

BRAZIL MISINFO BILL
NEW DRAFT REPORT BY SENATOR ANGELO CORONEL
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CHAPTER I
PRELIMINARY PROVISIONS

Art. 1 This Law establishes rules, guidelines and transparency mechanisms for providers of social networks and interpersonal communication services in order to guarantee security, freedom of expression, communication and expression of thought.

Sole paragraph. The lead sentence also applies to providers of social networks and interpersonal communication services based abroad, provided that they offer services to the Brazilian public or that at least one member of the same economic group has an establishment in Brazil.

Art. 2 This Law is based on the following principles:

- I - freedom of expression, advertising and the press;
- II - guarantee of the individual's rights to personality, dignity, honor and privacy;
- III - respect for users in their free choices of political preferences and a personal worldview;
- IV - shared responsibility for the preservation of a free, pluralistic, diverse and democratic public arena;
- V - guarantee of the reliability and integrity of information systems;
- VI - promote access to knowledge in matters of public interest;
- VII - broad and universal access to the means of communication and information;
- VIII - consumer protection; and
- IX - transparency in the rules for ads and paid content.

Art. 3 The objectives of this Law are:

- I – to defend freedom of expression and prevent censorship in the online environment;
- II - to strengthen the democratic process and promote access to the diversity of information on the internet in Brazil;
- III - greater transparency in moderation of content posted by third parties on social networks, with the guarantee of a full defense; and
- IV - the use of information mechanisms and tools regarding boosted content and advertising presented to the user.

Art. 4 For the purposes of this Law, the following definitions apply:

- I - **account**: access to providers of social networks and interpersonal communication services that allow the publication and distribution of content;
- II - **identified account**: account the responsible party of which is identified pursuant to this Law;

III - **automated account**: account predominantly managed by a computer program or technology that simulates or replaces human activities in the distribution of content in providers of social networks and interpersonal communication services;

IV - **content**: data or information, processed or not, contained in any medium, support or format, shared in an internet application, regardless of the form of distribution, publication or transmission used on the internet;

V - **advertising**: ads published in exchange for payment in cash or equivalent value to companies covered by this Law;

VI - **boosting**: expanding the reach of content through payment in cash or equivalent value to companies covered by this Law;

VII - **social network**: internet application that lets users publish content and interact among themselves, without prior editorial control, within the same computerized system, by means of connectable accounts;

VIII - **interpersonal communication services**: internet applications that provide services via the internet, intended mainly for private communications between its users, including the encrypted ones and email.

Sole paragraph. For the purposes of this Law, content providers that are news organizations, pursuant to Art. 222 of the Federal Constitution, are not considered providers of social networks.

CHAPTER II SECURITY AND TRANSPARENCY ON THE INTERNET

Section I General Provisions

Art. 5 Registering accounts on social networks and interpersonal communication services shall require the user to have a valid identity document, a cell phone number registered in Brazil and, for foreign cell phone numbers, a passport.

§1 To validate the information required in the lead sentence, providers of social networks and interpersonal communication services must send a verification code to the provided cell phone number by SMS.

§2 Social network providers must limit the number of accounts linked to the same cell phone number.

§3 Providers of social networks and interpersonal communication services shall develop technical means to detect fraud in account registration, as well as the use of accounts in violation of the law.

§4 The measures to be adopted pursuant to §3 must be included in the terms of use of the social networks and interpersonal communication services, or in other documents available to users.

§5 It is forbidden to use automated accounts not identified as such, understood as those whose automated nature has not been communicated to the provider of the social network or interpersonal communication services and, publicly, to users.

Art. 6 Providers of social networks and interpersonal communication services shall suspend accounts of users whose numbers are disabled by the telephone companies.

Sole paragraph. In order to comply with the lead sentence, providers of social networks and interpersonal communication services must request disabled numbers from the telephone companies, which will provide them in accordance with regulations.

Section II Interpersonal Communication Services

Art. 7 Interpersonal communication service providers shall, within the scope of their services, establish policies to:

I - limit the number of forwards of the same message to users or groups, as well as the maximum number of members per group;

II - institute a mechanism to check users' prior consent for inclusion in a messaging group or broadcast list;

III - disable, by default, authorization for inclusion in groups and broadcast lists; and

IV - keep logs of forwards from their origin, for a minimum of 4 (four) months and these records may be requested by court order pursuant to Section IV of Chapter III of Law No. 12.965 of April 23, 2014.

Art. 8 Providers of interpersonal communication services are forbidden to use and market external tools, which they have not certified, intended to send mass messages, except for the use of standard technology protocols for interaction of internet applications.

Section III Transparency of Boosts and Advertising

Art. 9 Social network providers must identify all boosted content and advertising, with information about the account responsible for the boosting or the advertisement, or other information defined by the Internet Transparency and Responsibility Board.

Sole paragraph. Measures to identify content, as provided in this article, must be prominently disclosed to users and maintained when the content or message is shared, forwarded or passed on in any way.

Art. 10. Running ads on social networks must comply with Brazil's rules regarding advertising.

Art. 11. The purchase of advertising in digital media for placement in the Brazilian market must be done in Brazil.

Art. 12. Providers of social networks that offer boosting for electoral advertising or for content that mentions a candidate, coalition or party must make the entire set of advertisements available to the public for purposes of verification by the Electoral Court and other purposes, including:

I - total amount spent by a candidate, party or coalition to run advertising on the Internet by boosting content on the respective application provider;

II - identification of the advertiser, either using the business tax number for legal entities or the personal tax number for individuals responsible for contracting the boost;

III - air time;

IV - identify that the content is electoral propaganda, pursuant to Art. 57-C of Law No. 9.504, of September 30, 1997; and

V - general characteristics of the target audience.

Sole paragraph. Social network providers must communicate to the Electoral Public Prosecution Office any irregular electoral advertising of which they are aware, pursuant to Law No. 9.504 of September 30, 1997.

Section IV **Guarantees of Freedom of Expression**

Art. 13. Exclusion of content or accounts by social network providers should be:

I - immediate, to comply with a court order or to guarantee privacy, as provided in Articles 19 and 21 of Law No. 12.965 of April 23, 2014; and

II - preceded by initiation of a moderation procedure that observes the right to defense, in cases of violation of the terms of use or other irregularity.

§1 The party interested in having a moderation procedure initiated must present the social network provider with clear and objective reasons for initiating the procedure, assuming responsibility for a reversal of outcome or loss caused by the procedure regarding the questioned content.

§2 The moderation procedure may provide for an abbreviated defense timeframe in cases of content that incites violence against a person or group due to their race, gender, sexual orientation, origin, religion or political preference.

§3 The abbreviated defense period referred to in §2 may also be used in cases of use of an image or voice manipulated to imitate reality, with the aim of misleading about the identity of a candidate for public office, with the exception of humor or parody.

§4 Social network providers must provide an accessible and prominent mechanism, available for at least 3 (three) months after the decision of the moderation procedure, so that users who create the content as well as the complainant, if any, can appeal the decision.

§5 The result of the moderation procedure must ensure the right of the offended party to reply in the same measure and scope of the content considered inappropriate.

§6 Social network providers will be solidarily liable for loss resulting from content generated by third parties if they fail to follow the guidelines established for the moderation procedure, including being subject to the sanctions provided for in this Law.

Art. 14. The social network providers referred to in this Law must publish transparency reports on their websites, in Portuguese, to inform about procedures and decisions regarding content generated by third parties, as well as the measures used to comply with this Law.

Sole paragraph. The information, parameters and metrics to be observed in the reports referred to in the lead sentence of this article will be defined by the Internet Transparency and Responsibility Board.

CHAPTER III ACTIONS OF GOVERNMENT

Art. 15. Accounts on social networks used by entities and bodies of the direct or indirect Public Administration and of political agents whose competence derives from the Constitution are considered to be of public interest, subject to the principles of Public Administration.

Art. 16. The Public Administration must prohibit advertising by websites and accounts on social networks that incite violence against a person or group due to their race, gender, sexual orientation, origin, religion or political preference.

Art. 17. The entities and the public authorities, directly or indirectly, shall publish on their transparency websites the following data about contracting advertising services and advertising or boosting content on the internet:

- I – amount of the contract;
- II – data about the contracted company and the way it was contracted;
- III – campaign content;
- IV – mechanism for distribution of resources;
- V – criteria for defining the target audience;
- VI – list of pages, applications, games, channels, websites and other media in which these resources were invested; and
- VII – number of views and the amount charged for the sum of views.

CHAPTER IV THE INTERNET TRANSPARENCY AND RESPONSIBILITY BOARD

Art. 18. The National Congress shall institute, within a period of sixty (60) days as of the publication of this Law, by means of a specific act, a board that will be responsible for carrying out studies, opinions and recommendations concerning freedom, responsibility and transparency on the internet.

§1 The board is responsible for:

I – drafting its internal regulations that will require approval of the Federal Senate Chair to enter into force;

II - establishing codes of conduct and good practice to social network providers and interpersonal communication services to ensure the transparency of the moderation process and its terms of use, which must be in line with current legislation;

III - defining the information, parameters and metrics to be observed when preparing the reports referred to in article 14 of this Law.

IV - evaluating the data contained in the reports referred to in article 14 of this Law;

V - publishing indicators on the sector's compliance with good practices;

VI - evaluating the adequacy of the usage policies adopted by the providers of social networks and interpersonal communication services on the internet;

VII – annually organizing a national conference on freedom, responsibility and transparency on the internet;

VIII - conducting studies for the creation of a fund for financing digital education in Brazil; and

IX - promoting studies and debates to define disinformation in the context of the internet and social networks.

Art. 19. The Internet Transparency and Responsibility Board is made up of 15 (fifteen) unpaid board members, with a term of 2 (two) years, 1 (one) renewal being admitted, being:

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

II - 1 (one) representative of the House of Representatives;

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

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

V - 1 (one) representative of the Internet Steering Committee in Brazil ;

VI - 3 (three) representatives of civil society;

VII - 2 (two) representatives of academia;

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

IX - 2 (two) representatives of the social communication sector; and

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

§1 The members of the Internet Transparency and Responsibility Board will be appointed by an act of the President of the National Congress from among Brazilians adults and upstanding reputation.

§2 The President of the National Congress will issue act regulating the form of appointment of the board members.

Art. 20. The President and Vice President of the Internet Transparency and Responsibility Board shall be elected from amongst its members, for a one year term, reappointment permitted.

Art. 21. The Internet Transparency and Responsibility Board, when the absolute majority of its members are present, will meet, ordinarily, at those times provided for in its internal regulations, at the headquarters of the National Congress.

Sole Paragraph. The extraordinary call for the Internet Transparency and Responsibility Board will be made:

- I - by the President of the Federal Senate; or
- II - by its President, at his volition or at the request of 5 (five) of its members.

Art. 22. Expenses with the installation and operation of Internet Transparency and Responsibility Board will be charged to the budget of the Federal Senate.

CHAPTER V SANCTIONS

Art. 23 . Without prejudice to other civil, criminal or administrative sanctions, providers of social networks and interpersonal communication services are subject to the following penalties to be applied by the Judiciary:

- I - a fine of up to 10% (ten percent) of the income of the economic group in Brazil in the previous year ; and
- II - suspension of activities.

§1 When applying the sanction, the judge shall observe proportionality, taking into account the financial conditions of the offender, the consequences of the offense in the individual and collective sphere, and recidivism.

§ 2 For the purposes of this Law, a person who repeats a previously sanctioned conduct within 12 (twelve) months will be considered a repeat offender .

CHAPTER VI FINAL PROVISIONS

Art. 24. Providers of social networks and interpersonal communication services shall have their headquarters in Brazil and appoint legal representatives in the country, making this information available on their websites, and shall keep a database in Brazil containing information regarding Brazilian users and for safekeeping of contents in those situations provided for by law.

Art. 25. The amount of the fines levied based on this Law will be allocated to the Fund for the Development of Basic Education and for Appreciation of Teachers (FUNDEB) and will be used in digital education and literacy actions in accordance with this regulation.

Art. 26 . Art. 1 of Law No. 10,703, of July 18, 2003, will henceforth read as follows:

" **Art. 1**

§ 1 The registration referred to in the lead sentence of this article will be carried out in the user's presence in person or through a digital process, according to regulations, containing, in addition to the full name and address:

- I - for individuals, identity card number and federal tax number;
- II – for legal entities, company federal tax number.

.....

§ 3 The registration regulation referred to in § 1 must include procedures for verifying the veracity of the individual’s federal tax number or that of the company federal tax number that are used for activating prepaid chips.

§ 4 Governmental bodies involved in the registration regulation referred to in § 1 and the telephone operators must apply constant efforts to control the authenticity and validity of the records, including those that already exist. ”

Art. 27. Article 5 of Law No. 12,965 of April 23, 2014 shall henceforth contain the following changes in items V, VI and VIII and additional new items IX and X:

" Art. 5

V - internet connection: enabling a terminal to send and receive data packets over the internet, by assigning or authenticating an IP address and Logic Gate, when the IP is natted;

VI – log records: the set of information referring to the date and time of the start and end of an internet connection, its duration, the IP address used by the terminal for sending and receiving data packets and Logic Gate , when the IP is natted;

.....

VIII - records of access to internet applications: the set of information regarding the date and time of use of a given internet application from a certain IP address and the logic gate, when the IP is natted;

IX - IP natting: sharing of an IP for more than one connection or single user, individualized through different logic gates; and

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

Art. 28. The lead sentence of articles 13 and 15 of Law n° 12,965 of April 23, 2014, will henceforth read as follows:

" Art. 13. The autonomous system administrator that provides Internet connections shall store connection logs, which individualize users in an

unequivocal manner, keeping them confidential, in a controlled and secure environment for a period of one (1) year, in accordance with the regulation.

..... ”

" **Art. 15.** An Internet application provider, organized as a legal entity and operating in an organized and professional manner for economic purposes, shall keep access logs to Internet applications, including records that individualize an IP user in an unequivocal manner, keeping them confidential, in a controlled and secure environment, for a period of six (6) months, pursuant to the regulation.

..... "

Art. 29. Law No. 4,737, of July 15, 1965 shall henceforth include the following article:

"**Art. 326-B** Three or more persons associate in order to repeatedly perpetrate any of the crimes provided in articles 324, 325, 326 and 326-A of this Law.

Penalty - from 2 to 6 years of imprisonment and payment of 20 to 50 days' fine.

Art. 30. Law 9.504, of September 30, 1997 shall henceforth include the following article:

"**Art. 53-B.** It is forbidden to run advertising with content manipulated for the purpose of degrading or ridiculing candidates or for putting at risk elections credibility and uprightness, subjecting the beneficiary to a fine of from R\$ 50,000.00 (fifty thousand reais) to R\$ 10,000,000.00 (ten million reais).

§ 1. The candidate will forfeit his candidacy registration if his participation in an institution or in maintaining a stable and organic structure so as to perpetrate the crimes provided in the lead sentence of this article, if he has knowledge of the existence of this structure and does not immediately communicate this to the competent authorities.

Sole paragraph. The forfeiture referred to in § 1 of this article will obey the procedure provided for in Article 22 of Complementary Law No. 64, of May 18, 1990."

Art. 31. Decree-Law No. 2848 of December 7, 1940 shall henceforth read as follows:

"**Art. 288-B.** Receive, obtain, safekeep, keep in deposit, solicit, invest, in any way, directly or indirectly, resources, assets, goods, rights, values or services of any nature, with the purpose of financing the spread of slander, injury, defamation, threat or prejudice of race, color, ethnicity, religion, sexual orientation or national origin on platforms, applications, websites or other digital media.

Penalty - imprisonment, from 1 (one) to 5 (five) years, and a fine, without prejudice to the penalties corresponding to other criminal offenses committed.

§ 1 The same penalty also applies to those who participate in a group, association or any other virtual environment, knowing that their main activity is directed to the propagation of slander, injury, defamation, threat or incitement to violence due to prejudice of race, color, ethnicity, religion, sexual orientation, national origin or political preference;

§ 2 The penalty is increased from 1/6 (one sixth) to 2/3 (two thirds):

I - if there is participation of civil servant;

II - whether public goods or values are used;

III - if the circumstances of the fact show the transnationality of the conducts set out in the lead clause; or

IV - if there is an electoral purpose.

§3. If found guilty, the judge may confiscate the assets and values obtained from the monetization of illicit content in favor of the Fund for General Public Interest and Collective Rights.

§4 The conduct of receiving funds or assets referred to in the heading of this article is punishable when the legal representative of the platform, application or electronic site, officially notified, fails to suspend the dissemination of advertising or boosting the illicit content to which the lead sentence of this article refers "

"**Art. 259-A.** Generate, transmit or disseminate content that contains incitement to violence due to prejudice of race, color, ethnicity, religion, sexual orientation, national origin or political preference or that seriously endangers to public health, social peace or the economic order.

Penalty - imprisonment, from 1 to 5 years, if the offense does not constitute a more serious crime.

§ 1 The penalty is increased by one third when the crime is perpetrated in coordinated action by groups or by an internet dissemination network."

" **Art. 307-A.** Attribute to oneself or to a third party false identity to deceive the public in internet applications, with the exception of the right to pseudonymy, under the terms of the law, as well as for explicit humor or parody.

Penalty - imprisonment, from three months to one year, or fine

Sole paragraph. If the crime is perpetrated by a civil servant in the exercise of his/her function, the penalty is increased by 1/6 (one sixth)."

"**Art. 307-B** . Operate or manipulate automated accounts or artificial distribution networks not identified as such, understood as those whose automated nature has not been communicated to the internet application provider and, publicly, to users.

Penalty - imprisonment, from three months to one year, or fine

Sole paragraph. If the crime is perpetrated by a civil servant in the exercise of his/her function, the penalty is increased by 1/6 (one sixth). "

Art. 32. Articles 141 and 154-A of Decree-Law No. 2,848 of December 7, 1940, will henceforth read with the following changes:

" **Art. 141**

.....
III - in the presence of several people, on the internet, or by means that facilitates dissemination of slander, defamation or libel;

.....
V - for electoral purposes.

§1 If the crime is perpetrated against payment of monies or promise of reward, by coordinated action of groups or dissemination network, a double penalty shall be applied.

.....
§3 The penalty of two thirds is extended if it results in severe suffering to the victim."

" **Art. 154-A.**

Penalty - imprisonment, from 1 (one) to 3 (three) years, and a fine.

§3

Penalty - imprisonment, from 3 (two) to 8 (years) years, and fine, if the conduct does not constitute a more serious crime.

..... "(NR)

Art. 33. Article 147 of Decree-Law No. 2,848, of December 7, 1940 shall henceforth contain the following wording and added the following first paragraph, renumbering the sole paragraph:

" **Threat**

Art. 147.

Penalty - imprisonment, from six months to one year, and a fine.

§ 1 The penalties are applied cumulatively and in double, when, for perpetrating the crime, more than three people meet, or there is the use of information and communication technologies;

§ 2 Only processed by way of complaint”

Art. 34. Paragraph 2 of article 1 of Law No. 12,850 , of August 2, 2013, shall henceforth include the following item III:

"**Art. 1**
.....

III - organizations formed spread incitement to violence due to prejudice of race, color, ethnicity, religion, sexual orientation, national origin or political preference, crimes against honor through the use of financial and technical resources, perpetrating illegal conduct or subverting the terms and policies for regular use of applications of internet, provided that the terms are in line with the legislation in force;”

Art. 35. Article 1 of Law No. 9,613 of March 3, 1998 shall henceforth read as follows:

" **Art. 1**
.....
§ 2

III - acts in the creation or operation of unidentified automated accounts and or unidentified artificial distribution networks through the perpetration of illegal activities.
.....

§ 7 If the conduct described in § 2, III of this article is perpetrated by a civil servant in the exercise of his/her function, the penalty is increased by 1/6 (one sixth).”

Art. 36. This Law shall come into force:

- I - after its publication, regarding arts. 18, 19, 20, 21 and 22; and
- II - after 90 (ninety) days of its publication, regarding the other articles.