

UTOPIA AND DYSTOPIA: THE RIGHT AND ITS ROLE ABOUT TECHNOLOGIES OF INFORMATION AND COMMUNICATION

by **Eduardo TUMA** Post-Doctoral student at University Paris 1 Panthéon-Sorbonne, Doctor of Laws at Pontifícia Universidade Católica de São Paulo – PUC-SP, Teacher and Lawyer, President of São Paulo City Council.

and

Juliana DUARTE Doctor of Laws at Pontifícia Universidade Católica de São Paulo – PUC-SP, J. D. at Fundação Armando Alvares Penteado – FAAP, Teacher and Lawyer, Member of the artificial intelligence and labor law Committee of the Lawyers Institute of São Paulo – IASP.

The present work, through an analytical and exploratory methodology, lens to analyze the technologies of information and communication in face of its social role, while middle of production of fake news and the control for their economical conglomerate of solid amount of the users' data. That analysis is justified having in mind the width of the problems that the indiscriminate manipulation and little regulated of TICs it's fomenting. Advanced knowledge in psychology, together with the possibility of prediction for complex algorithms created and recreated through artificial intelligence, bring an unprecedented capacity for the individual to control their tastes, interests and wills. In that context, it is worth to approach the Brazilian laws of Internet Civil Landmark¹ and the General Law of Data Protection², which were created besides to combat the problems above referred and to prevent improper embezzlement and inappropriate of data. It also fits the comparison of the Bill 2.630/2020, denominated Law of Fake News and defined as the Brazilian Law of Freedom, Responsibility and Transparency in the Internet³. The complexity of the devices and the algorithms used for the accurate identification of the future behavior of internet users evolves at a pace never seen before, which reinforces the need for debates on the subject.

¹ Internet Civil Landmark. No. 12.965. Brazil. 2014.

² General Law of Data Protection. No. 13.709. Brazil. 2018.

³ Brazilian Law of Freedom, Responsibility and Transparency in the Internet. Bill No. 2.630. Brazil. 2020.

§ 1 – THE SPREAD OF MISINFORMATION IS NOT FROM THESE DAYS

It is primarily worth referring to a quote relevant to the present day: “[...] there may also never have been a previous time in which factual truths are attacked with such zeal and efficiency whenever they oppose the advantage or ambition of one of countless interest groups.”⁴

Thus, Hannah Arendt stresses that facts are always in danger of disappearing from “the world, not only for a time, but potentially forever.”⁵

These statements, of undeniable actuality, were made in 1967 by Hannah Arendt, in her paper entitled “Truth and Politics”⁶. The debate at that time introduced by Arendt focused on the possibility of distorting the truth through propaganda and politics, which would be related not to the activity of interpreting the facts, but to the purposeful and deliberate affirmation and spread of lies on the most diverse issues in order to benefit this or that ideology, this or that power group.

Thus, Arendt criticized the shift of the debate from the dissemination of false information to the scope of freedom of expression. As the philosopher says, whenever:

“[...] unwelcome factual truths are tolerated in free countries they are often, consciously or unconsciously, transformed into opinions – as though the fact of Germany’s support of Hitler or of France’s collapse before the German armies in 1940 or of Vatican policies during the Second World War were not a matter of historical record but a matter of opinion.”⁷

Arendt’s assertions find parallels in criticism of the current misinformation widely disseminated on the Internet, especially on social networks, and which are accepted by many individuals and social collectives around the world.

But long before Hannah Arendt, this kind of public disclosure of untruths had been going on for a long time.

Procopius of Caesarea, the Byzantine historian of the 6th century, wrote a book full of stories of dubious veracity, entitled *Anecdota*⁸ in the original title, which kept secret until his death, to ruin the reputation of emperor Flavius Pedro Sabácio Justinian Augustus (Justinian I), after having shown adoration to him in works of his own and released at the time, being the greatest example of such

⁴ H. ARENDT, “Truth and Politics”, originally published in *The New Yorker*, February 25, 1967, and reprinted with minor changes in *Between Past and Future* (1968) and *The Portable Hannah Arendt* edited by Peter Baier (2000) and *Truth: Engagements Across Philosophical Traditions* edited by Medina and Wood (2005).

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ CAESAREA, *Procopius of. The Anecdota: secret history*, 1623. Translated by Dewing, Henry Bronson. Loeb Classical Library, vol VI. 1935.

worship the *History of the wars*⁹, a work divided into eight books concerning the wars fought by the Roman Empire during the reign of the said emperor.

Even in the 6th century, during the conclave of 1522, which would end by anointed Hadrian VI as pope, the statues around Piazza Navona in central Rome began to be covered with texts¹⁰. Authored by the writer and poet Pietro Aretino (1492-1556), in such writings he devoted himself to attacking cardinals who could become the new pontiff¹¹. The attacks were financed by Cardinal Giulio de Medici, who eventually became Pope Clement VII a year later, with the death of Hadrian VI¹².

But Aretino made history by displaying his sonnets near a statue carved in the 3rd century BC¹³. This statue, located in the vicinity of Rome's Piazza Navona, was where the community found to make their complaints, complaints, slander and fake news so they could spread faster and to the largest number of people. The work of art was named Pasquino¹⁴ in reference to a man of the same name whose profession and origin were unknown and who, according to Christopher J. Gilbert:

“[...] had unique access to otherwise clandestine political affairs. He was a folk messenger of sorts, translating what he saw as the disreputable activities of public officials into vulgar quips and thus into damnations of nobles, papal authorities, and even the pope. He was also a mediator, filtering public thought through rhetorical exchanges that articulated narratives of common meaning, web[s] of associations, and historicity in the passage of judgment.”¹⁵.

From then on, the genre of “defamatory pamphlets” became known as “pasquim”. Pasquins have become a usual method for spreading unpleasant news, mostly false, about public characters.

Further in history, already in the twentieth century, in 1933, with the rise of Nazism, Paul Joseph Goebbels creates the ministry of Public Enlightenment and Propaganda to disseminate inciting messages of hatred against Jews, using various means, including theater and the press.

As Julie Posetti and Alice Matthews rightly say in a 2018 report by the renowned professional and non-profit organization called *International Center for Journalists*, “the Nazis demonised and persecuted Jews so effectively that atrocities were committed with

⁹ Caesarea, op. cit.

¹⁰ For example: P. ARETINO, *Sonetti lussuriosi*, 1522; and P. ARETINO, *Dubbi amorosi*, 1523.

¹¹ Aretino attacked important christian personalities of the fifteen century as Bishop Giberti (1495-1543) and Medoro Nuci (1498-1541). E. HUTTON, P. ARETINO, *The Scourge of Princes*, London: Constable, 1922.

¹² E. HUTTON, P. ARETINO, *The Scourge of Princes*, op. cit.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ch. GILBERT, “If This Statue Could Talk: Statuary Satire in the Pasquinade Tradition”. *Rhetoric and Public Affairs*, Vol. 18, No. 1, 2015, p. 86.

popular support and Holocaust denialism continues in the 21st century.”¹⁶

§ 2 – SOCIAL NETWORKS, INTERNET AND MISINFORMATION IN THE 21ST CENTURY

Even with the science that fake news is not a phenomenon that emerged in contemporary times, currently there is a information dissemination never seen before in the globe, thanks to a progressive increase in the universalization of internet access and the platforms linked to it. Currently, 4.1 billion people use the worldwide network¹⁷. The number of users corresponds to 53.6% of the population worldwide¹⁸. As United Nations reports in the 2019 Digital Economy Report, “in least developed countries (LDCs), only one in five people uses the Internet as compared with four out of five in developed countries.”¹⁹

Even so, its advancement around the world is undeniable. Moreover, by strongly impacting the historical narrative of the facts in developed countries, these same countries and their citizens have strong political, economic and cultural influence throughout the globe. There is currently a moment of unprecedented dissemination of information, which also allows the dissemination by any subject and social collective of facts and untruths, in a broad and in many aspects unrestricted.

In other words, in the contemporaneity of globalization and the constant evolution of information and communication technologies, in-depth analyses on the large-scale dissemination of misinformation through Fake News are urgent, in addition to normative constructions and institutional programs to combat their origins and search for methods of mitigating their forms of propagation.

This is said because issues that seem harmless in a first and superficial analysis, such as terraplanism and conspiracy theories denying man's going to the moon, are in fact paradigmatic examples of the massive possibility of the ability to induce a large portion of society to believe in data and ideas far removed from reality and the simplest facts already scientifically proven and impossible to refute.

A clear example is the misinformation widely disclosed in the COVID-19 period. While pandemics and fake news are not new phenomena, Jennifer Rose points out that:

¹⁶ J. POSETTI, A. MATTHEWS, *A Short Guide to History of Fake News and Disinformation*, International Center for Journalists. 2018, p. 3.

¹⁷ ONU, *Estudo da ONU revela que mundo tem abismo digital de gênero*, November 2019. Access on 15 January 2021. Available at: <https://news.un.org/pt/story/2019/11/1693711>

¹⁸ ITU, *Measuring digital development. Facts and figures 2019*, International Telecommunication Union, Geneva, 2019. Access on 15 January 2021. Available at: <https://www.itu.int/en/ITU-D/Statistics/Documents/facts/FactsFigures2019.pdf>

¹⁹ UNCTAD, *Digital Economy Report 2019*, United Nations Conference on Trade and Development. 2019, p. 3. Access at 15 January 2021. Available at: https://unctad.org/system/files/official-document/der2019_en.pdf

“[...] an unprecedented time in history is presently unfolding when considered with the postdigital era. Digital media enables the prolific repetitious spread of fake news during crises when accurate and truthful information is necessary. Consequently, the ability of humans to discern between fact and fiction diminishes. It has resulted in some people making life-ending decisions based on their exposure to fake news.”²⁰

In times of pandemic, this problem becomes even more evident when it directly interferes with world public health, for example through the exponential dissemination of supposed evidence corroborating the efficacy of drugs that, in fact, have not undergone rigorous scientific testing methods.

It is also worth noting that misinformation is one of the preponderant factors for the determination of a dystopian reality, provided not only by the advancement of an increasingly democratic access to ideas, media and interests of the most varied possible, but also by the advancement of its other side, that is, the absence of interference of factual analyses on misinformation often purposely conveyed, which exposes the facet of the possibility of monetization of social networks for the expression of inconsistencies and untruths globally.

On the other hand, misinformation, the unrestricted dissemination of untruths, or fake news, is not a recent phenomenon and is currently identified as a pressing environment of combat by intellectuals, researchers and scientists specifically because of the progressive universalization of information in the globe.

In this sense, An Nguyen and Daniel Catalan-Matamoros point out:

“The fundamental issue remains that many people are still willing to believe in things that, by normal intellectual standards, are unmistakably unscientific or counterintuitive. This is a deep-rooted socio-political problem that has a longer history than the Internet itself. It entails a variety of human factors that can easily cloud public reasoning and/or be skillfully exploited for political, economic and/or religious gains. Among these are existing values and beliefs, insufficient health and science literacy, STEM [Science, Technology, Engineering e Mathematics] vocation crisis, inadequate news and media literacy, low emotional intelligence, and/or weak ability to be open to different sides of the argument.”²¹

On the other hand, it is still necessary to update investigations and analyses according to the current moment in order to identify the

²⁰ J. ROSE, “The Mortal Coil of Covid-19, Fake News, and Negative Epistemic Postdigital Inculcation”, *Postdigital Science and Education*, Vol. 2, 2020, p. 816.

²¹ A. NGUYEN, D. CATALAN-MATAMOROS, “Digital Mis/Disinformation and Public Engagement with Health and Science Controversies: Fresh Perspectives from Covid-19”, *Cogitatio Media and Communication*, Vol. 8, 2020, pp. 324-325.

forms of dissemination of fake News, even though it is a process not unheard of in the history of humanity. This is said because the distortion of the truth never before in history has gained so much prominence, which is due to the aforementioned widely greater possibility of access to information from various sources. In terms of Alice E. Marwick:

“[...] it is typically tied up with anxieties about the democratic ramifications of the shift from consuming news from broadcast television and newspapers to consuming news on social platforms. Thus, platforms like Facebook and Twitter have been heavily criticized for their role in spreading, facilitating, and even encouraging ‘fake news’. However, today news spreads through digital networks as only one element of a constant feed of information. Whether people are likely to trust a story has less to do with who published it than who shared it.”²²

In this sense, a study by Meghan Bridgid Moran et. al., published in the *American Journal of Communication in Healthcare*, about “What makes anti-vaccine websites persuasive?”, using a sample 480 websites, indicated that:

“Many pages used what they represented as scientific evidence to support an anti-vaccination message. Anecdotal evidence in the form of stories or personal testimonials supplemented these ‘scientific’ arguments. Research from literature on the study of persuasion indicates that both of these strategies can enhance the persuasiveness of a message. Additionally, many pages appealed to readers’ underlying values and ideologies – for example, many pages connected anti-vaccine sentiment to one’s sense of individuality or freedom of choice.”²³

In this way, it is possible to perceive that fake news is a reproduction of discourses linked more specifically to the needs set out above due to emotional attachments, and that create a kind of bond between their creators and the absorbed, and absorbed in such ideas in conceptions of participation and correspondence fleeing the space that such theories should occupy, that is, that of rational investigations and in the dialectic of validity-invalidity.

In other words, even if absent from scientific and historical evidence that supports such identities of belief, such subjects often remain unwavering in their ideologies and beliefs before the rationally revealing facts about such untruths in their impossibilities of endowment of any credit, including with regard to sciences that directly interfere in the pragmatism necessary to

²² A. MARWICK, “Why do people share fake news? A sociotechnical model of media effects”, *Georgetown Law Technology Review*, Vol. 474, 2018, p. 476.

²³ M. MORAN, M. LUCAS, K. EVERHART, A. MORGAN, E. PRICKETT, “What makes anti-vaccine websites persuasive? A content analysis of techniques used by antivaccine websites to engender anti-vaccine sentiment”. *Journal of Communication in Healthcare Strategies, Media and Engagement in Global Health*, Vol. 9, 2016, p. 159.

conduct their own survival itself, such as medicine, biology and physics.

Sleeping Giants, a liberal U.S. group of digital activists fighting hate speech and misinformation on the internet, began in November 2016²⁴, shortly after Donald Trump's victory in the U.S. presidential election, with the launch of a Twitter account aimed at boycotting Breitbart because of its intense ability to produce and spread misinformation and conspiracy theories. The campaign ran completely anonymously until July 2018, when publicist Matt Rivitz confirmed that he was one of the group's founders²⁵.

The aforementioned Breitbart News Network is an American far-right news, opinions and commentary site founded in 2007 by Andrew Breitbart and once executive chairman of American Politician Steve Bannon.

In 2018, Breitbart had 80 million visits a month²⁶. Among its news, it can be cited in July 2016 entitled “The Solution to Online ‘Harassment’ Is Simple; Women Should Log Off”²⁷; August 2015 with the title “Birth Control Makes Women – And Men – Less Attractive”²⁸; also in June 2015 titled “Gay Rights Have Made Us Dumber, It’s Time to Get Back in the Closet”²⁹; and the May 2015 news that says, in its terms, that “some studies show that children brought up in gay households are more likely to have emotional problems.”³⁰

With this type of publication, this site, in 2019, accumulated more likes and shares on social networks than the *New York Times*, *The Washington Post*, *the Wall Street Journal* and *USA Today* combined³¹.

²⁴ R. QUEIMALIÑOS, “O homem que arruinou a extrema direita nos EUA”, *El País*, 17 May 2020. Access on 15 January 2021. Available at: <https://brasil.elpais.com/icon/2020-05-17/o-homem-que-arruinou-a-extrema-direita-nos-eua.html>

²⁵ M. DIAS, “Propaganda em massa pela internet leva boas marcas ao pior da rede, diz fundador de Sleeping Giants”, *Folha*, May 2020. Access at 15 January 2021. Available at: <https://www1.folha.uol.com.br/mercado/2020/05/propaganda-em-massa-pela-internet-leva-boas-marcas-ao-pior-da-rede-diz-fundador-de-sleeping-giants.shtml>

²⁶ CH. Masters, “BUSTED WHO IS STEVE BANNON AND WHAT DOES AN INDICTMENT AGAINST HIM ALLEGE?”, *THE SUN*, AUGUST 2020. ACCESS ON 15 JANUARY 2021. AVAILABLE AT: <https://www.thesun.co.uk/news/2181916/steve-bannon-indictment-fraud-wall-president-trump/>

²⁷ M. YIANNOPOULOS, “The Solution to Online ‘Harassment’ Is Simple; Women Should Log Off”, *Breitbart*, July 2016. Access at 15 January 2021. Available at: <https://www.breitbart.com/social-justice/2016/07/05/solution-online-harassment-simple-women-log-off/>

²⁸ M. YIANNOPOULOS, “Birth Control Makes Women – And Men – Less Attractive”, *Breitbart*, August 2015. Access at 15 January 2021. Available at: <https://www.breitbart.com/tech/2015/12/08/milo-birth-control-makes-people-less-attractive/>

²⁹ M. YIANNOPOULOS, “Gay Rights Have Made Us Dumber, It’s Time to Get Back in the Closet”, *Breitbart*, June 2015. Access at 15 January 2021. Available at: <https://www.breitbart.com/politics/2015/06/17/gay-rights-have-made-us-dumber-its-time-to-get-back-in-the-closet/>

³⁰ M. YIANNOPOULOS, “Attack Of The Killer Dykes!”, *Breitbart*, May 2015, Access at 15 January 2021. Available at: <https://www.breitbart.com/europe/2015/05/07/attack-of-the-killer-dykes/>

³¹ J. CAPLAN, “VICE News: Breitbart Facebook Page Beats NYT, WSJ, USA Today, WaPo Combined”, *Breitbart*, December 2019. Access on 15 January 2021. Available at:

In favor of combating fake News, Sleeping Giant mapped some of the money that fueled said site, of alleged News, with advertisements that private companies financed on this platform. With the payment-by-click method, Google brings the possibility for any natural or legal person to advertise on the most varied sites that make this space available. Thus, Google profits from part of the value of clicks and another part is passed on to the site where the ad is served.

Thus, with the mapping, Sleeping Giant identified the brands that were with ads on Breitbart and warned them, publicly through social networks, that their ads were being displayed on such a platform, and then ended up financially supporting the disclosure of misinformation and fake News as the above. Thus, Breitbart in 2027 even lost 90% of the advertising linked in it³². As reported:

“The administrator attached screenshots and shared them on the networks of the affected brands. Within a few months, 4,500 advertisers removed their advertising from Breitbart News. Conservative Fox host Bill O'Reilly has lost virtually all of his advertisers. Ultra-right investor Robert Mercer was forced to step down as CEO at Renaissance Technologies after several clients threatened to leave the company upon learning of his relationship with white supremacists. In addition, several dozen phylonazi activists have lost the ability to monetize their operations through payment platforms.”³³

In other words, this strategy fights disinformation with more information (and not with less). It is up to each economic agent to decide where to allocate their investments in advertising and marketing.

The Sleeping Giants, however, have limited range. It acts only with respect to a small part of the money that finances fake news. This industry often involves the systematic practice of various criminal activities, such as ideological falsehood, false identity, procedural fraud and, above all, money laundering (in the concealment of private or public resources used to finance these crimes).

It acts by covering up the purchase of artificial engagements, uses robots and malicious automation to attack people or undermine public debate and so on. When they go down to illegality, they're real criminal organizations.

In addition, this technique used by the American Sleeping Giants was copied in several other countries. In addition to causing

<https://www.breitbart.com/the-media/2019/12/23/vice-news-breitbart-facebook-page-beats-nyt-wsj-usa-today-wapo-combined/#>

³² A. BHATTARAI, “Breitbart lost 90 percent of its advertisers in two months: Who’s still there?”, *Breitbart*, June 2017. Access on 15 January 2021. Available at: <https://www.washingtonpost.com/news/business/wp/2017/06/08/breitbart-lost-90-percent-of-its-advertisers-in-two-months-whos-still-there/>

³³ R. QUEIMALIÑOS, “O homem que arruinou a extrema direita nos EUA”, *El País*, 17 May 2020. Access on 15 January 2021. Available at: <https://brasil.elpais.com/icon/2020-05-17/o-homem-que-arruinou-a-extrema-direita-nos-eua.html>

significant financial damage to the misinformation media in the U.S., in France, for example, the movement also appeared with the *Observatoire du Conspirationnisme*³⁴ and *Stop Hate Money*³⁵ of “Projet Ripost”³⁶, and managed to pass a government regulation, colloquially called the Sleeping Giants Amendment, to prevent advertisers from financing hate and online extremism.

Thus, it is important to highlight the attempt of several governments around the globe and international institutions to ensure greater security about the facts and to resolve the dissemination of such misinformation.

The following will be a question about some of the Brazilian legislations that have the proposal to enunciate legal commandments to resolve and/or mitigate such problems arising from misinformation.

§ 3 – BRAZILIAN LEGISLATION AND FAKE NEWS

In Brazil, the dissemination of fake news is also a problem to be faced, both by civil society, by market agents and public authorities. Two examples of dissemination of misinformation are the sites Political Connection and the Journal of the Online City, which disseminate news of scientificity and veracity extremely doubts and difficult to base and prove the said facts that are conveyed.

With publications in the line of “Chloroquine, the cure denied to society: The political use of the pandemic Covid-19 is spreading chaos”³⁷; “TSE almost handed over electronic voting codes to Venezuelans and denied access to Brazilian auditors”³⁸, the *Jornal da Cidade Online* uses the aforementioned monetization through advertising campaign³⁹.

³⁴ Conspiracy Watch. Access on 15 January 2021. Available at:

<http://www.conspiracywatch.info/>

³⁵ Stop Hate Money. Facebook. Access on 15 January 2021. Available at:

https://www.facebook.com/StopHateMoney/?ref=page_internal

³⁶ RIPOST, *Recherches sur les interrelations personnelles, organisationnelles et sociales du travail*, Access on January 2021. Available at:

<http://www.ripost.qc.ca/projets/projet?id=1111>

³⁷ “Cloroquina, a cura negada à sociedade: O uso político da pandemia Covid-19 vai espalhando o caos (veja o vídeo)”, *Jornal da Cidade*, April 2020. Access on 15 January 2021. Available at:

https://www.jornaldacidadeonline.com.br/noticias/19796/cloroquina-a-cura-negada-a-sociedade-o-uso-politico-da-pandemia-covid-19-vai-espalhando-o-caos-veja-o-video?fbclid=IwAR2-9TL_XE6YreMDW-kaguQs79rB8vu1NRFJ2CNkSpewohwRj7gqEYO0H9w

³⁸ “TSE quase entregou códigos de segurança das urnas eletrônicas para venezuelanos e negou acesso para auditores brasileiros, segundo afirmou em março deste ano professor da UnB (veja o vídeo)”, *Jornal da Cidade*, access on 15 January 2021. Available at:

<https://www.jornaldacidadeonline.com.br/noticias/11448/tse-entregou-codigos-de-seguranca-das-urnas-eletronicas-para-a-venezuela-e-negou-acesso-para-auditores-brasileiros-veja-o-video>

³⁹ T. NALON, “Rede de desinformação do ‘Jornal da Cidade Online’ irriga site de viúva de Ustra. AF, abril 2020”. Access on 15 January 2021. Available at: <https://www.aosfatos.org/noticias/rede-de-desinformacao-do-jornal-da>

Three Brazilians recently created Sleeping Giants Brazil⁴⁰, using the same strategies as their North American reference, having as one of their first targets precisely the newspaper indicated above. In May of the same year, in a post by the creators on the social network Twitter that later went viral, the cable television channel Telecine was informed that its investments in advertising on Google were being directed to that site. Telecine⁴¹, on the same day, paused the campaign and positioned itself against the dissemination of fake news, which reflected in the same attitude by several other advertisers, such as the Brazilian state financial institution called Banco do Brasil. After political clash over the bank's decision, the Federal Court of Auditors determined the unlinking of the campaign to the site, and also stressing that the measure was “aimed at preventing the improper monetization of websites, blogs, portals and social networks that notoriously convey fake news.”⁴²

With the advent in Brazil of the Internet Civil Landmark (Law 12.965/2014)⁴³, space was opened for the debate on the intervention of the State in the regulation of the Internet and its respective linked contents.

This law provides as principles that regulate the use of the Internet in Brazil, listed in Article 3, among others, the principle of the protection of privacy and personal data, and ensure, as rights and guarantees of internet users, in Article 7, the inviolability and confidentiality of the flow of their communications and inviolability and confidentiality of their stored private communications, except by court order.

Article 10, § 1, which deals specifically with the protection of records, personal data and private communications, is very clear as to the possibility of providing private data, if requested by order of a judge, and says that the person responsible for the custody of the data will be obliged to make them available if there is a judicial request.

If the person responsible refuses to provide the data requested by the judge, he/she may be liable for the crime of disobedience, provided for in Article 330 of the Brazilian Penal Code.

In the caput of art. 19, it is listed that the internet application provider would only be civilly liable for damages arising from

⁴⁰ <https://www.dw.com/pt-br/a-luta-an%C3%B4nima-de-tr%C3%AAs-brasileiros-contra-sites-de-fake-news/a-54153272>

⁴¹ B. Pires, “MOVIMENTO EXPÕE EMPRESAS DO BRASIL QUE FINANCIAM, VIA ANÚNCIOS, SITES DE EXTREMA DIREITA E NOTÍCIAS FALSAS”, *EL PAÍS*, MAY 2020. ACCESS ON 15 JANUARY 2021. AVAILABLE AT: <HTTPS://BRASILELPAIS.COM/BRASIL/2020-05-20/MOVIMENTO-EXPOE-EMPRESAS-DO-BRASIL-QUE-FINANCIAM-VIA-PUBLICIDADE-SITES-DE-EXTREMA-DIREITA-E-QUE-PROPAGAM-NOTICIAS-FALSAS.HTML>

⁴² Secom TCU, *TCU determina ao Banco do Brasil a suspensão de publicidade em sites que veiculam fake news*, Tribunal de Contas da União, June 2020. Access on 15 January 2021. Available at:

<https://portal.tcu.gov.br/imprensa/noticias/tcu-determina-ao-banco-do-brasil-a-suspensao-de-publicidade-em-sites-que-veiculam-fake-news.htm>

⁴³ Internet Civil Landmark. No. 12.965. Brazil. 2014.

content generated by third parties after failing to comply in a timely specific court order determining its withdrawal.

More recently, another regulation was enacted stating the matter, the General Law for the Protection of Personal Data (13,709/2018)⁴⁴.

Just like the previous law, this also, by itself, does not fight fake news, serving as a beacon for the type and volume of data that platforms have to store to comply with the security requirements and storage of information of users.

In addition, the Freedom, Accountability and Transparency on the Internet Law⁴⁵, also known as the *Fake News Bill* (PL 2630/20) is being processed in the National Congress, which was approved in the Senate at the end of June 2020. Without public debate in the approval process, civil society, companies and scholars on the subject are concerned about the risks to freedom of expression.

The Bill in question aims, among other objectives, to establish guidelines to deal with misinformation in the network, however, it seems more like a standard aimed at fostering transparency processes between the platform and the user – which is not bad – than effectively to establish network security strategies in relation to the treatment of fake news.

It begins by highlighting that the definitions presented in Article 5 that establishes definitions for the delimitation of the scope of the Bill, such as: “identified account”; “inauthentic account”; “artificial distribution network”; “automated account”; “content”; “advertising”; “boosting”; “social network”; and “private messenger service”, present risks to freedom of expression especially because of the breadth and inaccuracy of the terms and concepts used.

Given this scenario of inaccuracy of terms, it is observed that the mechanisms brought by the legislation tend to generate even more insecurity, which can lead to incongruous applications of digital platforms, depending on the internal criteria of application of each provider. In other words, in addition to not bringing effective measures regarding misinformation, it causes severe concerns about the insecurity of its application, putting in check the protection of fundamental rights.

It is important to note that one of the most critical points of the Bill is that the removal/overthrow of accounts and content by automated means, is carried out by artificial intelligence techniques, which present high error rates, generating great concern especially regarding access to information, culture and education, resulting from a mistaken analysis of the contents made available on the network, which can cause the mass overthrow of content by platforms, in order to avoid possible accountability.

⁴⁴ General Law of Data Protection. No. 13.709. Brazil. 2018.

⁴⁵ Brazilian Law of Freedom, Responsibility and Transparency in the Internet. Bill No. 2.630. Brazil. 2020.

And this is because this judgment of what would be legitimate, or not to be made available on the network, would be in charge of application providers, private entities that do not have the legitimacy and technical knowledge to define the scope of protection of freedom of expression and access to information in the country. To attribute this judgment to the monopoly of the technology giants, who, in compliance with the law, could overturn mass content, would denote an obstacle to the free manifestation of thought and creation.

There is also in the Bill the requirement for applications to store records of bulk message submissions for up to three months. Thus, all people who participate in content sharing chains, such as journalists, researchers, parliamentarians and any citizens who eventually pass on a post in order to report it, will have their data necessarily stored by the platforms. In the event that there is a judicial process involving the discussion of the veracity of these contents, it will be up to the people involved the duty to prove, a posteriori (based on the facts), its non-relation to the industries of dissemination of disinformation that the Bill in question has the purpose of achieving.

The debate, then, in Brazil, given this scenario, is consolidated especially in the legal and fundamental foundations for freedom of expression and data privacy in view of the possibility of storage and use of data that may lead to private companies that own social networks and other related information and communication technologies.

Such insecurity is based on the possibility of unrestricted and arbitrary interference, both from the public authorities and private entities, on personal and confidential information. As can be seen, the solutions to legitimate and effective treatment of Fake News evoke a number of more complex issues inherent in intrinsic technologies.

The foundations of Hannah Arendt's theory laid out at the beginning of this work, therefore, are strengthened in contemporaneity, at the present moment of increasingly complex and diffuse human relations, demanding of fast answers and radical changes in favor of maintaining the historicity of the facts, before access to them becomes a privilege of the few, or even, are introduced into a dynamic of integral extinction and then arises to a virtual reality of the facts, before access to them becomes a privilege of the few, or even, are introduced into a dynamic of integral extinction and then arises to a virtual reality of the facts, before access to these becomes a privilege of the few, or even, are introduced in a dynamic of integral extinction and then arise to a virtual reality, dystopian and fanciful.