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By email

March 28, 2023

Superior Tribunal de Justiça SAFS - Quadra 06 - Lote 01 - Trecho III
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Re: Upholding Marco Civil Article 19

Dear Justices of the Brazilian Supreme Court,

The Reporters Committee for Freedom of the Press writes to express its strong support of Article 19 of Marco Civil and to urge this Court to uphold the law. The protections that Article 19 provides for the free flow of information online are vital to the work of journalists and news organizations throughout Brazil and the world. Since its enactment in 2014, Article 19 has tempered the incentive that online platforms would otherwise face to remove valuable speech—including lawful, public interest journalism that could be perceived as controversial based on its subject matter—out of fear that they will be subject to liability for hosting that speech.

Because of the global nature of news in the information age, Article 19 protections also impact the worldwide information ecosystem. With fewer protections against liability for hosting content, internet platforms will take down many more posts and, as a result, journalists conducting reporting that involves unflattering details about a person’s life will have fewer places to look and access to less information. Indeed, those with the means will be able to remove unflattering information about themselves more systematically than ever before. *See* Shawn Boburg, *Leaked files reveal reputation-management firm’s deceptive tactics*, Washington Post (Feb. 17, 2023), <https://perma.cc/9UMW-N7EZ> (reporting on a global investigation of company that specializes in “remov[ing] or drown[ing] out unflattering news stories” about their clients).

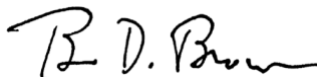
In the past three decades, the internet has not only transformed the way people communicate, share ideas, and conduct business, but it has also become an essential tool for journalists to gather facts, meet and communicate with sources, and report the news. It has provided journalists with necessary tools to reach an ever-widening audience and helped ensure that people have accurate, up-to-date information, especially at times when access to that information is critical to public safety. By limiting the fears of online intermediaries over unfounded litigation for content created by third parties, Article 19 protects the free exchange of ideas and information on the platforms that journalists rely on to identify sources, investigate stories, provide coverage of events of public concern, and engage personally with their audiences.

Additionally, Article 19 furnishes an incentive for platforms to host third-party content that is generated in real-time, or close to real-time, which is essential for journalists covering breaking news. Without the protection against liability that Article 19 provides, internet companies would have an incentive to pre-screen content, which could significantly impair and slow down breaking news coverage. When reporting on breaking news, journalists routinely rely on first-person accounts of unfolding events to understand what is happening on the ground. They often look to social media for those stories. See Natalia Mazotte, *Brazilian journalists increasingly relying on online social networks, research shows*, LatAm Journalism Review (June 8, 2011), <https://perma.cc/XMB8-YM7B>. Journalists in Brazil also rely on a range of online platforms to disseminate and amplify their breaking news reporting. *Statistic of the Week: How Brazilian voters get their news*, Digital News Report, Reuters Institute at Oxford University (2018), <https://perma.cc/72TS-HGN7> (“Brazilians are among the world’s highest users of social media for news.”). Without the protections of Article 19, platforms would likely refuse to display content until it has been scrutinized for litigation risk, making it impossible for journalists to report on breaking news since, after all, news is only news if it is new.

Online platforms have also become essential tools for journalists and news organizations to identify sources and stories and to communicate with readers under Article 19. Open online platforms allow journalists to engage with audiences on issues of public concern, understand how users react to and engage with online reporting, and receive real-time feedback from communities and users. See Luiz Peres-Neto, *Journalist-Twitterers as Political Influencers in Brazil: Narratives and Disputes Towards a New Intermediary Model*, 10:3 Cogitato Media and Communication Journal 28, 34 (2022), <https://perma.cc/4XQB-QB78>.

Finally, we respectfully submit that adopting the lower courts’ finding that Article 19 violates constitutional consumer protections would jeopardize Brazil’s pioneering protections for online speech and public access to government information. Katitza Rodriguez and Larissa Pinho, *Marco Civil Da Internet: The Devil in the Detail*, Electronic Frontier Foundation (Feb. 25, 2015), <https://perma.cc/TQ85-2W7U> (calling the law “one of the best-crafted and democratically debated expressions of rights online to acquire the force of law in the world”). Upholding the lower courts’ decision finding Article 19 unconstitutional would undermine the democratic process and lead to the undue suppression of free expression. We urge the Court to reject that outcome.

Sincerely,



Bruce D. Brown
Executive Director