

# Brazil

	2014	2015		
<b>Internet Freedom Status</b>	Free	Free	<b>Population:</b>	202.8 million
Obstacles to Access (0-25)	7	7	<b>Internet Penetration 2014:</b>	58 percent
Limits on Content (0-35)	7	6	<b>Social Media/ICT Apps Blocked:</b>	No
Violations of User Rights (0-40)	16	16	<b>Political/Social Content Blocked:</b>	No
<b>TOTAL* (0-100)</b>	<b>30</b>	<b>29</b>	<b>Bloggers/ICT Users Arrested:</b>	No
			<b>Press Freedom 2015 Status:</b>	Partly Free

\* 0=most free, 100=least free

## Key Developments: June 2014 – May 2015

- Brazil began implementing the Marco Civil Law, a so-called “Constitution for the Internet,” which was signed into law in April 2014 and ensures privacy protection for users, net neutrality, and several other positive measures. Since its passage, Marco Civil has clarified many issues related to intermediary liability and internet governance, although secondary legislation involving issues such as data privacy was still under public consultation as of mid-2015 (see **Legal Environment**).
- Strict regulations on permitted speech established in Brazilian electoral law led to the removal and censorship of political content in the lead-up to the October 2014 general elections (see **Content Removal**).
- Two bloggers were murdered during the coverage period, likely in retaliation for their online journalism, further limiting the space for free speech and investigative journalism (see **Intimidation and Harassment**).

## Introduction

After years of debate and revision, Brazil's highly discussed Marco Civil Law (Marco Civil da Internet), hailed as a civil rights framework for the internet, was signed into law by the president in April 2014. This law, which contains key provisions governing net neutrality and ensuring strong privacy protections and which further touches on regulation for intermediary liability, has received significant international attention as a new type of legislation predicated on ensuring individuals' rights as they pertain to the internet. Nevertheless, despite boasting some of the most progressive and comprehensive legislation on the rights of internet users, violence against bloggers, criminal defamation laws, restrictions on anonymity, and restrictive limits on content related to elections all continue to limit internet freedom in Brazil.

Over the year since its approval, the Marco Civil Law has begun to be implemented through new regulations and secondary legislation. The Marco Civil "safe harbor" measures for intermediaries via the official establishment of a judicial notice-and-takedown framework have led to clarification on previously murky legal questions concerning intermediary liability for internet service providers (ISPs) and search engines,<sup>1</sup> although a March 2015 ruling left media outlets open to liability for third-party content in their comments sections.<sup>2</sup> The approved legal text has, however, left regulation of some controversial issues pending. Net neutrality, provisions on storage of users' data by ISPs, and enforcement of new legal breaches are examples of matters that are to be regulated by a future presidential decree.

The regulation phase of Marco Civil has been characterized by high levels of public consultation and democratic participation—elements that were also present in the formation of the original legislation. On January 28, 2015, the Ministry of Justice initiated a public consultation intended to assess citizens' positions concerning the regulation of the internet and the enforcement and further regulation of Marco Civil. Given the massive volume of new issues being discussed, the duration of this process was extended from the original 30 days to 90; during this time, more than 1,500 internet users who signed in for the discussion accessed the online platform over 25,000 times.<sup>3</sup> Anatel, the telecommunications regulatory agency, and CGI.br, the Brazilian Internet Steering Committee also carried out specific consultations on net neutrality.<sup>4</sup>

Brazil has enacted a handful of initiatives in recent years to expand and enhance broadband and mobile phone usage. With programs ranging from tax incentives for suppliers of information and communications technology (ICT), to the installation of LAN houses (public and private internet access points) throughout the country, to policies fostering internet use in public schools, to the introduction of 4G services in April 2013, Brazil is making concerted efforts to facilitate continued investment in infrastructure and to increase the number of citizens with internet access. The latest surveys carried out by the National Institute of Geography and Statistics (IBGE) show that Brazil has

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1 Diego Spinola, "Brazil Leads Efforts in Internet Governance with its Recently Enacted "Marco Civil da Internet." What's In It for Intermediary Liability?," The Center for Internet and Society (blog), Stanford University, April 30, 2014, <http://stanford.io/1R0h4PH>.

2 Brazilian Superior Court of Justice (STJ), 1352053 / AL, March 24, 2014), <http://bit.ly/1LwWsOT>.

3 Portal Brasil, "Debate sobre Marco Civil da Internet é Prorrogado," [Debate on Marco Civil da Internet is Prorogated] March 31, 2015, accessed April 10, 2015, <http://bit.ly/1L6xase>.

4 Comitê Gestor da Internet no Brasil (CGI.Br), "CGI.br abre Chamada de Contribuições sobre temas da regulamentação do Marco Civil," news release, December 19, 2014, <http://bit.ly/1PtNH7d>; See also: Agência Nacional de Telecomunicações, "Consulta Pública nº8/2015 – Tomada de subsídios sobre a regulamentação da neutralidade de rede, prevista no Marco Civil da Internet," news release, <http://bit.ly/1yzq6sL>.

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50 percent of its population online.<sup>5</sup> Despite its notable progress in increasing ICT availability, however, Brazil still faces challenges in its quest to reach internet penetration rates commensurate with its economic wealth.

While internet penetration rates have been increasing modestly, social media interactivity and related activism are taking center stage in Brazil. Issues that have garnered particular interest in discussions on social media over the past year range from increasing public transportation fares to FIFA's initiatives for the 2014 World Cup (hosted in Brazil), to concerns over security, education, corruption, and public health. In some cases, since the emergence of the Free Fare Movement, online debate has catalyzed real-world street protests.<sup>6</sup>

Brazil still faces challenges to internet users' rights in distinct areas, such as defamation charges, violence against bloggers and journalists, and an increasing number of internet-related proceedings before domestic courts and governmental bodies. Reporters Without Borders's often ranks Brazil as one of top five deadliest countries for media personnel in Latin America.<sup>7</sup> In addition to attacks on print and broadcast journalists, two bloggers—Marcos de Barros Leopoldo Guerra and Evany José Metzker—were killed in relation to their journalistic work in Brazil between late 2014 and early 2015.<sup>8</sup>

In their transparency report, Google consistently cites Brazil as one of the countries with the highest number of content removal requests. The number of removal requests also tends to increase around elections, as Brazil's controversial electoral law prohibits defaming or insulting candidates in the months leading up to an election. During the October 2014 election, the law was used as a justification for almost two hundred lawsuits and numerous content removal requests, frequently contributing to the suppression of legitimate speech within the online environment. Although amendments and regulations introduced to the electoral law in 2013 and 2014 make it slightly less restrictive, the electoral law remains a primary obstacle to internet freedom in Brazil.

## Obstacles to Access

*Although internet and mobile penetration rates have increased steadily in Brazil, significant disparities in access, including in the ability to purchase data plans, persist, and Brazil has yet to achieve access rates commensurate with its wealth. A new initiative to introduce Internet.org, Facebook's zero-rating platform, has the potential to improve access to some online content but has also been criticized by digital rights activists who see the program as a violation of net neutrality. Marco Civil requires the Brazilian Internet Steering Committee (CGI.br), a highly respected institution of internet governance experts, be consulted in policy-making decisions related to internet governance and Marco Civil.*

## Availability and Ease of Access

Despite economic growth in recent years, Brazil's access rates remain below average compared to

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5 Luís Guilherme Barrucho, "IBGE: Metade dos brasileiros estão conectados à internet; Norte lidera em acesso por celular," *BBC Brasil*, April 29, 2015, accessed July 7, 2015, <http://bbc.in/1JijhAk>.

6 Leticia Fernandes et.al, "Protestos nesta quinta colocam segurança da Copa em teste" [Protests on Thursday put safety of World Cup to the test] *O Globo*, May 15, 2014, <http://glo.bo/1gOwk59>.

7 Reporters Without Borders, "Infographic: The Deadliest Countries for Journalists in the Americas," September 30, 2014, <http://bit.ly/145PpJz>.

8 Reporters without Borders, "Press Freedom Barometer 2014," accessed on June 21, 2015, <http://bit.ly/1V9H0hE>; Reporters without Borders, "Press Freedom Barometer 2015," accessed on June 21, 2015, <http://bit.ly/1Wj256r>.

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many North American and European countries. According to the most recent figures from the International Telecommunication Union (ITU) Brazil's internet penetration rate reached 57 percent by the end of 2014, compared to 51 percent in 2013 and 40 percent in 2009.<sup>9</sup> Various obstacles, such as high prices—a problem that extends to fixed broadband, wireless, and 3G and 4G technologies—limited availability of services, and persistent social inequalities prevent many households from accessing the internet.<sup>10</sup> A significant digital divide and disparities in infrastructure are evident between various geographical regions, as well as between urban and rural areas.

According to the 2015 data from the Brazilian Institute for Geography and Statistics, 31 million households have internet access, accounting for 49 percent of the population. Of these, 98 percent are connected by broadband and only two percent have dial-up connections.<sup>11</sup> Meanwhile, data from the ITU shows a fixed-broadband subscription penetration of around 11 percent at the end of 2014.<sup>12</sup> Mobile broadband connections have also expanded extremely rapidly over the past five years, quickly becoming a dominant means for Brazilians to access internet.<sup>13</sup> As of the fourth quarter of 2014, Akamai measured Brazil's average internet connection speed at 3.0 Mbps.<sup>14</sup>

Public paid access centers (also known as local area network, or LAN, houses) remain the primary means of internet access for low income Brazilians in many regions, providing access to roughly a quarter of those from the lowest economic brackets.<sup>15</sup> Although household access is becoming the most common means of connection for those with slightly higher incomes, LAN houses remain relevant to digital inclusion in Brazil, particularly in the country's impoverished northern regions.<sup>16</sup>

Internet growth has been slower than expected, yet mobile penetration has grown significantly over the past five years, increasing from 88 percent in 2009 to 139 percent (or around 281 million phone subscriptions) by the end of 2014.<sup>17</sup> As of April 2015, nearly 149 million users (approximately 53 percent) had 3G services.<sup>18</sup> According to the National Agency of Telecommunications (Anatel), Brazil had 6.8 million active 4G lines by the end of 2014, representing an increase of approximately 417 percent compared to December 2013.<sup>19</sup> Such advanced connections, however, are heavily concentrated in

9 International Telecommunication Union, "Percentage of Individuals using the Internet," 2009-2014, accessed June 10, 2014, <http://bit.ly/1LOr3mK>.

10 Coordination for ICT Strategies (CETIC), "No Brasil, 60% das Casas Ainda não Têm Internet," [In Brazil, 60 Percent of Households Still do Not Have Internet] July 1, 2013, <http://bit.ly/1jbuXiH>; CETIC, "Tic Domicílios e Usuários 2013," February 2014, <http://bit.ly/1NMPRjn>.

11 Empresa Brasil de Comunicação, "Acesso à internet chega a 49,4% da população brasileira," April 29, 2015, accessed July 1, 2015, <http://bit.ly/1Gih19q>.

12 International Telecommunication Union, "Fixed (wired)-broadband subscriptions," 2000-2013, accessed April 6, 2015, <http://bit.ly/1LOr3mK>.

13 "Banda ancha móvel en Latinoamérica alcanzó 32% de penetración en 2014," *Prensario Internacional*, February 3, 2015, <http://bit.ly/1NUcQL2>; See also Mediatelecom Agencia, "Banda Ancha Móvil de Brasil Crece Tres Veces Más Rápido Que El Promedio Mundial," *AE Techno*, May 29, 2015, <http://bit.ly/1V9IfNP>.

14 Akamai, *The State of the Internet Report*, Q4 2014, accessed April 6, 2015, <http://www.akamai.com/stateoftheinternet/sotivisualizations.html#stoi-map>.

15 Center for Excellence in Information and Communications Technologies (CETIC), "TIC Domicílios e Usuários 2014" [ICT Household and User 2014], *CETIC*, accessed October 19, 2015, <http://bit.ly/1GOHVZ5>.

16 CGI.Br, "ICT Households and Enterprises 2013 - Survey on the use of Information and Communication Technologies in Brazil," 2014, accessed April 8, 2015, 386, <http://bit.ly/1cRt7jV>.

17 International Telecommunication Union, "Mobile-Cellular Subscriptions," 2009-2015, accessed June 10, 2014, <http://bit.ly/1LOr3mK>.

18 Inteligência em Telecomunicações (Teleco), "Estatísticas de Celulares no Brasil," [Statistics on Mobile Phones in Brazil] accessed April 6, 2015, <http://www.teleco.com.br/ncel.asp>.

19 Ana Paula Lobo, "4G cresceu 416,55% em 2014 e chegou a 6,76 milhões de linhas ativas no Brasil," *Universo Online*, January 30, 2015, accessed July 10, 2015, <http://bit.ly/1NUFrED>.

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wealthy urban centers, such as São Paulo.<sup>20</sup>

The anticipated demand leading up to and during the June to July 2014 World Cup greatly accelerated the development of wireless hotspots and mobile technologies supporting 4G services. While national wireless networks are still small compared to other countries—as of July 2015, Anatel registered over one million hotspots within Brazilian territory<sup>21</sup>—mobile service providers worked to increase the number in the first half of 2014 as a means of accommodating anticipated increases in 3G and 4G network traffic during the World Cup.

Although the development of 4G services would appear to be a positive step in the enhancement of Brazil's technological capacity, consumer advisory entities are skeptical, contending that 4G service is expensive and is unlikely to live up to its potential until infrastructure is improved. Furthermore, 3G users will have to acquire new handsets to begin using 4G, indicating additional costs for individuals seeking to upgrade to the latest technology.<sup>22</sup> The supply of smartphones devices with 4G services has significantly increased since the technology's implementation in April 2013, but high prices and limited network still constitute challenges.

Brazil's federal government initiated a number of targeted internet expansion and improvement programs in 2010. One of these initiatives, the National Broadband Plan (Plano Nacional de Banda Larga or PNBL) aimed to triple broadband access by the end of 2014.<sup>23</sup> According to statistics from the Brazilian Telecommunications Association, nearly 172 million internet connections were facilitated by broadband in February 2015, representing an increase of 18.6 percent for that year.<sup>24</sup> Yet specialists criticized the final PNBL figures: After almost four years, only 1.8 million (7.9 percent) of the 23 million fixed broadband subscriptions in the country were contracted through PNBL. With regard to access by mobile phone, PNBL covered only 0.6 per cent (800,000) of the total 128.5 million individuals who accessed mobile internet.<sup>25</sup>

The REPNBL, a legal framework establishing tax incentives for the ICT sector passed in February 2013, complements the PNBL and is intended to encourage investment in existing telecommunications networks in order to expand and modernize broadband and mobile internet capabilities and offer internet access to the population at equitable prices, coverage and quality.<sup>26</sup> According to recent data provided by the Brazilian Ministry of Communications, by December 2015 this governmental program aims to provide 40 million households with broadband internet access at an average price of BRL 35 (US\$10).<sup>27</sup>

20 "Cidade de SP é o 5º maior mercado da América do Sul, diz Fecomercio," [City SP is the 5th Largest Market in South America, says Fecomercio] *O Globo*, January 1, 2014, <http://glo.bo/1JqLYzg>.

21 Teleco, "Hot-spots Wi-Fi no Brasil – Anatel," [Wi-Fi hotspots in Brazil] April 6, 2015, <http://www.teleco.com.br/wifi.asp>.

22 Proteste, "Brasil não Está Preparado para a Rede 4G" [Brazil is not Prepared for 4G Networks] July 15, 2013, <http://bit.ly/1LOvDBv>.

23 Ministry of Communications, "Programa Nacional de Banda Larga" [A National Plan for High Bandwidth] news release, May 25, 2015, accessed April 7, 2015, <http://bit.ly/UJ4JY6>. Although Brazil did not achieve the goal set out in the National Broadband Plan, according to ITU statistics, the country did manage to nearly double broadband access between 2009 and 2014.

24 Reuters, "Brasil soma 172 mil acessos de banda larga fixa em fevereiro," [Brazil Registered 172 Million Broadband Internet Access Points in February], *O Globo*, March 26, 2015, accessed April 7, 2015, <http://glo.bo/1ix1qzm>.

25 Luciana Bruno, "Programa de banda larga se aproxima do fim cheio de críticas," *Exame*, September 30, 2014, accessed July 10, 2015, <http://abrai/1QyPXdC>.

26 Ministério das Comunicações, "REPNLB – Início," news release, March 11, 2013, <http://bit.ly/1PtY0bv>.

27 Ministério das Comunicações, "Regime Especial de Tributação do Programa Nacional de Banda Larga para Implantação de Redes de Telecomunicações (REPNBL - Redes)," accessed July 7, 2015, <http://bit.ly/1JqnrFJ>.

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New policies have also been enacted to facilitate the sale of mobile phones within the domestic market in an attempt to expand the use of portable devices with 3G and 4G technology. In February 2013, President Dilma Rousseff signed Decree No. 7,981/2013, which amended the REPNBL and established tax incentives for the ICT sector by exempting certain categories of smartphones from taxation, namely those produced with national content, Wi-Fi connectivity, email access, and open source code for developers.<sup>28</sup> The Ministry of Communications and mobile companies have also launched projects in 2015 to improve high-speed internet access in rural areas of the country.<sup>29</sup>

On April 10, 2015, President Dilma Rousseff and Facebook CEO Mark Zuckerberg announced a partnership between the Brazilian government and Facebook aimed at increasing internet penetration by providing free access to a select group of mobile applications in low-income but highly populated areas of the country, as well as free mobile data for these applications.<sup>30</sup> The Internet.org<sup>31</sup> commercial initiative has the potential to increase access, but critics have worried that it violates net neutrality (see Media, Diversity, and Content Manipulation).

### Restrictions on Connectivity

The government does not place limits on bandwidth, nor does it impose control over telecommunications infrastructure. There have been no reported instances of the government cutting off internet connectivity during protests or social unrest. Although there was one instance in February 2015 in which a judge ordered the blocking of WhatsApp after the application failed to comply with an information request in a criminal investigation, the order was suspended and the application was never blocked (see Blocking and Filtering).

The backbone infrastructure for the internet in Brazil is mostly privately owned. In 1998, the state-owned company Embratel, which was responsible for the building of that internet backbone, was privatized and acquired by the U.S. company MCI; later, in 2003 it was acquired by the Mexican telecom American Movíl. Over the past decade, private backbone infrastructure, such as that of Embratel, GVT and Oi, has expanded in Brazil.

With the PNBL, however, Brazil intends to expand government owned infrastructure—including the underutilized optic fiber—to allow for low-cost connections. The significant increase in wired broadband subscriptions from 2010 to 2013 is at least somewhat attributable to the expansion of the state-owned backbone. Since the PNBL was initiated, over 612 Brazilian municipalities, which contain around 40 percent of the population, received service from the state-owned Telebras network.<sup>32</sup>

Internationally, undersea cables connect to Brazil from North America and Europe. Brazil has announced plans to create new undersea cable connections with South Africa and the Caribbean, as well as Portugal. Some of the impetus for building these connections is related to a desire to avoid reliance on U.S. infrastructure after revelations of pervasive U.S. spying on Brazilians in 2013.<sup>33</sup>

28 This decree modified the 2013 REPNBL. Presidência da Republica, Decree No. 7.921 de 15.02.2013, accessed February 25, 2014, <http://bit.ly/1MqgJnH>.

29 Luís Osvaldo Grossmann, "REPNBL aprova R\$ 526,4 milhões em projetos de 4G em 450 MHz," *Universo Online*, July 13, 2015, accessed July 10, 2015, <http://bit.ly/1WjakiS>.

30 Grasielle Castro, "Dilma Rousseff e Facebook anunciam parceria de internet grátis para população de baixa renda," *Brasil Post*, April 10, 2015, accessed April 18, 2015, <http://bit.ly/1jbINSc>.

31 Internet.org changed its name to Free Basics in September 2015.

32 "Brazil's Program Nacional de Banda Large," *Tech in Brazil*, October 17, 2014, <http://bit.ly/1Vb2cyi>.

33 Anna Edgerton and Jordan Robertson, "Brazil-to-Portugal Cable Shapes Up as Anti-NSA Case Study," eds. Pui-Wing Tam

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In 2004, the Brazilian Internet Steering Committee (CGI.br) launched an initiative called PTT Metro to create internet exchange points (IXPs) across Brazil, starting with their first IXP in São Paulo. As of April 2013, there were 22 IXPs in operation, covering 16 of Brazil's 26 states.<sup>34</sup> Currently, Brazil has at least 25 IXPs installed in the country.<sup>35</sup>

## ICT Market

Although there are no significant legal or economic barriers for companies competing in the ISP, mobile, or digital technology sectors, the Brazilian ICT market is highly concentrated. As of May 2015, the market share of four large private companies—Oi, NET, Telefonica, and GVT—corresponded to over 87 percent of the country's broadband market.<sup>36</sup> In January 2014, the Brazilian antitrust authorities approved the merger of Oi and Portugal Telecom into CorpCo. Once the merger is completed, CorpCo is expected to rank as the leading telecommunication company in Brazil and in Portuguese-speaking countries worldwide.<sup>37</sup>

Recent data regarding Brazil's mobile market indicates that four large private companies—Vivo, TIM, Claro, and Oi (the latter is also among the companies with the largest percentage of the broadband market)—hold 99 percent of market share.<sup>38</sup> Such high market concentration could make it very difficult for other providers such as CBTC and Nextel to compete in the mobile sector.<sup>39</sup> Despite such concentration, Brazil's mobile industry is the largest market in Latin America.<sup>40</sup>

## Regulatory Bodies

Two regulatory agencies oversee Brazilian ICTs: Anatel, the Brazilian telecommunication agency, and the Administrative Council for Economic Defense (CADE), the antitrust agency that is focused on addressing merger reviews and anticompetitive practices in telecommunications markets. Additionally, in 1995 the government created the Brazilian Internet Steering Committee (CGI.br), for the purpose of coordinating and integrating all internet service initiatives in Brazil, as well as promoting technical quality, innovation, and the dissemination of services. Provisions in Marco Civil mandate that the government consult with CGI.br, and in various instances directly involve the Committee, in the policy-making and implementation of Marco Civil processes.<sup>41</sup>

Anatel is administratively and financially independent, and not hierarchically subordinate to any government agency. Its decisions can only be appealed in court. From the Ministry of Communications,

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and James Attwood, *Bloomberg Business*, October 30, 2014, <http://bloom.bg/1gOGiDz>.

34 Internet Society, "New Study Reveals How Internet Exchange Points Spur Internet Growth in Latin America," December 3, 2013, <http://bit.ly/1Lx6mjr>.

35 Latin America and Caribbean Network Information Centre, "Internet Exchange Points en América Latina y Caribe," <http://bit.ly/1V9O79Q>.

36 Teleco, "Seção: Banda Larga—Market Share de Banda Larga no Brasil," [Section: Broadband—Market Share of Broadband in Brazil] accessed April 7, 2015, <http://bit.ly/1ix3MhE>.

37 Reuters, "Brazil competition watchdog approves Oi, Portugal Telecom merger," January 14, 2014, <http://reut.rs/1Ov29ys>.

38 Teleco, "Seção: Telefonia Celular—Operadoras de Celular," [Section: Cellular Telephony—Cellular Operators, June 2010] accessed April 7, 2015, <http://bit.ly/1ix42gx>.

39 Teleco, "Operadores de Celulare – 2T14" [Cellular Operators – 2T14] accessed April 4, 2015, <http://www.teleco.com.br/opcelular.asp>.

40 Sérgio Spagnuolo, "Brazil Launches 4G wireless service with few smartphone options," *Reuters*, April 17, 2013, <http://reut.rs/1Vb306p>.

41 Marco Civil, art.24, II.

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Anatel has inherited the powers of granting, regulating, and supervising telecommunications in Brazil, as well as much of its technical expertise and other material assets. While both Anatel and CGI.br are tasked with ensuring free, fair, and independent operation of ICTs, the General Telecommunications Act (Law No. 9.472/1997) also empowers CADE to issue decisions on matters such as price setting and collusion.<sup>42</sup> In May 2012, the new Brazilian Antitrust Act (Law No. 12.529 of November 30, 2011) came into force, introducing a pre-merger control regime in Brazil. Under this act, mergers must have pre-approval by CADE before they can proceed. The act also expands CADE's substantive enforcement power regarding cartel and unilateral business practices that affect competition as well as consumer rights and benefits.<sup>43</sup>

CGI.br, a multi-stakeholder independent organization created in 1995, counts among its members the founders of the Brazilian internet. Committee members are elected from the government, the private sector, academia, and nongovernmental organizations. The most recent elections concluded in early April 2014.<sup>44</sup> CGI.br's contributions include comprehensive and reliable annual reports on internet use in Brazil, funding for internet governance-related research, and the promotion of conferences such as the annual Brazilian Internet Governance Forum, and the international Net Mundial conference, which was organized in Brazil in 2014.<sup>45</sup> In June 2009, CGI.br declared the "Principles for the Governance and Use of the Internet," which include the goals of online freedom, privacy, human rights, and net neutrality as a base for the Brazilian information society.<sup>46</sup> Many of these principles were adopted into Brazilian law through the Marco Civil in 2014.

## Limits on Content

*Brazilian authorities do not filter or block messages online, nor do there appear to be limits on access to online content, although the country's strict electoral laws have resulted in allegations of censorship due to their impact on content critical of candidates and other public figures. While content removal requests filed before local courts continue to pose significant challenges to social media companies in Brazil, a notice-and-takedown provision in Brazil's recently passed Marco Civil Law has clarified the situation for intermediary liability. Brazilians' use of social media tools for civic action and activism continues to increase, particularly after the intense protests against the prices of public transportation (the 2013 Free Fare Movement), the FIFA World Cup in 2014, and antigovernment protests in 2015.<sup>47</sup>*

## Blocking and Filtering

In keeping with the country's push to modernize and expand access to ICTs, Brazil's digital information landscape remains largely unrestricted. There are no proven indications that Brazilian authorities

42 Maria Cecília Andrade, Ubiratan Mattos, and Pedro C. E. Vicentini, "Reforms in Brazilian Telecommunications Regulations and their Impact on Sector Competition," in *The Antitrust Review of the Americas 2009* (London: Global Competition Review, 2009), <http://bit.ly/1fRMA0S>; See also: Teleco, "Guia de Legislação" [Regulation: Legislation Guide], accessed February 25, 2014, Teleco, <http://www.teleco.com.br/legis.asp>.

43 Vinicius Marques de Carvalho, "Brazil: CADE, in *The Antitrust Review of the Americas 2014* (London: Global Competition Review, 2014), <http://bit.ly/1LG4xjL>.

44 CGI.Br, "Processo Eleitoral," [Elections Schedule] accessed July 10, 2015, <http://bit.ly/1Fg3UwF>.

45 For the outcomes of the Net Mundial 2014, see CGI, "Cadernos CGI.br | Declaração Multissetorial do NETmundial," January 28, 2015, accessed July 13, 2015, <http://bit.ly/1ROBsA9>.

46 CGI.br, *Principles for the Governance and Use of the Internet*, <http://bit.ly/1NN3Vta>.

47 Edgard Matsuki, "Em Brasília, protesto contra Dilma reúne 45 mil e proíbe vermelho," *Universo Online*, March 15, 2015, accessed July 15, 2015, <http://bit.ly/1OSFewl>.

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are filtering messages or engaging in widespread censorship online, nor do there appear to be limits on access to online content. Brazilians freely gather and disseminate information via the internet and mobile phone technologies. They have access to a wide array of national and international news sources, blogs, social networking platforms, and citizen journalism, the latter of which has proliferated over the past year. Social networks, communication apps, and video-sharing websites such as Facebook, Twitter, and YouTube are freely accessible and widely used in Brazil.

In February 2015, a judge in the Brazilian state of Piauí ordered the blocking of the messaging service WhatsApp—the most popular app in Brazil at the time. The presiding judge in that case had previously sent an order to WhatsApp, which Facebook bought in October 2014, to disclose information relevant to a police investigation of child pornography in the state. After receiving no answer, the judge, referring to Articles 11 and 12 of Marco Civil, which outline a series of sanctions for providers that violate Brazilian Law or rights to privacy, ordered the service suspended nationwide. Although Marco Civil mentions “temporary suspension of activities that are in violation of the law” as one of the possible sanction against providers, many digital rights specialists argue that the judge’s decision was a clear misinterpretation of the law.<sup>48</sup> This attempt to enforce Brazilian jurisdiction backfired, and millions of users spent days under the fear that one of the country’s leading messaging services would be completely blocked. The decision was reversed after a few days of national uproar and WhatsApp was never actually suspended, but the event hints at possible unforeseen effects of Marco Civil enforcement.

Another blocking case extensively reported in Brazilian media channels was related to a block on Secret, an application used to share messages anonymously among friends. Since its launch in Brazil, Secret was associated with practices of cyberbullying, privacy violations, posting of porn without consent, and defamation and libel, which generated broad public criticism of the application.<sup>49</sup> In August 2014, a Brazilian court issued an interim order for the suspension of the application Secret in the country based on the argument that internet users should not be able to rely on anonymity to infringe privacy and intimacy of third parties.<sup>50</sup> After that episode, Secret decided to cease operations in Brazil in March 2015, by removing its application from Google Play and the Apple Store.

## Content Removal

Brazilian law continues to limit certain content deemed to be injurious to electoral candidates in the run-up to elections, as well as content that is deemed to be racist or discriminatory. These restrictions on content resulted in the state issuing hundreds of content-removal requests in late-2014 and early-2015. During this same period, a number of court rulings, based on the Marco Civil Law, set precedents on intermediary liability, ruling that intermediaries could not be required to prescreen content but they could be held liable for delays in complying with court orders for content removal. In contrast to these protections for ISPs established during the coverage period, in March 2015, the court ruled that news sites could be held accountable for third party comments on their sites, although as of mid-2015, there were no cases against media companies based on third party com-

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48 Guilherme Tagiaroli e Larissa Leiros Baroni, “Especialistas classificam suspensão do WhatsApp como ‘ilegal e autoritária’” [Specialists characterize the suspension of Whatsapp as illegal and authoritarian,” *Universo Online*, February 25, 2015, <http://bit.ly/1YDnM31>.

49 “App ‘Secret’, de posts anônimos, chega ao fim, anuncia criador,” *G1 (blog)*, *O Globo*, April 30, 2015, accessed July 13, 2015, <http://glo.bo/1QSNFrL>.

50 “Apple cumpre ordem judicial e remove Secret da App Store,” *Olhar Digital (blog)*, *Universo Online*, August 21, 2014, <http://bit.ly/1KBFF7Z>.

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ments.

State-initiated censorship continues to be an ongoing problem in Brazil in the context of elections. Brazil's highly controversial Electoral Act of 1997 restricts content that could be viewed as injurious to a candidate, prohibiting such material from publication for three months prior to election day. The law also prohibits campaigning more than three months prior to election day or within 48 hours before or after the election. Although the law historically pertained primarily to offline materials, a 2009 amendment extended its application to the internet and social media platforms, placing restrictions on the online publication of materials pertaining to political candidates.<sup>51</sup>

Journalists and bloggers who disregard the electoral law are subject to fines and potentially even prison sentences, and electoral courts issue numerous removal requests in order to take down articles or posts that may infringe the law. The electoral law has faced intense scrutiny and public debate particularly because its broad terms harbor the potential to constrain freedom of expression both online and offline. Due to this criticism regarding its restrictions to offline and online speech, Brazil's Electoral Law was amended in September 2013 to allow for political campaigning on Twitter. However, the law was again amended in December 2013, creating new and specific restrictions to online content concerning candidates and political parties.<sup>52</sup>

During the 2014 presidential elections, the Superior Electoral Court issued guidelines allowing candidates, parties or coalitions to campaign on their own websites within three months of election day, provided that these websites were reported to the electoral authorities and hosted on servers based in the country.<sup>53</sup> Candidates and parties could also create political campaigns on blogs, social networking websites, and instant messaging platforms. According to Guideline No. 23.404/2014, any kind of paid advertising, on corporate sites, with or without profit, and on official or hosted pages by government bodies is prohibited.<sup>54</sup>

According to the Brazilian Association of Investigative Journalism, 192 lawsuits were filed before electoral courts in several states for suspension or removal of political and electoral related content in 2013 and 2014, with most of the requests being filed around the October 2014 elections.<sup>55</sup> For example, in September 2014, a provision of Article 57-D of the recently amended Electoral Act was employed to limit online speech in the Electoral State Court of Sergipe. Several political parties aligned with Eduardo Amorim's candidacy for the state governorship demanded that anonymous postings against him on Facebook be taken down and a fake profile be excluded from the social network. The Court granted Amorim's request and based its decision on Article 57-D of the Electoral Law, claiming that the upkeep of such posts would damage the candidate's reputation.<sup>56</sup> In another case, a court ordered the removal of satirical videos from the well-known comedy group Porta dos Fundos because the videos poked fun at the gubernatorial candidate Anthony Garotinho. The videos were only restored to the comedy group's YouTube channel after the candidate lost in the first round

51 Superior Electoral Court, "TSE Restabelece Multa Contra Deputado Estadual por Sao Paulo por Propaganda Irregular na Internet," [TSE Re-Impose Fines Against a State Representative in Sao Paulo by Irregular Internet Campaign] press release, November 11, 2013, <http://bit.ly/1Ms4AP3>.

52 Such restrictions include liability of servers with regard to early online campaigning; unsubscribing mechanisms for electoral advertising; elevation of fines due to violations of online electoral conduct; and the criminalization of hiring people in order to perform online bashing of candidates. Presidency of the Republic, Civil House for Legal Affairs, Law No. 12.891 of 2013, <http://bit.ly/1my5W1I>.

53 Superior Electoral Court, Guideline No. 23.404/2014, April 3, 2014, accessed June 10, 2015, <http://bit.ly/1mJwwUn>.

54 Superior Electoral Court, Guideline No. 23.404/2014.

55 Associação Brasileira de Jornalismo Investigativo, Infographics, <http://www.ctrlx.org.br/#/infografico>.

56 Tribunal de Justiça Eleitoral do Recife, "Decisão," [Decision] September 5, 2014, <http://bit.ly/1OwhleO>.

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of voting.<sup>57</sup>

Brazilian law also limits certain content through legislation against cybercrimes. The Azeredo Law (Lei Azeredo, Law #12.735/2012), which pertains to regulation of online content, was approved in April 2013 after major changes to its original, highly controversial proposal. In its final form, the Azeredo Law establishes the creation of specialized teams and sectors structured by the judicial police to combat cybercrimes and to take down racist content (other defamatory content is not directly covered by the bill). Takedowns require judicial notice, but can be issued before police investigations have begun.<sup>58</sup>

Intermediary liability issues have been settled by the establishment of consistent case law and by new legislation on the matter, with legal certainty created by the Marco Civil Law. Article 18 states: "Providers of internet connection shall not be liable for civil damages resulting from content created by third parties."<sup>59</sup> Meanwhile, Article 19 establishes that application providers will only be held liable for civil damages resulting from content generated by third parties should they refuse to follow a court order requesting specific removal of said content.<sup>60</sup> In recent years, case law was slowly built around a similar understanding, with the Superior Court of Justice (STJ) ruling towards a judicial notice and takedown model.<sup>61</sup> Exceptions are made for copyright and "revenge porn," sexually explicit photos or videos distributed without the consent of the individual appearing in them; in these cases a court order is not required for content removal, and the user's notification alone is enough to make the intermediary liable should it refuse to make the content unavailable in a short time.<sup>62</sup>

Although ISPs are not responsible for prescreening content, between mid-2014 to early 2015, the Brazilian STJ consolidated a number of precedents ruling that intermediaries are liable for complying with court-issued notice-and-takedown requests within 24 hours.<sup>63</sup> Accordingly, in a June 2014 case, the STJ issued a decision obliging Google to compensate a user on Orkut (Google's former social media site) for moral damages, since the company did not immediately comply with an order to remove defamatory content related to false accounts in her name.<sup>64</sup> Although legislation to create a so-called "right to be forgotten," by obliging search engines to remove links to personal data, has been introduced in the Brazilian legislature, it has not yet been brought up for debate.<sup>65</sup>

57 "Justiça Eleitoral libera vídeos do grupo Porta dos Fundos que citam Garotinho," *Portal Imprensa*, October 16, 2014, <http://bit.ly/1DfOvXN>.

58 Rafaella Torres, "Aprovação de Leis sobre Crimes Cibernéticos" [Approval of Cybercrime Laws], *A2K Brazil* (blog), January 17, 2013, <http://bit.ly/1QAGF0L>.

59 Law 12.965, "Marco Civil da Internet", art. 18: The provider of connection to internet shall not be liable for civil damages resulting from content generated by third parties.

60 Law 12.965, "Marco Civil da Internet", art. 19: In order to ensure freedom of expression and prevent censorship, the provider of internet applications can only be subject to civil liability for damages resulting from content generated by third parties if, after an specific court order, it does not take any steps to, within the framework of their service and within time stated in the order, make unavailable the content that was identified as being unlawful, unless otherwise provided by law.

61 The case law evolved to a notice and takedown model, which means internet providers and content providers were requested to remove the alleged infringing or offensive material within 24 hours upon the judicial order. See for instance STJ, *Educacional/Yahoo*, REsp 1.338.214/MT, decision as of November 13, 2013; STJ, *Sasaki/Google*, REsp 1.338.214/MT, decision as of December 12, 2012.

62 Pereira de Souza, Carlos Affonso, "Responsabilidade civil dos provedores de acesso e de aplicações de Internet: Evolução jurisprudencial e os impactos da Lei Nº 12.965," IN: Lemos, Leite, Marco Civil da Internet, Atlas, 2014.

63 Brazilian Superior Court of Justice (STJ), Appeals to the Superior Court No. 1501187 / RJ (December 16, 2014), 1337990 / SP (August 21 2014); Interlocutory Appeals No. 484995 / RJ, 1349961 / MG (September 16, 2014), 305681 / RJ (September 4, 2009). See: <http://bit.ly/1NQa7Tg>

64 Superior Court of Justice (Superior Tribunal de Justiça), Appeal to the Superior Court No. 1337990 / SP (August 21, 2014). See: <http://bit.ly/1NQa7Tg>

65 Senado Federal, "Conselho de Comunicação Social defende sigilo da fonte jornalística," news release, September 14, 2009, <http://bit.ly/1iO7y71>; See also "Direito ao esquecimento: o mundo todo precise esquecer?" Instituto de Tecnologia e Sociedade,

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Conversely, the STJ ruled in March 2015 that news providers are liable for not preventively controlling offensive posts by its users. The judges held that, unlike technology companies such as Google and Microsoft, news portals have a duty to ensure that their platforms are not used to disseminate defamatory content or violations of the privacy and intimacy of others, since their primary activity is providing accurate information to the public.<sup>66</sup> Although there were no charges against media organizations based on this precedent as of mid-2015, the ruling may encourage online newspapers and other media to preemptively delete their comments sections to avoid liability.

Brazilian requests for content removal issued to Twitter multiplied more than threefold in July to December 2014 compared to the previous period. During this six-month period, Twitter received 27 removal requests from Brazilian courts, 18 of which were related to the general elections in October.<sup>67</sup> The company withheld a total of 101 tweets and 5 accounts from view in Brazil.<sup>68</sup> With the exception of emergency situations or legal prohibitions related to a specific case, Twitter notifies users of requests for account information and restores access whenever it is not forbidden from doing so. Twitter un-withheld 80 tweets and 2 accounts previously found to be in violation of Brazilian election law following the presidential election.

## Media, Diversity, and Content Manipulation

Brazilians freely gather and disseminate information via the internet and mobile phone technologies, and they have access to a wide array of national and international news sources. As of June 2014, over 70 million Brazilians had Facebook accounts, representing one third of all Latin American Facebook users and placing Brazil just behind the United States and India in terms of Facebook adoption rates.<sup>69</sup> Brazil is also among the five largest Twitter markets in the world, with the number of users in the country expanding by 26 percent during the last year.<sup>70</sup> Blogs and social networking platforms have become important instruments for citizen journalists and others to access information, defend civil rights, and express political positions.

Although self-censorship is less pervasive in Brazil than in some neighboring countries, the ongoing cases of threats, intimidation, and violence against online journalists and independent bloggers in different regions across the country (see Intimidation and Violence), may indicate that some pockets of self-censorship exist in the country.<sup>71</sup>

The Brazilian federal government has been increasingly engaged in making a stand against human

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*Brasil Post* (blog), August 8, 2015, <http://bit.ly/1Hofb7Y>; See also the Proposed Bill: Câmara dos Deputados, Projeto de Lei 7881/2014, <http://bit.ly/1QAIH8>.

66 Brazilian Superior Court of Justice (STJ), Appeal to the Superior Court No. 1352053 / AL (March 24, 2014), <http://bit.ly/1MP9esA>

67 Twitter, "Removal requests," *Transparency Report*, July-December 2014, accessed on July 15, 2015, <https://transparency.twitter.com/removal-requests/2014/jul-dec>.

68 Twitter, "Withheld Content," *Transparency Report*, July-December 2012, accessed on April 9, 2015, <https://transparency.twitter.com/removal-requests-ttr2>.

69 Statista, "Number of Facebook users in Brazil from 2012 to 2018 (in millions)," June 2014, accessed April 2015, <http://bit.ly/1KE9IT2>; See also: Statista, "Leading countries based on number of Facebook users as of May 2014 (in millions)," July 2014, accessed April 2015, <http://bit.ly/1ndsdhM>.

70 "Twitter tem aumento de 25% no número de usuários no Brasil," ["Number of Twitter users increases 25% in Brazil"] *Folha de São Paulo*, December, 2014, accessed April 2015, <http://bit.ly/1v92uck>.

71 John Otis, "Bloggers Targeted as Murders Spike in Brazil," *Attacks on Press: Journalism on the Front Lines 2012*, Committee to Protect Journalists, February, 14, 2013, <http://bit.ly/1LzzPt0>; Jana Sampaio and Julia Cople, "Jornalistas cobram menos violência e mais recursos," Departamento de Comunicação Social, February 7, 2014, accessed on July 15, 2015, <http://bit.ly/1ML96v3>.

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rights violations online. Within the framework of Marco Civil, the Brazilian Presidency announced on April 7, 2015, the creation of the Pact for Combatting Human Rights Violation Online, comprising a series of commitments intended to promote a safe and discrimination-free virtual environment. This initiative has been supported by Google, Facebook and Twitter, and also includes the institution of an ombudsman for online human rights violations and the launching of a website called Humaniza Redes (Humanized Networks), which will receive complaints on human rights violations and offer internet users instructions on how to safeguard themselves from cyber-violence. The law also has some provisions allowing for the removal of racist or other discriminatory content, which may raise difficult issues about the balance between free speech and combating harassment (see Content Removal).<sup>72</sup>

The Marco Civil Law guarantees net neutrality in Brazil. The National Telecommunications Agency (Anatel) initiated a public consultation in December 2014 on the implementation of net neutrality regulation,<sup>73</sup> as did the influential private research and digital rights entity CGI.br.<sup>74</sup> There is significant debate about what the strong protections of net neutrality in the Marco Civil Law mean in relation to the implementation of zero-rating programs, such as Internet.org, the Facebook initiative that the company is planning to introduce in Brazil.

Facebook claims that Internet.org is an effort to increase global access to the internet,<sup>75</sup> but critics have raised concerns that the commercial initiative would provide free access only to a limited number of online applications, including Facebook, rather than to the internet as a whole, with the potential for some users to confuse access with Facebook to access with the internet. Critics argue that Internet.org, and zero-rating programs in general, violate net neutrality principles and stifle competition and innovation by creating “walled gardens” that confine low-income users to certain areas of the internet, giving birth to “cyberspace segregation,”<sup>76</sup> and concentrating Facebook’s market share, perhaps to the point of closing out opportunities for other competitors in the future.<sup>77</sup> In response to critics, Mark Zuckerberg has argued that limited access is better than no access,<sup>78</sup> and in early May 2015, announced the initiative would be open to any app developer.<sup>79</sup>

**Digital Activism**

Social media platforms such as Facebook and Twitter continue to play a central role in civic activism in Brazil. Social media has been instrumental to political movements such as the demonstrations against the federal government, which took place in March and April 2015.<sup>80</sup> Use of social networks

72 Portal Brasil, “Governo lança Pacto de Enfrentamento às Violações de Direitos Humanos” [“Federal Government Announces Pact for Combatting Human Rights Violation Online”] news release, April 7, 2015, accessed April 10, 2015, <http://bit.ly/1GPpWUO>.

73 Agência Nacional de Telecomunicações, “Consulta Pública n°8/2015 – Tomada de subsídios sobre a regulamentação da neutralidade de rede, prevista no Marco Civil da Internet.”

74 CGI.Br, “CGI.br abre Chamada de Contribuições sobre temas da regulamentação do Marco Civil.”

75 Internet.org, “About,” <http://www.internet.org/about/>.

76 Pedro Ramos, “Dilma, Zuckerberg e o fim do Facebook grátis na Claro,” *Brasil Post* (blog), April 14, 2015, accessed April 18, 2015, <http://bit.ly/1E6WxXh>.

77 Pedro Ramos, “Dilma, Zuckerberg e o fim do Facebook grátis na Claro.”

78 Tatiana de Mello Dias, “Mark Zuckerberg rebate críticas ao Internet.org: ‘É melhor ter algum acesso à internet do que nenhum,’” April 17, 2015, accessed April 18, 2015, <http://bit.ly/1Vbk2Xo>.

79 Mario Trujillo, “Zuckerberg blasts ‘extreme definition’ of net neutrality,” *The Hill*, May 4, 2015, <http://bit.ly/1L8xwyl>; “Facebook opens up Internet.org amidst net neutrality row,” *BBC News*, May 4, 2015, <http://bbc.in/1bsnF5L>.

80 Felipe Patur and Teresa Perosa, “1 milhão confirmam presença em atos pelo impeachment de Dilma,” [“One million persons join demanding Dilma Rousseff’s impeachment”] *Época* February 21, 2015, accessed April 10, 2015, <http://glo.bo/1KEd1UD>.

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is also significant among minorities and civil rights movements.

Following a historically tight presidential run in 2014, general frustration over the economy and a massive corruption scandal involving the state-run oil company contributed to widespread discontent with the government by late 2014. Catalyzed by social media, massive demonstrations in early 2015 brought over a million citizens to the streets to express their political positions, both for and against the government in office. Facebook, Twitter, WhatsApp and Instagram were widely used to organize protests in major Brazilian cities in March and April 2015.<sup>81</sup>

Citizen activism, however, is not merely limited to organizing outside the government. Citizens increasingly engage with formal government platforms to express opinions and shape the design and implementation of legislation. A number of open and transparent government initiatives provide citizen activists with important tools and information for campaigns, as well as formal avenues for direct democratic participation and input in government decisions affecting all areas of life, including information and technology issues. Some examples include the open, participatory legislative process leading to the adoption of Marco Civil Law in 2014 and the ongoing initiatives of public consultations set up by the Department of Justice to design Marco Civil's regulation through a governmental decree.<sup>82</sup> Brazil is also a founding member of the Open Government Partnership—a global effort to increase transparency and accountability—and, as part of this effort, has significantly improved standards of access to public information in recent years, establishing a system whereby citizens are entitled to request information from an electronic system.<sup>83</sup>

## Violations of User Rights

*Brazil's Marco Civil Law established a framework for internet users' rights, but other legal provisions – such as criminal defamation laws and laws restricting certain speech during elections – all contribute to a legal environment where individuals can face prosecutions for what they write online. High levels of violence in Brazil's urban centers, coupled with impunity for many crimes, have contributed to one of the highest rates of violence against journalists in the region. During the coverage period, two bloggers and four other journalists were killed.*

## Legal Environment

Although Brazil adopted some of the most progressive legislation in the world related to internet governance with the enactment of Marco Civil, several competing legal provisions, such as laws criminalizing defamation and blasphemy and restricting speech around elections, remain as obstacles to users' rights online (see Content Removal).

The Brazilian Federal Constitution forbids anonymity but protects freedom of the press and freedom of speech, including cultural and religious expression.<sup>84</sup> Brazil made noteworthy progress in estab-

81 David Biller, "More Than a Million Hit Brazil Streets to Protest Rousseff" eds. Philip Sanders and Harry Maurer, *Bloomberg Business*, March 15, 2015, accessed April 10, 2015, <http://bloom.bg/1xpWGwy>.

82 Pensando Direito, "Marco Civil Da Internet O Que É?" accessed July 10, 2015, <http://pensando.mj.gov.br/marcocivil/>.

83 From May 2012 to January 2015, the Government received 240,414 requests for information, most of which concerned public administration, finances and economy. From these, the government responded to 239,474 queries, granting the requested information in 175,203. Open Government Partnership Brazil, *Mecanismo Independente de Avaliação: Relatório de Progresso 2011-2013*, September-October 2013, 54, <http://bit.ly/1VcOkDM>.

84 Constituição Federal de 1988, an English translation of the Constitution is available at: <http://bit.ly/1iOdLz>.

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lishing a foundation for internet user rights with the passage of the Marco Civil Law, a so-called constitution for the internet, which was signed into law in April 2014.<sup>85</sup> The groundbreaking legislation establishes the rights to freedom of expression online, offers detailed privacy protections pertaining to personal data, guarantees net neutrality and functionality, and promises to uphold the participatory nature of the internet.<sup>86</sup> Nevertheless, Brazil continued to see instances of local officials bringing charges of defamation—which is a crime punishable by six months to two years in prison or a fine according to the penal code—against bloggers and online journalists.<sup>87</sup> In October 2014, ARTICLE 19, a civil society organization, launched a campaign in Brazil to press for the decriminalization of defamation.<sup>88</sup>

Brazil has a long history of laws that combat discriminatory speech. Although people are rarely charged or imprisoned for racist or discriminatory speech, Brazilian law establishes penalties ranging from two to five years in prison for practicing or inciting discrimination based on race, ethnicity or religion in the media or in other publications.<sup>89</sup> The Azeredo Law, passed in 2012, extended these penalties to online speech.<sup>90</sup> The Criminal Code further outlines punishment for vilifying or mocking religion, with penalties ranging from one month to one year in prison, although it is unclear whether these penalties have been applied online. In July 2015 representatives introduced a legislative initiative to Congress that seeks to increase the penalty for vilifying religion to four to eight years in prison.<sup>91</sup>

In April 2013, a Brazilian cybercrime law commonly referred to as the “Carolina Dieckmann Law” came into force. The law’s adopted nickname comes from actress Carolina Dieckmann due to the fact that the legislation took center stage after nude photos of her were distributed online in early 2012.<sup>92</sup> The law criminalizes breaches of digital privacy such as computer intrusion, the “installation of vulnerabilities,” and editing, obtaining, or deleting information—including credit card numbers—without authorization. The actions of distribution, sale, production, or offer of programs or devices meant to facilitate the aforementioned actions, or to interrupt ICT services, are also categorized as crimes. Associated punishments vary from fines to up to five years imprisonment.

## Prosecutions and Detentions for Online Activities

Several recent court cases concerning defamation may pose threats to freedom of expression online.<sup>93</sup> In April 2014, the blogger Paulo Henrique Amorim was convicted of defamation for insulting

85 Câmara dos Deputados, Projeto de Lei e Outras Proposições, [Draft Laws and Other Propositions] Project de Lei 2126/2011, accessed February 14, 2014, <http://bit.ly/1fjr8Qv>.

86 Presidency of the Republic of Brazil, Civil House, Legal Affairs Subsection, Text of Law No. 12.965 (in print only), Government of Brazil, April 23, 2014. English version by Carolina Rossini, distributed by CGI.Br at the end of Net Mundial event, available at <http://bit.ly/1jerSOK>.

87 Legal Decree 2848/40, Penal Code art. 331, <http://bit.ly/1OV4Vwj>.

88 To support the campaign, ARTICLE 19 has produced a mini-documentary called “I, the colonel in myself”. The film features interviews with people who have been prosecuted for defamation, as well as experts on the subject. Article 19, “Brazil: Article 19 launches campaign to decriminalize defamation,” press release, October 29, 2014, <http://bit.ly/1FwsNnz>.

89 Law N° 9.459, May 13, 1997, art. 20, [http://www.planalto.gov.br/ccivil\\_03/LEIS/L9459.htm](http://www.planalto.gov.br/ccivil_03/LEIS/L9459.htm).

90 Law N° 12.735, November 30, 2012, art.1, [http://www.planalto.gov.br/CCIVIL\\_03/ Ato2011-2014/2012/Lei/L12735.htm](http://www.planalto.gov.br/CCIVIL_03/ Ato2011-2014/2012/Lei/L12735.htm).

91 Fernando Diniz, “Após Parada Gay, “Cristofobia” pode virar crime hediondo,” *terra*, June 8, 2015, <http://bit.ly/1cIADW>.

92 “After 13 Years, Brazil approves two cybercrime laws at once,” *Linha Defensiva*, November 7, 2012, <http://bit.ly/1NWuCO4>.

93 There are a number of additional cases of defamation or other charges against online journalists. For example, the case against blogger Ricardo Antunes, charged in 2012 with extortion and imprisoned for five months, is still ongoing. In another case that occurred after the coverage period, the blogger Paulo Cezar de Andrade Prado was arrested and jailed on charges of defamation.

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Merval Pereira, a journalist for *O Globo*, whom he called a “bandit journalist.” Although originally convicted to serve jail time, Amorim’s jail sentence was commuted in favor of a fine of ten times the minimum salary to be paid to a public or private social impact institution. Amorim’s lawyer stated that her client will appeal the decision.<sup>94</sup>

In another defamation case in September 2014, however, a federal judge dismissed a defamation charge against Richard Noblat, a columnist for the *O Globo* newspaper, citing free expression concerns in his decision. The Public Ministry had charged Richard Noblat with racism and defamation for an article published on *O Globo’s* site in which he criticized Joaquim Barbosa, the president of the Supreme Federal Tribunal at that time, and implied that Barbosa only attained his job because he was black.<sup>95</sup>

In a previous, more highly publicized case, defamation charges were filed against journalist and blogger José Cristian Góes in December 2012 for a fictional story about the confession of a corrupt colonel that he posted on his blog *Infonet*. The charges, which were both civil and criminal, were initiated by high court judge Edson Ulisses, who claimed that both he and his brother were subject to defamation in the story. It is worth noting that while the story in question mocks political corruption in Brazil, it does not name or describe any particular person.<sup>96</sup> In July 2013, the author was sentenced to seven months and sixteen days in prison. The sentence has since been converted to community service. Góes was also sentenced to pay damages to the judge in a separate civil case, in November 28, 2014.<sup>97</sup> He ultimately decided to shut down his blog on July 22, 2014.

Brazilian courts have also banned individuals from posting online in certain cases. In March 2013, the Civil Court of São Paulo prohibited the activist Ricardo Fraga de Oliveira from posting anything on Facebook about the construction of a real estate development in Vila Mariana, São Paulo, after the real estate company in charge of the development filed a lawsuit against Fraga. Prior to the ruling, Fraga had organized several peaceful protests and a petition against the development. In February 2015, the free speech organization ARTICLE 19 organized a campaign against the continued infringements on Fraga’s right to freedom of expression online.<sup>98</sup> Under slightly different circumstances, the blogger Ricardo Atunes has been prohibited from writing about the criminal case in which he was charged with extortion in 2012, on his social media accounts. The case is still ongoing.<sup>99</sup>

94 “Paulo Henrique Amorim é condenado por injúria a jornalista,” *Folha de São Paulo*, April 29, 2014, accessed on June 16, 2015, <http://bit.ly/1OV6sSR>.

95 “Joaquim Barbosa perde ação contra o jornalista Ricardo Noblat por injúria racial,” *Portal Imprensa*, September 22, 2014, accessed June 16, 2015, <http://bit.ly/1QAPJTa>; see also Vinícius Lisbôa, “MPF denuncia Noblat por racismo e injúria contra Joaquim Barbosa,” *EBC Agência Brasil*, March 26, 2014, accessed June 16, 2015, <http://bit.ly/1OV7n CZ>.

96 Isabela Fraga, “Brazilian prosecutor files criminal charges against journalist for writing fictional blog post,” *Journalism in the Americas Blog*, Knight Center for Journalism at the University of Texas at Austin, February 15, 2013, <http://bit.ly/1G4XrPZ>; See also: Reporters Without Borders, “Journalist gets ‘Judicially Insane’ Jail Term for Fictional Short Story,” July 8, 2013, <http://bit.ly/12SU1Pr>.

97 Igor Waltz, “Justice sentences journalist again for publishing a fictional short story,” *Associação Brasileira de Imprensa*, December 3, 2014, <http://bit.ly/1LzGROW>; See also: Rafael Spuldar, “Brazilian writer convicted for fictional story,” *Index on Censorship*, July 15, 2013, <http://bit.ly/1Kxn3sR>.

98 Paula Martins, “Protest Letter to UN-Ricardo Fraga’s Case,” *Article 19*, April 22, 2014, accessed June 16, 2015, <http://bit.ly/1VcR6cj>; see also “2 anos de censura digital,” *Article 19*, February 20, 2015, accessed June 16, 2015, <http://artigo19.org/blog/2-anos-de-censura-digital/>.

99 Associação Brasileira de Jornalismo Investigativo, “Posição da Abraji em relação ao caso do blogueiro Ricardo Antunes, do Recife (PE),” news release, October 29, 2013, <http://bit.ly/1Vbko04>.

## Surveillance, Privacy, and Anonymity

The Brazilian Constitution explicitly forbids anonymity.<sup>100</sup> Although in practice, anonymous speech online is common, judges have occasionally cited the constitution as a basis for limiting particular instances of anonymous speech. For example, a judge in the state court of Espírito Santo cited the constitutional prohibition of anonymity when he issued an injunction on the popular mobile application Secret, which allowed users to post content anonymously. Other judges, however, have held that anonymous posts online are protected as long as it is possible to technically trace the speech through IP addresses and have upheld anonymous speech on the grounds that it is important for free expression and privacy. Secret was ruled permissible in September 2014 based on this argument,<sup>101</sup> yet its developer ceased the application's operations in Brazil.<sup>102</sup>

Several legal provisions also place restrictions on anonymity. Real-name registration is required in order to purchase mobile phones or open private internet connections, although the use of pseudonyms in discussion forums is a common. Lawmakers have urged further restrictions on anonymity in regard to public access points such as LAN houses, with the suggestion that internet communications be recorded in order to prevent cybercrimes. Legislation of this kind already exists in São Paulo<sup>103</sup> and Rio de Janeiro,<sup>104</sup> and a bill under debate in the Senate (as of June 2015) would require LAN houses to register all users and keep a directory of individual identification for an unspecified amount of time. Perhaps the most restrictive legislative proposal is one introduced in July 2015, which would amend Marco Civil to require users to register their real name and national registration number in order to post on social media or blogs.<sup>105</sup> Although there is little chance that this legal project will be approved, the proposal demonstrates the significant tensions surrounding anonymity in Brazil.

Brazilian electoral law has also been used to request data from anonymous users posting critical comments about candidates. In the State of Rondônia, for example, in July 2014, an electoral judge demanded that Facebook provide an anonymous profile's personal data in order to identify the user who was posting negative comments and images of the Confúcio Moura, a candidate for governor.<sup>106</sup> Although it is not known whether Facebook complied with this specific request, Facebook's Transparency Report states that between July and December 2014, the company received requests for data related to 1,967 separate accounts and produced data for 34 percent of these requests. Google and Twitter consistently rank Brazil in the top ten countries worldwide in number of requests for user data, following the United States and Japan.

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100 Constituição Federal de 1988, art. 5, <http://bit.ly/1FieR0R>.

101 The judge cites two sections of the Brazilian Constitution: Constituição Federal de 1988, ch. 1, art. 5, sec. IV: The expression of thought is free, anonymity being forbidden; and sec. X: Intimacy, private life, and the honor and image of persons are inviolable, ensuring the right to compensation for material or moral damages resulting from their violation, <http://bit.ly/1FieR0R>; Justiça libera o aplicativo Secret no Brasil a pedido do Google," *Tecnologia e Games* (blog), *O Globo*, September 12, 2014, <http://glo.bo/1Kxp6NK>; and Eva Galperin, "Too Many Secrets: A Court Ruling Spells Bad News for Anonymous Speech in Brazil," *DeepLinks* (blog), Electronic Frontier Foundation, August 26, 2014, <http://bit.ly/1NP5SW9>.

102 "App 'Secret', de posts anônimos, chega ao fim, anuncia criador."

103 Law No. 12.228/2006, January 11, 2006, <http://governo-sp.jusbrasil.com.br/legislacao/133832/lei-12228-06>.

104 Rio de Janeiro Municipal Decree No. 36.207, September 12, 2012: [http://smaonline.rio.rj.gov.br/legis\\_consulta/42990Dec%2036207\\_2012.pdf](http://smaonline.rio.rj.gov.br/legis_consulta/42990Dec%2036207_2012.pdf).

105 Paulo Higa, "Fim do anonimato: projeto de lei quer exigir CPF para comentar em blogs e redes sociais," [End of anonymity: legal project seeks to require CPF in order to comment on blogs and on social media networks] *Tecnoblog* July 30, 2015, <http://bit.ly/1MWF9Vh>.

106 "Justiça de Rondônia manda tirar do ar perfil falso no Facebook que agredia candidato a governador," [Rondônia's Justice Orders Profile Removal from Facebook, Due to Candidate's Aggression Claims] *Ariquem* Online, July 23, 2014, accessed on July 13, 2015, <http://bit.ly/1FwyeD9>.

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In the first months of 2015, the government opened two public consultations on the regulation and implementation of two pieces of legislation related to users' rights on the internet: the Marco Civil Law and the Privacy and Data Protection Bill.<sup>107</sup> Marco Civil treats privacy and data protection as fundamental rights, bans the disclosure of users' personal data to third parties, with the exception of police and judicial authorities, and requires providers to make privacy policies and terms of use clear and understandable.<sup>108</sup> While the Marco Civil is already in effect and regulation is being developed in accordance with the law, the Privacy and Data Protection Bill is in an earlier phase of development. It aims at creating comprehensive data protection legislation establishing clear user rights regarding both government and private sector collection and use of data, and intermediary liability regarding collection, storage and treatment of personal data.

Like similar legislation around the world, such as the EU Data Protection Directive,<sup>109</sup> the bill calls for the establishment of a Data Protection Authority, albeit leaving that creation to further legislation. Unlike many data protection laws in other countries, however, this law specifically mentions internet data protection alongside more general provisions for personal data.<sup>110</sup> On January 28, 2015, the Brazilian Ministry of Justice issued the Preliminary Draft Bill for the Protection of Personal Data (Anteprojeto de Lei para a Proteção de Dados Pessoais) on a website created for public debate.<sup>111</sup> In 2010, a previous version of the Bill was also submitted for online public debate. The new draft is a result of the comments gathered on the first debate and the series of discussions and developments on the issue following the passage of Marco Civil.

During 2014, some evidence emerged that the Brazilian government was increasing its capacity for surveillance. In advance of the World Cup, the government invested US\$900 million dollars in security equipment, including some technology such as drones and digital command centers that could be used for widespread surveillance.<sup>112</sup>

## Intimidation and Violence

Threats, intimidation, and violence against online journalists and bloggers constitute a major restriction on freedom of expression and human rights in Brazil. At least two bloggers and four other journalists were killed during the coverage period, and many other journalists and online activists reported harassment or threats.<sup>113</sup>

On May 18, 2015, police near the town of Padre Paraíso in the Brazilian state of Minas Gerais found the decapitated body of Evany José Metzker, a Brazilian blogger who investigated and wrote about

107 This consultations mimicked the successful multi-stakeholder collaborative process used during the elaboration of the original Marco Civil Law and aimed to receive opinions, critiques, and contributions from a variety of internet stakeholders through the "participation" website. By March 3, 2015 the website had received 578 different contributions, 300 related to the Marco Civil consultation and 278 related to the Privacy and Data Protection Bill.

108 Presidency of the Republic of Brazil, Civil House, Legal Affairs Subsection, Text of Law No. 12.965 (in print only), Government of Brazil, April 23, 2014. English version by Carolina Rossini, distributed by CGI.Br at the end of Net Mundial event, available at <http://bit.ly/1jerSOK>

109 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. See: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31995L0046&from=EN>

110 Ministério da Justiça, "Anteprojeto de Lei para a Proteção de Dados Pessoais" [Legal Proposal for the Protection of Personal Data], accessed October 15, 2015, <http://bit.ly/1Lk1b4K>

111 Ministério da Justiça, "Dados Pessoais" [Personal Data], accessed October 15, 2015, <http://dadospessoais.mj.gov.br/>

112 Ariel Bogle, "Drones Are Keeping Their Eye on the Ball, Too," *Slate*, June 13, 2014, <http://slate.me/1lI0UCj>.

113 Reporters Without Borders, "2014: Journalists Killed," <http://bit.ly/1L8IVyi>; Reporters Without Borders, "2015: Journalists Killed," <http://bit.ly/1NWAqgx>.

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corruption, crime, and prostitution for his blog *Coruja do Vale*. Although investigators have not yet determined that the murder was due to Metzker's work as a journalist, local news reports suggest that he was engaged in a highly sensitive investigation of a child prostitution ring at the time of his murder.<sup>114</sup> A few months earlier, in December 2014, unknown gunmen in Ubatuba, a town in the Brazilian state of São Paulo, killed blogger Marcos de Barros Leopoldo Guerra. Guerra had written about corruption of local authorities on his blog *Ubatuba Cobra* and had received threats in the past.<sup>115</sup>

Although the Brazilian justice system suffers from a high level of impunity and murders are often left unsolved, convictions in 2015 against the murderers of Décio Sá, a longtime political journalist and blogger who was killed in 2012, marked a positive development for justice and human rights protection. Sá, who wrote for the newspaper *O Estado do Maranhão* and ran a blog by the name of *Blog do Décio*, was shot to death while sitting in a bar. Police suspect that he was targeted for his reporting. Two defendants in the Décio Sá case were convicted in a trial by jury on February 5, 2015, and sentenced to 18 and 25 years of imprisonment, respectively.<sup>116</sup> Another suspect accused of commissioning Décio Sá's death still awaits trial.

Bloggers and journalists often face harassment and threats, as well as physical attacks. According to a report from the Brazilian Federation of Journalists,<sup>117</sup> there were 129 registered cases of violence against journalists in Brazil in 2014. Over 50 percent of such cases occurred while they were covering protests, in the crossfire between the police and protesters. In April 2015, for example, at least five journalists were injured while covering a teacher's strike in the southern Brazilian state of Paraná, which turned into a violent clash between protesters and police.<sup>118</sup>

Online bloggers and journalists who work in poor or rural areas and are not linked to major urban media outlets may face more harassment because they lack visibility and the support of colleagues on a national level. Under such circumstances, authorities feel little pressure to solve attacks on the provincial press. Unsolved attacks on journalists may also dissuade provincial reporters from investigating crime and corruption in their regions, resulting in pockets of self-censorship throughout the country.<sup>119</sup>

Police harassment is also a serious concern in Brazil. In February 2015, the blogger Enderson Araújo received threats from a police officer after writing about young people killed in police shootouts. Araújo, who helped create *Mídia Periférica* (a blog run by young journalists and focused on poor communities that receive little coverage by the mainstream press), went into hiding after receiving the threats.<sup>120</sup> In April 2015, several anonymous individuals posted online threats against the photo-journalist Fabiano Rocha after he photographed a police officer wearing a mask that covered most

114 Committee to Protect Journalists, "Brazilian blogger found decapitated in Minas Gerais state," May 20, 2015, accessed June 16, 2015, <https://cpj.org/x/6104>.

115 Committee to Protect Journalists, "Marcos de Barros Leopoldo Guerra," December 23, 2014, accessed June 16, 2015, <http://bit.ly/1KBTBPp>.

116 "Foi primoroso", diz secretário sobre julgamento do Caso Décio Sá, "[It was perfect', says Secretary about the judgement in the Décio Sá case] *O Globo*, February 5, 2015, <http://glo.bo/1PxRwIC>.

117 Igor Waltz, "Maioria dos casos de violência contra jornalistas em 2014 ocorreu em manifestações," [Most cases of violence against journalists in 2014 happened while covering the protests] Associação Brasileira de Imprensa, January 1, 2015, <http://bit.ly/1YDGyY9>.

118 Committee to Protect Journalists, "Brazilian journalists injured while covering protests," May 1, 2015, accessed June 16, 2015, <https://cpj.org/x/602d>.

119 Otis, "Bloggers Targeted as Murders Spike in Brazil."

120 Andrew Downie, "Brazilian bloggers encounter threats online and off," Committee to Protect Journalists (blog), March 23, 2015, accessed June 16, 2015, <https://cpj.org/x/5f6a>.

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of his face during an operation in the Alemão slum.<sup>121</sup> Brazilian law prohibits unidentified or masked agents from going into the field during peacekeeping operations.

### Technical Attacks

Although the government has made some efforts to ensure cyber-security, Brazil ranks as the top source and target of cyberattacks in Latin America.<sup>122</sup> The severity of cyberattacks seemed to increase during the coverage period, with online bank accounts and mobile phones being the main targets. The World Cup and the large influx of foreign visitors to the country are cited as some of the leading reasons why cyberattacks in 2014 incurred significant damage.

In early 2014, Anonymous, a loosely affiliated group of activists and hackers, announced that official websites linked to the FIFA World Cup Games in Brazil would be targeted by future cyberattacks.<sup>123</sup> The Brazilian chapter of Anonymous followed through on its threats, boasting on Facebook and Twitter about website defacements and DDoS attacks compromising government servers, and providing a running tally listing the number of attacks it had perpetrated against FIFA.<sup>124</sup> Tiger CEO Emanuele Gentili noted that cyberattacks predicated on damaging Brazilian infrastructure spiked in late April 2014, “with an exponential growth to almost 2,000 daily targets.”<sup>125</sup> The cyber assault—which grew to include DDoS attacks against government websites, as well as leaks of sensitive information from Rio de Janeiro’s military police—appeared to be coming primarily from outside Brazil, namely from India, Turkey, Europe, Mexico, and the United States.<sup>126</sup>

While experts agree that in general, too little attention has been given to cybersecurity and related investments in telecommunications infrastructure in Brazil,<sup>127</sup> Brazilian authorities seem to be making some efforts to increase cybersecurity. Brazil has embarked in a multi-stakeholder debate on implementing its cybersecurity agenda under development since 2008. One of the core outcomes so far was the opening of a National Cyber-Defense Center to protect against technical attacks.<sup>128</sup>

121 Cláudia Souza, “Fotografo do ‘Extra’ sofre ameaças por denunciar conduta da PM do Rio,” [Photographer of the newsoutlet ‘Extra’ is threatened after exposing policemen in Rio] Associação Brasileira de Imprensa, March 9, 2015, accessed July 15, 2015, <http://bit.ly/1G53N1R>.

122 Sabrina Passos, “Brasil é o País Latino Americano com mais ciberataques em 2014,” *Kzuka*, August, 18, 2014, <http://bit.ly/1NWC6jT>.

123 “World Cup Threat from Web Activists,” *BBC*, February 26, 2014, <http://bbc.in/1mI6wcr>.

124 Kate Vinton, “Hacktivist Group Anonymous Targets World Cup,” *Forbes*, June 18, 2014, <http://onforb.es/1jeCSvA>.

125 Federico Guerrini, “Brazil’s World Cup of Cyber Attacks: From Street Fighting to Online Protest,” *Forbes*, June 17, 2014, accessed July 15, 2015, <http://onforb.es/1qeqzC7>.

126 Federico Guerrini, “Brazil’s World Cup of Cyber Attacks: From Street Fighting to Online Protest.”

127 Carla Modena, “Governo Destina Baixo Orçamento para a Segurança Cibernética,” *Jornal Da Globo* (blog), *Globo*, July 27, 2013, <http://glo.bo/1LzRW23>.

128 Andréa Barretto, “Brazilian Armed Forces Strengthen the Nation’s Cybersecurity Defense,” *Diálogo Digital Military Magazine*, April 14, 2015, <http://bit.ly/1FinqJ7>.