Intersections Between the Consumer Protection Code and the Internet Civil Framework in Digital Advertising

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The rise of digital platforms has fundamentally reshaped advertising practices, ushering in a new model of interaction based on the processing of personal data.

Unlike traditional advertising, which is broadcast uniformly to the public, digital advertising is distributed in a segmented way, driven by algorithms that rely on objective criteria and operate with a logic that is often opaque to the average user. This structure redefines the supply chain for advertising services and calls for a reassessment of liability standards — particularly where the Consumer Defense Code (CDC) and the Internet Civil Framework (MCI) intersect.

The CDC establishes a broad protective regime, including strict and joint liability for suppliers whose unlawful advertising causes harm to consumers. This includes advertising that contains false or misleading information about the characteristics, properties, or risks of a product or service. For example, the CDC prohibits illegal practices in digital retail, such as the sale of counterfeit goods or products lacking certification from relevant authorities.

The MCI, in turn, sets limits on the civil liability of online content intermediaries and imposes obligations that affect how content is distributed. Article 7, for instance, guarantees users the confidentiality of communications and prohibits the disclosure of personal data without consent.

These provisions are especially relevant in the context of targeted advertising, which relies on data processing to build behavioral profiles and deliver content. They act as legal safeguards against unrestricted data collection.

The MCI explicitly provides for the application of the CDC in digital legal relationships and affirms the compatibility between the two frameworks. This interaction has been reinforced by case law from the Superior Court of Justice (STJ), which has held that

commercial use of the internet subjects resulting relationships to the CDC.[1] More recently, in its rulings on Themes 533 and 987, the Federal Supreme Court (STF) held that in cases involving boosted content and paid ads distributed through artificial networks, digital platforms are presumed liable, and the CDC's liability regime applies to marketplaces.

This regulatory landscape requires economic actors to adopt effective measures to prevent the distribution of advertising content that may be considered misleading, abusive, or in violation of consumer protection laws. These concepts become more complex online, where the boundary between content and advertising is often blurred.

To address this complexity, the European Union's Digital Services Regulation — in force since August 2023 — introduced new transparency requirements for digital advertising. These include public, searchable repositories that archive all ads shown on digital platforms for up to one year, enabling technical and social scrutiny.

It remains to be seen whether this is a workable solution. What is clear, however, is that civil liability in digital advertising calls for legal standards that reflect the complexity of the online content ecosystem — with particular attention to identifying the beneficiaries of advertising, adopting preventive measures, and integrating multiple legal frameworks, especially the CDC, the Internet Bill of Rights, and the General Data Protection Law.

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NOTE

1. STJ, REsp no 1.193.764/SP, Rel. Min. Nancy Andrighi.

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