**FROM SAFE HARBORS TO ACTIVE DUTY: PLATFORM RESPONSIBILITY FOR IP INFRINGEMENTS IN BRAZIL**

**Abstract:**  
This article examines the evolving legal regime governing the liability of digital platforms for intellectual property (IP) infringements in Brazil. Anchored in the framework of the Marco Civil da Internet (Law No. 12.965/2014), Brazilian law traditionally requires a judicial order to hold platforms accountable for third-party content — a rule that applies to industrial property rights such as trademarks and patents. However, the enforcement of copyright and related rights follows a distinct path: due to the absence of specific legislation, courts have increasingly allowed for direct liability based on private notifications and general civil liability principles.

The 2025 ruling by the Brazilian Supreme Federal Court (STF) significantly reshaped this landscape, introducing exceptions to the judicial-order requirement. Platforms may now be held liable without court intervention in cases involving manifestly unlawful content or paid promotion of infringing material. This shift reflects a broader move toward a functional and contextual approach to intermediary liability.

By analyzing relevant legislation, jurisprudence, and regulatory trends, the article explores the asymmetries between trademark, patent, and copyright enforcement, the tensions with fundamental rights, and the implications for platform governance. It argues for the urgent development of specific legal procedures and co-regulatory mechanisms to ensure balanced, effective, and rights-compatible enforcement of IP in digital spaces.

**1. INTRODUCTION**

This article was prepared in response to the 2025 LIDC Questionnaire (Question B), which explores the legal responsibilities of online platforms for the removal of infringements committed by their users, with a particular focus on intellectual property rights and unfair competition.

To ensure clarity and alignment with the questionnaire, each section of the article corresponds to specific questions posed in the LIDC framework:

Section 1 (Legal Framework: Platform Liability for Intellectual Property in Brazil): Addresses general context, rationale, and framing of the issue, as requested in Questions 1 and 2.

Section 2 (Legislative and Factual Background): Responds to Questions 1.1 through 2.3, covering legal evolution, platform types, and applicable regimes.

Section 3 (Legal Interpretation of Article 19): Relates to Questions 3, 5, 9, 11, 12, and 15, analyzing platform liability, differences between IP and other rights, and the judicial-order requirement.

Section 4 (Enforcement Mechanisms and Trends): Corresponds to Questions 6 through 10, discussing notice-and-takedown systems, remedies, procedural fairness, and trusted flaggers.

Section 5 (Balancing IP and Fundamental Rights): Reflects on Questions 11, 12, and 15, exploring the interplay between IP enforcement and constitutional guarantees such as freedom of expression and due process.

Section 6 (Conclusion): Concludes with reflections on Questions 13 and 14, assessing the current state of Brazilian law and recommending future legal and institutional reforms.

The analysis is grounded in Brazilian statutory law, jurisprudence, and recent constitutional developments, with comparative references where appropriate. This article adopts a critical approach, seeking to promote a balanced and rights-conscious interpretation of platform responsibility in Brazil.

**1. LEGAL FRAMEWORK: PLATFORM LIABILITY FOR INTELLECTUAL PROPERTY IN BRAZIL**

The Brazilian legal framework governing platform liability for intellectual property (IP) violations is complex and asymmetrical. As user-generated content becomes ubiquitous and algorithmic distribution intensifies, rightsholders face increasing challenges in protecting **trademarks**, **patents**, and **copyrights** in the online environment. Platforms such as social networks, e-commerce websites, and search engines act as intermediaries through which infringement frequently occurs — from the sale of counterfeit goods to the unauthorized reproduction of protected works.

In Brazil, platform liability is governed by a complex and asymmetrical framework. The **Industrial Property Law** (Law No. 9.279/1996), the **Copyright Law** (Law No. 9.610/1998), and the **Marco Civil da Internet** (Law No. 12.965/2014) form the backbone of the legal regime. Among them, **Article 19 of the Marco Civil** establishes that **internet application providers are only liable for third-party content if they fail to comply with a specific judicial order**. This general rule, intended to safeguard freedom of expression and due process, applies to industrial property rights — including trademarks and patents — thereby creating a high threshold for enforcement in digital spaces.

However, **Article 19 explicitly excludes copyright and related rights** from its scope. **Paragraph 2** of that article states that its application to copyright depends on the existence of **specific legislation**, which does not currently exist in Brazilian law. As a result, courts have increasingly recognized that **platforms may be held liable for copyright infringement even in the absence of a judicial order**, based on the general principles of civil liability — particularly when they fail to remove infringing content after receiving a sufficiently clear and substantiated notification.

This fragmented landscape was further clarified by the **Brazilian Supreme Federal Court in June 2025**, which reviewed the constitutionality of Article 19. The Court ruled that the article is **partially unconstitutional** and established key exceptions to the judicial-order requirement. First, the Court held that **platforms may be held liable for failing to remove manifestly unlawful content** — including IP violations — upon receipt of a clear and substantiated private notice. Second, the Court emphasized that **when platforms receive payment to promote or sponsor content**, they assume a more active role and may be held liable for any resulting harm **regardless of judicial intervention**.

This ruling reflects a broader trend toward **contextual and functional assessments of platform conduct**, moving beyond the binary classification of intermediaries as passive or neutral. The implications for intellectual property enforcement are profound: rightsholders now face a dual regime where **trademark and patent enforcement still requires court intervention**, whereas **copyright enforcement and paid content scenarios** open the door to **more immediate liability**.

This article examines the legal regime governing the liability of online platforms for intellectual property violations in Brazil. It explores the differing treatment of **industrial property and copyright**, the legal vacuum surrounding intermediary duties, and the constitutional tensions between enforcement, free expression, and procedural fairness. By analyzing recent jurisprudence and doctrinal debates, this paper seeks to contribute to the ongoing discussion about the future of IP protection in a digitally networked society.

**2. THE LEGISLATIVE AND FACTUAL BACKGROUND OF THE BRAZILIAN INTERNET BILL OF RIGHTS**

The adoption of the **Marco Civil da Internet** (Law No. 12.965/2014) marked a watershed moment in Brazilian digital regulation. Enacted in the wake of intense public debate on privacy, freedom of expression, and civil rights online, the law aimed to provide a constitutional foundation for internet governance. It was not, however, designed with intellectual property in mind.

The original draft of the Marco Civil, presented to Congress as Bill No. 2.126/2011, was the product of a multistakeholder process involving government, civil society, academia, and industry. Its guiding principles were rooted in the Brazilian Constitution and in the “Principles for the Governance and Use of the Internet” developed by the Brazilian Internet Steering Committee (CGI.br). These principles include network neutrality, freedom of expression, user privacy, and democratic access to the internet.

At the time of its enactment in 2014, Brazil had already become one of the most connected societies in Latin America. According to the 2009 National Household Sample Survey (PNAD), more than 68 million Brazilians used the internet regularly — a number that would more than double in the following decade. By 2024, Brazil counted over **187 million internet users**, **144 million social media accounts**, and **210 million mobile connections**, placing the country among the global leaders in digital connectivity and content creation.

Despite this rapid expansion, the legal framework for digital enforcement — especially in relation to intellectual property — remained fragmented and underdeveloped. The Marco Civil da Internet addressed **civil liability, privacy, and data retention**, but **did not incorporate specific provisions for the enforcement of trademarks, patents, or copyrights**. Instead, it introduced a general rule under **Article 19**, establishing that **internet application providers shall only be held liable for damages arising from third-party content if they fail to remove such content after a court order**. This provision became the cornerstone of intermediary liability in Brazil, and its effects on IP enforcement were immediate and profound.

From the outset, Article 19 was criticized by rightsholders for creating excessive barriers to enforcement. In contrast to the U.S. Digital Millennium Copyright Act (DMCA), which allows for extrajudicial takedown procedures based on private notice and counter-notice, the Brazilian model required judicial intervention — a slow and often costly process. For holders of **industrial property rights**, such as trademarks and patents, this meant that even in clear-cut cases of infringement — including the sale of counterfeit goods or the misuse of well-known marks — platforms could not be compelled to act without a court order.

The situation is more nuanced with respect to **copyright and related rights**. Although Article 19 established a general liability model, its **paragraph 2** explicitly states that the article’s application to copyright depends on **specific legislation** — which Brazil has yet to enact. In the absence of such legislation, Brazilian courts have increasingly accepted the view that **Article 19 does not bar copyright enforcement through private notice**, and that platforms may be held liable under general tort law for failing to act upon clear evidence of infringement. This interpretation, however, remains inconsistent, contributing to legal uncertainty.

The **2025 decision of the Brazilian Supreme Federal Court**, in the constitutional review of Article 19 (Extraordinary Appeals 1.037.396 and 1.057.258), partially addressed this legal vacuum. The Court reaffirmed the constitutional legitimacy of Article 19 as a general rule but carved out important exceptions: platforms can be held liable if (i) they fail to remove **manifestly unlawful content** after a **clear and substantiated extrajudicial notification**, or (ii) they receive **payment to promote infringing content**, assuming an active role in its dissemination.

This decision did not change the need for **specific legislation** in the field of copyright, as required by Article 19(§2), but it underscored the evolving understanding of platform responsibilities in Brazil — especially in scenarios where platforms act not as passive hosts, but as **active intermediaries**.

In this context, the Marco Civil da Internet has become both a foundation and a constraint: while it offers important guarantees for users, it has also hindered the development of efficient enforcement mechanisms for intellectual property rights in the digital age. The next sections will examine in more detail how courts and regulators have interpreted and applied this model in practice — and how it affects the protection of trademarks, patents, and copyrighted works in Brazil.

**3. LEGAL INTERPRETATION OF THE MARCO CIVIL DA INTERNET (LAW NO. 12.965/2014)**

The Marco Civil da Internet is structured into five chapters, addressing general principles, user rights, the responsibilities of internet connection and application providers, the role of the public sector, and final provisions. From its inception, it was framed as a digital civil rights charter — a normative constitution for the internet — grounded in the values of privacy, freedom of expression, and access to information. However, its impact on **intellectual property enforcement** has been shaped primarily by **Article 19**, which regulates intermediary liability.

**3.1. Article 19 as a General Liability Rule**

Article 19 of the Marco Civil sets forth a general rule: **application providers are only held liable for damages caused by third-party content when they fail to comply with a specific judicial order to remove the infringing content**. This standard shields platforms from being automatically liable for user behavior and reinforces the principle that **internet intermediaries should not be obligated to monitor or preemptively filter user content**.

In the context of **industrial property rights** — particularly **trademarks and patents** — courts have consistently applied Article 19 to require a prior judicial order before imposing any liability on platforms. This includes cases involving the unauthorized sale of counterfeit goods on e-commerce marketplaces, the use of third-party marks in advertisements or listings without authorization and the offering of patent-infringing products.

Unless and until the platform is judicially ordered to remove the infringing content and fails to comply, **no liability arises**. This has generated significant criticism from rightsholders, who view the system as excessively formalistic and out of sync with the velocity of digital infringements.

**3.2. The Special Case of Copyright: §2 of Article 19**

While Article 19 applies to most content-related claims, its **§2 introduces a fundamental distinction** for **copyright and related rights**. According to that paragraph, the application of Article 19 to copyright depends on the existence of **specific legislation**, which must also respect constitutional guarantees, such as freedom of expression (Article 5, IX) and due process (Article 5, LIV).

As Brazil **does not yet have such specific legislation**, the prevailing interpretation is that **copyright infringements are not subject to the judicial-order prerequisite of Article 19**. Instead, **civil liability principles under the Brazilian Civil Code and the Copyright Law (Law No. 9.610/1998)** apply. This opens the door for authors, artists, publishers, and collecting societies to **hold platforms liable without prior judicial orders**, particularly when the infringement is evident, the notice is clear, and the platform fails to act diligently.

This interpretation has gained traction in judicial decisions and academic commentary, recognizing that imposing the Article 19 model on copyright would effectively result in **complete impunity** for platforms in this domain — an outcome incompatible with Brazil’s international obligations under the Berne Convention and the TRIPS Agreement.

**3.3. The STF’s 2025 Ruling and its Doctrinal Impact**

In **June 2025**, the **Brazilian Supreme Federal Court (STF)** issued a landmark ruling in the constitutional review of Article 19. The Court upheld the general constitutionality of the judicial-order requirement but **introduced three key exceptions**, grounded in the principle of proportionality and the evolving nature of digital harm:

1. **Manifestly Unlawful Content**: When content is clearly illegal — such as incitement to violence, hate speech, or unauthorized use of well-known trademarks — **a sufficiently clear and substantiated extrajudicial notice** may trigger a duty of removal. Failure to act may result in liability, even without a court order.
2. **Violation of Intimacy (Art. 21)**: In cases involving unauthorized dissemination of images or videos containing nudity or sexual content, **platforms are subsidiarily liable** if they fail to act after being notified by the victim or their legal representative. This provision has inspired analogical reasoning in other fundamental rights contexts.
3. **Sponsored Content**: When a platform receives **payment to promote infringing content**, it assumes an active role and **may be held liable regardless of whether a court order was issued**. The STF emphasized that in such cases, platforms are no longer neutral intermediaries but active participants in the distribution of unlawful material.

Although the STF’s ruling did not explicitly redefine the regime applicable to copyright (still dependent on specific legislation under §2), it reinforced the notion that **civil liability may arise based on context, conduct, and commercial involvement**, especially in copyright matters where Article 19 does not apply.

**3.4. Practical Consequences and Interpretive Tensions**

The current legal regime has resulted in **asymmetric obligations and remedies** for different types of IP: (i) for **trademark and patent holders**, the requirement of a court order under Article 19 slows down enforcement and creates enforcement costs, even in blatant cases of piracy or counterfeiting, (ii) for **copyright holders**, the absence of specific legislation creates legal uncertainty but allows for **direct civil action** against platforms based on general tort principles and (iii) in all cases, the lack of detailed procedural rules for notification, content evaluation, and counter-notice mechanisms creates room for discretionary platform behavior, inconsistent court decisions, and chilling effects on speech.

**4. LIABILITY FOR INDUSTRIAL PROPERTY AND COPYRIGHT VIOLATIONS**

The enforcement of intellectual property rights in Brazil faces distinct legal pathways depending on whether the right in question involves industrial property — such as trademarks and patents — or copyright and related rights. While the country lacks a unified framework for platform liability in IP matters, the jurisprudence has gradually consolidated three coexisting regimes of responsibility, based on Article 19 of the Marco Civil da Internet and its interpretation by the judiciary.

**4.1. Trademarks and Patents: Judicial Order as a Precondition**

In the case of **industrial property rights**, including trademarks and patents, Brazilian courts continue to apply the **general rule of Article 19**. Platforms are not held liable for infringing content posted by users unless they **fail to remove the content after being served with a specific court order**. This model applies to e-commerce marketplaces hosting offers of counterfeit or patent-infringing goods, platforms displaying unauthorized use of third-party logos or brand identifiers and sponsored search results or listings referencing protected brand names without authorization.

This strict liability shield, while intended to protect freedom of expression, has generated considerable concern among rightsholders. Enforcement depends on **judicial intervention**, which is often slow and inaccessible, especially in cases requiring immediate action. Even when the infringement is evident — such as the unauthorized use of a **well-known mark** or repeated listings of counterfeit products — platforms are not under any affirmative duty to act unless judicially compelled.

Nonetheless, exceptions have emerged in **specific factual settings**. Courts have held platforms liable for failure to take action when they receive multiple and consistent reports of infringing behavior, the same user continues to post infringing content after prior takedowns and the infringement is manifestly illegal and easily verifiable (e.g., fake pharmaceutical products).

However, these decisions remain **exceptional** and heavily dependent on evidentiary burdens.

**4.2. Copyright and Related Rights: Direct Liability Without Court Orders**

By contrast, **copyright and related rights** are **not subject to the judicial-order requirement** set forth in Article 19. This distinction derives from **paragraph 2** of Article 19, which states that the application of the liability rule to copyright depends on the enactment of **specific legislation** — a requirement that remains unmet. Consequently, courts have treated copyright violations as subject to **general tort principles**, meaning that **platforms may be held liable for failing to act upon receiving a valid, clear, and substantiated extrajudicial notice**.

This has significant implications for authors, musicians, visual artists, publishers, and collecting societies, who now **routinely notify platforms of infringing content and request takedown**. When the infringement is obvious (e.g., full unauthorized reproduction of a book, film, or song), courts have found platforms liable for moral and material damages, even in the absence of a court order, particularly if the platform ignored the complaint or delayed its response.

This **informal “notice-and-takedown” model**, though not codified in legislation, has taken root in Brazilian practice, especially in disputes involving unauthorized streaming or reproduction of copyrighted works, uploads of entire books, songs, or audiovisual content on social platforms and posts using copyrighted content for commercial gain without license.

This interpretation has support in Brazilian jurisprudence. In *REsp 1.338.214/RJ*, the Superior Court of Justice (STJ) held that a platform could only be held liable for copyright infringement if it played an active role in the unlawful dissemination — for example, by organizing, promoting, or economically benefiting from the illicit act. Similarly, in decisions compiled by the Brazilian Observatory on Copyright and Internet (OMCI), courts have emphasized that **mere hosting of third-party content is not sufficient to establish liability** in the absence of participation, negligence, or failure to act upon clear notice.

Nevertheless, this approach lacks procedural safeguards. There is no formal mechanism for **counter-notification**, no legally defined timeline for takedown, and no appeals process for users — raising due process concerns and potential abuse risks.

**4.3. Paid Promotion of Infringing Content: Objective Liability**

A third and increasingly relevant scenario concerns **platforms that are paid to promote infringing content**. This often occurs through sponsored ads containing unauthorized use of trademarks or copyrighted material, boosted posts or paid search results that promote counterfeit products and monetized videos using unlicensed music or visual works.

In its 2025 decision, the **Brazilian Supreme Federal Court** clarified that **when a platform receives payment to disseminate content**, it no longer acts as a neutral intermediary. Instead, it **assumes an active, commercial role** and may therefore be **objectively liable** for the dissemination of infringing material — **even in the absence of prior notification or judicial order**.

This exception significantly alters the liability landscape for platforms that offer **advertising services**, including search engines, social networks, and e-commerce websites. It also creates strong incentives for platforms to v**et paid content more rigorously**, maintain internal compliance systems for advertising and establish preemptive detection mechanisms for infringing materials.

In practice, however, the implementation of these duties remains uneven, with many platforms lacking transparent procedures or adequate human review of sponsored content. This regulatory gap continues to be a point of contention between IP owners and digital intermediaries.

* 1. **ENFORCEMENT MECHANISMS, RECENT CASE LAW, AND EMERGING REGULATORY TRENDS**

The enforcement of intellectual property rights on digital platforms in Brazil is shaped not only by formal legal provisions, but also by evolving jurisprudence, administrative practices, and voluntary content governance mechanisms. As the legal framework remains fragmented — particularly in the absence of specific legislation for copyright enforcement and detailed intermediary obligations — courts, regulators, and platforms themselves have played an increasingly active role in defining procedures and responsibilities.

**5.1. Judicial Enforcement: STJ and STF Case Law**

The **Superior Court of Justice (STJ)** has served as the primary forum for interpreting the limits of platform liability under Article 19 of the Marco Civil da Internet. In a series of important cases, it reaffirmed the need for **judicial orders** in matters involving industrial property rights, while signaling a more flexible approach to obvious or egregious violations:

For example, in Special Appeal 1.338.214, the STJ held that a platform could not be held liable for third-party content absent a prior judicial takedown order. The ruling reinforced the idea that platforms should not be expected to perform private censorship or prior filtering without judicial oversight.

These precedents reflect the judiciary’s cautious stance toward **imposing affirmative duties on platforms** in industrial property cases, although lower courts have occasionally departed from this approach in light of extreme factual scenarios (e.g., clear counterfeiting, repeated infractions, risk to public health).

As discussed earlier, the **Brazilian Supreme Federal Court (STF)** altered this landscape in its **2025 constitutional review of Article 19**, holding that (i) **manifestly unlawful content** may trigger liability even without a court order, provided that the platform receives a clear and substantiated notification, (ii) **sponsored or monetized content** that infringes rights subjects the platform to **objective liability**, regardless of any notice, (iii) **privacy violations involving nude images** (as per Article 21 of the Marco Civil) create subsidiary liability upon notice, extending the logic of exception to other fundamental rights.

These developments have opened the door for broader judicial interpretations in IP-related cases, particularly where the infringement is self-evident, profit-driven, or associated with fundamental rights (such as moral rights of authors or reputational damage to brands).

**5.2. Voluntary Notice-and-Takedown Systems**

In the absence of statutory notice-and-takedown procedures akin to the U.S. DMCA or the EU Digital Services Act, Brazilian platforms have adopted **voluntary content removal policies**, often based on foreign standards or corporate compliance frameworks. These systems are most developed in large global platforms (i) which offers a copyright complaint system, including Content ID for automatic detection, (ii) which allows IP owners to submit takedown notices and report counterfeit listings, (iii) which runs the "Brand Protection Program" offering faster removal for verified IP holders.

Despite these programs, enforcement remains uneven and often lacks transparency. Challenges include (i) **delays in processing complaints**, even for clear violations, (ii) **lack of standardization** across platforms, (iii) **insufficient appeal mechanisms** for content creators or sellers and (iv) **absence of penalties** for repeat infringers in some platforms.

Furthermore, there is no legal concept of **“trusted flaggers”** in Brazil, and takedown requests from IP holders are treated as mere claims, not presumptively valid unless confirmed by a court. This weakens the efficacy of extrajudicial enforcement and places a disproportionate burden on rightsholders to prove the infringement.

**5.3. Regulatory Developments and Administrative Guidance**

Although Brazil does not yet have a dedicated law on intermediary responsibility for IP enforcement, some regulatory and administrative initiatives have influenced the debate.

The **Brazilian Data Protection Authority (ANPD)**, created by the General Data Protection Law (LGPD), has begun issuing guidance on digital platform conduct, including data handling in the context of notice-based systems. While not directly related to IP, these principles may shape future obligations regarding the processing of takedown requests and user data associated with infringing activity.

The **Ministry of Justice and Public Security** has launched periodic operations against the sale of counterfeit goods online, in coordination with IP owners and local law enforcement. While largely reactive, these campaigns have raised awareness and prompted greater collaboration between platforms and authorities.

Meanwhile, **self-regulatory codes of conduct** remain limited in scope and participation. Brazil lacks an industry-wide standard for platform behavior in IP enforcement, and sectoral initiatives (e.g., by audiovisual producers or publishing associations) have not yet achieved binding status or legal recognition.

**5. INTELLECTUAL PROPERTY AND FUNDAMENTAL RIGHTS: BALANCING ENFORCEMENT AND FREEDOMS IN BRAZIL**

In Brazil, intellectual property rights are recognized not only as individual rights but also as instruments that must fulfill a social function. The Federal Constitution guarantees the protection of authorship and industrial creations (Article 5, XXVII and XXIX), but does so in parallel with strong protections for freedom of expression, artistic freedom, access to information, and due process. These rights often come into tension in digital environments, where enforcement actions may result in censorship, prior restraint, or the chilling of legitimate speech.

Brazilian courts have increasingly sought to navigate this delicate balance. In doing so, they have affirmed that enforcement of IP rights, though essential, cannot override constitutional guarantees without careful analysis of context and proportionality. Cases involving parody, satire, quotation, and educational uses have typically been resolved in favor of the user, especially when the expressive use does not compete commercially with the original work. Article 46 of the Brazilian Copyright Law plays a key role in this analysis, offering a flexible set of exceptions that has been interpreted broadly to protect cultural expression.

This judicial stance becomes even more relevant in the age of algorithmic moderation. Platforms frequently rely on automated systems to detect and remove infringing content. While these tools are efficient in processing high volumes of data, they are prone to overreach, leading to the removal of content that may be entirely lawful. Independent creators, educators, journalists, and even activists often find themselves silenced by filters that lack the nuance to distinguish infringement from fair use or transformative expression.

In this context, Brazilian courts have emphasized the importance of procedural fairness. Several decisions have condemned the removal of user content without proper notice or the opportunity to appeal, reaffirming that digital spaces must also respect due process. Although the Marco Civil da Internet does not provide a detailed roadmap for content moderation, its general principles, such as transparency, proportionality, and non-discrimination, have been increasingly cited to demand higher accountability from platforms.

Still, challenges persist. The absence of specific legal frameworks governing notice-and-takedown procedures for copyright or trademark enforcement creates uncertainty for all parties involved. Rights holders may struggle to enforce their claims quickly and effectively, while users lack clear mechanisms to defend their content or demand reinstatement. The system remains heavily reliant on private rules established by platforms, which vary widely in accessibility, fairness, and consistency.

In short, the Brazilian legal system recognizes that intellectual property rights must be enforced in a manner consistent with fundamental freedoms. Yet, in the absence of clear legal procedures and balanced regulatory oversight, this equilibrium often depends on the discretionary choices of platforms or the unpredictability of judicial review. Ensuring a more equitable digital environment will require both legislative innovation and a reaffirmation of the constitutional commitment to pluralism, creativity, and due process.

**6. CONCLUSION**

The Brazilian legal framework on platform liability is undergoing a profound transformation. Anchored in the constitutional values of freedom of expression and access to information, the Marco Civil da Internet has long prioritized a judicial model of enforcement, seeking to prevent arbitrary censorship by conditioning platform responsibility on court orders. While this design was initially celebrated for promoting digital liberties, it has proven increasingly ineffective in the face of complex and large-scale intellectual property violations in the online environment.

The 2025 ruling of the Supreme Federal Court marks a significant departure from the original rigidity of Article 19. By recognizing that manifestly unlawful content—such as unauthorized use of trademarks, pirated works, or patent-infringing offers—can give rise to liability even without a judicial order, especially when clearly notified or monetized by the platform, the Court has moved toward a more responsive and balanced regime. The decision implicitly acknowledges that not all enforcement must begin in court, especially when the infringement is obvious, the harm is ongoing, or the provider has directly profited from the violation.

Nevertheless, the path forward remains uncertain. The legal system continues to lack detailed statutory procedures for notice-and-action mechanisms, trusted flagger models, or effective appeal processes. Enforcement remains heavily dependent on the voluntary initiatives of platforms, many of which are opaque, inconsistent, or geared more toward corporate risk management than users’ rights or the public interest. The absence of binding rules means that small creators, emerging artists, and independent inventors often struggle to protect their rights online, while automated systems remove content without sufficient context or oversight.

At the same time, fundamental rights must not be sidelined in the name of efficiency. The enforcement of intellectual property in the digital sphere must coexist with expressive freedom, artistic transformation, and cultural participation. It is not enough to create faster removal tools; it is necessary to ensure that such tools are fair, transparent, and proportionate. Due process must apply not only in courtrooms but also in the private regulatory spaces where most digital disputes now unfold.

To improve this scenario, several steps should be considered. First, Brazil must develop specific legislation governing platform responsibility in cases of IP infringement, clarifying procedures for notice, takedown, reinstatement, and dispute resolution. Second, regulatory agencies such as the Ministry of Justice and the National Data Protection Authority (ANPD) should issue guidelines on the use of automated moderation tools and the handling of sensitive user data in enforcement contexts. Third, platforms should be encouraged—if not required—to publish transparency reports, implement internal appeal mechanisms, and collaborate with public institutions and civil society in co-regulatory efforts.

Finally, any reform must remain faithful to the constitutional commitment to balance. Intellectual property rights serve innovation and creativity, but so do open networks, freedom of thought, and democratic pluralism. The challenge is not to choose one over the other, but to ensure that enforcement in digital spaces respects the complexities of a society increasingly mediated by platforms. Brazil now has an opportunity to lead by example, adapting its laws and institutions to the realities of the internet while defending the values that define its constitutional order.

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