PUBLICAÇÃO 96

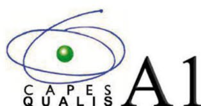
ISSN: 0101-9562
ISSN ELETRÔNICO: 2177-7055

SEQÜÊNCIA

Estudos jurídicos e políticos

Publicação do
Programa de Pós-Graduação em Direito da UFSC

VOLUME 45 ▪ ANO 2024



SEQÜÊNCIA – ESTUDOS JURÍDICOS E POLÍTICOS é uma publicação temática e de periodicidade quadrimestral, editada pelo Programa de Pós-Graduação Stricto Sensu em Direito da Universidade Federal de Santa Catarina – UFSC.

SEQÜÊNCIA – ESTUDOS JURÍDICOS E POLÍTICOS is a thematic publication, printed every four months, edited by the Program in law of the Federal University of Santa Catarina – UFSC.

Versão eletrônica: http://www.periodicos.ufsc.br/index.php/sequencia

Editora-Chefe: Norma Sueli Padilha

Editor Associado: José Sérgio da Silva Cristóvam

Editores Adjuntos: Priscilla Camargo Santos, Thanderson Pereira de Sousa

A publicação é indexada nas seguintes bases de dados e diretórios/
The Publication is indexed in the following databases and directories:

Base OJS
Base PKP
CCN (Catálogo Coletivo Nacional)
Dialnet
DOAJ (Directory of Open Access Journals)
EBSCOhost
Genamics Journalseek
Google Scholar
ICAP (Indexação Compartilhada de Artigos de Periódicos)
Latindex
LivRe!
ÖAW
OJS
PKP
Portal de Periódicos UFSC
Portal do SEER
ProQuest
SciELO
Scopus/Elsevier
Sherpa/Romeo
Sumarios.org
ULRICH'S
vLex

Ficha catalográfica

Seqüência: Estudos jurídicos e políticos. Universidade Federal de Santa Catarina. Programa de Pós-Graduação em Direito. n.1 (janeiro 1980)-.
Florianópolis: Fundação José Boiteux. 1980-.

Publicação contínua

Resumo em português e inglês
Versão impressa ISSN 0101-9562
Versão on-line ISSN 2177-7055

1. Ciência jurídica. 2. Teoria política. 3. Filosoia do direito. 4. Periódicos. I. Universidade Federal de Santa Catarina. Programa de Pós-graduação em Direito

CDU 34(05)

Catalogação na fonte por: João Oscar do Espírito Santo CRB 14/849

PUBLICAÇÃO 96
SEQÜÊNCIA
Publicação do
Programa de Pós-Graduação em Direito da UFSC
Estudos jurídicos e políticos
Ano XLIII
Volume 45

E98094
https://doi.org/10.5007/2177-7055.2024.e98094

ORIGINAL ARTICLE

Net neutrality in Brazilian internet law and the American FCC regulation: an examination of zero-rating and a case study in the business arena

Neutralidade da rede na legislação da internet brasileira e a regulamentação da FCC americana: um exame sobre o zero-rating e um estudo de caso no âmbito empresarial

Claudio Luiz de Carvalho[1]
Irineu Francisco Barreto Junior[1]
[1]Faculdades Metropolitanas Unidas, São Paulo, Brazil.

Abstract: This paper intends to delineate and expand upon the prevailing paradigms in Internet regulation, encompassing both the private and public sectors. The findings indicate that while the public sector sometimes aligns with net neutrality principles, it often diverges significantly when juxtaposed with the prior federal administration in the United States. The importance of network neutrality surged in U.S. courts following a notable shift during Trump's administration via its regulatory body, the FCC. This agency took measures to challenge the legacy of the 2015 Open Internet Order, which governed broadband Internet providers as a public utility. Our analysis of the zero-rating practice reveals a challenging convergence within its operational domain in Brazil. The paper concludes with an in-depth case study that presents a current discourse on net neutrality within the Brazilian Judiciary. This discourse unfolds gradually, factoring in the evolution of digital laws' and their enforcement. Numerous appeals have emerged from the scrutinized case, with decisions often reflecting a lack of maturity in establishing consistent jurisprudence. This scenario suggests an inefficient legal framework, despite having comprehensive legislative backing.

Keywords: Network Neutrality. Brazilian Internet Law. Zero-Rating Practice. Internet Regulation. Case Study.

Direito autoral e licença de uso: Este artigo está sob uma Licença Creative Commons. Com essa licença, você pode compartilhar, adaptar, para qualquer fim, desde que atribua a autoria da obra e forneça um link para a licença, e indicar se foram feitas alterações.

Resumo: Este artigo pretende delinear e expandir os paradigmas predominantes na regulação da Internet, abrangendo tanto os setores privado quanto público. Os resultados indicam que, enquanto o setor público às vezes se alinha aos princípios da neutralidade de rede, ele frequentemente diverge significativamente quando comparado com a administração federal anterior nos Estados Unidos. A importância da neutralidade de rede ganhou destaque nos tribunais dos EUA após uma mudança significativa durante a administração Trump, por meio de seu órgão regulador, a FCC. Esta agência tomou medidas para desafiar o legado da Ordem de Internet Aberta de 2015, que regulamentava os provedores de Internet banda larga como um serviço público. Nossa análise da prática de zero-rating revela uma convergência desafiadora dentro de seu domínio operacional no Brasil. O artigo conclui com um estudo de caso aprofundado que apresenta um discurso atual sobre a neutralidade de rede no Judiciário brasileiro. Esse discurso se desenvolve gradualmente, levando em consideração a evolução das leis digitais e sua aplicação. Diversos recursos surgiram do caso analisado, com decisões frequentemente refletindo uma falta de maturidade em estabelecer uma jurisprudência consistente. Esse cenário sugere um arcabouço legal ineficiente, apesar do amplo respaldo legislativo.

Palavras-chave: Neutralidade de Rede. Lei Brasileira da Internet. Prática de Zero-Rating. Regulação da Internet. Estudo de Caso.

1. INTRODUCTION

This article delves into the legal legacy of the private sector concerning the Brazilian Information Society, particularly under the Brazilian Internet Law – *Marco Civil da Internet* or MCI (Law 12.965/14). It focuses on ensuring and observing the guarantees and principles outlined in its mandate. The study notably emphasizes violations related to zero-rating and net neutrality terminologies. These concepts, first popularized by Professor Tim Wu in the early 2000s, have since become prevalent in various global legislations and recently sparked debate in the U.S. Congress. Such developments have directly influenced the framing of the Brazilian General Data Protection Law (Law 13.709/18).

Serving as a foundation for comparative research and digital compliance regulations, the Internet in the 21st century has evolved

into a sophisticated and ongoing communication medium, with its architecture continually innovating. The socio-economic and political backdrop, which shapes normative shifts such as those introduced by the *Marco Civil da Internet*, is termed the Information Society. As Barreto Junior (2015, p.2) articulates, this new stage of Capitalism development:

> is characterized by the disruption of sociability standards typical of the 20th century, instigated by a series of systemic and interconnected global events, commonly referred to as the Information Society. This marks the inception of a new phase in capitalist production, established by technological and digital convergence, the exponential growth (and subsequent cost reduction) of computer equipment production, and most notably, the global proliferation of the Internet.

Concurrently, market regulatory actions have gained more robustness over the past 15 years. This is marked by the introduction of specific resolutions by Brazil's national regulatory agency, ANATEL (*Agência Nacional de Telecomunicações* or National Telecommunications Agency). These measures would later play a pivotal role in the ratification of the Brazilian Internet Law - MCI and the Brazilian General Data Protection Law - LGPD (*Lei Geral de Proteção de Dados*).

As a core discussion to the *Marco Civil da Internet*, Net neutrality is translated by Barreto Junior and Daniel César (2017) as a rule for equal communications treatment, whatever the information, recipient, or source.

For the authors, net neutrality is related to acceptable and unacceptable connection providers' demeanor, forbidding discrimination, prioritization, blocking applications, and network traffic degradation, transparently acting toward users in relation to network management practices.

A report by Teletime (2023), jointly conducted by the Intervozes communication collective and the Chilean organization Derechos Digitales, elucidates that despite net neutrality being anchored in

Article 9 of the Brazilian *Marco Civil da Internet*, over fifty legislative proposals were under parliamentary consideration to amend this statute. Additional propositions with potentially detrimental implications were in the pipeline, ostensibly aiming to curtail online freedom of expression, infringe upon digital privacy, and augment the decision-making authority of the state's policing mechanisms. Such endeavors present a profound risk, particularly when juxtaposed with the growing normalization of exceptions and breaches to the principle of net neutrality.

In exceptional net neutrality breaching cases, the CGI – *Comitê Gestor da Internet* (Internet Management Committee), published in 2018, the network management guidelines, aligned with the Brazilian Internet Law and Decree 8,771/16. The Committee conceptualized the technical requirements and guided storage and browsing records. Furthermore, it enumerated circumstances under which breaches to net neutrality might be substantiated: i) mitigation of spam and defense against denial-of-service attacks or targeted traffic; ii) specific blockages, notably of "port 25," a conduit frequently associated with unwarranted message transmissions.

The CGI, in its report, posited that Internet service providers are obliged to disclose the security and infrastructure parameters they employ transparently and lucidly. It underscored that access to records will only be permitted upon receipt of a mandate from the Judiciary Branch, which is vested with the authority to sanction breaches in data confidentiality, as articulated in the MCI: "Art. 10th § Paragraph 1. The custodian responsible for data retention shall be compelled to release the records stipulated in the caput, independently or in conjunction with personal data or other pertinent details that might aid in the identification of the user or terminal, contingent upon a judicial directive, as delineated in Section IV of this Chapter, on the stipulations of Art. 7th."

Finally, it is important to highlight the technical note 34/2017 from CADE – *Conselho Administrativo de Defesa Econômica* (Administrative

Council for Economic Defense). Within this note, an Administrative Inquiry investigated violations of the Economic Order. The document critically examined alleged zero-rating practices, probing their implications for constraining, distorting, or harming open competition and enterprise via discriminatory access to Internet applications and differential pricing structures. Upon thorough investigation, such actions were deemed non-infringing in alignment with Art. 135th, §2º and Art. 139th §3º of CADE's Internal Regulations, as well as Art. 66th §4º of Law 12,529/2011.

The methodology employed in this study embraces a legal-dogmatic research paradigm, emphasizing the methodological autonomy of the law concerning the intrinsic components of a legal system. This *modus operandi* concentrates on probing the interconnections within normative frameworks, considering the vast scope of legislation, and assessing the structural intricacies of the legal system. Concurrently, it highlights the notions of efficiency and effectiveness in the interrelations among, and within, legal institutions, circumscribing the analysis of normative discourse within the boundaries of the legal system. However, this confinement does not insinuate an exclusive focus solely on the internal dynamics of the legal framework (Gustin; Dias, 2006, p. 20-25).

Using a legal-sociological investigative framework, this study endeavors to comprehend the legal phenomenon within an expansive social context. Within this paradigm, the law is perceived as a societal dependent variable, delineated by notions of efficiency and efficacy, and the interplay between law and society. The research pursues to interrogate the facticity of the Law and the intricate, at times contradictory, interrelations it establishes with various domains: sociocultural, political, and anthropological (Gustin; Dias, 2006, p. 20-25).

Subsequent sections will discuss into the following themes: 2) Literature Review; 3) The FCC Case and the "END" of Network Neutrality in the USA; 4) Net Neutrality Perspectives in Developing Countries: A Latin American Overview; 5) Zero-rating Practices in

the Telecommunications Private Sector: The Brazilian Context; 6) Case Study: Ipglobe Internet Service Datacenter-Ltda-me versus UOL (Universo Online); 7) A Quantitative Examination of Net Neutrality Issues within Brazilian Judiciary; Final Considerations.

2. LITERARY REVIEW

As paradigms of Internet governance transform, it is imperative to assess their ramifications on societal structures and prospective network architectures. The nomenclature "net neutrality" gained significant traction, predominantly through the scholarly contributions of Professor Tim Wu from Columbia University. However, the origins of this terminology can be traced back to the 19th century, specifically to the Pacific Telegraph Act of June 16th, 1860, as elucidated in its third section, which is reproduced herein:

> That messages received from any individual, company, or corporation, or from any telegraph lines connecting with this line at either of its termini, shall be impartially transmitted in the order of their reception, excepting that the dispatches of the government shall have priority…

Over a century and six decades, the repercussions of the neoliberal ethos have permeated one of the most fervently debated policy arenas of contemporary times: net neutrality. This notion is anchored in the "dumb pipe" principle, denoting a rudimentary network possessing ample bandwidth to facilitate byte transfers between users and the Internet, devoid of content prioritization. As posited by Berghel (2017), network providers ensure equitable access and pricing for all content creators and users, irrespective of the data's inherent character. Consequently, net neutrality stands in stark contradiction to discriminatory maneuvers such as bandwidth throttling, traffic modulation, source or service obstructions, preferential access, differential pricing, and the like.

Further echoing Berghel's insights, both net neutrality and the Open Internet paradigm embody congruent values and principles. Regrettably, these ideals are met with discernible skepticism by contemporary neoliberal policymakers and economists. The focal issue at hand pertains to the capacity of broadband providers to optimize their profit margins. Hence, there exists pronounced resistance from these entities, extending to political intermediaries, against the regulatory framework introduced by the FCC (Federal Communications Commission) in 2015 during the Obama era. This was further intensified by subsequent regulations under the Trump administration in the U.S., fundamentally eroding the tenets of an open Internet and net neutrality. It is pivotal to note that this decision instigated a paradigmatic shift amongst broadband providers, provoked established judicial interpretations, and exerted pressure on the U.S. Congress to enact legislation aligning with the vested interests of Internet service providers.

The discourse surrounding the deregulation of public services and the ethos of the free market, as articulated by Ramos (2005), intensified in Latin America during the 1980s. The state's notable conceptual role became particularly pronounced in its regulatory capacity, exemplified by agencies such as ANATEL in the Brazilian context. Bezerra (2014) assumes that from 2013 onward, the government's proactive stance toward regulatory frameworks became increasingly pertinent, spurred by concerns related to security and network nuances. Yet, the inception of the "*Marco Civil da Internet*" draft can be traced back to 2009, as reported by the specialized Jota media (2016), which cites a draft bill collaboratively developed with the Center for Technology and Society of FGV Law Rio (FGV/CTS). The blueprint and structure were formulated through extensive online public consultations, facilitated by digital platforms.

Bridging the most discussed points on the verge of public consultation, net neutrality emerges as the beacon. Once established, it mandates that Internet service providers treat all data packets equitably,

eschewing any form of discrimination based on content, origin, destination, service, terminal, or application.

To delineate these principles further, the Federal Government saw the necessity to specify exceptions to the principle of net neutrality through Decree 8,771/16. The exceptions encompass: telecommunications services not explicitly purposed for providing Internet connectivity and specialized services. The latter refers to services optimized for guaranteed quality in terms of service, speed, or security, even if leveraging TCP/IP or analogous logical protocols. These services are not perceived as a surrogate for the open and unrestricted nature of the Internet, given their catering to niche user groups with rigorous access controls.

A point of contention regarding the decree pertains to "zero-rating" practices, frequently employed by content providers. This is evident in the realm of social networks and Internet service providers, which underwrite access to specific applications and services, manifesting overt discriminatory practices. Such actions challenge the foundational principles of net neutrality and stand in opposition to extant regulations. However, when orchestrated by dominant market entities, these practices are often perceived as standard operational procedures, thus gaining tacit acceptance.

Such matter was brought to the forefront through an Administrative Inquiry initiated by the Federal Prosecution Office, known as *Ministério Público Federal* (MPF). The inquiry targeted telecom operators in Brazil, which, from the plaintiff's perspective, as reported by CADE (2017), engaged in anti-competitive behaviors. These operators were accused of fostering discriminatory practices concerning the content and applications accessed via their networks. In this context, competition law appeared to be starkly misaligned with the principles of net neutrality and the foundational tenets of the Internet Regulatory Framework – *Marco Regulatório da Internet*. These serve as the bedrock and guiding principle, respectively, for ensuring effective governance in digital business practices and establishing consumer relationships with Internet service and content providers.

3. THE FCC CASE AND THE "END" OF NETWORK NEUTRALITY IN THE USA

According to the Amicus Curiae Brief submitted by members of the U.S. Congress in 2018, the Telecommunications Act of 1996 stands as a seminal legislative enactment, conceived to guarantee that all Americans can avail of state-of-the-art telecommunications services at competitive rates. To actualize this vision, Congress embraced a technologically agnostic and encompassing definition of "telecommunications service" for regulation under the Communications Act, as revised by the 1996 Act, 110 Stat. 56. The 1996 Act delineates "telecommunications service" as the provision of telecommunications directly to the general populace for a stipulated fee, irrespective of the infrastructure employed. This is codified in 47 U.S.C. § 153 (53). Furthermore, "telecommunication" is characterized as the conveyance of user-specific information, preserving its original form and content during transmission, as noted in Id. § 153 (50).

Subsequently, in its 2015 directive titled Protecting and Promoting the Open Internet, 30 FCC Rcd 5601 (2015) (henceforth referred to as the 2015 Order), the FCC asserted that broadband Internet access ought to be designated as a "telecommunications service." Key officials from the Obama administration contended that broadband Internet access service inherently aligns with the explicit terminologies of "telecommunications" and "telecommunications service" as articulated in the 1996 Act. Moreover, even if one were to diverge from this literal interpretation, the overarching consensus on how consumers perceive the essence of broadband access invariably leads to the inference that the most cogent interpretation of the 1996 Act categorizes broadband Internet service as a "telecommunications service."

However, in stark deviation from the unambiguous language of the 1996 Act and prevailing consumer sentiment, the FCC, in its 2018 directive titled Restoring Internet Freedom, 33 FCC Rcd 311 (2018) (subsequently referred to as the 2018 Order), opted to revert

the earlier classification, designating broadband Internet access service as an "information service" and consequently revoking numerous stipulations established in the 2015 resolution.

With the appointment of Ajit Pai and the subsequent political realignment in Washington, the Federal Communications Commission (FCC) adopted a majority stance, rescinding the prior order despite substantial public dissent. Blevins (2018) observes that the agency purported to revert to the "light-touch" deregulatory approach, which had ostensibly underpinned Internet policy for an extended period. Blevins contends that this move was predicated upon a foundational normative rationale that subsequently influenced contemporary interpretations of U.S. jurisprudence. However, the FCC's narrative appears to be predicated on misconstrued historical perspectives of the Internet. The agency's decision-making seemed predicated on equating modern Internet access providers with their antecedents in the data and dial-up service realm. Consequently, the deregulation of these prior entities is now being invoked to rationalize the deregulation of their modern counterparts, a stance fraught with both normative and legal issues.

Opposition to the FCC's decisions coalesced around an amalgamation of tech enterprises and consumer advocacy entities, including, but not limited to, Mozilla Corporations, Etsy, Free Press, and The Center for Democracy and Technology. This culminated in Doc No. 18-1051, presented to the United States Court of Appeals for the District of Columbia Circuit on 08/20/2018.

The Mozilla v. FCC litigation marked a significant progression, with hearings commencing on 02/01/2019 and a definitive ruling by 10/01/2019. The petitioners categorically endorsed the 2015 Resolution, which was firmly rooted in net neutrality principles. In light of the FCC's decision to abrogate the previously instituted net neutrality rules, Nachbar (2019) notes that several U.S. states have embarked on enacting their own net neutrality statutes. Both the federal administration and industry trade consortiums have contested these state

laws, invoking the Negative Commerce Clause, a judicial construct derived from the Commerce Clause of the U.S. Constitution, in its Art. 1st, Section Eighth. This mandates that state legislation does not impinge upon interstate or international commerce.

The underlying objective of the aforementioned litigation was to countermand the decision promulgated by the Federal Communications Commission in late 2018. These actions were perceived as antithetical to the principles of net neutrality. The agency advanced the reclassification of information service, arguing its alignment with the Act's architecture, established Commission precedents, and the overarching objectives of the Trump administration.

In a pertinent update, during the 116th Congress in 2019, the U.S. House ratified the H.R. 1644, dubbed the "Save the Internet Act", subsequently advancing the bill to the Senate Legislative Calendar. Spearheaded by Rep. Mike Doyle of Pennsylvania, and endorsed by 132 original cosponsors, the bill reflects the overwhelming public support for the reinstatement of net neutrality safeguards. This legislation aims for empowering both the FCC and consumers to address grievances against ISPs, imposing penalties for infractions. Additionally, it aims to expedite broadband deployment, safeguard user privacy, and ensure accessible services for individuals with disabilities.

Rep. Mike accentuated that ISPs have historically capitalized on both consumers and edge providers, a practice detrimental to consumers, numerous enterprises, and consequently, the broader economy. This dynamic undermines technological innovation, particularly hindering the emergence of online startups, diminishing U.S. competitiveness, and negatively impacting the American standard of living.

Furthermore, as articulated by Rep. Greg Stanton, the potential enactment of this legislation would signify a repudiation of the FCC's 2018 Order under the aegis of former President Trump's administration, paving the way for strengthened net neutrality provisions. As delineated by the Representative, the legislation encapsulates three fundamental tenets of net neutrality: prohibiting blocking, throttling,

and paid prioritization. It would also serve to reinstate the FCC's jurisdiction, promoting broadband accessibility and expansion, with an emphasis on rural locales.

Despite the stratagems of the preceding administration, numerous stakeholders, including Mozilla Corp., penned a communique dated 3/19/2021 to the incumbent FCC Chairwoman, Jessica Rosenworcel, an appointee of President Biden. The correspondence unequivocally expressed endorsement for the reestablishment of net neutrality safeguards via the federal agency. The advocates emphasized that such foundational measures are imperative to sustain the Internet as a vibrant, open platform conducive to innovation and economic vitality. The dispatch underscored the bipartisan consensus among the population as well as the exigency of such protections, particularly as numerous sectors, including business and education, have transitioned to remote modalities amidst the COVID-19 pandemic. The signatories contended that by leveraging its federal mandate to reinstate net neutrality, the FCC could bolster broadband accessibility for myriad American households, concurrently facilitating the nation's economic resurgence.

On October 19th, 2023, the Federal Communications Commission (FCC) convened to deliberate on a proposal aimed at restructuring the mechanism to reinstate net neutrality, a principle that experienced substantial erosion during the tenure of the Trump administration. The regulatory proposition, championed by the Commission's Chairwoman, Jessica Rosenworcel, and endorsed by Democratic commissioners Geoffrey Starks and Anna Gomez, received approval. The FCC's decision, which adhered strictly to party affiliations, set in motion the endeavors to rejuvenate net neutrality by repositioning it under the ambit of Title II of the Communications Act. This maneuver effectively empowers the federal government with the jurisdiction to oversee prominent telecommunication entities, pivotal in orchestrating and controlling internet traffic and accessibility.

The aspiration to revive net neutrality encountered impediments in the early phase of the Biden administration, persisting until the selection of the fifth commissioner for the FCC. This delay can be attributed to the pronounced dissent faced by the initial nominee, jeopardizing her potential appointment. It is imperative to recognize that the trajectory toward restoration is inherently protracted, necessitating public engagement after the preliminary vote. Post this consultative phase, the FCC is poised to finalize its institutional stance, a process that may present challenges to achieving comprehensive reintegration before the electoral proceedings of 2024.

Net neutrality, as envisioned, fosters a milieu that has historically enabled the Internet to function as a catalyst for economic innovation, predicated on principles that preclude ISPs from obstructing, constraining, or prioritizing traffic. In a context unfavorable to nascent entrants, neutrality, as expounded upon Mozilla Corp.'s digital portal, augments long-term infrastructural investment. This amplifies broadband availability, enhances service velocities, and catalyzes the emergence of diverse service providers, transcending mere Internet access to encompass applications and a plethora of digital content. This profusion of offerings can proliferate unencumbered by ISP interventions, ensuring ubiquitous, equitable digital interaction within an expansive Internet environment.

It's evident that alongside a robust regulatory framework and vigilant governmental oversight to counteract exploitative practices, certain legal safeguards, exemplified by California's (CA) statutes, insulate its residents from challenges faced by their counterparts across the nation. This is a consequence of a judicious CA court ruling that sanctioned the state's net neutrality laws. It's incongruous for a singular federative entity to benefit from such protections, whilst the broader U.S. population remains subjugated to the extant FCC order, entirely estranged from the tenets and benefits of net neutrality.

4. NET NEUTRALITY PERSPECTIVES IN DEVELOPING COUNTRIES: A LATIN AMERICAN OVERVIEW

In the evolving global discourse on net neutrality, Latin America has notably embarked on crafting national legislative measures to address this regulatory challenge. Becerra (2015) underscores that the rapid growth of info-communication technologies and the ubiquity of the Internet in the region have largely overshadowed previous disparities in access and usage.

Navarro, López, Domínguez, and Castañeda's (2018) study in Mexico, drawing from 2016 INEGI (National Statistics and Geography Service) data, reveals that 47% of households have Internet connectivity, with 59.5% of the population being active users. This usage is predominantly urban and is significantly driven by the younger demographic. Economic constraints, as indicated by 60% of respondents, are a significant barrier to computer ownership. Most respondents, 74.2% and 85.4%, identified the home as the primary location for computer and Internet access respectively. Interestingly, 62.4% claimed to be self-taught in computer usage. In the realm of mobile technology, while 69.6% possessed a smartphone, a substantial 76.8% utilized prepaid services.

Mexico's journey towards establishing a net neutrality framework culminated in the Federal Law on Telecommunications and Broadcasting in 2014, updated in the Official Gazette Federation on 04/16/2021. This legislation, particularly in its Article 145, mandates specific net neutrality guidelines for concessionaires and Internet service resellers.

Institutionally, the law opened the door for the establishment of the *Instituto Federal de Telecomunicaciones* (IFT) – Federal Institute of Telecommunications. Positioned as an antitrust entity, the IFT's mandate, as detailed by Nguyen, Mohammed, Omar, and Dean (2020), was to prevent anti-competitive practices. However, the integrity of the IFT has been questioned, notably by President Andrés

Manuel Lopez Obrador in 2022, who critiqued its inability to curtail monopolistic tendencies in the industry, leading up to privatization and national assets spoliation.

Turning to international comparisons, Triviño, Franco, and Ochoa (2019) spotlight Chile's pioneering efforts in net neutrality, tracing its genesis to a 2006 legal dispute. A voice over Internet telephony company (VOIP - Voice over Internet Protocol) challenged service restrictions, alleging intentional degradation of its platform. While the Court of Defense of Free Competition initially ruled in favor of the VOIP company, subsequent political mobilization by civil society organizations such as Neutralidad, Movimiento de Liberación Digital, Mujeres en Conexión, Internauta Chile, among others - ensured that net neutrality principles were enshrined in the legal framework.

In the landscape of global net neutrality discussions, Chile emerged as a pioneer, enacting Law 20,453 in 2010. This legislation, bolstered by the Undersecretariat of Telecommunications (SUBTEL) through Decree 368 in 2013, prohibited the arbitrary blocking of applications, services, and content. Nonetheless, various telecommunications entities have faced allegations from civil society for potentially reducing application speeds and content access without adequate justification.

Huerta (2013) underscores the inadequate enforcement related to these legislative obligations, attributing it to a combination of limited technical capabilities and political inertia. Mobile carrier operators, in particular, have often sidestepped these legislative measures, offering access to select applications and content either freely or via zero-rating—a term globally recognized and discussed at length in that study. Such business tactics, while augmenting market shares, overtly defy the foundational principles of free competition and net neutrality.

Triviño, Franco, and Ochoa (2019) point to SUBTEL's seeming inaction, suggesting that commercial strategies like zero-tariffs, which do not explicitly discriminate content, align legally since users maintain Internet access. However, in a subsequent study in 2021, the same authors turned their attention to Colombia, where net neutrality

is addressed in Law 1,450/11, Article 56, Chapter II. This legislation prohibits ISPs from obstructing, interfering with, or discriminating against any lawful content, application, or Internet service. Yet, Resolution 3,502 of 2011 has drawn criticism for its perceived vagueness, potentially leading to decisions that violate net neutrality. A noticeable point of contention is the exclusion of civil society and academia in its formulation, thereby allowing providers to offer differentiated Internet access services, be it through zero-tariff practices or vertical integration. The authors argue that these zero-rating practices, which limit services and content based on market and consumer profiles, breach the principles against discrimination and information prioritization. Importantly, Resolution 3,502 solely governs ISP-consumer relationships, leaving content and application providers unregulated.

In synthesizing the net neutrality landscapes of major Latin American economies, excluding Brazil which is examined separately, there emerges a narrative of legislative frustration. The challenge lies in the inability or unwillingness to enforce extant laws due to local challenges, such as enforcement lapses or legislative inefficacy. In essence, Internet service providers, especially mobile carriers, display a common pattern across these nations. They offer enticing zero-tariff benefits to consumers, which inadvertently disadvantage competitors not part of these schemes. Consequently, local content providers are marginalized in favor of global conglomerates, impeding the entry of newcomers. This dynamic exacerbates disparities and information imbalances, starkly deviating from the egalitarian ethos of net neutrality, ultimately impacting content creation and consumption paradigms.

5. ZERO-RATING PRACTICES IN THE TELECOMMUNICATIONS PRIVATE SECTOR: THE BRAZILIAN CONTEXT

In the realm of telecommunications, it is commonplace for service providers to offer specific applications to consumers in an

"unlimited" or "no-cost" manner. This means that users can access these applications without incurring additional charges or consuming their data limits. Within the intricacies of the app market, Curwin (2016) delineates this phenomenon as a tripartite interaction among platform designers, mobile Internet operators, and application developers. These entities collaboratively shape the mobile ecosystem, with platform designers crafting the operating systems, mobile operators curating consumer contracts, and developers expanding their digital products, often overshadowing smaller competitors.

Curwin (2016) further advances that a substantial 85% of U.S. mobile Internet providers leverage these applications to entice new clientele. In essence, providers that center their offerings around such applications typically report higher average revenue per user and reduced customer attrition.

From the consumer's perspective, these offerings are largely advantageous. They enable users to utilize services extensively without concerns of exceeding their data limits. However, the crux of this discussion revolves around the concept of "zero-rating." As Santos (2016) elucidates, this is akin to the "walled garden" approach, where users' access is confined to select services rather than the entire Internet spectrum. This modality, particularly when certain network segments are selectively zero-rated, is seen by many experts as a transgression against certain regulatory frameworks, notably the *Marco Civil da Internet*.

Abarca (2019) suggests that "zero-rating" promotions warrant scrutiny both from a competition law lens—to ascertain if they potentially manifest as anticompetitive behavior—and from a net neutrality perspective, to discern if they infringe upon its foundational tenets.

Such promotions offer a dual incentive. Firstly, they exempt certain applications from incurring access costs, especially significant for data-intensive applications like audio and video streaming platforms. Secondly, they bolster the appeal of telecommunication companies to consumers, making data plans tethered to zero-rating offers more enticing.

However, Abarca (2019) also delves into the implications for content providers. Telecommunication firms' preferential agreements can foster a landscape where certain entities gain an undue advantage over others. This could manifest as restrictions on offering similar packages to rival content providers or as stipulations for maintaining exclusivity. The critical question then arises: Can dominant telecommunication entities arbitrarily dictate which partners benefit from such offers, potentially sidelining others?

Such discriminatory practices, especially if they marginalize entities not privy to these offers or outright block access, can distort market dynamics, effectively displacing potential competitors. Sabatier's (1988) notion of 'Advocacy Coalitions' becomes pertinent here, denoting groups opposing specific public policies, especially in the realm of net neutrality. These coalitions, unified by shared beliefs, can exert influence over the digital landscape. Curwin (2016) posits that unchecked, these entities might selectively host or block certain apps, underscoring the need for robust regulation to ensure fair market practices.

Abarca (2019) postulates that such zero-rating offers, when extended from telephony providers to content providers, could be construed as leveraging market dominance. This, in turn, might exclude competitors not privy to these offers.

Moreover, it's pivotal to recognize the potential dominant stance some service providers might command. Established jurisprudence underscores the oligopolistic nature of the telecommunications sector, characterized by significant entry barriers. Consequently, discerning the individual dominance of each telecommunication entity becomes challenging. Therefore, the competitive edge a zero-rating offer confers upon one content provider might not necessarily render an insurmountable advantage, but it does alter the market dynamics in nuanced ways.

In the context of the aforementioned theoretical discourse, the Brazilian Administrative Inquiry no. 08700.004314/2016-71 offers a

pertinent case study. Spearheaded by the Prosecution Office (Ministério Público Federal – MPF), the inquiry examines the practices of companies such as Claro S.A., Tim Celular S.A., Oi Móvel S.A., and Telefônica Brasil S.A. These entities are scrutinized under the purview of the Administrative Council for Economic Defense (*Conselho Administrativo de Defesa Econômica* – CADE).

Central to the MPF's contention is the assertion that these corporations, through their pricing strategies and distinct terms for Internet service provision, exhibited potentially anticompetitive behaviors. These actions, it is presumed, may have undermined the principles of free market competition. Furthermore, there are claims of discriminatory practices, wherein certain content and applications experienced preferential treatment over their network infrastructure.

The MPF emphasizes that these telecommunications providers, through their service plans, facilitated more economical access to select applications, thereby conferring a significant advantage over other offerings. Such a strategy could ostensibly skew the competitive landscape of the application market, stymieing the growth prospects of rival firms and posing barriers to market entry for newcomers. This could, in turn, stifle innovation and potentially lead to escalated prices for mobile Internet connectivity services, contravening consumer interests. The prosecutor's observations[11]on this matter are described below, as perceived on CADE (2017):

> From the perspective of the consumer, such practices, while masquerading as benevolent free offerings, disrupt the competitive landscape, of which the consumer is the primary beneficiary. Furthermore, it compromises the autonomy of

[1] [1] Sob a ótica dos consumidores, a prática, sob o pretexto de ofertar algo gratuitamente, distorce a concorrência, cujo grande beneficiário é o próprio consumidor, bem como afasta a autodeterminação do internauta, que está sendo enganado em relação à isonomia no acesso às aplicações, atuais e futuras. O estratagema também causa severos impactos no equilíbrio existente com relação à aquisição, pelo internauta, do plano que ele deseja, em condições justas e razoáveis, pois torna mais oneroso um acesso neutro à Internet.

> internet users by misleading them about the equitable access to both current and prospective applications. This tactic also profoundly impacts the equilibrium concerning the consumer's ability to procure their desired internet plan under equitable and reasonable terms, as it inadvertently inflates the cost of neutral internet access.

Upon rigorous examination and analysis of the case, both ANATEL and the Ministry of Science, Technology, Innovation, and Communications discerned that the scrutinized practices did not ostensibly violate the provisions of the *Marco Civil da Internet* and Decree 8,771/16, both pivotal regulatory instruments. The decision elucidated that the networks of Internet service providers remain accessible to an extensive array of content and applications. Significantly, there was an absence of tangible evidence indicating any blocking or degradation of traffic on applications not encompassed within the operator's collaborative agreements. The technical note further emphasized the lack of indicators suggesting prioritization during data switching or transmission.

Moreover, no discernible preferential treatment was accorded to applications during transmission, switching, or routing by corporations affiliated with the same economic consortium. From a competitive standpoint, given the investigative trajectory and responses gleaned from the inquiry, there was insufficient corroboration to infer that the behaviors under scrutiny could engender anticompetitive repercussions either in the Internet access provision sector or within the realm of applications and content.

In summation, it appears plausible that regulatory authorities might not perceive the presence of anticompetitive risks, thereby not necessitating direct intervention against telecommunication enterprises to cease zero-rating accords. This stance arises from the challenges in ascertaining the dominant stature of incumbent entities within the framework of significant harm theory. Consequently, a potential infringement of the neutrality principle might only manifest if one

extrapolates the interplay across all market facets, specifically, the dynamics between content providers and telephony providers, and the triangulation between content providers, telephony providers, and end-consumers. Addressing this intricate conundrum is paramount; zero-rating practices could then be perceived as discriminating access to content for mobile Internet consumers, thereby engendering a multifaceted competition dilemma within the aforementioned triad (data provider, content provider, and users).

6. CASE STUDY: IPGLOBE INTERNET SERVICE DATACENTER-LTDA-ME *VERSUS* UOL

In the context of the current case study, we endeavor to analyze net neutrality from a legal perspective, in alignment with the litigation proceedings at the Court of Justice of São Paulo, Brazil. The parties involved are IPGLOBE (Plaintiff) and UOL (Defendant). Preliminary scrutiny of the case reveals the Plaintiff's operational footprint within the digital domain, encompassing offerings such as Internet services, website hosting, dedicated servers, e-mail services, and virtual servers, among others. IPGLOBE asserts that it neither monitors its clientele nor engages in the dissemination of marketing emails or spam. Any such activity, if identified, is construed as an action initiated by the client's users, as articulated by the plaintiff's legal representative, Braido (2015).

However, post the imposition of a blockade by the Defendant in 2015, the Plaintiff, expressing dissatisfaction, communicated their concerns through multiple emails and telegrams. UOL responded, affirming their decision to implement the blockade, attributing it to the Plaintiff's alleged inundation of unsolicited messages, which, according to UOL, taxed their infrastructural capacities. This culminated in the ensuing legal tussle, with the Plaintiff contending that the intentional blockade impinged upon their user base and transgressed the

stipulations of the MCI, which was a nascent legal framework at that juncture. Central to this contention is the principle of net neutrality, which advocates for non-interference and non-blockade of content by ISPs or intermediary entities *vis-à-vis* their end-users.

Nonetheless, as per the Defendant's legal counsel, Luiz Ramos and Michel Salomão (2015), the initial adjudication by the Lower Court was deemed judicious, negating any remedial recourse sought by the Plaintiff.

During the appellate proceedings, the bench comprised Justice Luis Fernando Nishi, Justice Caio Marcelo Mendes de Oliveira, and Justice Ruy Coppola. The Plaintiff, challenging the initial denial of a preliminary injunction, underscored the reputational and financial repercussions stemming from non-renewed client contracts. They also invoked various provisions from the MCI legal framework, specifically Law 12,965/2014, to highlight the Defendant's alleged transgressions. The crux of the appellate deliberation revolved around the legitimacy of the data transmission blockade, with further investigative scrutiny deemed requisite.

In his pronouncement in October 2015, Judge Alves da Silva alluded to evidence presented by the Defendant, which showcased a conspicuous volume of unsolicited messages originating from the Plaintiff's IP. Labeling such practices as "spamming," the Judge deemed it an overreach regarding advertising rights and in contravention of the Consumer Defense Code (CDC). While the Defendant acknowledged the comprehensive blockade, the presiding Judge Silva (2015) emphasized the imperative of provider neutrality, vehemently condemning the practices in question, as elucidated in the subsequent translated decision excerpt[2]:

[2] Para a solução das questões jurídicas, entendo cabível a citação dos seguintes dispositivos da Lei 12.965/14 (Marco Civil da Internet): "Art. 2 o A disciplina do uso da internet no Brasil tem como fundamento o respeito à liberdade de expressão, bem como: ... III – a pluralidade e a diversidade; IV – a abertura e a colaboração; V – a livre iniciativa, a

For the solution of the legal questions, I believe it is appropriate to quote the following provisions of Law 12,965/14 (Marco Civil da Internet): "Article 2 – The discipline of Internet use in Brazil is based on respect for freedom of expression, as well as: ... III – plurality and diversity; IV – openness and collaboration; V – free initiative, free competition, and consumer protection... Art. 3 The discipline of Internet use in Brazil has the following principles: ... IV – preservation and guarantee of net neutrality... Art. 4 – The discipline usage of the Internet in Brazil has as its objective the promotion: ... II – access to information, knowledge and participation in cultural life and the public affairs conduct... Art. 7 – Access to the Internet is essential to the exercise of citizenship, and users have assured the following rights: ... II – inviolability and confidentiality of one's communications flow over the Internet, except by judicial order, in the form of the law... The person responsible for transmission, switching or routing has the duty to treat all data packets in an isonomic way, without distinction for content, origin and destination, service, terminal or application" (g.n.).

(Judgment; No. 1000984-09.2015.8.26.0400, Ipglobe Internet Service Datacenter Ltda-me X Uol – Universo Online S.A, 2nd Civil Court of the County of Olímpia, Justice Lucas Figueiredo Alves da Silva; j.10/19/2015)

---

livre concorrência e a defesa do consumidor... Art. 3 o A disciplina do uso da internet no Brasil tem os seguintes princípios: ... IV – preservação e garantia da neutralidade de rede... Art. 4 o A disciplina do uso da internet no Brasil tem por objetivo a promoção: ... II – do acesso à informação, ao conhecimento e à participação na vida cultural e na condução dos assuntos públicos... Art. 7 o O acesso à internet é essencial ao exercício da cidadania, e ao usuário são assegurados os seguintes direitos: ... II – inviolabilidade e sigilo do fluxo de suas comunicações pela internet, salvo por ordem judicial, na forma da lei... Art. 9 o O responsável pela transmissão, comutação ou roteamento tem o dever de tratar de forma isonômica quaisquer pacotes de dados, sem distinção por conteúdo, origem e destino, serviço, terminal ou aplicação" (g.n.).

(Sentença; nº 1000984-09.2015.8.26.0400, Ipglobe Internet Service Datacenter Ltda-me X Uol – Universo Online S.A, 2ª Vara Cível da Comarca de Olímpia, Dr. Juíz Lucas Figueiredo Alves da Silva; j.19/10/2015)

In alignment with the tenets delineated by the MCI legislation, a prominent query emanating from the appeal can be succinctly addressed: The Defendant is proscribed from modulating the trajectory of electronic messages directed to its users/consumers without their explicit consent, lest they infringe upon the sanctity of communications flow. Concisely, the Defendant has transgressed the doctrine of net neutrality. Additionally, as per the Consumer Defense Code (CDC), the Plaintiff is obligated to refrain from disseminating advertising services via e-mails devoid of users/consumers' overt assent. Amidst this legal imbroglio, the presiding judge opined that the CDC holds primacy in this legislative context, especially since users might avail alternative channels beyond mere email, a sentiment buttressed by Law 12,965/14. The judgment's essence can thus be distilled as follows: sans explicit consent from users/consumers, any oversight of electronic message content must be eschewed to circumvent potential infringements upon communications flow.

Upon judicious contemplation and a robust understanding of the nuances, the adjudicating magistrate sanctioned the preliminary injunction, mandating with unequivocal clarity that the provider, UOL, must give up from curating the content of electronic dispatches directed to users in the absence of explicit consent, imposing a monetary penalty of R$ 1,000.00 for each transgression. In a subsequent maneuver, UOL sought redress from the TJSP, contending that the Appellee had failed to articulate any explicit objection in its foundational plea. According to the verdict, promulgated by the Honorable Justice Luis Fernando Nishi, the purported inconsistency advanced by the Appellant lacked substantive grounding; a mere cessation of traffic oversight or a modulated response would tantamount to the debarment of the Appellant's IP addresses.

Although subsequent legal recourse was conceivable, the Appellant, in an astute legal move, tendered a Motion for Clarification, endeavoring to expunge the levied fine. In response, Honorable Justice Luis Fernando Nishi elucidated his ruling to obviate any ambiguities.

While acknowledging the identified infraction, he conceded that the plea was predicated not on dilatory tactics but a genuine quest for clarity regarding the antecedent pronouncement.

Subsequently, the Plaintiff, IPGLOBE, proffered a rejoinder to counter-refute the Special Appeal at the Superior Justice Court (Superior Tribunal de Justiça - STJ), positing that the Motion for Reconsideration solely annulled the fine, leaving the core essence of the judgment intact. As articulated by attorney Braido (2019), the verdict stands on the bedrock of the national legal edifice and warrants no deviation.

The defense for the Special Appeal hinges on Art. 105th, III, of CF/88, underscoring that it is imperative to adjudicate Special Appeals emanating from Federal or State Regional Courts when a federal treaty or law is ostensibly contravened or when disparate interpretations of a federal statute emerge from divergent courts.

Furthermore, as advocated by IPGLOBE's legal counsel, barring superior judgment, pursuant to Article 932 of the Brazilian Civil Procedural Code, it would be judicious to dismiss UOL's appeal on account of its manifest inadmissibility, further fortified by STJ Precedents nº 5 and nº 7:

> "Precedent 5
>
> THE MERE INTERPRETATION OF A CONTRACTUAL CLAUSE DOES NOT JUSTIFY A SPECIAL APPEAL.
>
> Precedent 7
>
> A SIMPLE RE-EXAMINATION OF EVIDENCE DOES NOT GIVE RISE TO A SPECIAL APPEAL."

In the context of the presented case study, despite the absence of a conclusive verdict—given the litigation has been dormant since June 2019—there is a clear alignment with the practical implications pertaining to net neutrality, as outlined in earlier discussions. Notably, even though the *Marco Civil da Internet* (MCI) was enacted

nine years ago, the judicial discourse on the matter remains nascent. The scarcity of well-established jurisprudence regarding net neutrality's ambit and implementation, combined with the stasis of the aforementioned litigation post-appeal, underscores a judicial inertia. The protracted legal processes, compounded by recurrent appeals, inevitably impede both procedural expediency and the resolution of the case at hand.

7. A QUANTITATIVE EXAMINATION OF NET NEUTRALITY ISSUES WITHIN BRAZILIAN JUDICIARY

Utilizing the term 'network neutrality' within the Thomson Reuters platform, this research endeavored to gauge the scope of jurisprudential decisions in Brazil, particularly those rendered by the regional Courts of Justice and extant determinations within the *Superior Tribunal de Justiça* (STJ). Analytically, the Court of Justice of São Paulo (TJSP) predominates, accounting for 44% of the decisions, trailed by the Court of Justice of Minas Gerais (TJMG) at 20%, the Court of Justice of Rio de Janeiro (TJRJ) at 11%, and the Court of Justice of Rio Grande do Sul (TJRS) at 9%. Remaining Courts of Justice contribute marginally, as delineated in Figure 1 and Figure 2:

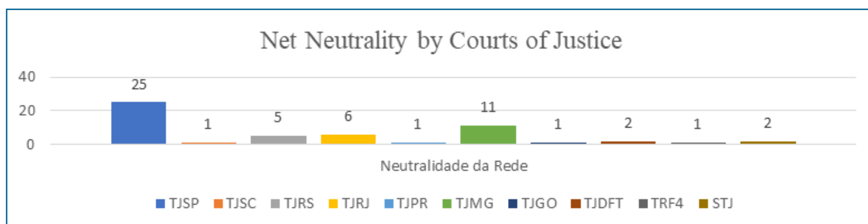


Figure 1 – Net Neutrality by Courts of Justice.
Source: Revista dos Tribunais Online (Thomson Reuters), 2022.

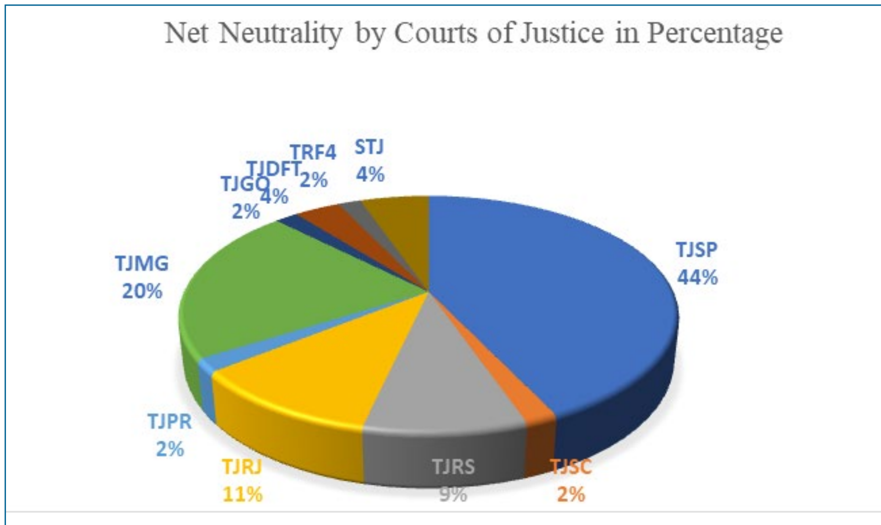


Figure 2 – Net Neutrality by Courts of Justice in Percentage.
Source: Revista dos Tribunais Online (Thomson Reuters), 2022.

Within the purview of legal disputes surrounding network neutrality, two cases, adjudicated by the Superior Court of Justice, merit particular attention due to their substantive implications. The inaugural case, adjudicated by Justice Moura Ribeiro, reaffirmed the jurisdictional competence of the 5th Business Court of Rio de Janeiro, focusing on the Oi Telephone Company's adherence to network neutrality principles. Central to this discourse is Law 12.965/14, which scrutinizes the legitimacy of operator practices relative to consumer rights concerning prepaid and postpaid charges, Internet speed reduction, and provisions articulated in the *Marco Civil da Internet Law*, specifically articles 7(IV, V) and 9(§2, I-IV).

The subsequent lawsuit, adjudicated by Minister Luis Felipe Salomão, centred on a business entity's dispute against a prominent social network content provider, spotlighting the dissemination of purportedly fallacious information. Herein, the pivot of the debate revolved around user confidentiality, especially those disseminating potentially defamatory content. Anchored in Law 12.965/14, the

discourse elucidated rights related to data privacy and confidentiality. Although articles 13 and 15 of the aforementioned legislation mandate the safeguarding of connection and access records, the court was reticent to endorse the breaching of privacy rights without meeting the stringent criteria outlined in Article 22.

A nationwide jurisprudential analysis illuminated a preponderance of cases advocating for the removal of sensitive content from social networks, predominantly citing potential defamation. This evolving judicial stance on network neutrality spans from 2014 to 2022. Content providers, during the nascent phases of Law 12,965/14's implementation, often invoked freedom of expression as a defense. The technical evolution from IPv4 to IPv6 in Brazil further complicated the discourse. To uniquely identify digital transgressors, the identification of the logical origin port became imperative alongside the conventional IP address.

Providers are held accountable per Article 19 of the MCI, contingent upon their non-compliance with judicial mandates. The judiciary consistently endeavors to strike a balance between free expression and user privacy, underscoring the non-absoluteness of the former.

Conclusively, as elucidated by Justice Luis Felipe Salomão in the latter case, while the removal of certain sensitive content is imperative, the overarching right to privacy must not be compromised by indiscriminately breaching others' confidential records merely to resolve isolated content disputes.

8. FINAL CONSIDERATIONS

This study, grounded in pertinent legislation, strived to elucidate the multifaceted dimensions of the net neutrality principle. The analysis bifurcates into two distinct domains: i) the international landscape, notably examining Latin American net neutrality legal provisions juxtaposed with an in-depth scrutiny of the U.S. political system's

operability. The latter notably foregrounds the potential ramifications of policy orientations during the Trump administration. The Federal Communications Commission (FCC) underwent a significant terminological and legal metamorphosis, equating legacy technologies like dial-up providers with contemporary broadband internet, a domain previously governed by comprehensive regulatory frameworks. With the Biden administration inaugurated in January 2021, a recalibration favoring net neutrality is anticipated; ii) the Brazilian context, with a focus on the 'zero-rating' practice. This is further elucidated through a post-MCI case study involving IPGLOBE and UOL, culminating in a quantitative exploration of contemporary jurisprudence as interpreted by regional courts and the Superior Court of Justice.

The findings underscore the complexity of classifying 'zero-rating' behaviors. Telecommunication entities, characterized by their oligopolistic nature, ostensibly function as a unified conglomerate. Consequently, the Administrative Inquiry initiated by the MPF refrained from endorsing 'zero-rating,' determining no transgressions of the MCI and Decree 8,771/16.

From a Latin American vantage, local content providers grapple with the overshadowing presence of international conglomerates, resulting in an environment antithetical to the principles of net neutrality. The aforementioned case study intimates a proclivity towards the Plaintiff, as the Defendant's actions, specifically the unwarranted blocking, contravened the stipulations of the MCI, particularly those pertaining to net neutrality. An ancillary observation highlights the ponderous pace of the Brazilian judiciary, exacerbated by a deluge of appeals.

Subsequent research endeavors should contemplate a meticulous jurimetric analysis crossing Brazilian, American, and Latin American judicial systems. Such an inquiry would elucidate the profound ramifications of net neutrality within regional and global digital terrains. This would not only discern its legal implications but also its societal and individual impacts. Despite existing legal frameworks, the assurance

of net neutrality remains tenuous, as evinced by prior case studies. Moreover, the 'zero-rating' paradigm not only impacts end-users but also engenders dilemmas for content providers, compelling them to navigate a milieu dominated by telecommunication behemoths. Such adverse dynamics challenge the very ethos of a free, entrepreneurial digital space, necessitating a comprehensive analysis of the intricate triad encompassing service providers, content creators, and end-users.

Beyond that, the zero-rating phenomenon affects not only the ending point, in a customer view but also, the content providers' dilemma: how to keep up their position as new entrants into the phone carriers' contractual environment where the big players act preserving the interests of a small portion of actors? This adverse effect mines the concept of a free environment for entrepreneurial and technological gain into the content provider's view as well the final user's view. The triad must be analyzed altogether.

REFERENCES

ABARCA, Manuel. **Ofertas Zero-Rating, competencia y neutralidad de red** (Zero-Rating, Competition Law and Net Neutrality). Available at SSRN 3299462, 2018.

BARRETO JUNIOR, Irineu Francisco. Proteção da Privacidade e de Dados Pessoais na Internet: O Marco Civil da rede examinado com fundamento nas teorias de Zygmunt Bauman e Manuel Castells. **DE LUCCA, Newton; SIMÃO FILHO; Adalberto; DE LIMA; Cintia Rosa Pereira. (Org.). Direito & Internet III: Marco Civil da Internet. 1ed. São Paulo: Quartier Latin**, v. 2, p. 100-127, 2015.

BARRETO JUNIOR, Irineu Francisco; GALLINARO, Fábio; SAMPAIO, Vinícius Garcia Ribeiro. Marco civil da internet e direito à privacidade na sociedade da informação. **Revista Direito, Estado e Sociedade**, n. 52, 2018.

BARRETO JUNIOR, Irineu Francisco; VIGLIAR, José Marcelo Menezes. As funções da jurisprudência na Sociedade da Informação. **REVISTA DA FACULDADE DE DIREITO DA UFMG**, n. 73, p. 391-418, 2018.

BECERRA, Martín. De la concentración a la convergencia. Políticas de medios en Argentina y América Latina, v. 1, 2015.

BERGHEL, Hal. Net Neutrality Reloaded. **Computer**, v. 50, n. 10, p. 68-72, 2017.

BEZERRA, Arthur Coelho; WALTZ, Igor. Privacidade, neutralidade e inimputabilidade da internet no Brasil: avanços e deficiências no projeto do marco civil. **Revista Eletrônica Internacional de Economia Política da Informação da Comunicação e da Cultura**, 2014.

BLEVINS, John. **The use and abuse of light-touch internet regulation**. BUL Rev., v. 99, p. 177, 2019.

BRAZIL. **DECRETO Nº 8.771, DE 11 DE MAIO DE 2016.** Disponível em: http://www.planalto.gov.br/CCIVIL_03/_Ato2015-2018/2016/Decreto/D8771.htm. Acesso em: 06 set. 2023.

CONSELHO ADMINISTRATIVO DE DEFESA ECONÔMICA (CADE). **NOTA TÉCNICA Nº 34/2017/CGAA4/SGA1/SG/CADE.** Disponível em: https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?DZ2uWeaYicbuRZEFhBt-n3BfPLlu9u7akQAh8mpB9yOTVltdzdZLqhkfLgLcg20sp2COFkT0u4F6kpO2C8HmeI4kRnRnEVbwvcVZhI5-Ryodazm-kfXdvuF-MMocM8XW. Acesso em: 23 set. 2023.

CÉSAR, Daniel; JUNIOR, Irineu Francisco Barreto. Marco civil da internet e neutralidade da rede: aspectos jurídicos e tecnológicos. **Revista Eletrônica do Curso de Direito da UFSM**, v. 12, n. 1, p. 65-88, 2017.

CORNELL LAW SCHOOL. **U.S. Constitution – Article I**. Disponível em: https://www.law.cornell.edu/constitution/articlei#section8. Acesso em: 14 set. 2023.

CURWIN, Rebecca. Unlimited data, but a limited net: How zero-rated partnerships between mobile service providers and music-streaming apps violate net neutrality. **Colum. Sci. & Tech. L. Rev.**, v. 17, p. 204, 2015.

DAILY DOT. **FCC officially kicks off effort to reinstate net neutrality**. Disponível em: https://www.dailydot.com/debug/fcc-net-neutrality-vote-reinstatement/. Acesso em: 24 out. 2023.

DE SOUSA GUSTIN, Miracy Barbosa. **(Re) pensando a pesquisa jurídica**. Editora del Rey, 2006.

GÓMEZ NAVARRO, D. A.; ALVARADO LÓPEZ, R. A.; MARTÍNEZ DOMÍNGUEZ, M.; LEÓN CASTAÑEDA, C. D. La brecha digital: una revisión conceptual y aportaciones metodológicas para su estudio en México. **Entreciencias: diálogos en la sociedad del conocimiento**, v. 6, n. 16, p. 47-62, 2018.

HUERTA, José. La neutralidad de la red en Chile:¿ mucha sofisticación para la SUBTEL?. **Digital Rights Latin American and the Caribbean**, n. 30, 2013.

JOTA. **Começa 2ª fase da Consulta Pública do Decreto do Marco Civil da Internet.** Disponível em: https://www.jota.info/artigos/comeca-2a-fase-da-consulta-publica-do-decreto-do-marco-civil-da-internet. Acesso em: 03 out. 2023.

LAYTON, Roslyn. Which open internet framework is best for mobile app innovation?: An empirical inquiry of net neutrality rules around the world. 2017.

MOZILLA. **Joint Brief for Petitioners Mozilla Corporation, Vimeo, Inc., Public Knowledge, Open Technology Institute, National Hispanic Media Coalition, Ntch, Inc., Benton Foundation, Free Press, Coalition For Internet Openness, Etsy, Inc., Ad Hoc Telecom Users Committee, Center For Democracy And Technology, And Incompas**. Disponível em: https://blog.mozilla.org/wp-content/uploads/2018/08/As-filed-Initial-NG-Petitioners-Brief-Mozilla-v-FCC-20Aug2018-1.pdf. Acesso em: 29 set. 2023.

MOZILLA. **Reinstating net neutrality in the US**. Disponível em: https://blog.mozilla.org/en/mozilla/internet-policy/reinstating-net-neutrality-in-the-us/. Acesso em: 28 ago. 2023.

NACHBAR, Thomas B. The Peculiar Case of State Network Neutrality Regulation. **Cardozo Arts & Ent. LJ**, v. 37, p. 659, 2019.

NIC.BR. **CGI.br lista exceções à neutralidade de rede no Brasil.** Disponível em: https://nic.br/noticia/na-midia/cgi-br-lista-excecoes-a-neutralidade-de-rede-no-brasil/. Acesso em: 03 set. 2023.

RAMOS, Murilo César. Agências Reguladoras: a reconciliação com a política. **LATIN AMERICAN STUDIES ASSOCIATION**, 2004.

SABATIER, Paul A. An advocacy coalition framework of policy change and the role of policy-oriented learning therein. **Policy sciences**, v. 21, n. 2, p. 129-168, 1988.

SANTOS, Vinicius Wagner Oliveira. **Neutralidade da rede e o Marco Civil da Internet no Brasil: atores, políticas e controvérsias** / Vinicius Wagner Oliveira Santos. Campinas, SP: [s.n.], 2016.

SÃO PAULO. Tribunal de Justiça. Processo n. 1000984-09.2015.8.26.0400, Ipglobe Internet Service Datacenter Ltda-me X Uol - Universo Online S.A. Juiz Lucas Figueiredo Alves da Silva. 2ª Vara Cível da Comarca de Olímpia, julgado em 19 out. 2015.

SINEMBARGO. **AMLO insiste en que órganos autónomos deben desaparecer; critica a la Cofece y a IFT.** Disponível em: https://noticieros.televisa.com/ultimas-noticias/amlo-lo-mejor-seria-cofece-ift-organos-autonomos-desaparecieran/. Acesso em: 01 out. 2023.

TELETIME. **Relatório afirma que zero-rating quebra a neutralidade de rede na América Latina.** Disponível em: http://teletime.com.br/25/09/2017/relatorio-conclui-que-zero-rating-quebra-neutralidade--de-rede-na-america-latina/. Acesso em: 01 ago. 2023.

TRIVIÑO, Roberto; FRANCO, Antonio; OCHOA, Rafael Leonardo. Regulación de la Neutralidad de Red en Sudamérica: Una revisión del progreso Net Neutrality and enacted Laws in South America: A Literature Review. **Latin American Journal of Computing**, v. 6, n. 1, p. 17-26, 2019.

TRIVIÑO, Roberto D.; FRANCO-CRESPO, Antonio; OCHOA-URREGO, Leonardo. Convergencia y matices de la neutralidad en la red en América del Sur. **Ingenius. Revista de Ciencia y Tecnología**, n. 26, p. 30-40, 2021.17-26, 2021.

UNITED STATES. **An Act to Facilitate Communication between the Atlantic and Pacific States by Electric Telegraph.** Disponível em: https://maint.loc.gov/law/help/statutes-at-large/36th-congress/session-1/c36s1ch137.pdf. Acesso em: 22 abr. 2023.

UNITED STATES. **FCC Releases Restoring Internet Freedom Order.** Disponível em: https://www.fcc.gov/document/fcc-releases-restoring-internet-freedom-order. Acesso em: 18 ago. 2023.

UNITED STATES. **H. Rept. 116-34 - SAVE THE INTERNET ACT OF 2019**. Disponível em: https://www.congress.gov/congressional-report/116th-congress/house-report/34/1. Acesso em: 04 out. 2023.

UNITED STATES. **House Passes Net Neutrality Bill with Stanton Amendment to Improve Broadband Access on Tribal Land**. Disponível

em: https://stanton.house.gov/2019/4/house-passes-net-neutrality-bill-stanton-amendment-improve-broadband-access. Acesso em: 05 out. 2023.

UNITED STATES. **The United States Court of Appeals for the District of Columbia Circuit.** Disponível em: https://eshoo.house.gov/media/press-releases/eshoo-markey-lead-members-congress-amicus-brief-supporting-fcc-net-neutrality. Acesso em: 18 set. 2023.

V. Nguyen, D. Mohammed, M. Omar and P. Dean, "Net Neutrality Around the Globe: A Survey," **2020 3rd International Conference on Information and Computer Technologies (ICICT)**, 2020, pp. 480-488, doi: 10.1109/ICICT50521.2020.00083.

WU, Tim. Network neutrality, broadband discrimination. **J. on Telecomm. & High Tech. L.**, v. 2, p. 141, 2003.

CLAUDIO LUIZ DE CARVALHO

Master's degree in Applied Economics from UFJF, bachelor's and master's degree in Law from FMU in Law and the Information Society. Lawyer and specialist in Tax Management from ESALQ-USP.

Address professional: Casa Metropolitana do Direito, 749 Liberdade Avenue, São Paulo, SP, 01503-001, Brazil.

ORCID ID: https://orcid.org/0000-0002-3189-0830

E-MAIL: claudioluizdecarvalho@usp.br

IRINEU FRANCISCO BARRETO JUNIOR

Post-Doctorate in Sociology from the University of São Paulo - USP. PhD in Social Sciences from the Pontifical Catholic University of São Paulo. Lecturer in the Master's Program in Information Society Law and the Undergraduate Law Course at FMU-SP. FMU-SP. Coordinator of the Law, Technology and Society Research Group. Research Analyst at Fundação Sistema Estadual de Análise de Dados Seade. Guest lecturer at the Escola Superior da

Advocacia (ESA OAB-SP), the Postgraduate Courses at the Instituto de Direito Público de São Paulo (IDP-SP) and the Postgraduate Courses at CERS.

Address professional: Casa Metropolitana do Direito, 749 Liberdade Avenue, São Paulo, SP, 01503-001, Brazil.

ORCID ID: https://orcid.org/0000-0003-1322-6909

E-MAIL: neubarreto@hotmail.com

Received: 05/01/2024

Accepted: 19/10/2024

This work is licensed under a Creative Commons Attribution 4.0 International License.

LICENSE TO USE

Authors grant Sequência Journal exclusive rights of first publication, and the work is licensed under the Creative Commons Attribution 4.0 International License. The license authorizes third parties to remix, adapt, and/or create from the published work, indicating credit to the original work and its initial publication. The authors are allowed to enter into additional separate agreements, with non-exclusive distribution of the version published in Sequência Journal, indicating, in any case, authorship and initial publication in this journal.