's second Presidency, and in the Marco Civil - were similarly hamstrung by deference to market-based telecoms diffusion.

The process of privatizing the state-run telecoms monopoly, Telebras, was also completed in 1998. Although the dramatic reduction in state funding during the debt crisis of the 1980s had resulted in the failure of Telebras to live up to its public service mandate by the 1990s - "low tele-density, low quality" (Larangeira 2004, p.82) - in many respects this state entity represented a significant asset to the Brazilian people. Telebras, akin to national carriers throughout the post-colonial global South, served as a "bastion of sovereignty" and offered significant social welfare features: they used revenue from business clients to underwrite connection to remote and rural communities, as well as employing a large unionized workforce (Schiller 2000, p.48). Indeed, in terms of the size of its operations, Telebras was ranked in the top 20 of telecoms companies worldwide, and certainly the biggest in the 'third world' (Dantas 2013, p.163). News of its impending sale therefore sent stocks surging, with its shares contributing as much as 50% of Brazil's daily stock market volume (Schiller 2000, p.46).

It was therefore unsurprising that there was significant domestic opposition to the privatization from the left of Brazilian politics, as well as nationalists and union groups. Instead of privatization, these voices called for the creation of a new public monopoly, similar to the German and French models; ultimately they wanted to "preserve the country's autonomy over a basic infra-structural area like telecommunication" (Larangeira 2004, p.82). Despite these potent arguments for preserving Telebras as a public asset, the parlous state of the Brazilian state finances (Larangeira 2004, p.83), the zealous resolve of Brazil's political elite to pursue a neoliberal policy framework, as well as intense pressure from the US via the WTO to 'liberalize' national telecoms markets (Schiller 2000, p.47) resulted in the dissolution of the national carrier.

It was broken up into 12 regional entities that were auctioned to private investors (O'Maley 2015, p.37). The lucrative São Paulo regional carrier Telesp was sold to Spain's Telefónica, the long-distance carrier Embratel and its valuable infrastructural assets were purchased by the American telecoms corporation, MCI, while the "poor and problematic" parts of the system could attract the interest only

of Brazilian capital (Dantas 2013, 165). Meanwhile, most of the wireless operators were purchased by foreign interests. These included "Telecom Italia/TIM (Italy); Telefónica (Spain); Telmex/America Móvil (Mexico); Bell South, Sprint, and NII Holdings, Inc. (United States); Portugal Telecom (Portugal); France Telecom and Vivendi (France). (Moreira 2015, p.7). Such was the value of these assets that the Brazilian state acquired USD15.3 billion through the privatizations (p.31), and indeed through the wave of privatizations that occurred in 1999, foreign transnationals were behind 341 out of 491 M&As in Brazil, principally within electronics and telecoms equipment (Saad Filho & Morais 2017, p.72).

As well as the telecoms privatizations, under Cardoso's presidency another major step was taken away from technological sovereignty and towards the periphery of informational capitalism. This came in the form of an updated Informatics Law in 2001, passed to replace the 1984 version that had established stringent protections for the Brazilian domestic IT industry, and had so antagonized its US equivalent. Schoonmaker (2002) offers an incisive assessment, worth quoting in full:

> The informatics policy, once a nationalist force to resist the interests of global capital was transformed into a mechanism to accommodate those interests. In the process, the Brazilian state assured foreign investors that neoliberalism reigned in Brazil, and that the invisible hand of the free market protected their freedom to invest anywhere from the Amazon to São Paulo's industrial heartland (p.170).

It is therefore unsurprising to observe how Brazil's previously vibrant manufacturing sector, particularly in the area of IT, was hollowed out by the neoliberal reforms of the Collor and Cardoso administrations, thus consolidating Brazil's relegation to the periphery of informational capitalism. As Saad-Filho and Morais (2017) explain:

> Instead of developing new competitive advantages under neoliberalism, Brazilian manufacturing became, effectively, a *maquiladora* for the domestic market, importing machines, inputs, parts and components (especially the electric, electronic, auto, pharmaceutical, and chemical industries) to produce for the home markets (p.114)

A roll-call of consumer electronics powerhouses – Sony, LG, Samsung, Apple – run manufacturing operations within Brazil. The incentive to do is premised on the scale of the Brazilian consumer market, combined with extremely high import tariffs on consumer electronics (88%) and

manufacturing hubs that offer significant tax relief and low labour costs (van Wetering, Gomes & Schipper 2015, p.3). The very low rates of R&D investment by these MNEs, the fact that most high-value components are imported from Asia, the low-skill assembly-line nature of the labour and the low rates of export (p.3) combine to suggest Brazil's peripheral status in this regard. While the strength of Brazilian trade unions and stringent labour regulations have likely prevented the egregious practices reported widely in China (Qiu 2016), reports of excessive hours and poor conditions have emerged in Samsung and Foxconn's facilities in the Amazon (van Wetering, Gomes & Schipper 2015, p.19-20).

Lula, free software, and the recurring chimera of media reform (2002-2010)

On his fourth bid for the Brazilian presidency, Lula da Silva led the Workers' Party (PT) to victory in the 2002 Federal elections. This result was widely heralded within Brazil, and by international observers as a massive victory for the left; the cresting, perhaps, of the vaunted Pink Tide (Huber and Stephens 2012). Despite Lula's status as a totem of the union movement in Brazil, the Workers' Party had made a series of pivotal compromises in order to secure the support of the 'markets'. Saad-Filho and Morais (2017) chronicle how the PT made agreements with the IMF in the run-up to the election to continue core macro-economic policies initiated by Lula's predecessors. Once the PT had "genuflected before the altar of neoliberal democracy" (p.91), its victory was effectively assured. The mode of governance that followed is classified by these analysts as 'developmental neoliberalism', a juxtaposition of neo-developmentalism and the neoliberal economic tripod.

The inherent incoherence of neo-developmentalism

In order to fully understand the media policy that was developed during Lula's mandate, it is essential to grasp the contradictory nature of 'developmental neoliberalism' and the tensions implied by marrying together "the institutional architecture of mature neoliberalism...but with...sensitivity to the need for compensatory social policies" (85). Gago (2017) analyses this tension in some depth in *Neoliberalism from Below*. She describes how neo-developmentalism is a response to neoliberalism's crisis of legitimacy in Latin America in the late 1990s. It is partly a resurrection of the ISI policies that flourished in the 1970s, but instead of the promotion of industrialisation and protectionism in order to develop "a consolidated working class", neo-developmentalism aims to create "apparatuses designed to capture a portion of the rent (mainly from agriculture, mining, and petroleum) and to promote,

based on these flows of money, a politics of social inclusion through consumption" (p.23). Moreover, this mode of governance, despite its redistributive intentions "expresses a particular conjuncture with and considerable political effort within the structure of neoliberal reason" as well as "an organic relationship to finance" (p.24). Harvey (2005) also offers an important insight into the contradictory relationship between the redistributive instincts of developmental states and the global neoliberal economic system in which they exist: "Neoliberalization...opens up possibilities for developmental states to enhance their position in international competition by developing new structures of state intervention" (p.72).

When we consider these judgments, it becomes easier to understand the general tenor of media policy under successive PT governments. Numerous efforts were made to address the *political-economic* injustices of informational capitalism such as broadcast media concentration and inequality of ICT access. These were countenanced because of the progressive heritage of the PT, but ultimately the sway to neoliberal forces was too strong and little or nothing came of them (Porto 2012; Shaw 2011; Solagna 2015)**.** The incoherence of neo-developmentalism, as we will see in the coming chapters, ultimately provides a cogent way to understand the failure of the Marco Civil to confront the forces of informational capitalism and to realise its civic potential.

The incoming PT government likely acknowledged that it would be much more viable to develop policy for 'new media' that would cohere with the values of the party, than to attempt reform of broadcast media that would see them confront the 'media giant' (Birkinbine et al 2016) of the Globo Group. Indeed, the PT government quickly set to work on a media policy tripod based around the promotion of free software (and particularly its adoption within state administration), the launch of initiatives to boost digital inclusion, and the creation of a new approach to digital culture -including a bold proposal for IP reform - led by the Ministry of Culture and Gilberto Gil (Pretto & Bailey 2010, p.271).

Free software under Lula: Autonomy, consumption and co-optation

Free, libre and open source software (FLOSS; and henceforth 'free software') refers to the development, diffusion and use of computer software - including operating systems and applications - that is developed in a collaborative and non-hierarchical manner, and is distributed for free without any claim to intellectual property or restrictions on its modification or application. Free software emerged as a reaction to informational capitalism's sweeping logics of commodification and control,

particularly as manifested in proprietary software in the 1980s (Soderberg 2008). In the particular context of Brazil, numerous accounts have explored the politicization of free software (Birkinbine 2015; Evangelista 2010; O'Maley 2015; Schoonmaker 2009; Shaw 2011).

Takhteyev (2012) notes how free software has been a "boon to peripheral programmers" (p.113). He draws an important parallel between the efforts of Brazilian computer science engineers in the 1970s to compel foreign companies to license their technologies to Brazilian manufacturers, and the opportunities presented by free software to Brazilian programmers to "inspect, modify and redistribute some of the world's most advanced software technology without even having to ask for it" (p.113). Computer science students at Brazil's top universities in the 1990s were exposed to both the ethos of free software that was promoted by pioneers in the United States such as Richard Stallman (Evangelista 2010, p.44), as well as strong currents of left wing politics in Brazil that circulated as a reaction to the recent end of military fascism in the country (Shaw 2011). Likely encouraged by the participatory budgeting experiments that were pioneered in Porto Alegre under Workers Party municipal governments from the 1980s (Baiocchi 2017), that city became the hub of a burgeoning national free software movement, with connections to senior figures in the PT. Free software indeed became insitutionalized in Porto Alegre through an annual conference called the FISL (Forum International de Software Livre) hosted in the city from 2000 (Evangelista 2010, p.80). By 2004, the PT government under Lula da Silva had announced a series of free software policies including promoting the adoption of FLOSS within federal agencies (Birkinbine 2016, p.11).

The fact that the promotion of free software became a trademark policy initiative of the Lula administration is significant to this study for a number of reasons. Given the fact that by 2002 the Brazilian state paid an estimated $1.1 billion in software licensing fees to foreign companies in 2002 (Chu, Magnier & Menn 2004), there was a clear economic rationale for pursuing the state use of free software. The political case, however, was no less cogent. In a clear echo of the 1984 Informatics Law, and the earlier policies of the military junta pursuing technological autonomy for Brazil, the state adoption of free software was framed in a discourse that was "nationalistic and ideologically driven" (Birkinbine 2016, p.11). For Lula da Silva and the Workers Party, the ethos of open source meshed readily with the broader strategy of neo-developmentalism: to boost national economic development through "a politics of social inclusion through consumption" (Gago 2017, p.23).

In terms of the connections between national development, consumption, social inclusion and free software, Schoonmaker (2009) helps to join the dots. The PT "strategy for digital inclusion included a novel emphasis on transforming conditions for software consumption. Indeed, the most striking thing about Lula's strategy was its imaginative approach to consumption as a site for making social change" (p.553). This strategy included the *Computador Para Todos* program (Pretto & Bailey 2010). This involved making lines of credit available through the Bank of Brasil for low-income Brazilians to buy computers that had been credentialed by the Ministry of Science on the basis of their affordability, functionality, and installation of an open-source operating system. The program was widely heralded for significantly lowering the cost of desktop computers in Brazil, as well as stimulating the production of IT within Brazil (Schoonmaker 2009).

The politicization of consumption as a site of civic agency is a characteristic of societies at the periphery of global capitalism: a point argued persuasively by Sorj (2001), as well as García Canclini (2003). This phenomenon is also evident in the case of the Marco Civil, as much of the advocacy work by CSOs that impelled the bill's passage into law was conducted on the terrain of consumption. As I will argue later, this led to a paradox whereby consumption was contested as a mode of citizenship in the case of the Marco Civil, but actually contributed to a bill that was denuded of politics; digital rights were decisively cast as individualized, technical fixes, rather than as collectivist, redistributive and systemic.

The PT's first ICT policies were premised in large part on increasing the affordability and accessibility of computers and software in Brazil, by reducing the barriers erected by licensing and hardware costs, many more Brazilians would be able to enjoy the civic value of ICT use. This mass democratization of digital tools would in turn boost economic development. On one hand, the contrast between this vision of ICT diffusion for social inclusion, and that of the military junta developing telecoms and broadcasting infrastructure for the purposes of fascist nation-building appears stark. A more concerted examination suggests, however, that similar macro-economic objectives undergirded both policies of ICT diffusion: insertion into the global capitalist order on more favourable terms for Brazil.

It was indeed possible to draw a clear line between the adoption of free software, and Brazil's place in the global economy. For free software pioneers in Brazil, such as the academic and activist Sérgio Amadeu, "the ability to control the source code represented power and autonomy, particularly from large informatics corporations based mainly in the Global North" (O'Maley 2015, p.49). Given the

growing importance of informational capitalism within the global economy - explored in detail in Chapter 2 - and Brazil's evident relegation to its periphery, the adoption of free software represented an opportunity for Brazil to transcend those constraints. As Schoonmaker (2009) argues, "The Lula administration's renewed emphasis on software policy testifies to the enduring importance of the computer and software sectors for...power relations within the global economy" (p.551). The conflict that escalated between the Brazilian government and the Microsoft Corporation over free software offers a vivid illustration of this relationship.

The Microsoft Corporation represented the undoubted 'bogeyman' of the free software movement; it was the presumed inspiration for Eric Raymond's concept of the 'cathedral' in his landmark essay on software development (1999). In the Brazilian context, one also needs to account for the huge amount of public money paid by the Brazilian state to Microsoft in licensing fees, as well as the way that it dominated the local software market at the expense of smaller Brazilian firms (Schoonmaker 2009, p.554). And as famously opined by the Brazilian activist, academic and free software pioneer, Marcelo Branco, "Every license for Office plus Windows in Brazil – a country in which 22 million people are starving – means we have to export 60 sacks of soybeans," (Dibbell 2004). Finally, Microsoft was a flag bearer for the United States: the epicentre of informational capitalism, and the percieved origin of neoliberal economic policies so despised by supporters of the Workers Party. As Gago (2017) reminds us, "one of the keys to neodevelopmentalist effectiveness...lies in maintaining neoliberalism as an external enemy power" (p.26). Microsoft represented a convenient 'external enemy', and according to Shaw (2011), the PT's free software policies were indeed "framed as radical responses to the neoliberal technology and... reinforced the leftist, progressive image of Lula and the party" (p.268).

Given all this, it should not perhaps be surprising that the company became a lightning rod for the criticism of free software pioneers in Brazil. The aforementioned Amadeu famously likened Microsoft's operations in Brazil to that of a drug trafficker, and the company threatened legal action in response (Computerworld 2004). And as chronicled later in this study, Lula launched the Marco Civil in a keynote speech at a free software conference, likening the difference between proprietary and free software as that between preparing a dish with "a Brazilian flavour to the food", or simply "eating whatever Microsoft wanted to sell us" (Tiemann 2009).

And yet, for all of the criticism of Microsoft and neoliberalism that free software galvanized, the movement in Brazil became inexorably co-opted by the very forces it purported to resist. This occurred in parallel with similar developments across the world, as 'open source' was coined as a rhetorical device designed to appeal to the business community and to remove the stigma associated with the foundational vision of 'freedom' (Stallman 2003). The US technology sector took notice and by 1998 the newly-formed Open Source Initiative presaged strategic shifts at the likes of IBM and Apple (Streeter 2011, p.159). Indeed, according to Berry's discursive analysis of the Open Source Initiative, neoliberalism constitutes one of the organization's core discourses (2008).

In Brazil, free software was embraced by global IT firms such as IBM and Intel, operating within the country by the early 2000's (Shaw 2011, p.268). Although free software remains widely used by the programming community in Brazil (Takhteyev 2012; Schoonmaker 2018) - a community that was a bastion of support for the Marco Civil – the fact of its adoption by US IT giants greatly diminished the radical potential of free software to propel Brazil on a path towards technological sovereignty. Other developments signalled that the movement in Brazil was being enveloped into the system of informational capitalism. Actions by some of the movement's founders were key to this: Mario Teza, for instance, became a vocal advocate of 'open business' in Brazil. And by 2008, the FISL lost its status as the exclusive physical forum for the free software movement.

Marcelo Branco , a founding member of the Associação de Software Livre (ASL) and longtime PT member (O'Maley 2015, p.40-41), organized the first edition of the 'Campus Party' in Brazil. Originating in Spain, and funded by the telecoms giant Telefonica, the Campus Party is a 'hackathon' and a multi-faceted celebration of technology, particularly 'open source'. The foundational role of Telefónica in the event, a corporation with massive holdings in Brazil and Latin America (Martínez 2017) was another clear signal of free software's embrace by the giants of informational capitalism.

Infrastructural sovereignty?

Another important component of the PT government agenda to develop Brazil's digital capacity was the program to build out the number of Internet Exchange Points (IXPs) on national territory; a program that has in some respects constituted a remarkable success story. IXPs are physical locations where different Internet Service Providers (ISPs) and Content Delivery Networks (CDNs) can intersect

and route data between them. IXPs represent a cost-effective and technically efficient means for the networks that comprise the Internet to share data.

In 2004, Brazil had only one IXP (in São Paulo) (Woodcock 2013). By 2016 that number had risen to 25 thanks to a program called IX.br launched by the Brazilian Internet Steering Committee launched in 2004 (Brito et al 2016). By 2013, Brazil was producing 75% of all of Latin America's bandwidth (Woodcock 2013). Hosting IXPs domestically allows for faster content delivery for national users as well as reduced transit costs and dependence on international IXPs, particularly in the US and Europe. Although the construction of this network of national IXPs represents one of the most significant technological achievements of Lula's presidency, it is important not to overstate the contribution of IX.br towards the PT project of technological sovereignty.

In her doctoral thesis studying the materiality and power relations embedded in global Internet infrastructure, Fernanda Rosa (2019) compares two of the world's largest IXPs: the DE-CIX in Frankfurt which routes the most traffic, and the IX.br SP in São Paulo that connects the highest number of networks (p.224). At first glance it appears remarkable that an IXP in Brazil might lead the world in this particular metric. A closer inspection, however, reveals that there is no real parity between these two nodes. At IX.br SP, 96% of all the networks that converge there are Brazilian, a confluence of the thousands of small regional ISPs that operate in Brazil, occupying the market vacuum left by the three major transnational telcos (NET/Claro, Telefônica and Oi) that refuse to serve more remote rural and informal urban communities (p.237). DE-CIX in Frankfurt, meanwhile, represents a genuinely global hub that connects networks from 35 countries in the global South and 43 countries from the global North. This disparity is driven by the demand to access global content providers which are overwhelmingly located in the global North. It is worth quoting Rosa at length on the implications of this disparity:

> *Giant* IXPs in the North are nourished by uneven infrastructure conditions in the South, shaping contemporary communication with infrastructure interdependencies between the North and the South, and a one-way flow of information from the first to the latter...symbiotic relations between giant IXPs and big content providers are formed. The dynamics revealed are an example of continuous patterns of inequality, and the coloniality of power distinctive of the South. (p.203)

One of the principal implications of this concentration of infrastructural control in the hands of a few core countries is that Internet traffic from around the world is routed through them. Data collected by Princeton researchers in 2016 showed that in the case of Brazil, 77% of all Internet paths that originate in that country, end in the United States, and only 17% end in Brazil itself (Edmundson et al 2018, 4-5). This signifies that the content being accessed is overwhelmingly hosted by US web companies, and contributes to their stockpiles of commodified data. This is what boyd and Crawford (2011) describe as "a new kind of digital divide: the Big data rich and the Big data poor" (p.13). It also means that the data that passes through the United States is subject to both its jurisdiction and possible government surveillance. The fact of this infrastructural inequality became readily apparent after the Snowden revelations emerged and the discourse of 'data sovereignty' was a defining aspect of the Marco Civil.

The recurring chimera of media reform

With respect to traditional media in Brazil, the PT government was inclined to tread much more lightly. Born into the dictatorship-era, and subsequently free of burdensome regulation, the major media conglomerates in Brazil: Folhapar, Grupo Abril, and particularly the Globo Group had built up a formidable degree of economic power and market concentration. Although these groups dominate nearly every dimension of the media industry, in Brazil, broadcast was (and remains) the medium by far with the greatest reach. Data from 2000 shows that per 1000 citizens in Brazil, only 43 newspapers were circulated, as opposed to radio and television sets that numbered 433 and 343 per 1000 respectively (Hughes and Lawson 2005, 16). By 2002, the Globo (53.8) and SBT (23.1) (Sistema Brasileira de Televisão) networks controlled 77% of market share of open television, representing a de facto oligopoly (Hughes & Lawson 2005, p.13). Indeed, accounting for market share by revenue, the terrestrial television market looks more like a monopoly for Globopar with the group accounting for 43% of the market by 2004, and their next nearest rival (SBT) accounting for only 9% (Moreira 2016, p.21). Indeed, according to Hervieu (2013) "concentration of ownership at the national and regional level and harassment and censorship at the more local level are the distinguishing features of a system that has never really been questioned since the end of the 1964 - 85 military dictatorship" (p.1).

The Brazilian state has been at best complicit, and at worst, an active accomplice in the parlous state of national media concentration. Successive governments have failed to address the situation, while "intimate relationships between government and broadcasting" remains, according to Mizukami et al

(2014), “a staple of the sector” (p.48). Research conducted by the *Folha de S. Paulo* revealed that state and national governments in Brazil spent more than US$5 billion on advertising between 2006-2011 (Nery & Costa 2013), a form of spending that is often interpreted as a form of indirect state subsidy to the Brazilian media sector with the associated implied obligations. Meanwhile, the term ‘electronic colonialism’ was famously coined by Santos and Capparelli (2005) to describe the influence that accrues from politicians holding so many broadcasting licenses. It is estimated that as many as 30% of all broadcast licenses are held by politicians - despite being expressly prohibited by the country’s Constitution - meaning that there is little vested interest in reforming the system (Moreira 2016, p.16). As well as government inaction, the seemingly static nature of media ownership in the hands of a few family-run firms is explained by other factors such as the highly politicized nature of broadcast license distribution, the fixed flows of advertising revenue, cross-ownership of other media properties, and the high barriers of entry for possible newcomers (Marinoni 2015, p.8&14; Mizukami et al 2014, p.12).

The principal implication of this situation for Brazilian society is that a very narrow selection of voices are heard in the mass media, and these are invariably supportive of social conservatism and exclusionary economic policies. Marinoni (2015) damningly describes the origins of the dominant worldview in Brazilian mediascape: as well as Globo, the few individuals and groups selected by the dictatorship, or that already existed and passed through the ideological filter of National Security, basically conformed to the broadcast bourgeoise that dominates the sector until today (p.15). The ‘national security doctrine’ to which Marinoni refers was an aggressive strain of fascist nationalism, deeply suspicious of anything resembling left-wing ideas. The fact that the major media groups in Brazil came of age at this time is therefore deeply problematic for Brazilian democracy.

A related legacy of the intimate relationship between Brazil’s major communication groups and the dictatorship, according to Matos (2012), has been the “marginalization of politics from the mainstream media. The latter has tended to privilege entertainment and a consumerist aesthetic to the detriment of more accurate and in depth (political) debate” (p.864). Essentially, it is much harder for Brazil’s people to address their social and political problems, when they are not addressed in the mass media public sphere.

Although Matos (2012), Porto (2012) amongst others have in fact identified a greater level of plurality in Brazilian media content since the democratic transition, the fact that the ideological lineage of

Brazil's media giants can be traced back to a fascist dictatorship is especially problematic for the leftist Workers Party. In the run-up to Lula's first election victory, for instance, Saad-Filho and Morais (2018) describe how "the mainstream media howled with indignation, demanding that the presidential candidates (ie. Lula) guarantee the continuity of Cardoso's economic policies in order to 'calm the markets'. In doing so, the media fueled frantic rounds of speculation" (p.84) that were only diffused by Lula's pre-election agreement with the IMF (detailed above). Essentially, if candidate Lula had not agreed to the IMF deal, the major media groups would have made it very difficult for him to win the election.

The political self-interest of the Workers Party to establish a more balanced media environment, as well as the evident benefits for the health of the country's democracy and the communication rights of Brazilian citizens, would seem to make a compelling case for media reform as a policy priority within Lula's two presidential mandates. The reality of the PT's experiments with media regulation, as we will discover, belied that expectation. The power wielded by the major media groups - based on their huge economic resources and influence over public opinion - as well as the fact of the PT ultimately being beholden to neoliberal institutions and policies, meant that media reform was little more than an empty promise; oft-repeated, and then broken.

The media policy of Lula's first administration (2002-2006) was focused entirely on digital inclusion. It was not until his second mandate in 2006 that the focus shifted to other dimensions of media policy. This may well have been the result of the hostile treatment Lula received from the mainstream press in the 2006 election - as he testified in interview: "they did everything they could so that I would lose" (Greenwald 2016) - as well as the expectation that in his second term he had less to lose by confronting such a powerful adversary as Brazil's media conglomerates. Whatever the political calculations, Lula began his second mandate with an overt focus on policies that would impact Brazil's major communication groups. Indeed, in his 2006 electoral campaign Lula announced an ambitious social communications program that would both create a unified regulatory model, apt for the convergence era, as well as finally ratifying measures guaranteeing communication rights that were included in the Constitution but had been long-ignored (Matos 2012, p.865).

The first concrete policy measure was to adopt a digital TV standard. The process of standardizing HD television in Brazil dated back to the 1990s, but in keeping with the glacial pace of media regulation in

Brazil, it was not until 2005, when Hélio Costa - a former Globo executive - was appointed Minister of Communications, that the debate between competing standards was finally settled (Mizukami et al 2014, p.96-97). During Lula's first term, in 2003, the President had established that the primary goals of the government's digital TV policy would be social inclusion, cultural diversity, the democratization of information as well as the adoption of Brazilian technologies and the promotion of a national IT industry (Dantas 2013, p.182). Such laudable objectives to use the much-heralded new technology to advance communication rights and national technological autonomy were almost entirely absent, however, in the final resolution passed in 2006.

Spearheaded by Mr Costa, and Globopar, Brazil's broadcasters rallied around a Japanese technical standard - ISDB-TV - that offered the sector the benefit of being able to maintain control over valuable spectrum, and to transmit content direct to cell-phone without having to use the proprietary networks of the telecoms companies (Mizukami et al 2014, p.96). A slew of counter-proposals and research findings - as well as technically superior alternatives (Lugo Ocando 2008) - presented by academic and civil society were ignored in the process (Dantas 2013, p.184). And although a Brazilian-developed open-source middleware called Ginga was included in the standard, it has never actually been used (Cabral and Taveira 2009, p.3). Ultimately, the broadcasters fear of competition from the telecoms sector was accommodated by the PT government, as was the interests of the communications hardware sector, whose actors lobbied for Brazil's to adopt international standards so that LG, Samsung, Zenith etc. could enjoy untrammeled access to the Brazilian market (Dantas 2013, p.184).

The following year, another promising development raised hopes amongst media democracy advocates in Brazil, only to ultimately leave them deflated. In 2006, President Lula issued provisionary decree to create the *Empresa Brasileira de Comunicação* (EBC): a public broadcasting company that would be comprised of 8 radio stations and two television channels that were renamed TV Brasil (Dantas 2013, p.206). In so doing, Lula was fulfilling his campaign promise to implement the three-tiered media system enshrined in Brazil's Constitution. The move was initially heralded by civil society groups as a means to boost media diversity, produce more educational and cultural content and to provide more concerted political coverage (Matos 2012, p.867). A general sense of disillusionment quickly followed, however, as TV Brasil never surpassed 1 audience point (Mizukami et al 2014, p.53), was starved of adequate funding and the vaunted national digital distribution was not achieved (Dantas 2013, p.207). Moreover, as the country approached the next election in 2010, concern grew amongst many observers

that the channel was increasingly being used as a partisan mouthpiece by the government (Matos 2012, p.867).

Within two years of EBC's launch, civil society in Brazil coalesced around a new project to advance the cause of media democracy. Confecom was launched by the Brazilian government as a forum for civil society, regulators, academics and industry actors to discuss reform of the media sector. The reasons for doing so were evident: the dictatorship-era, highly restrictive Press Law was still the law of the land (Marinho 2013, p.52); the Ministry of Communications had consistently revealed itself to be a poor arbiter of media regulation by virtue of its capture by industry actors (Mizukami et al 2014, p.55); even the community media sector was massively compromised by politicians controlling half of all issued licenses (Matos 2011, p.189); while the PT demonstrated its continuing deference to the broadcasting sector by paying a massive de facto subsidy in the form of government advertising, with Globo receiving 59% of all state TV advertisement revenue in the first year of Lula's presidency (Marinoni 2015, p.12).

Given these dysfunctional - though seemingly immutable - characteristics of the Brazilian media system, it is perhaps not surprising that there was a broad level of participation in the Confecom debates in 2009. Over 30,000 people took part in working groups across the country (Dantas 2013, p.203), "proof that the discussions on media reform had finally reached the mainstream of Brazilian society" (Matos 2012, p.864). Industry actors from both the telecoms and broadcasting sectors were also heavily involved, however, and the forum represented another opportunity for the two to advance - contradictory - agendas for media regulation.

The former group sensed an opportunity to chart a course for media reform that would recognise technological convergence as its locus and would therefore allow the telecoms companies to compete with broadcasters as content providers. The broadcast sector - led by Grupo Globo - recognised the threat this posed to its oligopolistic control of content production and distribution and withdrew from the event in an effort to undermine its legitimacy (Dantas 2013, p.203). It also used its newspapers to claim that the forum would result in a 'radical' form of press control by the government (Matos 2012, p.872). Although observers such as Dantas (2013) applaud the civic virtues of permitting an open debate about the kind of media system Brazil should aspire to (p.204), many others (Porto 2012; Matos

2012; Marinoni 2015) underscored that ultimately not one of the 672 proposals to reform Brazil's media system were actually legislated by the PT government.

The final development of note in 2010 was the implementation of a National Broadband Plan (PNBL). Prompted by data that showed Brazil lagging in 53rd place in a global ranking of broadband diffusion (19%), and owing to the national reality that the service was "slow and expensive and concentrated in a few regions or states" (Lemos & Jamil 2013, p.262), President Lula launched the plan in 2010. The stated objectives were laudable and ambitious - to move from 12 to 40 million connected households in all regions of the country by 2014 (p.261) - and were purported to address both Brazil's technological autonomy and global competitiveness, and also the communication rights of the millions of citizens denied access to highspeed broadband by the market failure of private infrastructure provision (Dantas 2013, p.209). Moreover, the decision to renationalise the defunct national telecoms carrier, Telebras, in order to lower prices across the sector and to coordinate the build-out of the necessary infrastructure (Knight 2014, p.73) appeared to signal a further commitment to technological sovereignty, and an important step back from a purely neoliberal approach to telecoms regulation.

Once again, however, the reality of the policy's execution was at odds with its stated goals, as a series of concessions extracted by the telecoms sector meant that the national broadband plan was left with "no regard for the public interest" (Mizukami et al 2014, p.152). Specifically, threats to undertake legal action against the plan by telecoms companies meant that the government lowered benchmarks for both cost and speed (Lemos & Jamil 2013, p.261), making the service neither affordable for low-income Brazilians, nor fast enough to provide the many benefits of broadband access. According to Dantas (2013), the principal deficiency of the National Broadband Plan was that it was premised on 'massification' rather than 'universalization' (p.209). By relying on private companies to provide the infrastructure and service, the PNBL was subservient to a market logic, rather than a civic logic that would see access to a truly universal service as an inalienable right. The dichotomy between 'massification' and 'universalization' was indeed apparent in the Marco Civil as telecoms company executives resisted any reference to the former goal in the bill, highlighting instead how market mechanisms could realise the former.

Conclusion

This historical survey has been structured around three principal themes: the policy and political-economy of media and communication technologies in Brazil; the relationship between the diffusion of ICTs/media systems and the communication rights of Brazilian citizens; and the role of media and communication technologies in establishing Brazil's status within global capitalism. The cumulative weave of these themes reveals the historical trajectory by which Brazil presently finds itself at the margins of informational capitalism, as well as the origins of the discourses, policy formations and political-economic structures that were so influential in shaping the Marco Civil. Specifically, we have observed numerous developments that will help to illuminate the case study material in the second half of this study.

Broadcast policy in Brazil was, from its inception: developed to encourage the commercialisation and concentration of the sector; devised as an adjunct to the fascist project of nation-building; was heavily influenced by its major players, and shaped by American technologies, advisors and capital. All these factors help to explain both the faith invested in the Internet's democratic potential by Brazilian activists, as well as the powerful influence of the Globo Group in the passage of the Marco Civil.

The development of the telecoms sector in Brazil also exhibited numerous contradictory tendencies that are quite pertinent to this study. The diffusion of telephony in Brazil represented a remarkably successful project of national technological sovereignty, promising to liberate Brazil from its dependency upon the capitalist core. However, at the same time as it permitted millions of Brazilians access to the affordances of a new communication technology, access was highly socially stratified. The diffusion of telephony also served to consolidate the power of a military dictatorship. These observations help to explain the extraordinary economic and political power of the telecoms sector (wielded to great effect during the Marco Civil process), the deep historical roots of the political project of technological sovereignty for Brazil (manifested in a new guise as 'data sovereignty' in the case of the Marco Civil), as well as a noteworthy ambivalence amongst many Brazilians about the dominance of its technology sector by American companies (born of a repudiation of the military regime's role in championing informatics in Brazil).

The neoliberal reforms of the post-dictatorship era in Brazil also left a deep imprint upon the digital rights of the Marco Civil. The dismantling of the real gains made in Brazil's domestic informatics and IT

manufacturing industries, as well as the sell-off of Brazil's extensive national telecoms network to international capital, accelerated Brazil's relegation to the periphery of informational capitalism. The market-oriented regulation of the Internet as a 'value-added service' (with no public service dimension) accelerated the commercialisation of the medium and thus limited the civic potential of any framework of digital rights.

The explicit marginalization of the state within Brazil's neoliberal reforms tapped into an existing and deep suspicion of the state within Brazilian society, born of the recent experience of dictatorship. This was evident in the civil society advocacy for a market-based decentralization of infrastructure in both the *Lei do Cabo* (the Cable Law) and the LGT (General Telecoms Law). Such wariness of the state was also prominent in the Marco Civil in the way that CSOs focused overtly on addressing state censorship/surveillance, but not their corporate corollaries. In a similar vein, the broad acceptance of the tenets of the neoliberal discourse - innovation, entrepreneurship, market logics, individualism, decentralization - was an essential precursor for the later overlapping dominance of the 'digital discourse' that delimited the civic potential of the Marco Civil so decisively. Finally, the market dominance of Globo within Brazil's communication sector - and its commensurate influence over the Marco Civil - was further consolidated by its favoured status in the two landmark pieces of neoliberal media reform: the Cable Law and the LGT.

Another secondary effect of the adoption of neoliberal reforms in Brazil was the adoption of neo-developmentalism as the preferred mode of governance of the three successive Workers Party administrations that began in 2003. This represented a hybrid form of governance based upon observance of the macro-economic tenets of neoliberalism, and the pursuit of national economic development with more equitable resource distribution and technological sovereignty. The inherent contradictions of this mode of governance shaped much of the media and communications policy initiatives of the PT governments, that in turn had a direct influence on the form of the digital rights contained in the Marco Civil.

For instance, state promotion of free software challenged Brazil's dependency on technology corporations from the core of informational capitalism, and the vibrant free software community in Brazil proved to be a highly supportive constituency for the Marco Civil. Similar policies of digital inclusion - such as the Computers for All - scheme were based on social inclusion through consumption; a striking microcosm of the contradictions of neo-developmentalism. The politicization

of consumption - and a commensurate shrinkage of the terrain considered properly civic - was also manifest in the Marco Civil's digital rights. Finally, numerous PT policy initiatives contained rich potential for substantive, civic-minded, political-economic reform of Brazil's communication sector (eg. the Confecom debates, the National Broadband Plan, and digital TV policy). These were all however, much diminished in deference to neoliberal orthodoxy and the influence of Brazil's media giants, thus creating a powerful path dependency observed also in the Marco Civil.

This chapter concludes the first part of this study. In Part II we turn our attention to the particular case of the Marco Civil da Internet. The next three chapters present a chronological account of the policy development of the Marco Civil, examining - with an alternate discourse/political-economic focus, and based on interview material and secondary sources - the contestation of digital rights at the periphery of informational capitalism. There I operationalize the analytical framework presented in the previous chapter - identifying the logics, dynamics, zones and discourses of informational capitalism - as well as the importance of the historical themes examined here.

Part II - Chapter 4

Circumscription: The discursive delimitation of digital rights

"Power and authority are not only about hard government...but also about the ability to foster and steer dialogue, to make issues visible…"

(Flyverbom 2011, p.160)

In terms of the chronology of the Marco Civil, here we examine the pre-history of the bill – examining the civic resistance to a proposed cybercrime law that constituted the Marco Civil's genesis – as well as the stages of public consultation and multistakeholder consultation that delineated the bill as a framework of digital rights. This chapter primarily adopts a discourse focus in order to understand the narratives that were formative in delimiting the Marco Civil's civic potential from its inception. I pick up the threads laid out in the final section of Chapter 2 to show how discourses that were formative in the construction of digital rights elsewhere in the world (in a manner that facilitated informational capitalism), were also evident in Brazil. These include most notably the neoliberal, technocratic and cyberlibertarian discourses that are all to some degree constitutive of the digital discourse, as well as its articulations with the local Brazilian discourse of neo-developmentalism.

In addition, I identify how characteristics of Brazil's contemporary media system, and the legacy of technological dependency and repressed civil communication rights reviewed in Chapter 3 (characteristic of Brazil's peripheral status within global capitalism), shaped how and why key sets of actors contested elements of the bill. These represent some of the most significant socio-cultural and political-economic particularities of how digital rights are contested in this specific local, and more generally, peripheral context. The main analytical contribution of this chapter to my overall argument is highlighted in the title: identifying the multiple junctures at which the imaginary of digital rights - informed by the dominant digital discourse - served to circumscribe the civic potential of the Marco Civil, and render it instead a corollary to informational capitalism.

Finally, one of the key empirical contributions of this chapter is to identify some of the underlying factors that created the conditions for the Marco Civil's emergence in Brazil at this time. These can be broadly grouped into three categories: historical, political and socio-technical. In the first bracket, a

large impetus for the framework of digital rights came from Brazil's historical tendency towards criminalisation as its primary legislative impulse: the idea of the Marco Civil was a repudiation of that approach. Also, the punitive cybercrime bill, the Lei Azeredo (described in detail in the next section) evoked Brazil's recent history of military dictatorship and civic repression and explains in part the efforts invested in resisting that law and building a civic alternative. Within the political realm, the Workers' Party government's neo-developmentalist agenda implied support for an innovative cyberlaw approach, while its focus on participation as a core value guided the Marco Civil's early forms of consultation. Finally, in terms of socio-technical factors, vibrant communities built around free software and the Creative Commons in Brazil meant that the Marco Civil could draw from a wellspring of support from individuals highly engaged in technological issues.

Within Part II of this study the material generated by my interviews becomes a key data source. In particular within this chapter, my three interviewees from the research laboratory *Centro de Technologia e Sociedade* (CTS) at the think tank, *Fundação Getulio Vargas* (FGV), and two individuals from the Ministry of Justice provide key insights into the initial drafting of the Marco Civil, and the process of the public consultation. I also draw upon interview material from representatives of some of the key economic groups engaged in the Marco Civil, as they began the early skirmishes around their preferred agendas for the Internet in Brazil.

(In)Coherence, clientelism and corruption

Before studying in detail the key events in the Marco Civil's prehistory, it behooves us to briefly consider the complex dynamics of Brazil's political culture, as this is an important and constant factor in the Marco Civil's legislative journey. The instability and "inchoate" (Mainwaring 1999) nature of Brazilian party politics is widely noted. The roots of this are traced by Saad-Filho and Morais back to the democratic transition and a political system they describe damningly as "fragile by design". It is comprised of a "myriad of parties unmoored by ideology or principle, making it virtually impossible for the President to command a majority in Congress without unwieldy coalitions…" (2017, p.45). Lucas and Samuels similarly assert that Brazil's "party system lacks the sort of coherence that scholars associate with collective responsiveness and accountability" (2010, p.42).

One of the most significant implications of this scenario is the pervasive clientelism that exists in Brazilian political culture. The horse-trading that is inherent to party politics throughout the world is indeed especially marked in Brazil. It is telling that the dizzying constellation of political parties in Brazil is popularly described as "acronyms for rent" (Rohter 2010, 257). The political structure in Brasília is also referred to as the '*centrão'*: the block of ideologically unmoored politicians who "support any government in exchange for public jobs and official money" (Strategic Comments 2020). The patronage of the telecoms sector is particularly pronounced within the *centrão*, and this is described in detail in Chapter 5.

One of the consequences of this clientelism is, rather predictably, corruption, with the members of this floating centre often implicated in its scandals. Corruption is inherent to politics, but it exists in varying degrees and with varying levels of visibility in polities around the world. In Brazil, lamentably, corruption is more visible than in many other democracies, to the extent that it represents "virtually a natural phenomenon" (Schwarcz & Starling 2018, p.600). The epic corruption scandal known in Brazil as the *Lava Jato* is emblematic of the scope of the problem[3]. Indeed, the fallout from this investigation was largely responsible for the downfall of the Workers Party government (Saad-Filho & Morais 2017) and will emerge in Chapter 6 of this study as it shared some connections with the Marco Civil.

Of course, the incoherence, clientelism and corruption of the Brazilian political system does not negate the possibility of meaningful policy reforms. The passage of the globally acclaimed *Bolsa Familiar* and other progressive legislation by the Lula administrations (Ricci 2013) demonstrate this fact quite vividly. However, as we will discover with the case of the Marco Civil, the complexities of Brazilian political culture leave an indelible mark on even the most well-intentioned pieces of policy.

Setting the bar: The *Lei Azeredo* and IP maximalism

In order to understand the formation of the Marco Civil da Internet, one element of its pre-history looms largest in the reckoning: PL84/1999*: o projeto de lei dos cibercrimes* (the cybercrime bill). More commonly known as the *Lei Azeredo* – after the Senator, Eduardo Azeredo, who stick-handled its eventual passage into law – this raft of punitive cybercrime proposals appears to represent the

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[3] The scale of the problem was vividly revealed to me when the Congressperson who permitted me access to the Brazilian parliament to observe the final Marco Civil vote was one of the first politicians indicted in the Lava Jato investigation.

legislative antithesis of the Marco Civil. Although there is an evident juxtaposition between the criminal and civic focuses of the two bills, arguably of more significance is the fact that the Lei Azeredo represented an attempt to codify into law IP safeguards to benefit particular sectors of informational capitalism. When these ambitions were denied, they found eventual resolution in the Marco Civil itself.

The civil rights framework of the Marco Civil was indeed conceived in opposition to the criminalization of everyday online activities proposed in the Lei Azeredo. Significantly, this meant that the Marco Civil was the product of a reactive, not a pro-active, legislative agenda. As a corrective to the Lei Azeredo, one of the primary goals for the Marco Civil was to limit the regression implied by the cybercrime bill. Not only did this set a low bar for the Marco Civil to represent a civic advance, but it means that the measures contained in the Lei Azeredo, as well as the discourses and actors that impelled its passage into law, had a corresponding effect on the initial shape of the Marco Civil, and must be examined closely.

In its first incarnation, PL84/1999 appeared in 1999 as the conglomeration of several inchoate pieces of cybercrime legislation into one draft bill (Papp 2014, p.21). It was not until Senator Azeredo of the conservative PSDB took the helm as rapporteur of the bill in 2006 (*Ibid.* 22), however, that the proposed legislation became infamous amongst a diverse coalition of digital activists, free software enthusiasts and the technical and academic community. The issues that galvanized public ire were the amendments that Azeredo introduced to the bill in 2007. These included a compulsory identification and registration of all Internet users, mandated data retention for ISPs, as well as the obligation for ISPs to report illegal activities to a state authority (Solagna 2015, p.38). Moreover, private security companies would be permitted to intercept data transmissions in order to detect illegal network activity (Santarém 2010, p.47).

The Senator had already shown a tendency to approach Internet legislation with extremist rigour. He was, for example, also rapporteur of another bill in the Brazilian Senate that proposed a registration of all email addresses in use in Brazil (Santarém 2010, p.43). Azeredo was not alone in this tendency. The Lei Azeredo corresponded to an established tendency within Brazilian politics that sought to criminalise new behaviours as a first resort (Brito 2015). This is a tendency with deep roots in Brazil. For instance, Brazil established its first Criminal Code in 1830, while the corresponding Civil Code did not appear

until 1916. This disequilibrium persevered in later years; the current Brazilian penal code was established in 1940, with the civil equivalent approved decades later in 2002.

This tendency, in turn, stems from two important and interrelated characteristics of Brazilian society; both are related to Brazil's historically peripheral status as a Portuguese colony. The first is that Brazil "has always been a country of law and of jurists", one that inherited a Romano-Germanic legal tradition from its Portuguese colonisers and went on to become one of the most prolific nations in the world in terms of the production of legislation (Carvalho 2013, p.76). In 2010, research by the Brazilian National Justice Council showed that the country possessed 1,240 law schools (Duran 2014), while the United States has just 199 schools accredited by the American Bar Association (ABA 2021). This fact is reflected in the specific context of this research project, as only 3 of the 18 individuals interviewed were not trained as lawyers.

Latterly this phenomenon has been interpreted by the sociologist Bernardo Sorj in a manner very germane to this study: "the contradiction which presents itself in Brazil is that the *juridification* of society ... is quite limited, but as a process of *judicialization* of social life, that is, of transference of social conflict to the judiciary, Brazil is, conversely, a very advanced case" (Sorj 2001, p.118).

This is a valuable insight for understanding the Marco Civil as a bill of digital rights because juridification refers to the introduction of legal norms and mechanisms into different realms of social life. Although this process is understood as a negative development by Habermas (1981), amongst others, its relative absence in the case of Brazil underscores the reality of the extralegal nature of great swathes of social activity. Evading mechanisms of law and bureaucracy is a pervasive fact of life in Brazilian society, referred to as the *jeito,* meaning the "skill required to maneuver around the laws or social conventions that prevent you from achieving an objective" (Rohter 2010, p.34). Despite, or perhaps, because of the indifference displayed towards legal institutions in Brazil, the Marco Civil represents another instance of Sorj's "transference of social conflict to the judiciary" in which digital rights are manifested in legalistic terms that not only negate a substantive civic vision but are overseen by institutions that are habitually disregarded.

Connected to this extraordinary proclivity for legalism, Brazil is also a country long-noted for its entrenched social stratification between the very poor and the very rich. It is a history of division that can be traced back to the enormous number of African slaves transported to Brazil by the Portuguese – over 4 million – that were violently oppressed by a tiny colonial elite (Rose 2005, p.3). Over time,

legislation became complementary to violence as a means for the Brazilian political elite to control a vast underclass, first of slaves, and later of workers. It is possible therefore to observe systemic efforts by the Brazilian state to stigmatise and criminalise the poor in Brazil through legislative means (Moura et al 2014; Holston 2009). Saad-Filho and Morais (2017) explain that the status of civil liberties in Brazil " at a formal level, are at least as substantial as those in most 'old' Western democracies, in practice the legal and judicial systems are geared to the protection of privilege and the penalisation of the poor..."(p.54). Members of the conservative PSDB party, one that belies its social-democratic moniker with a neoliberal policy agenda (Guiot 2010), are more inclined to this instrumental approach to criminalization than the Workers' Party (PT).

Some observers therefore characterised the Lei Azeredo as another instance of a "morality-centred legislative agenda", one that was now increasingly being applied to the Internet by the PSDB (Rossini, Cruz & Doneda 2015, p.3). Another line of enquiry would be to observe the powerful economic agents whose interests might be served by the measures contained within the proposed legislation, agents prominent within informational capitalism. This perspective needs to be considered in both a Brazilian and global context.

Information feudalism at the periphery

The regime of 'informational feudalism' identified by Drahos and Braithwaite (2002), one premised upon the global expansion of a stringent IP regime in order to control and commodify informational resources, arguably reached its xenith in the late 1990s (Streeter 2011, p.166). The World Intellectual property Organization (WIPO) was formed in 1994, along with the agreement on Trade-Related Aspects of Intellectual property Rights (TRIPS). The WIPO Copyright Treaty and the Performances and Phonograms Treaty appeared two years later. In the United States, the Digital Music Copyright Act (DMCA) was passed in 1998 during the Clinton administration. Finally, the Budapest Convention on Cybercrime was ratified in 2001 by the Council of Europe. Although this latter bill explicitly addressed cybercrime such as forgery and fraud rather than trade-based IP, such are the synergies between some of the core sectors within informational capitalism that the emphasis on cybercrime – including a strong focus on copyright protection – can be seen as complementary to the overall objectives of commodification and control through IP.

According to Turcotte (2016), the rationale for this legislative fervour was that "the linking of IP law with international trade enabled IP-exporting countries in the developed world to advance an

international trade-based IP regime focussed on…*the private appropriation of knowledge-based resources at the service of informational capitalism* [emphasis added]" (p.38). More than simply a set of conventions for states in the core of informational capitalism, TRIPS and the Budapest Convention were designed as templates for countries in the developing world to adopt as national legislation in order to harmonize "accumulation by dispossession" (Harvey 2005), from the core to the periphery.

In the case of Brazil specifically, in 2006, the country paid out 1.6 billion USD for the use of registered IP (World Bank 2021a), while it received 150 million USD in receipts (World Bank 2021b). The same data source reveals that the US by contrast received 70 billion USD and paid out 23 billion USD. The disparities between the balances of trade in IP related goods between Brazil and the United States is indeed characteristic of the zonal nature of informational capitalism.

By 2006, when Senator Azeredo introduced the most controversial amendments, IP maximalism was arguably on the wane in a global context. As Streeter (2011) notes, "after the arrival of the open source movement, the neoliberal assumption that more-property-protection-is-better was no longer unassailable" (p.160). This did not discourage the Senator, however from attempting to harmonize Brazilian law with those IP templates devised by Europe and the United States. His perspective was that this "would be good for global information technology companies, and would therefore promote private investment and technological development in Brazil" (O'Maley 2016, p.48). This presumption was likely based in part on his personal experience as an IT analyst at IBM in the 1970s, as well as leadership of various Brazilian state informatics corporations (2016, p.48). It also represented a continuation of the neoliberal informatics policy of the mid 1990s that dismantled earlier protectionist measures and established an open market favouring investment by IT multinationals (Schoonmaker 2002).

The Lei Azeredo and its provisions were supported by an array of core sectors within informational capitalism, most notably the security state, content production, and the financial services sector. As Secretary of Legislative Affairs of the Ministry of Justice 2007-2010, Pedro Abramovay, explained in a later article: Internally, the Federal Police...said that the project was fundamental to facilitate their work. The Public Prosecutor's Office followed a similar line. Febraban (the Federation of Brazilian banks) met with myself and the Ministry of Justice, as well as exerting strong pressure in Congress. The big argument was bank fraud (Abramovay 2014). Or, as a Congressperson declared in a Congressional debate: It is a noxious bill, with the clear objectives of economic interests behind it. Who are they?

The phonographic industry, bankers, the cultural industry and, evidently, the telcos. (Papp 2014, p.31). The director of Febraban did indeed make the extent of their involvement clear in an interview in 2007 "Febraban, as the representative of highly informationalized business, is interested in the bill since its first version…and we remain close to all the relators and parliamentarians involved in projects related to digital crime" (UOL Notícias 2007).

According to, Luiz Moncau, a member of the Centre of Technology and Society (CTS) at the Getulio Vargas Foundation that would become a founding partner with the Ministry of Justice in creating the Marco Civil, the opaque process made it hard to determine who exactly was backing it; although it was widely understood that "the only one that was clearly mapped was the IP interests because you have the…speciality reports that the US releases and they explicitly named the Lei Azeredo as an important bill for protecting IP…" (Research interview – transcript included in Appendix B).

The power and influence of the Lei Azeredo's backers was not reflected in the sophistication of the law itself. Many legal observers noted its incongruous, even naïve, presumptions. Santarém noted that "the lexicon of common sense as presupposition, without effective foundation, is significant." (2010, p.18). Lemos describes the 'imprecision' and 'limited technical rigour' of its articles (2010, 3-4), while Secretary of Legislative Affairs of the Ministry of Justice 2010-2013, Guilherme de Almeida, deemed the law "so obscure, and so totally missing what the Internet meant" (Research interview).

Whether these criticisms should be read, however, as a techno-legal critique, or an ideological clash, is a pertinent question. This is because, as we will examine in the following section, these commentators also formed the cabal of young lawyers who delineated the Marco Civil and whose presumptions about the Internet, I argue, were all guided by the digital discourse. As such, the Lei Azeredo represented a programmatic check on the personal freedoms championed in that discourse. The fact that Abramovay, in his condemnation of the Lei Azeredo in a newspaper interview in 2009, claimed that the internet is a space of freedom *par excellence,* not a place of fear, underscores this point (Brito 2015, p.51). As does Santarém's pithy observation that the proposal clashed with the libertarian logic of the Internet (2010, p.33).

Certainly, irrespective of the finesse of its legalese, the vision of an Internet extensively controlled in the interests of key sectors of informational capitalism - the Brazilian security state and the content

production sector - was met with concerted resistance. It is this resistance, and its influence on the formation of the Marco Civil, that is the subject of the next section.

Radical roots? Blogs, op-eds and a Presidential address

In this section I show how the principal opposition to the Lei Azeredo came from three main sources: the Brazilian free software community, a disparate collection of digital activists and technologists who rallied under the banner of the *Mega Não* (Big No), and key members of the governing Workers Party, including even the President, Lula da Silva, himself. This was a pivotal phase in the Marco Civil's pre-history because the discourses that percolated through this opposition were decisive in shaping a civic alternative to the punitive Lei Azeredo.

It is not enough, however, to note the fact of this opposition; we must pay heed to its form. In tracing the development of the Marco Civil through the accounts of my interviewees, primary media sources, and secondary academic texts, I identified four interventions in the Brazilian public sphere by high profile figures that constituted key junctures for the bill. These were:

- The blog of an influential freedom of expression advocate and cyber-activist
- The blog of a high-profile academic and champion of the free software movement
- An op-ed written by one of Brazil's foremost commentators on technology issues
- A keynote address at a free software convention by the Brazilian President, Lula da Silva

These key texts served as calls to action in this oppositional period and rendered visible some of the formative discourses of the Marco Civil. Indeed, the importance of the analysis presented here is to show that the discourses drawn upon by these sets of actors, although oppositional to the forms of control proposed in the Lei Azeredo, were shaped to such an extent by the tenets of the digital discourse, that they ultimately set the tone for a Marco Civil aligned with the logics of informational capitalism. Moreover, analysing these discourses reveals another thread essential to this study: that of the *articulation* of the digital discourse with peculiarly Brazilian values and meanings - most notably the country's recent history of military dictatorship - that also had a profound influence on the form that the Marco Civil took.

Cyber-libertarian bloggers and 'the death of the Brazilian Internet'

With a post entitled 'The Death of the Brazilian Internet', on November 07th, 2006, a digital publicist and free speech advocate based in Rio de Janeiro, João Caribé, started a blog called '*Xô Censura*' to protest an imminent Congressional vote on the Lei Azeredo. In this maiden post, Caribé laments the 'censorship' of 'our Internet' that will serve the interests of an unspecified 'powerful minority' (Caribé 2006). It is this blog that initially served as a clearing house for opposition to the Lei Azeredo; a precursor to the more organized Mega Não campaign that followed. A critical reading of some of this blog's key posts reveals the discourses that underpinned early opposition to the proposed Lei Azeredo.

Caribé refined the remit of the blog two months later with a short post proclaiming the importance of freedom of expression, given that the "rancid" "practice of censorship" from the dictatorship was still much in evidence (Caribé 2007a). In May 2007, the 'Death of the Brazilian Internet' post received a '2.0' update as a reaction to the amendments added to the bill by Azeredo in April 2007. In this text, the passage heralding the Internet as 'a social amplifier' displays the tenets of the digital discourse most strongly and merits quotation in full here:

> **Humanity's greatest conquest of all time** was the Internet that democratized communication, gave everyone the option of speaking and being heard, gave everyone the option of relationships without bureaucracy or discrimination, gave everyone **F R E E D O M** !!! Freedom is what unsettles those dinosaurs habituated to divulging one-way content to a people made imbecile by the mass media. The greatest danger of this freedom, of a free cyberspace is to leave the '**King naked'**, **let the king be naked**, we are going to reveal the truth, we are going to live freedom, freedom is essential to the development of any nation, and accompanied by deregulation could lead Brazil again to the position of leader of Latin America.
>
> (Caribé 2007b *translation mine*)

In this tract it is easy to hear echoes of what Mosco (2009) describes as the 'digital sublime'; the recurring conceit that new technologies will usher in a new and unparalleled era of progress. The timing of this post is significant in that regard, as 2006 is identified by Dahlberg (2010) as the point at which the discourse he calls 'cyber-libertarianism 2.0' emerged in earnest into the public realm. It is a discourse that equates the use of Web 2.0 technologies with the liberation of those users from the shackles of state control, to achieve a new form of democracy through participation and creativity

(2010, 333). It is also a discourse, as examined extensively in Chapter 2, that serves to legitimate informational capitalism and its logics.

A curious articulation can be observed in Caribé's text, however, that deviates from Dahlberg's understanding of 'cyber-libertarianism' par excellence. In what will become a recurring thread in this section, despite decrying 'bureaucracy', Caribé invokes the values of developmentalism and nationalism to argue that a free cyberspace could promote the national development and regional hegemony of Brazil. Perversely this prospect is contingent, however, upon 'deregulation', a core tenet, of course, of the neoliberal discourse. Finally, this passage is characterised by its emphasis on the value of individual freedom, another meta-signifier within the digital discourse.

'Innovation and efficiency': the intellectual genesis of the Marco Civil

At the same time as Caribé was attempting to foment grassroots resistance to the Lei Azeredo amongst Brazilian *internautas* (netizens), another voice emerged to rally the establishment. This time it came from within the academic/technical community in Brazil, and it belonged to the high-profile IP lawyer and technology commentator, Ronaldo Lemos. His op-ed published on the UOL content platform in May 2007, '*The Brazilian Internet needs a civic regulatory framework'* was a pivotal moment in the history of the Marco Civil (2007). This was the first time that the notion of a 'civil rights framework' or *Marco Civil* had entered into the public realm. As such, Lemos' text became a touchstone for Brazilian activists, and later for the drafters of the Marco Civil; including Lemos himself.

As well as analysing the discourses present in Lemos' article, it is important to understand the professional trajectory of the man himself, to be able to effectively trace those discourses and their origins. The roots of Lemos' rise to prominence can be traced to his decision to leave a career in telecommunications law to pursue a Master's degree at Harvard Law School in 2001 (Lemos 2013, 10). At that time, Laurence Lessig was teaching at the law school and gaining renown for questioning the legitimacy of IP maximalism online (Streeter 2009, p.167). With Lessig as his inspiration, Lemos returned to Brazil, and in 2003, alongside two other legal scholars who would become drafters of the Marco Civil – Bruno Magrani and Carlos Affonso Souza - founded the *Centre of Technology and Society* (CTS) at the *Getulio Vargas Foundation* law school (Papp 2014, p.88). This was the first think tank in Brazil focused on technology issues, and particularly IP law (O'Maley 2015, p.55). Indeed, it was also the first law school in Brazil that made an IP and technology course mandatory for students, according to Carlos Affonso Souza (Research interview).

The initiative that established renown for the centre was the decision in 2004 to make Brazil the third country in the world to adopt Lessig's Creative Commons (CC) licensing system (Lemos, 2013, p.10). Creative Commons in Brazil, in turn, achieved prominence when newly-appointed Minister of Culture, Gilberto Gil – a renowned and prolific musician – championed the project and re-licensed much of his own work using CC (Lemos 2013, p.11). Lemos adroitly used the public platform offered by CC to become a prominent commentator on technological issues in the Brazilian media (O'Maley 2015, p.55).

The Creative Commons project drew plaudits amongst academics and activists by presenting an alternative to IP maximalism, and for "protecting the global sharing of information and resources" (Bowrey & Anderson 2009 p.480). However, its emphasis on liberal, individual freedoms at the expense of addressing systemic change has been widely criticized (eg. Taylor 2014).

The passage of the Sonny Bono Copyright Extension Act through Congress in 1998 was the catalyst for law professor, Laurence Lessig, to commence a national speaking tour denouncing copyright maximalism. This represented the beginning of a 'free culture' movement that in 2001 eventually crystallised into the Creative Commons, an organization whose remit was "to build a layer of reasonable, flexible copyright in the face of increasingly restrictive default rules" (Creative Commons 2019). Lessig was joined in this endeavour by other cyberlaw scholars such as James Boyle, and significantly, the founder of the EFF, John Perry Barlow. This "small circle of elite legal scholars and technologists...forcefully politicized the implications of digital copyright" (Postigo 2012, p.55), and they did so in a manner that was explicitly "libertarian" (Creative Commons 2019). It is indeed a notable event in the Marco Civil's pre-history that in 2004 Brazil became the third country in the world to adopt Lessig's Creative Commons (CC) licensing system (Lemos 2013, p.10).

In charting the conceptual differences between those individuals who Streeter (2011) dubs the 'cyberscholars', he notes Lessig's "obsessive focus on an abstract individual freedom" and his articulation of the idea that "freedom itself is a simple condition, an absence of constraint, the ability of individuals to do what they want, especially to express themselves, to engage their creativity" (p.164). The coherence between this description of Lessig's vision for free culture, and the tenets of the digital discourse, of expression, creativity and individual freedom, are apparent. Moreover, the explicitly libertarian bent within the free culture movement, precluded any vision of systemic reform,

to overhaul the commodification of knowledge. This point has been developed forcefully by many critics.

Berry (2008) noted the central role within the movement of a “distorted and diminished concept of the commons, predicated on a system of private rights codified in intellectual property” (2008, p.28). Astra Taylor also condemned Lessig on the grounds that “his enthusiasm for the free circulation of information blinds him to the increasing commodification of our expressive lives and the economic disparity built into the system he passionately upholds” (2014, p.25). In his doctoral thesis on IP and the A2K movement, Turcotte (2016) notes how Lessig “locates the source of concern squarely on an individualistic level, presupposing that greater individual expressive freedoms will necessarily serve social ends. In doing so, “remix culture” does not attend to structural conditions and inequities that circumscribe the capabilities of individuals” (62). Finally, we should also note the significance of creativity itself as a tenet of the digital discourse and a concept that Drahos and Braithwaite argue is vital to legitimating global IP frameworks (2002), and that Berry’s analysis (2008) shows “is being reconfigured to meet the needs of capital” (p.42).

Indeed, as we will see, the values of maximizing individual freedoms and creativity that cohere with the digital discourse, are readily apparent not only in Lemos’ influential op-ed, but moreover in the structure of the Marco Civil itself. I argue that Lemos fulfilled a similar role in the context of the Marco Civil, that writers such as George Gilder did in propagating neoliberal dogma in the United States according to Harvey’s analysis (2005, p.54), or indeed the various ‘futurists’ and ‘visionaries’ profiled by Mosco in *The Digital Sublime* (2005). Ultimately, although Lemos gained plaudits for calling for a ‘*civil rights* framework’ for the Brazilian Internet, the dominant discourses within his text can be characterised as both technocratic and neoliberal.

In the opening paragraph of his article, Lemos writes that “the *natural* [emphasis added] path for the regulation of the network, one followed by all the developed countries, is firstly to establish a civil rights regulatory framework…” (2007, translation mine). The use of the adjective ‘natural’ here is a value-laden judgement that can be read to invoke the inevitable progress of modernity that features in the discourse of development (Escobar 2012), as well as the ‘naturalness’ of the market that is a tenet of the neoliberal discourse (Fisher 2013). Furthermore, the early reference to ‘all the developed

countries' implicitly frames Brazil as undeveloped, evoking its peripheral status within the global economy.

Lemos goes on to lament the imprecision of the technical language in the bill, the futility of some of its clauses – especially the requirement for all Internet users to identify themselves – and the regime of "private surveillance" that the bill would create. It should be noted that despite the technocratic tone overall, Lemos does once identify the threat posed to "collective and public interests" as well as the incompatibility of some of the bill's provisions with a "democratic state of law".

It is in the closing paragraph, however, that Lemos' overriding focus – one that I argue helped to orient the Marco Civil around using commercial interests as a proxy for user rights – becomes apparent. "To privilege the criminal regulation of the Internet before its civil regulation has as a consequence an increase in public and private costs, a *disincentive for innovation and above all, inefficiency* [emphasis added]" (translation mine).

In these final lines, Lemos chooses to underscore the dangers of inefficiency and a lack of innovation, not the chilling effects on democratic communication, or access to culture and knowledge. 'Innovation' and 'efficiency' are of course meta-signifiers within both the technocratic and neoliberal discourse. As McKenna and Graham note, the function of technocratic discourse is to eliminate "dialectical political encounters, and, consequently, the possibility for public debate on important matters of social policy" (2000, p.224). Accordingly and implicitly, the real victims of the Lei Azeredo are not citizens but particular sectors of Brazilian business, and by evading a focus on the substantively civic implications of the law, the terms of the debate are steered away from the messy terrain of politics.

The curious articulation of cyber-utopianism and neo-developmentalism

As Lemos' proposal for a civil alternative to the Lei Azeredo circulated amongst the technical, legal and academic communities in Brazil, activists – of whom Caribé and the University of São Paulo political science professor and free software advocate, Sérgio Amadeu, became unofficial leaders – developed a more concerted opposition. For instance, at the inaugural 2008 Brazilian edition of the international technology conference, Campus Party, the final days were marked by delegate protests led by Amadeu (Papp 2014, p.23).

A few months later, in July 2008, Amadeu formalized his position by publishing a manifesto on his blog that was co-signed by 95 academics and journalists entitled '*In Defence of the Freedom and Progress of Knowledge on the Brazilian Internet*' (Amadeu 2008). In collaboration with Caribé, this would go on to become the basis of a viral online petition; one that would bestow legitimacy and public influence on the organizers, and help to turn the political tide away from the Lei Azeredo.

Given its significance, the discursive underpinnings of this manifesto thus merit attention here. Moreover, it is an illuminating exercise to set the discourses drawn upon by Amadeu and Lemos side by side. Both were published as 'calls to arms' against the Lei Azeredo, but they represented two quite distinct sources of opposition: one technocratic in tone, written by an IP lawyer concerned with innovation and efficiency, and the other replete with cyber-utopian rhetoric, written by a sociologist and self-proclaimed free software militant sounding the alarm for blogging and P2P networking. Ultimately, as we shall see, it was the former that achieved discursive closure around the Marco Civil. Amadeu's rhetoric and support did, however, serve the important function of legitimating the project, and in that important respect, should be seen as complementary to Lemos rather than antagonistic. It should also be noted, that one reason that Lemos' perspective prevailed lies outside the discursive domain, and pertains to the simple fact that he was the first to articulate an *alternative to* the Lei Azeredo, as opposed to simply expressing opposition to it.

Andreu's concern was with the collective construction of knowledge and the forms of creativity and expressive freedoms that would be curtailed by the law. That is reflected in what amounts to the 'thesis statement' of the manifesto in its conclusion: 'We defend the necessity to guarantee the freedom of exchange, the growth of creativity and the expansion of knowledge in Brazil' (2008 *translation mine*).

Akin to Caribé, Amadeu repeatedly invokes the trope of freedom in his manifesto, and presents it as an inherent characteristic of the Internet. In this regard, one can readily identify the cyber-utopian discourse that he draws upon for this manifesto. The idea that the Internet is ushering in a new dawn of human achievement is at the crux of information society rhetoric and is present in the following lines: '(The Internet) is the stage of a new humanist culture that places, for the first time, humanity in front of itself in order to offer real opportunities for communication between people' (translation

mine). Also, 'the Internet reclassifies collaboration, reunifies the arts and the sciences, overcoming a division erected in the mechanical world of the industrial era. The Internet represents, although always potentially, the newest expression of human freedom' (translation mine).

As well as these utopian themes, the discourse of developmentalism is also present in Amadeu's manifesto. This is perhaps not surprising given his association with the Brazilian free software community. As Shaw (2011) argues, the leaders of the FLOSS movement in Brazil had 'come of age' during the military dictatorship and the technology was thus politicized in a way that would appear incongruous to the libertarian and apolitical free software programmers of the United States (p.259). Indeed, FLOSS in Brazil began as a potent expression of resistance, and an alternative, to information dependency on the global North. This theme is evident in Amadeu's claim that "The Internet offers an unrivalled opportunity to peripheral and emerging countries in the new information society" (2008 *translation mine).*

The early influence of Amadeu on the formation of the Marco Civil does appear contradictory. On one hand, his was a radical vision for the Internet in Brazil: staunchly opposed to the control leveraged by the content production sector and aligned with the neo-developmentalism of the free software movement in Brazil. However, as shown above, Amadeu's cyber-utopianism also aligns clearly with the legitimation discourse of informational capitalism that established the boundaries of 'common-sense' around the Marco Civil. Ultimately, although Amadeu proved to be a pivotal figure in the resistance against the Lei Azeredo, his discursive approach failed to orient the Marco Civil because it was in large part libertarian, and therefore incompatible with any attempt at drafting a framework of state-backed civic rights.

Echoes of repression

Another one of the most significant discursive interventions against the Lei Azeredo occurred at the 2009 edition of the Campus Party. This act engineered an important articulation between the discourse of resistance to the bill of law, and popular memory of the oppression of the Brazilian military regime. The *Ato-Institucional 5* (AI-5) was enacted in 1968 under the regime of President Costa e Silva and enforced the complete suspension of civil rights in Brazil. When Sérgio Amadeu referred to the Lei Azeredo in an interview in January 2009 as the "AI-5 Digital" (Santarém 2010, p.86)

he was therefore deliberately drawing parallels between the infringements of liberty implied by the Lei Azeredo, and one of the most acute moments of civil oppression in Brazilian history. The gambit was effective and served as an effective rallying cry for collective opposition, as well as demystifying the more arcane aspects of the legislative process for potential participants.

As per the analysis of Santarém, "as a result of the denomination 'AI-5 Digital', the project became better known and...there was a dislocation in focus, that receded from the specific provisions, and on to the associated ideas" (2010, p.82 *translation mine*). Also, as underscored in the later analysis of Abramovay, Amadeu's intervention was particularly influential in terms of refocusing the discussion about the Lei Azeredo into one centred on 'rights' (2017, p.57). I argue, indeed, that although Lemos' op-ed is often interpreted as the conceptual genesis for the Marco Civil, it was Amadeu's intervention that was decisive in garnering the public support and political will necessary to consider a framework of digital rights in Brazil; even though it was Lemos' technocratic focus that ultimately oriented the project.

Later the same year, the activist, Caribé, formed the '*Mega Não*': initially a blog but that would go on to become a loose social movement opposed to the Lei Azeredo. The digital and street protests under the banner of the '*Mega Não*', the continual '*blogagem políticas*' ('political bloggings') organized by Caribé and Amadeu, the online petition initiated by Caribé that garnered over 300,000 signatories, as well as the public hearings organized by sympathetic members of Congress, cumulatively influenced a change in tack by the PT government in relation to the cybercrime bill (Caribé research interview; Abramovay 2017, p.59). It shifted from a stance of tacit acceptance, to explicit opposition.

The Lei Azeredo was stripped of its most extreme provisions related to data retention and the obligation for ISPs to report illicit acts (Santarém 2010, p.93). It was this much denuded bill of law that would eventually be passed into law in 2012.

Although the opposition described here accounts for the partial defeat of the Lei Azeredo as a legislative project designed to control the Brazilian Internet in favour of the financial services industry and IP lobby, the birth of the Marco Civil required one last inducement. This came in the unexpected form of a keynote speech given by President Lula da Silva at the 2009 *Fórum Internacional de Software Livre* (FISL; International Free Software Forum) in Porto Alegre. It was in this charismatic and free-

wheeling address that Lula gave the presidential seal of approval to the concept of a framework of civil rights for the Brazilian Internet.

Free software and Lula's launch

The FISL had been organized as an annual event in Porto Alegre since 2000 by the *Associação de Software Livre* (ASL; Free Software Association) and had served as an important gathering point for the burgeoning free software community in Brazil. Free software emerged as a reaction to informational capitalism's sweeping logics of commodification and control, particularly as manifested in proprietary software in the 1980s (Soderberg 2015). Although an apolitical libertarianism became the dominant ethos amongst programmers in the United States, by contrast, free (libre) and open source software (FLOSS) had become peculiarly politicized in Brazil.

This politicization occurred by association with a number of factors: the country's recent history of civic repression and media control; the trade union movement, particularly the current of *novo sindicalismo*; the PT government's agenda of national development; and finally, the genesis of the community in Porto Alegre where participatory democratic experiments had characterised municipal politics since the late 1980s (Baiocchi 2017, p.38-39; Shaw 2011). Not insignificant amongst these factors was the perception amongst many free software advocates in Brazil that this mode of technology production would permit Brazil to transcend the constraints of its peripheral status within global capitalism.

As the analysis of Chapter 3 makes clear, the political embrace of technology as a developmental accelerant, in order to overcome the constraints of the periphery, has a long historical trajectory in Brazil. The promotion of FLOSS by the PT government represented only the latest chapter in that history. As Carlos Affonso Souza of the CTS opined to me, "to talk about technology is increasingly essential for your everyday political agenda". The fact that Lula describes 'digital inclusion' as the "sexiest word in government" in his FISL keynote is, in this regard, a telling claim (Tiemann 2009). Ultimately, given that in 2009, the PT were already positioning themselves for the 2010 Presidential election, and that the promotion of free culture and free software constituted some of the most acclaimed aspects of Lula's second term in office, it should perhaps not be surprising that Lula opted to make a landmark announcement at the FISL.

Alongside the electoral calculations, there was a personal dimension that played a large part in Lula declaring his support for the Marco Civil, that also emanated from the politicized free software community. It came in the form of two figures who could count on profile and influence within both the ASL and the PT: Sérgio Amadeu and Marcelo Branco. A measure of Lula's confidence in Amadeu can be gleaned from the fact the former recruited the latter in 2003 to head the Federal agency *Instituto Nacional de Tecnologia de Informação* (ITI) in charge of state encryption tools. In that role, Lula gave Amadeu license to use the ITI as a platform to push for the conversion of proprietary to free software throughout the Brazilian state (O'Maley 2015, p.50).

Branco, meanwhile, was a founding member of the ASL, organizer of both the FISL and Campus Party events, a longtime PT member, and prominent figure within various state informatics companies (O'Maley 2015, p.40-41). A measure indeed of Branco's perceived worth within the party was that he was recruited by Dilma Rousseff to run her web campaign for the 2010 presidential election. The influence of both men on the President was understood to have been key to Lula's decision to publicly pronounce against the Lei Azeredo, and in favour of a Marco Civil (Paranaguá research interview; Papp 2014, p.32). Both indeed were publicly recognised in Lula's speech (Tiemann 2009). And as the political genesis of the Marco Civil, it is important to analyse the discourses present in President Lula's address.

These played a large part in establishing the boundaries within which the Marco Civil would be constructed, most notably for the drafters of the bill in the Ministry of Justice who cited Lula's address as providing them with the seal of approval they needed to begin work on the project. As both a political champion of free software and digital inclusion, as well as head of a neo-developmentalist state project, President Lula draws upon a particular fusion of cyber-utopian and developmentalist discourses in his speech. Both of these discourses, as we will discover, were pivotal in shaping the legislative project of the Marco Civil itself.

The Presidential framing of freedom and development

Lula takes the opportunity at the outset of his speech to laud free software in general. In his characteristically folksy style, Lula begins by likening the difference between proprietary and free software as the difference between preparing a dish themselves with "a Brazilian flavour to the food",

or simply "eating whatever Microsoft wanted to sell us" (Tiemann 2009). It is in the next lines, however, that the tenets of the digital discourse are revealed.

In the competition between the dishes "what prevailed, simply, was freedom". Elaborating on this idea, Lula claims that FLOSS "valorizes people's individuality" and that "there is nothing more that guarantees freedom than if you guarantee individual freedom and that people allow their creativity to flourish…". Moreover, Lula uses the closing line of his address to claim that "Finally, this country is getting a taste for freedom of information". The signifiers of individual freedom, creativity and the free flow of information are key tenets of the legitimation discourse of informational capitalism.

The discourse of cyber-utopianism is also apparent in Lula's speech as he proceeds to eulogise the Internet as a transformative technology. It is also one into which he articulates themes from Brazilian history, as evidenced here: "I think that we are living through a revolutionary moment for humanity in which the press now does not have the power that it had a few years ago, information is no longer a selective thing that the holders can use for a coup d'état."[4] Evoking 'a revolution for humanity' as a consequence of the Internet's diffusion is a recurring conceit of cyber-utopianism. The reference to the coup d'état, meanwhile, refers to the information control imposed by the military dictatorship and their media apparatus. This reference also connects implicitly to Amadeu's coinage of the 'AI-5 Digital'. The connection between the Lei Azeredo and Brazil's history of media control is made more explicit when Lula addresses the topic of the controversial bill directly. He claims that the Lei Azeredo "does not seek to address abuses of the Internet. It, in truth, seeks to create *censorship* [emphasis added]" (2009). According to Santarém's analysis, censorship was the "magic word", because it made the Lei Azeredo "publicly indefensible" (2010, p.93). In my analysis, I explain why this was the case. Furthermore, I show the discursive connections that it enabled, the alternatives that it precluded, and the consequent influence that it bore on the eventual form of the Marco Civil.

To be clear, the central charge of 'censorship' is only one of many that Lula could have chosen to make against the Lei Azeredo. He might also have drawn attention to the intended political-economic effects of the bill: to minimize the risk exposure of Brazilian financial entities[5]; to surveil users on behalf of the

[4] A bitter irony, given the role that the traditional media in Brazil played in both Dilma Rousseff's impeachment in 2016 and Lula's imprisonment two years later that were widely considered to be illegitimate and politically motivated.

[5] An aspect of the Lei Azeredo that was highlighted by Amadeu with his claim that "os bancos querem democratizar o seu prejuizo ("The banks wish to democratize their losses") that became a slogan of cyber activists (Caribe Research interview).

IP lobby and security state; to protect the central commodity form of IP rights holders from unauthorised circulation. Reference to any of these aspects of the Lei Azeredo's provisions might have signalled to the drafters of the Marco Civil that the legislative project should consider the relationship between online civil rights and the structural inequities of the Internet in a concerted way.

Instead of any of the above dimensions of the Lei Azeredo, however, Lula opted to sound the alarm of 'censorship'. By doing so he was able to associate himself with the popular activism focused against the 'AI-5 Digital', a term coined by his confidant and colleague, Sérgio Amadeu. Moreover, censorship represents the antithesis of the creative freedom enabled by FLOSS in particular, and the Internet in general. Not only is creative freedom a meta-signifier within the digital discourse, but by invoking it in his speech Lula therefore also allied himself with the free software community in a resonant way. It was in some respects a strategic alliance as the government would need a supportive constituency for this project. As the CTS' Affonso de Souza explained to me, "If there was some group that we thought that could easily be plugged in to the whole idea of the Marco Civil, it was at the time the community around free software…" (Research interview).

The closest that Lula came to explicitly conceptualizing the inchoate Marco Civil is in the following: "What we need, comrade Tarso Genro, is perhaps to change the Civil Code, perhaps we need to change something. What we need is to make those people responsible, those people who work with the digital question, with the Internet. We must make them responsible, but not prohibit or condemn." The fact that Lula called upon Tarso Genro, then Minister of Justice, to lead the project was significant. because it implicitly occluded the participation of the Ministry of Communications. The latter Ministry might have been the obvious base from which to develop a new legal framework for the Internet (Abramovay 2017, p.59), but the close ties between the Minister of Communications, Hélio Costa, and the telecommunications sector were well known. Accordingly, any attempt to regulate the Internet in a way that would not be controlled from the outset by Brazilian telecoms interests, meant evading institutional capture by the Ministry of Communications.

It is also useful to draw attention to the presence of the other core discourse in Lula's address; that of developmentalism. For instance, one of the PT government's core digital inclusion programs was *Computador para Tudos* that aimed to make the desktop computer "arrive at the country's periphery" (Tiemanns 2009). Indeed in the context of recounting various initiatives of the PT government focused on digital inclusion, democratic participation and socio-economic development, Lula qualifies their

importance by stating that "this country is still finding itself, because for centuries we were treated like third class citizens, we had to ask permission to do things, we could only do the things that the United States or Europe let us do." The notion of Brazil existing at the periphery of the global economic system is explicit in Lula's statement here, and is one that I argue is key to understanding the significance of the Marco Civil within a global system of informational capitalism.

Lula's FISL address marked the political genesis of the Marco Civil. One important reaction came from De Almeida, at the time an Advisor within the Ministry of Justice's *Secretaria de Assuntos Legislativos* (SAL): 'OK, we have a mandate to do something. It was the carte blanche SAL needed to be able to touch the issue.' (Brito 2015, p.52, *translation mine*). The manner in which the 'issue' of the Marco Civil was addressed by Almeida and his colleagues is the focus of the next section. This is the phase in which the horizon of possibility for the Marco Civil was, in theory, opened up by the decision to undertake an online public consultation, but in fact, underwent rapid constriction.

Institutionalization: 'IP hipsters' and Brazil's 'Ten Commandments' for Net Governance

One of the main thrusts of this thesis is that in order to understand how the Marco Civil reached its eventual form, and how alternative visions were occluded in the process, the exercise of power needs to be approached in a multi-faceted way: not only material *or* discursive, but their myriad combinations. One of the most significant ways in which discursive and material power are combined in practice is in establishing the boundaries of debate for a contentious topic. After all, following Foucault: power is not simply oppressive; it is productive (1992). The title of this chapter - 'circumscription' – indeed underscores the importance of that dimension of power.

Flyverbom's exploration of how objects and actors are 'ordered' within global Internet governance shows how "power and authority are not only about hard government, decisions and clear-cut victories, but also about the ability to foster and steer dialogue, to make issues visible, to encourage involvements of different social worlds…" (2011, p.160). In examining the network neutrality debates in the United States in his doctoral dissertation, Newman (2016) arrives at a similar conclusion, arguing that the regulatory authorities and the corporate stakeholders succeeded in consolidating "a form of 'processing bias': the arguments themselves, in their processing by all players involved, needed to hew to a particular set of terms in order to *matter* as an actor where decisions were made" (p.26). This

reasoning was not entirely lost on the protagonists in the Marco Civil. As a senior figure at a US web company commented to me about the online consultation "If there's something that's biased about these tools from the get-go, it's that they invite comments on the draft, *and there could be plenty of things that are not on the draft*…".

The analytic gaze for this section settles therefore on the process of institutionalization that occurred as the Marco Civil transformed from an aspirational concern into a concrete legislative project. As a nucleus of young IP and technology lawyers took the reins, I argue that the digital discourse became a dominant force in shaping the contours of the Marco Civil and the digital rights contained therein. I identify some of the decisive factors in this process. One was the decision to use a document drafted by the Brazilian Internet Steering Committee (CGI.br) called the 'Ten Principles', or *Decálogo,* as a template for the Marco Civil's rights framework. Another was the partnership forged between the Ministry of Justice's Secretariat of Legislative Affairs (SAL) and the Getulio Vargas Foundation's *Centro da Tecnologia e Sociedade* (CTS), one that precluded the inclusion of more radical voices in the project's formation. Finally, stemming from this institutional alliance, I focus on the remarkable uniformity in professional vocation and intellectual formation of the bills drafters. It heralded the creation of what Streeter terms an "interpretative community" (1996), one that can designate which positions are open for debate, and which are beyond the pale.

The formation of a (miniature) 'interpretive community'

As we saw in the previous section, in his pivotal FISL keynote speech, it was the Minister of Justice, Tarso Genro, who President Lula commissioned to establish the Marco Civil. In the process of bureaucratic delegation, the task therefore fell to the Secretariat of Legislative Affairs (SAL) that operates within the Ministry of Justice. The role of the secretariat is to develop frameworks for new laws and stick-handle their passage through the relevant organs of state. In 2009 SAL was occupied by two key figures: Pedro Abramovay, Secretary of SAL from 2007 until 2010 (when he became the youngest Secretary of Justice in Brazilian history); and Guilherme de Almeida, Advisor to the Secretary from 2009 until 2010 (when he was promoted to Chief of Staff). Both men were in their mid-twenties and formed a nucleus around which the SAL was populated with young lawyers committed to the democratization of the legislative process (Abramovay 2017, p.67). Moreover, both Almeida and Abramovay – alongside Ronaldo Lemos, who wrote the pivotal op-ed analysed in the previous section -

were classmates in law school at the Universidade de São Paulo during the late 1990s[6]. These three men would become the architects of the Marco Civil.

Lula's proclamation at FISL was warmly welcomed by Abramovay. The Secretary had been seeking for some time to establish a process within the Ministry of Justice that could facilitate public debate, as opposed to simply 'public consultation', around legislation, to create in his words: 'a collective learning that would produce better law' (Abramovay 2014). Although the bureaucracy within the Ministry of Justice had repeatedly blocked this possibility, the impetus generated by the President's speech was enough to shatter the institutional inertia.

Two external partnerships were key to this breakthrough. One provided the technical capacity and was struck with a program in the Brazilian Ministry of Culture called the *Fórum da Cultura Digital Brasileira*. This permitted SAL to use an open source digital platform that the Ministry had created to facilitate debate around public policy, *culturadigital.br* (Santarém 2010, p.96). The other partnership was institutional and connected SAL to the *Centro da Tecnologia e Sociedade* (CTS), a technology think tank and research centre within the renowned *Fundação Getulio Vargas* (FGV). It is the latter partnership, I argue, that constituted the 'interpretive community' that delimited the civic potential of the Marco Civil.

As discussed at length in the previous section, Ronaldo Lemos was the lead researcher and co-founder of the CTS team. He had already become the de facto public face of the campaign for a civil regulatory framework for the Brazilian Internet. More than that, Santarém explained to me that his public profile was "incomparable with any other figure like him…he transcends the question of law, he is more about entrepreneurialism, technology". This profile translated into the vision of a Marco Civil outlined in his influential op-ed, one focused on the protection of innovation and efficiency that, in turn, became an orienting framework for the nascent bill.

The decision by SAL to partner with CTS was multi-dimensional. As Almeida explained to me, one dimension was pragmatic: to access technological and financial resources that would be harder to acquire through the machinery of the state. Another was personal: Almeida had known Lemos for twenty years and he was a trusted friend. The final and most significant was strategic: "They had a

[6] While upon graduation, Almeida and Lemos worked in telecommunications law in São Paulo, Abramovay took an MA in Constitutional Law at the Universidade da Brasilia.

public face that was recognised, valid, legitimate, and was not necessarily from one side of the other. I think if we had hosted the similar process in either Abranet's[7] website, or the Brazilian free software association's website, I don't think we would be seen as openly mediating civic debate".

Rather than adding a greater variety of perspectives to the SAL team, arguably the partnership with CTS served to further distil the ideology of the group, to undergird the creation of an 'interpretive community'. The tongue-in-cheek appraisal of one of the senior researchers and co-founders of the CTS, Carlos Affonso Souza, is instructive in this regard; he described the CTS as 'IP and Internet regulation hipsters' (Papp 2014, p.40). Nearly all young men, they were all indeed trained in IP and/or technology law. In interview he also lauded the uniformity of opinion that reigned within the partnership: "They had the very same view that we had for the Marco Civil as a whole. So, in terms of substance, of content, there was no major discussion or different opinions from the team of the Ministry of Justice and our team…We could not have asked for better people to work with".

On this detail, the SAL/CTS partnership does deviate from Streeter's description of an interpretive community. This is because it should not "generate absolute unanimity on all issues. Particularly since its self-understanding includes the premise that its activities are on some level consistent with liberal democratic discussion, it frequently engages in heated debate and struggle over particular issues" (1996, p.117). Streeter though was attempting to conceptualize the entire communications policy apparatus in Washington DC. It is for this reason that I characterise the CTS/SAL group – comprising less than a dozen core members – as an interpretive community *in miniature*. I argue that the remarkable ideational harmony that Affonso describes was derived from their shared professional vocation and worldview. It resulted in certain 'principles' of the Marco Civil – that we will examine in short order – being embraced as commonsensical, while others were dismissed as inconceivable. This constitutes the real essence of Streeter's "interpretive community".

Pragmatic pirates

Almeida was not alone in hailing the centrist legitimacy of the CTS as a development partner for the Marco Civil. The activist Caribé, for instance, characterised CTS to me as a "progressive nucleus within a conservative institution". Its involvement in the campaign against the Lei Azeredo was instrumental

[7] The Brazilian Internet Service Providers' Association

in discrediting claims that it was the project of ‘communists’ or ‘anarchists’. The label of ‘communism’ indeed remains a charged political term in Brazil - a legacy of the military dictatorship - and was a rhetorical device frequently used against the Marco Civil by its political opponents.

Although Almeida dismissed the viability of co-developing the Marco Civil project with, for instance, the ASL (Brazilian Free Software Association), it is hard to dismiss the idea that the partnership with CTS/FGV served to marginalise actors with a distinct vision for what the Marco Civil could become; one that might be much further removed from the logics of informational capitalism and its legitimation discourse. The *Partido Pirata*[8] (Brazilian Pirate Party) represented one such actor.

The Partido Pirata had been prominent in the opposition against the Lei Azeredo (Papp 2014, p.29; Santarém 2010, p.91). The proposed cybercrime bill was indeed antithetical to the pirate movement’s core values of eliminating government surveillance and reforming IP (Beyer & McKelvey 2015, p.900). Accordingly, the Partido Pirata and CTS became unlikely allies; united in their opposition to the Lei Azeredo. The prospect, however, of the ‘IP hipsters’ of the CTS’ technocratic vision of digital rights aligning with that held by the Pirates was negligible. This fact is underscored by one of the lead researchers within FGV, Luis Moncau, who characterised to me the Marco Civil as a “process of the community understanding that maybe that declaration of ‘Freedom of Cyberspace[9]’, maybe it’s not so true….”.

Indeed, as we will examine during this and the following chapters, the Pirate Party overcame an innate suspicion of government regulation of the Internet to voice initial support for the Marco Civil. They did so in spite of also articulating an alternate vision for the project that would have challenged the systemic logics of informational capitalism to a much greater degree than the framework devised by SAL/CTS. Out of pragmatism rather than conviction, the Partido Pirata would continue to support the bill through its Congressional phase, until the concessions demanded by the powerbrokers of informational capitalism dragged the Marco Civil into direct conflict with the values of the party (Partido Pirata 2013).

[8] Although officially incorporated as a national organization in 2012, it did operate as a more fragmented entity in Brazil since 2003.
[9] A central text of the cyber-utopian discourse, published by John Perry Barlow in 1996.

The empty signifier of 'participation'

One of the facets of the Marco Civil's development that marked it out for international acclaim (Web We Want Foundation 2014; Economist 2014) was its preliminary phases of open public debate. In the next and final section of this chapter I will go on to outline the limitations and peculiarities of this public consultation, that derived from Brazil's status at the periphery of informational capitalism. It suffices at this stage to focus on a different dimension of the consultation phase, one that also challenges the notion that the Marco Civil represents a blueprint for digital rights simply by virtue of having conducted a public consultation. I argue that rather than allow the fact of the consultation to obscure its substance, we need to understand not only the rationale for conducting this process, but also how the parametres of the debate were constricted from the outset. This focus will bring the constitutive force of the digital discourse into sharp relief.

It would be misguided to present the decision to conduct a public consultation as a cynical exercise, one frequently observed where the state's agenda is obscured by a veneer of democratic legitimacy. The intentions of the drafters to stretch the sinews of social participation in the legislative process, as far as one can discern reliably from the outside, were sincere. It was in the words of CTS researcher, Carlos Affonso Souza, an effort to "create the best and most diverse and most transparent bill of law that Brazil ever saw…it was a process to radicalize the democratic component of the legislative process" (Research interview).

Moreover, there also appeared to be a genuine belief that by collating opinion in an open way, optimal legislation would be the result. As per the SAL advisor, Almeida, the team wanted to 'listen to society and capture the best arguments to be able to write a better text; (Brito 2015, p.63, *translation mine*). This idealism was necessarily buttressed by pragmatism, an understanding that a law that was legitimated through the unfettered input of Brazilian society might better withstand the pressures exerted on it within the battleground of the Brazilian Congress. The manager of the online consultation, Paulo Santarém, affirmed to me that "we were looking to present to the Congress a project that had the weight of social legitimation". This is a claim echoed to me by Almeida: "people were so suspicious of the government, so making this a really open process and bringing people on board and trying to make people feel the ownership of the regulation became crucial to us. We won't be able to …create a new law if we don't find legitimacy".

Undergirding this rationale, however, were the precepts of the digital discourse and their crystallisation within the SAL/CTS team as common-sense. This served to heighten the value of participation within the group, to the extent that the *fact* of the consultation they facilitated may have blinded them to its nature. This was moreover the case given the crucial framing role they played in setting the initial boundaries of the debate.

Participation is a meta-signifier within the digital discourse, one used to legitimate the workings of informational capitalism. According to this discourse, participation in networked communication technologies allows users to overcome the limitations of traditional hierarchies and to enjoy the rewards of "democratization and decentralization" (Fisher 2013, p.111). The framing and sublimation of participation in the digital discourse in fact promotes a form of shallow engagement that occludes the power inequities between platforms and users, and that undermines the state, and the prospects for substantive democracy. As Mejias (2013) argues, "the participatory culture of the digital network has more in common with the society of control, where the desire to conform emerges from within the body" (p.25).

Participation as signifier also serves a dual function in terms of what it co-constitutes: a social atomization conducive to the workings of the market, and a mode of activity that 'feeds' many of the main business models that drive informational capitalism. The notions of 'participatory democracy' and 'DIY digital citizenship' were indeed popular buzzwords in academic and media texts during the mid-to-late 2000s (Dahlberg 2010, p.332). The influence of participation as a tenet of the digital discourse, I argue, can also be observed in the formation of the Marco Civil.

The following statement by SAL's then Chief of Staff, Daniel Arbix (2008-09), is revealing in this regard. He describes how "for everyone in this moment there was a great belief that *participation is a value in itself and must be maximized* [emphasis added]. And new technologies opened up a tremendous opportunity to do this" (Brito 2015, p.54 *translation mine*). It should be noted that in a general sense the PT government under Lula had gained renown for its efforts to extend participation in the democratic process (Avritzer & Anastasia 2006), while for SAL in particular, fomenting participation was part of its institutional agenda. Even within the context of the Brazilian political experience under

various levels of Workers Party administrations, the initially radical nature of 'participation' had been hollowed out by the end of Lula's second mandate. As per Baiocchi (2017):

> Today, the version of participation that dominates both governmental discourse in Brazil and discourse among international traffickers of participatory blueprints incorporates elements of the radical-democratic and revolutionary councils, which emphasize equivalence and inclusion, *even if they have given up ideas of social transformation and popular empowerment* [emphasis added]. (p.43)

We should also note that the Secretary of SAL, Abramovay, declared that he was actively trying to create a "Wiki-culture" within the legislative process (Abramovay 2017, p.69). A precursor to the Marco Civil created in 2007 between the Italian government and the Brazilian Ministry of Culture under Gilberto Gil also merits mention here. Isin & Ruppert (2015) cite the bill's architects as arguing that "the Internet constitutes a world without borders and will require a new cultural model of making digital rights claims from the bottom up" (p.173). Similarly, the notion that the open source *Wordpress* platform selected for the consultation was imbued with the rhetoric of 'collaboration' (Brito 2015, p.64). Or, that as the process was ongoing, Brazilian Internet activists referred to the consultation as a "hacking of the state" (Solagna 2015, p.80). Given the quite modest nature of these experiments, it brings to mind the caustic observation by Delfanti and Söderberg (2017) in their analysis of hacking that "the very idea that tinkering offers a way to subvert the agendas of the powers-that-be has become a foundational myth of contemporary capitalism." (p.461)

Perhaps the most convincing evidence that the digital discourse was a formative influence in the decision to undertake a public consultation can be discerned in the rhetoric used by Abramovay at the opening ceremony of the Marco Civil in October 2009. In this address, Abramovay declared that 'we knew that new technologies give us infinite possibilities to rethink democracy. Representative democracy since the 17th century…we hear the mantra that it was conceived in this way because it was impossible to return to Ancient Greece to place everyone in a public square. Today it is possible to place everyone in a public square' (O'Maley 2015, p.71 *translation mine*). The ideas that ICTs offer the potential to redesign our democracy, and that a return to the Athenian Agora is possible, correspond to the discourses of cyber-utopianism (Dahlberg 2010) and the 'digital sublime' (Mosco 2009).

The significance of underscoring the constitutive force of the digital discourse in this instance is to make the point that *the fact that there was open participation* at the inception of the Marco Civil obscured for many observers and participants, including arguably the drafters themselves, both the shortcomings of that participation, and *what they were being asked to participate in*. This latter deficiency sorely needs to be addressed and is what the remainder of this section will focus on. Indeed, the fact that so much work has been introduced into academic literature about the mechanics of the public consultation, by the drafters themselves as well as others (Segurado 2011; Bragatto, Sampaio, & Nicolás 2015a&b; Anastácio 2015; Affonso Souza & Lemos 2016; Abramovay 2017), that includes so little on how the initial framework was devised, underscores my point. I do not contend that was any attempt to 'bury the truth', or anything so conspiratorial. What underpins this collective omission is, I believe, an unquestioning faith in the legitimacy of the source documents on which the Marco Civil was based. Challenging this kind of common-sense thinking, and the alternatives it precludes, is however, one of the founding rationales for this thesis.

From the WSIS to the Marco Civil (via the Decálogo)

Again, a caveat first. From my discussions with them, as well as their testimonies made elsewhere, the SAL team were forthright about their primacy within the legislative process, and particularly with regards to the public consultation. Almeida makes this clear when he stated that although they were committed to collating public opinion, "at no time did we renounce our prerogative to write (the bill)" (Brito 2015, p.64 *translation mine*). The role of the Ministry of Justice in setting the legislative agenda was absolute, and it was also legitimate. The manner in which that agenda was established, however, was again circumscribed from the outset.

Faced with the daunting prospect of a blank canvas at the launch of the drafting process, Almeida explained to me that:

> We have this problem that we have to make our institutions, which are national, which are local and sovereign, dialogue with the Internet which is like global, constantly evolving and so forth. And how can we merge them both. And we tried to bring in from two different origins. One was the 10 commandments of the Internet in Brazil which was how can we perceive Internet from our lead entity that is legitimate to do this, and the second was the Brazilian

> Constitution. … We had to bring perspectives from both and see if they could mingle. I think this was complex enough, legitimate enough, to start a discussion.

The 'ten commandments' or *decálogo* that Almeida mentions refers to a set of principles for the governance of the Brazilian Internet published in 2009 by the Brazilian Internet Steering Committee (CGI.br), the product of a multistakeholder development process (CGI.br 2009). The foundational role of this document is what allows us to draw a line connecting the genealogy of digital rights detailed in Chapter 2 to the development of the Marco Civil.

The decálogo was devised over the course of 2 years by the 21 members of the CGI's standing committee (V. Almeida, Research interview). The impetus to produce this document was generated by the manifold threats to what many committee members considered to be the founding principles of the Internet's operations and structure. These threats included most notably the proposed Lei Azeredo, but also several judicial decisions in Brazil in the mid 2000's. One notorious example was the decision in 2007 by a lower-court judge to block the video-sharing website, YouTube, for all Brazilian users because of Google's refusal to remove a contentious video (LA Times 2007).

The fact that the development of the decálogo began around 2007 is significant. As I have established earlier in this study, the WSIS events occurred in 2003 and 2005 and set the paradigm for digital rights; one based upon technocratic, market-friendly and individualist fixes. The decálogo therefore emerged as one of the first post-WSIS digital rights charters and, I argue, was moulded in its image. It should be noted that although published with the subtitle "principles for the governance and use of the Internet", the decálogo was also explicitly created as a set of civil and communication rights. As the early Internet pioneer and CGI.br member, Carlos Afonso (popularly known as Caf) explained to me: "The point of view of civil society is always supposed to be the point of view of rights. The right to communicate etc. So we also try to influence that. So that is why in 2007 we decided we should have a set of principles for our own use…And we created those famous 10 principles…".

Specifically, the ten commandments are comprised of: *Freedom, privacy and human rights; Democratic and collaborative governance; Universality; Diversity; Innovation; Network neutrality; Limited third-party liability; Functionality, stability and security; Standardization and interoperability; Legal and regulatory environments* (CGI.br 2009). Each of these rights or principles is accompanied by a short explanatory text. A critical analysis of these helps to reveal the discourses that orient the charter.

The first principle, *Freedom, privacy and human rights*, explains that "The use of the Internet must be driven by the principals of freedom of expression, individual privacy and the respect for human rights, recognizing them as essential to the preservation of a fair and democratic society" (translation mine). The promotion of freedom of expression within the digital rights paradigm is presented as a negative right that obfuscates the structural conditions in which communication occurs. This, I argue, is the result of the expressive capacities of netizens being sublimated within the celebration of Web 2.0 and the digital discourse that accompanied it. This discursive construction of freedom of expression fails to address the surveillance architectures and algorithms designed to maximize data capture, or the hyper-commercialism of the Internet. Moreover, the emphasis on 'human rights' – as analysed in detail in Chapter 2 – serves to individualise, universalise and depoliticise digital rights, while demonstrating a shallow engagement with freedom of expression and privacy, but neglecting other substantive parts of the paradigm.

Meanwhile, the explicit reference to "*individual* privacy" is another characteristic of the digital rights paradigm. As surveillance scholars such as Gilliom reminds us, privacy is too often presented as hyper-individualist, legalistic and fails to adequately confront the surveillance regime that it purports to rebuff (Gilliom 2011). As Taylor (2017) similarly asserts, "New data technologies tend to sort, profile and inform action based on group rather than individual characteristics and behaviour, so that in order to operationalise any concept of data justice, it is inevitably going to be necessary to look beyond the individual level" (2017). Ultimately, these framings of privacy and freedom of expression serve to legitimate the logics of informational capitalism.

The second principle of *democratic and collaborative governance* declares that "Internet governance must be exercised in a transparent, multilateral and democratic manner, with the participation of the various sectors of society…". Multistakeholder policy development for the Internet is another core tenet of the post-WSIS paradigm. It serves to depoliticise the entrenched power relationships within informational capitalism covering it instead with a veil of 'consensus-based decision-making' (Powers & Jablonski 2015).

Universality is premised on "the idea that Internet access must be universal so that it becomes a tool for human and social development". Without any reference to the nature of the provision of Internet access, however, 'universality' implicitly legitimates the concentrated control of telecommunications

resources by corporations at the expense of the public interest. The principal of *innovation*, meanwhile is also a key signifier within both the digital and the neoliberal discourses, one that gives "technological clothing" (Fisher 2013, p.74) to the flexibility of market-based policies. The principals of *network neutrality* and *limited third-party liability* meanwhile, are both shallow proxies for user rights that are in fact techno-legal policy measures favouring certain actors within informational capitalism, specifically the business models of web companies.

The only stipulation for the *legal and regulatory environment* is that it "must preserve the dynamics of the Internet as a space for *collaboration*". The elevation of 'collaboration' to the foremost principle of the Internet's function should not be dismissed as happenstance. Collaborative production is vaunted within the digital discourse as a means to achieve user empowerment as well as decentralization and democracy (Fisher 2013, p.109). Collaboration as a signifier is also used to obscure the value of collaborative activities online as a mode of accumulation within informational capitalism. And as the Brazilian legal scholar Marcelo Thompson points out in his critique of the Marco Civil, lauding the value of collaboration is part of a worldview that technologizes society, one that understands people "being operatively assimilated by multitudinous networks rather than the other way around…". He also reminds us that collaboration is not indeed the "double of solidarity nor a fundamental of friendship" (2010, 9 *translation mine*). Finally, and perhaps most notably, an exclusive focus on collaboration forecloses many other possibilities for legal and regulatory measures that could safeguard the Internet for democracy.

Ultimately, any connection to wider social justice agendas, any reference to collectivist principles or structural reform of the Internet is obscured in this reckoning of digital rights and principles. The decálogo draws heavily upon the digital discourse in its selection and justification of the core principles of the Internet's use and governance. These tenets of the digital discourse privilege individual autonomy, creativity and expression. They legitimize the functions of informational capitalism but obscure any substantive reckoning of digital civic rights or any measure that might safeguard the Internet as a medium of genuinely democratic communication. And where the ideological function of the digital discourse is not evident, these ten principles are premised upon depoliticized techno-legal solutions that are agnostic as regards the inequities produced by informational capitalism. Indeed, the fact that the resultant text was eulogised by one of the founding members of the CGI.br as embodying "the spirit of the Internet" (Getschko 2009 *translation mine*), and that the principals were depicted in

the 2013 edition of the annual CGI magazine, Revista.br, as stone tablets presented by God (CGI 2013), suggest the degree to which the CGI presents its decálogo as dogma, obscuring alternative priorities for the network.

The neoliberal roots of multistakeholderism in Brazil

We must also contend with the history and composition of the CGI.br in order to understand how its actions align with, rather than challenge, the logics of informational capitalism. The CGI.br was initially founded in 1995 as part of the neoliberal reforms and privatizations undertaken in Brazil by the Collor de Mello and Cardoso administrations. Internet pioneers in Brazil such as Caf observed in the tumult of neoliberalisation a dual opportunity: one was to steer authority over the Internet away from the state telecoms company, Telebras, with which they had fundamental disagreements about the best technical protocols to adopt for the Internet; the other was to secure for themselves an enduring role in guiding the Internet's development.

Aided by a shared history of covert opposition to the military dictatorship, Caf and his colleagues enjoyed privileged access to the Minister of Communications, Sérgio Motta. They successfully lobbied Motta to separate the Internet from telecommunications as objects of regulation and to ensure that there was no state monopoly over provision of Internet services (Knight 2014, p.31). They also convinced him to create the Internet Steering Committee (CGI.br) as the main actor with legal authority over the Internet in Brazil. The initial composition of the government-appointed committee was weighted towards members of the appropriate ministries, as well as 2 appointees from business and one each from academia and civil society (Carvalho 2006, p.142; O'Maley 2016, p. 100-102).

The roots of multistakeholder governance of the Internet can be traced back to 1992, when Brazil hosted the UN environmental summit ECO 92 in Rio de Janeiro. Secure Internet connections were imperative for the event – at a premium in Brazil at this time - and the nascent Internet community in Brazil had to collaborate closely with state and business entities in order to pull off the feat (Anastácio 2015, p.9-10). Many of the protagonists in these events would become founders of the CGI.br. Although from this brief description, it appears as though multistakeholderism in Brazil was born of a genuinely pluralistic effort to further the public interest, I argue that the committee and its multistakeholder composition bear the foundational imprint of neoliberalism. More widely, I concur with the critique of Gurstein (2014), that multistakeholderism is the mode of governance par

excellence of neoliberalism: it negates democratic accountability; disguises established power imbalances; champions technical over public interest concerns; and veils the maintenance of a pro-market status-quo with the rhetoric of 'participation'. We would also be well-served to heed Streeter's (1996) observation that:

> If there is going to be government intervention on the industry's behalf, it must be done in a way that at least suggests the presence of neutral principles and expert decision-making. . . . Even corporations have an interest—an ambivalent one—in fostering institutions that are not mechanically tied to corporate designs, institutions that demonstrate some autonomy. (p.120)

As Gurstein argues, multistakeholderism may well be an effective and legitimate means to manage the technical minutiae of the Internet's functions (2014). However, when multistakeholderism is permitted to transcend that limited remit to become the default governance mode for all matters pertaining to the Internet - especially given the Internet's foundational role in sustaining informational capitalism – this demands a skeptical analysis of its rapid ascent.

In the case of the CGI.br, the Communications Minister responsible for its founding, Sérgio Motta, was one of the earliest champions of market-based reform in Brazil (Font 2003, 172). Although he was amongst a group of Brazilian politicians associated with a more moderate strain of neoliberalism (Boito & Resende 2007), it is difficult to imagine that Motta would have approved the multistakeholder blueprint of the CGI if he believed it would provide a governance model incompatible with neoliberal reform. In fact, Motta's agenda was also congruous with the Brazilian Internet pioneers' vision for the network. It is well-established that the Internet pioneers in Brazil were leftist exiles who abhorred the oppressive potential of a media system centralized under the state (O'Maley 2015). Neoliberalism therefore offered a means to wrest control of the Internet away from the state telecoms monopoly, Telebras. The fact that decentralization of the Internet's governance was accompanied by an outsize role for market actors was part of the trade-off.

As was clear in my interviews, CGI members display their multistakeholderism proudly, as a badge of honour (Caf & V. Almeida, research interviews). Multistakeholderism is indeed often promoted within the Internet governance community as a value in itself; an end and not the means (DeNardis & Raymond 2015). This is particularly true post-WSIS, after efforts by developing state actors to wrest critical Internet resources from US control were diffused through the creation of new multistakeholder

fora for discussing, but not *deciding*, Internet governance matters (McLaughlin & Pickard 2005). The role of the digital discourse in promoting the value of 'participation' should also be accounted for. In the case of the decálogo and its virtually unchallenged legitimacy, the *fact* of multistakeholderism obscures its nature in much the same way as the public consultation does in the case of the Marco Civil.

Indeed, the multistakeholder form of the CGI should not be conflated with democratic legitimacy. Although the CGI.br was extensively reformed in 2003 by the Lula administration to permit a greater diversity of representation[10] - in keeping with the PT's emphasis on participatory government – the effectiveness of these measures is questionable. The presence of long-term members casts doubt on the degree to which the committee is truly open to new and diverse voices. Caf also conceded to me the "imperfections" as very few eligible NGOs participate in the electoral process, while the business representatives are nominated in a "pre-arranged" fashion. Awareness of these 'imperfections' was manifest in the campaign launched by the Pirate Party in 2012 to reform a CGI.br they described as "insufficiently democratic, minimally representative and obscurely transparent" (Partido Pirata 2016 *translation mine*).

Moreover, although the decálogo was officially the product of multistakeholder 'consensus', O'Maley's analysis reveals that the decisive vote was in fact boycotted by the telecommunications representative, Eduardo Levy, in order to not validate the inclusion of network neutrality as one of the core principles (2015, p.107). According to O'Maley, Levy in particular and the telecoms sector generally, calculated that the real power lay outside the committee and that they could afford to permit the decálogo - network neutrality and all - to pass. I believe that Levy was correct in his assessment, and that if the decálogo and the workings of the CGI genuinely threatened the interests of the telecoms sector, it would have mounted an effective opposition. Given the economic power of the telecoms sector in Brazil, its tacit acceptance of the decálogo suggests a congruence between the workings of the CGI.br and the systemic logics of informational capitalism.

[10] The 21 member committee is based on a multistakeholder composition of: 9 government representatives, each representing a different ministry; 4 private sector representatives drawn from the telecoms, hardware and software industries; 4 civil society representatives; 3 representatives of the 'technical and academic community'; and, quixotically, one 'notorious expert on Internet matters' (CGI.br 2018).

Innovation > political-economy

As well as the roadmap offered by the decálogo, the public consultation manager, Paulo Santarém, made clear to me that the emphasis on private sector obligations was also driven by Ronaldo Lemos' initial framing of the Marco Civil as a guarantor of innovation in his pivotal op-ed. This corroborates my thesis regarding the enduring influence of Lemos' technocratic and pro-business approach to enacting civil legislation for the Brazilian Internet. Ultimately, within the context of the Marco Civil, the hypercommercialism of the Internet would not be addressed; a confrontation with capitalism was never on the table.

In his interview with me, I asked Almeida why the political-economy of the Internet and the ownership of platform resources did not feature within the provisions of the Marco Civil. His response was that "in a certain moment we decided that we were not regulating the Internet. We were regulating rights and obligations of people who are using the Internet. Liability, freedom of expression and neutrality to a certain extent are rights from one perspective, or obligation from another, to how you are using the Internet. In a second moment we made sure, and this was a way of gaining CGI's support, we made sure we were not discussing in the law, the Internet's critical resources".

Almeida went on to state that the Ministry of Justice did not want to interfere in critical Internet resources, such as the domain name system, because it was already successfully regulated by international bodies. They also sought to not infringe on the regulatory remit of CGI and to keep them onside as a strategic ally in their quest to pass the Marco Civil (Research interview). I argue that Almeida's perception that 'rights and obligations' necessarily precludes addressing the monopoly ownership, mass surveillance and hyper-commercialism of informational capitalism is a perspective aligned with the dominant paradigm of digital rights. In this reckoning, expression and freedom are seen as the values that should be safeguarded through techno-legal 'fixes'. The possibility of systemic, collectivist measures that address social justice concerns does not enter into the requisite 'common-sense'. Moreover, conflating the Internet's 'political-economy' with critical Internet resources is a reductive misunderstanding born of the over-emphasis on ICANN and its remit in the post-WSIS paradigm.

To fully understand this early circumscription of the Marco Civil, other factors need to be considered. The legacy of numerous aborted efforts by Lula's PT government to enact meaningful media reform –

as detailed in Chapter 3 – must also have weighed on the drafters of the Marco Civil. As they contemplated creating a bill that would actually pass through the Brazilian Congress, the doubt must have loomed over them as to why this bill would succeed in confronting the underpinnings of a concentrated media system if all prior attempts had failed? Also, the goal "to create a framework for courts not to break the Internet" (Almeida Research interview) was an understandably pragmatic vision for the Marco Civil given the nature of the proposed Lei Azeredo. The threat therein to the operations of the Internet and conventional online practices were so grievous that *any* effort to address those restrictions could be cast in a positive light.

Having analysed how the early blueprint for the Marco Civil was formed within the dominant paradigm of digital rights, through its gestation in a miniature interpretive community, as well as the intellectual lineage of its source documents, we now proceed to the final section of this chapter. Here we examine the two phases of public consultation – as well as the accompanying process of multistakeholder input – that defined this first phase of the Marco Civil's development. We do so within the context of Brazil's status at the periphery of global informational capitalism. Applying this analytic lens helps to explain how such a low level of participation was used to legitimate this early phase of the bill's development. We also critically interrogate the label of 'multistakeholderism' that has frequently been used to describe the input from private organizations and how this grossly mischaracterizes the form of participation demonstrated by the most powerful actors within informational capitalism.

Legitimation: Public consultation at the periphery

On October 29th, 2009 on a summer afternoon in FGV's headquarters in Rio de Janeiro, the Brazilian Minister of Justice, Tarso Genro, flanked by Ronaldo Lemos, Pedro Abramovay, senior executives from the FGV, and three members of Congress, announced to the assembled press that the first phase of an online consultation for the Marco Civil da Internet would begin (Abramovay 2017, p.80). Brazilian citizens qua Internet users were directed to the culturadigital.br site hosted by the Ministry of Culture where they would have 45 days to offer their suggestions on the provisional framework drafted by the SAL/CTS team. This constituted the start of the first phase of public consultation on the draft bill.

Phase I

The initial blueprint for the Marco Civil legislation that Brazilian citizens were invited to comment upon was based on a framework that did not disguise its origins in the CGI.br's decálogo. It was divided into

three main axis: *Individual and collective rights*; *Private sector obligations*; *Government directives*. Each axis then contained a number of more clearly defined principles, hyperlinked on the website (Ministério da Justiça 2009). In turn, every one of those, when clicked upon, revealed a short description of the principal, the rationale for its inclusion and an explanation of its treatment in existing Brazilian law - particularly the Constitution and the *Código da Defesa do Consumidor* (The Consumer Defence Code) - as well as relevant international equivalents.

Each principle contained a link that opened a blog page on which site users could leave a comment. The initial framework was divided as follows (*translation mine*):

1. Individual and collective rights (Axis 1)

- *1.1 Privacy*
  - *1.1.1 Intimacy, privacy and fundamental rights*
  - *1.1.2 Inviolability of correspondence and communications*
  - *1.1.3 Log storage*
  - *1.1.4 How to guarantee privacy?*
- *1.2 Freedom of expression*
  - *1.2.1 Federal Constitution and Universal Declaration of Human Rights*
  - *1.2.2 Conflicts with other fundamental rights: Anonymity*
  - *1.2.3 Freedom of expression on the internet*
  - *1.2.4 The right to receive and access information*
  - *1.2.5 Anonymous access*
- *1.3 Right to access*
  - *1.3.1 Connections to freedom of expression*
  - *1.3.2 Access to Internet and social development*
  - *1.3.3 Means of access*

2. Private sector obligations (Axis 2)

- *2.1 Clear definition of intermediary liability*
  - *2.1.1 Absence of specific legislation*
  - *2.1.2 A liability regime compatible with the dynamic nature of the internet*
  - *2.1.3 Administrative processes and extrajudicial precedents*
- *2.2 Non-discrimination of content (neutrality)*

2.2.1 The end-to-end principle

2.2.2 Unwarranted filtering

3. Government directives (Axis 3)

3.1 Openness

3.1.1 Full interoperability

3.1.2 Standards and open formats

3.1.3 Access to public data and information

3.2 Infrastructure

3.2.1 Connectivity

3.2.2 Broadband diffusion and digital inclusion

3.3 Capacity building

3.3.1 Digital culture for social development

3.3.2 Public and private initiatives

During this first round of consultation, a total of 686 comments were registered on the blog. The principals that attracted by far the most comments were: *anonymity* (139); *intimacy, privacy and fundamental rights* (76); and *log storage* (75) (Ministério da Justiça 2009). The remaining principles attracted less than half of those comment tallies. This fact suggests that an inclination to participate in the consultation was driven by the public opposition to the Lei Azeredo. Privacy, anonymity and log storage were, after all, the highest profile elements of the notorious cybercrime bill. It is indeed noteworthy that as the Marco Civil progressed through the legislative process and gained a new tripartite structure based on digital data privacy, network neutrality and limited third-party liability, the latter two of those three pillars enjoyed such limited salience at this stage. If we compare this to the public furore generated in the United States when network neutrality rules were 'in play' (Newman 2019), the contrast is indeed stark. This underscores the limited public awareness of such technical issues, a fact indicative of Brazil's peripheral status within informational capitalism, and one we will examine in more detail later in this section.

Although none of the principals selected by the drafters explicitly addressed the political-economic underpinnings of the Internet, many of them could have opened up discussion on issues related to mass surveillance, datafication, an advertising driven online economy and public ownership of data and platforms. The reality, however, revealed by a close reading of comments registered under the three

principles identified above showed that participants were predominately following a libertarian agenda, or were debating the merits of particular technical dimensions of Internet functionality e.g. the adoption of the IPv6 protocol.

Certainly, my reading of these comments aligned with the interpretation of Bragatto, Sampaio, & Nicolás et al (2015a) of the first phase consultation as a whole. According to those authors, “libertarianism” was the predominant ‘position’ espoused by participants. This entails the “non-regulation of the online environment or in the creation of rules that maximize freedom in cyberspace, looking to guarantee anonymity, to oppose log storage and favourable to absolute freedom of expression online” (p.19 *translation mine*).

The Pirates’ lone dissent

One user that deviated notably from these trends was the Brazilian Pirate Party. As flagged in the previous section, the Pirates envisioned a digital rights framework based on quite different principles to the SAL/CTS team. The Pirates expressed this vision through a total of 15 comments in this first round of the public consultation. As outliers to the general trends exhibited in the consultation, these are worthy of closer inspection.

For instance, one comment logged under *How to guarantee privacy?* makes explicit reference to the “exchange and sale” of user data and advocates for its complete prohibition (Ministério da Justiça 2009 *translation mine*). This is noteworthy because the overriding concern amongst other commentators was the role of the state in accessing user data, not the practices of market actors. Another comment registered under *Freedom of expression on the Internet*, stated that freedom of expression (FoE) is impossible unless all protocols, standards and formats are open, and prohibited from being proprietary and closed. This position therefore identifies the structure and ownership of communication as intrinsic to freedom of expression. This runs against the grain of the predominant understanding of freedom of expression articulated by other commentators. These mostly consider that FoE can be effectively safeguarded so long as the state is constrained from acting as censor.

In *Internet access and social development*, the group warned that “one must pay attention to not permit the great holders of the means of mass communication to suffocate the independent and distributed production on the Internet…with the goal of maintaining their communicative hegemony…”. This clearly refers to the control of media giants in Brazil, such as Globo, and is a

warning that such market concentration should be guarded against online[11]. In *A liability regime compatible with the dynamic nature of the internet* meanwhile, the Pirates note that the "importance of the framework is to separate the service from the content" (Ministério da Justiça 2009 *translation mine*). This notion of a structural separation framework between telecoms service providers and content platforms is flagged by Newman in the US network neutrality debates as a mechanism of great democratic value that is obfuscated by focusing on the technical minutiae of network neutrality.

In *Broadband diffusion and digital inclusion* the Pirates demand that the state regulate private telecoms monopolies in order to facilitate broadband diffusion. Building upon that comment, later in the same section the Pirates advocate for publicly-owned telecoms infrastructure as the only viable way to universalize Internet access throughout Brazil. Perhaps the most radical departure from the prevailing views expressed in this consultation comes in the penultimate section on *Digital culture for social development.* Here the Partido Pirata proposes revision of IP law and the creation of state-owned digital platforms to disseminate the work of small content producers. Furthermore "the state could intervene directly in network infrastructure to provide services to citizens. Not only of access, but also the production of content and the infrastructure to do so" (Ministério da Justiça 2009 *translation mine*). The notion of publicly owned content platforms corresponds quite precisely to the digital rights attributes of a social critique of capitalism. It is political, collectivist, public and founded upon state intervention and systemic change.

The fact that the Partido Pirata were ploughing a lone furrow in their conceptualization of digital rights offers two important considerations. The first is that, as per Flyverbom's (2011) notion of the exercise of power within Internet policymaking as the capacity "to foster and steer dialogue, to make issues visible…" (p.16), then the drafters consultative framework was extremely effective in circumscribing the scope of debate within the intended limits. As Dolber (2013) also notes, "policy reform activists must be in conversation with the values and norms of the dominant institutions in order to be taken seriously…" (p.149). Another explanation points to the constitutive force of the digital discourse in constricting consideration of issues by Brazilian citizens qua Internet users outside of the digital rights paradigm; ie. expression, freedom and individualism as opposed to social justice, equality and

[11] The Pirate Party were justified in their concerns as data from 2010 shows that the most visited news sites in Brazil were dominated by the Globo, Folha and Abril media groups (Ceron 2010), while Globo and Folha, alongside one ecommerce service, represent the only Brazilian entities in the top ten most visited sites in Brazil, a list otherwise comprised exclusively of US web companies (Mizukami et al 2013, p.46).

collectivism. This latter point is especially germane given the concentration of commentators working in the software development/technology sector, as highlighted in the analysis of Papp (2014).

“Artisinal” or “horrible”?

In terms of the number of participants, a total of 130 registered participants logged a comment in this first phase. As the analysis by Bragatto, Sampaio, & Nicolás et al (2015a) damningly reveals, the concentration of participation is even greater given that 67% of the comments were posted by just 13 individuals (p.15). This reveals that despite the high-profile activism that accompanied the Lei Azeredo - including an online petition attracting over 150,000 signatures (Leite & Lemos 2014, p.4) - the first phase of online consultation for the Marco Civil attracted a level of participation that was vanishingly small. Even in the context of Brazil’s Internet population the disparity is stark: Internet diffusion in 2009 stood at around 40%, equalling approximately 80 million people (Internet Live Stats 2009). Moreover, other analysis showed that the participants were all lawyers, programmers, researchers and IT professionals (Papp 2014, p.54): a tiny technical elite whose work tightly orbited the issues under discussion. As per the claims of Brazilian Internet pioneer Carlos Affonso, however, “there are people who think that just because everyone uses it, that everyone cares about the future of the Internet; but it’s not like that” (quoted in Papp 2014, p.54 *translation mine*).

The drafters were at pains to note that the limited uptake did not undermine their vision of the process; one founded on a collaborative rather than a participatory ethos. The former values the fact of openness, whereas the latter emphasizes the volume of input (Almeida Research interview). The low number of comments, in fact, allowed the small SAL/CTS team to assess and discuss each in turn, in a manner repeatedly described as “artisanal” (Affonso Souza Research interview). The careful and qualified deliberation implied by this scenario is not uncontested, however. As per the scathing assessment conveyed to me by a senior executive at a US web company, the participation was comparable to “YouTube comments I am afraid to say…99% of things were really horrible, and 1% were actually salvageable”.

Without doubt though, the fact that all contributions were read and considered (Santarém & Caf interviews) speaks not only to the good faith of the drafters, but also to the fact that methodologically the Marco Civil team were operating at the vanguard of established practice in terms of generating a federal law in this manner. Indeed, such was the improvisational nature of the process that if the consultation had “run to like 60,000 comments”, it would have been rendered unviable (Almeida

Research interview). Lemos later described the process as "crowdsourced" (Affonso Souza, Steibel & Lemos 2017, p.3). I contend that this characterisation is misleading. It simultaneously overstates the level of public participation, and underplays the framing role of the drafters. It is also indicative of the rhetoric that permitted the 'innovative' nature of the experiment to overshadow the limitations of both the consultative process and the provisions of the resulting draft law.

It is telling that the drafters testified to me the absence of trolling, or "messing up the debate" during the public consultation (Affonso Souza & Santarém research interviews). It is worth considering the phenomenon of astroturfing that beset one of the early rounds of public debate on network neutrality policy in the United States (Bangeman 2006), or the automated responses that flooded a later FCC consultation on the same topic (Lecher, Robertson & Brandom 2017). These were widely attributed to lobbying groups representing the telecommunications sector and opposed to network neutrality provisions in the US.

The fact that this phenomenon was not identified in the case of the Marco Civil is noteworthy and suggests two points relevant to this study. One is that in this time and place, the 'periphery' in 2009, online disinformation campaigns did not yet constitute an important part of the arsenal for informational capitalism's cast of actors (although a Pay TV law passed in 2007 did include an astroturf campaign and is discussed in the next chapter) . Partly this is due to the lower diffusion rates for the Internet, and partly owing to the extraordinary media concentration in Brazil that permitted broadcast to be the most effective means to manage public opinion. The second point is that for the powerbrokers of informational capitalism in Brazil, concerned with the idea that a new Internet law might impinge upon their interests, the perception likely existed that Congress was the most effective arena in which to exert their influence.

As a final observation on the first phase of the consultation process, it should be noted that only two industry actors opted to contribute suggestions at this stage: the Brazilian Chamber of Electronic Commerce (Câmara-e-net) and the industry association for Brazilian ISPs (Abranet). Given Câmara-e-net's status as an industry body representing the interests of the 'digital economy' the scope of their expectations for the Marco Civil were understandably focused on encouraging "private innovation" (Ministério da Justiça 2009), while Abranet advocated recourse to existing legislation rather than building a new civic framework for the Internet.

The first phase of consultation closed on December 17th 2009, and over the course of the next month in early 2010 the SAL team presented a first draft of the law to all relevant Ministries and offices (Papp 2014, p.57).

Phase II

This first draft of the bill, that was made available for a second round of online consultation on April 08, 2010, retained the tripartite structure of the previous framework based upon user rights, private actor obligations and state directives (Ministério da Justiça 2010b):

Chapter I – Preliminary provisions

Chapter II – The rights and guarantees of users

Chapter III – The provision of connection and Internet services

Section I – General provisions

Section II – Internet traffic

Section III – Data logs

Subsection I – The storage of connection logs

Subsection II – The storage of access and Internet service logs

Subsection III – Protecting the secrecy of Internet communication

Section IV – Content removal

Section V – The judicial requisition of logs

Chapter IV – The role of the state

Chapter V – Final provisions

From both a quantitative and qualitative perspective, the second round of consultation raised the low bar set by its predecessor. Aided by an upgrade in discussion tools, the higher public profile of the project, the engagement of civil and private organizations (albeit, as we will see, often in a shallow and instrumental way), as well as the benefit of an actual draft law to analyse, the second round of public consultation received 1,141 comments (Bragatto, Sampaio, & Nicolás et al 2015b, p.241). More significant than the volume of participation, this latter phase of debate was widely heralded as more qualified, technical and substantive than the first consultation. It was once again highly concentrated, however, with 63% of the comments posted by just 15 users in the three most commented sections

(Article 2 outlining the main principles of the law; Article 14 on connection logs; and Article 20 detailing the mechanisms for lawful content removal) (Ministério da Justiça 2009).

The activist Caribé suggested to me that although the debate required either a technical understanding of the Internet or legal knowledge in order to participate fully, it was still not elitist. I contend the opposite. Despite Brazil's noted proclivity for legalism (or perhaps because of it), those requirements of legal and technical knowledge did succeed in establishing a bar for participation that kept out all but a handful of Brazil's 80 million Internet users. Moreover, this was not at all infelicitous for the drafters, who strove for quality over quantity, knowing that the perception of democratic legitimacy would be bestowed upon the process however limited it was in practice.

Another significant recurring theme was the characterisation of the positions advocated by commentators. According to the same analysts – and as signalled by Caribé - the commentators could be broadly grouped into two camps: those associated with the IT sector and those with a legal background (Bragatto, Sampaio, & Nicolás et al 2015b, p.248). More significantly, it was quite straightforward to identify the discourses propagated by individuals within these groups. Those who worked in IT tended to espouse libertarian views "prioritizing creative freedoms and rejecting any central control" while legalists were technocratic, concerned with "detailed and thorough regulation" (*Ibid.*). These are, according to my analysis, the discourses that constituted the ideational foundation of the Marco Civil, and to identify their predominance at this formative stage of the Marco Civil's development shows how tightly the civic potential of the bill was constrained.

It is not enough though to examine the nature of the participation; what precisely were Brazilians being asked to comment upon?

Article 2 of the *Preliminary provisions* states that governance of Internet use in Brazil will recognize the "global scale of the network, the exercise of citizenship through digital media, human rights, plurality, diversity, *openness, free initiative, free competition and collaboration* [emphasis added]" (Ministério da Justiça 2009, *translation mine*). In addition, it would recognise the principals of freedom of expression, privacy, protection of personal data and network neutrality. By applying a discursive lens to some of these overarching principles, we can observe how the values of openness, free competition and collaboration correspond clearly to the tenets of the post-WSIS digital rights paradigm.

When these basic principles are distilled into specific rights, it becomes even more evident that the Marco Civil would represent a hollow conceptualization of digital rights; one attentive to the worst excesses of a repressive state but agnostic to the inequities and distortions of a hyper-commercial Internet.

To consider this point specifically, let us observe *Article* 7 of *the* *Rights and Guarantees of Users* section which states that the user has the right to:

> - "The inviolability and secrecy of their communications, except by judicial order in the case that and in the form that the law establishes for the means of a criminal investigation…"
>
> - "the non-suspension or degradation of the quality of their contracted Internet connection…"
>
> - "clear and complete information regarding the provision of services, establishing the framework for the protection of their personal data, connection and access logs[12], as well as information regarding network management practices that might affect their quality of service."
>
> - "their connection and access logs to not be used or divulged unless through express consent or judicial process" ((Ministério da Justiça 2010b, *translation mine*).

A further *Article* (8) declares that "the guarantee of the right to privacy and freedom of expression in communications is a condition of the full exercise of the right to Internet access", with a final stipulation that "exercise of the right to privacy and freedom of expression authorises Internet users to freely opt for security measures designed to protect their personal data and the secrecy of their communications" (*Ibid.*).

On one hand, the notional defence of freedom of expression and privacy by the state should have been a welcome development for Brazilian Internet users given the threats to these rights posed by the Lei Azeredo. However, without any explicit measures to address the ways in which the concentration of platform ownership and an online economy premised on data commodification imperiled those same rights, the Marco Civil failed to provide an adequate civic framework.

[12] Connection logs refers to Internet access metadata including time, date, duration, and IP address. Access logs refers to all data pertaining to the use of an Internet service (eg. electronic mail) from a particular IP address.

The measure to secure the 'inviolability of communications', meanwhile, was aimed at addressing overreach by the security apparatus of the state, especially in light of the measures proposed within the Lei Azeredo. Specifically, the provision of a judicial request being required to access connection and access logs was proposed to stymie the common practice of website operators providing user data to any Brazilian state authority, even when that request was made extralegally (Freedom House 2010).

The remaining provisions in the ***Rights and Guarantees*** section were focused not on the state but on the relationship between users and telecoms providers and platform owners. They also shared the common characteristics of being focused on individualist rather than collectivist concerns. Cumulatively, these represented a tepid collection of user safeguards, advocating technical fixes rather than substantive reform, and collapsing the categories of citizen and consumer in a way that ultimately grounded the framework in the terrain of consumption rather than civics.

To be clear, prohibiting the throttling of Internet traffic, mandating clear information for users on contracted services and permitting the use of encryption are unambiguously positive legal measures for most Internet users. It is their elevation to the tier of 'fundamental rights' that, in my judgement, needs to be accounted for given that these techno-legal measures effectively colonised the policy space that could have been used to advance structural reform and check the pernicious effects of informational capitalism.

Placating the platforms

In terms of the manner in which the practices of content and service providers would be addressed, once again the measures in the first draft of the bill failed to confront the systemic logics of informational capitalism, promising instead to tinker with its mechanics. Although some of these provisions – most notably related to network neutrality and data collection – would prove to be the object of bitter dispute between sectors of informational capitalism, it is my contention that these represented struggles over profit maximization, rather than existential threats. It is necessary to inspect some of those provisions to understand why.

*Article*s 9 & 14 referred to the obligation for ISPs to maintain connection logs for a maximum of six months – so as to meet the needs of possible criminal investigations – although they would be prohibited from maintaining records of user navigation history. This latter stipulation was in fact designed as a privacy safeguard for users, as the Lei Azeredo had demanded a storage duration of two

years. This is one of many examples of the impact that the repressive provisions of the Lei Azeredo had in tempering the civic value of the Marco Civil. Ultimately, the Marco Civil was the product of a reactive, not a pro-active legislative agenda. As a corrective to the Lei Azeredo, one of its primary goals was to limit the regression implied by the cybercrime bill, which necessarily limited the Marco Civil's progressive potential. This data retention provision would also prove highly unpopular with the telecoms sector as it limited their ambitions to profit from the analysis and sale of user data at the content layer of the Internet. An associated clause in *Article* 9 to prohibit ISPs from monitoring or analysing Internet traffic was also designed as a privacy measure and would prove similarly contentious, with one telco executive complaining that traffic analysis was their "oxygen" (Papp 2014, p.70).

An equivalent privacy provision targeted at web companies (*Article 10*) relieved them of any obligation to store user data, unless expressly demanded by a judicial order. This clause would raise the ire of the Brazilian security services and would eventually be overturned. While this did address the cost concerns of smaller or non-profit web companies, for those platforms for which the retention and analysis of user data was central to their business model, this clause was an irrelevance.

Article 10 highlights another recurring feature of the Marco Civil: the invocation of the security state as a privacy threat, while ignoring the repressive potential of commercial data collection. This can also be observed in *Subsection III – Protecting the secrecy of Internet communication*, *Article 18*, where Internet communications are afforded the same protections against arbitrary interception as telecoms (as per Lei n.o 9.296/96 and Abranet's proposal in the prior consultation). As will be examined later in a more concerted fashion, it suffices now to underline that Brazil's painful history of military tyranny caused the security state to gain an outsized role as a privacy bogeyman, while platforms – whose business models are legitimated through the digital discourse – largely escaped scrutiny.

Article 12 outlined the requirements for ISPs to treat all data equally irrespective of source or destination: the basis of network neutrality. Although this would later become the object of most public attention, defined as the "heart of the bill" (Molon, research interview) and the subject of a bitter dispute between key sectors of informational capitalism, the topic at this stage enjoyed very limited salience, attracting only 17 comments. This low profile was, I argue, a product of Brazil's status at the periphery of informational capitalism.

In 2010 the term 'network neutrality' had not even appeared in *Capes,* the principal directory of Brazilian academic research (Ramos 2014, p.16). There were no 'Wu's' or 'Yu's' contesting the concept and raising its profile in the academic realm. Prior to the Marco Civil, the national telecoms regulator Anatel only once established a position on the issue in 2005 in relation to VOIP calls, while there was no mention of the topic in Congressional records (p.73). In contrast to the United States' high degree of concern about net neutrality, including the infamous case of Comcast's discrimination against BitTorrent in 2007 (Van Schewick 2016), and although anecdotal evidence of Brazilian ISP throttling p2p traffic certainly existed (Mizukami, Reia & Varon 2013), Brazil lacked any such high-profile cases.

In Subsection II: *The storage of access and Internet service logs*, *Article 16* represented a significant instance where the drafters of the Marco Civil did intend to place limits on practices of data commodification. Here, the proposed provisions would mandate "free and informed prior consent from the user" for the "treatment, distribution to third parties or publication" of data pertaining to access logs. Moreover, data that could be used to identify individual users could only be shared upon issuance of a judicial order.

At first glance, *Article 16* appears to represent a meaningful attempt to protect users from the loss of privacy associated with the commodification of their data by web companies. It would provide them with the means to be aware of and reject a platform's privacy policy. The reality, however, of the power imbalance between user and platform should lead us to be more circumspect. The "asymmetrical loss of privacy" as individuals grow "increasingly transparent to both public and private monitoring agencies, even as the actions of these agencies remain stubbornly opaque" is how Andrejevic conceptualizes this imbalance (2007). Obar refers to this as the "fallacy of information self-management" (2015). This asymmetry implies that the notion that reams of dense legalese might constitute the 'free and informed consent' of the average user is more theoretical than real. These views are buttressed also by Cohen (2019) who reminds us that as:

> Consent to data extraction is being sublimated into the coded environment, and along the way … the lawyerly emphasis on such things as disclosure, privacy dashboards, and competition over terms becomes a form of Kabuki theater that distracts both users and regulators from what is really going on. (p.58-59)

Moreover, Jordan shows us how End User Licensing Agreements represent a form of exploitation (2015), as they represent "tactics of obfuscation" designed to "obscure the information landscape" (p.211). Finally, as Coll reminds us, licensing agreements normalize the information economy and define privacy in individualist terms that ultimately serve the needs of informational capitalism (2014). Informed by these judgements, *Article* 16 represented little more than 'business as usual' for web companies, a fact underscored by my interviewee at a major platform who informed me that *Article 16* did not even feature on their lobbying agenda for the Marco Civil.

What did appear at the top of that 'shopping list', the item that was "really the thing to get" (Web executive Research interview), was limited third-party liability, or 'safe harbours'[13]. This duly appeared in the Marco Civil as *Article 19* in *Section IV on Content Removal*. This was accompanied by a further 5 articles (20-25) that stipulated precisely under what conditions third-party content could be legally removed from the web. As well as fulfilling the most ardent wishes of the web companies, *Articles 19-25* provided the Marco Civil's second round of consultation with its most celebrated moment of debate and, by extension, democratic legitimacy. As such this merits close inspection here.

An elite debate about free expression

Marcel Leonardi was a lawyer and professor, and a high-profile figure in those rarified legal and academic circles concerned with online privacy and limited third-party liability in Brazil. He took issue with the proposed measure in the first draft to implement a variation of Canada's 'notice and counter-notice' scheme. In this system, a user who takes offence at a piece of online content should contact the platform hosting that material. The platform – acting as a conduit between the two parties - would then remove the offending content and contact its poster. That individual then had the option to accept the act of removal, or to take full legal responsibility for the content and request that the platform reinstate it. Leonardi asserted that only the state had the requisite authority and legal expertise to determine if online content should in fact be removed, and that moreover, platforms would be inundated with bad faith content removal requests, resulting in a regime of 'indirect censorship' (Ministério da Justiça 2010b).

[13] Safe harbours refer to the absence of legal liability for web companies for user generated content under certain conditions. The origins of this provision are described in Chapter 2.

Another highly qualified commentator, a Brazilian law professor at the University of Hong Kong, Marcelo Thompson, wrote in defence of the scheme. Thompson claimed that the system would effectively protect individuals against defamatory material online and avoid both the chilling effects of US-style notice-and-takedown, as well as overwhelming the judiciary. Both these figures posted lengthy, eloquent comments in defence of their positions, and were joined by a handful of other participants who strained to match the tenor of their debate. In the end, the SAL/CTS team took the decisive step of considering the arguments and posting an amended version of the Article while the consultation was still ongoing, one that largely aligned with Leonardi's proposal that web companies should only be held legally liable for user-posted content if they ignored a court order to remove it.

According to Guilherme Almeida's recollections – as interviewed by another researcher – the "duel between Leonardi and Thompson…was an academic debate of the highest quality, with Heidegger etc. over the course of pages that cited papers in SSRN in English. *So it was exactly what we needed* [emphasis added]: debates of high level, qualified, informed and provided material for us to debate…" (Brito 2015, p.88 *translation mine*). This statement, I believe, underscores my earlier point, that the rationale for the consultation was to collate high-grade legal and technical inputs into the drafters' deliberations, and to *bestow* democratic legitimacy; not to *actually* achieve it. Intuitively, any scholarly debate that draws upon Heidegger would be inaccessible to the average Internet user. To celebrate that fact is therefore quite telling.

We also need to examine the substance of the provision under debate in more detail in order to understand how it corresponds to the dominant paradigm of digital rights. Almeida explained to me that at the very beginning of the Marco Civil process, one of the earliest value judgements of the SAL/CTS team was to prioritize the protection of individual dignity over copyright. In practice this meant devising a system of content removal that addressed episodes of personal defamation online, but would not resort to the 'notice and takedown' regime enshrined in the United States' DMCA and favoured by IP lobbies worldwide. The SAL/CTS team did indeed receive a delegation from Sony music after the Marco Civil project had been announced "pushing for DMCA (Digital Millennium Copyright Act[14]) like" provisions. In response, the drafters asserted the pre-eminence of dignity over IP ownership rights (Research interview).

[14] The Digital Millennium Copyright Act was passed in the United States in 1998 that implemented two earlier WIPO copyright treaties and implemented punitive measures against illegal downloading/media piracy.

This position manifested itself in the first version of *Article 20* that imagined the 'notice and counter-notice' system detailed above. It was conceived as a hybrid of the Canadian and American systems; 'softening' the latter, and adding more safeguards to the former (Papp 2014, p.59). Ultimately, it should more rapidly facilitate content removal for individuals who saw themselves defamed online, but who might not have the means to legal recourse. It would also include a more straightforward mechanism for the poster to reinstate their content than the provisions in the DMCA, one favoured by the recording industry and infamous for its heavy-handed implementation.

We should note that in common with other Latin American countries, there is a high sensibility to attacks on personal reputation in Brazil. For instance, Article 140 of the Brazilian Criminal Code offers a very broad definition of slander as "offending the dignity of another person" and is punishable by 6 months to one year in prison (CPJ 2016). Such heightened awareness of these issues was raised even further in the build-up to the Marco Civil's genesis by a 2007 court case in which a judge banned the YouTube video sharing service for the entire country. This was in response to Google's failure to remove an intimate video of the Brazilian actress and model, Daniella Cicarelli (LA Times 2007). These facts attest to the particular local significance and contextualization of 'universal' digital rights.

It appears, however, that the initial stand to safeguard an individual's dignity – "why should we make it harder for a poor person whose dignity has been exposed, to be harder to be removed than Madonna's copyright" (Almeida Research interview) - wilted in the face of concerted opposition. The interests that lay behind this opposition helps to explain why these provisions were realigned, and with what effect on the conceptualization of digital rights.

Leonardi, most notably, spoke persuasively about the dangers of 'notice and counter-notice'. He also asserted that judicial orders were an accessible means to deal with these issues: "Filing a lawsuit to demand that content be taken down is neither complicated nor expensive in Brazil" (O'Brien 2010). It should of course be remembered that Leonardi at the time was a lawyer whose firm specialized in representing the interests of web start-ups . Although his arguments against a regime of 'indirect censorship' may well have been sincere, he was also highly attuned to the business needs of web companies with regard to content removal and intermediary liability. As well as web companies, the IP rights lobby could perceive a threat in the original Article 20; specifically that counter-notice provisions might stymie the prompt removal of copyright-infringing content.

Although Marcel Leonardi was the most visible antagonist on the public consultation, he was buttressed by other voices. One prominent commentator included Denise Bottman, a Brazilian historian who repeatedly attacked the 'notice and counter-notice' proposal from her influential blog '*Não Gosto de Plágio*' (I Don't Like Plagiarism). As the name suggests, Bottman was a prominent advocate for robust IP rules to protect authors and artists (Bottman 2010). In interview, the SAL team member, Paulo Santarém, cited the influence of this blogger in particular on their decision to revise the provisions (Research interview).

The original 'notice and counter-notice' was also criticized publicly by the Committee to Protect Journalists (CPJ). The CPJ decried the potential for legitimate journalism to be censored using this mechanism (CPJ 2011). The Globo Group also spoke out against the provisions of Article 20 (Tavares 2010). Their ostensible concern was, aligned with the CPJ, the protection of journalists and the integrity of their work. The group's foundational concern for the protection of their IP rights became more explicit as the Marco Civil process developed and presents a much more convincing rationale for their opposition, than any genuine concern that the pre-eminent media power in Brazil would suffer from arbitrary censorship under a 'notice and counter-notice' regime.

The 'safe harbour paradox'

Ultimately, mandating that web companies would only be held legally liable for third-party content if they ignored a court order to remove content appeared to secure an improbable triple win: for content producers, web companies, *and* the millions of Brazilian social media users uploading content daily. Content producers possessed the economic resources to easily obtain court orders to remove infringing content. They also avoided the messy potential for posters to effectively dispute and reinstate content. Web companies secured the coveted 'judicial assurance' that protected their business models from excessive liability. And for Brazilian Internet users, content removal by court order protected them from the arbitrary infringements on their freedom of expression that led to Brazil becoming the global leader in state-generated content removal requests in 2009-2010 (O'Brien 2010).

The powerful critique offered by Thompson provides the means to deconstruct this apparently harmonious arrangement, or at least points to the paradox at its heart. On one side, we can observe that what is protected for the average user in these arrangements is what Thompson calls an "unfettered, self-centred modality of freedom of expression" (2010, p.6). He goes on to elaborate that

> there is a clear egotistic orientation from which the overall scepticism of the mentioned provisions springs. What appears from these is that individuals should trust no others but their very selves, or those, the courts, whose Justinian existence, as they see it, vows “to give every man his [individual] due”. It is indeed nothing but the Roman, egotistic conception of justice that lies in the subtext. (p.7)

The excessive focus on individualist fixes at the expense of collectivist reform is a critique of the Marco Civil that I underscore repeatedly. In my judgement, it signals an impoverished reckoning of digital rights that too easily facilitates the systemic flows of informational capitalism. Here Thompson signals the same failing, though from a different ethical standpoint. He contends that by denying the possibility of actors collectively resolving differences in good faith through the notice and counter-notice scheme, the revised provisions over-emphasize an individualist conception of justice. It is here that one can identify the paradox to which I refer. While there is an excessive focus on an individualist or ‘*self-centred* modality of freedom of expression’, the individual’s expressive rights are never truly protected by the notion that the limited liability of platforms represent its proxy. In other words, protecting individual freedom of expression is only a secondary effect of securing the invulnerability of web platforms. The true beneficiaries of these arrangements are web platforms, and they exploit that benefit by perpetuating a surveillance-based business model that exploits users, even as those users gain access to a speech platform to express their ideas. This is the ‘safe harbour paradox’.

The state as antagonistic other, and the Pirates’ exceptional proposal

The final section of the first draft focused on the ***Role of the State***. These final 5 articles listed the obligations and duties of the state with regard to the Internet in Brazil. Most of these focused on technical issues such as promoting interoperability, open standards, accessible e-government services and open data policies. Other more profound proposals included the commitment to “promote digital inclusion of the entire population, especially for those on low income” (Culturadigital 2010).

Few of these principles attracted more than a handful of posts, many indeed receiving the dreaded Web 2.0 sobriquet of ‘no comments’. This would prove to be a recurring theme through the Marco Civil’s development; that the private sector obligations monopolized the attention of activists and the media and formed the basis of the most protracted conflicts. This, even when the state was being held liable for a goal as ambitious as connecting the entire country to the Internet. This low profile, I

believe, can be attributed to two factors. On one hand is the skepticism exhibited by much of Brazil's citizenry to its representatives. As Thompson indicated in his critique of the Marco Civil, "Brazil much prefers its courts to its lawmakers" (2010, p.5). I believe that this is a characteristic of the periphery, born of centuries of observation of a state that is corrupt, repressive and/or ineffective. So, when the state presents lofty goals for itself, the civic tendency is to shrug rather than applaud.

The other factor is even more germane to this study and refers to the role of the state within the dominant digital rights paradigm. In this reckoning the state is not so much marginalized as assigned pariah status. Only private sector actors, lauded within the digital discourse as the champions of innovation, connection and participation, can facilitate the expressive rights of user qua citizens. To the state is assigned only the presumptive role of rights infringer. The best that can be hoped for is that it recognizes its own innate malevolence and places itself under the necessary constraints.

Other than the multistakeholder input that will be discussed in the final section below, the last reference we need to make to this second round of public debate focuses on a contribution that set the rest of the debate into relief. Unlike the Thompson-Leonardi "duel", this was not a celebrated moment in the consultation and in fact stood in discord with the general tone. Although, overall, the proliferation of arguments would seem to suggest vigorous debate, this participation really only served to validate a limited range of positions: libertarians offered a semblance of radicalism, railing against any regulation under the banner of 'freedom', while legal experts debated the minutiae of the provisions with a legitimating gusto. Only the Pirate Party offered an entirely different conception of what digital rights could mean.

The Brazilian Pirate Party had produced an alternative draft of the entire bill, dubbed the *Marco Pirata v1.1* (2010). It was the product of internal debate and was published on both their own website and the Cultura Digital site and embodied a curious paradox of libertarian and socialist positions.

As would be supposed from the Pirates' political agenda, several of the provisions were designed to protect user privacy and freedom of expression, and would do so with an almost extremist vigour. For instance, the Pirates proposed that no access log data whatsoever would be admissible in criminal proceedings. Users would also enjoy a complete freedom to publish or access online material of "any nature". Other provisions extended the safeguards already featured in the Marco Civil, such as eliminating *any* legal liability on the part of those actors responsible for publishing content online.

As with their contributions in Phase I, some of the most radical proposals resulted when libertarian sentiments were set aside and the Pirates re-imagined the role of the state in providing public online services. There is no specific provision for network neutrality in the *Marco Pirata* because the Pirates imagined a content and access infrastructure provided by a state committed to complete freedom of information. According to Article 9, " The state must facilitate the free exchange of content and opinions on the Internet, providing isonomic infrastructure to all citizens". Further to that, "the state should provide a network of software and content repositories...a public network of access points...content servers administrated by users..."

Fundamentally, what is proposed here are the physical and content layers of the Internet as non-commercial operations. This is why there is no specific safeguard for network neutrality or any prohibitions upon the "treatment, distribution to third parties or publication" of data as outlined in *Article 16* of the original Marco Civil. There is no need for such safeguards because the Pirates envision this data only being used for "public service" requirements. Effectively these arrangements would negate the commodification of data, surveillance infrastructure and ubiquitous advertising that the original Marco Civil at worst ignores, or at best tinkers with. As such, we can observe in the *Marco Pirata* a conceptualization of digital rights that shatters the dominant paradigm, one that envisions systemic reform premised on collectivist principles. *This is the exception that proves the rule*.

Low-stakes-holderism: Demands not deliberation

Multistakeholderism is one of the tenets of the post-WSIS digital rights paradigm; I elaborated its critique in some detail earlier in this chapter. More important than simply reasserting that multistakeholderism is the 'mode of governance par excellence of neoliberalism', is to question the validity of the term as applied to this last pre-Congressional phase of the Marco Civil. This is important for two reasons. The first is because it allows us to draw a parallel between the way that both the online public consultation and the label of 'multistakeholder process' bestowed democratic legitimacy. It presented the appearance of open, consensus-based, *horizontal* decision-making amongsta diverse set of actors, when the reality was a long way from that ideal. The reality was of the unidirectional presentation of instrumental demands by the most powerful sectors of informational capitalism.

The second reason why it is for this study important to critique these claims is that it may also offer an insight into how an attempt at multistakeholder Internet policymaking manifests itself at the periphery. I suggest that Saad-Filho and Morais' observation regarding the nature of Brazilian state authority is germane here: that it exhibits vertical strength in repressing revolt from below, but is weak in a horizontal sense and struggles to mediate disputes with and between elite sectors (2017, p.7). This view was corroborated in a sense by one of my interviewees, Globo executive Tonet Camargo, in describing the pragmatic muddle that resulted from the Marco Civil process: "Brazil is a country that produces consensus, and this differentiates us from our *hermanos* in Latin America" (Research interview). The consensus he described was not the multistakeholder ideal. Instead, he alludes to the fact that the Marco Civil was a blending of agenda items by powerful economic sectors; this is perhaps the shape of multistakeholderism when mediated by a state at the periphery.

It is also important to examine this phase of the Marco Civil because it allows us to observe how battle lines were being drawn up around the bill by powerful economic interests. In many cases these concerns defined the form that the law took in its final reckoning.

Despite the best intentions of the SAL/CTS team to facilitate an open debate, industry bodies invariably presented their contributions at the eleventh hour, shortly before the consultation closed. This was done with the clear intention of circumventing, not facilitating debate. As per Almeida:

> in many cases companies preferred not to present themselves and publish comments themselves…So, associations such as Abranet had their internal Marco Civil discussions, reaching internal compromises and then presenting themselves at the debate at the last minute as a monolith in many cases. Even though we were trying to create a dialogue, people were still speaking unidirectionally to the government, even if it was in public (Research interview).

Moreover, these association statements arrived in the form of letters or PDF attachments addressed directly to the Ministry of Justice, not as part of the comments section where individual participants could engage with and critique them. As Bragatto, Sampaio, & Nicolás et al noted, only 4% of all comments emanated from entities or organizations, rather than individual citizens (2015b, p.243). The scenario described here clearly diverges a great deal from the consensus-based ideal of multistakeholderism.

To the drafters' credit, whenever such 'sealed' contributions arrived, the SAL/CTS team insisted on publishing them on the website so that they were at least exposed to public attention. In addition, as a tactical tweak to address the obfuscatory intentions of the private sector stakeholders, the team set the end of each public consultation period for a Sunday night. They did so knowing that corporate legal departments would not work over the weekend, meaning that any late contributions would arrive on a Friday afternoon, allowing any civically-minded participants at least two days to respond to the statements (Almeida research interview). The critique of the Internet Governance Forum (IGF) presented by Flyverbom (2011) is germane here, however. He questions the notion that simply because the transcripts of its meetings are published online, that this equates to the democratic ideal of transparency. Effectively, if no-one can parse the voluminous proceedings, they are not in fact rendered transparent, but invisible (p.150). In the case of the Marco Civil, could one reasonably expect any substantive interrogation of the legalistic and lengthy contributions of private sector actors, by individual citizens over the course of a weekend?

Synergies and tensions

In total, 22 Brazilian organizations took the opportunity to declare their hands in this second round of public consultation. These included economic, civil society and state actors. Several law firms also took the opportunity to propose amendments, though I have omitted mention of them here. In addition, 6 international associations of IP rights holders presented contributions to the process. I have included reference to only the largest of them (IFPI – International Federation of the Phonographic Industry) as their demands are almost identical. For the purposes of clarity and brevity, it is most useful to tabulate those contributions so one can identify what sectors were engaged in the process, and what interests were being advanced (Table 3). This in turn, shows what threats - if any - were posed to the systemic logics or mechanics of informational capitalism by the digital rights in the Marco Civil. It also helps to identify the tensions and synergies that existed between these sectors of informational capitalism.

Table 3

Actors that filed standalone contributions to Phase II of the Marco Civil public consultation

Organization	Sector	Principle demands[15]
ABES – Brazilian Software Company Association	Content production/ cultural industries	- Inclusion of 'notice and takedown' provisions - ISPs immediately notify IP infringers on P2P networks, incl. threat to suspend service - Log retention for all service and access providers - Database to identify all users held by ISPs
ABPD – Brazilian Association of Music Producers	Content production/ cultural industries	- That the Marco Civil explicitly address piracy in keeping with general trend of global legislation - Network neutrality needs to permit restriction on flows of pirated content - User rights and obligations should include respect for third-party IP - ISPs should be obligated, under a judicial order, to monitor and filter Internet traffic - ISPs should retain data logs for two years - Original notice and counter-notice scheme should be retained for IP infringements - ISPs immediately notify IP infringers on P2P networks, incl. threat to suspend service
Grupo Abril – Publishing group	Content production/ cultural industries	- In the case of users adopting anonymizing software, connection/content providers should not be held liable for identifying them - Clarification of Articles 9&10 showing how content providers can provide user data to law enforcement if they have not stored it in the first instance

[15] Ministério da Justiça 2010a

Aiyra Consultoria de Telecomunicações Ltda.	Telecoms	- Article 9 should permit traffic monitoring for ISPs in case of user assent (to permit offer of new services) - Network neutrality provisions should permit ISPs to manage traffic in order to maintain efficiency and security of the network
Rádio e Televisão Bandeirantes	Content production/ cultural industries	- New neutrality provisions explicitly prohibiting traffic shaping for economic/competition purposes - That media ownership rules are applied online meaning that only majority Brazilian owned companies and majority Brazilian produced content be permitted - Article 20 include provision for offended parties to notify the content poster before initiating judicial request
Claro	Telecoms	- Net neutrality should not be considered a general principle before it is properly studied and debated - Strengthening of provisions in Article 16 obliging content providers to obtain user consent for use of data
CNPG – National Council of Attorney Generals	Security state	- Article 16 should oblige data retention for 3 years - The limited liability of web companies should correspond to a legal agreement already reached between Google Brasil and the Minas Gerais State Prosecutor - The Marco Civil overall demonstrate a greater awareness of need to combat crime, especially those targeting children
Embratel	Telecoms	- That the Marco Civil corresponds to global Internet legislation, especially from the United States - Network neutrality provisions should permit ISPs to manage traffic in order to maintain efficiency and security of the network - Support provision stipulating that ISPs only provide user data under a court order

IDEC – Brazilian Institute of Consumer Defence	Civil society	- Greater protections for consumer against suspension of Internet service - Greater clarity of information presented to users by websites on data use policies - Fast-track content removal in cases of material harmful to consumers e.g. offers of illegal goods
IFPI – International Federation of the Phonographic Industry	Content production/ cultural industries	- That a balance be struck between creators' and other fundamental rights - Net neutrality include provisions for blocking of illegal content - ISPs should be incentivized to address IP violations
MPA Brasil – Motion Picture Association of Brazil	Content production/ cultural industries	- User rights and obligations should include respect for third-party IP - ISPs should be permitted to monitor Internet traffic to identify IP violations - Network neutrality provisions should be broad enough to permit creation of new business models - Mechanism for content removal in case of IP infringements without recourse to court order - ISPs threaten suspension of service for IP infringers - ISPs should retain data logs for longer than 6 months
Federal Police	Security state	- Recognition that Marco Civil adversely effects the state's capacity to maintain order and protect individual dignity - Define that all web content providers are subject to the law even if operating abroad - Elimination of provision permitting use of encryption technologies - Connection logs maintained for 3 years - Access logs to be maintained for 6 months

		- Content providers should notify state authorities within 48 hours regarding any crime committed by a user on their platform - Police authorities can also demand content removal
Proteste – Consumer association	Civil society	- One of the principals of the Internet's governance is that regulation be carried out in the public interest - The translation of Constitutional provisions into the Marco Civil: the guarantee of consumer defence; promoting measures to reduce social and regional inequalities; guarantee favoured treatment of small Brazilian businesses. - Applying a penal charge to any violation of network neutrality - Log storage safeguards should be made subject of contract between user and service provider - Users may request access to any data about them held by a service provider
UBV – Brazilian Video Union	Content production/ cultural industries	- Respect for IP rights established as principle of Internet's governance - Intermediary liability should include obligation of service providers to provide IP addresses of pirated content sites - Internet service providers should be obligated to provide details of IP violators

We can observe from this table the predominant concerns advanced by various sectors within informational capitalism. The most prominent claim was for greater IP protections to be included in the Marco Civil. This took the drafters by surprise. According to one of the CTS researchers, "We knew that there would be some reaction by IP holders, but we didn't know that they would be so organized" (Moncau, research interview). These claims were advanced by associations representing the content production sector, particularly of music, software and film. The proposals they made were intended to

promote IP protections that, in turn, would secure the logic of control over the flow of commodified immaterial resources. The form that their proposals took reveal two important things. The first is that in spite of the shrill dissent of content producers, their proposed amendments nearly all constituted *additions* to the Marco Civil, rather than *modifications*. This suggests that the existing provisions of the Marco Civil represented only a minor threat to the operations of the content production sector. The second aspect revealed by these proposals are the synergies and tensions that existed with another key sector of informational capitalism; namely, the telecoms sector.

The first recurring claim worthy of interrogation was that the rights of IP holders attain the same status as the other fundamental rights and principles enshrined in the Marco Civil. As Streeter reveals, the use of rights language was first harnessed by content producers and distributors in the 1980s (2011, p.79). Cohen (2019) similarly notes the "entrepreneurial appropriation of discourses about fundamental human rights to describe the rights and privileges of corporate entities" (p.257). Although neither Cohen nor Streeter describe it in these terms, it was an attempt to legitimate the nascent logics of control and commodification of informational capitalism. Here we see the same ploy in an updated form; the drive to legitimate the mechanic of IP law by including it within the framework of *digital* rights. This also speaks to the function of the dominant paradigm of digital rights generally; it is worth striving to achieve inclusion within it because it offers an effective means to legitimate the systemic functions of informational capitalism.

The other recurring claims centred on the obligations of the telecoms sector with regards to the protection of IP. In terms of their respective sectorial interests, this represented both a synergy and tension. The tension equated mostly to content producers wanting ISPs to share the burden of identifying, notifying, and possibly even penalizing IP violators using their networks. This would constitute a quite onerous demand on ISPs, without any obvious upside in terms of the ISPs' own business interests. Indeed, in its submission, the telco Embratel supported the proposal that ISPs should only be obligated to share user data if mandated by a court order. Seemingly, they too recognised the encumbrance that disclosing user information to IP rights associations would represent.

The evident synergies between the demands of the content production and telecoms sectors were more numerous, and more significant. On the topic of network management, the content producers shared a concern with ISPs for loosening the possible restrictions that network neutrality would imply. Content producers sought the freedom for ISPs to be able to not only monitor Internet traffic to detect

IP violations, but also to throttle or block it if necessary. This was clearly congruent with the stated desire of the telecoms sector to be able to manage Internet traffic; though under the guise of maintaining 'security and efficiency', rather than policing IP violations.

It was also in the interests of content producers to create network neutrality provisions flexible enough to leave room for the development of 'new business models', as suggested by the Motion Picture Association of Brazil. It is possible to imagine scenarios in which content producers without their own platforms might seek to develop consumer distribution channels that compromised the principal of network neutrality. Once again, this corresponded to the vested interests of the telecoms sector to be able to discount strict network neutrality in pursuit of potentially lucrative new business models; 'zero rating' mobile Internet services representing one of the most compelling possibilities. Indeed, the telecoms sector made the demand for 'the freedom of business models' a recurring motif for the Marco Civil once it reached Congress.

As a last mention of the contributions from the telecoms sector, it is worth noting the proposal by the telecoms provider Claro, that as per Article 16, further restrictions be applied to the ability of web companies to commercialise user data. It may seem curious that a telecoms company would use their finite political capital to make a proposal that could only stymie the business interests of another sector, rather than to try and advance their own. This view, however, misunderstands the degree of hostility exhibited by the telecoms sector towards web companies. The antipathy of the telecoms sector for 'over the top' (OTT) services is indeed well documented, and this dynamic of informational capitalism was as evident in Brazil as in the United States. Indeed, the proposal by Claro represented only a warning shot for what would become a barrage of hostile fire.

We should also recognise the importance of a competing claim made by another actor within the content production sector; in this case a broadcaster, and the only one that broke ranks to make a contribution to the Marco Civil. In contrast to the associations representing IP rights holders, the broadcasting conglomerate Bandeirantes sought a strengthening of net neutrality provisions that would explicitly prohibit traffic prioritisation by ISPs for economic purposes. We can see that the rationale for this was that broadcasting groups in Brazil feared the prospect of having their digital assets held to ransom by ISPs exploiting net neutrality loopholes. In the context of informational capitalism, this equated to a tension between competing visions of control over data flows. This also represented the early demarcation of a battle line that would become more entrenched as the Marco

Civil process ground on: broadcasters vs web companies for control over data networks. Indeed, once Globo joined the fray, the defenders of network neutrality would gain a decisive new ally.

The security state was the other main sector of informational capitalism involved in trying to shape the Marco Civil according to its interests. The specific actors were the Federal Police and the National Council of Attorney Generals. The tenor of their contributions was evocative of the trope of 'The Four Horsemen of the Infopocalypse' (Carey & Burkell 2007), frequently evoked by state authorities as a justification for increasing security measures online. These four spectres are terrorism, drugs, weapons and child pornography. It is the last of these to which both of the Brazilian security actors referred.

The two actors aligned in their demand for much longer duration of log and access record storage to assist with criminal investigations. This demand would also reappear at a later stage of the Marco Civil's legislative journey, this time the object of much greater contention. Another instance of the Federal Police articulating a demand that would recur later is the proposal that all web content providers be subject to Brazilian law, regardless of their national location or ownership. This stemmed from the frustration experienced by Brazilian law enforcement authorities seeking user data from web companies based in the United States. Recourse to MLAT agreements was often insufficient. This frustration would manifest itself several years later under the guise of a polemic 'data localization' provision added to the bill at the behest of the security services.

In terms of the civil society contributions, it is noteworthy that only two entities opted to make contributions at this stage, both of them consumer advocacy groups: IDEC and Proteste. Indeed the fact that only consumer rights groups saw fit to participate underscores the nature of the digital rights preliminarily embodied by the Marco Civil: a series of technical, market-based fixes. The nature of the proposals these organizations presented for the Marco Civil reveal a limited set of ambitions born of their status as consumer rights groups. All of their claims constituted modifications of existing provisions in order to boost consumer protections. Although some went further than others – such as making network neutrality violations a criminal offence – none of them fundamentally challenged the inequities of the Internet's political-economy under informational capitalism.

What may be as significant is recognition of those entities that opted not to engage with the consultation. Those most conspicuous by their absence were: ABERT – the broadcasters' association of Brazil; and SindiTelebrasil – the telecommunications sector association. These constituted the 'elephants in the room'. I did ask representatives of both associations to explain their non-

participation and both offered evasive answers. Their rationale may correspond to the analysis of Brito; these entities were simply keeping their powder dry, waiting until the bill reached Congress, and the corresponding opportunity to apply their formidable lobbying powers (2015).

In sum, we can observe from the above description of the Marco Civil's multistakeholder phase that it did not correspond, in reality, to the ideals of multistakeholderism. This was a process marked by the issuance of demands from powerful economic interests, with little or no interest in dialogue or compromise with other 'stakeholders'. As I stated in the introduction to this section, this is a critique worth elaborating because the label of multistakeholderism was attached to the Marco Civil as a marker of its democratic legitimacy. Akin to the larger process of public consultation, this meant that the actual form that this multistakeholder process took largely escaped scrutiny; the kudos associated with the term was sufficient to blind most observers to its substance. In fact, when we peel away the hype and actually scrutinize the proceedings, it becomes evident that powerful sectors of informational capitalism were not inclined to observe the dialogic niceties of a multistakeholder process, and instead stood ready to impose their demands on the Marco Civil.

I go further still by proposing that the characteristics exhibited by this process of private sector involvement can be explained in part by the coordinating role of a peripheral state. As Saad-Filho and Morais observe, the Brazilian state is vertically strong and horizontally weak (2017) which makes it an ineffective facilitator for a genuinely multistakeholder process. At this early stage of the Marco Civil's development, the Ministry of Justice served simply as a clearing house for demands, not a facilitator of dialogue. This inability (or unwillingness) of the Brazilian state to effectively mediate conflict with and between elites would manifest itself more acutely when the powerbrokers of informational capitalism really rallied their strength once the bill reached Congress.

Perhaps the most important reason to analyse this phase of the Marco Civil in detail is because it allows one to identify the territory staked out by some of the key sectors of informational capitalism. The tensions and synergies one can observe between some of the system's sectors, as well as the provisions of the Marco Civil that proved most contentious, would take on an outsized form once the Marco Civil entered its next crucial phase, and become the object of intense political conflict.

Conclusion

This chapter has surveyed the early legislative history of the Marco Civil from its initial emergence in response to a proposed cybercrime bill, to its first drafts, and the periods of public consultation and multistakeholder input that preceded its formal introduction to the Brazilian Congress. My analysis of these events produced several important contributions to my overall argument.

In studying the pre-history of the bill, I identified numerous factors particular to Brazil's status at the periphery that were instrumental in the emergence of the Marco Civil. These included: the fervour of a politicised free software community creating a bastion of support for the concept of the Marco Civil; the legacy of Brazil's military dictatorship sensitizing activists to the repression of communication rights implied by the Lei Azeredo; the historical tendency towards criminalisation as a first resort imbuing a bill of digital *civil* rights with greater urgency; the impetus to harmonise Brazilian law with IP frameworks from the core of informational capitalism characteristic of the periphery as a site of extraction. All of these factors bely the perceived universality of digital rights and instead emphasize the many social, cultural and political-economic contingencies that create the conditions for their emergence.

Using a discourse analysis lens, I examined four key texts that were instrumental in the initial emergence of the Marco Civil. In so doing I identified four discourses that aligned with the digital discourse and were formative for the initial conceptualisation of the Marco Civil: cyber-utopian; neoliberal, technocratic and neo-developmentalist. These discourses had an enduring impact on the Marco Civil and help to explain some of its emphases and blindspots. I argue in particular that the neoliberal and technocratic tenor of the op-ed written by Brazilian technology commentator, Ronaldo Lemos - widely recognised as the intellectual genesis of the Marco Civil – negated the possibility of any confrontation with informational capitalism.

The role of the digital discourse remained a pivotal factor later in the Marco Civil's development, shaping the contours of the digital rights contained therein. I showed how the Brazilian Internet Steering Committee's 'Ten Principles' for the Internet, which served as a template for the Marco Civil's rights framework, constituted a direct link between the Marco Civil and the dominant digital rights paradigm established post-WSIS. A discursive analysis of the ten principles shows that it is comprised

of depoliticized techno-legal solutions that privilege individual autonomy, creativity and expression. Moreover, by probing the neoliberal origins of the steering committee itself I further revealed the roots of the Marco Civil's alignment with the logics of informational capitalism. The initial discursive circumscription of the Marco Civil was also evident in the 'interpretive community' constituted by the bill's drafters who shared a common sense for the Marco Civil that was much influenced by the digital discourse, and that precluded the inclusion of more radical voices in the project's formation.

By discounting much of the celebratory rhetoric around the two phases of public consultation, I critically analysed the democratic deficiencies of these processes to show how their main significance was to legitimate the narrow remit of the Marco Civil and thus to enable a hollowed conceptualization of digital rights. I argue that rather than allow the fact of the consultation to obscure its substance, we need to understand how the parametres of the debate were constricted from the outset. I also demonstrated the various aspects of the consultation that were indicative of Brazil's status at the periphery of informational capitalism: the low profile for network neutrality; the extremely limited levels of participation; the absence of astro-turfing; and the manner in which debate around freedom of expression online was shaped by heightened concerns about attacks on personal reputation, and the legacy of state censorship. These facts attest to the particular local significance and contextualization of digital rights.

I flagged one of the most significant aspects of the public consultation: the contributions of the Brazilian Pirate Party. The Pirates' vision for the Marco Civil showed that a substantive conceptualisation of digital rights – one closely aligned with the discourse of 'information justice' (Karpinnen & Puukko 2020) - premised upon systemic reform of the Internet's architecture and political-economy was conceivable for the Marco Civil. The Pirates indeed represented the outlier in a consultation process that presented only the illusion of vigorous debate and served to validate a very limited range of positions.

Through detailed analysis of the provisions in the first drafts of the bill, I demonstrated how, from the outset, the digital rights of the Marco Civil aligned with the operational logics of informational capitalism, rather than challenging them. I showed how the manner in which the practices of content and service providers were addressed in the bill was based primarily on consumer protections and promised only to tinker with the mechanics of informational capitalism. Moreover, these techno-legal measures occupied the policy space that could have been used to advance structural reform.

Finally, I undertook a political-economic analysis of the multistakeholder contributions to the Marco Civil to show how they corresponded to the synergies and tensions that exist between core sectors of informational capitalism. This analysis revealed not only the dubious democratic credentials of multistakeholderism, but some of the core dynamics that became acutely evident later in the Marco Civil's development. These included most notably the synergies between the telecoms and content production sectors and the tensions between those two sectors and the web companies.

The significance of the Marco Civil entering the Congressional arena is the focus of the following chapter.

Chapter 5

Contestation: Power plays and debate pollution

"*It's one thing to come up with the perfect version of your dream law; it's a completely different thing to actually move that through Parliament*." (Web company executive, Research interview)

"*What the telcos expected is that whatever the bill of law that these people will propose, we'll handle it when it enters Congress, we can pay the politicians, and that was the hard part, that was really a hard part*."
(Caf, Research interview)

Having considered in the previous chapter the various ways in which the scope of the Marco Civil had been circumscribed through the power of discourse, I switch lenses now to predominantly focus on the material power exerted by the core sectors of informational capitalism to shape the Marco Civil according to their own agendas as it reached the Brazilian Congress. I operationalize the 'mechanics' and 'dynamics' of Chapter 2 to show how the telecoms sector, web companies and content production sector were alternately forming alliances of convenience, or advancing bitter rivalries. These disputes were decisive in curtailing the civic value of the bill, and creating instead a framework of digital rights conducive to the functioning of informational capitalism. In this chapter, I focus particularly on the disputes around the core digital rights of network neutrality and limited third-party liability (safe harbours).

In the case of net neutrality, I show how the telecoms sector was determined to resist the measure in order to protect 'future business models'. These included most notably the offer of 'zero rating' mobile plans – now ubiquitous in the global South. I also reveal the surprising ambivalence of the web company sector to securing a 'neutral' Internet. This derived from Brazil's status at the periphery, as web companies were keen not to rouse dormant antagonisms from the core, and were also constrained to act in public by their American origins. I contend that the paradox of network neutrality is that the more fiercely the telcos resisted the measure, the more civil society groups were convinced it was a core civil right and occluded more substantive alternatives.

I also chart the contestation of safe harbours and reveal how one of the Marco Civil's architects covertly introduced a highly controversial IP-carve out in order to win the support of the Globo group. This event further reveals the coherence between the Marco Civil and the systemic logics of informational capitalism, and resulted in an even greater dilution of the already limited civic value of the safe harbour provisions. In this chapter, there is also a discursive focus that reveals the particular local significance of digital rights. I examine how Brazilian discourses of social inequality, the politicization of consumption rights, and the historic fear of communism were central to how civil society and economic actors disputed provisions in the Marco Civil.

In this chapter, the material from all three interview groups – government, civil society and economic sectors – appears prominently as I examine how these social spheres come together to contest the Marco Civil.

Shifting sands: **Political appointments and corporate manoeuvres**

By August 2010, the draft bill had received a rubber stamp from all the Ministries with a perceived stake in the project. The political upheaval implied by a presidential election, and the transition of power from the Lula to the Rousseff administrations, however, delayed its introduction to Congress by one year (Almeida, Research interview). On August 24th, 2011, the Marco Civil did make its grand entrance to the Brazilian Congress bearing the docket number *PL 2.126/2011*. This bland identifier did little to suggest that it would soon occupy the centre of a power vortex.

The most obvious political change that would bear upon the development of the Marco Civil was the transition in the Brazilian presidency from Lula da Silva to Dilma Rousseff. Although they were close allies and both members of the Workers Party, the political trajectories, personal characteristics and policy priorities of the two leaders were quite distinct; a list of differences that would directly influence how the Marco Civil would now be treated as part of the government agenda. The personal journey of Lula da Silva, from illiterate son of North-Eastern workers immigrated to São Paulo, contributed heavily to his 'man of the people' appeal, and his comfort and effectiveness consulting and communicating with the Brazilian people (Schwarcz & Starling 2018). By contrast, Rousseff was the child of an upper middle class family and could boast no such popular sensitivity. She was a technician rather than an orator, with a late conversion to the Workers Party in 2000, and certainly no particular connection to the free software community in Brazil.

Pivotal to the fate of the Marco Civil was the fact that the transition from one PT administration to another was not limited to a rotation in the presidency. The change at the top was accompanied by a raft of new ministerial appointments, several of which would signal new configurations of power, aligning certain policy directions of the new PT government more closely with the systemic logics of informational capitalism. More specifically, some of these can be interpreted as the early strategic moves of powerful economic sectors seeking to influence the direction of the Marco Civil. These developments, in turn, need to be understood within the complex political dynamics that accompanied the election victory of Dilma Rousseff in 2011.

According to the judgement of Saad Filho and Morais (2017), the policy platform of Rousseff made her the most left-wing president of Brazil since João Goulart in the 1960s (p.108), as she sought to further expand programs of social assistance. Additionally, the PT's majority in both houses was staked on a fragile coalition of ten parties, of which only one third of the seats were held by parties of the left (p.107). The combination therefore of having to retain 'the faith of the markets' for a left wing policy platform, as well as to secure the allegiance of numerous right wing coalition partners, meant that Rousseff needed to be able to offer political sops in the form of ministerial appointments.

One of the most notable exits was that of the Minister of Culture, Juca Ferreira. Promoted from within by Lula, Ferreira had been appointed to the Ministry initially by the self-proclaimed "*Ministro hacker*", Gilberto Gil. Ferreira had been heavily involved in Gil's efforts to support an early forerunner of the Marco Civil in the form of a bilateral bill of digital rights with the Italian government in 2007 (Caf, Research interview). He also strove to establish a more equitable system of IP regulation in Brazil. He had worked with Gil in creating the widely acclaimed *Pontos de cultura* national network of cultural hubs and projects. All of this was demobilized by his successor, Anna de Hollanda, in 2011.
Despite being another musician, the sister moreover of the fabled Chico Buarque, de Hollanda shared none of Gil's reformist instincts. One of her first acts in office was to remove the Creative Commons logo from the Ministry website, and later replace it with corporate versions such as YouTube's (Silveira, Machado & Savazoni 2013, p.560). Indeed, her direction of cultural policy overall was characterised as a 'backward march' by the same authors. Widely known to be a supporter of more stringent IP protections, the appointment of de Holanda meant that not only had the Marco Civil lost an important ally, but that more broadly the Rousseff administration would be more accommodating to the

demands of the powerful content production sector. This perception would be reinforced by other developments.

Within the Ministry of Communications – the entity that Lula had striven to avoid when he handed the nascent Marco Civil project to the Ministry of Justice – Paulo Bernardo was appointed by the incoming administration. Bernardo was well-known for his connections to the telecoms sector, to the extent that he was lauded with the honorific of "Telecoms Man of the Year" in 2012 by a telecoms trade association (Telebrasil 2012), and was criticized for refusing to countenance mass media reform (Ekman 2013). The consequences of this corporate allegiance would become more overt as the Marco Civil underwent its fraught journey through Congress.

Other significant blurring of state and corporate lines occurred in 2011. As well as consolidating the influence of the telecoms sector within the Rousseff administration, the connections between the new government and major web companies were no less conspicuous. Within the executive office, Ivo Correa moved from Head of Public Policy at Google Brazil to become Vice-Head of Legal Affairs within the Civil Service. This led to the *Casa Civil* becoming much more involved in the parliamentary debates around the Marco Civil (Abramovay 2018, p.113). In the opposite direction, Bruno Magrani, a core member of the CTS/SAL research team working on the Marco Civil, became Head of Public Policy at Facebook Brasil. While these may have only represented the fulfillment of individual ambitions, these moves hinted at a significant congruence between major web companies and parts of the Brazilian government vis-à-vis the Marco Civil that became more visible as the legislative process ground on.

Meanwhile within the telecoms sector, its industry association, Sinditelebrasil, was reinvigorated in 2010. Although founded in 2003, the association had existed "only on paper until April 2010 when the companies resolved to make it work" in the words of the man elected to its presidency in 2011, Eduardo Levy (Abramovay 2018, p.111). That moment, not coincidentally, aligned with the launch of the second phase of public consultation of the Marco Civil. The conspicuously low profile of the telecoms sector during the consultations can therefore be ascribed to the fact that its industry association effectively lay dormant. Its reinvigoration as an entity with physical presence in Brasília, meanwhile, should be understood as a collective response to the perceived threat potential of the Marco Civil project.

Another major event related to the telecoms sector that occurred in the period since the consultation closed was a regulatory shift for cable television that placed the telcos into direct competition with the media sector, especially the Globo Group. The *Lei do SeAC*, or Pay TV Law, passed in 2011, introduced a raft of changes for the pay TV sector, including quotas for Brazilian content and an end to limits on the investment of foreign capital. However, the tectonic shift implied by the *Lei do SeAC* was that for the first time, telecoms companies would be able to offer subscription services through cable, having previously been limited to provision via satellite (DTH) and microwave systems (MMDS) (Miranda 2011). This head-to-head competition between the content production sector - led by the Globo Group - and the telecoms sector would have a crucial impact on the eventual formation of the Marco Civil.

The final political appointment that needs to be considered at this stage was the nomination of a rapporteur for the Marco Civil. According to Congressional norms, every law needs to have a Congressperson individually responsible for its passage through the house. A new Congressman from Rio de Janeiro, Alessandro Molon, volunteered and was accepted for the role. As a state-level representative in Rio de Janeiro, Molon was prominently involved in opposition to the Lei Azeredo (Research interview) and had hosted a public meeting on the Marco Civil during the consultation phase. Many of my interviewees coincided in the judgement that Molon was an adroit political operator, whose determination and negotiating skills were key to the Marco Civil's successful passage into law.[16] It should also be noted, however, that his pragmatism facilitated many of the Faustian bargains that accommodated the systemic needs of informational capitalism in the bill.

Yet more consultation (and legitimation)...

One of Molon's first moves was to organize a series of seven town hall meetings, across the country during May and June 2012, to permit further discussion of the law. This was followed by a third phase of online consultation that lasted only a few days and garnered 140 comments (Solagna 2015, p.86). The question emerges as to why Molon would seek to conduct yet more consultative exercises for the Marco Civil, when so much work had already been done. As my interviewee at a major web company opined: "Molon was the only one that actually held onto the multistakeholder spirit. The rest of the

[16] At the time of writing in 2021, Molon had risen to the role of official leader of the opposition in the Brazilian Congress.

Parliament they just treated it as a regular bill". More than extending participation for its own sake, however, I contend that Molon recognized the strategic value of making civic engagement an inextricable part of the Marco Civil. He identified the vested interests hostile to the Marco Civil that existed within Congress and calculated that if it was proclaimed as a 'people's bill', those threats might be blunted. Finally, following the rationale for earlier phases of consultation, I argue that this latest round served to legitimate the very limited scope of the Marco Civil.

What emerged from these latest consultative exercises was the first of what would be five amended versions of the bill (*substitutivos* in Portuguese), each the subject of fierce controversy. *Substitutivo I* was issued to the Brazilian Congress on July 4th, 2012 and included a number of changes, mostly minor, but also a few that signalled the most important points of future contestation[17].

By far the most important changes pertained to *Article 9* on network neutrality. Here, Molon opted to strengthen the language to minimize the loopholes available to skirt the intended protections. Net neutrality was after all the element of the Marco Civil that Molon had identified as the "heart" of the bill that would benefit Brazil's "80 million netizens" (UOL 2013). The move to reinforce it was therefore conducive to this vision. For instance, one sub-clause included the stipulation that telecoms providers should "respect free competition". Another amendment was to remove a clause introduced by Anatel and the Ministry of Communications that all edicts pertaining to network neutrality would stand "according to regulation". These three words were intended to serve as a legislative 'backdoor' so that the telecoms sector retained the possibility to dilute any inconvenient provisions during the subsequent regulatory process (Abramovay 2017, p.114). This wording had raised the alarm for civil society observers and was subsequently withdrawn.

Molon also opted to include a clause that meant that any exemptions to net neutrality could be made only by Presidential decree, and under the advice of the Brazilian Internet Steering Committee, CGI.br. The fact that CGI was nominated as the official advisor on this issue was significant because it was a strong defender of net neutrality – as per the *decálogo* – and because it included the participation of civil society actors, several of which, like the group Proteste, were conspicuous champions of the Marco Civil. Just as significant was what CGI.br's ascension precluded. It implicitly marginalized

[17] Henceforth all text cited from the various versions of the Marco Civil law can be found in Appendix C to this dissertation. All English translations are my own.

Anatel, the state telecoms regulator, and the institutionally legitimate source of technical advice on telecoms issues for the state government.

The fact of its exclusion caused consternation for Anatel. As one of CGI's founding members, Caf, advised me, "the dream of Anatel (is) to bring to Anatel what CGI.br does and there is therefore this tension all the time, all the time. Anatel was very upset when CGI was included explicitly in the MCi, very upset…" (Research interview). A few months later Anatel would indeed attempt to remind the government of its institutional heft by publishing a policy white paper on network neutrality, though to no avail (Solagna 2015, p.85). Given Anatel's de facto status as guarantor of the interests of the telecoms sector within the Brazilian state apparatus, its marginalization in this matter would have troubled the major telecoms corporations. This unease would soon manifest itself quite concretely.

The first attempt to vote the Marco Civil was scheduled for July 10th, 2011. The vote was abandoned due to a failure to achieve quorum. This scenario repeated itself on July 11th. Although the influence of the telcoms sector on these events was never made explicit, many of my interviewees with insight into the Congressional process were unequivocal about the pressure this sector applied to prevent a vote. The nature of this influence, the manner in which it was exerted and resisted, and the rationale for doing so is the focus of the ensuing section. Examining the pressure of the telecoms sector on the Marco Civil in this regard is essential because it casts a bright light on how one of the foremost powerholders within informational capitalism in Brazil used discursive and material power in order to shape the constitution of digital rights at the periphery.

Nothing neutral about the net: discourses and power plays

The total revenues for the telecoms sector in Brazil in 2013 were 213 billion reals, equivalent to 4.5% of GDP in Brazil, and accounted for nearly half a million jobs (Telebrasil 2018). The sector also contributed more than 400 billion reals in taxes from 2002-2014 (Sinditelebrasil 2014, p.3). By 2010, the total market capitalization of telecoms companies on the Brazilian stock market was US$73 billion (Moreira 2016, p.4). Finally, it is worth noting that as a percentage of GDP, the Brazilian telecoms sector surpassed any of their equivalents in the OECD in the same year (OECD 2013). Although its economic significance is evident, the political influence of this sector was yet more formidable.

Obstruction, obfuscation and the ‘telco Rasputin’

In 2012, one individual provided the key to understanding the political reach of the Brazilian telecoms sector. Before Congressman Eduardo Cunha’s dizzying fall from grace culminated in a 15-year prison sentence in 2017 on corruption charges, he represented a Rasputin-like figure in Brazilian politics. A contemporary analogue would be the fictional character Frank Underwood from the Netflix political thriller *House of Cards*. This comparison was spectacularly made by the current affairs magazine *ISTOÉ* in a front cover in March 2014 that portayed Cunha in the famous Underwood throne pose from the show, under the headline ‘Saboteur of the Republic’. This turned out to be a significant moment for the Marco Civil and is discussed in detail in Chapter 6.

Figure 3

Front cover of IstoÉ, edition 2312, March 19, 2014

In 2013 Cunha was voted leader of the conservative PMDB, a party that while nominally part of the governing coalition with the PT, under his leadership became the principal bulwark against the government agenda. Later, in 2015, Cunha would go on to become the House Leader. He also represented the conduit through which the demands of the telecoms sector were manifested in the legislative arena. Cunha’s connections to the telecoms sector date back to the 1990s when he was appointed President of the Rio de Janeiro state telecoms company, *Telerj*, during the infamous Collor administration (Solagna 2015, p.100). He oversaw its privatization and eventual takeover by the company *Telemar*, that in turn became *Oi*, currently one of the largest telecoms company in Brazil.

As well as constituting a key figure in the neoliberal reform of the telecoms sector, Cunha represented a formidable lobbyist and fundraiser for the PMDB, leveraging his connections to channel funds and influence from the telecoms, energy and construction sectors into Congress (Sequeira & Torres 2013). His sphere of influence was commensurate with this role: the parliamentary arithmetic revealed to me in interview by a special advisor for the PT was that of the 513 Federal Deputies in the House of Chambers, Cunha funneled financial contributions to 167, and could count on the support of a total of 250-300. Based on all of this, Eduardo Cunha was evidently the 'point man' for the telecoms sector to impel their agenda for the Marco Civil. The *means* by which Cunha initially sought to impose that agenda could be characterised as alternately obstructionist and obfuscatory; employing, respectively, material and discursive power to try and shape the development of the Marco Civil to the telcos' desired ends.

The "greatest war against the project"

I use obfuscation to refer to the use of particular discourses by the telecoms sector in general, and Cunha specifically, to misrepresent network neutrality, and by extension the Marco Civil, in terms that would resonate within the Brazilian public sphere. Those discourses will be carefully examined in the ensuing subsection. The obstructionist methods, meanwhile, refer to lobbying and funding efforts within the Brazilian Congress. One metric for measuring this influence is obvious: 7 votes for the Marco Civil scheduled during 2012 were cancelled (Solagna 2015, p.88). The reason for this can be attributed to the fact that in order for a bill to be voted in the House of Deputies, all ten party leaders within the governing coalition needed to agree on the scheduling (O'Maley 2016, p.76). This meant that those parties allied with the telecoms sector could block the passage of the Marco Civil without ever having to publicize their intentions in a way that might draw censure from voters. Those most attuned to the obscure mechanics of the legislative process were in no doubt as to the source and nature of these obstructionist tactics, however.

Those blocked votes in 2012 were when observers "realised the force and strength of the telecoms sector", according to my interviewee at a major web company. Meanwhile, from an activist's perspective, and from his close involvement in the Parliamentary process, Caribé noticed that "the telcos are always in the House...dozens of lobbyists, daily, working on each parliamentarian, giving presentations and things like that…"(Research interview). When I asked then advisor to the Ministry of

Justice, Guilherme de Almeida if they had foreseen all of the challenges implied by introducing the bill into Congress he replied “the thing is we did not anticipate the silent blocking power of the telecoms companies which was strongly implemented by Eduardo Cunha by then”. And given that the bill’s raconteur, Alessandro Molon, was the primary target of this lobbying effort, it is unsurprising that he recognized it as the “greatest pressure, the greatest resistance, the greatest war against the project” (Research interview).

When I asked one of the telecoms executives directly about these claims, his response was that the delays occurred because “it was a complex target and the deputies themselves did not feel comfortable voting on something that they didn’t understand.” While this response served to deflect personal responsibility, it does also contain a kernel of truth, one that sheds light on how digital rights are constituted at the periphery.

(Mis)understanding network neutrality

The fact is that explaining complex technical issues such as those contained within the Marco Civil to Brazilian Deputies and Senators was extremely difficult. The challenges involved in elucidating the details of network neutrality to these elected officials was expressed to me, both by Alessandro Molon – who described the task as “very difficult…I had to explain it to them hundreds of times” – and the civil society organizer Bia Barbossa. Barbossa represented the communication rights group, *Intervozes*, one of the only civil society groups championing the Marco Civil based in Brasília. As such, Barbossa maintained a near permanent presence in the Congress and described to me how “100% of my time was spent working in the Congress to explain to parliamentarians…because there were very few who understood what the Marco Civil was. Even the director of the telecoms industry association, Sinditelebrasil, struggled with the level of understanding of the Brazilian deputies: “For lay people, the same as Parliamentarians in the Congress, it was difficult to explain what network neutrality was”.

I contend that the nature of this ignorance amongst Brazilian representatives should be understood within a peripheral frame. That is not to say that politicians in the global North can be expected to possess a robust understanding of the intricacies of network neutrality. One Congressman in the United States memorably displayed that was far from the case when he declared that the Internet was “a series of tubes” in a Congressional debate (Kimball 2013, p.41). Moreover, according to an interview conducted by researcher Des Freedman with a US media policy lobbyist, “Most members of Congress haven’t got any idea about communications policy. They get beyond the surface-level

discussion of the issues and they are completely lost" (2006, p.913). It is not even as though expertise is a pre-requisite for legislation. Governments habitually issue laws pertaining to such complex phenomena as aviation, pharmaceuticals and bio-technology. What *is* an important distinction between the United States and Brazil on a highly technical topic such as network neutrality is that the advanced technological development of the former in contrast to the latter, is manifested in the relevance of such issues in the public policy realm, as well as the interest and understanding of the electorate. These factors, in turn, compel a greater degree of qualified engagement from its elected representatives on the issue.

As I described at length in the previous chapter, this lack of public awareness can be observed in the very low levels of participation in the consultations for the Marco Civil. In a country riven by egregious economic inequality and high rates of crime, we might do to well to consider this as a variation on Bertolt Brecht's maxim: "Grub first, then ethics". This was a reality that several of my interviewees also reflected upon. As Molon revealed to me, "to explain what it is and its importance to people's lives. That was the greatest obstacle…to explain why this changes their life". Or as Caf explained "There is and continues to be a task of sensitizing people to the relevance of the issue, one that is far from trivial. There are people who think that because everybody uses it, everyone is concerned with the future of the Internet, but it is not like that" (Papp 2014, p.54 *translation mine*).

These dynamics are exacerbated moreover by the opacity of network neutrality, as the lawyer and prominent Brazilian neutrality expert, Pedro Ramos, explained to me in interview. Unlike content removal, which is highly conspicuous, the fact that traffic management practices exist 'under the hood' makes it very difficult for consumers to be aware that their rights may be infringed.

A significant corollary to the lack of technical knowledge and concern amongst the Brazilian deputies was that it rendered them more pliant for the telecoms lobbyists who were so prominent in Congress. As a member of the CTS team explained to me, this resulted in "this deputy or this senator bringing out…an argument that you could expect from a lawyer from a telco to bring to the table" (Affonso Souza, research interview). An example of Souza's point was made vividly by a Parliamentarian, Ricardo Izar, who claimed in 2012 that, according to the telcos, the cost of creating a 100% neutral network would be a mammoth 250 billion reals, a cost that would all be passed on to the consumer (Guerlanda & Decat 2012).

The lobbying by the telecoms sector was so intense, it was often described in bellicose terms by my interviewees: “an information war” by Molon, and “white terrorism” by the civil society lawyer, Flávia Lefevre (Research interviews). What though was the agenda that the telecoms sector sought to advance through this intense lobbying? What elements of the Marco Civil were perceived as a threat to their business interests? There are two dimensions to this agenda, both defensive and offensive, that we will explore now.

The telco agenda (and one more ‘paradox of network neutrality’)

Before exploring those dimensions, we should reconsider one fundamental point; for the foremost sectors within informational capitalism, the digital rights of the Marco Civil did not represent an ‘existential threat’. Although the disputes that enveloped the bill, and the energies invested in disrupting its progress were significant, these were undertaken as an inherent part of intra-capitalist competition: the Marco Civil offered core sectors of informational capitalism an opportunity to secure legal assurances that could optimize revenue generation through the Internet vis-a-vis competing sectors. There is a clear parallel here with Newman’s description of the US Telecommunications Act of 1996 as “neoliberalism at war with itself as capital formations struggled for dominance” (2019, 25).

Ultimately, the digital rights contained within the bill did not confront the systemic logics of informational capitalism, tinkering instead with their mechanics. As such, although the Marco Civil was worthy of dispute, these disputes should not be considered a form of mortal struggle. The most important lesson to be drawn from this point is that the *fact of* the telcos fevered resistance to network neutrality served to consolidate the misapprehension that it represented a core digital right. This anomaly could be added to Newman’s ‘paradoxes of net neutrality’ (2014): the greater the resolve against net neutrality displayed by the telecoms sector, the more civil society groups and their political allies became convinced it was fundamental to their own interests, and the less they would consider more substantive alternatives.

In terms of the defensive dimension of the telecoms agenda, the principal focus was to avoid restrictions to the creation of future business models. Stepping back and considering this in terms of the logics of informational capitalism, the telcos’ primary concern was to permit themselves as much leeway as possible to commodify data packets, and to surveil their users. As my interviewee at a web company reported to me from a closed-door meeting held between representatives of his company

and the telecoms sector, he had asked "why exactly are you guys so up in arms against network neutrality? If you claim you already do all of these things, what are you so concerned with? What exactly is that going to change in your business practice?". He was told: "'We are concerned that we won't be able to have new business models, it's not what we are doing right now'".

Indeed, it was not a coincidence that the telecoms sector largely ignored the Marco Civil during the consultation phase, when network neutrality was included as a *general* principle, and took concerted aim at the bill once *specific* legal criteria were introduced. Essentially, while net neutrality was broad and ambiguous in its definition, the telecoms companies could introduce new network management practices and then argue that they remained in compliance with the law. Once the noose of legalese started to tighten around the concept, the telecoms sector sensed that certain - potentially or actually lucrative - business models would become untenable. Essentially, the telcos had not yet arrived at a firm conclusion as to which mechanics of commodification would generate most profit, and that uncertainty, coupled with potentially looming restrictions in the Marco Civil, generated great unease.

Of course, this contradicts what I was told by Sinditelebrasil executive, Alex Castro. He explained that "We wanted (network neutrality) adjusted so that it became clear and avoided 500 different interpretations and we had a torrent of judicial actions". Many of my interviewees did indeed advise me that in their estimation, despite the staunch opposition of the telcos to the bill, the 'judicial certainty' implied by the Marco Civil was a boon for the sector in terms of encouraging investment. For instance, one senior advisor in the state telecoms regulator, Anatel, advised me that "a well-defined set of rules is the foundation for continued investment in the sector". A senior executive at Embratel underscored to me in vivid terms that Embratel's telecoms infrastructure, an investment by its parent company América Móvil, could not be ripped out and returned to Mexico. As such, a secure regulatory environment was imperative for the sector. With all that said, it appears that the telecoms sector wanted 'clarity' on their own terms.

It should be noted that the telcos strained themselves to never denounce network neutrality outright. As described at length in the previous chapter, the telecoms sector was absent at the outset of the Marco Civil process. It did, however, contribute two statements to the second phase of public consultation. The América Móvil affiliate, Claro, limited itself to claim that network neutrality should be the subject of detailed study and debate before being legislated (Ministério da Justiça 2010a). Meanwhile, Embratel (also owned by América Móvil), and befitting its role as owner of large parts of

the Brazilian Internet 'backbone', underscored the complexities of network management to optimize the user experience (Ministério da Justiça 2010a). In interviews with me, Castro stated baldly that "We were never against the concept of network neutrality", while another telecoms executive maintained that their objection was only to the regulation of a "theoretical" concept in an "a priori" manner.

Positive discrimination: on the side of 'choice' and 'freedom'

In later public statements, once the sector opted to move out of the shadows and engage in the wider debate on network neutrality, representatives became more categorical. One of the principal vehicles the sector used to articulate a common (op)position for the Marco Civil was through the industry association *Sinditelebrasil*. As my web company interviewee explained to me, industry players would tend to speak out individually when in favour of a government project but would promote their interests *collectively* (thus assuming less reputational risk) through associations when they sought to *oppose* a policy. In the case of the telcos, a glossy brochure was published by Sinditelebrasil in 2014 to belatedly try and intervene in public discussions on the Marco Civil. "Are telecommunications providers favourable to network neutrality?" prompted a question presented in large font. The response was clearly intended to reassure:

> "The answer is yes! Whomever states the opposite is wrong! In truth, the discussion about network neutrality is already settled!...The telecoms sector defends the guarantee of a free and open Internet, preserving fundamental user rights, including transparency, freedom of communication, accessibility, non-discriminatory treatment, and your right to choice and privacy" (2014, p.5 *translation mine*).

Later, the brochure outlined what the sector concluded that network neutrality should *not* do: "Restrict free initiative and competition; delimit business plans for access providers; restrict the offer of differentiated services; restrict network management techniques for access and connection providers." There is much worthy of analysis in these statements.

We can identify once more the meta-signifiers of the digital discourse that were so formative in the early stages of the Marco Civil process. That the Internet should be kept "free and open" signified that it should remain permeable to market-led development. "Transparency" is used as a signifier for both the market economy and democracy, with the opacity of state bureaucracy backgrounded as the implicit and antagonistic 'other' (Springer 2012, p.936). 'Freedom' and 'choice' meanwhile are the

principle virtues of a market economy. Finally, the 'fundamental user rights' in the above tract refer to the techno-legal fixes from the dominant digital rights paradigm, that are compatible with informational capitalism's systemic needs.

In essence, the telcos felt compelled to come out and disavow 'negative discrimination'; the 'nasty' side of network management. Blocking websites and throttling traffic conflates easily with the spectre of censorship, and defiles the sacred cow of expression. It is in any event less lucrative than its 'positive' counterpart. What the telcos were desperate to secure, was the discursive territory around 'choice' and 'freedom', where the various practices of 'positive discrimination' – making certain sites and content *more available* than others – would be allowed to prevail.

This strategy was evident in a parliamentary debate on the Marco Civil in 2013, when Eduardo Cunha was forthright in condemning the ills of negative discrimination: "we all agree that we need neutrality, that nobody should be prevented from transmitting their content…that no-one is privileged, that nobody filters, that nobody monitors, that we have privacy controls. This receives applause from all of us. We are all in favour of neutrality of content" (Câmera dos Deputados 2013).

Beyond expressing such pieties for the sake of public appearances, there was also an economic rationale behind the stand against negative discrimination, one that derives from Brazil's peripheral status within informational capitalism. According to a group of Princeton researchers, 84% of all Internet paths originating within Brazil route via the United States (Edmundson, Ensafi, Feamster, & Rexford 2018). This occurs even when a user might be accessing the website of a Brazilian newspaper, for instance, and is based on Internet routing protocols that send data via the fastest path. Given such a heavy reliance on the infrastructure of US telecoms companies, the neutral nature of those systems becomes paramount to Brazilian telecoms companies. As Castro explained to me, "if (an American telco) prioritizes the traffic of my competitor here in Brazil, or discriminates against mine, what is going to happen to me? My clients are going to migrate to my competitor, right?".

Moreover, where the telcos outline the presumed negative potentials of network neutrality in the Sinditelebrasil brochure are where we can read the economic interests of the telecoms sector, and the specific goals of permitting positive discrimination. As mentioned at the outset of this subsection, the capacity to develop new business models represented the ultimate goal of the telecoms sector. What were those 'business plans' that they did not want to obstruct?

Ground zero for 'zero rating'

One such 'potential business plan' is outlined in the telecoms brochure: the offer of 'differentiated services' (Sinditelebrasil 2014). This referred to the desire of the telecoms companies to be able to offer stratified access to the Internet, for both the core and the edge of the network. For the core, "What we wanted effectively was paid prioritization. We wanted that possible" (Castro, research interview). This would mean that application and content providers could pay the telecoms companies a fee to be able to offer their users a 'fast track' to access. This might also apply to specialized services with exacting network requirements such as telemedicine and teleconferencing. Castro justified this to me as analogous to the sale of different classes of seat on an airplane: "Why can't I do this. I am not degrading anyone. I am not diminishing anything. I am giving a bonus to the guy. Just because there is an executive class on the plane, the fact that the guy travels executive or economy class does not mean that he's going to have awful service".

Moreover, he was at pains to underscore the fact that Anatel had already established minimum standards for the Brazilian user, thresholds that the telecoms companies were determined to meet[18]. Ultimately, so long as those minimums were maintained, what was the problem with other people paying to get a better service? This correlated with the values of choice and freedom, after all.

For the network's edge, meanwhile, 'differentiated services' could be constituted in various ways. For instance, one obvious possibility would be to offer a monthly social media package: a subscription that would only provide access to the core social networks. Or an Internet 'light' package where open web surfing was permitted, but video streaming was available only in a degraded form. Or perhaps the telecoms companies might present the fruits of a partnership with the likes of Facebook where access to the social network is given away for free; the practice known as 'zero rating' (Hoskins 2019). Indeed, at a telecoms industry trade show called Futurecom in 2013, the VP of the telecoms giant TIM, Mario Girasol, stripped bare the rhetoric and declared that in the Marco Civil "we are not talking about freedom, but about good old money, about business models." He went on to add that telecommunications should move beyond 'pipes' and function in a similar way to the provision of electricity ie. To sell data on a 'metred' basis. (Grossman 2013).

[18] It is worth noting that an Anatel report in 2013 declared that its minimum standards for mobile broadband were not being met by any major operator in 23 of the 27 states of the country (Amato 2013).

Even if some of the above constituted ‘future’ business models for the Brazilian market, other quotidian possibilities would in fact be prohibited by the Marco Civil. The wording of Article 9 of the earliest versions of the Marco Civil did in fact prohibit the offer of any differentiated services other than by the speed of Internet connection. Even the marketing of a sliding scale of data volumes – a standard market offering in Brazil in 2012 - was prohibited by the wording of the clause that read that access providers must treat all data packets in an isonomic form, irrespective of the contracted service. This meant that to block or de-prioritize a user’s Internet access after reaching her data cap would violate this stipulation. The inclusion of this strong consumer protection fuelled much of the telcos’ ire.

The other element within the Marco Civil that had the telecoms sector fighting a rearguard action was Clause 3 of Article 9 that stipulated that “in the provision of Internet access…it is prohibited to block, monitor, filter, analyse or inspect the content of data packets, save for the situations permitted in the legislation”. The fact that these prohibitions were included in the Article dealing with network neutrality shows that the intention of Molon was to safeguard a neutral network from the discriminatory intentions of the telecoms operators. The interpretation of the telecoms sector as expressed by Castro was quite different: “The operators depend on this, it is their oxygen. Without reading the packets, it’s not possible to manage the network” (Papp 2014, p.70). In other public statements, the telcos described it as “one more example of an unparalleled intervention that the law makes in the operations of the telecoms providers” (Sinditelebrasil 2014, p.8 *translation mine*).

At a parliamentary meeting, Castro even lamented that “there isn’t anywhere in the world with this reality” (Telesíntese 2013 *translation mine*), and he may well have been right. While these prohibitions certainly strengthened protections for Brazilian users, and would impinge upon some legitimate network management practices, there was still more to their protestations than appear on the surface. In interview with me, the National Secretary for Information Technology Policies for the Brazilian government (2011-2015), Virgilio Almeida, speculated about the commercial intentions of the telecoms sector with regard to the various layers that comprise the Internet[19]. “I perceive that the telcos want to go up, they are interested in making commercial use of subscriber data…it’s no longer only the data packet, they’re interested in the user, in consumer behaviour. So, the telcos also now see that below, the commercial possibilities might be more restricted than above”. If this reckoning

[19] The ‘layers principle’ holds that Internet regulation should acknowledge that the network operates in a system of 6 vertical layers, from lowest to highest: infrastructure; link; IP layer; transport; application; content (see Solum & Chung 2004 for a detailed explanation).

was correct, it added another dimension to the righteous indignation of the telecoms sector. The telcos might indeed have perceived that greater profits beckoned from beyond 'the pipes'. This possibility not only bolsters the argument that, in fact, the telcos' apparent desperation around network neutrality was more perceived than real, but also feeds into my next point around the 'offensive' aspect of their agenda and a heated competition to exploit lucrative user data.

Contesting "the law of Facebook"

The telco agenda was indeed more than just defensive. As well as seeking to ring fence certain network management practices, the telecoms sector had a rival in their crosshairs that potentially stood to gain the most from the provisions in the Marco Civil: the web companies. Although most of this dispute occurred well away from public scrutiny, my interviewees from both the telecoms sector and a major web company did not attempt to obscure the hostility that represents one of the core tensions within the dynamics of informational capitalism.

Both Castro and another telecoms executive I interviewed made clear their resentment at what they considered a parasitic, under-regulated, unaccountable industry existing 'on top' of their infrastructure. Castro went to lengths to detail the inequity:

> They only obey the laws of California, no?...The telecoms sector generates 500,000 jobs. And there, the guy comes from away, he has 5,000 employees there, no? The infrastructure, the platforms are offshore, they're not here…We invest 29 billion reals per year, no? Google invested half a billion in 5 or 6 years, you understand? It's that disproportional…"

This position was clarified in public at the aforementioned Futurecom event where the President of Telecomp, João Moura, declared that "the question is who appropriates the value generated and who incurs the cost. What we fear is that we continue to see what we could call an irrational use of the network without being able to monetize it in some way." It would be 'irrational' indeed, from the operators' perspective, to manage infrastructure from which untrammelled profit could not be rendered. At the same event, and returning once more to the TIM VP, Girasole, he was equally categorical: "We can't have a Marco Civil that carries a freerider…the operators cannot be treated like pipes." (Grossman 2013, *translation mine*).

We should return also to the Sinditelebrasil brochure that formalised the sector's position on the Marco Civil (2014). In the introduction, the text describes application providers as "big global companies that operate in Brazil in a nearly virtual way, *providing the most minimal social and economic contribution* for the high revenues they generate from local users" (3, *emphasis mine*). Finally, Cunha sang from the same hymn sheet as he decried the Marco Civil in a parliament, claiming that "If I vote for this here, I'm going to vote for Google's law, the law of Facebook. I am not going to vote for a law for those who are not investing in our country" (Câmara dos Deputados 2013).

In essence, the web companies were much more successful than the telcos at monetizing and commodifying user data, and the telcos coveted that capacity. As an editorial in the *Folha de São Paulo* described it succinctly, "the telcos…were late in understanding that the name of the game is content, and the client no longer sees value in the offer of services (voice and Internet)" (Wiziack 2013).

The redress the telcos sought through the Marco Civil was to lobby for more onerous commitments to apply to the 'free-riding' web companies. The precise nature of the strictures would vary as the legislative process developed, although the one constant was that the regulatory gap between these two sectors vying for primacy within informational capitalism be narrowed in favour of the telcos.

'Polluting the debate': the telcos' discursive strategy

Another important aspect of the telcos' offensive agenda was to make programmatic interventions in the discursive realm; to sow discord and confusion, and to propagate discourses about the Marco Civil that would legitimate their agenda in the Brazilian public sphere. As mentioned previously, a core part of these efforts was to lobby Brazilian Congresspeople and exploit their ignorance of the technical realities of the Internet and the likely impacts of the provisions in the Marco Civil.

As one of the senior researchers at CTS explained to me in vivid terms, the telecoms sector "went the public route, but instead of putting the debate on the table, they were kind of disturbing the debate, polluting, creating noise, trying to confuse the issue, …There are excellent arguments if you look at the debate in the US…they were not brought to Brazil". These claims were mirrored by civil society leader Lefevre who described to me how she and the other CSO representatives in Brasília would try and explain the precepts of the Marco Civil to parliamentarians. The challenge was that the telcos were "waging a strong campaign of disinformation…you won't be able to do this or that, it's going to be a

form of government of the Internet, businesses won't have freedom to develop business models and they painted a dark picture of what would emerge if they passed the Marco Civil". Once again, I would argue that the strategy of 'disturbing the debate', rather than engaging directly with opposing arguments, should be understood through the frame of digital rights being contested at the periphery.

In his analysis of the US network neutrality policy process, Newman describes at length the sprawling and arcane debate that occurred between legal experts around network engineering or "of arguments over pricing, double-sided markets, and consumer surplus foregone or gained" (2016, p.5970). In the United States, a glut of expertise on the technical and legal dimensions of telecoms network management meant that both critics and advocates of network neutrality were able to elaborate policy proposals and counter-proposals. As Newman describes, "Incumbents would pour resources into the hands of friendly academics and think tanks; network neutrality proponents would be forced to scramble to respond to each emergent argument as new variants surfaced…" (2016, p.5976).

The nature of the debate signified more than just the United States' remarkable level of technological development, and the related fact that public discussion of an otherwise arcane policy issue could be imbued with such technical rigour. According to Newman, the debate was carefully circumscribed by the telecoms and cable giants in order to legitimate the limited terms on which the issue of net neutrality could be considered, thus forestalling other more substantive visions for the Internet (2014; 2016; 2019). Freedman (2009) makes a similar case for the UK, arguing that

> 'official' contributions to net neutrality debates tend to rely heavily on legal and economic arguments that lack a focus on broader theories of the public interest, citizenship or, in particular, democracy. By reducing it to mere 'traffic management issues'...policy makers have sought to limit what should be a discussion about how best we should organise and facilitate the circulation online of information, media and culture to a much narrower pre-occupation with ill-defined notions of transparency, competition and 'openness' (Freedman 2012, 109).

The critiques thus elaborated describe a very distinct reality to the one observable in Brazil around the Marco Civil. As outlined in the preceding chapter, the concept of 'network neutrality' enjoyed very limited prominence in academic, policy or economic spheres. As such, technical arguments were not, in Moncau's words, 'brought to Brazil'; essentially because they were not needed. There was no

discursive foundation on which to build a rational, techno-legal debate around network neutrality in Brazil. That is not to say, however, that the telecoms sector did not wish to limit the terms of discussion in the same way that their counterparts in the United States did. It is simply that they elected to pursue a different discursive strategy; one in which the ideological component was much more clearly foregrounded, and disinformation more blatant.

In terms of the latter component, one medium that the telco sector tried to mobilise in their favour was social media, and in particular YouTube. Once again, rather than attempting to engage directly with the arguments presented by proponents of network neutrality (most notably consumer welfare arguments premised on cost, but also social justice arguments based on economic equality), the proxies of the telecoms sector aimed to propagate confusion and antipathy towards the Marco Civil. Prominent YouTubers spoke out on the platform against the Marco Civil. These included the famous Brazilian comedian and writer Danilo Gentili, who posted a recording in conversation with two collaborators roundly criticizing the Marco Civil. In the video, the three figures repeat a familiar claim that the Marco Civil would result in a regime of censorship, and that it was a policy similar to those implemented in Venezuela and Cuba (Rede Livre 2014).

Online free speech activist, João Caribé, considered the arguments proposed by these commentators to be "completely insane". Caribé was under no illusions as to the origin of these claims: "they represented other interests…the smoke screen worked a bit…because they were really positive players and they reached a lay audience that didn't know the Marco Civil…so they created opposition to the project…and then we realised for certain that this articulation represented the telecoms sector" (Research interview).

While we cannot ascertain for certain that these YouTubers were paid by representatives of the telecoms sector, there is a clear parallel in the forms of 'astroturfing' and public disinformation that were mobilised in Brazil a few years prior on behalf of the pay TV association (ABTV) in the corporate disputes around the Lei SEAC. In 2007 the ABTV launched a web-based campaign called 'TV freedom'[20] in order to mobilise viewers to speak out against reform of the Pay TV law. The campaign in this case claimed that the policy reform would result in the increased cost of cable TV subscriptions, as well as

[20] Based around a now defunct website called www.liberadedenatv.com.br

government control of programming (Lima 2015, p.37). The latter point shows a clear overlap with the claims of government censorship made by public figures opposing the Marco Civil.

It should be noted that the telecoms sector perceived that the flow of disinformation around the Marco Civil was not unidirectional; a belief that may have directed (or at least self-justified) the telcos' information strategy. Alex Castro decried an "enormous politicization of the debate" with "ideologies prevailing in the discussions" (Research interview). He was particularly animated about a video produced by some of the bill's civil society backers showing a user of a non-neutral Internet being forced to choose a bespoke content package in order to go online. It was "an exaggerated discourse, of antagonism…so we started to discuss, to want to enter into their games". He also invoked comparisons with the US debate, and claims made by the CEO of AT&T, that the telecoms sector was "demonized", along with the "dissemination of fear and alarmism". Accordingly, the telecoms sector opted to 'fight fire with fire', by foregrounding an ideological component to their opposition to the Marco Civil.

The 'Venezuelization' of the Brazilian Internet

What proved to be an enduring tactic was to try and engineer a discursive articulation between the historical spectre of communism and the legislative project of the Marco Civil. This articulation offered a potentially fruitful means to discredit the Marco Civil in the estimation of influential sets of actors: the traditional media (and by extension their viewers/readers), conservative politicians and various industry sectors.

The receptivity of the traditional media to 'red scare' rhetoric in Brazil was particularly pronounced. The mainstream commercial media in Brazil, as has been explained at length, was shaped by the military regime as part of a far-reaching plan of nation-building and social control. A core part of the media's function in this system was to showcase the achievements of the regime and to denigrate any opposition that emerged from within Brazilian society. Given that the dictatorship was in place during the height of the Cold War (1964-1985), the prospect of communist insurrection was considered an acute threat to the regime (Schwarcz and Starling 2020). And as Marinoni (2015) notes, "the few individuals and groups selected by the dictatorship, or that already existed and passed through the ideological filter of National Security, basically conformed to the broadcast bourgeoise that dominates

the sector until today” (p.15 *translation mine*). As such, the commercial media in Brazil, retained a strong institutional aversion to any political project associated with communism.

It needs to also be noted that the intense social stratification in Brazil, with a numerically tiny though economically preponderant elite class seeking to maintain hegemonic dominance over an enormous and impoverished subaltern class (Ribeiro 1995), results in the spectre of communism acquiring the mantle of the ‘bogeyman’. This fact also explains the strategic importance for the telecoms sector of connecting the Marco Civil with communism. The combination of the historical relationship between the media and communism, as well as elite fears of radical redistribution, are therefore essential ‘peripheral’ dimensions to consider when analysing how digital rights were contested in Brazil.

The Brazilian Congress was one of the primary venues in which the telecoms representatives, usually through their parliamentary proxies, promoted ‘red scare’ rhetoric around the Marco Civil. Solagna (2015) noted how the debate “acquired ideological contours” with the values of ‘freedom’ and ‘equality’ juxtaposed along political dividing lines (p.107). He goes on to cite the speech of one Congressperson, Fábio Ricardo Trad, as emblematic of this discourse. On November 11th, 2013, Trad claimed that “because the left embraces equality emotionally, this has a strong appeal. We are going to have to sustain the basic principles of free initiative, to defend the notion that who uses more, pays more…It’s inequality in the name of equality.” (p.107).

In another speech made in Congress, this time made by the telcos’ chief proxy, Eduardo Cunha, the articulation with communism was made explicit. In a lengthy diatribe that railed against the (mis)apprehension that all users under the Marco Civil would be permitted an unlimited data allowance, Cunha pronounced that “Yes, we are socializing, communizing the Internet. This is what we are going to end up doing!” (Câmera dos Deputados 2013 *translation mine*). In another event, Cunha repeated the claim: “The discussion is ideological and we do not agree with communizing the Internet” (Solagna 2015, p.107).

According to Intervozes campaigner, Bia Barbossa, the basis for these claims connected to a prevalent ideology within the Brazilian Congress that is “anti-regulation, in general”. She described this position to me as “neoliberal, extreme…that any regulation is prejudicial to the market. And the service providers strengthen this discourse saying that…Dilma wants to transform Brazil into Venezuela, that the Brazilian government is censoring the Internet the same as China…”.

In the ensuing subsections, we will broaden our focus to assess how the 'telco agenda' around network neutrality intersected with the competing agendas of other sectors within informational capitalism – particularly content producers and web companies and - as well as those civil society organizations that championed the bill.

The contours of an informational capitalist turf war

Owing in part to the kind of claims detailed above, the spectre of the telcos overshadowed all of the early skirmishes around the Marco Civil. The telecoms sector acquired an outsized status by virtue of its "bombastic declarations" in public (Web company executive, research interview), as well as its more obscure efforts to impede the bill in private. Certainly, for civil society organizations, the telecoms sector became the villain of the Marco Civil narrative, owing to its staunch opposition to network neutrality. It was not, however, the only interest group with a vested concern in whether and how network neutrality would be legislated.

The prospect of enshrining network neutrality in law did of course impinge upon other powerful sectors within informational capitalism, for which it represented an opportunity to consolidate their favoured mechanics of revenue generation. Net neutrality had also been elevated to the centrepiece digital right by Molon and his supporters in civil society; frequently made analogous to the civic values of freedom of expression and access to knowledge. As such, the focus of this sub-section is on the multiple contestations that evolved around network neutrality, the discourses that accompanied them, and how these represent some of the key tensions within the dynamics of informational capitalism.

As mentioned in the introduction to this chapter, informational capitalism in Brazil observed the advent of a powerful new rivalry in the form of Globo vs the telcos. This was due to the passage in 2011 of the Lei do SeAC (Pay TV Law) that permitted the telecoms sector access into a national cable TV market that was highly lucrative for the Globo media group. It meant that for the first time, the Latin American media conglomerate with the highest revenue in the region - Globo with USD5.7 billion - was cast into direct competition with the two telcos with the highest revenues - Telefónica with USD65 billion and América Móvil with USD50 billion (Mastrini & Becerra 2017, p.259).

The development of the Lei do SeAC could indeed be interpreted as a dress rehearsal for the power dynamics observed during the Marco Civil. The former was the object of major dispute for more than

three years before it was eventually passed. The struggle also pitted the core sectors within informational capitalism against one another in an effort to secure the optimal legislative environment for their business models.

The eventual compromise solution saw Globo's needs largely addressed, with legislators ignoring its near monopoly control over content production, while international players were mollified by the abolition on foreign capital caps in distribution enterprises, and the telecoms sector gained access to a lucrative new market. Akin to the Marco Civil, the Lei do SeAC never implied an existential threat for any of the major players; it simply offered the possibility to diminish or augment revenue generation. The final compelling parallel is that the end product was the result of various sectorial agendas being blended together in a grand political bargain, while sold as a public interest victory, and mediated by a state that was ill-equipped or unwilling to impose its own priorities (Souza Lima 2015, p.37).

These developments likely informed Globo's agenda for the Marco Civil; one that included securing network neutrality near the top of its wish list. This is because of the nature of Globo's participation in the subscription TV market in Brazil. Although Globo dominated the content side - either through domestic production, or its formidable bundle of exclusive licensing agreements with US studios - it relied on partnerships, rather than ownership of the distribution companies. With the introduction of the telecoms sector into the cable TV market; a raft of actors capable not only of funding content (up to a 30% ownership stake in any event (Wiziack 2013) but distributing content through its own infrastructure, it became imperative that Globo secure network neutrality in order to avoid finding itself at the sharp end of positive discrimination. As Moreira (2016) observed, the Lei SeAC "benefited the four dominant groups operating in Brazil: Spain's Telefónica, Mexico's America Móvil, Telecom Italia (Italy), and Brazil's Telemar with Portugal Telecom" (p.27).

In 2012, content production/programming represented 25% of the Globo Group's total revenues. This was divided between paid TV channels and online distribution (Possebon 2013). Although the lion's share of the group's revenues at this time, 71%, still came from the sale of advertising on its open and paid TV channels, content production/programming was the single largest growth area, as its revenues increased 34% from the previous year. This was clearly a 'golden egg' worth protecting from the threat of the telcos. Indeed, just four years later in 2016, its satellite division, Globosat, would represent the second largest source of revenue for the Globo Group after its open TV stations (Feltrin 2016).

In 2012, Globo were thus on the defensive with regard to the restrictions imposed upon it by the Lei SEAC. Although its domination of content production within the paid TV market was unaffected by the new law, stipulations regarding cross-ownership of content production *and* distribution enterprises meant that Globo was being compelled to make significant changes in its economic holdings.

Specifically, in 2012 Anatel demanded that Globo sell the stake it retained in NET/Embratel – recently acquired by Carlos Slim's America Móvil – in order to comply with the Lei de SeAC cross-ownership rules (Tavares 2012). NET/Embratel at that time dominated 38% of the pay TV market, with nearly double the number of subscribers of its nearest rival, SKY/DirecTV (Anatel 2013). Moreover, shortly afterwards, America Móvil consolidated its power in the Brazilian media market by assuming majority control of NET/Embratel and thus "strengthened the ever-growing presence of Carlos Slim, the Mexican media tycoon, in Brazilian telecoms" (Moreira 2016, p.23). As Globo processed this new threat, it "turned its focus towards the production rather than distribution of stations" (Mastrini & Becerra 2017, p.262), in the process becoming even more vulnerable to the possibilities that the newly-entered telcos would discriminate against their contents. A legislative assurance of network neutrality therefore offered a powerful hedge against this risk. Moreover, although Globo was not as reliant on online revenues as its rival, the Folha group, these too would be under threat in a non-neutral network world. Indeed, Globo must have recoiled at the telco's public musings about 'paid prioritization'; much better to leverage its existing media dominance than to have to pay the telecoms sector to maintain that privilege!

At the outset of the Marco Civil's journey through Congress, Globo opted to maintain a low public profile. Indeed, according to my keyword search of the Factiva database, in 2012 the only occasions that the Marco Civil was mentioned in Globo's newspaper *O Globo* were in two op-eds only tangentially related to the bill. The group was likely keen to observe the initial skirmishes from the sidelines, to see how network neutrality and IP – its two major concerns in the Marco Civil – would be affected.

Globo's 'doctrine' of neutrality

Certainly in interview, Tonet Camargo, the Director of Public Policy for the Globo Group, assured me that network neutrality was a foundational concern for the organization: "It is a doctrinal base, an axiomatic base, from which everything else is built". He went on to develop this perspective, one worth exploring in detail:

> (Without network neutrality) I am not going to have the Internet that it is today, a space that is naturally free. *Naturally free*…Because if everyone had the same opportunity for the traffic of their data through the Internet, it is going to continue to be a free medium. And when I say a free medium, I am not saying that we don't have to have tax regulations, or indeed internet businesses that charge fees, that we don't have safeguards for property rights, or any of that. I am talking about the flow of data, and the flow of contents on the Internet.

Camargo was evidently at pains to define what he meant by the Internet as a 'free' medium, and how that related to network neutrality. It is a perspective that is reminiscent of the US 'free flow' doctrine, in which 'freedom' is narrowly construed to justify a media system in which the most powerful content producers were able to distribute their material without restrictions (Nordenstreng 2011). It is a form of freedom that, conversely, does not preclude all manner of *control over* the user, in the form of taxes, fees and IP restrictions.

This tract offers indeed a valuable insight into the tension at the heart of network neutrality as a first order digital right: at the same time as it offers Internet users the possibility to access information, it constitutes a form of freedom that favours the powerful content producers and distributors that dominate the web, and as such it facilitates a core mechanic of informational capitalism.

Meanwhile, the tension implied by this 'doctrinal' commitment to network neutrality, and Globo's relationship with the telecoms sector, was also made explicit by Camargo:

> The position of Globo in relation to net neutrality was the same from the start to the end. Does this generate tension with the telecoms companies? It does, it did, because they are clients of ours and we are clients of theirs…But these things remained well separated, no? The discussion was one of a political nature.

The 'political' nature of these discussions refers most likely to the capacity of these entities to set aside their commercial interdependence in the interests of pursuing their preferred ends for network neutrality with a winner-takes-all mindset. This manifested itself in the manner in which Globo used its full media arsenal to publicly lobby for network neutrality (Rosa 2014), at the expense of the telcos, after it had privately secured its other main target: notice and takedown for copyright violations.

As well as ensuring a head-on confrontation with the telecoms sector, Globo's position on network neutrality implied an important synergy with the positions of other important actors in the development of the Marco Civil: its civil society and state backers, and the web companies.

In the case of the latter, it should be noted that although there was an obvious alignment with Globo in terms of support for network neutrality, the two sectors of informational capitalism were at loggerheads on the issue of copyright. This was vividly illustrated in the dispute over third-party liability in the bill – examined at length later in this chapter – but earlier episodes demonstrate that this was not an isolated incident. For instance, in 2011, Brazil's National Association of Newspapers (ANJ) (of which the Globo Group is the most prominent member), recommended to its 154 members that they leave Google News because it offered no remuneration for re-publishing its copyrighted content. This dispute unsurprisingly received prominent coverage in Globo's own newspaper (G1 2012).

Moreover, in 2012 Globo adopted an internal policy that prohibited the sharing of links to Globo content through the official Facebook pages of Globo media products such as *G1* and *O Globo*. The stated rationale for this "declaration of war" was because Globo executives were displeased with the ratio of Globo content that appeared in the newsfeeds of Facebook users, and also because they were concerned about the amount of information that Facebook gleaned about Globo's own audience, as well as their capacity to advertise directly to them (Mizukami et al 2014, p.123). We can therefore observe here a core dynamic within informational capitalism: the tension between information flow and control. On the topic of network neutrality, however, Globo and Google were broadly aligned.

The curious ambivalence of Google

Google and other web giants had taken a vanguard role in the US net neutrality debates in the mid to late-2000's. They made common cause with public interest groups like Free Press to pressure the FCC to enact safeguards for a neutral network (Kimball 2013). In so doing, the web companies successfully aligned their own economic interests in preserving an 'open Internet' with the civic goals of access to information and freedom of expression. As well as trading on their history of advocacy in the United States in support of network neutrality, the web companies adroitly associated themselves with key signifiers in the digital discourse, particularly 'open', 'neutral', 'transparent' and 'free' (Golumbia 2013). In the case of Brazil, web companies were thus positioned as 'natural allies' of the Marco Civil.

The Marco Civil's civil society and government supporters might therefore have anticipated that the web companies would represent a steadfast and powerful ally in the battle to achieve network neutrality protections. The reality fell well short. Although curiously, the *perception* amongst civil society groups and the telecoms companies was that the US net neutrality alliance had been replicated in Brazil. What could account for this disparity between reality and perception?

According to my web company interviewee the companies that comprised the sector "were not really engaging in network neutrality at all. They were just looking out to see 'do any of these things actually limit our practice'. No they don't. Is this a positive thing to have? Yes. But should we advocate strongly for it? No." The rationale for this strategic judgement takes us back to the hostile relationship observed in the United States, because they "didn't want to anger the telcos more than we already had worldwide" (Research interview).

Once again, we can observe that Brazil's place at the periphery of informational capitalism influenced the manner in which digital rights were contested and constituted. In this instance, my interviewee is referencing the net neutrality disputes in the US, described above, that pitted web companies against the telecoms sector. That hostility was reconciled in part through the infamous 'gentlemen's agreement' between Verizon and Google in 2010 (Dolber 2013, p.148). It is likely then that the web companies did not wish to revisit the antagonism between the two sectors that had reached such heights in informational capitalism's core, and preferred to pursue a more discreet tack at the periphery. Moreover, this strategy would make sense in a country like Brazil.

Data in 2011 showed that Brazil's web traffic is dominated overwhelmingly by US corporations, Google, Facebook, Microsoft and Twitter (Comscore 2012). This paucity of Brazilian national flagbearers has a significant bearing on the ability of web companies to legitimately intervene in public debate. While the country may boast one of the world's largest Facebook user population, their status as American companies, in a country famously sensitive to American interference in its national affairs (Rohter 2012), means that it is prudent for web and technology companies to keep a low profile in matters of national import. Moreover, it is widely understood that innovation and free speech are lofty ideals in American society and web companies were able to position themselves on network neutrality in order to appropriate those connotations. These currents in Brazil, by contrast, do not enjoy the same degree of salience.

We need to also focus on the web companies' guiding principle - 'do any of these things actually limit our practice?' - with regard to network neutrality. Within a strategic calculus, any desire not to antagonise the telecoms sector would surely be set aside if the web companies perceived that network neutrality provisions in the Marco Civil could bestow significant economic advantage. The fact that the telcos only sought protections for 'future business models' implied that there was no immediate threat for the web companies. As we explored in Chapter 2, infrastructure is a key dimension in the constitution of the zones of informational capitalism, and as Winseck (2017) astutely reminds us, Google's lower profile on network neutrality policy disputes coincided with a massive increase in Internet infrastructure investment; in effect, if Google owned its own pipes, then the telcos could manage theirs however they wished. Certainly, in 2016, Google announced the construction of a submarine cable linking Rio de Janeiro to São Paulo (BNAmericas 2016), a project that may well have formed part of Google's strategic considerations. In any event, the major US platforms had formidable resources to pay their way through to the user in a non-neutral network environment. And finally, if the 'future business models' implied zero rating and its variations, then the major platforms would be the favoured content providers in those arrangements with the telcos. As my own research elsewhere demonstrates (Hoskins 2019), in Brazil, as in other major Southern telecoms markets, zero rated mobile plans overwhelmingly feature the major American platforms.

As regards civil society's perception of the web companies' role in promoting net neutrality, my interviewee was again quite clear: "Maybe they didn't realise that we were never actually engaging on that. But yes, for them, we were all on the same side… *For civil society* [emphasis added] we were as strong supporters of net neutrality as they were".

We should compare that bald self-assessment of the web companies' ambivalence with the perception of one of the leading civil society organizers, the consumer rights lawyer and CGI board member, Flávia Lefevre: "So the big content providers ended up on the side of neutrality: Google, Globo etc. So, this was an important thing for us in the fight for network neutrality" (Research interview). Other interviewees from civil society and the SAL/CTS teams also identified what they imagined to be a significant marriage of convenience between civil society organizers and the web companies (Almeida; Afonso Souza; Moncau, research interviews). Even the telcos were drawn into the illusion, as my web company interviewee revealed:

> The activists were already so up in arms defending neutrality that the telcos thought wrongly - which was very funny - that we were the ones fuelling the fire. They thought that the web companies are the ones controlling and are behind the scenes of the activists because why would a regular person care about net neutrality is what they were saying…We actually let them think that even though it wasn't true at all... I didn't have even 1/10 of the leverage that they thought that we did.

For the web companies, network neutrality therefore appeared to constitute little more than a 'nice to have' from the Marco Civil. As discussed in the previous chapter, safe harbours were "really the thing to get" (Research interview). Although, the web companies were busy lobbying in Congress, as befitted their strategy of discretion, public statements at the outset of the Marco Civil's congressional journey were limited. One exception was a 'letter of support' for the Marco Civil, co-signed by Facebook, Google and the Brazilian e-commerce site, MercadoLivre, issued in September, 2012.

As per the strategic goals of the sector, in the two pages that this letter comprised, network neutrality did not receive a single mention. Instead, the web companies harnessed the digital discourse to elaborately promote the economic and societal benefits of safe harbours. For instance, the first point made in support of safe harbours underscored the supposed democratic importance of platforms:

> online platforms transform the political and social scenario, facilitating communication and access to government and creating new possibilities for interaction, organization and social mobilization…The recent political reform and the end of totalitarian regimes in various countries around the world, facilitated in part by the use of online tools, shows the democratic potential of the Internet" (Facebook, Google & Mercado Livre, personal communication, September 18, 2012, *translation mine*).

Another instance in which the curtain on the web companies' agenda was tugged back was when, Eduardo Neger, the President of the sector's industry association, Abranet, claimed at a trade show in 2013 that "If Brazil today has 100 million users, it's not because people like bit streams, but because they go on the Internet in search of apps that make sense for them" (Grossman 2013). The implicit message from Neger was that the economic logics of the Internet meant that any 'prioritization' in the mechanics of the network should be directed towards the web companies, and not the telecoms sector.

In sum, we can see that in the case of the Marco Civil, the contestation around network neutrality lays bare some of the dynamics of informational capitalism, and is defined in part by Brazil's status at the system's periphery. The telecoms sector resisted network neutrality in order to safeguard 'future business models', most likely including the practice of zero rating that has become nearly ubiquitous as a mode of offering mobile Internet access in the global South. Globo, meanwhile, sought to retain its dominance as a content conduit over the telecoms sector by securing network neutrality. Finally, the web companies defied public perception, and sought not to further inflame its tensions with the telecoms sector, by remaining neutral on net neutrality.

One group of actors decidedly non-neutral about network neutrality, as we will examine in the next section, was the informal consortium of civil society actors supporting the Marco Civil.

Civil society, consumption and the favela online

Although the principal civil society organizations that championed the Marco Civil – Intervozes, IDEC, Proteste, Partido Pirata, Artigo 19, FNDC – had displayed their support from the inception of the project, it was not until the bill reached Congress that the groups really began to amplify their advocacy work. This was partly in response to the interventions of the telecoms and content production sectors, and the security state, once the bill entered Congress. As we will see, there was also an obvious political opportunity structure implied by the Snowden revelations in 2013.

Much of this advocacy work was focused upon, and motivated by, the fate of network neutrality in the bill. As my web company interviewee explained: "a couple of activists and especially consumer groups were really strong in defence of network neutrality. I would say that if it wasn't for them, then that might have gone away". Given that this dogged support from a small band of CSOs was critical for keeping the issue on the government agenda, what requires examination at this stage, therefore, is *why* concerns for network neutrality were foundational to so much of this work. In so doing, what comes into focus is a bundle of discursive articulations connecting the concept of network neutrality with national socio-historical narratives. These show how Brazil's social inequality and its chequered history of media democracy, when associated discursively with the concept of network neutrality, garnered strong support from civil society groups for a techno-legal policy measure otherwise unheralded at the outset of the Marco Civil's development. In turn, this observation helps to address one of the core questions animating this study: why the Marco Civil represented such a modest set of digital rights.

‘Insurgent citizenship’: civil society in democratic Brazil

At this juncture, it is worth pausing to examine in more depth the composition and history of the civil society sector in Brazil. This is necessary in order to understand how the commitment displayed by a core of CSOs - so vital for the bill’s eventual passage into law - was connected to Brazil’s history of media democracy, and its status at the periphery of global capitalism.

One important dimension of civil society’s character in Brazil lies in the force of the urban poor seeking civil, social and political rights through collective action. Brazil experienced a massive process of urbanization during the 1960s and 70s as millions of poor rural inhabitants were encouraged to move to the city by the state in an effort to drive modernization and economic growth. The newly constructed urban peripheries, unserved by a neglectful state, and the subject of an “unjust and exclusionary citizenship” (Saad Filho & Morais 2017), organized themselves to acquire the necessities of life, and in so doing enact a form of “insurgent citizenship” (Holston 2009). Moreover, the order in which Brazil established its classes of rights (first social, then political, and then civil) (Carvalho 2013, p.17) also contributed to the emphasis on securing civil rights in Brazil. This history of rights claiming, although rooted in part in an urban underclass unconnected from those CSOs supporting the Marco Civil, did produce an influential legacy that helps to explain why digital rights were enacted in Brazil in the explicit form of a *civil* rights framework.

A further related aspect lies in the process of democratization that occurred in Brazil after the 1985 transition. President José Sarney established a National Constituent Assembly in 1985 that permitted popular amendments. This in turn facilitated the participation of CSOs that sought provisions on health and urban issues (Avritzer 2017, p.54), as well as communication rights (FNDC n.d.). As a result of these processes, a certain path dependency was created in terms of the willingness of the state and civil society to cooperate on the topic of civil rights. Indeed, as Baiocchi (2017) opines, “unlike, perhaps, civil society organizations in ‘liberal’ societies that have a stronger claim at “separateness” if not “autonomy”, civil society in Brazil has often had ties with the state” (p.43). This legacy was manifest in the close coordination between Congressman Molon and the CSOs during the parliamentary phase of the Marco Civil, as well as that between the Ministry of Justice and the CSOs in the foundational phase.

We must also highlight an important ambiguity in this dimension of civil society's relationship to the state in Brazil. A reaction to the abuses of the military dictatorship did not result only in a willingness to work closely with the *democratic* state in order to consolidate civil rights, but also an attraction to the Internet as a tool for disintermediating society from the communicative control of the state. This aspect of civil society's development in Brazil was flagged to me by Virgilio Almeida, who argued in interview that "These civil society groups, strong and structured, ended up acting on this question of the Internet because it is a vision of disintermediation. They would end up having more voices. So the Internet allows this, despite for example, the main communication groups".

The specific characters of the relevant CSOs deserves further scrutiny now, as civil society is often mischaracterised as a homogenous block. Indeed, in the case of the Marco Civil, it was composed of a diverse group whose organizational emphases could be broadly divided between consumer and communication rights. As I will go on to argue, the distinct remits of these two sets of CSOs were a significant contributing factor to the nature of the digital rights that constituted the Marco Civil.

Table 4

Organization remit of CSOs engaged in the Marco Civil da Internet

CSO	**Remit**	**Year founded**	
Artigo 19	Communication	2007	
FNDC[21]	Communication	1991	
IDEC[22]	Consumption	1987	
Intervozes	Communication	2003	
Movimento Mega	Communication	2009	
Partido Pirata	Communication	2012	
Proteste	Consumption	2001	

A bulwark against oppression: net neutrality and the Generals

Much of the basis of the staunch support of CSOs for network neutrality in the Marco Civil can be connected to Brazil's history of military dictatorship. As recounted extensively in Chapter 3, not only

[21] Fórum Nacional Pela Democratização da Comunicação (National Forum for the Democratisation of Communication)
[22] Instituto *Brasileiro* de Defesa do Consumidor (Brazilian Institute for Consumer Defence)

were civil and political rights severely repressed during the regime's 20-year rule (1964-1985), but the emergence of the mass media was managed carefully by the Generals in order to serve their socio-economic goals for the nation. The legacy of the media's servitude to dictatorship is an enduring one in Brazil, and is manifested within the civil society sector both in the broad mistrust of the main media groups (especially Globo), but also conversely by the faith placed in the Internet as a last redoubt of potential media democracy.

For the communication rights-focused CSOs, the 'fundamental rights' contained in the Marco Civil were deserving of their support because they offered safeguards for freedom of expression that had always been under grave threat in Brazil. I argue that recognition of this historic vulnerability resulted in the readiness of many of these communication-focused CSOs to accept and support a weak conceptualization of digital rights as framed in the Marco Civil. Moreover, as I argued at the outset of this section, the perceived legitimacy and urgency of the bill was greatly increased by the resistance of the broadcast, content production and telecoms sectors. In essence, the fact of this opposition served to reinforce the perception of the Marco Civil's worth amongst its civil society backers, despite its profound shortcomings as a guarantor of civil rights.

According to the Movimento Mega co-founder, João Caribé, the provisions in the Marco Civil protecting freedom of expression were important to "counteract a conservative, monopolist and controlling media". Caribé also noted how previous efforts to check the media power of the broadcast sector in Brazil, as detailed extensively in Chapter 3, were abandoned. The Marco Civil, in this context, offered a new opportunity to "create conditions in which we have a communication channel that is freer on social media". Neutrality, in his reckoning, was fundamental for this, "guaranteeing that our voices are heard equally." (Research interview).

A key member of the CTS team, Luiz Moncau, raised a similar point in interview. He claimed that in order to understand the significance of the Marco Civil in the context of Brazil, one needed to appraise the current and historical state of media concentration:

> there is one thing that is very important, which is concerns about media democracy and diversity, pluralism etc. So network neutrality gains a higher profile because of this. I think countries such as Germany that have a better environment for media maybe don't understand

> how deep the question is when you have only certain types of discourse circulating (Research interview).

Other Brazilian academics have similarly recognized the exalted status of the Internet for Brazilian activists, for the same reason expressed by Moncau and Caribé. Political scientist, Rosemary Segurado (2011), asserted that the context in which TV licenses are distributed in Brazil as a means of "political currency" means that "the concern for netizens is to prevent that the Internet under the command of the state privileges political groups and limits individual and collective freedom." (Segurado 2011, p.13). Also, the legal scholar, Marcelo Thompson, in his polemic published during the consultation phase of the Marco Civil (referenced extensively in the previous chapter), described how the Brazilian public sought judicial rather than political oversight of the Internet because of its perceived status as "a virgin, holy, pious territory" (Thompson 2010, p.5).

Bia Barbossa of the Intervozes group was one of the most steadfast supporters of the Marco Civil during its tubulent passage through parliament. Her advocacy work in parliament was identified by two of my interviewees as one of the key reasons that network neutrality provisions prevailed in the Marco Civil. In support of my earlier point regarding the importance of corporate opposition to the Marco Civil, Barbossa conceded that Intervozes' participation in the early stages was limited, and it was only when both the threat posed by the telecoms sector became apparent that her organization elected to commit itself wholeheartedly to the project. Also in interview, Barbossa made clear that as an organization committed to the defence of freedom of expression and the right to communication in Brazil, "the principal of network neutrality would be fundamental".

An existential concern: consumption at the periphery

A focus on the question of media democracy in Brazil and its legacy will only explain so much of the civil society advocacy for the Marco Civil. The other side of the equation also connected to Brazil's historically peripheral status, pertains to consumption rights, the groups that championed them, and the egregious social inequality in Brazil that makes this advocacy work such a pressing concern. The relevance of consumption rights to the framework of digital rights embodied in the Marco Civil may not, however, be immediately apparent.

In order to appreciate this dimension of the Marco Civil one must first take a step back to consider the broader question of what consumption means in Brazil and other societies in the economic periphery

of the global South. Sorj (2003) describes the central characteristic of consumption in contemporary society not in terms of its role as a marker of social status but as “embedded expressions of the scientific and technological knowledge of society, which have become prerequisites for social integration in everyday life, as much in terms of quality of life as in chances for social participation in general…” Moreover, he adds that “For the poorest populations of the planet, globalization is not the expectation of eating at McDonald's or wearing Nike, *it is access to food, water, electricity* [emphasis added] appliances, radio, television, telephone, Internet, antibiotics, books, cinema, CD players, cars, travel, (Sorj 2003, p.23). Fundamentally, for societies at the periphery, unlike the global North, consumption rights pertain to the existential question of the right to life, as opposed to the economic rationality of the right to fair treatment in the marketplace.

As has been widely documented, in Brazil in the 1990s, the stabilization of the economy and the end of hyperinflation through the Real plan catalysed an increase in the minimum wage, mass access to consumer credit and an overall increase in welfare for the salaried poor (Barbossa and Wilkinson 2017, p.150). Consumption behaviour amongst the urban poor changed radically as a result and the emergence of a ‘new middle class’ was widely championed (Barbossa and Wilkinson 2017). Social inequality and wealth concentration continued, however, to be defining markers of Brazilian society (Holston 2009; Carvalho 2013). Therefore, as Sorj argued in his milestone book, *A New Brazil*, consumption rights became a new mode of citizenship (2001).

The politicization of consumption rights in Brazil was also closely connected to the transition to democracy and the participatory processes that accompanied the construction of the country’s new constitution, as discussed above. The new democratic constitution did indeed enshrine consumer rights, and two years after its promulgation, the government enacted into law a Consumer Protection Code. It was an advanced piece of legislation that was partly the product of “popular movements advocating greater equity between groups and classes”, and went on to become “a model for consumer protection laws” throughout Latin America (Vaughn 1993, p.284). And as Barbosa and Wilkinson also describe, “the defense of consumer rights has also had a very active civil society presence, particularly through IDEC which has focused on key issues mobilizing social movements – GMOs, consumer information, internet access…” (2017, p.152).

The politicization of consumption rights mirrored developments occurring in other post-colonial or post-authoritarian societies, so the parallels between Brazil and South Africa deserves brief reflection.

This is especially relevant if we consider the parallels between the policy of racial apartheid in South Africa, and the Brazilian state's politics of exclusion based on class *and* race. As Iqani recounts:

> Citizenship in the new South Africa was expected by the previously disadvantaged to mean not only the right to have a say in who governed them, but also to provide opportunities to improve the material conditions of their lives. The ability to practice consumption in a more democratized manner was certainly high on the agenda of many South Africans who bore the brunt of systematic exclusion and institutionalized, grinding poverty. For these reasons, *it is impossible to consider citizenship apart from the possibilities and limitations of consumption* [emphasis added] in the South African context. (2012, p.7)

With this social context for consumption rights better established, one needs to consider the fact that consumer groups in Brazil – notably IDEC and Proteste - were heavily involved in efforts to universalize access to telecoms infrastructure in Brazil prior to the Marco Civil. This question of the right to Internet access contained in the Marco Civil thus represented one of the principal footholds for consumer advocacy groups to become involved in the development of the bill.

As Veridiana Alimonti – a lawyer for the IDEC group and interviewed for this study – explained, the emphasis on broadband diffusion was due to its potential to "strengthen rights like education, culture, freedom of speech, and access to information." (Alimonti 2016). Similarly, Flávia LeFevre from Proteste explained to me their particular approach to digital inclusion: "when you speak of public services, like access to the Internet, then we're not talking about something contractual, specific, it's talking about the right to access and the Marco Civil made this very clear… there is a reinforcement between what we at Proteste see as the right to consumption and the rights of the citizen".

Advocating for broadband access as a means to strengthen civil rights permeated also the consumer groups' approach to network neutrality. Senior Researcher at the FGV's CTS, Luis Moncau, explained these connections between a developing world view of consumption, the social inequality in Brazil, and the issue of network neutrality:

> Consumption is not just what you pay etc. but how to include the whole portion of people that doesn't have access to the market, that don't have…access to education, basic services like energy and water, these are deeply linked to human rights, to what in our Constitution is called the 'dignidade' of the human being…There is this strong perspective of creating an environment

> of equality. Network neutrality is related to that. And all the work these organizations do with copyright and access to educational material and culture these are related to (the fact that) Brazil is one of the most unequal countries in the world. (Research interview)

Through these observations, I contend that we can observe an important paradox in the influence of consumption rights on the Marco Civil. On the one hand, in Brazil consumption is politicized to a much greater degree than one would expect in societies in the global North, given the histories of state-led agendas of exclusion and the present and profound social inequalities. On the other, however, I argue that the high profile and social importance of consumption rights in relation to the Marco Civil actually served to further *depoliticize* the bill; the conflation of digital rights with the kind of individualist, technical fixes that inhere in the realm of consumption was, to a significant degree, legitimated by the exhaustive advocacy work of these consumer rights-focused CSOs.

I refer finally to Dantas' observations (2013) regarding the involvement of civil society groups in the neoliberal restructuring of the telecoms sector in Brazil, as the parallels with the Marco Civil are stark:

> there expanded an idea of a 'civil society' constituted by multitudes of particularist, communitarian, identity-focused movements in search of 'rights' that were *exclusive* and *excluding*, little disposed to any hierarchy of priorities, for which *systemic questions*, especially those directly related to capital, were not intellectually attractive or politically mobilizing (p.195 *translation mine*).

Uploading the favela: contesting 'differentiated services'

The goal of the telecoms sector to introduce 'differentiated services' – as detailed in the previous section – proved to be the glue that bound together civil society concerns around social inequality, and support for network neutrality provisions in the Marco Civil. The young lawyer and academic researcher, Pedro Ramos, became one of the most prominent independent voices articulating the importance of network neutrality during the Marco Civil process. Ramos invoked, in what became a widely cited comparison, the phenomenon of Brazil's urban favela communities to make a strong case against the telcos plans: "with the charging of differentiated services, the same social separation will be reproduced that occurs within Brazilian cities today: peripheries with limited access…and rings of wealth around which barriers of social stratification will be built with the objective of preventing the passage of the periphery…" (Ramos 2014, p.13 *translation mine*).

A similar case was introduced at a public audience hosted in the Brazilian Parliament to debate the Marco Civil by the free software advocate and confidant of Lula da Silva, Sérgio Amadeu. He cited research by CGI.br showing that of the poorest 15% of Brazilian Internet users, 72% used social networks and 52% used YouTube. The prospect of charging 'differentiated access' to multimedia content would therefore unduly penalise the most marginalized sectors of Brazilian society, in an argument that he described as "fatal" to the presented rationale of Eduardo Cunha and the telecoms sector. (cited in Solagna 2015, p.107).

Barbossa articulated similar concerns with regard to the potential for the offer of differentiated services to create a two-tiered Internet that would follow Brazil's fractured socio-economic lines: "if people didn't have net neutrality this inequality would increase even more. So, to use this argument in public debate was important because, in reality, so 40% of the Brazilian population don't have access to the Internet…we could increase social inequality if they created these differentiated service plans." (Research interview). These parallels between social disparities and digital exclusion in Brazil also explained in part the increasing media attention to network neutrality, according to Brazil's National Secretary for Information Technology Policies, Virgilio Almeida (Research interview).

These arguments did not, of course, go uncontested by the telcos. Indeed, the claim that network neutrality was a bulwark against the '*favela-ization*' of the Brazilian Internet was turned on its head by representatives of the sector. The Sinditelebrasil executive, Alex Castro, highlighted to me in interview the argument that differentiated services in the form of zero rating, and the related infringement of network neutrality, would in fact aid the freedom of expression of "40 million Brazilians who don't have money to pay for the service…and won't be able to exercise, at least partially, their role as citizen".

This concern for the speech rights of the most economically excluded in Brazil was also explained in connection to the 1670 municipalities in Brazil that are not served by broadband connections owing to their economic and geographic marginalization. According to Castro, the provision of zero rated mobile web services could allow telecoms operators to provide at least partial Internet access to regions where it was otherwise not economically viable (profitable) for them. For the inhabitant of those areas, "When you don't have service, that you can't pay for, or you don't have infrastructure for, when do you have freedom of expression? You don't. You cannot speak, you don't have the means" (Research interview).

This appropriation of social justice arguments *against* network neutrality by the telecoms sector was also evident in the US neutrality debates. Dolber (2013, p.157) explained how telecoms companies courted Afro-American community organizations to make the case for how enacting neutrality would imperil possibilities of increasing access for marginalized communities.

Thus, an important discursive articulation occurred between the discourses critical of social inequality in Brazil, and those advocating for the defence of network neutrality. In this articulation, network neutrality was defended as a fundamental facet of the Marco Civil by virtue of its capacity to prevent Brazil's favelas from becoming manifest online. As such, social divisions characteristic of Brazil's peripheral status became central to the contestation of network neutrality by key protagonists in the Marco Civil. The discourse of social inequality therefore buttressed the other - sometimes contradictory - dimensions of civil society advocacy for the Marco Civil that are characteristic of the periphery: the beleaguered state of media democracy, the politicization of consumption, the urgency of civil rights claims and the interrelationship between state and civil society.

We will examine in the next chapter how network neutrality was eventually resolved in the Marco Civil, including how the telecoms sector negotiated the inclusion of a legislative Trojan horse to enable their ambitions for network management practices. Now though, and in the final section of this chapter, we shift our attention to one of the other major provisions in the Marco Civil, safe harbours for web companies, and their conflation with the freedom of expression of Brazilian Internet users.

Any port in a storm: safe harbours and 'free' expression

In July 2012, the bill's rapporteur, Alessandro Molon, revealed three important changes he intended to include in the next version of the Marco Civil. These would become concretized in the bill as *Substitutivo II* issued on 11th November, 2012.

The first was that in spite of the concerted opposition of the telecoms sector, *Article 9* on 'data traffic' included amendments designed to further reduce possible loopholes for discriminatory network practices. This signalled that Molon, and the CSOs that lobbied for it, were not cowed by the obfuscatory and intimidatory tactics of the telecoms sector. The telcos, in turn, only intensified their efforts to thwart the bill's progress.

Those efforts would prove highly effective. Between August 2012 and June 2013, the Marco Civil was effectively frozen, as for any scheduled vote on the bill, the telecoms sector demanded the non-

cooperation of its Congressional block. As my web company interviewee explained to me, “that was when people realised the force and the strength of the telecoms sector because they basically wanted to block network neutrality rules, they didn’t really care about the rest” (Research interview).

Moreover, the Marco Civil no longer enjoyed the patronage of Lula da Silva, who was responsible for launching the project. Instead, the executive branch under Dilma Rousseff had effectively relegated the bill to a post-script on the governmental agenda; other priorities demanded her administration’s attention. These obstacles were evidenced by two cancelled votes: one on August 08th due to lack of quorum (likely orchestrated by the telcos), and another on September 19th by order of the executive branch (Papp 2014).

The inertia that had encompassed the bill must have been acutely evident to Molon, the man tasked with guiding its passage through the house. As such, the other two changes he included in this new version of the draft law were made with a view to breaking the deadlock. He intended to do so by driving a wedge into the sectorial interests of informational capitalism; interests that while not united, appeared in combination, insurmountable.

The second change was evidently a sop to the state security apparatus in Brazil. *Article 12* on ‘Log Storage for Internet Applications’ was completely rewritten in terms of the obligations of application providers (ie. those companies providing online services eg. social networks). From being *prohibited* from retaining any connection logs, they were now *compelled to retain them* for one year.

The amendment antagonised privacy advocates who understood the implications of the security services gaining greater access to user data; implications learned painfully from 21 years of military dictatorship. Those same advocates were also wary of the telecoms companies gaining access to users’ navigation history, as they feared that data would be used to exploit users. Molon himself declared that “if the connection providers had access to user data…we could not allow that in order to guarantee privacy” (Abramovay 2017, p.130). In contrast, little to no attention seemed to be paid to the implications of the web companies having access to the data. This blind spot can be attributed in part to the dominant paradigm of digital rights, which valorizes web companies as guarantors of expression, innovation and creativity, but obscures the exploitative nature of their data-driven business models.

The third change in *Substitutivo II* was the most radical. The addition of twenty short words signalled a major concession to some of the most powerful actors assailing the bill: the content production sector, including, most notably, the Globo Group.

'Free' as in beer: Expression and the safe harbour paradox

Article 15, of *Section III* on the "Responsibilities arising from damages caused by content posted by third parties" now included a new sub-clause stating that "the stipulations of this article will not apply when it concerns the infraction of authorial or associated rights".

This clause amounted to a radical alteration to safe harbours as a central principle of the Marco Civil, stipulating that online publishers would only be held liable for content if they had failed to comply with a court order for its removal. This change was the first attempt at what became solidified in the bill as a highly controversial IP carve-out, meaning that websites would be liable for copyright-infringing content. The inclusion of this new clause was significant because it signalled a tacit approval for the status quo: of notice and takedown, of backchannel agreements between platforms and copyright holders, and of the intimidation of small publishers to remove content deemed 'undesirable' by economically or politically powerful actors in Brazil.

This amendment proved pivotal to the fate of the bill in terms of securing the support of powerful new allies, and was predictably divisive. The nature of the contestation around safe harbours as free expression – a core digital right - will be explored in detail in the next sub-section, although it suffices to state here that the battle lines divided two main groups. On one side were the IP rights associations and content production sector favoured by the provision. They were in turn bolstered by pragmatists from within civil society who deemed it impossible to pass the Marco Civil unless they found a way to prise Globo and the content production sector away from the telcos.

On the other side were those 'idealists' amongst the bill's civil society champions, who decried how this clause would provide the conditions for systematic censorship. Where both sides of the civil society divide did coalesce was in the notion that the limited liability of platforms served as a legitimate proxy for the expressive rights of its users; the only divergence was in the degree to which those rights were diminished by the IP carveout. The pragmatists considered it a sacrifice worth making for the greater good of the bill, while 'freedom of speech' purists believed that the expressive rights of Brazilian Internet users would be decisively undermined.

The debate around this point indicates once again the unchallenged assumptions about safe harbours: that the invulnerability of web platforms could represent a true proxy for the freedom of expression of Brazilian Internet users. I reiterate now the essence of my critique*: that safe harbours as a proxy for expressive rights privileges a mode of communication that is 'free' only in terms of cost. Any advance of democratic or civic freedom generated by expression on those platforms is only ever a by-product of safe harbours, when the political-economic underpinnings of the Internet remain unquestioned. Such civic value is diluted by the reality that platforms commodify expression and use the ensuing power to algorithmically control the means of communication in a way that maximizes revenue at the expense of the public good. Ultimately, safe harbours represent the conflation of speech with profit, or as Schiller described it "a camouflaged preferment of electronic commerce"* (2000, p.72).

Defending the commodity form: The case for IP

Molon's grand bargain was premised on securing support for the Marco Civil from the content production sector, including its most powerful figurehead in Brazil, the Globo Group. The ability to effectively control the flow of its IP commodities was zealously guarded by the group. Across the breadth of its media empire in 2012, 'content and programming' may only have accounted for 25% of Globo's total revenues (compared to advertising at 71%) , but it was the most rapidly growing segment of the group's enterprise (up 34% from 2011) (Folha de S. Paulo 2013), and also the most vulnerable.

According to José Francisco de Araújo Lima, Director of Institutional Relations, Regulation and New Media for the Globo Group, in 2012, the business issued 150 notifications per week for copyright infringing content removal (Machado 2012). As the executive explained, "It is necessary to maintain notice and takedown in the Marco (Civil), and to assign responsibility to the provider that does not comply with the request. Using a judicial order makes everything impractical with the ponderousness of the justice system and the cost of the process".

Lima's fellow Globo executive, Tonet Camargo, similarly bemoaned the content provisions in the Marco Civil in interview with me. In so doing, he used two of the discourses that I identify as prominent in the arguments expressed by the Brazilian content production sector in defence of strict IP protections: the 'moral' and the 'apocalyptic' discourses. The 'moral discourse', proclaims the moral worth of copyright, invoking the plight of artists as rhetorical cover for the system that exploits them. The 'apocalyptical discourse' identifies the disastrous consequences for culture at large if rigorous IP protection is absent. Both of these discourses were propagated in order to legitimate a system of

control over the flow of information and culture that might otherwise be seen as punitive, excessive and designed to advance private power over the public good. In this respect there is an obvious corollary with the relationship between informational capitalism generally and the digital discourse: it serves the needs of power by securing assent for a system that would otherwise be unacceptable. For instance, Camargo bemoaned to me how content removal by judicial order represented an inversion of "the *natural order* of things"; that IP-infringing content should be *necessarily* expedited, not judicialized".

Clearly Globo had a vested economic interest in ring-fencing the systemic logics of commodification and control that were integral to the profitability of the group. As Camargo further explained, the prospect of a Marco Civil being legislated without the inclusion of IP protections was simply antithetical to the business goals of the group. Using the 'apocalyptic discourse', Camargo stated that "There has to be freedom on the web, but that doesn't mean that you relativize or end copyright. If you do, you end production. You end production" (Research interview).

Globo was obviously not alone in seeking to secure the continuation of notice and takedown. From the inception of the bill, the project had been assailed by the demands of international IP rights associations, orchestrated primarily by the IFPI, headquartered in Washington, DC. In a contribution submitted to the first round of public consultation, this organization - tasked with maintaining stringent IP protections worldwide to the advantage of the (predominately American) recording industry - wrote that "the approach of the Draft Proposal should therefore be rethought and amended substantially with the input of IP experts and the direct involvement of the copyright and cultural communities to establish an appropriate legal framework providing the necessary conditions for legitimate markets to develop online." (Ministério da Justiça 2010a *translation mine*).

The IFPI's Brazilian counterpart, the Brazilian Association of Phonographic Producers (ABPD), also vigorously lobbied Molon and the PT government to secure an IP exception in the Marco Civil. The Association's President, Paulo Rosa, cited data to justify its position, claiming that in 2011, 80,000 content removal requests were issued, claiming that "with a judicial order…the system will be overloaded." In a clear nod to the core of informational capitalism, Rosa also claimed that "It is not worth abandoning a practice that works in the United States and Europe" (Machado 2012).

The largest web companies also stood to gain from these proposed arrangements. An IP carve-out would simply replicate the familiar operating environment of the United States in Brazil, as well as

maintain the practice of notice and takedown that had done nothing to inhibit their dominance of the Brazilian Internet. The web companies would never publicly declare their support for the IP exemption for fear of compromising their zealously guarded 'neutral' status, although some press reports noted Facebook's prominent role in the IP clause being introduced (Dias 2012b). Moreover, my web company interviewee told me that in private they urged the clause's detractors to be realistic: "The web companies said listen guys, let's be honest here. Even the Communication Decency Act in the US, which is the biggest safe harbour provision in the world, has a carve-out for copyright…So, in a way our position ended up being a middle ground between these two extremes… Web companies are happy with that".

The manner in which the carve-out was negotiated and included by Molon was the subject of conflicting accounts. What is indisputable is that the fact and manner of its insertion into the bill proved hugely controversial, and consequential.

'Carve-out', or carve-up? IP and Molon's grand bargain

The Ministry of Culture was one of the actors most often invoked in explaining the presence of the IP clause, and it did indeed possess a strong vested interest in the issue. This is because in 2010, the Ministry of Culture had conducted its own public consultation to begin a proposed reform of intellectual property policy in Brazil. The existing copyright law (LDA), had been on the statute books since 1998, is considered highly restrictive, and had been badly dated by the mass adoption of the Internet (Branco 2016). Indeed, in 2012 an international consumer rights association ranked Brazil as 5th worst in the world for access to information according to the strictures of its copyright law (Dias 2012c). A reform process had begun under Minister Gil, a fierce advocate for copyright reform, who sought to "establish a dialogue between the market and other dimensions of culture" (Silveira, Machado & Savazoni 2013, p.568). An online public consultation in 2010 under Minister Ferreira attracted 8,000 comments, but the draft law was quietly abandoned by Rousseff's appointee, Ana de Hollanda, who increasingly pursued an approach to IP closely aligned with the goals of the content production sector (Silveira, Machado & Savazoni 2013; Branco 2016) .

In September 2012, a new Minister of Culture had been appointed by President Rousseff: Marta Suplicy. Suplicy bucked the recent trend exhibited in the post by being more open to resuming the project of IP reform than her predecessor, Anna de Holanda (Abramovay 2017, p.132). For some

observers, this offered a cogent explanation for what became the 'official' version of events regarding the inclusion of the IP carve-out. According to this account, the new Minister explicitly requested of Molon that the Marco Civil remain agnostic to the question of IP (or at least not impinge upon the status quo) so that she retained the policy space to re-open the IP reform file.

This explanation was clearly a positive spin on the IP carve-out for supporters of the Marco Civil: the Minister was simply paving the way for an eventual reform of IP law in Brazil. The reality, however, that Globo directly negotiated the carve-out with Molon presents a much less palatable account for the bill's champions; one that does not gloss over how the foremost power-holder in informational capitalism in Brazil decisively shaped the bill according to its own interests, and at the expense of Brazilian Internet users.

It is undisputable that Suplicy was under acute pressure from Globo, and its broadcaster coalition, Abert, as well as the domestic and international rights lobbies, to leverage her influence to secure notice and takedown. Certainly, by November 2012, the pressure from these actors was intense.

'Moral' and 'apocalyptic': The discourses of IP rights

In what appeared to be a coordinated attempt to shape the bill according to its sectorial interests, the content production sector led by the Brazilian Academy of Arts (ABL) and Grupo Globo, made two high profile interventions into the debate around IP and the Marco Civil. These interventions are worthy of analysis because they reveal how this core sector of informational capitalism attempted to wield discursive power in order to shape the composition of digital rights in Brazil, notably the freedom of online expression.

The first such intervention was a public workshop organized by ABL on November 5th, 2012 entitled "*Creators in defence of their authorial rights*" (Academia Brasileira de Letras 2012). The event was prominently reported by Globo in its newspaper (Machado 2012), and was attended by heavyweights from the content production sector, including José Francisco de Araújo Lima, Director of Institutional Relations, Regulation and New Media for the Globo Group, Paulo Rosa, Director of the Brazilian Association of Phonographic Producers and the President of the Brazilian Academy of Arts (ABL), Ana Maria Machado.

As one might expect from studying the dynamics of informational capitalism, the antagonistic 'other' in the case of the Brazilian IP rights lobby, were the major US web companies. For instance, the author, João Ubaldo Ribeiro described how "Google and Facebook pose as good guys, but they make out very well through advertising." Roberto Fieth, CEO of the publisher, *Objetiva*, made a similar argument, pointing out that "This distribution of other's content involves a lot of money, it's the big business of our time. Take a look at the purchase of YouTube by Google for US$1.65 billion in 2006. What creators were remunerated for that? These distributors say that content should be free, but are they going to liberate their patents?" (Machado 2012 *translation mine*).

Two other discourses prominent around IP in Brazil were also evident at the seminar: the 'moral' and 'apocalyptic'. Within the former discourse, the author, Ribeiro, claimed that "Literature is not obliged to be committed to any cause, but historically it was always responsible for the preservation and improvement of language in this country". While, in the latter he added that "If you withdraw the incentive to the men and women who make it (literature), then we end up with nothing". Similarly, the composer Fernando Brant argued that without proper remuneration for artists, as well as reproduction of their work being premised exclusively on permission being granted "nobody is going to write a book again, nobody is going to compose" (Machado 2012 *translation mine*).

Both of these discourses were evident in the opening speech given by the Brazilian Academy of Arts President, Ana Maria Machado. One salient point that derives from analysing her speech is that in a familiar tactic from the content production sector, Machado uses the language of rights in order to intervene in the debate about the Marco Civil. As described in the previous chapter, the use of rights language was first harnessed by content producers and distributors in the 1980s (Streeter 2011, p.79). Although Streeter does not describe it in these terms, it was an attempt to legitimate the nascent logics of control and commodification of informational capitalism. Here we see the same ploy in an updated form; the drive to legitimate the mechanic of IP law by including it within a framework of digital rights.

In this case, Machado presents a straw-man argument by opportunistically juxtaposing the 'right of access', with copyright:

> There is a confusion that presents as incompatible the right of access with the rights of the author. It doesn't have to be this way…We cannot have legislation that reinforces the

> misconception that the costs of the right to access should fall upon the rights of the author… (Academia Brasileira de Letras 2012 *translation mine*).

Nowhere in the Marco Civil does such a direct conflict exist. The only 'rights to access' included in the Marco Civil in the draft bill were included in Chapter 4: The Role of the State, and *Article 4* of the pre-amble. Neither has any direct connection to the liability of third parties (*Articles 14 & 15* of *Section III*). The question therefore emerges, why would Machado choose to make this connection?

I contend that she did so because safe harbours were frequently conflated with freedom of expression by the Marco Civil's civil society and government supporters, and free expression – owing to its status as a meta-signifier in the digital discourse – was unassailable. 'Access' on the other hand enjoyed a lower profile in the debate around the Marco Civil, as well as arguably within the digital discourse itself. Machado also appeared to reckon that 'the right to access' could be more closely associated with, and therefore used to besmirch that arch-rival for primacy within the system of informational capitalism; the web companies. As such, Machado concluded that passage arguing that "On the Internet, even with free access, the content hosting businesses gain from advertising and become owner millionaires.

Machado also opted to articulate the moral discourse about copyright with the discourse of social inequality in Brazil that was so prominent in the debate about network neutrality. A good example of this articulation appears in her statement that "without respect for copyright, only the privileged and dilettante can become authors, those that don't live professionally from the authorship of texts. We will cease to hear the voice of those who don't have their survival guaranteed by other means" (Academia Brasileira de Letras 2012 *translation mine*). Her purported concern to achieve a democracy of views was designed to give the defence of copyright a moral gloss, and to resonate in Brazil given its deep socio-economic inequalities.

In a similar vein, and with a disregard for the prominent roles of the Globo Group and major rights holders associations at the event, Machado finally proclaimed that "society has the right to have contact with different ideas and expressions, even if they are not dominant, controlled by powerful groups, private or public" (Academia Brasileira de Letras 2012 *translation mine*). Therein, one can observe the dutiful genuflection at the altar of expression, as well as the moralizing discourse of

copyright to claim that without its rigorous defence, society loses the possibility of a free and open exchange of ideas.

Two days later, the Globo newspaper published an editorial entitled '*Marco Civil da Internet threatens copyright*'. In an impassioned tirade, the editorial criticized Molon's decision not to specifically make provisions for IP in the article on limited third-party liability. With the moralizing discourse once more in evidence, the text argued that the burden of these arrangements would fall not on the "big editorial and media organizations that can mobilize battalions of lawyers to dispatch innumerable judicial notifications every day" but instead would be carried disproportionately by "the autonomous creators of content" (Jornal O Globo 2012 *translation mine*).

The notion that the Globo Group would concern themselves with the fate of "autonomous creators" would be laughable, were their ambitions to mould the legislation around their own interests not about to be fulfilled so decisively. The hundreds of billable hours recorded by those "batallions of lawyers" was arguably the greater concern. Indeed, the fact that a seismic shift in the Marco Civil occurred later the same day that this editorial was published should not be dismissed as happenstance.

Faustian pacts: Lemos, Globo and "an industry of private censorship"

As mentioned above and according to multiple reports – in the press, social media and subsequent academic accounts – the introduction of the IP carve-out was less to do with any manipulation by the Globo Group, but the result of a direct petition from Minister Suplicy to Alessandro Molon.

Molon himself tweeted the same day the clause was introduced that Suplicy had personally requested the amendment in order to facilitate reform of the Copyright Law (LDA) (Brito 2015, p.101). A year later Molon reiterated that claim in an op-ed, writing that the IP exemption was "not included…by business groups. The text was inserted in the bill in November last year at the request of the Minister of Culture" (Molon 2013 *translation mine*). The first press reports published after the amendment was made public also referenced the Suplicy claim (Dias 2012a). Finally, academic texts examining the Marco Civil also contain numerous interviews from protagonists in the bill's development who reiterate this account (Abramovay 2017, p.132), or make obfuscatory claims regarding these events (Affonso Souza, Steibel & Lemos 2017; Solagna 2015, p.90).

In my own interviews, for instance, Tonet Camargo from the Globo Group also stated that the IP carve-out was "an amendment proposed by the Minister of Culture". He went further by minimizing even Globo's role in pressuring Suplicy. He claimed that "who pushed this issue wasn't Globo. It was the association of broadcasters, that reunites 3000 broadcasters…so it was a sectorial position".

When I asked the Ministry of Justice's former Chief of Staff (and Advisor to the Ministry of Justice 2011-2013) about how the introduction of the carve-out transpired, he was unclear:

> I'm not sure I recall well, and I may have left Brasília by that point. Because I went to the US in August 2013 (*these events occurred in November 2012)*. There was then pressure by IP owners, by Globo, different music rights owners in the sense that they wanted to push a DMCA like provision… Actually I think it was several things at the same time. By that time Marta at the Ministry of Culture was pressing because of some artists, I think Globo was pushing because of its content, and they were all trying to put their tentacles wherever they could to make things to one side or the other (G. Almeida personal communication, February 17th, 2018).

My web company interviewee, for instance, concurred that there the "huge pressure" from the media sector on Molon to accede to an IP carve-out. He went on to clarify, however, that "by the media sector let's be honest here, it was the biggest Brazilian TV network, Globo, and of course copyright lawyers and copyright associations, the MPAA, were really concerned *but the major player that made the changes was Globo*. Web companies are happy with that." Although comfortable in revealing once again the web companies' private satisfaction with the IP carve-out, he too was unable or unwilling to specify precisely how the amendment had come about.

One account published by the Electronic Frontier Foundation on November 09th, 2012, and sourced from a lawyer for IDEC, Guilherme Varella, tugged the veil further of deception further away from the official version of events, but still without identifying the central role of the Globo Group. According to the post, Varella recounted that:

> this is the result of a clumsy intervention by the Ministry of Culture following constant pressure by the entertainment industry lobby, especially the Brazilian Association of Reprographic Rights (ABDR), the Brazilian Association of Phonographic Producers (ABPD) and the Motion Picture Association of America (MPAA). Varella reports that the entertainment lobby has been camped

> outside the Ministry and the Congress for the past few weeks, pressuring the vote on the Bill to be postponed until they get what they want (Rossini 2012).

In order to understand the circumstances in which I believe this IP carve-out was indeed introduced, we must draw upon the account of one of my interviewees, one who observed the events in question and directly contradicts the 'official' version of events. It is this account that implicates one of the progenitors of the Marco Civil as having brokered a deal with the Globo Group that many civil society observers considered a near mortal blow to the project's legitimacy as a framework of digital rights.

We first met Paulo Santarém in the earlier chapter: a co-founder of the Pirate Party and a core member of the SAL team at the Ministry of Justice; a technical advisor tasked initially with managing the public consultation. By the time I interviewed Santarém in 2015, he was a legal advisor at the Higher Court of Labour in Brasília. He explained to me how the IP carve-out was inserted into the bill, revealing the central role played by Ronaldo Lemos, Director of the *Centre of Technology and Society* (CTS) at the FGV law school, and author of the op-ed that laid the ideational foundation for the Marco Civil. Santarém divulged the following:

> It ended up that Ronaldo Lemos took the lead and appeared at the Ministry of Justice with a representative of the Globo Group and offered this change as a way that Globo could help in getting the bill passed…It was explicit, but it wasn't public. It was a meeting marked in the agenda and everything. But there was no press release about there being this amendment. It was a negotiation that wasn't arranged with the other civil society actors. Today there is a good part of those organizations that understands that it was a certain opportunism on Ronaldo's part that is reflected now in the fact that he has his own show on Globo News. At the time nobody understood, who wasn't there, they didn't understand why this happened and the doubt remained in the air…Some people found out what happened and the episode, let's say, got out…

Santarém's claim that this version of events was not widely known appears to be corroborated by my discussions with key figures around the Marco Civil, as well as a subsequent review of academic and media texts. This may have been the result of a genuine lack of insight into these events, or because they were reticent about identifying Lemos 'on the record' given his exalted profile within the conjoined fields of media, academia, technology and civil society in Brazil.

One notable exception to this ignorance (wilful or genuine) came from Sérgio Amadeu, the free software pioneer and professor who was nearly Lemos' equal in impelling the creation of the Marco Civil as a legislative project. In a later interview he stated that "Suplicy said that she didn't request the paragraph and that she wasn't interested in it", going on to add that the suggestion had come to her from representatives of the Globo Group and the CTS team so that there was an agreement and the project could go ahead (Papp 2014, p.80).

IPragmatism

Lemos himself has been repeatedly questioned about these events[23], but the responses he presents have always evaded the central nature of his role, as well as his possible motivations for doing so. For instance, Lemos' statement made to Papp (2014) is well representative: "My vision is rational, I like to make things happen. What happened is that clearly the Marco Civil had died and didn't have the slightest chance of being voted. It had a lot of people against it. How do you pass a law like this? It's impossible! So we undertook a really good and difficult negotiation to align at least two of those interests" (p.78 *translation mine*). Or, in another exchange, "in that moment we realised that the people needed to create an alliance or the project was going to die" (Brito 2015, p.100). It is the nature of that alliance that requires critical analysis.

It is telling indeed that Lemos describes the 'rationality' of his vision. This description correlates closely with my earlier analysis of his op-ed, which I argue proved so formative for the Marco Civil as a framework of digital rights. In this analysis, I flagged how the technocratic tenor of Lemos' article effectively circumscribed the civic potential of the project. This 'rational vision' was influential not only in discursively shaping the Marco Civil at its genesis, but appeared again now, guiding Lemos' decisive intervention in this midway point of the Marco Civil's legislative journey. By convincing himself that inserting an IP exception into the safe harbour provision on behalf of the Globo Group was the only way to break the 'checkmate' of rival powers that paralysed the Marco Civil, Lemos also effectively negated any potential that the bill may have had in loosening the stranglehold of the content production sector over the circulation of information online. This is because the inclusion of the IP carve-out in the Marco Civil would permit the continuation of the practice of notice and takedown for any *presumed* copyright

[23] It should be noted that he repeatedly ignored my requests for an interview.

violation. This is a process that: has an enormous in-built power imbalance between individual users/posters on one side, and platforms/rights-holders on the other; is highly opaque with little transparency or accountability on the part of the platform/rights-holder regarding the grounds for content removal; and that can easily be abused - especially when dealing with smaller websites/publishers - to remove material that is politically or socially objectionable.

Certainly, as per the assertion of Santarém, the 'rational' nature of Lemos' vision may also apply to the 'reward' that accrued from his intervention. One can only speculate as to whether a *causal* relationship exists between the two events, but it is certainly plausible to link the fact that in 2013 Lemos was given his own TV show on the GloboNews channel – *Navegador*, discussing salient technology issues (Castro, 2013) – with his acting as a go-between for Globo, the Ministry of Justice and Alessandro Molon. It is not the purpose of this work to assign blame or besmirch reputations, so we should acknowledge that it is also entirely plausible that Lemos would have been selected to host this TV show based solely on his public profile and expertise. If nothing else, what this sequence of events does demonstrate is the closeness of the relationship between one of the most influential figures in the formation and development of the Marco Civil, and the foremost power-holder in informational capitalism in Brazil. This fact provides another layer of reinforcement to the central argument of this thesis: that the Marco Civil as a framework of digital rights served to consolidate informational capitalism in Brazil rather than unsettle it.

Moreover, I believe that the other reason it is important to highlight these events is because they represent a powerful example of how discourses manifest reality, and why therefore it is important to analyse them. In this case, Lemos provided the ideational framework for the Marco Civil with his 2009 op-ed (Lemos 2007). Its focus on 'innovation' and 'efficiency' circumscribed the civic potential of the project, aligning it with the operational logics of certain sectors of informational capitalism, at the expense of establishing substantive communicative rights for Brazilian Internet users qua citizens. It becomes clear in light of Lemos' later actions described here, that the initial common-sense assumptions Lemos helped to establish around the Marco Civil enabled his actions to be viewed by many as a pragmatic and necessary course of action, rather than an act of betrayal. His expectations of this reaction surely emboldened him to pursue his action. Thus does discourse manifest reality.

Certainly, ‘pragmatism’ was the watchword for many of the key figures working on the Marco Civil. As Molon explained to me, by kicking the can of IP enforcement down the road, it would allow the government and civil society champions of the Marco Civil to isolate and possibly beat the telecommunications sector. Instead, “if we had confronted them all at the same time, maybe we wouldn’t have done it…The tendency is that people want everything resolved at the same time in a perfect fashion, but that’s not always possible, right?”.

In a different interview, Molon explained that “in Congress, it is very important not to increase your team of adversaries…If we wanted everything, we were going to get nothing. What’s the most important? The consensus was that it was net neutrality (Papp 2014, p.76 *translation mine*). And therein lies the essence of Molon’s pragmatism: a politician’s instinct as to the limits of the achievable, and a belief that a grand bargain premised on securing net neutrality by isolating the telcos and winning the support of Globo and the content production sector, was justifiable. De Almeida offered a similar justification as he revealed to me that by late 2012 “this was the moment in which we considered that to put forward certain compromises would be necessary. We were fighting so many battles at the same time that if we try to win them all, we might lose them all.”

This pragmatic approach to dealing with the adversaries that assailed the Marco Civil was not limited to those working within government. The media conglomerate, the Folha Group, for instance, offered calculated public support for the amendment, having previously resisted it in private. The Folha Group had not toed the sectorial line on an IP carve-out, likely because it sought to continue maximizing the revenue of its extremely successful content aggregating portal, UOL. Certainly, as Tonet Camargo revealed to me, there was “a little divergence between content producers in general and Folha de São Paulo in relation to UOL. UOL wanted more flexible rules with respect to copyright, due to the content that it aggregates, it wanted looser rules. In terms of copyright, it was only them…”.

The fact that on November 13th, the Folha de São Paulo published an editorial praising the Marco Civil and flagging the dangers of the Internet becoming “like cable TV’ if it lacked safeguards for net neutrality, was no coincidence (Folha de S. Paulo 2012). Clearly, a strategic position had been adopted within the giant media group that they should go ‘onside’ with the rest of the content production sector with regards to copyright. The calculation would likely have hinged on the fact that Globo’s intransigence made the IP exemption inevitable; network neutrality then became the most coveted prize remaining in

the Marco Civil. If the telcos were permitted to discriminate against UOL's online content, with all of the negative implications for web traffic and ad revenue that would ensue, then the liability issues around hosting copyrighted content faded into irrelevance.

Pragmatists also abounded within the civil society actors associated with the Marco Civil. Bia Barbossa of Intervozes, for instance, directed me "to study the history of the Globo Group in Brazil, it succeeds in influencing political processes in a really strong way…so if it was against the text, openly against it, we certainly wouldn't have got the bill approved in Congress…". Barbossa reiterated her appreciation of a 'necessary compromise' by making an equivalence – false in my estimation – between the reception of the IP exclusion by civil society groups, and by Globo: "we accepted in in the same way…as the Globo group". What this perspective fails to account for is that rights holders like Globo bargained from a position of great strength, and secured a coveted prize, while the Marco Civil's civil society backers had the IP exclusion forced upon them as a major concession.

Barbossa was not wrong about Globo's remarkable influence on the political process in Brazil. Folha was indeed joined by the *O Globo* newspaper in publishing a supportive piece about the Marco Civil in the immediate aftermath of the IP carve-out being inserted into the bill. Unlike the Folha Group's text, however, which signalled a strategic concession, Globo's contribution was a reminder of its strength. It is indeed a stark reminder of Globo's sway over Brazilian politics to consider how two pieces that it published in November 2012 effectively book-ended the controversial inclusion of the IP exemption.

As we already saw, on November 07th, Globo published an editorial that sharply condemned the Marco Civil because of its failure to explicitly safeguard copyright amongst its provisions (Jornal O Globo 2012). One week later, on November 14th, Globo published a bland description piece on the bill, describing how it compared with equivalent legislation in other countries (Jansen 2012). Having secured one of its primary goals for the bill, Globo opted to break its news embargo on the Marco Civil with what amounted to a tacit validation of the project. This would set the tone for the Globo Group's ongoing coverage of the Marco Civil. As my web company interviewee put it to me: "The moment they got the exception they wanted they were suddenly heavy supporters of the bill. They came from radical opponents of the whole idea…to being very heavy supporters…".

Just how heavy this support would get became acutely evident in April of 2013, a period when the Marco Civil was still mired in a legislative morass. The signal that concerted support would now be the norm from the Globo Group came when the Brazilian broadcast association, ABERT, opted to co-host a seminar in Brasília with Lemos and his CTS team. It was at this event that the President of ABERT effectively bestowed his blessing on the bill by referring to it as "The Constitution of the Internet" (Papp 2014, p.79). One day later, Abranet followed suit with its own seminar that also publicly endorsed the bill (Abramovay 2017, p.134). Accordingly, two influential sectors within informational capitalism could now be counted amongst the supporters of the Marco Civil, with the isolation of the telecoms sectors as the 'official opposition', now even more pronounced.

The spectre of censorship: Amadeu strikes again

The reaction to the insertion of the IP carve-out from within civil society was not uniformly sanguine, of course. Groups such as the Electronic Frontier Foundation argued that "If the new language of Article 15 prevails, *Marco Civil* will fall short in regard to one of its main reasons for existence. From the perspective of Brazilian civil society, Article 15's second paragraph should be deleted from the Marco Civil" (Rossini 2012). Similarly, the freedom of expression advocacy group, Artigo 19, lamented that the exclusion was not justified and "weakened the project as a whole" (Artigo 19 2013). It was the academic and free software champion, Sérgio Amadeu, however, who served to reignite outrage, and help to maintain public pressure on Molon, when many had given up the IP carve-out as a lost cause.

Amadeu had prior history as an effective 'disruptor' in the discursive domain. It was his blog post - '*In Defence of the Freedom and Progress of Knowledge on the Brazilian Internet*' in 2008 that became the basis of a viral online petition that helped to turn the political tide away from the Lei Azeredo. A year later he coined the term, 'AI-5 Digital' to articulate the cybercrime bill with Brazil's history of military dictatorship; a rhetorical move that popularised opposition to the Lei Azeredo.

It was in July 2013 that Amadeu staged his latest major intervention, one borne of a deep frustration. As he explained in interview:

> A war started, people saying: this can't be touched anymore, we're going to concentrate on net neutrality. This was my moment of greatest isolation in the fight for the Marco Civil. Because everyone was deluded, or they didn't get what I was saying, and that's when I got the idea of

> 'pre-emptive censorship'…I said that content removal can't be done by the private sector, it has to be done through a judicial filter, because if not, we violate democratic stability" (Solagna 2015, p.91 *translation mine*).

It is worth pausing to reflect on this statement because it contains two significant claims. The first is the extent to which most civil society supporters were content to accept notice and takedown for IP violations in order to pursue the 'greater prize' of net neutrality. This underscores my earlier point regarding the extent to which the zealous pursuit of network neutrality obscured alternative reckonings of digital rights. The other point is Amadeu's claim that only content removal by judicial order could maintain 'democratic stability'. This conversely shows the extent to which he accepted the premise that 'safe harbours' represented a safeguard for substantive communicative rights; a belief that I argue is a fallacy. In any event, his frustrations materialised in an editorial in July 2013: "Globo wants to pervert the Marco Civil' (Amadeu 2013).

In Amadeu's own words, the phrase in this instance that catalysed a concerted challenge to the amendment was "the magic word, that I knew would generate a problem, which is 'In the dead of the night, Globo inserts private censorship in the Marco Civil'" (Solagna 2015, p.91). He explained this claim in his post by presenting various examples where notice and takedown for IP violations could be used as a pretext for removing online speech deemed threatening by political and corporate actors in Brazil.

Once again, by invoking the spectre of 'censorship', Amadeu was able to achieve a number of important goals. He succeeded in connecting the amendment with the suppression of civil liberties under the military government. He also implicitly juxtaposed the impacts of the IP carve-out with the meta-signifier of 'expression' within the digital discourse, as well as the ideal of creative freedom so prized by the FLOSS community; one that still offered important support for the Marco Civil.

As Amadeu anticipated, the post was successful in maintaining pressure on Molon to address the amendment. It was not, however, until September 2013 that the question of copyright was resolved in the Marco Civil. This came as the result of a cataclysmic event in Brazil's international relations, the revelations made by Edward Snowden. The repercussions of this event for the Marco Civil, and the curtailment of any of the bill's vestiges of civic potential is the focus of the ensuing chapter.

Conclusion

In this chapter I examined how the Marco Civil represented an object of dispute within the dynamics of informational capitalism once it reached the Congressional stage of its development. I used the analytical framework from Chapter 2, as well as the historical themes discussed in Chapter 3, to show how the digital rights within the Marco Civil were shaped according to the operational needs of different sectors within informational capitalism as well as the priorities of the associated civil society organizations.

To begin with, I mapped out the corporate and political manoeuvres that prefigured the Marco Civil's entrance into Congress as a project of law. These machinations showed how powerful vested interests were positioning themselves to contest the Marco Civil and influence the digital rights therein according to their best advantage. The most notable of these groups were the telecoms sector, and I showed how they brought their formidable arsenal of material and discursive power to bear in order to pursue their agenda for the Marco Civil. This agenda is summarised below.

The remainder of this chapter was divided into three main sections, focused primarily on network neutrality, freedom of expression/safe harbours, and the role of civil society organizations.

I analysed the digital civil right of network neutrality within the context of the operational goals of the telecoms, content production and web/technology sectors, to demonstrate how this techno-legal principle was decisively shaped by these divergent interests. I showed how the resistance of the telecoms sector to enacting substantive net neutrality protections was based in part on discursive strategies; to exploit the low public profile of the issue and the limited technical understanding of Brazilian legislators. The concept was also systematically conflated with communism. I contend that these discursive strategies are particularities of the periphery, and further diminish any claims to the universality of digital rights.

I proposed that the concerted resistance of the telecoms sector owed to their ambitions to pursue zero rating as a business model, one that has become nearly ubiquitous as a mode of offering mobile Internet access in the global South. However, given the value of juridical stability presented by the Marco Civil, as well as the sector's ambitions to extract greater value from user data, I contend that network neutrality may not in fact have constituted the grave threat that the telecoms sector presented it as. Indeed, I propose that the paradox of network neutrality in this case was that the

greater the resistance exhibited by the sector, the more that civil society were convinced of its civic value and pursued it to the exclusion of any more substantive agenda.

I also demonstrated how web companies belied their public perception by offering a very limited defence of network neutrality. I showed how the global political-economy of informational capitalism meant that the web companies were adverse to recreating at the periphery confrontations between themselves and the telecoms sector from the system's core. Moreover, I argued that in a non-neutral environment, US web companies' investment in proprietary infrastructure as well as their favoured status in zero rating plans meant that the sector had little to fear.

The final main insight provided by my analysis of network neutrality was to highlight how the particular political-economy of Brazil's media market created an intense rivalry between Globo and the telecoms sector which converted the media giant - otherwise a prominent antagonist on communication rights - into the foremost ally of civil society in their pursuit of network neutrality

I adopted a discourse focus to analyse the manner in which Brazilian historical narratives and experiences mobilised intense civil society advocacy around the Marco Civil. These included most prominently the alliance of civil society with the state, the emphasis on securing civil rights, the acute vulnerability of communication rights, the significance of the Internet as tool for disintermediation., and the particular value of network neutrality in the context of an extreme level of media concentration. The discourse of social inequality indeed proved to be a site of contention between the telecoms sector and civil society groups and network neutrality. Finally, the latter group, I argue, contributed in fact to the hollowed civic value of the Marco Civil; this was the result of a paradoxical situation in which the politicization of consumption characteristic of the periphery drove the advocacy of consumer rights groups for the Marco Civil, helping to produce a framework of civil rights that was in fact built primarily upon the terrain of consumption. This analysis of civil society further demonstrates the contingency of digital rights upon local political-economic and socio-cultural factors. Finally, I revealed the little-known circumstances that prompted the introduction of an IP exemption within the Marco Civil's safe harbour provisions that threatened to neuter their already limited civic value. I examined the importance of IP to Brazil's foremost media power, the Globo Group, and analysed the discourses that were mobilised to legitimate the measure. Revealing that the Globo Group imposed the carve-out on the bill and negotiated it in secret via a go-between who was also the Marco Civil's

most prominent advocate, bolsters my contention that the bill facilitated rather than challenged the logics of informational capitalism.

What follows is the concluding chapter of Part II in which the Snowden revelations become the catalyst for the Marco Civil's contested passage into law.

Chapter 6

Cataclysm: Surveillance, sovereignty and Snowden at the periphery

"You are Cuban! Get to Cuba! Get to Cuba, Cubano! They've got Internet there!"

(Jair Bolsonaro, cited in Papp 2014, p.122, *translation mine*).

"Civil society won on so many points that I believe it's really incredible, I sincerely do, after it all finished I said I don't know how we got all of those points!"

(Flávia Lefevre, research interview).

The Marco Civil's rapporteur, Alessandro Molon, had sealed his Faustian pact with Globo and the content production sector in November 2012; a bargain with Globo, brokered by one of the architects of the bill. The act of aligning the strategic goals of one of the most powerful sectors within informational capitalism even more tightly with the digital rights that comprised the Marco Civil was supposed to liberate the bill from its legislative morass. The beginning of 2013, however, was characterised by the same inertia that had defined the latter half of 2012; the draft bill was effectively deadlocked within the Brazilian Congress. Even with the Globo Group's newfound support, the opposition of the telecoms sector continued to prove insurmountable.

The event that would prove pivotal in securing the passage of the Marco Civil was integral to the workings of informational capitalism. It centred on the sudden visibility of an otherwise obscure component of the system. Specifically, the nexus of the security state and globally dominant web companies exploiting their control over user data, became suddenly apparent to the world.

The decision in June 2013 of a CIA defence contractor, Edward Snowden, to release a trove of highly-classified NSA files into the public realm, would have many repercussions. One of those was to create the necessary political conditions in Brazil for the Marco Civil to be voted into law. That fact was one of the few things on which nearly all of my interviewees concurred on: without the Snowden files, the Marco Civil as a project of law, would have likely languished indefinitely. It is the purpose of this chapter to explore precisely why the revelations of US state surveillance would weigh so heavily on the fate of a Brazilian bill of digital rights. The connections are not readily apparent, but Brazil's status at the periphery of informational capitalism, its claims to 'data sovereignty', and the country's history of

(perceived) subordination to the United States would all play a key role in converting Snowden's revelations into the Marco Civil's most potent catalyst. The NSA files also had the effect of seeing digital rights thrust suddenly into the epicentre of geopolitics, while it both forced the Brazilian government to resolve the tension between digital rights and neo-developmentalism, and also cast the hypocrisy of forcing surveillance tools into the Marco Civil into even sharper relief.

As well as surveying the influence of the Snowden revelations, this chapter will examine how tensions within informational capitalism were eventually resolved vis-à-vis the digital rights contained in the Marco Civil. These include most notably the resolution of network neutrality in the bill despite the concerted opposition of the telecoms sector; the tug-of-war around data retention between civil society's privacy advocates and an alliance of the security state and the IP rights lobby; and a fractious end to the détente between the Brazilian government and the major web companies. In sum, after the early circumscription of what could constitute the Marco Civil's digital rights described in Chapter 4, and the contestation of those rights by the principal sectors of informational capitalism analysed in Chapter 5, this chapter explores how those same actors acted decisively to curtail any vestiges of the Marco Civil's potential to actually challenge the operational logics of informational capitalism.

Snowden's shock waves reach the periphery

Given the ramifications of the Snowden revelations within international relations, it might not be hyperbolic to compare them with a nuclear detonation. In this instance, the epicentre of the blast occurred in the United States (not coincidentally, the core of global informational capitalism), meaning that the ensuing shockwaves took longer to wreak their destructive effects beyond the blast centre. In the case of Brazil, there was a lag of several weeks between Glenn Greenwald first breaking the story on June 06th (Greenwald 2013), and any direct connection with Brazilian national affairs.

The moment that the shock waves first reached Brazil can be identified quite precisely. An article published in the Globo newspaper on July 06th, 2013, co-written by Glenn Greenwald, first alerted Brazilians to the fact that their calls and emails had been compromised by the NSA dragnet (Greenwald, Kaz & Casado 2013).

That story, however, represented only the start of the fallout. A report on the September 01st edition of the weekly television news-magazine show, *Fantástico*, broadcast on the main Globo channel,

showed that President Dilma Rousseff had been the object of a targeted communications intercept operation by the NSA (Fantástico 2013). This news heralded a massive intensification of the scandal.

The NSA program was designed to deliver "an increased understanding of the communication methods and increased selectors of Brazilian President Dilma Rousseff and her key advisors" (Fantástico 2013 *translation mine*). The document, entitled 'Intelligently filtering your data: The case studies of Brazil and Mexico' was dated June 2011 and appeared to have been compiled to share best-practice techniques with other departments within the NSA, as well as the intelligence agencies of the so-called Five Eyes[24].

One week later, came the last and, arguably most destabilizing shockwave from the Snowden 'detonation'. On September 8th, the same line of communication between Edward Snowden, Glenn Greenwald and the producers of *O Fantástico*, yielded revelations that the Brazilian state oil company Petrobras had also been the target of US state surveillance (G1 2013b). Documents included in an internal NSA presentation showed how the agency was using new cryptographic techniques to monitor secure corporate networks, including those of Petrobras, provided by Google Brazil. This news contradicted statements by the NSA that they did not partake in industrial espionage.

As these shockwaves reached their destructive crescendo, between July 07th and September 08th, the public reaction of the Brazilian government was initially limited to standard diplomatic manouevres, such as summoning the US ambassador to Brazil to the Ministry of Foreign Affairs (G1 2013a).

Beneath the surface of the Brazilian government's bland protestations, however, forces were shifting in a way that would have great consequences for the Marco Civil. It was clear to many of the actors and economic sectors with the greatest vested interests, that the Snowden revelations opened a new window of opportunity to shape the bill according to their own agenda. Owing to the Marco Civil's status as a framework of digital rights, it was obvious that it could be presented by the Brazilian government as a riposte to the United States on the global stage, If the Snowden revelations could indeed compel the government to act decisively on the Marco Civil, to rouse the bill from its legislative coma, then those vested interests needed to act quickly to influence the form of the law before the 'political opportunity structure' (Tarrow 1996) collapsed.

[24] Also comprising Great Britain; Australia; Canada and New Zealand.

In the ensuing section we will examine some of the earliest moves to exploit that opportunity structure. These represented the initial skirmishes in what would become the final battle to shape the constitution of digital rights at the periphery of informational capitalism, with both the security state and the telecoms sector amongst those seizing the chance to realize its own interests.

Wounded sovereignty, and the 'craziness' of data localization

It took just 24 hours from the first Snowden revelations published by Globo on July 07th for the Minister of Institutional Relations, Ideli Salvatti, to reveal that the government was studying proposals for a policy response to the NSA surveillance to be included in the Marco Civil (Mendes 2013). Two days later Alessandro Molon did indeed announce a major amendment.

The measures constituted an extraordinary expansion in the scope of the bill: a new clause mandating the storage of Brazilian user data on Brazilian territory by any commercial application provider. This clause included two further stipulations: that any communication occurring on these platforms, in which one participant was based in Brazil, would also be stored locally; and that Brazilian legislation would also apply in cases where Brazilian user data was stored outside of the country. These measures became known collectively as 'data localization', and they proved to be one of the most contentious proposals to be added to the Marco Civil.

From the outset, Molon attempted to cast the amendment in the best possible light, claiming that "I consider this proposal from the Planalto (the Brazilian executive office) positive, it tries to reinforce the privacy protections for users" (Tozetto 2013 *translation mine*) In secret, Molon must have known the amendment did no such thing, nor was it intended to do so. Indeed, he explained his private position in a later interview: "It was a political response from a President to an attack on our sovereignty. And it was important for a parliamentarian to support the Head of State. But there (the Marco Civil) was not the proper place for it" (Abramovay 2017, p.141 *translation mine*).

As well being driven by a sense of duty to his President in a time of national crisis, there was also a more calculated basis for his support: the fact that the government had placed the Marco Civil back on its agenda in the wake of the Snowden revelations was unquestionably a positive development for him as the rapporteur for the bill, perhaps regardless of how it was being reconfigured as a result.

To understand why these data localization measures did not in fact protect user privacy, one need only cursorily consider the way that the provisions would work, and the manner in which the NSA had

conducted its surveillance. The incongruence between the two processes demonstrates clearly that protecting privacy was simply a façade.

The privacy fallacy

The data localization proposal mandated that data about and by Brazilian users would need to be stored locally. Moreover, that data could not additionally be transferred to servers housed outside of the country (Ramos 2013). However, the proposal did not specify what would occur in those instances when Brazilian users communicated with international users. The unspoken reality was that copies of those communications could and would be stored extra-territorially. Any notion of exclusivity would after all constitute a bounded Brazilian Internet cut off from the outside world; an extraordinary proposition, but one that would at least represent a meaningful block on NSA surveillance.

The practical reality of the almost inextricable nature of Brazilian and international user interactions across multiple global communication platforms – Gmail, Facebook etc. - meant that much of the Brazilian user data mandated to be stored locally would therefore constitute simply a duplication. Thus the NSA would continue to have ready access to the data stored on the servers of the US web companies that dominated Internet use in Brazil, and exploiting its technical prowess, could in any event likely access data stored on their Brazilian equivalents. As the Chief Technology Officer at the American Civil Liberties Union, Christopher Soghoian, opined at the time of the announcement: "It's not just about having servers in Brazil, it's about storing data on servers that are not run by US companies. Unless you're going to make it illegal to use Google, which would be a very high bar, you need to build domestic services that are equally compelling" (Toor 2013).

Moreover, what was acutely evident to some was that not only were the data localization amendments not going to provide a meaningful safeguard for privacy, they would in fact systematically undermine it. As Bia Barbossa of the communication rights advocates, *Intervozes*, argued in public - as well as in interview with me - "the more that you store data, even if it is here, the greater the risk of espionage". Moreover, the greater ease with which the Brazilian security state could access locally stored data, and the power those forces held over every Brazilian user qua citizen, meant that local storage constituted a much graver threat to Brazilians' civil liberties than international espionage. As such, in my estimation, the data localization amendment, *rather than being an awkward appendage to the Marco Civil, should be considered a seamless addendum; as one more techno-legal policy measure that would facilitate rather than challenge the systemic logics of informational capitalism.*

The periphery strikes back

What the Justice Minister Cardozo later described as “national data sovereignty” was not only embodied in the data localization amendment, however (Azevedo 2014). In September 2013, General Sinclair Mayer, head of the Brazilian Army’s science and technology department, announced to lawmakers that Brazil would establish underwater Internet cables linking Brazil to Europe and to Africa, in an effort to divert Internet traffic passing through the United States (Romero & Archibold 2013). Existing submarine infrastructure channeled around 90% of all outbound Internet data from Central and South America through one data centre in Miami named the Network Access Point of the Americas (Sparrow 2013). Bypassing this surveillance choke point in the United States became an obvious policy target for Rousseff after the Snowden revelations. However, given the resources of the NSA – including the existence of a nuclear submarine dedicated to tapping transoceanic cables (Toor 2013) – such measures would likely only make NSA surveillance costlier, but not impossible. Moreover, it was only one year later that Google announced a new proprietary undersea cable connecting Brazil with Florida in the United States (Chant 2014), exposing the futility of the Brazilian state efforts.

Finally, another related policy proposal that emerged in response to the Snowden revelations was a national email program. Conceived initially as a parallel measure to the Marco Civil, rather than an amendment to it, the service was named “Digital Messenger” (Época 2013). Of significance, given the program’s obvious benefits to the telecoms sector, was the fact that the scheme was commissioned by the Minister of Communications – and staunch telecoms sector ally – Paulo Bernardo. According to the Minister, a national email service with local storage and cryptographic standards was essential in the wake of the revelations of NSA surveillance (Nery & Agostini 2013). The service was slated for launch in early 2014, but with little support from other areas of government, the plan was quietly abandoned. In its stead, a secure internal email system, only for federal government use, was announced by President Rousseff on Twitter later in 2013 (Kelion 2013).

When assessing the plausibility of a national email service as a privacy safeguard, it is important to also note that in the initial development of the project, the designers were open to replicating Microsoft or Google’s advertising-based business model in order to cover the costs of the program (Época 2013). With such a business model in place, it is certain that user communications would be under scrutiny from advertisers, thereby negating in great part any defence of user privacy.

Given the profound deficiencies in these provisions as privacy safeguards, what was the real rationale for their development? To answer that question we need to consider two important dimensions of data localization in the Marco Civil: the discourse of 'sovereignty' that accompanied the fallout from the Snowden revelations, and recognition of those sectors of informational capitalism with the most to gain, and the most to lose, from the territorialisation of Brazilian data.

The pretence (and the reality) of data sovereignty

When the Minister of Institutional Relations, Ideli Salvatti, first revealed the government's intentions to use the Marco Civil as a vehicle to respond to the NSA surveillance, he also stated that "it is absolutely clear that the sovereignty of the country and the privacy of the Brazilian citizen is under threat" (Mendes 2013 *translation mine*). This claim of wounded sovereignty was later echoed by the Minister of Justice, José Eduardo Cardozo, who issued a statement declaring that "if these facts are verified, we are presented with a situation that is inadmissible, unacceptable, because they constitute a clear violation of the sovereignty of our country" (G1 2013b *translation mine*).

Brazil was certainly not alone in articulating its outrage at the violation of sovereignty implied by the mass surveillance of the NSA and its partners. The government of Germany, as well as many others, issued similar laments (Bauman et al 2014, p.128). In the case of Brazil, however, the reference to sovereignty evoked a very particular set of connotations that pertain to Brazil's experience as a country at the margins of global capitalism.

As Brazil's first democratic President of the current Republic, José Sarney, declared in 1986 in justification of the country's informatics policy: "It is fundamental to our survival as a sovereign nation and for the welfare of our people that we exercise control over the scientific and technological instruments that will shape our future" (Crandall 2011, p.140). This policy, described in detail in Chapter 3, was justified on nationalist principles, and the idea that the country could only become 'Great Brazil' by "the defence of national sovereignty through informatics" (Cukierman 2013, p.491 *resources*). The contrast therefore between Brazil's concerted efforts to assert technological autonomy from the United States in the late 1980s, and the unfortunate consequences of what Amann calls "an erosion of technological sovereignty" (2002 p.886) evident by the 2000s, was stark and clear.

The Workers' Party government of Lula da Silva, first elected in 2002, had taken stock of the parlous state of Brazilian technological development and devised several policies to address it. In keeping with

the neo-developmentalist model of government adopted by this PT administration (Saad-Filho & Morais 2017), it promoted industrial policy for economic sectors that it deemed a national priority, such as the IT sector (Ramos 2013). The most notable of these was the "Strategic Program for Software and IT Services" launched in 2012. This included tax incentives, state subsidies, the development of digital ecosystems and the assistance for new business through 'Start-Up Brasil' (Ramos 2013). Furthermore, the development of IXPs (Internet Exchange Points) within Brazil, and the build-out of undersea Internet cables was a core part of this initiative (Woodcock 2013).

The affront of violated sovereignty could also be connected to the PT's hallmark foreign policy. Certainly, in opposition, the Workers Party had developed a foreign policy in which the assertion of national sovereignty was one of its main planks (Bourne 2008, p.153). In government, moreover, a policy of assertive diplomacy designed to boost Brazil's global profile was a defining characteristic of the Lula administration (Saad-Filho & Morais 2017, p.97).

Finally, as discussed on numerous occasions in this thesis, the fear of the United States thwarting Brazil's global geo-political ambitions was a recurring theme in popular and media discourses in Brazil. For instance, a trope emerged in the early 2000s that was popularised in Brazil, that Brazil's sovereignty over the Amazon was threatened by US 'forces' who coveted the resource rich region (Rohter 2002). This was dubbed 'Amazon Paranoia' by Viola & Mancini (2018) in their analysis of the narratives that comprised Brazilian government responses to international climate change policy.

The scenario, therefore, in which Brazil found itself in 2013 evoked numerous associations that were characteristic of Brazil's, current and past, peripheral status. Moreover, the discursive articulations between the violation of sovereignty implied by the NSA state surveillance, and these particularly Brazilian discourses of sovereignty provided both rhetorical cover for possible government policy responses (that might advance another more obscure agenda), as well as exerting additional pressure to react decisively. I believe this dual function of the discourse I call 'data sovereignty' is essential to understand the inclusion of data localization in the Marco Civil: it offered a plausible justification for a measure designed to further other less publicly palatable government objectives - to be discussed shortly - and helps to explain the pressure on the Brazilian government to be seen to offer a strong policy response.

The twin defences of privacy and sovereignty were not sufficient, however, to avoid a barrage of criticism for the data localization provision. Civil society supporters of the Marco Civil, particularly

those aligned with the 'technical community' such as the Brazilian Internet Steering Committee (CGI.br) were amongst the most vocal (Solagna 2015, p.101). CGI.br co-founder, Caf, explained to me in interview that "We had a problem with this idea of sovereignty which I already told you, the government started to make proposals, absurd proposals that all data centres should be located in Brazil", describing them also as "completely impossible…so silly…". Another pioneer of the Brazilian Internet, Demi Getschko, described the measures as "imprecise…and incoherent" (Romer 2013). Ronaldo Lemos also spoke out against the proposal, highlighting how it would make Brazilian Internet users "clandestine, second class citizens" as global web companies would bar them in order to evade these obligations (Honorato 2013).

A coalition of civil society groups published an open letter to Congress in August 2013 in which, amongst other demands, they decried the fact that "data would continue to be sent to the country of origin of the web company, and therefore subject to their inspection" (Altercom et al, personal communication, August 07, 2013, *translation mine*). Other voices from within civil society railed against the perceived increase in costs for Internet users in Brazil that would arise from web companies being compelled to build new data infrastructure (Papp 2014, p.91).

I argue that another important reason for opposition to localization provisions by these civil society actors, beyond the technical and consumer-focused concerns, was the clear tension between the discourse of 'data sovereignty', and the 'digital discourse' that had circumscribed the scope of the Marco Civil from its inception. The discourse of 'data sovereignty' cohered closely with neo-developmentalism and foregrounded the importance of the state, and its defence. The digital discourse, meanwhile, valorizes the expressive individual and conceptualizes the state principally as a threat to be controlled. It was the latter discourse that civil society actors mobilized in their defence of the Marco Civil, and its incompatibility with 'data sovereignty' constituted a clear antagonism.

Overall, the suite of measures advanced by the PT government under the banner of 'data sovereignty' were not intended to usurp or replace informational capitalism. They were intended to realign power relations within the system; to wrest some control over the flow and commodification of data away from the epicentre, and towards the periphery. In that respect, the parallels with Brazil's earlier efforts to induce technological sovereignty are clear. As Takhteyev (2012) notes, the key actors responsible for Brazil's sovereigntist efforts in the 1970s did so not "seeking to isolate Brazil from foreign influences.

Rather, each group *was looking for a way to participate to the fullest extent possible in global practices* … [emphasis added] and, more generally, to promote the modernization of the country" (p.109). In the present case, if enacted, these measures would indeed represent a significant riposte to the nexus of the US security state and the globally dominant web companies. The logics of informational capitalism would not be challenged, however, as actors within Brazil – notably the telecoms sector and the Brazilian security state – would simply gain greater advantage from the commodification and control of Brazilian user data.

In terms of data localization specifically, the most vocal and concerted opposition came from the sector with the most to lose from the proposal: the web companies. Indeed, it is by analysing this opposition that we can identify the agenda that drove the government to shoehorn data localization into the Marco Civil under the pretence of securing user privacy. Moreover, we will see that the dispute around data localization exposed a core tension within informational capitalism; one that exists between the security state and the web companies over which sector directs the mechanic of enclosure, to its best advantage.

The 'Google amendment': Securitisation, and dominoes at the periphery

As detailed in Chapter 2, one of the defining characteristics of informational capitalism is the tension between data flow and data enclosure, and how different sectors compete to employ those mechanics in order to channel the systemic logic of control. This antagonism is most clearly embodied in the ongoing disputes between states that seek to impose data enclosure for the purposes of securitization, and the web companies' operational need for data flow. As Jordan (2015) argues, such state attempts at data enclosure go 'against the flow' of information power, while Haggart and Jablonski (2017) describe this as the "protection-dissemination tension" (p.104) inherent to American information policy. This indeed is the systemic tension within informational capitalism that explains the real rationale for the government proposal of data localization, and why it was so fiercely resisted by the web companies.

There were two principle reasons for the web companies to resist the Brazilian government's attempt at data enclosure. One was that it could potentially impede the web companies' capacity to undertake effective data recursion. As many scholars have noted (Jordan 2015; Isin & Ruppert 2015), the value of large-scale datasets comes from the ability to undertake processes of recursion in which algorithms feed the results of data analysis back into the datasets to produce yet more valuable correlations. If at

least some of the data about and by Brazilian users was not able to be assimilated into the same master datasets, then these processes of algorithmic recursion might not generate value so effectively.

The other, and probably more significant, consideration for the web companies, were the cost implications of being forced to construct a parallel set of data infrastructure in Brazil. In the case of Google Inc., for instance, in the last quarter of 2013, the company had already invested USD7.3 billion in data infrastructure, from earnings of USD59.7 billion, or 12% of total revenue (Miller 2014). Each of its data centre projects in the United States in 2013 constituted a cost of USD200-600 million (*Ibid*.). The cost, however, of creating a standalone *national* data infrastructure sufficient for Google's approximately 40 million Brazilian users would likely be much higher. This would moreover be exacerbated by the higher cost overall of building datacentres in Brazil (Ramos 2013).

Of course, given the enormous cash reserves of the likes of Microsoft, Facebook and Google, the one-time capital expenditure for complying with data localization provisions in Brazil would ultimately be negligible. The real fear though was that other governments would see the opportunity in the wake of the Snowden revelations to roll-out their own data localization measures, and in this case, Brazil would constitute simply the first in a cascade. As Powers and Jablonski (2015) have observed, "Google's fear of regulation of the Internet is genuine, as greater discretion regarding how governments control the flow of information within, into, and outside its geographic space is of tremendous import to the future of Google's business" (p.98).

Google CEO Eric Schmidt articulated this fear at an event in New York in September 2013, when he declared that "The real danger…is that other countries will begin…to essentially split the internet and that the internet's going to be much more country specific. That would be a very bad thing, it would really break the way the internet works, and I think that's what I worry about" (Holpuch 2013). And as my web company interviewee similarly advised me, "you can imagine the cost and you can imagine the domino effect, if Brazil wants that, then Turkey, China, Russia…". In effect, data localization writ large could amount to a coup attempt by the periphery; to realign power within informational capitalism away from the epicentre.

Accordingly, the web companies embarked on a campaign of lobbying to try and persuade the Brazilian government to withdraw the data localization amendment. Representatives of the major US web companies increased their presence in Brasília, conducting meetings with legislators, presenting at Senate and Congressional committees, and giving interviews to the mainstream press. The arguments

that the web companies expounded at these encounters merit examination; as much for what they did not say, as what they did.

For instance, the web companies drew upon tenets of the digital discourse to add weight to their arguments. As expressed in an article in *O Estado de S. Paulo* newspaper, local data storage would "erect unnecessary barriers on the web, that should be a space without frontiers" (cited in Abramovay 2017, p.141 *translation mine*). The intrinsic qualities of 'openness', 'freedom' and 'neutrality' of the Internet would thus be much compromised by the Brazilian proposal. Again, we must recall that the digital discourse "translates many of the neoliberal tropes into a digitalistic language" (Fisher 2013, p.75), and 'frontiers' and 'barriers' in these statements should be interpreted as a metaphor for any regulation that impedes 'frictionless capitalism' (Gates 1995), and more specifically the flow of data, revenue and power within informational capitalism.

As well as the digital discourse, the web companies also made extensive use of the technocratic discourse, to lend both an aura of "scientific impartiality and political objectivity" (McKenna & Graham 2000) to their claims, and therefore to bolster their doom-laden prognostications of what would befall the Brazilian digital economy if these provisions were enacted. The testimony of Bruno Magrani, Head of Public Policy at Facebook, at a Senate hearing on NSA surveillance typified this discursive approach: "We are worried about the changes…it is an enormous technical challenge that will degrade the Internet service in Brazil because it will impede the circulation of data. The demand will also imply enormous costs and inefficiencies for online business in the country, as it will impact small and new businesses that wish to provide services to Brazilians" (Pedruzzi 2013 *translation mine*).

The spectre of cost increases was indeed frequently invoked by the web companies (Papp 2014, p.98). They sought to exploit a major concern at the periphery, which was the challenge of digital inclusion in a society with deep economic inequalities. The invocation of small digital enterprises was also a strategic necessity. They were designed to represent a proxy more deserving of sympathy than the US web companies themselves. The web companies were already disparaged as flag-bearers for the US, and especially so given their cooperation with the NSA revealed by Snowden (Rossini, Brito Cruz & Doneda, 2015, p.6). Hostility to the sector was evident from coverage in the popular press. The fact that Article 12 was known colloquially as 'the Google amendment' made that clear (Web interviewee, Research interview). A story in the *Correio Braziliense* claiming that the head of the Brazilian civil

service, Ivo Correa (an ex-Googler), was a company mole within the government was also emblematic of this kind of paranoid attack (Abramovay 2017, p.138).

The 'June Journeys' and the need for data

In public, therefore, the web companies developed an obfuscatory narrative, one that would not further antagonize the Brazilian government, or their Brazilian user base. On one hand they were at pains never to reveal their primary concern that Brazil could trigger a cascade of data localization proposals around the world: a chain of events that would constitute an operational and economic catastrophe for them. On the other, they also opted to play along with the Brazilian government's narrative of sovereignty and privacy, even though in private they were clear that this was only a facade. As my web interviewee explained to me:

> Snowden happened and the Brazilian government played the card that the Marco Civil was going to be the solution for Brazilian sovereignty, to safeguard Brazilian rights…and that's when things took a turn for the worse… It was basically a way to get web companies to comply with local law. It was never the intention of actually forcing, to actually host it in Brazil for security reasons, of course that was the public discourse…but if you take a look at it with less anger in your eyes *you realise that what they were trying to do is to make sure that local authorities had that level of access that they were perceiving the US government to have in the first place.*

As another web company executive interviewed in Papp (2014) revealed, "In the public hearings that I participated in in the Congress, the Senate and the Federal Police, it was clear: they were much more concerned with understanding is the Brazilian companies were collaborating or not with Brazilian justice, than to understand of that data was in fact going to the American authorities" (p.99).

By applying this rationale, the conundrum of why the government would promote data localization as a safeguard for user privacy when its deficiencies were so glaring is quickly resolved. Data localization would permit the Brazilian security state untrammelled access to data about Brazilian citizens that had for years been denied to them by American web companies. One only need to review the data from Google's biannual transparency reports, to understand why a sense of frustration and urgency would have been building within the Brazilian government. The data in the table below shows how more requests for user data from the Brazilian government were being denied by Google Inc. each year from

2011-2013. There is no more precise data on the nature of the requests, though these would likely have been to further criminal investigations, as well as pertaining to state security threats.

Table 5

Brazilian government requests for user data from Google Inc.[25]

Reporting period	Number of data requests	% of requests where data disclosed	
July – December 2013	1085	49%	
January – June 2013	1239	65%	
July – December 2012	1211	66%	
January - June 2012	1566	76%	
July – December 2011	1615	90%	
January – June 2011	703	87%	

Mutual Legal Assistance Treaties (MLATs) are the principal means by which governments, including the Brazilian and US ones, would request information from a foreign government to aid in a criminal investigation. The process may not however be especially streamlined, nor would it necessarily guarantee success. Certainly, my web company interviewee was clear that the Brazilian authorities resented having to resort to the MLAT process, instead of simply being granted immediate access to the required information. As he stated,

> Web companies…kind of shot themselves in the foot…(if there was a request for user data) basically what we would say as web companies is basically that this is actually in conflict with US law and because the services are controlled by the US parent company you actually need to go through the MLAT process…and that was a thesis that has always held a lot of water anywhere else in the world but *the Brazilian authorities…even said that it was humiliating to go through the MLAT process*…

Not only was it a cumbersome process to seek user data through an MLAT process, but it is telling that my interviewee describes the 'humiliation' felt by the Brazilian security services. I contend that this

[25] (Google, N.D.)

derives from the well-documented inferiority complex evident in Brazilian popular discourse when the United States is the topic of discussion. This in turn may stem from Brazil's long-standing status at the periphery of global capitalism.

The frustration of the Brazilian state security apparatus regarding the MLAT requirement, was not the only driver of the data localization provisions, however. In June 2013 a loose collation of protest groups took to the streets in mass rallies across Brazilian urban centres. The massive and rapid scaling of the so-called *Jornadas de Junho* took the Brazilian authorities by surprise. Although President Rousseff did announce a raft of conciliatory social policy changes, the size and frequent violence of the protests would have concerned the Brazilian security services. As such, it was of little surprise that during the protests, the Brazilian Intelligence Agency (ABIN) announced that they had launched a surveillance program to monitor social networks to pre-empt future unrest (Rizzo & Monteiro 2013).

This move towards securitisation by the Brazilian state had two important effects with regards to the data localization measures. On one hand, the 'June Journeys' would have made much more urgent the Brazilian authorities' desire to access user data held by US web companies. The other is that a discourse of securitisation already in effect in the wake of the street protests would have emboldened the Brazilian state to authorise such an extraordinary proposal as data localization.

The fact that the Institutional Security Office (GSI), a quasi-military body headed by an Army General, forms part of the Presidential cabinet, would have likely also had a significant influence on the decision to propose such a heavy-handed measure as data localization. As the former Chief of Staff in the Ministry of Justice, Guilherme de Almeida advised me in interview, the GSI:

> is concerned with military, information security and presidential security, and they are also those that promote our cyber-security legislation. This part of the regulation is somehow in the hands of the military *so this brings additional layers of nationalism and not fully understanding the Internet* to this branch of policy.

Thus was the Brazilian security state able to exert direct influence on the Marco Civil. It was not only the security state that had a vested interest in promoting data localization, however. Given the potentially ruinous consequences of the proposal for the web companies, it is of little surprise that one of their principle antagonists within informational capitalism might also have played a role in promoting the measure. In an interview to the press in July 2013, Castro supported these greater

obligations for the web companies: “Huge Internet companies are basically virtual in Brazil. Really we need more adequate legislation to guarantee information privacy, because there are many points of fragility” (Tozetto 2013).

While it is possible that the Brazilian telecoms sector was exhibiting a genuine concern for user privacy, it is more likely given their later conduct over jurisdictional measures in the bill that they were simply seeking to push some advantage in their sectorial rivalry with the web companies. This was indeed the reading of my web company interviewee: “You actually saw a few telcos in favour of data localization. Why? Because they knew it would upset us. So it is not exactly as if they were advocating for something that would be beneficial to them, they wanted that to be perceived as a kind of a…leverage thing.”

According to many civil society actors, as well as academic observers such as Abramovay (2017), the inclusion of the data centres constituted a “clear rupture” (143) with the early promise of the bill as a framework of digital rights. I argue, however, that all of the evidence presented here as to the real rationale for the inclusion of data localization in the Marco Civil demonstrates that it was in fact entirely coherent with the overall tenor of the bill. Indeed, the dispute over data localization was really only a struggle as to which sector of informational capitalism stood to gain the most: the security state or web companies. This corroborates my thesis that as a bill of digital rights, the measures contained therein would consolidate rather than challenge the systemic logics of informational capitalism; in this safeguarding the mechanics of enclosure and surveillance for the purpose of control.

Nuclear options

Given the potential ramifications of the Brazilian data centre proposals, it should be expected that the web companies were deeply concerned with the prospect that those measures would endure into the final legislation. It should therefore also not be surprising if an economic sector with such abundant resources, and representing the engine at the epicentre of informational capitalism, would consider using its considerable power to influence a political outcome at the periphery. To what lengths though would this sector be willing to go to have data localization effectively disappear as a problem? According to my web company interviewee, they were prepared to try and eliminate the Marco Civil entirely. The comments he made merit reproduction in full:

> It would be a very schizophrenic scenario in which we had been some of the major supporters of the bill moving forward and suddenly we would have to actually try and halt it, try to change parts of it…and data localization provisions which was basically such a huge problem inside of the company…*every US company actually gave the order from HQ to all of the policy folks on the ground here…everybody than you can think of, if it comes to that we prefer you to nuke the entire bill*, we prefer to lose the safe harbours that we are going to get than have to comply with this craziness of data localization.

Beyond simply trying to prevent the inclusion of data localization measures in the bill by maintaining a high profile in the Brazilian press and a near constant, coercive presence in the Brazilian Congress, the web companies were apparently prepared to try and impel the complete abandonment of the Marco Civil as a legislative project. My interviewee declined to elaborate on how precisely they might make that happen. It is possible to speculate, of course: they might orchestrate an 'astroturf' campaign amongst their millions of users; publicly withdraw their support; or resort to more nefarious means to exert influence on Brazilian legislators. More concretely, one can draw three assured conclusions from this revelation.

The first is that in terms of how the provisions of the Marco Civil corresponded to the sectorial needs of the web companies, the negative implications of data localization outweighed the positives of safe harbours. Although categorized as "really the thing to get" the web companies were willing to forego the benefits of limited liability and the unimpeded data flow represented by safe harbours to avoid the prospect of Brazilian data localization catalysing a balkanized global Internet.

The second is that any notion that the web companies constituted a steadfast ally of civil society on the topic of digital rights should be abandoned. Although both sectors based their defence of the Marco Civil on the tenets of the digital discourse, any alignment between civil society supporters of the bill and the web companies was based purely on the pragmatic pursuit of their sectorial needs.

Thirdly, and of most significance for this study as an analysis of how digital rights are constituted and contested at the periphery of informational capitalism, *the web companies possessed the will, and believed they possessed the means, to sabotage a bill of law supported by multiple civil society groups and a democratically elected government. This vividly illustrates not only the power differential between centre and periphery within the global system of informational capitalism, but also justifies in*

the first instance why the analytical perspective offered by informational capitalism is so important; it foregrounds information as both the goal and means of power.

By hook or by crook: Jurisdictional battles

In the closing months of 2013, the repercussions from the Snowden revelations continued to playout in Brazilian politics. During these events the 'nuclear option' of eliminating the Marco Civil was retained as a strategic option for the web companies while they continued to pursue orthodox lobbying and public relations efforts. In November 2013, Alessandro Molon issued Version III of the Marco Civil, formally including not only the data localization amendment but a new provision that amplified the pressure on the web companies.

A new article (11) was included in this version of the bill stipulating that in any instance of the "collection, storage or treatment of personal data, registration data or communications by connection providers or Internet applications in which at least one of these acts occurs on national territory, Brazilian law should be respected…". This jurisdictional provision was designed to further consolidate the reach of Brazilian security services into data about Brazilian users collected by US web companies. It signalled perhaps an awareness from within government that the data localization provisions might not survive the lobbying efforts of the US web companies or the resistance of the Brazilian technical community. Another significant reason for the addition of this jurisdictional provision was the influence of the telecoms sector.

The director of the Brazilian Telecoms Association revealed to me in interview, that they had compelled Molon to add the provision: "he didn't want to put it in…It was us that forced it. If it's awful for us, it should be awful for others too…". Beyond a simple expression of spite, however, the telecoms sector would have been aware that imposing jurisdictional provisions on the web companies would help to level the playing field in terms of limiting the web companies' capacity to monetize and commodify user data: a revenue source that the telcos dearly coveted. Accordingly, lobbying for this amendment was simply another skirmish in the battle for primacy within informational capitalism.

My web company interviewee revealed that with the inclusion of Article 11, the sector was now fighting a damage limitation battle on two fronts:

> It was not something that our legal department actually liked, or for any other web company for that matter. It pretty much said well you're going to have to pick and choose...We're

> probably going to lose the jurisdictional battle…and basically what my job became was suddenly to actually try and salvage the Marco Civil. Let's see if we are able to safeguard the provisions that we like, see what we can live with of things that we may not like so much *and see if we can get rid of the craziness of the data localization thing*…

Moreover, he asserted that for the Brazilian government, data localization had only ever been a means to secure the jurisdictional provision; in effect the invocation of an apocalypse, to make a disaster seem palatable. "Brazil never actually wanted data localization in the first place. The real issue on data localization was jurisdiction…It was basically as if they had written, if your company is called Google or Facebook or Microsoft you have to comply with this, or else not a problem".

It is impossible to determine if indeed data localization represented little more than a bargaining tool on the part of the Brazilian government to ease the passage of the jurisdictional provision. What we can infer with confidence from the various machinations surrounding the insertion of Articles 11 & 12 in the Marco Civil is that they represented one more instance of digital rights serving as the terrain for the power-holders of informational capitalism to vie for systemic advantage.

The triumph of digital rights over data sovereignty

In the wake of the initial revelations, President Rousseff had taken the opportunity of a G-20 summit in St Petersburg on September 5th to press President Obama for an explanation. As Rousseff explained to the press, "I want to know everything there is...beyond what was published in the press, I want to know everything there is related to Brazil. Everything..." (G1 b 2013 *translation mine*). Within days, Rousseff would indeed discover more about the scope of the NSA surveillance program targeting Brazil.

It was on September 08th when news broke that Petrobras had also been the object of US surveillance. This revealed that the US security state, at the epicentre of informational capitalism, was pursuing not only an agenda of securitisation, but also seizing access to commercial data that could provide American energy companies with a competitive advantage. Petrobras was the worldwide leader in offshore oil exploration (G1 2013b) making it not only the crown jewel of the Brazilian state in terms of revenue generation, but also an emblem of its sovereignty. As such the Brazilian government needed to amplify its reaction.

The data localization amendment had already been provisionally added to the Marco Civil by this point, but given the critical reaction it had received from civil society, the Brazilian government required a

more categorical response that would signal to the public its resolve to stand up to the Americans. This was particularly important because, according to Robert Muggah, the research director of Brazilian security think-tank, the Igarapé Institute, "For many on the Brazilian left, the NSA program harkens back to the military dictatorship and the US support that brought the military to power" (Toor 2013).

Righting the ship: Dilma leverages the Marco Civil

According to multiple accounts (Papp 2014; O'Maley 2015; Abramovay 2017), Rousseff felt under acute pressure to deliver a fitting riposte to US surveillance on the international stage. Partly this owed to electoral calculations. Rousseff's approval ratings had plummeted in the wake of the June protests - from 60 to 27% in the space of one month according to Santos & Guarnieri (2016, p.485) - and the elections were less than 12 months away. This meant that the Snowden revelations represented an opportune distraction, from which she needed to extract maximum political value. It was indeed at this juncture that Rousseff started to take personal interest in the Marco Civil as a tool with which to confront the US and to improve her public image. This represented a volte-face because after the transition of power from President Lula to Rousseff, the Marco Civil clearly constituted a low-priority issue for the latter administration. Guilherme de Almeida characterised the difference to me thusly: "With Lula it was more a political support, but with Dilma it was more of a technical perspective until Snowden arrived, and then the energy raised…" (2018).

Rousseff's first step behind the scenes was to convene a meeting with the Ministers of Justice and Telecommunications, José Cardozo and Paulo Bernardo respectively, as well as the Marco Civil's rapporteur, Alessandro Molon. It was agreed in that September 10th meeting that passing the Marco Civil would constitute a clear message to the United States, the Brazilian public, and the international community that the Brazilian government was a defender of digital rights, in stark contrast with the United States. As Ronaldo Lemos later opined, "it was the only credible option, precisely because it wasn't a governmental initiative, it had emerged from society" (Papp 2014, p.90).

Given the obstacles within parliament erected by the telecoms sector, the passage of the Marco Civil could not be impelled by force of political will alone. Indeed, by late 2013 Rousseff's political capital was much diminished. In the last year of her first term, Rousseff only managed to secure the passage of 16% of her proposed bills (compared to an average amongst Brazilian presidents of 60% in their final year) (Santos & Guarnieri 2016, 490). Accordingly, a sleight of hand was needed.

As such, the day after the meeting, the Brazilian government announced that it was applying the status of 'Constitutional Urgency' to the bill. According to Article 64 of the Federal Constitution, the President possesses the prerogative to apply this to any bill of law. The result is that the Congress has 45 days to pass a bill (and the Senate another 45 to approve it), and if it fails to do so, no other bill can be voted upon, effectively shutting down the legislature (Solagna 2015, p.96).

This announcement provided a clear signal to both the opponents and defenders of the bill that passage of the Marco Civil had become the priority policy item for Rousseff's government. This fact imbued the Marco Civil with fresh momentum and both sets of actors began to redouble their efforts to shape the bill according to their agendas. As such, the assignment of constitutional urgency marked the beginning of the end game for the Marco Civil; a period defined by the curtailment of any residual potential for the Marco Civil to establish a substantive set of civil digital rights.

A 'steering' committee, indeed

Another pivotal moment for the fate of the Marco Civil was the decision by President Rousseff to convene a meeting with the Brazilian Internet Steering Committee (CGI.br) in order that they might guide her in planning the government's next steps. This was a pressing consideration as Brazil was due to give the opening address at the General Assembly of the United Nations on the 24th of September; an obvious opportunity for Rousseff to deliver her riposte to the United States.

The meeting was arranged for September 16th, and according to five of my interviewees who were present (Veridiani Alimonti, Alessandro Molon, Flávia Lefevre, Pedro Paranaguá and Caf), as well as the statements of other participants published elsewhere, the discussions therein were "a determining factor" in impelling the Marco Civil towards its passage into law six months later (Lefvre, research interview). In essence, the advice offered by the members of the steering committee to the President consolidated her belief that the Marco Civil should form a core plank of her response to the NSA surveillance programs. As became evident in her UN address, the Marco Civil was not intended to be the only weapon in her armoury, and Rousseff played a careful double game intended to reconcile Brazil's status as both defender of digital rights, and a peripheral country advancing its technological sovereignty through infrastructural development.

This 'double game' was principally rhetorical, however, and in terms of impelling actual policy, there was a clear emphasis on the side of digital rights. Indeed, the testimony of the CGI members appeared

to guide the President towards that direction. As I argued earlier in this chapter, the pursuit of data sovereignty constituted a means to partially redress the power imbalance within informational capitalism; from the epicentre to the periphery. Rousseff's eventual focus on digital rights and the gradual erosion of government support for data sovereignty, constituted another important instance of the Marco Civil maintaining the status quo of informational capitalism, rather than disrupting it.

Securing Rousseff's support for digital rights over data sovereignty would also play a large role in determining how sectorial tensions within informational capitalism were eventually resolved in terms of the digital rights contained in the Marco Civil. Accordingly, this meeting on September 16th played a decisive role in the resolution of some of the most contentious elements of the bill: network neutrality, the IP carve-out, as well as the role for multistakeholderism.

Before analysing the details of the meeting and its implications, we must account for the nature of Rousseff's interlocutors in this meeting. The fact that it was the Brazilian Steering Committee (CGI.br) was, I argue, highly significant in continuing to circumscribe the scope of digital rights within the bill.

As I argued extensively in Chapter 4, the CGI.br espoused a vision of digital rights squarely aligned with the dominant paradigm. This vision legitimizes the logics of informational capitalism and obscures any substantive reckoning of digital civic rights that addresses the political-economy of the Internet. And where the ideological function of the digital discourse is not evident, this vision is premised upon depoliticized techno-legal solutions agnostic to the inequities produced by informational capitalism. Accordingly, the tremendous opportunity to substantively advance digital civic rights implied by Rousseff's newfound interest in the Marco Civil was effectively nullified by the fact that she sought out the guidance of the CGI. As we will see, the demands they articulated at this encounter amounted to little more than damage control to preserve an already deeply compromised vision of digital rights.

Discrediting the telcos

Another important outcome of CGI's efforts to sideline the telecoms sector in this meeting was the marginalization of then Minister of Communications, Paulo Bernardo; a man who according to the judgement of CGI co-founder, Caf was "completely in the hands of the telcos" (Research interview). He went on to highlight the importance of the fact that Bernardo was present at the meeting and was compelled to listen as the CGI board members denounced the telecoms sector's position on the Marco Civil: "And Paulo was right beside her (Rousseff), and very quiet! And from that meeting on, he really

stopped interfering and saying some completely silly things. Like Brazilians' emails should be done entirely in Brazil" (Research interview).

Caf's perception of Bernardo being discredited in that meeting – and the implications of that for the telecoms sector – were reinforced by a senior governmental advisor on technology law, Pedro Paranaguá:

> She perceived that the Minister of Communications would not be the appropriate person to deal with the Marco Civil…And she realised that he was not defending the national interest, so from there she excluded the Ministry of Communications and included instead the Ministry of Justice. When they came in, it changed the scenario completely. In fact, from then on, the government started to act in the public interest.

The discrediting of Bernardo as a credible advisor to the President was significant because proposals backed by Bernardo such as the national email program and national data centres lost legitimacy. This suggested that although further governmental responses would continue to assert data sovereignty, the principal focus would instead be on digital rights. Also, given that Bernardo served effectively as a proxy for the telecoms sector within government, that sector would need to reassess how it could advance its objectives for the Marco Civil, leading to a commensurate rise in profile of the 'telco rasputin', Eduardo Cunha (introduced in the last chapter), as the telecoms sector began to advance their agenda through him. Finally, discrediting Bernardo and the telecoms sector opened an opportunity for the CGI to pressure Rousseff to lock-in a defence of network neutrality in the Marco Civil. According to IDEC lawyer, Veridiana Alimonti, the board member's explanations convinced Rousseff that it was a fundamental aspect of the Marco Civil and "from that moment she had it in her head that she wanted to have net neutrality" (cited in Solagna 2015, p.97 *translation mine*). The fruits of this exchange would indeed become manifest in the next version of the bill issued by Molon in October 2013 in which provisions defending network neutrality were significantly reinforced.

Another significant concern for the CGI members present at the meeting was the IP carve-out that had been introduced amidst such controversy and subterfuge nearly one year prior. On that topic, free software activist Sérgio Amadeu took the initiative, confronting Rousseff with the proposition that she could not defend free speech through the Marco Civil while safe harbours featured an exemption for intellectual property. According to Amadeu's account: "she (Rousseff) said "I will order them to be removed'". Alimonti, also quoted in Solagna (2015, p.102), verified this exchange. As per my earlier

point, the notion of the equivalence of free expression with safe harbours was not in itself challenged by Amadeu or his colleagues. The CGI.br's acceptance of the commonsensical nature of this entwinement represented another important instance of curtailment for the Marco Civil.

The end result of the meeting was not nearly as categorical as Rousseff had intimated. In a later (and final) amendment added by Molon, Article 20 stated that the application of limited third-party liability in any cases of copyright infringement would depend on future "specific legal provisions". In effect, the entire issue of intellectual property would be deferred until copyright reform was revisited. In the continued absence of this reform (still absent by 2021), however, this amendment did little other than consolidate the status quo practice of notice and takedown for copyright violations, to the benefit of the content production and web company sectors.

For the most part, civil society groups accepted that the amendment was as great an improvement as they could expect given the power of the organizations that backed an IP carve-out. As such, they swallowed their medicine. The sober assessment of IDEC in a November 2013 blog post to its members, that the amendment was simply "better" than the previous version, summed up this grudging pragmatism (IDEC 2013).

This tone of resignation regarding the permanency of the IP carve-out was echoed to me by the manager of the public consultation, Paulo Santarém: "What is undeniable is that it facilitated the approval of the Marco Civil. By the same token, it is also undeniable that it weakened the project. It would have been stronger if it had been approved without that point". In such a way, the flawed equivalence of freedom of expression with safe harbours saw its civic value further diminished.

Sovereigns and stakeholders: Brazil's schizophrenic approach to Net Governance

Brazil's support of multistakeholderism as the preferred model of Internet governance, both globally and domestically, was the final agenda item that the CGI members sought the opportunity to advance at the September meeting. Brazil's approach to the governance of the Internet does though require some contextualization, as it suffered from a distinct lack of coherence between its domestic and foreign policy; a disjuncture that once again signals the tension between pursuing data sovereignty and digital rights as well as highlighting the stratified global political-economy of informational capitalism.

As analysed at length in Chapter 4, from 1995 Brazil established a model of governance for its national Internet based on multistakeholder principles through the foundation of the Brazilian Internet Steering

Committee (CGI.br). By contrast, at more recent ITU (International Telecommunication Union) summits, Brazil had sided with voting blocks of mostly developing nations – prominently led by Russia and China - that sought greater government control of the Internet. Indeed, at the 2012 WCIT (World Conference on International Telecommunications) in Dubai, Brazil voted for the ITU to wrest control of Internet governance away from ICANN (Internet Corporation of Assigned Names and Numbers). The fact that the other voting block was populated most notably by the US and EU states led the Economist to dub this 'A Digital Cold War' (2012). What then accounts for Brazil's seemingly schizophrenic approach to Internet governance?

It is important to note that those nations voting for greater government control of global Internet governance corresponded largely with the Group of 77 (G77) that in turn could trace its roots to the Cold War-era non-aligned movement. These countries were opposed to US geopolitical hegemony generally and sought to assert their sovereignty in international forums whenever possible. More specifically these nations were antagonistic to and skeptical of US control over ICANN, and the influence it afforded to them over global telecoms infrastructure (Mueller & Wagner 2014, p.2). As noted earlier in this chapter, the PT government pursued a neodevelopmentalist agenda that sought to assert national sovereignty in various policy arenas, including foreign policy and national technology development. Accordingly, Brazil's position at the WCIT was coherent with these goals. Additionally, there are other factors more specific to the operation of telecoms at the periphery that help to explain Brazil's earlier position on Internet governance.

As per the analysis of Mueller & Wagner (2014) countries in the pro-sovereignty block have international communications policies that "tend to be driven by government ministries that have close and sometimes incestuous ties to incumbent telecommunications operators" (3). As frequently noted by Brazilian academics, civil society and political figures, the Ministry of Communications, as well as the state telecoms regulator, Anatel, were heavily influenced by Brazil's telecoms corporations. As such, Brazil's international position on Internet governance was likely driven in part by the calculations of Brazil's telecoms sector that greater government influence in Net governance arrangements would benefit them more than a multistakeholder model that permitted its principle antagonists - web companies and civil society - a voice at the table.

My discussions with a senior executive in Anatel on this topic presented a slightly different perspective. He claimed that the ITU conference in Dubai was unfortunately politicized and miscast as a polarisation

between those seeking to control the Internet, and those seeking to leave it 'free'. In fact, Brazil's more nuanced position was based on *economic and developmental considerations* (Research interview). What he was alluding to was the other major reason why Brazil might have backed the pro-sovereigntist block at the WCIT.

The incisive analysis of Milton Mueller again points the way: "The most important battleground in the WCIT is not censorship or security, but interconnection and the flows of funds among carriers attendant upon interconnection agreements" (2012). Indeed, while it might have suited the American delegation to claim that the dispute at WCIT was an attempt to 'censor' the Internet, really it centred upon the desire of nations at the periphery of informational capitalism for their "national regulatory authorities to have more collective control over ISPs generally, and American ISPs and Internet services specifically" (Mueller 2012). Winseck (2017) also observes that "some telecoms operators in the Global South, with backing from their respective governments" consider: "traffic from internet giants such as Google, Facebook, Amazon, Apple, Baidu, Netflix, and so on as bypassing the traditional international revenue settlement agreements they have relied on in the past for profits and to finance their network investments". Not only that, but according to other analyses "net providers and users in the developing world are in effect subsidizing the maintenance and growth of the global, Western-owned net backbone" (Powers and Jablonski 2015, p.123).

Essentially, the International Telecommunications Regulations (ITRs) that were being renegotiated offered telecoms companies in peripheral nations the opportunity to reset the economics of interconnection that favoured content providers in informational capitalism's core. The proposal was to secure revenue by enshrining 'the principal of sending party network pays'.

By contrast, the status quo of multistakeholder governance of the Internet through US-led bodies like ICANN upholds a market-led, distance-agnostic model favouring US-based web companies and Internet services. It represents a doctrine that is, in the words of Geert Lovink, "dotcom-NGO-libertarian" (Toor 2013). In sum, the dispute over ITRs at the WCIT in 2012 represented a zonal conflict within the global system of informational capitalism, between centre and periphery; a battle over who controls and profits from information flows.

Six months on from these events and the Snowden revelations therefore presented Brazil's government with a dilemma in how to orient its approach to Internet governance. It could ride the wave of criticism directed at the US surveillance programs and continue to pursue greater sovereignty

within international Internet governance arrangements. Or, it could align its direction with the dominant digital rights paradigm and advocate for multistakeholderism and Internet ‘freedom’, leaving the power structure of informational capitalism unmolested. Ultimately as we will see, Rousseff opted for a variant of the latter; a “third way” as Ronaldo Lemos described it (Lemos 2014, p.8).

The CGI members were indeed given a tremendous opportunity to validate Rousseff’s instincts as, according to Caf, the President had first entered the boardroom clutching a copy of the Steering Committee’s *decálogo* (Ten principles for Internet governance). She then asked “’Look, I agree with all of this! What should I do now?’” (Caf, research interview). The CGI members proceeded to help her draft her UN address in a way that incorporated nearly all of those principles, including an affirmation of multistakeholder governance.

UN vs NSA, and Rousseff’s double game

The day after the pivotal meeting between President Rousseff and the board members of CGI, on September 17th the Brazilian government announced that it was cancelling the scheduled state visit of President Rousseff to the United States in October 2013, a visit that was to include the rare honour of a full state dinner at the White House (Balza 2013). As a statement of the Brazilian government’s displeasure, the cancelation was a clear one. Rousseff, however, would still soon be travelling to the United States, to deliver a more categorical rebuke. This because on September 24th Brazil was due to make the inaugural statement[26] at the opening of the 68th session of the UN General Assembly.

The meeting with CGI.br eight days prior had served to prepare the President for this engagement, and she duly presented a speech in New York on September 24th that was in large part premised upon the principals of the Marco Civil, derived in turn from the CGI’s *decálogo*. Rousseff claimed that “Brazil will present proposals for the establishment of a civilian multilateral framework for the governance and use of the Internet” (UN 2013), a framework that would contain 5 of the first 6 ‘ten commandments’:

1) Freedom of expression, individual privacy and respect for human rights; 2) Open, multilateral and democratic governance; 3) Universality that ensures social and human development; 4) Cultural diversity; 5) Network neutrality (UN 2013)

[26] It is a tradition within international relations that the Brazilian head of state always speaks first at the UN General Assembly.

Rousseff indeed found in both the *decálogo* and the Marco Civil a framework of digital rights that translated readily into the language of universal human rights that was the lingua franca of the United Nations. Hers was a discursive strategy that obfuscated the central tension implied by the role of the state in both the UN discourse of human rights, and the digital discourse that was formative for the Marco Civil. In effect, she employed an articulation between the digital rights informed by the digital discourse in which the state is a threat to be contained, and the UN discourse of human rights in which the state constitutes a guarantor of rights.

As Isin & Ruppert (2015) as well as Jorgensen (2013) have documented, framing digital rights in a *human* rights framework, as opposed to *citizen* rights renders them "static and universal" rather than "historical and situated and arising from social struggles" (Isin & Ruppert 2015, p.10). The fact of this address indeed did much to establish the Marco Civil da Internet in the minds of international observers as a *universal* framework of digital rights; a "Magna Carta for the web" according to Tim Berners-Lee (Kiss 2014). Such judgements - as systematically asserted in these pages - elides the social and political-economic boundedness of the Marco Civil, and the way that it was contested and shaped at the periphery of informational capitalism.

In her speech, Rousseff, indeed made reference to the fact of the NSA "violating fundamental human rights" and claimed that "harnessing the full potential of the Internet requires…respect for human rights" (UN 2013). Her address was not limited to this vocabulary of human rights, however. Rousseff also sought the opportunity to assert Brazil's sovereignty, as well as to underscore the particular implications of the NSA surveillance for a society at the periphery. As per the analysis of Bauman et al, "the game that Brazilian authorities are playing is actually an attempt to reconcile individual autonomy, state sovereignty, and universal rights" (Bauman et al 2014, p.129).

In the following statement, Rousseff, made clear that there was an economic dimension to the NSA's digital surveillance, and that her government was prepared to defend its informational resources and data sovereignty from the forces at informational capitalism's core: "Brazil, Mr. President, will redouble its efforts to adopt legislation, technologies and mechanisms to protect us from the illegal interception of communications and data. My Government will do everything within its reach to defend the human rights of all Brazilians and to protect the fruits borne from the ingenuity of our workers and our companies" (UN 2013). The 'technologies and mechanisms' here refer to the bundle of policy measures conceived to assert Brazil's data sovereignty: the undersea cable to Europe; the

national email program; and data localization. Finally, Rousseff invoked Brazil's peripheral history of military dictatorship to proclaim that "As many other Latin Americans, I fought against authoritarianism and censorship, and I cannot but defend, in an uncompromising fashion, the right to privacy of individuals and the sovereignty of my country." (UN 2013)

In sum, Rousseff used her UN pulpit to play a careful double game. On one hand, she presented Brazil as the champion of digital rights, and carefully articulated the individual rights of the Marco Civil, with the vocabulary of universal human rights expected at the United Nations. This gambit was designed to stake the moral high ground in contrast to the skulduggery of the US, and as such to appeal to voters in Brazil. In juxtaposition to the Marco Civil's digital discourse of individual rights grounded in expression and creativity, Rousseff also drew upon the discourses of sovereignty and neo-developmentalism as another means to rhetorically confront the United States. These references were intended to reconcile the core PT policy commitment to technological sovereignty, with an appeal to those voters whose desire for economic nationalism was offended by the Snowden revelations.

Rousseff's post-Snowden balancing act between sovereignty and multistakeholderism, the digital and neodevelopmental discourses, and accommodation or confrontation with the core of informational capitalism was revealed again in her announcement of the NetMundial meeting.

ICANN; We Can

On October 8th, the ICANN CEO and Chair, Fadi Chehadé, made an unscheduled visit to Brasília to try and meet with President Rousseff. Although initially blocked from seeing her by Paulo Bernardo, Brazil's Minister of Communications, he eventually succeeded (Mueller & Wagner 2014, p.4). Chehadé, only the day previously had overseen the publication of the 'Montevideo Statement', a communique that repudiated any moves to fragment, or 'Balkanize', the global Internet (ICANN 2013).

Chehadé was pursuing an agenda that would maintain the 'multistakeholder consensus' of global Net governance, one that would retain the centrality of his own organization, ICANN, and the immense influence of its overseer, the US government. It was therefore intuitive that he would seek to co-opt President Rousseff, after her UN speech had made her the public face of resistance to NSA surveillance. Indeed, according to Chehadé, "I came to ask the President to raise her leadership to a new level, so that we could move towards a new model of governance, one in which we are all equal" (Chagas 2013).

The 'new model' was intended to somehow placate all of the principal stakeholders within global Internet governance: to retain the United States at the epicentre of power and influence; to admit a greater role for governments (in recognition of the calls for sovereignty expressed at the last ITU summit); to not antagonise the telecoms sector "an integral part of the family with which we need to work (Chagas 2013); and a role for the civil society groups that play a key role in legitimizing multistakeholder processes as 'consensual' and 'democratic'.

The fruits of the meeting between Rousseff and Chehadé was the announcement on October 9th of an international conference (later dubbed NETMundial) on the future of Net Governance to be hosted in Brazil in April 2014 (Chagas 2013). According to the analysis of Mueller and Wagner, the announcement signalled that:

> President Rousseff was edging away from the sovereigntist alliance and edging towards compromise with the multistakeholder alliance. By the same token, ICANN and the Internet organizations were signalling their willingness to bargain with governments critical of the system, and indicating some support for the sovereigntist idea that governments should participate in multistakeholder institutions "on an equal footing (2014).

And as Lemos also opined, "With NETmundial, Brazil takes a step in the direction of the US" (2014, p.8). Indeed, Rousseff's engagement with the event provided another clear signal that her government intended to pursue the path of multistakeholderism and digital rights, not data sovereignty and neo-developmentalism. In essence, Rousseff opted for an accommodation with the foremost powers within informational capitalism, not a confrontation.

It is worth noting that owing to the inclusion of the most powerful actors within informational capitalism, and despite the optimism and fanfare that accompanied the event from communication rights activists and the international technical community, the outcome of the event did little to advance the cause of digital rights. The outcome document was "weak, disappointing" and "did not even mention net neutrality" (Patry 2014, p.22).

In sum, the response of the Brazilian government to the Snowden revelations represented a highly eventful chapter in the constitution of digital rights at the periphery. Some actors within the Brazilian state sought the opportunity to propose policy measures - in the realm of infrastructure - that might constitute a meaningful intervention in the global power imbalance inherent to informational

capitalism. These would do little to address the many inequities of informational capitalism for Brazil's citizens, however. As I have argued, as privacy safeguards they were all deeply flawed. Collectively, however, they may have constituted an effective intervention in the political-economy of the Internet that could have enhanced Brazil's status at the periphery of informational capitalism. President Rousseff, however, decided to prioritize Brazil's framework of digital rights, the Marco Civil, as her government's primary response to the NSA surveillance programs. This decision was made with both electoral and geopolitical considerations, and signalled an accommodation with, rather than an intervention in, informational capitalism. Accordingly, in this instance, the significance of the Marco Civil for informational capitalism centred not on the nature of the individual rights contained in the bill, *but in the framework overall constituting the favoured alternative to a systemic intervention in the architecture and political-economy of the Internet*.

Echoes of media tyranny: Restraining and enabling the security state

Despite President Rousseff championing the Marco Civil, the bill was still effectively frozen in Brazil's Congress. This occurred because of the continued obstructionist tactics of a block of parties within Congress led by Eduardo Cunha and his PMDB party. Partly, this was orchestrated in support of the telecoms sector, but also by an ad-hoc alliance of six parties acting on behalf of the Federal Police. This latter grouping of six parties[27] sought new data storage provisions to facilitate the investigative work of the security state (Papp 2014, p.110). In order to overcome these formidable obstacles, Molon opted to introduce four last ditch amendments to the 4th – and penultimate - draft of the bill (Substitutivo IV) issued on December 11th, 2013. One of these changes was intended to placate the telecoms sector and its allies and will be substantively analysed in the next sub-section.

Molon also introduced two additions to the provisions on third-party liability and content removal. In light of some highly publicized incidents of 'revenge pornography' that had occurred in Brazil, Molon opted to include a new Article (22) in *Section III On the Responsibility for Damages Resulting from Content Posted by Third Parties* stipulating that application providers would be obliged to remove any content containing "scenes of nudity or sexual acts" posted without the consent of the subjects. Despite serving the interests of the victims of revenge pornography, this new stipulation attracted

[27] Comprised of the DEM, PSDB, PPS, PTB, PROS and the PP

censure from activists concerned that it would provide cover for a "patrolling" of the Internet based on "moral or religious grounds" by conservative forces in Brazil (Arpub et al 2014).

Moreover, in the same Section, and in what was widely seen as a concession to Congresspeople and Senators anxious to retain control over politically damaging material published about them online, Molon added another amendment. Clauses 3&4 stated that online content deemed damaging to "reputation, honour and personal rights" could be attended to by specialist courts. This amendment also drew the ire of CSOs that recognized the self-interest of politicians in Brazil who had, on numerous occasions, intimidated online publishers into removing compromising content, even when its publication was demonstrably in the public interest. Freedom House's 'Freedom of the Press' report for Brazil in 2013 noted multiple instances of "judicial censorship" favouring politicians (2013). As my web company interviewee lamented to me, these instances were indicative of Brazil's status as "not 100% a mature democracy". Indeed, I argue that this amendment to the Marco Civil represented not only another instance of the freedom of online expression being further undermined, but also a modification of digital rights characteristic of the periphery.

The fourth and final amendment was a significant change to the provisions on data retention. This was widely perceived to represent a concession to the Brazilian state security and law enforcement authorities, especially the Federal Police and the Public Prosecutor's Office (Lefevre 2015, Research interview). What was less visible to outside observers were the vested interests of other sectors of informational capitalism in setting new standards for data retention and access, namely the web companies and the copyright lobby. Those two sectors, as we will examine, possessed strong commercial interests in further diminishing the Marco Civil's limited privacy safeguards.

What's the matter with metadata?

In a new Article (16), in a newly added sub-section – ***Storage of Access Registries for Internet Applications*** – the draft stated that commercial application providers needed to retain data for six months, and that any application service provider – even if non-commercial – could be mandated by judicial order to retain data pertaining to specific events over a longer timeframe. These transformed the initial Article 13 on the matter, which had remained unchanged from the first iteration of the bill, and had specified *no* data retention obligations for application service providers.

The main implication of this modification stemmed from the newly enabled capacity of security services to combine connection and access records. ISP connection logs were mandated for retention by Article 11 from the inception of the Marco Civil. Connection logs meant data pertaining to time, frequency, duration and IP address of Internet connections. These metadata constitute technical information that might aid with a criminal investigation, but in isolation, yield a limited understanding of an individual's behaviour. Access logs, however, means metadata pertaining to sites visited, software used, files downloaded etc. These evidently constitute a detailed portrait of user behaviour. By combining them with connection logs, as well as communication content, security analysts gain access to a trove of personal information. As Mega Não co-founder João Caribé lamented to me: "connection data is one thing, access data is another. Combining the two is the danger...It breaks your privacy completely…".

CSOs, activists and the technical community in Brazil had indeed remained sanguine about the initial extent of mandatory data retention in the bill. From the Marco Civil's inception, Article 11 had mandated that ISPs must retain connection logs for one year. The initial broad acceptance of civil society can largely be explained by three points.

The first is that an accompanying clause in Article 11 prohibited ISPs from using any user navigation records. It was the capacity of the telecoms companies to "trace the entire navigation map of users" that communication and consumer rights advocates feared the most (Altercom et al 2013). If the telcos – broadly reviled by Brazilian consumers; or "demonized" according to telecoms executive, Alex Castro – were denied access to detailed behavioural data, then civil society observers appeared largely content.

The second point that explains acceptance of the connection log retention is that the data contained therein was considered to be minimally infringing of personal privacy given that it pertains only to the technical metadata around times, durations and forms of connection.

Finally, the spectre of the Lei Azeredo still haunted the Marco Civil. The intention of legislators developing the contentious cybercrime bill to implement data retention provisions of five years - in the interests of the banking sector, IP rights holders and the security state - meant that a very low bar for user privacy had been established in Brazil. The Marco Civil became, as a result, an exercise in "damage control" (Caribé, research interview). The possibility therefore that the Marco Civil would mandate 'only' one year of data retention for connection providers, became by contrast, palatable.

The amendments on data access need to be considered in conjunction with changes made to the previous Substitutivo (III) issued the month prior: specifically two new clauses added to Article 10 in the *Section on the Protection of Registries, Personal Data and Private Communications*.

The first clause, included within an article otherwise oriented towards user privacy, stated that "the content of personal communication can only be made available through a court order". This was the first time that any reference to communication content had been included in the bill. The second relevant clause stipulated that access to user data held by connection or application providers related to "personal identity, affiliation and address" could be sought by "administrative authorities that possess the legal competency for its requisition". This meant that connection and access data could be integrated with detailed offline identifying metadata, as well as communication content, creating an integrated whole. Moreover, the vague wording of this second clause would enable access to this information for a huge swathe of state actors without necessarily having to seek a judicial order.

Cumulatively, the provisions concerning the retention of user metadata, access to personal information and communication content, and establishing lenient conditions under which that information could be divulged to state authorities, *constituted a tremendous expansion of the Brazilian surveillance state*.

Communication content, after all, can reveal only so much. It is metadata pertaining to "cookie identifiers, email addresses, GPS coordinates, time and date and persons involved" (Parsons 2015, p.2) that provides the means for security services to connect persons with other possible surveillance targets; to cast the dragnet out. As per Maas' analysis, "when there is metadata, there is no need for informers or tape recordings or confessions" (2015).

And if access to metadata provides the means to extend surveillance, then it contributes significantly to the chilling effects thereof that are so corrosive to democracy. As Parsons (2015) explains: "as a result of being always in a potentially-targeted category, individuals may alter their behaviours to try to secure their telecommunications from third-party monitoring. Such alterations may cause individuals to suppress their autonomy in order to appear unobtrusive" (p.4). It is the violation of that "essential place between the individual and the world" that Mosco too laments when considering the effects of surveillance, one that "makes it more difficult to safely develop a self and an identity" (2014, p.139). For Couldry and Mejias (2019), one of the most damaging aspects of what they call 'data colonlialism' is the erosion of "the minimal integrity of the self" caused by ubiquitous digital surveillance. Their critique is echoed by Cohen when she argues that the function of 'data doubles' "within the emerging

political-economy of personal information is to subsume individual variation, idiosyncrasy, and self-awareness within a probabilistic and radically behaviorist gradient" (2019, p.67).

Surveillance practices do not only impede the development of *individual* autonomy (Cohen 2000), however, but alters "the environment of social relationships and thereby undermines *collective* [emphasis added] self-determination" (Stahl 2016). Another important rationale for fearing the increased surveillance capacities of the state security apparatus is for the simple reason that it further increases the dominion of state over citizen, and amplifies the coercive power of the former over the latter. For these reasons, the surveillance practices of the security state constitute one of the many ways that the logics of informational capitalism are inimical to democracy.

Accordingly, the changes enacted in this fourth iteration of the bill need to be understood as one of the central contradictions of the Marco Civil as a framework of digital rights: at the same time as some provisions in the bill were oriented towards safeguarding individual privacy (however flawed), others were explicitly conceived to enable the practices of the surveillance state.

A "big defeat"? Civil society finally reacts

The fact of this contradiction did not go unnoticed by Brazilian civil society organizations and indeed explains some of the most concerted resistance displayed by CSOs during the Marco Civil process. Moreover, the timing of these amendments contributed to the jarring sense of incoherence. Within six months of the Snowden revelations generating such outrage in Brazil, and Dilma Rousseff taking the role of global spokesperson against the practices of dragnet electronic surveillance, it was shocking to see surveillance measures added to the country's landmark digital rights law.

Of course, the Snowden revelations were not the only political event to agitate Brazilian politics in the middle of 2013. The *Jornadas de Junho*, indeed constituted a fillip for, rather than a curb upon, the ambitions of the surveillance state. These protests, as has already been discussed, provided some of the impetus to install data localization provisions in the Marco Civil. They also catalyzed the Brazilian Intelligence Agency's move to develop a surveillance program to monitor social networks (Rizzo & Monteiro 2013). Moreover, even the state telecoms regulator Anatel had issued new rules (614/2013) for 'Multimedia Communication Services' that mandated the retention of connection log and user registration data for one year (Anatel 2013b). Given this context, intelligence and security services in Brazil were emboldened to demand tools that could assist them in surveilling and controlling Brazil's

citizenry. These included mandatory data retention provisions in the Marco Civil, however incongruous they may have appeared in a bill of digital rights.

As one of my interviewees described it: "If you look at the Marco Civil, I don't think that it is a single coherent piece. There have been changes after Snowden, there have been changes by different actors that bargained specific provisions…So there is this part that protects the open, free Internet and there is this part that enhances surveillance powers of the state…" (Moncau, Research interview). Flávia Lefevre of the CSO *Proteste* was forthright in her condemnation of the bill's incoherence: "here in Article 10, this 3rd paragraph I think is terrible, a loss. Here you have a great protection. But then in the caput you have…the process of metadata, this is a big thing…In my opinion it's a big defeat: either you have data protection or you don't" (Research interview).

The amendments in Article 15 pertaining to access log retention were the object of greatest concern for Bia Barbossa of *Intervozes*. Her particular fear of enabling state surveillance through these provisions was widely shared by civil society organizations advocating for the Marco Civil, while the implications of commercially-driven surveillance were largely unarticulated. In her estimation, the new provisions opened "a large space to have mass surveillance of users" and that moreover "every citizen becomes a suspect", thus violating the presumption of innocence enshrined in the Brazilian Constitution (Research interview).

Communication rights activists were justified in their concerns, as Brazil's state security apparatus was already a prolific user of surveillance technologies. As Freedom House's 2012 Press Freedom report for Brazil recounted, "in August 2011 alone, the judiciary granted over 17,000 wiretaps, many of them to Voice over IP (VoIP) lines" (2012). Moreover, senior researcher at FGV, Luiz Moncau, recounted to me how the security services would employ extra-legal measures to intimidate smaller web companies and ISPs into divulging user data: "We hear about the use of different kinds of pressures such as …bringing the police to the door of the house of the director of the company and there is this concern amongst the neighbours 'oh, was this guy corrupt?'. There is this kind of pressure system to get at the data." According to my web company interviewee this was an effective tactic as "some companies didn't want any trouble with the authorities so they would just disclose information directly with no care for due process…".

Concerns about judicial over-reach and the abuse of state power were also echoed in a statement published by the Partido Pirata on December 13th, 2013, one day after the contested provisions were

announced by Molon in Congress. The Pirates decried what Article 16 could mean for the "monitoring and intimidation of social movements that organize on the Internet in order to demand change in Brazil" (Partido Pirata 2013 *translation mine*).

As detailed in Chapter 4, the Partido Pirata were early supporters of the Marco Civil, and made numerous contributions to the two rounds of public consultation. In contrast to many of their allies in civil society, however, theirs was a conceptualization of digital rights that envisioned systemic reform premised on collectivist principles, and was therefore quite at odds with the dominant paradigm of digital rights that served to delineate the bill from the outset. Indeed, the Party considered the amendments on data retention so egregious and antithetical to their values that they announced their intention to withdraw support from the project until Article 16 was reformed.

Such a move was resisted by Barbossa, one of the highest profile coordinators within the Marco Civil coalition. Her position was that it was essential to retain a united front in order to effectively pressure members of Congress to pass the bill: "If we started to divide, it was going to be very easy for them to not approve the text" (Research interview). Walking united required hewing to a centrist line, and arguably led to civil society groups other than the Pirate Party capitulating to the systemic needs of informational capitalism.

A tract from the Pirates' statement deserves particular attention as it signals how those few CSOs that rejected the tenets of the digital discourse appeared more attentive to the inexorable dilution of the Marco Civil: "*Political games ensured that economic interests and the maintenance of current power structures were privileged. These above all were the business models of the Telephone Operators and the other holders of communication infrastructure, as well as the big media conglomerates, copyright holders and political parties…*". The Pirates indeed represented one of the only voices in Brazilian civil society that was willing to denounce not only how a repressive state would be emboldened by new surveillance powers, but also how "*questionable business models*" would be consolidated (Partido Pirata 2013 *translation mine*).

Once again, the failure by communication and consumer rights groups in Brazil to explicitly identify the repressive potential of data commodification, consolidates one of the principal blind spots in the Marco Civil as a framework of digital rights: while the security state gained an outsized role as privacy bogeyman, platforms – whose business models are effectively legitimated through the digital discourse – largely escaped scrutiny.

The economic imperative for data access

Perhaps in part, the fact that the furore around Article 16 did not mention the US web companies was simply a tacit recognition that the data retention provisions did not imply an obligation for them; their business models were already premised on complete data capture and its long-term retention. The principal novelty for the likes of Google, Facebook and Microsoft lay in the means by which user information could be requested by actors within the Brazilian state. And indeed on this basis, this sector of informational capitalism was a strong advocate of Article 16, again pitting their interests against those of the Marco Civil's civil society backers.

In 2012, Brazil was ranked the third highest worldwide for state-initiated user data requests (following the US and Japan). This was according to data divulged by Google (2,777 requests) and Twitter (34) (Freedom House 2013b). In the first half of 2013, for Google that number had dropped to 1,239 requests for data regarding 1,515 Brazilian user accounts (Google N.D.). Facebook do not systematically report such requests.

In of themselves, complying with this volume of user data requests might not imply more than a nuisance for companies with the operational scale of the US platforms. The concerns arose from the lack of legal clarity in how these requests should be addressed, and the consequences of non-compliance.

According to my web company interviewee, clarity on data retention provisions was near the top of their agenda for the Marco Civil: "Of secondary importance…but not nearly as important as the safe harbours were the regulations on what kind of data to retain, for how long, to which authorities they should disclose…because that has always been a mess". He went on to add that his company's position was always that if they divulged information to the authorities, that was data that the user presumed to be private. He also noted that in Brazil there is no subpoena or 'middle ground' like in the US, there is either a court order or an unofficial request. Some judges, apparently, would accept a letter from the police as legal authority but Google would always demand a court order.

The result of this opacity was that the web companies would often confront the dilemma of courting negative publicity by divulging user data without due process, or antagonising the Brazilian judiciary and security state. The implications of the latter were vividly illustrated when in September 2012, a

Brazilian court issued arrest warrants for two senior Google Brazil executives "for failure to remove content prohibited under electoral law" (Freedom House 2013b).

Given this scenario, it is perhaps unsurprising to learn that "of course we tried to influence the system so it would be in compliance with our own practices, which is basically that you always needed a court order" (Web company executive, research interview). What this statement does not address is that the changes made to Article 10 in the Marco Civil would permit web companies and ISPs to divulge personal user information to a broad array of state actors *without* a court order. This change would certainly establish legal certainty for the web companies in terms of user data requests, but would also massively facilitate the sharing of that user data with the Brazilian state and without the oversight implied by judicial intervention. In this respect, once again, the operational demands of the web companies ran counter to the demands of communication rights groups.

The web companies were not the only sector of informational capitalism with a commercial interest in securing the new data retention provisions. IP rights holders also benefit significantly from access to user data in order to combat online piracy; the longer that web companies and ISPs are compelled to retain access and connection data, the stronger the basis for identifying and processing copyright violations. It was well-established that the concerns of the international IP rights holders were one of the main drivers of the ill-feted cybercrime bill, the Lei Azeredo. And outside of Brazil, it is a truism of copyright legislation that IP rights associations routinely pressure governments to implement data retention provisions. In Canada, for instance, during the Copyright reform consultation in 2009, the Canadian Independent Record Production Association demanded "the retention of data by users for a sufficient period to allow for effective law suits to be launched and brought to completion" (Geist 2009).

In the case of the Marco Civil, one of my interviewees, the CGI.br co-founder and Brazilian Internet pioneer, Caf, indicated to me that the data retention provisions would remain in the bill because "the IP community are very strongly interested in keeping that". Moreover, as well as global (US) IP rights associations such as the MPA (Motion Picture Association) and IFPA (International Federation of the Phonographic Industry), Brazil's media sector (ie. the Globo Group) "were desperate on the articles on metadata because they are the prime representatives of the IPR (Intellectual property Rights) community, so the process took over and it was really, really difficult." (Research interview). According to this well-positioned observer then, the amendments to Article 16, as well as a boon to the Brazilian

surveillance state, advanced the interests of the global IP rights lobby. The inclusion of these data retention provisions to the Marco Civil therefore represents another instance - to be added to the IP carve-out in the safe harbour clause - of the content production sector safeguarding the logic of control within informational capitalism.

The outrage of many civil society organizations generated by the revision of Article 16, was vividly manifested in the #16igualNSA protests (explored in the next subsection). International condemnation, by the likes of the Electronic Frontier Foundation also followed (Rodriguez and Pinho 2015). Such consternation was not, however, necessarily reflective of the wider Brazilian population. In one of the main contradictions around the concept of privacy in the Marco Civil, at the same time as the data retention provisions evoked Brazil's recent history of military dictatorship and state control through surveillance, for many others another peripheral concern ensured a more sanguine reaction to the amendments. This was the fear of crime that is pervasive in Brazil.

Running parallel with, and no doubt connected to, its status as one of the most unequal societies in the world, Brazil also heads global data tables in terms of crime. Between 1980 and 2010 there were 1 million violent deaths in Brazil, providing it with the unwelcome distinction of having one of the highest homicide rates in the world (Murray, de Castro & Kahn 2013). From 2008-2013, Brazil's incarceration rate increased by 40% (HRW 2013) and resulted in it having the fourth largest prison population in the world (Murray, de Castro & Kahn 2013). Vigilante actions perpetrated by urban militias, as well as high rates of extra-judicial killings by law enforcement authorities (HRW 2013), contribute to the cycle of violence and the perception of insecurity. Indeed, according to Rodrigues (2006) it is Brazil's status as a 'disjunctive democracy', one in which the state fails to adequately "secure civil rights and a democratic rule of law" (p.246) that contributes significantly to the fear of crime and the perceived risk of victimization in Brazil. Such chilling statistics can in turn be connected to the policy failures of a weak peripheral state.

Moreover, the result of such high societal sensitivity to crime is that moves toward securitisation by the state can often find favour in the general public. The consequences of this were disheartening for Bia Barbossa in terms of repealing the Article 16 amendments: "It is a difficult debate to make in Brazilian society because you have this whole discussion on paedophilia, of financial crime. There is this logic that people have, that if they're not doing anything wrong, they don't have any problem with having their data retained…if privacy was a stronger value in Brazilian society, perhaps we would have

one on this issue…" (Research interview). Indeed, aided in no small part by the inability of Brazilian CSOs to harness a broader public reaction to the data retention provisions, Article 16 featured unimpeded in the final approved version of the bill.

Section summary

In sum, the addition of these data retention clauses in the Marco Civil were significant for three reasons. The first is that they constituted one more instance, perhaps more explicit than most, of the predominant powers of informational capitalism securing protections for their systemic logics within the Marco Civil. Primarily these protections favoured the security state, but also IP rights holders. For both sectors, mandatory data retention allowed them to more effectively surveil and discipline citizen-users. For the security state, this capacity would allow it to better identify perceived security threats, while the chilling effects of increased surveillance tools would ultimately augment its coercive power vis-à-vis Brazil's citizenry. While for IP rights holders, they would be better able to identify and punish copyright violations, thus dissuading future acts of piracy, and helping to protect the commodity form of software and entertainment media.

The second reason relates to the repeated failure of the digital rights contained in the Marco Civil to address the practices of commercial dataveillance. The mass collection and commodification of behavioural data by web companies, legitimated through the provisions of Article 16, were never substantively addressed in the Marco Civil. The nature of civil society reaction to the data retention clauses, particularly the tunnel-vision focus on the implications of increased state surveillance, without considering the oppressive potential of commercial data collection for Brazilian netizens, was indicative of this enduring lacuna. I argue that the fact of this blind spot demonstrates not only the influence of the digital discourse in delineating which actors needed to be conceptualized as threats through digital rights, but ultimately made the Marco Civil an expedient for, rather than a check upon, the logics of informational capitalism.

Finally, the third reason why these data retention provisions are significant is because they cast into relief one more dimension of the way that digital rights were contested at the periphery. In this case, privacy was contested fiercely by some activists and CSOs because increasing the powers of the surveillance state evoked memories of Brazil's history of military dictatorship and the manner in which citizens were systematically monitored, classified and oppressed. For many other Brazilian citizens, however, privacy was a social good of limited value when compared with the fear of criminal

victimization. This fear in turn stemmed from the perilous levels of insecurity born of life in a 'disjunctive democracy' (Rodrigues 2006).

The next and final section of this chapter focuses on the resolution of network neutrality in the Marco Civil. This represents the last major instance of curtailment for the digital rights contained in the bill. This is because the tunnel-vision on net neutrality of the CSOs that advocated so tirelessly for it, meant that not only did they fail to consider policy alternatives that would more fully address the inequities of informational capitalism, but they ended up with a version of net neutrality that was compromised in some key respects. As well as examining how network neutrality was finalised in the Marco Civil, the following section also provides the opportunity to consider how the agenda of the telecoms sector was resolved with respect to the competing goals of other powerful sectors of informational capitalism.

That most corporate of digital rights: "the freedom of business models"

Alongside the data retention provisions introduced in the fourth and penultimate version of the Marco Civil, the other major novelty was an amendment that had long been coveted by the telecoms sector in Brazil and was intended to win their support for the bill. This was a grim necessity for Alessandro Molon, as the telecoms sector, represented with brutal efficacy in Congress by Eduardo Cunha, continued to block its passage.

Although no observer of the Marco Civil was in any doubt that this amendment pertained to the legislation of network neutrality, the change did not appear in Article 9 that was dedicated exclusively to the topic. Instead, the divisive amendment was secreted into Article 3 that outlined the fundamental principles of Internet usage in Brazil. Alongside such civic ideals as "protection of privacy" and "guarantee of freedom of expression", a new principle baldly protected: "the freedom of business models developed on the Internet, so long as they do not conflict with the other principles established in this law".

It was clear that the clause was intended to address the long-standing concern of the telecoms sector that the legislation of network neutrality in Brazil would prevent them from offering potentially lucrative new services. These were never explicitly articulated but likely referred to zero rating mobile plans for users, and high-speed prioritization for content providers and corporate services. The ambiguous nature of this clause would provide the telecoms sector a secure foothold from which to contest the most inconvenient aspects of network neutrality in the regulatory phase of the Marco Civil.

According to aggrieved civil society observers, the clause would create a “war of interpretations around the concept of neutrality” (Arpub et al 2014 *translation mine*). To achieve such ambiguity was a vital consideration for the telecoms sector given how the loopholes around network neutrality had been progressively tightened by Molon.

Backed by President Rousseff’s newfound commitment to net neutrality, as well as the indefatigable support of the bill’s core of civil society advocates, over the course of the two versions of the bill issued in 2013, Molon had added new clauses to strengthen Article 9. These would further restrict the telcos room for manoeuvre when the time came to establish the regulatory minutiae of the bill. In terms of the permissible exceptions to network neutrality changes, in Version III of the bill issued in November 2013, Molon added that the network operator could not “harm users” and as per Article 927 of the Brazil’s Civil Code, in the event that it did, it would be obliged to make amends. Moreover, network operators would be obliged to “act with proportionality, transparency and isonomy” as well as to “offer commercial services that were non-discriminatory and to abstain from anti-competitive practices”.

In addition to these amendments, the telcos frequently claimed to be indignant about the prospect that the Marco Civil would prevent the marketing of Internet subscriptions based on different connection speeds. Although Molon repeatedly insisted this was not the case (Estadão 2013), it was likely that the claims of the telecoms sector represented one more instance of the tactics of obfuscation examined in detail in the previous chapter. It is probable that they also served as a negotiating tactic to secure assurances that they would be permitted to market mobile and fixed Internet plans based on data packets, as this had been in genuine doubt. Establishing clarity on this matter would, in turn, put the sector a step closer to the desired goal of being able to legitimately enact positive discrimination. As Sinditelebrasil executive, Alex Castro, explained “the concern was that the activists did not want mobile plans based on (data) capacity. They said that it violated the concept of neutrality network.” But as he also added, “we won on this”.

The ‘win’ for the sector came about as the result of a meeting on December 06th, between Molon and Eduardo Levy, the executive director of *Sinditelebrasil*. According to Levy, “we arrived at a text on network neutrality together with the relator (Molon)” (Solagna 2015, p.107 *translation mine*). He added that “now the telecoms sector is favourable to its passage” (Papp 2014, p.107 *translation mine*).

The text in question was the fourth version of the bill issued a week later, one in which the clause on 'freedom of business models' satisfied the telecoms sector's demands.

The tactics of the sector, acting hand-in-glove with Eduardo Cunha's PMDB-led opposition coalition, *o blocão* (the big block), had forced Molon into granting this concession, even as it represented a time-bomb for the bill's subsequent regulation. The President's declaration of 'constitutional urgency' had done little to counter the obstructionist manoeuvres that had stymied the bill's progress until then. According to *Proteste* executive lawyer, Flávia Lefevre, after 'urgency' had been declared, the telecoms sector "turned their attention to removing the article on network neutrality and Molon was so assailed by their demands that the only way to achieve consensus was to include the (clause in) Article 3" (Research interview).

The sector advanced these 'demands' by blocking the bill every time it appeared on the voting agenda for Congress. At the end of 2013, the bill was deferred on ten occasions, with a further 14 occurring in the first months of 2014 (Solagna 2015, p.104). Congresspeople allied with the telcos exploited the opportunity to insert amendments "on the fly" that would undermine protections for net neutrality and according to Congressional protocol would have to be voted upon (Web company executive, research interview). These amounted to more than 30 such changes, leading Molon to declare indignantly that "amendments that distort or disfigure neutrality…will be rejected" (Papp 2014, p.97).

Massification vs universalization: Contesting the discourse of inequality

As well as these manifestations of material power, representatives of the telcos were also advancing their agenda in the discursive realm. They did so using the discourse on social inequality that was examined in detail in the previous chapter. The sector sought to position itself on the right side of concerns around digital inclusion, a prominent concern for a society at the periphery in which millions could not surmount socio-economic obstacles to internet access.

The discursive strategy focused on the distinction between 'massification' and 'universalization'. A senior telecoms executive (who opted to remain anonymous) explained the distinction to me: the former was already being practiced by telcos in Brazil and was comprised of the offer of small data cap plans or zero rated social media access. The latter, by contrast, implied public investment and a prominent role for the state. Unsurprisingly, the telcos favoured 'massification' and emphasized the

prospects for the market to be able to deliver digital inclusion through the mechanism of 'consumer choice'. Alex Castro, President of Sinditelebrasil, also claimed to me that in a non-neutral environment, smaller service providers could afford to offer services based on positive discrimination in remote areas without having to make large infrastructure investments.

This emphasis was made explicit in a prominent op-ed written by *Sinditelebrasil* President Eduardo Levy in the *Folha de São Paulo* in November 2013. Levy described telecoms service providers as "carrying out one of the greatest social inclusion programs in the world: we make broadband access to services and content available to millions of Brazilians…making enormous investments using private resources and without a single public cent."[28] (Levy 2013 *translation mine*). He went on to describe the Marco Civil as "an elitist proposal" and that was instead needed in Brazil was to mirror the Constitution's affirmation that "private enterprise is one of its pillars, that competition and market offerings are free, and to have the freedom to continue to offer the whole of society what it desires…" (Levy 2013 *translation mine*). This eulogy to the power of the market was mirrored by Eduardo Cunha in a Congressional debate on network neutrality shortly after the op-ed was published. In it he proclaimed that he was "here to defend the preservation of one of the biggest digital inclusion schemes in the world and not for its abolition" (Estadão 2013 *translation mine*).

The appropriation of the discourse of social inequality by the telecoms sector did not go uncontested, however. In an open letter sent to the Congress and Senate in September 2013, signed by the core CSOs championing the Marco Civil, as well as numerous trade unions and industry associations such as ABRANET, warned of the dangers of a "toll road Internet" if the telecoms companies were permitted to charge different prices based on the type of Internet traffic. This would ultimately create "different types of Internet, accessible based on the purchasing power of users, *thus perpetuating the history of inequality in Brazil* [emphasis added]". The letter drafters went on to add that "saying that the Marco Civil is against digital inclusion is a fallacy. It is only by guaranteeing neutrality that one can…ensure freedom of expression, creativity and innovation on the Internet" (Abranet et al, personal communication, 5th September, 2013, *translation mine*).

[28] Levy omitted here any reference to the government program launched in 2012 that offered tax incentives for new telecoms infrastructure, one that the sector had already registered 15 billion reals worth of projects for (Ramos 2014, p.6).

The fact that the telcos opted to use the discourse on social inequality in order to resist the provision of network neutrality in the Marco Civil represents another important example of how digital rights were contested at the periphery. In a society with such stratified inequalities as Brazil, the ability to control the discourse on inequality became an important dimension of the fight over network neutrality; to effectively moralise an otherwise arcane, technical policy issue, and to stake the high ground thereafter. It is impossible to determine precisely the effectiveness of this strategy for the telecoms sector, though what we can and must do is to evaluate the extent to which the goals of the sector were realized in the final version of the bill, and how those were reconciled with the competing interests of rival actors within informational capitalism. This is the purpose of the following section.

The end game…

The Brazilian Congress enjoys a lengthy recess over the Christmas period, between late December and early February. Although that explains why there were no formal legislative milestones for the Marco Civil during the first few weeks of 2014, it did not signify that those actors with a vested interest in the bill were sitting on their hands. Indeed, many were actively developing strategies for the Marco Civil's resolution, to shape the bill according to their own agendas.

Fears of the implications of an expanded surveillance state in Brazil prompted new measures by the recently established civil society coalition, *MarcoCivilJá*. One was to launch a social media campaign. Developed around the hashtag *#16IgualNSA* (ie. Article 16 = same as the NSA), the campaign was designed to apply pressure on Alessandro Molon and the PT government to repeal the controversial new data retention provisions (Posetti 2014). By equating the amendments with the surveillance programs of the NSA, the organizers intended to flag the hypocrisy of the PT government in concurrently spearheading outrage to US surveillance abroad, while attempting to institute new surveillance tools at home. Indeed, many of the participating Tweets featured the additional hashtag #UNprivacy to underscore the discordance between the two government positions.

Another measure by the coalition was to threaten to withdraw its support from the bill if the provisions on data localization, data retention and content removal were not substantively reformed (Arpub et al 2014). In an open letter to Brazil's Congresspeople and Senators, published on February 10th and co-

signed by 16 CSOs[29], the authors vividly expressed their fears about the consequences of the new Article 16:

> Even if the data is only released following judicial deliberation, they will be collected in an open-ended way, turning everyone into a suspect. Given how the judiciary functions in Brazil, it is not hard to imagine that a climate of vigilantism will be created, particularly against the 'undesirables', those that contest established powers" (*translation mine*).

Here, the organizers are explicit in denouncing the repressive history of state power in Brazil, and the increased potential for that force to be used against political dissidents.

Realpolitik meets digital rights

On the same day as Molon issued the latest *substitutivo* for the Marco Civil, it became clear that civil society groups had not been alone in developing new strategies for the Marco Civil during the Congressional recess. Eduardo Cunha - leader of the conservative PDMB, the main coalition partner for the governing PT and the conduit through which the demands of the telecoms sector were conveyed into Congress – announced to the media that his party would no longer be supporting the government agenda, and that moreover, their "political position was to defeat any project that has been granted urgency…". That meant the Marco Civil. (Passarinho 2014a).

The pivot from reluctant ally to outright opposition by the PDMB was consolidated days later with the announcement of a significant new entity in Brazilian politics: the *blocão*. A block of right-leaning political parties had exploited the lull in legislative proceedings to negotiate a formidable new political alliance. Formally unveiled to the media on February 25th, 2014, the group consisted of seven parties previously allied with the PT-led government, including Cunha's PDMB, and one opposition party. It would go on to play a pivotal role, not only in the conclusion of the Marco Civil, but in Brazilian politics writ large. The group was formed principally with the intention of boosting its representation within key ministries, as well as born of the frustration of seeing their legislative proposals frozen within the regime of urgency invoked for the Marco Civil. However, the group had another goal that would contribute to what became a cataclysm in the Brazilian polity (Passarinho 2014b).

[29] Arpub (Associação das Rádios Públicas do Brasil) / Artigo 19 / Associação Software Livre.org / Barão de Itararé / Coletivo Digital / CTS – FGV / FNDC (Fórum Nacional pela Democratização da Comunicação / GPOPAI/USP / Idec / Instituto Bem Estar Brasil / Instituto Socio Ambiental / Intervozes / Knowledge Commons / Movimento Mega / Partido Pirata / Proteste

The *blocão* announced its intention to establish an investigative committee to probe claims that a Dutch oil company, SBM Offshore, had paid millions in bribes to executives of the state oil company Petrobras (Passarinho 2014b). The intention was to embarrass the PT by establishing connections between the illegal actions of the state oil company and the government. It is unclear whether this was the intention of the *blocão*, but these allegations would later form part of the sweeping corruption investigation, Operation *Lava Jato*, that would contribute to President Rousseff's impeachment in 2016, and the imprisonment of her predecessor, Lula da Silva, in 2018.

In terms of the Marco Civil, the implications for the bill were significant. Given that the new group was led by Eduardo Cunha, the priorities of the telecoms companies would be made paramount. Indeed, at the media announcement, the group confirmed their requirement that Molon include an explicit provision in the bill to permit the offer of Internet plans based on different speeds (Passarinho 2014b).

In sum, this new development must have made the various supporters of the Marco Civil, from within government and civil society, realise how precarious the status of the bill was. One response to this heightened sense of urgency, and a scenario in which the Marco Civil had become a pawn in a high-stakes political stand-off, was to find new ways to demonstrate the civic legitimacy of the bill. As Barbossa of communication rights group *Intervozes* explained in interview, "they struggled to understand…that it was a civil society project. If they wanted to take down the government, it should be other means" (Papp 2014, p.117 *translation mine*).

One attempt to underscore the popular will that civil society groups believed the project represented was in the form of an online petition using the international advocacy platform, Avaaz. In another instance of the fluid interplay between the Brazilian state and web platforms (although non-profit in this case), upon leaving the Ministry of Justice as Secretary of Legislative Affairs, Pedro Abramovay became the Campaign Director for Avaaz Brasil. It was under his stewardship that a petition was launched on March 10th calling upon the Brazilian Congress "to remain firm against the telecoms lobby and to guarantee that no user should lose their rights because of private profits". The call went on to add that "The Internet is free and should continue that way" (Avaaz 2014 *translation mine*).

By the time the petition was presented to the President of the Brazilian Congress on March 25th by Bia Barbossa, the petition had garnered nearly 350,000 signatures (Nascimento 2014). Although the volume of support for this petition pales in comparison with other campaigns promoted by Avaaz Brasil (notably the anti-corruption *Ficha Limpa* campaign in 2010 that accrued 2 million supporters, and the

2016 campaign for Eduardo Cunha to be expelled from Congress with 1.3 million supporters), 350,000 signatories in two weeks demonstrates the extent to which the Marco Civil had permeated the public consciousness and appears in stark contrast with the miniscule uptake in the bill's public consultation phase.

The political alliance of Eduardo Cunha appeared ambivalent about the level of public support, however, as it continued to obstruct the bill's passage through the early months of 2014. On March 11th, Cunha no longer hid his intentions for the bill, as he declared to the press: "We want to vote tomorrow, and we want to defeat it" (Câmera dos Deputados 2014). Indeed, in keeping with the strategy of explicit opposition, on March 13th Cunha was emboldened to attempt a radical transformation of the bill that would have aligned the provisions of the bill tightly with the goals of the telecoms sector.

The principal changes offered explicit allowances for the sale of differentiated services such as social media packages, and indeed exempted 'Internet services' in general from network neutrality obligations. Another amendment established the telecoms regulator Anatel as the only oversight for regulating exceptions to neutrality, instead of Presidential decree, underscoring once again the corporate capture of this entity. As an anonymous interviewee within the PT government advised me in a damning critique: "Anatel clearly operated in the interest of the telcos and not that of civil society, the government or the public".

The attempt to put this transformed version of the bill to a vote was ultimately scuppered due to a lack of consensus. However, it demonstrated the degree of political capital the conservative alliance within Congress was willing to expend in order to shape the legislation of network neutrality in the interests of its corporate backers in the telecoms sector.

As well as CSOs such as Intervozes maintaining a near-constant presence in the Brazilian Congress to discourage its members from using the bill as a pawn in their partisan manoeuvres, an event in the Brazilian media sphere proved pivotal in dampening the oppositional resolve of the *blocão*. On March 15th the current affairs magazine *IstoÉ*, published a feature article analysing the power wielded by Eduardo Cunha within Congress, a level of influence that had hitherto been largely obscured from those outside the political bubble of Brasília (Dantas & Torres 2014). The front page – pictured in Chapter 4 - featured a Photoshopped image of Cunha's head atop the iconic throne image of Kevin

Spacey from the Netflix political thriller, House of Cards, and a headline reading "Saboteur of the Republic". The publication sent shockwaves through the Brazilian polity.

As a PT policy advisor explained to me, the consequence of the *IstoÉ* article was that "for the first time he (Cunha) became a relatively public figure…this generated a tremendous anger on his part and a major public pressure finally turned against him. For the first time, the telcos became more withdrawn, and this was a major victory". This was clearly a highly significant development: Cunha and the telecoms sector were accustomed to operating in the shadows, and given the very low esteem in which Brazil's major telecoms companies were held by the public, it became prudent for them to refrain from any further attempts to derail the passage of the Marco Civil.

Resolving neutrality

Indeed, by the end of March 2014, a combination of elements were in place that finally enabled a successful vote on the Marco Civil.

The *IstoÉ* expose greatly limited the room for manoeuvre for Cunha's *blocão* and the telecoms sector. It appeared that a decision was made by the telecoms sector at this stage to move ahead with the Marco Civil with the concessions that had already been won. As Guilherme Almeida explained to me, "part of the compromises they tried to force could be seen as part of their legal strategy to minimize the effects of network neutrality. It seemed to me like one of those chess games where they had less pieces but they could lead to a tie".

The most significant compromise 'forced' by the sector that was retained in the final version of the bill was the principal of 'freedom of business models'. This coupled with the general tendency in the Marco Civil to keep "limitations to network neutrality that were generic and open" made the "legislation a bit less self-enforceable". This was, in Almeida's estimation "a victory" for the sector. Moreover, the final provision that any future regulation of network neutrality would be based on Presidential decree was based on the sector "counting on having more influence at the regulatory agency and more influence with future governments to revise any potential defeats" (Research interview).

The head of the telecoms industry association, Alex Castro, buttressed Almeida's assertion that at some point the sector realised that it had wrung every concession it could from the Marco Civil at the legislative stage, and had to re-focus on shaping network neutrality at the regulatory level. "So, we're

only going to work on the exception, not on the concept any more. Re-inventing network neutrality? That passed, that phase has gone. Network neutrality is done. *Now it's about seeing where I can, in what situations I can, break network neutrality*".

Finally, as was repeatedly emphasized to me by figures within the major economic groups contesting the Marco Civil, almost irrespective of the particular provisions contained therein, the 'juridical assurance' implied by the bill would prove a boon for investment. The prevailing opinion was that the legal clarity offered by the Marco Civil would assuage the fears of investors in Brazil's digital economy that rogue judges could implement ad-hoc rulings that jeapordized their investments. This was encapsulated most neatly by Tonet Camargo from the Globo Group: "juridical certainty leads to what? Investment, in very clear reasoning. The less juridical certainty you have, the greater the difficulty you will have for investment". This was likely more true of the telecoms sector than any other because of the huge capital costs required for physical infrastructure. Accordingly, despite its overt hostility to the legislation, and despite the prevailing opinion by civil society observers, I contend that the passage of the Marco Civil was ultimately a positive development for the telecoms sector.

As well as the strategic shift by the telecoms companies, other sectors of informational capitalism combined to finally impel the passage of the bill. In the case of those other sectors, they continued to exert pressure so that the key provisions that benefited them would finally be written into law. According to Abramovay's later appraisal (2017) of the Marco Civil's final straight, the pressure of the web companies, the Globo Group and the security state were all decisive in dampening the obstructionist ardour of the *blocão* (p.145).

The seductive vision of innovation

The last remaining concern of the web companies was the clause on data localization. The principal US platforms – Facebook, Google, Microsoft and Twitter, had lobbied the government relentlessly to strip this last vestige of 'data sovereignty' from the Marco Civil. The web companies wanted the government to do away with an obligation that could be ruinously expensive for their industry, if it was then replicated on a global scale. As a web company executive explained "we did a major campaign explaining the problems with data localization, we were successful in convincing pretty much everyone in Congress of the problems that it would cause" (Research interview).

This executive went on to ascribe the reason for this success, and it was an important factor not only in the debate over data localization, but in explaining how the final version of the bill aligned with nearly every point on the web companies' agenda. This factor was the seductive vision of 'innovation' that the web companies sold as part of their lobbying. As my interviewee explained:

> I guess part of the reason we were so successful compared to the telcos was *we wanted to tell the good stories*. Basically, we were saying…Brazil really wants to attract more digital entrepreneurs, Brazil really has all this creativity. Look at the local start-up ecosystem. Look at all of these things. So, data localization is a bad idea for these reasons….Web companies don't do any support of Congress…so, *essentially it was the power of the arguments*…

The 'power' of this argument can, I argue, be explained in large part by Brazil's place at the periphery of informational capitalism. The policy direction of the PT government under Lula da Silva was explicitly oriented towards 'technological sovereignty'. The web companies were therefore very astute in making the connections between establishing the policies that would benefit them – limited third-party liability, network neutrality, free flow of digital data – and creating the conditions for a viable local high-technology sector.

The virtue of 'innovation' is of course an article of faith within the technology sector, and is promoted in a way that obfuscates any associated risk, as Cohen explains:

> The view of innovation as both inevitable and riskless is all the more remarkable because it is an anomaly. In the domains of environmental regulation and food and drug regulation, regulatory regimes have long endorsed the precautionary principle, which dictates caution in the face of as-yet-unknown and potentially significant risks (2019, 92).

One of the few public statements issued by the web companies on the Marco Civil, some two years earlier, offers insight into the kind of argument that they would likely have been making privately in the corridors of the national Congress. In an open letter published in 2012, Google, Facebook and Microsoft, amongst others, argued strongly in favour of limited third-party liability:

> Protection of content providers boosts national innovation. The next online revolution is just an idea at this time. Innovation on the Internet requires a balanced judicial system that protections providers from responsibility for the acts of their users. The absence of such safeguards tremendously increases costs for entreprenurs, small businesses and Brazilian start-ups,

> creating disparities that undermine national innovation and scare away foreign investments (Facebook, Google & Mercado Livre, personal communication, September 18, 2012, *translation mine*)

The other main factor that explains the power of these arguments is the extent to which they cohere with the tenets of the digital discourse. 'Entreprenurialism', 'creativity' and 'innovation' are all meta-signifiers within the digital discourse, one that was dominant in establishing common sense in matters of technology and associated policy. It is also, of course, the discourse that legitimated the logics of informational capitalism and allowed web companies to realise their economic dominance. Finally, as I argued extensively in Chapter 5, 'innovation' was the orienting framework for the Marco Civil from the outset owing to the discursive intervention of Ronaldo Lemos. By invoking that founding value in their arguments, the web companies were 'staying true' to the origins of the bill as a framework of digital rights and were ultimately successful in removing the dreaded data localization clause.

The unbearable lightness of data finality

The resolution of the Marco Civil did not entirely favour the interests of the web companies, of course. Article 7 of the approved bill, establishing 'the rights and guarantees of users', contained several limitations on commercial data storage for web application providers. These approved provisions stipulated notably that user data could only be shared with third parties with explicit user consent, and that users could request the permanent deletion of their data upon terminating subscription or membership of a particular application. These moves towards 'data finality' were welcomed by communication rights activists (Barbossa, research interview), even though it was clear that the business model of the web companies premised on commodifying user data would be unaltered.

It is worth noting Cohen's (2019) critique of such measures here, as she argues that it is "unclear what, if anything, individual data subjects might gain from the opportunity to navigate an additional layer of complexity in aid of making wide-ranging and imperfectly informed decisions about an uncertain future" (p.262). Indeed, following Obar's argument of the "fallacy of information self-management" (2015), the notion that reams of dense legalese might constitute the 'free and informed consent' of the average user represents another instance in the Marco Civil where digital rights were hollowed out and incapable of addressing the exploitation inherent in processes of informational capitalism.

Another reason that even those CSOs with the greatest expertise in matters of communication and consumer rights were willing to accept the provisions of 'data finality' was because of the asymmetry, oft-noted in this study, between the acute concern of many Brazilian citizens about state surveillance, and their relative ambivalence on issues of corporate 'dataveillance'. Partly this can be interpreted within a peripheral frame, as the result of Brazil's history of military dictatorship, but also with a discursive interpretation, as a product of the web companies' status within the digital discourse as champions of free expression and creativity.

The web companies too were sanguine about the user rights provisions contained in Article 7. Despite the fact that these represented some of the most onerous obligations to be directed towards the web sector, the companies were conspicuously silent on the matter. Their reticence to obstruct the data finality provisions can be ascribed in part to the civic legitimacy of the bill, and how incongruous it would appear for the web companies – the perceived allies of civil society over the Marco Civil – to be seen to resist particular digital rights. My web company interviewee explained that quandary :

> When you speak of data protection and web companies, that's kind of the subject that you say 'no please, no regulation whatsoever at any time' but it was not realistic at that point to even oppose that. It would have been perceived as very corporate thing, non user-centric. Of course the Marco Civil has always been about the user first and foremost…Going against any of these things (the three pillars of net neutrality, freedom of expression and privacy) would be very complicated.

One should of course recall that as a matter of private strategy, the web companies contemplated doing whatever they could to 'nuke the bill' if it proceeded with data localization measures. The web sector was clearly therefore willing to resist, just not to do so publicly. Although the web companies also opted against lobbying publicly for network neutrality for fear of catalysing a major conflict with the telecoms sector, it would have been abundantly clear to those within government that the decision to implement the policy meant favouring either the web or the telecoms companies. As the telecoms law scholar, Pedro Ramos opined:

> It seems clear that network neutrality is a question of choice: it is, at its base, a trade-off between incentivizing the software and IT sector, reducing the economic potential of the telecoms sector; or promoting the telecoms sector, and reducing incentives for Internet applications (2014, p.6).

Given the economic power and political influence of the telecoms lobby it would have been understandable if the PT government had decided to side with it in the conflict over network neutrality; to diminish or even eliminate the most contentious provisions. The fact that the government was resolute in including network neutrality in the final version of the Marco Civil requires therefore some explanation.

One important factor was the web companies promoting the potential for domestic technology innovation in Brazil, a seductive vision for the PT government, as explained above. Moreover, CSOs that championed the bill were indefatigable in their defence of net neutrality. In what I describe as the 'paradox of network neutrality', the greater the opposition of the telecoms sector, the more entrenched the belief became amongst activists and CSOs that it was an essential part of securing digital rights in Brazil. This precluded consideration of structural reforms that would have challenged the logics of informational capitalism.

The support of the CSOs, in turn, buttressed the resolve of Alessandro Molon. He described neutrality as 'the heart of the bill', and in interview with me he dismissed the benefit of the measure to the web companies as incidental: "the guarantee of neutrality, for me, it is principally of interest to the user. And it's good for Google as well. That doesn't interest me. My focus is not on Google, my focus is on the user." I argue that this view neatly encapsulates the blind spot that dominated the defence of the Marco Civil by its civil society and state champions: it was a failure to anticipate that favouring the operational needs of the web companies was not merely a secondary effect of securing digital rights, *but in fact would actively undermine them*.

There were also important electoral considerations for the PT government in early 2014 in continuing to defend network neutrality. A federal election was only six months away, and the popularity of Dilma Rousseff had been badly eroded by the massive street protests of 2013. The government could ill afford to be perceived to be acting in favour of entrenched economic interests, and against the will of the people, by capitulating on net neutrality. The advocacy work of CSOs and activists such as *MarcoCivilJá* was very effective at establishing this as the stark choice implied by net neutrality. The popular slogan used by defenders of the bill, "Democracy yes; Corporations no", made this quite explicit (seen in Figure 1).

Finally, the media power of the Globo Group, for which network neutrality was of fundamental concern, would have been influential in the government's decision. As discussed in the previous

chapter, several of my interviewees reported that positive coverage of the bill increased markedly on Globo's various television holdings after the group secured its coveted IP carve-out. Although references to the Marco Civil in the *O Globo* newspaper in 2013-2014 were still relatively modest, given that Globo's free to air TV stations boasted a daily average audience of 91 million people in 2014 (Economist 2014b), it is likely that any coverage of the bill would have substantially increased public support. Luiz Moncau explained to me how Globo advanced that agenda by using its strategic assets: "Broadcasters were really smart and they didn't come up to the front. They won on network neutrality. They used media right, so this is a lot". And as the communication rights advocate Bia Barbossa explained to me in stark terms "if you want to study the history of the Globo Group in Brazil, it has managed to influence political processes in a really profound way…so if it was against the bill, openly against it, then we would certainly not have secured its approval in Congress".

Moreover, data regarding the levels of state expenditure by all of the PT administrations on advertising in the various Globo holdings (6.24 billion reals 2003-2014; Marinoni 2015, p.12) demonstrates the reciprocal levels of influence that existed between the Globo Group and the government. Indeed, just in 2013, state funding on advertising was equivalent to 25% of all Globo's revenues (Marinoni 2015, p.12). These facts corroborate my thesis that the Brazilian government's support for network neutrality was driven more by the influence of Brazil's pre-eminent media power, than dedication to the rights of its citizenry.

By late March, it appeared that most of the conditions were in place for the Marco Civil to be finally viable as a bill of law: the government was exercised by the looming deadline of the NetMundial summit in Brasília in April, which was to be the show-piece of their global leadership on resisting US surveillance (and with a vigent Marco Civil its crown jewel); civil society organizations had ratcheted up pressure on Congresspeople to finally pass the bill, which was doubly significant in an election year; Cunha and the blocão were temporarily cowed by the *IstoÉ* exposé; the telecoms sector finally resigned itself to fight for net neutrality loopholes at the regulatory phase of the Marco Civil; the security state and IP rights holder were keen to lock-down valuable surveillance provisions in the bill; Globo used its power to pressure Congresspeople to secure network neutrality and limited third-party liability, including the IP carve-out; and web companies pushed for resolution of the bill once the government finally abandoned data localization on March 19th 2013 (Abramovay 2018, p.145). Cumulatively, the stage was finally set for a successful vote on the Marco Civil.

Passage

On March 25th 2014, I arrived at the national Congress late into the night, and with the security clearance of a Parliamentary aid, was permitted to view proceedings on the floor of the Congress as the vote concluded. Five months after the bill was subject to ‘constitutional urgency’, it was finally passed with near unanimity. Even Eduardo Cunha voted in favour of the bill, although in a telling declaration as he submitted his vote, he confessed: “I do this with the residual fear that the Internet only got where it is due to the absence of regulation” (Nascimento 2014b).

The only abstaining party was the Socialist Party of Brazil (PSB). In a speech made to cat calls and whistles, the leftist party offered a last substantive critique of the bill that few had ever been prepared to consider, that of its subservience to powerful economic interests and compromised government institutions:

> We now have absolute neutrality and we are submitting that neutrality to the hands of the President of the Republic. In the hands of Anatel, that is set up like all the regulatory agencies of Brazil…It is for this reason that this breakthrough for humanity cannot be in the hands of those who would seek to break the freedom of expression of the Brazilian people (Papp 2014, p.121, *translation mine*).

And in one other abstention worthy of note, the virulent Congressman and future President, Jair Bolsonaro, declared that “I prefer Obama to be reading my emails than a gang set-up by the PT”. When he was rebutted by a PT Congressperson, Bolsonaro’s response evoked the telecoms sector strategy of connecting the Marco Civil with communism: “You are Cuban! Get to Cuba! Get to Cuba, Cubano! They’ve got Internet there!” (Papp 2014, p.122, *translation mine*).

These bombastic statements, however, were the exceptions to the rule. The vast majority of the speeches made as votes were cast, irrespective of party affiliation and ideological hue, praised the significance of the bill, and recognized its civic legitimacy. Barbossa of Intervozes interpreted this as the fruit of all of the civil society coalition’s tireless advocacy work: “I think it was all well done in the end because… all the parties voted in favour of the bill with speeches saying ‘this is an important project for the country’ or ‘this is important for society’. It stopped being the speech ‘this is a government project so it should be defeated’” (Research interview).

Another observer of the vote took a more cynical position: “it was almost like we were watching a science fiction movie, because these guys who were fighting each other like a week before, and suddenly everyone was like ‘yeah, this is for the benefit of Brazil and the Internet ecosystem!’ ‘Yeah, let’s approve the Marco Civil!’ It was kind of hilarious to see that. But that’s politics, right?” (Web company executive, research interview).

Less than one month later, and the result of concerted government pressure, on April 22nd the bill was unanimously approved by the Brazilian Senate. President Rousseff thus secured her coveted goal of being able to sign the bill into law, before a global audience, on the opening day of the *NetMundial* summit.

Thus, after five years of internecine conflict between competing sectors of informational capitalism, bitter political factionalism, the relentless campaigning of a small band of technology activists and communication and consumer rights advocates, and a singular act of courage by a US government contractor, Brazil had its bill of digital rights. Still structured around the three pillars of network neutrality, data privacy, and freedom of expression first proposed at the public consultation, the final Marco Civil da Internet had been decisively shaped by the discursive and material power of informational capitalism, as well as by Brazil’s present and historical status at the periphery of the global capitalist economy.

Many civil society observers were, however, ebullient, as exemplified by Flávia Lefevre’s reaction: “civil society won on so many points that I believe it’s really incredible, I sincerely do, after it all finished I said I don’t know how we got all of those points” (Interview *translation mine*). It has been my contrarian position that the ‘incredible’ nature of the Marco Civil is a chimera; that the reason that civil society ‘got all of those points’ was because the digital rights contained in the bill ultimately cohered with rather than checked the logics of informational capitalism.

Other observers were more aligned with my thinking. Paulo Santarém, manager of the public consultation for the Ministry of Justice offered this much more circumspect judgement of the Marco Civil to me in interview:

> *it does not guarantee that the Internet is more just*, it does not impede the telcos from offering abusive plans…it does not avoid the diffusion of material that violates the rights of minorities or

individuals. For the law, it permits that these discussions occur on clearer terms. That is undeniable.

It is with no satisfaction that I note how recent history strongly suggests that the Marco Civil's 'legal clarity' has done little to uphold digital rights for Brazilians. The failure to establish collective over individual digital rights, to confront the logics of informational capitalism and to address the inequitable political-economy of the Internet have returned to haunt Brazil. The impeachment of Dilma Rousseff in a legislative coup d'état, and the subsequent election of a neo-fascist President in Jair Bolsonaro were strongly abetted by the 'limited liability' of Google, WhatsApp and Facebook, as those platforms were used to disseminate disinformation favouring Bolsonaro's campaign (Avelar 2019) . Listening to one of the last interviews with Lula da Silva before his imprisonment on dubious corruption charges in 2017[30], it was poignant indeed that when asked for his biggest regret in politics, his reply was to have never carried out meaningful reform of the communications media. Given the role of Globo and other media giants in Brazil as orchestrators of Rousseff's dubious impeachment (Matos 2016) it is clear why that regret might loom largest. The Marco Civil unfortunately represents just the latest chapter in a long saga of doomed efforts to democratize media in Brazil.

Conclusion

In this chapter, I examined the many repercussions of the Snowden revelations of US surveillance in Brazil, how the fallout broke the Marco Civil free from its Congressional deadlock, how it sparked an intensification of conflict between rival sectors of informational capitalism as all interested parties sought to secure their agendas during the bill's 'end game', and how it was catapulted to the top of the President's political agenda. By examining these events in detail, I showed how the framework of digital civil rights became subsumed within the tensions of informational capitalism, which saw its remaining civic potential decisively curtailed.

Brazil's status at the periphery of informational capitalism was a defining factor in the government's response to the NSA surveillance revelations, and its manipulation of the Marco Civil as a policy tool. By critically interrogating the narrative of 'data sovereignty' and the associated policy measures that emerged in response to the Snowden disclosures, I revealed several insights germane to this study.

[30] Interviewed by the Brazilian filmmaker, Petra Costa, in her 2019 documentary, *The Edge of Democracy*.

The discourse of data sovereignty invoked important peripheral concerns around technological under-development and subordination to US state interests. It was used to justify a number of policy measures that may not have meaningfully established technological sovereignty, but that if enacted might have recalibrated Brazil's zonal status within the global system of informational capitalism.

I showed how it was not possible for the data localization measures to in fact protect the privacy of Brazilian user qua citizens. In fact, the claim of protecting privacy was simply a façade to obscure the agenda of the Brazilian security state seeking to gain access to user data. The increasing civic unrest in Brazil coupled with the long-standing resentment of Brazilian security services to the obstructionism of US web companies meant that data localization measures constituted a form of securitisation; one explicitly aligned with the logics of informational capitalism.

As per the messy dynamics of informational capitalism, the efforts of the security state to control the flow of user data, triggered one of the core tensions within the system and an occasional antagonism with the web company sector. My analysis showed that the data localization proposal, if adopted on a global scale, could realign power within informational capitalism away from the epicentre. Accordingly, the web companies were fiercely opposed to the measure, and material from my interviews reveals that the sector was prepared to somehow sabotage the entire bill in order to avoid this fate. This is a significant revelation as it demonstrates that the web companies were willing to forego the prize represented by safe harbours to avoid catalysing a balkanized global Internet. It also dissolves any remaining notion that the web companies were an ally of civil society on the topic of digital rights. I also highlighted the difficulties for the web companies to push their claims publicly as representatives of the US operating at the periphery.

The Brazilian government delivering the opening address at the UN General Assembly proved to be a pivotal moment for the Marco Civil, and my analysis of the build-up to that speech, as well as its content, revealed what I describe as a 'double game': an attempt to balance a contradictory set of policies in the form of data sovereignty and digital rights. Although President Rousseff offered rhetorical support for data sovereignty – an agenda coherent with a peripheral state's neo-developmentalist orientation – the eventual focus on digital rights represented another important instance of the Marco Civil maintaining the status quo of informational capitalism, rather than disrupting it.

The government's announcement of 'constitutional urgency' for the Marco Civil heralded a febrile passage of change for the bill and I revealed how the most powerful sectors within informational capitalism vied to impose their agendas on it.

The new standards for data retention and access foisted onto the Marco Civil represented a stark reminder that the bill was of a piece with informational capitalism. The measures advantaged principally the security state and the content production sector, and by massively expanding the reach of state/corporate surveillance, they ultimately made a mockery of the notion that the Marco Civil would safeguard the privacy of Brazilian Internet users qua citizens. Moreover, I argued that the vociferous protests of civil society groups to these amendments, and their support for the tepid 'data finality' provisions, exposed once more the dangerous failure of those same groups to condemn the repressive potential of online surveillance when it is perpetrated by private actors, and not only by the state.

The telecoms sector secured a similarly coveted prize with the inclusion of a new protection for 'future business models' in the bill. This engineered a legislative 'backdoor' into the bill to allow the telecoms sector to evade network neutrality provisions and represented another instance of accommodation with the logics of informational capitalism.

I also identified some important dimensions of the contestation of privacy and network neutrality that were characteristic of the periphery. I argued that the high societal sensitivity to crime made it challenging for privacy advocates to mobilise the public against the data retention measures. In the case of network neutrality, there was a significant articulation with the discourse of social inequality which both the telecoms sector and civil society groups competed to imbue with their preferred set of meanings. Also, I showed how the web companies were successful in harnessing the discourse of innovation – especially significant in a peripheral country seeking to advance its technological development – in order to secure government support for its policy agenda.

Finally, I advanced my argument that the Brazilian government was willing to expend political capital to secure network neutrality in the bill, not because it safeguarded civil rights for Brazil's citizens, but primarily because of the formidable power and influence of the Globo Group, for which net neutrality represented a valued prize. These facts corroborate my thesis that the Brazilian government's support for network neutrality was mostly driven by the influence of Brazil's pre-eminent media power.

Chapter 7

Conclusion: The fragile contingency of digital rights

"If you consider fake news, how divisive Brazilian society is with regard to political discussions in the Internet, somehow it has lost on the way…Maybe we had a romantic moment with the Marco Civil…and now we're facing a dire reality" (Almeida 2018, Research interview)

"the cause of democratic media reform...where the avoidance of disaster passes for victory" (Anderson 2013, 203)

At the time of writing in November 2020, a neo-fascist - Jair Bolsonaro - sits in the Planalto in Brasília. In the two years of his presidency, Bolsonaro's policies have accelerated destruction of the Amazon rainforest to a dangerous tipping point, inflamed social tensions with racist and homophobic rhetoric, and flaunted a callous disregard for the Covid 19 epidemic, that by April 2021 had resulted in more than 365,000 deaths. His successful Presidential campaign in 2018 was abetted in part by misuse of Facebook's messaging platform, WhatsApp, to disseminate disinformation. The closed architecture of the end-to-end encrypted service ensures that it is nearly impossible to know the full extent or efficacy of the campaign. However, content analysis of pro-Bolsonaro WhatsApp groups (Nemer 2018), evidence of widespread use of automated bots and media reports of millions of dollars worth of illegally purchased 'mass blasts' (Campos Mello 2018) suggest that this material had tremendous reach. Brazil after all is home to 120 million active users, while 44% of the population use the service to find political information (Isaac & Roose 2018).

Although the disinformation program was in contravention of electoral law in Brazil, and could potentially even see Bolsonaro's victory annulled (France 24 2020), there was nothing in the practice that directly infringed upon any of the digital rights of the Marco Civil da Internet. As the former Ministry of Justice Chief of Staff mused in a quote from our interview that opens this chapter, "maybe we had a romantic moment with the Marco Civil…and now we're facing a dire reality". The failure of the Marco Civil to directly confront the harms caused by informational capitalism has thus returned to haunt Brazil.

I have developed the critique through these pages that as a bill of digital rights, the Marco Civil was of a piece with the logics of informational capitalism, and saw its civic potential severely constrained by the material and discursive powers of the system's most powerful actors. Moreover, the composition and

the significance of the Marco Civil can only be properly understood within the context of Brazil's status at the periphery of global capitalism. Certainly, in the years since the law was regulated in 2016, numerous developments in Brazil have underscored what limited protections the Marco Civil represents for Brazilian citizens qua Internet users.

Freedom of expression remains imperilled as evidenced by the Brazilian Association of Investigative Journalism identifying over 500 instances of politicians requesting the removal of online content during the 2018 Federal election period (Abraji 2018). Moreover, Brazil continues to receive a yearly rebuke from Freedom House as it classifies the Internet in Brazil as only 'partly free' (2019). The Brazilian Law on Freedom, Transparency and Accountability (informally known as the 'Fake News Bill') was passed in June 2020 and rolled back many of the limited protections for privacy and expression contained in the Marco Civil (Garcia 2020). The IP reform bill that was touted as the reason that questions pertaining to copyright were omitted from the Marco Civil remains frozen over a decade since it was first proposed. Although Article 27 of the law obliges the state to promote digital inclusion, socio-economic inequities in online access remain stark according to recent research from the Research Centre for the Development of the Information Society (Cetic 2019). And despite the celebrated protections for network neutrality, zero rated mobile services that directly contravene the principal of neutrality have proliferated rapidly in Brazil (Hoskins 2019), contributing significantly to the wide adoption of WhatsApp and its use as a conduit for disinformation.

Moreover, the political-economy of Brazil's digital ecosystem, which was completely elided within the Marco Civil, continues to exhibit levels of concentration and control that favour technology companies from informational capitalism's core. Four of the top five most visited websites in Brazil are US companies (Alexa 2021), while the most popular mobile apps in Brazil demonstrates a similar level of concentration with only 3 of the top 20 for most active users not owned by Alphabet, Facebook, Spotify or Tencent (SimilarWeb 2021). Three Google-owned submarine cables went into operation in 2017 and 2018 that connect Brazil to the United States, Argentina as well as between major Brazilian cities (Sawers 2019). These increase Brazil's infrastructure dependence as well as its vulnerability to US surveillance. Finally, a government proposal to privatize Brazil's national Post Office in 2021 has seen Amazon as well as FedEx and DHL emerge as potential buyers (Iglesias & Beck 2020), a move that would further consolidate control of the core over Brazil's information infrastructure.

Could a Marco Civil premised on different conceptual foundations have made a difference? Could Brazil be facing a different reality with regards to the harms imposed by informational capitalism and its status at the periphery of it? Quite possibly. As I have indicated at various junctures in Part II of this thesis, alternative visions of digital rights were espoused in Brazil during the Marco Civil's public consultation exercises. The Brazilian Pirate Party articulated a detailed and clear vision for a digital rights framework premised on principles of public service and infrastructural and political-economic reform of the Internet: a direct confrontation, in other words, with the logics of informational capitalism. However, these ideas existed outside of the accepted common-sense for digital rights, they did not "hew to a particular set of terms" (Newman 2016, p.26), and were promoted by an actor exogenous to the acceptable 'policy community'. Accordingly, they were discounted.

Of course, the ills associated with online disinformation, commodification, surveillance, and hate speech do not exist in isolation from Brazil's many other social, political and economic challenges. However, if the public service provision of digital media had been contemplated within the Marco Civil, if privacy had been conceptualised as a collective good rather than something to be mitigated through individualised 'protections', and if the interests of web and media companies were not conceived as an acceptable proxy for the communication rights of Brazil's citizens, then I contend that Brazil might well have begun to establish a digital media system that bolstered rather than undermined its democracy.

Within the state too, proposals were made to address some of the infrastructural dimensions of Brazil's peripheral status, within the policy discourse of 'data sovereignty'. These included a national email system, data localisation and new submarine cables. Although obscure and problematic agendas lay behind some of these ideas, they collectively represented the kind of (infra)structural reforms that could start to reprogram the exploitative circuits of accumulation that underpin informational capitalism.

As I mentioned in the conclusion to the last chapter, Lula lamented the failure to enact media reform as his greatest regret from his time in office. The concentration of ownership, commodification of culture, and control over communication acutely evident in Brazil's media system all played a large role in his dubious corruption charges, and the ensuing legislative coup against his successor, Dilma Rousseff. In that light, the Marco Civil therefore represents a sorry continuation of squandered opportunities to enact a more just, equitable and democratic communication environment for Brazil.

A 'techlash'; tempered

Brazil does not of course exist in a microcosm with regard to the developments listed above. The inequities and exploitations of informational capitalism have become highly visible in recent years across the globe. A so-called 'techlash' - popular awareness of the destructive impacts of platform power and accompanying calls for reform - has emerged in response to myriad conjoined factors (Smith 2018). The question of platforms accepting responsibility for the harm caused by the content they circulate is chief amongst them. A deluge of disinformation, extremist propaganda, revenge porn, trolling abuse, racist rhetoric and fake news surge daily through the networks of YouTube, Facebook and Twitter. The destructive impacts for democracy and social justice have been keenly observed. The furore over Cambridge Analytica's furtive access to Facebook user data and their attempt to manipulate millions using highly targeted 'dark ads' during the 2016 US presidential election and the UK Brexit referendum (Cadwalladr & Graham-Harrison 2018) represented just the most conspicuous such episode.

The immense size and market power of the major technology companies has also been the subject of great concern. The concentration of platform ownership enables tax evasion, anti-competitive behaviour against smaller companies, systematic privacy violations, a vacuum of political accountability, and near-monopolistic control over vast domains of digital activity including search, online advertising, e-commerce, social networking, and photo and video sharing. As Tim Wu declared pessimistically of the concentrated power of 'big tech', if left unaddressed: "these are end-states. I don't see what dislodges their dominance, at least not in our lifetimes" (Patel 2018).

Thus have the harms caused by the concentration and control of informational capitalism moved out of the shadows to become matters of lively public debate. Legislators and regulators around the world have certainly taken note, with proposals to address platform power being debated in jurisdictions throughout the EU and North America.

What is apparent from these legislative proposals is that the paradigm of digital rights that was dominant during the development of the Marco Civil - premised on a trident of network neutrality, digital data protections and freedom of online expression - has lost some its legitimacy as a means to safeguard Internet users qua citizens from harm, or in creating anything that resembles a democratic medium of communication. Network neutrality is a foundational principle for protecting access to information, innovation and expressive rights, but it does almost nothing to mitigate the

commodification, concentration and commercialisation of the Internet. Safe harbours as a proxy for freedom of expression are a fine legal principle in theory, but in practice have actually enabled platforms to better profit from the flow of toxic content online. Finally, individual digital data protections in the context of pervasive surveillance and commodified data relations, represent little more than a band aid on an axe wound. The deficiencies of these measures as civic safeguards are detailed in the critique I present in these pages, and implicitly at least this appears to have permeated mainstream thinking on how to address the harms of platform power.

Indeed, the 'techlash' has seen the paradigm of digital rights characterised by individualist, technical fixes premised on protecting the expression, creativity and freedom of users, seemingly superseded by a more ambitious slate of reforms. These include: enacting greater content liability, such as levying heavy penalties for circulating harmful content as enacted in Germany, or current proposals for reforming Section 230 in the United States; bolstering user privacy by mandating opt-in for tracking and data portability as included in the EU's GDPR; addressing market power by using anti-trust rules to enforce a partial break up of the major platforms. Other proposals include mandating "progressive data sharing" (Mayer-Schönberger & Ramge 2018), creating a tier of 'middleware' firms to act as independent intermediaries between platforms and users (Fukuyama et al 2021), and establishing dispute resolution tribunals (Smith 2018).

These measures do address some of the blind spots of the dominant digital rights paradigm, manifested in a particular form in the Marco Civil: agnosticism to the political-economy of informational capitalism, and a failure to consider structural reforms to the business models of its most powerful sectors. These measures constitute a proportionate reaction to the increased power and harms of informational capitalism but retain the gulf between problem and response that rendered the previous digital rights paradigm impotent. Significantly, they also retain the myopic focus upon the harms caused by informational capitalism within the system's core. These are indisputably real and measurable, but they ignore the even greater damage wrought at the periphery: amplified ethnic discord contributing to massive violence such as in Myanmar (Stevenson 2018); a toxic legion of trolls, bots and disinformation marshalled by tyrants from the Philippines to Iran (Diebert 2020); and attempts to manipulate elections in Brazil, Bolivia and India (Canales 2020).

The reforms catalysed by the 'techlash' ultimately remain deeply inadequate. While they fail to countenance the inequities and exploitations inherent to informational capitalism on a global scale,

while they fail to address the commodification of data relations, pervasive surveillance systems and the commercialisation of online space, and while they fail to imagine a civic-valued, public-oriented alternative to proprietary platforms, as civic safeguards, they simply fail. As Anderson notes grimly, "playing by the rules of a strictly neoliberal paradigm will unfortunately lead to more of the same" (2013, p.209).

In essence, the responses to the harms caused by informational capitalism from policymakers, the mainstream media, as well as repentant figures from within the technology sector have converged on the notion that we can "step aside and let the more enlightened forces of capitalism fix the problem" (Couldry and Mejias 2019, p.187). Meanwhile, voices that call for de-commodified data relations, re-thinking advertising as the underpinning of the Internet, and re-casting social networking and search as public utilities (Schiller 2020), remain muted at the margins. As Newman pointedly observed in the context of the US net neutrality debates, a form of 'processing bias' is at play whereby "as long as one pursued the debate in these terms, one mattered; when one deviated, one ceased to be seriously considered" (2019, p.75).

The lessons of the Marco Civil detailed in this study reveal quite starkly that *any concession to informational capitalism negates a civic outcome*. As the system of commodification, surveillance and control is permitted to continue unabated, thus will the harms inflicted upon our democracies persist. As we grapple with our response to platform power, the stakes now are simply too high to permit the shortcomings of this 'Magna Carta for the web' to be repeated. For that and other reasons, there is a renewed urgency in understanding how and why the digital rights of the Marco Civil failed to achieve their civic potential. This was the overarching inquiry orienting this research, and the contributions generated by interrogating this, as well as my ancillary research questions, are substantively addressed in the following section.

Ultimately, this account helps us to recognise how and why the powerbrokers of informational capitalism shape digital rights to their advantage, the nature of the material and discursive power wielded by them, the perils of treating digital rights as a matter of consumption, how dominant discourses silence marginal voices, and the importance of properly contextualising the periphery. This account presents therefore a cautionary tale, but also one in which we can glean insights that could guide more meaningful interventions into informational capitalism; cause also then, for hope.

Contributions

This thesis was structured in two main sections - a theoretical scaffold, and an empirical analysis, so it makes sense to parse the contributions accordingly.

Part I

Analysing informational capitalism; discourse, matter and power

The scale of informational capitalism - from its application of core technologies, to its discursive legitimation, and global political-economy - challenges the scope of any siloed analysis. One of the principal contributions provided by the first part of this thesis therefore was to propose an analytical framework for informational capitalism that attempts to account for the sweep of its systemic functions. I have argued in these pages that informational capitalism needs to be understood in terms of the logics that impel the system "forward in its flight into the future" (Dyer-Witheford 2015, p.188), the mechanics and dynamics that account for its granular texture and tensions, the zones that constitute its uneven global political-economy, and the discourses that legitimate its functions and serve as a corollary to its material power.

I have not made any grand theoretical advance that elegantly folds these dimensions into one another, I have merely offered a new conceptual vocabulary to represent them, and made the case that they need to be accounted for in combination. However, the importance of this holistic approach should not be understated, as it is a pre-requisite for meaningful scholarship, civic activism and policy interventions around informational capitalism. Indeed, I trust that the analytical framework I have developed here can provide a foundation to build upon in analysing future developments.

More specifically, by employing a wide-angle lens capturing the broad range of actors that comprise informational capitalism, including the media and telecoms sectors and state actors, I address one of the principal blind spots in recent political-economy and critical media studies scholarship: the narrow focus on web platforms and data extraction (Srnicek 2017; Zuboff 2019; Couldry & Mejias 2019). Similarly, another important omission within recent scholarship on informational capitalism that is addressed in my framework is a dearth of systematic efforts to conceptualise the zonal geography of informational capitalism, to relate the periphery to the core. Although the notion of 'the periphery' often features in the literature, a robust model of the global political-economy of informational capitalism has been lacking and therefore constitutes one of this study's principle contributions.

Discourses are not immutable; they are contested, evolving, constitutions of knowledge, meaning and power. The discourses that legitimate capitalism in the face of future calls for reform will not be the same as those I traced here. However, they will not arrive out of the ether, and will share some characteristics and lineage with the 'digital discourse' examined in detail in this study. Similarly, capitalism itself is not static; it undergoes periodic 'sea changes' in response to technological, political and cultural developments. However, the next iteration of capitalism will not represent a rupture, but instead a series of continuities, as the inherent logics of commodification and control are realised through a new set of mechanics, built upon those identified here. The sectors of informational capitalism analysed in this framework will likely evolve rather than disappear, and the ensuing dynamics will reflect that evolution. Finally, as the recent rise of China into the core of informational capitalism demonstrates, the zonal geography of capitalism will shift, but not vanish.

A defining aspect of the analytical framework presented in this thesis is that it accounts for both material and discursive power. This represents another important scholarly contribution. The political-economy of communication (PEC) notably emphasises the structural dimensions of of informational capitalism, while critical discourse analysis (CDA) attends to its semiotic dimensions. These approaches correspond to a Rubin vase illusion, however, and are rarely used to visualise both dimensions simultaneously. By fusing together two planes of analysis as I have done in this study — the discursive focused on meaning-making processes and the political-economic focused on structures—my research advances a holistic model of analysis capable of compensating for the analytic blind spots in each approach, as well as bridging scholarship between CDA and PEC. This is a vital endeavour, as a blinkered focus favouring one dimension over the other will only yield a partial understanding of the scope, scale and influence of informational capitalism. The broad array of the system's harms presently under scrutiny indicate that partial understandings will no longer suffice.

Indeed, effective policy interventions in the form of digital rights must account for the discourses that legitimate informational capitalism. Social relations, institutions and discourses after all exist in a dialectical relationship with one another (Fairclough 2001). How a concept like network neutrality is discursively constructed and the way it is defined and the meanings assigned to it shapes the possible regulatory and policy decisions made about it (Streeter 2013). Discourse is thus *constitutive of media policy* (Lentz 2013). Meaningful reform will not occur through claims for 'freedom' or 'innovation', for

instance. Freedom is perilous conceptual terrain on which to stake any claim for digital rights, owing to the way freedom as a signifier has been usurped by the forces of capital. Much surer footing can be found atop 'justice', 'equity' and 'democracy'. These are the signifiers that are grounded in a social critique of capitalism; they can be used to justify substantive reforms that could actually secure civil rights, and they lack the long history of discursive colonisation by capitalism evident in the tenets of the digital discourse.

Tracing digital rights

As a parallel endeavour to mapping the systemic contours of informational capitalism, I also undertook a genealogical tracing of digital rights to excavate their discursive origins and elucidate how and why they are inadequate as civic safeguards. I merged together several discrete but interconnected histories to produce a crude genealogy of digital rights. I identified junctures at which the efforts of activists, technologists and policymakers to establish civic safeguards for the Internet – such as in the form of open access to broadband networks - were co-opted materially and discursively, and denuded of any genuine challenge to informational capitalism. These individual pathways converged on the nodal point of the WSIS summits, from which the dominant paradigm of digital rights - one decisively shaped by the legitimation discourse of informational capitalism - became ascendant.

An accounting of the history of digital rights had not yet been made in any concerted way, and I contend that this therefore represents an important contribution for scholars in the fields of communications policy, PEC, media activism and political communication, as well as for activists and policymakers. By demonstrating the coherence between the dominant paradigm of digital rights and the systemic logics of informational capitalism I have revealed that not only are alternate approaches desperately required, but that to a large extent, such pathways already exist, but remain untrodden. In order to establish the Internet as a medium of communication that nourishes rather than corrodes democracy, then the unfulfilled promise of proposals that privilege the public over the proprietary, collectivism over the individual and the citizen over the consumer - such as the Civil Society Declaration from the 2003 Tunis WSIS summit - show the way.

This tracing of digital rights was, moreover, a vital endeavour for the specific purposes of this study because it allowed me to show how the measures that comprise the Marco Civil were shaped by discourses of long-standing, that can be traced back to the emergence of informational capitalism. This is significant because it reveals the extent to which the conceptual trident of the Marco Civil (one

shared by many other digital rights charters) - network neutrality, freedom of online expression and digital data privacy - were compromised from the outset and could never constitute a meaningful check on the harms of informational capitalism. However, like the system of informational capitalism itself, the digital discourse does not settle uniformly across the world. By conducting a longitudinal discursive analysis, this allowed me to identify the many particularities evident in the Marco Civil's development, as dominant discourses articulated with local, subaltern narratives to produce new structures of meaning that could legitimate particular social and political-economic conjunctures. The specifics of these articulations, and their implications, will be explored more fully in the next sub-section.

Part II

In the second part of this thesis I conducted a critical policy analysis of the Marco Civil's development. I operationalised the analytical framework and historical themes laid out in Part I in order to answer three key inquiries:

- *What were the circumstances that explain how and why the Marco Civil was passed into law, and how was it shaped by the material and discursive power of informational capitalism?*
- *What are the particular political-economic characteristics of informational-capitalism at 'the periphery', and how do these influence the form and significance of digital rights?*
- *How do dominant, global policy discourses articulate with subaltern, local narratives to produce new structures of meaning, and how can these influence the process of communications policymaking?*

Lessons from the torturous passage of the Marco Civil da Internet

In addressing the first of these questions, this thesis represents the first comprehensive academic English-language policy analysis of the Marco Civil, which in turn, generated numerous original knowledge takeaways. Given the high public profile of the Marco Civil and its presumed status as a template for digital rights frameworks in other jurisdictions, it is essential to establish a fulsome account of how this law came to pass, to illuminate some of its unheralded aspects, and to challenge some of its accompanying myths. This will assist policymakers and civil society organizers elsewhere in the world to anticipate some of the pitfalls and challenges implied by enacting digital rights in other

legislatures. This will also be a valuable resource for scholars and practitioners in the adjacent fields of Internet governance, communications policy, the political-economy of communication and international communication.

I revealed how the contributions of the Brazilian Pirate Party - unheralded in any other academic account, and certainly ignored by the architects of the Marco Civil - presented an alternative and much more substantive vision of what digital rights could mean in Brazil. Its vision of digital rights was broadly aligned with the notion of 'information justice' (Karpinnen & Puukko 2020) and was premised upon collectivist principles, broader social justice concerns and structural reforms to the Internet's infrastructure and political-economy. This is an important revelation because by virtue of existing outside of it, the Pirates' manifesto helps to make visible the dominant paradigm of digital rights. It also shows that my central critique of the Marco Civil as of a piece with informational capitalism, is not simply an aspersion tossed from a distant ivory tower, or a harsh judgement of the past based on the values of the present, but corresponds to ideas that were articulated at the time by local actors directly involved in the Marco Civil process.

By dispassionately analysing the origins of the Marco Civil - notably the public consultation, the blueprint provided by the *decálogo*, the 'interpretive community' constituted by the bill's architects and the multistakeholder input - I have revealed that much of the Marco Civil's acclaimed democratic legitimacy was ill-deserved, and in fact served to obscure the many ways in which the democratic value of digital rights were circumscribed.

I have undertaken the only systematic academic analysis of the corporate consultation inputs into the Marco Civil and in so doing cast a light onto the competing tangle of economic interests that delimited the bill's civic potential. Moreover, I have shown how these represented not simply the inevitable friction of multistakeholderism, but corresponded more meaningfully to the dynamics of informational capitalism.

I have revealed the particularities of civil society involvement in the Marco Civil. CSOs played a pivotal role in the passage of the Marco Civil and it is therefore essential to understand how and why this influence was brought to bear. These constitute some of the granular context for the Marco Civil's passage, and challenge the assumptions of its universality as they derive from Brazil's peripheral status. These include most notably the tension inherent to civil society's simultaneously close relationship to the state in Brazil and its rejection of its centralising tendencies, the particular significance of enacting

civil rights in Brazil, and the politicisation of consumption. One key takeaway from this analysis is that CSOs should be wary of marriages of convenience with platforms. They should desist from perceiving the benefits of digital rights for technology and media companies as a kind of 'win win', but instead as a mutually exclusive proposition. This study has revealed quite starkly that any positive input into informational capitalism negates any civic benefit.

The Snowden revelations undoubtedly represent the most widely recognised event discussed in these pages, although their relevance in the context of the Marco Civil lacked any comparable understanding. I demonstrated this connection across multiple dimensions: how it forced the mechanics of informational capitalism out of the shadows and into the spotlight, and how that sudden visibility impelled the digital rights of the Marco Civil towards legislative approval; how it created the conditions for the narrative of 'data sovereignty' to become viable rhetorical cover for government policy; and finally how it placed the massive hypocrisy of baking government surveillance measures into a bill of digital rights into stark relief, further emphasizing the civic deficiency of the Marco Civil.

I carefully tracked the corporate manoeuvres and political-economic configurations that prefigured all of the substantive changes to the constitution of digital rights in the Marco Civil during the bill's fraught passage through the Brazilian Congress. Such granular analysis has not yet been undertaken elsewhere and it provides a vital layer of understanding to appreciate - and crucially to anticipate - *the agendas and power relationships enmeshed in each digital civil right*. The antagonism between Globo and the telecoms sector over network neutrality and subscription TV, and the operational disaster implied by data localization for the web technology sector represent two such insights from these pages. These correspond to the 'dynamics' of informational capitalism that I identified in my analytical framework. Moreover, these insights represent the empirical buttress for my thesis that the dominant paradigm of digital rights, embodied in the Marco Civil, coheres with the logics of informational capitalism.

Finally, from my fieldwork interviews with participants from civil society, government and business, I was able to reveal several facts about the Marco Civil process that have not received recognition in any other academic accounts, and that are imperative for a substantive understanding of the Marco Civil. Notable amongst these insights are the revelation that the controversial negotiation that safeguarded the continued practice of notice and takedown in Brazil was in fact brokered by one of the civil society architects of the Marco Civil, and that the web company sector had collectively agreed to discharge a

‘nuclear option’ against the Marco Civil if the Brazilian government insisted on maintaining data localisation measures in the bill.

Charting the periphery

Rather than assume that informational capitalism will have uniform effects across the globe and then try to account for any divergence, I have started this study from the premise that socio-cultural, political-economic differences are essential to understand the impact of the system in distinct contexts. In keeping with this premise, I have consistently foregrounded the significance of Brazil’s status at the margins of global capitalism in terms of the constitution and contestation of digital rights, and their social significance.

As Isin and Ruppert (2015) and Jørgensen (2013) have documented, digital rights are most often presented as *human*, rather than *civic* rights. This is a key distinction as the former serves to frame digital rights as “static and universal” instead of “historical and situated and arising from social struggles” (Isin and Ruppert 2015, p.10). This dominant framing therefore often fails to acknowledge how digital rights would intersect with local political-economic and socio-cultural realities. Accordingly, it has become commonplace for charters of digital rights to be drafted and advocated for as initiatives with explicitly universal scope. I contend that the dominant digital rights thus shares one of the principal shortcomings of international development, as Prassad (2018) observes, of “reducing intractable social challenges...to technical problems divorced of both history and politics” (p.418). The analysis of the Marco Civil presented here offers a corrective to that approach as it emphasizes the many social, cultural and political-economic contingencies of digital rights that must be accounted for in order to be both culturally appropriate and legislatively viable.

In regards to the way that network neutrality was contested in Brazil as a digital civil right, for instance, one can observe numerous key contextual differences with other societies around the world, and particularly in informational capitalism’s core. The low social value of innovation, the challenge of enlisting public engagement for a technical policy issue, the low profile for web companies from the United States, and the economic significance of zero rating are all particularities that enhance not only our appreciation of the Marco Civil, but might also contribute to better understanding similar issues in other peripheral contexts.

More broadly, in this thesis I have emphasized that the periphery of informational capitalism is a distinct analytical entity with particularities that must be accounted for when surveying the exploitations of and resistances to the system, and especially when examining the formation of communication policy and digital rights. This is an urgent issue for the field of communication studies to consider given the growing awareness of the egregious harms wrought by informational capitalism at the margins of the system, whether in terms of civil violence in Myanmar, labour exploitation in China, or environmental destruction in the Congo (Diebert 2020).

Articulations

The final principle area of contribution of this thesis is demonstrating that dominant communication policy discourses - that are evident throughout the world - do not replicate themselves in a uniform way in distinct settings, but articulate with local narratives to produce new sets of meanings that must be accounted for in explaining the outcomes of policy processes. This is a significant consideration for communication policy and political-economy scholars, as well as for communication and digital rights advocacy groups. Without this appreciation, academic analyses and policy proposals are rendered tone deaf.

In the case of the Marco Civil, for instance, my analysis showed how network neutrality articulated with the discourse on urban social inequality to imbue it with new meaning, while privacy was entangled in the discourse of fear of crime and the legacy of dictatorship, participation was understood in the context of left-wing participatory policy experiments, and data sovereignty was equated with neo-developmentalism. These articulations play a large role in shaping which constituencies and actors will support or resist a policy measure, the willingness of politicians to expend capital in enacting them, and which elements of a policy are emphasized or downplayed at the regulatory stage. In sum, therefore, they represent an important component of the social construction of policy.

Limitations and unanswered questions

The following section addresses some of the limitations of this dissertation.

Although the fieldwork I conducted for this project in Brazil was incredibly fruitful, and I remain humbled by the degree of access I was granted by key figures in the Marco Civil's development, I have also had the opportunity to reflect on areas for improvement. One issue that certainly merits reflection is that I did not begin this research project with the same analytical framework that now orients it. I set

out initially to undertake a critical policy analysis of the Marco Civil as a case study in how the Internet becomes the material manifestation of social values and power relationships. Accordingly, my fieldwork interviews were focused on questions of process and power, on the policy agendas of key economic and social sectors, and how the bill was influenced by them. The primacy of informational capitalism in understanding these arrangements was an insight that only came later. By not channeling my initial inquiries through the filter of informational capitalism, I am aware that I might have therefore missed some relevant insights.

In terms of the range of interviews that I conducted, I remain satisfied that I was able to reach individuals in all of the key civil, political and economic groups that were influential in shaping the Marco Civil, and that moreover, those individuals were very well informed as to the intricacies of the policy process. There were, however, two key individuals - one each from the civil society and web technology sectors - that I believe would have provided some important testimony. Unfortunately, one of them ignored repeated requests for an interview, while the other was willing to talk, but was unable ever to coordinate a meeting with me.

I have certainly struggled with the perceived churlishness of criticising digital rights in general, as well as the efforts of the civil society organizations that advocated tirelessly for the Marco Civil, in particular. Network neutrality, for instance, represents a quandary insofar as it is a prerequisite for the Internet to function as an open, accessible and innovative medium of communication and repository of knowledge. However, as I have argued in these pages, it is also deeply compromised as a digital right, and serves other contradictory ends that in fact erode the Internet's civic potential. In a similar fashion, I have also analysed with a critical lens the actions of CSOs in the context of the Marco Civil. From my discussions with individuals at these organizations, I am aware that they championed the Marco Civil in the face of seemingly insurmountable odds and were willing to confront powerful adversaries in their quest to see the bill passed into law. Given that I recognise their good faith actions, I need to acknowledge that it has sometimes been a challenge to also critique what I consider to be the inadequacy of the Marco Civil and the misdirected efforts to promote it.

That aforementioned critique of digital rights represents a diagnosis. Therefore, the logical progression is to develop a prescription; a framework of digital rights that does more than just mitigate harm, but that can actively harness the tremendous potential of digital information and communication

technologies to contribute to social justice and democracy. Although I point to some of the characteristics of such a framework - collectivist, positive, civic and adaptable to diverse social contexts - its precise composition represents the looming unanswered question of this thesis. Sadly, such an ambitious undertaking was beyond the remit of this study, but I hope the insights from these pages may contribute to its realisation.

Finally, I am aware that I have succeeded in telling the story of the Marco Civil and its passage only through the actions of organizations, and the perspectives of the accomplished and highly-educated individuals embedded within them. There is also, of course, a story 'from below' that needs to be told, from the perspective of the millions of Internet users qua citizens in Brazil whose voices were not heard, as it is their experience that ultimately qualifies or disqualifies the Marco Civil as a set of civic safeguards. This observation provides a neat segue into the last section of this chapter, as we consider the path ahead.

The path ahead...

This quote from Crain from the introduction to this thesis merits a bookend here: "the point of critical analysis is not to theorize the domination engendered by capitalism, *but to clarify its dynamism in order to support and work toward forms of intervention* [emphasis added]" (2013, p.254). Responding to this clarion call, the most urgent research agenda that could be built out of this thesis is to create a web of connections between the multiple points of resistance to the systemic injustices and exploitations of informational capitalism.

As I stated at the outset of this study, informational capitalism is a hydra, not a monolith and it engenders multiple discrete forms of resistance. These are represented by the struggles against the Aadhaar digital ID system in India, or the efforts to unionise tech workers in the United States, or to create civic data trusts as a counterpoint to smart city initiatives. Scholarship that can connect these disparate episodes, to understand their continuities and particularities, and show how they can inform one another, is of vital importance. The value of such research would reverberate beyond the academy. It would certainly "support and work towards forms of intervention", as per Crain's point.

As understanding the pitfalls of the Marco Civil process experienced by CSOs in Brazil can help inform the practice of similar groups the world over, so can accounts of the myriad other sites of resistance around the globe. This praxis could, as Ron Diebert notes of social media reform efforts, "show that

everyone's efforts are weaving something larger than their own separate struggles...(and) help chart a path towards an alternative agenda on which groups can work together more confidently" (2020, p.264)

Similarly, a broad based comparative study of digital rights frameworks across the world, analysing the similarities and disjunctures, would represent a tremendous advance for communication scholarship. This could take the form of a 'digital rights observatory' that could track where and how progress is being made to reprogram the logics of informational capitalism.

Finally, peering off into the horizon, one needs to ask: where does informational capitalism go next? What will be the next meta-mutation in the evolving phases of capitalism? Whether that system to come is best conceptualised as data colonialism (Couldry & Mejias 2019), or AI-capitalism (Dyer-Witheford, Kjøsen, Steinhoff 2019), or something yet to be imagined, it will still be premised on a dynamic of control and resistance. Our capacity to anticipate and analyse the form it takes, and its means of control, will necessarily shape our capacity for meaningful resistance.

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Appendix A

List of interviewees

Interviewee	Group	Affiliation	Interview location/date	Language
Flávia Lefevre	A	IDEC; Director	São Paulo 06/03/2015	Portuguese
Luiz Moncau	A	CTS/FGV; Senior Researcher	Rio de Janeiro 11/03/2015	English
Veridiana Alimonte	A	IDEC; Campaigner	Rio de Janeiro 11/03/2015	Portuguese
Bia Barbosa	A	Intervozes; Director	Brasília 17/03/2015	Portuguese
Carlos Affonso de Souza	A	CTS; Vice-Coordinator	Rio de Janeiro 12/03/2015	English
Carlos Afonso (Caf)	A	CGi.br; Executive board member	Rio de Janeiro 12/03/2015	English
João Caribé	A	Mega Não; Activist/Co-founder	Rio de Janeiro 12/03/2015	Portuguese
Alex Castro	B	Sinditelebrasil; Director	Brasília 19/03/2015	Portuguese
Web company executive	B	Web company; executive	São Paulo 06/03/2015	English
Carol Conway	B	Abranet/Grupo Folha; In-house counsel	São Paulo 06/03/2015	Portuguese
Tonet Camargo	B	Grupo Globo; Director of Public Policy	Rio de Janeiro 13/03/2015	Portuguese
Telecoms company executive	B	Telecoms company executive	Brasília 19/03/2015	Portuguese

Daniel Cavalcanti	C	Anatel; Senior Policy Advisor	Brasília 16/03/2015	English
Guilherme de Almeida	C	SAL/MoJ; Secretary of Legislative Affairs	Skype; 07/02/2018	English
Paulo Santarém	C	SAL/MoJ; Public consultation manager	Brasília 17/03/2015	Portuguese
Pedro Paranaguá	C	PT; Technology Policy Advisor	Brasília 17/03/2015	Portuguese
Marcel Freitos	C	SAL/MoJ; Secretary of Legislative Affairs	Brasília 20/03/2015	Portuguese
Virgilio Almeida	C	National Secretary for Information Technology Policies	Brasília 18/03/2015	Portuguese
Alessandro Molon	C	PT; Congressperson/Rapporteur	Brasília 19/03/2015	Portuguese
Marcel Dantas	Background	UFRJ; Professor	Rio de Janeiro 12/03/2015	Portuguese
Fabro Steibel	Background	ITS; Researcher	Rio de Janeiro 12/03/2015	English
Pedro Ramos	Background	Lawyer	São Paulo 09/03/2015	Portuguese
Francisco Brito	Background	Internet Lab; Founder/Researcher	São Paulo 05/03/2015	English

Appendix B

Interview transcriptions

Flavia Lefevre; Proteste – 06/03/2015 – São Paulo

- Proteste works with the universalization of broad band from many years ago. Proteste was founded in 2001 and I've worked on this issue since '98. Before I was with IDEC.
- When the privatization of the telecoms happened here in July '98
- We've been working not only with the broadband issue but the democratization of telecommunications generally as we have a critical perspective of what happened after their privatization.
- As the broadband issue is only one means to approach the issue of digital access so when we became aware of the MC, we entered into the dispute.
- In clause 61 the Lei Geral de TC clearly separates what is telecommunications from what is 'services of value added' and Norma 4 of the Min of Comms establishes clearly that access to the Internet is a value added service and therefore is outside the remit of Anatel.
- Therefore, as a complement to our work toward digital inclusivity and bc we had a long and profound work on the universalization of the infrastructure of telecoms, of the networks, then we also accompanied the formulation of a law that would establish access to the space of the Internet...
- **What methods did you use to advance your objectives?**
- First was to seek an alliance with other entities that had an interest in this issue so we made the movement 'MC Ja', we participated with dozens of entities not just with the objective of consumer defence but the right to communicate as well as specifically in digital inclusion. So you have Intervozes, Coletivo Digital, intl entities like Artigo 19…and so we linked and it was v interesting this movement bc we had a blog by Casa Fora de Eixo …So a great movement was created there and we joined forces and went to Brasilia, there are photos, we wrote an open letter that we took to the most parlamentares possible, as much from the congress as the senate, we made the presentations to the *bancadas,* to the parties about the MC bc the companies were waging a strong campaign of disinformation…you won't be able to do this or that, it's going to be a form of government of the Internet, businesses won't have freedom to develop business models and they painted a dark picture of what would emerge if they passed the MC.
- **And this was the opposition pols?**
- No! It was the businesses, they even…distributing it there (Congress)…it was a form of 'white terrorism' saying it wd be a catastrophe if they passed the MCI. And so we started to work on a counterweight to the conduct of the businesses… I spoke with the benches of various parties, we made meetings and lots besides. So it was really heavy…and this was after the second phase of public consultation in the Congress, when that ended the dispute began! The firms with the representative of Eduardo Cunha…a man who knows the telecoms sector as he used to President of the TeleG (?) of Rio, very well connected and can 'move' the other party benches and he was an opponent…and bc of this movement we started to chase the congressppl who supported the MCI and we published a list of those deputados who were 'friends of the MCI'. So it was difficult, there were moments in Nov 2013 we reckoned that we no longer had any chance bc they succeeded in dismantling and co-opting the Congressppl and every time there was a vote they obstructed it.
- Then, by coincidence, came the Snowden revelations and w/the news that the privacy of Dilma had been violated...and from there Pres Dilma resolved to take up the baton, cancelled her visit to the US, made a speech at the UN saying that it was important that global rules were defined around privacy between states and from there she took the MCI – though in my view it was not fundamental to the objective that she wanted – and she placed it under 'urgencia consitutional' and from there when the companies saw that it

was going to be voted, to become law, they passed onto…for them the principal obstacle was the question of NN so they turned their attention to removing the article on NN and Molon was so assailed by their demands that the only way to achieve sufficient consensus was to include the Article 3…

- **Me – Do you think for Dilma the MCI was more of a foreign policy tool than a domestic one?**
- No, I think it was both. Bc we were at the eve of the election and bc the PT and especially Dilma had distanced themselves so much from the popular movements and they were very well connected at this time on this issue, which is an issue that is fundamental to the freedom of expression, for the preservation of the open network, of the democratization of the Net…and also internationally it was a way for Brazil to have an interlocution as well as for numerous other countries like Germany…
- So the only way forward for the companies was to include this in Article 8…"Liberdade de modelos de negocios…and then we managed to include this part here "so long as it doesn't interfere with the other principles" So, what did they want?
- In the process of negotiation for the law this was introduced by them and then we introduced the other part. No, it was word for word, it was hot…Cunha put fwd an 'audencia publica' in the parliament to which were invited various entities, the Ministerio Publico bc the MCI deals with the issue of privacy, the rights of the authorities to have access to the registries of access, registries of applications so the Ministry plus the IP lobby also had interest bc it talked about the removal of content, the responsibility of the providers for the posting of content…the CS won on so many points that I believe it's really incredible, I sincerely do, after it all finished I said I don't know how we got all of those points.
- **To what do you attribute this 'incredible' victory?**
- I believe it was a series of circumstances: first bc the rights that the MCI protects are fundamental, they guarantee that the Internet isn't going to be appropriated by private interests or political interests. I think that in Brazil we have a law that guarantees us this, no. Then we have a great persistence and an ability on the part of Molon, bc I witnessed scenes that were almost physical in the voting periods, that fight in the Chamber, the thing was hot. And he persisted, he was stuck in the middle and suffered a lot of pressure from CS, from the congressppl and from the companies and his persistence was preponderant and the luck of having Snowden make those revelations at the time that he did and Dilma needing a *destaque internacional* and needing to rescue the support of the popular movements and with the NetMundial she was able to sign the law in front of all the countries and CS. It's a conjunction of factors and obviously the persistence of CS as we were getting closer and closer until we got it. As well as the CGI.br that arranged a meeting with Dilma at the end of 2013 and that meeting was also a determining factor. Bc all the 'terrorism' that the industry was waging was explained (and debunked) by the CGI. And I believe then she felt more confident to invest in it.
- The CGI is a m/s organ and I'm part of it, one of the representatives of CS and it includes academia etc and I believe this is very significant. And the MC attributed new roles to the CGI, a m/s organ, that I believe is much better than Anatel. Although by law Anatel wouldn't have to participate bc the Internet isn't part of telecommunications.
- (31.00) – *Responds to my question on CS remaining on sidelines until the end of the consultation phase, she responds that she can't corroborate that and that certainly Proteste did no such thing.*

For me, the greatest successes were twofold, one, that NN passed in the way that it did, though this is still in dispute bc now we're in the regulatory phase and things like this (reads clause on 'freedom of business models') we are going to fight now. (As well as) The discussion on 'zero rating', on sponsored access (accesso patrocinado - the cutting off of pre-pay clients as soon as they've reached their monthly quota) and there we're going to dispute this.

- In my evaluation we have very strong means, legal tools, to defend NN in a wide-reaching way and to counter-balance this clause that the firms put in about freedom for business models.

- This for me was the biggest conquest, to guarantee access to the Net as something democratic, free from influence of govts and large economic groups and this I believe is fundamental. And the other thing that we got was to have contents removed only by judicial order. And look, the dispute around this too was heavy bc the likes of Globo and (?) the big holders of copyright didn't want this, they wanted notice and takedown, and this for freedom of expression as a restriction would have been tremendous. And still, the entities with whom we are partners fight a lot bc of Article 15 that compels providers that have an economic (for profit) role to retain logs that could be seen as a loss I believe that in the process of regulation and in a very calm way we have the means to counter balance these measures. Bc it's an infringement of privacy, we have lots of paths to counter balance this.
- And we also have in public consultation, the law on the protection of personal data. So we're going to have another powerful instrument there.
- But there are things I really think are a loss. For ex, here in Article 10, this 3rd paragraph I think is terrible, a loss. (reading the clause) Here you have a great protection. But then in the capute you have this: "all of the above rights don't impede that data…personal qualification, affiliation and address" This here in the process of metadata, this is a big thing, it's outside of the (previous) guarantee. In my opinion it's a big defeat – either you have data protection or you don't.
- These were introduced mostly by the pressure of the Police and the Ministerio Publico. I mean it's obvious, the Internet greatly complicates the work of the Police in terms of investigating crimes
- ***On my question regarding possible tension between consumer and civic values:***
- For us at Proteste this doesn't imply any tension whatsoever bc we treat consumption, especially that which is essential which the MC made it very clear for the exercise of citizenship as expressed in Article 7. The rights of the consumer are not only for those who have the money to buy but for the right to consumer, we have that vision, and especially when you speak of public services, like access to the Internet, then we're not talking about something contractual, specific, it's talking about the right to access and the MCI made this very clear. On the contrary there is a reinformcement between what we at Proteste see as the right to consumption and the rights of the citizen. The Consumer Defense Law in Brazil which is a very advanced law also makes this clear (Article 22 on right to Internet access).
- ***What about Chile's consumer oriented NN bill? Why was it civically oriented in Brazil?***
- I believe that as we have a govt of the left this gave a certain weight to the product that came out (MCI). Bc you had an anteprojeto da lei that was formed in a Ministry of J and a government of the left, involving entities that think about these issues in a very far-reaching way – not just in terms of consumption – and the MofJ had at this time the great *sacada* of legitimating this with the public consultation. And bc this process was so slow, when it's slow you realize more gains. You discuss things more, and the more discussion there is, when it emerges, it does so already legitimated. It was a product of debate between various sectors of society people can't present a divergent interpretation of what was recorded in the public debates.
- *(48:00) What were the key events in the development of the bill?*
- The important fact is that Dilma took advantage of this para *lavancar* the MC. (In Nov 2012 after 4 or 5 attempts to pass the bill were obstructed for Marco Maia, then Pres of the Chamber, it was 'enough' – it's wearing for a President to be obstructed on so many votes – I'm not going to propose it again. There won't be a Marco Civil, there won't be NN and you'll have to make do with the Consumer Defence Law).
- The importance of the Snowden revelations, was…that if you have a law that regulates the Internet then this was determining. With the rights that we won with the Marco Civil, an authoritarian govt cannot block your blog or block access to certain apps or content.
- The Snowden revelations were impt for this reason – we need protection on the Internet. People say "oh it's an open environment". OK, precisely for this reason you need rules for the regulation of this space bc big economic interests will want to appropriate this space and govts as well. For example (gives example of Turkey and blocking of Netflix – in Brazil you couldn't do this).

- The Snowden revelations were impt to weaken the discourse of those who said that the MC would be a law to *cecear* the right to freedom of expression and navigation of the Net, it demonstrated exactly the opposite.
- ***Question on tensions and agreements between parties.***
- It's funny bc Globo, for ex, were against the inclusion of obligation of judicial order for removal of content bc it produces lots of content and it wanted to protect it. On the other hand as Globo is a competitor of the TelCos – until 2011 bc of the LGTC the TelCos cd only offer telephony service, they were expressly forbidden from providing communication services, TV and such. So, in 2011 the SEAC law was passed. It altered the LGTC and these limitation were gone…and so they became competitors of Globo. And as they (?) the wires, then Globo felt threatened and so wanted to guarantee the neutrality. (It's obvious why. If Oi, present in 97% of the Brazilian territory, partnered with another TV co and NN wasn't guaranteed then they could privilege the traffic of their commercial allies and block access to the content of Globo, for example.)
- So the big content providers *ficarem olados da neutralidade.* Google, Globo…So, this was an impt thing for us in the fight for NN. On the other hand, we fought with them over the issue of freedom of expression, notice and takedown and all this. So we had areas of consensus as well as areas of non-consensus with them. So it was very interesting, it was very rich all of this, you know. It was a process of maturation for civic action in Brazil I believe. For civil society to mature their discourses, to learn how to make particular concessions. A maturation in terms of the discussion, dispute…this is what I think the MC brought for us.
- **And what were the most powerful actors in the process?**
- I believe that the two most powerful were, that ordered the discussion really, were the economic power of the businesses – with the political configuration that we have in Brazil we know that the political powers are very susceptible to cooptation by economic powers…and there arrived a moment in which we learnt, and civil society, bc when Dilma for conjunctural reasons resolved to *sumir esa bandeira* and rescue civil society and strengthen it and place the issue on consititutional urgency bc it had a political context in which CS wanted this, I think there were the two preponderant powers: the economic power of the economic groups involved in the economic exploitation of the Internet and the political power of CS that for circumstantial questions was reinforced by the political power of the executive who was the President of the Republic. So I think these two factors were preponderant. Why? Because the discussion in the Chamber, if we hadn't disputed this, if we had stood aside then Molon wouldn't have achieved this. As persistent as he was, if he wasn't backed up by CS he wouldn't have carried this to the point.

Carol Elizabeth Conway; Abranet – 06/03/2015 – São Paulo

- I prefer to speak from the perspective of Abranet.

- *What were the main objectives of Abranet in trying to influence the form of the Marco Civil?*

- Initially Abranet had as its primary objective that the Marco Civil didn't exist. But…a legislation that disciplined (addressed) issues that were not in the juridical planning of Brazil. And why? Because Abranet has as a philosophy that the Internet is only a medium for the realization of various activities that are also realized in the offline world. So we understood that the legislation that applies offline should also be applied online and to submit the MC to a political process extremely influenced by lobbies could impact upon the full freedom of expression, initiative and information and all the rights of users, especially under the optics of net neutrality and intellectual property.

- However, two measures were always supported by Abranet. The first was a legislation that addressed factual and new aspects arising with the Internet. For example, the storage of logs, the removal of content. Something like this, Abranet always supported that new phenomena, like any new phenomena in the economy or social relations, should be regulated. What we wouldn't like to have is an overlap to try, to remove by force what the Consitution already addressed in terms of freedoms, that the Consumer Defence Code already addressed in terms of user rights. It's a philosophical thing. This doesn't mean that Abranet didn't give support to or tried to take away the MC. We just believed that it wasn't necessary. For example, a guideline, or something that could explain to the judiciary or the population how the rights that were already protected in the amendments of democracy and freedom. Always in the judgement that the law addressed new aspects. And all this is quite fundamental, as much in judicial logic as you have an integrated judicial framework as the protection of the Internet against the force of the lobbies. But obviously we supported all legislation that as a matter of principle that guaranteed rights and freedoms as we worked in conjunction with Alessandro Molon, for example.

- (summary) Brazilian regulation divides ISPs in two types. Telephonic ISPs that are responsible for the networks and the transmission of high speed data and ISPs of connection that are responsible for the attribution of IP, identification that are the 'logical' services of the network. The physical part was always telecommunications in Brazil and the logical part was always an information service here or 'additional value services'. Abranet represents this whole layer of information service and small telco operators. ISPs by radio, wi-fi. (Small telcos in Bahia for example that offer broadband via radio as well as some content are affiliated with Abranet). But obviously the strong focus of the organization is the providers of connection and application providers – everything that goes on over a telecommunication network.

- *Was there a change in position for Abranet from the beginning to the end?*

- When Abranet understood that the govt. had the objective of passing the MC and this was not something that they were going to go back on, then we came around to understanding that it was necessary to fight for the points that make sense for the Internet in a law. Brazil is a country of laws, we have laws for everything here, and this is according to a juridical logic, doesn't make sense. But with a political optic the government had this agenda and it was an agenda that said that the govt wasn't going to go back. And so it was time for us to mark the position of the association for the basic premises of liberty, so that the Internet could continue functioning as it currently does.

- *What methods did Abranet use to contribute to the MC process?*

- Abranet participated since the beginning of the Marco Civil. We contributed to all the phases of the public consultation. I don't know if you know but there was a law attempting to criminalise certain elements of the Internet. Abranet is a pioneering organization in the market, it was founded in 1996, and so it battled greatly against this criminal legislation. So when the govt of the PT decided to formulate the MC it called Abranet because it wanted to understand what was wrong in the legislation and what we wanted to change. So our first participation was written but also meetings with the govt, meetings with the *relator*. We arranged a conference based on this issue, many people from the market, the ministries, Molon and so on – we maintained a close contact. In terms of the national congress we participated in the *audencias publicas* . So all the political movement created by the relator or by the executive power, Abranet always had a presence.

- *What were the main objectives of Abranet in this process?*

- Without any doubt NN. This is an issue…for the association. The question of log storage (that's been around for many years) is very positive…the question of protection of the provider from the arbitrary removal of content for us as well that's very positive because our associates are scared of committing an illicit act. And these are the most positive aspects. Negative perspectives then, starting at the end, the *rasalvas* that were

made regarding the removal of copyrighted content. Logically the scenario for any provider is to have judicial assurance (in terms of what he is removing). It's one thing to remove content that is clearly protected, quite another is to remove content where you're not certain who the rights holder is and that puts the provider in a delicate position. When the MC accepted the question of copyright in the disposition 21, I think, that talks about the protection of the provider for the removal of content, this creates an atmosphere of stability for the future. This is a point that Abranet obviously opposed. I think that this is the principal point, no? The question of data protection that was placed in Article 7, or around there, the truth is that it's neither great nor awful – it was just thrown in there. This is a matter for the project on Data Protection and it was thrown in there. So this suggests again a juridical uncertainity about how this is going to be carried out so I think is a negative point as well.

- *What were main areas of tension/agreement?*

- As I told you, Guy, the main part of the MC explains what is already legislated so if you take the principals therein you have freedom of initiative, privacy, consumer defence – I'm taking these off the top of my head – but these principles are in the Federal Constitution – so you don't have disagreement on these. The question of log storage, again you don't have great disagreements. Civil society, on certain elements…but I think that's a lesser disagreement. Issues of greater conflict: certainly copyright and NN

- *But between what sectors? CS and traditional media?*

- In truth not even traditional media. There exists a big communication group in Brazil that defends the removal of content for copyright reasons without judicial order. And the whole of the rest of society, including Abranet, defends the need for this to be regulated with great calm. Why? Because it's logical that no provider has any interest in leaving 'on air' any illicit content. However, that provider has to clearly identify that that material is illicit for copyright reasons and if not it may be conducting private censorship. So, there was a great polarization between a large communication group in Brazil and civil society and Abranet on the other in terms of copyright. … In terms of net neutrality, the polarization comes from the TelCos on what side and Abranet, civil society, that big communication group on the other side.

- *Was there any conflict in terms of Abranet's links with Folha which is a newspaper?*

- No. The Folha always defended net neutrality. This is a principle of the group. As well as with copyright. As much as Folha, same as UOL, is a communication group and has its copyright always protected, the freedom of expression is a right and a value that comes before copyright. As an internal value, in terms of ethics, the freedom of expression is an unnegotiable principle here, even if it prejudices certain economic *viezes* of the group itself. So if Folha content is replicated without authorisation we will seek compensation but this does not mean that we support legislation that is *vaga* in terms of content removal. Why? Because private censorship, as well as public, is the 'enemy of the house' so we had no conflict at all.

- *Was it a successful multistakeholder process? Was it really possible to influence the process?*

- 'Really' is an interesting word, Guy. Was it 'really' possible? I believe that the work of Molon was exceptional. It was really great what he did, he listened to everyone. It was a political platform for him as well. But at the end of the line he sent it for lobbying. He had to make concessions and open positions in order for it to become law. So if the question is if everyone participated, if everyone influenced then it's necessary to think about the term 'effective' because at the end of the day he had to make the political *cortos*.

- *Which were the most effective/powerful actors?*

- Well, you have the biggest communication group in the country, the telephone companies on the other hand. But it was a differentiated process. Yes, Abranet participated a lot, the CGI participated a lot, IDEC participated a lot. So you have various groups influencing but with political limitations. Because who has influence in the national Congress is the media companies (*radiodifusores)* the telecommunications companies and Molon confronted this difficulty but it was a differentiated process in terms of participation and everyone participated.

- *As Director of Regulatory Affairs I imagine you had a lot of experience in Brazilian legislation, was the MC really an exceptional episode?*

- It was. The dexterity of the *relator,* he listened to everyone, he conducted *audencias publicas* and according to the limits of the possible (…he did what he could?). He had lots of inflection points that he tried to explain that he didn't hear because he was listening to the academy that understands private law, it doesn't understand, the academy that was supporting him is oriented around private law. (But this was a case of public law) and Molon locked. So I do think that it was a differentiated process on account of the public audiences, public consultations and the participation of various sectors…(although Brazilian congress, like all congress' is subject to lobbies) but it's a process from which the result was very good, unbelievable, unbelievably good.

- *It was a complex process, but if there were winners, who were they?*

- The Internet won. Everyone who lives from the Internet. Who are the winners? The users. The service providers on the Internet. Sincerely Guy, I believe that the Telcos also were winners despite everyone… a continuity of the Internet is assured with this model, the Internet will renew itself, there is innovation, new products will emerge, YouTube, you know. Neutrality… (27:37 is a good for everyone?) because the more that thinks evolve, the more value that the operators will have because YouTube would be worth nothing without the content. So I think in the long term … (27:50) And this doesn't mean that they can't have their private networks and that they can do what they want with different speeds but the public network, neutral, in the long term everyone benefits.

- *And do you think that the Telcos privately believe in this (that in the long run everyone wins)?*

- I believe not Guy because they want that their business models are based on express connections. But I believe that this is a short term vision.

- *And is there an argument that it creates a more stable business environment for the Telcos?*

- Yes it did.

Caf – Cgi.br - Rio de Janeiro - 12/03/2015

- Caf a founding member of CGi in 1995 (when members were selected by govt)

- "In 2003 with Lula…we decided to come up with a proposal to do it the multistakeholder way, the proper way meaning that each sector would select their reps. It is not perfect bc there is, you know, all that manipulation in the elections and so on in each sector, but anyway…So, from Sept 2003 CGi became a true MS commission." (Caf)

- (On the presumotion that bc govt reps stack the decks, they dominate votes)"But the practice is not that. In practice, the Min of Comms doesn't go well with Anatel, which doesn't go well with the Min of Sci/Tech, which

doesn't go well with the Min of Industry so they never get together! And this is fantastic bc in practice you can say it is really MS!" (Caf)

- "So it is v difficult that any decision by Cgi.br could be accused of being manipulated by the govt. We might do wrong decision but it's not bc the govt imposed them on us so far" (Caf)

- "What does CGi.br do? It establishes policies related to the distribution of names and numbers in Brazil…But we also, according to the decree, are supposed to be influential in the development of the Internet in Brazil. We are supposed to be listened to in how this develops…"

- (and we also weigh in on issues like privacy) "The point of view of CS is always supposed to be the point of view of rights. The right to comm etc. So we also try to influence that. So that is why in 2007 we decided we should have a set of principles for our own use, like CGi.br. And we created those famous 10 principles which include the right to privacy, accountability of intermediaries, NN and so on. The interesting thing of those 10 principles is that it was a 2 yr process in which we insisted we would have consensus by all sectors including the telco reps at CGi.br, including the media reps. And we managed to do that in 2009." (Caf) ***The 10 principles were conceived as an exercise to establish civil rights. Is it possible then to be much more critical of them on that basis?***

- "WE have about 26 IXPs in Brazil. The largest number after the US…These are maintained as neutral, non-profit points by Nic.br." (Caf) http://www.cetic.br/ stats on Internet use in Brazil

- "There are imperfections. When we elect the reps of CS we are 200,00 NGos in Brazil, only 300 or 400 take part in the electoral college…A very simple procedure but nobody bothers. And these 300 are easily manipulated because many of them they have no idea what they are doing…And the businesses of course they have a completely diff way of selecting their reps. It's by voting as well but it's all pre-arranged!" (Caf)

- (21 – example of semi-arid initiative in the NE of a successful MS project in Brazil) "But CGi was the first" (example of MS in Brazil) (Caf)

- Michael Gurstein critique of neoliberal ethos of MS

- (On role of CGi in MCi) "During the whole process we were present. During the discussions in Congress we were trying to be there. Several of our board members were present…especially when it entered Congress to support the work of the deputies who were there battling for the...Alessandro Molon and so on…" (Caf)

- (Segun tradition, Brazil always makes the inaugural address at the UN General Assembly) "And so Dilma decided to call us, CGi, to help her write the part of the discourse which would refer to the surveillance that was being revealed by Snowden and what shd be done about it and so on. And we went to Brasilia and sat together with her, all the 21 members of the board, and she entered the room with the ten principles in hand, and said 'Look, I agree with all of this! What should I do now?' So we sat down with her and we suggested to her what she should say. Not a thing like 'Hey, hey, this, this and that!'. No, propose something. So, then she proposed basically the principals of the MCi…and this gave an additional leverage to the MCi, very important…" (Caf) ***Underscores importance of the Snowden revelations, and the influence of CGi to push MCi to the end game***

- (On the meeting w/Dilma) "It was fantastic bc the Minister of Communications at the time (Bernardo) was completely in the hands of the telcos. And when she called us, she called also the ministers including Paulo Bernardo and the other ministers, and PB had to hear that members of the govt shouldn't be doing some things, and she agreed! And P was right beside her, and very quiet! And from that meeting on, he really stopped interfering in saying some completely silly things. Like Brazilians' emails should be done entirely in Brazil." (Caf) ***This suggests that Dilma had a major influence on crushing the localization proposal***

- (32 summary) On question of 'pipes, not pols' he says questions of rights are always present, even at ICANN. Whenever there is any question regarding ownership of a site, ICANN calls Interpol and the FBI, whose tendency is to open up everything, in violation of privacy, to find out if somebody downloaded smthg. This is the case bc IP interests are heavily represented at ICANN. (Caf)

- "Brazil has an interesting detail which we cannot forget, which is the Braz Constitution. There is an article which is v clear and says that there is no anonymity in comm. But it doesn't say that the contents of this comm is public, it's private. Bc there is another article which says that the privacy of correspondence is sacred, cannot be violated. And both are v impt together. Bc you can say that someone sends smthg to someone, but you cannot say what was sent, the content. You can keep it secret. So these are impt things. How do you deal w/that in deciding, you know. Ppl are retaining metadata, ok, metadata is smthg that can be used in court. But can it really? That's my question, why? Bc this metadata is retained by private service providers who are not following certain standards, standards of certification, standards of accuracy…So these are probs, v serious probs that I think the ensuing regulation of the MCi should deal with." (Caf). ***This is an important consideration w/regard to privacy, and its foundation in Braz const.***

- (On data retention directive in EU being overthrown) "It could happen here, but I doubt it. The providers and so on, and the IP community are very strongly interested in keeping that…" (Caf). ***Not just the security services with a vested interest in data retention; there is the commercial imperative too.***

- (On MCi as digital sovereignty) "There is a way in which you can interpret that. We have our own NN regulation, we have our own regulation regarding data retention, we have our own regulation regarding .com the messenger (?) and so on. I don't see it as a q of sovereignty. I see it as a q of regulating processes, which is quite similar to any other regulation. We had a problem with this idea of sovereignty which I already told you, the govt started to make proposals, absurd proposals that all data centres should be located in Brazil for all data related to Brazil, which was completely impossible and they insisted on that. And there is a basic econ sit which doesn't recommend doing data centres in Brazil for intl users because of the costs, they are much higher…This was a hard part bc it was so silly but we had to discuss it with them…" (Caf)

- "And when the Snowden revelations came to be, many of those Ministers really thought they could, you know, enclose the Internet within Brazil, you know, and nobody could look at it any more! Of course this lasted a few weeks and…!" (Caf)

- "That q of sov, maybe the right way to see it is that we managed to create a body of principles in a national law related to the right to comm, bc it's a rights based law…it's unique I think and in this way we can say no other country managed to do so far, of course the EU has several legislations and Chile pioneering NN regulation many years ago but this body which takes several of the aspects of Net Gov together in a coherent whole, I think it was the first time and this I think the Minister could say, not sovereignty, but 'we did this, us Brazilians' no, and use it as an intl reference." (Caf)

- (On lack of coherence between MCi and previous Brazilian positions on intl NetGov) "And Anatel has a view similar to China's, to Russia's, to Saudi Arabia, to Cuba…in which the ICANN should be run as a UN body…and this is a big problem. When Anatel is present, that is the vision. When CGi.br and other ministries are present, the vision is another one, similar to the Canadian vision, the European vision…And this is the dream of Anatel to bring to Anatel what CGi.br does and there is therefore this tension all the time, all the time. Anatel was very upset when CGi was included explicitly in the MCi, very upset, especially when we went on the same level as Anatel…We heard some stupidities from the Pres of Anatel, the chair of Anatel, which was so unfortunate. And we had to call Anatel, the people at the second rank, the technicians who know that is absurd who said 'well we already talk to him but he is uncontrollable'. (Caf)

- (On the success of the MS experiment) “What the telcos expected is that whatever the bill of law that these ppl will propose, we’ll handle it when it enters Congress, we can pay the politicians, and that was the hard part, that was really a hard part. They wanted to drop Article 9 entirely. And the media companies were desperate on the articles on metadata bc they are the prime reps of the IPR (restrictions) community, so the process took over and it was really, really difficult.” (Caf)

Luiz Moncau – CTS – Rio de Janeiro - 11/03/2015

- “An ecosystem of actors saw (CS and corporate that the Lei Azeredo would be) “Instrumental to create an enforcement structure for IP rights, especially copyright…” (LM) ***Therefore opportunity and threat, depending on vantage point.***

- “There were ppl from the financial system wishing for more strict rules. So, it feels like there was a very clear agenda behind the law even though this wasn’t very clear…the only one that was clearly mapped was the IP interests bc you have the…speciality reports that the US releases and they explicitly named the Lei Azeredo as an important bill for protecting IP…” (LM)

- (off record) “some CS actors were suspicious about what wd come especially around one specific issue, there was a big reaction around the cybercrime bill from groups that wished complete anonymity online and the MC in the end this went very further than we wished and ended up with data retention provisions. But the prob is we had this cybercrime bill that wanted 5 years of data retention and we ended up in the MC with 1 yr for access providers and 6 months for content providers so this was the balance made poss by debates in the Congress. The problem is that some CS groups did not want any kind of concession and when they saw that this was smthg to be debated, they were very suspicious. I wouldn’t say there was any kind of ‘Ah, they’ve partnered with FGV’ but on the day that the partnership was launched there was some, we were monitoring the social networks, we cd see some bad reactions but what we did was we picked up the telephone and called the ppl who were reacting and said ‘Look, this is a very important bill, we will construct this collectively, we needed your participation but we can’t have you at the table bc we have ministers…and they immediately changed how they were behaving.”

- “I think this was v important bc there were some people who could change the perception of the broader public…People saying (on Twitter) ‘This is the Azeredo bill in a new form’. Oh, come on!”

- “But then you have to map the nuances between the different groups. There were some who didn’t want any regulation at all, they wanted to preserve the Internet as a kind of anarchic space… (like Sergio Amadeu, Marcelo Branco, Caribe). But most of the orgs dealing with the whole process didn’t have the legal perspective. As the FGV we were the only institution with a legal background. We didn’t have Article 19 at this point…We had IDEC who, if I am correct, were not very strong on the cybercrime bill debate bc this was not seen as a consumer issue, and we had plenty of orgs that deal with communications or journalists…So we had people who didn’t want the law (to impose) new standards of behaviour. At least this is how I feel. “

- “And we had this debate that ‘no rules would be the rules of the stronger’. And we need rules to protect people. The whole process of the MC is a process of the community understanding that maybe that declaration of ‘Freedom of Cyberspace’ maybe it’s not so true….”

- “If you look at the MC I don’t think that it is a single coherent piece. There have been changes after Snowden, there have been changes by different actors that bargained specific provisions, so the part of control is the part

that deals with data retention and this is a part of great concern. So there is this part that protects the open, free Internet and there is this part that enhances surveillance powers of the state…"

- (On importance of accountability mechanisms for state actors for access to user data) "We hear about the use of different kinds of pressures such as putting the police into the house of the director, bringing the police to the door of the house of the director of the company and there is this concern amongst the neighbours 'oh, was this guy corrupt'. There is this kind of pressure system to get at the data." (LM)

- "I think, and this is maybe smthg to criticise in the CS behaviour, CS praises a lot the Marco Civil, and we have problems in the MC, problems of drafting the law, problems of things that were uncertain, but CS had to defend the law as a whole to get it through Congress…I don't know if all the groups switched to the new mode where they can criticize the things that are bad…(LM)

- (On the question of the naiveté of some CS w/regard to the political process) it led "some CS groups to fade away.." while those that remained were better used to the lobbying process eg IDEC and Intervozes. (LM) ***This is relevant to the idea that more radical ideas/voices were effectively silenced.***

- "We took this objective distanced position during the drafting…after the bill went to Congress we were relinquished from these obligations…" (LM)

- (17 on open letter to Molon threatening to withdraw CS support) "So, CS said we need to draw a line and make them stop. We need to offer them smthg, 'if you go beyond that you will lose everything'…" (LM)

- (On Molon's public interest focus and his effort to negotiate with all parties, esp CS) "OK, we will not put some strong efforts on the data retention, but we will stick to the NN, bc if we fight both, we will lose"

- (On q of the exercise of power) "Telcos, broadcasters, IP rights holders, state authorities seeking data access, civil society and Internet companies, these are the main players. Telcos fighting NN, broadcasters fighting the provision that would create some safeguards against IP violations so they managed to restrict the notice and takedown provisions, exclude any copyright from the N&T provisions. Equally the other IP owners. Broadcasters, newspapers and the media generally in favour of NN. CS in favour of NN and against data retention and authorities in favour of data retention" (LM)

- (on winners and losers) "The telcos lost almost everything so they made a poor job, which is incredible bc they were probably the most powerful in terms of how they managed to influence Congress…They chose the wrong strategy, they chose not to communicate, not to jump into the debate…They went the public route, but instead of putting the debate on the table, they were kind of disturbing the debate, polluting, creating noise, trying to confuse the issue, so the Deputies that were against NN were saying things totally absurd. They are not putting the good arguments against NN. There are excellent arguments if you look at the debate in the US…they were not brought to Brazil. So, there were some really dumb affirmations on why NN should not be approved. This is one thing. Broadcasters were really smart and they didn't come up to the front. They won on NN. They used media right, so this is a lot. And they managed to win also the N&T provisions through lobbying. And CS groups were very effective considering the power in hands, which is almost none! And authorities were, this is a hard…bc the MC was being pushed fwd by the MoJ and you have the Fed Police which is inside the MoJ so they made their negotiations inside the Ministry so we didn't have access to what kind of pressures. So they were v successful in bringing their claims forward." (LM)

- (25 On q of the legitimacy of CS groups) "They are reputable I would say. IDEC has a really strong history of defending consumer rights…"What matters more (than a high degree of public awareness of the relevant issues) is these groups they have a strong public interest mandate, they are truly public interest groups, they are not funded by corporations, this is what brings a lot of legitimacy." (LM)

- (on the transparency of the public consultation serving to level power imbalances). “Definitely, some positions were known in advance, so all the contributions were made public. We knew that there would be some reaction by IP holders but we didn’t know that they would be so organized, so if you look at the MC platform you see that we have contributions from associations of IP holders from all across the world…This was a v important thing bc it made clear what were the specific points specific groups would oppose…so it gave us the opportunity to isolate one or other group to approve the most impt things.” (LM)

- (31 summary) The public consultation was impt to give CS the experience of knowing how to contribute to a process like this, as well as learning how Congress works. And the CS groups became invested in the project and would not simply let Congress kill it.

- “Much closer to a multistakeholder ideal than a traditional form of drafting a law…” (LM)

- (On the Brazilian context for the passage of the MC) “There is one thing that is very important which is concerns about media democracy and diversity, pluralism etc. so NN issues gain a higher proportion (importance?) bc of this. I think countries such as Germany that have a better environment for media maybe don’t understand how deep the question is when you have only certain types of discourse circulating.” (LM) ***The peculiarly Brazilian significance of NN.***

- “There is this historical background of the debates around the copyright law reform which were very attached to the digital and the access to information, access to knowledge, and this was something that predates the MC and built the capacity and created the network among certain orgs (lots of debates organized around this topic in order to ‘break the taboo’ of conventional thinking around copyright). This is a characteristic of Lula’s govt, on many issues there were lots of debates, debates, debates, debates…a kind of deliberative democracy…MC was one of these initiatives…a strategy that Dilma’s govt completely lost.” (LM) ***Shows the importance of Gil and his policies in preparing the ground for the MCi***

- “And then if you go two steps behind you can see the whole process of Brazilian dem I would say, so if you go twenty years behind all of this would be completely impossible. All the CS groups, all the participation, this will of taking part, not losing control of things that are going on in Brasilia, participating and making sure that the public interest is being taken into account…”(LM)

- “When it reached Congress at some point everyone felt that the bill would be killed there because we had the chance to play at the playground and ‘ah, the debate about this impt law’ and then the lobbying and traditional politics would take care of this good initiative and then the Snowden revelations shook the environment, right, and called the attn. to the Internet and what is going on on the Internet…Without Snowden we probably wouldn’t have anything at this point…” (LM)

- (On the peculiarly Brazilian conflation of human and consumer rights) “Maybe this is a developing world view of consumption bc if you want to deal with consumption in a developing world where only the rich can consume you are not really a public interest group…So all of these groups have this strong view that consumption is not just what you pay etc. but how to include the whole portion of ppl that doesn’t have access to the market, that don’t have access to basic service, access to education, basic services like energy and water, these are deeply linked to human rights, to what in our Constitution is called the ‘dignidade’ of the human being…There is this strong perspective of creating an environment of equality. NN is related to that. And all the work these orgs do with copyright and access to educational material and culture these are related to, Brazil is one of the most unequal countries in the world.” (LM)

Web company executive - São Paulo - 06/03/2015

- By 2009 a prominent expert on online privacy and intermediary liability and opted to “jump into the discussion” to “raise the bar of the comments”

- First round of public consultation was to provide input into what should be in the MCi, and “was to the tune of YouTube comments I am afraid to say”. “99% of things were really horrible, and 1% were actually salvageable” (ML)

- “The original system for MCi for intermediary liability was notice and takedown for any type of online content” (ML)

- “Before MCi this issue was mostly tackled by precedent…that’s a very problematic process in the sense that you are essentially saying that anybody at any time can complain about any third party content and have that taken down just for the sole reason of the complaint” (ML)

- “A notice and takedown system should always be the exception and never the norm” (ML)

- “Working as a lawyer I saw the pernicious effects of not having those safe harbours into the law” (saw start-ups for apps give up on their idea because their legal liability was medium-high based on established precedent) (ML)

- “By then people were still perceiving this debate as a David against Goliath thing, in the sense that this is something that Google and FB and Twitter…these are the companies that can actually fight this all the way to the Supreme Court of Brazil…and ppl are kind of forgetting that I am not speaking on behalf of those guys, I’m talking about the entrepreneurs I see day to day who are afraid of these legal risks and are basically not going to be able to provide these tools and these platforms and then that leads to a chilling of freedom of expression”

- (13 – Sum) Doctrine of 1st amendment works very well for US, but in Europe they strive to balance rights, an approach that Brazil has tried to copy. CDA in fact goes too far by restricting the judiciary’s capacity to have content removed “absurd” (ML)

- “There was always the concern that members of Congress would legislate for their own interest and some of them really loved the idea of a fast track for content removal, for obvious reasons, especially in Brazil that has this complicated political climate, not 100% a mature democracy…” (ML)

- “And that’s one thing that the activists actually sometimes get wrong. It’s one thing to come up with the perfect version of your dream law, it’s a completely different thing to actually move that through Parliament.”

- (16 – Sum) It’s OK to use me as a proxy for web co’s because it was pretty much like that

- “In order of importance, the safe harbours was really the thing to get. In the industry we even joked in the trade association meetings that the Marco Civil ought to really have only two articles, Articles 18 & 19” (ML)

- “Of secondary importance…but not nearly as important as the safe harbours were the regulations on what kind of data to retain, for how long, to which authorities they should disclose…bc that has always been a mess” (ML)

- (17 Sum) Google’s position was always that if they divulged information to the authorities, that was data that the user presumed to be private. In Brazil there is no subpoena or ‘middle ground’ like in the US, there is either a court order or an unofficial request. Some judges would take a letter from the police as legal authority but Google would always say, no we need a court order. (ML)

- “Before the MCi it was a mess. Some companies didn’t want any trouble with the authorities so they would just disclose information directly with no care for due process…” (ML)

- “And of course we tried to influence the system so it would be in compliance with our own practices which is basically that you always needed a court order” (ML)

- “And bc the bill is spearheaded by the worker’s party they are very concerned with safeguarding the rights of the defendants, very pro-left agenda in that sense so that was a no-brainer for them, it was obvious for them that only a judge could order companies…so I wdnt say it was a complicated battle at all, it was already there so it was not smthg we really needed to influence” (ML)

- “and from a very distant third…what kind of rules are they going to put there for user rights and NN and that was a debate that most web co’s preferred not to engage, not bc they did not have a clear position but bc they knew they would be picking a huge, huge fight with the telecoms system” (ML)

- (Sum 22) July ’11 to August ’12 once it had entered Congress but before any votes, Molon organized the audencias publicas so that every stakeholder had an opportunity to be heard.

- “From Aug 12 to December 12…that was then people realised the force and the strength of the telecoms sector bc they basically wanted to block NN rules, they didn’t really care about the rest. For them safe harbours were not an issue bc no-one in their right mind actually sued telcos or ISPs for third party content…for them of course the whole NN debate was about preventing them from developing new business models so they exercised some really heavy lobbying and were able to obstruct the vote on the bill ” (bc of all the stalled votes) (ML)

- (Sum 23) From Jan to June 2013 the bill was really stalled. He would speak to members of Congress and the Executive and they would say there is no consensus and they don’t want to lose the vote (ML)

- “It was really frustrating bc my job at that time was to ensure that the bill did not lose its momentum but basically the govt was concerned with several other things” (ML)

- “And then June 2013 Snowden happened and the Brazilian govt played the card that the MCi was going to be the solution for Brazilian sovereignty, to safeguard Brazilian rights…and that’s when things took a turn for the worse in the sense that the MCi was a great bill for giving users their rights and giving web co’s legal certainty…and things were inserted into it as a response to the US govt…and that’s when things were really concerning…it wd be a very schizophrenic scenario in which we had been some of the major supporters of the bill moving fwd and suddenly we wd have to actually try and halt it, try to change parts of it…and data localization provisions which was basically such a huge problem inside of the company…every US company actually gave the order from HQ to all of the policy folks on the ground here…everybody than you can think of, if it comes to that we prefer you to nuke the entire bill, we prefer to lose the safe harbours that we are going to get than have to comply with this craziness of data localization…and you can imagine the cost and you can imagine the domino effect, if Brazil wants that then Turkey, China, Russia…and basically what my job became suddenly to actually try and salvage the MCi, let’s see if we are able to safeguard the provisions that we like, see what we can live with of things that we may not like so much and see if we can get rid of the craziness of the data localization thing…” (ML)

- (Sum 28) On public pronouncements to the press we said that was not true to the MCi as originally intended (ML)

- “Brazil never actually wanted data localization in the first place. The real issue on data localization was jurisdiction… Web co’s…kind of shot themselves in the foot…(if there was a request for user data) basically what

we would say as web co's is basically that this is actually in conflict with US law and bc the services are controlled by the US parent company you actually need to go through the MLAT process…and that was a thesis that has always held a lot of water anywhere else in the world but the Brazilian authorities were pretty much adamant saying, some of them even said that it was humiliating to go through the MLAT process. The reasoning was very simple, so long as you have an office in this country you are bound by local laws and you have to have your local branch talk to your parent company regardless of who does what and disclose the evidence that we need" (ML)

- "So that is what explains Article 11 of the MC as it became law, which is very strong jurisdictional provisions…" (ML)

- "And that became a secondary problem here bc suddenly we were dealing with the data localization thing and the jurisdictional thing. It was not smthg that our legal dept actually liked, or for any other web co for that matter. It pretty much said well ur going to have to pick and choose, we're not going to win both battles. We're probably going to lose the jurisdictional battle…" (ML)

- (On the fact that the first draft revision which stipulated that only co's with a revenue <x would be subject to the law) "It was basically as if they had written, if your company is called Google or FB or Microsoft you have to comply with this, or else not a problem. Even within Brazil it is v funny bc the data localization provision was called the 'Google amendment'. It was basically a way to get web co's to comply with local law. It was never the intention of actually forcing… to actually host it in Brazil for sec reasons, of course that was the public discourse…but if you take a look at it with less anger in your eyes you realise that what they were trying to do is to make sure that local authorities had that level of access that they were perceiving the US govt to have in the first place." (ML)

- "We did a major campaign explaining the probs with data localization, we were successful in convincing pretty much almost everyone in Congress of the probs that it wd cause. And the govt actually conceded…" (ML)

- (Sum 33-34) While the bill was stalled the telcos and other sectors were exploiting the lull to have amendments prepared to be inserted 'on the fly' by Members of Congress that would disfigure the bill. Once the govt realised this they backed down on certain provisions, including the data localization. Though as a result in Feb 2014 they strengthened the provision on jurisdiction. (ML)

- "We were really happy about the end of data localization but ppl were really concerned with the jurisdictional thing." (ML)

- "For trad media I would say they won really quickly. But that was before the whole Snowden thing. When the MCi was really ready to be voted and the telcos were exerting all of their pressure bc of NN, the copyright media sector were really concerned with safe harbours and the reason for that was really simple they wanted an exception to be carved out for copyright…The moment they got the exception they wanted they were suddenly heavy supporters of the bill. They came from radical opponents of the whole idea…to being very heavy supporters…" (ML)

- (On opposition of CS to IP amendment) "The web co's looked at that and said listen guys, let's be honest here. Even in the CDA in the US which is the biggest safe harbour poss in the world has a carve-out for copyright…So, in a way our position ended up being a middle ground between these two extremes (CS and trad media)…(On "huge" pressure on Molon to introduce the amendment) And by the media sector let's be honest here, it was the biggest Brazilian TV network, Globo, and of course copyright lawyers and copyright associations, the MPAA, were really concerned but the major player that made the changes was Globo. Web co's are happy with that."

- (On disappointment of CS to IP carve out) “it was a little bit of political naivety on their end in the sense that they were still clinging to the idea of ‘let’s keep our perfect, sacrosanct bill in tact’…But that’s not how politics works realistically…it took them a while to actually realise that.”

- “From CS in general a couple of activists and especially consumer groups were really strong in defence of NN. I wd say that if it wasn’t for them then that might have gone away. Bc web co’s were not really engaging in NN at all. **<u>They were just looking out to see ‘do any of these things actually limit our practice’. No they don’t.</u>** Is this a positive thing to have. Yes. But should we advocate strongly for it. No. Because we didn’t want to anger the telcos more than we already had worldwide….My take is that it was a little bit of a mistake bc the activists were already so up in arms defending neutrality that the telcos thought wrongly, which was v funny, that we were the ones fuelling the fire. They thought that the web co’s are the ones controlling and are behind the scenes of the activists bc why would a regular person care about NN is what they were saying…we actually let them think that even tho it wasn’t true at all...They wanted us to come to a middle ground ‘we can accept this if you can accept that’. And we would say, yeah, let’s take it over. I didn’t have even 1/10 of the leverage that they thought that we did.” (ML)

- (Sum 42 On influence of CS) They were very vocal on privacy rights and after Snowden, if you look at Article 7, in the original draft it had 5 or 6 clauses, and the final bill contained 13. “And the whole reason was the whole Snowden thing. They wanted to include some minimum privacy/data protection safeguards in there so that it would be perceived as CS (accepted?). ”

- “When you speak of data protection and web co’s that’s kind of the subject that you say ‘no please, no regulation whatsoever at any time’ but it was not realistic at that point to even oppose that. It would have been perceived as very corporate thing, non user-centric. Of course the MC has always been about the user first and foremost…(On the 3 pillars of NN, freedom of expression and privacy) “Going against any of these things wd be very complicated.” (ML) ***It’s perception as a bill of civic rights therefore did insulate it against some of the more egregious pressures of certain interest groups***.

- “For CS we were as strong supporters of NN as they were. Maybe they didn’t realise that we were never actually engaging on that. But yes, for them, we were all on the same side.” (ML)

- “I don’t think we had any disagreements with CS at all in the MC process….even if we weren’t actually talking or engaging with them in an organized fashion, there was always some alignment of minds and ideas”

- (45) “We were very aligned on that (resisting mandatory data retention with CS) we ended up losing that battle in the final moment of the MCi…That was a point of very strong coherence”

- (46-47 sum) “It made no sense whatsoever the data protection provisions in the MC as a reaction to Snowden” The data protection provisions in Article 7 are nominally a reaction to the Snowden revelations, but that was an issue of spying and security, and the provisions in the MCi are about the practices of commercial data operations.

- “These co’s basically live and thrive on the ability to collect and use all of this info… target advertising which is the lifeblood money that comes from these things…and of course activists and some academics see that as a necessary problem in the sense that yes we would be happy if that went away tomorrow but some of them are more sympathetic to the idea that yes that you realise that with no ads and no data collection any of these services wouldn’t be free. So, there’s always a tension there but I would say it’s a minor (issue)” (ML)

- “The telco sector… started defending things that we didn’t like. You actually saw a few telcos in favour of data localization. Why? Bc they knew it would upset us. So it is not exactly as if they were advocating for smthg that wd be beneficial to them, they wanted that to be perceived as a kind of a…leverage thing.”

- “To be honest some ppl defend the privacy thing without realising what the law actually allows. The whole data retention was a point of contention internationally, for example EFF, you probably remember…said that the MC is very nice and all but we cannot actually support any data retention whatsoever… And if you check their later positions they actually came to terms to that, they still say the MC is good with the exception of that…”

- “But let’s be realistic…it’s not something that activists were really concerned with for one simple reason, they did realise that law enforcement actually needs that inf to get anywhere and the pressure from law enforcement and particular attorneys…was very strong. So even though they did fight to the bitter I would say on that front they actually came to terms with the idea that if they didn’t accept that then the MC probably wouldn’t happen at all…” (ML)

- “I think that the MCi should really be praised, but for the process. If you check the contents there is nothing totally new there. I mean, safe harbours exist in the US system since 1996…In Europe since 2000 you have the commerce directive which basically already states that intermediaries are not going to be held liable…I wouldn’t say that it is the substance of the MC that is so innovative or such a model to the rest of the world even though Brazilians like to play that card bc it’s a beautiful thing to say…I think it’s really about the process of how it actually became law…” (ML)

- (On Abranet) “One of the major disagreements when the MC was in the public consultation process was ‘do we even want this?’ Abranet at first was against the very idea of Internet regulation. Their reasoning was, even if the draft law is good, it can get significantly worse so we are better off with no law whatsoever. And we actually had a very intense work trying to make them see that, well, whether we like it or not the law is coming so we may as well work to make sure we at least have it be smthg we can live with. And then they had a change of heart when they realised it was really going to happen regardless of what we defended as web companies…they came to terms and started being very aligned and very present there.” (ML)

- “I still have to say, from a lobbying perspective, the web co’s did most of the solo work rather than relying on associations. Why? Very simple reason. You do that when you actually support the bill. So when you support the bill as a company you have a lot more leeway and freedom so to speak to actually be out in the public defending it, *as a company*. Whereas if you’re against a specific bill, you don’t want to be singled out…”

- Camera ae net (e-commerce industry association). Brasscom (hardware and software association)

- “Everything really strong, those bombastic declarations, came from Sinditelebrasil!” (ML)

- “I actually said that at one of the meetings: “why exactly are you guys so up in arms against NN? If you claim you already all of these things, what are you so concerned with? What exactly is that going to change in your business practice?” We are concerned that we won’t be able to have new business models, it’s not what we are doing right now.” (ML)

- “After it was entered into Congress Molon was the only one that actually held onto the multistakeholder spirit. The rest of the Parliament they just treated it as a regular bill.” Claims that it was a civsoc inititative and should be treated as such “pretty much fell on deaf ears” (ML)

- “Of course, when the MC was finally approved almost unanimously in the House of Reps bc of the whole pressure of NetMundial…it was almost like we were watching a sci-fi movie. Bc these same guys who were fighting each other like a week before and suddenly everyone was like, ‘yeah, this is for the benefit of Brazil and the Internet ecosystem! Yeah, let’s approve the MC!’. It was kind of like hilarious to see that. But that’s politics, right.” *This contradicts Barbossa’s claim that the civsoc origin was key to securing support from members of Congress.*

- The MS origins are “it’s a very nice story to tell…” but “after July 2012 it was pretty much just like interest groups clashing all the time.”

- In ref to the online portal “If there’s smthg that’s biased about these tools from the get-go it’s that they invite comments on the draft, and there could be plenty of things that are not on the draft but are worth commenting as well.”(ML) ***Again, the power of setting the terms of the debate.***

- (On CS) “They did learn quickly the harsh lesson that politics is the art of compromise” (ML)

- (1:08 On q of power) “In a way the PT were the champions of this project. They wanted the best for users. So, CivSoc did exrt some pressure on NN but that pressure was also embraced and even shown by the PT themselves to the rest of the Parliament. So, I’m not saying they did not need to do advocacy but my point is they already had the PT on their side. It wasn’t a hard sell to say that NN was a good thing, that user privacy was a good thing…” (ML)

- “But I have to say for interest groups, we the web co’s were the most successful. And the reason for that was our constant presence there (Parliament)…and I guess part of the reason we were so successful compared to the telcos was we wanted to tell the good stories. Basically, we were saying ‘hey, this is how the system works elsewhere on intermediary liability, Brazil really wants to attract more digital entrepreneurs, Brazil really has all this creativity. Look at the local start-up ecosystem. Look at all of these things. So, data localization is a bad idea for these reasons….Web co’s don’t’ do any support of Congress. None of these co’s actually help with their campaigns…so, essentially it was really the power of the arguments and I guess for that I even say for sure Molon congratulated me for my honesty. We were really really concerned, Google in particular, FB as well, to not simply be corporate lobbyists defending our own points of view….We didn’t want to destroy the other party’s arguments, we just wanted to show they were a bad choice policy wise.” (ML) *Success premised partially on underscoring the economic benefits of these policies.*

- (1:10 On q of whether the MC secured a ‘civic Internet’) (Summary: users weren’t really concerned with commercial data storage, they were worried about state authorities accessing their communications. In that respect, the MC is a boon for privacy bc now defendants can establish if they have been investigated according to due process.) (ML)

- “For users it does assert rights that were maybe implicit in our legal system but now they are flat out mentioned there. It does create a few others, like on data disclosure, on data use, or even NN which is obviously a major core user right…” (ML)

- “If you ask me what’s really novel about the whole thing in Brazil: the safe harbours are novel in the sense that you have a very clear, non-generic liability rule. As a novelty, it’s the privacy provisions of Article 7.” (ML)

Carlos Affonso de Souza – CTS - Rio de Janeiro - 12/03/2015

- (Sum) Carlos Affonso Souza was Vice Coordinator at CTS when the MCi was first originated, while Lemos was director. Working on MCi since its inception as an idea. In 2013, him Lemos and two others left FGV to form the ITS.

- “Since the MCi nowadays is a Federal law, to talk about the humble origins of this Federal law sometimes looks even embarrassing, something so trivial, it looks so small. But the whole idea behind it I could tell in a more grandiloquent way which would mean to say the MCi was the theoretical engine that was conceived to fight the

cybercrime law that was being discussed in the national Congress, but on the other hand the MCi was conceived as an idea at lunchtime when Ronaldo, myself and Bruno Magrani (now at FB) were discussing how to counterattack this multitude of laws that are being submitted in the national Congress. How could we communicate in a better way that criminal law should not be the first piece of legislation to be approved in Brazil." ***Lemos' public role as the originator of the MC is likely overstated.*** (CAS)

- "So that when the MC came to first as an idea and Ronaldo wrote an article to Folha newspaper on that back in 2007. But I really have to say if you look at the very first origins of the MCi, it was in a report on how to fight spam that at the time, CTS, but especially Ronaldo, myself, Danilo (?), who at the time was not involved in the Ministry of Justice whatsoever, was just a friend and one of the best experts that you would ever think of on privacy and data protection law at that time in Brazil. So, Ronaldo, me and Carolina Rossini…so the three of us, we used to be at FGV at this time, we invited Danilo to join us in a project that was commissioned by CGi to come up with a study on how CGi could be useful in the battle against Spam…When we were writing this report on Spam, it was clear to us that most of the time when you look at the bills of law that deal with Spam, I would say that 90% of them would go in the track which will be to criminalize spam, to say that spam's a crime therefore the person who sends out spam will be subjected to this or that penalty. And doing this report we wrote some paragraphs saying that this was not the way to go. To simply criminalize a behaviour online is not the best way for you to regulate this specific behaviour and if it was true in the very specific issue of spam, that was the genesis for us to proceed in our discussions in thinking a little bit broader on that…and to take this argument to the next level would be to say that Brazil should not have criminal law as the first stage in regulating the web down here but to take a different approach in having fundamental rights and human rights as the main driver for this new piece of legislation would be a better approach. So we realised that this was a line of thought that could be helpful not only for the Spam study…but then like v quickly we thought maybe it's a good idea for us to start this conversation with CGi.br and at the very same time the whole discussion about the LA started picking up in Congress so we thought maybe that is the right venue for us to bring this discussion along…" ***This Spam report is another less heralded dimension of the origin of the MCi.*** (CAS)

- (On tendency of Brazilian legislators to criminalize behaviours as a first resort) "I would say that it is easier for electors (voters) to understand that they are fulfilling their mission bc you are penalizing something…It looks like an easier way to say I have done the task I was commissioned to…" (CAS)

- "There is one blindspot in this story, even for us, which is something quite unique…We start to advertise this idea (the MCi) quite a lot but to get Lula, our president, to defend in public our idea is quite a stretch so…my guess is we have a political environment or framework at that time that it was quite useful for our President to antagonize the Azeredo bill of law. Azeredo was a very preeminent senator and deputy from the PDSB…and Lula could address one issue that was very strong in his first mandate which was free culture and free software and Brazil was in need of some sort of regulation on the Internet. We still see today that for a politician to address this issue it makes the politician looks updated, interested in some issues that are relevant to the daily lives of people. So this is not something that is trivial, a small part of a bigger political plan. To talk about technology is increasingly essential for your everyday political agenda. So there is one explanation for this which was for Lula it was very convenient to have what later became the MCi as part of his speech during the Free Software Forum. It was smthg that could connect easily to the Free Software culture, that was getting bigger and bigger in Brazil, it would antagonize a bill of law being spearheaded by the opposing party…so why not take this opportunity…" *Important point on the significance of technology in the global South.* (CAS)

- "If there was some group that we thought that could easily be plugged in to the whole idea of the MCi, it was at the time the community around free software bc you have to understand that back in 2007 we didn't have

the number of entities, our ppl, really engaged in online activism as we have today…" ***Free software community was the substrate for the MCi*** (CAS)

- (Sum 18-24) The IGF Dynamic Coalition on Internet Rights and Principles met in Rio for the IGF conference in 2007. Carlos and Paulo Prado from the Ministry of Culture worked overnight with Italian counterparts to create a declaration on an Internet bill of rights. It was signed by Gilberto Gil but did not have the support from the whole Brazilian govt, just the Ministry of Culture. It shows that even in 2007 the Brazilian government was thinking about the possibility of an Internet bill of rights. ***This shows the importance of Gil's early campaign on free culture and how it created the conditions for an acceptance of related ideas like online rights.*** (CAS)

- "Since Ronaldo has published the article and was the face behind the whole idea of the MCi in the first place it was only natural to have the Getulio Vargas Foundation, especially the CTS, as the academic partner…" (25) ***Ronaldo Lemos is very much 'the face'!*** (CAS)

- Describes the process and methodology underpinning the MCi as "handcrafted and artisanal" and not "industrial or high end" because it was the first time something of this type had been attempted in Brazil. (CAS)

- (On the design of the first round of PC) "The idea was to go broad on the first phase, and then feeling the temperature of the debate, and having a broad spectrum of subjects and issues, then go with an actual text, wording of the law." (CAS)

- "We had almost a non-existence of trolling, or of people who were like messing up the debate…but it was only the first phase. The trolling came along when the MC got more successful." (CAS)

- "We were really lucky to have this team in the MoJ. We could not have asked for better people to work with" (CAS)

- "We worked with Pedro Abramovay, Felipe and Guilherme Almeida. So, those three guys were incredible. They had the very same view that we had for the MC as a whole. So, in terms of substance, of content, there was no major discussion or different opinions from the team of the MofJ and our team…At the end of the day the MC was smthg that was being carried out by the govt so our position was to advise as experts on the issues for MofJ, but the last word was also from the MoJ…" ***Complete harmony between FGV team and MoJ team shows a shared ideology. One derived from their 'progressive' views as IP lawyers.*** (CAS)

- (On q of controversy within CS about selection of FGV as partner) "FGV could never be your traditional civil society entity, that is clear (bc it was a public policy school created by govt)…there was among some reps of CS the idea that FGV could never be as progressive as they would like the Foundation to be…(goes on to describe how in the 10 years that Carlos was at CTS they promoted some progressive issues like Creative Commons) (CAS)

- (On pushing the agenda at FGV) "We were the very first law school in Brazil to have IP and Tech as a mandatory discipline for students to have during their law courses". *This is good background for showing the depth of influence of Lessig et al's ideas on IP.* (CAS)

- (43 sum) CTS issued a statement against ZR during the regulation of the MC and FGV contradicted it saying it was not the official position of the foundation. (CAS)

- (On q of how to conceptualize the MC) "It was an initiative co-organized by the government and ourselves to create the best and most diverse and most transparent bill of law that Brazil ever saw in the recent period of time because we were using the Internet and all the advantages the Internet brings along, transparency and accountability, to the legislative process. So it was a process to radicalize the democratic component of the legislative process (CAS)

- "Everyone keeps saying that the MC is an example of a MS experience…That is pretty much true, but since the MC was the very first initiative which were using this MS process, that was already being tested on by CGi…so MSism was smthg that was not strange for Internet policy in Brazil at this time, but to create smthg as a Federal law out of a MS process was smthg unique…" (CAS) ***CGi the trailblazers for MSism in Brazil.***

- "(On q of exercise of power) How decisions were made is smthg that most of the time it is not focused on (the attn. of observers) and part of the reason is we were experimenting on that. This is smthg that nowadays we have better tools. We have a more transparent, accountable decision-making than we had at the time of the MCi. Bc what we were doing at the time is printing out the comments and, like 'Huh, those guys are in favour of liability with faults, those guys are in favour of strict liability. Let's read them all and see'. So it's a very artisanal way of doing it. And especially when you come back to the community and say why this understanding was victorious and the other was not contemplated into law. This was smthg we were learning by doing. In this regard, power comes along when because someone has to decide what the MC will look like when it is going to be sent to the national Congress…So CS, the private sector, academia can provide the govt with all the best inputs but it's important to understand that even in MS'ism, saying that there is equal footing…but if we're talking about a federal law, it's a governmental business to take on so of course in this regard govt has a favourable position in the MC in this first phase, before sending it out to Congress. Once the MC was in Congress it was interesting to see how different economic interests and a different spectrum of actors end up playing along." ***The power of agenda setting.***

- (Still on power) "So, lessons learned: there is no uniform private sector. Different company sectors have different economic interests that may antagonize each other, so it was interesting to see how in the MCi, the Internet companies end up siding with CS, but I think it was very instructional, it was really smthg positive for CS to understand that those alliances may or may not happen. It happened with the MCi, it may not happen with another bill of law like the data protection law, for example…But it was important for CS in Brazil to understand that alliances can be forged and dismantled depending on the topic that you're talking about in Internet policy." ***Similar point to LeFevre and ML on the 'maturation' of CS during the MC.*** (CAS)

- "Second, it's easy to demonize or say that the telcos were the main antagonists around the MC, but then it is important to realise that the telcos are not represented in the national Congress. There are representatives there. So the deputies and the senators that are taking the telcos' interests in the debates. It's smthg for us to really take a look on, especially now in Brazil when you are discussing private financing to campaigns…so the MC was a living example of how those issues can be so pre-eminent. As you can see this deputy or this senator is bringing out an argument that is like most likely an argument that you could expect from a lawyer from a telco to bring along to the table…" ***Lays bare the telco influence in Congress*** (CAS)

- (Power cont.) "In terms of power, a lot of the opposition that the MC faced, it faced for the sole purpose that it was smthg that was submitted to the Congress by the Labour Party. So, if you are against the Labour Party, if you are in an opposition party, you would be against the MCi. So, in terms of enrichment of political debate in Brazil, the MC is a very sad example in which we saw criticism of the MC from people that most likely have not even read the wording of the MC. They are against bc it was smthg submitted by the PT." ***Realpolitik at work too – something I have to conceptualize within the frame of IC.*** (CAS)

- "Right after the MC, during the elections, it exploded and it was clear in the social networks, in Twitter and Facebook how Brazil ended up using very badly social networks during the elections…In terms of political engagement, it was even better if you don't even access your social network…" ***Underscores perhaps the missed opp of the MCi, to create a more substantive, democratic framework for the Internet*** (CAS)

Bia Barbosa – Intervozes – Brasília - 17/03/2015

[00:00:01.13] Interviewer: Começar a gravação... É. ... Quais eram os objetivos primários de intervozes em tentar de influir a forma que tivera o Marco Civil.

[00:00:13.10] Respondent: O Marco Civil ... Bom, o Intervozes ele é uma organização que existe há 12 anos e cuja bandeira principal é a defesa da liberdade de expressão e do direito a comunicação. É..... e essa, e essa, essa missão da defesa da liberdade de expressão, ela tem duas relações com a internet principais na nossa visão. Uma é você ter o acesso à internet porque ela é também um instrumento de acesso à informação e de acesso ao conhecimento e à cultura. Que é fundamente. Que é um direito, uma parte do direito à comunicação que a gente entende. E ela é um espaço fundamental cada vez mais de exercício dessa liberdade de expressão. De você poder produzir conteúdo, você poder produzir informação e ter um espaço pra, pra difundir essas informações. Então, é.... a existência de uma lei é .... que desde o início foi proposta pra garantir direitos dos usuários na internet como o Marco Civil era fundamental pra gente. Então, e.... e. ... e para além disso, para além da regulação geral que foi proposta na lei, tinha uma parcela específica sobre a questão da liberdade de expressão porque o Brasil vinha se tornando um país é....e ainda é, mesmo com o marco civil em vigor, um país com o maior número de retiradas de conteúdo pelo simples mecanismo do 'notice and take down', e isso vinha violando uma série de é... grupos sociais, é... segmentos da sociedade civil organizada, que é. ... mediante qualquer tipo de alegação, de qualquer tipo de justificativa tinha seus conteúdos retirados do ar pela avaliação individual do provedor daquele serviço que não tinha nenhuma condição jurídica de analisar se aquilo de fato tava violando um direito, se aquilo tava violando um copyright, ou tava em alguma coisa desse tipo. Então, pra gente é.... ter uma legislação que garantisse um acesso igualitário à internet. E, aí, isso seria ....pra isso todo princípio da neutralidade de rede seria fundamental e que na outra ponta tivesse a questão de uma garantia a esse exercício da liberdade de expressão na rede, tinha tudo a ver com a nossa missão. Então, por isso que a gente participou desse processo. Obrigada, <uninteligible>.

[00:02:45.16] Interviewer: Obrigado!

[00:02:45.16] Respondent: Então, por isso que ....por isso que pra gente era fundamental incidir nesse processo porque é. ... o Marco Civil, várias pessoas já devem ter te falado isso, ele nasce como uma contraposição à iniciativas de tentativas de criminalizar algumas condutas na rede. Então, ele nasce como uma proposta da sociedade civil pra garantir direitos é.... dos usuários, é..... então, o próprio princípio da existência do marco civil era algo que tinha a ver com a nossa missão. Então, quando a gente percebe que essa lei vai ser de fato votada, né? Passar pelo congresso, e que há muitos interesses contrários a que ela seja aprovada, principalmente das operadoras de telefonia e de acesso à internet, né? A gente achou que era fundamental a gente se envolver nessa luta.

[00:03:40.25] Interviewer: uhum....E quais eram os métodos que vocês usaram para <uninteligible> no processo?

[00:03:47.14] Respondent: Então, no início. Porque o Marco Civil vem desde de 2000 e, né? lá atrás. Nós participamos não de forma muito intensa no início das consultas que levaram à, à elaboração da lei e no início da tramitação do processo no Congresso Nacional, a gente também participou de alguns debates, de algumas audiências públicas, mas a gente de fato entrou é. ....com muito peso pra defender a aprovação da lei a partir de

Junho é .... de 2013, ou seja, quase um ano antes da aprovação da lei, que foi Abril de 2014. Em Junho de 2013, é....

[00:04:33.14] Interviewer: Depois das revelações do Snowden, então?

[00:04:35.02] Respondent: E depois das... é, é, que ....porque o Snowden fez as denúncias em Junho, e a partir de Setembro. Quando o Snowden fez as denúncias em Junho, o governo federal brasileiro é. .... adotou um mecanismo que existe aqui no Brasil que é você caracterizar um determinado projeto como prioritário e, significa dá um título de urgência constitucional pra esse projeto. Isso faz com que ele passe na frente de todos os outros no Congresso Nacional, e se ele não for votado em 45 dias, o Congresso Nacional não pode votar mais nada. Ele tranca, o que a gente diz, a pauta do congresso nacional. Então, a partir desse momento quando vieram as denúncias do Snowden. E, e essa característica foi dada para o projeto. É.... não só .... não foi uma leitura só do intervozes, mas de todas as entidades que estavam envolvidas que foi: "Tá, agora é a hora. A gente tem que botar peso nessa história, fazer esse debate chegar pra sociedade como um todo... e...... e garantir a aprovação da lei. Aí, 45 dias depois das... que a Presidenta colocou .... Ela foi até a ONU, fez aquele discurso defendendo a privacidade dos internautas e ela decretou essa urgência constitucional pro projeto, 45 dias depois ele passava a trancar a pauta do Congresso. Isso foi no dia 29 de Outubro de 2013, eu me mudei para Brasília no dia 26 de Outubro de 2013. Então, a partir do dia 29, foi cem por cento do meu tempo de trabalho, foi trabalhar no Congresso nacional pra explicar pros parlamentares o que era isso, porque era muito poucos deputados que entendiam o que que era o Marco Civil, que só foram olhar para o Marco Civil quando ele de fato passou a impedir que outros projetos fossem votados. Você tem 513 deputados pra fazer esse diálogo. Você tem muito poucas organizações da sociedade civil aqui em Brasília, a maioria das organizações está em São Paulo, ou está no Rio de Janeiro. Então, foi uma tarefa que a gente assumiu não só pra gente como pro conjunto do movimento que era fazer esse trabalho de ir deputado por deputado, partido por partido, pra explicar pra eles o que que era o Marco Civil, qual que era ....qual era as propostas que a sociedade civil brasileira defendia. E, fazer a interlocução com o relator, né? O Alessandro Molón, desse, desse projeto. E, em paralelo, a gente também fez todo uma mobilização que não era só aqui em Brasília, mas que era no Brasil todo, que era de promover debates, de tentar publicar artigos na imprensa,

[00:07:21.00] Interviewer: Na imprensa...

[00:07:21.00] Respondent: Em geral,

[00:07:22.24] Interviewer: Geral?

[00:07:22.24] Respondent: Em geral... de, é de ....fazer discussões, hangouts pra explicar para as pessoas, de fazer twittaços, né? de produzir uma série de conteúdos para as redes sociais pra isso e chegando nas outras pessoas. Então, foram uma série de iniciativas, que.... que a sociedade civil desenvolveu. O intervozes não desenvolveu sozinho, a gente construiu uma articulação que, chamava Marco Civil Já! E dentro dessa articulação a gente definia quais estratégias que a gente ia fazer e o que que ia ficar sob responsabilidade de cada organização e, como a gente estava aqui em Brasília, como eu estava aqui em Brasília, a gente ficou com essa tarefa prioritária de fazer essa interlocução tanto com o relator quanto com o Ministério da Justiça no âmbito do Governo Federal, e de explicar pra cada Deputado o que que estava acontecendo assim..... Então, foi um pouco de cada coisa que a gente fez.

[00:08:15.05] Interviewer: E. ... você acha que talvez é a ignorância dos deputados fora o obstáculo maior que você encontrou?

[00:08:23.18] Respondent: Não, é .... é muito comum num Congresso do tamanho do brasileiro e com a quantidade de assunto que nem todos os deputados conheçam todos os assuntos, né? Acho que é natural isso.

É.... acho que o maior obstáculo foi a oposição das operadoras de telecomunicações porque, é. .... a gente estava num ano, anterior ao ano eleitoral. Aqui no Brasil, como você sabe, doação de empresas para campanhas eleitorais é algo autorizado. É.....e, então, o poder econômico dessas empresas fez muita diferença pra convencer alguns deputados a votarem em função do que elas queriam, né? Acho que esse foi um grande obstáculo. O outro obstáculo foi uma ideia que as empresas ajudaram a disseminar na sociedade é. .... e a oposição de direita também ajudou a disseminar que era você criar uma lei pra regular a internet significar se cercear a liberdade de expressão, quando era exatamente o contrário, né? Então, é .....Agora, isso não foi uma questão de ignorância dos deputados, foi uma questão de leitura ideológica mesmo, né? Porque a gente explicava que não era, que, que tinha vários artigos lá que estava justamente defendendo a liberdade de expressão. e. mas tinha uma leitura ideológica que é anti-regulação, no geral. É uma leitura liberal, neoliberal, extrema, que existe muito forte em setores partidários aqui no Brasil, que é de qualquer regulação é prejudicial pro mercado. E, as operadoras ajudaram a fortalecer esse discurso dizendo que se você regulasse demais a internet você ia coibir a inovação, que a liberdade expre ... que a Dilma queria transformar o Brasil na Venezuela, que o governo brasileiro estava fazendo igual a China censurando a internet. Então, por mais que a gente explicasse tinha um corte ideológico ali que, que não avançava. Não era uma questão de ignorância. E aí o que eu acho que a gente acertou em conseguir fazer. Não sei se eu já estou me antecipando a outras perguntas suas, mas o que eu acho que a gente acertou foi conseguir mostrar principalmente pros partidos de oposição de direita no Congresso, que esse era um projeto que não era do governo federal, que esse projeto era da sociedade civil. E se eles quisessem fazer o enfrentamento com o governo federal, que escolhessem outros projetos do governo federal pra brigar e não o nosso. Porque, claro que o governo foi fundamental nesse processo, pra aprovar. Porque ele entendeu que era um projeto prioritário e colocou toda energia para que esse projeto fosse aprovado, mas não foi uma ideia do governo fazer esse projeto, foi uma demanda dos internautas, das organizações da sociedade civil. Então, isso foi fundamental porque o governo conseguia conversar com os seus partidos aliados no congresso, mas ele não consegui conversar com a oposição. Então, várias vezes na interlocução que a gente fazia com o governo ficava claro que a tarefa de convencer a oposição ia ser nossa, porque o governo não ia conseguir convencer. A gente é que ia ter que convencer. E, acho que isso foi bem sucedido porque, no final, quase todos os partido, a exceção de um na câmara e no senado, todos os partidos votaram favoravelmente a lei, com discursos que foram feitos no momento da votação dizendo: "este é um projeto importante para o país", "esse é um projeto importante para a sociedade". Deixou de ser o discurso: "este é o projeto do governo que nós temos que derrotar". Entendeu? Então, acho que foi um acerto que a gente conseguiu fazer na nossa comunicação com todo mundo, mas de fato, esse obstáculo do desconhecimento, da ignorância dos deputados, eu acho que ele não foi o principal, mas ele foi um dos. Porque a gente teve que explicar pra todo mundo, e é um assunto técnico. É um assunto difícil. Não é algo, você não está falando de educação que a maioria deles entendem, de saúde. É algo técnico. Então, foi uma tarefa que a gente teve que cumprir, mas eu acho que o principal obstáculo foram esses outros dois mesmo do poder econômico das empresas com financiamento de campanha e essa leitura de que a regulação da internet era ruim, de que isso era a Venezuelização do Brasil e por aí...

[00:13:03.24] Interviewer: E para os interesses de intervozes qual foi a maior vitória do Marco civil? e a pior derrota?

[00:13:15.15] Respondent: A pior derrota e a maior vitória? Bom, a maior vitória eu acho que foi é....

[00:13:22.28] Interviewer: Falando da forma final que

[00:13:25.03] Respondent: Da redação da lei, né?

[00:13:28.00] Respondent: Eu acho que a principal vitória foi a questão da garantia da neutralidade de rede. Não só porque aqui a gente já vive uma sociedade muito desigual em termos econômicos e a questão do acesso à

internet sem a neutralidade de rede ia criar usuários de duas categorias, aqueles que podem pagar mais para ter acesso a todo tipo de conteúdo na internet e aqueles que só vão poder acessar redes sociais, whatsapp, né? E e-mail porque é mais baratinho para as operadoras e isso ia criar usuários de duas categorias. Tanto que essa briga da neutralidade de rede, continua agora no processo de regulamentação da lei porque todo debate de zero rating que a gente está fazendo, na nossa avaliação, zero rating viola a neutralidade de rede e para as operadoras não viola, né? E justamente você é .... oferecer o zero rating para alguns sites, para alguns serviços, isso já começa a criar usuários de diferentes categorias porque no Brasil onde o acesso é super. caro ainda, né? A telefonia é um serviço caro, o acesso à internet é um serviço caro, você dar alguns serviços de graça significa aquelas pessoas restringirem o acesso delas àqueles serviços, e isso não é internet, né? Tem gente no Brasil que acha que o Facebook é a internet, né? E tá longe de ser isso, né? É..... então acho que a garantia da neutralidade de rede foi importante até porque pra além da realidade brasileira, ela também foi um princípio importante de ser afirmado naquele momento é. ... em que o brasil estava organizando o net mundial e que isso serviu de exemplo pra outros países também. Então acho que foi a principal conquista e acho que uma das, talvez a principal derrota que a gente tenha tido nesse processo tenha sido no aspecto da privacidade, É, no artigo 15 que a gente tento inclusive ainda pedir o veto da Presidência da República na hora de sancionar a lei e isso não foi possível em função dos compromissos que tinham sido firmados com alguns partidos políticos. Que na verdade abre uma brecha muito grande para você ter uma vigilância em massa dos usuários. Porque ele, ele não só autoriza as empresas a guardarem os dados, como ele obriga todas as empresas a guardarem os dados. Então, mesmo aquelas que não guardavam dados dos usuários passam a ser obrigadas a guardar pensando que lá na frente aquele internauta pode vir a comete rum crime. Então, assim, todo cidadão passa a ser um suspeito, né? Então isso viola inclusive o princípio da presunção da inocência que está na constituição brasileira, né? e que pra gente é muito importante. Então, o que nós.... foi uma derrota sem dúvida essa obrigação da guarda de dados pra todo mundo, mas ela não foi a pior possível porque tinha setores, por exemplo dentro do congresso nacional, que defendiam a obrigação da guarda de dados por cinco anos e a gente conseguiu por um ano pra dados de conexão e seis meses para dados de aplicação, né? E o que a gente está tentando fazer agora na regulamentação é restringir ainda mais isso. Então, a gente está defendendo no processo de regulamentação que não sejam todas as empresas que sejam obrigadas a guardar esses dados e, e o processo de regulamentação também vai ser importante pra definir como que esse dados tem que ser guardados, isso não está na lei. Então, como que eles vão ser guardados? Quem vai poder ter acesso a esses dados? A lei fala de maneira geral em autoridades e a política federam. Então, o que são autoridades? Que autoridades são essas? Então a gente quer restringir isso ao máximo. E, a gente quer garantir que passado esse prazo da obrigação de guarda desses dados, eles sejam automaticamente destruídos, que você não .... que uma empresa não possa ficar guardando vinte anos os dados, só com decisão judicial fundamentada. Porque aí tudo bem, se você tem um criminoso que opera na internet, você vai guardar os dados dele, agora os meus não, por favor. Né? Eu acho que essa foi uma das principais derrotas que a gente teve e que é difícil, é um debate difícil de fazer na sociedade brasileira porque tem toda essa discussão da pedofilia, dos crimes financeiros. Tem uma lógica das pessoas é.... de que se elas não estão fazendo nada errado, não tem problema guardar os dados delas, só que na verdade isso tem uma ´serie de consequências políticas pro próprio exercício da liberdade de expressão na internet, se você não tem a sua privacidade garantida. Então, é algo que a gente ainda está tentando derrubar. Vamos ver se a gente consegue pelo menos diminuir é. ... esse conjunto de empresas que tem que guardar esses dados.

[00:18:35.05] Interviewer: Ok. Enquanto a gente estiver falando dos valores essenciais do marco civil. Acho que ia perguntar se você acha justificada a importância fundamental que tem a neutralidade de rede no marco civil, mas mais ainda vir à custa de outras possibilidades, por exemplo os direitos autorais, você pode pensar isso neste tema também como um análogo a liberdade de expressão, né? A proteção ... o o ao, porque há uma exceção no marco civil para os direitos autorais...

[00:19:16.08] Respondent: Para os direitos autorais....sim

[00:19:16.08] Interviewer: É. ... e parece que a sociedade civil aceitou esse compromisso.

[00:19:25.02] Respondent: É. ... foi uma troca ali que a gente teve que fazer. É, não, acho que na verdade assm, a gente vai enfrentar um debate agora, que é a reforma da lei de direitos autorais no Brasil. Que vai ser um debate muito além da internet, vai discutir toda a questão dos direitos autorais. E que é uma discussão que já vem anterior ao marco civil, mas que ficou parada e que eu acho que foi um acerto a gente não fazer junto com o marco civil o debate sobre os direitos autorais na internet porque se não a gente ia juntar muita coisa na mesma, na mesma lei. Então, essa é a próxima batalha que a gente tem no congresso nacional, é a lei, é a reforma da lei de direitos autorais. Então, assim, a lei, o marco...

[00:20:14.05] Interviewer: Então, é como se a sociedade civil aceitasse essa troca sabendo que ia ter essa possibilidade?

[00:20:24.09] Respondent: Exato ... a gente aceitou do mesmo jeito, por exemplo, que as principais empresas interessadas na discussão de direito autoral como as organizações Globo, por exemplo, né? Que é uma grande major aí de comunicação... É. ... também aceitaram tirar isso do texto do Marco Civil pra discutir na reforma da lei de direitos autorais. E, pra gente foi muito importante porque o inimigo, entre aspas, das operadoras de telecomunicações, já era um inimigo difícil de ser é.... batido.... se a gente tivesse também as organizações Globo contra o texto, a gente certamente não conseguiria ter aprovado o marco civil da internet. Não só porque ela é um ator político muito importante no país, como ela colocaria todos os seus meios de comunicação de massa, televisão, rádio, pra formar a opinião pública contrária ao texto do marco civil. E ela nesse caso ficou neutra. E ela ter ficado neutra, se você quiser estudar assim a história da rede globo no Brasil, ela, ela consegue influenciar processos políticos de uma maneira muito forte, os protestos de domingo aqui foram fortemente influenciados por ela. Convocou as pessoas a irem as ruas, como um meio de comunicação. Então, se ela fosse contrária ao texto, abertamente contrária ao texto, a gente certamente não conseguiria ter aprovado o texto no Congresso nacional, então foi um acordo que foi feito. Olha, nós vamos discutir isso depois, as empresas concordaram, a sociedade civil concordou, então é.....e não foi só nesse, nessa questão dos direitos autorais que a gente fez acordos, a gente precisou aceitar outras coisas também ao longo do texto porque senão ele não passaria. Então, é uma negociação. Não é um texto ideal pra sociedade civil, acho que várias outras coisas para além do artigo 15, a gente poderia ter mudado, mas é, foi o texto possível, e acho que foi um bom texto. Agora, o desafio que a gente tem agora é garantir que ela seja cumprida, mas não é o texto perfeito na visão da sociedade civil, tinha muitas outras que a gente poderia ter melhorado, né? Mas é, é isso, é um 'compromise' que a gente acaba tendo que fazer quando vai pro congresso nacional, quando você tem diferentes visões, a gente ainda teve uma vantagem muito grande que era o governo federal com uma visão muito próxima da que a gente tinha porque poderia ser outra visão diferente ainda, normalmente é, e não foi. Então, a gente teve um aliado aí que foi o Ministério da Justiça pra, pra fazer essa discussão.

[00:23:11.26] Interviewer: Isso, isso ia ser uma pergunta minha, se havia, havia áreas de tensão entre o estado e a sociedade civil ou tinham, tenham sempre mais ou menos a mesma agenda?

[00:23:29.20] Respondent: nesse, nessa questão específica a gente tinha uma agenda muito próximo, é claro que, por exemplo, quando o governo federal chegou pra gente e falou assim, nós vamos manter o artigo 15 da privacidade, porque se não esses partidos políticos, que eram seis no total, não vão votar a favor do texto. Mesmo que vocês, sociedade civil, sejam contra. Então, teve uma tensão. Teve uma tensão também quando a gente diz pra eles é.... saúde, imagina. Teve uma tensão também quando nós dissemos para eles 'tá bom, vocês vão manter no texto, mas nós somos contra, então a gente vai pedir o veto da presidência depois", aí eles 'não, não façam isso', aí a gente 'a gente vai fazer' porque aí também cada um precisa preservar sua autonomia nessa discussão, né? Então, por exemplo, na abertura do net mundial, quando a presidente Dilma, estava assinando a lei, a gente entrou no salão com uma faixa enorme, não sei se você viu as fotos, pedindo o veto da presidente.

Pro governo isso não é tranquilo. O governo não queria em um evento internacional, todos os países, empresas do mundo todo, e a gente lá reclamando do artigo de uma lei que ela estava sancionando, pra eles seriam ótimo se a gente estivesse só batendo palma. Então, teve alguns momentos de tensão, mas tanto a sociedade civil quanto o governo entendeu que se a gente não estivesse juntos, não ia passar o texto. E como era importante pra gente, e como era importante pro governo. A gente teve que caminhar junto e foi isso que aconteceu.

[00:25:11.29] Interviewer: E, ao contrário, havia áreas de acordo entre sociedade civil e os setores industriais, que tiveram interesse no marco civil?

[00:25:22.21] Respondent: com alguns setores. É, acho que os principais adversários eram as operadoras de telecomunicações, mas por exemplo, é.....a Globo, por exemplo, que não teve a questão dos direitos autorais discutidos no texto, em última análise, no final, a neutralidade de rede também é boa para a Globo porque num, num mercado sem neutralidade de rede para ela garantir que os conteúdos dela tenham prioridade, ela acaba tendo que pagar para a operadora, porque ela não tem o cabo, ela não controla a infraestrutura da internet. Então, pra ela, em última análise, a neutralidade de rede também era boa. Então, nesse sentido, tinha um determinado acordo ali. É.... em relação a questão da privacidade, é..... alguns provedores de conteúdo também eram contrários a serem obrigados a guardar. Principalmente, pequenos provedores porque, tem um custo econômico pra eles de guardar isso, então, nesse sentido, eles também eram contrários a essa obrigação da guarda. Então, você tinha pequenos aliados em alguns aspectos da lei.

[00:26:50.15] Interviewer: E esses pequenos provedores eles tinham uma associação?

[00:26:52.02] Respondent: Tem, eles tem uma associação.

[00:26:54.24] Interviewer: Como se chama? Não é ABRANET?

[00:26:57.06] Respondent: Não, a ABRANET também. A ABRANET também, mas não são todos os que estão na ABRANET, mas é. ... eu não estou me lembrando agora com certeza. Pode atender o seu telefone está tocando?

[00:27:13.28] Interviewer: Não, não.

[00:27:13.28] Respondent: Acho que é de outra pessoa porque eu ouvi um toque.

[00:27:13.28] Respondent: É. .... Eu não tenho certeza se a ABRANET no final ficou favorável a essa questão ou não. Eu não me recordo, precisaria pesquisar pra te passar. Posso até olhar depois e te mandar. É ..... mas tinha alguns provedores que estavam fazendo conversas com outros deputados também e que eram favoráveis, nesse sentido, a não serem obrigados a guardar por muito tempo os dados. Uma das coisas, por exemplo, que caiu no texto e que saiu do texto porque ninguém era a favor, que era uma proposta inicial do governo. Era a necessidade de você ter datacenters no Brasil pra guardar os dados no Brasil. Não sei se você lembra disso, essa era uma proposta que a Dilma foi lá e apresentou essa proposta, porque ela achava que se os dados fossem guardados no Brasil, o risco de espionagem era menor. Aí, a gente teve que convencer o governo que não, que quanto mais você guarda dados, mesmo que seja aqui, maior o risco de espionagem, então, é melhor ter menos gente guardando dados, do que você obrigando o Google, por exemplo, a guardar dados lá e aqui. Então, e. ... e aí, nesse sentido, teve também uma pressão grande dos provedores aqui no Brasil, do ponto de vista econômico, que eles falaram, a gente não quer ter que montar datacenter no Brasil. Aí, o facebook foi contra, aí o Google foi contra, aí, nesse caso, todo mundo foi contra e o governo teve que recuar também dessa posição e isso saiu completamente do texto, é. .. porque era uma visão distorcida, uma má compreensão do governo de que achava que se os dados tivessem guardados aqui, o governo teria maior controle sobre eles o que não era verdade.

[00:29:11.04] Interviewer: Relacionado a isso, eu estava falando semana passada com um professor da ECO, no Rio, e ele me tava contando que pra ele.

[00:29:21.21] Respondent: Com quem você falou, Marcos Dantas?

[00:29:21.21] Interviewer: Sim. Que o Marco Civil é uma história de uma disputa entre grandes blocos do Capital, e realmente o ganhador principal, os ganhadores principais foram os web companies como o facebook, que se lucram da guarda de dados. Ahm... para ele, o marco civil não é definitivamente uma lei assim cívica, que não tem lógica necessariamente cívicos, não... O que que você acha disso?

[00:29:59.02] Respondent: É, a gente já divergiu algumas vezes do professor Marcos Dantas, em relação ao Marco Civil da Internet. Mas ele é um parceiro, a gente é aliado, a gente faz muita coisa junto. É..... ela acho que sim, apesar do google e do facebook e dessas grandes companhias de provimento de conteúdo não terem sido muito prejudicadas com o Marco Civil da internet e poderem manter os eu modelo de negócios como estão, eu acho que a lei é essencialmente uma lei de civil rights na internet. Porque mesmo com essas empresas podendo continuar o seu modelo de negócio de guarda de dados, agora nós temos uma lei que diz que o uso desses dados tem que ser, informado, que eu tenho direito de pedir a exclusão dos meus dados quando eu termino meu contrato. Então, se eu saio do facebook, eu tenho o direito de pedir pro facebook apagar todos os meus dados, é....

[00:31:05.11] Interviewer: Não somente depois do tempo obrigatório?

[00:31:06.11] Respondent: Não somente depois do obrigatório. Se eu saio do facebook agora, eu tenho direito pelo marco civil da internet a pedir que o facebook apague todo os meus dados. Então, é..... eu tenho, eu tenho que ser informado sobre quais dados meus estão sendo guardados... é..... eu tenho que autorizar expressamente, não num termo de, enorme ... de vinte páginas, que você clica lá só pra você poder acessar e se logar. Eu tenho que ser expressamente informado de que os meus dados estão sendo guardados e pra quê eles estão sendo guardados. Para além de facebook, e outros serviços grandes, os serviços pequenos que também guardam nossos dados, só podem guardar os dados que são essenciais para a prestação daquele serviço. Então tudo isso foram, são mecanismos e restrições é..... que, do ponto de vista, da garantia da privacidade, foram um avanço pra gente, mesmo que a gente não tenha privacidade absoluta e garantida e mesmo que a gente tenha o artigo 15 que é um problema na nossa visão, teve avanços em relação a privacidade. Se você pensar, por exemplo, a constituição brasileira ela garante a inviolabilidade, você não pode violar a carta, correio, correspondência, física. Até o marco civil da internet, essa mesma garantia da inviolabilidade, não existia para os e-mails. E, foi o Marco Civil que garantiu, então só pode abrir o meu e-mail, só tem acesso ao meu e-mail, quem mandou, e pra quem que eu mandei e eu. Quer dizer, eu não posso ter terceiros vendo o conteúdo daquele e-mail. É claro que se eu quiser violar essa legislação, eu vou violar. Eu tenho mecanismos pra isso. Mas eu enquanto usuário posso processar essa empresa. Então, eu tenho uma lei que me dá proteção disso agora que antes não dava. E era um princípio que estava previsto na constituição de 88, quando não existia internet, então a privacidade ali, era só pra correio, era só pra carta, não era pra e-mail. Então, teve uma série de avanços mesmo com esses problemas, é.... mesmo com esses problemas todos colocados que a gente falou em relação a privacidade, eu acho que teve um avanço. E acho que a neutralidade é um avanço, acho que a questão da liberdade de expressão também é um avanço. E tem um, a última parte do marco civil, ele fala dos deveres do poder público, que é um ponto que não gerou polêmica porque para as empresas não fazia diferença, porque era obrigações pro poder público, mas que pra gente faz muita diferença, que são obrigações de inclusão digital, de educação pro acesso. Tem, é importante porque do ponto de vista do que você pode avançar em políticas públicas pra sociedade aprender a usar a internet, se apropriar disso, poder difundir conteúdo. Ali, tem aspectos muito interessantes, que a gente pode usar a lei pra reivindicar políticas públicas em relação a isso e que parece que é uma coisa que não ficou muito conhecida porque não gerou polêmica, mas que são coisas importantes. O

marco civil da internet, por exemplo, ele fala que a internet é um serviço essencial. Isso não estava escrito em nenhum lugar no Brasil. E pela legislação brasileira, quando um serviço é considerado essencial, ele tem uma ´série de obrigações. Ele precisa ser universalizado, ele precisa ter tarifas acessíveis e não muito caras. Então, por exemplo, tem toda uma briga que nós estamos fazendo agora com base no marco civil da internet que é pra mudar... eu não sei se isso vai ficar claro em inglês pra vocês depois, porque eu não sei como é que funciona a legislação de vocês... mas que é pra mudar o regime de prestação do serviço de internet. Hoje ele é um regime privado, as operadoras fazem o que elas querem, tem algumas regras que são previstas pela ANATEL, que é a agência reguladora, mas, por exemplo, não há uma obrigação de universalização do acesso à internet, pela legislação brasileira, anterior ao marco civil, quando a gente define que um serviço é essencial, na legislação brasileira, significa que ele tem que ser universal, então isso muda, por exemplo, a política do governo brasileiro de oferecer o acesso à banda larga no Brasil, que antes estava só para as empresas, as empresas oferecem só onde elas tem mercado e onde elas tem interesse econômico em oferecer, e quem não pode pagar fica sem acesso. Quando você considera que um serviço é essencial, o estado brasileiro tem que garantir o acesso desse serviço pra quem não pode pagar por ele. Então, a gente não tinha isso, o marco civil vem garantir. Então pra gente, sem dúvida foi uma lei que avançou na questão do, do dos direitos civis e até dos direitos sociais porque se você pensa que o acesso à internet é também um acesso à cultura, um acesso à educação, um acesso à informação, são outros direitos sociais que você acaba tendo acesso por meio da internet também, né? Não só o direito individual de cada, mas um direito social também. Então, nesse caso a gente discorda do professor Marcos Dantas.

[00:36:28.05] Interviewer: houve alguma discórdia na sociedade civil com a seleção da FGV como parceiro oficial para o desenvolvimento do objeto da lei? E quanto a marginalização das vozes talvez mais radicais?

[00:36:47.26] Respondent: Sobre a questão da FGV eu não posso te falar porque isso foi lá atrás... quando o texto foi redigido pela primeira vez, a gente não estava acompanhando muito de perto isso. É ..... mas houve algumas divergências, por exemplo, nessa reta final, mais recentemente, por exemplo em torno do artigo 15, quando nossa maior parte da sociedade civil aceitou, entre aspas, o artigo 15 para garantir que a lei passasse. É, várias organizações que trabalham especificamente com a questão da privacidade se retiraram do processo. Então, algumas organizações mais radicais nesse sentido, que como a agenda delas era especificamente a privacidade elas não se sentiam contempladas.

[00:37:37.12] Interviewer: Como a Artigo 19?

[00:37:37.12] Respondent: Não, a Artigo 19, não. A artigo 19 ficou com a gente. Por exemplo, o partido pirata, no Brasil ele soltou, ele chegou a soltar uma nota contra o marco civil, por conta da questão da privacidade É.... e todo nosso esforço no final, foi 'olha, se a gente não tiver a sociedade civil unida, vai ficar muito fácil pra eles não passarem o texto" porque o que dava certo no diálogo com os deputados e senadores era dizer: "toda a sociedade civil defende esse texto'. Se a gente começasse a se dividir, ia ser muito fácil par eles não aprovar o texto. Então, por exemplo, depois que o partido pirata publicou essa nota, nós tivemos que conversar com eles e falar 'olha, a gente entende, a gente acha que é um problema, mas a gente precisa, não sair publicamente falando contra o texto. A nossa posição pública precisa ser de apoio ao texto". Pode tirar, obrigada.

[00:38:45.19] Interviewer: Pra você quais são os fatores históricos, culturais, que para um estrangeiro que quer saber mais. Que quer entender bem o contexto para o Marco Civil no Brasil. Quais que são os mais importantes para você?

[00:39:09.23] Respondent: Bom, eu acho que é importante essas questão do poder econômico dessas empresas de telefonia. É, essa outra questão também que eu já falei da não oposição dos grandes grupos de comunicação de rádio e TV ao texto. Isso é importante também pro texto ter conseguido aprovar. É acho que o fato de você

ter sociedade civil e governo juntos também é um aspecto importante e cultural. E acho que tem um outro elemento que é cultural e que a gente não conversou ainda que acho que é fundamental e foi fundamental pra que a sociedade civil apoiar o texto. É a má qualidade do serviço de acesso à internet no Brasil. Porque apesar do marco civil da internet não discutir qualidade do acesso. A sociedade em geral odeia as operadoras de telecomunicações. Eu tava ouvindo no rádio agora, vindo pra cá, o número de reclamações nos serviços de proteção ao consumidor de 146000 reclamações que já aconteceram aqui em Brasília este ano, 130000 foram das operadoras de telecomunicações. Então, as operadoras são odiadas pela sociedade, então isso foi importante também, é .... porque elas eram as inimigas do texto. Então, quando a gente lidava com a discussão social de falar assim: " olha, quem está contra a neutralidade de rede são essas empresas porque elas querem lucrar mais e elas querem ganhar mais e querem poder cobrar amis de você. Então, defenda a neutralidade de rede por causa disso, disso, disso". Isso tinha aderência, as pessoas recebiam bem essa ideia. Então, acho que esse é um aspecto da economia brasileira e da cultura brasileira que também influenciou nesse processo do marco civil, que é as campeãs, elas são as campeãs das reclamações de direito do consumidor do Brasil são as operadoras de telecomunicações. Eu acho que o pouco ace.... acho que essa desigualdade no acesso que faz com que o preço do acesso à internet seja muito caro, também é um elemento importante porque com a neutralidade de rede isso ia aumentar a desigualdade. Ainda, se a gente não tivesse a neutralidade de rede essa desigualdade ia aumentar ainda mais. Então, usar esse argumento no debate público também foi importante porque, na realidade, assim 40 % da população brasileira não tem qualquer acesso à internet, não pode ser considerado usuário de internet, e esse número poderia piorar, a gente poderia aumentar a desigualdade social se a gente criasse aí, os diferentes pacotes de acesso à internet por conta da questão da neutralidade. É. .... acho que essa questão que eu já falei antes também sobre essa cultura de achar que não tem problema guardar os meus dados porque eu não estou fazendo nada de errado, então tudo bem é a baixa valorização da privacidade de cada um, que a gente tem, também é um elemento importante porque a gente não conseguiu ganhar essa discussão foi uma derrota, acho que se a privacidade fosse um valor mais forte pra sociedade brasileira talvez a gente tivesse ganhado esse aspecto.

[00:42:35.21] Interviewer: Mas isso é uma coisa universal, né?

[00:42:38.28] Respondent: Talvez, mas eu acho por exemplo em países como os Estados Unidos, acho que na Europa também isso é um valor é mais forte do que aqui, é mais forte do que aqui, assim. Aqui as pessoas acham que a gente tem muita criminalidade e que a polícia tem que poder investigar de qualquer jeito. Então, que não interessa ... eu abro mão da minha privacidade pra polícia poder prender os criminosos que estão agindo na internet. É mais ou menos isso, entendeu?

[00:43:05.15] Interviewer: Eu pensaria que o Brasil tem uma história bastante contemporânea...

[00:43:11.10] Respondent: De democracia? também...

[00:43:12.02] Interviewer: De uma ditadura militar que, que teria uma sensibilização mais forte da privacidade, como a Alemanha, por exemplo.

[00:43:24.12] Respondent: Sim, mas eu acho que é ao contrário, na verdade. Eu acho que aqui a gente tem essa ideia de que o crime tem que ser combatido porque a violência está muito grande, então quem está praticando crime precisa ser investigado, então se a polícia puder investigar através da internet, então tudo bem, sabe? Então, acho que. o valor da privacidade ainda não é muito forte pra gente, sabe? Eu acho que eu posso ficar com você mais um pouquinho só são quinze para as cinco. É, ver alguma que seja muito importante depois a gente pode continuar por Skype.

[00:43:47.17] Interviewer: Ok. Eu acho que duas, duas.

[00:43:57.03] Respondent: Eu vou tentar ser mais objetiva porque eu falo muito também.

[00:43:58.17] Interviewer: Dado o poder preponderante das empresas de telecomunicações é muito surpreendente que elas perdessem. E quem são os fatores...

[00:44:15.12] Respondent: Por que eles perderam?

[00:44:15.12] Interviewer: Sim.

[00:44:15.12] Respondent: Eu acho que eles perderam porque houve uma pressão do governo em aprovar esse projeto. Porque depois que a imagem da Presidenta Dilma ficou exposta no mundo todo por ela ter sido espionada pelo... NSA, a partir das denúncias do Snowden, depois ela ter ido a assembleia da ONU, e depois ela ter convocado um encontro sobre governança da internet aqui no Brasil, ela não podia perder o marco civil da internet no Congresso. Então, era uma lei que tinha que passar, isso foi muito importante para ter passado. É, e acho que o outro aspecto foi a posição da sociedade civil, foi a mobilização que a gente conseguiu fazer e que mostrou pra todos os parlamentares que era um projeto da sociedade civil e que se eles fossem contrários, ia ser muito ruim pra eles. Nós chegamos a fazer um tipo de mobilização, porque 2014 foi um ano eleitoral e no começo do ano o grande debate foi o marco civil, a gente falava: "olha, vocês vão votar o Marco Civil agora. Em outubro, nós vamos votar. Então, a gente vai cobrar na urna de vocês, lá na frente depois, quem for contra esse texto. E como a mobilização foi muito grande na internet, é .... e o fato de a pauta também estar travando o congresso, estar parando as outras votações, teve uma visibilidade muito grande pro tema na própria imprensa em geral. E foi só nesse momento, inclusive, que a sociedade em geral se mobilizou. Porque também eram grupos de organizações muito restritas, quando o Congresso para, não vota mais nada, os jornalistas começam a falar daqui. Aí, todo mundo vê na televisão todo dia, no jornal todo dia, quer entender o que que é. E aí, eu acho que a gente foi bem sucedido em conseguir explicar para as pessoas que tinha uma oposição entre direitos dos usuários versus lucros das empresas de telefonia. E aí, a gente conseguiu ganhar, acho que foi uma combinação de fatores, incluindo também a má qualidade do serviço que elas prestam aqui. Que fez com que as pessoas não admitiram, assim: " as empresas não podem ganhar mais uma vez". Sabe? Agora, são os nossos direitos que precisam sair vencedores. E acho que foi por isso que a gente conseguiu ganhar, apesar de todo poder que elas tem.

[00:46:43.25] Interviewer: E foi a transparência também do processo que ajudou a reequilibrar o balance dos poderes?

[00:46:48.08] Respondent: É. ... acho que sim. A gente trabalhou com uma comunicação que foi para todo mundo, né? As universidades também tiveram um papel muito importante nesse processo porque a academia tem um olhar que não é necessariamente de um lado ou de outro, né? Ela .... aos olhos da sociedade ela parece mais neutra. Então, o fato de a gente ter várias universidades também que estavam defendendo o texto do marco civil também ajudou a defender a sociedade e os deputados de que era um bom texto, uma boa lei. Então acho que foi no geral. A gente brinca assim, foi muito fatores positivos juntos, pra gente conseguir essa combinação de novo vai demorar uns dez anos. Deixa eu só atender aqui.

[00:47:58.04] Respondent:<talking on the phone>

[00:47:58.04] Respondent: Eu não acho que foi a eleição que fez outros movimentos sociais apoiarem o marco civil. Acho que eles entenderam que era uma pauta que era importante para todo mundo. E, vieram se somar a gente. Então, movimentos que não são da área de comunicação, que são de outros setores, vieram ajudar a gente a fazer essa luta também. E o governo acabou lá na frente se beneficiando disso. A Dilma usou na campanha presidencial dela, 'nós aprovamos o Marco Civil, nós fizemos o Net mundial. E acho que pra ela, pro governo foi importante, mas eu não acho que o governo deu a importância que deu a esse tema porque tinha

uma eleição. Eu acho que ele deu mais porque já tinha acontecido as denúncias do Snowden, porque a Dilma já tinha se comprometido e porque ela tinha. E porque ela tinha um evento nacional aqui pra, pra prestar contas entendeu? Acho que foi mais isso do que a eleição, mas indiretamente acabou, indiretamente acabou ajudando sem dúvida no processo eleitoral. Acho que ajudou. Oh, são sete reais, você tem trocado. Está certo, está certo. Pronto. Dezesseis, está certo, flor? É quinze e quarenta. Está certo, pode ficar com o troco pra vocês. Então, é.... eu acho que acabou ajudando, mas eu acho que não sei ....não me pareceu em todo o diálogo que a gente fez com o governo que eles tivessem lá na frente, nós vamos aprovar por causa da eleição. Acho que não. Acho que foi muito mais porque, é. ...depois que a Presidenta fez um discurso público internacional, ela não podia ter uma derrota em relação a isso, entendeu? acho que foi mais por causa disso.

[00:49:53.29] Interviewer: Ok. Ok.

[00:49:53.29] Respondent: Deu?

[00:49:55.26] Interviewer: Acho que sim.

[00:49:56.04] Respondent: mas se você, mas se você.

Daniel Cavalcanti – Anatel - Brasília - 16/03/2015

- By the time they had handed it over to Congress, as a draft bill so to speak, it was the result of, as much as possible, a consensus within the Executive branch (B) ***Seems like a euphemistic reference to the fact that Anatel did manage to influence the text in some form during the first drafts.***

- However, our legislation does say that the relationship between telecom operators and value added service providers is within the scope of Anatel so in that sense saw a role in influencing these discussions, which does not mean that Anatel claimed sole jurisdiction over this matter, much the contrary. (B). ***Scope of Anatel's authority seems another area of conflict within the MCi***

- So, NN is an evolving concept and the concerns of Anatel are less regarding what is in law, but not everything was in the law and in that sense we were quite happy with the outcome…we see it as a very reasonable outcome of the negotiation process. (B) ***'Happy' with the outcome? Malleable enough to bend to the telcos' will?***

- (Sum) The Internet is very dynamic so it makes sense that the law is fluid enough to adapt to changing circumstances. (B) ***Is this bc the telcos can more effectively challenge/undermine NN?***

- *I have to remember the corporate capture of Anatel in these responses. Are they entirely bland/technocratic, or do they hint at the 'real' power arrangements?*

- The drafts came and went but if you look at the legislation it actually says Anatel and CGi (B) ***Important here to stake their claim to future influence over Internet legislation***

- (On whether the novelty of the MCi's development was connected to the nature of the Internet) It has to do with the legal tradition of this country that you use legislation as a form of affirmation of certain principles and in that sense it is one of the possible alternatives to what other countries have pursued…(B)

- The way it was built is a reasonable solution and everyone can work within this structure, so it works in Brazil. (B)

- (On MS within MCi) We practice it domestically, we like the idea of MS processes, which does not mean that ultimately the way you make agreements and wade forward is necessarily in a MS fashion. Certain decisions require some formal doc that established these principles. So, the MCi in a sense is yes the result of a MS process, but in the end it a piece of more formal legislation. (B)

- (12-19 sum) The ITU conference in Dubai in 2012 (WIKIT) was unfortunately politicized and miscast as a polarisation between those seeking to control the Internet, and those seeking to leave it 'free'. In fact, Brazil's more nuanced postion, based on economic and developmental considerations, was that there is *a role* for govt in intl Net Gov. Also, the delegation is MS, while the preparation is open to input from the entire society. (B)

- "In our experience for the private sector that invests in the telecoms sector what they need are stable rules, and that's what they like, and that's what they respect and see in this agency in terms of consistency of action, and if there' a piece of legislation to them that is reality, that is helpful…In the end the telecoms sector did not have some of their views that they would like to see reflected in the legislation but they can certainly live with it and they understand that this is a negotiation process." (B) ***Must always remember that this reality underpins all of the factional corporate disputes around the MCi. Some rules are better than none.***

- "A grouping of countries is dealing with these very same issues. How do you respect the principal of NN, which is at the essence for the motivation for this piece of legislation, so that you ensure rights to the citizen, to the different players within the ecosystem, but you do not try to ex ante determine what the Internet is and what it will be. You know, that is the fine balance. I think we are on a good path but there are steps yet to be made."

- (On the q of Anatel's positon on data localization) "No. Anatel is basically a technical org. Whenever ideas come up, Anatel is basically heard. Whether the feasibility of the implementation of some of these concepts…sometimes ideas come up but the Internet is a v complex infrastructure so not all ideas are technically implementable but fortunately Anatel is heard on these issues and we are comfortable with the outcome." (B) ***This sounds like a veiled critique of the concept, though on what basis?***

- Telecoms alone in Brazil is approx. 5% of GDP so this has huge economic impact and a well-defined set of rules is the foundation for continued investment in the sector. In that sense, I think, it is a v positive development." (B) ***Again, this note of realism espoused by those observing rather than within the telco sector***.

João Caribé - Mega Não - Rio de Janeiro - 12/03/2015

[00:00:04.10] Respondent: Está bastante pra um material acadêmico. Deixa eu te mandar aqui. Eu tenho ele aqui porque eu estou lendo. Ele fala, inclusive, da gente, fala do Carlos Afonso. Cita a minha pessoa, cita outras pessoas envolvidas no processo do marco civil. Deixa eu só achar aqui. Achei. É o primeiro aqui, eu estava lendo ele. Chama-se 'Em nome da internet'.

[00:00:41.19] Interviewer: É um livro?

[00:00:41.19] Respondent: É um trabalho de. É quase um livro. É um trabalho de graduação, tem 147 páginas e conta toda a história do. Como é que é seu e-mail, é Guy... guy22uk.

[00:01:00.19] Interviewer: Guy é 'Guy'.

[00:01:22.22] Respondent: É isso, sim. Pronto, eu te mandei em anexo, aí você dá uma olhada, porque ele é bastante. É bom que você leia porque ele vai te dar uma base. Ela conseguiu fazer um trabalho muito bom de investigação com toda a história, então ela faz parte do processo.

[00:01:24.14] Interviewer: Acho que vai ajudar.

[00:01:24.29] Respondent: Vai sim. E, outra pessoa que você devia conversar, provavelmente se o Carlos Afonso e o lemos não conseguirem fazer a ponte, eu tenho, o deputado Molón.

[00:01:43.03] Interviewer: Sim, vou falar com ele semana que vem.

[00:01:43.03] Respondent: Ah, você já marcou? Ah, então ótimo. Porque ele foi o relator, como é que eu posso te dizer, ele que pode te contar as histórias dos bastidores, dos processos, das forças dentro da casa legislativa contra, contra e a favor do projeto. A dança, vamos dizer assim, desses poderes. A mídia, a princípio, ela não tinha, ela não é muito favorável à política de democratização de comunicação, né? Mas.

[00:02:28.28] Interviewer: A mídia assim tradicional?

[00:02:29.07] Respondent: É, a mídia tradicional, mas em determinado momento, houve uma, uma, a partir do momento que se citou, depois tirou-se, se citou a proteção do copyright, ela passou a apoiar o marco civil. Mas depois no final da votação esse artigo foi extraído da lei. Mas de qualquer maneira foi um bloco de força. O único bloco opositor era o das empresas de telecomunicações por causa da neutralidade e por causa da privacidade. E, então, quer dizer, essas duas questões foram o ponto forte e houve realmente uma forte queda de braço. Houve uma... O Molón, ele teve uma. Já está gravando?

[00:03:25.20] Interviewer: Sim.

[00:03:25.20] Respondent: Ah, tá. Ele teve uma determinação muito grande porque a maioria dos parlamentares teria, dada a pressão que ele estava sofrendo, ele teria abandonado completamente o processo e aceitado as condições que estavam sendo impostas porque era um bloco de pressão enorme. As empresas de telecomunicações tem um poder de lobby muito grande e essa pressão ela se espalhou para fora do legislativo e começou a se inserir dentro do executivo. Isso ele vai te contar com mais detalhes. É, como é que você quer a dinâmica, você quer fazer perguntas e eu respondo?

[00:04:17.20] Interviewer: É, já preparei algumas perguntas para você. Então, para começar, você pode explicar que papel tinha o MEGANÃO no início do projeto, nas origens do marco civil?

[00:04:34.23] Respondent: Seria bastante interessante como o Mega Não ele não foi criado com o propósito de se tornar um organismo. O que que aconteceu? Nós tínhamos, o ativismo, o cyber ativismo brasileiro. Ele começou ganhar consistência na resistência a um projeto de cyber crimes e ele era tão restritivo que ele passou a ser chamado de AI-5 digital. O AI-5 é um ato que foi instituído na ditadura em que ele simplesmente cassou todos os direitos civis, censurou a imprensa, fechou o congresso, ou seja, o AI-5 é, foi uma ditadura efetiva na comunicação. Ou seja, acabou completamente com a liberdade dos brasileiros. É uma coisa meio parecida com o ato patriota, mas numa proporção maior no Brasil. É .... então, o projeto dele a gente chamou de AI-5 digital por causa do tamanho do problema que ele causaria em termos de liberdade. Ou seja, ele era tão exagerado que pelo simples fato de acessar a internet você estaria cometendo um crime. Porque nós mostramos, aí, fomos muito interessante o processo porque todo mundo começou a desenvolver soluções. E, é uma coisa, foi uma coisa bem da internet, quer dizer foi uma coisa bem colaborativa porque um acadêmico escrevia uma análise, <uninteligible> escrevia outro. E todo mundo usava aquelas informações e disseminava. Eu, por outro lado, como ativista, minha base é publicitária, eu pegava aquelas informações complexas.

[00:06:35.01] Interviewer: Sim, de vários blogs ou de onde?

[00:06:35.01] Respondent: Sim, de vários blogs ou de trabalhos acadêmicos, várias postagens, twitter. Na época, a gente usava muito twitter e Orkut, nem era...

[00:06:46.01] Interviewer: Ah, ok.

[00:06:46.01] Respondent: Existia uma comunidade dentro do Orkut que foi basicamente onde começou isso. Que era uma comunidade de cyber cultura.

[00:06:53.05] Interviewer: E tive um nome, foi um grupo como o facebook ou...

[00:06:57.11] Respondent: É, comunidade é um grupo. É como se fosse um grupo.

[00:07:00.12] Interviewer: E tinha um nome?

[00:07:00.12] Respondent: Tinha mas era uma comunidade genérica de cyber cultura, de cyber culture. E, dentro dessa comunidade, apareceu esse tema, esse tópico, foi uma thread dentro da, do grupo e que ganhou tanta relevância que se tornou o assunto mais importante a ser discutido. Então, o que que acontecia? Eu comecei a pegar essas informações e tranfor... e isolar os pedaços porque a tarefa mais difícil que nós tínhamos era de mostrar pras pessoas que uma lei que aparentemente era pra garantir a sua segurança, na verdade, era uma lei muito perversa. E, começamos a descobrir como é que a gente faria isso. Tem uma série de vídeos que eu fiz com o meu sobrinho. Na verdade, é o filho da minha sobrinha, ele, mostrando três situações assim muito simples. Primeiro, aparece ele cantando, não sei o quê... e aí mostrou que ele, seria crime se a lei fosse promulgada, seria crime ele, digamos assim, compartilhar uma música de outra pessoa. Ou ele falando no celular, que seria crime desbloquear um telefone celular, ou seja, você teria um telefone preso a uma operadora se você quisesse desbloquear para usar em outra operadora, você já estaria cometendo crime. E, aí, a gente começou a pegar o projeto mostrando vários pontos, e isso começou a impactar as pessoas e principalmente os nichos específicos.

[00:08:40.02] Interviewer: Sim, você publicou esse vídeos na..

[00:08:49.06] Respondent: Publiquei, eu mando um link para você. Mas o que acontece? O... esse processo, ainda não existia o Mega Não, até esse momento não existia. Existia um grupo de pessoas que estavam fazendo ações de ativismo e, em determinado momento, nós começamos a. Eu queria publica uma petição online. Daí, temos que publicar uma petição online. Daí, o Sérgio Amadeu, ele é professor. Você já deve ter ouvido falar do Sérgio Amadeu, né? É meio difícil falar desse assunto sem falar dele. É, o Sérgio Amadeu, professor André Lemos e outros acadêmicos propuseram um manifesto acadêmico contra esse projeto de lei. E, eu acabei acessando porque foi publicado naquele grupo do Orkut e eu li o texto e falei, gente, esse texto é muito bom. Aí, eu pesquisei com o Henrique e descobri através do Henrique, o celular do Sérgio Amadeu, que era o principal signatário do negócio. O Sérgio, na época, estava na Espanha. O Sérgio atendeu, eu falei com ele rapidamente que eu gostei muito do texto e eu queria transformar aquele texto numa petição online e se eles autorizavam. Eles autorizaram e eu publique a petição online. Logo que eu publiquei a petição online, ela... já estava mais ou menos quente a discussão. Então, a gente conseguiu já uma boa adesão inicial. No momento que, você vai ler no texto da Carolina, no momento que o texto foi votado no Senado. Acho que nesse momento o Mega Não já existia. Não, não existia. É. ... quando o texto foi votado no senado, ele foi votado numa, final.

[00:10:45.15] Interviewer: Então, a petição foi disseminada.

[00:10:49.29] Respondent: Foi disseminada.

[00:10:54.12] Interviewer: Mas não sai nenhuma organização?

[00:10:54.12] Respondent: Foi uma petição da sociedade civil.

[00:10:55.29] Interviewer: Ok.

[00:10:57.25] Respondent: Não existiu. Ela está associada a minha pessoa, por isso que está associada ao Mega Não. Mas, não, não quer dizer que seja uma petição do Mega Não. O Mega Não não existia ainda. Aí, o que que aconteceu. Na época, no final do recesso parlamentar, último dia, nós tínhamos a informação de que poderia ser votado o projeto. Aí, eu gerei uma lista com as cinco mil assinaturas e mandei pro Aloísio Mercadante que era um dos relatores, um dos relatores não, era da, era da comissão que se iria votar o projeto. E, na época, já tinha cinco mil assinaturas, era muito pouca. Por que que a gente fez a petição. Porque apareceu numa situação, o Eduardo Azeredo, que era o Senador, ele hoje está sendo processado, né? Ele era o senador, ele levou pra agência uma menina, que teve uma situação qualquer que as fotos foram expostas na internet.

[00:12:15.03] Interviewer: Uma atriz?

[00:12:15.26] Respondent: Não, não era não. Nem era o caso da atriz. A atriz é outra história. Era uma menina que teve algumas fotos, de alguma situação. Não era nem sexo explícito, nem nada não. Era uma situação que causava um desconforto. Acho que ela tinha sofrido uma cirurgia e apareceu nas fotos. E, essa menina trouxe uma caixa com treze mil assinaturas em favor do projeto do Eduardo Azeredo. Aí, nós falamos, "gente, nós temos que conseguir pelo menos treze mil contra pra anular essa, essa...". E, aí, você veja como é que as dimensões mudam, né? Naquela ocasião, treze mil assinaturas provocou um fato político. Bom, então nós mandamos nesse dia para o Mercadante, uma cópia do texto, da petição, e uma lista de cinco mil nomes que tinham assinado já a petição. E, aí, nós acompanhávamos a votação às onze e meia da noite, quase no virar da noite, o projeto de pedofilia foi a votação e o Azeredo inseriu esse junto, ele tinha votado esse escondido junto com o da pedofilia e as pessoas. Ele falou que esse projeto, ele era um projeto que coibia a pedofilia, o que era uma grande mentira na verdade. Então, é .... ele coibia, coibia nada. Voltando. Tanto que teve um senador que votou ... Teve um senador chamado Eduardo Suplicy, ele votou, depois ele pediu desculpas publicamente num ato público porque ele votou e não leu o projeto. Foi uma resignação muito importante porque isso gerou um outro fato político. Aí, mas então.

[00:14:28.17] Interviewer: Isso foi uma declaração a mídia que esse senador fez?

[00:14:32.27] Respondent: Não, foi uma declaração num ato público. Então, a gente vai chegar lá. É, o que que acontece? Isso passou. No que ele passou, extra pauta. OU seja, ele passou como a gente chama extra pauta, ou seja, não estava na pauta para ser votado. Ele causou uma indignação muito grande. Então, no dia seguinte, nos próximos três dias posteriores a votação, a petição teve mais 35 mil assinaturas. De 5 para 35 mil assinaturas. E, aí, foi crescendo o número de assinaturas numa velocidade tão grande que era uma razão de dez, quinze assinaturas por minuto, era uma coisa assim assustadora. E, rapidamente, chegou a cem mil assinaturas. E, aí, já tínhamos um documento político. Mandamos para alguns parlamentares que eram interessados na nossa causa a informação e eles começaram a trabalhar com isso no congresso, trouxeram ao congresso. Já na câmara dos deputados, que foi onde a gente desmontou o projeto. Porque o projeto. O processo legislativo brasileiro se você faz um projeto de lei e aprova, é como o americano, bicameral. Você é Canadense, né?

[00:15:55.12] Interviewer: Sim, sou britânico, mas moro em Canadá.

[00:15:58.02] Respondent: Ah, sim, eu não sei como é o processo legislativo no seu país, mas aqui é que nem nos Estados Unidos é um processo bicameral, você tem Câmara e Senado. Então, um projeto de lei originado na Câmara, ele é votado e vai pro Senado pra ser votado, aprovado. Se houver modificações, no Senado, ele volta pra Câmara pra Câmara analisar. E o que houve foi exatamente isso. Foi um projeto de lei que virou um substitutivo, ou seja, o Azeredo mudou completamente e devolveu o projeto pra Câmara pra ser votado. E, aí, da Câmara ele vai direto pra sanção presidencial. E o mesmo ao contrário. Se um projeto for originado no Senado e a Câmara modificar, ele tem que voltar pro Senado antes de ser enviado para sanção. Bom, o que aconteceu foi o seguinte. A gente percebeu, que o senado por características do próprio senado ele é muito

mais conservador e muito mais difícil de trabalhar politicamente. É. ... inclusive a sociedade civil. E quando ele voltou pra câmara, ele já voltou quente e o próprio deputado do partido do Azeredo já pediu urgência e trabalharam para que o projeto voltasse pra câmara e fosse votado com pressa.

[00:17:15.10] Interviewer: E houve um governo petista?

[00:17:18.17] Respondent: É já era o PT. Já era um governo petista. E pra ser votado com pressa. E nós conseguimos através do deputado Paulo Teixeira.

[00:17:37.19] Interviewer: Ah, ok. De São Paulo, né?

[00:17:37.28] Respondent: É, do PT de São Paulo. Ele conseguiu fazer. Ele não conseguiu tirar o regime de tramitação, mas ele conseguiu fazer que o projeto dada a polêmica por causa da petição online que já tinha cem mil assinaturas fosse avaliado nas diversas comissões. Isso atrasou o projeto. E, aí, começou a ter pressão. Aí, nós tivemos. Aí, começou a existir movimentos políticos no país, como audiências públicas e debates. E, aí, começou a aparecer um monte. Primeiro teve um em São Paulo, que foi justamente esse que o Suplicy esteve presente e pediu desculpas ao público presente no evento por ter cometido tamanha, erro, equívoco. E aí, começou a ter um monte. Aí, o ativismo começou a ganhar uma consistência meio .... A gente começou a perceber que existiam várias forças na mesma direção. E aí, eu conversando com o Daniel Pádua, esse Daniel Pádua era um garoto de Brasília, já era bem ativista, um garoto muito inteligente. Eu falei Daniel, ' A gente precisa. Está acontecendo um monte de eventos. A gente precisa organizar essa informação para que as pessoas consigam não perder nenhum deles e para que tenha, para que crie uma percepção de que existe uma grande movimentação contra o projeto do Azeredo. Nós temos que dizer um não para esse projeto '. Aí, ele: 'É, nós temos que dizer um Mega Não.'. Aí, surgiu o nome e tal. O Daniel, eu não sabia na ocasião, o Daniel ele ajudou muito nesse processo. Inclusive, gostaria de citar ele por uma razão muito especial. Daniel Pádua. P-A-D-U-A. Ele, ele teve uma participação muito grande na forma como a gente articulou isso e a gente fez disso um blog. Transformou isso num blog e estava demorando muito processo e a gente falou vamos criar um blog. E o blog do Mega Não foi criado com o propósito simples de ser um agregador.

[00:20:02.12] Interviewer: É o mesmo blog que ainda existe?

[00:20:02.12] Respondent: É, só que

[00:20:06.04] Interviewer: Ou fechou o ano passado, né?

[00:20:06.04] Respondent: Não, ele parou de funcionar como Mega Não e agora está no movimente Mega.org. Porque, por que que a gente mudou também tem uma explicação. Naquele o Mega Não era tudo, era mais importante dar um Mega Não, e todo mundo começou a usar o Mega Não e criar Mega Não que eram os eventos que aconteciam. E aí, os parlamentares começaram a criar audiências públicas o próprio Molón na época, ele era deputado estadual aqui no Rio, e ajudou a gente a articular uma audiência pública no sindicato dos jornalistas e essa articulação foi positiva porque a gente criou mais um fato político. Então, o Daniel Pádua me ajudou a montar isso e tal, mas eu não sabia que o Daniel Pádua estava internado com câncer terminal, não sabia de nada. Já conhecia o Daniel Pádua de outros eventos e tal, mas eu falei assim, ele falou assim 'é que eu estou aqui internado no Hospital. Estou com um problema nos ossos.'. Era um câncer nos ossos e eu não sabia. Tanto que alguns meses depois ele morreu, morreu novo, morreu com vinte e poucos anos. E, a gente soube da morte dele durante um evento que estava acontecendo em São Paulo que era o primeiro fórum da cultura digital. Não, era o primeiro não, era o primeiro, o Gilberto Gil acho que era o Ministro ainda. Aí, em homenagem a ele decidiram dedicar o fórum pra ele, o fórum foi dedicado ao Daniel. Foi uma coisa bacana e tal, enfim. Ele teve uma participação muito importante porque ele já tinha uma atividade muito forte na questão do software livre e outras coisas mais. E então, enfim. Então, surgiu o Mega Não. O Mega Não surgiu, na verdade, é um

agregador de movimentos, não tinha a proposta de ser uma organização, um organismo da sociedade civil, nada disso. Mas ele começou a ganhar essa consistência da sociedade civil por causa disso. E aí, a gente começou a coordenar algumas ações. Quer dizer, algumas atividades que nós precisávamos coordenar é que nós precisávamos mudar a percepção da sociedade em termos do projeto de uma forma bastante efetiva. Então, começamos a inventar algumas ações. Na época, a mídia social mais ativa era o twitter que cá pra nós é muito melhor do que o facebook que é todo fechado, é difícil de lidar. Só funciona com dinheiro. Se eu pagar, ele me distribui, se eu não pagar, ele não fala. E nós entrávamos no Google e pesquisávamos sobre o projeto de lei e só tinha, só aparecia favorável. A gente falou, nós temos que mudar isso. Então, fizemos várias blocagens coletivas. A gente convocava as pessoas pra blogger contra o projeto. E aí, cada blocagem a gente conseguia sessenta, oitenta postagens diferentes. Chegou a um ponto que você estava no Google e aí você só tinha coisa favorável ao projeto lá pra terceira ou quarta página do Google. Então, nós invertemos a percepção das pessoas porque é. ...você é da área de comunicação, sabe bem disso. Que as pessoas elas não, elas se influenciam por esse tipo de detalhe. Se você pesquisa, se você procura a informação e você vê que só tem informação contra, sua percepção imediata é de que está todo mundo contra isso. Ou da mesma forma ao contrário se tiver percepção a favor, vai todo mundo estar a favor disso. Bom, isso conseguimos fazer uma coisa. E a coisa começou a ganhar uma consistência muito forte. E a gente começou a dizer, olha está todo mundo contra esse projeto. Não sei o quê. Aí, começamos a isolar os atores e descobrimos, olha, só mesmo a Febraban, ou seja, os bancos e a polícia federal estavam a favor do projeto. Isolamos os atores. Isso. E, os bancos, aí começou o discurso: 'os bancos querem democratizar os seus prejuízos.".

[00:24:08.28] Interviewer: Queriam democratizar...

[00:24:09.11] Respondent: Democratizar o prejuízo. Por que? Cada vez que tem um crime digital, roubo de senha ou clonagem de cartão de crédito, pro banco é mais vantagem assumir o prejuízo do que digamos assim, investigar ou processar. E, isso logicamente, era contabilizado como prejuízo. Mas eu tive uma palestra que eu dei na Câmara, eu fui, participei de uma audiência pública, na Câmara, mostrando que na verdade esse prejuízo era insignificante frente aos lucros. Eu até tenho aqui o slide de repente eu te mostro. Mas o que que acontece? O Sérgio Amadeu criou essa expressão 'os bancos querem democratizar seu prejuízo'. E, a coisa começou a ganhar caldo, né? Então, começamos a discutir, ficou bem claro que era exatamente isso que o banco queria. Ele queria não ter o prejuízo. Ele queria com o projeto de lei do Azeredo, responsabilizar o servidor de acesso pelo prejuízo. Ou responsabilizar terceiros pelo prejuízo dele. Aí, a coisa começou a ganhar uma consistência muito grande. A reação contra o projeto começou a ganhar um volume muito intenso, já não adiantava mais a mídia defender o projeto porque a reação era muito grande contra o projeto. Nesse momento, surgiu no primeiro fórum da internet, que é um evento que aconteceu em São Paulo na época, não me lembro exatamente o ano. Mas acho que foi 2010, 2011, um negócio assim, 2012. Não me lembro exatamente. O projeto ficou parado na câmara muito tempo. E aconteceu uma reunião.

[00:26:02.22] Interviewer: Então, já iniciou o projeto de lei do Marco Civil?

[00:26:06.00] Respondent: Ainda não.

[00:26:06.27] Interviewer: Ah, ok.

[00:26:07.27] Respondent: No primeiro fórum da cultura, no primeiro fórum da internet. Que surgiu numa reunião, e estava nesse fórum o Paulo Teixeira, a Erundina, a Manuela e um outro deputado que eu não lembro o nome. Não era o Molón não, o Molón na época ainda não era federal. Estava esses quatro deputados, a gente teve uma reunião com os ativistas e tal, eles queriam fazer uma proposta, que era apresentar um projeto substitutivo ao projeto do Azeredo, mas sem os malefícios do projeto. E, foi isso que fizeram, tanto que surgiu um outro projeto similar. E, esse projeto do Azeredo continuou engavetado porque houve um acordo, isso

também está no texto da Milena. Ela fez um trabalho muito bom. Houve um acordo entre o Paulo Teixeira e o Júlio Semegni, o Júlio Semegni era o deputado do partido do Azeredo, do PSDB. Que ele concordou que o projeto realmente tinham uma série de coisas que não eram legais. E ele concordou em manter o projeto, digamos assim, congelado na comissão de ciência e tecnologia enquanto fosse necessário. E começou a tramitar isso. Aí, existiu, na época, o Presidente da República era o Lula. Então, isso deve ter sido 2010 ou 2011. Eu acho que foi por aí, 2010. O Lula foi com a Dilma que era a secretária dele na ocasião, numa, numa, no FISNI. No Fórum Internacional de Software Livre, em Porto Alegre. E, na ocasião, já tinha uma manifestação muito grande contra o Azeredo. Tinha eventos e manifestações públicas. O Lula viu isso e o Lula conversou com o Marcel na época, com o Marcelo Branco e com outros deputados do Rio Grande do Sul. O que que era aquilo que estava acontecendo? E aí tomaram. O Marcelo explicou pra ele, o Marcelo Branco, né? Explicou para ele detalhadamente o que estava acontecendo e ele pegou e falou, entregou o discurso que tinha levado para fazer, entregou pra Dilma o discurso, e falou 'olha, eu vou fazer um discurso de improviso'. E na hora que ele começou a discursar no FISNI, ele falou, mais ou menos assim, tem esse vídeo na internet: ' tem um projeto tramitando na câmara aí. Um projeto que todo mundo está chamando de AI-5. Um projeto que é a censura. No meu governo não tem censura. Nós temos é que ter um projeto que garanta os direitos do cidadão, os direitos civis na internet.'. Nessa ocasião, o Ronaldo Lemos já tinha desenvolvido um estudo, já vinha trabalhando em paralelo com a proposta. E aí, aconteceu isso porque ele já tinha, mais ou menos, não é um rascunho. Já tinha um estudo de um projeto de lei civil pra internet. E ele trabalhou junto com o ministério da justiça que na ocasião foi quem ficou responsável por conduzir esse projeto de lei. E isso foi uma das prioridades do governo lula, daí pra frente. E aí que o projeto do Azeredo ficou realmente congelado. Que aí já era outro discurso. Então, houve um processo bastante democrático, ele queria que fosse muito democrático e tal. Então, houve a consulta pública, foi uma referência, né? Virou uma referência de modelo. Houveram duas consultas públicas, depois das consultas públicas o Molón, o relator, fez uma série de audiências e tal. Pra mostrar que houve todo mundo participou e que houve consenso. Então... é. ... esse projeto começou a ter uma <uninteligible> ganhar. Aí, depois das consultas públicas ele ficou, ele ficou parado na casa civil, não foi ainda enviado para o congresso. Mas houve, o texto, houve uma modificação interna, já no governo Dilma, houve uma modificação interna. E também como a Dilma se elegeu, o Azeredo que era senador se elegeu deputado. O primeiro ato que ele fez foi desarquivar o projeto que estava parado. O projeto dele. E aí, consequentemente, começou a reação dentro da câmara. Aí, a Erundina convocou uma audiência pública. Uma audiência pública não, um seminário, que eu fui um dos palestrantes desse seminário. Um seminário contra o projeto de novo. Sobre o projeto, não contra. Um seminário sobre o projeto, onde ela chamou vozes contra e vozes a favor. E a coisa mais interessante foi que, justamente, eu já tinha sido chamado, estava na mesa, ia ser o próximo a falar, quando eu vi no twitter alguém dizendo que a casa civil tinha acabado de enviar pra câmara o projeto do marco civil. Aí, na ocasião, eu mostrei pro presidente da mesa que era o Paulo Pimenta porque a, era a Manuela, mas a Manuela teve que se ausentar por alguma razão e passou pro Paulo Pimenta. Eu mostrei pro Paulo Pimenta e ele falou assim, temos que falar isso. Eu falei: 'Paulo, você é o presidente da mesa, faça as honras'. E ele anunciou. Parou o seminário e anunciou que acabou de entrar em tramitação o Marco Civil da Internet. Foi nesse dia, eu posso até ver qual foi o dia exatamente se você quiser. E te passo esse dado. Você quer isso?

[00:32:07.19] Interviewer: Sim.

[00:32:07.19] Respondent: Tá. E aí, pronto. Aí, a euforia ganhou conta. Aí, o projeto começou a ganhar, a gente começou a ganhar força. E aí, começou toda uma briga diferente. Em que o nosso ativismo já não era mais contra alguma coisa e sim a favor. E, na ocasião em que eu criei o Mega Não com o Daniel Pádua, já na época ele tinha vislumbrado, falando assim, "A gente tem que pensar no Mega Sim, vai que a gente precisa de ter uma posição proativa, vamos dizer assim". Eu falei, 'É, Daniel, eu acho que a gente tem que ser mais imediatista e pensar'. Aí, ele falou 'Mas não deixa de registrar o Mega Sim'. Eu falei, 'tá bom!'. E não deu outra, né? Agora já era o Mega Sim, mas a gente começou a perceber que é muito mais fácil você mobilizar pessoas contra alguma

coisa do que a favor de alguma coisa. Mas assim, é absurdamente diferente. Se eu disse pra você, vamos fazer isso que isso vai ser bom pra você, você vai. Mas você só reage, você reage contra uma ameaça muito mais intensamente do que em favor de uma ação. É uma...

[00:33:39.11] Interviewer: É uma <uninteligible>

[00:33:41.04] Respondent: É, tanto que num desses, num IGF desse, eu participei de uma mesa sobre ativismo e falei exatamente isso. Que eu tinha percebido isso e....

[00:33:50.26] Interviewer: Você fez alguma participação formal, alguma contribuição formal ao Marco Civil?

[00:33:58.14] Respondent: Fiz na questão da neutralidade.

[00:34:01.16] Interviewer: Ok. Você fez algum comentário lá no foro?

[00:34:06.10] Respondent: Na primeira consulta, eu já nem lembro mais o que eu falei. Mas a minha preocupação naquela ocasião era mais de garantia da neutralidade porque eu achava, eu achava não, eu acho que a neutralidade da rede é estratégica. Não adianta você ter liberdade e nem privacidade se você não tem a neutralidade. Porque se você tem liberdade e não tem neutralidade, não tem nenhuma garantia de que a sua informação vai ter o mesmo, digamos assim, o mesmo peso do que um outro tipo de informação gerado por uma outra fonte. Então você não tem esse equilíbrio. E também se não tem neutralidade, pouco faz diferença você ter privacidade. Então, eu sempre foquei mais na neutralidade.

[00:34:53.01] Interviewer: Ok. Isso ia ser uma pergunta minha. Se você achava que a neutralidade é de, merecia ser o coração do Marco Civil?

[00:35:04.19] Respondent: E era, até o próprio Molón, ele considerou, três, é o tripé de coração, a neutralidade, a privacidade e a, o terceiro eu já não lembro mais, mas eu acho que era a liberdade de expressão. Que era o tripé que sustentava a proposta do marco civil. Então, deixa eu, qual foi a outra pergunta aí que você fez? A da neutralidade?

[00:35:31.08] Interviewer: Foi isso e antes se, se fez alguma contribuição, mas acho que já...

[00:35:42.06] Respondent: Já. A contribuição mais importante que eu fiz foi agora. Não foi no projeto de lei, mas na regulamentação.

[00:35:50.01] Interviewer: Na fase que está rolando agora?

[00:35:50.01] Respondent: É. e é uma contribuição que eu fiz através da consulta do CGI. No Ministério da Justiça eu não fiz ainda, eu fiz só algumas perguntas. Pretendo fazer outra contribuição no Ministério da Justiça, mas a minha preocupação é porque eu comecei a tomar conhecimento do processo no último IGF que teve agora em Istambul, no final do ano passado e que teve vários painéis de neutralidade da rede, dos quais eu participei e passei a me filiara uma série de movimentos internacionais em favor da neutralidade. E a prática que é conhecida aqui como Facebook grátis e na verdade é o zero rating. E, eu, o meu exercício foi provar por A mais B que o zero rating quebra a neutralidade porque é uma coisa muito sútil. Por que que é sutil? Nós temos uma lei que lida com a tecnologia e toda lei que lida com tecnologia ela corre o risco de obsolescência rápida. E começamos, na minha avaliação, comecei a investigar que existiam três, teve um camarada que achou o quarto método de como executar o zero rating. Porque dependendo da forma como ele era executado, ele podia ou não quebrar a neutralidade. Aí eu pensei, comecei a pensar em alternativas que pudessem ser um argumento indistinto disso. Se a gente começar a se prender muito a tecnologia, você cria brechas que vão ser quebradas rapidamente em algum momento. Então, eu comecei a análise e, por acaso, eu coincidi com a análise do Tim Bearns-Lee, eu não sabia que ele tinha feito essa análise, e quando eu cheguei à conclusão, eu vi que o texto

dele que era igualzinha. Só que o dele foi um texto muito mais elaborado e muito mais complexo, mas a análise é muito simples. Se você passa a cobrar do acesso específico, em alguns sites, de repente se eu passo a te cobrar um extra pra ter acesso ao Youtube ou pra você ter acesso ao Netflix, isso é quebra de neutralidade porque eu estou criando um desequilíbrio econômico. Tá certo? Com base nesse entendimento, ao te cobrar para acessar certos sites, eu estou criando um desequilíbrio econômico que o Juquinha que acessa a internet e que paga um plano mais barato, ele não tem direito pra pagar os extras, vai ficar é, digamos assim, ausente desse serviço. Ele não vai ter dinheiro pra ter Youtube e Netflix em casa. E a internet não pode ser assim, ela tem que ser universal. É, muito bem, não concorda com esse argumento. <uninteligible>. É um argumento plausível e usual ou então se a gente pensar ao contrário. Vamos pensar no mesmo Juquinha, no mesmo Guy. É Guy ou Gui?

[00:38:59.14] Interviewer: Guy.

[00:38:59.14] Respondent: Guy. O Guy ele tem um acesso celular mobile que ele paga uma taxa mensal pra ter acesso 3G por um pacote de megabytes, ou gigabytes por mês. O Juquinha, ele usa telefone pré-pago com facebook grátis e whatsapp de graça. Ora, se o Juquinha não tem condições financeiras de pagar pela outra parte da internet, pelo mobile, e só tem acesso ao facebook e whatsapp, você também está criando um desequilíbrio econômico. Ou seja, o acesso do Guy e do Juquinha são diferentes, a mesma coisa acontece. Então, você quebra a neutralidade da mesma maneira. Quer dizer, essa foi mais ou menos a minha contribuição, a minha discussão na consulta do CGI através da Flávia Lefebvre que é conselheira. Ela criou um grupo, ela trabalhou num grupo nas contribuições dela. E levou as contribuições do grupo pra dentro do CGI.

[00:40:10.23] Interviewer: É, fui até o escritório lá em São Paulo semana passada.

[00:40:13.28] Respondent: Você falou com ela?

[00:40:13.28] Interviewer: Sim.

[00:40:13.28] Respondent: Ah, então.

[00:40:16.21] Interviewer: Sim, podemos voltar, mais às origens do marco civil.

[00:40:20.22] Respondent: Sim.

[00:40:20.22] Interviewer: e aí, como a seleção do FGV como parceiro oficial do terceiro setor, é possível interpretar isso como uma estratégia do Estado para marginalizar os vozes mais radicais para ter um parceiro mais assim, não sei?

[00:40:51.04] Respondent: Eu sei o que você quer dizer. É, foi importantíssimo. A FGV, a Fundação Getúlio Vargas, ela sempre teve uma imagem, respeitabilidade, uma grande respeitabilidade e uma imagem de uma instituição conservadora. Só que o CPA que era coordenado pelo próprio Ronaldo Lemos que hoje é do UTS, ele tinha uma, uma, era digamos assim, era um núcleo progressista dentro de uma instituição conservadora.

[00:41:21.23] Interviewer: A mesma história do Ministro de Justiça?

[00:41:25.18] Respondent: Sim, de Justiça. Gilberto Gil, né? E o atual, atual e que era ministro também. Exatamente. O Gilberto Gil foi fantástico, inclusive foi muito bom para esse processo todo. Mas a FGV justamente tinha esse poder de chancela. Então, quando a FGV começou a se pronunciar contra o projeto do Azeredo, na época já foi uma coisa muito importante.

[00:41:52.08] Interviewer: Ah, ok.

[00:41:52.08] Respondent: Porque eles se valiam da polarização. Ah, mas aqueles comunistas, aquela sociedade civil, eles estão querendo, não querem esse projeto de lei porque eles querem ser anárquicos. E, aí como a

fundação, uma voz de uma instituição respeitável falou que também era ruim, aí, quebrou essa argumentação e teve uma. Ao mesmo tempo que por outro lado trouxe uma dúvida, uma dúvida não, uma suspeita negativa no Marco Civil quando essa proposta veio de lá de dentro. Teve que ser feito um trabalho muito grande pra mostrar que o CPS não era o conservador da Fundação Getúlio Vargas. Quer dizer, ela teve um papel importante em dois polos, vamos dizer assim, no sentido de ser contra o Azeredo, o AI-5 digital e ser, o AI-5 digital e o PL-8499 que depois virou lei, foi votado só um pedacinho dele. Bom, o que aconteceu? Então, teve esse papel muito importante. E outras instituições começaram a apoiar, participar, o próprio IDEC. E aí, foi importante nesse ponto, organizações, digamos respeitáveis, começaram a se posicionar contra e a favor de <uninteligible>.

[00:43:23.01] Interviewer: Mas havia nessa época, havia neste momento, havia bloqueiros que sentiam que tinham perdido a iniciativa, que perdiam o controle sobre o assunto quando entrava os grupos grandes como o FGV e o IDEC?

[00:43:42.14] Respondent: Não.

[00:43:44.15] Interviewer: Ok.

[00:43:44.15] Respondent: Muito pelo contrário, usávamos eles como ponte pra.

[00:43:51.07] Interviewer: Ah, ok.

[00:43:51.07] Respondent: Eu sempre dizia. Eu sempre uso a, é..... são meus grandes ombros que eu trabalho. Você me traz uma água com gás? E gelo. São os grandes ombros que nós usávamos, a gente usava o argumento da FGV, que já era o entendimento de que era um argumento incontestável, era um argumento sólido contra o projeto. Então, houve essa parceria. Aí, começou a existir uma grande parceira. Tanto que em determinado momento, já quando o projeto do Azeredo era. Quando a gente quis enterrar de vez. Houve uma parceria entre a Avaaz, o IDEC e o MEGA NÃO, com uma petição coletiva contra o Azeredo. Eu sei que essas petições juntas, que teve uma petição do IDEC, uma petição do Avaaz, e uma nossa petição. As três juntas tinham mais de trezentas mil assinaturas. Já era assim, uma coisa absurda.

[00:44:51.08] Interviewer: Isso era a favor do Marco Civil ou ao encontro do Azeredo?

[00:44:54.14] Respondent: Contra o Azeredo. É um trabalho que a gente fazia em duas frentes, o tempo todo. Contra um e a favor do outro. O a favor do marco civil foi muito difícil. Até hoje existe movimentos contra, porque os grupos econômicos tem muito dinheiro. Então, eles pegavam figuras importantes da internet, como por exemplo o Danilo Gentili, não, Danilo Gentili não, é um desses caras aí. Que são famosos no Youtube. São youtubers, como a gente chama. E, o cara começou a falar mal, teve o Danilo Gentili também que começou a falar mal do Marco Civil. Aí, teve um canal do otário, que era um canal do Youtube que fazia críticas contundentes e tal. Mas o Canal do Otário, ele tinha um problema, ele começou. Ele, quando começou com esse discurso, ele tentou dizer que o marco civil era uma farsa, e usou argumentos já de um vídeo. Começaram a surgir vídeos contra, mas assim, se você que entende do assunto vir o vídeo, vai morrer de rir porque os argumentos eram completamente insanos. Entendeu?

[00:46:13.24] Interviewer: E foi uma cortina de fumaça de outros interesses?

[00:46:18.25] Respondent: Sim, claro. Representou outros interesses. Só outros interesses. Essa cortina de fumaça atrapalhou um pouco, atrapalhou bastante. Porque eram players muito positivos e pegavam um público leigo que não conheciam o marco civil, não conhecia a história do processo. E, digamos assim, criou opositores ao projeto. Aí, a gente começou a perceber que essa articulação ela representava as telecomunicações com certeza. E ela tem lá uma carta na manga ainda. Vou te dizer qual é já, já. E, porque eles queriam criar fatos políticos contra o Marco Civil e não conseguiram. Tanto que o marco civil foi votado e aprovado, foi promulgado

durante o NET mundial. Porque a Dilma foi orientada a levar para as nações unidas o discurso com base no decálogo do CGI-BR, o Comitê Gestor. E esse pronunciamento dela na ONU foi um pronunciamento muito positivo e que produziu, que gerou o NET Mundial, que era o interesse do Fadih que é o CEO da 'I Can" e que junto com a Dilma fizeram o NET mundial. E que hoje tem o Net Mundial iniciative que eu sou um dos conselheiros do Net Mundial Iniciative.

[00:47:55.01] Interviewer: Ok. Queria dizer mais alguma coisa? Queria falar um pouco sobre o desenho da consulta pública, os mecanismos para discussão. Você concordou com os <uninteligible> do site do Marco Civil, você acha que foi efetivo como uma maneira?

[00:48:17.09] Respondent: Foi. Foi. Ele usou uma plataforma WordPress. Foi no Ministério da Cultura se não me falha a memória e usou um plug-in desenvolvido por pessoal de software livre ligado à própria. Era um plug-in chamado 'dialogue', que era genial. Ou seja, pelo lado técnico o plug-in ele usava short-code, não é short-code, não. É, short-code. Que era uma tag que você inseria no meio do texto que abria uma janela de comunicados. Então, eles colocaram uma. Ou seja, a cada parágrafo, você podia comentar.

[00:48:58.00] Interviewer: Isso foi a segunda fase?

[00:48:59.17] Respondent: Não foi a primeira.

[00:49:01.10] Interviewer: Ah, ok.

[00:49:03.14] Respondent: Ou seja, desde a primeira consulta usou o 'dialogue'. Então, eles permitiam comentar na, em cada parágrafo, isso foi positivo porque era muito mais fácil você comentar a cada parágrafo do que você olhar um texto inteiro e botar um comentário só lá embaixo, consolidado. Então, isso facilitou enormemente o processo de consulta. Eu acho que na discussão de um processo de lei é a forma mais efetiva que tem. Melhor do que isso, só se você pudesse sinalizar, realçar um item do texto e comentar em cima do item como a gente faz, por exemplo, no Google Docs, né? mas eu acho que pra uma consulta pública da dimensão que foi o Marco Civil foi o melhor que podíamos ter feito. Já a consulta pública nova, atual, é mais um fórum de debates do que efetivamente. Estamos discutindo em cima de um texto consistente. Nós estamos pensando na mesma coisa no Net Mundial iniciative. Que nós estamos discutindo agora o Term of Reference e nós aceitamos, fizemos um questionário, várias pessoas participaram, de várias, de vários stakeholders e de vários continentes. E, nós vamos gerar um draft e esse draft vai ser comentado exatamente no mesmo modelo do marco civil.

[00:50:26.23] Interviewer: E na primeira fase do marco civil da consulta pública, você acha que logrou o fim de identificar e discutir os temas mais importantes para o internet brasileiro.

[00:50:42.23] Respondent: Sim. Acho que um dos problemas maiores, mas que tem a ver com a regra, acho que tem a ver com a regra do 1 por cento. Não sei se você já viu, é. ... pode pesquisar no Wikipédia a regra do 1 por cento. Que ela vale pra tudo, ou seja, ela diz o seguinte: de todas as ações colaborativas, 1 por cento realmente arregaça a manga e trabalha, dez por cento tem uma participação mais leve, ou seja, do tipo 'Ah, concordo", 'discordo!'. Né? E noventa por cento são lookers, ou seja, não fazem absolutamente nada. Então, apesar de ter um número grande, acho que duas ou três mil contribui, contribuintes na consulta pública. E eu me lembro que na, entre a primeira e a segunda consulta pública tivemos uma Campus Party. Que era o responsável do Ministério da Justiça pela consulta, levou para a Campus Party um calhamaço de quinhentas folhas de papel, falando assim, isso aqui é a consulta pública, quinhentas folhas de papel de comentários. Sistematizamos isso, e vamos mostrar aqui qual é a posição das pessoas em relação ao marco civil. Aí, é uma coisa substancial, quinhentas folhas de pa, de comentários. São, é muita coisa. Mas pra um país de duzentos milhões de habitantes não é nada, mas o que acontece é que esse debate ainda é um debate muito, não é que é elitizado. É que é um debate que tem depende, que tem um requisito técnico. Ou o cara tem que entender o que é internet

ou o cara tem que entender um pouco de lei. Eu não entendia de nenhuma. Eu entendia de internet. Tanto que eu estou na internet desde que ela começou no Brasil, desde noventa e seis. Mas eu não entendia xongas de processo legislativo e não entendia nada de política, aprendi nesses anos. Aprendi muito e me apaixonei pela ciência política. É uma coisa interessantíssima e quando eu comecei, quando o Mega Não ganhou em dois mil e onze, o prêmio Frida.

[00:53:08.00] Interviewer: Pelo quê?

[00:53:08.00] Respondent: Nós ganhamos o prêmio Frida na categoria liberdade por causa da nossa ação contra o Azeredo.

[00:53:14.20] Interviewer: Ah, sim.

[00:53:14.20] Respondent: E, aí eu passei. Como parte do prêmio eu fui participar do IGF lá em Nairóbi. Aí, quando eu entrei no IGF, eu fiquei que nem criança em loja de doce. Gente, isso aqui é um barato, um espetáculo. Porque eu comecei a entender como é que era o processo político internacional. O processo diplomático, digamos assim, e que era uma coisa totalmente diferente do processo político local. O processo político regional, local, nacional é muito sutil. Existem. E o processo político diplomático não tem sutileza nenhuma. Os caras, é do tipo, usa muito a expressão '<unintelligible> corporation' pra não ter porrada, né? mas a situação é do tipo 'eu acho que é assim', 'eu acho que é assado', 'eu acho que você está errado, por isso'. Então, no discurso diplomático ninguém fala isso abertamente, mas assim, já é bem assim, nesse nível. Bom, você perguntou da consulta pública, eu cheguei no processo internacional. Mas vamos lá, o que você quer saber mais aí?

[00:54:22.24] Interviewer: Eu acho que para você parece que a garantia da neutralidade de rede foi a maior vitória do Marco Civil?

[00:54:36.03] Respondent: Sim, ainda não foi porque não foi regulamentada, né? Espero que sim.

[00:54:41.01] Interviewer: Mas o que que você acha que foi a pior derrota? Perdida, a pior...

[00:54:49.22] Interviewer: Foi a questão do. Bom, a pior derrota que seria, a gente conseguiu que era o armazenamento de servidores obrigatório, que deve ser de doze no país, que isso aí seria uma tragédia. Porque isso vai contra um. Isso corrobora também com um processo que é problemático que é, chama de 'balcanização da internet'. Igual a Rússia fez. Aliás, a Rússia teve uma coisa engraçada, né? Que ela obrigou que todos os aplicativos usados no país tivessem datacenter no país, por outro lado na última reunião da "I Can', em Cingapura, eles foram reclamar que estão sofrendo sanções dos Estados unidos porque o "I Can" está bloqueando certos domínios na Rússia, ou seja, um paradoxo de quem é um país que se diz autossuficiente em termos de internet que não precisa de estar ligado a internet. Então, a balcanização ela tem sido defendida por vários especialistas de cyber crimes e cyber war, que são duas coisas que eu falo com uma certa ironia, um certo sarcasmo, porque eu não concordo com nenhum dos dois, mas eles defendem que a melhor defesa para um país é criar uma rede que se isole o país no caso de uma guerra digital. Na verdade, você pode isolar o país por outras <uninteligible>, por exemplo, se tivesse uma situação dessas no Egito, ninguém saberia quando a internet foi desligada no país, mas muita coisa já tinha saído do país. Então, se a gente tiver uma internet só fechada. Então, a pior coisa que eu achei no marco civil era isso aí, eu achei que isso aí ia ser terrível. E, é uma outra coisa que nos preocupa é o armazenamento de dados pessoais. Isso foi uma derrota. Isso foi uma exigência que passou e não devia ter passado. Mas foi uma circunstância que é, era tipo assim, o marco civil chegou a um momento que o próprio Molón deve te dizer, que era mais uma gerência de danos. Ou seja, é melhor que ele passe com isso do que não passar. Então, isso passou e isso tá <uninteligible>. Conversando com algumas pessoas, a gente pensou 'bom, enquanto isso não é regulamentado, isso não é um problema'. Porque como a lei,

o texto ficou escrito, quer dizer, teoricamente, eu, que sou um blog, teria que guardar o acesso ao meu blog, por exemplo. E, então, há um debate em torno disso. Quando e em que circunstâncias esses dados vão ser guardados? Porque o dado de conexão é uma coisa, o dado de acesso é outra. Juntar os dois é que é o perigo. Né? Porque o conexão, ele vai ganhar qual é o teu IP e qual é a sua, data e hora, é o timestamp e o IP que foi atribuído ao teu terminal. Isso é o dado de conexão. E o timestamp da desconexão. Que hoje em dia já não existe quase isso desse conceito da desconexão, né? Você fica conectado praticamente o tempo todo. E, se você associar esse timestamp e o IP e associar esse IP às visitas nas páginas. Conseguir trabalhar esse metadado, você tem uma informação muito preciosa de cada um. Né? Você saber onde você navegou é muito interessante. Mas, aí, quebra a tua privacidade por completo. Então, é, esse ponto é ruim. Então, a discussão é em torno dessa, a solução do problema pode ser dado na regulamentação, que ela pode definir, por exemplo, que só vão ser obrigados a guardar dados de acesso sites comerciais com volume maior, específico de usuários ou que tenham sofrido uma, duas ou três ações na justiça. Ou assim. Porque se não vai ser uma loucura, eu tenho um blog, vou ter que ter um datacenter pra guardar os dados de acesso do meu, porque tem que guardar os dados em ambiente seguro. E eu preciso de ter um <uninteligible> com um disco rígido em hide, não sei o quê. Ou seja, precisa ter um aparato tecnológico pra guardar esse tipo de informação. O mesmo, por exemplo, nós temos aqui uma rede wi-fi compartilhada, seria que eu ter que ter um registro de conexão dessa rede aqui, em ambiente. Então, eu acho que na regulamentação, isso <uninteligible>. Essa foi a maior derrota que a gente teve no marco civil.

[01:00:01.28] Interviewer: E ao fim de contas, você acha que o marco civil logrou estabelecer uma internet cívico, realmente cívico?

[01:00:13.15] Respondent: Sim. Agora, é uma outra. A nossa batalha agora não terminou. Uma vez, eu estava conversando com, com John Perry Belo, da iFF, nesse mesmo fórum da cultura digital. Ele esteve presente, eu fiquei conversando com ele, eu falei: 'Porra, quando é que você acha que a gente vai conseguir o que a gente quer?'. Ele disse, a gente não vai conseguir o que a gente quer nunca, a gente vai ter que brigar o resto da vida por isso, porque sempre vai ter uma nova ameaça. Sempre vai ter. Então, depois da briga contra o AI-5 digital, da briga pra aprovação do marco civil, as articulação agora, nós vamos ter que brigar pela regulamentação e nós vamos ter que brigar pelas jurisprudências. Porque jurisprudência, é. ... são os entendimentos do judiciário em torno da lei.

[01:01:04.26] Interviewer: Ok.

[01:01:06.27] Respondent: então, se há um entendimento da lei nesse sentido e ela é considerada plausível. Ela é, muitos dos juízes utilizam isso já como um pré, uma pré-percepção. Então, por exemplo, recentemente, agora, teve um caso de uma, de uma ação da polícia do Piauí, com um processo que corre em segredo de justiça - ninguém sabe o que se trata -, que queria bloquear o whatsapp no país. A gente falou assim. Pô, mas se o processo todo do marco civil surgiu pra, digamos assim, resposta a isso também. Que foi o caso da Cicarelli e tal. Que bloqueou o Youtube. Que é pra justamente não responsabilizar o provedor de conteúdo, vamos dizer assim, por um problema específico. Não é isonomia não, tem uma expressão maior que o Ronaldo vai te da, certamente ele vai te dar o nome. É, como é que chamaria isso? Bom, eu não me lembro o nome ad expressão técnica, inimputabilidade. Inimputabilidade do provedor de conteúdo. Ou seja, não tem sentido, por exemplo, o que aconteceu no passado. Teve um cara que teve que pagar danos morais pra uma pessoa por causa de um comentário anônimo no blog dele. Bom, eu tenho um blog que abre o comentário, por que que eu tenho que ser responsável pelo que as pessoas escrevem no meu blog, né? Então, ela ....o marco civil permitiu que isso não existisse mais. Então, com base no próprio marco civil, e, segundo a matéria. Que.... aí, começa assim, sempre estão batendo porque existe uma disputa no país, você está percebendo isso. É uma disputa um pouco insana. É um antipetismo. E associaram o marco civil ao PT, o que não é verdade. Apesar de ter sido um projeto iniciado na gestão do Lula, ele é um projeto que teve uma participação ampla de vários parlamentares de vários

partidos. E, teve uma participação ampla da sociedade civil, técnica ou não. Não é um projeto. Mas eles querem associar o marco civil ao PT e querem bater no marco civil. Porque aí matam dois coelhos com uma cajadada só. Atingem o PT e atingem aos interesses das empresas de telecomunicações. Isso é óbvio. Então, eu perdi o raciocínio. Deixa eu me lembrar. Perdi completamente. Quebrou a linha de raciocínio. Bom, vamos lá. Então, quer dizer, existe essa tendência de querer bater. Então, no processo do Piauí. Me lembrei. As matérias diziam que de acordo com o Marco Civil. O whatsapp fez algo errado. Não, não é isso. Ele está dizendo que ele seguiu os preceitos do marco civil de notificar o provedor, o provedor não fez nada. Aí, ele tecnicamente pode partir para cima do provedor de conteúdo. Só que não é razoável. Eu falei, 'gente, isso não é razoável. Você tirar o whatsapp do ar porque um usuário ou mais transitaram alguma coisa, algum material pornográfico ou pedófilo ou coisa parecida, é absurdo. Seria o mesmo que eu mandar desligar todo sistema energético do país porque um garoto morreu soltando pipa porque a pipa enganchou no fio'. A mesma lógica. Entendeu? aí, quer dizer, eu dei um exemplo bem assim do tipo. Pô, pra mostrar o tamanho da coisa. E, foi o entendimento do desembargador que suspendeu a ordem de sus pensão, cancelou a suspensão do whatsapp. Então, quer dizer, esses entendimentos assim. Existe um escritório de advocacia em São Paulo, eu acho que a gente não deve citar nomes, mas eu vou citar só pra que você se oriente quem é. Que é o Office boom. O office boom ele sempre foi um representante da FEBRABAN, sempre foi a favor do projeto do Azeredo. Então, tem interesses extremamente econômicos e fim de papo. Então, nós começamos a perceber que quando o marco civil estava indo já pra ser promulgado. Ele se tornou um especialista no assunto. Foi curioso isso. Começou a escrever artigos e pareceres, e coisa e tal. Criou seminários...

[01:06:04.19] Interviewer: Deu entrevistas no Youtube. Eu vi entrevistas como advogados também...

[01:06:18.11] Respondent: E, ele... aí, eu falei. Isso aí, já é a briga da jurisprudência que é a briga que vai ter lá na frente. E ainda tem mais um processo aí que eu te falei que ia falar. E tem uma casca de banana muito grande. O que que aconteceu? Quando o governo decretar a regulamentação do Marco Civil, com certeza, vai ter que ser banido o zero rating. Quer dizer, com quase certeza. Quer dizer, né? pela minha vontade, vamos dizer assim. Eu acho que vai ser banido o zero rating e as operadoras não vão mais poder oferecer facebook, whatsapp, nem xongas nenhuma de graça. Isso vai ser mostrado que o governo é contra a inclusão digital. Mas até que a culpa é do governo, ele errou na hora da decisão. E vai dizer que o governo quer tirar a internet do pobre. Vai gerar todo esse tipo de... Você pode ter certeza, isso vai acontecer porque vai ser o último suspiro das empresas de telecomunicações contra o decreto.

[01:07:27.21] Interviewer: Ah, ok.

[01:07:28.02] Respondent: Eu acho que na hora que o texto final já for publicado no ministério da justiça. Se esse texto vier a tona, eles já vão começar a bater em cima disso. Porque foi banido no Chile, foi banido no Canadá, se não me falha a memória. Porque é uma prática anticoncorrencial também. Mas eu sou contra por outros aspectos. E, eu acho inclusive o zero rating perigoso. Lá no IGF mesmo, eu mostrei umas imagens, eu pegava o meu tablet assim.... Em Istambul, teve três painéis de neutralidade, um só do zero rating e um sobre...

[01:08:19.16] Interviewer: Conhece um advogado jovem de São Paulo que se chama Pedro Ramos?

[01:08:21.03] Respondent: Não.

[01:08:22.14] Interviewer: Ele, ele publicou um artigo sobre o zero rating nos países desenvolvidos e no mundo inteiro.

[01:08:33.27] Respondent: Não, mas eu posso ver. Eu publiquei até um artigo no 'Circle' sobre isso. 'Zero Rating and the creation of digital Castas". Ah, e tem esse aqui que era em cima do argumento que eles usam, né? É, o que acontece? Você. A perversidade está no seguinte, quando você faz uma, promove uma inclusão digital pelo

lado do acesso. Você após o acesso, começa a tentar descobrir o que tem ali dentro. E, com isso, você cria uma cultura sua de internet. Uma cultura de rede. Que a rede é um conceito distribuído. A internet é uma rede distribuída e você começa a ter, essa percepção do que é rede distribuída, como é que a informação dá acesso. Quer dizer, cada pessoa tem uma percepção de internet. Se você me descrever internet. A sua descrição vai ser muito diferente da minha descrição. Mas, no conceito geral, as pessoas começam a entender como é que a rede funciona, distribuída e tal. E, isso tem afetado, existem estudos que a, o nativo digital ele tem uma conexão sináptica, cerebral, diferente do imigrante que é o meu caso. Eu não nasci com a internet. Meu filho nasceu com a internet, por exemplo. E, eles tem uma visão completamente diferente das coisas. A primeira coisa foi o seguinte. Eles não tem. A minha relação acumula tudo. Se eu acho uma informação na rede, eu guardo pra mim. Meu filho não guarda nada. Ele fala, a informação está lá, é simples de pesquisar. Eu acho o que eu quero. A mesma coisa outro dia, ele gosta de rock dos anos 80, que é da minha época, ele baixou uma série de discografias. Isso pra mim seria uma heresia, na minha concepção, jogar isso fora. Ele formatou o HD sem a menor preocupação. Lembra como eles usam a internet como uma extensão do cérebro. E uma outra coisa mais importante, usando a premissa. Outro dia eu até perguntei ao próprio Pierre Levy sobre isso, ele não tem uma opinião formada. Eu acho que ou ele não prestou atenção na minha pergunta. É, o que você acha do zero rating pra inteligência coletiva. Ele disse, 'não, eu acho positivo.'. Não é possível, ele não pode ter dito isso. Eu acho negativíssimo. Porque a inteligência coletiva, é a capacidade cognitiva, segundo ele mesmo, de construção de conhecimento da rede. Usando a rede como uma interface. E, aí, baseado nisso, eu fiz um texto sobre a neutrali, a singularidade das multidões. Que tem várias teorias em cima de singularidade tecnológica que no futuro. Que chega ao Matrix. Que os homens são dominados pelas máquinas. Eu falei, não, a singularidade das multidões. As multidões informativas, digitais, vão ser muito, vão dominar os imigrantes. Que eles vão ter uma capacidade de processamento de adensamento de informação tão mais rápido, tão mais eficiente do que a nossa. Que eles vão ser muito mais inteligentes do que qualquer um de nós. Juntos. É uma coisa plausível. Bom, mas isso, em todo esse aspecto, na formação do cidadão digital, tal. Seria muito perverso, por exemplo, eu dar um acesso à internet por uma pessoa que já é de uma parcela da sociedade excluída socialmente, por causa de limitações financeiras, eu dar um acesso também é, digamos assim, específico ao facebook e não a internet. Ora, facebook é uma rede privada, fechada. Ela é amarrada. Ela é, digamos assim, é uma rede social que é difícil de buscar informação. Já tentou achar alguma coisa no facebook, você não acha. Se pesquisar palavra-chave, não existe. Agora, que eles aceitam tags, mas antes não aceitava nem tags. Mas achar uma coisa no facebook é muito difícil, no Orkut era muito mais fácil. Aliás, era facílimo. Então, e além de tudo, a pessoa cria uma visão equivocada da rede. Ela não conhece a rede, não conhece a característica distribuída da rede e não conhece a questão da inteligência coletiva porque a função da inteligência coletiva no facebook também é muito limitada. Justamente porque você não tem facilidade de buscar informação. Aí, você cria um cidadão de segunda categoria. E que pior, no futuro ele vai ter uma, um letramento digital, muito inferior ao letramento digital do nativo, que tem acesso pronto. Então, é isso. É uma das questões mais perversas do zero rating, tanto que teve um estudo agora que mostrou que em vários países, na Indonésia e alguns países da África, por exemplo, as pessoas acessam o facebook, não sabiam que acessavam a internet. A maioria das pessoas que acessam o facebook, não sabem que estão acessando a internet.

[01:14:09.21] Interviewer: Isso é um tema muito interessante, sim. Restam-me duas perguntas. Uma é, dado a grande <unintelligible>, no caso do marco civil, entre as empresas de telecomunicações e a sociedade civil no outro. Como é que ganhou o lógico civil, nesse caso?

[01:14:45.09] Respondent: Deixa eu tentar entender sua pergunta. Apesar da disputa muito forte como é que a gente conseguiu...

[01:14:52.01] Interviewer: É, falando especificamente no assunto do Poder. Que o Mega Não não tem assim, essa reserva de dinheiro.

[01:15:01.07] Respondent: tem nem dinheiro.

[01:15:02.00] Interviewer: Não. Exato. Como é que vocês conseguiam equilibrar?

[01:15:09.24] Respondent: AH, as forças? Olha, com a rede. Nossa. E isso está ficando um pouco preocupante, mas a nossa habilidade de trabalhar com a rede e de articular com a sociedade civil em larga escala foi o ponto positivo. Agora, existem pessoas que fazem isso por dinheiro. E, aí, a coisa está ficando meio contrabalançada. Tanto que até um determinado eu dizia, defendia a tese de que a internet, quer dizer, a tese de que a sociedade civil conectada seria o quinto poder. Você tem os três poderes do estado, você tem o poder institucional, das corporações. E teria o poder da sociedade civil, conectada e organizada, contrapondo as grandes corporações. É o poder do esclarecimento, digamos assim. então, isso foi uma grande vitória pra gente. Eu temo que esse poder esteja enfraquecendo agora. Principalmente, pela grande facebookalização da rede. Porque o facebook ele consegue controlar os fluxos, certamente ele consegue controlar o nosso poder. E, isso é preocupante. Nós vimos isso nas eleições agora. É, mas foi isso, foi através da rede. O nosso lobby era reunindo as organizações. Portanto, tem organizações que tem escritório em Brasília e atuavam junto aos parlamentares o tempo todo, orientando e tal. Existia uma certa unidade de pensamento. Então, mais ou menos assim. Porque as teles estão sempre na câmara, eles tem lá dentro da câmara, sei lá, dezenas de lobistas, diariamente, trabalhando em cima de cada parlamentar, dando pauta, presentinhos e coisas assm. Então, realmente é uma disputa injusta. E, a nossa disputa contra o facebook, é nesse sentido. Ou seja, se nós tivermos uma sociedade completamente facebookalizada, a gente vai ter uma sociedade totalmente imbecil. No sentido de que, a rede ela serve, a rede distribuída, ela serve como uma forma de contrainformação. Né? Se você tem uma mídia que não é imparcial, você tem uma mídia parcial, que ela tem uma posição política bem clara e ela trabalha nesse sentido. Se você tem uma rede que você tem uma contrainformação, ela é interessante. E a internet ela tem uma característica muito maior do que uma polarização, ou seja, você tem uma informação contra e uma informação a favor. Não, você tem uma informação contra, a favor, meio contra, quer dizer, você tem várias matrizes em torno da informação que você busca. Então, você tem uma fonte de informação que é uma fonte de informação, digamos assim, imparcial. Onde você tem controle da informação. Você lê uma coisa... "Não, não pode ser. Será que. Vamos dizer, o caso da Venezuela, será que a Venezuela está tão ruim assim? A coisa está tão ruim na Venezuela? Aí, você vai, você acha coisas, acha textos, argumentos, posições que não. Que a coisa é positiva. Por outro lado, você acha textos e informações que não, que a coisa realmente é ruim, é negativa. Entendeu? Então, é, mas com isso você constrói o seu juízo. Coisa diferente da mídia. Que só tem um posicionamento. Então, eu temo que isso aconteça. Com base na experiência que eu tive durante a campanha eleitoral. Porque nós tínhamos lá durante a campanha eleitoral, tinha um camarada que articulava a juventude das comunidades. E, na conversa com ele, eu falei assim: "Mano, mas a galera das comunidades já é bem descolada. Ela já tem... ', ele falou, assim: "Não, a galera das comunidades forma o seu juízo pela mídia". Eu falei, "Mas como eles não tem acesso à internet?". Ele falou, "Não, eles tem acesso a facebook".

[01:19:25.01] Interviewer: Falando da mídia, isso é a última pergunta que tenho. Há alguma, na sua visão, há alguma coisa deficiente na mídia ou na democracia aqui no Brasil, que faz o marco civil especialmente importante? Que lhe dá uma significância mais...

[01:19:49.03] Respondent: É, as coisas não estão tecnicamente relacionadas, mas o marco civil garantindo as liberdades, ele garante a liberdade de expressão na rede. Isso já é um ponto importante pra contrapor uma mídia conservadora e direcionada e monopolista. E uma das brigas. Mas ele não tem uma gerência muito grande. Ou seja, ele se permite que você crie na rede, com liberdade, sem preocupações legais, digamos assim, uma contrainformação. Essa. O problema da mídia brasileira. O que as pessoas. Logicamente, a mídia mesmo anuncia equivocadamente. Dizendo que é. Equivocadamente e intencionalmente, dizendo que é censura e não é

isso. A proposta que foi discutida em vários fóruns de comunicação, vários. Em vários níveis, regional, municipal, estadual, nacional, gerou um documento final, onde se discutia a democratização dos meios de acesso, de informação. Porque até hoje no Brasil, rádio comunitária e rádio pirata são colocadas na mesma cesta. Então, ou você tem a rádio comercial ou, que é a única que está certa, porque a rádio comunitária está sempre sujeita a ser fechada, discriminada. Você não tem essa democratização da comunicação. Da mesma forma, por exemplo, o que o Brasil quer fazer com a mídia, é como a Inglaterra tem. Ela tem um certo, uma certa controle, no sentido de quem é dono da televisão, não pode ser dono do jornal e quem é dono. Eu soube que é assim na Inglaterra, nem sei se é assim. Acho que você pode me dizer isso com mais propriedade. Mas, quer dizer, a Globo não podia ser dona da Globo, da Rádio Globo, do jorna O Globo, da editora Abril, da editora Globo. Ou seja, o Globo tinha que escolher ou ele é dono da televisão, ou ele é dono do jornal, ou ele é dono da rádio, ou ele é dono da revista. Porque se ele é dono de todos os veículos de comunicação, ele consegue trabalhar qualquer percepção. Você é dono da globo, você coloca uma piadinha dentro de uma novela ou de um programa qualquer, você já consegue trabalhar as pessoas. Mas se você é dono da televisão, é dono do jornal, é dono da revista, você replica informação, transita informação entre os seus veículos, você tem um controle enorme. Isso é teoria da comunicação, isso não tem mistério. Então, é isso que é um processo que ainda vai acontecer que deveria ter acontecido a quatro anos atrás. Não aconteceu. Porque o projeto do Plano Nacional de Comunicação estava pronto pra ser enviado ao Congresso e não foi enviado. Como a gente diz em português: comeram mosca, né? Então, acho que é isso. Acho que o Marco Civil não tem ingerência sobre isso, ele só tem assim, na comunicação, ele cria condições de que nós tenhamos um canal de comunicação nas mídias sociais mais livre. E a neutralidade nos garante que nossas vozes serão ouvidas por igual, tá? Porque se não houvesse neutralidade, por exemplo, quem garante que meu blog teria visitação ou teria facilidade de acesso que teria o jornal O Globo online, por exemplo. Entendeu? É, isso são detalhes também que tem importância. Por que assim, não, todo mundo pode querer votar na internet, mas a gente não tem neutralidade. Então, O Globo, você acessa de graça, não desconta dos seus créditos, vamos dizer assim, mas o blog do João não. Você tem que pagar pra acessar o Mega Não porque ele não tem contrato conosco. Quer dizer, só pra citar alguns exemplos de como a coisa poderia ficar ruim, né? Então, é isso, eu acho que essa é a questão que você fez da última pergunta. Não sei se você tem mais alguma dúvida ou, que você.

[01:24:16.23] Interviewer: Não, eu acho que já, eu quis a história dos inícios da campanha e também para ter as suas opiniões como alguém que não tenha filiação com nenhuma organização, nenhuma empresa. Para ter as suas opiniões sobre estes assuntos. Pra mim siso foi ótimo. Vou parar a gravação

Alex Castro – Sinditelebrasil - Brasília - 19/03/2015

[00:00:02.02] Interviewer: Quando o Marco Civil foi lançado como anteprojeto de lei, qual foi a primeira postura do SINDITELEBRASIL frente a, a ele?

[00:00:48.00] Respondent: Bom, logo que o projeto começou a ser discutido no executivo, nem tinha ido ainda pro congresso. é. ... houve consulta pública no ministério da justiça pra montar o anteprojeto de lei. A gente, a nossa percepção, era de que a nova lei viria pra suprir algumas lacunas ....Você entende bem português?

[00:00:48.00] Interviewer: Sim, entendo sim.

[00:00:48.00] Respondent: Algumas lacunas. É. ... que a legislação atual, seja no marco legal ou no marco regulatório, não ocupavam, não atacavam, não cobram, vamos dizer assim. Então, que lacunas eram essas? Eram justamente o tratamento em relação aos provedores de aplicação na internet. Porque a internet é um

serviço de valor adicionado aqui no Brasil, não é um serviço de telecomunicações. Ah... ele é prestada sobre um serviço de telecomunicações, por isso é chamado de serviço de valor adicionado. Então, esses provedores, a quem eles se reportam? Quem os fiscaliza? Quem os avalia? Tá, certo, sobre o seu serviço? E tem dia que tinha uma vacância de legislação sobre eles. Então, uma questão que a gente entendia que era muito importante era a questão da inimputabilidade da rede. Né? A inimputabilidade da rede ela viria pra cobrir essa questão de responsabilização do provedor. Então, é, provedor que eu digo, é provedor de aplicação. E sempre que eu falar provedor de aplicação, são todos os demais provedores de internet. Ou seja, provedor de armazenagem, provedor de conteúdo, provedor de entretenimento, provedor de busca, qualquer outro tipo de provedor. O provedor de acesso e conexão, eu vou juntar os dois, o provedor. Você originalmente é dos Estados Unidos, americano?

[00:02:19.07] Respondent: Não, eu sou Cabbot, eu sou britânico, mas moro no Canadá.

[00:02:23.10] Interviewer: Então, o provedor de acesso e conexão, aqui no Brasil se faz uma distinção de provedor de acesso e provedor de conexão. Provedor de acesso é aquele que oferece a infraestrutura pra você poder acessar a internet, o de conexão é o que te dá a autorização pra você entrar na internet. Ele faz o triple way. Autorização, o accounting... Ele por exemplo, você quer acessar a internet ele diz. É como se ele fosse uma, o cara do pedágio. A estrada quem constrói é o provedor de acesso, e quem deixa você trafegar na estrada é o cara do pedágio. Aí, ele diz assim: - você tem autorização? quem é você? você pagou o pedágio? você tem direito de acessar essa estrada? Aí, ele libera e você entra. É.. em outros países, nos Estados Unidos, por exemplo, não existe essas duas figuras, só existe a figura do ISP. Esse, o ISP, ele faz ..... ele constrói a estrada e te dá autorização pra você passar. Bom, então, a gente entendia que a questão da inimputabilidade da rede seria boa para os provedores de acesso e também para os provedores de aplicação. Pra evitar essa questão jurídica aí, de juiz entender que a gente deveria ser responsabilizado por um, por um conteúdo ilegal que está na rede. Ora, eu sou transportador, eu transporto conteúdo. Né? Eu não tenho nada ....É que nem o correio, ele entrega a carta, ele não lê o que está escrito dentro da carta. Né? Então como é que poderia querer responsabilizar os provedores de acesso? Né? E com relação aos provedores de aplicação existia muita controvérsia, principalmente com relação aos conteúdos de terceiros. Né? Então, a adoção do 'Notice and take down', ou bastava a questão mediante a ação judicial, né? Então.... pra poder retirar aquele conteúdo da internet. Então, a gente achava que a lei viria pra cobrir essa vacância porque as empresas de telecomunicações, elas já são extremamente reguladas pela ANATEL, tem mais de 6000 páginas de regulamento da ANATEL. Todos os serviços, eles tem seus regulamentos, tem suas... regulamentos de operacional do serviço, como é que ele se estrutura, quanto é que ele cobra, tarifa, preço, planos, é.... qualidade, está tudo .... sigilo, interconexão, tudo lá está regulamentado peal Anatel. Então, e a gente é extremamente regulado e fiscalizado. A ANATEL tem escritório de fiscalização no Brasil inteiro, praticamente ela tem fiscal nas operadoras todos os dias, ao longo do ano. Então, mas qual foi a nossa surpresa, que o texto que foi gerado a partir dessas contribuições foi um texto que, que era muito mais o foco do texto estava muito amis sobre nós do que sobre os provedores de aplicação. Está certo? essa a gente... a nossa expectativa era uma e aconteceu uma outra coisa.

[00:05:40.06] Interviewer: E para o setor, você fala, você mencionou uma lacuna legislativa aqui no Brasil, isso foi um problema grave para o setor enquanto a sua atuação comercial?

[00:05:57.05] Respondent: Não, para o setor de telecomunicações não houve lacuna porque, como eu te falei, nós já somos regulamentados. A ANATEL regulamenta, o órgão regulador de telecomunicações é a ANATEL, e aí, ela regulamenta todos os prestadores de serviço, então para nós...

[00:06:09.11] Interviewer: <uninteligible>

[00:06:10.27] Respondent: O problema era no serviço de valor adicionado para os provedores de aplicação, está ok?

[00:06:19.19] Interviewer: e como era ao início, pelo menos, como era um processo de consulta aberta e todos os setores que tinham um interesse na internet tinha a oportunidade de contribuir, quais foram os, os objetivos primários de sinditelebrasil neste, neste contexto.

[00:06:40.27] Respondent: Bom, o que que a gente brigava durante todo o processo. Aí, já também incluindo o período dentro do legislativo, considerando já na Câmara e no Senado. O que que a gente? Primeiro, a gente percebeu uma politização enorme do debate, tá? Isso foi uma coisa muito ruim. Segundo, aspectos ideológicos também prevalecendo dentro da discussão. E terceiro, é que uma minoria ativa tava, tava falando em nome de uma maioria silenciosa da população. Então, o que que a gente percebia? Hoje, a gente sempre falou, defendeu o seguinte que na rede de telecomunicações que suporta o acesso à internet, né? Cem por cento da capacidade disponível na rede era, vamos dizer assim, oitenta por cento dessa capacidade era consumida por 25%, 30% de usuários, só. Então, 70% dos usuários consumiam 20% da banda. E esses 80% que a gente buscava, então, de alguma forma defender, que a lei protegesse esses 80% eles estavam, assim, nosso entendimento é que eles estavam sem um apoio, sem alguém que falasse por eles. Sem uma representação. A palavra certa é representação. Por quê? Todas essas organizações do terceiro setor, elas falavam mais em nome dos heavy users, tá certo? Então, apesar de dizer que estavam falando em nome de todos falavam apenas em nome dos heavy users. E houve um negócio que a gente entendeu muito ruim para a discussão do marco civil. Primeiro, a politização que eu já te falei e a questão ideológica, né? E a atuação dos ativistas, né? Os ativistas, eles adotaram uma, uma argumentação, uma estratégia de atuação de que, de que, de gerar animosidade, de exagerar as situações. Eu estou pegando aqui, as palavras que foram colocadas pelo CEO da AT&T, no caso americano, mas que se aplica aqui, uma animosidade, um exagero, a demonização das empresas de telecomunicações, como se as empresas de telecomunicações fossem o demônio, tá certo? E a disseminação do medo e do alarmismo. Então, essas foram as vozes que estavam sobressaindo nessa discussão. E que a gente entendia que dessa forma não ia ser possível se tomar como base pra gente consolidar um marco civil que fosse bom pra todo mundo. Porque na verdade o papel do regulador é saber balancear bem adequadamente o desejo do terceiro setor, o desejo da indústria e o desejo da população em geral, da sociedade em geral, da acadêmica também. E balancear... não pode ser sempre do jeito que... o que que a sociedade gostaria? Que a internet fosse de graça. Que eu pudesse trafegar a 100, 1 gigabytes por segundo, capacidade ilimitada, que eu pudesse pagar cinco reais pelo serviço, ou de graça. Isso seria o ideal. Acontece que por outro lado, as operadoras mostravam que não éramos nós que falávamos isso, era a maioria dos analistas econômicos de telecomunicações mostravam que as empresas vinham sendo obrigadas a fazer grandes investimentos, investimentos vultosos pra fazer frente a expansão de suas redes em função do aumento grande de tráfego que vinha sendo experimentado na internet. Tráfego baseado em vídeo que vinha sendo cada vez, crescentemente disponibilizado na rede. Então, as empresas vinham tendo que investir e a rentabilidade não acompanhava o crescimento percentual. Então, não se traduzia aquele investimento não estava se traduzindo em receita. As margens <uninteligible> das operadoras, pelo menos aqui na américa do sul, mas principalmente aqui no brasil, vinham caindo, mas caindo em todas as outras, vinham caindo. E a gente mostrava que a rentabilidade estava menor do que a inflação aqui no país. Então, o que a gente dizia era o seguinte, olha, a gente quer um marco civil, que seja um marco civil que dê liberdade aos modelos de negócio. Aqui a gente possa discutir futuramente, não estamos querendo impor nenhum modelo de negócio, mas em função do cenário que a internet ela está em desenvolvimento ainda é muito diferente do passado. E vai ser muito diferente daqui pra frente, a gente não queria uma lei que nos engessasse que abrisse a possibilidade do discurso, do estudo da discussão, né? de novos modelos de negócio pra gente poder negociar. Então, a gente sempre foi favorável ao conceito de neutralidade de rede, e a gente sempre justificava, era interesse nosso mesmo. Aqui no Brasil, muitas das conexões ao com o exterior, nos estados unidos principalmente, entendeu? Então, uma boa parte do tráfego, a maioria do tráfego vai pra fora.

Bom, pra fora eu vou ter que fazer, eu vou ter que pegar a minha rede, o meu tráfego, ele vai ter que passar por uma AT&T, por uma Verizon, alguma outra empresa no exterior, bom se aquela empresa lá prioriza o tráfego dela própria e descarta o meu ou discrimina o meu. Ou pior, se ela prioriza o tráfego do meu concorrente aqui no Brasil, discrimina o meu, o que que vai acontecer comigo, os meus clientes vão migrar pro outro concorrente aqui, tá certo? porque o meu cliente vai experimentar, como ele busca o conteúdo lá fora, ele vá experimentar uma qualidade de serviço ruim, enquanto o outro vai ter uma qualidade de serviço boa porque lá o cara prioriza o meu concorrente, não a mim. Então, a gente tinha como empresa, sempre teve, interesse no conceito da neutralidade de rede, da, de uma forma bem ampla. Então, sempre... mas o que aconteceu, devido a esse, essa questão politizada, ideológica, essa questão dos ativistas, dessas vozes surgirem com animosidade, exagero, demonização, como eu te falei. Então, por exemplo, diziam o seguinte... as empresas não querem investir. As empresas já ganham muito dinheiro, mandam altos volumes de recursos pro exterior, entendeu? Elas querem é faturar mais, querem arrumar um jeito de faturar mais. E a gente mostrava com dados que isso era mentira, tá certo? e não eram dados nossos, eram dados dos analistas econômicos, mostrando que as margens estão reduzindo, a gente batendo recordes de investimento no Brasil. Em 2014, a gente investiu 29 bilhões, o setor de telecom 29 bilhões, mas chega a 15%, 16% da receita operacional bruta. Mais um percentual de investimento, difícil de se encontrar no mundo hoje, mesmo em países emergente. Então, é..... querer dizer que a gente não queria investir se a gente vem batendo recorde em cima de recorde de investimento, né? querer dizer que a gente está ganhando rios de dinheiro, quando a gente mostra que as margens são pequenas, os resultados. Então, mostrando, pegando os balancetes, os balanços das empresas que são públicos, né? E mostramos, pedimos, pagamos uma consultoria LCA, pra mostrar qual era a rentabilidade. Agora, a gente não podia escancarar demais isso, se não a ação da empresa despenca. Todo mundo ....porra, telecomunicações é uma porcaria, não vou investir nisso. Então, é .... era um trade-off que a gente tinha que fazer ao mesmo tempo que tinha que rebater os ativistas que vinham com um discurso mentiroso, a gente não podia se expor demais com relação a questão do serviço. Bom, e vimos falando também do benchmark internacional, como estava a Europa, os Estados Unidos, o Chile e outros países, a Venezuela, colômbia.

[00:15:55.06] Interviewer: E como vocês estavam aqui articulando esses argumentos, publicando esses resultados?

[00:16:03.08] Respondent: A gente participava de todos. A gente soltava vários releases, notas para as mídias especializada, tá certo?

[00:16:08.01] Interviewer: Que estão ainda no seu site? Você sabe se houveram...

[00:16:11.01] Respondent: Não sei se está lá, mas deve estar lá. Deixa que perguntar isso, só um instantinho, peraí.

[00:16:20.04] Interviewer: Que que você acha que as restrições...

[00:16:25.08] Respondent: Você botou stop ou botou pra funcionar aqui, está funcionando?

[00:16:30.15] Interviewer: São forte demais...

[00:16:36.11] Respondent: Quem são forte demais?

[00:16:36.11] Interviewer: Que as restrições quanto a neutralidade de rede no marco civil?

[00:16:40.17] Respondent: Não, eu não falei isso.

[00:16:43.10] Interviewer: Não, ok.

[00:16:43.21] Respondent: Então, vamos falar um pouco de neutralidade. Então, o que que a gente queria? A gente não era contra o conceito de neutralidade de rede. A gente queria que ele fosse ajustado pra que ele ficasse claro e evitasse quinhentas interpretações diferentes e depois a gente tivesse uma enxurrada de ação judicial, né? Cada um interpretando de um jeito e a coisa ficasse lá na justiça para ser discutida. O que a gente queria efetivamente era o "paid priorization", a gente queria que fosse possível. E a gente defendia o seguinte, a ANATEL já tinha estabelecido nas resoluções, resolução 574 e 575, essas duas resoluções estabeleceram padrões de qualidade da internet. Então, velocidade, perda de pacote, latência, <uninteligible>, uma série de características. Então, a gente falou, olha ...

[00:17:46.28] Interviewer: Embora então não seja o regulador dos valores, dos serviços de valor agregado.

[00:17:52.03] Respondent: Não, a ANATEL é o órgão regulador da telecomunicação, de telecomunicações, só. A ANATEL não entra em serviço de valor adicionado. Então, a ANATEL tinha dois serviços de telecomunicações, o ECM e o SMP, aqui no Brasil. O ECM é o serviço de comunicação multimídia. É o da banda larga fixa, isso é o serviço de telecomunicação. Outro serviço de telecomunicações, é o Serviço Móvel Pessoal que é o móvel, banda larga móvel que é o aparelho, é o móvel. Então, a ANATEL criou, aprovou duas resoluções, se eu não me engano em 2011, duas resoluções dizendo qual é o padrão mínimo de qualidade da banda larga, né? Então, a gente diz olha, vamos atender. Nós vamos ter que mexer na rede pra atender o que a ANATEL estabeleceu de padrão de qualidade. Agora, se que quiser vender um serviço por uma qualidade melhor do que a Anatel colocou como o mínimo, que já é muito bom o que a Anatel colocou, tá? Por que eu não posso fazer? Eu não estou degradando ninguém. Eu não estou piorando. Eu estou dando um plus pro cara. É que nem a classe executiva e primeira classe no avião, o fato do cara viajar de classe executiva ou de classe econômica, não quer dizer que ele vai ter um serviço ruim. Ele vai poder ir a qualquer lugar no mundo, como o cara da primeira classe, qualquer país que ele quiser ele pode ir. Ele pode acessar qualquer conteúdo. E segundo, ele vai ter um padrão de qualidade bom que é o da ANATEL. Que é o que a ANATEL estabeleceu. Não vai ter um serviço, degradado. Agora, eu posso oferecer uma classe executiva, posso oferecer uma primeira classe. Então, isso é o 'paid priorization', que a gente queria incluir. E, outra coisa que a gente queria incluir, a segunda coisa, era a possibilidade de oferecer pacotes customizados. Não acesso à internet limitada, mas oferecer pacotes assim.... Ó, você quer acessar a internet por 10 reais, então está bom, você vai acessar por 10 reais, você vai ter acesso só a WEB, e vídeos, por exemplo, 500 MB de vídeo, fora do horário de pico. Então, o cara que baixar um vídeo lá, assistir um vídeo no Youtube, vê fora do horário de pico. No horário de pico, ele não podia usar vídeo, mas ele podia acessar estudos de, educacionais, podia acessar facebook, acessar rede social de uma maneira geral, fazer buscas, reservar um hotel, entrar na, na companhia aérea que ele tem interesse, fazer uma reserva de passagem, ele teria acesso à internet. E a gente queria customizar pacotes específicos, acesso específico. Não nos permitiram, tá certo? Então, é.... basicamente era isso que a gente queria. Agora, o tratamento ao pacote... porque o que que o conceito da neutralidade de rede do marco civil estabelece. Que os pacotes tem que ter nas atividade de transmissão, comutação e roteamento, tá? NO tráfego, é a rede, a rede tem que ser neutra. Isso que diz o Marco Civil. A rede tem que ser neutra. Se a rede tem que ser neutra, eu não posso criar uma política de roteamento no meu roteador, né? De forma a beneficiar o tráfego de A em detrimento ao tráfego de B. Se o A me pagou pra ter prioridade, eu dou prioridade pra você. Não posso fazer isso, tá certo? Então é..... todos os pacotes tem que ter tratamento igual. Tá certo? Bom, é. ... o que a gente não queria. Mas a gente queria a neutralidade de rede com uma outra conceituação, não passou, passou essa. E a gente aceitou e estamos implementando, obedecendo essa que está aí. Esse conceito de neutralidade de rede que está aprovado no marco civil da internet.

[00:21:57.02] Interviewer: O que que vocês podem oferecer agora ao consumidor brasileiro?

[00:22:02.17] Respondent: Agora a gente pode oferecer, tem que oferecer a internet, um acesso à internet, né? Baseado em velocidade e capacidade. É isso que a gente pode fazer. Então, essa é uma outra preocupação, isso

a gente conseguiu ganhar. Porque a preocupação era que os ativistas não queriam o sistema de franquia por capacidade. Eles diziam que quebrava o conceito da neutralidade de rede, entendeu? Então, o conceito de neutralidade de rede que saiu do marco civil também não atendeu os ativistas. Por quê? Porque os ativistas não queriam o, a franquia. Não queriam planos por capacidade, tá? Então, foi um meio termo, assim como desagradou a gente porque não tem QOS, não posso oferecer, não tem 'paid priorization', tá? Pra nós, eu não posso oferecer pacotes, acesso customizado. Eu sou obrigado a oferecer a internet, acessível a qualquer um. Então, por exemplo, qualquer aplicação que eu digo, qualquer um, é qualquer aplicação. Então, eu poderia fazer um pacote dizendo o seguinte, olha, esse acesso que você vai me comprar vai custar dez reais, mas você não tem voip aqui. Não tem voip. Ou, vai custar dez reais, mas você só tem vídeo fora do horário de pico. Vai custar dez reais, mas você não tem streaming aqui nesse pacote. Eu poderia, a gente queria fazer isso, isso otimizaria a rede, tá certo? E facilitaria pequenos provedores, tá? Que não tem dinheiro pra gastar, fazer grandes investimentos. Mas ele poderia fazer um investimento menor, principalmente nas áreas mais remotas e, oferecer serviços desse tipo aqui. Tá certo? Isso seria bom pra todos, pra população que aí pagaria menos e teria o acesso à internet, né? E também pro próprio provedor de internet, né? Que não precisaria fazer grandes investimentos, porque se o tráfego de vídeo hoje consome uma banda tremenda e não tá rentabilizando adequadamente porque, né? do jeito que está sendo cobrado hoje, a tendência, a pressão. A competição no Brasil é grande, no móvel é muito grande, a pressão é pra redução das margens, né? E você tendo que investir muito pra fazer frente ao, a demanda de tráfego, né? Pra um provedor de pequeno porte ele poderia fazer uma rede mais modesta, e limitando, e dizendo ó, você não tem aqui acesso a qualquer aplicação. Não, voip não tem aqui, streaming não tem aqui, entendeu? E ele poderia comercializar e dar oportunidade a usuários de menor poder aquisitivo de poder acessar a internet, acessando o hotel, a passagem, arquivos educacionais e etc. Bom, mas isso não passou, proibiu, tá? O marco civil proibiu. E a gente agora tem que... você me pergunto, o que vocês podem oferecer? A gente pode oferecer a internet tem que acessar qualquer aplicação qualquer aplicação, o usuário que ele comprou qualquer acesso, ele pode acessar qualquer aplicação, apenas vai ser diferenciado na velocidade e no volume, na capacidade, é isso que a gente pode oferecer hoje, tá? É isso.

[00:25:32.15] Interviewer: É. ... isso fica muito mais claro agora. O terceiro setor fez um argumento muito forte dizendo que a neutralidade de rede fosse análogo a liberdade de expressão .... o que que você acha de esta, de essa relação entre os dois conceitos?

[00:25:57.03] Respondent: EU acho que eles não se relacionam. Sinceramente, não acho que se relacionam, a liberdade de expressão é você ter a possibilidade de você acessar o site do seu interesse, qualquer site. E, na verdade, o conceito de, vamos dizer assim, talvez se relacione nesse sentido porque o conceito que a gente queria de neutralidade de rede, né? É..... podia limitar a acessibilidade pra alguns acessos, alguns planos de serviço limitaria, mas... algumas aplicações não poderiam, mas hoje o, hoje a liberdade de expressão é você poder acessar qualquer site que você queira, tá certo? E colocar a informação que você queira colocar lá, tá certo? Então, você poder acessar as informações e inserir as informações de forma livre. Então, isso está preservado dentro do conceito atual do que seja neutralidade de rede. Então, é.... eu acho que .... o que que você acha pior, vou te fazer uma pergunta. Você ... o Brasil, ele tem uma desigualdade social muito grande, ainda tem. Então, a gente tem regiões pobres, pra você ter uma ideia.... o brasil tem cinco mil quinhentos e setenta municípios, desses cinco mil quinhentos e setenta municípios, eu te digo aqui três mil e novecentos tem banda larga móvel. Aí, você vai dizer assim, puxa, mas a diferença aqui dá mil seiscentos e setenta municípios não tem bandar larga móvel? Eu vou dizer, não. Só que esses três mil e novecentos aqui são 92% da população e os mil seiscentos e setenta que não tem banda larga móvel, né? tem 8% da população. Então, eu pergunto pra você se você está nesses mil seiscentos e setenta, se você mora aqui por que que eles não tem banda larga móvel lá? Porque não tem rentabilidade. É, o investimento é caro pra fazer lá, são áreas mais remotas, né? É. ....é caro. E a população é pobre lá. São condições que foram as telecomunicações que resultou nisso? Não. É a situação econômica do país, social. Social e econômica. Então, o que que a gente propunha? O que que é pior? Agora eu

pergunto pra você, o que que é pior? Você não tem o serviço nenhum. Quando você não tem o serviço, que você não pode pagar ou porque não tem infraestrutura lá, tá? Quando você tem de liberdade de expressão? zero. Você não pode falar, você não tem o serviço. Zero, né? Agora, se você tiver a possibilidade de acessar rede social, facebook, google, youtube, poder inserir lá um vídeo seu, lá no youtube, você ver os vídeos no youtube. Isso aí você só pode fazer fora do horário de pico, por exemplo. Tá? Mas você ter acessos customizados pra essa população aqui, tá certo? Você vai dizer, o cara tem 100% de liberdade de expressão? Não. Vai ter algumas aplicações que ele não tem direito, não vai poder acessar, mas é melhor do que ele não ter nada. É melhor do que ele não ter nada. Era o que a gente defendia. A gente defendia a massificação do acesso da internet através dessas soluções. Bom, porque pra essas regiões realmente o mercado não regula. A iniciativa privada chegar lá tem que ser por uma imposição regulatória, né? Então... porque são regiões pobres, população com um IDH bem baixo, né? Então, a gente sempre defendeu isso porque a gente não era contra a liberdade de expressão. Agora, os ativistas do terceiro setor, eles pensam num mundo ideal. Primeiro, que o governo tem dinheiro infinito que pode, não precisa da iniciativa privada, vamos transformar o serviço de banda larga em serviço público, quem presta é o governo, e vamos universalizar, todo mundo vai ter acesso. Não é assim, não tem dinheiro pra isso. A gente mostrou que pra gente chegar no nível da Itália de 2010, o Brasil chegar em 2022 com o nível da Itália de 2010, ia precisar de 160 bilhões de reais no Brasil.

[00:30:40.24] Interviewer: Uma boa grana...

[00:30:40.24] Respondent: Aí, da onde ia tirar? né? Então, a ideia era buscar algumas alternativas, como são hoje os zero rating programas lá que estão colocados. Mas isso é uma outra discussão não sei se você depois vai querer me perguntar. Vamos lá...

[00:30:59.27] Interviewer: Na primeira fase de consulta pública, eu só encontrei contribuições de EMBRATEL e CLARO, eu leio um bom argumento muito meticuloso de <uninteligible> Capela. Por que o SINDITELEBRASIL não contribuiu, não fez uma contribuição a esta fase? Fiquei surpreendido que não havia...

[00:31:17.25] Respondent: Porque o SINDITELEBRASIL ele na verdade, ele começou a se estruturar em Julho de 2010, Agosto de 2010. Então, começamos a operar. Então, tinha toda uma fase de contratação de gente, de pessoal, de estrutura do sindicato. Então, na fase inicial, não. Mas depois sim, já no legislativo, a gente se manifestou.

[00:31:43.02] Interviewer: Ah, ok. Não sabia isso que eu pensava que tinha países mais <uninteligible>.

[00:31:51.00] Respondent: Em 2010, Julho de 2010.

[00:31:52.01] Interviewer: Uhm... e há muitos argumentos válidos contra a neutralidade de rede como a favor, mas eu vi críticas, não sei se são críticas, são observações do que o setor de telecomunicações não entraram no debate público tão forte como a gente imaginava que ia fazer. Que havia muitos argumentos que se podia articular que não foram articulados. Isso é uma crítica que eu ouvi falar.

[00:32:29.15] Respondent: Não, eu vou dizer pra você o seguinte. É ..... esse assunto é um assunto técnico e complexo. Para as pessoas leigas, mesmo pra parlamentares no Congresso. É. ... era difícil você explicar o que que era neutralidade de rede, né? É..... então, o que, a, o discurso dos ativistas da animosidade, do exagero, da demonização, né? É fácil. Então, o cara dizer assim. O cara chega pro parlamentar lá, e diz .... essas empresas ganham muito dinheiro, essas empresas não querem investir, as empresas não sei o que. Isso é fácil dele entender. Agora, quando você vai explicar, né? O que que você quer efetivamente com o conceito de neutralidade de rede, é mais difícil dele entender. Né? Por exemplo, a gente fala, nos estados unidos antes mesmo dessa decisão agora. Os estados unidos ele tinha uma série de regras que era relacionada com neutralidade de rede. Que era no blocking, no throttling, é e outras regras lá. E dava tratamento diferenciado do

móvel pra fixo. O móvel não tinha as mesmas obrigações que a fixa, tá certo? e a gente tinha que explicar isso pros parlamentares e eles não entendia. Por que que a móvel podia ter tratamento diferenciado? por que os estados unidos dava tratamento diferenciado a móvel? é difícil explicar, pra quem não entende, né? é ..... não entende e às vezes não tem tempo nem pra prestar atenção, entendeu? porque o cara vive, vive ocupado, ele vive participando de reuniões, etc. E aí você participava de um evento, de um seminário, de uma audiência pública. Chegava os ativistas e vinham com esse argumento. Então, só pra te dar um exemplo. Um dia eu estava participando de uma audiência e a gente tava falando desses planos aqui, planos customizados. O pessoal dos ativistas botaram lá um vídeo, um vídeo, aonde, simulando um cliente ligando pro call center da operadora.

[00:34:37.24] Interviewer: Ok... acho que eu já vi...

[00:34:40.14] Respondent: E pedindo lá um plano. Eu queria uma internet. Aí, o cara dizendo, mas doutor você quer uma internet com vídeo ou sem vídeo? Aí ele não, quero com vídeo. Mas com vídeo pra acessar só o google, se for só o google o senhor tem. Então, começaram, é o exagero, né? Como se a gente criasse duzentos mil e confundisse, duzentos mil planos de serviço e confundisse a cabeça do usuário. Então, é......a prática do exagero, do discurso exagerado, da animosidade. Era prática vigente nesses encontros, nessas audiências. E aí, a gente começava a discutir, a querer, a entrar no jogo deles. A gente começava a defender isso. Aí, o cara dizia, não porque vocês tem lucros enormes. Não sei o quê. Tem que lucro enorme. Olha aqui, ó. Aí, começava a dizer, discutir outra coisa. Olha aqui os resultados das empresas. Olha aqui quanto a gente investe, olha quanto isso aqui. E aí não se falava mais disso. Até hoje permanece isso. Mesmo com o conceito aprovado. Com a lei aprovada e o conceito definido. Né? Então, o que a gente fala agora. A lei foi aprovada, não é? Foi um processo democrático? Foi. Teve imperfeições? Teve. A lei é ótima? Não, não é ótima. Tem defeitos? Tem. Se você me perguntar eu te digo depois quais são. Mas é a lei, está aprovada e tem que ser respeitada. Então, a gente não quer agora que mude a lei. Vamos regulamentar o que precisa regulamentar. Então, o conceito de neutralidade de rede, está devidamente definido. Agora, a lei diz, vamos regulamentar por decreto as exceções. Então, vamos só trabalhar na exceção. Não no conceito mais. Querer dizer, inventar alguma outra coisa pra que que é a neutralidade de rede. Acabou, já passou, é fase passada. A neutralidade de rede já foi. Agora, é ver o que é que eu posso, onde que eu posso, em que situações eu posso quebrar a neutralidade de rede. E é isso que a gente tem que fazer. Mas a gente começa a perceber que os ativistas querem mudar a lei. De uma forma, com interpretações mirabolantes, tá certo? Por exemplo, um exemplo que eles colocam é o seguinte. A gente defende, está escrito na lei. O Molón que é o relator falou várias vezes, a gente tem gravação disso aqui, né? Dizendo, e está lá na exposição de motivos do Molón, né? Dizendo o seguinte, que a neutralidade de rede ela ia garantir que uma operadora não pudesse discriminar o tráfego de uma operadora concorrente a ela. Então, eu tenho um serviço de telefonia, né? O cara quer fazer VOIP em cima do meu acesso, não vai fazer não, eu vou discriminar, tá certo? Ou então eu vou priorizar o pacote de um conteúdo, de um meu parceiro. E vou prejudicar outro. Ou seja, tudo estava envolvido na atividade de transmissão, comutação e roteamento. O tráfego tinha que ser igual. Por isso que chama neutralidade de rede. A rede tem que ser neutra. O cara, o administrador da rede não pode estabelecer políticas lá para beneficiar A em relação a B. Os pacotes tem que ter tratamento igual na rede. Mas é, é ali, no âmbito do transporte, tá certo? No âmbito da rede. Aí, o cara vem. Aí, surgiram os zero rating programs. Os zero rating programs, ou mesmo os, o, eu trato como se fosse uma coisa, no mesmo bolo. Mas tem gente que trata separado. Trata zero rating programs de um jeito e conteúdos e aplicativos de acesso patrocinado. Que na verdade é a tarifação reversa. Em vez de você, aquele tráfego que você buscou lá num site da globo, por exemplo, em vez de você pagar, quem paga é a globo, debita lá. A globo contrataria de mim não sei quantos gigabytes, terabytes, e vai debitando dela lá. Tudo que eu transportar. Bom, esse é o patrocinado. E tem os zero rating, que é aquele acordo que eu faço com uma operadora. Do qual não estão muito claros o que que eu estou levando, o que eu estou ganhando como operadora, e o que que o facebook está ganhando como provedor. Está certo? Não está claro e nem é público, de forma pública assim. Mas alguma coisa eu estou ganhando porque eu não estou cobrando do meu usuário. Deveria cobrar, não cobro, né? E o facebook também

está ganhando. Aí, o pessoal diz, não, o zero rating quebra a neutralidade de rede. Aonde quebra a neutralidade de rede? Aonde? Isso beira o golpe. Dizer que o zero rating program quebra a neutralidade de rede é golpe. É querer mudar a regulamentação porque o zero rating programs, os pacotes do facebook vão ter o mesmo tratamento na rede, eles não vão ter nenhuma prioridade, chegou aquele pacotinho lá. Aqui está o roteador, o pacote chegou aqui, como chegou os outros aqui vai ser FIFO, First-in First-Out, o primeiro que chegou é o primeiro que sai. Tá certo? Então, o tratamento dos pacotes pro facebook, ou pro whatsapp dependendo do zero rating que seja, do Wikipédia, qualquer coisa assim. Eles têm pela rede o mesmíssimo tratamento, não tem nenhuma vantagem. A única diferença é comercial, em vez de cobrar, eu não cobro aquele tráfego. Mas a rede, e a neutralidade é da rede. A rede é neutra, absolutamente. Comercialmente, no billing. É billing isso aí, eu não vou cobrar do cara. Não cobro do usuário, tá? Então, aí os caras querem oportunistamente dizer, não, quebra. Quebra, tem discriminação. Então, o que acontece. Hoje tem dois tipos de zero rating aqui no Brasil, o tipo A e o tipo B. O tipo A é aquele que o seguinte... você, o usuário, o cliente tem que ter um plano. Tem que ter um plano de serviço válido, pode ser pré, pode ser pós, pode ser, né? Tem que ter um plano válido. E aí, ele tem um plano válido, ele pode acessar qualquer site, qualquer conteúdo. Né? Aqueles conteúdos do zero rating. Não são debitados do, da conta que ele tem, do crédito que ele tem. Os outros são. Então, mas toda vez que ele acessar o facebook é zero de débito pra ele, tá certo? Agora, na hora que ele, na hora que ele não tiver, que ele esgotou a franquia dele, tá certo? Aí, ele não pode mais acessar os outros e não vai poder também acessar o zero rating. O facebook, o whatsapp, ou seja lá o que for, ele não acessa mais ninguém. Tá certo? Esse é o tipo A. E tem o tipo B que é o seguinte, olha, você não precisa contratar plano de dados comigo, você contratou voz, tá? E eu vou te dar um plus, eu vou te dar um link pra você acessar o facebook. Pode ser pela internet aberta, pode ser por uma rede privativa, tá certo? É... agora, você não contratou comigo o serviço, tá certo? Então, você não tem direito ao serviço, eu não estou te bloqueando. Bloquear é quando você tem o direito ao serviço e eu vou lá e bloqueio de propósito o teu tráfego, n´é? Mas você não contratou comigo o serviço, você não tem direito. Então, eu não estou bloqueando ninguém, tá? Eu estou dando apenas um plus pro cara, pra aquele cara, pra dizer, olha você pode acessar o facebook de forma gratuita, eu vou te liberar o acesso gratuito. Eu não tou dando... a rede não está sendo... não está, não está sendo não isonômica. Porque a rede simplesmente é o seguinte, eventualmente eu posso nem estar passando pela internet aberta. Eu posso estar fazendo isso como eu te falei por um link direto, por uma intranet, etc. né? A rede, eu estou fazendo isso contabilmente, é uma questão contábil. Né? No momento, em que... Ah, mas quer dizer, no momento em que acaba a franquia do usuário você só bloqueia os que não são pagos, os que são pagos continuam. Mas não é bloqueio, quando o cara acaba de, a franquia dele, quando ele esgota a franquia dele, o que é que acontece com ele? Se ele não renovar, ele não tem mais serviço, plano de serviço. Ele não tem mais direito ao serviço, entendeu? Então, ele está na mesma condição do outro que não contratou o plano. Né? Então, por uma liberalidade, esse outro continua, pode continuar o acesso lá. Tá certo? Também é uma, uma questão comercial. Não é uma questão. Ah, quer discutir o zero rating program por infração da ordem econômica? Ah, zero rating program vai prejudicar o desenvolvimento da internet? Zero rating program vai fazer com que os usuários achem que a internet é só facebook? O zero rating program vai fazer com que os preços do acesso da banda larga não caia, tá certo? Bom, quer discutir tudo isso, vamos discutir. Vamos discutir na academia, na universidade, no CADE. Que é o conselho de apuração de descumprimento econômico, né? No Brasil. Vamos discutir, mas no lado econômico, né? Agora, não venha querer dizer que que, né? quebra a neutralidade de rede. Não tem nada uma coisa a ver com a outra, né? Então, é essa nossa preocupação, a nossa briga agora. A gente não está defendendo pura e simplesmente o zero rating programs. A gente está defendendo que zero rating program não quebra a neutralidade, está certo? O conceito de neutralidade que está no marco civil, ele é preservado integralmente. Os pacotes recebem o mesmo tratamento, independentemente da origem, do destino, do terminal, do serviço e da aplicação. Agora, é.... eu posso cobrar, eu posso não cobrar... é a questão contábil, somente isso. Então, é isso. A gente defende a discussão. Agora, porque se proibir o zero rating program? Aí, eu pergunto, você através da tarifação reversa, você pode fazer acordos com o governo e disponibilizar pra população serviços eletrônicos na internet. Então, o

cara pode tirar certidão, o cara pode tirar declarações, né? Tudo via internet. Ele pode ter acesso ao Wikipédia, ele pode ter acesso a educacionais gratuito. Ele pode ter acesso às redes sociais e poder se manifestar. Hoje, no brasil, são 40 milhões usufruem do zero rating program, no Brasil. Então, se você disser que por uma questão de quebra da ordem econômica, no CADE, não neutralidade, porque neutralidade está fora de discussão. Mas se você falar por questões de ordem econômica, você proibir. Você vai calar 40 milhões de brasileiros que não tem dinheiro pra pagar o serviço. E aí, esse cara não vai poder se manifestar, não vai poder exercer, pelo menos de forma parcial, o papel dele de cidadão. Poder se manifestar, poder organizar a sua manifestação, poder criticar A, B e C, quem ele quiser. E também não poder acessar conteúdos que o próprio governo possa colocar na internet pra esclarecer o cidadão e etc. né?

[00:46:16.01] Interviewer: Desculpa, esses 40 milhões, estão no lado B ou A?

[00:46:21.20] Respondent: Ah, estão misturados.

[00:46:21.20] Interviewer: Ah, os dois.

[00:46:22.17] Respondent: Estão misturados. Estão no A e no B. Eu não sei te dizer quantos estão no A e quantos estão no B, tá? Porque aqui, nós temos quatro grandes empresas de móvel, aqui. Duas, uma presta o serviço aqui, e outra presta aqui. E as outras duas não prestam o serviço. Não tem zero rating. Então, a gente tem uma aqui e a outra aqui.

[00:46:48.01] Interviewer: O fato de ser um processo bastante aberto e pública problematizou a participação das teles no processo?

[00:46:56.27] Respondent: Não, com relação a isso não teve problema. Foi aberto o espaço pra gente poder se manifestar sempre e ....além da dificuldade da gente conseguir passar a mensagem. E ter que enfrentar essas questões da animosidade, do exagero e da demonização, disseminação do medo e do alarmismo. Né? A gente não teve dificuldade não.

[00:47:20.00] Interviewer: E você falou que estava disposto a discutir os piores elementos do Marco Civil... então, qual que você acha?

[00:47:32.27] Respondent: Então, por exemplo, o que eu acho .... uma coisa que a gente sempre defendeu era assim ....Neutralidade de rede a gente falava. Mas a gente não falava neutralidade da informação, neutralidade de disponibilização da informação. O Marco Civil, como eu te falei, a gente tinha uma expectativa de que ele viesse cobrir a lacuna para os provedores de aplicação. Tinha pouca lei, pouco regulamento para os provedores de aplicação. Então, por exemplo, hoje o facebook ele tem a política dele lá de, de publicação de conteúdos. Então, se o facebook entender que o meu vídeo que eu quero botar lá, no Youtube, por exemplo. Eu quero botar lá, e se ele achar que aquele meu vídeo infringe a política que ele estabeleceu, ele vai lá e corta. Ele é o censor, ele diz qual conteúdo de terceiros que eu público, qual conteúdo de terceiros eu não público. Não existe nenhuma lei que estabeleça critérios aqui pra serem observados pelo coisa. Por exemplo, um site que tenha informação de crime hediondo. Por exemplo, crime de homofobia, qualquer crime hediondo, racismo, qualquer coisa assim. O site, ele é anônimo, ninguém sabe quem é o dono daquele site, né? Pra você tirar o site do ar, o que você precisa? Medida judicial, tá certo? Aquela informação que está lá no Youtube, aquela informação está lá no facebook, a informação que está no twitter. Você vai precisar de uma medida judicial, mesmo sendo o que, anônimo. Você não tem a quem responsabilizar. Então o cara que tem o seu direito a honra, que deveria ser preservado. A liberdade de expressão é uma coisa muito importante, tá? Mas a liberdade de expressão não permite o anonimato. Na constituição brasileira, não permite o anonimato. Então, es o cara quer falar de forma anônima e o atingido reclamar com o Youtube, com o facebook e pedir pra tirar. O Youtube tinha que fazer no mínimo, assim, bom, cadê o cara que postou isso aqui? Tentar entrar em contato com esse cara, e falar assim,

olha, estão pedindo pra tirar o seu conteúdo. Mas se ele perceber de cara que o cara é anônimo, não tem, então ele pode fazer o quê? Olha, não tenho como responsabilizar, retiro o cara. Entendeu? Mas não. Isso ia dar muito trabalho pro provedor de aplicação, então o que que fizeram. Tem que ser a medida judicial. Prejudicou quem? O usuário. Tá certo? Então, eu vou lá de forma. Entro numa lan house, crio um blog falso com um nome falso, tudo falso, né? Falo uma porção de inverdades suas, faço montagem, não sei, uma porção de coisas. Você se sente atingido, pede pra retirar, não pode. Você tem que ir no juiz, vai ter que gastar dinheiro.

Vai perder tempo, entendeu? Enquanto isso, está lá, veiculado lá a coisa. E de uma forma anônima. Então, esse é o segundo erro. Primeiro, que deram poder de censura ao provedor de aplicação, segundo que, que dificultaram a retirada da informação. E estava muito pior. O projeto que foi levado para o executivo. Né? Não previa retirada por cena de nudez, não. Nudez e sexo privado. Isso foi colocado depois na lei porque o Molón só mudou a lei porque ele foi pressionado. Tá certo? Porque se não ia ficar só medida judicial para tudo. Aí, a gente fala assim, " mas gente, que internet que a gente quer para o nosso país? né? a internet é uma coisa mundial. Não existe do Brasil, dos Estados Unidos ou outra coisa. Mas se cada um fizer a sua parte, a gente consegue fazer uma internet mais decente, né? Hoje, você tem sites que ensina a criança a se enforcar. Hoje, você tem sites que ensina práticas como a criança pode ser bulimia, como é que ela faz prática pra ser anoréxica, tudo lá. Tem site de tudo que é tipo, sem falar os pornográficos, de pedofilia, etc. A maioria desses sites são anônimos, tá certo? Então, por que dificultar no anonimato? Caracterizado o anonimato, por que não se retira imediatamente? Tem que pedir a ação de um juiz? Pro usuário comum, o cidadão, comum... um deputado, um senado, esse cara estala o dedo, ele consegue um advogado rapidinho, consegue tirar. Agora, o cidadão comum, já pensou ter que ir lá, tirar lá, tirar lá o coisa. Então, é..... esses defeitos tinham. Que mais? Que outros defeitos tinham? a questão da, da privacidade. A privacidade, né? A lei, estabeleceu. ...A lei do marco civil era muito pior antes, quando o projeto foi pra lá, tá? Ali, estabelecia o seguinte. Os provedores de aplicação, né? podem ler, mediante consentimento do usuário, podem ler o conteúdo da informação do usuário. Então, google. Vamos pegar o exemplo do google. Que que é o Gmail gratuito? O Gmail gratuito você tem acesso ao serviço de correio eletrônico, né? E aí, você manda o e-mail, o google pega uma máquina, lê o teu e-mail, e aí vê lá Dubai, aí te manda lá... "Viagem, promoção de avião em Dubai. Hotel em Dubai em promoção. Loja de Esportes em Dubai". Te manda, te enche de coisa de Dubai, né? Porque ele vai ganhar dinheiro na publicidade e te deu o serviço de graça. Na verdade, não foi de graça, você abriu mão da tua privacidade. Então, o provedor de aplicação. Facebook, a mesma coisa, o provedor de aplicação pode ler o usuário. Aí, eles colocaram lá no marco civil que o provedor de acesso não pode é.....guardar os logs, nem ler os dados do usuário. Tá certo? Por que essa assimetria? Por que? Por que que um pode e o outro não pode? Porque dar isso, isso gera no fundo, no fundo uma reserva de mercado para a publicidade na internet. Se dá a publicidade na internet para quem, para oitenta e cinco. Quem é que domina os oitenta cinco por cento do mercado no provedor de aplicações, Google, Yahoo, Microsoft, Amazon são essas empresas. Tem 85% do mercado publicitário na internet, estão com eles. Entendeu? Então, qual foi, qual era o interesse? A gente ficou surpreso aqui. Por que isso? O setor de telecomunicações, atua no Brasil há mais de 50 anos aqui, desde a época de Telebrás, sem falar antes. Mas do sistema Telebrás pra cá, posso botar aí 40, 45 anos, 50 anos. Os casos de escândalo de quebra de privacidade ou sigilo por parte das operadoras, você conta no dedo da mão aqui. E mesmo assim, quando elas sofreram ataque, não foi elas que foram lá e quebraram a privacidade do usuário, tá certo? Então, se o usuário pode mediante consulta abrir mão da sua privacidade para ter o serviço, por que que ele não pode também dar a operadora, o direito de ler mediante também a abertura da sua velocidade? A gente poderia até dar de graça o serviço pra ele também, se o outro dá, eu posso dar de graça, ou posso dar um belo desconto para ele. Tá certo? E não permitiram, o marco civil impediu. Então, o marco civil também gera uma, uma, uma reserva de mercado na publicidade eletrônica para os provedores de aplicação, tá certo? Esse é um outro fato gravíssimo, que a gente considera. Né? Bom, o que mais que eu posso falar então com relação a privacidade? É, ainda tem, tinha mais... por exemplo, google e facebook, estabelecia uma política de privacidade, dizendo lá o seguinte, que, que

qualquer conflito de interesse deveria ser dirimido no fórum da Califórnia. Eles só obedeceriam as leis da Califórnia. Tá? E guardam os dados lá, lá no exterior. Né? Então, é .... a gente dizia, mas por que esse tratamento diferente? O cara é. ... eu sou uma empresa brasileira, eu gero quinhentos mil empregos, o setor de telecomunicações gera quinhentos mil empregos. E aí, o cara vem de fora, tem aí cinco mil empregados, né? Os equipamentos, as plataformas estão no exterior não estão aqui. O cara não investe em pessoal, em .... não, trabalho, emprego é pequeno. Investe, a gente investe oitenta mil dólares por dia, né? Oitenta mil, oitenta milhões, agora tenho que ver, oitenta mil dólares por dia. 29 bi por ano, né? O google investiu quinhentos milhões em cinco, seis anos, entendeu? É uma coisa assim desproporcional, a coisa. Aí, por que o cara ainda pode prestar o serviço aqui no Brasil e dizer, 'Olha, não senhor, eu não estou sujeito às leis brasileiras, eu estou sujeito às leis do Canadá, vamos discutir lá no Canadá'. Quem é que é o cidadão brasileiro que vai poder ter condições de discutir isso no Canadá? Tá entregue, né? Então, é. ....isso foi objeto de muita discussão e a lei acabou sendo mudada pra dizer, 'ó, não serão permitidos, nos termos, nas políticas lá, estabelecimento de foros internacionais. Se o serviço é prestado aqui, tem que ser feito aqui.'. Outra coisa .... estou te falando uma cacetada de problema. E que olha, entrava por aqui e saia por aqui. A gente falava, sabe quando é que você, quando você falava isso, e o ativista dizia lá 'ah, as empresas querem ganhar dinheiro, não querem investir, não sei o quê.'. Só se ouvia isso, não se ouvia o que eu estou falando pra você, entendeu? Era uma coisa absurda, entendeu? Um outro ponto que eu queria te falar era com relação a guarda de logs. A gente sempre teve oportunidade de guardar aqui, os logs, aí que não vou chamar de log de registro, nem log de aplicação, vou chamar de informações, que informações que a gente guardava? O IP de origem, a hora que foi feita a conexão na internet, a hora que acabou, e qual foi o IP de destino, para quem que aquele cara ligou, né? Pra você ver mais uma vez como é o tratamento assimétrico que a lei dá beneficiando os provedores de aplicação, que são gente de empresas de fora, multinacionais, que não estão no Brasil em prejuízo das empresas que estão aqui, gerando, investindo bilhões, e gerando milhões de empregos. Eles disseram: 'você não pode mais guardar o IP de destino', tá certo? Você só pode guardar o IP de origem, a hora, a hora de início e a hora de fim. E a duração, que é aí, nesse sentido. Mas o IP de destino você não pode guardar, porque isso vai te dar uma grande vantagem, porque você tem sua base de assinantes todos aqui, e você sabe pra que site que o cara liga, aí você vai poder oferecer comércio, propaganda pra ele. Você vê que o cara liga, manda muito, entra muito na Nike, aí você vai poder oferecer produtos esportivos, você vê que o cara gosta muito do, do site lá da globo esporte, esporte da globo lá. Você vai saber que o cara é esportista, você vai oferecer. Então, nos proibiram de guardar os acessos. Os logs de aplicação. Qual motivação? Ah, privacidade. Privacidade, que motivação, que, que que ao longo de 45 anos no coisa as empresas podem ser culpadas de quebra de privacidade ou segurança dos seus usuários? nenhum. Como eu te falei, conta na mão aí. E ficou na lei, dessa forma, entendeu? Ou seja, a gente não pode guardar, e pior, pior, os provedores de aplicação não eram obrigados a guardar esses logs. Então quando a polícia ia apurar ilícito da internet, ia apurar algum ilícito da internet, ela perguntava assim, perguntava pra gente, operadoras, mas pra que destino? Não posso.... eu não tenho essa informação guardada. Eu não ...sou impedido de guardar essa informação. Eu só sei, que IP que foi conectado e que hora que ele conectou. E de quem é esse IP, eu sei, que o cara contratou, tá certo? Agora, pra quem ele ligou, pra quem ele conectou, a onde ele ligou? Não sei. Então, aí dificultou a apuração. Porque aí o cara ia no provedor de aplicação e perguntava, quem é que te acessou dia tal, tal, tal? Não tem, não tem esses dados. Mesmo que tivesse ia dizer que não tem. Entendeu? Porque ele não era obrigado a guardar por lei, o marco civil não obrigava. Aí, diz, gente existe assimetria pior do que essa, maior do que essa? Quer dizer um é obrigado a guardar. Eu sou obrigado a guardar o de conexão, quer dizer, o IP de origem, o horário de início e fim da conexão sou obrigado a guardar, mas não posso guardar o IP de destino. E o outro, guarda se quiser, guarda se quiser. Aí, a gente gritou, brigou muito e conseguimos mudar a lei e fazer com que os provedores de aplicação fossem obrigados a guardar por seis meses a coisa. E a lei saiu dizendo isso. Tá certo? Então, tudo isso que eu te contei, né? É ..... foi objeto de uma. Muita coisa não entrou, continua prevalecendo a, a. ....ainda existe a lei. Ainda tem. Apesar das melhorias

de como ele entrou, pra como ele saiu, a lei ainda preservou muita assimetria, muito tratamento diferenciado beneficiando os provedores de aplicação.

[01:01:53.19] Interviewer: Eu te ia perguntar é muito simplístico falar de ganhadores e perdedores, mas está ficando acho bastante claro que você acha que os aplicativos foram os ganhadores.

[01:02:06.18] Respondent: Ah, os grandes beneficiados. Os grandes beneficiados, não tenho dúvida nenhuma disso, eles... ah, talvez, o bode na sala que botaram pra eles lá. Você entende isso, bode na sala? quando você quer criar alguma dificuldade, alguma coisa ruim. Vou botar um bode, o animal bode, na sala da pessoa. Talvez, a dificuldade que eles tenham tido é a questão da guarda dos logs, que eles não queriam guardar. E a questão também relativa ao artigo 10, artigo 11, por exemplo, o juiz lá do Piauí, é. ....pediu ao whatsapp que disponibilizasse os dados, lá dos pedófilos lá. O whatsapp disse, eu não me sujeito às leis brasileiras, eu só obedeço às leis americanas, os senhores, por favor, façam um acordo internacional com os estados unidos que aí eu cedo. Aí, o juiz pediu várias vezes, o whatsapp não deu, a lei diz claramente, que se o cara presta o serviço no brasil, isso não estava escrito, não estava escrito, só entrou a fórceps, foi o Molón botou isso no texto meio que forçado porque ele não queria botar. Aí, o cara disse

[01:03:26.16] Interviewer: E foram vocês...

[01:03:26.16] Respondent: isso. Nós que forçamos. É ruim pra nós, vai ser ruim pros outros também, entendeu? Porque a ideia é o seguinte, vamos fazer uma internet de forma que é..... os ilícitos possam ser apurados, aqueles caras responsáveis por conteúdo ilegal sejam criminalizados, seja civilmente ou na área criminal. Bom, aí o que aconteceu? O juiz lá do whatsapp pediu, é.....várias vezes, o whatsapp não deu. E a lei diz claramente, se ele presta o serviço no Brasil, ou ele coleta as informações no Brasil, mesmo que eles não tenham, não esteja fisicamente aqui, sediado aqui, ele está sujeito às leis brasileiras, mas como ele não tem representação legal aqui. O facebook, o facebook. A princípio, o facebook tá aqui no brasil, mas a lei não ficou clara que poderia responsabilizar o facebook, porque é do grupo, faz parte do grupo. Então, o que aconteceu? O juiz diz lá no artigo 12, claramente, que se o cara descumprir o artigo 11 que fala aí é o artigo 10, que diz que ele está sujeito às leis brasileiras. Se ele não fornece os dados, uma das penalidades é a suspensão temporária do serviço, o juiz não inventou nada, o juiz está certíssimo, a única coisa que o juiz está errado é que, pra ele fazer. O que ele tinha que fazer? Notificar o whatsapp suspende o serviço aqui no Brasil, não suspendeu vai preso, perde. Né? Mas não tinha ninguém aqui do whatsapp. Então, o que ele fez? Pediu, obrigou às operadoras que bloqueasse, tá certo? Aí, o ônus passou a ser nosso. Ora, está clara a inimputabilidade da rede, eu não posso ser onerado ou responsabilizado por um problema de um provedor de aplicação. O problema é dele, vai falar com ele. Entendeu? Ou então busca através de retirada de todos os servidores de DNS, tá certo? E apagar do servidor DNS, o, a informação. Bom, mas o fato é esse, ou seja, a lei que foi aprovada, ela trouxe várias melhorias de regulamentação dos provedores de aplicação porque antes a lei era um negócio assim, um oba oba fenomenal. Era, era, falava da inimputabilidade pra beneficiar os provedores de aplicação que era a grande dor de cabeça que eles tinham. Porque toda hora o juiz pedia lá pra tirar, pra tirar o conteúdo e queria responsabilizá-los, né? Aí, eles passaram a ter uma lei que protegia eles, pra eles não tirarem o conteúdo, só se for mediante. E todo o resto, não tinha mais nada pra eles, nenhuma obrigação mais. Aí, em função das nossas brigas, a gente conseguiu introduzir a necessidade de guardar os logs, a necessidade de sujeitar às leis brasileiras, a necessidade de ser penalizado. Ele passou a ser penalizado aqui. A gente conseguiu incluir várias coisas. Né? Pra, pra, vamos dizer assim, tornar um pouco mais equilibrada a relação, né? Porque do jeito que estava, a lei estava só com a foice em cima da gente, em cima do pessoal nada. Dos provedores de aplicação nada. Então, é isso.

[01:06:59.06] Interviewer: Ok. Vou fazer só mais duas perguntas. Falando do processo mais do que o conteúdo da lei. Ah, durante mais de não sei, dois ou três anos, a lei ficou bastante paralisada ali no congresso. E, estou

seguro que você ouviu essas opiniões, que há muitas pessoas que acham que foi influência do setor de comunicações...

[01:07:29.07] Respondent: Eu ouvi, ouvi isso. Mas posso te assegurar que não é verdade. Te assegurar. Ah... eu digo o seguinte, demorou porque era um assunto complexo e os próprios deputados não se sentiam confortáveis de votar uma coisa que eles não entendiam. Entendeu? Então, houve a necessidade. E fruto desse tempo, foi graças a esse tempo, onde aconteceram várias audiências públicas, várias consultas públicas, né? Vários seminários, workshops, né? E os deputados, parlamentares, começaram a se informar, né? Começaram a ouvir a gente, a ouvir outros também. O que a gente fazia era exercer um papel legítimo de ir ao deputado, ao parlamentar, e explicar nossa posição, só isso. Agora, dizer que a gente queria que não aprovasse, não aprova o marco civil, vamos postergar. Isso não é fato. Mentira. Quer dizer, nós não temos esse poder de chegar lá e dizer, vamos postergar, tem quinhentos e poucos deputados lá na câmara dos deputados, e, e pior, os partidos majoritários eram contra a gente. E até alguns da oposição também eram contra, o nosso posicionamento. Então, é mentira dizer que de alguma forma o setor interferiu na aprovação, tá certo? O setor apenas aproveitou o tempo. Tá certo? Porque em função da própria tramitação demorada que o projeto tem lá, não é só nessa lei, várias outras leis, a tramitação é muito demorada, lenta. Em função da, da complexidade do assunto, do desconhecimento do assunto por vários parlamentares, eles realmente tiveram interesse em aprender um pouco mais sobre isso, conhecer um pouco mais de detalhes. E isso foi o que levou o tempo. Basicamente, foi isso.

[01:09:17.09] Interviewer: Então, a última pergunta. Embora não seja uma lei perfeita, é melhor para o setor ter uma, alguma legislação clara em de...

[01:09:34.09] Respondent: Pro setor de telecomunicações...

[01:09:34.09] Interviewer: Sim.

[01:09:34.09] Respondent: Eu posso dizer pra você o seguinte. Se não existisse o marco civil, a única coisa que a gente sentiria falta era a questão da inimputabilidade da rede, era a única coisa. Tá certo? o resto, tudo que está lá no coisa, eu já sou obrigado a atender perante a regulamentação da ANATEL, entendeu? Tá, então, neutralidade de rede. A neutralidade de rede já estava incluída numa proposta de regulamento da ANATEL, a ANATEL tirou por causa do marco civil. Mas a ANATEL já estava definindo neutralidade de rede.

[01:10:10.18] Interviewer: Numa proposta?

[01:10:10.18] Respondent: Num regulamento. Uma proposta de regulamento. Que era o regulamento do SCN, tá? Esse regulamento foi colocado em consulta pública com o conceito de neutralidade, nós, inclusive, apresentamos nossas contribuições pra ANATEL, tá? mas ele foi retirado do regulamento por causa da lei.

[01:10:29.13] Interviewer: Como se chama? Sabe como era, tinha um código?

[01:10:33.14] Respondent: A consulta pública?

[01:10:34.17] Interviewer: Não, essa proposta de regulamentação.

[01:10:40.14] Respondent: Deixa eu ver aqui, peraí...

[01:11:36.13] Respondent: Aqui ó. Era a consulta pública número. Anota aí, consulta pública número 45 de oito de agosto de dois mil e onze. E o artigo que falava de neutralidade de rede...

[01:12:28.12] Interviewer: É interessante, porque é depois do lançamento do marco civil.

[01:12:29.02] Respondent: Foi antes do marco civil. Na verdade foi antes, a consulta pública da ANATEL foi antes de ir pro Congresso. Foi muito próximo, um do outro. Deixa eu ver aqui o número do artigo.

[01:13:17.23] Respondent: Artigo 59. Artigo 59 da proposta do regulamento do ECM. Tá? O regulamento que ia sair, era um regulamento do uso do serviço de comunicação multimídia. Essa CP-45. E se você quer ver, o que estava escrito lá era o seguinte. A definição lá do 59, era dito assim: 'é vedado a prestadora, realizar bloqueio ou tratamento discriminatório de qualquer tipo de tráfego como voz, dados ou vídeo, independentemente da tecnologia adotada'. Essa era a proposta de definição da neutralidade de rede, que estava... quando que eu te falei?

[01:14:07.00] Interviewer: 2011.

[01:14:07.00] Respondent: 2011, pois é. Então, é. ... respondendo de novo a sua pergunta, se a lei não existisse, a gente sentiria falta da questão da inimputabilidade da rede, todo o resto, privacidade, segurança, tudo a gente já entende que está bastante claro na regulamentação da ANATEL. A gente já é bem regulado. Bem não, bastante regulado e fiscalizado. O que é importante dizer. Que é outra coisa que eu digo assim..... a lei não definiu quem vai fiscalizar os servidores de aplicação, essa é a grande dúvida. Se os provedores de aplicação não guardarem os logs por seis meses, quem é que vai fiscalizar eles? Quem é que vai sancionar? É o Ministério da Justiça? É um outro órgão regulador? É o CGI? Comitê gestor da internet? Quem? Quem vai fazer isso? É isso aí. Bom, espero ter ajudado você aí.

[01:15:00.15] Respondent: É muitíssimo. Essa foi uma grande ajuda. Muito obrigado, Alex.

Tonet Camargo – Globo Group - Rio de Janeiro - 13/03/2015

[00:00:03.22] Interviewer: Vamos começar nossa gravação. Então, para o início. O Marco Civil foi lançado como projeto, do anteprojeto de lei. Qual foi a postura do Globo frente a isso? A reação?

[00:00:24.15] Respondent: A reação foi ótima, quer dizer, nós sempre defendemos a neutralidade de rede, né? na questão da internet. Nós achamos que a neutralidade de rede é uma base doutrinária, uma base de axioma, aonde todo o resto vai ser construído. Se a rede não for neutra, nós vamos ter a governança da internet variando. Eu sempre costumo fazer a seguinte observação ... a rede por melhor que ela seja, ela é um cano, é um tudo .... Se eu puder estabelecer que em metade ou dois terços desse tubo, eu vou selecionar quem vai ter passagem maior por esse tudo e o restante todo vai ter que ficar com o que restar desse tudo. Eu não vou ter na internet o que ela é hoje, é um espaço naturalmente livre. Naturalmente livre. Eu disse isso e me perguntaram: mas isso não vem, não pode contrariar os interesses da própria Globo? Porque a globo poderia querer comprar a possibilidade de passar isso com .... um interesse circunstancial poderia haver, um interesse circunstancial. Não pode se sobrepor à uma visão de princípio sobre como a internet deve funcionar, né? Porque se todos tiverem a mesma oportunidade do tráfego de seus dados pela internet, a internet vai continuar sendo um meio livre. E quando eu digo meio livre, eu não estou dizendo que não tenha que ter regulamentação tributária de taxes, e enfim os negócios de internet que se fatura, que não tenha que ter resguardo a direitos patrimoniais, quer dizer, eu não estou tratando disso. Eu estou tratando de fluxo de dados e fluxo de conteúdos na internet. Então, nós sempre achamos que o marco civil tinha essa qualidade. Ia deixar claro na legislação brasileira esse tráfego de conteúdo, com isso, vamos dizer, a capacidade de liberdade na rede não retira das operadoras, por exemplo, de quem vende esse tráfego na rede de ter lá seus modelos de negócios. Agora, o fato de você onerar, de você dar mais velocidade ou dar mais compressão enfim a dados, isso não faz com que o meu dado vá trafegar na rede de maneira mais privilegiada que o teu. Isso que não pode acontecer. Então, essa discussão foi muito rica. Porque

evidentemente, e eu entendo isso perfeitamente, as operadoras de telecomunicação queriam poder monetizar a rede. E monetizar a rede significa, gerenciar a rede. Né? Então este foi o grande embate que aconteceu. Teve um outro ponto que acabou saindo da discussão por proposta do próprio governo que é o tema dos direitos autorais.

[00:03:56.04] Interviewer: E está falando da primeira fase...

[00:04:00.03] Respondent: Da primeira fase, da primeira fase... aí o próprio governo. Entendeu? Porque o tema dos direitos autorais hoje, por não haver na lei brasileira de direitos autorais a previsão da internet. Ela é anterior à internet, mas é uma lei muito moderna. E no Marco Civil foi entendido que não se deveria tratar de direitos autorais, senão reformar a lei de direitos autorais, faria mais sentido. E a jurisprudência vem, a jurisprudência dos tribunais vem resolvendo isso pacificamente de que evidentemente, tem que haver o fato de existir a liberdade da web, não significa com você relativizar ou terminar com os direitos autorais, senão você acaba com a produção. Você acaba com a produção, com alguém que escreve uma obra, como você está escrevendo. E, evidentemente, isso tem que ser resguardado. Agora, é tudo muito novo como é que a gente tem mecanismos pra resolver esse problema na WEB não tem dúvida nenhuma. Mas, de qualquer maneira, essa discussão foi retirada do...

[00:05:02.23] Interviewer: A questão dos direitos autorais.

[00:05:03.12] Respondent: Dos direitos autorais, dos direitos...

[00:05:03.12] Interviewer: Ah, ok.

[00:05:03.19] Respondent: Dos direitos autorais foi retirada, porque estabeleceram lá um mecanismo, né? De que só pode haver retirada de conteúdo, né? por ordem judicial. Nós fomos contra isso, porque veja bem, né? Você judicializar todas essas questões quando poderia perfeitamente se resolver fora do âmbito judicial. Quer dizer, você vai para o judicial quando não há consenso. Se não há consenso, eu estou sentindo meu direito violado, então eu vou procurar a justiça. No Brasil, do ponto de vista dos conteúdos da internet, isso virou regra, né? Então, a gente acha que é um contrassenso isso. Se você tem um portal, tem lá uma pessoa com ...... Eu boto lá um conteúdo que é crime, por exemplo, e chega alguém que está dizendo: "Olha, o Tomé está botando no portal do Guy um conteúdo que é crime tal e coisa". E você, espontaneamente diz o seguinte .... "Eu vou tirar do ar", se eu acho que o conteúdo que estou botando não é crime que eu vá procurar a justiça então. Mas se há entendimento seu que esse conteúdo deve ser retirado.

[00:06:24.04] Interviewer: Como dono do portal que você diz?

[00:06:24.21] Respondent: Como dono do portal, quer dizer, você tem que ter essa .... e em cima da sua decisão de tirar ou não tirar o conteúdo, em cima dessa sua decisão você vai responder, né? Você vai assumir a responsabilidade civil e até criminal pela sua decisão. Quer dizer, e a solução judicial se dá sempre a posteriori. No modelo brasileiro, não. Quer dizer, você só tira conteúdo com decisão judicial, então obriga qualquer ofendido a demandar em juízo, que é o que eu acho que inverteram a ordem natural das coisas, mas de qualquer forma, esse dispositivo que permaneceu lá no marco civil ele não diz respeito à direitos autorais, os direitos autorais foram excluídos desse dispositivo. Então, as nossas duas grandes preocupações no Marco Civil da Internet como Globo eram, primeiro a neutralidade de rede, né? E, segundo, o trato dos direitos autorais na medida em que nós somos produtores de conteúdo e remuneramos com esse conteúdo autores, diretores, atores, à toda uma cadeia produtiva remunerada em função desses direitos autorais e que nós não podemos relativizar esse direito.

[00:07:51.05] Interviewer: e falando disso, você acha que seria justo dizer que a contribuição do Globo foi determinante da retirada da inserção dos direitos autorais? Foi a influência da Globo que fez muita diferença nesse caso?

[00:08:07.27] Respondent: Não, eu... veja bem, é preciso que se diga o seguinte, sempre quando eu digo Globo, quando digo que isso é um posicionamento da globo. Ele era um posicionamento da Globo, e como ele era um posicionamento convergente com as outras empresas do setor, ele virou um posicionamento do setor. Então, quem levou esse tema para frente não foi a Globo, tá? Senão a associação das emissoras, que reúne aí 3000 emissoras no país, de rádio, televisão, enfim. Então, esse é um posicionamento setorial. É muito raro a Globo, levar ao Congresso Nacional, ou mesmo ao poder executivo, um posicionamento seu.

[00:08:54.25] Interviewer: A voz coletiva entre o setor...

[00:08:55.10] Respondent: Sim, os posicionamentos são sempre setoriais, quer dizer, a gente sempre busca um razoável consenso no setor para que isso seja uma iniciativa do setor. A política de lobby, vamos dizer assim, que nós fazemos é sempre setorial e nunca empresarial. É muito raro, eu pelo menos não me lembro de um caso que a gente tenha... Um caso e outro num texto de um projeto de lei, que ai quando o setor não há consenso, o que que acontece? A associação de classe ela não se manifesta e aí cada um faz lá as suas ponderações, às vezes se ganha, às vezes se perde, né? Como é do jogo. Agora, eu diria que nesse tema dos direitos autorais não foi só a Globo. Quer dizer, além da Globo e das outras emissoras teve uma pressão muito grande dos autores. Autores de livros, inclusive. E, essa pressão foi grande principalmente em cima do Ministério ad Cultura. O dispositivo que excepciona os direitos autorais no Marco Civil da Internet foi uma emenda proposta pelo Ministério da Cultura.

[00:10:02.24] Interviewer: Ah, sim.

[00:10:02.24] Respondent: Não foi uma proposta dos setores. Então, é preciso que se recupere isso. Na época, a ministra Marta Suplicy, que era Ministra da Cultura, ela entendeu de mandar esse, essa proposta que era proposta do Governo por entender que essa disciplina sobre direito autoral tinha que ser feita na lei de Direitos Autorais. E, ela estava trabalhando numa alteração de lei de Direitos autorais para propor ao Congresso. Então, de forma que esta iniciativa determinante, foi do Governo.

[00:10:32.28] Interviewer: Sob pressão do que?

[00:10:37.17] Respondent: Nossa, dos autores. E dos produtores. De quem está na cadeia produtiva de conteúdo, em geral. Tá. Houve essa pressão sim, mas eu diria que a coisa determinante foi a vontade do Ministério da Cultura de tratar esse assunto em outra norma. Eu acho que isso foi o determinante.

[00:11:00.01] Interviewer: E, é muito complexo para uma organização tão grande como Globo, que tem interesses na imprensa, na televisão, o espaço digital, ter somente uma postura quando se trata do Internet, que tem um pouco de tudo, né? ...

[00:11:19.06] Respondent: É difícil... Às vezes produzir um consenso interno é muito difícil, mas nós nos pautamos como empresa. E aí, é importante que se diga que o grupo Globo, né? Que reúne uma série de empresas, e essas empresas do ponto de vista da sua gestão, elas são autônomas. A TV Globo tem uma direção, a GloboSat, os canais pagos, conheceste agora que estava aqui comigo o Albert Perseguedo, que é o diretor-geral da GloboSat, né? A InfoGlobo, dos jornais. O Sistema Globo de Rádio, das rádios, e assim por diante. A editora Globo, né? Todas essas empresas são autônomas, né? Têm a sua gestão. Mas tem uma área estratégica que é corporativa, que fica em cima na holding e que diz à todas as empresas, que é o que nós chamamos de área institucional, que é a área que eu dirijo porque tem temas estratégicos, como por exemplo: liberdade de expressão, liberdade de tráfego na rede e tal. Que se colocam acima do interesse dos negócios. Não sei se fui

claro. É, ou seja, são princípios que nós entendemos que são mais importantes do que os negócios porque a tendência dos negócios é apoiar uma determinada ação que naquele momento faça sentido pro negócio. Às vezes, quando nós tomamos uma decisão como por exemplo, em relação a neutralidade de rede. Em relação á direitos autorais, circunstancialmente pode desagradar alguma área de negócio, né? Mas são princípios estratégicos, que nós julgamos estrategicamente com os acionistas, com o conselho, enfim... e que a longo prazo fazem absoluto sentido pro conjunto das empresas, né? Não é fácil às vezes acomodar isso internamente. Isso é muito frequente, isso é muito frequente, por exemplo, entre TV aberta e TV paga, que na verdade concorrem, mas nós temos que fazer esse arbitramento para uma visão estratégica de futuro.

[00:13:25.29] Interviewer: É.... e quais... acho que já contestou essa pergunta. Ia perguntar quais eram os objetivos primários para o Globo na, para o Marco Civil da Internet.

[00:13:48.01] Respondent: É este, eu já referi que é a questão da neutralidade de rede e dos direitos autorais.

[00:13:52.00] Interviewer: E quais eram os métodos ou canais que o Globo usou para avançar estes objetivos. Vocês participaram na consulta pública, por exemplo, ou deixaram, ou ficaram fora?

[00:14:07.02] Respondent: Nós sempre fomos muito participantes nisso, como eu te disse, através das entidades, né? Então, a associação nacional de jornais. A Associação Nacional dos Editores de Revista, A ABRANET, A ABERT. Através de todas essas entidades, nós participamos vivamente do processo legislativo, das consultas públicas, como estamos participando agora da consulta pública da regulamentação do Marco Civil, no que diz respeito a neutralidade de rede. Claro, estamos participando, mas através das entidades porque temos um consenso nas entidades de como é que isso deve funcionar.

[00:14:46.00] Interviewer: Ok. E.....e houve uma coerência muito forte entre a postura do Globo e os demais produtores de conteúdo, não houve tensão nenhuma?

[00:15:01.16] Respondent: Não, não, não...

[00:15:02.01] Interviewer: Estava falando com uma <uninteligible>

[00:15:04.06] Respondent: Vamos lá, eu preciso ser honesto contigo. Teve uma pequena divergência entre os produtores de conteúdo em geral e a Folha de São Paulo em função do UOL, né? O UOL queria regras mais flexíveis no que diz respeito a direito autoral, em função dos conteúdos que ela agrega, que ela recebe eles queriam regras mais frouxas. Em relação a direitos autorais, mas eram só eles, isoladamente. Vamos dizer de quem produz conteúdo todo mundo tinha a mesma posição. Eles por serem ao mesmo tempo produtores de conteúdo e portal de internet, né? É.... valeu mais o lado portal ali. O nosso lado portal aqui ficou como eu te disse, resolvido o conflito com eles em função de um bem maior que é a preservação dos direitos autorais. A gente acha o seguinte, Guy, se não tiver uma preservação mundial dos direitos autorais, você não vai ter produção de conteúdo de qualidade. Quer dizer, você não vai ter mais autores de livros, você não vai ter produção de vídeos de qualidade, e vamos e venhamos, o que está hoje no youtube, é maravilhoso, é livre, é bárbaro e tal e coisa, mas está longe de ser a produção que faz hollywood, que faz os grandes estúdios americanos, que nós fizemos aqui no Projac, enfim....Não é isso, a proposta é outra, tá? Né? Se nós tivéssemos só o Youtube, nós não teríamos a cadeia produtiva de autores, diretores, atores, iluminadores, enfim, por aí vai. Né? Não tem como financiar isso.

[00:16:55.14] Interviewer: É.... o processo de fazer legislação do Marco Civil foi um projeto muito original, muito novo, <uninteligible> muito presidentes no mundo inteiro. Isso trouxe dificuldades para o Globo para saber como atuar, como participar no processo?

[00:17:17.06] Respondent: Não, na verdade o que aconteceu foi o seguinte. O projeto do Marco Civil foi um projeto enviado ao Congresso pelo executivo, foi discutido no Executivo e tal e foi enviado um projeto para o Congresso Nacional. Como é normal, vamos dizer, nas democracias, o Congresso Nacional abre um amplo debate sobre esse assunto. O Relator que foi o Deputado Alessandro Molón, teve uma atitude assim, foi exemplar na condução desse projeto, abriu o debate, conversou com a sociedade, fez audiências públicas, e a partir daquele texto, que serviu de texto primário, vamos dizer assim, se evoluiu a partir dos debates e da participação de todo mundo pro texto que acabou sendo votado. Às vezes com muita, com muita dificuldade, quer dizer, as empresas de comunicação jogaram duro em função. Desculpe, eu estou um pouco resfriado. Em relação ao tema da neutralidade, quer dizer, houve ali um... como é normal do processo democrático. Acabou prevalecendo a maioria, que queria o princípio da neutralidade e com as exceções ali previstas, e a forma de executar essas exceções é que deve ser estabelecida na regulamentação aí que está em consulta pública. Interessante um fato que quando você tem uma determinada regra que precisa de regulamentação apenas para como ela tem que ser executada há uma vontade dos que perderam na discussão, de tentar rediscutir o assunto na regulamentação, mas também é do jogo. É do jogo. O que juridicamente não é possível.

[00:19:02.21] Interviewer: Sim, falando fora do... Ah, da associação de emissoras, quais foram as áreas de acordo mais amplo que tiveram o Globo com os demais setores contribuindo para o Marco Civil e quais foram as tensões mais fortes? Entre a postura do Globo e os interesses dos demais grupos.

[00:19:28.17] Respondent: Dos grupos de comunicação você quer dizer?

[00:19:32.16] Interviewer: Ou a sociedade civil, ou ...

[00:19:36.27] Respondent: Não, na verdade, houve muito mal entendido quer dizer, a Globo desde o início se manifestou sobre a sua posição sobre a neutralidade de rede. Posição pública, posição essa depois que foi condensada nas diversas entidades. E, aí, algumas entidades da sociedade civil, botaram nas redes sociais, a Globo está junto com as teles contra a neutralidade de rede, por uma razão muito simples. Por uma arzão muito simples, porque numa ocasião em Brasília as teles foram conversar conosco. Não só com a Globo, com o setor de Radiodifusão em geral. É, desta reunião, sai uma manifestação: "Olha a globo está junto!". A gente não está junto com ninguém, a gente estava conversando como nas democracias se conversa. Agora, a posição da Globo em relação a neutralidade de rede foi a mesma do início ao fim. Agora, a posição da globo em relação a neutralidade de rede foi a mesma do início até o fim. Isso gera uma tensão com as empresas de comunicação? Gera, gerou, até porque nós... as empresas de comunicação são nossos clientes e nós somos clientes deles. Quer dizer, eles são nossos clientes porque nós produzimos canais de TV por assinatura e eles são os operadores de TV por assinatura. Né? Nós somos clientes deles, porque nós compramos banda, compramos enfim serviços de comunicação. Mas essas coisas ficaram bem separadas, né? A discussão foi uma discussão de natureza política. E aí, claro, teve embates com a área de telecomunicações. É, na questão do direito autoral, quer dizer, há organizações não governamentais que defendem uma abertura total de direito autoral, que não deve ter restrição e tal e coisa. Então, naturalmente, há esse embate, né? É legítimo as pessoas manifestarem através das suas organizações os seus pensamentos, né? Mas nós achamos que a preservação do direito autoral, é a preservação da capacidade de produzir. Esse é o nosso posicionamento, nosso e o setor.

[00:21:52.09] Interviewer: Acho que fica claro que a maior vitória para a Globo foi a neutralidade da rede, mas qual foi que o que você acha o pior elemento da lei do Marco Civil.

[00:22:09.17] Respondent: O pior do Marco Civil eu diria, que ele é uma regra muito programática e com pouca, vamos dizer, com pouco mandamento executivo, né? O que é que isso significa na prática. Os conflitos que eventualmente possam vir da lei do Marco Civil vão ser discutidos aonde, no Judiciário. E, da forma que a lei está

colocada, de forma programática, muito ampla, né? O poder de ditar o direito será do juiz e não do legislador. Não sei se... <phone rings> Eu gosto de viver perigosamente, eu não atendi a minha mulher.

[00:22:57.19] Interviewer: Esse é um perigo mortal.

[00:22:58.06] Respondent: É um perigo mortal. Mas é. ... você entende? quer dizer, quanto mais aberta fica a norma, quanto mais programática ela é, quem é que vai resolver o conflito? O juiz. Sem parâmetro na lei porque a lei não está estabelecendo o direito claramente. Fazendo uma analogia com os Estados Unidos, é como a Constituição Americana, a Constituição Norte-americana é um grande programa, né? O que que foi estabelecendo o que é que a constituição dizia, a Suprema Corte. Através das suas decisões, né? Então, claramente, por uma norma ser programática, ela transfere ao judiciário. O Judiciário brasileiro é muito complexo, complexo no seu procedimento, você pode levar anos para ter uma decisão judicial e a internet é um meio que trabalha com segundos e não com anos. Então, eu acho que se eu tiver uma crítica a fazer ao Marco Civil, a crítica é essa.

[00:24:00.05] Interviewer: E essa crítica vai, talvez é porque o Marco Civil é uma lei assm explicitamente cívica, para o Marco Civil a neutralidade da rede é análogo a liberdade de expressão...

[00:24:17.20] Respondent: Liberdade de expressão. Sim, no nosso ponto de vista sim.

[00:24:17.20] Interviewer: Sim. Então, por isso então programática, né? Não foi feita para os negócios.

[00:24:53.29] Respondent: Até na questão da neutralidade de rede é um ponto dali onde ela não é programática, ela estabelece direitos e obrigações no tema da neutralidade, mas o Marco Civil é muito mais amplo do que o tema da neutralidade, eu me refiro aos outros pontos. Ah, todos são iguais na internet, não pode ter isso e aquilo, quer dizer...

[00:24:53.29] Interviewer: Os princípios?

[00:24:53.29] Respondent: Sim, os princípios. Eu acho que a lei tem que ter princípios, mas ela tem que estabelecer direitos e obrigações, eu acho que aí ficou um pouco mais nos princípios e portanto dando ao juiz em caso de conflito uma abertura pra decidir. Isso tudo gera na minha opinião, o que nós chamamos de segurança jurídica. Segurança jurídica leva ao quê? Investimento, num raciocínio muito claro. Quanto menos segurança jurídica você tem, maior dificuldade você terá de investimento. E, a internet, ela tem uma parte que ela é um canal livre de comunicação por quem está na rede e não quer fazer daquilo um negócio. E aí, não tem que ter regra pra nada. O sujeito tem que ser livre mesmo. Agora, tem um setor dentro da internet que é business. Bom, isso que é business tem que ter um parâmetro. Tem que ter parâmetro e tem que ter segurança jurídica pra fazer investimento, né? O que não dá pra dizer é o seguinte, né? A internet, ela é livre pra todo mundo, não tem parâmetro pra ninguém. Não, se eu tenho uma atividade empresarial e uso a internet como plataforma. Vamos dizer, eu sou um banco. Hoje em dia, a gente faz transações bancárias, a gente faz compra e venda na internet. Quer dizer, no momento que eu faço uma compra e venda mercantil na internet, as regras sobre aquela ação dentro da internet, ela é as regras de compra e venda mercantil. Você tem que pagar imposto, você tem dever de entrega de mercadoria. Enfim, as regras todas que presidem isso. Se eu estou fazendo uma transação bancária pela internet, um empréstimo, uma remessa de dinheiro, alguma coisa, isso tem que se sujeitar às regras do Banco Central, as regras de banco, né? Não é porque tá na internet que é um... Enfim, por quê? Porque eu estou aquele negócio na internet é um business, eu estou ganhando com aquilo ali, é uma atividade empresarial. Então, aquilo que for atividade empresarial, tem que ter regra clara, tem que ter a regulação natural do setor off-line pro online, né? Então, eu acho que não ficou claro. Seria uma boa oportunidade. Não ficou claro no Marco Civil esta divisão. É, eu quero me manifestar, quero ter um blog e nesse blog eu quero dizer as maiores barbaridades. Então qual é o meu limite? O crime. Eu posso dizer as maiores

barbaridades, mas não posso cometer crime. O crime de racismo, o crime de incitação à violência etc. e tal. Bom, mas eu tenho que ser livre. E eu não tenho que pedir licença pra ninguém, eu boto lá meu blog e pau e pau. Agora, se eu quero comprar e vender. Se eu quero fazer uma atividade de compra e venda na internet, não pode ser igual ao cara que quer se manifestar, sem interesse econômico, sem interesse empresarial. Eu acho que essa divisão, seria uma oportunidade, não foi. Por quê? Você vai me dizer, é ruim? Não, é ótimo, né? É porque o processo legislativo, especialmente o processo legislativo brasileiro, ele só avança por consenso. Isso pode ser um defeito, mas também pode ser uma virtude. Quer dizer, virtude política, histórica do Brasil. Quer dizer, o Brasil é um país que produz consenso, isso nos diferencia um pouco dos nossos Hermanos de la america latina. O brasil é um país que avança nos consensos. E quando você avança nos consensos, né? Você não tem a melhor lei, você tem a lei possível, né? Então, esse é o retrato, vamos dizer, do Marco Civil, né? Maior desafio do Molón e ele foi muito bom nisso, foi tentar conciliar os diversos interesses em jogo e produzir o texto possível. Eu, certamente... o texto que saiu não era o texto da preferência do Molón, mas foi o texto possível pra viabilizar sua aprovação. Nós temos experiências no Congresso, várias, que onde não se produz tem projetos ou temas que estão sendo discutidos no Congresso, há 20 anos, 30 anos. Por quê? Porque não se produz o mínimo de consenso pra isso avançar na sociedade. Isso é uma característica do brasileiro. Tem as suas desvantagens, mas tem as suas vantagens.

[00:29:05.25] Interviewer: E você acha que o modelo multissetorial do marco Civil pode ter vantagens no futuro se houver outro anteprojeto de lei focado na internet, a Globo apoiaria um processo assim multissetorial em vez de um processo puramente no Congresso?

[00:29:38.29] Respondent: Não entendi a sua pergunta.

[00:29:38.29] Interviewer: Sim, porque o Marco Civil tinha um modelo bastante original no respeito da consulta pública e estava aberta a todos os blocos econômicos e, no futuro, se o governo quiser usar este modelo de novo, você acha que seria bem-vindo?

[00:30:18.23] Respondent: Deixa eu ver se eu entendi sua colocação, o modelo tradicional da internet, tinha pouca interferência do Estado e o atual tem alguma interferência do Estado, é isso a sua pergunta?

[00:30:26.18] Interviewer: Não, isto era outra pergunta. Se você acha que o internet com a intervenção do Estado é melhor do que a internet assim livre.

[00:30:42.19] Respondent: Eu acho que a intervenção do Estado tem que ser o mínimo possível para poder regular algumas atividades na internet, é aquilo que eu te disse. Se eu tenho uma atividade que eu vou usar a internet como plataforma para empresarialmente explorar essa atividade, então o Estado tem que intervir na medida que ele interfere como ente regulador desta atividade econômica fora, né? Fora isso, eu acho que a intervenção do Estado na internet, vai ser uma coisa que vai beirar o ridículo porque não tem como fazer. O Estado que quiser controlar a internet, né? Vai cair no ridículo internacional. Eu acho que o Estado não tem que se envolver. Claro, tem que controlar. Tem crime na internet? Vamos controlar o crime. Tem uma atividade econômica? Tem que ter a regulação de qualquer atividade econômica. Agora, a internet como plataforma, quanto menos intervenção do Estado melhor. Esse é o nosso posicionamento.

[00:31:38.03] Interviewer: Então, no caso do Marco Civil, você acha que foi um equilíbrio bom assim?

[00:31:40.15] Respondent: Acho, acho. É como eu te disse, é o equilíbrio possível. Aí, teve um ponto de discussão no marco civil que era o seguinte: bom, a administração da internet tem que ficar no CGI ou passar pra ANATEL. Isso foi uma briga que nós ficamos mais ou menos assistindo entre a ANATEL e o CGI. Tá? Se você me perguntar: O CGI é ótimo? Vocês estão satisfeitos com o CGI? Não, o CGI tem um monte de problemas, mas nós ainda preferimos que essa gestão da internet, pelo modelo que a internet, seja feita fora do estado do que

dentro do estado. Acho que o modelo como está, está bom. E acho que o Molón encontrou uma forma de conciliar isso, no texto do projeto definitivamente aprovado. Acho que, acho que... foi interessante.

[00:32:37.02] Interviewer: Isso vai ser a minha última pergunta. O Mundo inteiro tem um interesse nesse...

<Respondent introducing another person>

[00:33:20.25] Interviewer: Sim, é a última pergunta. O mundo inteiro tem muito interesse no tema do Marco Civil e o assunto de estabelecer direitos de usuários da internet é uma coisa bastante universal, na União Europeia está falando disso também, mas o Brasil foi o primeiro. Por quê?

[00:33:20.25] Respondent: Acho que isso me preocupa um pouco. Isso me preocupa um pouco porque, na verdade...

[00:33:21.27] Interviewer: Então, por que aqui? Há alguma coisa especial no contexto brasileiro, na mídia?

[00:33:30.05] Respondent: Não, veja, na verdade é um conjunto de coisas, né? Tem duas coisas que ninguém entende bem ainda. Entender bem... Eu digo que a internet é que nem as mulheres. Cuidado, nenhuma mulher pode escutar isso aqui, tá? O Freud morreu sem entender as mulheres. Então, a internet é um pouco siso, a forma como ela é concebida. A dinâmica da internet faz com que seja muito difícil você fazer uma atividade de planejamento. Quer dizer, vamos planejar, a internet vai ser isso, vai ser aquilo... Não, ela sempre vai atropelar os fatos. E, principalmente, ela vai atropelar a lei. Qualquer atividade legislativa que você faça de regulação da internet, vai ser atropelada pelos fatos. Não tem como. Eu te dou um exemplo bem simples. Bem simples, que causa perplexidade e ninguém sabe a resposta. Hoje, para você ter um jornal no Brasil, a Constituição diz que 70% do capital tem que ser brasileiro. A Constituição tem uma série de regras para você poder ter um jornal aqui no Brasil. Então, você pega um jornal como o Estado de São Paulo, um jornal importante no Brasil, que tem lá sua gráfica, etc., etc., etc. Mas está online, né? Tem lá, o serviço do Estadão na internet, transmitindo notícias e tal. Vamos admitir que amanhã, os meus amigos Mesquita lá, dizendo: vamos fechar a gráfica, o jornal vai ser só online. Eles podem vender 100% do capital? Eles deixam de estar sujeitos às regras constitucionais? Ou eles continuam com as mesmas regras Constitucionais.

<Another person comment: E vale a mesma coisa pra televisão.>

[00:35:07.18] Respondent: E vale a mesma coisa pra televisão.

<Another person comment: Você monta um noticiário na internet, como o Terra montou há 10 anos. Pegando inclusive uma âncora que foi âncora do Jornal Nacional, a Lilian Wite Fibe, e fazia um noticiário. Hoje, você pode continuar fazendo a mesma coisa, você conecta uma TV inteligente, você tem um programa de televisão.>

[00:35:26.25] Respondent: É mais eloquente, quando eu digo o seguinte, você tem uma atividade regulada, e por um ato de desligar um detalhe dessa atividade. Que, aliás, hoje é um problema. Porque jornal impresso acabou virando um problema, você desliga essa atividade e se desregula. Então, esse tipo... Eu setou te citando esse exemplo, não para dizer o seguinte: eu tenho a solução. Pode ou não pode. Concieto ou não Conceito. Não, essa é uma discussão que está sendo feita, eu não tenho a resposta, eu só estou te exemplificando a perplexidade que esse mundo novo está trazendo no ambiente regulatório. E para as empresas? Essa é a primeira questão. E a segunda questão: quem ganha dinheiro na internet? É outro problema. Uma atividade que você off-line, você tem uma forma de remuneração e tal, quando chega dentro do ambiente da internet, ela é completamente diferente. Então, tudo isto é muito novo. E, o fato do Brasil sair na frente disso, eu acho um pouco preocupante por quê? Porque a internet não começou aqui. Tem peculiaridades no Brasil, então, sempre quem sai na frente e vai experimentar aquela norma, tem a desvantagem de ser a cobaia, de ser o piloto disso. Eu acho que uma das coisas, acabou não sendo colocado lá, que politicamente influenciou para que isso fosse

acelerado, foi aquela revelação do Snowden, que foi isso, né? que eles explicitaram. Enfim, veio à tona, que o serviço secreto norte-americano tinha informações sobre o governo brasileiro e usava essas informações, quer dizer, quando isso veio a público, politicamente o governo brasileiro queria fazer uma reação. Algumas ações foram burras, na minha visão. Foram primárias. O que é que o governo brasileiro fez? Tinha uma visita de Estado da presidente da República. O que é que ela fez? Ela cancelou a visita. Nós aqui comentávamos, certamente o presidente Barack Obama vai perder o sono porque o Presidente do Brasil não foi visitá-lo. Quer dizer, uma bobagem total, mas este fato fez com que o governo quisesse aprovar uma norma de internet, e chegaram a tentar colocar dentro da norma uma emenda que obrigava a todos, a toda internet brasileira a ter reserva de dados, base de dados aqui. É outra bobagem, é outra sandice. Então, esse conjunto de coisas fez com que a norma andasse, mas eu acho que o grande, grande subproduto, é o tema da neutralidade.

<Another person comment: E está cheio de buracos aí, como a questão dos impostos, INSS>

[00:38:25.08] Respondent: Eu estava dizendo para ele, é um tema não resolvido, né? O Marco Civil foi um avanço, mas longe de resolver. Nós temos que nos ater, eu diria, ele é o marco civil, que estabelece responsabilidade civil, os outros problemas da internet não .... E acho que fez bem, não tinha que discutir ali mesmo.

[00:38:43.19] Interviewer: É, vou parar de gravar.

Alessandro Molon – PT - Brasília - 19/03/2015

[00:00:01.20] Interviewer: Ahm ... pode explicar um pouco sobre como e quando você começou a ter um vínculo com o projeto do Marco Civil?

[00:00:10.20] Respondent: Quando eu ainda era Deputado Estadual, no estado do Rio de Janeiro. E.... acompanhei uma mobilização da sociedade civil contra um projeto, um outro projeto de lei que tramitava aqui no Congresso, que foi apelidado de AI-5 Digital.

[00:00:35.05] Interviewer: Ok!

[00:00:35.05] Respondent: Que era um projeto que tinha por objetivo criminalizar uma série de condutas na internet. Então, a sociedade civil se mobilizou contra o projeto e disse: "Nós não queremos esse projeto transformado em lei. Nós queremos um Marco Civil da Internet." Foi a primeira vez que eu ouvi falar nisso. E, eu ainda não era Deputado Federal, só Estadual, lá no Rio de Janeiro, não é? Na minha província, digamos assim, no meu estado, né? E .... foi a primeira vez que eu tomei contato. Depois quando eu cheguei aqui, já sabendo que a Presidenta estava prestes a enviar, comecei a acompanhar os debates e sobretudo querer participar das decisões sobre o tema.

[00:01:16.14] Interviewer: Ok. É. E como era o resultado de um processo tão inovador, tão democraticamente legítimo. Você ficou surpreendido ou decepcionado quando começou a política direcional aqui no Congresso, quanto ao Marco Civil?

[00:01:38.21] Respondent: Olha, eu ... eu me deparei com duas dificuldades de compreensão mútua. Uma dificuldade do Congresso entender o que era um processo diferente de construção de um projeto de lei. E, encontrei alguma dificuldade também, na Sociedade Civil de entender que o Congresso representa o Povo como prevê a Constituição, com todos os limites dessa representação, né? Então, foi preciso trabalhar numa mútua, numa recíproca compreensão. Dizer para os deputados: "Olha, nós não podemos desconsiderar o que a

sociedade fez. Precisamos preservar ao máximo aquele espírito que está ali!". Mas, ao mesmo tempo, eu dizia para a Sociedade Civil: "Olha, nós não podemos desconsiderar que quem está lá foi eleito..."

<Speaking to another person>

[00:02:43.15] Respondent: dizia para a Sociedade: "Nós não podemos desconsiderar que quem está lá foi eleito para representar o povo. Então, têm o direito de falar em nome do povo".

[00:03:00.28] Interviewer: Ok. E como foi um projeto tão inovador em sua forma, no contexto do sistema democrático do Brasil, qual a melhor maneira de conceituar o Marco Civil quanto a sua... como foi... como tive um processo de consulta pública e tudo isso?

[00:03:26.20] Respondent: Como é que eu faria isso?

[00:03:28.22] Interviewer: Como é que você pode relacionar o Marco Civil ao sistema político brasileiro?

[00:03:37.00] Respondent: Eu acho que ele é resultado da boa... da complementariedade da democracia participativa com a democracia representativa. Ele é filho desse casamento entre as duas. E, eu acho que é um casamento muito bonito porque eu acho que a democracia participativa, ela fortalece a democracia representativa, e não a enfraquece. Eu acho que nós não temos uma coisa ou outra, nós precisamos das duas coisas se complementando.

[00:04:09.27] Interviewer: Ok.

<interruption>

[00:04:15.29] Interviewer: De todos os setores que tentaram influir na forma que tiveram o Marco Civil qual foi a pressão mais forte que você sofreu?

[00:04:24.29] Respondent: O setor das telefônicas. Os provedores de conexão porque eles resistiram muito ao conceito de neutralidade da rede. E a proibição de cobrança tanto por conteúdo quanto por origem e destino. Que no fundo são dois aspectos da neutralidade da rede. Foi a maior pressão, a maior resistência, a maior guerra contra o projeto foi essa. Mas nós vencemos.

[00:04:35.13] Interviewer: E falando da neutralidade da rede, ao contrário dos Estados Unidos. No Brasil, não parece que houve um debate tão forte aqui como nos Estados Unidos? Mas obviamente você entendeu a neutralidade como o elemento mais importante da lei, por quê?

[00:05:20.26] Respondent: Por causa da democracia. Eu acho que a neutralidade ela garante direitos fundamentais, é uma lei que garante direitos humanos na rede. O direito à informação, o direito à liberdade, e sobretudo o direito de divulgar e receber a informação que eu quero sem que o critério econômico influencie nisso. Porque a arquitetura horizontal da rede, ela... com neutralidade ela garante isso que qualquer um possa ler e concordar com aquilo que eu penso e escrevo, e eu posso ler e concordar e formar minha opinião com o que quer que eu queira acessar em qualquer lugar do mundo. Sem a neutralidade isso se perde. Então, na minha opinião, a garantia da neutralidade ela é sobretudo fundamental para observância de direitos fundamentais: o direito a cultura, o direito à informação, o direito à liberdade de expressão. E, também, para garantir a democracia porque ela depende da minha capacidade de informação.

[00:06:35.07] Interviewer: E foi um trabalho muito difícil fazer com que os seus colegas entendessem essa importância aqui na Câmara?

[00:06:35.07] Respondent: Foi, foi muito difícil. Deu muito trabalho e eu tive que explicar centenas de vezes isso. Porque é um tema técnico também, e muita gente não conhece, não sabe o que é, e não quer conhecer. Tem

outros interesses na vida. Então, deu muito trabalho. E houve muita guerra de informação. Então, você explicava a pessoa entendia, depois vinha alguém que era contra e dizia " não é nada disso, isso é o contrário". Aí, você tinha que explicar porque a pessoa não conhece. É como explicar uma doença médica, uma doença rara pra uma pessoa que não é médica. Deve tomar água ou não deve tomar água? É. ....se a pessoa não conhece. A luz do sol faz bem ou mal? Então, é uma coisa muito técnica, né? Então, dá um trabalho, né? Esses exemplos que eu dei não são bons, mas eu quero dizer o seguinte, é um tema muito distante, do cotidiano da vida das pessoas, da realidade mais imediata delas.

[00:07:37.06] Interviewer: Você acha legítimo essas críticas de que a forma final que tinha o marco civil, é favorável demais às grandes companhias de web como o Google e o Facebook?

[00:07:47.08] Respondent: Não, eu....veja bem, eu acho que todo mundo tem o direito de criticar o que quiser porque eu defendo a liberdade de expressão. Então, todo mundo tem esse direito, isso não tem nenhum problema. Mas eu discordo dessa crítica, por que? Porque o nosso foco do começo ao fim do projeto foi o usuário. A garantia da neutralidade da rede para mim, ela interessa principalmente ao usuário. Ah, mas ela também é boa para o Google? Não me importa. O meu foco não é o google, o meu foco é o usuário. Pro usuário é bom? É! Eu garanti isso pra ele. Pode ser que outros achem isso bom, não me importa, o meu objetivo é atender o usuário. Então, pode ser que tenha coisas boas também pra empresa de internet? Pode ser, eu acho até que tem. Mas o objetivo foi proteger o interesse do usuário, os direitos do usuário. Isso é que nos preocupou. Isso que nos moveu.

[00:08:45.00] Interviewer: Qual é o seu maior desapontamento quanto à forma final que tinha o Marco Civil?

[00:08:52.15] Respondent: Eu não sei dizer. Eu fiquei muito satisfeito com o resultado final assim. Naturalmente que há temas que não estão cobertos pelo Marco Civil, mas desde o início nós sabíamos que o Marco Civil não poderia resolver tudo. Então, assim, eu acho que ele ficou o melhor que ele poderia ter ficar. Eu acho que assim, ele é perfeito dentro do possível, né? Quer dizer, eu acredito muito que o ótimo é inimigo do bom. Então, você imaginar que uma lei só, vai resolver tudo, para sempre, de todos os campos. Não existe. Então, dentro do que a gente poderia construir, eu acho que foi o melhor possível. Eu fiquei muito satisfeito com o resultado.

[00:09:38.07] Interviewer: Ok. E o Marco Civil agora é um ponto de referência de mais países no Mundo. E vocês já tem vínculo com Argentina, México e Itália. Mas o que há no Brasil que faz com que o Marco Civil tenha um significativo especial, que talvez não tivesse em qualquer outro país do Mundo? O que que há não sei, na sociedade brasileira, no sistema político, a mídia....que tem que o Marco Civil tem um significativo amis forte aqui no Brasil?

[00:10:13.29] Respondent: Tá! Do que pra outros países?

[00:10:16.20] Interviewer: Sim.

[00:10:16.20] Respondent: Não, eu acho que ele vai ter pra outros países também. Eu acho que o Brasil saiu na frente nesse debate. Eu acho que nós conseguimos sair na frente porque por razões históricas, e sociológicas e políticas, o Brasil acabou debatendo primeiro esse tema e conseguiu produzir uma decisão antes que a Europa, antes que os Estados Unidos, e antes que o restante da América Latina sob alguns aspectos. Sob outros aspectos nós estamos atrasados. Por exemplo, algumas regras de proteção de dados pessoais que tem no Marco Civil, já tem na Europa e em outros países há muito tempo, até na América Latina. Mas no campo da neutralidade e também uma lei que trate de pilares da internet como é o Marco Civil. Uma lei que, digamos assim, que não é uma lei só sobre neutralidade, mas que trata de privacidade, liberdade de expressão, 'safe hardware' e.... proteção de dados pessoais, privacidade. Com essa cara, só o Marco Civil, realmente.

[00:11:19.26] Interviewer: Ahm... e eu sei que você teve que enfrentar poderes econômicos muito fortes nesse país para aprovar o marco civil e de fora parece uma vitória muito improvável, que que você acha o elemento, o fato mais importante para compreender esse êxito?

[00:11:47.07] Respondent: Bom, primeiro, acreditar que o improvável às vezes acontece. Não é? Quer dizer, o improvável não é impossível, não é? Então, às vezes acontece o improvável. Eu também durante... em alguns momentos, achei que não conseguiríamos vencer. Eu, em alguns momentos, eu falei, nós não vamos conseguir. Né? Mas acho que foi um conjunto de fatores. Uma mobilização da sociedade, que eu acho que é um fator determinante, pedindo isso. Uma presidente da república comprometida com a causa, que entendeu a importância disso. Uma conjuntura que deu uma importância a isso, que talvez isso não tivesse antes, como a revelação do Snowden sobre a violação da privacidade de dados do governo brasileiro. Então, foi um conjunto de fatores que permitiu isso. E, às vezes, pra conseguir determinados resultados. Uma série de coisas tem que se alinhar. Como elas se alinharam da maneira certa, graças à deus, a coisa funcionou.

[00:12:39.28] Interviewer: E, qual foi o maior obstáculo que você enfrentou para conseguir a aprovação do Marco Civil?

[00:12:51.08] Respondent: Conseguir explicar o que é e a importância disso pra vida das pessoas. Esse foi o maior obstáculo. Isso é o mais difícil. Explicar por que que isso muda a sua vida? Em que medida isso é importante para você? Porque quando as pessoas entendem que isso é importante pra elas, elas passam a apoiar. Mas às vezes, explicar porque é importante isso é mais difícil. Explicar porque é importante o salário aumentar, não precisa explicar todo mundo sabe, é óbvio. Mas explicar porque é importante ter neutralidade da rede, não é tão simples, né?

[00:13:29.20] Interviewer: Havia pressão nos bastidores durante a consulta pública ou só quando chegou o projeto no congresso?

[00:13:35.18] Respondent: Não, houve pressão do começo ao fim. A pressão em momento nenhum deixou de existir.

[00:13:47.05] Interviewer: E de um setor mais que outro?

[00:13:47.05] Respondent: Não, houve uma pressão constante sobretudo dos provedores de conexão que mais temiam que isso... que a neutralidade fosse garantida. Eu vou precisar ir... porque na verdade... Tem mais alguma pergunta? Se tiver mais alguma.

[00:14:04.08] Interviewer: Não, na verdade, a gente fez tudo.

[00:14:07.26] Respondent: Conseguimos então?

[00:14:07.26] Respondent: Essa foi uma decisão uma decisão muito importante porque se nós não tivéssemos tratado disso nós teríamos aumentado o número de opositores ao projeto. Então, isso foi uma questão tática muito importante. Quer dizer, então vamos tratar de um problema de cada vez porque se não nós vamos unificar os adversários do projeto. Então, quando nós dissemos, direitos autorais nós vamos tratar depois, nós dissemos, nós vamos enfrentar um setor aqui importante que é o de provedores de conexão e vamos vencê-los. Se talvez tivéssemos enfrentado todos ao mesmo tempo, talvez não tivéssemos conseguido. Seria mais difícil.

[00:14:46.09] Interviewer: E foi difícil explicar essa estratégia pra os demais?

[00:14:46.09] Respondent: Não, foi necessário explicar. Quando você explicava as pessoas entendiam, embora alguns resistissem. Porque a tendência é as pessoas quererem que você resolva tudo ao mesmo tempo da forma

perfeita, isso nem sempre é possível, né? Então esse tema ficou para um próximo debate da lei de direitos autorais. Tá bem?

[00:15:06.23] Interviewer: Sim, foi muito bom.

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[00:00:08.06] Respondent: Se for alguma parte mais sensível, eu digo para você.

[00:00:08.06] Interviewer: É.... então... prefere que eu fale em inglês ou?

[00:00:23.03] Respondent: Pode ser em inglês, eu prefiro responder em português que fica mais fácil.

[00:00:23.03] Interviewer: Ah sim... então... Da sua perspectiva, pode descrever os origens do Marco Civil?

[00:00:30.08] Respondent: É, o Marco Civil na verdade foi um contra movimento, em relação ao PL 8499, que era o projeto do Eduardo Azeredo, do PSDB de Minas, sobre cyber crimes. Crimes cibernéticos. Ele basicamente ia tornar crime várias atividades corriqueiras na internet. Aí, houve um grande contra movimento, principalmente liderado pelo movimento Software Livre. E as duas principais lideranças dessa área no Brasil hoje que é o Marcelo Branco, lá no Sul, e o Sérgio Amadeu em São Paulo. E isso expandiu. E aí num dos <uninteligible> do software livre lá em Porto Alegre... é. ....eles são petistas, eram próximos ao Lula. O Lula era presidente, acho que isso foi 2009. Acho que não ... Isso foi bem antes, não me recordo a data. Eles, quer ver, foi dois mil .... É, quer dizer, acho que talvez tenha sido 2009 ou um pouco antes. Eles sugeriram que fosse criado antes que se tivesse uma legislação no âmbito criminal, que se tivesse uma legislação no âmbito civil, pra aí, depois, se fosse o caso, tratar do tema no âmbito criminal. E isso expandiu não só pelo movimento Software Livre, Sérgio Amadeu e Marcelo Branco, mas depois pra FGV, que era a entidade que na época eu trabalhava, com o Ronaldo Lemos. Então, essa é a forma como surgiu. E aí, foi feita uma consulta pública, uma parceria entre FGV e....

[00:02:20.25] Interviewer: E nessa época você era o Chefe de Gabinete do Ministro da Justiça?

[00:02:27.00] Respondent: Não, não. Quem era o chefe de Gabinete era outro Pedro. É o Pedro Abramovai.

[00:02:32.21] Interviewer: Abramovai. Ah, certo. Você tava aonde?

[00:02:35.04] Respondent: Eu estava na FGV. Eu trabalhava com o Ronaldo.

[00:02:37.20] Interviewer: Ah, ok. Tá.

[00:02:38.06] Respondent: É. .. e aí, foi feita essa parceria e a FGV ajudou a montar o primeiro texto que foi colocado em consulta pública pelo Ministério da Justiça. Essa é a origem.

[00:02:55.08] Interviewer: E quando eu falei com o Carlos Afonso de <uninteligible> Lima. Ele falou que quando Lula fez este, este discurso sobre a primeira ideia do Marco Civil foi uma grande surpresa. E, pra ele, ele não sabe muito bom porque ele fez esse discurso. Você tem alguma ideia?

[00:03:14.27] Respondent: É, porque na verdade ele estava, isso no <uninteligible>, né? Porque as pessoas estavam presentes lá, é .... o Sérgio Amadeu e Marcelo Branco, então conhecidos do Lula, e sugeriram que ele fizesse isso. Acho que era, na época, a situação política era muito mais tranquila, é....

[00:03:35.05] Interviewer: Que hoje...

[00:03:35.05] Respondent: Que hoje. E, o Lula tinha capacidade política de comprar essas pautas ou essas brigas do que hoje o governo tem capacidade. Então, era algo tranquilo de se fazer, era ainda ..... O PT ainda estava conseguindo implementar várias modificações para melhorar a sociedade, e acho que era uma delas .... Ele achou interessante a pauta, e foi pautado pelo Marcelo Branco e pelo Sérgio Amadeu.

[00:04:09.07] Interviewer: Ok. Você acha que a seleção da FGV como parceiro oficial da sociedade civil. Como é uma organização bastante conservadora, com fortes relações com o Estado, isso influiu no processo, como foi a forma final do Marco Civil? Como se fosse, como se foram as vozes mais radicais da sociedade civil fosse marginalizada?

[00:04:51.00] Respondent: Isso dentro do processo ainda na consulta do MJ, Ministério da Justiça, ou no processo final?

[00:04:52.19] Interviewer: Não, desde o início.

[00:04:53.18] Respondent: É. ... Eu acho que não. É, eu acho que assim, se fossem outros grupos ou entidades da sociedade civil, talvez o texto fosse mais radical pra um dos lados. Eu acho que o texto da FGV foi um texto socialmente mais pra esquerda. Eu acho que o lado positivo é que tem o peso institucional da FGV, justamente por ser uma instituição não de esquerda, a instituição, acho que isso trouxe credibilidade perante terceiros que não a sociedade civil, eu acho que isso é um fator positivo. E fato é que na verdade o CTS, é de esquerda, apesar de fazer parte da FGV. Então, tem uma certa liberdade de pensamento ali pro CTS fazer praticamente o que acha correto. Então, pouco do que o CTS faz acaba esbarrando nas diretrizes centrais da FGV como um todo.
[00:06:31.08] Interviewer: Agora, ouvi falar de histórias mais contemporâneas sobre assuntos do CTS quando a liderança do FGV falou: "Não, isso não tem que ver com a nossa opinião"...

[00:06:35.07] Respondent: É, sobre dados pessoais, é ..... Foi a única vez que teve alguma intervenção mais direta da presidência. Eu não estou mais lá, apesar de ser amigo do Luiz <uninteligible>. Eu não sei exatamente como é que foi. Parece que ele tinha tido uma conversa com uma das pessoas que foi lá e divulgou, algo que certamente seria feito por uma ONG bem de esquerda. E, eu acho que talvez eles tivessem que ter tido alguma sensibilidade maior pra eventualmente não deixar o negócio tão explícito, a ponto de a presidência da FGV ir lá e querer barrar eles. Então, acho que é. ... o trabalho que eles fazem lá é muito importante. E, acho que eles tem que continuar fazendo e não soar esse alarme da presidência.

[00:07:36.01] Interviewer: Quais são os fatores que explicam um projeto de lei tão inovadora quanto o Marco Civil?

[00:07:43.28] Respondent: É.... eu acho que principalmente por ser ..... Bom, primeiro pelo tema em si que é inovador. E, pelo fato de ter sido um texto montado por várias mãos. Então, o texto inicial foi feito pela FGV, mas depois na consulta pública do Ministério da Justiça passou por várias modificações. E, depois, quando veio pra Câmara, passou por muitas, e muitas, e muitas outras mais modificações. Tanto é que eu imagino que qualquer pessoa que você fale da telefônica, da rede globo, e da sociedade civil, vão achar que o texto não está perfeito. Porque justamente o texto é resultado de consenso, por incrível que pareça, de todos os atores que atuam nesse setor. Então, tem pontos que não aguardam cem por cento a um determinado setor, mas foi o possível pra se chegar no consenso e aprovar o texto. Então, acho que ele é inovador porque envolve pessoas que estão extremamente atualizadas e que participaram. Pessoas participativas foi essencial pra que fosse inovador.

[00:09:08.01] Interviewer: Mas falando especificamente sobre a ideia de ter uma consulta pública, isso é a inovação mais saliente do Marco Civil, né?

[00:09:21.18] Respondent: Eu acho que sim. Eu acho que sim. É .....acho que a tendência que isso sempre aconteça, isso deve acontecer ou deveria acontecer em todos os processos, ou pelo menos nos principais, em qualquer país que se diz democrático no século XXI. Não existe querer fazer política sem participação social. É.... pelo simples fato de que amis cabeças, mais pessoas, pensam melhor, é simples isso, então .... desde aquele exemplo corriqueiro e banal, da, de catalogar as crateras de Marte, não sei se você ouviu falar desse projeto. A NASA ia catalogar as crateras de Marte e os próprios cientistas da NASA demorariam décadas e décadas, tipo mais de cem anos pra conseguir catalogar. Aí, eles resolveram lançar um desafio público para que qualquer pessoa leiga começasse a catalogar quantas crateras são, em qual região de marte, quais as dimensões e tal. E aí, como era tanta gente catalogando, por mais que elas não tivessem conhecimento técnico algum. é ..... era tanta informação agregada, que eles foram fazendo a média.... Digamos que uma cratera foi catalogada por sei lá 1000 pessoas, 10000 pessoas, eles começaram a agregar e comparar as informações e chegaram a um resultado que segundo os cientistas da NASA foi mais perfeito ou mais bem feito que os próprios cientistas fariam, e numa velocidade de tempo muitíssimo inferior ao que os próprios cientistas fariam. Então, quer dizer, é. a participação social agrega muito. Então, são mais pessoas olhando o mesmo problema sobre pontos de vista diferentes. Então, por exemplo, quando a gente estava escrevendo o texto. A gente, digo, já aqui no governo, eu pelo relator o Alessandro Molón, em conjunto sempre com o Ministério da Justiça, a gente sempre escrevia o texto e pensava assim: "Isso aqui da forma como está, vai afetar positiva ou negativamente o Google, O Facebook, a Sociedade Civil, a Rede Globo, a Telefônica, a gente tentava pensar, se colocar no lugar de todos. Muitas vezes a gente conseguia, mas muitas vezes não tinha como porque você não consegue pensar em todas as possibilidades, ainda que a gente varasse madrugadas pensando e repensando. Então, a gente sempre via, soluções, sugestões vindas de um setor ou outro que sempre ajudavam. Então, assim, de fato a consulta pública foi muito, muito positiva.

[00:12:07.22] Interviewer: E a grande surpresa do Marco Civil é a percepção que a derrota principal foi para as empresas de telecomunicações? Você pode explicar como isso aconteceu na sua visão?

[00:12:26.22] Respondent: Eu acho que ainda é cedo pra afirmar que a grande derrota foi deles porque na prática eles tem que quebrado a neutralidade, na prática eles tem feito várias parcerias com bases em <uninteligible> rating. Isso é violação frontal ao Marco Civil e a regulamentação ainda não terminou. Então, acho que ainda é cedo pra afirmar. Assim, o texto em si de fato foi uma grande vitória, mas eu acho que o resultado global ainda é cedo pra afirmar que é vitorioso, sobre o fato de a gente ter conseguido um texto mais benéfico que prejudicial, é bem difícil de resumir porque são vários, e vários e vários fatores que influenciaram. Acho que além de cada uma das pessoas que estavam amis diretamente relacionadas, cada uma delas teve seu papel. E, foi ... e no final isso foi benéfico. Pela sociedade civil, a Bia Barbosa foi essencial, porque teve momentos que a sociedade civil não aceitava o texto, era contra o que a gente faia e a Bia foi uma peça fundamental pra trazer esse consenso, explicar pra eles que se não fosse assim a gente ia ser derrotado nos votos. Então, tiveram momentos que as teles estavam muito fortes e iam sim conseguir nos derrotar. Então, a gente preferiu que a gente pegou partes do texto que a gente não concordava, achava que não era positiva. A gente preferiu pegar e escrever com nossas próprias mãos pra que fosse um texto menos ruim do que escrito por outros. É. .... acho que esse é um ponto fundamente. É.... novembro .... outubro, novembro de 2013. A gente quase foi derrotado. E, o Eduardo Cunha que hoje é presidente, pouquíssimo conhecido de pessoas que não trabalham aqui, então uma figura pouquíssimo pública. Então, é perigoso porque ele é uma pessoa extremamente inteligente, articulada, uma das pessoas que mais conhecem de regimento interno da casa e.... um exímio estrategista. É. .... ele tem muito poder, mais do que o vice-presidente da república. Na época do Marco Civil dizia-se que ele tinha 167 deputados com ele, que ele financiava, nessa legislatura já tinham me dito que ele teria entre 250 e 300 deputados e ele foi eleito por 269 deputados. Então, outubro, novembro de 2013 pela primeira vez ele se tornou uma figura relativamente pública. A IstoÉ, a revista, colocou ele na capa no trono do senador lá do House of Cards, e isso gerou uma ira tremenda por parte dele, e a pressão pública se tornou finalmente muito grande

contra ele. Pela primeira vez, as teles ficaram mais recuadas, então essa foi uma virada grande e um pouco antes disso é ....ainda que sem relação direta o caso Snowden também foi importante. Porque dentro do governo o Marco Civil foi tido como uma possível resposta ou minimização dos danos causados pela espionagem. Então, a Presidente chamou o Molón pra Conversar, ele levou consigo vários documentos, inclusive documentos sobre decálogo do CGI. E, aí, ela perguntou o que era CGI e aí chamou todos os membros do CGI para conversar, aí que a sociedade civil então foi em massa e passou a ser ouvida. E ela percebeu que o Ministro das Comunicações não seria a pessoa adequada pra tratar do Marco Civil, ele que era o porta-voz do governo sobre o Marco Civil. E ela identificou que ele não estava sendo, defendendo o interesse nacional. Aí, ela excluiu o ministério das comunicações e passou a incluir o Ministério da Justiça. Quando o Ministério da Justiça entrou na jogada aí o cenário mudou completamente. Aí, de fato, o Governo começou a jogar pelo interesse público.

[00:17:24.08] Interviewer: AHm ... Um momento para minha pesquisa, é a dinâmica do poder. Para você quais foram os atores mais poderosos nesse conserto e como tentaram usar o poder para influir a lei?

[00:17:48.25] Respondent: Foi o Eduardo Cunha certamente, representando o Eduardo Cunha e não representando as teles. O deputado do ... na época ele estava em outro partido, hoje em dia ele está no PSC. É o Sílvio Costa. Não era essencial, mas ele estava nitidamente pago pelas teles. E, toda vez que ele podia, ele dava um discurso eloquente pra embolar o meio de campo. Mas pealas teles principalmente era o Eduardo Cunha. Com um poder muito superior em relação aos outros. Sandro Alex de certa forma também, mas bem menos, mais em relação a guarda de dados. A polícia federal, o ministério público, de certa forma, pressionando muito pela guarda de dados. A ANATEL nitidamente jogando no interesse das teles e não da sociedade civil, de governo ou de interesses públicos. Ministério das telecomunicações... aí, eu prefiro que você não inclua o meu nome... Mas muito mais pelo interesse das teles... É. MJ, de fato, pelo interesse público .... E exerceu um papel fundamental. E o relator, o relator Alessandro Molón foi muito essencial. Ele é muito inteligente, muito sagaz, entendeu o jogo o que estava por trás e assumiu comprar essa briga. São poucos que comprariam essa briga, então ele de fato como relator, apesar sim de ter escutado todos os interesses em jogo, ele foi uma pessoa fundamental, mas que se não tivesse o apoio do MJ, não conseguiria ter feito o que fez. Na sociedade civil, eu acho que eu não diria jogo de poder, mas equilibrar e trazer a sociedade civil pra junto do MJ e do relator a Bia Barbosa foi essencial também.

[00:20:29.20] Interviewer: Você acha que o Marco Civil logrou realmente estabelecer uma internet cívica? Que está legislado de um lógico realmente cívico?

[00:20:48.21] Respondent: Sim, acho que sim, no final foi bem positivo.

[00:20:49.29] Interviewer: E há elementos, não se, da sociedade brasileira ou do sistema midiático aqui no Brasil que faz com que o Marco Civil fosse ainda mais significativo do que seria em qualquer outro país? Quais são os elementos no Brasil que faz isso importante?

[00:21:23.04] Respondent: Deixa eu ver se eu entendi ... Se a mídia exerceu um papel fundamental em fazer com que o Marco Civil fosse importante ou mais importante que em outros lugares? É isso?

[00:21:27.28] Interviewer: Quer dizer, sobre como a economia política da mídia aqui no Brasil, como é o sistema aqui. Se isso faz o poder logo...

[00:21:43.05] Respondent: A Rede globo na verdade exerceu um papel fundamental, eu esqueci de mencionar até, pelo seguinte, eles não tinham identificado se eles iam apoiar o marco civil e a neutralidade ou se o assunto principal deles era incluir no texto os direitos autorais. E eles finalmente entenderam que quem controla a torneira, o registro, são as teles. E se as teles fechassem a torneira da neutralidade o conteúdo de direitos autorais da globo não ia passar. Quando eles finalmente entenderam isso, eles concordaram em deixar direitos

autorais fora do texto pra deixar só na reforma da lei de direitos autorais e passaram a defender a neutralidade da rede. Quando finalmente a rede globo percebeu isso e passou a atuar dessa forma, eles passaram também a noticiar o Marco civil no Jornal Nacional, por exemplo, que é o jornal mais assistido do Brasil. Então, é um assunto técnico que em geral não sairia na televisão. Ou se saísse, sairia com muito menos visibilidade, mas pelo fato de a Globo achar que era um assunto essencial pra ela isso de fato em alguns momentos foi muito importante. E teve sim influência não só na TV, mas nos jornais.

[00:23:22.29] Interviewer: Não sei se a gente tem tempo para mais uma pergunta. Você acha que o fato de que o Brasil fosse às vésperas de uma eleição, isso foi um fato importante também?

[00:23:42.26] Respondent: Não, na verdade, eu acho que sempre que está no momento de eleições é um momento ruim pra se fazer política. Porque geralmente é um momento que não se faz política, tudo fica em banho Maria como se diz aqui. E pouca coisa acontece. Então, na verdade, ele foi aprovado em abril, acho que foi justamente até o momento limite, se passasse disso, acho que poderia não ter sido aprovado. Acho que é ao contrário, se tivesse sido um momento político pré-eleições mais próximos, aí prejudicaria o processo.

[00:24:27.12] Interviewer: Ok. Muito bom. Tá, eu vou parar a gravação.

Paulo Santarém – SAL - Brasília - 17/03/2015

[00:00:06.00] Interviewer: Então, como não sabia até, até uma meia hora, uma hora mais ou menos se íamos encontrar, não preparei perguntas. Então, vou só falar da memória, tá? Não entendo muito bem, o sua vincula, como seu vínculo com os origens do projeto. Pode explicar um pouco sobre isso?

[00:00:34.22] Respondent: É, bom, eu acompanhei em 2009, as origens da manifestação do presidente Lula. Mas eu só sabia que existia, não tinha acompanhado em 2007, a ideia do Ronaldo. Não sabia do debate até, então. Tinha acompanhado o projeto do Azeredo, mas sem nenhum interesse maior. Em paralelo, eu entrei no mestrado da UnB em 2008, pra tratar de uma coisa bem processual, direito do trabalho processual e eu mudei de tema em função dos julgamentos do Pirate Bay, que foram em Abril de 2009. Aí, meu interesse se voltou pra internet, eu ia começar a debater direito autoral. Mas vi que na área do direito constitucional tinha algo mais interessante. E, aí, voltei minhas pesquisas pra isso, assim, o aspecto constitucional do direito relacionado à internet. Enfim, depois de muita pesquisa, eu cheguei na ideia do internauta como um sujeito de direito constitucional. Assim como, trabalhadores, mulheres, crianças tem direitos constitucionais. O internauta começa a emergir como uma figura nesse aspecto. Enfim, minha pesquisa eu sempre me propus a, enfim, não me desligar da realidade durante a pesquisa. Então, eu passei a usar até bastante o twitter pra registrar os meus achados, né? Então, achava um texto que eu ia ler, postava no twitter que eu estava lendo aquele texto e tal. E, entre essas coisas, um dia eu postei uma lista, um post que tinha acho que vinte e sete livros gratuitos sobre direito autoral e sobre direito da internet. Enfim, no âmbito da pesquisa. Aí, o Guilherme almeida que estava na <uninteligible>, já me seguia no twitter, achou interessante, foi ver quem eu era, o que eu fazia. E, aí, como eu tinha. Eu estava desenvolvendo uma pesquisa acadêmica sobre o tema. Então, não era só um advogado interessado. Tinha uma ligação já concreta.

[00:02:54.09] Interviewer: Na Universidade de...

[00:02:54.09] Respondent: Na Universidade De Brasília. Minha universidade, é a Universidade de Brasília. E, por ser servidor público aqui do TST, tinha uma facilidade pra contratação pro MJ. O Ministério da Justiça, ele não precisava fazer uma seleção, ele podia requisitar. Porque como eu já estou no serviço público federal, isso já

reduz em muito as exigências burocráticas. Aí, ele viu: 'bom, o cara mora aqui em Brasília. É um custo a menos da mudança. Já é um pesquisador, então não tem um custo intelectual dele ter que se inteirar do assunto. E, já sendo servidor a burocracia é reduzida, então.". Eu passei a trabalhar com o Marco Civil muito em função do meu envolvimento acadêmico com o tema, assim. da minha proposta de estudar esse tema. E aí, eu comecei a trabalhar...

[00:03:45.15] Interviewer: E em que etapa estava o projeto quando você entrou no...?

[00:03:51.27] Respondent: O convite foi feito, uma semana antes do lançamento.

[00:03:55.02] Interviewer: Ah, ok. Foi bem elaborado este.

[00:03:55.02] Respondent: Em 29. O Lançamento, se não me engano, foi em 29 de outubro. O Guilherme me ligou.

[00:04:06.00] Interviewer: <uninteligible>

[00:04:06.17] Respondent: De 2009.

[00:04:09.07] Interviewer: E 9.

[00:04:09.21] Respondent: <uninteligible> de 2009. Em 2007, foi o texto do Ronaldo. Falando da questão do Marco Civil. Aí, em Junho de 2009, teve o evento do FISNI (?), que o Lula estava presente em Porto Alegre. Passou a proposta do marco civil para ser feita pelo ministério da justiça. Isso foi desenvolvido com o Pedro Abramovai, ainda na secretaria. Aí, acho que no dia 20 ou 21 de outubro, o Guilherme me ligou. Falou, 'vamos almoçar?'. Eu falei, 'ah, beleza, ok.'. No dia seguinte, assim, na quinta-feira. Aí, nessa quinta ele me explicou a proposta. Aí, na sexta eu vim aqui e conversei com meu chefe, ele me liberou. Segunda-feira, inclusive feriado, e eu. Era dia do servidor público se não me engano. E, mesmo assim, eu já comecei a trabalhar com o Guilherme almeida direto no texto e na quarta-feira, a gente viajou para o rio para poder ter o lançamento n quinta, do marco civil.

[00:05:16.15] Interviewer: No FGV?

[00:05:16.15] Respondent: Na FGV. Isso. No período de uma semana, eu fui convidado e estava no jatinho indo com o ministro da justiça para o lançamento. Bem rápido assim minha entrada no projeto.

[00:05:34.11] Interviewer: Então, o white paper já foi escrito sobre os princípios?

[00:05:40.29] Respondent: Aí, pelo primeiro documento sobre quais seriam os temas que precisariam ser debatidos, indicando os três eixos, direitos fundamentais, questão da obrigação e papel do estado. Que foi a primeira grande divisão do Marco Civil assim. Depois, com o desenvolver dos debates ao longo dos anos, acabou que neutralidade, dados pessoais e a remoção de conteúdo se tornaram os três focos, assim. Mas no começo, a gente não antecipou que teria esse privilégio. Mas, daí...

[00:06:22.10] Interviewer: E essa primeira estatura que tinha o marco civil, tinha base, porque o CGI publicou uma declaração sobre direitos...

[00:06:34.25] Respondent: Dez princípios para Governança da internet.

[00:06:35.27] Interviewer: que tinha base em...

[00:06:40.05] Respondent: a gente utilizou muito do decálogo como conteúdo. Então, pra gente enriquecer o texto que a gente usou, a gente desenvolveu os pontos do decálogo, mas a estrutura em si, era um pensamento do Guilherme. Que ele identificou que assim, o surgimento da ideia, na verdade, era no viés bem de obrigações

das empresas. A proposta de 2007, do Ronaldo, até falava em marco regulatório civil da internet. Porque era questão mesmo de regular um setor econômico. Aí, essa parte de obrigações depois, com os debates do projeto penal, tiveram que conviver também com a questão dos direitos dos internautas, né? Até nesse ponto que entra a minha pesquisa, que é mais a ideia de direitos fundamentais para quem usa a internet. ´E, aí, nesse momento que o governo toma pra si o projeto, vem um terceiro ponto que é o papel do estado, né? O que que o estado tem que fazer? Que aí é a parte final da lei. Então, já desde o começo a gente tinha essa ideia desses três capítulos da lei, esse eixo foi direcionado pelo Guilherme. E tinha além disso, uma parte introdutória e uma parte de disposições finais, que é basicamente a estrutura que o marco civil acabou seguindo hoje. É, e aí, a minha dissertação que era bem amis aberta pra direitos do internauta, acabou ficando como um histórico do marco civil, assim. Então, faço uma primeira metade da minha dissertação é contando como que a gente chegou ao projeto de lei do Azeredo de cyber crimes. Então, o histórico do primeiro projeto de lei de cyber crimes. E, como ele foi se somando a outros, até ser apenasdo ao projeot de lei do Azeredo. E a partir daí, eu faço um corte e enrto na história do Marco Civil. Então, em paralelo, as blogagens desde 2007, os textos da imprensa, a mobilização coletiva online, o fórum internacional de software livre em 2009 e as consequências até o estado tomar pra si o projeto. E aí, o terceiro momento da minha dissertação o que que o estado fez até aquele momento. Que era desenvolver o debate. Não tinha nem sido enviado anda o projeto. O projeto tinha sido enviado em 2011, minha dissertação é de setembro de 2010. Então, naquele momento tinha só encerrado a fase de consulta. Então, era isso, essa primeira estrutura veio da ideia já da <uninteligible>, já estava lá. E o Guilherme me chamou também, apesar dele já ter um histórico, já ter uma relação com essa temática de direito de internet. Ele não tinha uma experiência como ativista, né? Eu tinha realizado já um evento aqui do Mega Não, que era contra a lei Azeredo.

[00:09:50.05] Interviewer: Com o <uninteligible>.

[00:09:50.05] Respondent: Isso.

[00:09:50.05] Interviewer: Eu falei com ele no Rio.

[00:09:56.01] Respondent: E, assim, ele queria alguém dentro do projeto que tivesse uma visão em favor dos internautas, né? Que pudesse pensar os direitos com um certo rigor pra não impor pra eles <uninteligible> muito restritivos ou vigilantista.

[00:10:21.01] Interviewer: Isso foi muito progressivo, né? Buscar alguém que tivera esta...

[00:10:30.27] Respondent: E ao mesmo tempo a gente assumiu um compromisso, de assim, ter cuidado com as propostas, não propor nada fora desse espírito de direito fundamental e tal. Mas ao mesmo tempo de fomentar o debate, de não colocar do início um posicionamento verticalizado de o Ministério da Justiça tem essa proposta. Mas de colocar o Ministério da Justiça tem essa pergunta pra responder. E aí, deixar, fomentar a sociedade pra responder sobre essas perguntas, desde as teles até o ministério público e sei lá, a senhora que usa e-mail uma vez por semana ou o cara que trabalha com TI, enfim. Todos os perfis de usuário, possível. Aí, o meu cuidado era nessa formulação das perguntas, né? De você não incorrer em perguntas que ela mesma já colocasse em cheque o direito. Tentar fazer esse trabalho mais cuidadoso.

[00:11:39.17] Interviewer: E quem foi responsável pelos mecânicos da consulta pública. Para se acionar como ia ser o site e tudo isso...

[00:11:53.03] Respondent: O que já tinha sido definido antes de eu entrar era um convênio entre o Ministério da Justiça e o Ministério da Cultura. Especificamente, a secretaria de cultura digital. Que era tocada pelo José Murilo Junior, que ainda está lá até hoje e que, enfim, eles tinham uma rede social para tratar de políticas públicas. Então, a ideia foi, se fosse preciso o próprio ministério desenvolver um site, teria que fazer um

procedimento licitatório, no mínimo para ampliar o contrato de prestação de serviço de tecnologia que já existia, que já tinha uma empresa de TI que tinha ganhado essa licitação, mas não tinha esse objeto, então teria que ser incluído e isso levaria muitos meses. E aí, foi mais fácil firmar um convênio sem ônus pra nenhum dos lados, em que esse projeto ia ser desenvolvido com a tecnologia do ministério da cultura. Que, à época, o debate da lei de direito autoral era um expoente assim, estava a frente. Já tinha tido uma experiência interessante e presencial, né? Diversas reuniões e essa plataforma vinha na sequência para continuar esse retrabalho na área de direito autoral. E foi a equipe deles assim, que montou o site, enfim, subiu conteúdo no servidor, organizou todos os domínios e tal, foram eles. Estavam lá. Aí a Zodara Córdoba, que hoje está no Nick Br, o Uirá, que acho que voltou pro Ministério da Cultura, mas estava no governo do Rio Grande do Sul, junto com o Tarso Genro, desenvolvendo lá umas ferramentas pra exercício da cidadania digital. Umas coisas bem de governo 2.0 assim, pra pessoa poder ter acesso a qualquer serviço entrando num site só. Fala o que ele quer e é direcionado. O Uirá, <uninteligible>, e o Lincoln, que está hoje nos Estados Unidos até, eu acho, trabalhando nessa área assim. E, enfim, tinha mais gente lá na equipe que foi entrando.

[00:14:22.10] Interviewer: Ricardo Pop?

[00:14:22.10] Respondent: Ricardo Pop, não. Ricardo Pop ainda estava fora. Ele trabalhava no <uninteligible>, ele era da sociedade civil, junto com a Daniela Silva e o Pedro Markun, eles inclusive em janeiro de 2010, eles pegaram as participações das pessoas e transformaram isso num gráfico de nuvem de palavras. E aquele de árvore de palavras.

[00:15:01.03] Interviewer: Da primeira fase. Ah, ok.

[00:15:05.27] Respondent: E hoje o Pop está tocando o Participa Br. Esse envolvimento dele também, deu esse destaque pra ele, também porque ele, enfim, é formado em TI e em Ciência Política. Ele chegou a trabalhar na <uninteligible> também. Assim que eu saí, ele foi o primeiro a me substituir.

[00:15:37.12] Interviewer: Então, como foi o processo de traduzir as contribuições na consulta pública a esta primeira versão da lei.

[00:15:52.13] Respondent: A gente usou uma concepção até da, da, de tambores digitais. Enfim, tem um texto do Gilberto Gil que fala de você pensar na, na movimentação da sociedade como se fosse uma música e tal. E o nosso trabalho era transformar essa música em partitura. Então, você transformar em lei o que as pessoas acham que tem que ser certo ou errado em termos de legal ou ilegal pra usar a internet. Não teve outro jeito. A gente teve que ler tudo. E, assim, na prática a gente dividiu. Na segunda fase, siso foi mais sintomático. Na primeira fase, todo mundo leu tudo, não foram muitas contribuições e a gente formatou um primeiro projeto de lei com esses três eixos, lendo muito das leis pertinentes. A gente usou muito da estrutura da Constituição. Da constituição brasileira, né? Que tem uma ordem de fundamentos, objetivos e princípios. A gente seguiu essa ordem. O Masal tem esse trabalho de produzir lei. A gente teve muito cuidado com a questão de articular, cada tema em um artigo, cada subtema em um inciso, essa parte bem formal. Mas nessa primeira fase o conteúdo demorou muito porque uma vez que a gente fez uma primeira proposta já mais interna, com bastante apoio da FGV, com contato direto e tal. Tem esse primeiro texto teve que ser repassado por toda a Esplanada, por todos os ministérios que tinham alguma coisa a ver. então, comunicação, contato com a Anatel também especificamente. É, planejamento, ciência e tecnologia, educação, cultura e a casa civil. Acabou que com a educação não desenvolveu muita coisa, mas os outros.

[00:17:57.16] Interviewer: Mas eles só tinham a oportunidade de dar um conselho ou eles podem, puderam dizer: 'não, isso fora!'?

[00:18:10.12] Respondent: A gente dava abertura para eles, eventualmente, tirarem alguma coisa, mas aí também de forma bem dialogada, com um motivo. Até pra gente eventualmente tentar alterar a redação. E a ideia era que, o primeiro texto proposto não sofresse ataques do próprio governo e também não impusesse uma obrigação que o próprio governo considerasse excessiva. Então, principalmente na terceira parte do papel do Estado no desenvolvimento da internet, os termos foram bem cuidados assim. Tudo muito filtrado, relido e relido, revisado pra poder tirar qualquer problema. Mas na parte mais das obrigações dos provedores e dos direitos, foi mais tranquilo teve mais inclusão do que exclusão. E, bom, e com a primeira proposta teve a sugestão ao debate, teve um debate bem pesado com relação a remoção de conteúdo, a gente aplicou uma dinâmica que não foi bem aceita de pronto. Em quinze ou vinte dias dos trinta previstos, a gente alterou essa proposta. O próprio ministério reconhecer que precisava fazer já uma outra proposta.

[00:19:27.00] Interviewer: Havia pressão para retirar certos elementos de onde? Pode dizer?

[00:19:37.04] Respondent: Começou em um blog específico, muito, que tinha bastante fama na época. Era da. Como é que era o nome, gente? Acho que era. Não era Lola. Até esqueci o nome da moça, mas na minha dissertação está até bem identificado. Mas a questão, para uma blogueira, que achou ruim, começou a reclamar e isso ecoou. Muitos outros blogs, jornais, replicaram essa posição, teve manifestação na plataforma mesmo. E a gente resolveu alterar. Gerou assim uma crise contra o texto digamos. A gente resolveu alterar e isso resolveu, assim. A nova proposta foi mais bem recebida. E isso foi ali em maio já de 2010. E depois que finalizou essa segunda parte da consulta, aí, a gente em Junho, fez uma reunião de dois dias na FGV, manhã, tarde, manhã, tarde, debatendo a fundo. Cada uma das questões do texto, neutralidade, proteção de dados, remoção de conteúdo, papel do estado, retenção de dados, neutralidade. Cada um dos temas especificamente, e aí depois de fechar o nosso consenso com relação a isso. A gente foi relendo o texto e fazendo as alterações. O trabalho prévio a isso foi separar o que tinha de comentários na plataforma, tweets, manifestações no facebook, manifestações da imprensa e manifestações em outros blogs. Todos os textos foram lidos.

[00:21:27.16] Interviewer: Ah, então não tinha que ser uma contribuição direta ao projeto do marco civil.

[00:21:33.21] Respondent: A gente acabou considerando tudo.

[00:21:42.12] Interviewer: Há uma diretório, por exemplo, todos os artigos que saíram na imprensa, existe uma, um estado delas?

[00:21:54.05] Respondent: No site original da consulta, culturadigital.com.br/marcocivil. Tem uma aba lá, notícias, você tem uma lista de quase que todas as notícias desde o lançamento até setembro de 2010, bastante completo. Depois foi rareando e hoje tem bem menos, mas creio que no site novo. Que agora o marco civil está tendo o debate da regulamentação. No site da regulamentação, deve ter um pouco lá dessas notícias. O que a gente. Os comentários que a gente considerou e os tweets, eles estão compilados lá em post. Depois você me manda um tweet, eu te passo um link que tem esse relatório das contribuições da primeira fase e da segunda fase, tem isso compilado.

[00:22:52.00] Interviewer: E lá nos tambores digitais, do Gil, não havia nenhum modelo que vocês podiam seguir porque isso foi um projeto bem inovador, né? Então a sua estrutura e formato.

[00:23:04.24] Respondent: A gente não tinha nada assim, nem de como fazer a coisa, nem de onde a gente ia chegar, completamente no escuro assim. Por exemplo, a gente não moderou comentários. Os comentários entravam automaticamente na plataforma e a gente avisou que a gente poderia retirar eventualmente algum comentário, não foi preciso. Não só não teve nenhum palavrão, nada muito fora do tópico. A gente só precisou tirar um comentário, que o próprio autor comentou duas vezes. E o primeiro estava incompleto. E o cara falou, ah, retira o anterior. Aí, eu tirei. Mas todos os comentários...

[00:24:00.25] Interviewer: É lógico que quem acreditava né...

[00:24:02.23] Respondent: Mas a nossa segurança, ficou oculta. Porque pra poder comentar, você tinha que se cadastrar na rede do ministério da cultura, o cultura digital. E para esse cadastro, você tinha que dizer algumas informações, como identidade e CPF. Então, a gente construiu uma posição bem cômoda em que a gente não estava tendo acesso direto às informações pessoais, era possível usar pseudônimo, nick, não tinha exigência de você apresentar o seu nome. Mas para a plataforma você tinha que dar essas informações, que a gente não tinha acesso. Então, tava...

[00:24:46.20] Interviewer: Foi uma boa separação...

[00:24:47.07] Respondent: Então, não era uma entidade privada. Não era um login pelo facebook, pelo twitter, a gente não exigia que você desse os seus dados pessoais para uma empresa. Eles iam ficam com a plataforma do cultura digital...

[00:25:02.16] Interviewer: Foi uma consideração pra você...

[00:25:07.01] Respondent: foi uma das principais considerações, junto com aquela ideia de reduzir custo, e de ganhar velocidade na construção da plataforma em vez de tirar, em vez de pensar num novo contrato pro serviço de tecnologia do MJ. Diria que foi assim, o fator primordial porque tem aí um paradoxo de você trabalhar com proteção de direitos do internauta, ter que formular termos de uso e uma política de privacidade, que ela mesma não direcione o debate. Aí, alguém fala, 'Ah, você está propondo esse tipo de política então você apoia esse tipo de orientação, esse tipo... '. E isso nos livrou disso, porque a política de privacidade era da plataforma, os termos de uso era da plataforma. Então, a gente não precisou entrar nesses termos.

[00:26:02.28] Interviewer: Enquanto ao início do projeto, quando vocês estavam dialogando com os vários ministros. Você acha que havia uma consciência do que era um projeto da sociedade civil em vez de um projeto de lei assim, direcionado?

[00:26:21.29] Respondent: A gente sempre falou que era plenamente possível o governo sentar e escrever um projeto que fosse bom até, mas o diferencial que a gente estava buscando era apresentar ao congresso um projeto que já tivesse o peso de uma referência social, assim. Então, esse texto socialmente referenciado era o nosso objetivo. E, isso estava sendo apresentado. Então, ó, colocar qualquer alteração busca precisa ter uma explicação que possa ser submetida às pessoas e entendida. Qualquer coisa alterada sem explicação seria mal vista. Então, tem esse parâmetro que foi considerado desde sempre. Então, olha, a sociedade está se manifestando, a gente vai levar em conta de verdade o que está sendo dito. Tudo vai ser submetido a esse escrutínio do público. Então, todos os ministros tinham já essa ideia de que, principalmente na primeira fase, de elaboração do texto, que aquilo ia ser colocado ao público, não ia ir direto pro congresso. Muito na percepção de que há um problema quando um projeto de lei é aprovado, está prestes a ser sancionado já e aí a opinião pública se apropria da discussão, mas já é tarde, né? As forças políticas já se organizaram. Nesse caso, a gente antecipou, né? Então, desde antes de haver um texto, a opinião pública já teve condição de se formar e ao me ver isso se mostrou essencial porque na reta final, mesmo que as forças políticas tradicionais tenham conseguido atrasar bastante o projeto, o resultado final dependeu dessa preparação de anos anterior que a sociedade civil conseguiu ter. Então, diversas entidades já estavam previamente organizadas para ter um discurso mais qualificado que pudesse já fazer frente ao lobby.

[00:28:53.08] Interviewer: Então, você acha que é fundamental o fato de que o marco civil fosse aprovado na forma em que foi? É fundamental o processo que tinha antes de chegar no congresso? Sem ela você acha que não seria possível?

[00:29:12.06] Respondent: Tem algumas passagens assim históricas que são meio episódicas, contingentes assim, poderiam não ter acontecido. Se não tivesse o escândalo do Snowden, por exemplo, provavelmente o marco civil ainda não teria sido aprovado. A crise agora política, se fosse esse o clima, seria impossível passar. É, mas sem dúvida, no conjunto de fatores, o fato de que a sociedade não foi chamada pra participar ou não se viu na posição de participar de última hora, permitiu um fortalecimento de algumas lideranças, a apropriação da discussão por algumas entidades que conseguiram já algum respeito, algum respaldo. Então, IDEC, intervozes, a própria FGV, o movimento social, o MEGA NÃO, e outros grupos, o artigo 19, por exemplo, que não tinha nenhum protagonismo público no brasil, já existia há algum tempo, o escritório deles funcionava aqui, quase que se reportando apenas ao centro, ganhou um protagonismo assim. Então, hoje eles estão...

[00:30:34.08] Interviewer: Eles tem uma base aqui em Brasília?

[00:30:34.08] Respondent: Tem uma base aqui em Brasília.

[00:30:35.05] Interviewer: Ah, sim.

[00:30:35.05] Respondent: É, Laura.

[00:30:37.25] Interviewer: Eu pensava que ela trabalhava nos Estados Unidos.

[00:30:42.10] Respondent: Não, trabalha aqui em Brasília.

[00:30:44.19] Interviewer: Eu vou então falar com ela.

[00:30:44.19] Respondent: Sim. Ela é uma pessoa que vai dar esse histórico pelo lado do artigo 19, por exemplo. Tem a Paula, também que fica em São Paulo. E, a Laura aqui. Mas assim, eles começaram participando por aí. E, também, tem uma outra coisa de você trazer a público o discurso que normalmente fica sigiloso nos gabinetes. É, as várias teles mandaram a sua manifestação que foram publicadas no site. Então, eles enviaram PDF por e-mail. A gente respondia. Esse foi um dos trabalhos iniciais. Ó, recebi, mas eu só vou considerar se ela puder ser publicada no site. Você autoriza? E aí, meio que protocolar assim, eles autorizavam e a gente publicava.

[00:31:31.23] Interviewer: E havia casos em que foi ao contrário?

[00:31:35.02] Respondent: Não, ninguém se negou a publicar. É, teve uma repercussão negativa quando a Claro se manifestou contrária a proteção da neutralidade de rede. A Claro falou que não era o momento, que era muito inicial esse debate, que era muito recente e que uma lei não podai tratar isso já como um princípio. E aí, foi criticado pela imprensa e tal.

[00:32:01.22] Interviewer: E a Embratel falou mais ou menos a mesma coisa, né?

[00:32:03.14] Respondent: mas acho que. Pelo que eu me lembre, nenhum foi tão direto quanto o da Claro assim. Atacado, inclusive. A polícia federal se manifestou, o ministério público se manifestou. E aí, também preparou os jornais pra que seus cadernos especializados já tivessem uma equipe que entendesse mais ou menos o assunto. Eles se preparam pra entender melhor o processo legislativo. Então, isso permitiu também pra imprensa até fazer um melhor trabalho. Então, ensaiar esse debate desde 2009, quando chegou nos debates mais críticos, que a Presidenta, enfim, tomou como medida colocar o projeto de lei em urgência constitucional, que trava pauta do congresso se ele não for votado num período. E foram contados assim, cinco meses que ficou tudo parado na câmara, nada se votava em função do marco civil. Se a imprensa não soubesse o que era o marco civil, talvez ele pudesse ser recebido apenas como um projeto do governo. Não pelo seu conteúdo, mas pela origem. E a gente conseguiu neutralizar isso em partes. Embora, tenha surgido a ideia de que era um projeto do PT, de que era um projeto pra censura, mas boa parte da imprensa, da opinião pública entendeu que não era o caso. Pra isso, foi importante também determinar bem qual era a pauta, não era regulamentação do

serviço tecnológico de internet, não é regulamentação da banda larga, não é proibição de spam, não é uma lei criminal, não é uma lei que trata de comércio eletrônico, não é uma lei que trata de, enfim. A nossa votação, o nosso processo eleitoral que é eletrônico, é bem separado assim. É uma lei geral pra internet no Brasil. Vamos. Feito esse recorte assim, foi possível avançar sem pisar nos calos. Não é direito autoral, então isso foi importante.

[00:34:26.16] Interviewer: E neutralidade de rede no marco civil é como que análogo a liberdade de expressão, né? Enquanto aos direitos autorais, isso pode ser visto também como forma de garantir a liberdade de expressão. E como foi retirado do marco civil, isso foi uma derrota? Como foi vista do interior do processor.

[00:34:51.12] Respondent: Foi assim. Foi bem episódico também. Foi um momento que havia um impasse porque a Globo e as outras, não todas, mas algumas empresas de telecomunicações grandes se colocavam contra o projeto porque as previsões de neutralidade de rede e, em especial, as previsões de remoção de conteúdo e responsabilidade dos provedores poderiam enfraquecer as medidas que elas tomam pra remover conteúdo ilegal da internet. E há todo um debate específico sobre isso na reforma da lei de direito autoral. Mas a gente entendia, enfim, aí já eu atuando como ativista, já quando eu saí do governo, mas também dentro do governo eu defendi a ideia de que a aprovação de uma lei geral que traçasse uma lei mais garantidora da liberdade de expressão não tanto do direito autoral, eventualmente, também pressionaria pra finalmente sair a aprovação da questão do direito autoral. Que continuou parado. E o fato dela estar parada é benéfico pra quem está se beneficiando da situação, reproduz a situação. É. ....e nesse impasse da dificuldade de ter um apoio da imprensa, acabou que o Ronaldo Lemos tomou a frente e se apresentou ao Ministério da Justiça, em conjunto com um representante da Rede Globo, das Organizações Globo e, enfim, ofereceu essa alteração como uma forma de que a Globo pudesse auxiliar nessa aprovação.

[00:36:39.03] Interviewer: Ok. Ah, foi assim de explícito, eu pensava que fosse um pouco mais tácito?

[00:36:43.09] Respondent: Foi explícito, mas não foi público.

[00:36:43.24] Interviewer: Ah, ok.

[00:36:43.24] Respondent: Então, ficou muito caro pra <uninteligible>. Foi uma reunião marcada na agenda e tal. Mas não teve um comunicado de imprensa de que ia haver essa alteração. É..... foi uma negociação, não combinada com os outros atores da sociedade civil. E, assim, há uma boa parte hoje das organizações que entende que foi um certo oportunismo do Ronaldo, e que se reflete hoje no fato dele ter um programa na Globo News. Tem uma. Ele já era bastante destacado nessa área. Tem uma proeminência hoje incomparável com qualquer outra pessoa assim. É, essa celebridade do assunto de direito à internet. Sei lá, teve uma propaganda da Samsung, por exemplo, que reuniu um time de doze especialistas da área de tecnologia, informação e o Ronaldo foi colocado na publicidade, como sendo, o líder dessas pessoas que ia orientar um brainstorming pra imaginar como seria o futuro da humanidade da sociedade com as novas tecnologias e tal. Enfim, ele é essa figura assim. Que até transcende a questão do direito, está mais no empreendedorismo, na tecnologia. Então, assim, teve um certo abalo do ponto de vista da sociedade civil e foi visto como uma derrota assim. O Sérgio Amadeu, se tornou assim um forte opositor dessa mudança, escreveu mais de um artigo dizendo que essa mudança foi feita de forma sub-reptícia assim, de um dia pro outro, sem ninguém saber. E, mas ela já estava combinada, antes de ter sido efetivamente feita. Então, ela foi combinada antes e quando o relator foi apresentar um novo relatório, ele incorporou essa mudança. E aí, ninguém entendeu, quem não sabia, não entendeu o porquê e ficou essa dúvida no ar assim. E depois que foi explicar, assim. Algumas pessoas ficaram sabendo do que aconteceu e o episódio, digamos assim, vazou. Mas foi explícito assim, esse caráter de mudança. É.... e aí, essa questão ficou de fora. O que é inegável, facilitou a aprovação do marco civil. Da mesma

forma que é inegável que enfraqueceu o projeto. O projeto seria mais forte se tivesse sido aprovado com esse ponto. E, a questão do direito autoral continua parada. Não aconteceu nada até agora.

[00:39:24.28] Interviewer: quanto tempo ainda tem?

[00:39:26.27] Respondent: Acho que mais uns quinze minutos.

[00:39:26.27] Interviewer: Ok. E a parceria com o FGV, como é uma organização bastante conservadora, que tem vínculos bem fortes com o Estado, isso, você acha, que influiu a forma que tivera o marco civil.

[00:39:47.08] Respondent: De alguma forma, isso influiu, mas mais diretamente pela liberdade que a FGV se dava pra poder defender uma ou outra posição, menos por parte. É..... do ministério da justiça ou de qualquer cobrança externa. O centro de tecnologia e sociedade, como um centro de certa forma autônomo dentro da FGV, tem lá a suas obrigações com relação a esse vínculo. Então, eles mesmos se preservavam digamos assim. Não era. Mas naquela forma também de que, como parte da equipe que estava auxiliando na plataforma de discussão, durante todo o processo de debate, a FGV cuidou mais de fomentar as perguntas. De colocar as questões e menos de se posicionar. O posicionamento deles já havia sido feito anteriormente nos debates. E o próprio Ronaldo já tinha se colocado anteriormente. E ficou mais no discurso durante os debates, ficou mais no discurso de que era importante a participação, de que era importante esse tipo de desenvolvimento, esse tipo de abertura para a sociedade poder se manifestar. No conteúdo mesmo, essas opiniões só foram manifestas na hora de redigir o texto. Acatar ou não, enfim, de selecionar quais opiniões seriam acatadas e quais seriam descartadas. Mas no. Eu diria que não influir muito no resultado do projeto, digamos assim, se o CTS fosse um centro completamente independente, autônomo, o resultado não teria sido muito diferente. Talvez tenha influído um pouco na forma como eles se manifestaram publicamente. Mas não que tenha prejudicado. Por outro lado, o fato de a FGV ser ela também essa instituição com um caráter de fundação pública. Como ela tem origem num dinheiro historicamente privado, mas que quando foi fundada é pra atender o interesse público. Ela tem esse regime jurídico. Isso então facilitou o convênio e facilitou a possibilidade de ser desenvolvido sem ônus também. Não é tão fácil como ser do Ministério da Cultura ou como a contratação de um servidor do tribunal. Mas foi bastante fácil, nesse sentido.

[00:42:29.08] Interviewer: E o marco civil é um projeto muito inovador. Eu sei que você se juntou ao time depois do início. Há um fator preponderante que explica por que o governo estava disposto a iniciar um projeto assim?

[00:42:55.13] Respondent: Olha, tem muito do aspecto político de o Presidente ter sido sensibilizado. Então, ele ter ido participar do fórum de software livre na esperança de sacar um ponto positivo do seu programa político. Que era o apoio ao software livre. Abriu a possibilidade dele ouvir os ativistas, inclusive internacionais, que defendiam a necessidade de que os internautas tivessem seus direitos garantidos e num contexto em que tinha um projeto de lei criminal que se mostrava restritivo. Isso conseguiu unir as pessoas em torno da defesa dos direitos. Então, na sua diversidade de agentes. O projeto, quer dizer, todo mundo se juntou contra o projeto de lei de crimes. E, isso forçou assim, abriu caminho pro Lula que tinha esse tino político muito bom, responder. E aí, você vê inclusive que a resposta dele não é exatamente do ponto de vista institucional muito adequada. Porque não cabe ao ministério da justiça propor esse tipo de lei. Talvez, a Casa Civil poderia ter tocado esse projeto. Até porque consulta pública mesmo, como instituto formal de direito, tem uma regulamentação e quem toca é a Casa Civil ou sobre autorização da Casa Civil. Do jeito que foi feito nem pode se enquadrar como consulta pública, a gente insistiu até em chamar em debate aberto. Diálogo com a sociedade. Então, ele não se atentou muito a questão institucional e passou a encomenda mais pela questão política mesmo. Foi disputa de poder mesmo assim. E de 'olha, meu governo é bom pra internet. E se tem um projeto ruim então a gente não vai começar a regular a internet pela porta da cadeia. Vamos começar pelos direitos'. E aí, passou a encomenda pro Ministro que estava responsável a época por melhorar o texto penal. Que aí sim, está dentro das atribuições

do ministério da justiça. É, enfim, não. Aí, isso encontrou por coincidência, o Pedro Abramovai na sala. Que era um cara que já tinha essa ideia, esse projeto de usar a internet pra debater os projetos de lei que estavam a cargo da secretaria de ação civil legislativa. Ele já tinha essa preocupação. E aí, ele viu uma oportunidade de colocar isso em prática. Então, teve, foi um casamento bastante feliz assim, de pessoas que estavam no lugar certo e que deram possibilidade pra resolver esse problema que apareceu assim. Se não tivesse tido esse projeto de lei de crimes, não teria o marco civil assim. Isso é inegável também. Foi uma condição necessária, se não fosse o lula, dificilmente, teria tido essa aprovação. Se não tivesse o Pedro Abramovai dificilmente teria tido essa organização. O Guilherme Almeida que já estava lá antes também, mas a muito pouco tempo, ele também foi uma peça essencial. O Ronaldo já ter trabalhado com isso anteriormente também qualificou o debate. Então, houve essa sincronicidade assim. Essa coincidência de diversos fatores, mas do ponto de vista político teve esse tino do Lula Assim. De entender que mais do que o software livre, o governo dele podia fazer um pouco mais pela área da tecnologia. E reconheceu nisso assim, bom, o estado precisa ouvir as pessoas, então vamos ouvir o que elas tem a dizer pra dizer quais são os direitos. E aí, claro, né? com todo o arcabouço de fundamentação jurídica, de filosofia do direito. O Pedro inclusive era meu colega do mestrado. A gente era da mesma turma do mestrado aqui na UnB. Mas a minha contratação assim, eu fui o último a saber que o Pedro ia ser meu chefe. Que ele nem ligou o nome à pessoa que era eu que estava sendo contratado assim. Foi muito curioso, assim. Típico de Brasília, assim. Porque a gente fala que existem três pessoas, eu, você e alguém que a gente conhece. Invariavelmente, você tem um ponto em comum com alguém assim. Então, eu estava sendo contratado pra trabalhar com meu colega de mestrado, eu nem sabia que ele era secretário. Ele não sabia que esse era o meu projeto. Foi uma coincidência.

[00:47:29.00] Interviewer: E como foi o título do seu trabalho, do seu emprego. Você tinha um título assim....

[00:47:34.08] Respondent: Ah, nossa, era gigante, cara. Gigante mesmo, assim. Chefe de Divisão. No final, era Chefe de Divisão. Mas era Chefe de Divisão da Diretoria do Departamento da Secretaria do Ministério. Quando eu fui nomeado, tem assim umas três linhas o meu cargo. Porque, na verdade, não. A estrutura da <uninteligible>, ela é bem fluida. Então, era só um cargo formal mesmo, não tem diretor de tecnologia. Não, tem chefe de divisão. E, isso foi mudando também, na medida em que eu fui ascendendo. Eu comecei como DAS 1, cargo em comissão, né? um, fui pro dois, fui pro três. Quando eu saí, tinha um quatro que eu poderia subir, mas não, eu vi que estava na hora de voltar pra cá, mas depois eu te mando esse nome. É anedótico assim. É uma piada. É bem curioso.

[00:48:45.01] Interviewer: Ok. Última pergunta. Na sua opinião, o Marco Civil logrou estabelecer uma internet cívica?

[00:48:52.07] Respondent: Sim. A gente sabia do começo que o direito tem seus limites. Você dizer que matar é crime não impede que as pessoas morram, sejam mortas. Mas você tem que dizer. E, antes disso, você tem que dizer que as pessoas tem direito a vida. E, no âmbito do Direito de Internet. A gente tinha um grande hiato assim. Uma desconexão muito visível do mundo do direito com o mundo da internet. Os profissionais trabalhavam no direito com a sua visão pessoal do que é a internet. E aí, bom, experiência de internet cada um tem a sua. Mesmo entre dois juízes, vai ter um que conhece muito de facebook e não sabe nada de twitter, por exemplo. Ou sabia muito de Orkut e não sabe nada de Google Plus. E aí, linkedin, enfim, qualquer nova tecnologia que possa vir. Então, fica difícil pro juiz tomar uma decisão adequada do ponto de vista daquilo que ele está tratando. Então, e vai causar uma aplicação inadequada do direito também. Então, nesse ponto de vista o marco civil tem bastante sucesso de servir de parâmetro legal para você considerar o direito. Então, é você zerar a internet. Então, hoje, se o juiz não sabe o que é um IP, não sabe o que é um terminal, não sabe o que é conexão, não sabe o que é um provedor. Ele tem no Marco Civil escrito o que que é e o que que não é. Até onde ele pode exigir e o que não pode ser exigido. Isso não existia e era definido com base, repito, na experiência pessoal, né? Tinha. E ficava difícil você exigir que uma decisão respeitasse a neutralidade de rede, por exemplo,

se a neutralidade de rede era só um conceito acadêmico. E agora, ela é um conceito legal. E não só no Brasil, né? No mundo inteiro. Na Europa tem essa discussão, nos estados unidos presentearam o mundo com uma definição muito feliz também nesse sentido. E o brasil foi protagonista. Inegavelmente, na questão da neutralidade de rede o Brasil está à frente ainda. Porque aqui já é lei. Lá ainda é uma determinação regulamentar da FCC. O Canadá também teve uma decisão recente, né? a respeito da provisão de conteúdo pela plataforma móvel, de não poder discriminar. E, isso já tem base no marco civil. Nesse ponto a gente já está também avançado. É, e permite, assim, você não garante que a internet tenha ficado mais justa, não impede que as teles proponham novos planos abusivos, não impede que algumas práticas continuem ocorrendo. Não evita que haja difusão de material que viole direitos de minorias ou direitos individuais, mas é isso. Pro direito, ela permite que essa discussão se dê em termos amis claros. Isso é inegável. E aí, tem o tempo também de repercussão, né? A lei ainda não fez um ano, ainda não está regulamentada. Então, ela ainda tem muita coisa pra gerar de efeitos práticos. Ainda não gerou todos os seus efeitos práticos, isso continua em aberto. E aí, é aquilo, eu acho que o trabalho que a gente fez foi essencial assim. Provavelmente, ela não teria saído dessa forma sem esse prévio debate da sociedade. E isso é até bom também pra significação da lei, né? Agora que ela já está aprovada, quando você lê um ou outro dispositivo, você encontra uma referência, um debate anterior pra poder saber qual seria a leitura mais ou menos adequada. É isso.

Virgilio Almeida - National Secretary for Information Technology Policies – Brasília - 18/03/2015

[00:00:02.04] Interviewer: Ok. Então, no início do projeto do Marco Civil, você era o secretário, então?

[00:00:09.02] Respondent: Eu não era o secretário. Eu sou. Eu comecei como secretário aqui em 2011.

[00:00:14.06] Interviewer: Dois mil e onze.

[00:00:14.06] Respondent: Mas, é.....eu sou professor também na Universidade Federal de Minas Gerais.

[00:00:19.04] Interviewer: Ah, ok.

[00:00:19.04] Respondent: Então, tenho uma. Já tinha um envolvimento com a área, eu sou professor de um departamento de Computer Science.

[00:00:26.07] Interviewer: Ah, ok! Então, você não teve uma, um vínculo direto com a postura do Ministro de Ciência e Tecnologia?

[00:00:35.02] Respondent: Não, não. Eu comecei a trabalhar nessa questão em 2011, quando vim para a secretaria e tornei-me coordenador do Comitê Gestor.

[00:00:47.29] Interviewer: Ah, ok. Ok. Muito...

[00:00:49.28] Respondent: Neste ponto, o projeto do Marco Civil estava parado no congresso. Ele foi reativado depois das divulgações das revelações do Snowden.

[00:01:06.05] Interviewer: E para entender os origens do Marco Civil. Parece que tem que entender a postura do governo de Lula da Silva frente a relação entre a tecnologia da informação e a sociedade. Que parece que tem uma filosofia bem... E que qual é...

[00:01:27.13] Respondent: Pois é....Olha, eu não participei do governo Lula como parte do Governo, mas a minha avaliação é que eu acho que o Marco Civil veio, foi inspirado muito pela ação do Comitê Gestor. Que publicou em 2009, um documento chamado "Princípios para uso e governança da internet". Esse documento foi aprovado pelo comitê gestor, chamado de "Os Dez Princípios". O importante é que ele foi aprovado por um

comitê que tinha representantes do setor privado, da sociedade civil, do governo. E lá, nesses, nessa representação múltipla chegou-se a um consenso após dois anos de discussões. Então, o documento reflete de uma maneira bem, bem precisa, a visão dos vários setores da sociedade. Esse documento, me parece - e aí, é um visão pessoal - que foi a, o ponto de partida dessas discussões de se ter uma legislação, né? Ah, o Congresso... O Ministério da Justiça, então, fez um processo de consultas públicas para elaboração do projeto do Marco Civil, mas a inspiração foi o decálogo do Comitê Gestor. O governo Lula teve um papel importante sim porque no governo Lula, no primeiro governo em 2003, foi feita uma reformulação do comitê gestor, onde os representantes da sociedade civil, do setor privado e da comunidade técnica passaram a ser eleitos pelas suas comunidades, e não mais indicados pelo governo.

[00:03:33.19] Interviewer: Isso foi uma, uma etapa, não sei, bastante progressista?

[00:03:39.03] Respondent: Isso foi uma etapa bastante progressista, de evolução do multistakeholder <uninteligible> porque como que você seleciona quais são os representantes de determinado setor até então era indicações do governo. Nesse ponto do governo Lula, criou-se então o mecanismo de eleição. Esse é um ponto importante porque dá mais legitimidade e envolvimento das diferentes comunidades. Eu acho que esse mecanismo tem que ser aperfeiçoado ainda, sabe? eu acho que esse é um ponto pro futuro importante porque as eleições, a, a, os diferentes segmentos de cada grupo se registram para votar, mas alguns podem capturar o movimento. Então, esse é um ponto pro futuro, o mecanismo de, as regras da eleição devem ser discutidas mais.

[00:04:33.19] Interviewer: Imagino que o Brasil estava na vanguarda dos países <uninteligible>

[00:04:44.17] Respondent: E o comitê gestor tem vinte anos, foi criado em 1995.

[00:04:48.05] Interviewer: E quero entender mais esse... porque o Brasil tem...

[00:04:51.26] Respondent: Pois é.....eu, e aí também é uma visão, aí um pouco da minha visão acadêmica. Em 1995, foi quando se começou a discutir a questão da internet, a questão das tecnologias da informação no Brasil. Um primeiro ponto que levou a isso, foi um decreto, na época, uma portaria na época do Ministro das telecomunicações, eu não sei a data exatamente, mas ele criou um documento chamado "Norma Quatro", que definiu a internet como serviço de valor agregado e não como serviço de telecomunicação.

[00:05:43.03] Interviewer: Dentro da lei geral de <uninteligible>...

[00:05:47.17] Respondent: Dentro da lei geral, exatamente. Então, eu acho que esse foi um ponto vital nessas discussões todas. Já que é um novo serviço, como que esse novo serviço deveria ser governado? Não mais a ANATEL porque não era um serviço de telecomunicações. Aí, tem um ponto importante, nessa mesma época os grupos que faziam parte do governo nas políticas tecnológicas também tiveram uma visão importante, criaram a rede nacional de pesquisa (RNP), com um programa chamado "Sofitex".

[00:06:21.06] Interviewer: De qual você foi parte?

[00:06:21.06] Respondent: Eu fui parte, é. ... na época, fui. E um programa que eu fui o coordenador chamava-se "PROTENCC". Um programa de pesquisa envolvendo várias universidades.

[00:06:34.19] Interviewer: Que ainda existe?

[00:06:34.19] Respondent: Não, não existe mais. Mas esses três programas a RNP, o SOFITEX e o PROTEN formavam o tripé, os três, a visão para tecnologia da informação na época, que era muito restrita ainda. Porque ainda não havia popularizado, né? Nessa época então surgiu a ideia do Comitê Gestor em função dessa Norma Quatro também, sabe? Então, foi uma visão de grupos na época que tiveram uma visão progressista, sabe? Não

é o governo que faz. Você pode imaginar que na época houve reação porque o governo estaria trazendo para controlar a internet não só o governo, mas outros setores da sociedade. Então, isso começou vinte anos atrás. Depois, uma nova modificação do comitê gestor na composição dos participantes e nas eleições, essa nova modificação ocorreu em 2003. De lá para cá, se mantém estável.

[00:07:34.13] Interviewer: Ok. E essa pergunta foi inspirada pelo artigo que você me mandou. No modelo convencional do multissetorialismo tem quatro quadras representando a sociedade civil, o estado, o setor privado, mas no caso do Marco Civil, acho que esse modelo ignora as tensões que havia dentro desses vários blocos. Por exemplo, a sociedade civil não é um bloco homogêneo, o setor privado tem os interesses das teles. Então, isso debilita a pretensão de que o marco civil fosse um processo multissetorial ou não?

[00:08:26.14] Respondent: Não porque o marco civil foi colocado em consulta pública amplamente para a sociedade, não só para o comitê gestor. Então, a sociedade como um todo, as empresas de comunicação, as empresas de internet puderam manifestar nas propostas do marco civil. Então, veja, o comitê gestor foi uma voz. As outras vozes na sociedade também participaram. A consulta é. ... foi mais ampla do que o comitê gestor. Então, as tensões refletiram na consulta e acabaram chegando ao congresso. As discussões, por exemplo, neutralidade de rede, localização de servidores, privacidade, todas essas foram discussões que no Congresso apareciam posições diferente que representavam exatamente o que você falou, as diferentes partes da sociedade civil e as diferentes composições do setor privado. Então, veja, se nós olharmos o processo de longe agora, teve o Comitê gestor que tinha o conhecimento específico que formulou uma proposta inicial, teve uma consulta pública que ampliou essa participação e teve o congresso, que tem todas, tem a legitimidade para representar todos os setores.

[00:09:58.03] Interviewer: Então, parece um processo único na história política do Brasil e dos demais países do mundo. Você acha que o internet é que é o elemento fundamental nisto?

[00:10:10.11] Respondent: Pois é, eu talvez não tenha o registro pessoal do que ocorreu antes de 2011 quando eu vim pra cá. Mas de 2011 pra cá, a minha visão é a seguinte: primeiro, a internet no Brasil ela tem uma amplitude muito grande, pega todos os setores, né? Nesses anos de crescimento da internet, houve também. E, aí, provavelmente como decorrência da consolidação democrática, do final da ditadura dos anos 80, a criação de grupos da sociedade civil fortes e estruturados. Esses grupos da sociedade civil fortes e estruturados acabaram também atuando nessa questão da internet porque é uma visão de desintermediação. Passaram a ter mais vozes. Então, a internet permite isso contra, por exemplo, as principais companhias de comunicação. Eu acho que a origem dos movimentos sociais que começaram após ao término ad ditadura. A possibilidade da internet permitir uma desintermediação do processo de comunicação que deu mais voz a sociedade. E a participação da sociedade civil de maneira muito intensa no comitê gestor, tudo isso então criou, o conjunto de condições pro Marco Civil.

[00:11:48.16] Interviewer: ah, ok. Na governança de internet...

[00:11:54.03] Respondent: Só fazendo um parênteses, Guy, a sociedade civil internacional, ou seja, os vários segmentos da sociedade civil internacional reconhecem o comitê gestor como órgão exemplar. Não só pela atuação da, dos grupos da sociedade civil brasileira, mas pela forma multissetorial. Isso fortaleceu cada vez mais, é hoje talvez o exemplo mais internacionalmente referenciado.

[00:12:32.09] Interviewer: Ok. Tem que ser um boa fonte de orgulho...

[00:12:37.10] Respondent: Eu acho que é uma construção coletiva importante, sabe?

[00:12:55.19] Interviewer: Sei. E falando mais sobre a governança da internet, lá existiu um refrão "<uninteligible> no politics", você conhece esse refrão?

[00:12:55.19] Respondent: Conheço esse refrão.

[00:12:55.19] Interviewer: Pra você foi justificado que o marco civil fosse tratado no âmbito da política em vez do âmbito puramente técnico.

[00:13:06.04] Respondent: Pois é.....eu, aí, faria uma diferença, uma distinção entre internet e cyberspace. Que eu acho que talvez o conceito seja mais amplo. Internet seria mais o "pumbling" tecnológico, a infraestrutura tecnológica, de telecomunicações. Quando nós falamos de cyberspace, nós estamos falando das informações, das relações entre informação, dispositivo, redes e pessoas. E, aí, surgem os problemas que a governança hoje, a governança da internet trata de uma maneira prioritária: direitos humanos, liberdade de expressão. Essa, isso está numa camada acima de pumbling, embora tenha uma relação porque não podemos ignorar, que se embaixo não houver a neutralidade de rede, em cima o freedom of expression está comprometido. Então, é uma combinação, são layers que se comunicam.

[00:14:10.29] Interviewer: E parece que especialmente para as empresas, os teles, isso é uma relação muito bem difícil?

[00:14:18.27] Respondent: mais difícil, isso mesmo. Eles tendem a ver, a infraestrutura de comunicação só, mas agora, nós... eu percebo ... de novo, aí é uma opinião pessoal. Eu percebo que as teles também querem subir, elas tem interesse nos dados dos assinantes pra fazerem uso comercial. Então já sobe.... já não é mais só o pacote de dados, eles estão interessados no user, no consumer behavior. Então, as teles também já veem que embaixo as possibilidades comerciais são mais restritas do que em cima.

[00:15:02.11] Interviewer: E falando da neutralidade de rede, é um tema muito complexo porque significa coisas distintas, aos vários blocos da sociedade. Pela fala, que dizer, o papo... é. ....por exemplo, para a sociedade civil quer dizer liberdade de expressão, para o golpe e facebook quer dizer inovação de web. E, pelos teles, quer dizer o controle do estado sobre os seus modelos de negócio. Então, o que que significa para você a neutralidade de rede?

[00:15:51.09] Respondent: Quer dizer, eu acho que nas discussões do comitê gestor a neutralidade de rede foi sempre associada a liberdade de expressão, a direitos humanos, acesso a informação, oportunidade de inovação, igual oportunidade para todas as empresa\s. Esses foram os conceitos de discussão principal. Naturalmente, dentro do comitê gestor também tivemos opiniões diferentes, o setor de telecomunicações argumenta sempre que ele tem que investir muito e as camadas de cima é que tem maior faturamento. Mas a visão que prevaleceu do comitê gestor foi a manutenção da neutralidade como parte do marco civil. O apelo que isso teve, na minha visão, na minha leitura, o apelo popular foi da oportunidade de acesso igual para todas as empresas que pode levar a inovação e também a questão da liberdade de expressão, essa foi a principal relacionada a direitos humanos.

[00:17:19.29] Interviewer: Então, você acha justifica o, a resistência dos teles em relação...

[00:17:21.05] Respondent: Então, eu acho legítima, mas a discussão. E, aí, o congresso também entrou nessa discussão, acabou optando. Tinha que fazer uma alternativa, tinha que fazer uma escolha. A escolha foi manter a neutralidade de rede. Naturalmente, que a medida que você aumenta o uso da rede, a infraestrutura também ganha. Eu acho que foi a opção da sociedade brasileira a internet, a neutralidade. Diferente dos Estados Unidos que agora tem toda essa discussão está colocada lá no item 2 da legislação de telecomunicações. Aqui a discussão foi feita na camada de cima, e não na do controle da infraestrutura. Então, foi discutida a internet. E nas discussões, as teles participaram como todos os outros setores, mas não foi colocado como parte da lei geral de telecomunicações, foi colocado como parte do marco civil cuja especificamente o artigo do marco civil diz os seguinte, as exceções à neutralidade que podem ser por motivos de emergência, ou por motivos tecnológicos

devem ser analisadas e recomendadas pelo comitê gestor da internet e pela ANATEL. Então, a lei acaba combinando um pouco da indústria de telecomunicações com essa nova visão multissetorial que é o CGI.

[00:19:07.16] Respondent: Se você também quiser falar alguma coisa Luana. A Luana também está fazendo doutorado. A Luana é uma gestora pública. Queria que você explicasse a sua carreira

[00:19:11.28] Luana: Na verdade, é uma carreira de, é uma carreira transversal. Ela é do Ministério do Planejamento, mas é de especialista de políticas públicas e gestão governamental. E o planejamento faz os concursos e distribui os profissionais nos vários ministérios. A ideia é justamente que os profissionais se desloquem bastante no governo federal para ganhar uma expertise.

[00:19:43.07] Respondent: É uma carreira de estado. Que é treinada para isso.

[00:19:45.21] Luana: É meio parecido assim. O pessoal faz uma associação com a de diplomata que vai para vários países, mas essa é mais interna para passar por vários setores. E eu estou fazendo doutorado, eu não sei se o seu também é na, eu imagino que seja, não sei se é na área de ciência política, de...

[00:20:02.21] Interviewer: É comunicação e cultura. E a sua?

[00:20:05.29] Luana: O meu doutorado, eu estou fazendo aqui na Universidade de Brasília, eu sou da Ciência Política e, aí, a minha ideia também é trabalhar o processo de formação de agenda e de agendamento do tema de internet. E todo o processo vinculado ao CGI.

[00:20:25.13] Interviewer: Dentro do governo brasileiro?

[00:20:46.20] Luana: Dentro do governo brasileiro. É uma experiência, né? eu ainda estou começando o doutorado, mas minha ideia é mais ou menos essa. É trabalhar a análise do processo decisório que envolveu toda essa questão, toda essa evolução dos últimos anos.

[00:20:46.20] Respondent: Quer dizer, agora tocou num ponto interessa que é que dentro do governo tem muitas opiniões diferentes sobre esse processo todo. E, durante as discussões do Marco Civil, também dentro do governo tinham visões diferentes que foram sendo harmonizadas pelo Ministério da Justiça. Eu sou do Ministério da Ciência e Tecnologia tinha uma visão mais próxima do Comitê Gestor. Outros ministérios se aproximavam mais dentro dessa visão da infraestrutura, telecoms. Então, havia, a polícia federal tinha, teve um papel importante na definição, nas demandas sobre os lobbies, sobre a retenção de dados. Então, houve um... houve tensão entre vários órgãos de governo também.

[00:21:33.25] Interviewer: Sim, porque como Carlos Afonso me explicou como é a estrutura do comitê. Há, embora o bloco do governo parece que se eles quisessem poderiam fazer o que...

[00:21:50.07] Respondent: Não pode aprovar porque somos nove do governo. O comitê gestor tem 21, então não temos a maioria. Tem que ser negociado. Nenhum setor isolado tem a maioria dos votos, então tem que haver uma negociação. Isso também é incômodo às vezes para certas áreas do governo.

[00:22:11.05] Luana: Mas imagino que tenha sido estratégico, né?

[00:22:14.20] Respondent: Exatamente, de que ninguém tenha maioria.

[00:22:16.17] Luana: De ninguém ter a maioria pra dar esse trabalho de envolver mais negociação.

[00:22:20.27] Interviewer: E Carlos Afonso também falou que é bastante comum que os vários ministros também votem, não votem tudo em bloco.

[00:22:29.10] Respondent: Em bloco, não.

[00:22:29.10] Interviewer: Mas quando eu falei isso pra um amigo meu que trabalha como assistente parlamentar no congresso. Ele me falou: "Não, se a Dilma ou alguém liga para eles e ....".

[00:22:42.07] Respondent: Eventualmente pode haver essa determinação do governo, mas enquanto a questão não está definida, por exemplo, pela presidente, as discussões podem ser diferentes. Mas é, eu acho que essa composição multissetorial, consolidar é um processo difícil porque os governos, em geral, e as grandes empresas não tem essa humildade pra não mandarem. Então, isso é o lugar onde surgem essas tensões todas.

[00:23:15.17] Interviewer: Eu leio um artigo onde o ministro Cardoso falou que o Marco Civil foi uma afirmação da soberania digital do Brasil. Não sei se você lembra deste artigo...

[00:23:32.16] Respondent: Sim.

[00:23:32.16] Interviewer: Você acha que esse é um....

[00:23:36.23] Respondent: Eu acho que sim, sabe. Eu acho que o Marco civil, na minha visão pessoal aí também, tem méritos que suportam essa afirmativa do Ministro. O primeiro, ela é uma legislação. Uma comprehensive law. Que coloca tudo sobre internet em uma legislação que os outros países não tem, dessa maneira. Primeiro ponto. Segundo ponto, é uma lei que parte dos direitos do cidadão na vida online, e não na criminalização feita em alguns países. De novo, é a característica do direito dos cidadãos e das obrigações também. Então, é uma lei que dá os direitos da vida online e que vai construindo essa, essa, esse arcabouço legal pra isso. Segundo, o conteúdo foi ... a legislação é nova comparada ao resto do mundo, e original. Isso mostra essa questão. Isso reforça esse comentário dele da soberania digital. É uma proposta nova, muito caracterizada na experiência do país. Segundo, o processo de construção dessa lei também foi inovador porque ele passou por períodos de consulta pública, ele utilizou a internet como meio para construção de sua própria legislação. E o governo ouviu a consulta pública e levou em consideração isso. Um último aspecto que eu acho importante, Guy, é a legislação é simples. A sociedade entende a legislação. Então, ela é importante no conteúdo que é claro. E ela é importante na forma como ela foi construída. Então, a forma e o conteúdo foram as chaves pra suportar essa afirmação que o ministro falou. Você não tem uma legislação parecida em nenhum outro país. Comprehensive, numa única legislação. Você tem partes e a internet espalhada por várias partes da legislação dos países.

[00:25:53.11] Interviewer: E tem que ver também com a violação da soberania brasileira enquanto as revelações do Snowden?

[00:26:02.12] Respondent: Eu acho que teve. É, foi o que eu te falei no início, é..... as revelações do Snowden aceleraram o processo de discussão do Marco Civil. Porque ali a lei começou a garantir, primeiro a inviolabilidade das comunicações. Segundo, que as empresas que operam no Brasil mesmo sendo internacionais, tem que prestar contas a legislação brasileira. Então, tem exemplos interessantes que já mostram. Uma legislação feito essa, que combina tecnologia e direito não é simples de ser absorvida. Então o próprio judiciário vem absorvendo, aprendendo essa legislação. Vou te dar dois exemplos que a imprensa noticiou. Nessa operação Lava-Jato, onde os juízes, os procuradores estão levantando as questões. Uma notícia no jornal outro dia mostrou que o procurador que conduz já havia informações em tempo real sobre comunicação de alguns dos acusados e, antes do Marco Civil, a empresa responsável por isso negava-se a fornecer os dados dizendo que a sede era nos Estados Unidos. Após o Marco Civil eles passaram a cumprir a ordem do procurador. Uma ordem judicial. Então, esse é um exemplo concreto.

[00:27:34.13] Interviewer: E você falou que tinha dois exemplos...

[00:27:37.10] Respondent: Dois. O outro foi recentemente, um juiz do Piauí pediu, determinou que a operadora bloqueasse, as operadoras bloqueassem o whatsapp porque eles não entregaram os dados. De novo, a discussão do comitê gestor veio. A operadora é, ela não pode ser condenada por causa do conteúdo que ela

transporta, isso não é uma questão dela. O conteúdo tem que ser bloqueado pela justiça. Não a operadora. A operadora é simplesmente o meio. Então, também isso foi colocado como uma nota técnica do comitê gestor da internet. Mostrando que essa decisão do juiz iria, teve um conflito com o Marco Civil, se ela fosse mantida. Mas a justiça levantou a decisão do juiz.

[00:28:44.07] Interviewer: E você acha que o Marco Civil tem um significativo no Brasil que não teria em qualquer outro país do mundo?

[00:28:51.07] Respondent: Deixa eu pegar meu computador, um minutinho só, pra eu te mostrar um dado. Você conversa com a Luana um pouquinho.

[00:29:08.01] Luana: Deixa eu pegar um cartão meu também.

[00:30:03.19] Respondent: Ok. Isto é uma pesquisa da, de uma ONG, U-GOV.

[00:30:15.01] Interviewer: Ok. U-GOV. No Reino Unido, né?

[00:30:17.06] Respondent: Opposition to US Mass Surveillance strongest in Brazil <uninteligible>. Percentage against the US government spying on Mobile German 81%, Brazil 80%. So, you see the rest of the countries here. France 56. Percentage of us who think our government should Spy on internet mobiles. Again, Brazil, Spain and German are against that.

[00:30:59.09] Interviewer: So, this is from the amnesty international. Is this that? A pesquisa de dados.

[00:31:07.25] Respondent: U-GOV amnesty.

[00:31:11.21] Interviewer: É interessante porque eu estava falando com alguém de, da coletiva intervozes e ela me falou que no Brasil há uma consciência muito baixa do, da, do valor dos dados pessoais porque o crime é uma...

[00:31:32.02] Respondent: É uma preocupação.

[00:31:32.02] Interviewer: E eles acham...

[00:31:34.09] Respondent: Pois é, eu acho que sim. Mas eu acho que no caso da internet as pesquisas mostram que há essa preocupação. Eu acho talvez que tenha a ligação entre a questão da violência urbana e a internet, essa conexão não existe, sabe? É como se fossem dois problemas diferentes.

[00:32:05.11] Interviewer: E o Brasil também tem essa história de, não sei, ser bastante sensível quando tem que ver com os Estados Unidos, né?

[00:32:13.25] Respondent: Pois é, acho que tem um pouquinho dessa questão da sensibilidade. Embora, aí também é subjetivo, né? A minha visão é que os brasileiros admiram a sociedade americana e tem receio do governo americano, são duas distinções. Sabe? Mas de novo, isso é uma opinião completamente subjetiva.

[00:32:40.09] Luana: Não dá pra saber, né?

[00:32:41.00] Respondent: Mas...

[00:32:47.23] Interviewer: Na minha leitura, pode ser que exista uma contradição entre a postura do Brasil no âmbito mundial em quanto a internet. Eu estou falando especificamente sobre a postura que teve no congresso de Dubai em 2012, no... E agenda que perseguiu respeito ao Marco Civil que parece bem mais progressista.

[00:33:14.08] Respondent: É, acho que houve um, talvez uma, é parte dessa construção de ajustar... em Dubai foi mais a ANATEL, a visão mais da ANATEL. Posteriormente a Dubai, houve a questão do Snowden e uma

decisão da presidente, e aí, o governo como um todo se orientou para o Marco Civil, para a governança multissetorial. Então, se nós olharmos em perspectiva Dubai está aqui, as revelações de Snowden aqui e aí uma posição mais uniforme do governo brasileiro determinada pela presidente quando ela foi a ONU e fez o discurso na ONU em dezembro falando de uma nova ordem global para a internet. A explicação que eu tenho é factual nessa questão.

[00:34:06.22] Interviewer: E o net mundial existia como ideia antes ou foi uma reação...

[00:34:17.23] Respondent: Não, foi completamente como uma maneira...

[00:34:17.23] Luana: Uma resposta.

[00:34:17.23] Respondent: Uma resposta. Uma forma de dar concretude, fazer concreto ao discurso dela na ONU. Na ONU, ela propôs que fosse discutida a nova ordem da global da internet. A NET mundial foi o local, o lócus onde foi feita essa discussão. A NET mundial surgiu após o encontro, as revelações e o discurso dela na ONU.

[00:34:48.01] Interviewer: E nessa polêmica do Snowden, você acha que o net mundial tem como durar, como surgiu como uma reação, uma resposta do governo?

[00:35:06.00] Respondent: Pois é, eu acho que é.....o net mundial foi uma resposta da presidente embora a discussão sobre surveillance ela não foi tão ampla na net mundial, mas a, os resultados obtidos pela net mundial. A net mundial foi planejada para ser um evento único. Não foi planejada pra ser uma série, foi uma resposta. A internet tomou uma dimensão muito grande, há países que fazem uma surveillance, precisamos ver como que globalmente os países respondem a isso. Essa foi a posição da net mundial. Ah.... ela foi a primeira conferência multissetorial que apresentou uma proposta concreta de princípios, um road map aprovado por ampla maioria, não por todos, mas por ampla maioria. Eu acho que os princípios ....é, a net mundial trouxe uma, uma valorização do, da, do sistema multistakeholder pra discussão da internet. Acho que esse é o mérito maior da net mundial.

[00:36:22.03] Interviewer: E a Dilma, ela aproveitou para...

[00:36:22.03] Respondent: Pois é, ela abriu o net mundial, assinou o marco civil, então simbolicamente foi muito importante porque o marco civil garante a privacidade, a inviolabilidade das comunicações, apresenta um novo contexto institucional. Então, daí a importância dela fazer isso numa reunião que teve mil e cem pessoas de cento e dez países.

[00:36:44.00] Respondent: É, mas houve protestos naquele momento. Você acha legítimos...

[00:36:50.11] Respondent: Acho legítimo. Acho. Dentro do comitê gestor protestos tem o tempo todo, diferenças de opinião. Os protestos que tiveram foram de dois tipos: um que queria uma reação mais forte a, às revelações de Snowden. Eles apareciam com uma foto do anonymous. Houve o protesto também de alguns países que não aceitaram, não se sentem confortáveis com o sistema multistakeholder - Rússia, Cuba e Índia, com menos ênfase. Foram os países que se manifestaram.

[00:37:26.07] Interviewer: Por que Brasil antes estava neste bloco, né?

[00:37:31.01] Respondent: Pois é, de novo, antes havia diferentes opiniões. A área de comunicações lá em Dubai aproximou-se mais desses, mas o Comitê Gestor tinha uma outra visão. Após Snowden e após a decisão da Presidente houve uma unificação dessas questões.

[00:37:48.08] Interviewer: Ok.

[00:37:50.06] Respondent: O discurso passou a ser um só: a governança multissetorial. Que não exclui as negociações multilaterais. Ela propõe no discurso dela que haja uma convivência entre os modelos.

[00:38:10.20] Interviewer: Ok. Como por exemplo o acordo que fez o Brasil com a Itália, né?

[00:38:10.20] Respondent: Com a Alemanha. Sobre a resolução 52 da ONU, onde iguala a privacidade off-line com a privacidade online.

[00:38:25.24] Interviewer: Então, última pergunta que tenho...

[00:38:26.17] Respondent: Só falando, sobre essa resolução 52, foi também determinada que a Unesco fizesse um estudo sobre os modelos multissetoriais. Agora, há duas semanas, houve a reunião da UNESCO, chamada Connecting the Dots, em Paris, onde foi apresentada uma proposta de, para direitos humanos na internet. Acho que vale a pena você ler os documentos. Connecting the dots, UNESCO. E, isso vai ser levado ao conselho da Unesco, para ser colocado como um documento de direitos humanos, ética. é... É, são quatro temas. Human Rights, Freedom of Expression, Ethics and, acho que Inclusion.

[00:39:21.07] Interviewer: Ok. É.....você falou que o comitê gestor já é uma referência global. Pode ser também o marco civil pela governança de internet global ou pelos os seus, suas origens nacionais, não tem nada a ver?

[00:39:38.09] Respondent: Pois é.....outro dia a Luana estava comigo aqui. Nós recebemos aqui um grupo da Human Rights Watch, e havia um

[00:39:52.01] Interviewer: Um time brasileiro ou um time dos Estados Unidos?

[00:39:52.01] Respondent: Um time dos Estados Unidos com brasileiros, mas tinham também alemães fazendo parte da comissão. E, um deles, fez a seguinte pergunta pra mim: "Por que o Brasil tem o marco civil e a Alemanha não tem?". Eu não sou a pessoa pra responder sobre a situação da Alemanha. Mas no Brasil, eu acho que o marco civil deve-se em grande parte a atuação do Comitê Gestor. Então, os outros países olham o marco civil como uma legislação avançada.

[00:40:26.07] Interviewer: Mas pode ser um modelo para governança global ou só pode ser implementado no contexto...

[00:40:33.03] Respondent: Eu acho que é um modelo que tem as características brasileiras. Mas alguns traços do Marco Civil certamente poderiam, são olhados por outros países como a questão de direitos humanos, como a questão da liberdade de imprensa, como a questão que o Marco Civil diz que o modelo de governança ad internet deve ser multissetorial. Isso está no Marco Civil. Então, eu acho que ....onde ele consolida essa questão dos direitos mais do que da criminalização. Então, aproxima as regras da vida off-line, vida online. Então, eu acho que ele tem características importantes. E, de novo, é uma legislação que foi construída com a sociedade. E, depois, foi legitimada pelo congresso. Acho que aí tem um ponto importante que é o seguinte, grande.....no CGI, o CGI não tem o caráter de enforcing law, ele tem o caráter de propor best practices, mas a partir desses best practices, algumas delas são levadas para o Congresso, onde o congresso discute e faz a lei. Então, surge de novo, no modelo setorial a proposta de Best Practices. Uma vez essas best practices são aceitas ou absorvidas pela sociedade, o congresso faz a lei. Isso ocorreu agora com o Marco Civil. Eu acho que essa discussão de proteção dos dados individuais também passou pelo CGI e o Congresso vai discutir quando chegar lá a proposta do Governo. Então, tem essas .... O órgão de governança da internet não é um órgão de enforcement, mas de surgir as ideias das melhores práticas e depois o congresso faz ou não virar lei.

[00:42:34.21] Interviewer: E falando disso, você assistiu aquela reunião com a presidente Dilma antes da votação do Marco Civil?

[00:42:45.19] Respondent: No Palácio com o Comitê Gestor?

[00:42:47.29] Interviewer: Sim.

[00:42:47.29] Respondent: Sim, eu estava lá.

[00:42:47.29] Interviewer: Isso foi um momento chave, né?

[00:42:52.10] Respondent: Foi um momento importante porque, primeiro que ela, valorizou a atuação desse comitê setorial, multissetorial. Chamando para dentro do palácio uma reunião. Segundo, que ela determinou que se fizesse a net mundial, determinou a três ministros que coordenassem isso. O Ministro das Comunicações, o Ministro das Relações Exteriores, e o Ministro da Ciência e Tecnologia, e os três passaram pra mim como coordenador do Comitê gestor, a responsabilidade organizar a Net Mundial. Então, esse foi o fluxo de Comando dessa questão. Então, ela, ela valorizou e disse. Aqui, é onde o Brasil vai responder com a participação da sociedade, não foi só uma ação de governo.

[00:43:44.14] Interviewer: Ok. Então, há outro, não sei, há outra coisa que você acha que eu deveria que não temos...

[00:43:59.01] Respondent: Pois é, então, você está fazendo um trabalho acadêmico. Talvez, fosse interessante ver lados que não, que tem visões diferentes dessa questão. A ANATEL, então. Eu acho que, do ponto de vista acadêmico, eu acho que você deve explorar todos os lados.

[00:44:17.18] Interviewer: Isso é o foco específico do meu tese, quero porque no Âmbito global, o processo multissetorial é apresentado como se fosse um processo neutral, sem intenção, sem conflito. No Marco Civil isso obviamente não foi o, não era o caso. Então, eu gosto, eu quero interrogar como os valores sociais foram disputados pelos vários blocos da sociedade.

[00:44:46.04] Respondent: Exatamente, pra você ver que no caso do marco civil teve o comitê gestor, teve a consulta popular e teve o congresso. As forças apareceram diferentemente nesses três momentos. Sabe? Eu acho que vale a pena você olhar em perspectiva também no setor de comunicações, de telecomunicações. Sabe? Esse é um ponto que eu acho que vale a pena.

[00:45:15.08] Interviewer: Sei, vou falar hoje com Max Castro do SINDITELEBRASIL.

[00:45:19.28] Respondent: Pois é, o SINDITELEBRASIL tem uma posição muito firme que é a posição das empresas operadoras. Tem o presidente do SINDITELEBRASIL é membro do comitê gestor, chama-se Eduardo Levi. Ele tem uma visão muito, muito forte. Eu acho interessante você conversar com ele e ouvi-lo, sabe? Eu acho, na minha visão, os segmentos que são muito atuantes... a sociedade civil é muito atuante dentro da, do comitê gestor, fala e atua mais às vezes que os outros setores.

[00:45:54.01] Interviewer: Eu já falei com Flávia <uninteligible>. E quais são os outros representantes desse setor...

[00:46:08.29] Respondent: Atualmente são, Flávia <uninteligible>, Tiago, eu posso olhar ali o nome dele, ele é da Bahia, ele representa uma, uma ONG, mas ele também é responsável por uma organização chamada SaferNet contra a pedofilia e... ódio e racismo. Tiago, tem que olhar o nome dele ali. Tem como procurar na página do comitê gestor, também tem. Acho que seria interessante você conversar com ele. Tiago, Flávia. Percival, que é da Paraíba, também é, tem os votos de um grande número de organização. Tiago Flávia. E o Carlos Afonso, são os quatro membros da sociedade civil. Um outro ponto interessante que eu acho, olhando assim historicamente é que, por exemplo, essa questão da neutralidade de rede e servidores, ela passou a ser um tema de jornal durante o período que foi discutido. Sabe? E as pessoas começaram a entender mais disso. E eu acho

interessante que o debate público, trouxe essa temática, ainda mais no país que tem uma divisão muito grande social, né? É.... o tema teve um interesse grande, acho que foi esse um lado interessante. Acho que não é compreendido o marco civil ainda todo, porque isso demora um pouco pra uma legislação feito essa, mas as pessoas começaram a ver.

[00:47:41.03] Interviewer: Uhum ... sim.

[00:47:42.03] Respondent: Eu acho que pra frente vamos ter conflitos, novos conflitos. Por exemplo, o zero rating é ou não é uma violação do Marco Civil? Nós vamos ver conflitos diferentes, provavelmente parte da sociedade civil vai falar: não, mas nós queremos o zero rating, outra vai falar não, mas isso bloqueia o acesso a outras informações fora desses <UNINTELIGIBLE>. Então, eu acho que nós teremos mais pra frente disputas nesse setor. Falando pessoalmente, eu acho que o zero rating é a ameaça maior que enfrenta a internet.

[00:48:21.02] Respondent: Pois é, tem uma tese do Pedro Ramos, da FGV, muito interessante sobre isso.

[00:48:24.05] Interviewer: Sim, eu falei com ele em São Paulo, sim.

[00:48:28.18] Respondent: E, pois é, eu acho que o interessante é você fazer uma tese nesse tema, que esse é um tema em construção. A sociedade global, é uma combinação de uma questão global, uma questão regional, com as visões nacionais. A governança da internet tem que combinar todos esses, esse diferentes níveis.

[00:48:53.26] Luana: Que envolve uma questão cultural, né?

[00:48:54.03] Respondent: Que envolve uma questão cultural. Privacidade, por exemplo, em cada país tem uma visão. Globalmente, é difícil construir uma visão. Mas, esses conflitos globais, regionais e nacionais, aparecem muito claro ... porque a internet não tem um único ponto de controle, ou de autoridade. Então, isso é um amplo para investigação acadêmica.

[00:49:21.26] Interviewer: É, não, não, estou de acordo. Eu também quero investigar esse relação entre o âmbito nacional e global.

[00:49:36.21] Respondent: Eu vou te mandar, nós escrevemos um artigo agora, eu e o Wolfgang <uninteligible>.

[00:49:36.21] Interviewer: Ah, ok. Eu vi no seu twitter.

[00:49:39.01] Respondent: É, se você quiser eu te mando o artigo.

[00:49:44.07] Interviewer: É sobre o...

[00:49:41.17] Respondent: Rainforest and the internet government models. Se você me mandar o e-mail, eu te mando o artigo, tá? Saiu agora. E, tem o próximo que se chama "Privacy, Governments and Cyberspace", que é justamente esses conflitos nos vários níveis e como se pode analisar isso.

[00:50:05.04] Interviewer: Vou te mandar um e-mail então. Sim.

[00:50:10.13] Respondent: Tenho que te mandar esse artigo. São os artigos de fim de semana agora, na hora que eu tenho tempo pra fazer é só no fim de semana.

[00:50:22.16] Interviewer: Então, eu vou parar a gravação.

Guilherme de Almeida – SAL – Skype – 07/02/2018

(In ref to Snowden revs) This was her response and it fit well bc it was a way to promote rights and civil rights and FOE and somehow exert its sovereignty on the Internet even though this is quite a unusual way to see the Internet….this is exactly the opposite of what we had been facing…being spied upon and trying to make this a positive perspective on Internet regulation rather than revenge that was possible and dignified at the time.

- In order to make it approved it was necessary to make some compromises…several instances where compromising in the language makes the bill more enduring but a bit weaker. It's more flexible so it's not that it creates small loopholes or caveats that allow things to be reversed. If we wanted to write things in stone, to make things not changeable any more, which I am not sure would be a great perspective for Internet regulation, but if the intentuion was to carve things in stone, it was not the final result. And if we get back to the beginning of the MCi when we faced the very initial discussions, we had this dilemma as well, the initial q we faced was "hey it's not broken so don't fix it" and more than that how do you want to regulate smthg that is ever changing…And our perspective at the beginning was that the structure is mostly in the hands of several diff private actors, if we don't regulate we won't be able to make things fair or open, even though this is somehow embedded in the code, it's not embedded in legislation so regulating to ensure openness or transparency or participation could be a way to make this a positive right. And second, let's not get too much into the details, at least not in the legislation. Let's keep it in principles so that we can make it adaptable to the future…

- What has changed between now and then is that several of those weak principles or directives are being implemented (eg digital govt strategy and digital transformation principles eg. interoperability etc.). All those values that are embedded in the legislation somehow guide policy execution.

- When mobile phone co's in Brazil offer plans with free WhatsApp or free FB, I dare to say that it's not a full, let's say, NN. So, to some extent, some of the permissive language or compromises of Anatel…is not necessarily the one for strongly enforcing a pure vision of neutrality.

- Maybe our current status prevents us from regressing too much if a compromise was necessary in order to draw a line and the line was not let's say in the 100, but in the 60s or 70s, having a line prevents us from going back to 15 or 10. So I think we set the bar…

- We have our cabinet for institutional security (GSI) the part of the Pres cabinet which is concerned with military/information security/presidential security agency and they are also those that promote our cyber-sec legislation or regulation. This part of the regulation is somehow in the hands of the military so this brings additional layers of nationalism and not fully understanding the Internet to this branch of policy.

- (On opposition of Abranet) There is an issue that the MCi does not deal with and that is tax-related issues, taxation on informational services…we had by the late 90s ISPs who were not telecoms co's who were providing value added service on top of telecoms co's who were taxed as services. By the early 200s Anatel tried to regulate a diff kind of ISPs who were telco comms and to a certain extent this telecom regulation which was basically cable or other broadband providers would require ISPs to pay higher taxes. And so for quite a while in Brazil there was discussion on whether we could use some regulation from the 90s which wd allow ISPs to pay lower taxes or shd we enforce for all of the ISPs those more stringent telecoms regulation that would put everyone as a telecoms service provider. For quite a while Abranet was highly involved in this tax battle, and this is a total guess, at the v beginning when they saw the government starting to discuss regulation maybe their first impression was that oh now we are going to lose our edge on this non-telecoms status and this might bring us a worse perspective…I have a hint that they were afraid that this would bring a worse economic perspective…And Abranet is mostly software and service providers and content providers rather than

infrastructure providers so they tried to protect themselves from structure and tried not being telecoms co's…

- I think that most I co's especially those providiign content, services or location fear regulation. They are right in fearing it. We see how regulation normally neglects the I's nature, its cross-border nature, its free-flow of inf nature. So, like, you have to keep data in our borders. This was functional in the 1970s…It's not feasible anymore…The word is cloud…

- I say this from experience that it is really hard to explain to a Representative how it works and why it would be broken if you tried to impose your values on infrastructure if you're not aware of its internal workings. The thing is while you were trying to convince MPs that regulating wd prob be a bad strategy and maybe don't fix it if it's not broken, what happened is that our judiciary, our courts, started to break the Internet. We had several cases in which judges from lower courts mandated blocks to ISPs or domain names. We had YouTube down for 4 or 5 days in Brazil…This was the moment in which, I think, Abranet got on board. They realised that well, if it's not broken, or a court will break it so let's create protections so that the courts will have clear mandates not to break it. That was part of the reasoning that we tried to convince Abranet on.

- The LA was so critical, and so obscure, and so totally missing what the Internet meant that I wondered what would have happened if it had been approved. It would have given grounds to totally disrupt the Internet. Or it would be neglected by the courts or it would be repealed bc it would bring so incompatible grounds that it wouldn't extended. On the other hand I used to call the LA a zombie law bc it had been approved in both houses so you could not reject it, you could only approve one version or the other. So in the end part of the compromise that was set was that it was approved with so many revisions in the final version…We were pushing for the MCi to be approved prior to any criminal law which was sort of a rabbit and turtle race bc it had passed the two houses 2 or 3 times and after 12 or 13 years of debates and we were trying to pass a law in linke 6 months and saying this is more important than this one and should go first. It was maybe a bit obnoxious to a certain extent or pushy…

- (In ref to the passage of the Lei Carolina Dieckmann) We were trying to use the compromise and commitment to passing a criminal law to pass the MC and we lost that edge. Once that happened, I would say…the MCi lost traction bc we did not have any bargaining power in terms of its opponents to try and push it forward…

- (On how IP exemption was introduced) I'm not sure I recall well, and I may have left Brasilia by that point. Bc I went to the US in August 13 (it occurred Nov 2012). There was then pressure by IP owners, by Globo, different music rights owners in the sense that they wanted to push a DMCA like provision. I remember that by 2009 or 2010 when we received a delegation from Sony Music I guess, and they wanted us to push for the DMCA like. And our answer to that was well I totally concede that you have rights on that, but we are also discussing that when we consider content removal that in some cases the removal may be smthg related to someone's dignity. And at the last minite we had a provision on revenge porn included or something like that. Do you really consider that your ownership rights are more urgent and more important than someone's dignity, and considering that that person wouldn't have the means to bring this to court. To which extent, we are dealing with conflicting values in that moment and why should we make it harder for a poor person whose dignity has been exposed, to be harder to be removed than Madonna's copyright…This I would say was the strongest debate during the first stage of the public debate of the MCi…

- (On q of explicit source of IP exemption) Actually I think it was several things at the same time. By that time Marta at the Min of C was pressing because of some artists, I think Globo was pushing bc of its content, and they were all trying to put their tentacles wherever they could to make things to one side or the other. And this was the moment in which we considered that to put forward certain compromises would be necessary. We were fighting so many battles at the same time that if we try to win them all, we might lose them all.

- (On importance of public participation) Lula's govt in part was quite open to social participation. His formation, his trajectory and his vision. So, being open was part of, though conferences or summits or participatory budgheting were open to part. Second, the debate that was going in the Congress was not that public, in other words, lobbying groups were working directly on LA but this was not public yet. Actors in civil society were opposing it, but it was not a movement. It started to become a movement maybe by July 2009 when Lula took part in an open software conference in Brazil, this was the moment in which, and I remember this, I will ask Tarso (min of J)… to take care of this. And then he got the determination to respond to those ppl who were there, who he didn't exactly know who they were or what they were doing, or how to work that, and there was…and from that we considered we could only face existing lobbies if we had a certain legitimacy. And there's also a grimmer perception which is by that time several members of CS who were opposing the bill were also opposing the govt bc they considered that the govt was supporting or not sufficiently opposing the bill. So ppl were so suspicious of the govt, so making this a really open process and bringing people on board and trying to make ppl feel the ownership of the regulation became crucial to us. We won't be able to defeat that low or create a new law of we don't find legitimacy. And if ppl say we're not legitimate, let's give ppl the voice they want and let's work in a way that we can bring this a sort of govt supported reference…And this will not only be our weapon to fight the LA but this will also be the antidote to our public rejection on the grounds that we support Azeredo. Finally, there was a moment in which the opp to Azeredo was called Mega Nao, and then we made a MC on the grounds that it's easy to say no but its hard to make something. We are open heartedly trying to build smthg together. We agree on the no, let's build a yes. This was the momentum and the message, and the great thing is it worked to a certain extent. And it was from the heart and maybe this is one reason why it worked.

59.30

- (On public participation) It was necessary with the hypothesis that this wd bring the bill fwd in the Congress bcwe know how hard it would be.

- (On q of whether more radical visions of the MCi fell away as it became institutionalized) For sure. Whenever we wanted opr needed to make a compromise, to put things fwd. So, to lower our bar of the idealistic vision of the Internet in order to put things fwd we faced really strong opps from, I wd say, purists. From 2013 on. For instance, when we were duped, or let's say they ran over us and approved the Azeredo and the other criminal law, the reaction wd be how did you let this happen. You totally ruined it. We managed to resist the bill for 10 years and even if it was reduced to nothing, it was still considered by some a victory for the other side. Even if it was not enforceable, the only thing that was innocuous from our perspective and we had managed to bypass, was Congressional regulations to reduce tax, it was still seen as if they were losing. (Where were those dissenting voices coming from?) From the free software community, some activists on free speech, and particularly those who were for quite a long time were strong supporters of MCi, for example Marcelo Branco, Amadeu, Caribe, those agents who were the voices of the society of the movement. They felt betrayed at some moments, whenever any kind of compromise was necessary to put things fwd. Idealistic vs pragmatic. But there wd be no MCi if there was no compromise, I guess.

- (On CGi's 10 principles and the alternatives) We had negative blueprints. In our very v v initial draft of a whitepaper and what shd be done I think that one of the guiding principles was why shd dignity be less impt or valuable than IP rights. I think this was smthg striking in the DMCA in my perspective. And then maybe we shd do things differently. Shd everything need a court or order, or does nothing need a court order? And which kind of content shd be more relevant enough to be opposed to freedom of expression, if any. This was one of the qs. But the thing is when we had the initial vision of how cd we org this discussion we had to start from somewhere. Then we had this insight, well we have this problem that we have to make our institutions, which are national, which are local and sovereign, dialogue with the Internet which is like global, constantly evolving and so forth.

And how can we merge them both. And we tried to bring in from 2 diff origins. One was the 10 commandments of the I in Brazil which was how can we percieve Internet from our lead entity that is legitimate to do this, and the second was the Brazilian Constitution. We had to create a convo between I and law, law from one perspective and the I from the other. We had to bring perspectives from both and see if they could mingle. I think this was complex enough, legitimate enough, to start a discussion.

- (On q of pol econ of the Internet) I am fully aware of the debate, I read Wu and Goldmsith! Years before the Marco Civil, so who owns the Internet was a reference and was part of the debate but in a certain moment we decided that we were not regulating the Internet. We were regulating rights and obligations of ppl who are using the I. Liability, foE and neutrality to a certain extent are rights from one perspective or obligation from another to how you are using the Internet. In a second moment we made sure, and this was a way of gaining CGi's support, we made sure we were not discussing in the law, the Internet's critical resources. We are not discussing IP, DNS or whatever. We were trying to create a framework for courts not to break the Internet, and not a regulation for all stakeholders operating around the world who were following RFC's or ICANN's regulations so we did not want to create conflict with existing critical resource structures that we acknowledge even by omission that were working well and had their necessary intl regulations and that Brazil was doing a great job in terms of intl discussions in the field. Our intitial point, CGi, we are not taking your powers or interfering with you. On the contrary, we want to promote your work in creating an environment in which you will be legitimate in promoting certain things and we can prevent certain bad things from happening to the I in Brazil. (He then goes on to conclude that although they omitted infrastructure from consideration, they did bring the operation of the Internet, including the telcos, IP, content providers into the debate)

- We tried hard to send the MCi as one of Lula's last bills of law to the Congress…to make it the symbol of the conclusion of a process. Particularly bc we knew that if we had to do this under a new govt., no matter which tio would be, it wd be an internal discussion again. We had at least 4 different ministers involved in the discussion and we need at least three diff approvals from each Ministry. (Althogh the exec branch can send bills of law to Congress, there is a complicated and lengthy internal process to get to that point). We had all this done within Lula by Aug 2010 but struggled to have this final version sent to Congress from Aug to Dec. It was the election too…The transition (to Dilma) made the bill take at least an additional year in discussions

- (On whether there was a diff level of support for MCi from Lula to Dilma) I wouldn't say a diff level bc you could not quantify that but a diff kind of support. With Lula it was more a pol support, but with Dilma it was more of a technical perspective until Snowden arrived and then the energy raised. But it was a technical rather than a critical or a social perspective.

- (On decision to partner with FGV and Lemos) I have known Ronaldo for more than 20 yrs now. We went to uni together and then we worked together for a while too. (When G had his law firm in the early 2000s they often took part in debates or even worked together on cases). Not only I knew him, and not only was he maybe the most recognised public face in this field in Brazil but also he was a longtime friend and someone we knew we could trust. And by then FGV and CTS was the only thintank in Brazil really working in that field, in a public perspective and with access to the media and to ppl with influence (!). And they were willing to work on that and they were willing to bring support to this and maybe to provide facilities that we might struggle to procure within govt or they wd be willing to invest in platforms for instance…but they were partners willing to collaborate…and they had a public face that was recognised, valid, legitimate, and was not necessarily from one side of the other. I think if we had hosted the similar process in either Abranet's website, or the Brazilian free software association's website, I don't think we would be seen as openly mediating civic debate…A partner who cd bring balance and not necessarily bias to the process. (Also, from 2007-2011 SAL had been executing an explicit policy of partnering with academic experts and commissioning indepenedent research – on more than 50 diff projects – of which this represented a continuation).

- (On influence of web co's) I think that one particular detail in the initial debates which is not that obv from outside that in many cases co's pereferred not to present themselves and pub comments themselves. In many cases we had ass's providing comments. So what we understand from convos and seeing what happened is that associaitons such as Abranet had their internal MC discussions (as referenced by ML) and reaching internal compromises and then presenting themselves at the debate at the last minute as a monolith in many cases. Even though we were trying to create a dialogue, ppl were still speaking unidirectionally to the govt, even if in public. (They set the end of each debate on a Sunday bc legal depts. don't work weekends so it wd give everyone two days to respond) Mostly they were trying to avoid the debate, either by hiding behind associations or by trying to provide it at the last minute…When the bill was in Congress we started to feel the potential of coaltions for diff interests. For instance, big I co's were pro lesser intermediary liability, or no notice and takedown for sure. Whenever a stronger lobbies tried to create some kind of notice and takedown or intermediary liability we would reach to them and say, heh will you let this happen? If you really want a free Internet…you have to stand up for this position and confront them. We were tring to make sure that whenever we had someone who it was in their interests and were supportive of our vision and broader mission we tried to reach them to support the vision openly so that this wd bring support….(On impossibility of complete consensus: 90% agreement and 10% disagreement) My goal in the Ministry of Justice is to make everybody equally unhappy…Be aware that compromise will be necessary bc we all want this but if anyone wants it in its own way and is totally in opp to any other poss way then it will never work…

- I would say I was happy, yes. Maybe they could have been more supportive at some moments but I do remember moments in which I noticed ppl were supportive. For instance, Google supported us strongly, on NN for instance, and intermediary liability clauses that were more promoting of a free Internet and I remember thinking some companies, Globo for instance were supportive of NN. It was truly in their interests…

- (Did they anticipate all the challenges in Congress?) The thing is we did not anticipate the silent blocking power of the telecoms companies which was strongly implemented by Eduardo Cunha by then.

- (Did the telcos 'lose'?) Did they lose? I wd say yes to a certain extent. But, for instance, when we provided for data retention clauses that were less stringent, and enforcement agencies wanted, they were winning as well. When we created some compromise and limitations to NN that were generic and open and when we brought the broader principle which was requested or the ability to create new biz models on the Internet, which was their request, it was as if they were creating the grounds for their legal questioning of the validity of their activities on NN breaching based on the principals of the MC. So part of the compromises they tried to force cd be seen as part of their legal strategy to minimize the effects of NN. It seemed to me like one of those chess games where they had less pieces but they could lead to a tie. So I wouldn't say they lost. If you count the pieces, they lost, but they were in a way, let's avoid this to make this a loss and let's postpone this as much as poss…The thing is, part of the compromise was to include a clause saying this would work according to the decree, so that it wd not be readily enforceable and they wd have to time to try and negotiate mitigations…A lot of the compromises made the legislation a bit less self-enforceable, so it was a victory, and a bit more flexible and I bet they were counting on having more influence at the regulatory agency and more influence with future govts to revise any potential defeats.

- (On q of whether regulating NN by Pres decree represented a 'legislative backdoor') The thing is this was certainly a compromise at a certain moment. But I do not think it was an exploit bc one of the reasons why ppl were afraid of legislation on the I is that the only thing harder than approving a new law is cancelling a law that has already been passed. If you consider that the I is constantly evolving and the laws shd be generic and abstract, trying to write the details of regulations within the law that are forever is contrary to the I's evolution…So whenever ppl said this shd be regulated by decree, I was comfortable bc you shdn't put every detail in the regulation. For instance someone wanted to put IPV4 in the legislation. This should not be

there….For a pres to revise what is going on, he or she would have to face the consequences such as public opinion (We need to respect the fact that we live in democracies. We shouldn't be 'tyrannical' and attempt to impose our ideas, even if they correspond to Internet principles)

- (On q of whether he was satisfied with extent of participation) (He cites the book 'Wikigovt' which discusses the distinction between participation for deliberation – lots of voices for legitimacy – and collaboration which requires less. G favours the latter) I consider that the MCi moment was a collaborative one so we make the possibility of giving voice to ppl, we hear the voice and we use this in a way to understand perspectives we were not considering from the single perspective of the Ministry. So, when ppl wanted even more participation my crude explanation was that the President is entitled to send a bill of law and we are in our full right to send the bill we want. The thing is we think it will be a better legislation and a more legitimate legislation if we hear ppl. So, we still have values and the final criterion will be our decision which will face public scrutiny and accountability based on what we have heard…I don't think it was a prob to have less comments bc I am not sure we wd have managed to run to like 60,000 comments in a team of 2 ppl and maybe this would have harmed the processes bc it wd have been really hard to make clear that we were fully acknowledging everything we had received…

(Molon had organized an audencia publica in Rio that Gui attended when he was a state rep and so was already immersed in the issues before he was elected to Congress.)

- (On Molon's second public participation) When he got the opportunity to run this he said I will make this really historic, really participatory and if we have the tools here, why don't we use them. This will be my trademark.

- (On the biggest achievement and greatest lost potential of the MCi) 1:50: 02 The biggest achievement was to prove that it was possible…I think to a certain extent we are still looking for a way to make dem really happen in the 21c…(Ppl seeking to make democracy responsive and legitimate and to overcome the limitations of representation) Even with several flaws and biases and difficulties we somehow proved that it was poss. It was a not a full vote from everyone in Brazil but the process showed that a diff kind of participation could lead to a feeling of social transformation and participation in public issues. I thik that this was maybe the greatest achievement of the MC and also one of the main losses bc we have reached a society in which the participatory mechanisms are totally twisted and sicredited. If you consider fake news, how divisive Braz soc is with regard to pol discussions in the Internet, somehow it has lost on the way…Maybe we had a romantic moment with the MCi…and now we're facing a dire reality.

- (On my point about current fake news prob a result of unaddressed commercialism online) And what we don't know, bc there has not been a controlled experiment on it is if we had set a higher bar or a more principled version of the MCi is would it have solved the question. And I dare to say that it wouldn't…Whenever we tried to frame it as a constitution (for the Internet) we are trying to make it one step higher than the other laws, but it is not. We are trying to make ppl believe and feel it seem so impactful and transformative that it shd reorganize the way we think about law and about institutions and the Internet…

- It's crazy bc in a country in which media is so concentrated the Internet is a medium which is on one hand can bypass concentration and on the other to enforce even more concentration. But this is about control. Control of resources, control of vision, control of framing…

- Globo have launched Globo play as a kind of Netflix, they are making ppl log-in to vote on BB #18 in order to capture user data and they are getting ppl to send in videos envisioning the Brazil they want for the elections as a way to mediate the voice of the people.

Appendix C

Comparative table of all draft and final version of the Marco Civil da Internet law

This table is taken from:

Solagna, F. (2015). *A Formulação da Agenda e o Ativismo em Torno do Marco Civil da Internet.* [MA thesis, Universidade Federal do Rio Grande do Sul]. CAPES: Catálogo de *Teses* e Dissertações.

CAPÍTULO I – DISPOSIÇÕES PRELIMINARES							
Dispositivo	**Texto do PL no 2.126, de 2011**	**Substitutivo I (04/07/2012)**	**Substitutivo II (07/11/2012)**	**Substitutivo III (05/11/2013)**	**Substitutivo IV (11/12/2013)**	**Substitutivo IV (12/02/2014)**	**TEXTO APROVADO**
Art. 1	Esta Lei estabelece princípios, garantias, direitos e deveres para o uso da Internet no Brasil e determina as diretrizes para atuação da União, dos Estados, do Distrito Federal e dos Municípios em relação à matéria.	Esta Lei estabelece princípios, garantias, direitos e deveres para o uso da Internet no Brasil e determina as diretrizes para atuação da União, dosEstados, do Distrito Federal e dos Municípios em relaçãoà matéria.	Esta Lei estabelece princípios, garantias, direitos e deveres para o uso da Internet no Brasil e determina as diretrizes para atuação da União, dos Estados, do Distrito Federal e dos Municípios em relação à matéria.	Esta Lei estabelece princípios, garantias, direitos e deveres para o uso da Internet no Brasil e determina as diretrizes para atuação da União, dos Estados, do Distrito Federal e dos Municípios em relação à matéria.	Esta Lei estabelece princípios, garantias, direitos e deveres para o uso da Internet no Brasil e determina as diretrizes para atuação da União, dos Estados, do Distrito Federal e dos Municípios em relação à matéria.	Esta Lei estabelece princípios, garantias, direitos e deveres para o uso da Internet no Brasil e determina as diretrizes para atuação da União, dos Estados, do Distrito Federal e dos Municípios em relação à matéria.	Esta Lei estabelece princípios, garantias, direitos e deveres para o uso da internet no Brasil e determina as diretrizes para atuação da União, dos Estados, do Distrito Federal e dos Municípios em relação à matéria.

Art. 2	A disciplina do uso da Internet no Brasil tem como fundamentos: I – o reconhecimento da escala mundial da rede; II - os direitos humanos e o exercício da cidadania em meios digitais; III - a pluralidade e a diversidade;	A disciplina do uso da Internet no Brasil tem como fundamentos: I – o reconhecimento da escala mundial da rede; II - os direitos humanos, o desenvolvimento da personalidade e o exercício da cidadania em meios	A disciplina do uso da Internet no Brasil tem como fundamentos o respeito à liberdade de expressão, bem como: I – o reconhecimentoda escala mundial darede; II - os direitos humanos, o desenvolvimento da personalidade e o	A disciplina do uso da Internet no Brasil tem como fundamentos o respeito à liberdade de expressão, bem como: I – o reconhecimentoda escala mundial darede; II - os direitos humanos, o desenvolvimento da personalidade e o	A disciplina do uso da Internet no Brasil tem como fundamentos o respeito à liberdade de expressão, bem como: I – o reconhecimentoda escala mundial darede; II - os direitos humanos, o desenvolvimento da personalidade e o	A disciplina do uso da Internet no Brasil tem como fundamentos o respeito à liberdade de expressão, bem como: I – o reconhecimentoda escala mundial darede; II - os direitos humanos, o desenvolvimento da personalidade e o	A disciplina do uso da Internet no Brasil tem como fundamentos o respeito à liberdade de expressão, bem como: I – o reconhecimentoda escala mundial darede; II - os direitos humanos, o desenvolvimento da personalidade e o

	IV - a abertura e a colaboração; e V - a livre iniciativa, a livre concorrência e a defesa do consumidor.	digitais; III - a pluralidade e a diversidade; IV - a abertura e a colaboração; e V - a livre iniciativa, a livre concorrência e a defesa do consumidor. VI – a finalidade social da rede.	exercício da cidadania em meios digitais; III - a pluralidade e a diversidade; IV - a abertura e a colaboração; e V - a livre iniciativa, a livre concorrência e a defesa do consumidor. VI – a finalidade social da rede.	exercício da cidadania em meios digitais; III - a pluralidade e a diversidade; IV - a abertura e a colaboração; e V - a livre iniciativa, a livre concorrência e a defesa do consumidor. VI – a finalidade social da rede.	exercício da cidadania em meios digitais; III - a pluralidade e a diversidade; IV - a abertura e a colaboração; e V - a livre iniciativa, a livre concorrência e a defesa do consumidor. VI – a finalidade social da rede.	exercício da cidadania em meios digitais; III - a pluralidade e a diversidade; IV - a abertura e a colaboração; e V - a livre iniciativa, a livre concorrência e a defesa do consumidor. VI – a finalidade social da rede.	exercício da cidadania em meios digitais; III - a pluralidade e a diversidade; IV - a abertura e a colaboração; e V - a livre iniciativa, a livre concorrência e a defesa do consumidor. VI – a finalidade social da rede.
Art. 3	A disciplina do uso da Internet no Brasil tem os seguintes princípios: I - garantia daliberdade de expressão, comunicação e manifestação de pensamento, nos termos da Constituição; II - proteção da privacidade; III - proteção aos dados pessoais, na forma da lei; IV - preservação e garantia da neutralidade da rede, conforme regulamentação; V - preservação da estabilidade, segurança e funcionalidade da rede, por meio de medidas técnicas compatíveis com os padrões internacionais e pelo estímulo ao uso de	A disciplina do uso da Internet no Brasil tem os seguintes princípios: I - garantia da liberdade de expressão, comunicação e manifestação de pensamento, nos termos da Constituição; II - proteção da privacidade; III - proteção aos dados pessoais, na forma da lei; IV - preservação e garantia da neutralidade da rede, conforme regulamentação; V - preservação da estabilidade, segurança e funcionalidade da rede, por meio de medidas técnicas compatíveis com os padrões	A disciplina do uso da Internet no Brasil tem os seguintes princípios: I - garantia da liberdade de expressão, comunicação e manifestação de pensamento, nos termos da Constituição; II - proteção da privacidade; III - proteção aos dados pessoais, na forma da lei; IV - preservação e garantia da neutralidade da rede, conforme regulamentação; V - preservação da estabilidade, segurança e funcionalidade da rede, por meio de medidas técnicas compatíveis com os padrões	A disciplina do uso da Internet no Brasil tem os seguintes princípios: I - garantia da liberdade de expressão, comunicação e manifestação de pensamento, nos termos da Constituição; II - proteção da privacidade; III - proteção aos dados pessoais, na forma da lei; IV - preservação e garantia da neutralidade da rede, conforme regulamentação; V - preservação da estabilidade, segurança e funcionalidade da rede, por meio de medidas técnicas compatíveis com os padrões	A disciplina do uso da Internet no Brasil tem os seguintes princípios: I - garantia da liberdade de expressão, comunicação e manifestação de pensamento, nos termos da Constituição; II - proteção da privacidade; III - proteção aos dados pessoais, na forma da lei; IV - preservação e garantia da neutralidade da rede, conforme regulamentação; V – preservação da estabilidade, segurança e funcionalidade da rede, por meio de medidas técnicas compatíveis com os padrões internacionais	A disciplina do uso da Internet no Brasil tem os seguintes princípios: I - garantia da liberdade de expressão, comunicação e manifestação de pensamento, nos termos da Constituição; II - proteção da privacidade; III - proteção aos dados pessoais, na forma da lei; IV - preservação e garantia da neutralidade da rede, conforme regulamentação; V – preservação da estabilidade, segurança e funcionalidade da rede, por meio de medidas técnicas compatíveis com os padrões internacionais	A disciplina do uso da internet no Brasil temos seguintes princípios: I - garantia da liberdade de expressão, comunicação e manifestação de pensamento, nos termos da Constituição Federal; II - proteção da privacidade; III - proteção dos dados pessoais, na forma da lei; IV - preservação e garantia da neutralidade de rede ~~conforme regulamentação~~; V - preservação da estabilidade, segurança e funcionalidade da rede, por meio de medidas técnicas compatíveis com os padrões internacionais

	boas práticas; VI - responsabilização dos agentes de acordo com suas atividades, nos termos da lei; e VII - preservação natureza participativa da rede.	internacionais e pelo estímulo ao uso de boas práticas; VI - responsabilização dos agentes de acordo com suas atividades, nos termos da lei; e VII - preservação natureza participativa da rede.	internacionais e pelo estímulo ao uso de boas práticas; VI - responsabilização dos agentes de acordo com suas atividades, nos termos da lei; e VII - preservação natureza participativa da rede.	internacionais e pelo estímulo ao uso de boas práticas; VI - responsabilização dos agentes de acordo com suas atividades, nos termos da lei; e VII – preservação natureza participativa da rede.	e pelo estímulo ao uso de boas práticas; VI - responsabilização dos agentes de acordo com suas atividades, nos termos da lei; e VII – preservação natureza participativa da rede. VIII – a liberdade dos modelos de negócios promovidos na Internet, desde que não conflitem com os demais princípios estabelecidos nesta Lei.	e pelo estímulo ao uso de boas práticas; VI - responsabilização dos agentes de acordo com suas atividades, nos termos da lei; e VII – preservação natureza participativa da rede; VIII – a liberdade dos modelos de negócios promovidos na Internet, desde que não conflitem com os demais princípios estabelecidos nesta Lei.	e pelo estímulo ao uso de boas práticas; VI - responsabilização dos agentes de acordo com suas atividades, nos termos da lei; VII - preservação da natureza participativa da rede; VIII - liberdade dos modelos de negócios promovidos na internet, desde que não conflitem com os demais princípios estabelecidos nesta Lei.
Par. Ún.	Os princípios expressos nesta Lei não excluem outros previstos no ordenamento jurídico pátrio relacionados à matéria, ou nos tratados internacionais em que a República Federativa do Brasil seja parte.	Os princípios expressos nesta Lei não excluem outros previstos no ordenamento jurídico pátrio relacionados à matéria, ou nos tratados internacionais em que a República Federativa do Brasil seja parte.	Os princípios expressos nesta Lei não excluem outros previstos no ordenamento jurídico pátrio relacionados à matéria, ou nos tratados internacionais em que a República Federativa do Brasil seja parte.	Os princípios expressos nesta Lei não excluem outros previstos no ordenamento jurídico pátrio relacionados à matéria, ou nos tratados internacionais em que a República Federativa do Brasil seja parte.	Os princípios expressos nesta Lei não excluem outros previstos no ordenamento jurídico pátrio relacionados à matéria, ou nos tratados internacionais em que a República Federativa do Brasil seja parte.	Os princípios expressos nesta Lei não excluem outros previstos no ordenamento jurídico pátrio relacionados à matéria, ou nos tratados internacionais em que a República Federativa do Brasil seja parte.	Os princípios expressos nesta Lei não excluem outros previstos no ordenamento jurídico pátrio relacionados à matéria ou nos tratados internacionais em que a República Federativa do Brasil seja parte.
Art. 4º	A disciplina do uso da Internet no Brasil tem os seguintes objetivos: I - promover o direito de acesso à Internet a todos os cidadãos; II - promover o acesso à informação, ao conhecimento e à participação na vida cultural e na condução dos assuntos públicos;	A disciplina do uso da Internet no Brasil tem os seguintes objetivos: I - promover o direito de acesso à Internet a todos ~~os cidadãos~~; II - promover o acesso à informação, ao conhecimento e à participação na vida cultural e na condução dos assuntos públicos;	A disciplina do uso da Internet no Brasil tem os seguintes objetivos:I - promover o direitode acesso à Internet a todos; II - promover o acesso à informação, ao conhecimento e à participação na vida cultural e na condução dos assuntos públicos;	A disciplina do uso da Internet no Brasil tem os seguintes objetivos:I - promover o direitode acesso à Internet a todos; II - promover o acesso à informação, ao conhecimento e à participação na vida cultural e na condução dos assuntos públicos;	A disciplina do uso da Internet no Brasil tem os seguintes objetivos:I - promover o direitode acesso à Internet a todos; II - promover o acesso à informação, ao conhecimento e à participação na vida cultural e na condução dos assuntos públicos;	A disciplina do uso da Internet no Brasil tem os seguintes objetivos:I - promover o direitode acesso à Internet a todos; II - promover o acesso à informação, ao conhecimento e à participação na vida cultural e na condução dos assuntos públicos;	A disciplina do uso da Internet no Brasil tem os seguintes objetivos:I - promover o direitode acesso à Internet a todos; II - promover o acesso à informação, ao conhecimento e à participação na vida cultural e na condução dos assuntos públicos;

	III- promover a inovação e fomentar a ampla difusão denovas tecnologias e modelos de uso eacesso; e IV - promover a adesão a padrões tecnológicos abertos que permitam a comunicação, a acessibilidade e a interoperabilidade entre aplicações e bases de dados.	III- promover a inovação e fomentar a ampla difusão de novas tecnologias e modelos de uso e acesso; e IV - promover a adesão a padrões tecnológicos abertos que permitam a comunicação, a acessibilidade e a interoperabilidade entre aplicações e bases de dados.	III- promover a inovação e fomentar a ampla difusão de novas tecnologias e modelos de uso e acesso; e IV - promover aadesão a padrõestecnológicos abertos que permitam a comunicação, a acessibilidade e a interoperabilidade entre aplicações e bases de dados.	III- promover a inovação e fomentar a ampla difusão de novas tecnologias e modelos de uso e acesso; e IV - promover aadesão a padrõestecnológicos abertos que permitam a comunicação, a acessibilidade e a interoperabilidade entre aplicações e bases de dados.	III- promover a inovação e fomentar a ampla difusão de novas tecnologias e modelos de uso e acesso; e IV - promover aadesão a padrõestecnológicos abertos que permitam a comunicação, a acessibilidade e a interoperabilidade entre aplicações e bases de dados.	III- promover a inovação e fomentar a ampla difusão de novas tecnologias e modelos de uso e acesso; e IV - promover aadesão a padrõestecnológicos abertos que permitam a comunicação, a acessibilidade e a interoperabilidade entre aplicações e bases de dados.	III- promover a inovação e fomentar a ampla difusão de novas tecnologias e modelos de uso e acesso; e IV - promover aadesão a padrõestecnológicos abertos que permitam a comunicação, a acessibilidade e a interoperabilidade entre aplicações e bases de dados.
Art 5º	Para os efeitos desta Lei, considera-se: I- Internet - o sistema constituído de conjunto de protocolos lógicos, estruturado em escala mundial para uso público e irrestrito, com a finalidade de possibilitar a comunicação de dados entre terminais por meio de diferentes redes; II - terminal - computador ou qualquer dispositivo que se conecte à Internet; III - administrador de sistema autônomo - pessoa física ou jurídica que administra blocos de endereço Internet Protocol - IP específicos e o respectivo sistema	Para os efeitos desta Lei, considera-se: I- Internet - o sistema constituído de conjunto de protocolos lógicos, estruturado em escala mundialpara uso público e irrestrito, com a finalidade de possibilitar a comunicação de dados entre terminais por meio de diferentes redes; II - terminal - computador ou qualquer dispositivo que se conecte à Internet; III - administrador de sistema autônomo - pessoa física ou jurídica que administra blocos de endereço Internet Protocol - IP específicos e o	Para os efeitos desta Lei, considera-se: I- Internet - o sistema constituído de conjunto de protocolos lógicos, estruturado em escala mundial para uso público e irrestrito, com a finalidade de possibilitar a comunicação de dados entre terminais por meio de diferentes redes; II - terminal - computador ou qualquer dispositivo que se conecte à Internet; III - administrador de sistema autônomo - pessoa física ou jurídica que administra blocos de endereço Internet Protocol - IP específicos e o respectivo sistema	Para os efeitos desta Lei, considera-se: I- Internet - o sistema constituído de conjunto de protocolos lógicos, estruturado em escala mundial para uso público e irrestrito, com a finalidade de possibilitar a comunicação de dados entre terminais por meio de diferentes redes; II - terminal - computador ou qualquer dispositivo que se conecte à Internet; III - administrador de sistema autônomo - pessoa física ou jurídica que administra blocos de endereço Internet Protocol - IP específicos e o respectivo sistema	Para os efeitos desta Lei, considera-se: I- Internet - o sistema constituído de conjunto de protocolos lógicos, estruturado em escala mundial para uso público e irrestrito, com a finalidade de possibilitar a comunicação de dados entre terminais por meio de diferentes redes; II - terminal - computador ou qualquer dispositivo que se conecte à Internet; III - administrador de sistema autônomo - pessoa física ou jurídica que administra blocos de endereço Internet Protocol - IP específicos e o respectivo sistema	Para os efeitos desta Lei, considera-se: I- Internet - o sistema constituído de conjunto de protocolos lógicos, estruturado em escala mundial para uso público e irrestrito, com a finalidade de possibilitar a comunicação de dados entre terminais por meio de diferentes redes; II - terminal - computador ou qualquer dispositivo que se conecte à Internet; III - administrador de sistema autônomo - pessoa física ou jurídica que administra blocos de endereço Internet Protocol - IP específicos e o respectivo sistema	Para os efeitos desta Lei, considera-se: I- Internet - o sistema constituído de conjunto de protocolos lógicos, estruturado em escala mundial para uso público e irrestrito, com a finalidade de possibilitar a comunicação de dados entre terminais por meio de diferentes redes; II - terminal - computador ou qualquer dispositivo que se conecte à Internet; III - administrador de sistema autônomo - pessoa física ou jurídica que administra blocos de endereço Internet Protocol - IP específicos e o respectivo sistema

	autônomo de roteamento, devidamente cadastrada no ente nacional responsável pelo registro e distribuição de endereços IP geograficamente referentes ao País; IV - endereço IP - código atribuído a um terminal de IV - endereço IP uma rede para permitir sua identificação, definido segundo parâmetros internacionais; V - conexão à Internet - habilitação de um terminal para envio e recebimento de pacotes de dados pela Internet, mediante a atribuição ou autenticação de um endereço IP; VI - registro de conexão - conjunto de informações referentes à data e hora de início e término de uma conexão à Internet, sua duração e o endereço IP utilizado pelo terminal para o envio e recebimento de pacotes de dados; VII - aplicações de Internet - conjunto de funcionalidades que podem ser acessadas por meio de um	respectivo sistema autônomo de roteamento, devidamente cadastrada no ente nacional responsável pelo registro e distribuição de endereços IP geograficamente referentes ao País; IV - endereço IP - código atribuído a um terminal de IV - endereço IP uma rede para permitir sua identificação, definido segundo parâmetros internacionais; V - conexão à Internet - habilitação de um terminal para envio e recebimento de pacotes de dados pela Internet, mediante a atribuição ou autenticação de um endereço IP; VI - registro de conexão - conjunto de informações referentes à data e hora de início e término de uma conexão à Internet, sua duração e o endereço IP utilizado pelo terminal para o envio e recebimento de pacotes de dados; VII - aplicações de Internet - conjunto de	autônomo de roteamento, devidamente cadastradanoente nacional responsável pelo registro e distribuição de endereços IP geograficamente referentes ao País; IV - endereço IP - código atribuído a um terminal de IV - endereço IP uma rede para permitir sua identificação, definido segundo parâmetros internacionais; V - conexão à Internet - habilitação de um terminal para envio e recebimento de pacotes de dados pela Internet, mediante a atribuição ou autenticação de um endereço IP; VI - registro de conexão - conjunto de informações referentes à data e hora de início e término de uma conexão à Internet, sua duração e o endereço IP utilizado pelo terminal para o envio e recebimento de pacotes de dados; VII - aplicações de Internet - conjunto de funcionalidades que podem ser acessadas	autônomo de roteamento, devidamente cadastradanoente nacional responsável pelo registro e distribuição de endereços IP geograficamente referentes ao País; IV - endereço IP - código atribuído a um terminal de IV - endereço IP uma rede para permitir sua identificação, definido segundo parâmetros internacionais; V - conexão à Internet - habilitação de um terminal para envio e recebimento de pacotes de dados pela Internet, mediante a atribuição ou autenticação de um endereço IP; VI - registro de conexão - conjunto de informações referentes à data e hora de início e término de uma conexão à Internet, sua duração e o endereço IP utilizado pelo terminal para o envio e recebimento de pacotes de dados; VII - aplicações de Internet - conjunto de funcionalidades que podem ser acessadas	autônomo de roteamento, devidamente cadastrada no ente nacional responsável pelo registro e distribuição de endereços IP geograficamente referentes ao País; IV - endereço IP - código atribuído a um terminal de IV - endereço IP uma rede para permitir sua identificação, definido segundo parâmetros internacionais; V - conexão à Internet - habilitação de um terminal para envio e recebimento de pacotes de dados pela Internet, mediante a atribuição ou autenticação de um endereço IP; VI - registro de conexão - conjunto de informações referentes à data e hora de início e término de uma conexão à Internet, sua duração e o endereço IP utilizado pelo terminal para o envio e recebimento de pacotes de dados; VII - aplicações de Internet - conjunto de funcionalidades que podem ser acessadas	autônomo de roteamento, devidamente cadastrada no ente nacional responsável pelo registro e distribuição de endereços IP geograficamente referentes ao País; IV - endereço IP - código atribuído a um terminal de IV - endereço IP uma rede para permitir sua identificação, definido segundo parâmetros internacionais; V - conexão à Internet - habilitação de um terminal para envio e recebimento de pacotes de dados pela Internet, mediante a atribuição ou autenticação de um endereço IP; VI - registro de conexão - conjunto de informações referentes à data e hora de início e término de uma conexão à Internet, sua duração e o endereço IP utilizado pelo terminal para o envio e recebimento de pacotes de dados; VII - aplicações de Internet - conjunto de funcionalidades que podem ser acessadas	autônomo de roteamento, devidamente cadastrada no ente nacional responsável pelo registro e distribuição de endereços IP geograficamente referentes ao País; IV - endereço IP - código atribuído a um terminal de IV - endereço IP uma rede para permitir sua identificação, definido segundo parâmetros internacionais; V - conexão à Internet - habilitação de um terminal para envio e recebimento de pacotes de dados pela Internet, mediante a atribuição ou autenticação de um endereço IP; VI - registro de conexão - conjunto de informações referentes à data e hora de início e término de uma conexão à Internet, sua duração e o endereço IP utilizado pelo terminal para o envio e recebimento de pacotes de dados; VII - aplicações de Internet - conjunto de funcionalidades que podem ser acessadas

	terminal conectado à Internet; e VIII - registros de acesso a aplicações de Internet - conjunto de informações referentes à data e hora de uso de uma determinada aplicação de Internet a partir de um determinado endereço IP.	funcionalidades que podem ser acessadas por meio de um terminal conectado à Internet;e VIII - registros de acesso a aplicações de Internet - conjunto de informações referentes à data e hora de uso de uma determinada aplicação de Internet a partir de um determinado endereço IP.	por meio de umterminal conectado à Internet; e VIII - registros de acesso a aplicações de Internet - conjunto de informações referentes à data e hora de uso de uma determinada aplicação de Internet a partir de um determinado endereço IP.	por meio de umterminal conectado à Internet; e VIII - registros de acesso a aplicações de Internet - conjunto de informações referentes à data e hora de uso de uma determinada aplicação de Internet a partir de um determinado endereço IP.	por meio de umterminal conectado à Internet; e VIII - registros de acesso a aplicações de Internet - conjunto de informações referentes à data e hora de uso de uma determinada aplicação de Internet a partir de um determinado endereço IP.	por meio de umterminal conectado à Internet; e VIII - registros de acesso a aplicações de Internet - conjunto de informações referentes à data e hora de uso de uma determinada aplicação de Internet a partir de um determinado endereço IP.	por meio de umterminal conectado à Internet; e VIII - registros de acesso a aplicações de Internet - conjunto de informações referentes à data e hora de uso de uma determinada aplicação de Internet a partir de um determinado endereço IP.
Art. 6º	Na interpretação desta Lei, serão levados em conta, além dos fundamentos, princípios e objetivos previstos, a natureza da Internet, seus usos e costumes particulares e sua importância para a promoção do desenvolvimento humano, econômico, social e cultural.	Na interpretação desta Lei, serão levados em conta, além dos fundamentos, princípios e objetivos previstos, a natureza da Internet, seus usos e costumes particulares e sua importância para a promoção do desenvolvimento humano, econômico, social e cultural.	Na interpretação desta Lei, serão levados em conta, além dos fundamentos, princípios e objetivos previstos, a natureza da Internet, seus usos e costumes particulares e sua importância para a promoção do desenvolvimento humano, econômico, social e cultural.	Na interpretação desta Lei, serão levados em conta, além dos fundamentos, princípios e objetivos previstos, a natureza da Internet, seus usos e costumes particulares e sua importância para a promoção do desenvolvimento humano, econômico, social e cultural.	Na interpretação desta Lei, serão levados em conta, além dos fundamentos, princípios e objetivos previstos, a natureza da Internet, seus usos e costumes particulares e sua importância para a promoção do desenvolvimento humano, econômico, social e cultural.	Na interpretação desta Lei, serão levados em conta, além dos fundamentos, princípios e objetivos previstos, a natureza da Internet, seus usos e costumes particulares e sua importância para a promoção do desenvolvimento humano, econômico, social e cultural.	Na interpretação desta Lei, serão levados em conta, além dos fundamentos, princípios e objetivos previstos, a natureza da Internet, seus usos e costumes particulares e sua importância para a promoção do desenvolvimento humano, econômico, social e cultural.
CAPÍTULO II – DOS DIREITOS E GARANTIAS DOS USUÁRIOS							
Dispositivo	**Texto do PL no 2.126, de 2011**	**Substitutivo I (04/07/2012)**	**Substitutivo II (07/11/2012)**	**Substitutivo III (05/11/2013)**	**Substitutivo IV (11/12/2013)**	**Substitutivo IV (12/02/2014)**	**TEXTO APROVADO**
Art. 7º	O acesso à Internet é essencial ao exercício da cidadania e ao usuário são assegurados os seguintes direitos:	O acesso à Internet é essencial ao exercício da cidadania e ao usuário são assegurados os seguintes direitos:	O acesso à Internet é essencial ao exercício da cidadania e ao usuário são assegurados os seguintes direitos:	O acesso à Internet é essencial ao exercício da cidadania e ao usuário são assegurados os seguintes direitos:	**Art. 7º** O acesso à Internet é essencial ao exercício da cidadania e ao usuário são assegurados os seguintes direitos:	**Art. 7º** O acesso à Internet é essencial ao exercício da cidadania e ao usuário são assegurados os seguintes direitos:	**Art. 7º** O acesso à internet é essencial ao exercício da cidadania, e ao usuário são assegurados os seguintes direitos:

	I - à inviolabilidade e ao sigilo de suas comunicações pela Internet, salvo por ordem judicial, nas hipóteses e na forma que a lei estabelecer para fins de investigação criminal ou instrução processual penal; II - à não suspensão da conexão à Internet, salvo por débito diretamente decorrente de sua utilização; III - à manutenção da qualidade contratada da conexão à Internet, observado o disposto no art. 9o; IV - a informações claras e completas constantes dos contratos de prestação de serviços, com previsão expressasobre o regime de proteção aos seus dados pessoais, aos registros de conexão e aosregistros de acesso a aplicações de Internet, bem como sobre práticas de gerenciamento da rede que possam afetar a qualidade dos serviços oferecidos; e V - ao não fornecimento a	I - à inviolabilidade da intimidade e da vida privada, assegurado o direito à sua proteção e à indenização pelo dano material ou moral decorrente de sua violação; I - II - à inviolabilidade e ao sigilo de suas comunicações pela Internet, salvo por ordem judicial, nas hipóteses e na forma que a lei estabelecer para fins de investigação criminal ou instrução processual penal; II - III - à não suspensão da conexão à Internet, salvo por débito diretamente decorrente de sua utilização; III - IV à manutenção daqualidade contratada da conexão à Internet, observado o disposto no art. 9o; IV - V - a informações claras e completas constantes dos contratos de prestação de serviços, com previsão expressa sobre o regime de proteção aos seus dados pessoais, aos	I - à inviolabilidade da intimidade e da vida privada, assegurado o direito à sua proteção e à indenização pelo dano material ou moral decorrente de sua violação; II - à inviolabilidade e ao sigilo de suas comunicações pela Internet, salvo por ordem judicial, nas hipóteses e na forma que a lei estabelecer para fins de investigação criminal ou instrução processual penal; III - à não suspensão da conexão à Internet, salvo por débito diretamente decorrente de sua utilização; IV - à manutenção da qualidade contratadada conexão à Internet; V - a informações claras e completas constantes dos contratos de prestação de serviços, com previsão expressa sobre o regime de proteção aos registros de conexão e aos registros de acesso a aplicações de Internet, bem como sobre práticas de gerenciamento da rede que possam afetar sua qualidade; e	I – à inviolabilidadeda intimidade e da vida privada, assegurado o direito à sua proteção e à indenização pelodano material ou moral decorrente de suaviolação; II – à inviolabilidade e ao sigilo do fluxo de suas comunicações pela Internet, salvo por ordem judicial,nas ~~hipóteses e na~~ forma ~~que a lei~~ estabelece ~~para fins de investigação~~ criminal ou instruçãoprocessual ~~penal~~ na forma da lei; III – à inviolabilidade e ao sigilo de suas comunicações privadas armazenadas, salvo por ordem judicial; ~~III~~ - IV– à não suspensão da conexão à Internet, salvo po débito diretamente decorrente de sua utilização; ~~IV~~ - V– à manutenção da qualidade contratada da conexão à Internet; ~~V~~ - VI– a informações claras e completas constantes dos contratos de prestação de serviços, com previsão expressa detalhamento sobre o	I – à inviolabilidade da intimidade e da vida privada, assegurado o direito à sua proteção e à indenização pelo dano material ou moral decorrente de sua violação; II – à inviolabilidade e ao sigilo do fluxo de suas comunicações pela Internet, salvo por ordem judicial, na forma da lei; III – à inviolabilidade e aosigilo de suas comunicações privadas armazenadas, salvo por ordem judicial; IV – à não suspensão da conexão à Internet, salvo por débito diretamente decorrente de sua utilização; V – à manutenção da qualidade contratada da conexão à Internet; VI – a informações claras e completas constantes dos contratos de prestação deserviços, com detalhamento sobre o regime de proteção aos registros de conexão e aos registros de acesso a aplicações de Internet, bem como sobre práticas de gerenciamento da rede que possam afetar sua	I – à inviolabilidade da intimidade e da vida privada,assegurado o direito àsua proteção e à indenização pelo dano material ou moral decorrente de sua violação; II – à inviolabilidade e ao sigilo do fluxo de suas comunicações pela Internet, salvo por ordem judicial, na forma da lei; III – à inviolabilidade e aosigilo de suas comunicações privadas armazenadas, salvo por ordem judicial; 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	terceiros de seus registros de conexão e de acesso a aplicações de Internet, salvo mediante consentimento ou nas hipóteses previstas em lei.	registros de conexão e aos registros de acesso a aplicações de Internet, bem como sobre práticas de gerenciamento da rede que possam afetar a qualidade dos serviços oferecidos; e ~~V~~-VI - ao não fornecimento a terceirosde seus registros de conexão e de acesso a aplicações de Internet, salvo mediante consentimento livre, expresso e informado ou nas hipóteses previstas em lei; VII - a informações claras e completas sobre a coleta, uso, tratamento e proteção de seus dados pessoais, que somente poderão ser utilizados para as finalidades que fundamentaram sua coleta, respeitada a boa-fé; VIII - à exclusão definitiva dos dados pessoais que tiver fornecido a determinada aplicação de Internet, a seu requerimento, ao término da relação entre as partes; e IX - à ampla	VI - ao não fornecimento a terceiros de seus registros de conexão e de acesso a aplicações de Internet, salvo mediante consentimento livre, expresso e informado ou nas hipóteses previstas em lei; VII - a informações claras e completas sobre a coleta, uso, tratamento e proteção de seus dados pessoais, que somente poderão ser utilizados para as finalidades que fundamentaram sua coleta, respeitada a boa-fé; VIII - à exclusão definitiva dos dados pessoais que tiver fornecido a determinada aplicação de Internet, a seu requerimento, ao término da relação entre as partes; e IX - à ampla publicização, em termos claros, de eventuais políticas de uso dos provedores de conexão à Internet e de aplicações de Internet.	regime de proteção aos registros de conexão e ~~aos registros~~ deacesso a aplicações deInternet bem como sobre práticas de gerenciamento da rede que possam afetar sua qualidade; ~~VI~~ - VII– ao não fornecimento a terceiros de seus dados pessoais, inclusive seus registros de conexão, e de acesso a aplicações de Internet, salvo mediante consentimento livre expresso e informado ou nas hipóteses previstas em lei; ~~VII~~- VIII– a informações claras e completas sobre a coleta, uso, armazenamento, tratamento e proteção de seus dados pessoais, que somente poderão ser utilizados para finalidades que fundamentaram sua coleta, respeitada a ~~boa-fé~~: a)justificaram sua coleta; b)nao sejam vedadas pela legislação; e c)estejam especificadas nos contratos de prestação de serviços. IX– ao consentimento expresso sobre acoleta uso	qualidade; e VII – ao não fornecimento a terceiros de seus dados pessoais, inclusive seus registros de conexão, e de acesso a aplicações de Internet, salvo mediante consentimento livre, expresso e informado ou nas hipóteses previstas em lei; VIII – a informações claras e completas sobre a coleta, uso, armazenamento, tratamento e proteção de seus dados pessoais, que somente poderão ser utilizados para finalidades que: a) justificaram sua coleta; b) não sejam vedadas pela legislação; e c) estejam especificadas nos contratos de prestação de serviços ou em termos de uso de aplicações de Internet. IX – ao consentimento expresso sobre a coleta, uso, armazenamento e tratamento de dados pessoais, que deverá ocorrer de forma destacada das demais cláusulas contratuais; X – à exclusão	que possam afetar sua qualidade; e VII –ao não fornecimento a terceiros de seus dados pessoais, inclusive registros de conexão, e de acesso a aplicações de Internet, salvo mediante consentimento livre, expresso e informado ou nas hipóteses previstas em lei; VIII – a informações claras e completas sobre a coleta, uso, armazenamento, tratamento e proteção de seus dados pessoais, que somente poderão ser utilizados para finalidades que: a) justificaram sua coleta; b) não sejam vedadas pela legislação; e c) estejam especificadas nos contratos de prestação de serviços ou em termos de uso de aplicações de Internet. IX – ao consentimento expresso sobre a coleta, uso, armazenamento e tratamento de dados pessoais, que deverá ocorrer de forma destacada das demais cláusulas contratuais;	que possam afetar sua qualidade; ~~e~~ VII - ~~ao~~ não fornecimento a terceiros de seus dados pessoais, inclusive registros de conexão, e de acesso a aplicações de internet, salvo mediante consentimento livre, expresso e informado ou nas hipóteses previstas em lei; VIII - ~~a~~ informações claras e completas sobre coleta, uso, armazenamento, tratamento e proteção de seus dados pessoais, que somente poderão ser utilizados para finalidades que: a) justifiquem sua coleta; b) não sejam vedadas pela legislação; e c) estejam especificadas nos contratos de prestação de serviços ou em termos de uso de aplicações de internet; IX - ~~ao~~ consentimento expresso sobre ~~a~~ coleta, uso, armazenamento e tratamento de dados pessoais, que deverá ocorrer de forma destacada das demais cláusulas contratuais;

		publicização, em termos claros, de eventuais políticas de uso dos provedores de conexão à Internet e de aplicações de Internet. terceiros		armazenamento e tratamento de dados pessoais, que deverá ocorrer de forma destacada das demais cláusulas contratuais; ~~VIII~~ - X– à exclusão definitiva dos dados pessoais que tiver fornecido a determinada aplicação de Internet, a seu requerimento, ao término da relação entre as partes; e ~~IX-~~ XI– à ~~ampla publicização, em termos claros,~~ publicidade e clareza de eventuais políticas de uso dos provedores de conexão à Internet e de aplicações de Internet.	definitiva dos dados pessoais que tiver fornecido a determinada aplicação de Internet, a seu requerimento, ao término da relação entre as partes, ressalvadas as hipóteses de guarda obrigatória de registros previstas nesta Lei; XI – à publicidade e clareza de eventuais políticas de uso dos provedores de conexão à Internet e de aplicações de Internet; XII – à acessibilidade, consideradas as características físicomotoras, perceptivas, sensoriais, intelectuais e mentais do usuário, nos termos da Lei; e XIII – à aplicação das normas de proteção e defesa do consumidor nas relações de consumo realizadas na Internet.	X – à exclusão definitiva dos dados pessoais que tiver fornecido a determinada aplicação de Internet, a seu requerimento, ao término da relação entre as partes, ressalvadas as hipóteses de guarda obrigatória de registros previstas nesta Lei; XI – à publicidade e clareza de eventuais políticas de uso dos provedores de conexão à Internet e de aplicações de Internet; XII - à acessibilidade, consideradas as características físicomotoras, perceptivas, sensoriais, intelectuais e mentais do usuário, nos termos da Lei; e XIII - à aplicação das normas de proteção e defesa do consumidor nas relações de consumo realizadas na Internet.	X - ~~à~~ exclusão definitiva dos dados pessoais que tiver fornecido a determinada aplicação de internet, a seu requerimento, ao término da relação entre as partes, ressalvadas as hipóteses de guarda obrigatória de registros previstas nesta Lei; XI - ~~à~~ publicidade e clareza de eventuais políticas de uso dos provedores de conexão à internet e de aplicações deinternet; XII - ~~à~~ acessibilidade, consideradas as características físico-motoras, perceptivas, sensoriais, intelectuais e mentais do usuário, nos termos da lei; e XIII - ~~à~~ aplicação das normas de proteção e defesa do consumidor nas relações de consumo realizadas na internet.
Art. 8º	A garantia do direito à privacidade e à liberdade de expressão nas comunicações é condição para o pleno exercício do direito de acesso à Internet.	A garantia do direito à privacidade e à liberdade de expressão nas comunicações é condição para o pleno exercício do direito de acesso à Internet.	A garantia do direito à privacidade e à liberdade de expressão nas comunicações é condição para o pleno exercício do direito de acesso à Internet.	**Art. 8º** A garantia do direito à privacidade e à liberdade de expressão nas comunicações é condição para o pleno exercício do direito de acesso à Internet	**Art. 8º** A garantia do direito à privacidade e à liberdade de expressão nas comunicações é condição para o pleno exercício do direito de acesso à Internet .	**Art. 8º** A garantia do direito à privacidade e à liberdade de expressão nas comunicações é condição para o pleno exercício do direito de acesso à Internet .	**Art. 8º** A garantia do direito à privacidade e à liberdade de expressão nas comunicações é condição para o pleno exercício do direito de acesso à internet.

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<tr><td></td><td></td><td></td><td></td><td>Parágrafo único. São nulas de pleno direito as cláusulas contratuais que violem o disposto no caput, tais como aquelas que:
I – impliquem ofensa à inviolabilidadee ao sigilo das comunicações privadas pela Internet; ou
II – em contrato de adesão, não ofereçam como alternativa ao contratante a adoção do foro brasileiro para solução de controvérsias decorrentes de serviços prestados no Brasil.</td><td>Parágrafo único. São nulas de pleno direito as cláusulas contratuais que violem o disposto no caput, tais como aquelas que:
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<tr><td colspan="8">CAPÍTULO III – DA PROVISÃO DE CONEXÃO E DE APLICAÇÕES DE INTERNET</td></tr>
<tr><td colspan="4">Seção I
Do Tráfego de Dados</td><td colspan="4">Seção I
~~De Tráfego de Dados~~
Da Neutralidade de Rede</td></tr>
<tr><td>Dispositivo</td><td>Texto do PL no 2.126, de 2011</td><td>Substitutivo I (04/07/2012)</td><td>Substitutivo II (07/11/2012)</td><td>Substitutivo III (05/11/2013)</td><td>Substitutivo IV (11/12/2013)</td><td>Substitutivo IV (12/02/2014)</td><td>TEXTO APROVADO</td></tr>
<tr><td>Art. 9º</td><td>O responsável pela transmissão, comutação ou roteamento tem o dever de tratar de forma isonômica quaisquer pacotes de dados, sem distinção por conteúdo, origem e destino, serviço, terminal ou aplicativo,</td><td>O responsável pela transmissão, comutação ou roteamento tem o dever de tratar de forma isonômica quaisquer pacotes de dados, sem distinção por conteúdo, origem e destino, serviço, terminal ou aplicativo.,</td><td>O responsável pela transmissão, comutação ou roteamento tem o dever de tratar de forma isonômica quaisquer pacotes de dados, sem distinção por conteúdo, origem e destino, serviço, terminal ou aplicativo.</td><td>Art. 9º O responsável pela transmissão, comutação ou roteamento tem o dever de tratar de forma isonômica quaisquer pacotes de dados, sem distinção por conteúdo, origem e destino, serviço, terminal ou aplicação</td><td>Art. 9º O responsável pela transmissão, comutação ou roteamento tem o dever de tratar de forma isonômica quaisquer pacotes de dados, sem distinção por conteúdo, origem e destino, serviço, terminal ou aplicação.</td><td>Art. 9º O responsável pela transmissão, comutação ou roteamento tem o dever de tratar de forma isonômica quaisquer pacotes de dados, sem distinção por conteúdo, origem e destino, serviço, terminal ou aplicação.</td><td>Art. 9º O responsável pela transmissão, comutação ou roteamento tem o dever de tratar de forma isonômica quaisquer pacotes de dados, sem distinção por conteúdo, origem e destino, serviço, terminal ou aplicação.</td></tr>
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	sendo vedada qualquer discriminação ou degradação do tráfego que não decorra de requisitos técnicos necessários à prestação adequada dos serviços, conforme regulamentação.	~~sendo vedada qualquer discriminação ou degradação do tráfego que não decorra de requisitos técnicos necessários à prestação adequada dos serviços, conforme regulamentação.~~					
§ 1º		A discriminação ou degradação do tráfego será regulamentada por Decreto, ouvidas as recomendações do Gestor da Internet no Brasil (CGI.br) e somente poderá decorrer de: I - requisitos técnicos indispensáveis à fruição adequada dos serviços e aplicações, e II - priorização a serviços de emergência.	A discriminação ou degradação do tráfego será regulamentada por Decreto, ouvidas as recomendações do Comitê Gestor da Internet no Brasil (CGI.br) e somente poderá decorrer de: I - requisitos técnicos indispensáveis à fruição prestação adequada dos serviços e aplicações, e II - priorização a serviços de emergência.	§ 1º A discriminação ou degradação do tráfego será regulamentada por Decreto,~~ ouvidas as recomendações do Comitê Gestor da Internet no Brasil (CGI.br)~~ e somente poderá decorrer de: I – requisitos técnicos indispensáveis à prestação adequada dos serviços e aplicações; e II – priorização a serviços de emergência.	**§ 1º** A discriminação ou degradação do tráfego será regulamentada por Decreto e somente poderá decorrer de: I – requisitos técnicos indispensáveis à prestação adequada dos serviços e aplicações; e II – priorização a serviços de emergência	**§ 1º** A discriminação ou degradação do tráfego será regulamentada por Decreto e somente poderá decorrer de: I – requisitos técnicos indispensáveis à prestação adequada dos serviços e aplicações; e II – priorização a serviços de emergência.	**§ 1º** A discriminação ou degradação do tráfego será regulamentada ~~por Decreto e somente poderá decorrer de:~~ nos termos das atribuições privativasdo Presidente da República previstas no inciso IV do art. 84 da Constituição Federal, para a fiel execução desta Lei, ouvidos o Comitê Gestor da Internet e a Agência Nacional de Telecomunicações, e somente poderá decorrer de: I - requisitos técnicos indispensáveis à prestação adequada dos serviços e aplicações; e II - priorização de serviços de emergência.
§ 2º		Na hipótese de discriminação ou degradação do tráfego	Na hipótese de discriminação ou degradação do tráfego	**§ 2º** Na hipótese de discriminação ou degradação do tráfego	**§ 2º** Na hipótese de discriminação ou degradação do tráfego	**§ 2º** Na hipótese de discriminação ou degradação do tráfego	**§ 2º** Na hipótese de discriminação ou degradação do tráfego

		prevista no § 1º , o responsável mencionado no caput deve: I – abster-se de causar prejuízos aos usuários; II – respeitar a livre concorrência; e III – informar previamente de modo transparente, claro e suficientemente descritivo aos seus usuários sobre as práticas de gerenciamento ou mitigação de tráfego adotadas.	prevista no § 1º, o responsável mencionado no caput deve: I – abster-se de causar prejuízos aos usuários II – respeitar a livre concorrência; e III – informar previamente de modo transparente, claro e suficientemente descritivo aos seus usuários sobre as práticas de gerenciamento ou mitigação de tráfego adotadas. IV – abster-se de praticar condutas anticoncorrenciais.	prevista no § 1º, o responsável mencionado no caput deve: I – abster-se de causar ~~prejuízos~~ dano aos usuários, na forma do art. 927 do Código Civil; II ~~– respeitar a livre concorrência; e~~ II – agir com proporcionalidade, transparência e isonomia; III – informar previamente de modo transparente, claro e suficientemente descritivo aos seus usuários sobre as práticas de gerenciamento e ou mitigação de tráfego adotadas; e IV– oferecer serviços em condições comerciais não discriminatórias e abster-se de praticar condutas anticoncorrenciais.	prevista no § 1º, o responsável mencionado no caput deve: I – abster-se de causar dano aos usuários, na forma do art. 927 do Código Civil; II – agir com proporcionalidade, transparência e isonomia; III – informar previamente de modo transparente, claro e suficientemente descritivo aos seus usuários sobre as práticasde gerenciamento e mitigação de tráfego adotadas, inclusive as relacionadas à segurança na rede; e IV– oferecer serviços em condições comerciais não discriminatórias e abster-se de praticar condutas anticoncorrenciais.	prevista no § 1º, o responsável mencionado no caput deve: I – abster-se de causar dano aos usuários, na formado art. 927 do Código Civil; II – agir com proporcionalidade, transparência e isonomia; III – informar previamente de modo transparente, claro e suficientemente descritivo aos seus usuários sobre as práticasde gerenciamento e mitigação de tráfego adotadas, inclusive as relacionadas à segurança da rede; e IV– oferecer serviços em condições comerciais não discriminatórias e abster-se de praticar condutas anticoncorrenciais.	prevista no § 1o, o responsável mencionado no caput deve: I - abster-se de causar dano aos usuários, na forma do art. 927 da Lei no 10.406, de 10de janeiro de 2002 - Código Civil; II - agir com proporcionalidade, transparência e isonomia; III - informar previamente de modo transparente, claro e suficientemente descritivo aos seus usuários sobre as práticas de gerenciamento e mitigação de tráfego adotadas, inclusive as relacionadas à segurança da rede; e IV - oferecer serviços em condições comerciais não discriminatórias e abster-se de praticar condutas anticoncorrenciais.

Par. Ún.	Na provisão de conexão à Internet, onerosa ou gratuita, é vedado monitorar, filtrar, analisar ou fiscalizar o conteúdo dos pacotes de dados, ressalvadas as hipóteses admitidas em	<< parágrafo único passa a ser o § 3º, abaixo >>	<< parágrafo único passa a ser o § 3º, abaixo >>	<< parágrafo único passa a ser o § 3º, abaixo >>	<< parágrafo único passa a ser o § 3º, abaixo >>	<< parágrafo único passa a ser o § 3º, abaixo >>	<< parágrafo único passa a ser o § 3º, abaixo >>

	lei.						
§ 3º		Na provisão de conexão à Internet, onerosa ou gratuita, é vedado bloquear, monitorar, filtrar, analisar ou fiscalizar o conteúdo dos pacotes de dados, ressalvadas as hipóteses admitidas ~~em lei~~ na legislação.	Na provisão de conexão à Internet, onerosa ou gratuita, bem como na transmissão, comutação ou roteamento, é vedado bloquear, monitorar, filtrar, analisar ou fiscalizar o conteúdo dos pacotes de dados., ~~ressalvadas as hipóteses admitidas na legislação~~.	**§ 3º** Na provisão de conexão à Internet, onerosa ou gratuita, bem como na transmissão, comutação ou roteamento, é vedado bloquear, monitorar, filtrar ou analisar ~~ou fiscalizar~~ o conteúdo dos pacotes de dados.	**§ 3º** Na provisão de conexão à Internet, onerosa ou gratuita, bem como na transmissão, comutação ou roteamento, é vedado bloquear, monitorar, filtrar ou analisar o conteúdo dos pacotes de dados, respeitado o disposto neste artigo.	**§ 3º** Na provisão de conexão à Internet, onerosa ou gratuita, bem como na transmissão, comutação ou roteamento, é vedado bloquear, monitorar, filtrar ou analisar o conteúdo dos pacotes de dados, respeitado o disposto neste artigo.	**§ 3º** Na provisão de conexão à internet, onerosa ou gratuita, bem como na transmissão, comutação ou roteamento, é vedado bloquear, monitorar, filtrar ou analisar o conteúdo dos pacotes de dados, respeitado o disposto neste artigo.
				Seção II Da Proteção aos Registros, Dados Pessoais e Comunicações Privadas			
Art. 10	A guarda e a disponibilização dos registros de conexão e de acesso a aplicações de Internet de que trata esta Lei devem atender à preservação da intimidade, vida privada, honra e imagem das partes direta ou indiretamente envolvidas.	A guarda e a disponibilização dos registros de conexão e de acesso a aplicações de Internet de que trata esta Lei devem atender à preservação da intimidade, vida privada, honra e imagem das partes direta ou indiretamente envolvidas.	A guarda e a disponibilização dos registros de conexão e de acesso a aplicações de Internet de que trata esta Lei devem atender à preservação da intimidade, vida privada, honra e imagem das partes direta ou indiretamente envolvidas.	**Art. 10.** A guarda e a disponibilização dos registros de conexão e de acesso a aplicações de Internet de que trata esta Lei, bem como de dados pessoais e do conteúdo de comunicações privadas, devem atender à preservação da intimidade, vida privada, honra e imagem das partes direta ou indiretamente envolvidas.	**Art. 10**. A guarda e a disponibilização dos registros de conexão e de acesso a aplicações de Internet de que trata esta Lei, bem como de dados pessoais e do conteúdo de comunicações privadas, devem atender à preservação da intimidade, vida privada, honra e imagem das partes direta ou indiretamente envolvidas.	**Art. 10**. A guarda e a disponibilização dos registros de conexão e de acesso a aplicações de Internet de que trata esta Lei, bem como de dados pessoais e do conteúdo de comunicações privadas, devem atender à preservação da intimidade, vida privada, honra e imagem das partes direta ou indiretamente envolvidas.	**Art. 10**. A guarda e a disponibilização dos registros de conexão e de acesso a aplicações de internet de que trata esta Lei, bem como de dados pessoais e do conteúdo de comunicações privadas, devem atender à preservação da intimidade, da vida privada, da honra e da imagem das partes direta ou indiretamente envolvidas.
§ 1	O provedor responsável pela guarda somente será obrigado a disponibilizar as informações que	O provedor responsável pela guarda somente será obrigado a disponibilizar as informações os	O provedor responsável pela guarda somente será obrigado a disponibilizar as informações os	**§ 1º** O provedor responsável pela guarda somente será obrigado a disponibilizar os registros mencionados	**§ 1º** O provedor responsável pela guarda somente será obrigado a disponibilizar os registros mencionados	**§ 1º** O provedor responsável pela guarda somente será obrigado a disponibilizar os registros mencionados	**§ 1º** O provedor responsável pela guarda somente será obrigado a disponibilizar os registros mencionados

	permitam a identificação do usuário mediante ordem judicial, na forma do disposto na Seção IV deste Capítulo.	registros mencionados no caput, de forma autônoma ou associados a outras informações que ~~permitam~~ possam contribuir para a identificação do usuário ou do terminal, mediante ordem judicial, na forma do disposto na Seção IV deste Capítulo.	registros mencionados no caput, de forma autônoma ou associados a outras informações que possam contribuir para a identificação do usuário ou do terminal, mediante ordem judicial, na forma do disposto na Seção IV deste Capítulo.	no caput, de forma autônoma ou associados a dados pessoais ou outras informações que possam contribuir para a identificação do usuário ou do terminal, mediante ordem judicial, na forma do disposto na Seção IV deste Capítulo, respeitado o disposto no artigo 7º.	no caput, de forma autônoma ou associados a dados pessoais ou outras informações que possam contribuir para a identificação do usuário ou do terminal, mediante ordem judicial, na forma do disposto na Seção IV deste Capítulo, respeitado o disposto no artigo 7º.	no caput, de forma autônoma ou associados a dados pessoais ou outras informações que possam contribuir para a identificação do usuário ou do terminal, mediante ordem judicial, na forma do disposto na Seção IV deste Capítulo, respeitado o disposto no artigo 7º.	no caput, de forma autônoma ou associados a dados pessoais ou a outras informações que possam contribuir para a identificação do usuário ou do terminal, mediante ordem judicial, na forma do disposto na Seção IV deste Capítulo, respeitado o disposto no art. 7o.
§ 2º	As medidas e procedimentos de segurança e sigilo devem ser informados pelo responsável pela provisão de serviços de conexão de forma clara e atender a padrões definidos em regulamento.	As medidas e procedimentos de segurança e sigilo devem ser informados pelo responsável pela provisão de serviços de conexão de forma clara e atender a padrões definidos em regulamento.	As medidas e procedimentos de segurança e sigilo devem ser informados pelo responsável pela provisão de serviçosde conexão de formaclara e atender a padrões definidos em regulamento.	**§ 2º** ~~As medidas e procedimentos de segurança e sigilo devem ser informados pelo responsável pela provisão de serviços de conexão de forma clara e atender a padrões definidos em regulamento~~. O conteúdo das comunicações privadas somente poderá ser disponibilizado mediante ordem judicial, nas hipóteses ~~e na forma que a lei~~ estabelecer.	**§ 2º** O conteúdo das comunicações privadas somente poderá ser disponibilizado mediante ordem judicial, nas hipóteses e na forma que a lei estabelecer.	**§ 2º** O conteúdo das comunicações privadas somente poderá ser disponibilizado mediante ordem judicial, nas hipóteses e na forma que a lei estabelecer	**§ 2º** O conteúdo das comunicações privadas somente poderá ser disponibilizado mediante ordem judicial, nas hipóteses e na forma que a lei estabelecer, respeitado o disposto nos incisos II e III do art. 7º.
§ 3º	A violação do dever de sigilo previsto no caput sujeita o infrator às sanções cíveis, criminais e administrativas previstas em lei.	A violação do dever de sigilo previsto no caput sujeita o infrator às sanções cíveis, criminais e administrativas previstas em lei.	A violação do dever de sigilo previsto no caput sujeita o infrator às sanções cíveis, criminais e administrativas previstas em lei.	**§ 3º** O disposto no caput não impede o acesso, pelas autoridades administrativas que detenham competência legal para	**§ 3º** O disposto no caput não impede o acesso, pelas autoridades administrativas que detenham competência legal para	**§ 3º** O disposto no caput não impede o acesso, pelas autoridades administrativas que detenham competência legal para	**§ 3º** O disposto no caput não impede o acesso aos dados cadastrais que informem qualificação pessoal, filiação e endereço, na forma da

				a sua requisição, aos dados cadastrais que informem qualificação pessoal, filiação e endereço, na forma da lei.	a sua requisição, aos dados cadastrais que informem qualificação pessoal, filiação e endereço, na forma da lei.	a sua requisição, aos dados cadastrais que informem qualificação pessoal, filiação e endereço, na forma da lei.	lei, pelas autoridades administrativas que detenham competência legal para a sua requisição. ~~aos dados cadastrais que informem qualificação pessoal, filiação e endereço, na forma da lei.~~
				§ 4º As medidas e procedimentos de segurança e sigilo devem ser informados pelo responsável pela provisão de serviçosde ~~conexão~~ de formaclara e atender a padrões definidos em regulamento.	**§ 4º** As medidas e procedimentos de segurança e sigilo devem ser informados pelo responsável pela provisão de serviços de forma clara e atender a padrões definidos em regulamento, respeitado seu direito de confidencialidade quanto a segredos empresariais.	**§ 4º** As medidas e procedimentos de segurança e sigilo devem ser informados pelo responsável pela provisão de serviços de forma clara e atender a padrões definidos em regulamento, respeitado seu direito de confidencialidade quanto a segredos empresariais.	**§ 4º** As medidas e os procedimentos de segurança e de sigilo devem ser informados pelo responsável pela provisão de serviços de forma clara e atender a padrões definidos em regulamento, respeitado seu direito de confidencialidade quanto a segredos empresariais.
				Art. 11. Em qualquer operação de coleta, armazenamento, guarda e tratamento de registros, dados pessoais ou de comunicações por provedores de conexão e de aplicações de Internet em que pelo menos um desses atos ocorra em território nacional, deverá ser respeitada a legislação brasileira, os direitos à privacidade, ao sigilo	**Art. 11**. Em qualquer operação de coleta, armazenamento, guarda e tratamento de registros, dados pessoais ou de comunicações por provedores de conexão e de aplicações de Internet em que pelo menos um desses atos ocorra em território nacional, deverá ser respeitadaa legislação brasileira, os direitos à privacidade, à	**Art. 11.** Em qualquer operação de coleta, armazenamento, guarda e tratamento de registros, dados pessoais ou de comunicações por provedores de conexão e de aplicações de Internet em que pelo menos um desses atos ocorram em território nacional, deverá ser respeitada a legislaçãobrasileira, os direitos à privacidade, à	**Art. 11.** Em qualquer operação de coleta, armazenamento, guarda e tratamento de registros, de dados pessoais ou de comunicações por provedores de conexão e de aplicações de internet em que pelo menos um desses atos ocorra em território nacional, deverão ser obrigatoriamente respeitados a legislação brasileira e

				dos dados pessoais, das comunicações privadas e dos registros.	proteção dos ~~ao sigilo~~ dos dados pessoais e ao sigilo das comunicações privadas e dos registros.	proteção dos dados pessoais e ao sigilo das comunicações privadas e dos registros	os direitos à privacidade, à proteção dos dados pessoais e ao sigilo das comunicações privadas e dos registros.
				§1º O disposto no caput se aplica aos dados coletados em território nacional e ao conteúdo das comunicações, nos quais pelo menos um dos terminais esteja localizado no Brasil.	**§1º** O disposto no caput se aplica aos dados coletados em território nacional e ao conteúdo das comunicações, nos quais pelo menos um dos terminais esteja localizado no Brasil.	**§1º** O disposto no caput se aplica aos dados coletados em território nacional e ao conteúdo das comunicações, nos quais pelo menos um dos terminais esteja localizado no Brasil.	**§1º** O disposto no caput aplica-se aos dados coletados em território nacional e ao conteúdo das comunicações, desde que pelo menos um dos terminais esteja localizado no Brasil.
				§2º O disposto no caput se aplica mesmo que as atividades sejam realizadas por pessoa jurídica sediada no exterior, desde que pelo menos uma integrante do mesmo grupo econômico possua estabelecimento no Brasil.	**§2º** O disposto no caput se aplica mesmo que as atividades sejam realizadas por pessoa jurídica sediada no exterior, desde que pelo menos uma integrante do mesmo grupo econômico possua estabelecimento no Brasil.	**§2º** O disposto no caput se aplica mesmo que as atividades sejam realizadas por pessoa jurídica sediada no exterior, desde que pelo menos uma integrante do mesmo grupo econômico possua estabelecimento no Brasil.	**§2º** disposto no caput aplica-se mesmo que as atividades sejam realizadas por pessoa jurídica sediada no exterior, desde que~~que pelo menos uma integrante~~ oferte serviço ao público brasileiro ou pelo menos uma integrante do mesmo grupo econômico possua estabelecimento no Brasil.
				§3º Os provedores de conexão e de aplicações de Internet deverão prestar, na forma da regulamentação, informações que permitam a verificação quanto ao cumprimento da	**§3º** Os provedores de conexão e de aplicações de Internet deverão prestar, na forma da regulamentação, informações que permitam a verificação quanto ao cumprimento da	**§3º** Os provedores de conexão e de aplicações de Internet deverão prestar, na forma da regulamentação, informações que permitam a verificação quanto ao cumprimento da	**§3º** Os provedores de conexão e de aplicações de internet deverão prestar, na forma da regulamentação, informações que permitam a verificação quanto ao cumprimento da

				legislação brasileira, a coleta, guarda, armazenamento ou tratamento de dados, bem como quanto ao respeito à privacidade e ao sigilo de comunicações.	legislação brasileira, a coleta, guarda, armazenamento ou tratamento de dados, bem como quanto ao respeito à privacidade e ao sigilo de comunicações.	legislação brasileira referente à coleta, guarda, armazenamento ou tratamento de dados, bem como quanto ao respeito à privacidade e ao sigilo de comunicações	legislação brasileira referente à coleta, à guarda, ao armazenamento ou ao tratamento de dados, bem como quanto ao respeito à privacidade e ao sigilo de comunicações.
				§4º Decreto regulamentará o procedimento para apuração de infrações ao disposto neste artigo.	**§4º** Decreto regulamentará o procedimento para apuração de infrações ao disposto neste artigo.	**§4º** Decreto regulamentará o procedimento para apuração de infrações ao disposto neste artigo.	**§4º** Decreto regulamentará o procedimento para apuração de infrações ao disposto neste artigo.
				Art. 12. O Poder Executivo, por meio de Decreto, poderá obrigar os provedores de conexão e de aplicações de Internet previstos no art. 11 que exerçam suas atividades de forma organizada, profissional e com finalidades econômicas a instalarem ou utilizarem estruturas para armazenamento, gerenciamento e disseminação de dados em território nacional, considerando o porte dos provedores, seu faturamento no Brasil e a amplitude da ofertado serviço ao público brasileiro.	**Art. 12.** O Poder Executivo, por meio de Decreto, poderá obrigar os provedores de conexão e de aplicações de Internet previstos no art. 11 que exerçam suas atividades de forma organizada, profissional e com finalidades econômicas a instalarem ou utilizarem estruturas para armazenamento, gerenciamento e disseminação de dados em território nacional, considerando o porte dos provedores, seu faturamento no Brasil e a amplitude da ofertado serviço ao público brasileiro.	**Art. 12.** O Poder Executivo, por meio de Decreto, poderá obrigar os provedores de conexão e de aplicações de Internet previstos no art. 11 que exerçam suas atividades de forma organizada, profissional e com finalidades econômicas a instalarem ou utilizarem estruturas para armazenamento, gerenciamento e disseminação de dados em território nacional, considerando o porte dos provedores, seu faturamento no Brasil e a amplitude da ofertado serviço ao público brasileiro.	

				Art. 13. Sem prejuízo das demais sanções cíveis, criminais ou administrativas, as infrações às normas previstas nos artigos 10, 11 e 12 ficam sujeitas, conforme o caso, às seguintes sanções, aplicadas de forma isolada ou cumulativa: I – advertência, com indicação de prazo para adoção de medidas corretivas; II – multa de até dez por cento do faturamento bruto do grupo econômico no Brasil no seu último exercício, excluídos os impostos; III – suspensão temporária das atividades que envolvam os atos previstos nos artigos11 e 12; ou IV – proibição de exercício das atividades que envolvam os atos previstos nos artigos 11 e 12.	**Art. 13.** Sem prejuízo das demais sanções cíveis, criminais ou administrativas, as infrações às normas previstas nos artigos 10, 11 e 12 ficam sujeitas, conforme o caso, às seguintes sanções, aplicadas de forma isolada ou cumulativa: I – advertência, com indicação de prazo para adoção de medidas corretivas; II – multa de até dez por cento do faturamento bruto do grupo econômico no Brasil no seu último exercício, excluídos os ~~impostos~~ tributos, considerados a condição econômicado infrator e o princípioda proporcionalidade entre a gravidade da falta e a intensidade dasanção; III – suspensão temporária das atividades que envolvam os atos previstos nos artigos11 e 12; ou IV – proibição de exercício das atividades que envolvam os atos previstos nos artigos 11 e 12.	**Art. 13.** Sem prejuízo das demais sanções cíveis, criminais ou administrativas, as infrações às normas previstas nos artigos 10, 11 e 12 ficam sujeitas, conforme o caso, às seguintes sanções, aplicadas de forma isolada ou cumulativa: I – advertência, com indicação de prazo para adoção de medidas corretivas; II – multa de até dez por cento do faturamento bruto do grupo econômico no Brasil no seu último exercício, excluídos os tributos, considerados a condição econômica do infrator e o princípio da proporcionalidade entre a gravidade da falta e a intensidade da sanção; III – suspensão temporária das atividades que envolvam os atos previstos nos artigos11 e 12; ou IV – proibição de exercício das atividades que envolvam os atos previstos nos artigos 11 e 12.	**Art. 12.** Sem prejuízo das demais sanções cíveis, criminais ou administrativas, as infrações às normas previstas nos artigos 10 e 11 ~~e 12~~ ficam sujeitas, conforme o caso, às seguintes sanções, aplicadas de forma isolada ou cumulativa: I - advertência, com indicação de prazo para adoção de medidas corretivas; II - multa de até 10% (dez por cento) do faturamento do grupo econômico no Brasil no seu último exercício, excluídos os tributos, considerados a condição econômica do infrator e o princípio da proporcionalidade entre a gravidade da falta e a intensidade da sanção; III - suspensão temporária das atividades que envolvam os atos previstos no~~s~~ artigo~~s~~ 11 ~~e 12~~; ou IV - proibição de exercício das atividades que envolvam os atos previstos no~~s~~ artigo~~s~~ 11 ~~e 12~~.

				Parágrafo único. Tratandose de empresa estrangeira, responde solidariamente pelo pagamento da multa de que trata o caput sua filial, sucursal, escritório ou estabelecimento situado no País.	**Parágrafo único.** Tratando-se de empresa estrangeira, responde solidariamente pelo pagamento da multa de que trata o caput sua filial, sucursal, escritório ou estabelecimento situado no País.	**Parágrafo único.** Tratando-se de empresa estrangeira, responde solidariamente pelo pagamento da multa de que trata o caput sua filial, sucursal, escritório ou estabelecimento situado no País.	**Parágrafo único.** Tratando-se de empresa estrangeira, responde solidariamente pelo pagamento da multa de que trata o caput sua filial, sucursal, escritório ou estabelecimento situado no País.
Subseção I **Da Guarda de Registros de Conexão**								
Art. 11	Na provisão de conexão à Internet, cabe ao administrador do sistema autônomo respectivo o dever de manter os registros de conexão, sob sigilo, em ambiente controlado e de segurança, pelo prazo de um ano, nos termos do regulamento.	Na provisão de conexão à Internet, cabe ao administrador do sistema autônomo respectivo o dever de manter os registros de conexão, sob sigilo, em ambiente controlado e de segurança, pelo prazo de um ano, nos termos do regulamento.	Na provisão de conexão à Internet, cabe ao administrador do sistema autônomo respectivo o dever de manter os registros de conexão, sob sigilo, em ambiente controlado e de segurança, pelo prazo de um ano, nos termos do regulamento.	~~Art. 11~~. **Art. 14**. Na provisão de conexão à Internet, cabe ao respectivo provedor o dever de manter os registros de conexão, sob sigilo, em ambiente controlado e de segurança, pelo prazo de um ano, nos termos do regulamento	**Art. 14.** Na provisão de conexão à Internet, cabe ao respectivo provedor o dever de manter os registros de conexão, sob sigilo, em ambiente controlado e de segurança, pelo prazo de um ano, nos termos do regulamento.	**Art. 14.** Na provisão de conexão à Internet, cabe ao respectivo ~~provedor~~ administrador de sistema autônomo respectivo o dever de manter os registros de conexão, sob sigilo, em ambiente controlado e de segurança, pelo prazo de um ano, nos termos do regulamento.	**Art. 13.** Na provisão de conexão à internet, cabe ao administrador de sistema autônomo respectivo o dever de manter os registros de conexão, sob sigilo, em ambiente controlado e de segurança, pelo prazo de 1 (um) ano, nos termos do regulamento.
§ 1º	A responsabilidadepela manutenção dos registros de conexão não poderá ser transferida a terceiros	A responsabilidade pela manutenção dos registros de conexão não poderá ser transferida a terceiros	A responsabilidadepela manutenção dos registros de conexão não poderá ser transferida a terceiros	**§ 1º** A responsabilidade pela manutenção dos registros de conexão não poderá ser transferida a terceiros.	**§ 1º** A responsabilidade pela manutenção dos registros de conexão não poderá ser transferida a terceiros.	**§ 1º** A responsabilidade pela manutenção dos registros de conexão não poderá ser transferida a terceiros.	**§ 1º** A responsabilidade pela manutenção dos registros de conexão não poderá ser transferida a terceiros.
§ 2º	A autoridade policial ou administrativa poderá requerer cautelarmente a guarda de registros de conexão por prazo superior ao previsto no caput.	A autoridade policial ou administrativa poderá requerer cautelarmente que os registros de conexão sejam guardados ~~a guarda de registros de conexão~~ por prazo	A autoridade policial ou administrativa ou o Ministério Público poderá requerer cautelarmente que os registros de conexão sejam guardados por prazo superior ao	**§ 2º** A autoridade policial ou administrativa ou o Ministério Público poderá requerer cautelarmente que os registros de conexão sejam guardados por	**§ 2º** A autoridade policial ou administrativa ou o Ministério Público poderá requerer cautelarmente que os registros de conexão sejam guardados por	**§ 2º** A autoridade policial ou administrativa ou o Ministério Público poderá requerer cautelarmente que os registros de conexão sejam guardados por	**§ 2º** A autoridade policial ou administrativa ou o Ministério Público poderá requerer cautelarmente que os registros de conexão sejam guardados por

		superior ao previsto no caput.	previsto no caput.	prazo superior ao previsto no caput.	prazo superior ao previsto no caput.	prazo superior ao previsto no caput.	prazo superior ao previsto no caput.
§ 3º	Na hipótese do § 2o, a autoridade requerente terá o prazo de sessenta dias, contados a partir do requerimento, para ingressar com o pedido de autorização judicial de acesso aos registros previstos no caput.	Na hipótese do § 2o, a autoridade requerente terá o prazo de sessenta dias, contados a partir do requerimento, para ingressar com o pedido de autorização judicial de acesso aos registros previstos no caput.	Na hipótese do § 2o, a autoridade requerente terá o prazo de sessenta dias, contados a partir do requerimento, para ingressar com o pedido de autorização judicial de acesso aos registros previstos no caput.	**§ 3º** Na hipótese do § 2º, a autoridade requerente terá o prazo de sessenta dias, contados a partir do requerimento, para ingressar com o pedido de autorização judicial de acesso aos registros previstos no caput.	**§ 3º** Na hipótese do § 2º, a autoridade requerente terá o prazo de sessenta dias, contados a partir do requerimento, para ingressar com o pedido de autorização judicial de acesso aos registros previstos no caput.	**§ 3º** Na hipótese do § 2º, a autoridade requerente terá o prazo de sessenta dias, contados a partir do requerimento, para ingressar com o pedido de autorização judicial de acesso aos registros previstos no caput.	**§ 3º** Na hipótese do § 2o, a autoridade requerente terá o prazo de 60 (sessenta) dias, contados a partir do requerimento, para ingressar com o pedido de autorização judicial de acesso aos registros previstos no caput.
§ 4º	O provedor responsável pela guarda dos registros deverá manter sigilo em relação ao requerimento previsto no § 2o, que perderá sua eficácia caso o pedido de autorização judicial seja indeferido ou não tenha sido impetrado no prazo previsto no § 3o.	O provedor responsável pela guarda dos registros deverá manter sigilo em relação ao requerimento previsto no § 2o, que perderá sua eficácia caso o pedido de autorização judicial seja indeferido ou não tenha sido impetrado protocolado no prazo previsto no § 3o.	O provedor responsável pela guarda dos registros deverá manter sigilo em relação ao requerimento previsto no § 2o, que perderá sua eficácia caso o pedido de autorização judicial seja indeferido ou não tenha sido impetrado protocolado no prazo previsto no § 3o.	**§ 4º** O provedor responsável pela guarda dos registros deverá manter sigilo em relação ao requerimento previsto no § 2º, que perderá sua eficácia caso o pedido de autorização judicial seja indeferido ou não tenha sido protocolado no prazo previsto no § 3º.	**§ 4º** O provedor responsável pela guarda dos registros deverá manter sigilo em relação ao requerimento previsto no § 2º, que perderá sua eficácia caso o pedido de autorização judicial seja indeferido ou não tenha sido protocolado no prazo previsto no § 3º.	**§ 4º** O provedor responsável pela guarda dos registros deverá manter sigilo em relação ao requerimento previsto no § 2º, que perderá sua eficácia caso o pedido de autorização judicial seja indeferido ou não tenha sido protocolado no prazo previsto no § 3º.	**§ 4º** O provedor responsável pela guarda dos registros deverá manter sigilo em relação ao requerimento previsto no § 2o, que perderá sua eficácia caso o pedido de autorização judicial seja indeferido ou não tenha sido protocolado no prazo previsto no § 3º.
					§ 5º Em qualquer hipótese, a disponibilizaçãoo ao requerente, dos registro de que trata este artigo deverá ser precedida de autorizaçãoo judicial, conforme disposto na Seção IV deste Capítulo.	**§ 5º** Em qualquer hipótese, a disponibilização ao requerente, dos registros de que trata este artigo, deverá ser precedida de autorização judicial, conforme disposto na Seção IV deste Capítulo	**§ 5º** Em qualquer hipótese, a disponibilização ao requerente dos registros de que trata este artigo deverá ser precedida de autorização judicial, conforme disposto na Seção IV deste Capítulo.
					§ 6º Na aplicação de sanções pelo	**§ 6º** Na aplicação de sanções pelo	**§ 6º** Na aplicação de sanções pelo

					descumprimento ao disposto neste artigo, serão considerados a natureza e a gravidade da infração, os danos dela resultantes, eventual vantagem auferida pelo infrator, as circunstâncias agravantes, os antecedentes do infrator e a reincidência.	descumprimento ao disposto neste artigo, serão considerados a natureza e a gravidade da infração, os danos dela resultantes, eventual vantagem auferida pelo infrator, as circunstâncias agravantes, os antecedentes do infrator e a reincidência.	descumprimento ao disposto neste artigo, serão considerados a natureza e a gravidade da infração, os danos dela resultantes, eventual vantagem auferida pelo infrator, as circunstâncias agravantes, os antecedentes do infrator e a reincidência.
Subseção II **Da Guarda de Registros de Acesso a Aplicações de Internet**				**Subseção II** **Da Guarda de Registros de Acesso a Aplicações de Internet na Provisão de Conexão**				
Art. 12	Na provisão de conexão, onerosa ou gratuita, é vedado guardar os registros de acesso a aplicações de Internet.	Na provisão de conexão, onerosa ou gratuita, é vedado guardar os registrosde acesso a aplicações de Internet.	Na provisão de conexão, onerosa ou gratuita, é obrigatória a guarda de registros de conexão, na forma do art. 11, respeitado o disposto no art. 7o, e é vedadao a guardar dos registros de acesso a aplicações de Internet.	~~Art. 12.~~ **Art. 15.** Na provisão de conexão, onerosa ou gratuita, é vedado guardar os registros de acesso a aplicações de Internet.	**Art. 15.** Na provisão de conexão, onerosa ou gratuita, é vedado guardar os registros de acesso a aplicações de Internet.	**Art. 15.** Na provisão de conexão, onerosa ou gratuita, é vedado guardar os registros de acesso a aplicações de Internet.	**Art. 14.** Na provisão de conexão, onerosa ou gratuita, é vedado guardar os registros de acesso a aplicações de internet.
				Subseção III **Da Guarda de Registros de Acesso a Aplicações de Internet na Provisão de Aplicações**				
Art. 13	Na provisão de aplicações de Interneté facultado guardar os registros de acesso dos usuários, respeitado o disposto no art. 7o.	Na provisão de aplicações de Internet é ~~facultado guardar~~ facultada a guarda dos registros de acesso a estas, ~~dos usuários,~~ respeitado o disposto no art. 7º.		~~Art. 13.~~ **Art. 16**. Na provisão de aplicações de Internet, onerosa ou gratuita, é vedada a guarda ~~dos registrosde acesso a aplicações de Internet, respeitado o disposto no art. 7o, e é vedadaa guarda dos registros de conexão:~~ I – dos registros de acesso a outras	**Art. 16.** O provedor de aplicações de Internet constituído na formade pessoa jurídica, que exerça essa atividade de forma organizada, profissionalmente e com fins econômicos, deverá manter os respectivos registros de acesso a aplicações de internet, sob sigilo, em	**Art 16.** O provedor de aplicações de Internet constituído na formade pessoa jurídica, que exerça essa atividade de forma organizada, profissionalmente e com fins econômicos, deverá manter os respectivos registros de acesso a aplicações de internet, sob sigilo, em	**Art 15.** O provedor de aplicações de internet constituído na forma de pessoa jurídica e que exerça essa atividade de forma organizada, profissionalmente e com fins econômicos deverá manter os respectivos registros de acesso a aplicações de internet,

				Aplicações de Internet sem que o titular dos dados tenha consentido previamente, respeitado o disposto no art. 7º; ou II – de dados pessoais que sejam excessivos em relação à finalidade para a qual foi dado consentimento pelo seu titular.	ambiente controlado e de segurança, pelo prazo de seis meses, nos termos do regulamento.	ambiente controlado e de segurança, pelo prazo de seis meses, nos termos do regulamento.	sob sigilo, em ambiente controlado e de segurança, pelo prazo de seis meses, nos termos do regulamento.
§ 1º	A opção por não guardar os registros de acesso a aplicações de Internet não implica responsabilidade sobre danos decorrentes do uso desses serviços por terceiros.	A opção por não guardar os registrosde acesso a aplicações de Internet não implica responsabilidade sobre danos decorrentes do uso desses serviços por terceiros.	A opção por não guardar os registros de acesso a aplicações de Internet não implica responsabilidade sobre danos decorrentes do uso desses serviços por terceiros.		~~Art. 17.~~ **§ 1º** Ordem judicial poderá obrigar, por tempo certo, os provedores de aplicações de Internet que não estão sujeitos ao disposto no caput a guardarem registros de acesso a aplicações de Internet, desde que se tratem de registros relativos a fatos específicos em período determinado., ~~ficandoo fornecimento das informações submetido ao disposto na Seção IV deste Capítulo.~~	**§ 1º** Ordem judicial poderá obrigar, por tempo certo, os provedores de aplicações de Internet que não estão sujeitos ao disposto no caput a guardarem registros de acesso a aplicações de Internet, desde que se tratem de registros relativos a fatos específicos em período determinado	**§ 1º** Ordem judicial poderá obrigar, por tempo certo, os provedores de aplicações de internet que não estão sujeitos ao disposto no caput a guardarem registros de acesso a aplicações de internet, desde que se trate de registros relativos a fatos específicos em período determinado.
§ 2º	Ordem judicial poderá obrigar, por tempocerto, a guarda de registros de acesso a aplicações de Internet, desde que se tratem de registros relativos a fatos específicos em período determinado, ficando o	Ordem judicial poderá obrigar, por tempo certo, a guarda de registros de acesso a aplicações de Internet, desde que se tratem de registros relativos a fatos específicos em período determinado,	Ordem judicial poderá obrigar, por tempo certo, a guarda de registros de acesso a aplicações de Internet, desde que se tratem de registros relativos a fatos específicos em período determinado, ficando o	~~§ 2º~~ **Art. 17**. Ordem judicial poderá obrigar, por tempo certo, a guarda de registros de ~~acesso~~ os provedores de aplicações de Internet a guardarem registros de acesso a aplicações de Internet, desde que se tratem	~~§ 1º~~ **§ 2º** Observado o disposto no *caput*, a autoridade policial ou administrativa ou o Ministério Público ~~poderá~~ poderão requerer cautelarmente a qualquer provedor de aplicações de Internet	**§ 2º** Observado o ~~disposto no *caput*~~, A autoridade policial ou administrativa ou o Ministério Público poderão requerer cautelarmente a qualquer provedor de aplicações de Internet que os registros de	**§ 2º** A autoridade policial ou administrativa ou o Ministério Público poderão requerer cautelarmente a qualquer provedor de aplicações de internet que os registros de acesso a aplicações

	fornecimento das informações submetido ao disposto na Seção IV deste Capítulo.	ficando o fornecimento das informações submetido ao disposto na Seção IV deste Capítulo.	fornecimento das informações submetido ao disposto na Seção IV deste Capítulo.	de registros relativos a fatos específicos em período determinado, ficando o fornecimento das informações submetido ao disposto na Seção IV deste Capítulo.	que os registros de acesso a aplicações de Internet sejam guardados, observados o procedimento e os prazos previstos nos §§ 3º e 4º do art. 14.	acesso a aplicações de Internet sejam guardados, inclusive por prazo superior ao previsto no caput, observado o disposto ~~observados~~ e ~~procedimento~~ e os ~~prazos previstos~~ nos §§ 3º e 4º do art. 14.	de internet sejam guardados, inclusive por prazo superior ao previsto no **caput**, observado o disposto nos §§ 3º e 4º do art. ~~14~~ 13.
§ 3º	Observado o disposto no § 2o, a autoridade policial ou administrativa poderá requerer cautelarmente a guarda dos registros de aplicações de Internet, observados o procedimento e os prazos previstos nos §§ 3o e 4o do art. 11.	Observado o disposto no § 2o, a autoridade policial ou administrativa poderá requerer cautelarmente que os registros de acesso a aplicações de Internet sejam guardados ~~a guarda dos registros de aplicações de Internet~~, observados o procedimento e os prazos previstos nos §§ 3o e 4o do art. 11.	Observado o disposto no § 2o, a autoridade policial ou administrativa ou o Ministério Público poderá requerer cautelarmente que os registros de acesso a aplicações de Internet sejam guardados, observados o procedimento e os prazos previstos nos §§ 3o e 4o do art. 11.	~~**§ 3º**~~ **§ 1º** Observado o disposto no ~~§ 2o~~ caput, a autoridade policial ou administrativa ou o Ministério Público poderá requerer cautelarmente que os registros de acesso a aplicações de Internet sejam guardados, observados o procedimento e os prazos previstos nos §§ 3º e 4º do art. ~~11~~ 14.	**§ 3º** Em qualquer hipótese, a disponibilização ao requerente, dos registros de que trata este artigo, deverá ser precedida de autorização judicial, conforme disposto na Seção IV deste Capítulo.	**§ 3º** Em qualquer hipótese, a disponibilização ao requerente, dos registros de que trata este artigo, deverá ser precedida de autorização judicial, conforme disposto na Seção IV deste Capítulo.	**§ 3º** Em qualquer hipótese, a disponibilização ao requerente dos registros de que trata este artigo deverá ser precedida de autorização judicial, conforme disposto na Seção IV deste Capítulo.
					§ 4º Na aplicação de sanções pelo descumprimento ao disposto neste artigo, serão considerados a natureza e a gravidade da infração, os danos dela resultantes, eventual vantagem auferida pelo infrator, as circunstâncias agravantes, os antecedentes do infrator e a reincidência	**§ 4º** Na aplicação de sanções pelo descumprimento ao disposto neste artigo, serão considerados a natureza e a gravidade da infração, os danos dela resultantes, eventual vantagem auferida pelo infrator, as circunstâncias agravantes, os antecedentes do infrator e a reincidência.	**§ 4º** Na aplicação de sanções pelo descumprimento ao disposto neste artigo, serão considerados a natureza e a gravidade da infração, os danos dela resultantes, eventual vantagem auferida pelo infrator, as circunstâncias agravantes, os antecedentes do infrator e a reincidência.

					~~Art. 16~~. **Art. 17.** Na provisão de aplicações de Internet, onerosa ou gratuita, é vedada a guarda: I – dos registros de acesso a outras Aplicações de Internet sem que o titular dos dados tenha consentido previamente, respeitado o disposto no art. 7º; ou II – de dados pessoais que sejam excessivos em relação à finalidade para a qual foi dado consentimento pelo seu titular.	**Art. 17.** Na provisão de aplicações de Internet, onerosa ou gratuita, é vedada a guarda: I - dos registros de acesso a outras aplicações de Internet sem que o titular dos dados tenha consentido previamente, respeitado o disposto no art. 7º; ou II – de dados pessoais que sejam excessivos em relação à finalidade para a qual foi dado consentimento pelo seu titular.	**Art. 16.** Na provisão de aplicações de internet, onerosa ou gratuita, é vedada a guarda: I - dos registros de acesso a outras aplicações de internet sem que o titular dos dados tenha consentido previamente, respeitado o disposto no art. 7o; ou II - de dados pessoais que sejam excessivos em relação à finalidade para a qual foi dado consentimento pelo seu titular.
				~~§ 1º~~ **<u>Art. 18</u>**. Ressalvadas as hipóteses previstas nesta Lei, a opção por não guardar os registros de acesso a aplicações de Internet não implica responsabilidade sobre danos decorrentes do uso desses serviços por terceiros.	**Art. 18**. Ressalvadas as hipóteses previstas nesta Lei, a opção por não guardar os registros de acesso a aplicações de Internet não implica responsabilidade sobre danos decorrentes do uso desses serviços por terceiros.	**Art. 18**. Ressalvadas as hipóteses previstas nesta Lei, a opção por não guardar os registros de acesso a aplicações de Internet não implica responsabilidade sobre danos decorrentes do uso desses serviços por terceiros.	**Art. 17.** Ressalvadas as hipóteses previstas nesta Lei, a opção por não guardar os registros de acesso a aplicações de internet não implica responsabilidade sobre danos decorrentes do uso desses serviços por terceiros.
				Seção III Da Responsabilidade por Danos Decorrentes de Conteúdo grado por Terceiros			
Art. 14	O provedor de conexão à Internet não será responsabilizado por danos decorrentes de conteúdo gerado por terceiros.	O provedor de conexão à Internet não será responsabilizado <u>civilmente</u> por danos decorrentes de	O provedor deconexão à Internet não será responsabilizado civilmente por danos decorrentes de conteúdo gerado por	~~Art. 14~~. **Art. 19**. O provedor de conexão à Internet não será responsabilizado civilmente por danos decorrentes de	**Art. 19.** O provedor de conexão à Internet não será responsabilizado civilmente por danos decorrentes de conteúdo gerado por	**Art. 19.** O provedor de conexão à Internet não será responsabilizado civilmente por danos decorrentes de conteúdo gerado por	**Art. 18.** O provedor de conexão à internet não será responsabilizado civilmente por danos decorrentes de conteúdo gerado por

		conteúdo gerado por terceiros.	terceiros.	conteúdo gerado por terceiros.	terceiros.	terceiros.	terceiros.
Art. 15	Salvo disposição legal em contrário, o provedor de aplicações de Internet somente poderá ser responsabilizado por danos decorrentes de conteúdo gerado por terceiros se, após ordem judicial específica, não tomar as providências para, no âmbito do seu serviço e dentro do prazo assinalado, tornar indisponível o conteúdo apontado como infringente.	~~Salvo disposição em contrário~~, Com o intuito de assegurar a liberdade de expressão e evitar a censura, o provedorde aplicações de Internet somente poderá ser responsabilizado civilmente por danos decorrentes de conteúdo gerado por terceiros se, após ordem judicial específica, não tomar as providências para, no âmbito e nos limites técnicos do seu serviço e dentro do prazo assinalado, tornar indisponível o conteúdo apontado como infringente, ressalvadas as disposições legais em contrário.	Com o intuito de assegurar a liberdade de expressão e evitar a censura, o provedor de aplicações de Internet somente poderá ser responsabilizado civilmente por danos decorrentes de conteúdo gerado por terceiros se, após ordem judicial específica, não tomar as providências para, no âmbito e nos limites técnicos do seu serviço e dentro do prazo assinalado, tornar indisponível o conteúdo apontado como infringente, ressalvadas as disposições legais em contrário.	~~Art. 15~~. **Art. 20**. Com o intuito de assegurar a liberdade de expressão e impedir a censura, o provedor de aplicações de Internet somente poderá ser responsabilizado civilmente por danos decorrentes de conteúdo gerado por terceiros se, após ordem judicial específica, não tomar as providências para, no âmbito e nos limites técnicos do seu serviço e dentro do prazo assinalado, tornar indisponível o conteúdo apontado como infringente, ressalvadas as disposições legais em contrário.	**Art. 20**. Com o intuito de assegurar a liberdade de expressão e impedir a censura, o provedor de aplicações de Internet somente poderá ser responsabilizado civilmente por danos decorrentes de conteúdo gerado por terceiros se, após ordem judicial específica, não tomar as providências para, no âmbito e nos limites técnicos do seu serviço e dentro do prazo assinalado, tornar indisponível o conteúdo apontado como infringente, ressalvadas as disposições legais em contrário.	**Art. 20**. Com o intuito de assegurar a liberdade de expressão e impedir a censura, o provedor de aplicações de Internet somente poderá ser responsabilizado civilmente por danos decorrentes de conteúdo gerado por terceiros se, após ordem judicial específica, não tomar as providências para, no âmbito e nos limites técnicos do seu serviço e dentro do prazo assinalado, tornar indisponível o conteúdo apontado como infringente, ressalvadas as disposições legais em contrário.	**Art. 19**. Com o intuito de assegurar a liberdade de expressão e impedir a censura, o provedor de aplicações de internet somente poderá ser responsabilizado civilmente por danos decorrentes de conteúdo gerado por terceiros se, após ordem judicial específica, não tomar as providências para, no âmbito e nos limites técnicos do seu serviço e dentro do prazo assinalado, tornar indisponível o conteúdo apontado como infringente, ressalvadas as disposições legais em contrário.
Par. Ún.	A ordem judicial de que trata o caput deverá conter, sob pena de nulidade, identificação clara e específica do conteúdo apontado como infringente, que permita a localização inequívoca do material.	A ordem judicial de que trata o caput deverá conter, sob pena de nulidade, identificação clara e específica do conteúdo apontado como infringente, que permita a localização inequívoca do material.	<< parágrafo único passa a ser o § 1o, abaixo >>	<< parágrafo único passa a ser o § 1o, abaixo >>	<< parágrafo único passa a ser o § 1o, abaixo >>	<< parágrafo único passa a ser o § 1o, abaixo >>	<< parágrafo único passa a ser o § 1o, abaixo >>

§ 1º			A ordem judicial deque trata o caput deverá conter, sob pena de nulidade, identificação clara e específica do conteúdo apontado como infringente, que permita a localização inequívoca do material.	**§ 1º** A ordem judicial de que trata o caput deverá conter, sob pena de nulidade, identificação clara e específica do conteúdo apontado como infringente, que permita a localização inequívoca do material.	**§ 1º** A ordem judicial de que trata o caput deverá conter, sob pena de nulidade, identificação clara e específica do conteúdo apontado como infringente, que permita a localização inequívoca do material.	**§ 1º** A ordem judicial de que trata o caput deverá conter, sob pena de nulidade, identificação clara e específica do conteúdo apontado como infringente, que permita a localização inequívoca do material.	**§ 1º** A ordem judicial de que trata o **caput** deverá conter, sob pena de nulidade, identificação clara e específica do conteúdo apontado como infringente, que permita a localização inequívoca do material.
§ 2º			O disposto neste artigo não se aplica quandose tratar de infração a direitos do autor ou a direitos conexos.	**§ 2º** ~~O disposto neste artigo não se aplica quando se tratar de~~ infração a direitos do ~~autor ou a direitos conexos~~. A aplicação do disposto neste artigo para infrações a direitos de autor ou a diretos conexos depende de previsão legal específica, que deverá respeitar a liberdade de expressão e demais garantias previstas no art. 5º da constituição federal.	**§ 2º** A aplicação do disposto neste artigo para infrações a direitos de autor ou a diretos conexos depende de previsão legal específica, que deverá respeitar a liberdade de expressão e demais garantias previstas no art. 5º da constituição federal.	**§ 2º** A aplicação do disposto neste artigo para infrações a direitos de autor ou a diretos conexos depende de previsão legal específica, que deverá respeitar a liberdade de expressão e demais garantias previstas no art. 5º da Constituição Federal.	**§ 2º** A aplicação do disposto neste artigo para infrações a direitos de autor ou a diretos conexos depende de previsão legal específica, que deverá respeitar a liberdade de expressão e demais garantias previstas no art. 5º da Constituição Federal.
					§ 3º As causas que versem sobre ressarcimento por danos decorrentes de conteúdos disponibilizados na Internet relacionados à honra, à reputação ou a direitos de personalidade bem como sobre a indisponibilização desses conteúdos por	**§ 3º** As causas que versem sobre ressarcimento por danos decorrentes de conteúdos disponibilizados na Internet relacionados à honra, à reputação ou a direitos de personalidade bem como sobre a indisponibilização desses conteúdos por	**§ 3º** As causas que versem sobre ressarcimento por danos decorrentes de conteúdos disponibilizados na internet relacionados à honra, à reputação ou a direitos de personalidade, bem como sobre a indisponibilização desses conteúdos por

					provedores de aplicações de Internet poderão ser apresentadas perante os juizados especiais.	provedores de aplicações de Internet poderão ser apresentadas perante os juizados especiais.	provedores de aplicações de internet, poderão ser apresentadas perante os juizados especiais.
					§ 4º O juiz, inclusive no procedimento previsto no § 3º, poderá antecipar, total ou parcialmente, os efeitos da tutela pretendida no pedido inicial, existindo prova inequívoca do fato e considerado o interesse da coletividade na disponibilização do conteúdo na Internet, desde que presentes os requisitos de verossimilhança da alegação do autor e de fundado receio dedano irreparável ou de difícil reparação.	**§ 4º** O juiz, inclusive no procedimento previsto no § 3º, poderá antecipar, total ou parcialmente, os efeitos da tutela pretendida no pedido inicial, existindo prova inequívoca do fato e considerado o interesse da coletividade na disponibilização do conteúdo na Internet, desde que presentes os requisitos de verossimilhança da alegação do autor e de fundado receio dedano irreparável ou de difícil reparação.	**§ 4º** O juiz, inclusive no procedimento previsto no § 3º, poderá antecipar, total ou parcialmente, os efeitos da tutela pretendida no pedido inicial, existindo prova inequívoca do fato e considerado o interesse da coletividade na disponibilização do conteúdo na internet, desde que presentes os requisitos de verossimilhança da alegação do autor e de fundado receio dedano irreparável ou de difícil reparação.
Art. 16	Sempre que tiver informações de contato do usuário diretamente responsável pelo conteúdo a que se refere o art. 15, caberá ao provedor de aplicações de Internet informar-lhe sobre o cumprimento da ordem judicial.	Sempre que tiver informações de contato do usuário diretamente responsável pelo conteúdo a que se refere o art. 15, caberá ao provedor de aplicações de Internet informar comunicar-lhe ~~sobre o cumprimento da ordem judicial~~. os motivos e informações relativos à	Sempre que tiver informações de contato do usuário diretamente responsável pelo conteúdo a que se refere o art. 15, caberá ao provedor de aplicações de Internet comunicar-lhe os motivos e informações relativos à indisponibilização de conteúdo, com informações que	~~Art. 16~~. Art. 21. Sempre que tiver informações de contato do usuário diretamente responsável pelo conteúdo a que se refere o art. 15 e 19, caberá ao provedor de aplicações de Internet comunicar-lhe os motivos e informações relativos à indisponibilização de conteúdo, com	**Art. 21.** Sempre que tiver informações de contato do usuário diretamente responsável pelo conteúdo a que se refere o art. 19 e 20, caberá ao provedor de aplicações de Internet comunicar-lhe os motivos e informações relativos à indisponibilização de conteúdo, com informações que	**Art. 21.** Sempre que tiver informações de contato do usuário diretamente responsável pelo conteúdo a que se refere o art. 19 e 20, caberá ao provedor de aplicações de Internet comunicar-lhe os motivos e informações relativos à indisponibilização de conteúdo, com informações que	**Art. 20.** Sempre que tiver informações de contato do usuário diretamente responsável pelo conteúdo a que se refere o art. 19~~ e 20~~, caberá ao provedor de aplicações de internet comunicar-lhe os motivos e informações relativos à indisponibilização de conteúdo, com informações que

		indisponibilização de conteúdo, com informações que permitam o contraditório e a ampla defesa em juízo, salvo expressa previsão legal ou salvo expressa determinação judicial fundamentada em contrário	permitam o contraditório e a ampla defesa em juízo, salvo expressa previsão legal ou salvo expressa determinação judicial fundamentada em contrário.	informações que permitam o contraditório e a ampla defesa em juízo, salvo expressa previsão legal ou salvo expressa determinação judicial fundamentada em contrário.	permitam o contraditório e a ampla defesa em juízo, salvo expressa previsão legal ou salvo expressa determinação judicial fundamentada em contrário.	permitam o contraditório e a ampla defesa em juízo, salvo expressa previsão legal ou salvo expressa determinação judicial fundamentada em contrário.	permitam o contraditório e a ampla defesa em juízo, salvo expressa previsão legal ou ~~salvo~~ expressa determinação judicial fundamentada em contrário.
Par. Ún.		Quando solicitado pelo usuário que disponibilizou o conteúdo tornado indisponível, o provedor de aplicações de Internet que exerce essa atividade de forma organizada, profissionalmente e com fins econômicos, substituirá o conteúdo tornadoindisponível, pela motivação ou pela ordem judicial que deu fundamento à indisponibilização.	Quando solicitado pelo usuário que disponibilizou o conteúdo tornado indisponível, o provedor de aplicações de Internet que exerce essa atividade de forma organizada, profissionalmente e com fins econômicos, substituirá o conteúdo tornado indisponível, pela motivação ou pela ordem judicial que deu fundamento à indisponibilização.	**Parágrafo único**. Quando solicitado pelo usuário que disponibilizou o conteúdo tornado indisponível, o provedor de aplicações de Internet que exerce essa atividade de forma organizada, profissionalmente e com fins econômicos, substituirá o conteúdo tornado indisponível, pela motivação ou pela ordem judicial que deu fundamento à indisponibilização.	**Parágrafo único**. Quando solicitado pelo usuário que disponibilizou o conteúdo tornado indisponível, o provedor de aplicações de Internet que exerce essa atividade de forma organizada, profissionalmente e com fins econômicos, substituirá o conteúdo tornado indisponível, pela motivação ou pela ordem judicial que deu fundamento à indisponibilização.	**Parágrafo único**. Quando solicitado pelo usuário que disponibilizou o conteúdo tornado indisponível, o provedor de aplicações de Internet que exerce essa atividade de forma organizada, profissionalmente e com fins econômicos, substituirá o conteúdo tornado indisponível, pela motivação ou pela ordem judicial que deu fundamento à indisponibilização.	**Parágrafo único**. Quando solicitado pelo usuário que disponibilizou o conteúdo tornado indisponível, o provedor de aplicações de internet que exerce essa atividade de forma organizada, profissionalmente e com fins econômicos substituirá o conteúdo tornado indisponível pela motivação ou pela ordem judicial que deu fundamento à indisponibilização.
					Art. 22. O provedor de aplicações de Internet que disponibilize conteúdo gerado por terceiros poderá ser responsabilizado subsidiariamente pela divulgação de imagens, vídeos ou outros materiais contendo cenas de	**Art. 22**. O provedor de aplicações de Internet que disponibilize conteúdo gerado por terceiros poderá ser responsabilizado subsidiariamente pela divulgação de imagens, vídeos ou outros materiais contendo cenas de	**Art. 21**. O provedor de aplicações de internet que disponibilize conteúdo gerado por terceiros será responsabilizado subsidiariamente pela violação da intimidade decorrente da divulgação, sem autorização de seus

					nudez ou de atos sexuais de caráter privado sem autorização de seus participantes quando, após o recebimento de notificação, deixar de promover, de forma diligente, no âmbito e nos limites técnicos do seu serviço, a indisponibilização desse conteúdo.	nudez ou de atos sexuais de caráter privado sem autorização de seus participantes quando, após o recebimento de notificação pelo ofendido ou seu representante legal, deixar de promover, de forma diligente, no âmbito e nos limites técnicos do seu serviço, a indisponibilização desse conteúdo.	participantes, de imagens, de vídeos ou de outros materiais contendo cenas de nudez ou de atos sexuais de caráter privado ~~sem autorização de seus participantes~~ quando, após o recebimento de notificação pelo participante ou seu representante legal, deixar de promover, de forma diligente, no âmbito e nos limites técnicos do seu serviço, a indisponibilização desse conteúdo.
					Parágrafo único. A notificação prevista no caput deverá conter elementos que permitam a identificação específica do material apontado como violador de direitos da vítima.	**Parágrafo único**. A notificação prevista no caput deverá conter, sob pena de nulidade, elementos que permitam a identificação específica do material apontado como violador de direitos da vítima e a verificação da legitimidade para apresentação do pedido.	**Parágrafo único**. A notificação prevista no caput deverá conter, sob pena de nulidade, elementos que permitam a identificação específica do material apontado como violador da intimidade do participante e a verificação da legitimidade para apresentação do pedido.
Seção IV **Da Requisição Judicial de Registros**							
Art. 17	A parte interessada	A parte interessada	A parte interessada	~~Art. 17.~~ **Art. 22.** A parte	~~Art. 22~~. **Art. 23** A parte	**Art. 23**. A parte	**Art. 22.** A parte

	poderá, com o propósito de formar conjunto probatório em processo judicial cível ou penal, em caráter incidental ou autônomo, requerer ao juiz que ordene ao responsável pela guarda o fornecimento de registros de conexão ou deregistros de acesso aaplicações de Internet.	poderá, com o propósito de formar conjunto probatório em processo judicial cível ou penal, em caráter incidental ou autônomo, requerer ao juiz que ordene ao responsável pela guarda o fornecimento de registros de conexão ou de registros de acesso a aplicações de Internet.	poderá, com opropósito de formar conjunto probatório emprocesso judicial cível ou penal, em caráter incidental ou autônomo, requerer ao juiz que ordene ao responsável pela guarda o fornecimento de registros de conexão ou de registros de acesso a aplicações de Internet.	interessada poderá, com o propósito de formar conjunto probatório em processo judicial cível ou penal, em caráter incidental ou autônomo, requerer ao juiz que ordene ao responsável pela guarda o fornecimento de registros de conexão ou de registros de acesso a aplicações de Internet.	interessada poderá, com o propósito de formar conjunto probatório em processo judicial cível ou penal, em caráter incidental ou autônomo, requerer ao juiz que ordene ao responsável pela guarda o fornecimento de registros de conexão ou de registros de acesso a aplicações de Internet.	interessada poderá, com o propósito de formar conjunto probatório em processo judicial cível ou penal, em caráter incidental ou autônomo, requerer ao juiz que ordene ao responsável pela guarda o fornecimento de registros de conexão ou de registros de acesso a aplicações de Internet.	interessada poderá, com o propósito de formar conjunto probatório em processo judicial cível ou penal, em caráter incidental ou autônomo, requerer ao juiz que ordene ao responsável pela guarda o fornecimento de registros de conexão ou de registros de acesso a aplicações de internet.
Par. Ún.	Sem prejuízo dos demais requisitos legais, o requerimento deverá conter, sob pena de inadmissibilidade: I - fundados indícios da ocorrência do ilícito; II - justificativa motivadada utilidade dos registros solicitados para fins de investigação ou instrução probatória; e III - período ao qual se referem os registros.	Sem prejuízo dos demais requisitos legais, o requerimento deverá conter, sob pena de inadmissibilidade: I - fundados indícios da ocorrência do ilícito; II - justificativa motivada da utilidade dos registros solicitados para fins de investigação ou instrução probatória; e III - período ao qual se referem os registros.	Sem prejuízo dos demais requisitos legais, o requerimento deverá conter, sob pena de inadmissibilidade: I - fundados indícios da ocorrência do ilícito; II - justificativa motivada da utilidade dos registros solicitados para fins de investigação ou instrução probatória; e III - período ao qual se referem os registros.	**Parágrafo único.** Sem prejuízo dos demais requisitos legais, o requerimento deverá conter, sob pena de inadmissibilidade: I – fundados indícios da ocorrência do ilícito; II – justificativa motivada da utilidade dos registros solicitados para fins de investigação ou instrução probatória; e III – período ao qual se referem os registros.	**Parágrafo único.** Sem prejuízo dos demais requisitos legais, o requerimento deverá conter, sob pena de inadmissibilidade: I – fundados indícios da ocorrência do ilícito; II – justificativa motivada da utilidade dos registros solicitados para fins de investigação ou instrução probatória; e III – período ao qual se referem os registros.	**Parágrafo único.** Sem prejuízo dos demais requisitos legais, o requerimento deverá conter, sob pena de inadmissibilidade: I – fundados indícios da ocorrência do ilícito; II – justificativa motivada da utilidade dos registros solicitados para fins de investigação ou instrução probatória; e III – período ao qual se referem os registros.	**Parágrafo único.** Sem prejuízo dos demais requisitos legais, o requerimento deverá conter, sob pena de inadmissibilidade: I - fundados indícios da ocorrência do ilícito; II - justificativa motivada da utilidade dos registros solicitados para fins de investigação ou instrução probatória; e III - período ao qual se referem os registros.
Art. 18	Cabe ao juiz tomar as providências necessárias à garantia do sigilo das informações recebidas e à preservação da intimidade, vida privada, honra e imagem do usuário,	Cabe ao juiz tomar as providências necessárias à garantia do sigilo das informações recebidas e à preservação da intimidade, vida privada, honra e imagem do usuário,	Cabe ao juiz tomar as providências necessárias à garantia do sigilo das informações recebidas e à preservação da intimidade, vida privada, honra e imagem do usuário,	**Art. 23** Cabe ao juiz tomar as providências necessárias à garantia do sigilo das informações recebidas e à preservação da intimidade, vida privada, honra e imagem do usuário,	**~~Art. 23~~. Art. 24.** Cabe ao juiz tomar as providências necessárias à garantia do sigilo das informações recebidas e à preservação da intimidade, vida privada, honra e	**Art. 24**. Cabe ao juiz tomar as providências necessárias à garantia do sigilo das informações recebidas e à preservação da intimidade, vida privada, honra e imagem do usuário,	**Art. 23.** Cabe ao juiz tomar as providências necessárias à garantia do sigilo das informações recebidas e à preservação da intimidade, da vida privada, da honra e da imagem do usuário,

	podendo determinar segredo de justiça, inclusive quanto aos pedidos de guarda de registro.	podendo determinar segredo de justiça, inclusive quanto aos pedidos de guarda de registro.	podendo determinar segredo de justiça, inclusive quanto aos pedidos de guarda de registro.	podendo determinar segredo de justiça, inclusive quanto aos pedidos de guarda de registro.	imagem do usuário, podendo determinar segredo de justiça, inclusive quanto aos pedidos de guarda de registro.	podendo determinar segredo de justiça, inclusive quanto aos pedidos de guarda de registro.	podendo determinar segredo de justiça, inclusive quanto aos pedidos de guarda de registro.
CAPÍTULO IV – DA ATUAÇÃO DO PODER PÚBLICO							
Dispositivo	**Texto do PL no 2.126, de 2011**	**Substitutivo I (04/07/2012)**	**Substitutivo II (07/11/2012)**	**Substitutivo III (05/11/2013)**	**Substitutivo IV (11/12/2013)**	**Substitutivo IV (12/02/2014)**	**TEXTO APROVADO**
Art. 19	Constituem diretrizes para a atuação da União, dos Estados, do Distrito Federal e dos Municípios no desenvolvimento da Internet no Brasil: I - estabelecimento de mecanismos de governança transparentes, colaborativos e democráticos, com a participação dos vários setores da sociedade; II - promoção da racionalização e da interoperabilidade tecnológica dos serviços de governo eletrônico, entre os diferentes Poderes e níveis da federação, para permitir o intercâmbio de informações e a celeridade de procedimentos; III - promoção da interoperabilidade entre sistemas e terminais	Constituem diretrizes para a atuação da União, dos Estados,do Distrito Federal e dos Municípios no desenvolvimento da Internet no Brasil: I - estabelecimento de mecanismos de governança transparentes, colaborativos e democráticos, com a participação dos vários setores da sociedade; II - promoção da racionalização e da interoperabilidade tecnológica dos serviços de governo eletrônico, entre os diferentes Poderes e níveis da federação, para permitir o intercâmbio de informações e a celeridade de procedimentos; III - promoção da interoperabilidade	Constituem diretrizes para a atuação da União, dos Estados, do Distrito Federal e dos Municípios no desenvolvimento da Internet no Brasil: I - estabelecimento de mecanismos de governança transparentes, colaborativos e democráticos, com a participação dos vários setores da sociedade; II - promoção da racionalização e da interoperabilidade tecnológica dos serviços de governo eletrônico, entre os diferentes Poderes e níveis da federação, para permitir o intercâmbio de informações e a celeridade de procedimentos; III - promoção da interoperabilidade entre sistemas e	~~**Art. 19.**~~ **Art. 24.** Constituem diretrizes para a atuação da União, dos Estados, do Distrito Federal e dos Municípios no desenvolvimento da Internet no Brasil: I – estabelecimento de mecanismos de governança ~~multiparticipativa,~~ transparente, colaborativos, ~~colaborativa~~ e democráticos ~~democrática~~, com a participação ~~dos vários setores da sociedade~~ do governo, do setor empresarial, da sociedade civil e da comunidade acadêmica; II – promoção da racionalização da gestão, expansão e uso da Internet, com participação do Comitê Gestor da Internet no Brasil;	~~**Art. 24.**~~ **Art. 25** Constituem diretrizes para a atuação da União, dos Estados, do Distrito Federal e dos Municípios no desenvolvimento da Internet no Brasil: I – estabelecimento de mecanismos de governança multiparticipativa, transparente, colaborativa e democrática, com a participação do governo, do setor empresarial, da sociedade civil e da comunidade acadêmica; II – promoção da racionalização da gestão, expansão e uso da Internet, com participação do Comitê Gestor da Internet no Brasil; III – promoção da racionalização e da interoperabilidade	**Art. 25** Constituem diretrizes para a atuação da União, dos Estados, do Distrito Federal e dos Municípios no desenvolvimento da Internet no Brasil: I – estabelecimento de mecanismos de governança multiparticipativa, transparente, colaborativa e democrática, com a participação do governo, do setor empresarial, da sociedade civil e da comunidade acadêmica; II – promoção da racionalização da gestão, expansão e uso da Internet, com participação do Comitê Gestor da Internet no Brasil; III – promoção da racionalização e da interoperabilidade	**Art. 24.** Constituem diretrizes para a atuação da União, dos Estados, do Distrito Federal e dos Municípios no desenvolvimento da internet no Brasil: I - estabelecimento de mecanismos de governança multiparticipativa, transparente, colaborativa e democrática, com a participação do governo, do setor empresarial,da sociedade civil e da comunidade acadêmica; II - promoção da racionalização da gestão, expansão e uso da internet, com participação do Comitê Gestor da internet no Brasil; III - promoção da racionalização e da interoperabilidade

	diversos, inclusiveentre os diferentes níveis federativos e diversos setores dasociedade; IV - adoção preferencial de tecnologias, padrões e formatos abertos e livres; V - publicidade e disseminação de dados e informações públicos, de forma aberta e estruturada; VI - otimização da infraestrutura das redes, promovendo a qualidade técnica, a inovação e a disseminação das aplicações de Internet, sem prejuízo à abertura, à neutralidade e à natureza participativa; VII - desenvolvimento de ações e programas de capacitação para uso da Internet; VIII - promoção da cultura e da cidadania; e IX - prestação de serviços públicos de atendimento ao cidadão de forma integrada, eficiente, simplificada e por múltiplos canais de acesso.	entre sistemas e terminais diversos, inclusive entre os diferentes níveis federativos e diversos setores da sociedade; IV - adoção preferencial de tecnologias, padrões e formatos abertos e livres; V - publicidade e disseminação de dados e informações públicos, de forma aberta e estruturada; VI - otimização da infraestrutura das redes, promovendo a qualidade técnica, a inovação e a disseminação das aplicações de Internet, sem prejuízo à abertura, à neutralidade e à natureza participativa; VII - desenvolvimento de ações e programas de capacitação para uso da Internet; VIII - promoção da cultura e da cidadania; e IX - prestação de serviços públicos de atendimento ao cidadão de forma integrada, eficiente, simplificada e por múltiplos canais de acesso, inclusive remotos.	terminais diversos, inclusive entre os diferentes níveis federativos e diversos setores da sociedade; IV - adoção preferencial de tecnologias, padrões e formatos abertos e livres; V - publicidade e disseminação de dados e informações públicos, de forma aberta e estruturada; VI - otimização da infraestrutura das redes, promovendo a qualidade técnica, a inovação e a disseminação das aplicações de Internet, sem prejuízo à abertura, à neutralidade e à natureza participativa; VII - desenvolvimento de ações e programas de capacitação para uso da Internet; VIII - promoção da cultura e da cidadania; e IX - prestação de serviços públicos de atendimento ao cidadão de forma integrada, eficiente, simplificada e por múltiplos canais de acesso, inclusive remotos.	~~II -~~ III – promoção da racionalização e da interoperabilidade tecnológica dos serviços de governo eletrônico, entre os diferentes Poderes e níveis da federação, para permitir o intercâmbio de informações e a celeridade de procedimentos; ~~III -~~ IV – promoção da interoperabilidade entre sistemas e terminais diversos, inclusive entre os diferentes níveis federativos e diversos setores da sociedade; ~~IV -~~ V – adoção preferencial de tecnologias, padrões e formatos abertos e livres; ~~V -~~ VI – publicidade e disseminação de dados e informações públicos, de forma aberta e estruturada; ~~VI~~ - VII – otimização da infraestrutura das redes e estímulo à implantação de centros de armazenamento, gerenciamento e disseminação de dados no país, promovendo a qualidade técnica, a inovação e ~~disseminação~~ difusão	tecnológica dos serviços de governo eletrônico, entre os diferentes Poderes e níveis da federação, para permitir o intercâmbio de informações e a celeridade de procedimentos; IV – promoção da interoperabilidade entre sistemas e terminais diversos, inclusive entre os diferentes níveis federativos e diversos setores da sociedade; V – adoção preferencial de tecnologias, padrões e formatos abertos e livres; VI – publicidade e disseminação de dados e informações públicos, de forma aberta e estruturada; VII – otimização da infraestrutura das redes e estímulo à implantação de centros de armazenamento, gerenciamento e disseminação de dados no país, promovendo a qualidade técnica, a inovação e a difusão das aplicações de Internet, sem prejuízo à abertura, à neutralidade e à	tecnológica dos serviços de governo eletrônico, entre os diferentes Poderes e níveis da federação, para permitir o intercâmbio de informações e a celeridade de procedimentos; IV – promoção da interoperabilidade entre sistemas e terminais diversos, inclusive entre os diferentes níveis federativos e diversos setores da sociedade; V – adoção preferencial de tecnologias, padrões e formatos abertos e livres; VI – publicidade e disseminação de dados e informações públicos, de forma aberta e estruturada; VII – otimização da infraestrutura das redes e estímulo à implantação de centros de armazenamento, gerenciamento e disseminação de dados no país, promovendo a qualidade técnica, a inovação e a difusão das aplicações de Internet, sem prejuízo à abertura, à neutralidade e à	tecnológica dos serviços de governo eletrônico, entre os diferentes Poderes e âmbitos da Federação, para permitir o intercâmbio de informações e a celeridade de procedimentos; IV - promoção da interoperabilidade entre sistemas e terminais diversos, inclusive entre os diferentes âmbitos federativos e diversos setores da sociedade; V - adoção preferencial de tecnologias, padrões e formatos abertos e livres; VI - publicidade e disseminação de dados e informações públicos, de forma aberta e estruturada; VII - otimização da infraestrutura das redes e estímulo à implantação de centros de armazenamento, gerenciamento e disseminação de dados no País, promovendo a qualidade técnica, a inovação e a difusão das aplicações de internet, sem prejuízo à abertura, à neutralidade e à

				das aplicações de Internet, sem prejuízo à abertura, à neutralidade e à natureza participativa; ~~VII -~~ VIII – desenvolvimento de ações e programas de capacitação para uso da Internet; ~~VIII -~~ IX – promoção da cultura e da cidadania; e ~~IX -~~ X – prestação de serviços públicos de atendimento ao cidadão de forma integrada, eficiente, simplificada e por múltiplos canais de acesso, inclusive remotos.	natureza participativa; VIII – desenvolvimento de ações e programas de capacitação para uso da Internet; IX – promoção da cultura e da cidadania; e X – prestação de serviços públicos de atendimento ao cidadão de forma integrada, eficiente, simplificada e por múltiplos canais de acesso, inclusive remotos.	natureza participativa; VIII – desenvolvimento de ações e programas de capacitação para uso da Internet; IX – promoção da cultura e da cidadania; e X – prestação de serviços públicos de atendimento ao cidadão de forma integrada, eficiente, simplificada e por múltiplos canais de acesso, inclusive remotos.	natureza participativa; VIII - desenvolvimento de ações e programas de capacitação para uso da internet; IX - promoção da cultura e da cidadania; e X - prestação de serviços públicos de atendimento ao cidadão de forma integrada, eficiente, simplificada e por múltiplos canais de acesso, inclusive remotos.
Art. 20	Os sítios e portais de Internet de entes do Poder Público devem buscar: I - compatibilidade dos serviços de governo eletrônico com diversos terminais, sistemas operacionais e aplicativos para seu acesso; II - acessibilidade a todos os interessados, independentemente de suas capacidades físico- motoras, perceptivas, culturais e sociais, resguardados os aspectos de sigilo e restrições administrativase	As aplicações ~~Os sítios e portais~~ de Internet de entes do Poder Público devem buscar: I - compatibilidade dos serviços de governo eletrônico com diversos terminais, sistemas operacionais e aplicativos para seu acesso; II - acessibilidade a todos os interessados, independentemente de suas capacidades físico- motoras, perceptivas, culturais e sociais, resguardados os aspectos de sigilo e	As aplicações de Internet de entes do Poder Público devem buscar: I - compatibilidade dos serviços de governo eletrônico com diversos terminais, sistemas operacionaise aplicativos para seu acesso; II - acessibilidade a todos os interessados, independentemente de suas capacidades físico- motoras, perceptivas, culturais e sociais, resguardados os aspectos de sigilo e restrições administrativas e	~~Art. 20.~~ **Art. 25**. As aplicações de Internet de entes do Poder Público devem buscar: I – compatibilidade dos serviços de governo eletrônico com diversos terminais, sistemas operacionaise aplicativos para seu acesso; II – acessibilidade a todos os interessados, independentemente de suas capacidades físicomotoras, perceptivas, culturais e sociais, resguardados os aspectos de sigilo e restrições administrativas e	~~Art. 25~~. **Art. 26**. As aplicações de Internet de entes do Poder Público devem buscar: I – compatibilidade dos serviços de governo eletrônico com diversos terminais, sistemas operacionaise aplicativos para seu acesso; II – acessibilidade a todos os interessados, independentemente de suas capacidades físicomotoras, perceptivas, sensoriais, intelectuais, mentais, culturais e sociais, resguardados os aspectos de sigilo e	**Art. 26**. As aplicações de Internet de entes do Poder Público devem buscar: I – compatibilidade dos serviços de governo eletrônico com diversos terminais, sistemas operacionaise aplicativos para seu acesso; II – acessibilidade a todos os interessados, independentemente de suas capacidades físicomotoras, perceptivas, sensoriais, intelectuais, mentais, culturais e sociais, resguardados os aspectos de sigilo e	**Art. 25.** As aplicações de internet de entes do poder público devem buscar: I - compatibilidade dos serviços de governo eletrônico com diversos terminais, sistemas operacionaise aplicativos para seu acesso; II - acessibilidade a todos os interessados, independentemente de suas capacidades físico-motoras, perceptivas, sensoriais, intelectuais, mentais, culturais e sociais, resguardados os aspectos de sigilo e

	legais; III - compatibilidade tanto com a leitura humana quanto com o tratamento automatizado das informações; IV - facilidade de uso dos serviços de governo eletrônico; e V - fortalecimento da participação social nas políticas públicas.	restrições administrativas e legais; III - compatibilidade tanto com a leitura humana quanto com o tratamento automatizado das informações; IV - facilidade de uso dos serviços de governo eletrônico; e V - fortalecimento da participação social nas políticas públicas	legais; III - compatibilidade tanto com a leitura humana quanto com o tratamento automatizado das informações; IV - facilidade de uso dos serviços de governo eletrônico; e V - fortalecimento da participação social nas políticas públicas.	legais; III – compatibilidade tanto com a leitura humana quanto com o tratamento automatizado das informações; IV – facilidade de uso dos serviços de governo eletrônico; e V – fortalecimento da participação social nas políticas públicas.	restrições administrativas e legais; III – compatibilidade tanto com a leitura humana quanto com o tratamento automatizado das informações; IV – facilidade de uso dos serviços de governo eletrônico; e V – fortalecimento da participação social nas políticas públicas.	restrições administrativas e legais; III – compatibilidade tanto com a leitura humana quanto com o tratamento automatizado das informações; IV – facilidade de uso dos serviços de governo eletrônico; e V – fortalecimento da participação social nas políticas públicas.	restrições administrativas e legais; III - compatibilidade tanto com a leitura humana quanto com o tratamento automatizado das informações; IV - facilidade de uso dos serviços de governo eletrônico; e V - fortalecimento da participação social nas políticas públicas.
Art. 21	O cumprimento do dever constitucional do Estado na prestação da educação, em todos os níveis de ensino, inclui a capacitação, integrada a outras práticas educacionais, para o uso seguro, consciente e responsável da Internet como ferramenta para o exercício da cidadania, a promoção de cultura e o desenvolvimento tecnológico.	O cumprimento do dever constitucional do Estado na prestação da educação, em todosos níveis de ensino, inclui a capacitação, integrada a outras práticas educacionais, para o uso seguro, consciente e responsável da Internet como ferramenta para o exercício da cidadania, a promoção de cultura e o desenvolvimento tecnológico.	O cumprimento do dever constitucional do Estado na prestaçãoda educação, em todos os níveis de ensino, inclui a capacitação, integrada a outras práticas educacionais, para o uso seguro, conscientee responsável da Internet como ferramenta para o exercício da cidadania, a promoção de cultura e o desenvolvimento tecnológico.	~~Art. 21~~. **Art. 26**. O cumprimento do dever constitucional do Estado na prestaçãoda educação, em todos os níveis de ensino, inclui a capacitação, integrada a outras práticas educacionais, para o uso seguro, consciente e responsável da Internet como ferramenta para o exercício da cidadania, a promoção de cultura e o desenvolvimento tecnológico.	~~Art. 26~~. **Art. 27** O cumprimento do dever constitucional do Estado na prestaçãoda educação, em todos os níveis de ensino, inclui a capacitação, integrada a outras práticas educacionais, para o uso seguro, consciente e responsável da Internet como ferramenta para o exercício da cidadania, a promoção de cultura e o desenvolvimento tecnológico.	**Art. 27**. O cumprimento do dever constitucional do Estado na prestaçãoda educação, em todos os níveis de ensino, inclui a capacitação, integrada a outras práticas educacionais, para o uso seguro, consciente e responsável da Internet como ferramenta para o exercício da cidadania, a promoção de cultura e o desenvolvimento tecnológico.	**Art. 26.** O cumprimento do dever constitucional do Estado na prestaçãoda educação, em todos os níveis de ensino, inclui a capacitação, integrada a outras práticas educacionais, para o uso seguro, consciente e responsável da internet como ferramenta para o exercício da cidadania, a promoção da cultura e o desenvolvimento tecnológico.
Art. 22	As iniciativas públicas de fomento à cultura digital e de promoçãoda Internet como ferramenta social devem:	As iniciativas públicas de fomento à cultura digital e de promoção da Internet como ferramenta social devem:	As iniciativas públicas de fomento à cultura digital e de promoção da Internet como ferramenta social devem:	~~Art. 22~~. **Art. 27.** As iniciativas públicas de fomento à cultura digital e de promoção da Internet como ferramenta social	~~Art. 27.~~ **Art. 28**. As iniciativas públicas de fomento à cultura digital e de promoção da Internet como ferramenta social	**Art. 28**. As iniciativas públicas de fomento à cultura digital e de promoção da Internet como ferramenta social devem:	**Art. 27.** As iniciativas públicas de fomento à cultura digital e de promoção da internet como ferramenta social devem:

	I - promover a inclusão digital; II - buscar reduzir as desigualdades, sobretudo entre as diferentes regiões do País, no acesso às tecnologias da informação e comunicação e no seu uso; e III - fomentar a produção e circulação de conteúdo nacional.	I - promover a inclusão digital; II - buscar reduzir as desigualdades, sobretudo entre as diferentes regiões do País, no acesso às tecnologias da informação e comunicação e no seu uso; e III - fomentar a produção e circulação de conteúdo nacional.	I - promover a inclusão digital; II - buscar reduzir as desigualdades, sobretudo entre as diferentes regiões do País, no acesso às tecnologias da informação e comunicação e no seu uso; e III - fomentar a produção e circulação de conteúdo nacional.	devem: I – promover a inclusão digital; II – buscar reduzir as desigualdades, sobretudo entre as diferentes regiões do País, no acesso às tecnologias da informação e comunicação e no seu uso; e III – fomentar a produção e circulação de conteúdo nacional.	devem: I – promover a inclusão digital; II – buscar reduzir as desigualdades, sobretudo entre as diferentes regiões do País, no acesso às tecnologias da informação e comunicação e no seu uso; e III – fomentar a produção e circulação de conteúdo nacional.	I – promover a inclusão digital; II – buscar reduzir as desigualdades, sobretudo entre as diferentes regiões do País, no acesso às tecnologias da informação e comunicação e no seu uso; e III – fomentar a produção e circulação de conteúdo nacional.	I - promover a inclusão digital; II - buscar reduzir as desigualdades, sobretudo entre as diferentes regiões do País, no acesso às tecnologias da informação e comunicação e no seu uso; e III - fomentar a produção e circulação de conteúdo nacional.
Art. 23	O Estado deve, periodicamente, formular e fomentar estudos, bem como fixar metas, estratégias, planos e cronogramas referentes ao uso e desenvolvimento da Internet no País.	O Estado deve, periodicamente, formular e fomentar estudos, bem como fixar metas, estratégias, planos e cronogramas referentes ao uso e desenvolvimento da Internet no País.	O Estado deve, periodicamente, formular e fomentar estudos, bem como fixar metas, estratégias, planos e cronogramas referentes ao uso e desenvolvimento da Internet no País.	~~Art. 23.~~ **Art. 28.** O Estado deve, periodicamente, formular e fomentar estudos, bem como fixar metas, estratégias, planos e cronogramas referentes ao uso e desenvolvimento da Internet no País.	~~Art. 28~~. **Art. 29**. O Estado deve, periodicamente, formular e fomentar estudos, bem como fixar metas, estratégias, planos e cronogramas referentes ao uso e desenvolvimento da Internet no País.	**Art. 29.** O Estadodeve, periodicamente, formular e fomentar estudos, bem como fixar metas, estratégias, planos e cronogramas referentes ao uso e desenvolvimento da Internet no País	**Art. 28.** O Estado deve, periodicamente, formular e fomentar estudos, bem como fixar metas, estratégias, planos e cronogramas, referentes ao uso e desenvolvimento da internet no País.
CAPÍTULO V – DISPOSIÇÕES FINAIS							
Dispositivo	**Texto do PL no 2.126, de 2011**	**Substitutivo I (04/07/2012)**	**Substitutivo II (07/11/2012)**	**Substitutivo III (05/11/2013)**	**Substitutivo IV (11/12/2013)**	**Substitutivo IV (12/02/2014)**	**TEXTO APROVADO**
							Art. 29. O usuário teráa opção de livre escolha na utilização de programa de computador em seu terminal para exercício do controle parental de conteúdo entendidopor ele como impróprio a seus filhos menores, desde que respeitados

							os princípios desta Lei e da Lei no 8.069, de 13 de julho de 1990 - Estatuto da Criança e do Adolescente.
							Parágrafo único. Cabe ao poder público, em conjunto com os provedores de conexão e de aplicações de internete a sociedade civil, promover a educaçãoe fornecer informações sobre o uso dos programas de computador previstos no **caput**, bem como para a definição de boas práticas para a inclusão digital de crianças e adolescentes.
Art. 24	A defesa dos interesses e direitos estabelecidos nesta Lei poderá ser exercida em juízo, individual ou coletivamente, na forma da lei.	A defesa dos interesses e direitos estabelecidos nesta Lei poderá ser exercida em juízo, individual ou coletivamente, na forma da lei.	A defesa dos interesses e direitos estabelecidos nestaLei poderá serexercida em juízo, individual ou coletivamente, na forma da lei.	~~Art. 24~~. **Art. 29.** A defesa dos interessese direitos estabelecidos nestaLei poderá serexercida em juízo, individual ou coletivamente, na forma da lei.	~~Art. 29~~. **Art. 30**. A defesa dos interessese direitos estabelecidos nestaLei poderá serexercida em juízo, individual ou coletivamente, na forma da lei.	**Art. 30**. A defesa dos interesses e direitos estabelecidos nestaLei poderá serexercida em juízo, individual ou coletivamente, na forma da lei.	**Art. 30**. A defesa dos interesses e dos direitos estabelecidos nesta Lei poderá ser exercida em juízo, individual ou coletivamente, na forma da lei.
				Art. 30. Até a entrada em vigor da lei específica prevista no § 2º do art. 20, a responsabilidade do provedor de aplicações de Internet por danos decorrentes de conteúdo gerado por	~~Art. 30.~~ **Art. 31**. Até a entrada em vigor da lei específica prevista no § 2º do art. 20, a responsabilidade do provedor de aplicações de Internet por danos decorrentes de conteúdo gerado por	**Art. 31.** Até a entrada em vigor da lei específica prevista no § 2º do art. 20, a responsabilidade do provedor de aplicações de Internet por danos decorrentes de conteúdo gerado por	**Art. 31.** Até a entrada em vigor da lei específica prevista no § 2o do art. 19, a responsabilidade do provedor de aplicações de internet por danos decorrentes de conteúdo gerado por

				terceiros, quando se tratar de infração a direitos de autor ou a direitos conexos, continuará a ser disciplinada pela legislação autoral em vigor aplicável na data da entrada em vigor desta Lei.	terceiros, quando se tratar de infração a direitos de autor ou a direitos conexos, continuará a ser disciplinada pela legislação autoral em vigor aplicável na data da entrada em vigor desta Lei.	terceiros, quando se tratar de infração a direitos de autor ou a direitos conexos, continuará a ser disciplinada pela legislação autoral em vigor aplicável na data da entrada em vigor desta Lei.	terceiros, quando se tratar de infração a direitos de autor ou a direitos conexos, continuará a ser disciplinada pela legislação autoral vigente aplicável na data da entrada em vigor desta Lei.
Art. 25	Esta Lei entra em vigor sessenta dias após a data de sua publicação.	Esta Lei entra em vigor sessenta dias após a data de sua publicação.	Esta Lei entra em vigor sessenta dias após a data de suapublicação.	~~Art. 25~~. **Art. 31**. EstaLei entrará em vigor sessenta dias após a data de sua publicação oficial.	~~Art. 31.~~ **Art. 32** Esta Lei entrará em vigor sessenta dias após a data de sua publicação oficial.	**Art. 32**. Esta Lei entrará em vigor sessenta dias após a data de sua publicação oficial.	**Art. 32**. Esta Lei entra em vigor após decorridos 60 (sessenta) dias de sua publicação oficial.