

Desafios democráticos na era digital: diagnósticos e soluções da produção de Fake News no Brasil à luz da Comissão Interamericana de Direitos Humanos*

Democratic challenges in the digital age: diagnosis and solutions for the production of Fake News IN Brazil from the Inter-American Commission on Human Rights

Retos democrático en la era digital: Diagnósticos y soluciones de la producción de Fake News en Brasil a la luz de la Comisión Interamericana de Derechos Humanos

Diego Fonseca Mascarenhas**

Resumo



Com o avanço da tecnologia, ocorreram significativas transformações na livre circulação de dados na democracia, em razão do aparecimento do perturbador problema da propagação de *fake news* na *internet*. A relevância do estudo persiste não apenas no fato de que a disseminação proposital de desinformação produzida por fontes anônimas tem abalado a credibilidade do jornalismo, mas também tem ocasionado danos para o bom desenvolvimento da democracia na confrontação de fatos e ideias em assuntos de interesse público. Tarefa que requer apontar como ocorreu alteração do jornalismo devido à produção de sentido em operações midiáticas, assinalar o diagnóstico da Comissão Interamericana de Direitos Humanos (CIDH) sobre a questão das *fake news* no Brasil e, por fim, elucidar como a CIDH visa solucionar a circulação de notícias falsas em terras brasileiras. Diante dessa realidade, e apoiada no método lógico-dedutivo, a pesquisa busca estudar propostas por Fausto Neto e CIDH no enfrentamento à desinformação. A pesquisa traz como contribuição a identificação e a análise de seis princípios para normatizar a livre circulação de informação a fim de assegurar o acesso universal, não discriminação, pluralismo, privacidade, a excepcionalidade dos limites à circulação de ideias e informações e, por fim, a neutralidade da rede. Conclui-se que o exercício da liberdade de expressão deve ser regulamentado com bastante acuidade, a fim de evitar o risco de censura prévia.

Palavras-chave: *fake news*; *internet*; jornalismo; Comissão Interamericana de Direitos Humanos.

Abstract

With the advancement of technology, significant changes have occurred in the free circulation of data in democracy, due to the emergence of the disturbing problem of the spread of fake news on the internet. The relevance of the study remains not only in the fact that the purposeful dissemination of misinformation produced by anonymous sources has undermined the credibility of journalism, but has also caused damage to the good development of democracy in the confrontation of facts and ideas in matters of public interest. A task that requires pointing out how changes in journalism occurred due to the production of meaning in media operations, highlighting the diagnosis of the Inter-American Commission on Human Rights (IACHR) on the issue of fake news in Brazil and, finally, elucidating how the IACHR aims to solve the circulation of fake news in Brazilian lands. Given this reality, and supported by the logical-deductive method, the research seeks to study proposals by Fausto Neto and IACHR in combating disinformation. The research contributes to the identification and analysis of six principles to standardize the free circulation of

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**   PhD and Master in Law from UFFa. University professor at the University of the Amazon (UNAMA) and Cosmopolitan College. Researcher linked to the Study Group of Constitutional Hermeneutics (GEHC) and Effectiveness of Fundamental Rights (GEEDF) linked to the Graduate Program in Fundamental Rights of the University of the Amazon (PPGDF-UNAMA).

information in order to ensure universal access, non-discrimination, pluralism, privacy, the exceptionality of limits to the circulation of ideas and information and, finally, net neutrality. It is concluded that the exercise of freedom of expression must be regulated very accurately, in order to avoid the risk of prior censorship.

Keywords: *fake news; internet; journalism; Inter-American Commission on Human Rights.*

Resumen

Con el avance de la tecnología, ocurrieron significativas transformaciones en la libre circulación de datos en la democracia, debido al surgimiento del perturbador problema de la propagación de fake news en internet. La relevancia del estudio persiste no solo en el hecho de que la diseminación intencionada de desinformación producida por fuentes anónimas está abalando la credibilidad del periodismo, pero también tiene ocasionado daños para el buen desarrollo de la democracia en el confronto de hecho e ideas en temas de interés público. Tarea que requiere indicar cómo ocurrió alteración del periodismo debido a la producción de sentido en operaciones de media, enfocar el diagnóstico de la Comisión Interamericana de Derechos Humanos (CIDH) sobre la cuestión de fake news en Brasil y, por fin, aclarar cómo la CIDH busca solucionar la circulación de noticias falsas en tierras brasileñas. Ante esta realidad, y basada en el método lógico-deductivo, la investigación busca estudiar propuestas por Fausto Neto y CIDH en el enfrentamiento a la desinformación. La investigación trae como contribución la identificación y análisis de seis principios para normalizar la libre circulación de información con el objetivo de asegurar el acceso universal, no discriminación, pluralismo, privacidad, la excepcionalidad de los límites a la circulación de ideas e informaciones y, por fin, la neutralidad de la red. Se concluye que el ejercicio de la libertad de expresión debe ser reglamentado con bastante agudeza, con el objetivo de evitar previa censura.

Palabras clave: *fake news; internet; periodismo; Comisión Interamericana de Derechos Humanos.*

1 Introduction

Currently, the classic model of journalistic freedom is questioned and, to a certain extent, surpassed by the phenomenon of mediatization¹, in which the receiver is not a passive subject in the stages of the constitution of communication, since people actively participate in the process of producing information. In this context, the problem of the production of *fake news* in the circulation of information on the internet *arises*, which not only provokes mistaken questions about the credibility of journalists, but also damages democracy through the propagation of untrue news in the public space (Pérsigo; Fossá, 2010, p. 9).

The relevance of the research for the protection of fundamental rights lies in the fact that, currently, technologies constitute sources of production of meanings, by creating forms of interaction. But it can also be said that they generate complexities in the form of paradox: at the same time that this process is offered as a reference, it is also a source of instability (Fausto Neto, 2019, p. 64).

This communicational maladjustment would not be caused unilaterally by the sender, but occurs due to the structural element of communication itself, since the sender has

¹ In the scenario of communication theories, the concept of mediatization emerges, resulting from the increase in the flow of data caused by technological advances in society. In this sense, there was a transformation of the free circulation of information from an analog model to be re-signified in a digital era of information transmission, where the receiver actively participates in the process of information elaboration.

no control or predictability over the effects of the discourse on his interlocutor. The means of communication and their communicational intensification provoke social transformations in the circulation of the production of informational meaning in society.

This phenomenon caused instability in Brazilian democracy, and one of the unquestionable findings of this democratic disturbance occurred in July 2013 during the act in which there was journalistic coverage, in which the reporter asked himself: "Who to interview, if there are thousands and there are no leaders?" These questions were also followed, at the time, by a police authority from Rio de Janeiro who, when answering a reporter's question about how the police were negotiating the progress of the demonstrations, observed in the form of a question: "With whom to dialogue? Because now it's all social networks." It is true that mediatization stands out as an interactional process of reference, but it also establishes, through affectations between languages and circulation, situations of incompleteness, somehow recalled by the situations exposed above (Fausto Neto, 2019, p. 64).

In view of this scenario, it is necessary to evaluate how the changes in journalistic activity occurred due to the production of meaning in media operations, in 4 (four) aspects: the transformation of the journalist's space as a place of systematization of contacts; the journalist's self-referentiality within the process of news development; self-reflection around its theoretical foundations; and, finally, transformation of the *reader's logos* within the process of informational interaction.

Further, it is important to highlight the diagnosis of the Inter-American Commission on Human Rights (IACHR) in relation to the issue of *fake news* in Brazil. In this analysis, the vulnerability of the protection of fundamental rights in the national legal system is found through the emergence of a "digital militia" and the dissemination of controversial issues, as was the case of the "gay kit".

Finally, it is pointed out how the IACHR proposes that the legal systems of the countries that are part of the Inter-American Human Rights System (IAHRS) should regulate the free expression of data on the internet. The principles listed are: universal access, non-discrimination, pluralism, privacy, the exceptionality of limits to the circulation of ideas and information and, finally, net neutrality.

The paper will carry out the interdisciplinary approach to knowledge by exposing reflections from International Law and Communication Theory. From this conception on the subject, the text will follow the logical-deductive method by presenting the concept of mediatization proposed by Fausto Neto in the virtual world, in order to point out legal principles for the regulation of the internet through discussions and expositions of arguments to combat the circulation of data that causes disinformation in the digital age. Thus, the solutions pointed out by the IACHR to correct the distortions caused by the production of *fake news* in the public space will be analyzed, as it understands that the exercise of freedom of expression is a

fundamental value for the development of democracy in Brazil.

2 The transformation of journalism due to the production of meaning in media operations

Mediatization develops new procedures of affectation and impact between social actors and institutions, and its operationalization in the journalistic universe develops in 4 (four) aspects: the transformation of the journalist's space as a place of systematization of contacts; the journalist's self-referentiality in the process of news development; self-reflection around its theoretical foundations; and, finally, transformation of the *reader's logos* in the process of informational interaction.

In the first place, there is the journalistic topographic transformation as an organizing space for contact to report the dynamics of the functioning of the work environment of the journalistic newsroom or other places of the practice of these professionals. This occurs due to mediatization, which promotes the approximation between the sender and the receiver of the captured message.

According to Fausto Neto (2008, p. 97-98), it is necessary to visualize this work process, to make it palpable, so that the notion of the newspaper is not restricted only to the act of selling and buying. Journalists are also "atorized," not as indeterminate sources. References to its existence appear in the form of images in the body of the institutional texts themselves, as is the case of the "Letter to the Reader" section. The effect of this strategy is precisely to argue that there is a need to build a more lasting link between the newspaper's production and consumption structures. To this end, it is essential to make visible and available the universe of the production process itself, in some way, allowing the reader to access it.

Secondly, the self-referentiality of the production process follows the strategy of highlighting the characteristic of reinforcing the point of journalistic topography previously explained. It is about demonstrating how the very space of production of media operations occurs, with the purpose of exposing how reality is constructed from the journalistic perspective.

Fausto Neto (2008, p. 98) states that a good example of what is mentioned here is the section "Inside the Globe" of the newspaper *O Globo*, from Rio de Janeiro, which represents a kind of different version of the traditional institutional text through which the journalistic media addresses the reader. Their emphasis is on addressing their own production operations, their routines, and how journalists work on the coverage they are assigned. It is a strategy that brings together a sum of actions: accountability (Unpublished Interview, *O Globo*, 01/09/2006) and description of his own work of productive routine (A hora de inventar, *O Globo*, 27/07/2007).

Thirdly, the journalistic activity in its editorial process must occur in an objective,

clear and selective way, which refers to the information to be conveyed to the interpreter, since the filter of information requires that there be simultaneously conciseness and selective interpretation of the news. Fausto Neto (2008, p. 99) exemplifies when he states that edited texts need to be short, but "short", in this context, does not mean superficial. The goal here is to present the news and all that it means in the shortest possible space.

Fourthly, there is the strategy of making the reader the protagonist of the discursive process of the news, not only in relation to the journalistic topography, but also in the production interactions that unite the producers and the receivers in the same place of speech, that is, the readers are installed within the productive process of sending the message.

In fact, it is an innovative understanding that the receiver is the protagonist within the journalistic device, to actively participate in the rules of the production of meanings. It is noted that the current dynamics of the media protocol allows that, gradually, the participation in the enunciative production of media discourses is directed to the hands of the receivers. Thus, with the process of technological convergence, there is a rearticulation of the interaction between producers and readers, in the sense that, with the inclusion of the reader, there is "a game to be played" within the process of elaboration of the informative products that constitute the message.

It is known, according to Fausto Neto (2008, p. 100), that the quality of the relationships between producers and receivers of discourses is characterized by inevitable maladjustments, since no discourse can control another, even if it previously establishes the estimated effects in relation to its reception. Undoubtedly, in the strategy there is a symptom that signals the production's concern to prevent its receptors from wandering to "vanishing points", compromising the protocol of meaning and its commercial and audience goals. Under these conditions, the strategy aims to operate through what Luhmann calls "complexity reducers", to the extent that the focus of the contract is, through supposed dilutions of differences, to educate the receiver to deal with the logics of this system of production-interpretation of discourses (Fausto Neto, 2008, p. 100).

Therefore, mediatization puts into crisis the classical concept that defined what was producer and reader, because previously there was an asymmetry between them, given that in the Theory of the Agenda² the sender was the one who formulated the content of the message and the receiver was the passive subject of receiving them.

However, with mediatization, there is a process of symmetry between producer and

² The Agenda Theory admits that communication companies can even point out which news will have greater media visibility, but they will not have control over what the receiver will interpret of the information, that is, the information channels will have control over what news the public will have access to, but not how individuals will receive the information. The studies of McCombs' Agenda Theory (2009, p. 28) focus their analysis on the figure of the sender and the content of the message and have as a starting point to evaluate how a two-way interference is established between the media and public figures or public agents. It is important to investigate how this interaction occurs, as media activity has the capacity to form public opinion and, consequently, constitute the perception of the reading public in relation to the political agenda of the State.

reader in favor of the emergence of "pregnancy zones" that have the capacity to institute new forms of meaning within the media device. The effects of this new discursivity have the capacity to establish new protocol rules in the dynamics of the message transmitted in the post-industrial society³.

It is noted that all the examples treated by Fausto Neto involve the Globo Telecommunications Network. This is due to the fact that this station holds the oligopoly of the news outlets, a conduct repudiated by article 220 of the Federal Constitution (FC) of 1988 and by principle 12 of the IACHR's Declaration of Principles on Freedom of Expression. Such a practice is seen as harmful to democracy, as it restricts the plurality and diversity that ensure the full exercise of citizens' right to information (Inter-American Commission on Human Rights [IACHR], 2016, p. 53).

During the hearing on "Freedom of Expression, Diversity, Pluralism, and Media Concentration in the Americas," held on March 16, 2015, during its 154th Period of Sessions, the IACHR received with concern the information that in Brazil, Rede Globo holds 70% of the commercial advertising market and 40% of the national audience. The requesting organizations also stated that in the country there is the so-called "electronic coronelismo", that is, the influence of legislators who are radio and television concessionaires. And, despite the fact that there is a prohibition in the Brazilian Constitution, these legislators still found an interpretation that allowed them to become owners of numerous radio and television concessions, then proceeding to legislate to favor the interests of their companies (IACHR, 2016, p. 53).

According to the information received by the Office of the Special Rapporteur, there are few television stations with national reach in Brazil, which would result in an oligopolization of the sector. According to the survey carried out by the São Paulo Media Group, Rede Globo reaches 98.6% of Brazilian municipalities; SBT, 85.7%; Rede Record, 79.3%; Rede Bandeirantes, 64.1%; and Rede TV, 56.7%. According to what was reported, no other broadcaster would reach "double digits" (IACHR, 2016, p. 53).

3 Diagnosis of the Inter-American Commission on Human Rights on the problem of *fake news* in Brazil

The emergence of the internet meant a great advance for the increase of the

³ The concept of post-industrial society acquires meaning when its attributes are compared to those of industrial and pre-industrial societies (Bell, 1974, p. 146). Pre-industrial society is of the agrarian type, structured in traditional ways, where power is associated with land ownership. Industrial society rests on the production of industrial goods, and the power instituted in it belongs to the capitalists. The post-industrial society is based on services, and the source of the power in it lies in information (Bell, 1974, p. 148).

communication flow in democracy. Currently, the world wide web is the most powerful instrument for expanding freedom of expression in its dual dimensions: as the right of all people to disseminate ideas and the right to seek and receive information of all kinds (Knight Center[...], [2020]).

In fact, the advent of the internet meant a great advance in the process of spreading access to communication and disseminating knowledge, stimulating debates among people within digital platforms. However, the digital community also has the potential to violate fundamental rights, especially the very exercise of freedom of expression (Lanza, 2017, p. 58).

In this sense, the phenomenon of mediatization allows the interaction of the receiver of information within the process of news production. The possibility of active participation between the editorial board and the public through social media arises (Fausto Neto, 2019, p. 59). With the advancement of technology, the concept of traditional journalism is relativized, as an intermediate concept emerges between individual and social freedom of expression, that is, in the great interactivity provided by the connectivity of digital media, which is configured as a structure of public participation in a new public space (Puddephatt, 2016, p. 20).

In the current context, for example, the unprecedented and disturbing problem called *fake news arises* (Marino, 2017, p. 82). This, in turn, is based on 3 (three) pillars: the phenomenon of mediatization, the purposeful dissemination of fake news with the purpose of provoking disinformation, and the anonymous source of the news.

With mediatization, the receiver of the news interacts together with the sender of the information in the act of data circulation. It happens that, with *fake news*, the subject who was at the center of the reader of the news begins to disguise himself as if he were an official source of information emission, expressing himself with a language that resembles the presentation of the editorial board. Finally, "the anonymous character of this phenomenon occurs because there is dissemination of false news and the subject maliciously camouflages himself as a 'legitimate' source of information" (Marino, 2017, p. 69).

The problem was strongly felt in election periods, as well as in debates on issues involving health, ethics, morals, and even debates about the Earth being round or flat. In social media, there was a simulation of news that was structurally presented as if it had the format of traditional and professional news, but which, in reality, was absolutely false information. This information was intended to harm, harass, and persecute certain candidates, discredit science, or target people who advocated solutions related to respect for human rights (Marino, 2017, p. 66).

The curious thing is that the study of McCombs' Theory of the Agenda (2009, p. 21) points out that the communicational instability of news in the public space already occurred in the electoral period in the twenties of the twentieth century. Now, it reaches the media in the digital age under the contours of the phenomenon of *fake news*.

In the analog era of information transmission, news sources were identifiable and,

consequently, subsequent liability could be applied against the respective sender of the information. For example, Arendt, in the book "Origins of Totalitarianism", points to the media as being the strategic element for the Nazi party, in order to distort reality (Arendt, 2011, p. 394).

However, the current phenomenon in the digital world has its peculiarities compared to the previous period due to the communicational fluidity of the internet and social networks. This allows the democratization of the word, access to information and pluralism that are observed on the internet and social networks. The intention is to associate actions that make freedom of expression and a robust public possible in a democracy, which seeks, receives and disseminates information, ideas and critical opinions (Puddephatt, 2016, p. 20).

In the digital age, the speed of information is intense and the news quickly goes viral through the mass sharing of the transmitted content. Therefore, truly false information, if spread, causes distortions in the public debate, as there is a distancing from authentic democratic participation in the electoral debate and from various issues of public interest that should be based on projects, ideas or proposals for government programs (Santin; Pra, 2022, p. 4).

Spreading false information deliberately, that is, disinformation, is using *fake news* with the intention to provoke conflicts from the abusive use of freedom of expression. The phenomenon is driven by anonymous people who become true sources of *fake news* with the deliberate purpose of bringing false information into the public debate, distorting votes, electoral debates, harming a candidate, public official, public figure – such as a journalist – or a human rights defender (Organization of American States [OAS], 2019a, p. 300). On the other hand, it is important to differentiate that there may be inaccurate or vague news within the journalistic activity, which does not imply *fake news*. This is part of the democratic debate, in which information circulates in the public discussion so that the truth can emerge.

Certainly, within a debate on a controversial topic, such as corruption, the right to honor and reputation of a certain person can be discussed and the instrument of reparation for this is the right of reply, applied in two situations. The first occurs if there is the dissemination of maliciously false information about someone; The second situation occurs through disproportionate consequences to the exercise of freedom of expression. Regarding *fake news*, the IACHR received information that the Federal Supreme Court (STF) and the Brazilian National Congress have initiated investigative measures to determine whether there are possible structures for the production and dissemination of fake news. These investigations are salutary for the preservation of Brazil's democratic foundations, as well as for the protection of the human rights of people and journalists who are victims attacks from the digital world.

Likewise, the new dynamics of communication and information that have emerged from social networks have also enhanced the growth of attacks and threats against journalists and communicators. On March 16, 2019, the

newspaper O Estado de São Paulo denounced that there would be a 'defamation machine' on social media in the country. The newspaper refers to the case of its journalist Constança Rezende who suffered virtual attacks on March 10, in addition to the newspaper itself that would have been targeted by these 'virtual militias' when it published a report on the Rezende case, showing that its statements would have been altered. The Estado de São Paulo says that these 'virtual militias' would have tried to disqualify the newspaper through the use of the hashtag #EstadaoMentiu on the social network Twitter. It also reported that, according to social media experts, these digital attacks would be supported by bots (IACHR, 2021, p. 183-184).

In the IACHR report, the term "virtual militias" is used, which manipulate information with the daring purpose of undermining the credibility of official journalistic sources by disseminating statements on social networks, as seen on *Twitter*, where they accuse the press of lies and manipulation of information.

Another controversial case is the famous "*gay kit*" speech, so questioned and criticized by former President Jair Bolsonaro:

The IACHR also received information on the use of homophobia as a political tool. In October 2017, online information was released due to the interview of one of the candidates for the presidency of Brazil whose opponent in the elections had been the main responsible for the creation and distribution of a 'gay kit' in Brazilian schools. This material, although it had never circulated, was an educational material created in conjunction with civil society and in accordance with the School without Homophobia plan - a policy of sex education and against bullying in schools - which sought to teach the gender perspective in schools. The untruth of the news about the 'gay kit' was confirmed by a decision of the Superior Electoral Court (TSE), which requested the suspension of links to websites and social networks related to the denomination (IACHR, 2021, p. 181).

The IACHR report reveals that there was never a distribution of the "*gay kit*" in schools, contrary to what the former president claims to have occurred. Within this process of information circulation, two hypotheses are considered to try to understand Jair Bolsonaro's attitude. First, he is a victim of the circulation of *fake news* about the "*gay kit*" and, because he believes in the veracity of this news, he has taken a voracious stand against the application of this program related to homophobia. The second position is that the former president intentionally makes allegations in bad faith, and the digital militias later reproduce his statements on the internet in order to give "airs of veracity" to his political discourse. It is not possible to know the answer to this question, but what is certain is that Brazilian law is governed by the logic of the presumption of innocence, and this understanding should always be the interpretative guide to reflect such a question.

What is clear is that there is circulation of fake news in Brazil, which is extremely harmful to the good conduct of Brazilian democracy, causing polarization and intolerance in ideological-partisan thinking. Political tension in Brazil is so intense that the IACHR, in its report, referred to the aggression against reporters or photographers while covering the 2013

protests.

Among the acts of violence denounced is the aggression suffered by photographer Sérgio Silva, who in 2013, a year marked by several protests, which began in São Paulo and spread throughout the country, was injured by a rubber bullet fired by the military police while covering a demonstration in São Paulo. The incident caused the communicator to lose vision in his left eye (IACHR, 2021, p. 176).

Violence and the murder of journalists contribute to the self-censorship of the press, and the State has an obligation to identify and conduct investigations in an effective and impartial manner to punish the perpetrators of these crimes, as impunity has contributed to the curtailment of freedom in the media.

Furthermore, it is important to establish the principles that govern freedom of expression on the internet in order to maintain the virtues of a public debate within the virtual space, in order to combat disinformation that affects or prevents the free circulation of information for the promotion of public discussion.

Freedom of expression is not an absolute right, since, in certain cases, its exercise can harm the enjoyment of other Human Rights. The difficulty of establishing rules to regulate the news that travels in the digital world lies in being able to protect all the rights involved in the functioning of freedom of expression, without weakening the internet. The challenge is to establish the regulation of the internet through legislation or administrative regulation or judicial decisions that respect its characteristic of being an open, neutral and global network (Marino, 2013, p. 5).

As the virtual world is decentralized and open, it is not easy to achieve the goal of protecting personality rights without running the risk of producing negative impacts on networks. As a result, there is a need to stipulate criteria and principles capable of guiding the appropriate solution in order to solve these conflicts.

4 The proposal of the Inter-American Commission on Human Rights to solve the circulation of *fake news* on social networks

The Office of the Special Rapporteur for Freedom of Expression of the IACHR has prepared a report entitled "Freedom of Expression and the Internet," which brings together principles⁴ and general rules to seek solutions to problems in the digital area and how the State deals with controversies arising from the Internet. In fact, the report is intended to serve as a guide for governments, regulators, legislatures, the judiciary and society, in order to ensure a

⁴ In 2000, the IACHR drafted the Declaration of Principles on Freedom of Expression to regulate freedom of expression in its individual and social spheres. However, in 2013, the IACHR launched new principles to address freedom of expression on the internet, demonstrating the need for a new legal treatment for the media in the digital age.

filter of the news within social networks, to avoid subsequent accountability.

In this sense, there are 6 (six) guiding principles: universal access, non-discrimination, pluralism, privacy, the exceptionality of limits to the circulation of ideas and information and, finally, net neutrality.

According to the IACHR's rapporteurs on freedom of expression, the first principle concerns access under equal conditions, which implies the preservation of the structure of the internet, since it is open, plural, neutral, participatory and global. Therefore, any possibility of intervention or regulation of cyberspace is a matter of extreme sensitivity, because if the internet is fragmented, there will be control of the flow of its data by the State (Marino, 2013, p. 5).

In fact, the State has a positive obligation to universalize access to the internet for all people, which implies promoting the inclusion of digitally illiterate people and expanding the structure of the *online* network in all places, so that there is accessibility to the manifestation of freedom of expression to remote places (Puddephatt, 2016, p. 26).

The presence of the State to regulate freedom of expression in the digital world is very important; however, it must be done with care so that the treatment of State coordination in the digital age does not entail undue restriction and censorship of information. There is a risk (Puddephatt, 2016, p. 22), for example, that people will be restricted to the knowledge of content produced only in their country or that the State will impose a ban on uploading content on the internet. In addition, the state entity can still decide which content will circulate faster, slower or leave some content *offline*.

In other words, the State can restrict access to content on the internet in a malicious way, or with good intentions when seeking to protect the honor or image of a person attacked by information inserted on the internet. However, court rulings can affect the structure of the virtual world's architecture.

The second and third principles consist of the principle of pluralism and the principle of non-discrimination, as both are closely connected in considering that, by prohibiting the practice of discrimination, the preservation of a plural structure on the internet will be promoted. Thus, both principles state that States cannot establish any measure that seeks to directly or indirectly block access to ideas, opinions and information, in order to avoid obstacles to the appropriate participation and public deliberation of certain groups on the internet (Lanza, 2017, p. 52). Non-discrimination consists of the State ensuring that neither laws nor social, economic, or cultural conditions are obstacles, with the aim of limiting people from exercising their right to the internet for reasons of an ideological nature, race, gender, language, or geographical issues (Lanza, 2017, p. 55).

Fourthly, there is the principle of privacy, which indicates that freedom of expression cannot be exercised if there is no public and state recognition of the need for legal

protection of the private sphere. Therefore, the State must take measures to respect and ensure the protection of private data against arbitrary or abusive interference of attacks against honor and reputation within the digital community (Marino, 2013, p. 10).

Fifthly, it is the principle of exceptionality of limits to the circulation of ideas and information on the internet. This principle informs that the rule in the legal system should be not to block content or *web* pages in the virtual space, but the possibility of restricting content is admitted if there is an offense to freedom of expression (Marino, 2013, p. 24).

For example, child pornography is content that is blocked on the internet because it violates the rights of children or adolescents. In fact, in order for there to be a restriction of information, it must fail the tripartite test, of necessity or proportionality. In fact, any restriction on the free expression of content on the internet must be provided for by law, which must be clear, precise and aim at a legitimate objective, with a restriction proportional to the desired purpose (La Rue, 2014, p. 14).

Sixthly, it refers to the principle of neutrality, which establishes that governments and providers must be neutral in relation to the content posted on digital networks, considering that there can be no adoption of mechanisms that undermine the equality of conditions in the market of ideas on the internet, through practices that prioritize or punish the functioning of certain platforms (Marino, 2013, p. 13).

The circulation of data in the digital community must guarantee the characteristic of information neutrality on the internet. In this regard, the Office of the Special Rapporteur for Freedom of Expression of the IACHR defines more specific criteria and principles.

The current democratic challenges require coordinated and strategic work between digital platforms and the State, with the adoption of filters and blocks in virtual networks, as well as respect for copyright in the cyber world, ensuring security in cyberspace infrastructure, and employing surveillance programs in exceptional cases (Puddephatt, 2016, p. 21).

The first point concerns filters and blocks on the internet, considering that, a priori, neither States nor intermediaries can filter or block information from the virtual space. Therefore, neither the Judiciary nor the Legislative Branch can impose restrictions on intermediaries within the process of disseminating communication, such as digital platforms, such as *Google* or *Youtube* (Marino, 2017, p. 40).

However, in exceptional cases, there may be a filter of specific information filed by lawsuits that respects due process and is conducted by an independent and impartial judge. It is necessary that the magistrate is committed to defending the fundamental rights aimed at the exercise of citizenship and not inclined to extract personal benefit or to represent the interest of eventual political majorities.

The second point refers to the non-accountability of the intermediary before the State. The Judiciary and the Legislative Branches cannot impose restrictions or blockages on

intermediaries within the process of disseminating communication. In other words, platforms such as *Google* or *Youtube* should not be held responsible for the content posted by their users, as this would imply affecting the free enjoyment of the circulation of information and thought in a given country (Marino, 2013, p. 44-45).

Intermediaries are more vulnerable in the process of information circulation compared to users, so it is important to protect them to avoid the emergence of barriers or blockages in the flow of information. In addition, the obligation to monitor the content posted by users should not be imposed, as such enforceability tends to make the provision of service unfeasible, which would imply filtering or blocking the information transmitted on the internet. In this sense, the user can be held responsible for the content posted

through the filing of a lawsuit.

On the other hand, the commitment and responsibility of digital platforms consist of making clear what the conditions are for the manifestation of freedom of expression and privacy in their *web* space. In addition, intermediaries must also publish the requests they receive from agencies for the delivery of user data. It is not up to the intermediaries to refuse to comply with court orders, but they can judicially question whether, perhaps, the requests are in violation of Human Rights (OAS, 2019a, p. 29).

The Superior Electoral Court (TSE), since 2018, has signed an agreement with different partners with the aim of preventing the spread of *fake news*. An example of this was the cooperation between the Facebook company and the Brazilian State in the case of politician Marina Silva, since the parliamentarian was affected by fake news that circulated within the social network.

In June 2018, the TSE made its first decision on the issue of 'fake news'. According to the available information, the case involved the candidate for the Presidency of the Republic, Dr. Marina Silva. In its decision, the TSE determined that within 48 hours Facebook must remove the content considered false in relation to Ms. Silva. Likewise, it determined that within 10 days, Facebook should report the data on the origin of the registration of the page responsible for the publications, the access records to one of the posts and the personal data of the creator and administrators of the Facebook profile. The aforementioned [preliminary] precautionary decision was the first to use resolution 23,551, approved in December 2017, in the field of confronting false notifications (OAS, 2019b, p. 80).

The third point concerns copyright in cyberspace, as the importance of protecting this right is related to the promotion of the development of culture, education and access to information, so that protection on the internet is, in fact, democratizing. As a result, copyright protection measures must be adequate and proportional, so that there is no interference in the content or operation of the internet. In other words, intermediaries should not be held responsible for content that violates copyright, as well as there can be no filter or blocking without ensuring respect for due process and fundamental rights (Marino, 2013, p. 63).

The fourth aspect is cybersecurity, understood as the security of cyberspace infrastructure and the security of user data. This is a recent concept that addresses the practice of new crimes within the digital community (Marino, 2013, p. 59).

The fifth topic is related to surveillance programs, which have legitimacy to act in very exceptional situations. The restriction of their application is due to the fact that they have the ability to invade and violate privacy and freedom of expression in their individual, social and media dimensions. Therefore, these measures must be strictly monitored to avoid the violation of rights (Marino, 2013, p. 72). Surveillance can only be applied when it involves a serious and concrete violation of a fundamental right (Puddephatt, 2016, p. 27). Finally, the new frontiers of freedom of expression must be connected to the advancement and expansion of the internet.

In 2022, there were new presidential elections in Brazil, which were marked by strong political polarization. Against this backdrop, the IACHR points out the need for Brazilian elections to contain institutional procedures to ensure respect for representative democracy and human rights.

Among the series of measures adopted, the agreement signed between the Superior Electoral Court (TSE) and the Attorney General's Office of the Electoral Republic to combat gender-based political violence; the installation of an intelligence center by the TSE, with the objective of combating political violence in the electoral process; as well as the creation of an intelligence center by the TSE, with the objective of combating political violence in the electoral process; as well as the creation of an intelligence center by the TSE, as well as the creation of an intelligence center by the TSE, the creation of an intelligence center by the TSE, the creation of an intelligence center, the installation of an intelligence center, with the objective of combating political violence in the electoral process, as well as the creation of an intelligence center. of specific criminal courts to judge cases of political-partisan violence [...]. In addition, the creation of campaigns, online interaction tools, and other mechanisms that provide information to the population about the rights and duties of voters, the functioning of the national electoral system, and participation in elections is welcome (OAS, 2022, p.1).

In addition, the IACHR positively evaluated the measures taken by the TSE, the Attorney General's Office, and the Supreme Court in conducting the elections. This reinforced the solidity of Brazil's democratic institutions, which are based on the proper functioning of the constitutional system of checks and balances between the three branches.

In order to reinforce the environment of free circulation of information during the electoral period, the main *fake news* were denied by the Electoral Court and by fact-checking agencies that are partners of the TSE in the fight against disinformation (BRASIL, 2023). However, on January 8, there was a frustrated attempt to invade the

National Congress, in order to question the act of inauguration of the new president of the republic, Luiz Inácio Lula da Silva, based on unfounded accusations of fraud in the

electronic ballot boxes.

In 2023, Bill No. 2,620/2020 was discussed in the National Congress to seek to resolve the problem of the dissemination of *fake news* in Brazil. However, the vote on the document is still in progress in the Legislative Branch.

For Cabedo and Rezende (2023, p. 9) the importance of this document is to ensure transparency mechanisms of the information on the internet, by establishing that:

Platform providers must provide quarterly reports on their websites when informing the number of users who accessed from Brazil and the number of active Brazilian users; number of account and content moderating measures adopted in the period, specifying motivation, methodology and measure adopted; number of moderating measures of accounts and content adopted due to compliance with court orders, specifying the motivations; total number of automated accounts and artificial distribution networks detected, with the corresponding measures, motivations and methodology used in detection; among others, all safeguarding the protection of personal data. The text also provides for the creation of a state body, the Council for Transparency and Accountability on the Internet, to monitor measures that deal with the implementation of this law and also that platforms will be able to create bodies for self-regulation focused on transparency and responsibility in the use of the internet (Brasil, 2020, p.11).

Finally, this bill faces a delicate issue for the necessary state regulation of the *Internet*; however, in order not to run the risk of provoking censorship, it is necessary that the Council for Transparency and Accountability on the *Internet* has functional autonomy, so that it does not violate the principle of respect for access to equal conditions. as well as the preservation of the principle of neutrality, which requires the maintenance of the free market of ideas on the *internet*.

5 Conclusion

The phenomenon of mediatization has modified the structure of the communication process, given that the receiver of information actively participates in the constitution and circulation of data in the public space in the digital age. Given this scenario, it is necessary to draft a specific law to regulate freedom of expression, since the presence of legislation does not imply prior censorship, as long as the restriction of the norm is clear, precise, and respects the six guiding principles of the IACHR report, which include: universal access, non-discrimination, pluralism, privacy, exceptionality of limits on the circulation of ideas and information, and, by end, net neutrality.

In fact, the institution of legislation to establish limits on the exercise of freedom of expression must be aligned with the legitimate and democratic purposes of a plural, free and tolerant society. The elements that justify the need for a specific law to regulate the circulation of data on digital platforms are present in the analysis of the IACHR's reports on freedom of

expression in Brazil. These reports alarmingly highlight how the production of *fake news* has generated tensions in Brazilian democracy and mistaken questions regarding the credibility of journalistic activity.

The advancement of technology has caused changes in social organization, social practices and interaction processes, with regard to the circulation and reception of the content of the message disseminated. In the sense of argumentative reinforcement, it is worth mentioning the case of *Facebook* or *Twitter*, which encourage people to post digital content on their respective communication platforms, in order to influence the formation of news in the public space. Therefore, a mechanism for legislative collaboration between digital platforms and the national legal system should be established.

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Mailing address:

Diego Fonseca Mascarenhas
diegomask_85@hotmail.com



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