

São Paulo, June 9, 2020.

STATEMENT

RISKS OF PROPOSALS TO CONTAIN DISINFORMATION THAT ARE UNDER DISCUSSION IN THE BRAZILIAN CONGRESS

The [Brazilian Chapter of the Internet Society \(ISOC Brasil\)](#) expresses its concern with the expedited manner and little space for public dialogue given by the Congress to the issue of combating disinformation in Brazil. Our members understand that such a process may have severe negative implications for the operation and use of the Internet in the country. As a result ISOC Brasil would like to bring the following topics to the attention of the parliamentarians involved and the general public.

Most of this Declaration addresses propositions contained in Federal Senate Bill No. 2,630/2020 and House of Representatives Bill No. 2,927/2020. Both have identical content and propose a "Brazilian Law on Freedom, Responsibility and Transparency on the Internet". However, since the introduction of those Bills in each Chamber, several complementary and/or alternative proposals have been disclosed to the public (substitute texts, proposals for global amendments and other more restricted amendments) without the generation of a stable version of the text (until the date of publication of this Declaration) that could enable public discussion. For this reason, we have chosen, in this document, to deal with basic aspects that are crucial to the Internet's security, stability and trust from the perspective of the Brazilian Chapter of the Internet Society.

1. The Internet is (and should continue to be) an open network with global reach, allowing the development of different applications and services, supporting innovation, creativity and, especially, socioeconomic and human development. **The principles that guided the development of the "Marco Civil" as well as the rules**



therein adopted must be fully and unequivocally observed in the treatment of the existing interfaces between the phenomenon of disinformation and the operation of certain services and applications that rely on the Internet for their operation.

2. The term "Internet applications" refers to a wide range of different services. Equating the term 'Internet' and the expression 'Internet applications' to a particular service is an attack on the diversity and plurality that exists in a network with global reach, which conceptually and practically should allow anyone, anywhere, access to any content, service and/or application available on and accessible through it. **Public policies and regulatory frameworks related to the Internet should not be built based solely on the specification of specific services or applications**, otherwise (a) those frameworks will become obsolete very quickly due to the rapid pace of technology and business models development, and (b) they will end up having their scope unjustifiably enlarged to encompass applications or services other than the ones originally envisioned, something that generates legal uncertainty in multiple dimensions of the digital ecosystem.
3. Because the Internet has global reach, no legislative or regulatory intervention in the national territory should generate unjustified obstacles to the use of services and applications available elsewhere on the Internet. Likewise, the adoption of bureaucratic and administrative requirement for services to be authorized to operate in Brazil should result in the country's being closed to the services that are technically innovative, economically attractive and useful to the Brazilian audience, at the risk of delaying the advance of digital transformation in the country (an essential requisite for achieving the Sustainable Development Goals of UN Agenda 2030). **It would be absolutely counterproductive for the country to be accused of contributing to the "fragmentation of the global Internet" and the creation of a digital ecosystem aligned with physical territorial boundaries (sustained by rules which, for instance, authorize application blocking as the ones that wrongfully**

occurred in the past). Such a thing is completely inconsistent with the notion of an open Internet whose benefits should be enjoyed globally.

4. Some of the proposals, in particular PL 2630/2020, put forward rules that aim at "traceability of private communications" in messaging applications. **Traceability, in the terms proposed by this PL, obliges the generation and storage of metadata directly associated with the content of private messages**, something that cannot be reconciled with the full preservation of privacy and confidentiality of private communications in any way whatsoever. Besides that, ISOC Brasil would like to call the attention to the following issues:
 - a. The intended data retention will be done in an indiscriminate way, for all users of a given service or application, without the existence of any reasonable evidence of authorship or participation in a criminal offence. It will be done so, even if there are other means of evidence available to the public authority that do not involve access to private communications. It can be anticipated that traceability, if approved, will be used not only in the criminal sphere, but also in the civil sphere.
 - b. In technical terms, the requirement, by law, for the preemptive creation and maintenance of huge databases containing metadata associated with user-generated content increases the operational complexity of individual applications, which favors large players over smaller ones in the market, and can contribute to an **unwanted increase in cyber insecurity by the generation of new avenues for unauthorized tampering, intervention and manipulation, as well as accidental or non-authorized leaks of personal data** stored by private companies.
 - c. The current proposal in PL 2630 results in **violation of the presumption of innocence inscribed as a fundamental right in the Brazilian Constitution, and also contradicts the principle of "data minimization"**, mandated by the Brazilian Marco Civil and recently approved General Law on Personal Data Protection (which are both a reflex of the state of the art in global discussions regarding privacy and data protection).

- d. It calls for application providers to make user security disproportionately and unnecessarily worse in relation to privacy and data protection. Furthermore, it **reverses the logic of due process in criminal persecution, which does not prevent the monitoring of private communications, but restricts it to be done, after judicial authorization, for individualized persons identified as suspects of a certain illicit act and on a prospective basis solely.** Those tenets serve as a guarantee of necessity and proportionality of the action of the State.

5. In addition to the damage to the exercise of fundamental rights in the country, traceability under the proposed terms prevents users from being able to trust the services and applications available on the Internet. Brazil has a positive track record in Internet regulation, is a leader in that sphere based on the experience the country had with the development of the Marco Civil, and also has an enormous potential to be a world leader in the global digital economy. However, **Brazil loses a lot if Internet users (including companies that use the Internet to operate) cannot rely on secure and reliable means of communication to perform their online activities. In addition, if application providers operating (for-profit and not-for-profit) in the country are forced to offer less reliable services, they may lose competitiveness in the global market, directly and indirectly harming the country's insertion into the digital economy.**

The fight against disinformation is multidimensional and cannot be reduced to the technological variable. It needs appropriate debate and multi-stakeholder participation. In those terms, the collaborative production of the Marco Civil (with involved broad and exhaustive participation), as well as its principles-based approach, should be the path to follow to ensure that legislative and regulatory intervention under comment now can be

capable of leveraging the Internet as a tool capable for the technical, technological, socioeconomic and human development in Brazil.

If any advance on the subject imposes caution, the exceptional context we live in today in the context of the COVID-19 pandemic imposes even a higher degree of caution to avoid that careless measures amplify the amount of damage that can be done to the Internet and its users.