

Brazilian Supreme Court establishes new civil liability parameters for internet application providers

On June 26, 2025, Brazil's Supreme Court (STF) ruled that Article 19 of Law No. 12, 965/2014 (Internet Legal Framework) is partially unconstitutional.

Article 19 provides that internet application providers should only be held liable for damages stemming from third-party content if they fail to comply with a specific court order of removal. However, according to the STF, Article 19 does not provide sufficient protection of fundamental rights and democracy.



Key issues addressed by the decision:

Interpretation of Article 19

Until new legislation is enacted, internet application providers must comply with the STF's interpretation of Article 19 – **except in situations regulated by electoral legislation and normative acts issued by the Superior Electoral Court (TSE).**



Liability based on Article 21 (Internet application providers' subsidiary liability when content remains available even after the user has notified them to take it down)

Subsidiary liability applies in cases involving general crimes or illegal acts, or those involving accounts reported as false.



Duty of care in relation to the mass circulation of illegal content

Internet application providers are liable for systemic failures¹ to remove content that constitutes any of the following specific crimes regardless of notification:

- a. Anti-democratic conduct and acts, as defined in Brazil's Penal Code (*Código Penal*)
- b. Terrorism or preparing for a terrorist act, as per Law No. 13,260/2016
- c. Inducing, instigating or aiding suicide or self-mutilation, as per the Penal Code
- d. Inciting discrimination based on race, color, ethnicity, religion, national origin, sexuality or gender identity (homophobic and transphobic conduct), as per Law No. 7,716/1989
- e. Crimes committed against women on the grounds of being female, including content that propagates hatred or aversion to women, as per Law No. 11,340/06, Law No. 10,446/02, Law No. 14.192/21 and the Penal Code
- f. Sex crimes against vulnerable people, child pornography and serious crimes against minors, in accordance with the Penal Code and the Children and Adolescent Statute



Internet application providers

The original wording of Article 19 continues to apply to:

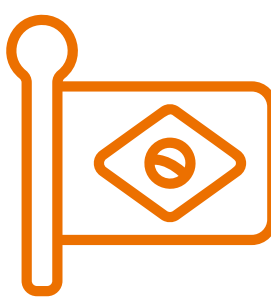
- a. E-mail service providers
- b. Providers of applications designed to host closed video or voice meetings
- c. Instant messaging services providers (also called private messaging service providers) – exclusively in relation to interpersonal communications, which are subject to confidentiality protections



Representation in Brazil

Internet application providers operating in Brazil must have an office and an official representative in the country. The representative's name and contact information must be easily accessible and available on the provider's websites. The representative must be a Brazil-based legal entity with full powers to:

- a. Respond to Brazil's administrative and judicial courts
- b. Provide competent authorities with information on the provider's operations; its rules and procedures for content moderation and managing complaints via internal systems; transparency, monitoring and systemic risk management reports; and rules for user profiling (where applicable), advertising and boosting paid content
- c. Comply with court orders
- d. Respond to and comply with penalties and fines incurred by the represented party, especially for failure to comply with legal and judicial obligations



No objective liability

Objective liability does not apply in the STF's interpretation of this issue.



Crimes against honor

Article 19 remains applicable, though the removal of content via **out-of-court notification** is still possible.



Replications of content recognized as offensive by the courts

When content has already been ruled to be offensive via a judicial decision, upon being notified (judicially or out of court), all social media providers must remove any publications containing identical content, irrespective of new judicial decisions.

Presumption of liability

Providers' liability is presumed in either of the following cases:

- a. In relation to paid ads and boosted posts
- b. Artificial communication networks (i.e., chatbots or robots)

Providers can be liable **without receiving notification**, unless they can prove they acted diligently to make the content unavailable.



The decision's effects

The effects of the STF's decision are immediate and apply prospectively. Cases in which a final, unappealable judgement has been handed down are not affected.



Please take note:

- The mere existence of illegal content does not sufficiently characterize a systemic failure on the part of the provider. However, the liability framework in Article 21 of the Internet Legal Framework applies to content that constitutes one of the crimes in the list on the left .
- Persons responsible for publishing content taken down by an internet application provider in the event of these crimes may apply to the courts to have it restored, provided they can prove it is not illegal. The provider has no compensation obligation even if the content is restored by a judicial order.



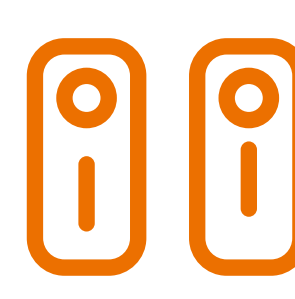
Marketplaces

Internet application providers that operate as marketplaces are civilly liable under Brazil's Consumer Protection Code (*Código de Defesa do Consumidor*).



Self-regulatory measures

Internet application providers must establish a series of self-regulatory measures covering notification systems, due process, and annual transparency reports concerning out-of-court notifications, advertisements, and boosted content. These measures must be published, revised periodically, and made publicly available.



Customer service channels

Internet application providers must provide users and non-users with specific customer service channels (preferably electronic ones). These must be permanently accessible and widely publicized on their respective platforms.



Potential for new legislation

The STF has urged the Brazilian Congress to draft legislation capable of remedying the shortcomings in protecting fundamental rights that exist in the current framework.



¹ Systemic failure: when the internet application provider fails to take adequate measures to prevent or remove previously listed illegal content, in violation of its duty to act responsibly, transparently and cautiously.



This content reflects the [STF's interpretation](#) and does not constitute the opinion or legal advice of Mattos Filho.