

The Price of Moderation

Impacts on the Judiciary and the Debate on the Supreme Federal Court's Review of the Brazilian Civil Rights Framework for the Internet

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Executive Summary

A landmark decision on internet regulation may produce unforeseen consequences for the Justice System.

The Brazilian Supreme Federal Court (STF) is expected to resume deliberations on Cases 987 and 533, which assess the constitutionality of Article 19 of the Civil Rights Framework for the Internet (“Marco Civil da Internet” - MCI). The opinions already delivered by Justices Toffoli, Fux, and Barroso point towards divergent legal pathways, with potential ramifications not only for content moderation but also for the structural dynamics of the internet in Brazil — with collateral effects on the digital ecosystem and the functioning of the public sector that remain largely unquantified.

Considering the possible adoption of a new strict liability regime for digital platforms, this study examines an underexplored externality in the debate: **what are the budgetary implications of such a shift for the Judiciary itself?**

To address this question, we employed econometric models based on synthetic control and scenario projections for the period from 2025 to 2029, drawing on actual data related to litigation rates and procedural costs. Based on this analysis, we outline four scenarios for the **2025–2029** period, varying according to the degree of platform liability and the intensity of spillover effects.

Key Findings:

754 thousand

Projected number of new lawsuits over the next five years if strict liability is adopted.

160%

Increase in litigation compared to the current scenario (2.6 times higher), with potential concentration in civil courts and small claims courts.

R\$ 777 million

Most severe financial impact scenario for the Judiciary — equivalent to hiring 1,600 federal judges for one year.

Lawsuits involving content moderation **may hinder judicial efficiency**, as they tend to be more complex than typical consumer disputes, demanding greater time and adjudicative effort, potentially driving costs even higher;

There is a heightened risk of abusive litigation, especially if the STF’s decision is broad, insufficiently tailored, and lacks safeguards, potentially fueling a “lawsuit industry” and straining judicial budgets;

The adoption of alternative regimes based on fault-based liability — with clearly defined low-discretion scenarios and systemic obligations — in line with international trends, **may significantly reduce the financial burden on the Judiciary.**

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1. Introduction

In November 2024, the full court of the STF began the trial of Cases 987 and 533, arising from Extraordinary Appeals (RE) Nos. 1,037,396 and 1,057,258, reported by Justices Dias Toffoli and Luiz Fux. These cases address the civil liability of digital platforms for third-party content, and consequently, the constitutionality of Article 19 of the Civil Rights Framework for the Internet.

To date, three of the STF's eleven Justices have cast their votes. Reporting Justices Dias Toffoli and Luiz Fux, along with president Luís Roberto Barroso, have all expressed support for declaring Article 19 unconstitutional and for introducing new **legal binding precedent** to reshape platform liability. However, their proposals differ significantly, making consensus a considerable challenge.

The trial has been suspended following a request for further review by Justice André Mendonça on 18 December 2024. The final ruling could reshape the legal understanding of digital platform liability, with direct implications for freedom of expression and content diversity on the internet.

This is a multifaceted debate. In 2024, Reglab published the study “Stakeholder Interests in the Supreme Court: Analyzing the Dispute Over the Civil Rights Framework for the Internet”, which illustrated the complexity of the issue: more than 56 organizations submitted opinions in the proceedings, advancing 63 distinct arguments (Ramos et al., 2024).

One dimension that has received limited attention is the economic impact of the STF's decision on the public sector: depending on which **legal thesis prevails**, how might this affect the Judiciary and public finances? This paper addresses that specific angle and seeks to introduce new elements to enrich the ongoing debate.

1.1. How does platform liability work?

Digital platforms, here understood as services that facilitate or intermediate interactions between two or more parties via the internet (CADE, 2023), provide spaces for users to create and share content (Teffé, 2024). Given the high number of users on some platforms, such as social media services, questions have emerged regarding the extent to which platforms are liable for third-party content.

In Brazil, this matter is currently governed by Law No. 12.965/2014, known as the **Civil Rights Framework for the Internet**. Today, the applicable rule is that of fault-based liability, but with specific criteria that go beyond mere negligence or intent — a model commonly referred to as **judicial notice and take down**. It operates as follows:

- Internet platforms are not automatically liable for content published by users.
- Platforms may only be held liable after receiving a specific court order to remove the content and failing to comply.

- This does not prevent platforms from removing content pre-emptively under their own moderation policies, whether by their own initiative or following a user notification.

An Example of the Civil Rights Framework in Practice

In 2022, the Superior Court of Justice (STJ) ruled on a case in which an individual posted criticism on social media regarding the appointment of another person to the Secretariat of Public Security of the State of São Paulo. The post alleged that the appointee had been involved in a corruption scheme. The platform did not remove the post. The public official then requested a judicial order for its removal, claiming defamation.

The STJ found that the post did not constitute an unlawful act, as it represented political criticism based on plausible facts and of public interest, even if expressed in a harsh, ironic, or severe tone (STJ, 2022). This case illustrates the importance of Article 19 in safeguarding public debate and the Judiciary's role in balancing fundamental rights.

The rule established in 2014 aimed to strike a balance between freedom of expression and protection of individual rights. However, there are two exceptions:

In cases involving copyright violations or non-consensual intimate imagery, platforms are required to remove the content immediately upon direct **notification by the victim**, without the need for a court order.

This model is referred to as notice and take down: although liability remains subjective, judicial intervention is not required — failure to act upon a user's notification is sufficient to incur liability.

1.2. What Is Being Debated in the STF Proceedings?

As the STF begins deliberating Cases 987 and 533, the Justices have proposed new **legal binding precedent for the interpretation of Article 19** and rules concerning platform liability. Barroso, Toffoli, and Fux agree on the need to shift from a **judicial notice and take down** model to a **notice and take down model, although their approaches differ significantly**.

Justice Barroso advocates for the maintenance of fault-based liability but restricting the *judicial notice and take down* procedure to cases involving defamation offenses, tort claims, and residual content – for all other categories, a standard *notice and take down* procedure would apply.

Toffoli and Fux have proposed broader **legal thesis** that would, in practice, shift the procedure towards a model of **strict liability, meaning that platforms would be held liable regardless of prior notification**¹. Under this regime, liability would be automatic and independent of fault, grounded in the duty to compensate for the inherent risk of the activity (Miragem, 2021).

¹ In his opinion, Justice Luiz Fux proposed a doctrine of absolute presumption of knowledge regarding the unlawful nature of content — that is, dispensing with the need to prove fault on the part of the platform. According to his opinion, in cases involving paid promotion of posts, the platform is presumed to have knowledge of the content, thereby eliminating the requirement for prior notification to establish civil liability. Thus, although the term “fault” is still employed (in the sense of awareness of illegality), such presumption is absolute, which, for the methodological purposes of this study, aligns in practical terms with strict liability.

Strict liability is not new in Brazilian law: it is established by legal provision and applies in areas such as consumer protection and environmental regulations. However, **its application to matters involving freedom of expression would be unprecedented.**

| Criteria | Fault-based liability via Judicial Review (Judicial Notice and Takedown) | Fault-based liability upon Awareness (Notice and Takedown) | Strict Liability |
|------------------------------|--|---|---|
| When is liability triggered? | After non-compliance with a court order | Following a direct request from the user and/or authority, without the need for court order | Regardless of notification or court order |
| Who decides on removal? | Judiciary | Platform | Platform |

1.3. How do other countries address this issue?

The debate over liability in content moderation is neither exclusive to Brazil nor recent. It began in the United States in 1996, with **Section 230 of the Communications Decency Act**, which granted broad immunity to digital platforms for third-party content. This protection extends both to user-generated posts and to platforms’ moderation decisions (Teffé; Souza, 2024).

Since the 2010s, this framework has come under increasing criticism, with reform proposals aimed at better balancing platform immunity with more effective accountability mechanisms. **In fact, the Civil Rights Framework for the Internet, enacted in Brazil in 2014, adopted a contrasting approach:** it rejected advance immunity and instead established procedural liability rules, whereby content removal is contingent upon a court order — the model known as *judicial notice and takedown*.

In 2020, European countries began revising their regulatory frameworks, with some questioning about the premises embedded in the Civil Rights Framework. **The Digital Services Act (DSA)**, in force across the **European Union** since 2024, **maintains a model of fault-based liability based on specific knowledge** and reinforces freedom of expression safeguards, including a prohibition on general monitoring obligations. While the DSA does not directly address civil liability under Member States’ domestic laws, it sets minimum principles that constrain platform liability while imposing systemic and transparency obligations.

In the **United Kingdom**, the **Online Safety Act (OSA)**, enacted in 2023, **also adopts subjective liability as the general rule**, but establishes proactive obligations to address illegal and harmful content — particularly to protect children. It requires a higher standard of regulatory diligence than the Civil Rights Framework for the Internet, focusing on effective prevention and response systems, rather than on platform liability for individual pieces of content.



In other words, **the evolution of content moderation regulation in comparative law does not appear to alter the general liability framework, in which fault-based liability remains the prevailing paradigm. The adoption of strict liability for digital platforms is not common — on the contrary, it is rare and exceptional** (Mello, 2024). China and Iran, for example, impose strict liability regimes on digital platforms for, respectively, content deemed harmful to the image of the party and government (Wang, 2022) or content that may “lead to crimes” (Article 19, 2012), making them among the few countries worldwide to follow such a model.

The adoption of strict liability entails a range of consequences — such as the risk of excessive content removal, impacts on freedom of expression, and a transformation in moderation dynamics. These are complex issues that demand deeper research and analysis to understand their scope, their effects, and the extent to which they are justified by any potential societal benefits.

In this context, the present study adopts a specific and underexplored angle: **the direct consequences of such regulatory change for the Judiciary itself.**

1.4. Impacts of Regulatory Choices on the Judiciary

Experiences in other sectors demonstrate how **regulatory changes can affect the workload of the Judiciary**, with implications for public finances and for effective access to justice.

In the Labor Courts, a 2021 ruling by the STF declared unconstitutional a provision from the labor reform that required the losing party to pay expert and legal fees regardless of income level (STF, 2021). As a result, this created an incentive for recipients of court fee waivers to file claims, leading to an increase of 378,000 lawsuits (Gercina, 2025). In the field of healthcare, the Government has for decades faced a high volume of litigation related to the supply of medicines not included in the SUS (Brazilian public health system) list. This has recently prompted an inter-federative agreement aimed at ensuring the financial sustainability of the public health system while alleviating the Judiciary’s burden from individual claims (Reis, 2024).

It is important to stress that an increase in litigation or judicial costs is not inherently negative. In many cases, growing litigation reflects greater rights awareness, broader access to justice, or the redress of historical inequalities. **This article does not seek to question the legitimacy of such outcomes, but rather to ask to what extent they are anticipated, measured, and accounted for at the point of regulatory decision-making. That is the core objective of this study.** It seems logical that the striking down of Article 19 of the Civil Rights Framework for the Internet and the adoption of strict liability for platforms could lead to a significant rise in legal claims for damages (Murta Goyanes, 2023). **But how significant would this increase be? How could its budgetary impacts be either mitigated or intensified by the STF's decision?**

Once again, we emphasize that we do not deny the importance of the normative debate on platform liability, particularly considering its potential impact on individual lives, democracy, and freedom of expression (Cruz, 2024), nor is our aim to discourage the use of the Judiciary as a forum for the assertion of rights.

By quantifying potential impacts on the Judiciary, our goal is **to support general repercussion rulings with more comprehensive, evidence-based assessments**, helping to anticipate unintended consequences and to ensure that the final regulatory model is both applicable and balanced, considering systemic effects on the justice system.

2. Methodological Summary

This analysis was designed to estimate the impact on the Judiciary’s public budget resulting from a potential change in the liability regime applied to digital platforms for third-party content — particularly the adoption of strict liability (as proposed by Justice Dias Toffoli) or an irrebuttable presumption of guilt of fault (as in Justice Fux’s opinion)².

The budgetary impact may arise through two main channels: (i) changes in the volume of lawsuits, and (ii) changes in their associated costs. Although more complex lawsuits could result in longer proceedings and involvement of more judicial instances, for the purposes of this analysis, we assume cost per case remains constant, based on the methodological premise that the STF’s decision in Cases 987 and 533 would primarily affect the volume, not the complexity. Therefore, the empirical challenge lies in assessing whether the ruling will alter the number of judicial claims brought before the courts.

To approximate causal effects, the identification strategy relied on a counterfactual scenario based on the current regime, starting from the hypothesis that, had the Civil Rights Framework for the Internet been implemented with a strict liability model, the volume of legal actions would have been higher. To test this, we applied the synthetic control method³ (Abadie & Gardeazabal, 2003; Abadie, Diamond & Hainmueller, 2010; Abadie, 2021).

Using actual judicial data, a counterfactual simulation was constructed by comparing the observed behavior of digital platforms with a “synthetic company” (referred to here as **Company S**). This company was composed of firms that operate directly with consumers and are subject to strict liability rules (e.g. product suppliers governed by the Brazilian Consumer Defense Code) but were not affected by the implementation of the Civil Rights Framework. This approach enabled an estimate, based on historical evidence, of how many additional lawsuits would have occurred under a regime without the liability limitations introduced by Article 19.

From this estimated difference, we projected the additional number of lawsuits that digital platforms could face between 2025 and 2029 if the STF modifies the current regime. Based on the average cost of a judicial proceeding, we also calculated the budgetary impact for the Judiciary under various scenarios. **The complete methodology, including databases and parameters used, is detailed at the end of the study.**

² As outlined in Footnote 1, although the proposals are grounded in distinct legal doctrines, we consider their practical effects to be equivalent. Accordingly, for methodological purposes, this study treats both opinions as functionally equivalent.

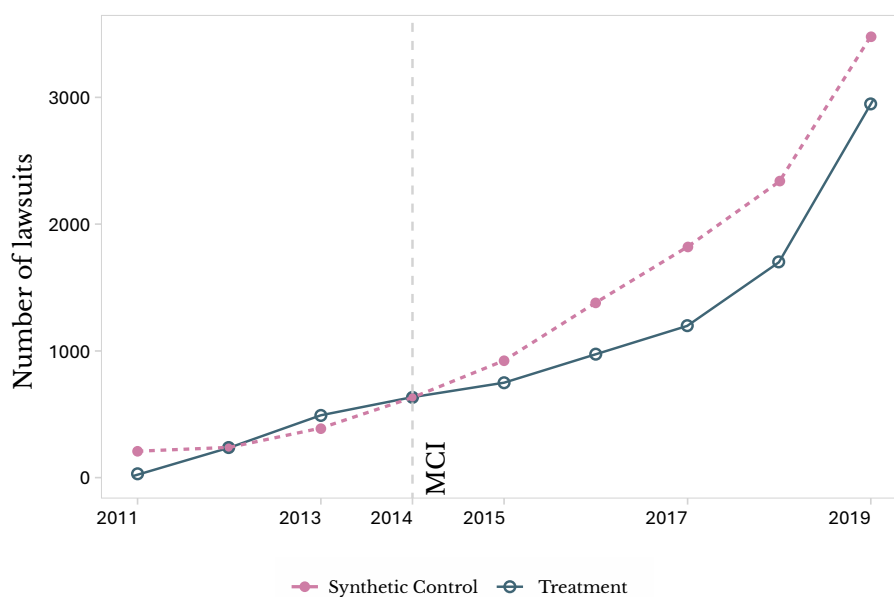
³ Synthetic control is a well-established technique for evaluating the impact of public and economic policies, as well as changes to the legal framework. The scenarios generated using this model should not be interpreted as forecasts, but rather as **conditional simulations designed to support evidence-based public decision-making.**

METHODOLOGY, SIMPLIFIED

- **Imagine the Civil Rights Framework for the Internet had never existed, and that since 2014, Brazil had adopted a different rule** — similar to the one currently under consideration by the STF.
- To understand how this might have changed things, we compared digital platforms with other companies that deal directly with the public and follow stricter liability rules — such as consumer-facing businesses. **This technique is called synthetic control** — it's like creating an alternate version of history, using real-world data and scientifically validated mathematical models.
- To carry out these calculations, we analyzed historical judicial data and court costs, while also factoring in other relevant variables — such as increased internet access and the emergence of new social networks. **With this simulation, we were able to estimate the additional number of lawsuits that might have emerged in the courts — and how much this could cost the public sector.**

3. Results

3.1. Statistical Effects – With or Without the Civil Rights Framework for the Internet

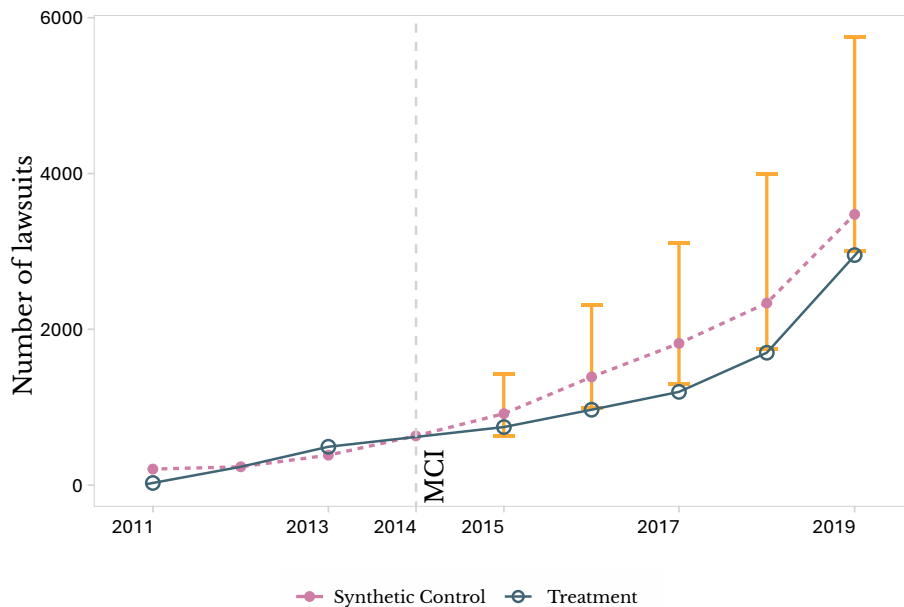


The pre-treatment period was defined as spanning from 2011 to 2014, and the weight construction for the synthetic control group was performed using the simplex method.

In the counterfactual analysis, it is estimated that if the Civil Rights Framework for the Internet (MCI) had not been enacted, the synthetic control group, referred to as **Company S**, would have experienced a higher volume of lawsuits. The figure below summarizes the results.

The pink curve displays the behavior of the synthetic control group before and after the treatment (the MCI). It is evident that, in the pre-treatment period, the synthetic control group closely mirrors the observed data for the actual company under treatment (**represented by the blue curve**). Considering the point estimate alone, the increase in the number of lawsuits — had the MCI not been enacted — would have reached approximately 51% by the third year.

The results above are statistically significant from the second-year post-treatment onwards. Confidence intervals were constructed based on Cattaneo, Feng, and Titiunik (2021), using a 95% confidence level, and are represented in the figure below.



According to the interval estimate, the upper bound reaches a **160% increase** in the number of lawsuits compared to the scenario with treatment.

In other words, the estimated increase in content removal lawsuits, should a strict liability regime be adopted, is 2.6 times the current volume.

3.2. Scenario Construction

Based on the results above, it is possible to construct scenarios illustrating the potential impact of the STF’s decision in Cases 533 and 987 on public expenditure related to the Judiciary. It is important to stress that these scenarios are not predictive, but exploratory and comparative, intended to map plausible trajectories grounded in empirical evidence and the counterfactual model.

To build the econometric scenarios, we first estimated the projected trend in the number of lawsuits against major companies (e.g. Meta/Facebook, YouTube, TikTok, X/Twitter) under current conditions — that is, assuming no STF ruling — for the 2025 to 2029 period. An ARIMA model (with order selected according to the information criterion AIC) was estimated for each time series of judicial claims across all companies in the sector.

In addition to the base-case projections for lawsuit volume, two key choices were made to construct the scenarios. The first refers to the magnitude of impact of the STF’s ruling. For that, two types of counterfactual scenarios were considered: an average increase and an upper-bound increase in the number of lawsuits, based on synthetic control model estimates.

Another premise used considers the rate of growth in the number of lawsuits, again with two variations:

- **MCI pace:** a year-on-year growth rate similar to that observed in the synthetic control counterfactual after the MCI’s enactment — i.e., simulating progressive effects as seen in 2015, 2016, and so on⁴;
- **MCI peak:** assumes the maximum annual increase estimated by the synthetic control model applies to every year. This stress-test model corresponds to the upper-bound estimate (Firpo & Possebom, 2018), and aims to replicate a litigation explosion from the outset, without initial mitigation mechanisms.

From these combinations, four scenarios were developed:

| Scenario | Description | Increase in number of lawsuits over five years | Estimated additional cost to the Judiciary (R\$ million) |
|---|---|--|--|
| Scenario 1 (average increase, MCI pace) | Gradual growth in lawsuit volume, mirroring the pace observed after the MCI came into effect. | 158,403 | 165.13 |
| Scenario 2 (average increase, MCI peak) | Annual lawsuit volume replicates the peak observed post-MCI, simulating an immediate litigation surge in 2025. | 243,476 | 250.88 |
| Scenario 3 (upper-bound increase, MCI pace) | Assumes high litigation levels, but with a gradual distribution over time. | 584,447 | 604.20 |
| Scenario 4 (upper-bound increase, MCI peak) | Highest possible volume of lawsuits from year one, without mitigation measures, repeating annually the worst-case scenario. | 754,683 | 777.62 |

⁴ That is, the number of lawsuits considering ARIMA models projections would be 22.36% higher in the first year following the change in the STF’s interpretation, 42.02% higher in the second year, 51.56% in the third, 37.35% in the fourth, and 17.99% in the fifth year, under the average estimator (or 91.48%, 137.09%, 159.82%, 135.6%, and 95.16%, respectively, under the upper-bound estimator)

The table above presents the results of the simulations under each of the four scenarios, in terms of the accumulated increase in lawsuits over a five-year period and the present value of the additional costs that such a rise in litigation would represent for the Judiciary.

Considering only these four scenarios, it is estimated that up to 754,000 additional lawsuits may be filed between 2025 and 2029, generating a potential cost to the Judiciary of up to R\$777.62 million.

4. Discussion Of Results

The findings are consistent with legal expert opinions, which suggest that an increase in litigation would result from the adoption of a regime of “automatic liability” for the platforms, in which the dynamics tend to encourage lawsuits, not only from individuals harmed by third-party publications, but also from users whose content is improperly taken down (Ramalho, 2024).

The legal thesis proposed by Justices Dias Toffoli and Luiz Fux outline various situations in which platforms would be held liable, thereby creating an incentive for claims for damages — **even before a formal complaint is lodged with the platform**. In Dias Toffoli’s opinion, these situations would include:

- | | | |
|---|---|---|
| <ul style="list-style-type: none"> • Inauthentic accounts • Copyright infringement • Content moderated, recommended, or promoted by the platform • Crimes against the Democratic Rule of Law • Acts of terrorism or preparatory acts • Incitement, inducement, or assistance in suicide • Racism | <ul style="list-style-type: none"> • Any form of violence against children, adolescents, or vulnerable persons • Any form of violence against women • Public health violations, such as obstructing or refusing to comply with health measures during a national public health emergency • Human trafficking • Incitement to or threats of physical or sexual violence | <ul style="list-style-type: none"> • Dissemination of demonstrably false or seriously misleading information inciting physical violence, threats to life, or violence against socially vulnerable groups or their members • Dissemination of demonstrably false or misleading information likely to undermine the fairness of an election or the integrity of the electoral process |
|---|---|---|

Although these categories are presented as exhaustive, it is important to note that **they are broadly formulated, allowing for significant interpretive discretion**.

This legal framework could foster the emergence of an “industry of compensation claims” (Ramalho, 2024), in **which litigation becomes an economically attractive tool for abusive claims aimed at securing financial compensation without requiring proof of fault**. Attention has also been drawn to the potential role of litigation services companies — similar to those operating in the civil aviation sector — which might encourage mass litigation by users whose content was removed (Ramalho, 2024).

“Litigating against tech companies could become even more profitable than starting a tech company” (Souza, in Ramalho, 2024).

In such a context, fraudulent tactics may emerge, such as the creation of allegedly fake profiles, the intentional posting of offensive content, and self-incrimination schemes, in which the content creator poses as the victim. These are examples of strategies likely to be employed by bad-faith litigants seeking unjustified financial redress — contributing further to the overburdening of the Judiciary (Batista, 2024).

4.1. Overload, Delays, and Access to Justice

An increase in litigation undermines the efficiency of judicial services (CIJMG, 2022). As noted by Justice Luís Roberto Barroso, a decline in the quality of judicial service frequently results in a higher rate of errors, which leads to contradictory rulings on the same legal issue and a disregard for precedents (CIJMG, 2022). A lack of consistency in precedents also contributes to the development of unstable and unpredictable case law, which in turn stimulates the multiplication of legal claims (Gimenes, 2024).

Data from the *Justiça em Números (Justice in Numbers)* report (National Council of Justice, 2024)

83.8 million

Pending legal cases in Brazil

35 million

New cases filed in 2024, of which 22 million originated at first instance

4 years and 5 months

Average time for a case to be resolved in the State Courts

Although the projected 750,000 additional lawsuits over five years may not appear statistically significant within the overall volume of cases in Brazil’s Judiciary, the 160% increase they represent is exponentially higher than the year-on-year growth observed between 2022 and 2023, which stood at 9.4% (CNJ, 2024).

It is also important to highlight the **complexity of such cases**. Compared to consumer rights litigation, **lawsuits concerning third-party online content typically involve more complex legal analysis, ranging from the balancing of fundamental rights to overlaps with criminal law** (such as in cases of alleged defamation). This point is aligned with Justice Luís Roberto Barroso’s opinion, who has stated that Brazilian judges are trained to decide individual cases, but not to “conduct systemic analyses” of the broader consequences of their decisions (Estadão Conteúdo, 2024).

This issue also **relates directly to one of the methodological limitations of the econometric study**, which assumes a fixed cost per case. If, however, these lawsuits are in fact more complex than typical consumer cases, it is reasonable to infer that **the total financial impact on the Judiciary may be underestimated, and actual costs may be even higher**.

Therefore, it is essential to contextualize these costs within the broader financial structure of the Judiciary. In 2023, expenditure on personnel and infrastructure necessary

to maintain the functioning of the Judiciary amounted to R\$132.8 billion, equivalent to 1.2% of Brazil's GDP (CNJ, 2024). This percentage is considerably higher than that of other emerging economies and developed countries, where judicial expenditure averages 0.5% and 0.3% of GDP, respectively (Tesouro Nacional, 2023).

Given this high structural expenditure by the Judiciary, **any additional budgetary pressure stemming from new sources of litigation is likely to worsen congestion and further deteriorate the quality of services provided.** As demonstrated above, the implementation of strict liability for platforms may result in additional costs of up to R\$777 million for the Judiciary in the most extreme scenario.

To illustrate the magnitude of the impact in its highest scenario:

- The total cost could be 485 times greater than the development cost of Victor, the AI system used by the STF to optimize evaluation of extraordinary appeal (REs) cases, automatically returning to lower instances the ones that already align with a general repercussion theme (Teixeira, 2018).
- With the maximum projected cost, the Judiciary could fund approximately 1,600 federal judges for one year (CJF, 2025) and 1,800 state judges (TJMG, 2025)⁵.

We reiterate that rising judicial costs should not be automatically condemned. In sectors such as healthcare, litigation is often used to ensure access to high-cost or non-standard treatments not incorporated into SUS, serving as a legitimate tool for the enforcement of fundamental rights (INAFF, 2025).

However, the phenomenon under analysis here is of a different nature: **the potential creation of incentives for a proliferation of private lawsuits against platforms, in disputes between private parties, over harm caused by third parties.** This type of litigation — often predatory — may not only result in high fiscal costs but may also compromise the effectiveness of the Judiciary itself by diverting resources away from legitimate cases to opportunistic disputes.

⁵ The estimates were based on baseline salary tables published on the official websites of the Federal Justice Council (CJF) and the Court of Justice of Minas Gerais (TJMG), excluding additional charges and benefits, which are variable.

4.2. Abusive litigation in Brazil

Predatory or abusive litigation consists of the use of the right to litigate that deviates or exceeds the limits of its specific social, legal, political or economic purpose, including in lawsuits aimed at specific parties (CNJ, 2024). **This practice is currently one of the serious problems of the Brazilian Judiciary, causing great losses and having a direct impact on the average processing time of cases** (Centro de Inteligência da Justiça de Minas Gerais, 2022).

According to data compiled by the Intelligence Centre of the Judiciary of Minas Gerais (CIJMG), the annual impact of predatory litigation exceeds R\$10 billion (CIJMG, 2022)⁶. In the State of São Paulo, estimates from the Monitoring Unit for Demand Patterns of the Judicial Inspectorate (NUMOPEDE) indicate that, between 2016 and 2021, abusive litigation generated approximately 337,000 lawsuits per year (NUMOPEDE, 2023; Leitão, 2025), causing an estimated loss of around R\$16.7 billion over the period and R\$2.7 billion annually to the public sector (NUMOPEDE, 2023).

The “Abusive Litigation Industry” as a Profitable Business: in the state of Mato Grosso do Sul, according to data collected by the Intelligence Centre of the TJMS, between January 2015 and August 2021, 50,000 banking-related lawsuits were filed. Of these, approximately 80% (39,704 cases) were brought by the same lawyer (TJMS Intelligence Centre, 2022). The estimated cost to the public sector in these cases was R\$148 million, especially considering that 100% of the claims were supported by legal aid (Centro de Inteligência do TJMS, 2022).

The recognition of so-called presumed damages for emotional distress, which eliminates the requirement to prove harm (Lins; Belmonte, 2024), is also a factor that encourages abusive litigation. Presumed damages for emotional distress (or “in re ipsa”) refers to situations in which no pecuniary loss needs to be demonstrated, since the harm is assumed to be a logical and automatic consequence of the unlawful act. Common examples include unlawful inclusion in credit default registers or lost luggage by airlines. In such cases, the Judiciary generally holds that unlawful act alone is sufficient to presume a moral injury warranting compensation.

Thus far, **none of the opinions presented has explicitly proposed presumed damages for emotional distress** - those of Toffoli, Fux, and even Barroso present no clarity regarding how damage must be proven in either strict or fault-based liability regimes. The risk is therefore jurisprudential: if local courts (particularly **small claims courts**) begin to presume damages for emotional distress in cases involving offensive content, fake news, or false profiles, based on the notion of “undue exposure”, this could result in a de facto system of presumed damages, even if not enshrined in legal doctrine. This is not a hypothetical risk: the STJ, prior to the Civil Rights Framework for the Internet, had recognized presumed damages in dozens of rulings⁷.

⁶ The estimate is based on the average procedural cost, calculated according to parameters established by the Institute for Applied Economic Research (Ipea), and assumes a minimum incidence of 30% of civil cases involving abuse of the right of action (CIJMG, 2022). The analysis focuses on two of the most common categories of cases in the State Courts in 2020: supplier liability / moral damages under consumer law and obligations / types of contracts (Vieira et al., 2023).

⁷ See AREsp 990096, REsp 1637026 and AREsp 166135, STJ for examples.

It is important to acknowledge that the Brazilian Judiciary is aware of the abusive litigation issue. In October 2024, the CNJ adopted Recommendation No. 159/2024, which provides guidelines for judges to help them identify and order inquiries in suspected cases of abusive litigation (CNJ, 2024). In March 2025, the Special Court of the STJ ruled that judges may, in a reasoned and proportional manner, require parties suspected of acting in bad faith to amend their initial claim by providing documents that prove their legitimate interest and the authenticity of the claim (STJ, 2025). This understanding was established under the repetitive appeal procedure of Theme 1,198 and must be followed by all courts nationwide (STJ, 2025).

There is, therefore, an institutional mobilization to address abusive litigation, with the aim of preserving legitimate access to justice and ensuring the quality of judicial services. It would be reasonable for this institutional concern to be taken into account — or at least considered — as part of the broader context in the STF’s ruling.

5. Scenario Analysis and Assessment

Not all increases in judicial costs should be avoided. Litigation can be a legitimate means of addressing abuses, protecting rights, and tackling serious issues such as disinformation and hate speech.

However, judicial costs are not the only factor at stake. Studies have shown that models such as strict liability or broad *notice and takedown regimes*, while often well-intentioned, may result in significant side effects — including over-removal of content and the expansion of platform discretion over what may or may not circulate online (DG Connect, 2020). **This is undoubtedly a field marked by tensions, and the aim of this study is not to take a position, but rather to contribute to a more informed debate on a specific dimension of the issue.**

Based on the discussion of results, our preliminary assessment is that combining (i) broad grounds for strict liability, (ii) low barriers to initiating lawsuits, (iii) no requirement for prior notice to platforms, and (iv) the potential interpretation of presumed moral damages, **appears to form an explosive combination for abusive litigation, possibly with dynamics unseen in any other sector in Brazil.**

The construction of the scenarios in this study was guided by two central variables: (i) the degree of liability imposed on platforms; and (ii) the speed at which the effects of the decision propagate through the justice system. These two axes correspond, respectively, to the normative content of the ruling to be adopted by the STF, and to the way this new legal framework may be interpreted and implemented by various actors — including legal practitioners, lawyers, judges, platforms, and citizens.

From the discussion of results, the econometric analysis, and the review of relevant literature, we have sought to map out the scenarios by associating each with plausible regulatory contexts — even though (i) these scenarios do not naturally arise from the econometric model alone, but rather from a combination of secondary data and interpretation of the opinions issued so far, and (ii) the proposed legal thesis may also fit intermediate scenarios, that is, between the four primary ones discussed.

These scenarios are not presented as “futurology”, but as tools to enrich the regulatory debate: although they are preliminary projections, which may prompt further studies, the likelihood of each scenario will vary depending on the normative content of the STF’s final ruling:

| Scenario | Increase in lawsuits over 5 years | Estimated cost of increase (R\$ million) | Assessment and Commentary |
|--|-----------------------------------|--|--|
| Scenario 1 (average increase, MCI pace) | 158,403 | 165.13 | <p>Gradual growth with moderate impact</p> <p>This scenario is most likely if the STF establishes a new binding precedent of fault-based liability (i.e., liability for failure to comply with a court order or valid notification), but with limitations on its scope. Modulation could be achieved through mechanisms such as limiting notice and takedown to specific, low-discretion categories (e.g., graphic content, explicit violence), establishing minimum criteria for valid notifications, or creating mechanisms to assess actual harm in cases of non-compliance — helping to avoid abrupt increases driven by abusive litigation. In this context, case growth would be gradual and aligned with patterns observed after the Civil Rights Framework was enacted.</p> |
| Scenario 2 (average increase, MCI peak) | 243,476 | 250.88 | <p>Immediate surge with moderate impact</p> <p>This scenario becomes more likely if the STF establishes a new binding precedent of fault-based liability doctrine but leaves wide interpretive margins for judicial discretion and potential recognition of presumed moral damages. This could happen, for example, if the notice and takedown rules are broad, there are no clear criteria for notification validity, and if the assessment of moral damages is left open to judicial interpretation.</p> <p>Even without a structural shift in the liability regime, incentives for abusive litigation would be high, causing a sudden, yet limited increase.</p> |
| Scenario 3 (upper bound, MCI pace) | 584,447 | 604.20 | <p>Gradual growth with high impact</p> <p>This scenario is most likely if the STF adopts a strict liability legal precedent (i.e., automatic liability, regardless of notification), but the effects of the decision are mitigated by short-term regulatory actions.</p> <p>These may include incorporating minimum requirements for establishing harm or proof of prior attempts at extrajudicial resolution directly into the ruling, or legislative actions introducing further limits to civil liability. In this case, the impact would be high, but such mechanisms would help slow the onset of abusive litigation.</p> |
| Scenario 4 (upper bound, MCI peak) | 754,683 | 777.62 | <p>Immediate surge with high impact</p> <p>This is the most adverse scenario, which could materialize if the STF adopts a broad strict liability precedent, without limiting its scope or providing clear guidance for its application in concrete cases. This would create strong and immediate incentives for mass litigation, including coordinated action by specialized litigation firms, as already observed in other sectors.</p> |

In summary, this assessment identifies the following scenarios:

If the **position of Justices Toffoli and Fux** prevails, advocating a broad strict liability regime with minimal limitation of applicable cases, **the risk of mass judicialization increases significantly, approaching Scenario 4, with an estimated impact of up to R\$777 million.**

Conversely, if an intermediate position is adopted, **such as the one proposed by Justice Barroso** — which maintains fault-based liability for non-compliance with court orders and establishes specific criteria for *notice and takedown* — the most likely outcome would be **Scenario 2**, with an immediate surge but moderate financial impact (up to R\$250 million), which could be further reduced toward **Scenario 1** (up to R\$165 million), depending on the level of detail in the ruling and how it addresses the risk of abusive litigation.

Lastly, if another Justice proposes a strict liability framework but with extensive temporal limitations on the ruling's effects, **the outcome will likely align with Scenario 3** (with a projected cost of up to R\$604 million).

The main message of this study is that any change to the liability regime of digital platforms must also consider its impact on the justice system. For balanced decision-making, it is essential to deepen the technical debate with data-driven analysis — enabling both the STF and Congress to mitigate side effects without compromising the protection of fundamental rights.

Possible Regulatory Alternatives

Although the primary objective of this study is to quantify the potential increase in judicial costs associated with the adoption of a strict liability regime for digital platforms in the context of STF Cases 987 and 533, it is worth presenting some non-exclusive regulatory alternatives proposed by legal scholars in recent months:

- **Shifting the the Burden of Proof.** According to Professor Osny da Silva Filho (Fundação Getulio Vargas), evidentiary difficulty alone is not sufficient to justify the application of strict liability. Instead, Article 373, § 1 of the Brazilian Civil Procedure Code (CPC/15) could be applied, allowing for the **shifting the the burden of proof in cases of “impossibility” or “excessive difficulty” in producing evidence** (Silva Filho, 2025).
- **Exception-Based Regime.** One alternative under discussion involves the creation of new exceptions to Article 19, expanding on the scope of Article 21 of the MCI (Cruz, 2024). In this case, the STF could apply the technique of interpretation in accordance with the Federal Constitution⁸, introducing **exceptions to the judicial notice and takedown rule**. However, to avoid legal uncertainty and excessive content removal, **such exceptions must be objective and based on clearly unlawful content**.
- **Systemic and Procedural Obligations.** As highlighted in the introduction, the European Union’s Digital Services Act (DSA) opted not to alter fault-based liability model already adopted by Member States. In fact, the Directorate-General for Communications Networks, Content and Technology (DG Connect) **explicitly rejected a strict liability approach, citing risks to freedom of expression and the over-removal of content** (DG Connect, 2020). However, the DSA links platform liability to systemic failures, meaning that platforms are not held liable simply for the existence of harmful content, but rather for failing to adopt procedural obligations that prevent such content from persisting on their services.

⁸ The argument in favor of interpreting Article 19 of the MCI in accordance with the Constitution has been put forward by several stakeholders in the case records of STF Cases 987 and 533 and gained momentum from 2023 onwards. These actors propose interpretive adjustments to align the application of the provision with constitutional demands, considering that, in its literal form, the article may generate incompatibilities in specific contexts. These positions involve an innovative interpretative approach, giving the provision a meaning adapted to current realities.

For a more in-depth discussion on interpretation in accordance with the Constitution, see SILVA, Virgílio Afonso da. Interpretação conforme a constituição: entre a trivialidade e a centralização judicial. *Revista de Direito Constitucional e Internacional*, vol. 2, no. 1, p. 191–210, jan./jun. 2006. This article served as a methodological reference for this section.

6. Conclusion

This study analyzed the economic impact of the Supreme Federal Court (STF)'s upcoming decision in Cases 987 and 533, in which the Justices will redefine the liability regime applicable to digital platforms. The aim of the research was to estimate the budgetary impact that would result from the potential adoption of a strict liability model for digital platforms on the Brazilian Judiciary's public finances.

Should the current model be replaced by strict liability, it is estimated that the number of legal claims before the Judiciary could increase by up to 2.6 times, representing more than 750,000 additional lawsuits over a five-year period.

While this volume may seem modest when compared to the over 40 million legal proceedings initiated annually in Brazil, **these cases are qualitatively different:** they typically involve complex disputes, balancing of fundamental rights, digital evidence, and may reach multiple levels of jurisdiction. In other words, the issue is not merely one of volume, but also of **prioritization, institutional capacity, and overall effectiveness of the Judiciary as a whole**, since a sudden surge in highly complex and specialized litigation could **divert the Judiciary's focus from other pressing social issues.**

In terms of cost, this increase represents a **potential fiscal impact of over R\$770 million.** In a context where the Judiciary already constitutes a significant expenditure for the State, any additional financial burden resulting from new sources of litigation is likely to **worsen system congestion, undermine service quality, and heighten public scrutiny over judicial spending.**

Understanding these impacts is crucial to ensure that the Court's decision does not produce adverse side effects that compromise the very effectiveness of justice. The review of the liability model established in Article 19 of the MCI must therefore be carefully considered, considering not only the constitutional principles at stake, but also the systemic implications of the ruling for the health of the justice system and its service to society.

It is important to emphasize that the figures presented throughout this study refer exclusively to the **direct costs borne by the courts. They do not include the full costs associated with litigation arising from the improper attribution of liability to providers,** such as the litigation expenses incurred by the parties. Moreover, **these figures do not account for the broader social impacts of a potential increase in litigation driven by inappropriate changes to the legal framework established by the MCI,** such as the risk of impunity for users who, in fact, produce and disseminate unlawful content, or threats to freedom of expression — issues that also warrant careful examination.

More than a study on civil liability in the digital environment, this research also serves as an invitation to broaden the scope of general-impact rulings, so that their assessment goes beyond **case law** to include their systemic costs for the Judiciary itself and the externalities they may generate. We hope to continue contributing to this debate.

7. Direction for future studies

Based on the findings and discussions of this study, as well as its methodological limitations, we highlight the following directions for future research that may continue and improve upon this work:

- **Use of historical series:** This study adopted a fixed counterfactual scenario based on observed behavior, without accounting for how agents may alter their behavior in response to regulatory changes — the so-called “Lucas’s critique”. Future research could employ alternative models to simulate changes in content moderation policies and explore how these might amplify or mitigate the effects estimated here, as well as investigate broader impacts on social welfare.
- **Indirect costs of litigation for the justice system:** The analysis focused on direct costs; however, indirect costs were not included and may have significant effects — such as delays in other judicial areas and impacts on legal precedents across fields like traditional media or consumer law.
- **Qualitative analysis of perceptions among judges and legal professionals:** Future research could conduct interviews and focus groups to examine how judges, public defenders, lawyers, and court staff perceive the practical effects of strict liability, including the risks of overload and the impact on decision quality.
- **Impacts on consumers and content creators:** This study focused on impacts on the Judiciary. Future research could explore how different liability regimes affect internet users economically, considering compliance costs, barriers to entry, and redistributive effects.
- **International comparisons focused on enforcement:** Countries that have undertaken significant reforms in their content moderation frameworks, such as Germany, may offer valuable insights for understanding the likely effects of similar measures in Brazil.
- **Discussion of regulatory alternatives:** While some normative alternatives were outlined, an in-depth and exhaustive analysis of these regulatory regimes was beyond the scope of this study. A detailed assessment of the compatibility and practical feasibility of alternative regulatory arrangements in the Brazilian context represents a promising avenue for further research.
- **Empirical effects of liability regime changes on platform behavior:** This study aimed to forecast the budgetary and institutional costs of adopting a strict liability regime for platforms but did not seek to predict the behavioral effects of implementing such a model. Future research could address these behavioral effects using law and economics approaches or comparative analyses of countries with different liability frameworks.

References

ABADIE, Alberto; DIAMOND, Alexis; HAINMUJELLER, Jens. Synthetic Control Methods for Comparative Case Studies: estimating the effect of californias tobacco control program. **Journal of the American Statistical Association**, [S.L.], v. 105, n. 490, p. 493-505, jun. 2010. Informa UK Limited. <http://dx.doi.org/10.1198/jasa.2009.ap08746>. Available at: <https://economics.mit.edu/sites/default/files/publications/Synthetic%20Control%20Methods.pdf>. Access in: 07 apr. 2024.

ABADIE, Alberto; GARDEAZABAL, Javier. The Economic Costs of Conflict: a case study of the basque country. **American Economic Review**, [S.L.], v. 93, n. 1, p. 113-132, 1 fev. 2003. American Economic Association. <http://dx.doi.org/10.1257/00028280321455188>. Available at: <https://economics.mit.edu/sites/default/files/publications/The%20Economic%20Costs%20of%20Conflict.pdf>. Access in: 07 apr. 2025.

ABADIE, Alberto. Using Synthetic Controls: feasibility, data requirements, and methodological aspects. **Journal Of Economic Literature**, [S.L.], v. 59, n. 2, p. 391-425, 1 jun. 2021. American Economic Association. <http://dx.doi.org/10.1257/jel.20191450>. Available at: <https://www.aeaweb.org/content/file?id=12409>. Access in: 07 apr. 2025.

ABEAR - ASSOCIAÇÃO BRASILEIRA DAS EMPRESAS AÉREAS. **Desde 2020, número de processos contra companhias aéreas aumentou, em média, 60% ao ano. 2024.** Available at: <https://www.abear.com.br/imprensa/agencia-abear/noticias/desde-2020-numero-de-processos-contra-companhias-aereas-aumentou-em-media-60-ao-ano/>. Access in: 03 apr. 2025.

ABEAR - ASSOCIAÇÃO BRASILEIRA DAS EMPRESAS AÉREAS. **Justiça Federal desativa 37 "sites abutres", que estimulam o excesso de judicialização no setor aéreo. 2022.** Available at: <https://www.abear.com.br/imprensa/agencia-abear/noticias/justica-federal-desativa-37-sites-abutres-que-estimulam-o-excesso-de-judicializacao-no-setor-aereo/>. Access in: 03 apr. 2025.

ARTICLE 19. **Islamic Republic of Iran: Computer Crimes Law.** 2012. Available at: <https://www.article19.org/data/files/medialibrary/2921/12-01-30-FINAL--iran-WEB%5B4%5D.pdf>. Access in: 13 mar. 2025.

BATISTA, Rafael. **O futuro das plataformas digitais no Brasil.** 2024. Available at: <https://www.jota.info/artigos/o-futuro-das-plataformas-digitais-no-brasil>. Access in: 26 mar. 2025.

BRASIL. Superior Tribunal de Justiça. Recurso Especial nº 1986323. Brasília, DF, 06 de setembro de 2022. **Diário de Justiça Eletrônico.** [S.I.], 13 set. 2022. Available at: <https://scon.stj.jus.br/SCON/pesquisar.jsp?pesquisaAmigavel=+2021%2F0303507-3&b=ACOR&tp=T&numDocsPagina=10&i=1&O=&ref=&processo=&ementa=&a=&filtroPorNota=&orgao=&relator=&uf=&classe=&juizo=&data=&dtpb=&dtde=&operador=e&thesaurus=JURIDICO&p=true&livre=2021%2F0303507-3>. Access in: 04 apr. 2025.

BRASIL. **Recomendação Nº 159 de 23/10/2024.** [S.I.], Available at: <https://atos.cnj.jus.br/atos/detalhar/5822>. Access in: 25 mar. 2025.

CATTANEO, Matias D.; FENG, Yingjie; PALOMBA, Filippo; TITIUNIK, Rocio. Scpi: uncertainty quantification for synthetic control methods. *Arxiv*, [S.L.], p. 1-41, 2022. **ArXiv.** <http://dx.doi.org/10.48550/ARXIV.2202.05984>. Available at: <https://arxiv.org/abs/2202.05984>. Access in: 07 apr. 2025.

Centro de Inteligência da Justiça de Minas Gerais. **Nota Técnica CIJMG nº 01/2022.** 2022. Available at: https://www.tjmg.jus.br/data/files/49/80/E5/70/DF212810B8FE-0B185ECB08A8/NT_01_2022%20_1_%20_1_.pdf. Access in: 04 apr. 2025.

Centro de Inteligência do Tribunal de Justiça do Mato Grosso do Sul. **Nota Técnica 01/2022.** 2022. Available at: <https://www.tjms.jus.br/storage/cms-arquivos/62a318e6cbe7019b873fa0a4d8d58599.pdf>. Access in: 25 mar. 2025.

CHOI, Hyunyoung; VARIAN, Hal. Predicting the Present with Google Trends. *Economic Record*, [S.L.], v. 88, n. 1, p. 2-9, jun. 2012. Wiley. <http://dx.doi.org/10.1111/j.1475-4932.2012.00809.x>. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id

CJF – Conselho da Justiça Federal. **Tabela de remuneração de magistrados federais.** 2025. Available at: <https://www.cjf.jus.br/cjf/transparencia-publica-1/informacoes-sobre-pessoal/estrutura-remuneratoria/2025/tabela-de-remuneracao-de-senvidores>. Access in: 04 apr. 2025.

Conselho Nacional de Justiça. **Justiça em Números 2024.** Brasília: Conselho Nacional de Justiça, 2024. Available at: <https://www.cnj.jus.br/wp-content/uploads/2025/02/justica-em-numeros-2024.pdf>. Access in: 24 mar. 2025.

CRUZ, Francisco Brito. Mudanças na internet demandam reinterpretção do Marco Civil pelo STF. **Folha de S. Paulo.** São Paulo, 19 set. 2024. Available at: <https://www1.folha.uol.com.br/ilustrissima/2024/09/mudancas-na-internet-demandam-reinterpretacao-do-marco-civil-pelo-stf.shtml>. Access in: 31 mar. 2025.

Directorate-General for Communications Networks, Content and Technology. **Digital Services Act: Questions and Answers.** 2024. Available at: <https://digital-strategy.ec.europa.eu/en/faqs/digital-services-act-questions-and-answers>. Access in: 21 março 2025.

Directorate-General for Communications Networks, Content and Technology. **Impact Assessment of the Digital Services Act.** 2020. Available at: <https://digital-strategy.ec.europa.eu/en/library/impact-assessment-digital-services-act>. Access in: 21 março 2025.

ESTADÃO CONTEÚDO. **Barroso: Judiciário no Brasil tem papel diferente do que no resto do mundo.** 2024. Available at: <https://noticias.uol.com.br/ultimas-noticias/agencia-estado/2024/11/21/barroso-judiciario-no-brasil-tem-papel-diferente-do-que-no-resto-do-mundo.htm>. Access in: 27 mar. 2025.

FIRO, Sérgio, e POSSEBOM, Vitor. **"Synthetic Control Method: Inference, Sensitivity Analysis and Confidence Sets"** *Journal of Causal Inference*, vol. 6, no. 2, 2018, <https://doi.org/10.1515/jci-2016-0026>. Access in: 27 mar. 2025.

GERCINA, Cristiane. Justiça do Trabalho recebe 2 milhões de novas ações em 2024, recorde após reforma trabalhista. **Folha de S. Paulo.** São Paulo, fev. 2025. Available at: <https://www1.folha.uol.com.br/mercado/2025/02/justica--do-trabalho-recebe-2-milhoes-de-novas-acoes-em-2024-recorde-apos-reforma-trabalhista.shtml>. Access in: 03 apr. 2025.

GIMENES, José Jácomo. **República de processos, uma tragédia nacional em andamento.** 2024. Available at: <https://www.jota.info/artigos/republica-de-processos-uma-tragedia-nacional-em-andamento>. Access in: 26 mar. 2025.

INAFF. Número de judicialização na saúde registra aumento. 2025. Available at: <https://www.inaff.org.br/noticias/numero-de-judicializacao-na-saude-registra-aumento/#:~:text=Os%20dados%2C%20que%20s%C3%A3o%20do,16%25%20entre%202022%20e%202023>. Access in: 24 mar. 2025.

INGIZZA, Carolina; CARVALHO, Mirielle. **Por que o número de processos contra companhias aéreas é tão alto no Brasil.** 2024. Available at: <https://www.jota.info/justica/por-que-o-numero-de-processos-contra-companhias-aereas-e-tao-alto-no-brasil>. Access in: 25 mar. 2025.

LEITÃO, Matheus. **A litigância predatória afeta economia e os negócios, diz especialista.** Available at: https://veja.abril.com.br/coluna/matheus-leitao/a-litigancia-predatoria-afeta-economia-e-os-negocios-diz-especialista#-google_vignette. Access in: 25 mar. 2025.

LINS, Julia Vieira de Castro; BELMONTE, Renata Martins. **Litigância predatória e o custo da judicialização no setor aéreo brasileiro.** 2024. Available at: <https://www.jota.info/artigos/litigancia-predatoria-e-o-custo-da-judicializacao--no-setor-aereo-brasileiro>. Access in: 25 mar. 2025.

LUCAS, Robert E.. Econometric policy evaluation: a critique. **Carnegie-Rochester Conference Series On Public Policy**, [S.L.], v.1, p. 19-46, jan. 1976. Elsevier BV. [http://dx.doi.org/10.1016/s0167-2231\(76\)80003-6](http://dx.doi.org/10.1016/s0167-2231(76)80003-6). Available at: <https://www.sciencedirect.com/science/article/abs/pii/S0167223176800036>. Access in: 07 apr. 2025.

MELLO, Patrícia Campos. Países discutem responsabilização de bigtechs, mas Brasil arrisca ser "jabuticaba". **Folha de S. Paulo. São Paulo.** 08 dez. 2024. Available at: <https://www1.folha.uol.com.br/poder/2024/12/paises-discutem-mais-responsabilidade-para-big-techs-mas-brasil-se-arrisca-a-ser-jabuticaba.shtml>. Access in: 04 apr. 2025.

MIRAGEM, Bruno. **Responsabilidade Civil - 2ª Edição** 2021. 2. ed. Rio de Janeiro: Forense, 2021. E-book. p.67. ISBN 9788530994228. Available at: <https://integrada.minhabiblioteca.com.br/reader/books/9788530994228/>. Access in: 12 mar. 2025.

MOYNIHAN, Harriet; PATEL, Champa. **Restrictions on online freedom of expression in China:** the domestic, regional and international implications of china's policies and practices. The domestic, regional and international implications of China's policies and practices. 2021. Available at: <https://www.chathamhouse.org/sites/default/files/2021-03/2021-03-17-restrictions-online-freedom-expression-china-moynihan-patel.pdf>. Access in: 13 mar. 2025.

MURTA GOYANES ADVOGADOS. **Manifestação - MercadoLivre.com**. Available at: <https://redir.stj.jus.br/estfvisualizadorpub/jsp/consultarprocessoeletronico/ConsultarProcessoEletronico.jsf?seqobjetoincidente=5160549>. Access in: 07 apr. 2025.

NUMOPEDE - Núcleo de Monitoramento de Perfis de Demandas. **Reconhecimento de Litigância Predatória**. 2023. Available at: <https://api.tjsp.jus.br/Handlers/Handler/FileFetch.ashx?codigo=151470>. Access in: 25 mar. 2025.

RAMALHO, Renan. Censura proposta por Toffoli favorece indústria de indenizações contra redes sociais. **Gazeta do Povo**. Curitiba. 10 dez. 2024. Available at: <https://www.gazetadopovo.com.br/vida-e-cidadania/censura-proposta--por-toffoli-favorece-industria-de-indenizacoes-contr-redes-sociais/>. Access in: 03 apr. 2025.

RAMOS, P. H. et al. Interesses em Jogo no STF: Mapeando a Disputa pelo Marco Civil da Internet. Radar Reglab, n. 1. São Paulo: Reglab, 2024.

REIS, Nadja Alves dos. **Judicialização: no STF**, ministra Nísia afirma: “esse é um marco para o Brasil e para o SUS”. 2024. Available at: <https://www.gov.br/saude/pt-br/assuntos/noticias/2024/outubro/judicializacao-no-stf-ministra-nisia-afirma-esse-e-um-marco-para-o-brasil-e-para-o-sus>. Access in: 18 mar. 2025.

RESENDE, Guilherme Mendes (ed.). Mercados de Plataformas Digitais (EDIÇÃO REVISTA E ATUALIZADA). Cadernos do Cade, [S.L.], p. 1-278, 2023. Cade. <http://dx.doi.org/10.52896/dee.cc2.023>. Available at: https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos--do-cade/Caderno_Plataformas-Digitais_Atualizado_29.08.pdf. Access in: 02 apr. 2025.

SILVA FILHO, Osny da. **Quatro cautelas para o julgamento do artigo 19**. 2025. Available at: <https://portal.fgv.br/artigos/quatro-cautelas-para-o-julgamento-do-artigo-19>. Access in: 01 apr. 2025.

Superior Tribunal de Justiça. **Corte Especial decide em repetitivo que juiz pode exigir documentos para coibir litigância abusiva**. 2025. Available at: <https://www.stj.jus.br/sites/porta/p/Paginas/Comunicacao/Noticias/2025/20032025-Corte-Especial-decide-em-repetitivo-que-juiz-pode-exigir-documentos-para-coibir-litigancia-abusiva.aspx#:~:text=A%20litig%C3%A2ncia%20abusiva%20ocorre%2C%20por%20o%20livre%20dessa%20press%C3%A3o%20processual>. Access in: 25 mar. 2025.

Supremo Tribunal Federal. **STF derruba normas da Reforma Trabalhista que restringiam acesso gratuito à Justiça do Trabalho**. 2021. Available at: <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=475159&ori=1>. Access in: 04 apr. 2025.

TEFFÉ, Chiara Spadaccini de. **Moderação de conteúdo e responsabilidade civil em plataformas digitais: um olhar atual**. 2024. Available at: <https://itsrio.org/pt/publicacoes/moderacao-de-conteudo-e-responsabilidade-civil-em-plataformas-digitais-um-olhar-atual-2/>. Access in: 04 apr. 2025.

TEFFÉ, Chiara Spadaccini de; SOUZA, Carlos Affonso. **Moderação de conteúdo e responsabilidade civil em plataformas digitais: um olhar sobre as experiências brasileira, estadunidense e europeia**. In: Joyceane Bezerra de Menezes, Fernanda Nunes Barbosa. (Org.). A prioridade da pessoa humana no Direito Civil-Constitucional: estudos em homenagem a Maria Celina Bodin de Moraes. 1.ed. Foco, 2024, p. 25-37.

TEIXEIRA, Matheus. **STF investe em inteligência artificial para dar celeridade a processos**. 2018. Available at: <https://www.jota.info/coberturas-especiais/inova-e-acao/stf-aposta-inteligencia-artificial-celeridade-processos>. Access in: 03 apr. 2025.

Tesouro Nacional. **Despesa por Função do Governo Geral** – Resultados de 2023: classificação cofog. classification of functions of government. Classificação COFOG – Classification of Functions of Government. 2025. Available at: <https://tesourotransparente.gov.br/publicacoes/cofog-despesas-por-funcao--do-governo-geral/2023/114>. Access in: 07 apr. 2025.

TJMG - Tribunal de Justiça do Estado de Minas Gerais. **Anexo III - C) Estrutura remuneratória - Membros da Magistratura**. 2025. Available at: <https://www8.tjmg.jus.br/transparencia/relatorios/membrosMagistratura.jsf>. Access in: 04 apr. 2025.

VIEIRA, Mônica Silveira; SANTOS, Daniel Geraldo Oliveira; ASSUNÇÃO, Rafaela Costa da Rocha. **Litigância predatória consome anualmente mais de R\$ 25 bilhões dos cofres públicos**. 2023. Available at: <https://www.conjur.com.br/2023-out-31/opiniao-litigancia-predatoria-consome-25-bilhoes/>. Access in: 04 apr. 2025.

WANG, Jufang. **Platform Responsibility with Chinese Characteristics**. 2022. Available at: https://digitalplanet.tufts.edu/wp-content/uploads/2023/02/DD-Report_1-Jufang-Wang-11.30.22.pdf. Access in: 13 mar. 2025.

Reglab Methodology Annex

POLICY BRIEF

AUTHORSHIP: Pedro Henrique Ramos, João Ricardo Costa Filho e Daniela Naomi Shimabukuro Nomura

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|-----------------------------------|--|
| <p>Title</p> | <p>The Price of Moderation: Impacts on the Judiciary and the Debate on the Supreme Federal Court’s Review of the Brazilian Civil Rights Framework for the Internet.</p> |
| <p>Research Question</p> | <p>What is the projected economic impact of the Federal Supreme Court’s decision in Case 987 on the Brazilian judiciary, considering the expected increase in lawsuits against digital platforms?</p> |
| <p>Methodology Summary</p> | <p>A synthetic control model was employed to estimate the counterfactual effect of the STF’s decision in Case 987, based on projections of the number of legal cases in selected state courts using ARIMA models. The present value of the total cost associated with the projected increase in lawsuits was calculated under four distinct scenarios.</p> |
| <p>Data Collection</p> | <ul style="list-style-type: none"> • Primary data: Data was collected between 11 and 14 March 2025, including Google Trends search volumes and stock prices and trading volumes. In parallel, the number of legal cases filed in the selected state courts was gathered and aggregated to form the dependent variable for the model. Additional data included the budget of the São Paulo Court of Justice (TJSP) as stated in the state government’s annual budget law (LOA), and the number of first-instance judicial decisions in 2024. These elements complemented the empirical dataset. • Secondary data: A comprehensive documentary review was also conducted to contextualize the findings from the synthetic control analysis. Sources included academic papers, news articles, opinion pieces, official documents published by public bodies (e.g., the CNJ’s annual <i>Justice in Numbers</i> report), and reports from organizations such as Chatham House and Article 19 on content moderation and freedom of expression. These materials were used to contextualize the econometric findings. |
| <p>Data Analysis</p> | <p>A counterfactual scenario was developed based on a fictitious company (“Company S”). Initially, data from companies such as Facebook/Meta, Twitter/X, and Google (YouTube) were considered, although the latter two were ultimately excluded, focusing instead on available data from Facebook. The approach mirrors the logic of randomized controlled trials:</p> <p>one control group (impacted by the Civil Rights Framework for the Internet) and one treatment group (where the treatment is defined as the implementation of Article 19 of the Framework). In the case of the synthetic control model, however, the control group is not merely sampled but synthetically constructed. The following state courts were included: São Paulo (TJSP), Minas Gerais (TJMG), Rio de Janeiro (TJRJ), Bahia (TJBA), Paraná (TJPR), and Rio Grande do Sul (TJRS).</p> <p>To construct “Company S”, the following companies were considered: Bradesco, Itaú, Santander, Latam, Magazine Luiza, Amazon, Lojas Renner, and Casas Bahia. The aim was to select companies that, while not directly affected by the Civil Rights Framework for the Internet, maintain regular interactions with end consumers. For the construction of the synthetic control group, in addition to the number of legal claims involving these companies, certain characteristics were also incorporated. These included Google search trends (Google Trends), stock prices in US dollars, and trading volumes. All empirical data used in the analysis were annual. Google Trends data may anticipate economic indicators (Choi; Varian, 2012) and can be useful in revealing decisions by agents that are often not directly observable.</p> |

Data Analysis

In this study, the term used in the searches combined the company name in lowercase with the word “ouvidoria”, for instance, “facebook ouvidoria” or “bradesco ouvidoria”. Data collection was limited to searches conducted within Brazil.

The inclusion of this variable is exploratory in nature, intended to capture expressions of dissatisfaction with the company that may precede the initiation of legal proceedings, even if it cannot serve as a direct causal index of formal litigation. Google Trends generates an index ranging from zero to 100, where 100 corresponds to the period with the highest number of searches for the given expression. As this study uses annual data, the monthly average for each company was considered over the course of the year.

The variables “stock value in US dollars” and “trading volume” were included based on the hypothesis that the motivation behind certain legal claims may be related to the companies’ market value (used as a proxy for economic-financial performance) and to investor interest in the company (approximated here by the volume of shares traded). These data were obtained from Yahoo Finance. The year-end closing value and its associated trading volume were considered.

Once the effect of MCI had been estimated for the five years following its implementation, it was assumed that the impact on companies operating in the sector today could be approximated by the percentage difference between the control group and the treatment group. Thus, it was posited that companies such as Bytedance Brazil, Facebook Brazil, Jovo Tecnologia Brazil, and X Brazil would see an increase in the number of legal proceedings filed between 2025 and 2029 similar to the counterfactual projection that would have applied under the MCI scenario between 2015 and 2019. From this assumption, several scenarios were developed, as detailed in the findings section.

Following the estimation of changes in the number of legal proceedings, the average cost per action was calculated, enabling estimation of the increase in the Judiciary’s budget resulting from the STF’s decision. To estimate the average unit cost of a legal action, the budget of the São Paulo Court of Justice (TJSP), as set out in the 2024 Annual Budget Law (LOA), was divided by the number of first-instance judicial decisions issued by the court in 2024. The result was an estimated cost of BRL 1,263.78 per action.

For each scenario concerning the STF’s decision’s impact on public expenditure, the present value (for the 2025–2029 period, at January 2025 prices) of the resulting increase in the Judiciary’s budget was calculated. The cost simulations were conducted in real terms (thus assuming the average unit cost per action remains constant). Accordingly, a real discount rate was applied, calculated on the basis of median projections for inflation (measured by the IPCA) and the Selic rate from the long-term “Top 5” group in the Focus Report published by the Central Bank of Brazil on 21 March 2025.

Bias Reduction Procedures

PTo mitigate potential biases, the study relied on empirically grounded analytical approaches that are well-established in literature. Furthermore, the methodological design was discussed and reviewed internally on two separate occasions to ensure that suggestions and critiques could be incorporated prior to the execution of the analysis. Additional procedures adopted include:

- **Double Validation at Critical Stages:** For the “Discussion of Results” and “Scenario Analysis and Assessment” sections, all three researchers independently reviewed the text. In instances of disagreement, a fourth party was engaged to arbitrate and help reach a consensus.
- **Methodological Transparency and Record-Keeping:** Detailed records of all file versions and research outputs were maintained, preserving the project’s history and enabling more systematic review and replication.

| <p>Other Methodological Limitations</p> | <ul style="list-style-type: none"> • Assumption that the MCI counterfactual would replicate: The scenarios developed in this study are based primarily on the assumption that the counterfactual behavior of legal actions related to the MCI would be replicated following the STF's rulings on Cases 987 and 533. • Absence of a structural model: To address the limitations above, a structural model could have been developed to account for how agents might respond under the various scenarios outlined in this study (as well as under additional scenarios not explored herein). • Reliance on open access sources: The study depended heavily on data and information drawn from open-access databases, news portals, newspapers, and academic journals. This reliance may limit the breadth of the analysis, as relevant materials available only through restricted or specialized databases may not have been captured, potentially affecting the completeness and depth of the findings presented. | | | | | | | | | | | | |
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| <p>Software Use</p> | <table border="1"> <thead> <tr> <th data-bbox="513 640 815 712">Software</th> <th data-bbox="815 640 1362 712">Use in Research</th> </tr> </thead> <tbody> <tr> <td data-bbox="513 712 815 792">MS Office Suite</td> <td data-bbox="815 712 1362 792">Text editing, spreadsheets, and charts</td> </tr> <tr> <td data-bbox="513 792 815 902">Adobe Suite</td> <td data-bbox="815 792 1362 902">Layout design and finalization of charts and illustrations</td> </tr> <tr> <td data-bbox="513 902 815 1034">ChatGPT</td> <td data-bbox="815 902 1362 1034">Grammatical revision (spelling, grammar, synonym suggestions), language refinement, and editing of pre-drafted sections</td> </tr> <tr> <td data-bbox="513 1034 815 1140">More UFSC</td> <td data-bbox="815 1034 1362 1140">Generation of bibliographic references in ABNT format</td> </tr> <tr> <td data-bbox="513 1140 815 1252">R</td> <td data-bbox="815 1140 1362 1252">Estimation of the synthetic control model</td> </tr> </tbody> </table> | Software | Use in Research | MS Office Suite | Text editing, spreadsheets, and charts | Adobe Suite | Layout design and finalization of charts and illustrations | ChatGPT | Grammatical revision (spelling, grammar, synonym suggestions), language refinement, and editing of pre-drafted sections | More UFSC | Generation of bibliographic references in ABNT format | R | Estimation of the synthetic control model |
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| <p>Ethical Guidelines</p> | <p>This research was funded by Google Brasil Internet Ltda., a company with a direct interest in the outcome of Theme 987 before the STF. To ensure the integrity of this work, the authors designed, conducted, and analyzed the study independently, without any contribution or interference from the company, which also did not influence or intervene in the interpretation of the results.</p> <p>The authors maintain full professional independence and assume sole responsibility for the content and conclusions of this work.</p> <ul style="list-style-type: none"> • Respect for Privacy and Confidentiality: The data used is in the public domain and was sourced from publicly accessible platforms, without infringing upon the privacy or confidentiality of any individual or institution. • Responsible Use of Public Data: Although the data analyzed are publicly available, they were used responsibly and ethically, solely for academic research purposes. • Non-discrimination and Respect for Diversity: The research was conducted in a manner that respects diversity and avoids any form of discrimination. | | | | | | | | | | | | |