Duty of care and regulation of digital platforms: a Brazilian perspective

POLICY BRIEF #1

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Summary

This *policy brief* reflects the key points discussed in a workshop with 28 experts from the public sector, academia, private sector, and civil society in November 2024, on the opportunities and challenges related to the concept of "duty of care" in the regulation of internet platforms in Brazil. The event was held under the Chatham House Rule and this document provides an overview of the discussions, proposing ways forward to support the advancement of the regulatory debate.

This workshop proved highly timely. Held shortly after the 2024 municipal elections, it facilitated a discussion of concrete cases involving the use of digital platforms by candidates and campaigns, uncovering new legal challenges. This post-election context, compounded by the imminent Supreme Federal Court (*Supremo Tribunal Federal* – STF) ruling on two cases concerning the Brazilian Internet Civil Rights Framework (*Marco Civil da Internet* – MCI – Law No. 12.965/2014), underscores the workshop's importance. The STF ruling could significantly alter the legal framework for platform liability in Brazil, directly impacting the feasibility of a regime of positive obligations based on the concept of duty of care, as proposed by Bill No. 2630/2020 (under consideration since 2020). While this legislative proposal currently faces political deadlock, renewed debate seems increasingly likely given the evolving political landscape, including the 2025 leadership changes in the National Congress, the impact of the forthcoming STF ruling, and recent shifts in major social media platforms' content moderation policies.

In this context, the workshop aimed to identify areas of consensus and opportunities related to the duty of care as a regulatory approach, as well as to prepare stakeholders for the next steps in the debate. This policy brief reports on these findings to support the future regulation of internet platforms in Brazil and contribute to the public debate. The conclusions of the debate—detailed in the final section of this brief—were related to:

- Mitigating risks and due diligence on digital platforms: elements for legislative updates
- The legal elaboration of the "duty of care" with a focus on its administrative dimension (as opposed to civil liability)
- Definition and institutional design of regulatory bodies
- Mechanisms for social participation

I. Why discuss duty of care and internet platforms in Brazil?

The "Duty of Care and Internet Platforms" workshop, held in São Paulo, Brazil in November 2024, aimed to provide a forum for open and frank discussion on emerging issues, to encourage productive, focused debate on solutions for platform regulation in Brazil, and to identify gaps in existing regulation and research.

Background and motivation

This event is part of an academic research project, a collaboration between the University of Sussex and Insper (a higher education and research institute in Brazil). Funded by the British Academy's ODA Challenge-Oriented Research Grants 2024 Programme, supported under the UK Government's International Science Partnerships Fund,[1] the project explores the use of "duty of care" as a regulatory approach, reflecting growing global interest in new ways to regulate online platforms.

In the UK, the Online Safety Act 2023 places a range of duties of care on internet services, requiring them to identify risks and adapt their systems and processes to mitigate them. This legislation marked a significant shift in the regulation of digital platforms, intensifying the debate about the implementation and effectiveness of duty of care-based models.

In Brazil, Bill No. 2630/2020 highlighted the concept of duty of care, but a theoretical gap remains regarding how a regulatory regime based on this concept should be designed, interpreted, and implemented within the Brazilian legal framework. This research therefore seeks to analyse the concept in greater depth, exploring its foundations within Brazilian law.

The workshop was strategically timed to coincide with a crucial moment: immediately after the local elections, providing a valuable opportunity to analyse the use of digital platforms and the resulting legal challenges. The electoral period offered valuable case studies for considering the

[1] ISPF ODA Challenge-Oriented Research Grants, No. IOCRG\100823.

potential and limitations of duty of care as a regulatory strategy in Brazil. The Brazilian Supreme Federal Court's imminent review that same month of key cases concerning the constitutionality of Article 19 of the *Marco Civil da Internet* (Internet Civil Rights Framework) further emphasised the timeliness of these discussions.

Workshop dynamics and objectives

Bringing together experts from various fields,[2] the workshop focused on new forms of disinformation observed during elections, particularly the 2024 elections. It assessed the success and limitations of existing regulatory strategies in response to these trends, discussed the desirability of improvements, and identified key questions to guide a research agenda. The workshop included a diverse group of leading figures representing the public and private sectors, academia, and civil society.

The discussion began with introductory presentations to stimulate dialogue and unfolded in two stages. The first stage was dedicated to discussing and reflecting on the 2024 municipal elections and how trends observed in this context might impact future electoral processes. The second stage focused on how broader issues observed in 2024 relate to the debate on the regulation of digital platforms.

This document summarises the outcomes of this workshop, offering a snapshot of the ongoing debate on platform regulation in Brazil. As it reflects the perspectives of leading figures in this field, it provides valuable insights for the broader public discussion. To inform public debate on duty of care, this document adopts a structure focused on this concept, using examples from the electoral context as illustrations. To aid readers less familiar with the Brazilian context, the document includes explanatory boxes that provide further detail on relevant regulatory frameworks and institutions mentioned by workshop participants. This document aims to serve as a foundation for further research into the suitability and specific features of the duty of care as a regulatory strategy for digital platforms within the Brazilian legal system.

[2] Workshop participants were selected for their close involvement in the digital platform regulation debate. Some participants were also invited due to their work in the electoral sphere, as this provided a contextual study used to initiate the discussion, as described above. We thank the participants for sharing their perspectives with us.

II. The current regulatory framework: a discussion on shortcomings and improvements

The regime of duties and responsibilities for internet application providers established in the *Marco Civil da Internet* (Law 12.965/2014) provided the basis for workshop discussions on the legislative framework. The debate centred on the need to either update or reassess the adequacy of this framework, potentially through the development of more specific layers of governance.

Box 1. The regime of the *Marco Civil da Internet* – Law 12.965/2014

The *Marco Civil da Internet* defines the following civil liability regime for internet intermediaries in cases of harm caused by third-party content:

- Internet connection providers are not liable for third-party content, as they merely provide the connection infrastructure, as per Article 18 of the MCI.
- Internet application providers (i.e., digital platforms) can only be held liable for user-generated content if they fail to comply with a court order to remove it, as per Article 19 of the MCI.
    - Exception 1 – Copyright: According to paragraph 2 of Article 19, this rule does not apply to cases of copyright or related rights infringements, to which specific legislation and jurisprudence apply.
    - Exception 2 – Non-consensual intimate content: Article 21 of the MCI establishes that application providers can be held liable for harm caused by third-party content if they receive a mere extrajudicial notification in cases of non-consensual disclosure of "scenes of nudity or sexual acts of a private nature" and fail to take action to make them unavailable.

The *Marco Civil* does not explicitly address content moderation or recommendation activities, nor does it impose specific duties of care on platforms. Instead, it establishes general principles for internet use, largely derived from the Brazilian Federal Constitution 1988, as per Articles 7 and 8 of the MCI.

In the collective reflection developed during the workshop, the diagnosis of this framework and its outcomes provides a common starting point, based on the following elements/questions:

- **Since 2014, the internet has undergone significant evolution, with new business models giving rise to novel systemic risks.** Workshop participants emphasised the need to adapt the MCI, or to develop complementary layers of regulation, to address the evolving landscape. This includes acknowledging the impact of new platform models and the systemic risks they pose, such as the spread of misinformation and hate speech amplified by recommendation algorithms and paid content promotion. While the prevalence of deepfakes may have been lower than anticipated,[3] perhaps due to the Superior Electoral Court (*Tribunal Superior Eleitoral* – TSE) proactive ban on their use in political campaigns, concerns were raised regarding the substantial financial resources dedicated to amplifying harmful content,[4] the influence of "digital influencers" with large followings, and the limitations of "pre-digital" regulatory frameworks (including electoral laws) in addressing these emerging challenges.[5] A striking example of these interconnected issues was the 2024 São Paulo municipal election. The influencer and "life coach", Pablo Marçal, leveraged his substantial online following and sophisticated digital marketing techniques to significantly boost his campaign, nearly securing a place in the second round of the run for mayor.[6]

[3] On deepfakes in the Brazilian 2024 municipal elections, see *AI in the 2024 Brazilian elections*, report written by Matheus S. Cruz, Nina Santos, Rodrigo Carreiro, Lizete Nóbrega and Gabriel Amorim. Published by Aláfia Lab and Data Privacy Brasil. October 2024, available at https://desinformante.com.br/wp-content/uploads/2024/11/AI-in-the-2024-brazilian-elections.pdf; JUNQUILHO, Tainá Aguiar; SILVEIRA, Marilda de Paula, FERREIRA, Lucia Maria Teixeira, MENDES, Laura Schertel, OLIVEIRA, André Gualtieri de. (org.). *Construindo consensos: deep fakes nas eleições de 2024 relatório das decisões dos TREs sobre deep fakes*. Brasília: Instituto Brasileiro de Ensino, Desenvolvimento e Pesquisa: Laboratório de Governança e Regulação de Inteligência Artificial, 2024, ISBN 978-65-87546-23-0.

[4] Some examples can be found in the following studies: HADDAD, João Gabriel; SALLES, Débora Gomes; ROSE MARIE SANTINI. SEXUALIDADE EM DISPUTA: o direcionamento de anúncios nas redes da Meta sobre a comunidade LGBTQIAP+ durante as eleições de 2022. P2P E INOVAÇÃO, Rio de Janeiro, RJ, v. 11, n. 1, p. e-6681, 2024. DOI: 10.21728/p2p.2024v11n1e-6681.; MEDEIROS, Priscila et al. DESINFORMAÇÃO SOCIOAMBIENTAL COMO FERRAMENTA DE PROPAGANDA: Uma análise multiplataforma sobre a crise humanitária Yanomami. In: ANAIS DO 32° ENCONTRO ANUAL DA COMPÓS, 2023, São Paulo. Anais eletrônicos. Campinas, Galoá, 2023.

[5] As explained in BRITO CRUZ, Francisco. Novo jogo, velhas regras: democracia e direito na era da nova propaganda política e das fake news. Belo Horizonte, MG: Grupo Editorial Letramento, Casa do Direito, 2020.

[6] On these strategies, see https://institutodx.org/publicacoes/relatorio-eleicoes-sp-aliciamento-digital/. On digital influencers in Latin America, see https://internetlab.org.br/pt/noticias/influenciadores-redes-sociais-e-politica-a-perspectiva-dos-jovens-latino-americanos/.

- **Civil liability for third-party content is just one part of a wider governance discussion.** Workshop participants from various sectors argued that the MCI's focus on individual content removal following a court order (or other liability triggers) is insufficient to address systemic risks. The repeated court orders to take down Pablo Marçal's profile during the 2024 election highlighted this gap in the MCI. His third profile, created after the initial removals, amassed nearly a million followers within just two hours.[7] They emphasised the need for platforms to adopt preventative, structural measures consistent with due diligence, which goes beyond the scope of civil liability for user-generated content.
- **A new role for the State?** Some participants discussed the need for a renewed State role in developing and implementing public policy for digital platforms, going beyond the scope of the MCI and prioritising the public interest. They argued that self-regulation (primarily through content moderation) is insufficient to address emerging risks, both within and outside the electoral context. They suggested building stronger regulatory capacities beyond simply relying on judicial control of user-generated content, with some proposing a new independent regulatory body equipped with the technical expertise to oversee and enforce due diligence standards.
- **What institutional design would be most appropriate?** Participants pointed to the complexity and difficulty of defining and implementing new duties and obligations, especially without a regulatory body and clear parameters. The lack of specificity can generate legal uncertainty and harm the functioning of platforms, generating undesirable and unforeseen effects. At this point, participants from different sectors underlined the gaps in terms of existing institutional capacities within the Brazilian State to achieve this objective. The picture is composed of comments on:
    - The *Autoridade Nacional de Proteção de Dados* (ANPD), the national data protection authority, which is currently in the process of institutional construction and consolidation.
    - The *Agência Nacional de Telecomunicações* (ANATEL), the national telecommunications agency, which is seeking new competences but has no existing expertise in content moderation.

[7] See https://www.poder360.com.br/poder-eleicoes/marcal-atinge-800-mil-seguidores-2h-apos-criar-3o-perfil-no-instagram/ (in Portuguese).

- Other newly established government bodies still developing their scope and capacities.
- The judiciary, whose remit to regulate platform governance is constrained by its legal competence and institutional capacity, particularly when it comes to overseeing both campaigns and platforms concurrently. The Electoral Court, however, was singled out for combining normative, regulatory, and administrative powers, including its power of *ex officio* action.

- **Where is the (new) place for freedom of expression?** Some participants expressed concerns that updates to the MCI or new regulatory layers could compromise the exercise of freedom of expression online, especially as this could incentivise arbitrary content moderation by large digital platforms or other intermediaries who would naturally be averse to legal or administrative risks.
    - At the same time, participants agreed on the political sensitivity of the rhetoric defending "freedom of expression" in the current Brazilian context, both from a social point of view (in the mobilisation of this concept for violent political extremism that carries risks to the rule of law) and from a political-institutional point of view (in a kind of instrumentalisation to channel social mobilisation to prevent the advancement of any regulatory discussions in the National Congress).
- **What can be achieved within the existing regulatory framework?** It was argued that the judiciary and legal scholarship may be sufficient to address some pressing issues, without the need for a new regulatory body. To this end, workshop participants defended interpretations of the Brazilian Civil Code, the Consumer Defence Code and the new regulations of electoral legislation produced by the Superior Electoral Court as a basis for the enforceability of new platform duties – or loopholes in the liability regime established by the *Marco Civil da Internet* (Internet Civil Rights Framework).
    - Among the ideas discussed are the operational challenges of a series of new duties created at the infralegal level by TSE Resolution No. 23.732/2024. This form of electoral regulation established libraries of electoral political advertisements, mandated adjustments to content moderation systems, and imposed various other obligations on platforms when they share political-electoral content created by users. These changes were designed to enhance TSE's oversight of the constantly evolving electoral process. The Resolution's innovations regarding transparency and obligations for online ads, for example, are clearly linked to the misuse of this tool to spread disinformation about the electronic voting system in 2022.

- **The Brazilian Supreme Federal Court's ruling on the constitutionality of the intermediary liability regime established by the *Marco Civil da Internet* will define the future direction of this debate.** Participants discussed the emerging scenarios arising from different (and hypothetical) Supreme Court decisions on the matter, with varying expectations regarding the best outcome.
    - The meaning and implications of a ruling of "interpretation in accordance with the constitution" of Article 19 of the MCI was a subject of discussion. Many positions on the "modulation of effects" were presented by participants, referring to desirable outcomes of the Supreme Court's judgment on general repercussion themes 987 and 533. Amongst the different perspectives, "middle ground" views stood out, which would mean maintaining a general rule of civil liability while simultaneously creating exceptions or additional due diligence duties proportional to different types and sizes of providers.

Box 2. Cases on intermediary liability in the Brazilian Supreme Federal Court

The Supreme Federal Court has begun judging two cases concerning the liability of internet providers for content published by third parties. General repercussion was conferred upon both cases, meaning they will serve as a reference for the application of the law beyond the specific situations being judged. They are:

- The *Aliandra Case* (general repercussion theme 533, RE 1057258, Rapporteur Justice Luiz Fux): questions whether an old social network called Orkut – owned by Google – should be held liable independently of a court order for the removal of content in a case involving the creation of a user community intended to criticise and discredit a teacher. The case predates the *Marco Civil da Internet*, and the general repercussion question is about the "duty of a website hosting company to monitor published content and remove it when considered offensive, without judicial intervention".
- The *Lourdes Case* (general repercussion theme 987, RE 1037396, Rapporteur Justice Dias Toffoli): the case originates from a small claims court action (or "special civil court") seeking compensation for damages due to the creation of a fake profile in the author's name on the social media platform Facebook. The case questions the constitutionality of Article 19 of the MCI, which is already applicable to the case.

The cases are being decided in a joint judgment that began in November 2024 and, as of the date of writing this document, had not been concluded.

III. A Brazilian "Duty of Care"?

The question posed to workshop participants about the idea of a “duty of care” generated diverse reactions regarding the reception of this concept in Brazil. A central point of the debate revolved around its legal nature. Some participants explored the concept within the framework of Brazilian Civil Law, examining its potential implications for liability regimes governing third-party generated content. Others, drawing on experiences from other jurisdictions, introduced the perspectives of “administrative liability” or positive obligations. There was also a broader debate about terminology: it was questioned whether the Portuguese term *dever de cuidado* (the more literal translation of the English term “duty of care”) finds an adequate equivalent in Brazilian law, or whether a more appropriate Portuguese term exists to designate the type of obligations being referred to, in light of Brazilian legislation.

- Definitions and history of the concept. Participants mentioned that the presence of the concept in the Brazilian legal-regulatory debate on digital platforms is recent, dating back to legislative debates around Bill No. 2630/2020 (the main proposal for online content moderation governance in the country) in 2023 and TSE Resolution No. 23.732/2024 adopted in 2024 (which introduced the concept as derived from the constitutional principle of “social function of the company”). As a related concept, the “duty of safety” under the Consumer Defence Code was mentioned, although participants stressed that its application to online platforms has limitations.
    - The recent introduction of the “duty of care” concept in Brazil (both in the TSE regulation and in academic literature) raised concerns among some participants about how it would be applied and interpreted, particularly by the Brazilian courts. They argued that a lack of clarity regarding the precise definition of “duty of care” and the specific measures platforms should take would create legal uncertainty. This lack of clarity, some argued, could incentivise platforms to engage in arbitrary and overly cautious content moderation.

- Participants who voiced concerns about creating incentives for arbitrary and risk-averse content moderation by platforms also linked these fears to the application of a "duty of care" without clear parameters.

Box 3. Bill No. 2630/2020 and the duty of care

Bill No. 2630/2020, presented to the Brazilian National Congress in 2020, aims to establish the Brazilian Law of Freedom, Responsibility and Transparency on the Internet. The Bill was approved by the Senate in 2020 and has since been discussed by the Chamber of Deputies, undergoing extensive debate with various sectors of society and several modifications over the years. Essentially, the Bill includes measures aimed at regulating the activities of large digital platforms and guaranteeing rights to their users.

In its May 2023 version, the Bill included, among other measures, the establishment of a "duty of care", whereby providers must act diligently to prevent or mitigate illicit practices on their services – a section included following a suggestion from the Executive branch inspired by international examples (such as the EU Digital Services Act, DSA, and the Online Safety Act 2023 in the UK). This duty of care would encompass a series of illegal third-party content, including content that would constitute crimes against the democratic rule of law and attempted *coups d'état*, acts of terrorism, incitement or assistance to suicide, crimes against children and adolescents (Law No. 8.069/1990 – *Estatuto da Criança e do Adolescente*) and discrimination or prejudice.

Compliance with the "duty of care" would be assessed, among other elements, by information from providers' systemic risk assessment and transparency reports, as well as the handling of notifications and complaints. Sanctions for non-compliance will not be based on isolated content, but on the overall efforts and measures adopted by providers. However, the proposal does not detail the supervision mechanisms or the institutional design of the regulatory body.

The Bill also sought to impose obligations on platforms to analyse and mitigate systemic risks arising from the design and operation of their services and related systems, including algorithmic ones—echoing duties adopted in the EU DSA. These risks refer to the dissemination of illicit content and damage to collective fundamental rights, such as freedom of expression, information and the press, the pluralism of the media, and civic, political-institutional and electoral issues.

Bill No. 2630/2020 gained political momentum for a vote in April 2023, but resistance from opposition sectors in a context of heightened polarisation in the Brazilian Congress prevented its vote and progress.

- **Need for modulation and proportionality.** Participants advocated tailoring any "duties of care" according to the type of platform, its size, and the specific risks it poses. Applying a uniform set of obligations to all internet application providers would be disproportionate, ineffective, and could challenge the competitiveness of non-established actors in offering functions already provided by large platforms with consolidated dominance. An asymmetric regulatory approach, on the other hand, would allow for better adaptation of obligations to platform design and functionalities, as well as their impact on public debate.

- **Need for greater transparency in monitoring, supervision, and law enforcement.** The workshop revealed concerns about the current scenario of judicial control of content moderation in the electoral sphere, arguing for greater transparency in state action in this area, which is sensitive to freedom of expression. This concern can be seen broadly, both in the activities currently conducted by the TSE—in its decisions and in the broader activity of its Integrated Centre for Combating Disinformation and Defending Democracy (*Centro Integrado de Enfrentamento à Desinformação e Defesa da Democracia* - CIEDDE)—, and in the future activities of other judicial or administrative bodies.

- **Duty of care containing components of due diligence that allow for analysis and mitigation of "systemic risks".** At the workshop, participants from different sectors emphasised the importance of the duty of care concept encompassing the mitigation of "systemic risks", in an argument that connects the concept adopted in UK legislation with the obligations placed on very large online platforms (VLOPs) and very large online search engines (VLOSEs) in the EU's DSA. Focusing on systemic risks, as well as the processes and systems adopted by platforms in response, would allow intervention at more structural points in the dissemination of harmful content.

IV. Oversight structures for a duty of care: institutional capacities and enforcement gaps

Amidst an ongoing discussion about the state's role in regulating digital platforms, the workshop discussed various components of an agenda to strengthen regulatory capacities to monitor and oversee the exercise of a duty of care by digital platforms at the administrative level.

- **Need for oversight and expertise.** The debate on adopting regulation prompted participants to reflect on the key role of creating (or designating) a specific regulatory body for the sector. Establishing a regulatory body with oversight capacity and technical expertise is fundamental to the effective supervision and monitoring of digital platforms' duties, ensuring compliance with rules and promoting accountability. Participants emphasised the importance of the regulatory body having technical expertise to deal with the complexity of the issue and to operate independently of both the current government and capture by economic power, in defence of the public interest.

- **Sectoral view.** Despite disagreements about the precise design and remit of a regulatory body, participants generally agreed that regulation should adopt a sectoral approach, tailored to the specific business models of digital platforms. A specialised regulator would be best placed to understand the sector's challenges and implement policies.

- **Risks in building regulatory capacities.** In the task of overseeing a duty of care of an administrative law, regulatory nature, participants from different sectors assessed risks and difficulties.

    - **Bureaucracy and inefficiency.** One participant suggested that establishing a new regulatory body could lead to excessive bureaucracy and inefficiency, potentially duplicating functions already covered by judicial oversight or existing agencies with broadly defined remits. This argument appears to conflate civil liability, which is handled by the courts, with administrative liability, which would require a form of sectoral regulator.

- **Challenges arising from the political context.** Challenges stemming from the political context were also highlighted. Participants questioned the political feasibility of establishing a regulatory body in Brazil, given the current legislative landscape. Diverse perspectives were expressed regarding the field's priorities, with some suggesting that a more pragmatic approach, focusing on measures likely to be approved in the legislature, would be more suitable.

- **Strengthening existing capacities.** Participants mentioned the need to strengthen existing authorities or sectoral and horizontal regulatory bodies, such as the Administrative Council for Economic Defence (CADE)—the Brazilian antitrust authority—and the Public Prosecutor's Office to act in the regulation of digital platforms, using their existing powers to address issues such as market power and data protection. As examples, recent cases involving the General Data Protection Law (Law 13709/2018)[8] and discussions about expanding CADE's mandate (based on a recent study conducted by the Brazilian Ministry of Finance).[9] This approach, it seems, could also apply to other previously mentioned authorities, such as the National Data Protection Authority.

- **Social participation.** Several participants emphasised the importance of civil society participation in the construction and implementation of a regulatory model that is effective and democratic. The Internet Steering Committee (*Comitê Gestor da Internet* – CGI.br)—a multi-stakeholder entity specific to the internet governance landscape in Brazil—was cited as an original element in the Brazilian experience. These voices advocated conducting public consultations, public hearings, and other mechanisms to guarantee the participation of different actors in the discussion.

- **Co-regulation and cooperation instruments with digital platforms.** Although participants agreed that self-regulation and proactive platform action were insufficient or inadequate on their own, they acknowledged the value of co-regulatory and cooperative mechanisms. They

[8] See KIRA, Beatriz. Inter-agency coordination and digital platform regulation: lessons from the Whatsapp case in Brazil. International Review of Law, Computers & Technology, v. 38, n. 2, 2024.

[9] See report "Digital platforms: competition aspects and regulatory recommendations for Brazil", Secretariat of Economic Reform, Ministry of Finance (2024), available at https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/relatorios/digital-platforms-competition-regulatory-recommendations-brazil-en.pdf

stressed the importance of establishing joint performance metrics and shared commitments to make such collaborations successful.

- **Public policies impacting content moderation.** Participants discussed the broader landscape of public policy impacting online content moderation, including the role of government agencies. They cited positive examples of government-platform collaboration, such as the "Health Awareness" (*Saúde com Ciência*) programme aimed at countering health-related misinformation.[10] These examples suggest that while regulation is crucial, government agreements and platform self-regulation can play a complementary role.[11]

V. Specific themes

The workshop also served to highlight specific points in the discussion of duty of care, generally related to mechanisms for the production and dissemination of harmful content and behaviours on digital platforms.

- **Paid ads and content recommendation.** One of the key points of discussion at the workshop was the importance of including the topics of paid advertisement and content recommendation, given that these mechanisms play a central role in the dissemination of information and in shaping public opinion. Participants therefore debated the extent to which platforms should be held responsible for the consequences of their own editorial decisions and how this behaviour should be defined.
    - To this end, participants stressed the need for greater transparency around platform algorithms, so that both users and regulators can understand the processes by which content is recommended, amplified, or demoted.

[10] See https://www.gov.br/saude/pt-br/assuntos/saude-com-ciencia

[11] These initiatives could be undermined by Meta's recent decision to stop moderating some type of content that could be considered illegal content in Brazil. This could set a dangerous precedent for both platform self-regulation and the relationship between technology companies and governments. See https://www.gov.br/secom/pt-br/assuntos/noticias/2025/janeiro/agu-recebe-manifestacao-da-meta-e-documento-causa-grave-preocupacao.

- **Content moderation and context.** When faced with challenges in implementing content moderation systems, participants pointed out the difficulty of moderating content in different languages and cultural contexts. Some participants argued that platforms should make investments to ensure they have moderators who understand the Portuguese language and the Brazilian context, for example.

- **Protection of vulnerable groups.** Participants drew attention to the need to protect vulnerable groups from harms on digital platforms, especially black, indigenous and people of colour, women and LGBTQIA+ individuals. Thus, the conceptualisation and operationalisation of a duty of care in Brazil, and any resulting regulation, should take into account the specific needs of these groups and, in a scenario of limited regulatory resources and capacities, prioritise them.

VI. Conclusions and guiding questions for future debate

The debate was complex and multifaceted, reflecting the difficulty of finding an effective, balanced regulatory model that also respects fundamental rights. Although it revealed numerous divergences and divisions, the workshop also identified areas of agreement and common ground that could inform future discussions on platform governance in Brazil:

1. **Mitigating risks and due diligence on digital platforms: elements for legislative updates.** To establish a duty of care framework for digital platforms in Brazil, either the MCI needs updating or new legislation is required to address the systemic risks generated by platforms' evolving business models, such as the dissemination of misinformation and hate speech, amplified by algorithms and paid promotion. In this regard, establishing duties of transparency and risk detection and mitigation is particularly important. Electoral law must also be updated to reflect these new digital realities.

2. **The legal elaboration of the "duty of care" with a focus on its administrative dimension (as opposed to civil liability).** Doctrinal and jurisprudential development on this topic needs to take place alongside the legislative debate. This development requires careful consideration of the differences and complementary nature of civil and administrative

liability that may be applied to the technology sector. The discussion identified potential sources and starting points within Brazilian law, but also highlighted that legal analyses on a duty of care applicable to digital platforms are still in their early stages of development.

3. **Definition and institutional design of regulatory bodies.** The discussion highlighted the lack of oversight mechanisms for these new regulatory layers and the implementation of a duty of care. Simultaneously, there is conflict between existing authorities, uncertainty regarding the distribution of powers, and risks to rights. There was consensus that the responsible authorities must possess technical expertise and be independent of both government and economic influence.

4. **Mechanisms for social participation.** Civil society participation is essential for developing an effective and democratic regulatory model. Co-regulatory instruments and supervised dialogue with platforms are also valuable tools, incorporating performance monitoring metrics.