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## Ethics and Internet Privacy Policy Making on Brazilian "Marco Civil" <sup>1</sup>

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### Resumo

This paper proposes to examine the Brazilian Internet policy-making process (Bill 2126/2011 best known as “Marco Civil da Internet”) specifically on privacy issues and its ethical consequences for Internet policies in Brazil. In 2013, after Edward Snowden’s exposes US surveillance practices against Brazilian public authorities and civilians, Internet policies have become a national security issue in Brazil. It argues that different private and public interest conflicts on privacy guides Brazilian Internet Civil Rights Bill policy-making process towards a particularly case. It suggests that the privacy tends to become a right based on market and private companies’ interests. Despite Brazilian international position as a key political actor, it argues that postcolonial culture shapes privacy boundaries discussion, in which one the legitimacy of international actors are assumed as a natural right. In this sense, it discusses the relation between local culture and new media privacy policies.

**Palavras-chave:** ethics; internet policy; policy-making; privacy; Brazil

### Introduction

The global proliferation of digital communication technologies raises serious concerns over the issue of online privacy, especially after the significant media coverage of some recent breaches of users’ data security. Yet, despite the increasing popular and scholarly attention to digital privacy and related policy practices, we notice two conspicuous omissions in the literature. The first is the absence of cross-cultural comparative perspectives in Internet policy studies; the second is the

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<sup>3</sup> Associated National Security Agency (NSA) and Christopher H. Smith Center for American Enterprise in US. The Germany “Spiegel” were one of the first newspapers to interview Snowden. For further information, see



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predominance of Western conceptualizations in both theoretical and empirical discussions of Internet privacy.

Thus, we are glad that this paper aims to discuss on line privacy policy-making process from a global south perspective. This debate is an extension of my research agenda initiated in 2013 at the Annenberg-Oxford Summer Institute, hosted at Oxford University (UK) and the Fulbright Research Fellow I had in 2015 at the Annenberg School for Communication. In first occasion, we had the opportunity to discuss cross-cultural differences and regulatory polices passed on new media across the Globe. At the second, guided by Monroe Price, I have tried to connect it with his "market for loyalties theory". Considering this context this paper will focus specifically in Brazilian Internet Civil Rights Bill.

Nevertheless, it is important to point out some meta-theoretical questions that feed this work: how do we conceptualize privacy, and what are some possible ways to structure laws and policies to secure the practice of a good life? Together, different theoretical perspectives provide insights into the shaping of a number of privacy laws and policies around the world, as well as the role of culture in the process. We propose that the concept of privacy may be intricately connected to the cultural and historical particularities of a society, just as it may be shaped by geopolitical ecologies, market forces, political struggles, and technological architectures. Thus, a comparative interrogation of those aspects is critical for a more nuanced understanding of current privacy-related Internet policy practices.

In Brazil, there was a draft law project on Internet policies (Projeto de Lei 2126/2011, best known as “Marco Civil da Internet”) that has been almost out of the political agenda since December 2012. After Edward Snowden revealed the massive US surveillance system<sup>3</sup> and considering the past

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<sup>3</sup> Former National Security Agency (NSA) employee who disclosed a massive surveillance machine in US. The Germany “Spiegel” were one of the first newspapers to interview Snowden. For further information, see <http://www.spiegel.de/international/world/interview-with-whistleblower-edward-snowden-on-global-spying-a-910006.html> (visited 14th. September 2013)



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protests in a huge number of Brazilian cities in June of 2013<sup>4</sup>, a political “window of opportunity” (KINGDON, 1995) has been generated to put this issue back on the Brazilian political agenda. In fact, the Communication Minister Paulo Bernardo said on last July 24th that nowadays “it is urgent to pass this law in order to regulate Internet in Brazil”<sup>5</sup>.

This paper argues that on the one hand, the making of privacy-related Internet policies in Brazil was shaped by the conflict between public and private interests. It suggests that privacy tends to become a right, increasingly defined by market forces and the interests of transnational corporations. On the other hand, the discussions about the concept of privacy and the public/private boundary are structured by the country’s post-colonial social and cultural conditions, which not only legitimize the involvement of transnational corporate actors but also equip them with considerable political influence on the construction of discourses about privacy. For that reason, we argue that an ethics debate must be included in this issue discussion. This paper point out the policy-making process and some key contents of the latest Brazilian Internet Civil Rights Bill (Bill 2126/2011, best known as “Marco Civil da Internet”) and its significance for future Internet policies in Brazil.

### **Methodology and epistemological bases**

For political scientists, all political actions can be analyzed as a cycle, which means that policy-making researches study how a problem or a troublesome situation that requires the public intervention is detected, how solutions for it are proposed, and in which way different institutions and actors interact looking for a consensual policy solution for this problem (CONSIDINE, 2005; HILL, 2005; BIRKLAND, 2005).

Despite the interdisciplinary foundations that all the policy-making studies could have, political scientists have established common studies with only a few areas (VALLÈS, 2012; SABATIER, 1999). As a classical research area in political sciences field it was also settled some typical policies issues researched such as education, welfare, healthcare, and environment, ethnical

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<sup>4</sup> Along June 2013, millions of Brazilians went out to streets in massive riots and protests against the absence public services and the democracy lack in some political daily process. For further information, see <http://www.theguardian.com/world/2013/jun/21/brazil-police-crowds-rio-protest> (visited 14th. September 2013).

<sup>5</sup> Bernardo’s speeches were reproduced in several newspapers. See it (in Portuguese only) at <http://www.redebrasilatual.com.br/saude/2013/07/apos-conversa-com-google-paulo-bernardo-pede-urgencia-em-votacao-do-marco-civil-da-internet-6460.html> (visited 14th. September 2017).



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and urban policies (PARSONS, 1995, p. 31). According to Zimring and Johnson (2006), political scientists have not looked for diversified issues to research in this area. Specifically, they mention the omission of media policies as a public policy-making issue to be researched among others.

In addition, media scholars have not been studying the media policy-making process either. We argue that whereas many experts had focused on the consequences of some media policies or on economics impact and Human Rights restrictions' of such media laws had. In this sense, we can found out prominent works such as Cabral Filho (2012), Bolaño and Britos (2010) or Brant and Barbosa (2010), among others. The labor of Latin Union of Information, Communication and Culture Economy Politics (ULEPICC) is also remarkable. Nevertheless, we believe that the policy-making process continues to be neglected in studies of media law and polices.

And probably there are many reasons for this gap. Firstly, the implicit difficulty in working with media policy-making, which requires a minimum knowledge of legislative process that shapes all the legal system. Secondly, frequently, people who have this knowledge do not work with media studies and thirdly, media polices are close related with elites interests that intensive lobby to make this issue invisible to the public agenda. As a result, media policies frequently have less publicity and interest rather than other public policy issues.

### **Constructing an Internet policy-making research**

W. Parsons (1995, p. 39) has classified six different types of policy-making studies following different epistemological basis. They are: a) the heuristic approach that explains policy as a sequential steps model; b) the approach based on power analysis and its distribution between elite and groups; c) neomarxist analysis that uses Marxist theory; d) the functionalist approach that explains policies as the resultant of any inputs/outputs relation; e) the studies based on discourse and communicational process; f) the institutionalism approach.

In the face of these multiple epistemological approaches, Sabatier (1999) claims for the need of constructing a specific theoretical framework to each policy-making study. According to him, the complexity of each political process requires every empirical study to find ways to simplify the research on how some issues are taken into account as problems and how some political solutions



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are implied for it. However, researchers must be prepared and open minded to put in practice theories provided by different fields.

Following this proposal, Hill (2005, p. 109) suggests a pragmatic perspective in which one policy-making research shall be based on analyzing actors and process. Methodologically, he has divided it in three analytical levels: firstly, the descriptions of the political context and cultural environmental followed by, secondly, the construction of a policy-community, and thirdly, the establishment of networks between political actors inside the policy-community and the action of these actors during the policy-making process.

According to Rhodes (2006, p.427-428), a policy-community has a limited number of members and basically includes all political actors interested in a common subject. In his opinion, they share values and interest. Hence, there is not an equality division of power or functions.

Nevertheless, as Pross (1986, p.106) has shown, policy-communities present changes according to each political issue and have different working rules. However, he argues that all of them are organized in two axes: the ‘sub-government’, in which all political actors elected and public Institutions are situated, and the ‘attentive public’, which includes all the actors who could be interested in the subject, from mass media, interest groups to illustrated citizens.

Whereas the ‘sub-government’ institutionalize political elite’s and the three branches of government implied in each policy-community, the ‘attentive public’ – at the same time to political theory and public opinion theories – represents the piece of citizenship most illustrated and motivated to take part of the political process and, as consequence, works as a hinge between the crowd and the elite (GROSSI, 2007, p. 96).

Following this policy-making model, we assume a pragmatic approach and assume the importance in analyze actors and process involved in the Brazilian Internet Bill policy-making process. For that reason, we draw the policy-community, summarizing in Table 1 “sub-government” and “attentive public”.



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### **Sub-Government**

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- Government (Executive Branch);
- House of representatives and Senate;
- Commissions and Parliamentary Groups;
- Communications Ministry;

### **Attentive public**

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- Mass media and journalists;
  - Political Parties;
  - Academics;
  - Traditional media corporations
  - Telecom companies;
  - Sectorial Interest groups;
  - Illustrated citizens
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**Table 1.** Internet Law “Marco Civil” policy-community in Brazil (2013-14).

As said, Table 1 summarize the actors under the mentioned policy-community. In fact, we had found out 32 institutional actors directly implied in the “Marco civil” discussion. In this sense and following the methodological approach defined, we had defined the relationship between the policy-community actors and the political processes. Hence, as shown by Kingdon (2003), in this context there are two main processes: setting the agenda and constructing policies alternatives. However, the agenda-setting is the first and most important stage in the construction of some public polices (MAJONE 2006; CONSIDINE 2005; DEARING and ROGERS 1996) and it is the moment that politicians communicate to the social body which really does matter (MOUW and MACKUEN, 1992, p. 87).

The analyzed political process has not concluded yet. Therefore, we decided focus on the agenda-setting process to understand what each political actor has done to settle some issue or interest perspective. For that, we constructed a sample including public and legislative interventions



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of these actors in some key days (following legislative procedure). We assume that these discourses are qualitative representative of the conflicts, issues and interests implied. The sample include all political speeches made during Legislative interventions and all discursive material published in mass media press (O Globo, Estadão and Folha de S. Paulo) and is marked out from July 2013 until December 2013.

## **Research Techniques**

To achieve the objectives that we have pointed out, we have decided to use preferentially qualitative techniques. For this reason, we have decided to use discourse analyses to study the relationship between the policy-community actors and the political processes during the discussion of the Brazilian Internet Civil Rights Bill (Projeto de Lei 2126/2011, “Marco Civil da Internet”).

As a discourse analysis technique, we have chosen the ‘Critical Discourse Analysis (CDA)’. As Van Dijk (2003, p. 144) has shown, it is not a method nor a school but a perspective that can be related or combined with “any approach and subject of humanities or social sciences”. The Critical Discourse Analysis is a multidisciplinary approach enables to compare the discourses structures with the social structures. Because of this, adds the mentioned author, the CDA requires that the researcher construct a meta-theory to support his analyses.

Therefore, the CDA interprets all discourses as such social practices. In this way, it puts together the relationship between texts and its contexts (FAIRCLOUGH, 2003). The links between both of them can oscillate according to the cognitive structures (values, beliefs, ideologies) and social structures (institutions, classes, genders, communities) in which the discourse action take place.

For this reason, ‘pragmatics’ provides a useful theoretical background as the study of signs and its relations between the speakers of one language (HERRERO CECILIA, 2006). As explains Giró Martí (1999, p. 92) it represents the study of communicative action of the encoder (addresser), decoder (addressee) and the message. As a theory of the languages uses, pragmatics allows the interpretation of contexts, decoding for that presuppositions and implicit meanings.



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Allowing for the idea that the speakers of a language, considering the amount of information that circulates, are not able to memorize and handle all the details of the meaning of a discourse, and that these meanings are mentally organized by semantic reduction operations, Van Dijk (2010) has used the pragmatic theory to achieve the concept of ‘macro-themes’. According to him, all texts present semantic ‘macro-structures’ that allow the comprehension of their meaning. In this way, we aimed to identify in all discourses collected these propositions that summarizes the meanings of the texts in order to figure out issues and content set on the Internet Civil Rights Bill agenda by political actors.

## Discussion

Benjamin Franklin, one of the American founding fathers’ assumed that “who can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.” Franklin’s argue is opposed to surveillance and control practices developed by US government. Probably Edward Snowden knew most of the consequences of his acts. Nevertheless, it is difficult to figure out if he could suppose how deep such kind of discloses could affect Internet policies around the Globe.

However, when the whole Snowden case started to emerge, the Brazilian Government said that they do not know if PRISM surveillance had implications on local sovereignty. At that point, Brazilian internet users were teasing about the scandal by putting personal messages to President Obama on Facebook, Twitter, and other social networks. Say “good morning”, “hey” or other informal posts addressed to US President were a strategy to embrace humor as a soft criticism of privacy invasion. In this sense, “#bomdiaObama” (Good morning Obama) has been a trending topic on Brazilian Twitter. Meanwhile only NGO and Academics political actors had tried to activate Brazilian Internet Civil Rights Bill discussion from the privacy and neutrality points of view.

This scenario changed dramatically after the newspaper “O Globo” published on July 7th some of Snowden documents in which Brazil was shown as a US priority spying target. Besides China, Russia, Iran and Pakistan, income and outcome personal data and internet information of local users were massively captured. Only after these facts Brazilian president Dilma Rousseff made a public statement on it and required formal explanations from the US government. In this context, “sub-government” actors have developed intensive discourse activities to pass Brazilian Internet





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Civil Rights Bill as a response to US government. Privacy were the main “macro-theme” of these discourses and it was understand as an anti-surveillance concept.

At the same point, all the largest operating telecom companies such as Oi, TIM, Claro and Vivo and also Google denied their duties and cooperation with US spying. Nevertheless, all the companies we mentioned have international agreements to use satellites and submarine cable gates, which expose personal data and traffic information. These businesses are estimated at US\$650 million per year. It is important to point out that telecom companies are nowadays the most important internet access providers in Brazil. According to F/Nasca-Datafolha 2012 survey there are 84.5 million internet users in Brazil and 41 million of them use mobile phones to get connected.

Meanwhile, Brazilian Senate has created a special Committee to investigate national sovereignty violation among other political controversies and the Federal Police opened a criminal prosecution. Hence, the Minister of Institutional Relations Ideli Salvati proposed to Congress to vote the Brazilian Internet Civil Rights Bill as a way to get a clear and democratic answer to US government. It is interesting that the protect freedom of expression in Brazil were a secondary argue in these analyzed discourses.

In fact, Brazilian government has tried to pass the Internet Civil Rights Bill on Parliament in 16<sup>th</sup> of 2013 July and was forced to move back on it. The Bill was taken of the political agenda. This decision was done considering different pressures. It is possible to map at least four key political actors involved in this dispute with different discursive interests.

Firstly, telecom companies’ had pressured for a soft regulation on its capabilities to sell internet access. Based on neoliberal arguments they require have liberty on its commercial offers. According to this lobby, as much freedom internet market become as better it will be for citizens’ uses and safety. This point of view affects net-neutrality and privacy. With a soft regulation, telecom companies could be allowed to control users’ consumption in other to sell different commercial offers. As a result, user’s social position would be ranked by financial capabilities.

Close to this position, secondly, key market players such as Google and Facebook would also be interested on commercial liberty to sell their products without so many law policies. Without



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market regulatory obligations, for example, a mobile phone with only Facebook or Google access could be commercialized. However, some clear regulations points on issues such as data protection could be interesting for these players in order to avoid judicial causes. Only for that, they claim for user's safety and defense some regulatory policies. Both actors are not supporting privacy in the same meaning then "sub-government" actors.

At this point, a controversy on copyright emerges. As a thirdly key political actor, traditional media groups such as Rede Globo (the largest TV and multimedia content production group) proposes that the Brazilian internet regulatory policy compel immediately remove from internet any copyright violation. As a consequence, sites like Youtube would be forced to take off any video or other content that broken copyright. Privacy is not a concern of these actors rather then copyright.

Finally, fortunately, there are also some social movements and other civil groups pressuring to guarantee free internet in Brazil. These groups, such as NGO "Intervezes" or "Marco Civil Já" are visualizing in this moment an opportunity to generate a more consistent debate on media policies regulation in Brazil, taking into account not only private interest.

## **Conclusions**

In this paper, we had tried to point out some particularities of Brazilian Internet Civil Rights Bill policy-making process. For that, we have used the notion of "policy-community" to map and analyze political actors and process. Our reading of political agenda-setting was reduced to the legislative debate. Although such a decision limits the comprehension of the political process, we decided to do so because we understand that the political agenda is directly connected to the competitive processes and it operates with the logic of the issue "offer" available in the public agenda. In this sense, it is curious that a foreign policy issue generated all political debate: Edward Snowden disclosures.

Using Critical Discourse Analysis approach, we have studied a huge discursive material. Different political actors have been using the public opinion controversy on US surveillance to defend its own interests. The public interest was only part of NGO and some civil actor's discourses. Privacy, for example were converted in a different issue for "sub-government" and "attentive public"



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actors. Moreover, under the “attentive public” private corporations have divergent interest on privacy and are lobbying on it intensive. Civil society represents a weak political actor, despite the fact that it is the unique cluster interested in pass the Internet Civil Rights Bill.

It is difficult to realize in which way this debate will ends. As argues French philosopher Edgar Morin (2005), not only the future but also life is uncertain. For that reason, liberty and freedom of expression on internet must be treating as a human right and a public issue to generate conditions to change uncertain in the certain of existed life moments. For that, urges an ethical perspective in this debate.

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