

## **The liability of digital platforms for copyright infringement: an analysis of social networks and streaming services**

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### **SUMMARY**

This article analyzes the liability of digital platforms and their users for copyright infringements, especially on social networks and streaming services. The research

This is a bibliographic and qualitative study that investigates Brazilian legislation, as well as national and international court decisions, in order to understand the limits and obligations of these companies in controlling content today. It notes that, although platforms are not directly responsible for content posted by third parties, they can be held liable when they fail to act in the face of evident violations or when they fail to adopt the appropriate mechanisms to ensure effective monitoring. A model of mitigated liability is proposed, which combines the protection of copyright with the guarantee of freedom of expression. The study concludes that a balance between technological innovation and legal protection is possible, but requires clear regulation, transparent mechanisms and cooperation between platforms, users and rights holders.

**Keywords:** Civil liability; Copyright; Digital platforms; Social networks; Streaming; Freedom of expression.

### **ABSTRACT**

This article analyzes the civil liability of digital platforms for copyright infringements committed by their users, particularly on social media and streaming services. The research, of bibliographic and qualitative nature, examines Brazilian and comparative legislation, as well as national and international judicial decisions, in order to understand the boundaries and duties of these companies in content control. It is observed that, although platforms are not directly responsible for content posted by third parties, they may be held liable when they omit to act in the face of evident violations or fail to implement effective monitoring mechanisms. A model of mitigated liability is proposed, aiming to reconcile the protection of copyright with the guarantee of freedom of expression. The study concludes that balancing technological innovation with legal protection requires clear regulation, transparent mechanisms, and cooperation among platforms, users, and rights holders.

**Keywords:** Civil liability; Copyright; Digital platforms; Social media; Streaming; Freedom of expression.

## INTRODUCTION

The rapid growth of digital platforms has profoundly transformed the way we content is produced, shared and consumed. Social networks and streaming services have come to occupy a central role in the propagation of culture and information. This reality brought undeniable benefits, such as easier access to knowledge and entertainment, but also intensified the challenges faced in protecting the Copyright of content in view of the numerous rights violations that occur in this dynamic and difficult environment control.

The digitalization of communication has allowed copyrighted works to be easily copied, modified and even disseminated on a global scale, which occurs several times times and without the proper authorization of their owners. This practice has become especially frequent on platforms like YouTube, Instagram, TikTok and Spotify, where millions of users gather and share content daily. Although these platforms claim to be only intermediaries between users and content, the current legal discussion indicates the need for a more active stance on the part of these companies in order to protect and combat copyright infringement.

In view of this, the present research has as its central problem the following question: what is the legal liability of digital platforms in cases of copyright infringement committed by its users? In other words, we seek to understand to what extent these platforms can be held civilly liable, especially when they adopt or fail to adopt adopt control methods such as detection algorithms, reporting systems and policies removal.

The relevance of the topic does not only arise from the economic impact of these infractions, but also the challenge of balancing two fundamental values: the protection of intellectual property and freedom of expression. Furthermore, constant technological innovations impose a need for regulatory updating, and on the part of legislators and courts, interpretative, which makes the analysis of national and international jurisprudence an essential step in this research.

The general objective of this article is to critically analyze the responsibility of platforms. digital infringements of copyright, considering the legal, technological and social stakeholders. In particular, it is intended to: examine the applicable legislation, investigate the effectiveness of the mechanisms used by the platforms, analyze relevant case law and

propose legal alternatives that ensure a balance between copyright protection of content and freedom of expression of users.

The research focuses on the analysis of digital platforms as agents intermediaries in cases of copyright infringement. Although the main focus is on Brazilian legal system, international experiences will be addressed, such as the model European and the North American model, in order to broaden the understanding and comparison between different regulatory systems.

## 1 METHODOLOGY

This research is qualitative in nature and bibliographical in nature, supported by national and foreign doctrine, legislation and jurisprudence related to civil liability of digital platforms for copyright infringement. The method adopted is deductive, based on general premises regarding copyright and the duties of platforms such as digital intermediaries for the analysis of specific cases and technical and legal measures applied by the platforms.

Data collection was carried out through secondary sources, such as books, articles scientific, dissertations, legislation, judicial decisions and international guidelines, with emphasis for the Copyright Law (Law No. 9,610/1998), the Internet Civil Rights Framework (Law No. 12.965/2014), the Digital Millennium Copyright Act (DMCA), of the United States, and the Directive European Union Copyright.

Decisions from the Superior Court of Justice (STJ), the Court of Justice of the European Union (CJEU) and North American jurisprudence, with the aim of understand the different accountability criteria adopted in each legal system. The analysis was carried out in a critical and comparative manner in order to identify potential models of balance between copyright protection and freedom of expression.

Finally, the research proposes legal and institutional reflections aimed at building a palliated liability model for digital platforms, in order to encourage adoption of transparent, effective practices adjusted proportionally to the risks of the activities developed by these companies in the digital environment.

## 2 LEGAL BASIS FOR THE LIABILITY OF PLATFORMS

### DIGITAL

Civil liability of digital platforms in the context of rights infringements copyright represents one of the great contemporary challenges of Law. With the advancement of technology and the explosion of internet use for sharing protected works, has become if necessary, review the classic foundations of civil liability to adapt them to the virtual environment, where damage can be diffuse, recurrent and difficult to track. The platforms, which initially presented themselves as mere neutral intermediaries, began to be the target of judicial and academic questions regarding their role in preventing and repression of copyright infringement.

In Brazil, the main legal grounds for analyzing the liability of digital platforms are in Law No. 9,610/1998 (Copyright Law) and in Law No. 12.965/2014 (Marco Civil da Internet). The Copyright Law protects the moral and authors' assets, determining that the use of works without authorization may generate accountability. The Internet Civil Rights Framework has already established general rules for liability of providers, adopting the relative responsibility model, in which platforms only may be held civilly liable if, after judicial notification, they insist on not taking measures to remove the infringing content in accordance with Art. 19 of the legislation (BRAZIL, 2014) which states:

In order to ensure freedom of expression and prevent censorship, the internet application provider may only be held civilly liable for damages resulting from content generated by third parties if, after a specific court order, it fails to take steps to, within the scope and technical limits of its service and within the specified period, make the content identified as infringing unavailable, except for legal provisions to the contrary.

However, this approach is still the target of criticism. Many authors argue that given of infractions in the digital environment, the judicial notification model proves insufficient to

ensure effective protection. Vinícius Marques de Carvalho in “The regulation of digital platforms in Brazil.” From 2019 (2019) argues that the argument of platform neutrality should be relativized, especially when they benefit economically from the circulation of works protected. According to him, digital platforms cannot be considered neutral when profit from the dissemination of copyrighted content and fail to adopt reasonable measures to prevent infringements. There is also the argument that the simple omission of platforms in the face of manifestly illicit content may constitute a failure in the duty of care, generating liability for omission. At this point, the discussion about liability arises mitigated by platforms: they should not be automatically held liable for acts of third parties, nor can they completely exempt themselves when they fail to adopt the mechanisms admissible control.

In addition to Brazilian legislation, the debate is also enriched by international standards. In the United States, for example, the Digital Millennium Copyright Act (DMCA) instituted a notice and takedown system, in which platforms must remove infringing content receive a valid notification, under penalty of being held liable. As explained in the Copyright Alliance:

The DMCA notice and takedown process is a tool for copyright holders to get user-uploaded material that infringes their copyrights taken down off of websites and other internet sites. [...] If they fail to do so, then they open themselves up for potential secondary liability for assisting with copyright infringement.

<sup>1</sup>(Copyright Alliance, 2024).

The European Union Copyright Directive, especially after the reform of 2019 (Directive 2019/790), began to require platforms to adopt proactive measures, that is, anticipatory measures, such as the use of automatic filters, to prevent the upload of content protected without authorization from the creator, producer or person responsible, which considerably expanded their duty of care. Article 17 of the Directive states: “The requirements oblige platforms to implement preventive control and filtering measures, which are a restriction on freedom of expression” (Directive 2019/790).

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<sup>1</sup> “The DMCA notice and takedown process is a tool for copyright owners to remove user-submitted material that infringes their copyrights from websites and other Internet sites. [...] Failure to do so may subject them to potential secondary liability for aiding and abetting copyright infringement.” (Copyright Alliance, 2024).

Additionally, platforms must demonstrate “best efforts”<sup>2</sup> to obtain authorization from holders, block unauthorized content and act quickly after notification, including to prevent new uploads of the same content (notice-and-stay-down<sup>3</sup>).

These models demonstrate an international trend towards gradual accountability of digital platforms. Although they are not considered direct producers of content, they are understood that their strategic position in the dissemination chain gives them not only power, but also a legal duty to collaborate with the protection of copyright. This understanding gains strength, especially given the fact that a large part of the monetization of content online occurs precisely through these platforms, which profit from the circulation of works, even when there is copyright infringement involved.

Therefore, the study of platform responsibilities must consider not only the omission in the face of illicit content, but also the systemic structure that makes the massive dissemination of content, often with direct financial benefit. The balance legal, in this scenario, depends on the creation of legal mechanisms that encourage cooperation of platforms with rights holders, without imposing prior censorship or compromising the freedom of expression of users.

#### 4 CONTROL AND PREVENTION MECHANISMS ON DIGITAL PLATFORMS

In view of the growing number of copyright violations in the virtual environment, digital platforms have adopted several technological and regulatory mechanisms with the aim to curb these violations. Measures vary according to the size and capacity of the platform, the available resources and the legal requirements of each jurisdiction, but in general, involve the use of automatic detection algorithms, notification and removal systems, preventive blocks, in addition to the demonetization of suspicious content.

Several data and examples reinforce that digital platforms have been adopting mechanisms increasingly sophisticated technological and regulatory measures to prevent copyright infringement in virtual environment. In Brazil, for example, Ecad (Central Office of Collection and

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<sup>2</sup> “best efforts”

<sup>3</sup> “watch-and-be-quiet”

Distribution) uses automatic matching technology that allows the identification of around 100 thousand songs per second on streaming platforms, ensuring the correct distribution of rights copyright to the owners.

Additionally, platforms like YouTube implement demonetization systems and preventive blocking of suspicious content, often using detection algorithms automatic to identify possible violations even before a formal complaint is made. The system notice and takedown is also widely used, allowing content creators request the immediate removal of infringing material, which contributes to the protection of copyright and to deter future infringement.

These mechanisms vary according to the technical capacity and resources of each platform, but reflect a global trend towards the adoption of technological and regulatory solutions for address the growing challenge of copyright infringement in the digital environment.

The most cited example in literature and case law is YouTube's Content ID. This tool, based on artificial intelligence, allows copyright holders register their works in a database. When a new video is uploaded to the platform, the system performs an automatic scan in search of sections that coincide with the protected content. If there is a match, the system may block the video, demonetize it or even redirect revenue to the rights holder. Similar tools are used by other platforms such as Facebook, Instagram and TikTok, each with their own level of sophistication.

In addition to automated detection, another important mechanism is the notice and takedown, adopted in countries such as the United States of America. In it, the holder of the right sends a formal notification requesting the removal of the infringing content. If the platform does not comply with this request within a reasonable time, may be held legally liable. In Brazil, this logic was partially incorporated by the Internet Civil Rights Framework, which requires notification judicial for civil liability, except in cases of content related to nudity or intimacy, in which simple extrajudicial notification is sufficient.

Despite representing progress in combating infractions, these same mechanisms face several criticisms. The first concerns effectiveness: algorithms still fail to correctly identify protected content, generating false positives (inappropriate removals) and false negatives (infringers who go undetected). Often, protected works are

removed even when the use is protected by legal exceptions, such as the right to quote, the parody or educational use, directly affecting freedom of expression and the production of legitimate content.

According to Nelson Rosenvald, in "Civil liability: new risks" from 2019, replacing state judgment with algorithmic judgment leads to private censorship, potentially incompatible with due process and freedom of expression. The criticism highlights the need for procedural limits and guarantees also in the digital environment.

Another problem is the lack of transparency in the criteria used by platforms for identification and removal of content. Users, most of the time, do not know which elements led to the exclusion of their publication, and they do not even have easy access to channels of appeal or review. This undermines due process and leaves room for abuses, such as private censorship of legitimate content. In this sense, authors such as Nelson Rosenvald warn for the risk of transforming digital platforms into "private courts", with the power to judge and execute decisions without effective judicial control.

Furthermore, there is a recurring criticism regarding the asymmetry of power between the big copyright holders such as major record labels and professional studios and small content creators. Platforms tend to respond promptly to requests from large names, while ordinary users face difficulties in contesting decisions. This disparity violates the principle of equality and favors a scenario of concentration of power informational and economic.

Finally, it is worth highlighting that, although the platforms try to argue that such mechanisms control are sufficient to guarantee the safety of the authors and thus avoid the legal liability, the mere existence of control policies does not exempt them automatically of guilt. The Courts have understood that the effectiveness and good faith in the application of these mechanisms are decisive in assessing the company's civil liability. In other words, the duty of platforms is not restricted to the formal implementation of policies, but to their consistent, fair and proportionate application, respecting the rights of all parties involved in the operation.

## 5 JURISPRUDENCE AND SPECIFIC CASES ON THE LIABILITY OF COMPANIES PLATFORMS

Case law analysis is fundamental to understanding how the Judiciary national and foreign have interpreted and applied the rules regarding the liability of digital platforms in cases of copyright infringement. In Brazil, court decisions on the subject are still relatively recent, but they reveal a trend of evolution interpretative, which seeks to reconcile copyright protection with the fundamental rights of users, such as freedom of expression and due process.

A relevant example is the judgment by the Superior Court of Justice (STJ) in REsp 1,840,848 SP 2019/0292472-3, which discussed the liability of internet providers for the removal of offensive content, especially intimate images released without consent. The STJ reaffirms that, as a rule, removal requires a court order (art. 19 of the Internet Civil Rights Framework), but there is an exception (art. 21) for cases of nudity or private sexual acts non-consensual, which can be removed only with notification of the victim. In the case under consideration, it was understood that sensual photos taken for commercial purposes do not fall under this exception.

However, the STJ itself has already signaled, in more recent decisions, the possibility of flexibility of understanding. In judgments involving notoriously illicit content, such as full reproductions of protected works without authorization, the Court has admitted that the omission immediate withdrawal may constitute a failure in the duty of care, even without a court order prior. This interpretation reinforces the notion that the platforms' responsibility is not absolute nor non-existent, and must be analyzed on a case-by-case basis, according to the conduct adopted by company in the face of violation.

At the international level, the most emblematic case is that of the Copyright Directive of European Union, especially Article 17<sup>4</sup>, which imposed on platforms the duty to obtain prior authorization for the provision of protected works, except in cases of legitimate use.

This device generated great controversy because it forced platforms to act in a

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<sup>4</sup> European Union. Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. Official Journal of the European Union, L 130, 17.5.2019, p. 92–125. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0790&from=FR>. Accessed on: 5 June 2025.

anticipatory, which in practice means using automatic filters even before the publication of the content. The Court of Justice of the European Union (CJEU), in decisions such as the one in the case *YouTube and Cyando (C-682/18 and C-683/18)*, recognized that platforms that play a role active in making protected content available may be held liable for violations, even if they are not direct authors.

In the United States, case law has also evolved. Although the DMCA system (Digital Millennium Copyright Act) provides immunity to platforms that correctly follow the *notice and takedown* procedure, cases such as *Viacom v. YouTube*, tried by the Court of Appeals from the Second Circuit made clear that this protection does not apply when the platform has effective knowledge of the infringement and does not take action. The court reinforced that although YouTube had a takedown policy, knowledge of infringements systematic and failure to adopt more effective measures could constitute negligence and, therefore, responsibility.

These precedents demonstrate that the decisive criterion for judicial accountability has been the platform's conduct in the face of the infringement: if it acts diligently and in good faith, it may be exempt from guilt; otherwise, he/she is jointly liable with the offender. The courts have shown favorably to the need to protect copyright holders, but also recognize the risks of excessive accountability of platforms, which could make the technological innovation and affect users' freedom of creation and expression.

Jurisprudence, therefore, moves towards seeking a balanced model, which does not transform the platforms into censors of published content, but also do not allow them omission in the face of evident violations. This interpretative construction has been fundamental to guide both the companies' internal policies and the bills being processed in the National Congress and in foreign parliaments.

## **6 PROPOSALS FOR THE BALANCE BETWEEN COPYRIGHT PROTECTION AND FREEDOM OF EXPRESSION**

The central challenge that permeates the accountability of digital platforms for violations of copyright is to balance the protection of intellectual property with the guarantee of freedom of expression and access to information. These values, although not necessarily

opposites, often come into disagreement in the digital environment, especially when automated control measures result in arbitrary removals of lawful content. In view of Furthermore, legal solutions and public policies are proposed that aim to reconcile these rights fundamental rights in a fair and proportionate manner.

A first proposal consists of improving the transparency of detection algorithms and content removal. Currently, the criteria adopted by platforms to identify Copyright infringements are largely opaque, which prevents verification of potential abuses. The adoption of public reports on removal decisions, as well as the explanation of the reasons for blocking users, would allow greater social and legal control over these tools, reducing the risk of undue censorship.

Another important measure is the strengthening of accessible and effective mechanisms that allow users to appeal against automatic removals. Such mechanisms must guarantee the adversarial system and full defense, including reasonable deadlines for response and review by a human team, especially in cases where the content involves parody, criticism, educational use or other legal exception. In this way, freedom of expression is protected without compromising the effectiveness of copyright protection.

In the legislative field, the creation of a civil liability model is proposed mitigated, which recognizes the role of platforms as intermediaries, but which also imposes duties of care when they benefit directly from the circulation of content. This approach is already adopted in part by the Civil Rights Framework for the Internet, but can be improved with the express provision of proactive monitoring duties in cases of recurrence or evidence clear signs of systematic infringement. In this approach, the platform would only respond when there was negligence in prevention or proven omission, avoiding both impunity and automatic censorship. For MARTINS and FURLAN, “the current legal challenge is not just to punish infringements, but ensure that copyright protection does not become an instrument of repression of freedom informational” (Martins; Furlan, 2024).

In this sense, it is also important to promote regulatory cooperation between public entities, platforms and rights holders. According to Gabriela Trindade Martins, “efficient regulation of digital platforms depend on integration between public entities, legal operators, companies technology and copyright holders” (Martins, 2024). Through action protocols joint, such as unified databases of protected works, direct reporting channels and

audits on automated moderation systems. Such instruments favor the performance preventive, rather than merely repressive, and reduce the excessive judicialization of disputes about online content.

From a doctrinal point of view, authors such as Nelson Rosenvald (2019) and Vinícius Marques de Carvalho (2019) argue that the role of platforms should be that of a collaborative agent in preservation of the public interest and the legal order, without replacing the State in its role of apply sanctions. This view is in line with the principle of proportionality, which requires consideration between conflicting rights, and with the principle of reasonableness, which requires that measures restrictive measures are necessary, appropriate and as little burdensome as possible.

Finally, digital education and copyright awareness should be encouraged, both between creators and consumers of content. Understanding the limits of use of protected works and copyright is essential for the formation of a digital culture more responsible, which can reduce the occurrence of infractions and facilitate the construction of more consensual and less litigious solutions.

Therefore, tackling the problem should not be guided by extreme measures such as total exemption of the platforms or the imposition of objective liability, but by a model hybrid, which considers the conduct of the platform, the nature of the content, the existence of control mechanisms and respect for fundamental rights. The balance between innovation, freedom and legal protection is possible, as long as it is built on the basis of dialogue, transparency and institutional cooperation.

## CONCLUSION

Digital transformation has profoundly impacted the way content is produced, shared and consumed, bringing with it new legal challenges for the protection of copyright. In this context, digital platforms play a central role not only as intermediaries, but as agents with real capacity to interfere in the dissemination of works protected, whether through algorithms, internal policies or partnerships with rights holders.

The analysis carried out allowed us to observe that Brazilian legislation, especially after the Internet Civil Rights Framework, adopts a position of liability conditioned on omission after court order. However, this system has been re-evaluated in light of international practices and

of recent case law, which recognizes that the omission or deficient performance of platforms can, in fact, give rise to civil liability. Emblematic cases in Brazil, Europe and in the United States they demonstrate that, although absolute and prior control should not be required, it is possible to hold platforms accountable when failures in their mechanisms are proven monitoring and reaction.

It was also found that the control mechanisms adopted by the platforms, such as detection algorithms and *notice and takedown systems*, although they represent advances, still lack transparency, effectiveness and respect for due process. Such limitations generate significant impacts on freedom of expression and users' right to publish content legitimate, especially in cases of use permitted by law, such as quotations, parodies and purposes educational.

Given this scenario, this work advocates the adoption of a liability model mitigated, which considers the platform's specific conduct in the face of infractions, the existence of reasonable prevention systems and good faith in action. In addition, reforms are needed legislative and institutional measures that promote greater transparency, the possibility of appeal for users, cooperation between platforms and rights holders, and strengthening education digital as a means of prevention.

It is concluded that the liability of digital platforms for violation of rights copyright should be neither absolute nor non-existent. The most appropriate path is that of balance: ensure effective protection for copyright holders without compromising innovation, freedom of expression and the democratic functioning of the digital environment.

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