

**Global Network of Interdisciplinary Internet & Society Research Centers
Events Series**

Regional Conference Brazil 2013

**Internet Frameworks and the “Marco Civil da Internet”:
Challenges in Brazil and Abroad**

**NoC Working Meetings
August 8, 2013
Summary**

Conference Venue:

Center for Technology & Society at Fundação Getulio Vargas (FGV) School of Law,
Praia de Botafogo, 190
Rio de Janeiro, Brazil

Introduction

Session 1: Online Intermediaries: Functions, Values, and Governance Options

Session 2: Teaching Digital Revolution

Session 3: The Future of the Digital Agenda

Introduction

In August 2013, members of the informal Steering Committee of the interdisciplinary Network of Internet and Society Centers (NoC) came together to discuss the activities of the NoC since the inaugural meeting at the Berkman Center for Internet & Society, which took place in December 2012, and the first regional NoC event, hosted by Bilgi University, that took place in Istanbul in May 2013. Held in Rio de Janeiro, Brazil, this second NoC regional event included a day-long public symposium focused on “Internet Frameworks and the ‘[Marco Civil da Internet](#)’: Challenges in Brazil and Abroad,” with a particular emphasis on the Brazilian context ([agenda](#)). The public symposium was followed by a day of working meetings for NoC participants, which is summarized below.

Session 1: Online Intermediaries: Functions, Values, and Governance Options

Session description (by Urs Gasser, Berkman Center for Internet & Society at Harvard University, and Wolfgang Schulz, Humboldt Institute for Internet and Society):

Intermediaries in various forms – meta media such as search engines as well as user generated platforms, app stores and microblogs – play an essential role in opening up the potential of the Internet and capitalizing on its generativity. At the same time, intermediaries are increasingly powerful institutions that shape the public networked sphere and sometimes develop significant market power. Pursuing a variety of objectives, governments around the world have developed legal regimes aimed at governing online intermediaries, often using liability mechanisms as the means of regulation.

For the first NoC research project, we envision a policy-oriented study on areas of convergence and disagreement regarding the liability and responsibility of online intermediaries. We seek to initiate the process by inviting NoC participants to (a) contribute to a shared repository of relevant research from various disciplines, including methodologies and approaches, data, and expertise on the function of intermediaries; (b) engage in an initial analysis of recent policy debates and proposals related to the governance of online intermediaries around the globe, including attitudes towards liability; and (c) collaborate on a shared methodology for assessing the impact of such governance regimes on the open Internet.

The project would begin with an analysis of two countries, likely Brazil and India, and provide an opportunity to develop a sense of key criteria, comparative opportunities, and other analytical approaches aimed at informing (and improving) Internet policy-making across countries and regions. A small honorarium is available for collaborators who are committed to work on country case studies.

In addition to the substantive outcomes mentioned below, the pilot project would support our efforts to determine what is required to foster useful global collaboration around a policy issue and to channel insights from such collaborations into relevant policy and other spheres of decision-making.

Conversation Summary:

The first working session of the day started off with a discussion about the potential scope of a joint research project on online intermediaries as outlined in the session description. The discussion initially centered on definitional issues, exploring the different meanings of the term “intermediaries” across

disciplines. From an engineering point of view, for instance, it is possible to distinguish between two types of intermediaries: human and software. Different types of intermediaries might also entail platforms or even governments. Participants agreed on the complexity of the term and referred to it as ‘moving target’ given the fast-changing technology environment, evolving business models, and adaptive user behavior. For instance, what would it mean if users were offered virtual machines or software that is then left to be configured by the user? Would the service provider still be an intermediary under such a scenario? The group concluded that the complexity of the phenomenon should be reflected in any attempt to define or categorize “online intermediaries” – for instance in a concentric circle model (with “obvious” categories of intermediaries in the inner circle, less obvious types of intermediaries in outer circles).

In the second part of the conversation, participants explored the implications of the definitional challenge for law and policy-making. The ways in which the law might deal with the technological, economic, and social complexity within and across different categories of intermediaries was identified as a core research question. Questions to be addressed in this context may include the following: (a) How might legal regulation deal with the fact that intermediaries are a moving target?; (b) Is the legal use of the word ‘intermediaries’ already so much in flux that we should be more open to the way this term is used?; (c) How do different legal instruments deal with intermediaries, and what are the pros and cons of specific approaches?; (d) Might there even be a type of governance regulation that makes intermediary liability more concrete?; Or (e) might it make sense to work less with a typology in the traditional sense – which would suggest precise boundaries – but to apply a circular model instead?

The third part of the conversation addressed methodological issues, with an emphasis on the challenges associated with comparative country studies concerning the liability and responsibility of online intermediaries. Specifically, the group discussed the potential trade-offs among different methodological approaches – such as detailed questionnaires versus more open-ended questions – when approaching different countries and their corresponding legal and policy frameworks. The group tentatively concluded that a set of guiding questions might be the most productive approach, as it would preserve some degree of flexibility for the authors of specific country case studies, rather than implement a very detailed and highly harmonized “template.” Participants made several suggestions for guiding questions, including the proposal to map and compare the range of approaches to intermediary regulation countries have taken vis-à-vis different issues, ranging from child pornography to consumer protection.

The session ended with reflections on the targeted audience of the research project, including policy-makers and the public at large. In this context, the conversation touched on the role of academia in general, and on the role of the NoC in particular. Participants acknowledged that a policy statement by the group might have a high public impact, highlighting the importance of academic curiosity and rigor.

The participants agreed that the Berkman Center should take the lead in coordinating this NoC research effort and set up a mailing list for interested collaborators from the network.

Session 2: Teaching Digital Revolution

Session description (by Juan Carlos de Martin, NEXA Center for Internet & Society at Politecnico di Torino):

Well into the second decade of “Internet & society” studies, a considerable body of knowledge regarding “digital culture” is ready to be taught at various levels, from grade school to higher education. There are, however, many questions that need to be discussed. The first question asks what the minimum set of facts, concepts and skills that a person should have to be considered a proficient worker and citizen in the digital age. A corollary question is when and how such facts, concepts and skills should be optimally taught, taking into consideration grade school through college.

The premise to the second question is that higher education has been traditionally quicker to adapt than lower grade schools. Therefore, assuming that students reach college with no formal education in digital culture, what should an undergraduate digital culture course look like? The experience with the “Digital Revolution” course at the Politecnico di Torino (Italy) for the last two years will provide some elements to be discussed (<http://rivoluzionedigitale.polito.it>).

The premise to the third question is that the digital culture knowledge not included in the minimum set of competencies (however defined) is huge. It is, therefore, possible to envisage a digital culture degree (with variations). The third question is thus: would a digital culture degree make sense? What might a digital culture curriculum look like?

Conversation Summary:

Juan Carlos de Martin started his presentation by clarifying the first question underlying his course as follows: “What is the set of facts, concepts and skills that any individual should have (a) for his / her personal happiness?; (b) to be a productive worker?; and (c) to be a good citizen?” The first component of this question referred to a set of *skills* needed to practically handle digital revolution, to minimize risk and to optimize potential. These skills – of which coding is one – allow for the control of *attention* and *searching*. The second component of the question entails facts and concepts regarding the Internet, computers, and everything digital, with the aim of giving students a general sense of how the Internet broadly works.

Suppose one would want to come up with a textbook for grades 1-5, how would the two components be taken into account? First of all, the motivation behind the course is value-based, assuming that there is a close link between civic education and fostering digital literacy; keywords being autonomy and media literacy. Furthermore, the contextualization of the Internet within the broader ecosystem is also important: In which respects are these skill sets part of more horizontal abilities such as critical thinking etc.? Are mechanisms of informal and peer learning at play? The openness of the map in terms of formal and informal learning was considered a strength of the model.

The second question addressed during the presentation was “how to structure a digital culture course for first year undergraduate students?” Here, Juan Carlos de Martin shared his experience in teaching a course on digital revolution at the Politecnico di Torino over the course of the last two years. Engineering students were eligible to take this course (elective course) in their first year. Approximately 130 students seized the opportunity. One of the key questions addressed within the course concerned how to combine the technical with conceptual components. The students had three months to complete a certain set of challenges, their activities being tracked. These practical challenges, which counted for 60% of the grade,

included (a) opening a blog (3-4 people) on any digital topic of their choice and writing at least 6 posts on this blog, which had to be under a CC licence; (b) using Twitter; and (c) using a public mailing list with teachers and guest lecturers present, allowing students to learn about such basic issues as netiquette or form of emails. Approx. 6 hours of the complete 52-hour course were dedicated to this digital part.

40% of the course, on the other hand, revolved around teaching. The course started with a historical contextualization of “revolution” – ranging from astronomic revolutions to scientific, technological and political. The goal of this contextualization was to raise awareness, and to provide an intellectual basis for the usage of the term “revolution.” The course then provided a brief history of communications media. How does the debate around digital revolution compare to previous debates around the introduction of the printing press, radio, or television, for instance? Are there patterns (such as the path from ideation to invention to social necessity to diffusion)? The interaction of society through diffusion oftentimes takes away the radical element. Additional topics covered in the course included (a) computers and networks; (b) Internet history and basic technical facts; (c) the web (http/html); (d) Internet governance; (e) Internet and the law, including basic facts about Internet crime; (f) Intellectual property (copyright); (g) knowledge (Creative Commons, open access, global public good); (h) the Commons; (i) collaboration; and (j) open source/hacker culture/Wikipedia (with students who did successful edits on Wikipedia receiving a bonus). In order to provide students with a variety of perspectives from practice, guest speakers were invited to teach individual courses. Guests included the CIO of NTT Data (talking about the practical aspects of personal online presence), the director of Fab Lab (about 3D printing), and a La Stampa journalist (talking about what digital media is doing to journalism & digital revolution), to name a few examples. The course finished with a final exam that included a set of closed questions as well as essays.

As the NoC plans to build up a global set of courses, the “teaching digital revolution” course might form a highly suitable introductory course. Participation might be opened up to an international audience by synchronizing courses and building up on specific aspects of the course, such as CopyrightX. Individual issues such as criminal law, for instance, could then be country-specific. The practical aspect of the course lends itself to smaller groups. It might be desirable to introduce alumni grading, and to connect the course to fellowship programs. In order to contribute to the conversation around digital education, particularly at the elementary school level, a wiki could be set up to involve education specialists in the conversation.

Session 3: The Future of the Digital Agenda

The discussion on the future of the digital agenda was initiated by Ronaldo Lemos, founder of the Center for Internet & Society at FGV School of Law, who referred to the fact that the debate in Brazil is highly complicated and revolves not only around the Marco Civil, but also around issues such as privacy, infrastructure, and competition. The Snowden case and resulting protests led to the return of Marco Civil to the agenda of Congress after a period of political stalemate (see the Marco Civil background document in the agenda[MP2]). The Brazilian government currently being very proactive regarding the Snowden case, the Marco Civil was amended. Now all Internet companies doing Internet business in Brazil must have their data stored locally in Brazil; data will still be trafficked normally, however. It was mentioned that in the absence of laws, neither judges nor courts know how to decide on individual cases. As a

consequence to the absence of legislation, many court orders contradict each other, leading to an uncertain landscape for businesses, citizens and consumers. With regard to the case mentioned above, it was noted that establishing a data center under legislative uncertainty might be a bad idea. While addressing these questions, the point was brought forward that some businesses prefer even less-than-ideal legal certainty to no legal clarity in order to open up business models. The Marco Civil would be the first legislative framework to target these issues systemically.

Generally, the questions were raised as to which problems might call for legal regulations at a national level, and how it might be possible to better take into account the complex relationship between the legal and the technical aspects of regulation. A referral was made to the difference between the judiciary and other forms of regulation as in the absence of legislation; the concern was voiced that the executive might outgrow its own influence in creating other forms of regulation.

Within the context of these discussions, the need for public participation and scrutiny was highlighted. One issue that gained particular relevance within the Marco Civil, for instance, is network neutrality. Participants of the discussion stressed that it would be important to have a broader discussion around network neutrality, involving relevant actors as well as the public. A reference was also made to the danger of falling back into ideological debate. The neutrality of intermediaries and algorithms are further issues around which a public debate would be useful.

Generally, Brazilian participants of the meeting pointed towards a change in the Brazilian public sphere. The Marco Civil was seen to have triggered a range of developments, touching the legal process with regard to new structures of lobbying, amongst other things. Moreover, and triggered by recent events, governments are responding to the Snowden case by imposing regulation on private companies, i.e. regarding data protection law. Generally, however, the discussion was interpreted as seeing a lot of interference and urgency. Participants therefore pointed towards the need to focus on the principles underlying the Internet in general. In this regard, the hope was raised that the Marco Civil might not be seen as only another piece of legislation, but as one that could guide other legislative efforts in the future.

In this context, it was proposed that NoC could fulfill the role of drafting a commentary on the specific structure of the Internet, referring to Art. 6 of the Marco Civil. Whilst the discussion at this point also touched on issues ranging from the emergence of monopolies to the significance of interoperability, participants pointed towards risks of current developments regarding the Internet in general. Yet on a hopeful note, discussants also referred to social learning that may be observed. The underlying assumption might therefore be that there is no need for systematic intervention on the part of academia, but rather a need for instruments to protect specific values. Again, the discussion revolved around the role of academia in providing guidance to relevant discussions. While its role lies in looking at questions analytically, academia might also have to defend its positions publically within an environment where there is an asymmetric relationship between governments and the public in the sense that governments keep data to themselves at the same time as individuals are expected to surrender their data.