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## Comment

## Brazil's Marco Civil da Internet: Does it live up to the hype?



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Brazil recently enacted legislation called the *Marco Civil da Internet*, which has attracted considerable attention both domestically and internationally. This paper provides a short description of the statute. It also contains an analysis of the most important provisions introduced by *Marco Civil* while reflecting on how its introduction is accommodated within the Brazilian legal system. Whenever helpful, parallels are drawn between the statute and similar legislation in Europe.

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## 1. Introduction

## 1.1. The Marco Civil da Internet: what is it?

In recent years, Brazil has become a prominent protagonist in the field of Internet governance. Several Portuguese words have become popular among those interested in the field: *mundial*, as part of the NETmundial meeting,<sup>1</sup> and *Marco Civil da Internet*,<sup>2</sup> the newly enacted Brazilian law that is aimed at regulating particular aspects of Internet use in the country.

Marco Civil has received considerable praise, as exemplified in this statement from Sir Tim-Berners-Lee:

*Like the Web, Marco Civil has been built by its users – the groundbreaking, inclusive and participatory process has resulted in a policy that balances the rights and responsibilities of the individuals, governments and corporations who use the Internet.*<sup>3</sup>

However, although this new legislation was generally welcomed, there remains abundant curiosity about its content. During the NETmundial meeting,<sup>4</sup> for instance, many of those who applauded the sanctioning of the legislation by President Dilma Rousseff were also eager to read the text for themselves, as an English translation had not been made available at that point.

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<sup>1</sup> NETmundial was a meeting that took place in São Paulo, Brazil, from 23–24 April 2014, where multiple stakeholders from around the world presented proposals for a better model of Internet governance.

<sup>2</sup> Law no. 12.965, 23 April 2014.

<sup>3</sup> Dillon Mann, 'Marco Civil: Statement of Support from Sir Tim Berners-Lee' (World Wide Web Foundation, 2014) <<http://webfoundation.org/2014/03/marco-civil-statement-of-support-from-sir-tim-berners-lee/>>, last accessed 30 September 2014. All URLs referenced in the following were last accessed on that date also, unless otherwise noted.

<sup>4</sup> The first-listed author of this paper participated in the meeting.

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Given such interest and expectations, it is important to understand properly what *Marco Civil* is and what it is not. The legislation has commonly been viewed as concerned with Internet governance. Yet, if one defines Internet governance as an area concerned primarily with managing critical Internet resources (CIR) – such as Internet Protocol (IP) addresses and domain names – then *Marco Civil* is definitely not an Internet-governance statute as it passes over CIR management. Further, supporters of any side of the dichotomy between, say, contractual and statutory regulatory regimes<sup>5</sup> will not find *Marco Civil* to offer clear support for any specific governance model for the Internet *per se*: the legislation is mostly about how the Brazilian legal system shall deal with particular issues related to Internet use, such as data privacy and liability of Internet service providers (ISPs). Admittedly, it does embrace a ‘multistakeholder’ model of governance (Art. 24(I)) and it does acknowledge the role of the Brazilian Internet Steering Committee (CGI.br), established already in 1995, in managing the Internet in Brazil (Art. 24(II)), but it does not provide comprehensive regulation of Internet deployment and use.

Also noteworthy is that, despite being praised as ‘a world first digital bill of rights’,<sup>6</sup> the legislation does not contain any right that has not been enacted elsewhere in the world. This does not mean that the statute is unimportant or that it could not serve as a model to other countries. Indeed, it can provide legislative inspiration for those countries that still lack the sorts of rules it provides. This is the case, for example, in Italy, where the drafting of an Internet bill of rights has been inspired by the Brazilian legislation.<sup>7</sup>

*Marco Civil* is a very unique Internet-centric statute. Instead of creating protection regimes based on the general types of rights involved, Brazil has chosen, with *Marco Civil*, to focus primarily on the protection of those rights in the specific context of the Internet. Thus, instead of introducing a general data privacy regime, such as is established in Europe, this new law only regulates particular Internet-related aspects of data privacy. The same is true for data retention and network neutrality – as shown further on in this paper.

Similarly, *Marco Civil* does not institute a major overhaul of the Brazilian regulatory framework for telecommunications. There has been very little reform of that framework to include specific Internet-related provisions,<sup>8</sup> despite data transmission networks based on the Transmission Control

Protocol (TCP) and Internet Protocol being for some time arguably the most important channel for the exchange of data.<sup>9</sup> In Brazil, the Internet is still considered a mere ‘value-added service’. Parts of the telecommunications regulatory framework have long been anachronistic. Until recently, for instance, when a user had subscribed to broadband services provided by their ISP of choice, they were required to subscribe also to another ISP just for the purpose of authentication. After years of judicial orders ruling against this requirement, Brazil’s National Telecommunications Agency (*Agência Nacional de Telecomunicações*; ANATEL) finally dispensed with it in 2013.<sup>10</sup>

For the reasons mentioned above, we ought to treat some of the English translations of the law’s title with some scepticism. The draft legislation became first known outside Brazil as an ‘Internet Civil Rights Framework’,<sup>11</sup> which seems inappropriate. A ‘framework’ is arguably better suited to designate a collection of legislation or of other regulatory instruments. The terminology was likely due to the recent tendency in Brazil to adopt laws aimed at regulating a particular strategic area, such as telecommunications, the natural environment or energy supply.

More recent English-language references to the law in the mass media have referred to it as the ‘Internet Bill of Rights’,<sup>12</sup> which again seems hyperbolic: *Marco Civil* is an ordinary federal law.<sup>13</sup> And, for the most part, it fleshes out rights that already exist in Brazil (albeit in a latent or vague form), rather than creating entirely new rights.

Perhaps a better translation would be one derived from the law’s sub-title, which reads as follows:

*[This law] establishes the principles, guarantees, rights and obligations for the use of Internet in Brazil.*

A less wordy translation, such as ‘rights and obligations regarding Internet use’, would be more self-explanatory. Yet, for the sake of simplicity, and as the Portuguese title has

<sup>5</sup> Further on this dichotomy, see Lee A. Bygrave, ‘Contract versus statute in Internet governance’ in Ian Brown (ed), *Research Handbook on Governance of the Internet* (Edward Elgar, 2013) 168–97.

<sup>6</sup> Dillon Mann, ‘Welcoming Brazil’s Marco Civil: A World First Digital Bill of Rights’ (World Wide Web Foundation, 2014) <<http://webfoundation.org/2014/03/welcoming-brazils-marco-civil-a-world-first-digital-bill-of-rights/>>.

<sup>7</sup> Indeed, Alessandro Molon, the rapporteur for the *Marco Civil* in Brazil’s National Congress, was invited to address Italy’s Chamber of Deputies (Camera dei deputati) on 16 June 2014 as part of the initiation of the Italian work on point.

<sup>8</sup> One exception is the National Broadband Program (*Programa Nacional de Banda Larga*) created by Presidential Decree no. 7.175 on 12 May 2010, aimed at reducing the digital divide and reintroducing the otherwise dormant state incumbent, Telebras, to provide the main backbone for this program.

<sup>9</sup> The TCP/IP suite, developed by Vinton G. Cerf and Robert E. Kahn in the 1970s, currently provides the basic formats and rules for data transmission across the Internet, with TCP handling primarily the packaging of data, and IP the routing of data. See further T. Socolofsky and C. Kale, *Request for Comments (RFC) 1180: A TCP/IP Tutorial* (January 1991) The Internet Engineering Task Force (IETF) <[www.ietf.org/rfc/rfc1180.txt](http://www.ietf.org/rfc/rfc1180.txt)>.

<sup>10</sup> Fábio Amato, ‘Anatel acaba com exigência de provedor para banda larga fixa’ (G1, 23 May 2013) <<http://g1.globo.com/economia/noticia/2013/05/anatel-acaba-com-exigencia-de-provedor-para-banda-larga-fixa.html>>.

<sup>11</sup> The law is still mentioned under this name on Wikipedia: <[http://en.wikipedia.org/wiki/Brazilian\\_Civil\\_Rights\\_Framework\\_for\\_the\\_Internet](http://en.wikipedia.org/wiki/Brazilian_Civil_Rights_Framework_for_the_Internet)>.

<sup>12</sup> See eg Anthony Boadle, ‘Brazilian Congress passes Internet Bill of rights’ (Reuters, 22 April 2014) <<http://www.reuters.com/article/2014/04/23/us-internet-brazil-idUSBREA3M00Y20140423>>.

<sup>13</sup> Brazilian laws are generally classified as ‘ordinary’ or ‘complementary’. The latter category designates laws that are hierarchically superior to the former as their subject matter is of a constitutional nature. Although ‘Marco’ means ‘landmark’ or ‘milestone’, the *Marco Civil da Internet* belongs to the ‘ordinary’ category.

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