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Brazil’s Senate approves Bill on fake news

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On June 30, 2020, Brazil's Senate approved Bill 2630/2020, the "Brazilian Law on Freedom, Responsibility and Transparency on the Internet", known as the "Fake News Bill". Sponsored by Senator Alessandro Vieira, the Bill is intended to establish mechanisms to fight the dissemination of misinformation and false news in social media and via private messaging services.

The proposed legislation, which is now before the Chamber of Deputies, would apply to all social media and private messaging providers that have more than two million users and offer services to the public in Brazil or that have at least one member of their economic group in Brazil, even if the provider is located in another country. Article 2 of the Bill expressly states that its provisions must be interpreted in accordance with the Internet Bill of Rights (Law 12.965/14), the General Data Protection Law (Law 13.709/18), the Consumer Defense Code (Law 8.078/90) and the Elections Law (Law 9.504/97).

The Bill introduces two new concepts: identified account (an *"account held by a person that has been fully identified by the application provider by confirmation of data previously communicated by the accountholder"*) and artificial distribution network (*"coordinated conduct articulated through automated accounts or technology not supplied or authorized by the internet application provider, except for the use of application programming interface, for the purpose of artificially impacting distribution of content"*).

Among other obligations, the Bill provides that social media and private messaging providers must: bar inauthentic accounts and automated accounts not identified as such; identify all advertising and boosted content distributed in exchange for payment to the social media provider; have a registered office and legal representatives in Brazil; and maintain remote access, from Brazil, to their databanks, ensuring that the information related to Brazilian users will be stored for the purpose of complying with Brazilian law, and especially court orders.

Social media providers have the additional obligation of presenting quarterly reports on matters such as the mitigating measures adopted, the number of automated accounts identified, the measures implemented to identify content and the types of identification.

Private messaging providers must also retain the logs of messages that have been *"massively forwarded"*; limit the number of times the same message can be shared; and implement mechanisms to check that users have consented to being included in message groups, transmission lists and the like, among other obligations.

The Fake News Bill also provides for the creation of the Internet Transparency and Responsibility Council, which will be responsible for overseeing measures related to the legislation. The Bill also provides that social media accounts used by government entities, departments and agencies, as well as by political agents whose powers are established by the Constitution, fall within the realm of public interest and are subject to the principles applicable to the conduct of government agents.

The Bill has been much criticized for its potential to violate freedom of expression and for provisions that promote surveillance and criminalization of conduct. Critics argue that the content of the Bill should have been more thoroughly debated, principally through dialogue with representatives of civil society and other interested parties, pointing to traceability of messages, excessive storage of data, and violation of users' freedom of expression and privacy. They also stress that the Bill does not include any measures for tracing the financing of fake news, which they contend is one of the most effective ways to combat disinformation campaigns.

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