

## DECALOGUE OF RECOMMENDATIONS ON THE BRAZILIAN REGIME OF INTERMEDIARY LIABILITY

### **1. COMPLEXITY OF THE INTERNET SERVICE PROVIDERS ECOSYSTEM MUST BE RECOGNIZED**

Bearing in mind Marco Civil da Internet (Federal Law n. 12.965/2014) binary categorization of service providers as "Internet Connection Providers" and "Internet Applications Providers", it is important that any policy measure take into account the inherent distinctions and particularities of existing services and utilities, their legal nature, economic scale and position at the digital ecosystem, in order to guide the development of legal guarantees aligned with their different roles, and therefore mitigate the risks of legal obsolescence and obstacles to innovation.

### **2. INTERNET INFRASTRUCTURE MUST BE PROTECTED**

It is key to safeguard Internet application providers that are also involved with core activities pertaining to the Internet's infrastructure and are key to the stability of the network in Brazil.

### **3. ANY INTERNET-RELATED POLICY OR REGULATORY DEVELOPMENT PROCESS SHALL ENSURE THE BROADEST POSSIBLE MULTI STAKEHOLDER PARTICIPATION**

Internet-related policy or regulatory development process shall be public, open, and multistakeholder, with the special involvement of the Brazilian Internet Steering Committee, in order to ensure outcomes that are aligned to the protection of user's rights and that are limited to what is necessary and proportionate to the achievement of its objectives, allowing for the proper balance of all stakeholders' interests.

### **4. ANY POLICY OR REGULATORY MEASURE SHALL TAKE INTO ACCOUNT THE EXISTING MULTIDIMENSIONAL ASYMMETRIES AMONG THE DIGITAL ECOSYSTEM VARIOUS PLAYERS**

New regulatory models must consider (i) the diversity of business models and the economic capabilities of the many types of Internet application providers, including their size and the scope of their services, as well as (ii) the different liability regimes applicable in the existing Brazilian legal system at-large.

### **5. MARCO CIVIL'S INTERMEDIARY LIABILITY REGIME DOES NOT NEED REFORMS**

The intermediary liability regime established by Marco Civil da Internet enacts principles and values entirely aligned with Internet critical properties and way of functioning.

### **6. POLICY PROCESSES ENHANCING MARCO CIVIL DA INTERNET SHALL PRESERVE ITS PRINCIPLE-BASED APPROACH AND FOLLOW THE SAME PARTICIPATORY MODEL FOR DEVELOPMENT**

Any policy or regulatory process seeking to improve intermediary liability regime established by Marco Civil da Internet shall not only preserve the Law's foundations, principles and objectives, but shall also promote a high level of social participation and broad multistakeholder dialogue that guided its development. Such improvements shall also recognize the freedom to adopt any allowed business model, and the autonomy of Internet services and applications to establish their terms of use and service; as well as strive to preserve the potential for innovation in the digital ecosystem.

## **7. INTERNET MUST BE RESPECTED AS A GENERAL PURPOSE NETWORK**

Laws and regulations shall not target any specific business or activity developed by Internet Applications Providers, in order to avoid legal obsolescence caused by the rapid evolution of Internet technologies and business models.

## **8. TRANSPARENCY AND ACCOUNTABILITY SHALL BE DEMANDED FROM INTERNET SERVICE AND APPLICATION PROVIDERS**

Instead of changing the Brazilian intermediary liability model, new legislative proposals shall aim at enhancing the levels of transparency and accountability of Internet Service and Application Providers (including through full implementation of measures already provisioned by Marco Civil) in order to provide end users with information regarding the impacts of the provider's activities over their rights.

## **9. THE TERMS OF USE AND SERVICE OF INTERNET APPLICATIONS PROVIDERS MUST ENSURE BROAD ACCESS TO INFORMATION AND ALLOW FOR DUE PROCESS MEASURES**

Internet application providers shall (a) develop and offer clear and robust appeal mechanisms for users who have had their content or profiles removed based on violations of the applicable terms of use and moderation policies and (b) provide clear information on content moderation rules and practices, in a way fulfill the users right to know the reasons for such removal, as well as the specific clauses allegedly violated by their action or content.

## **10. INTERNET IMPACT ASSESSMENT MECHANISMS SHALL GUIDE THE ADOPTION OF POLICIES EITHER BY THE PUBLIC OR THE PRIVATE SECTOR**

Any policy or regulatory process, as well as any practices and policies adopted by Internet Services Providers, shall be preceded by an [impact assessment](#) capable of demonstrating of the potential and concrete implications such measures on the Internet ecosystem in a broad perspective, with special attention to Internet infrastructure and operation in Brazil and abroad, and to small companies and startups, in order to preserve free competition in the digital environment.