



Liability of Digital Platforms: What Changes in the Fight Against Piracy After the Brazilian Supreme Court's Ruling on Article 19 of the Internet Civil Framework (MCI)

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With the Brazilian Supreme Court's decision on the MCI, online marketplaces and social networks lose their unrestricted immunity, ushering in a new phase of digital compliance and increased civil and commercial exposure.

The judgment of Extraordinary Appeals (RE) 1037396 and 1057258 (General Repercussion Themes 987 and 533) established a new interpretation of Article 19 of the Internet Civil Framework (MCI), previously regarded an “excessive shield” against contemporary online risks. The Court declared the provision partially and progressively unconstitutional for failing to provide sufficient protection to fundamental rights and democracy.

Under this new framework, the civil liability regime applicable to digital platforms now depends on three distinct categories, according to the specific circumstances:

a) Content generated by ordinary users

The traditional notice-and-takedown model, which required a prior court order, now applies exclusively to crimes against honor, where platforms are liable only upon failure to comply with a court order. For all other third-party content, platforms have a duty to act upon extrajudicial notification and may be held liable for failure to respond, including cases involving inauthentic accounts or crimes against honor previously recognized by a court. In practice, Article 19 now governs only honor-related crimes, while the general rule follows Article 21, which requires removal upon user notification under penalty of liability and allows preventive action without compromising freedom of expression.

b) Sponsored or artificially boosted content

Platforms are now presumed to have knowledge of content they sponsor, boost, or artificially distribute through bots, algorithms, or automated networks. In these cases, liability does not depend on judicial notice, since providers are deemed to exercise direct control over the reach and message format. Companies can only avoid liability by demonstrating effective diligence in stopping the circulation of such content within a reasonable timeframe.

c) Duty of proactive diligence in serious crimes

The Court recognized that certain categories of unlawful conduct require an active and preventive posture from platforms due to their social gravity and systemic risk.

These include:

- Crimes against the Democratic Rule of Law, terrorism, and incitement to violence;
- Incitement to discrimination based on race, religion, nationality, sexual orientation, or gender identity;

- Sexual crimes against children and adolescents, child pornography, and human trafficking;
- Gender-based crimes and encouragement of suicide or self-harm.

In such situations, platforms must maintain processes, technologies, and workflows consistent with the “state of the art,” including automated and human moderation mechanisms, annual transparency reports, and legal representation in Brazil with an accessible contact channel.

For the trade of goods—especially counterfeits, piracy, illicit imports, and “parallel marketplaces”—the shift is dramatic. Until now, even though some marketplaces offered internal monitoring and reporting tools, rights holders generally depended on court orders to remove illegal listings or pursue compensation. Under the new framework, immediate takedown requests based on reports and extrajudicial notifications become viable, as do claims for damages and demands for institutional compliance measures.

Economically, this signals a new risk landscape for platforms and informal sellers: higher potential liabilities, the need for active monitoring of vendors, and robust internal due-diligence protocols. Concurrently, it strengthens formal commerce and brand protection, particularly in sensitive sectors such as apparel, electronics, cosmetics, toys, auto parts, and counterfeit pharmaceuticals.

From a regulatory standpoint, although the Supreme Court’s decision has prospective effects, it acts as an “interpretive bridge”: until Congress enacts legislation on the matter, Article 19 must be read in light of Article 21 and the parameters set by the Court, effectively imposing a duty of care on service providers.

For companies, brands, and lawyers, the moment calls for immediate action: structuring monitoring processes, issuing infringement notifications, pursuing civil liability when necessary, documenting evidence precisely (URLs, timestamps, screenshots, context of sponsored ads), and—above all—demanding that platforms internalize compliance standards. The transition period will be decisive.

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