The struggle over privacy, security, cyber-crimes and the civil rights in the Brazilian law – a historical overview

Rubens A. Menezes de Souza Fº
University of São Paulo, Brazil / CEETEPS

This paper presents a initial study of the multiple ongoing reform propositions of the Brazilian laws related to privacy, security, crimes and intellectual property. All of them focused on the events that can occur over computer based communications, most notably the ones that take place over the Internet. The main goal of this text is to expose, through a historical overview, whether or not Brazil is fulfilling the said democratic creation of new laws on privacy, security and cyber-crimes, or if it is just reenacting old debates about to what extension the civil rights can exist in the Brazilian law and in the Brazilian society. A critical question for a country that aspires to have international political relevance in the near feature.

Introduction

With one of the highest rates of Internet adoption in the world[1], the Brazilian society is facing new challenges regarding regulation of the digital landscape. Questions over privacy, cyber-crimes, data security and, most notably, intellectual property are emerging amongst tribunals, the media, social activists, scholars and politicians.

This paper will first focus on the current Brazilian legal landscape over this matters, presenting the consolidated legislation and the current tendencies adopted by its tribunals, also it will deal with the many ongoing reform propositions of the Brazilian laws that are focused on conflictive events that may occur over computer based interactions, especially the ones that take place over the Internet.

The reform propositions can only be understood exposing the actors who defend them, they will be presented playing their roles as representatives of different interest groups on the struggle to adapt, change or, somehow, interfere in the Brazilian law. Then, with a clear understanding of who

1 GNETT-IBOPE/NetRatings (4th trimester/2008) in http://www.cetic.br/usuarios/ibope/tab02-06.htm

the actors are, it is possible to pinpoint the major forces of the debate, represented by the conservatives and the leftist-oriented intelligentsia.

Their methods of interference on the how public debates are conduced will be the main interest of this text, that is duo to the fact that at the moment, very innovative propositions and experiences on the ways of how this debates are conducted, and on how the laws are written, are being tested in Brazil. Some of this debates are opened to the whole society, and even to foreigners (something that many consider to be an aberration). Of course it remains to be proved if these processes are as open as they are portrayed and if they can survive to the traditional legislative process that will follow, especially if one took in consideration the debating parties large political spectrum, one heterogeneous chorus of voices that has generated quiet conflictive, contradictory and different law propositions.

Looking to how this debates has evolved, mostly in the last ten years with a historical criticism, makes it possible to grasp some perspective on how the different sides has being trying to win the hearts and minds of the civil society. Ultimately their actions, voices and reasoning captured and crystallized in these debates can lead to very interesting conclusions on if whether or not Brazil is fulfilling its largely advertised creation of new laws, and specially if the current civil rights can survive the process.

A Brief Overview on Political History

Brazilian law initially derives from the Portuguese Civil Law and has, over the years, acquired its won face. To understand the current Brazilian Civil Law it is necessary to consider a little bit of the country's history, that will be briefly presented in the next few paragraphs.

Brazil is the only Portuguese-speaking country of the Americas, and has began it's history (in 1500) as one of the many Portuguese colonies. It kept the colonial status until 1815 when, after being forced out-off Europe by Napoleon, the Portuguese monarchy sought refuge in the new continent, arriving at Rio de Janeiro, and making the city the new capital (1808), in place of Lisbon[2]. This way Brazil become part of the “United Kingdom of Brazil, Portugal and Algarves” [3], a status that made the country the first (and only) country of the Americas to ever become a monarchy, with a complete European royal family direct ruling over it. So the Brazilian law, has began – against all chances – as a Monarchy Law.

But that was not a situation meant to least, the independence from Portugal was reached in 1822, first as one "independent" Brazilian Empire, ruled by the son of the original king, and then in

2 István Jancsó, org., *Cronologia de História do Brasil Colonial (1500-1831)*, Série Iniciação 1 (São Paulo: FFLCH-USP, 1994), 192.

3 Ibidem, 206.

1824 Brazil got it's first constitution ratified, implementing a bicameral legislature, that latter would be the Congress, and finally, in 1889, it would become a Republic.

Historians name the period from 1889 to 1930 as Old Republic (República Velha in portuguese), a period where Brazil would call itself a Democratic Republic, but would hardly meet the minimum requirements to be named that way, consider, just as an example, no woman could vote. The power would be, in fact, shared between the oligarchies of the two richest states of the union: São Paulo and Minas Gerais. The 1929 world crisis, and it's effect over Brazilian agricultural economy, produced the necessary crisis amongst the established powers, and brought new forces in the political arena. The Old Republic period ended in 1930 with the arise of president Getúlio Vargas, a civilian dictator (from the southern state of Rio Grande do Sul) installed by a military *coup d'état*, marking both the end of Old Republic and the begin of the "Era Vargas", Portuguese for "Vargas Age".

It might seem odd to see a country decaying from a Democratic Republic to a Dictatorship, but it is interesting to note that neither democracy, nor the republic, where universal values for the people at this period. All efforts to make ideological approximations with the French or North-American democratic values where just nominal, and made by the oligarchies when justifying their own domination over the State. In 1930 Vargas promoted the dissolution of Congress, the abrogation of the country's 1891 Constitution and put an end (or a halt) to the dominance cycle of the São Paulo and Minas Gerais oligarchies. Around 1930 Brazil was a very different country, living the infancy of its industrialization that has seen a first minor burst from 1880-1890[4], when the country was still transitioning from the salve work forces to wage working forces, a necessary step towards industrialization. This is also the time where Brazil (and Latin America in general) will have it's major urbanization jumping from a 37,7 per cent of the population living in urban areas in 1940 to 69,4 per cent in 1980[5].

Vargas ruled Brazil as dictator until 1945, when he was forced out of the office by another *coup d'état*, his dictatorship was marked by strong fascist-influence and persecution of leftist-oriented parties, (namely the communists that had tried a insurrection in 1935, heavily squashed and then used as decades long propaganda against communists and left oriented parties[6]). The period that starts in 1946 is remembered by it's great political instability and was named Second Republic by the historians. Vargas, who maintained strong influence during the Second Republic, returned from 1951 to 1954 as elected president, when he committed suicide, putting an end at the Vargas Age.,

4 Sergio Silva, *Expansão Cafeeira e Origens da Indústria no Brasil* (São Paulo: Alfa-Omega, 1976), 80.

5 Orlandina de Oliveira e Bryan Roberts, "O Crescimento Urbano e a Estrutura Social Urbana na América Latina, 1930-1990", in *História da América Latina: a América Latina após 1930: Economia e Sociedade*, vol. VI (São Paulo: Edusp, 2005), 302-303.

6 Daniel Aarão Reis, "Entre Reforma e Revolução a Trajetória do Partido Comunista no Brazil entre 1943 e 1964", in *História do Marxismo no Brasil - Partidos e organizações dos anos 1920 aos 1960*, vol. 5 (Campinas: Editora da UNICAMP, 2007), 73.

The political instability that followed led to the infamous 1964 *coup d'état* that would keep Brazil under an authoritarian military government from 1964 to 1985, again a period of great persecution of the left aligned parties and ideologies.

In 1985 the civilian José Sarney[7], an oligarch of Northern Brazil, was finally named President, after Tancredo Neves[8], a Minas Gerais politician of whom he was the vice, was appointed president by the congress and died (of natural causes) before entering the office. Today, as defined by the 1988 Constitution, Brazil is a Federal Republic that congregates 26 States, the Federal District, and over five thousand Municipalities.

After the promulgation of the 1988 Constitution, Brazil held a direct democratic election, on 1989 – the first in almost 30 years – bringing Fernando Collor de Mello[9], a politician, born in Rio de Janeiro, but based in the northeastern state of Alagoas, to the president office. Collor was elected with an agenda that focused in combating the corruption of José Sarney's office and concluding the transition to civilian government after the "plumb years[10]" of military rule. Collor also began the process of opening (liberalizing) the Brazilian markets, an aspect of the economic life that the military has kept under tight control, especially in areas considered strategic like computers[11].

After being itself accused of enormous corruption in 1991, Collor started to face protests all over the country, and was driven to resignation in 1992. His resignation was a maneuver to avoid the Senate voting for his impeachment, something that happened anyway, and suspended his political rights for the following eight years, according with the Brazilian law[12].

After the impeachment of Collor, Itamar Franco[13] his vice president and a Minas Gerais state politician, assumed the presidency for the remainder term. Itamar was faced with a major economic crisis and stratospheric inflation rates, he named Fernando Henrique Cardoso (FHC), a São Paulo state politician, the Minister of Treasury. After decades of close to desperation tentatives of controlling the inflation – where Sarney and Collor had failed – FHC managed to get the inflation under control with his Plano Real (that established a new currency in Brazil), this major

---

7 "José Ribamar Ferreira de Araújo Costa - José Sarney — Presidência da República Federativa do Brasil", [s.d.], http://www.presidencia.gov.br/info_historicas/galeria_pres/galsarney.

8 "Tancredo de Almeida Neves — Presidência da República Federativa do Brasil", [s.d.], http://www.presidencia.gov.br/info_historicas/galeria_pres/galtancredo.

9 "Fernando Afonso Collor de Mello — Presidência da República Federativa do Brasil", [s.d.], http://www.presidencia.gov.br/info_historicas/galeria_pres/galcollor.

10 Brazilians often refers to the military years after the 1964 *coup d'état* as "anos de chumbo" or "plumb years" in English.

11 Ivan da Costa Marques, "Cloning Computers: From Rights of Possession to Rights of Creation", *Science as Culture* 14 (2) (junho 2005): 139-160.

12 As a side note, it is interesting to mention that Collor, the first Brazilian elected president after the military regimen, and also first impeached president ever, has won the second term of the 1989 election against Lula, who would be elected the president latter in 2002. Today, in 2011, Collor is one elected senator by the northeast Alagoas state, his political base.

13 "Itamar Augusto Cautiero Franco — Presidência da República Federativa do Brasil", [s.d.], http://www.presidencia.gov.br/info_historicas/galeria_pres/galitamar.

accomplishment made it possible for FHC to be elected in the 1994[14] presidential run, and even re-elected in 1998[15].

In 2002, Luiz Inácio "Lula" da Silva[16], of the leftist PT (the Workers Party) finally got elected as president, after being defeated by Fernando Collor de Mello in 1989, and Fernando Henrique Cardoso in 1994 and in 1998. Lula's election marked one notable turn in Brazilian politics, since, for the first time a leftist-oriented party won a democratic election in Brazil, something important for the arguments that are going to be made in this paper, and to better illustrate many conflicts that would come to be. Lula served for two terms[17], and in October of 2010, Dilma Rousseff[18], from the same Working Party (PT), got elected to the president's office, being the first woman to ever made such achievement in Brazilian politics.

PT was officially founded in 1980, as a reflex of the new classes emerging from the industrialization and also of the growth of the urbanization. Paulo Henrique Martinez[19] traces the origins of PT back to middle 60's, he decompose the social groups that got together in the party as follows:

> *"The social base that constituted the PT was composed mainly of industrial workers, such as metallurgical, chemical, oil, leather, and glass workers; service sector workers like employees of transport companies, banks, small capitalists and landless rural workers, also civil servants such as teachers of municipal and state schools.*
>
> *The composition of this social base aggregated also numerous politically radicalized segments of the middle classes that where bound by work and also by participation in different organized social movements, mostly urban, for housing, better wages, jobs, education and health. (...) The connection with the world of work, predominantly the waged work, assured the social identity that shaped and named the new party: of the Workers"*[20]

If until 2002 the power balance in Brazil would be changing amongst different representatives of a more or less same dominant elite, swinging between the more and the less conservative, with

14 "Fernando Henrique Cardoso — Presidência da República Federativa do Brasil", [s.d.], http://www.presidencia.gov.br/info_historicas/galeria_pres/galfhc1.

15 "Fernando Henrique Cardoso (2) — Presidência da República Federativa do Brasil", [s.d.], http://www.presidencia.gov.br/info_historicas/galeria_pres/galfhc.

16 "Luiz Inácio Lula da Silva — Presidência da República Federativa do Brasil", [s.d.], http://www.presidencia.gov.br/info_historicas/galeria_pres/Lula.

17 "Luiz Inácio Lula da Silva (2) — Presidência da República Federativa do Brasil", [s.d.], http://www.presidencia.gov.br/info_historicas/galeria_pres/Lula2.

18 "Dilma Rousseff — Presidência da República Federativa do Brasil", [s.d.], http://www.presidencia.gov.br/info_historicas/galeria_pres/dilma-rousseff.

19 Paulo Henrique Martinez, "O Partido dos Trabalhadores e a Conquista do Estado 1980-2005", in *História do Marxismo no Brasil - Partidos e movimentos após os anos 1960*, vol. 6, 6 vols. (Campinas: Editora da UNICAMP, 2007), 464.

20 PT stands for Partido dos Trabalhadores, that translates as Workers Party.

the victory of PT in 2002 elections, a different group would arrive in power, making room, if not for changes, at least for the possibility of changes.

It is still an open debate if PT has, from its foundations in 1980 to the election of 2002, kept itself faithful to the original propositions or even to the original segments that helped in its creation, but there is no doubt that, in many aspects, after 2002 the political agenda in Brazil was opened to incorporate new practices and new propositions, this has led to the first major movements proposing the relaxation of copyright and also some kind of Internet regulation that would primarily re-assure fundamental rights to citizens in place of trying to control or coerce their on-line activities.

The Brazilian laws related to privacy, security, crimes and intellectual property

Before getting to the central point of this paper (the ongoing law reforms and propositions, and the clash between their supportive interest groups) it is convenient to present the current state of the Brazilian law on items related to privacy, security, crimes and intellectual property.

Since Brazilian law was at first inherited from Portugal, it is natural to assume that it had preserved some of its characteristics like being hierarchically organized, meaning the states got their individual judiciary systems, but all of them are limited by the federal judiciary. The system is mirrored on the Roman-Germanic tradition, based on statutes and law, but since a 2004 Constitutional Amendment, has introduced the *Súmula Vinculante*, a mechanism similar to *Stare Decisis*, so there could be more uniformity on decisions made by the judiciary system, the *Súmula Vinculante* can be stated only by the Supreme Court of Brazil.

Also the Constitution rule above all the other laws, and no law can go against it, or it will be labeled unconstitutional and, theoretically, put to no effect. From constitutional determination the Brazilian citizen got granted the rights to free speech and free thinking, and no right to anonymity, which is, in fact, prohibited by the Constitution.

A brief look at the constitutional rights of the Brazilians, in the Constitution of 1988, is enough to imagine the great judiciary mess that would be installed ten years latter, with the wide spread utilization of the Internet in the country. It is in the Title II [21], devoted to "Fundamental Rights and Guarantees", and its Chapter I that defines the Rights and Duties of Groups and Individuals the Brazilian Constitution deals with many aspects of interest to this paper.

The Art. 5Th, Item IV [22] makes no room for doubt when stating that: *"The manifestation of thinking is free, but anonymity is forbidden"*[23], the reasoning of the legislators is plain obvious when

21 TÍTULO II : Dos Direitos e Garantias Fundamentais ; CAPÍTULO I : DOS DIREITOS E DEVERES INDIVIDUAIS E COLETIVOS

22 *Constituição da República Federativa do Brasil de 1988*, *Constituição da República Federativa do Brasil de 1988*, 1988, http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm.

23 VI - é livre a manifestação do pensamento, sendo vedado o anonimato;

you read the Art. 5Th, Item V[24] that assures the right of answer, and material reparation in cases of material, moral or image damages. That is the rezoning why Brazilians are free to say whatever they want, but there should be responsibility on it, and, if that become the case, consequences.

Art. 5Th, Item IX[25] will deal with the right to free expression, and intellectual, artistic, scientific and communication freedoms, that should not face any kind of censorship or licensing interferences, and Art. 5Th, Item X[26] made it inviolable the intimacy, private life, honor and image of the person, again, re-assuring possibility of compensation for material or moral damages if violations occur.

About correspondence, communications over phone, telegraphic or data communications, the Art. 5Th, Item XII[27] made them inviolable, in a way it can only be broke by a judicial order to proceed criminal investigations, and only according with the cases established by the law nº 9.296 of 1996. Even in this case there are clear limits to how far the State can dig in the course of the investigations, we'll get back to that latter. It also is important to note, that while anonymity is forbidden, Art. 5Th, Item XIV[28], grants to all access to information and allows secrecy of sources.

The Brazilian Constitution of 1988 will also specifically deal with intellectual property rights, it begins with Art. 5Th, Item XXVII[29] that reassure authors and their heirs rights, mentioning that a specific law will determinate the time length of this protection, and then continues with Art. 5Th, Item XXVIII[30] that will enter in even more details about authors rights. Art. 5Th, Item XXIX[31] regulates industrial innovations and the rights of its authors, and also property over trademarks, and companies names and other distinctive signs.

Other Constitution Articles worth mentioning for the purposes of this paper are the ones in the range from Art. 5Th, Item XXXIX to Item XLII, that will respectively define the following principles:

---

24 V - é assegurado o direito de resposta, proporcional ao agravo, além da indenização por dano material, moral ou à imagem;

25 IX é livre a expressão da atividade intelectual, artística, científica e de comunicação, independentemente de censura ou licença;

26 X - são invioláveis a intimidade, a vida privada, a honra e a imagem das pessoas, assegurado o direito a indenização pelo dano material ou moral decorrente de sua violação;

27 XII - é inviolável o sigilo da correspondência e das comunicações telegráficas, de dados e das comunicações telefônicas, salvo, no último caso, por ordem judicial, nas hipóteses e na forma que a lei estabelecer para fins de investigação criminal ou instrução processual penal; (Vide Lei, de 1996)

28 XIV - é assegurado a todos o acesso à informação e resguardado o sigilo da fonte, quando necessário ao exercício profissional;

29 XXVII - aos autores pertence o direito exclusivo de utilização, publicação ou reprodução de suas obras, transmissível aos herdeiros pelo tempo que a lei fixar;

30 XXVIII - são assegurados, nos termos da lei:
a) a proteção às participações individuais em obras coletivas e à reprodução da imagem e voz humanas, inclusive nas atividades desportivas;
b) o direito de fiscalização do aproveitamento econômico das obras que criarem ou de que participarem aos criadores, aos intérpretes e às respectivas representações sindicais e associativas;

31 XXIX - a lei assegurará aos autores de inventos industriais privilégio temporário para sua utilização, bem como proteção às criações industriais, à propriedade das marcas, aos nomes de empresas e a outros signos distintivos, tendo em vista o interesse social e o desenvolvimento tecnológico e econômico do País;

XXXIX[32] – there is no crime without prior law that defines it, neither punishment without previous legal sanction;

XL[33] – the law will never be retroactive, except in the benefit of the defendant;

XLI[34] – the law will punish any act of discrimination against fundamental rights and freedoms;

XLII[35] – the practice of racism is a crime unbailable and imprescriptible, subject to imprisonment under the law;

Many items of the Brazilian Constitution are defined only by their principles, and need a latter formulated law to define exactly on what grounds they will be applied. The above mentioned law 9.296/96[36] define how Art. 5[Th], Item XII, dealing with communications is implemented. The main highlights on this law[37] will be scrutinized in the next paragraphs.

32 XXXIX - não há crime sem lei anterior que o defina, nem pena sem prévia cominação legal;
33 XL - a lei penal não retroagirá, salvo para beneficiar o réu;
34 XLI - a lei punirá qualquer discriminação atentatória dos direitos e liberdades fundamentais;
35 XLII - a prática do racismo constitui crime inafiançável e imprescritível, sujeito à pena de reclusão, nos termos da lei;
36 The Brazilian laws are represented in a number/year format, like this.
37 LEI Nº 9.296, DE 24 DE JULHO DE 1996. -

Regulamenta o inciso XII, parte final, do art. 5° da Constituição Federal.

O PRESIDENTE DA REPÚBLICA Faço saber que o Congresso Nacional decreta e eu sanciono a seguinte Lei:

Art. 1º A interceptação de comunicações telefônicas, de qualquer natureza, para prova em investigação criminal e em instrução processual penal, observará o disposto nesta Lei e dependerá de ordem do juiz competente da ação principal, sob segredo de justiça.

Parágrafo único. O disposto nesta Lei aplica-se à interceptação do fluxo de comunicações em sistemas de informática e telemática.

Art. 2° Não será admitida a interceptação de comunicações telefônicas quando ocorrer qualquer das seguintes hipóteses:

I - não houver indícios razoáveis da autoria ou participação em infração penal;

II - a prova puder ser feita por outros meios disponíveis;

III - o fato investigado constituir infração penal punida, no máximo, com pena de detenção.

Parágrafo único. Em qualquer hipótese deve ser descrita com clareza a situação objeto da investigação, inclusive com a indicação e qualificação dos investigados, salvo impossibilidade manifesta, devidamente justificada.

Art. 3° A interceptação das comunicações telefônicas poderá ser determinada pelo juiz, de ofício ou a requerimento:

I - da autoridade policial, na investigação criminal;

II - do representante do Ministério Público, na investigação criminal e na instrução processual penal.

Art. 4° O pedido de interceptação de comunicação telefônica conterá a demonstração de que a sua realização é necessária à apuração de infração penal, com indicação dos meios a serem empregados.

§ 1° Excepcionalmente, o juiz poderá admitir que o pedido seja formulado verbalmente, desde que estejam presentes os pressupostos que autorizem a interceptação, caso em que a concessão será condicionada à sua redução a termo.

§ 2° O juiz, no prazo máximo de vinte e quatro horas, decidirá sobre o pedido.

Art. 5° A decisão será fundamentada, sob pena de nulidade, indicando também a forma de execução da diligência, que não poderá exceder o prazo de quinze dias, renovável por igual tempo uma vez comprovada a indispensabilidade do meio de prova.

Art. 6° Deferido o pedido, a autoridade policial conduzirá os procedimentos de interceptação, dando ciência ao Ministério Público, que poderá acompanhar a sua realização.

§ 1° No caso de a diligência possibilitar a gravação da comunicação interceptada, será determinada a sua transcrição.

§ 2° Cumprida a diligência, a autoridade policial encaminhará o resultado da interceptação ao juiz, acompanhado de auto circunstanciado, que deverá conter o resumo das operações realizadas.

§ 3° Recebidos esses elementos, o juiz determinará a providência do art. 8° , ciente o Ministério Público.

Art. 7° Para os procedimentos de interceptação de que trata esta Lei, a autoridade policial poderá requisitar

To break someones communications secrecy it is mandatory to have one order from a competent judge, and this law is valid to the *"interception of communications flow in informatics and telematics systems"*, which pretty much covers the Internet even in the most narrowed interpretations.

The 9.296/96 law also defines, in its Article 2nd, that the interception of the communications will not be admitted when *"there are no reasonable evidence of authorship or participation in penal infraction"* and *"the evidence could be generated by other means available"*. It also states that at all hypothesis it has to be clearly described the situation that is the object of the investigation and that the monitoring should not exceed 15 days, renewable by the same period. Article 7th of the same law opens the possibility for law enforcement to request specialized technical assistance of the services operators, and Article 9th determines that *"The recordings that do not relate to the seeked evidence will be destructed by judicial determination, during the process, evidence gathering or after that, by the means of a request of the Ministério Público[38] or by the interested part."*, also the Ministério Público will witness the destruction, being optional the presence of the defendant or its legal representative. Finally the 10th Article of the 9.296/96 law define as a crime to intercept communications off this regulations and define its punishment as *"two to four years of reclusion, and a fine"*.

So not only the secrecy of electronic communications is a Constitutional right in Brazil, but it also got it's own law, barring strong principles and heavy punishments.

In the matters of free speech and thinking, Brazilians are also well covered by their constitutional rights, even considering they are not allowed to act anonymously when manifesting their ideas. We will return to this ideas latter when we clash them against tribunals reality and the new laws being proposed. Focusing on intellectual property rights, we have already saw that they are also granted by the Constitution, again, the details of these rights and how they are implemented, are defined by specific laws.

---

serviços e técnicos especializados às concessionárias de serviço público.

Art. 8° A interceptação de comunicação telefônica, de qualquer natureza, ocorrerá em autos apartados, apensados aos autos do inquérito policial ou do processo criminal, preservando-se o sigilo das diligências, gravações e transcrições respectivas.

Parágrafo único. A apensação somente poderá ser realizada imediatamente antes do relatório da autoridade, quando se tratar de inquérito policial (Código de Processo Penal, art.10, § 1°) ou na conclusão do processo ao juiz para o despacho decorrente do disposto nos arts. 407, 502 ou 538 do Código de Processo Penal.

Art. 9° A gravação que não interessar à prova será inutilizada por decisão judicial, durante o inquérito, a instrução processual ou após esta, em virtude de requerimento do Ministério Público ou da parte interessada.

Parágrafo único. O incidente de inutilização será assistido pelo Ministério Público, sendo facultada a presença do acusado ou de seu representante legal.

Art. 10. Constitui crime realizar interceptação de comunicações telefônicas, de informática ou telemática, ou quebrar segredo da Justiça, sem autorização judicial ou com objetivos não autorizados em lei.

Pena: reclusão, de dois a quatro anos, e multa.

38 The independent Public Prosecutors.

Long lasting rights...

The first Brazilian law to deal with what today is called intellectual property is the law nº 496/1898 of the 1830 Penal Code, until that point the authors right in Brazil was a *"no man's land"* to quote Prof. Paranaguá[39], the interest of Brazilian society in the protection/mercantile fruition of intellectual goods – as one would expect – is born and grow in the same years that Brazil made its transition to a capitalist economy and get initiated in its urbanization and industrialization. In September of 1886 Brazil adhere to the Berne Convention for the Protection of Literary and Artistic Works, initiating its relationship with international laws about immaterial goods. Also the 1891 Constitution[40] would, briefly, deal with intellectual property rights referring to the specific law for the duration of protections.

The 1916 Civil Code revoked that law and substituted it by Articles nº 649 to nº 673 that dealt with *"Literary, Scientific and Artistic Property"*[41]. It is worth mentioning that the 1898 law indicated that the length of time an authors work would be protected was for 50 years, counting from 1st of January of the year of the publishing[42], the 1916 Civil Code extended it to 60 years, counting from the day of the authors death[43]. Ten additional years of protection in only 18 years time, also ten years beyond Berne Convention.

But it was only in 1973 that Brazil would get a comprehensive and unified law regulating authors rights, the law nº 5.988[44] that made a minor adjustment to the length of the protection, now being 60 years counting from 1st of January of the year after the authors death. This law was latter substituted by law nº9.610[45] from 1998, the current Brazilian law for the authors rights, and here there was a major change, Art. 41 will state that: *"The author's economic rights endure for seventy years as of January 1 of the year following his death, obeying the order of succession under civil law"*[46], providing additional ten years of protection in relation to 1973. So we can point out that there has been a movement in Brazilian society to extend these property rights in favor of the authors and to the detriment of society at large.

Also it is an interesting coincidence that this extension was made in the same year that the

---

39 Pedro Paranaguá e Sérgio Branco, *Direitos Autorais*, 1st ed., FGV Jurídica (Rio de Janeiro: Editora FGV, 2009).

40 "Constituição da República dos Estados Unidos do Brasil de 1891", [s.d.], http://www.planalto.gov.br/ccivil_03/constituicao/Constitui%C3%A7ao91.htm.

41 Da propriedade literária, científica e artística

42 *Lei nº 496, de 1º de agosto de 1898.*, *Collecção das Leis da Republica dos Estados Unidos do Brazil de 1898*, vol. I, 1898, http://www2.camara.gov.br/legin/fed/lei/1824-1899/lei-496-1-agosto-1898-540039-publicacao-39820-pl.html.

43 Clovis Bevilaqua e Aquiles Bevilaqua, *Codigo Civil Dos Estados Unidos Do Brasil Commentado*, vol. 3, 9th ed. (Rio de Janeiro: Francisco Alves, 1916).

44 *Lei nº 5.988, de 14 de Dezembro de 1973.*, 1973, http://www.planalto.gov.br/ccivil/leis/L5988impressao.htm.

45 *Lei nº 9.610, de 19 de Fevereiro de 1998.*, 1998, http://www.planalto.gov.br/ccivil/leis/L9610.htm.

46 Art. 41. Os direitos patrimoniais do autor perduram por setenta anos contados de 1° de janeiro do ano subseqüente ao de seu falecimento, obedecida a ordem sucessória da lei civil.

North-American Congress approved the Sonny Bono Copyright Term Extension Act[47], while it is tempting to speculate about a direct relationship between the two extensions, envisioning maybe some kind of pressure, in reality, at this point in time, the pressure for more strict and hard enforcement of intellectual properties is scattered all over the globe. The most direct example of this being the Trips Agreement, or Agreement on Trade-Related Aspects of Intellectual Property Rights[48], that was in negotiation from 1986 to 1994, and basically introduced the Intellectual Property in the WTO[49].

It is important to make room for two considerations, first that from the two systems used world-wide to deal with authors rights, Brazil is historically affiliated with the French idea of *droit d'auter* and not with the British *copyright*[50], and the doctrine that deals with the authors rights understands that these rights are fair, but they should be limited in time, to the benefit of the whole society at some point. Quite conflictive concepts with Brazil's position as fourth worst-rated country by Consumers International IP Watchlist in 2011[51].

The lack of flexibility, the extended duration and the criminalization of activities related to the reproduction of copyrighted materials in Brazil has triggered the government to start a reform of the 9.610/98 law[52]. This reform intends, for the most of it, to put in place regulations to assure the fair use of copyrighted materials, creating some flexibility in a very strict law, the best representative of this idea is a proposition that would make illegal to place Digital Rights Management[53] technology (DRM) on works that has entered the public domain. Needless to point that this law reform is quite not popular amongst the copyright industry representatives in Brazil and abroad[54].

The Civil Landmark

Three major law reform propositions are now being discussed in Brazil: the Marco Civil da Internet[55] (Internet's Civil Landmark), the new LDA[56] (a New Copyright Law), and the Law about

47 Sonny Bono, *Sonny Bono Copyright Term Extension Act*, 1998, www.copyright.gov/legislation/s505.pdf.
48 *Trade-Related Aspects of Intellectual Property Rights*, 1994, http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm.
49 Maristela Basso, "O Regime Internacional de Proteção da Propriedade Intelectual da OMC/TRIPS", in *OMC e Comércio Internacional*, org. Alberto do Amaral Júnior (São Paulo: Aduaneiras, 2006), 360.
50 Paranaguá e Branco, *Direitos Autorais*.
51 Consumers International, *Consumers International IP Watchlist 2011* (Consumers International, 2011), http://A2Knetwork.org.
52 "Gilberto Gil: 'Pirataria é desobediência civil' - Terra - Cultura", março 5, 2009, http://terramagazine.terra.com.br/interna/0,,OI3605448-EI6581,00-Gilberto+Gil+Pirataria+e+desobediencia+civil.html.
53 Georg Erber, "Proprietary Digital Rights Management Systems and Music-Downloads - Obstacles for Innovation from a Competition Policy Perspective", *SSRN eLibrary* (setembro 18, 2009), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1475059.
54 "Quem tem medo da mudança?", *Link - Estadao.com.br*, março 20, 2011, http://blogs.estadao.com.br/link/quem-tem-medo-da-mudanca/.
55 "Marco Civil", [s.d.], http://culturadigital.br/marcocivil/sobre/.
56 "Consulta Direito Autoral", [s.d.], http://www.cultura.gov.br/consultadireitoautoral/consulta/.

Personal Data Protection[57]. We will deal with the former two, since the third one is still being debated with the society at the moment we write this text and also it would drive us far away from the legislation presented until now.

When it was launched back in 2009 the very idea of Marco Civil was a radical change in the perspective on how law and politics could be conduced by a government. The Marco Civil is not a law, but a law proposition, formulated in great part outside the legislative houses of the Brazilian Congress. The idea was to obtain the draft of the bill from the society prior the necessary step of sending it to be voted and negotiated by the congressman, and the radical concept was to use the Internet itself to formulate a law meant to regulate the Internet, in an extreme democratic approach the debate would be opened to everyone, including non nationals of Brazil:

> *"The proposed construction of the regulatory framework also seeks to innovate the process of its formulation: the intent is to encourage, through the Internet itself, the objective and active participation of the numerous actors involved in the debate (users, academics, representatives of private enterprises, parliamentarians and government representatives). For this, the process will be conducted primarily by the Internet itself. "*[58]

This idea would latter be adopted by the Brazilian government to start other relevant discussions such as the ongoing revision the Copyright Law[59] and the formulation of a Personal Data Protection Law[60].

At the present moment (April, 2011) the debate is over and the final text, that can be found on-line[61], is waiting to be presented to Congress. In many aspects the Marco Civil was constructed as a very progressive bill, but during the formulation of the text many Brazilian activists pointed out a possible interpretation of the new law – an unintended consequence – that could drive to a kind of forced monitoring or registering requisite to access the Internet in Brazil, a possibility that jeopardize civil liberties and that is unconstitutional.

It is fair to mention that the Marco Civil does not made this proposition (directly), the problem resides in the crossing of different ideas that appears along the proposed text, such as the suggestion of the keeping of access logs for a given period of time.

Many known free-speech, free-culture and free-software activists had manifested their

57 "Debate Público Proteção de Dados Pessoais", [s.d.], http://culturadigital.br/dadospessoais/apresentacao-2/.
58 "Marco Civil".
59 "Consulta Direito Autoral", [s.d.], http://www.cultura.gov.br/consultadireitoautoral/consulta/.
60 "Debate Público Proteção de Dados Pessoais", [s.d.], http://culturadigital.br/dadospessoais/apresentacao-2/.
61 "Marco Civil".

discontentment with this idea[62], even tough, in principle, they do support the Marco Civil. The majority of the criticism pointed to this perception that access logs keeping would end up in a kind of compulsory registration to access the Internet in Brazil.

The propositions of the Marco Civil are:

Art. 2th clearly reassures freedoms and rights expected by the Internet user, including rights to privacy and free-speech.

Art. 4th paragraph VI establishes what are the *"logs of access to the Internet"* and do define them as *"the collection of information regarding the date and time of use of a particular Internet service from a particular IP number"*, precisely the definition of access log from a technical perspective.

Chapter II, Art. 7th establishes the users rights. Here Paragraph I grants *"the inviolability and secrecy of their communications, except by court order, in cases and in the manner provided by law for purposes of criminal investigation or criminal proceedings;"* and Paragraph IV extends the user rights assuring the *"non-disclosure or use of the connection logs and records of access to Internet services, except upon the consent or due to court order"*. Art. 8th continues assuring to the Internet user privacy, free-speech and granting the user the right to take its own measures to pursue this objectives, something we believe is specifically positioned here to legally grant to the citizen the freedom to use proxy and encryption technologies.

It is only in Chapter III, Art. 9th that the contradictions emerge with this wording *"imposes the obligation to keep connection records, according to Subsection I of Section III of this Chapter, being prohibited the keeping of records of access of Internet services by the ISP"*, and Art. 14th states *"The provision of Internet connection requires the administrator of the autonomous system corresponding duty to keep confidential records of connection in a controlled environment and security, for a maximum of 6 (six) months, in accordance with the Regulation"*

Art. 15th will deal only with the *"keeping of connection records"* in this way:

> *"I - the connection logs can only be provided to third parties by court order or with prior written permission the the respective user;*
>
> *II - the registration can only be available linked to the connection logs by court order, and*
>
> *III - the measures and procedures of security and confidentiality of records and registration data connection should be told clearly to the users."* and *"The security*

62 This feeling was pretty much materialized in their Twitter feeds and in the re-tweets of the protest messages. Some of them can be found (in Portuguese) at this addresses: http://twitter.com/samadeu/status/12949772543, http://twitter.com/samadeu/status/12950057728, http://twitter.com/MarceloBranco/status/13392755675 and http://twitter.com/samadeu/statuses/13384481632

procedures necessary to preserve the confidentiality and integrity of the connection logs and the registry data of this article must meet the appropriate standards to be set by regulation."

This proposition become confusing and contradictory when one returns to Art. 7th where it reads *"(...) except by court order, in cases and in the manner provided by law for purposes of criminal investigation or criminal proceedings;"* and Paragraph IV *"(...), except upon the consent or due to court order"*

Point is that if *"connection logs and access logs"* exist stored at any place, like it is mentioned in Paragraph IV of Art. 7th, and considering that Art. 15th, Paragraph II makes it possible to cross connection data with registration data, it means that the value of privacy is severely undermined. This situation is aggravated by the Art. 15th when it does not clearly defines how this data is supposed to be kept.

In Subsection II, dealing with *"The Internet services access record keeping"* Art. 16th the following is defined:

"The keeping of records of access to Internet services depend on the user's permission and must meet the following, without prejudice to other rules and guidelines relating to protection of personal data:

I - informing the user about the nature, purpose, period of storage, security policies and destination of the saved information by giving it access, possibility to correct and update the data whenever requested;

II - free and informed consent for the user prior to process, distribution to third parties or publication of information collected, and

III - data allowing the user identification can only be provided in a manner linked to records of access to Internet services by a court order."

Problem is that user consent, while pretty well defined by the proposed law, is innocuous once the court can request the already stored logs and registration data.

In any case scenario the fact that remains true is that whenever registration data (essentially name and billing address) and connexion data (IP address, time of access and addresses visited) exists stored, there is a possibility of a query to rebuild and trace a user whereabouts on line. This scenario can easily be interpreted as a form of compulsory registration to access the Internet, extinguishing in this way the anonymity of the users.

Who makes the laws?

Before proceeding with the criticism of Marco Civil it is important to understand from where does this law proposition came, why it was designed in public, and who are the political actors involved in it, here reconnecting the text with the historical and political panorama traced at the beginning will be as necessary.

During the XX century, Latin America saw established political parties and oligarchies erode significant part of its power as a consequence for the expansion of the cities.

> *"The industrial growth stimulated the elevation of education, proletarianization of the workforce and also the expansion of non-manual workforce. On the other side, this very urban growth brought with it one sharp polarization of the social structure, in terms of income and in terms of working conditions, (...) and a very distorted income distribution"*[63].

Brazil was not out of this movement, and in 2002 President Lula finally got to the presidency, allowing his party, the PT to experiment the expansion of policies first tried in states and municipalities in a federal level.

There is no space here to explore the alleged differences, but one characteristic of PT administrations probably reflected with great vivacity over this new method of laws formulations: the commitment with Open Source Software (OSS).

Since the first municipalities that PT managed to elect mayors, there has been a commitment from the party, to explore the possibilities of implementation of Open Source Software in the public administration and in the digital inclusion of the population.

> *"Porto Alegre, a southern Brazilian city is a metropolis with over 3 million people, during 15 years it had an unique experience when we consider the peculiarities of Brazilian politics. From 1989, during four successive administrations, until 2004, the Workers Party (PT) ruled the city, introducing innovations such as participatory budgeting, supporting the creation of the World Social Forum and becoming a center for the debate on the possibilities for the left in local scale changes."* [64]

Also in Porto Alegre for over eleven years the FISL (International Forum of Free Software) is

63 Oliveira e Roberts, "O Crescimento Urbano e a Estrutura Social Urbana na América Latina, 1930-1990".
64 "A esquerda no poder local: Porto Alegre e o Partido dos Trabalhadores", setembro 12, 2009, http://www.ub.es/geocrit/sn/sn-24516.htm.

being realized, sometimes together with the first editions of the World Social Forum (in opposition of the World Economic Forum). This way, for almost two decades Porto Alegre has been – even when not under a PT administration – the lighthouse for free software advocates in Brazil. It helped to form a generation of leftist-oriented technicians, and it expanded the OSS way of think to academics, lawyers and NOGs.

This way, the culture of OSS was already in place by 2002, it mixed with the discourse of technological independence, and the urge to implement Free Software, spread from Porto Alegre to all over the federal level. It was just normal for PT members, whom in less then eight years made Brazil an international reference in implementation of OSS[65].

At almost the same time, the Minas Gerais state senator Eduardo Azeredo (PSDB) become the major sponsor of a bill presented in 1999[66], called by its detractors as "Digital AI-5"[67], this bill intends to deal with *"the crimes committed in the area of informatics, its penalties and other measures"* focusing in *"virtual computer crimes or the attacks perpetrated by hackers and crackers"*[68]. It is easy to see why this 84/1999 Law Project (PL) meet instant hostility from PT technical militants, that in general can get offended by the mixed misuse of the words hacker and cracker.

The clash of this OSS mentality with the PSDB[69] proposition of regulation of on-line crimes, gave birth to the idea of the Marco Civil, something important to bare in mind when proceeding with the criticism of Marco Civil[70]. This way one can understand not only from where does this law proposition came from, but also why it was designed in public, like a free software project.

It is important to remember that the Marco Civil is just a law proposition, it will be submitted to Congress where it will suffers alterations and will be focus of disputed negotiations amongst the parties, that might be the reason behind why the logs proposition was kept even under heavy criticism, it looks like a movement in contemplating the other side.

Control arguments and counter-arguments

Some of the arguments of the log supporters are that they are necessary to maintain the *"crime scene"* in case an investigation might arise in future, the problem with this argument is that this

65 Todd Benson, "Brazil - Free Software's Biggest and Best Friend", Imprensa, *NYTimes.com*, março 29, 2005, http://select.nytimes.com/gst/abstract.html?res=F40614FD395B0C7A8EDDAA0894DD404482&fta=y&incamp=archive:article_related.

66 "PL-84/1999", fevereiro 24, 1999, http://www.camara.gov.br/sileg/prop_detalhe.asp?id=15028.

67 AI-5 or Institutional Act Number 5, was a decree imposed by the military regimen in December 13 of 1968 that revoked most of the freedoms of Brazilian society and is still to this day remembered as the very face of the military dictatorship.

68 At this point there are two similar PL (Law Projects) with the same objective, the 84/1999 and the 587/2011.

69 PSDB is the major opposing party in Brazil, and also the ex-government party.

70 There is a considerable overlap of intentions and actors between the Marco Civil and New LDA initiatives.

way, there will be the preserving the *"crime scene"* without the knowledge if a *crime*[71] will ever take place.

Brazilian law does not allow the previous recordings of logs, as previously stated, this recordings would constitute a breach of communications secrecy (a constitutional right) and it is mandatory to be ordered by a judge. The 9.296/96 law in its Article 2nd defines that if *"there are no reasonable evidence of authorship or participation in penal infraction"* and *"the evidence could be generated by other means available"* that the interception of the communications will not be admitted. The very maintenance of access logs at the ISP is against this same law that limits even authorized monitoring of communications to exceed no more than 15 days, renewable by the same period. It is also possible to argue that the prohibition of log maintenance is in the best interest of very fundamental human rights. It is not correct to record communications (keeping of logs) on the very basic concept that one person is innocent until proven guilt.

Presumption of innocence is a basic milestone of the majority of constituted legal systems and, together with privacy is a fundamental right for a democracy, the simple knowledge that all communications and interactions that take place over the Internet are being logged can have a profound chilling effect on democracy and free-speech. It would also be a law unable to fulfill its intended purposes, since the tech savvy users can easily defeat such monitoring, or, worst, can easily frame other people, forging or interfering in the logs generation.

Lets not forget that this kind of control proposition exists only duo to the technical viability of their implementation, they are not hard neither extremely costly to implement, in this manner creating a great temptation for certain economic groups and reactionary politicians, that would consider a fair trade to loose some democratic ground in exchange of bigger control over Internet communications. Their discourses when defending the reasons to sacrifice citizens freedoms comes, invariably, dressed as very fundamental security concerns, that would be in the best interest of the citizens.

For example, the law projects about this matter now in congress, PL-84/1999[72] and PL-587/2011[73] make use of the following phrases: *"Deals with the crimes committed in the area of informatics, its penalties and other measures"*; *"Characterizes as virtual or computer crime the attacks perpetrated by hackers and crackers, especially the manipulations to home pages and the misuse of passwords"*; *"Deals with the classification of the criminal conduct on the Internet and other measures. "*

A fundamental aspect to be observed here is that the Brazilian state can keep logs and can

71 There should be stated that there is a difference between a **crime** and a **transgression**, the **crime** bares within itself a much higher offensive degree. The italics is to point that hardly a **crime** can take place over the Internet, most of the time the illegal actions via Internet are **transgressions**.

72 "Lei Azeredo".

73 "PL-587/2011", [s.d.], http://www.camara.gov.br/sileg/Prop_Detalhe.asp?id=493377.

investigate the citizens if security concerns arise, but only after the beginning of an investigation, and when ordered by a judge. Such a process is intended to preserve this two fundamental rights of privacy and presumption of innocence. The current law projects over this matter seeks exactly to remove this necessity, creating a much more direct, police driven, course of actions.

It is not too much to mention that today, the ISP already do keep access logs for alleged *security reasons*, any ISP making use of Proxy servers do know exactly who the user is, what it has accessed in a determined moment and what files where delivered to the user by the servers. Also today there is logs generation and keeping by the ISP for control reasons, not always under ideal security conditions (probably another reason to avoid logs generation).

Some weird court decisions

Before we get to the conclusions it is probably a good idea to take a look at some weir court decisions.

We have already pointed out that Art. 5Th of the Constitution, on Item IV states that: *"The manifestation of thinking is free, but anonymity is forbidden"*, and the same article, in its Item V assures the right of answer, and material reparation in cases of material, moral or image damages. We went even far making the inference that the rezoning would be freedom with responsibility.

Again, the same article, in its Item IX grants the right to free expression, and intellectual, artistic, scientific and communication freedoms, that should not face any kind of censorship or licensing interferences, Item X made it inviolable the intimacy, private life, honor and image of the person, again, re-assuring possibility of compensation for material or moral damages if violations occur.

So *"honor and image"* are constitutional guarantees, that would not be affected by freedom of expression since anonymity is forbidden, and compensation for material or moral damages are also assured in case of any violations.

Also we remind that the Brazilian law is hierarchically organized, and the *"Constitution rule above all the other laws, and no law can go against it, or it will be labeled unconstitutional and, theoretically, put to no effect"*.

Lets take a closer look, considering real cases connected to the two biggest newspapers of Brazil: O Estado de São Paulo (Estadão) and Folha de São Paulo (Folha).

The first one is related to Folha, and is a really direct test for the Item IX that *"grants the right to free expression"* assuring that one *"should not face any kind of censorship or licensing interferences"*. In Portuguese the word *Folha* is a synonym for daily newspaper, but it is just one letter from *fAlha* that means *fail* in Portuguese. A site named *"Falha de São Paulo"* has been taken

off the Internet, by the newspaper *Folha* under the allegation of *"misuse of the trademark"* in a polemical decision, that is seen by many as an act of censorship. Even putting aside the free-speech issue, they defended themselves as being a parody site, and parody is another constitutional right.

The second one is a bit more complicated. The *Estadão* is prohibited by a judge of publishing an array of informations, including phone calls, from members of the ex-president Sarney[74] and about himself. This is seen as a *"prior censorship"*[75] and is unconstitutional, the correct procedure for the justice would be to let the paper publish the informations and then, if someone got offended, they can ask the justice to evaluate if it constituted any offense that could generate compensation. On the front cover of the *Estadão* website the paper keeps a black stripe and a counter updated every day, showing for how long its under censorship[76].

That is the reason why so many people got extremely surprised when the analyst Maria Rita Kell got fired (in 02/10/2011) by the *Estadão*[77], after publishing an opinion column in the paper, criticizing the elites and supporting president Lula. Examples like these abound in contemporary Brazilian society, and they extend to both sides of the political spectrum, including members of PT.

Conclusions

The original idea of this text was to evaluate if Brazil was being able to conduce a democratic creation of laws regarding the new communication technologies without hurting consolidated civil rights. In this proposition three major issues emerge as constitutional rights not fully preserved/defended or somehow endangered: the free manifestation of thinking, the privacy/freedom of communications, the access to cultural goods.

The free manifestation of thinking is now under attack by two significant threats, the acceptance of tribunals to enter in the realm of opinion litigations that many bloggers at left and right are being subjected, and the very unsettling *prior censorship.*

Privacy and freedom of communications are under attack by different law propositions and even by the Marco Civil since the officially sanctioned logs keeping initiatives will grant the state the power to search citizens activities under many different precedents, also it will grant the state the power do go back in time, to investigate alleged *crimes* committed in the past. This initiative can have a profound chilling effect in many levels of free-speech and even in the very ability of the

74 "Justiça censura Estado e proíbe informações sobre Sarney - politica - Estadao.com.br", [s.d.], http://www.estadao.com.br/noticias/nacional,justica-censura-estado-e-proibe-informacoes-sobre-sarney,411711,0.htm.

75 "Entidades da área de imprensa denunciam 'censura prévia' - politica - Estadao.com.br", [s.d.], http://www.estadao.com.br/noticias/nacional,entidades-da-area-de-imprensa-denunciam-censura-previa,411761,0.htm.

76 "1 ano sob censura - Especiais :: Estadao.com.br", [s.d.], http://www.estadao.com.br/pages/especiais/sobcensura/.

77 "Maria Rita Kehl: 'Fui demitida por um "delito" de opinião' - Terra - Política", [s.d.], http://terramagazine.terra.com.br/interna/0,,OI4722228-EI6578,00-Maria+Rita+Kehl+Fui+demitida+por+um+delito+de+opiniao.html.

citizen to criticize and oversee government actions.

The copyright law in Brazil is now one of the most restrictives in the world, it works as a legal wall, used to keep citizens detached of education and cultural development, the economic status being the principal factor to define how the citizen can access cultural goods. The current reform proposition of the 9.610/98 law was made to amend this situation and have a good chance of achieving its objectives. It remains to be seen if it will survive the legislative process inside the Congress.

Finally we can say that the long time conservative interest groups and the leftist-oriented intelligentsia are just the surface and most obvious aspects of the normative and social challenges that the new communication technologies are presenting today for the Brazilian society.

This challenges run across right winged parties like PSDB and PFL, the supporters of copyright industries, religious groups, left winged parties like PT, and leftist-oriented activists from digital culture movements, OSS enthusiast at FISL and many other interest groups.

At this point, even considering the innovations on how public debates has been conduced, the young Brazilian democracy looks really challenged to fulfilling the hopes for democratic creation of new laws and in harmonizing them with the civil rights already in place. These new laws will, somehow, regulate the technological development of the country, it remains a question to be seen if current civil rights will survive the debates.

A very famous Brazilian humorist, Millôr Fernandes, has once said: “A disgrace never comes alone. In Brazil it is always accompanied by threats to democracy”[78].

References

“1 ano sob censura - Especiais :: Estadao.com.br”, [s.d.]. http://www.estadao.com.br/pages/especiais/sobcensura/.

“A esquerda no poder local: Porto Alegre e o Partido dos Trabalhadores”, setembro 12, 2009. http://www.ub.es/geocrit/sn/sn-24516.htm.

Basso, Maristela. “O Regime Internacional de Proteção da Propriedade Intelectual da OMC/TRIPS”. In *OMC e Comércio Internacional*, organizado por Alberto do Amaral Júnior, 360. São Paulo: Aduaneiras, 2006.

Bevilaqua, Clovis, e Aquiles Bevilaqua. *Codigo Civil Dos Estados Unidos Do Brasil Commentado*. Vol. 3. 9th ed. Rio de Janeiro: Francisco Alves, 1916.

Bono, Sonny. *Sonny Bono Copyright Term Extension Act*, 1998. www.copyright.gov/legislation/s505.pdf.

“Constituição da República dos Estados Unidos do Brasil de 1891”, [s.d.]. http://www.planalto.gov.br/ccivil_03/constituicao/Constitui%C3%A7ao91.htm.

78 "Uma desgraça nunca vem só. No Brasil vem sempre acompanhada de ameaças à democracia." in http://twitter.com/millorfernandes/status/6760821167

Constituição da República Federativa do Brasil de 1988. *Constituição da República Federativa do Brasil de 1988*, 1988. http://www.planalto.gov.br/ccivil_03/constituicao/constitui%C3%A7ao.htm.

"Consulta Direito Autoral", [s.d.]. http://www.cultura.gov.br/consultadireitoautoral/consulta/.

Consumers International. *Consumers International IP Watchlist 2011*. Consumers International, 2011. http://A2Knetwork.org.

"Debate Público Proteção de Dados Pessoais", [s.d.]. http://culturadigital.br/dadospessoais/apresentacao-2/.

"Dilma Rousseff — Presidência da República Federativa do Brasil", [s.d.]. http://www.presidencia.gov.br/info_historicas/galeria_pres/dilma-rousseff.

"Entidades da área de imprensa denunciam 'censura prévia' - politica - Estadao.com.br", [s.d.]. http://www.estadao.com.br/noticias/nacional,entidades-da-area-de-imprensa-denunciam-censura-previa,411761,0.htm.

Erber, Georg. "Proprietary Digital Rights Management Systems and Music-Downloads - Obstacles for Innovation from a Competition Policy Perspective". *SSRN eLibrary* (setembro 18, 2009). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1475059.

"Fernando Afonso Collor de Mello — Presidência da República Federativa do Brasil", [s.d.]. http://www.presidencia.gov.br/info_historicas/galeria_pres/galcollor.

"Fernando Henrique Cardoso (2) — Presidência da República Federativa do Brasil", [s.d.]. http://www.presidencia.gov.br/info_historicas/galeria_pres/galfhc.

"Fernando Henrique Cardoso — Presidência da República Federativa do Brasil", [s.d.]. http://www.presidencia.gov.br/info_historicas/galeria_pres/galfhc1.

"Gilberto Gil: 'Pirataria é desobediência civil' - Terra - Cultura", março 5, 2009. http://terramagazine.terra.com.br/interna/0,,OI3605448-EI6581,00-Gilberto+Gil+Pirataria+e+desobediencia+civil.html.

"Itamar Augusto Cautiero Franco — Presidência da República Federativa do Brasil", [s.d.]. http://www.presidencia.gov.br/info_historicas/galeria_pres/galitamar.

Jancsó, István, org. *Cronologia de História do Brasil Colonial (1500-1831)*. Série Iniciação 1. São Paulo: FFLCH-USP, 1994.

"José Ribamar Ferreira de Araújo Costa - José Sarney — Presidência da República Federativa do Brasil", [s.d.]. http://www.presidencia.gov.br/info_historicas/galeria_pres/galsarney.

"Justiça censura Estado e proíbe informações sobre Sarney - politica - Estadao.com.br", [s.d.]. http://www.estadao.com.br/noticias/nacional,justica-censura-estado-e-proibe-informacoes-sobre-sarney,411711,0.htm.

Lei nº 496, de 1º de agosto de 1898. Collecção das Leis da Republica dos Estados Unidos do Brazil de 1898. Vol. I, 1898. http://www2.camara.gov.br/legin/fed/lei/1824-1899/lei-496-1-agosto-1898-540039-publicacao-39820-pl.html.

Lei nº 5.988, de 14 de Dezembro de 1973., 1973. http://www.planalto.gov.br/ccivil/leis/L5988impressao.htm.

Lei nº 9.610, de 19 de Fevereiro de 1998., 1998. http://www.planalto.gov.br/ccivil/leis/L9610.htm.

"Luiz Inácio Lula da Silva (2) — Presidência da República Federativa do Brasil", [s.d.]. http://www.presidencia.gov.br/info_historicas/galeria_pres/Lula2.

"Luiz Inácio Lula da Silva — Presidência da República Federativa do Brasil", [s.d.]. http://www.presidencia.gov.br/info_historicas/galeria_pres/Lula.

"Marco Civil", [s.d.]. http://culturadigital.br/marcocivil/sobre/.

"Maria Rita Kehl: 'Fui demitida por um "delito" de opinião' - Terra - Política", [s.d.]. http://terramagazine.terra.com.br/interna/0,,OI4722228-EI6578,00-Maria+Rita+Kehl+Fui+demitida+por+um+delito+de+opiniao.html.

Marques, Ivan da Costa. "Cloning Computers: From Rights of Possession to Rights of Creation". *Science as Culture* 14 (2) (junho 2005): 139-160.

Martinez, Paulo Henrique. "O Partido dos Trabalhadores e a Conquista do Estado 1980-2005". In *História do Marxismo no Brasil - Partidos e movimentos após os anos 1960*, 6:464.

Campinas: Editora da UNICAMP, 2007.
Oliveira, Orlandina de, e Bryan Roberts. “O Crescimento Urbano e a Estrutura Social Urbana na América Latina, 1930-1990”. In *História da América Latina: a América Latina após 1930: Economia e Sociedade*, VI:560. São Paulo: Edusp, 2005.
Paranaguá, Pedro, e Sérgio Branco. *Direitos Autorais*. 1st ed. FGV Jurídica. Rio de Janeiro: Editora FGV, 2009.
“PL-587/2011”, [s.d.]. http://www.camara.gov.br/sileg/Prop_Detalhe.asp?id=493377.
“PL-84/1999”, fevereiro 24, 1999. http://www.camara.gov.br/sileg/prop_detalhe.asp?id=15028.
“Quem tem medo da mudança?” *Link - Estadao.com.br*, março 20, 2011. http://blogs.estadao.com.br/link/quem-tem-medo-da-mudanca/.
Reis, Daniel Aarão. “Entre Reforma e Revolução a Trajetória do Partido Comunista no Brazil entre 1943 e 1964”. In *História do Marxismo no Brasil - Partidos e organizações dos anos 1920 aos 1960*, 5:304. Campinas: Editora da UNICAMP, 2007.
Silva, Sergio. *Expansão Cafeeira e Origens da Indústria no Brasil*. São Paulo: Alfa-Omega, 1976.
“Tancredo de Almeida Neves — Presidência da República Federativa do Brasil”, [s.d.]. http://www.presidencia.gov.br/info_historicas/galeria_pres/galtancredo.
Todd Benson. “Brazil - Free Software’s Biggest and Best Friend”. Imprensa. *NYTimes.com*, março 29, 2005. http://select.nytimes.com/gst/abstract.html?res=F40614FD395B0C7A8EDDAA0894DD404482&fta=y&incamp=archive:article_related.
Trade-Related Aspects of Intellectual Property Rights, 1994. http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm.