



BRAZIL

FACT-CHECKER LEGAL GUIDE

**Fact-Checkers Legal
Support Initiative**



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INTRODUCTION

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1. This Guide summarizes the legal regime in Brazil relating to rights and obligations that are potentially relevant to fact-checkers. As explained below, these rights include honor rights, privacy rights, and image rights (collectively known as “personality rights”), along with copyright and the right to access information.

OVERVIEW OF CONSTITUTIONAL RIGHTS IN BRAZIL

2. In 1988, after the end of the military dictatorship, Brazil adopted a propositional Constitution setting out expansive individual rights.

3. Article 5 of the Constitution, which is within the section of the Constitution that provides “Fundamental Rights and Guarantees,” sets out the “Individual and Collective Rights and Duties” of “all persons ... residing in” Brazil (applying to both citizens and non-citizens). Among other things, Article 5 guarantees:

a. That “[a]ll persons are equal before the law” and are “ensured of inviolability of the right to life, to liberty, to equality, to security and to property.”¹

b. Freedom of thought.²

c. Freedom of any form of intellectual, artistic, scientific or communicative expression.³

d. Access to information.⁴

e. The protection of rights known as personality rights, considered to be “inviolable” rights of every natural person. These are the rights to:

i. “privacy [and] private life”;

ii. “honor”; and

iii. “image.”⁵

Article 5 expressly states that any violation of personality rights results in “the right [of] compensation for property or moral damages resulting from their violation.”⁶

4. The main sources of protection for personality rights are provisions in the Criminal Code and the Civil Code.⁷ This legislation regulates personality rights and guarantees that they can be enforced in Brazilian courts if violated. An individual generally cannot bring a legal claim based on the protection of personality rights provided for in the Constitution itself but can bring a claim based on the provisions of the Criminal or Civil Code that aim to protect these Constitutional rights. The specific claims that an individual can make based on the protection of personality rights provided in the Criminal and Civil Codes are discussed below.⁸

5. Freedom of speech and freedom of the press are also protected in Article 220 of the Constitution, which prohibits any form of censorship motivated by political, ideological or artistic reasons.⁹ However, unlike personality rights, freedom of speech and freedom of the press are not currently regulated by any legislation in addition to the Constitution.

HONOR RIGHTS

6. Article 5(X) of the Constitution guarantees the protection of honor rights. Honor rights are regulated by both the Criminal Code and the Civil Code, as explained below.

7. This section summarizes (a) the scope of protection provided by honor rights; (b) the criminal offences that can arise from violations of honor rights; and (c) the civil claims that can arise from violations of honor rights.

A. *What Is Protected?*

8. Under Brazilian law, “honor” has been described as the “faculdade de apreciação ou o senso que se faz acerca da autoridade moral de uma pessoa, consistente na sua honestidade, no seu bom comportamento, na sua respeitabilidade no seio social, na sua correção moral; enfim, na sua postura calcada nos bons costumes” [“faculty of appreciation, or evaluation of the moral authority of a person, consisting of his or her honesty, good behavior, respectability in the social sphere, moral correctness; and attitudes based on the good customs”].¹⁰

9. There are two categories of honor: (i) objective honor, which is a person’s honor as perceived by others (including a person’s reputation); and (ii) subjective honor, which is a person’s own perception of his or her reputation.¹¹

B. *Criminal Offenses for Violations of Honor Rights*

10. The Criminal Code defines the following crimes against honor: (i) calumny (Article 138); (ii) defamation (Article 139);, and (iii) injury (Article 140). These are considered crimes of a private nature under Brazilian law (barring one exception regarding injury explained below¹²), and can therefore only be prosecuted at the request of the victim.¹³

11. Each of the honor crimes set out in Articles 138 to 140 of the Criminal Code is discussed in more detail below, with some examples from case law and possible defenses.

12. As explained below, calumny is the most severe honor crime, followed by defamation, and then injury. Calumny and defamation aim to protect a person’s objective honor, whereas injury aims to protect a person’s subjective honor.

1. Calumny

13. Calumny consists of making a false accusation that another person has acted in a way that constitutes a crime.¹⁴ Calumny aims to protect a person’s objective honor.

a) Elements of Calumny

14. The elements of calumny are listed below:

a. There must be an accusation that an act has been committed that is a crime under Brazilian law (it is sufficient for the accusation to describe actions that amount

to a crime; the accusation does not need to directly state that the person committed a crime)¹⁵;

- b. The accusation must be false (either because no crime was committed or because the person accused did not commit the crime¹⁶);
- c. The accusation must be specific as to the acts, and cannot merely state that a person committed a crime¹⁷;
- d. The accusation must be directed at or heard by third-parties¹⁸;
- e. The person who made the accusation must be aware that the statement is false¹⁹; and
- f. The person who made the accusation must intend to cause harm.²⁰

b) Who Can Commit Calumny?

15. Only natural persons can commit the crime of calumny.²¹ A third party who hears an accusation that meets the requirements of calumny and repeats that accusation (while aware that the accusation is false) also commits calumny.²²

c) Who Can Be a Victim of Calumny?

16. Most authorities state that both natural and legal persons can be victims of calumny crimes.²³ In the case of natural persons, the victim may be alive or dead.²⁴ In the case of legal entities, the crime attributed to the legal entity must be considered a crime under the Law of Environmental Crimes.²⁵

d) Punishment for Calumny

17. The punishment for calumny is imprisonment for a minimum of six months and maximum of two years and the payment of a criminal fine.²⁶

e) Defenses to Calumny

18. As described below, truth and retraction are defenses to calumny.

(1) Truth

19. The Criminal Code provides that an accusation generally cannot constitute calumny if the accusation is true.²⁷

20. However, there are some exceptions to this rule. A truthful accusation that someone has committed a crime can still constitute calumny where:

- a. the accusation is that a crime of a private nature²⁸ has been committed by a person who has not yet been convicted of that crime;

- b. the accusation was made about a person who meets the criteria of Article 141 discussed below;²⁹ or
- c. the accusation is made after the accused person has already been found not guilty at final instance of the crime in question.

(2) Retraction

21. Under Article 143 of the Criminal Code, there can be no punishment for calumny if the accuser retracts his or her accusation before the court of first instance makes a finding of calumny.³⁰

f) Examples from Case Law

22. In a recent case, a journalist who published a blog post stating that a federal judge had participated in a scheme for misuse of public funds in the well-publicized car wash operation³¹ was found guilty of calumny and sentenced to ten months and ten days of imprisonment. The Federal Court of the 3rd Region stated that “[a] notícia que atribui ao magistrado a vinculação a partido político e a réu de processo criminal em que exerce a jurisdição, claramente, ofende sua reputação e, ao imputar-lhe falsamente crimes, patenteia o propósito de ofender sua honra, a caracterizar as práticas de difamação e calúnia.” [“press articles that attribute to a judge’s relations with a political party and with a criminal defendant in which [the judge exercises] jurisdiction clearly offends his reputation and, by falsely imputing crimes to him, evidences the purpose of offending his honor, and constitutes defamation and calumny”].³²

23. In another case, a journalist wrote an article accusing a public prosecutor of having illegally provided legal counsel to the mayor of San Antonio da Platina. The article explained that the public prosecutor had filed a motion to request that a video be removed from the internet that showed the mayor buying drugs when he was a candidate for mayor. The journalist was accused of calumny against the public prosecutor. However, the Federal Court of the 4th Region found the journalist not guilty. The court recognized the journalist’s intention to inform and to criticize the public prosecutor and stated that the journalist did not have the intention to personally harm the honor of the public prosecutor.³³

2. Defamation

24. Defamation consists of making an accusation that another person has acted in a way that, although not a crime, harms a person’s objective honor.³⁴ As with calumny, defamation aims to protect a person’s objective honor.

a) Elements of Defamation

25. The elements of the crime of defamation are similar to those of calumny.

- a. Like calumny, defamation requires that
 - i. the accusation contains a specific description of the facts considered harmful to a person’s honor,³⁵ and

ii. that the offender must have intended to cause harm.³⁶

b. However, the crime of defamation differs from calumny in two important respects:

i. the defamatory statement does not have to be an accusation that a crime has been committed, and

ii. a statement can be defamatory regardless of its truth (save for a narrow exception discussed below³⁷).

b) Who Can Commit Defamation?

26. Only natural persons can commit defamation.³⁸

c) Who Can Be a Victim of Defamation?

27. While natural persons can be the victims of defamation, courts and commentators are split on whether a legal entity can also be the victim of defamation.³⁹

d) Punishment for Defamation

28. The punishment for defamation is imprisonment for a minimum of three months and maximum of one year and the payment of a criminal fine.⁴⁰

e) Defenses to Defamation

29. Retraction is a partial defense to defamation. In very narrow circumstances, truth is also recognized as a defense to defamation.

(1) Retraction

30. As with calumny, Article 143 of the Criminal Code provides that there will be no punishment for defamation if the party alleged to have committed defamation retracts the accusation in question before the court of first instance has made a finding of defamation.⁴¹

(2) Truth

31. Unlike calumny, an accusation need not be false in order to be defamatory. Therefore, truth is not generally a defense to a charge of defamation.

32. There is one exception to this general rule. Article 139 of the Criminal Code provides that truth is a defense to defamation if the victim is a public servant and the accusation in question is related to the public services provided.⁴²

f) Immunity from Charges of Defamation

33. Article 142 of the Criminal Code provides immunity from charges of defamation in certain contexts (generally, to certain professionals acting in the course of their professional duties):

- a. A statement made in court, in the course of and related to the proceedings in question, by a lawyer or party involved in the proceedings, cannot be the basis for criminal charges for defamation. This immunity does not apply to a person who publishes that same statement outside of court.
- b. Literary, artistic, or scientific criticism will not attract criminal charges for defamation unless the criticism was expressed with the intention to cause harm.
- c. A statement expressed by a public servant acting in his or her official capacity cannot be the basis for criminal charges for defamation. However, this immunity does not apply to a person who subsequently publishes that same statement.

g) Examples from Case Law

34. Generally, to find someone criminally liable for defamation, courts require more than a mere offensive accusation or some degree of intent to cause harm. In other words, courts require some degree of severity in the elements of the crime, but there is no clarity on the requisite level of severity.

35. For example, in a case involving a journalist's articles in which he referred to a professional association of contractors as "clube," associação "inútil," "mequetrefe," and "chifrim" ["club," "useless," "rascal," and "tacky"], the court found the journalist guilty of defamation. In his defense, the journalist had argued that he had acted consistent with his constitutional right of freedom of speech, and therefore no crime was committed. The State Court of São Paulo decided, however, that the journalist's articles had stepped beyond mere criticism, and that he had repeatedly published statements with the intention to harm the association's reputation and had therefore committed defamation.

3. Injury

36. The crime of injury is defined broadly in the Criminal Code as "to offend someone, injuring their dignity or decorum."⁴³

a) Elements of Injury

37. The elements of the crime of injury are:

- a. the offending statement or action must be:
 - i. severe and capable of affecting a person's subjective honor; and
 - ii. made with the intention to offend and to cause harm.⁴⁴

38. The Criminal Code does not provide any guidance on the degree of severity necessary for a potentially offensive statement or act to amount to the crime of injury. That assessment is left to the court's discretion. Using that discretion, courts have held that merely expressing a critical opinion about someone does not constitute the crime of injury, absent an intention to offend or harm that person. Similarly, statements intended to be humorous or a mere recounting of facts do not amount to the crime of injury.⁴⁵ Offensive

statements exchanged in a heated argument would be exempt from punishment, as described below.⁴⁶

b) Who Can Commit Injury?

39. Only natural persons can commit the crime of injury.⁴⁷

c) Who Can Be a Victim of Injury?

40. Only natural persons can be a victim of the crime of injury.

d) Punishment for Injury

41. The punishment for injury can be either imprisonment from one to six months or the payment of a criminal fine.⁴⁸

(1) Judicial Forgiveness

42. Under Article 140 of the Criminal Code, the judge may, at his or her discretion, decide not to punish someone convicted of the crime of injury where: (i) the victim directly provoked the offense “in a reproachable manner” or (ii) the offender is both an offender and a victim and committed the offense in response to a prior offense of injury.⁴⁹

e) Aggravating Factors for the Crime of Injury

43. The crime of injury can be aggravated if the offending statement or action occurs alongside physical violence or hostile behavior.⁵⁰ Injury accompanied by physical violence or hostile behavior is no longer a crime of a private nature,⁵¹ but becomes a crime of a public nature, and therefore the public prosecutor’s office may prosecute the crime without the prosecution being initiated or authorized by the victim.⁵²

44. The sentence for injury accompanied by physical violence or hostile behavior is imprisonment from three months to a year, the payment of a criminal fine, and any additional punishment that may arise if the use of physical violence is recognized as another crime (*e.g.*, bodily injury).

45. Another aggravated form of the crime of injury occurs if the offending statement refers to a person’s race, color, ethnicity, religion, origin, age, or disability.⁵³ In such cases, the sentence is imprisonment from one to three years and a criminal fine.

f) Defenses to Injury

46. There are no defenses specific to the crime of injury in the Criminal Code.

g) Immunity from Charges of Injury

47. Immunity from charges of injury applies in the same situations as it does for defamation.⁵⁴

h) Examples from Case Law

48. Recent cases illustrate distinctions some courts have drawn between mere critical or offensive statements and statements that amount to the crime of injury.

49. In one recent case, a Supreme Federal Court justice initiated criminal charges for calumny, defamation, and injury against a journalist who had written an article criticizing the opinions and decisions of the justice in a well-publicized case. The court of first instance found the journalist not guilty. In its decision, the court stated that “[q]uestionar os poderes de uma autoridade pública não deve ser considerada uma afronta, e a crítica à autoridade pública tornou-se algo não somente possível, mas necessário. O exercício do cargo no Poder Judiciário não foge a essa regra” [“questioning the powers of a public authority should not be considered an offense, and criticism directed to a public authority has become not only possible but necessary. The exercise of a position in the Judiciary does not exclude this rule.”].⁵⁵

50. In another recent case, the court addressed a claim of offensive statements aggravated by race discrimination.⁵⁶ The journalist Paulo Henrique Amorim was sentenced to one year and eight months of imprisonment for the crime of injury because he had published on his website that another journalist, Heraldo Pereira, was a “negro de alma branca” [“a black person with the soul of a white person”] and that he “não conseguiu revelar nenhum atributo para fazer tanto sucesso, além de ser negro e de origem humilde” [“did not have any qualities necessary to achieve professional success, in addition to being black and from simple origins”].⁵⁷ The Appeal Court’s decision (which was confirmed by the Supreme Federal Court⁵⁸) stated: “[a]s expressões utilizadas pelo réu ... foram desrespeitosas e acintosas à vítima, excedendo os limites impostos pela própria Constituição Federal e ferindo seu objetivo primordial, que é o exercício da democracia. Portanto, não há como entender que o réu agiu apenas com o animus narrandi ou criticandi, devendo a liberdade conferida a ele ser limitada, tendo em vista que feriu direito alheio” [“the expressions used by the defendant ... were disrespectful and offensive to the victim, exceeding the limits imposed by the Federal Constitution and violating its primary objective, which is the exercise of democracy. Therefore, there is no way to understand that the defendant acted only with the animus narrandi or criticandi, and the freedom conferred on him should be limited, since he injured the right of others”].⁵⁹

4. Factors Which Increase Sentence Length for All Honor Crimes

51. In certain circumstances, Brazilian law provides for harsher sentences for the honor crimes discussed above.⁶⁰

52. The sentence for an honor crime may be increased by up to a third of the initial sentence if the crime is committed:

- a. against the Brazilian president or any head of state of another country;
- b. against any public servant because of his or her public position;
- c. in the presence of many people or by means that facilitate the propagation of the calumnious, defamatory, or injurious statement.⁶¹

53. In cases of calumny and defamation (but not injury), the sentence also may be increased where the victim is more than 60 years old or has any disabilities.⁶²

54. In addition, if an honor crime is committed after receiving a payment in connection with the statement or for the promise of a reward, the length of the sentence will be increased by two times the initial sentence.⁶³

c. Civil Claims for Violations of Honor Rights

55. As discussed above, the Brazilian Constitution provides for the protection of personality rights and provides that any violation of personality rights may result in claims for moral and pecuniary damages.⁶⁴ The Civil Code sets out the regime for civil claims for violations of personality rights.⁶⁵

1. Who Can Be Liable for a Violation of Honor Rights?

56. Where there is a civil violation of any personality right arising from a publication in the press, the Superior Court of Justice has clarified that “[s]ão civilmente responsáveis pelo ressarcimento de dano, decorrente de publicação pela imprensa, tanto o autor do escrito quanto o proprietário do veículo de divulgação” [“both the author and owner of the publication are liable for the payment of damages”].⁶⁶

2. What Relief Can Be Claimed for a Violation of Honor Rights?

57. Article 12 of the Civil Code authorizes a person whose personality rights have been violated to claim compensation for any losses and damages.⁶⁷

58. Article 12 of the Civil Code also provides that any person may demand that any violation of his or her personality rights cease.⁶⁸ The Code specifically states that a person whose personality rights have been violated may seek to enjoin the “divulcation of writings; transmission of speech; and publication, exhibition or use of the image of a person.”⁶⁹

3. Statute of Limitations

59. Because image rights are fundamental rights of a person that cannot be “transmitted or renounced,”⁷⁰ claims requesting that a court recognize the unauthorized use of a person’s image as a violation of image rights, and seeking that the violation cease, are not subject to any statute of limitations.

60. However, the statute of limitations imposed on all civil compensation claims applies to a compensation claim arising out of the violation of a person’s image rights. The statute of limitations for such claims is three years from the time of the offense.⁷¹

4. Right to Compensation for Violation of Honor Rights in the Absence of Proof of Loss

61. Article 953 of the Civil Code provides further regulation specifically with respect to honor rights.⁷² Article 953 provides for the right to be compensated for damage caused by a civil violation of a person’s honor rights even if there is no proof of material loss. In such

cases, Article 953 provides judges with the discretion to award compensation in the amount they deem to be equitable in the circumstances.

62. In exercising this discretion, courts routinely consider the following factors:⁷³
- a. the nature of the offense, its gravity, and the extent of the harm caused to the offended person;
 - b. whether the person who committed the offense acted with malice;
 - c. whether the person who committed the offense has committed a similar offense before or is likely to commit the same offense again;
 - d. whether the offense caused any pecuniary damage;
 - e. the potential reach of the publication used to commit the offense; and
 - f. the financial and social conditions of the parties involved.

5. Examples from Case Law

63. As a result of these provisions, the scope for civil claims based on the offense of honor rights is very broad. Any person who feels that his or her honor has been offended may bring a civil claim even where no pecuniary damage can be proven. It is within the courts' discretion to decide the admissibility of these claims and to determine a reasonable level of compensation, if any.

64. Brazilian courts have found journalists liable for damages under the Civil Code for violations of honor rights in various circumstances. For example, in one case, a magazine's editor was ordered to pay R\$ 150,000 in moral damages to a judge for an article that stated that the judge had acted negligently in deciding a child's protection request against his father. The article stated that because the judge took a long time (19 days) to decide the request for protection, the child ended up being murdered by the father. The accused judge demonstrated that, contrary to the article's claims, she only had two days to examine the request, and that the article's representations had caused severe damage to her reputation.⁷⁴

65. In another case, a publisher was held liable for moral damages to a police officer caused by an article in the publisher's newspaper. The article described a police operation to capture drug dealers in the city of Jundiai, and mistakenly identified the police officer in question as one of the drug dealers.⁷⁵

66. Another publisher was held liable to pay damages to a man who had been accused of rape. The publisher was responsible for a television news report that purported to provide a definitive account of the facts of the crime, even though the case was still under investigation and the television channel had only obtained and presented the victim's account of the crime. The report gave the name of the suspect and aired his photograph. The Sao Paulo State Court found the report to be sensationalist, and stated: "[o] ato ilícito não está na veiculação matéria sobre crime notório, que atende o interesse público de dar

conhecimento geral da prática de grave delito, quais as providências adotadas - ou não - pelas autoridades para coibi-lo e, especialmente, o estímulo para a identificação e punição do suspeito. O ilícito está na no tom da matéria, desde logo imputando o crime ao autor, com páldas reservas, colocando no ar sua fotografia e seus dados pessoais, sem ao menos ouvir sua versão” [“the illicit act committed is not in publishing a report about a notorious crime, which serves the public interest of publicizing the occurrence of a serious crime, which measures were adopted (or not) by the authorities to prevent the illicit and, in particular, the impulse to help in the suspect identification and his punishment. The illicit act is in the tone of the report, which from the beginning attributes the crime to the suspect, with minor reservations, publishing his photograph and his personal data, without even hearing his version.”].⁷⁶

PRIVACY RIGHTS

67. The Brazilian Constitution guarantees privacy rights. Article 5(X) of the Constitution includes the rights “*of intimacy and to have a private life.*”⁷⁷ Privacy rights are regulated by both the Criminal Code and the Civil Code.⁷⁸

68. In addition to the general privacy rights guaranteed by Article 5(X), the Constitution specifically protects (i) the right of property and the inviolability of a person’s home,⁷⁹ and (ii) the confidentiality of correspondence and telegraphic, telephonic, and data communications.⁸⁰

69. This section summarizes (a) the scope of protection provided by privacy rights; (b) the criminal offenses that can arise from violations of privacy rights; and (c) the civil claims that can arise from violations of privacy rights.

A. *What Is Protected?*

70. The wording of Article 5(X) of the Constitution gives rise to two distinct categories of privacy rights.⁸¹

a. The right “of intimacy” is generally understood to be a right to privacy with respect to the most intimate aspects of an individual’s life, including family life, health, and personal correspondence.⁸²

b. The right “to have a private life” is generally understood to be a right to privacy with respect to aspects of an individual’s life that are private but that nevertheless interact with non-private aspects of that individual’s life (for example, with the individual’s work).⁸³

71. The distinction between the two categories is clearer in theory than in practice. Elements of the most intimate aspects of an individual’s private life are routinely co-mingled with non-private aspects, making the distinction difficult to draw. That said, aspects of private life that are more likely protected by the right to intimacy are likely to be better protected than those aspects protected by the right to have a private life because there is no competing public interest in the information; as commentators have explained, there can be little, if any, legitimate public interest in aspects of an individual’s life that are protected by the right to intimacy.⁸⁴

1. Is Surreptitious Recording Permitted?

72. There is no legislation in Brazil providing that surreptitious recording of a conversation by a person taking part in that conversation is illegal. Courts have generally found that such surreptitious recording by participants in a conversation is not illegal,⁸⁵ but this is assessed on a case-by-case basis.

73. However, it is illegal for a third party to record a conversation, unless the third party obtains judicial authorization to do so in the context of a criminal investigation.⁸⁶

2. Is There a Right To Be Forgotten?

74. Brazilian law does not codify a right to be forgotten. Authoritative commentary has, however, recognized such a right as falling within Article 11 of the Civil Code, which provides that personality rights “cannot be transmitted or renounced and their exercise cannot be voluntarily limited.”⁸⁷

75. Brazilian courts have also sometimes recognized the right to be forgotten, for example in the following two cases:

a. In the first case, the Court held that a man who had been accused of participation of the crime “Chacina da Calendaria” – a 1993 mass killing in which 70 children and teenagers were shot in the Candelaria church, eight of whom died – but was later found innocent had a right to be forgotten. A television show reporting on the Chacina da Calendaria in 2006 (more than a decade after the crime) had mentioned the man’s name as one of the accused. The Court held that the man had the right to be forgotten, that he should not have been mentioned in the documentary, and that the television channel had to pay him R\$ 50,000 for moral damages.⁸⁸

b. In the second case, the Court found that the right to be forgotten did not apply on the facts of the case because 50 years had passed between what the person bringing the suit wanted forgotten and when it was published. It held that “[a] reportagem contra a qual se insurgiram os autores foi ao ar 50 (cinquenta) anos depois da morte de Aida Curi, circunstância da qual se conclui não ter havido abalo moral apto a gerar responsabilidade civil. Nesse particular, fazendo-se a indispensável ponderação de valores, o acolhimento do direito ao esquecimento, no caso, com a consequente indenização, consubstancia desproporcional corte à liberdade de imprensa, se comparado ao desconforto gerado pela lembrança” [“The article against which the claimants file a complaint was on air 50 (fifty) years after the death of Aida Curi, a circumstance of which cannot cause moral harm capable of resulting in damages’ compensation. In this particular case, it is indispensable to consider the values involved; the acceptance of the right to be forgotten, in this case, with the consequent right to be compensated would result in a disproportionate violation of the freedom of the press, in comparison to the discomfort caused by the memory of the murder.”].⁸⁹

3. Limitations on Privacy Rights

76. The Civil Code does not list any defenses for civil claims arising out privacy rights violations. In practice, the main defenses tend to be founded in the Constitutional rights of information, freedom of the press, and freedom of speech,⁹⁰ and include that the information in question (a) was in the public domain; (b) was newsworthy; (c) concerned a public figure; or (d) concerned a historical fact.

a) Public Domain

77. Generally, there is no offense to privacy rights if:

- a. the disclosed fact “has already entered the public domain”;
- b. it “may be known by another form of obtaining information”; or
- c. “the information disclosed was limited to reproducing information already widespread.”⁹¹

b) Newsworthiness

78. Where there is a valid public interest in the disclosed information, this must be balanced against the right to privacy.

79. As a general matter, the stronger the connection between the information in question and the first category of constitutional privacy rights (“right to intimacy”), the less likely a court is to find a legitimate public interest in the information. Similarly, where the right to privacy at issue falls in the second category of constitutional privacy rights (“right to a private life”), a court is more likely to find in favor of the right of access to information and freedom of the press.⁹²

80. For example, the information that a person is the suspect of a criminal investigation is (if true) normally considered to be of legitimate public interest. In one case, the Superior Court of Justice found that “[a] suspeita que recaía sobre o recorrido, por mais dolorosa que lhe seja, de fato, existia e era, à época, fidedigna. Se hoje já não pesam sobre o recorrido essas suspeitas, isso não faz com que o passado se altere. Pensar de modo contrário seria impor indenização a todo veículo de imprensa que divulgue investigação ou ação penal que, ao final, se mostre improcedente” [“The suspicion that fell on the claimant, however painful, indeed existed and was, at the time, true. If today there are no longer suspicions regarding the Claimant, this does not mean that the past has changed. To think otherwise would be to impose the payment of damages to any publication that discloses a criminal investigation or action which, in the end, is unfounded.”].⁹³

81. The newsworthiness of private information may be diminished in certain cases, such as where the individual has been charged but not convicted of a crime or where the crime was committed many years ago and the individual has already served his or her sentence.⁹⁴

c) Public Figures

82. The courts have often found that a public figure has diminished privacy rights as a consequence of his or her expanded public life, in which there is a legitimate public interest. However, courts have stated that public figures do still have a large degree of protection over the first of the two categories of constitutional privacy rights, the “right to intimacy.”⁹⁵

83. In one case, for instance, the Superior Court of Justice stated “[a]s pessoas públicas, malgrado mais suscetíveis a críticas, não perdem o direito à honra. Alguns aspectos da vida particular de pessoas notórias podem ser noticiados. No entanto, o limite para a informação é o da honra da pessoa. Com efeito, as notícias que têm como objeto pessoas de notoriedade não podem refletir críticas indiscriminadas e levianas, pois existe uma esfera íntima do indivíduo, como pessoa humana, que não pode ser ultrapassada” [“[p]ublic figures, although more susceptible to criticism, do not lose their right of honor. Some

aspects of the private life of public figures can be reported. However, the limit of information is that of the honor of the person. In fact, news that has as its object public figures cannot reflect indiscriminate and frivolous criticism, because there is an intimate sphere of the individual, as a human being, that cannot be surpassed.”].⁹⁶

d) Historical Fact

84. A person who is not a public figure may nevertheless become involved in an important historical event and, for this reason, have a diminished right to privacy with respect to the event in question where there is a collective interest in having the private information released. Refugees and survivors of natural catastrophes, for example, may have a diminished right to privacy with respect to the historical events in which they were involved.⁹⁷

B. *Criminal Offenses for Violations of Privacy Rights*

85. The Criminal Code provides that it is a crime to violate a person’s privacy by intruding upon (1) the person’s home and (2) the person’s correspondence.

1. Intrusion

86. Article 150 of the Criminal Code provides that it is a crime to enter or remain in someone’s home without permission, as explained in more detail below.

a) Elements of the Crime of Intrusion

87. The elements of the crime of intrusion are:

- a. entering or remaining in someone’s home (including any land on which the home is situated and any outbuildings on that land that are owned by the homeowner);
- b. without the express or tacit consent of the person who is by law responsible for the property (typically, the property owner or, in a rented property, a tenant);
- c. with malice, *i.e.*, the intruder must know that he or she is not allowed in the home.⁹⁸

88. For the purposes of the crime of intrusion, a “home” is defined broadly as any

- a. inhabited private housing property;
- b. occupied room in a hotel or other form of shared accommodation; or
- c. professional office that is not open to the public.

89. Despite the references to “inhabited” and “occupied” properties or spaces in these definitions in the Criminal Code,⁹⁹ if the property is temporarily unoccupied (*e.g.*, if the occupant is travelling) an intrusion would still be considered a crime.¹⁰⁰

b) Punishment for Intrusion

90. The punishment for the crime of intrusion is one to three months of imprisonment or a criminal fine.¹⁰¹ However, this sentence can be increased to a period of six months to two years if the crime was committed (i) by two or more people, (ii) with the use of violence, (iii) during the night, or (iv) in a rural area.

c) Defenses to Intrusion

91. The only defenses specific to the crime of intrusion are that (1) the intruder entered the home to prevent an ongoing crime in the home¹⁰² or (2) the intruder was authorized to enter the home (for example, by court order).¹⁰³

2. Correspondence Violations

92. Article 151 of the Criminal Code sets out a category of crimes known as “correspondence violations.”

a) Specific Correspondence Violations

93. Under Article 151, it is a crime to:

- a. open another person’s mail;¹⁰⁴
- b. destroy or misappropriate someone’s mail (even if it has already been opened);¹⁰⁵ or
- c. disclose, transmit to others, or abuse¹⁰⁶
 - i. telegraphic or radioelectric communications addressed to a third party; or
 - ii. telephone conversations between other persons.¹⁰⁷

b) Punishment for Correspondence Violations

94. The punishment for these crimes is one to six months of imprisonment or a criminal fine.¹⁰⁸ However, this sentence can be increased by up to half of the sentence if the crime has caused property damage or moral damage.¹⁰⁹

c) Defenses to Correspondence Violations

95. There are no defenses specific to correspondence crimes set out in the Criminal Code.

c. *Civil Claims for Violations of Privacy Rights*

96. Privacy rights, like all personality rights,¹¹⁰ are regulated by Articles 11 to 21 of the Civil Code. As a result, civil claims based on the breach of privacy rights have the same broad elements (and the same statute of limitation) as civil claims based on honor and

image rights, and a claimant can demand that violations of his or her privacy rights cease and also claim compensation for losses and damages.¹¹¹

97. In addition, Article 21 of the Civil Code specifically states that “[t]he private life of the natural person is inviolable, and the judge, at the request of the interested party, shall take the necessary measures to prevent or terminate the act contrary to this norm.”¹¹²

98. Although privacy, honor, and image are different rights with specific and separate protection in Brazilian law, in practice, most circumstances involving offenses to privacy also involve either a violation of a person’s image rights or offenses to a person’s honor.

IMAGE RIGHTS

99. Like honor and privacy rights, image rights are guaranteed as fundamental rights by the Constitution¹¹³ and regulated by the Civil Code.¹¹⁴ However, violations of image rights do not give rise to criminal offenses.

100. This section summarizes (a) the scope of protection provided by image rights and (b) the civil claims that can arise from violations of image rights.

A. *What Is Protected?*

101. Brazilian statutory provisions prohibit violations of a person's image rights and provide that such a violation may result in claims for moral or pecuniary damages. These statutory provisions do not, however, clarify the definition of a person's "image" or the specific content of these rights.

102. In an effort to provide guidance, commentators have explained that the legal concept of "image" entails both:

- a. a person's "imagem-retrato" ["portrait-image"], which is the representation of a person's physical characteristics, (including his or her voice); and
- b. a person's "imagem-atributo" ["attribute-image"], which is the representation of a person's non-physical characteristics and personality.¹¹⁵

103. "Imagem-atributo" also forms part of a person's reputation, and therefore an offense to a person's "attribute-image" may also constitute an offense to that person's subjective honor (discussed above in Section III).¹¹⁶ In practice, this means that violations of a person's image rights can be caused not only by the unauthorized publication of a person's physical image, but also by publications containing a mischaracterization of a person's personality which is capable of affecting his or her image as it is presented to the public (for example, his or her professional image).¹¹⁷

104. In general, the protection of image rights guarantees that (i) no one can publish a person's image without his or her authorization; (ii) authorization cannot be presumed, except in special circumstances (see paragraphs 115-121 below); and (iii) any authorization is limited to the specific purpose for which this authorization was given.¹¹⁸ In the words of the Superior Court of Justice, violation of image rights "materializa-se com a mera utilização da imagem sem autorização, ainda que não tenha caráter vexatório ou que não viole a honra ou a intimidade da pessoa, e desde que o conteúdo exibido seja capaz de individualizar o ofendido" ["materializes with the mere use of a person's image without authorization – even if it is not vexatious or if it does not violate the honor or intimacy of the person – and provided that the publication is able to individualize the person offended."].¹¹⁹

B. *Civil Claims for Violations of Image Rights*

105. The violation of a person's image rights can result in civil claims for both cessation of the violation and compensation for any damage caused.¹²⁰ As with all personality rights, there is no statute of limitations on a claim for the cessation of a violation of image rights, and there is a three-year statute limitations on claims for compensation for damage caused by such a violation.¹²¹

106. As with civil claims for violations of honor rights, a civil violation of image rights arising from a publication in the press can lead to liability on the part of both the author and the owner of the publication.¹²²

107. Courts have discretion to determine the amount of damages for an image violation. In exercising this discretion, they routinely consider a number of factors, including whether the offense caused any pecuniary damage and the potential reach of the publication used to commit the offense, as described above.¹²³

108. Furthermore, Superior Court of Justice Súmula 403 also provides that “independe de prova do prejuízo a indenização pela publicação não autorizada da imagem de pessoa com fins econômicos ou comerciais” [“the right of compensation arising from the non-authorized use of a person's image for a financial or commercial purpose can be determined regardless of any proof of damages.”].¹²⁴

109. A Superior Court of Justice judgment applying Súmula 403 has stated: “[a] utilização de imagem da pessoa física, sem seu consentimento, com fins econômicos ou comerciais, gera o direito ao ressarcimento dos danos morais, independentemente de prova do prejuízo. [...] O direito à imagem reveste-se de duplo conteúdo: moral, porque direito de personalidade [rectius: direito de humanidade]; patrimonial, porque assentado no princípio segundo o qual a ninguém é lícito locupletar-se à custa alheia. Em se tratando de direito à imagem, a obrigação da reparação decorre do próprio uso indevido do direito personalíssimo, não havendo de cogitar-se da prova da existência de prejuízo ou dano, nem a consequência do uso, se ofensivo ou não.” [“The use of an individual's image, without her consent, for economic or commercial purposes, generates the right to compensation for moral damages, regardless of proof of loss. ... The right to image is two-fold: moral, because it is a personality right [*i.e.*, a human right]; patrimonial, because it is based on the principle according to which no one can enrich themselves at the expense of others. Regarding image rights, the obligation to compensate is due to the improper use of a personality right, and there is no need to consider whether there is any loss or damage or the consequence of the use, whether offensive or not.”].¹²⁵

1. Defenses to Civil Claims for Violations of Image Rights

110. Article 20 of the Civil Code provides that the use of a person's image is prohibited “except if [a] authorized, or [b] necessary for the administration of justice or the maintenance of public order.”¹²⁶

a) Authorization

111. Courts interpret authorization for the use of a person's image under Article 20 of the Civil Code restrictively. The authorization must be express and must cover the full scope of the use.¹²⁷ In particular, an authorization should cover how the image may be captured and published and contain a description of its purpose, means of use, and the period of authorization.¹²⁸

112. For example, an authorization to use the image of an employee for internal display in the employer's office does not allow the employer to upload the image to a website or to reproduce it in printed publications.

113. As a general rule, authorization for the use of a person's image must be in writing.¹²⁹

114. The requirements for authorization may differ where the image is of a public location or public figure. These are discussed in turn below.

(1) Images Captured in a Public Location

115. Authorization to use a person's image may not be required if that image captures a public location.

116. Additional factors may also be considered, including the following (the existence of each making it more likely that authorization will be required):

- a. if the person whose image was captured was identified;
- b. if it was the intention of the person who captured the image to capture the individual, as opposed to the public space;
- c. if the image is not considered to be newsworthy; and
- d. if the image has a commercial purpose.

117. The following examples demonstrate the case-by-case approach taken by the courts and their application of the above factors:

- a. The Superior Court of Justice denied the claims of a man who sued a newspaper for publishing an image of him taking part in a protest without his authorization. The Court held that freedom of press and the right to information prevailed in the case because the man was photographed in a public space, during a protest, and he was not identified by the reporter. The Court also emphasized that the publication had the intention to inform others about the protest, and the man's picture was not included for a commercial purpose.¹³⁰
- b. The Superior Court of Justice refused to award damages against a newspaper that published the image of a topless woman on a beach without her authorization.¹³¹ The judge explained that the journalist's intention was to picture a public location (the beach), and the woman was simply part of the crowd.
- c. In another case, the Superior Court of Justice awarded damages against a newspaper for publishing images of a topless woman on the beach.¹³² The judge

distinguished the prior case described immediately above, explained that in this second case (i) the newspaper published four sequential pictures of the woman and intended not to show the beach but to show the woman herself and (ii) moral damage had been caused to the woman who had her personal and professional life affected by the pictures.¹³³

(2) Images of Public Figures

118. Like their privacy rights (see Section IV), the image rights of public figures may also be diminished as a consequence of their expanded public lives in which there is a legitimate public interest. The use of a public figure's image is therefore likely to be permitted without prior authorization; Brazilian courts generally presume an authorization to reproduce the image of public figures in public spaces as a consequence of their status as public figures.¹³⁴

119. However, public figures do not sacrifice all image rights simply because they are public figures. An unauthorized image of a public figure may not be published

- a. for a commercial purpose (*e.g.*, a sticker album of football players);¹³⁵
- b. for a different purpose than that authorized (*e.g.*, the image of an actress in a television show cannot be reproduced in a magazine without her consent¹³⁶); or
- c. for a defamatory purpose that is not newsworthy (*e.g.*, a report suggesting that judges from the Superior Court of Justice could be involved in a corruption scandal, even though the first instance judge had already exempted them from the accusations).

b) Maintenance of Public Order or Administration of Justice

120. The Civil Code allows the unauthorized use of a person's image for the maintenance of public order or administration of justice. The most common example of this permitted unauthorized use is the distribution of the image of a person who is a suspect in a criminal investigation. However, a suspect's image can be published only when this is necessary for the purposes of a judicial investigation (*e.g.*, when the suspect cannot be found or may be considered dangerous to others).¹³⁷

ACCESS TO INFORMATION

121. The right of access to information is a fundamental right guaranteed by Article 5 of the Constitution.¹³⁸ This right is also protected by Article 37 (right to administrative records),¹³⁹ Article 93(IX) (right to judicial documents),¹⁴⁰ and Article 216 (right to government documents).¹⁴¹

122. The sections below explain how the public can gain access to (a) information regarding the executive and legislative branches of government and (b) information regarding the courts.

A. *Access to Information Regarding the Executive and Legislative Branches of Government*

123. At the infra-constitutional level, access to public information is regulated by the Lei de Acesso à Informação Pública Brasileira [Law of Access to Brazilian Public Information] (“LAI”) in force since 16 May 2012.¹⁴²

124. All public entities are subject to the LAI,¹⁴³ and any person (natural or otherwise) can request information from public entities. Non-profit organizations are also subject to the LAI when the requested information is related to any public funds the organization has received.¹⁴⁴

125. The LAI establishes rights and duties of public entities with respect to access to information and sets out (i) what information can be requested under the LAI, and what information must be proactively published by the public entity; (ii) the procedure to classify information as confidential; (iii) the procedure to request information; and (iv) the procedure to decide a request for information.

126. Although the general rule under the LAI is that access to information should be provided,¹⁴⁵ there are exceptions to this rule:

a. Article 23 of the LAI provides that information is deemed to be confidential where its disclosure could pose a risk to, *inter alia*, (i) national security; (ii) sovereignty; (iii) population safety, health, or life; or (iv) national scientific or technological research.¹⁴⁶

b. Other statutes also exclude from the scope of the LAI information regarding banking transactions¹⁴⁷; tax information¹⁴⁸; information determined by a court to be confidential; and trade secrets and information on the stock market.¹⁴⁹

c. Personal information, including information that bears on a person’s honor or image, is also generally excluded from the scope of the LAI.¹⁵⁰

127. Where the requested information contains confidential information in part, the LAI requires that the information be provided with the confidential content removed or redacted.¹⁵¹

128. The implementation of the LAI is regulated by various Laws, Decrees, and Resolutions, and varies depending on the public entity from which information is sought:

a. With respect to the executive branch of the federal government, the implementation of the LAI is regulated by Decree n. 7.724 of 16 May 2012.¹⁵² The Brazilian government also provides an “LAI Map” for users unfamiliar with the LAI listing the LAI’s principal guarantees.¹⁵³ The government also has a website providing (i) explanations about the rights guaranteed by the LAI, (ii) the procedure to request information, and (iii) an electronic system to request information.¹⁵⁴

b. With respect to the legislative branch of government, the implementation of the LAI is regulated by the Ato da Comissão Diretora¹⁵⁵ (for the Senate) and the Ato da Mesa n. 45 of 16 July 2012 (for the House of Representatives).¹⁵⁶ Both the Senate and the House of Representatives provide “transparency websites,”¹⁵⁷ which include information that must be proactively provided by the public entity (such as basic information about the body including organizational structure and public opening hours, public funds received by the body, and the body’s expenses),¹⁵⁸ as well as an electronic system to request information based on the rights guaranteed in the LAI known as the e-SIC).¹⁵⁹

B. Access to Information Regarding Courts

129. Access to information regarding courts is provided for in the LAI and by Article 189 of the Code of Civil Procedure.

130. Under the LAI, the public can request access to information about courts and the judiciary. The LAI authorizes the public to request information about, for example, the use of public funds received by a court or how many cases a judge handles in a given month or year. Each court or tribunal individually regulates its adherence to and implementation of the LAI. For example:

a. Supreme Federal Court (STF): The LAI is regulated by Resolution n. 528 of 3 June 2014.¹⁶⁰ The STF website provides both a transparency page¹⁶¹ and the e-SIC system¹⁶²;

b. Superior Court of Justice (STJ): The LAI is regulated by Resolution n. 14 of 22 June 2016.¹⁶³ The STJ website provides both a transparency page¹⁶⁴ and the e-SIC system¹⁶⁵;

c. Federal Audit Court (TCU): The LAI is regulated by the Resolution n. 249 of 2 May 2012.¹⁶⁶ The TCU website provides both a transparency page¹⁶⁷ and the e-SIC system¹⁶⁸; and

d. Public Prosecution Office (MPF): The LAI is regulated by Resolution n. 89 of 28 August 2012.¹⁶⁹ The MPF website provides both a transparency page¹⁷⁰ and the e-SIC system.¹⁷¹

131. By default, court proceedings are public.¹⁷² Thus, unless a particular proceeding is determined to be confidential (either by law¹⁷³ or at the determination of the court in

question), any person can have access to a court's files or proceedings. Under Article 792 of the Code of Criminal Procedure, the public can generally access information about specific criminal court proceedings, including the parties, procedural information about the case, and the case judgment.¹⁷⁴ Under Article 189 of the Code of Civil Procedure, the public can generally access the same types of information about specific civil court proceedings.¹⁷⁵

COPYRIGHT

132. Copyright is a fundamental right guaranteed in Article 5 of the Brazilian Constitution.¹⁷⁶ Copyright is also regulated by the Conventions of Paris (1883) and Berne (1886), and Act n. 9.610 of 19 February 1998 (the “Copyright Act”).¹⁷⁷

A. *What Is Protected?*

133. Copyright protects any intellectual work (*e.g.*, writing, drawings, paintings, photographs, and speeches) that meets the legal criteria set out in Article 7 of the Copyright Act¹⁷⁸ and which is not excluded from protection by Article 8 of the Copyright Act.¹⁷⁹ Among other things, the Copyright Act excludes from protection intangible intellectual work like ideas, concepts, and principles, and texts of laws, decrees, and orders.¹⁸⁰

134. As a constitutional right, copyright is a right enjoyed by natural persons; corporations and other legal entities only have limited copyright protections in Brazil.¹⁸¹

135. Copyright gives rise to both “moral” and “patrimonial” rights. The moral rights provided by copyright guarantee the untransferable and irrevocable rights that an author has with respect to his or her creative work. An author cannot transfer his or her moral rights in the work to others.¹⁸²

136. These moral rights provide that an author may:

- a. claim, at any time, ownership of his or her work;
- b. have his or her name (or chosen penname) indicated as the work’s author;
- c. ensure that his or her work is used as conceived by him or her;
- d. decide to not publish his or her work; and
- e. remove his or her work from publication.

137. The patrimonial rights provided by copyright are the rights of use, enjoyment, and transmission of the creative work. Article 29 of the Copyright Act provides that a work cannot be used without the express authorization of its author.¹⁸³ An authorization of use is often specific, and if given for a specific purpose, does not cover any other purpose.¹⁸⁴ An author may, however, provide a general and open authorization to the public, establishing the place, format, and period for which the authorization is valid, and whether it authorizes the use for free or subject to payment.¹⁸⁵

138. Patrimonial rights (i) are protected only for a limited period of time (70 years),¹⁸⁶ after which time the work is in the public domain and (ii) may be transferred to others through licensing, concession, assignment or other means admitted by law.¹⁸⁷ As noted above, this is not true of moral rights.

B. *Ownership of Journalists' Works*

139. The editor of a newspaper or other press publication owns the patrimonial rights of all work published in that publication for the normal period of the publication in question (*e.g.*, one day for daily publications, one week for weekly publications) (after which time the rights return to the author) unless (i) the parties have agreed otherwise or (ii) the publication contains an identification of its author or another reservation as to the publication's authorship.¹⁸⁸

140. For example, in 2009, Millôr Fernandes, an author, filed suit against Editora Abril, a major publisher, for unauthorized use of his work. Editora Abril had published online all content that it had previously published in print in its various publications, which included Millôr's articles published from time to time in one of the publisher's magazines. The Sao Paulo State Court's decision recognized that the Editora Abril's rights to use Millôr's articles were limited to the period of the magazine's publication at the time each magazine's edition was published. The decision also recognized that where Millôr's authorization was specific as to its use (*i.e.*, publication in a printed magazine), the articles could not be reproduced online without his express authorization.¹⁸⁹

C. *Permitted Use of Copyrighted Work*

141. Article 46 of the Copyright Act sets out a number of circumstances in which the limited use of copyrighted works is permitted without authorization. These circumstances include, but are not limited to, the following:

a. "a reprodução na imprensa diária ou periódica, de notícia ou de artigo informativo, publicado em diários ou periódicos, com a menção do nome do autor, se assinados, e da publicação de onde foram transcritos;" ["the reproduction of news or informative reports by journals, newspapers, or other informative means of press, provided that the publication included (i) the name of the author (if the publication's author was identified in the original), and (ii) where the publication was originally published"]¹⁹⁰;

b. "em diários ou periódicos, de discursos pronunciados em reuniões públicas de qualquer natureza" [the publication in journals or periodicals of speeches delivered at public meetings of any nature]¹⁹¹;

c. "de retratos, ou de outra forma de representação da imagem, feitos sob encomenda, quando realizada pelo proprietário do objeto encomendado, não havendo a oposição da pessoa neles representada ou de seus herdeiros" ["portraits or other form of representation of an image, which were taken by or at the instruction of the person publishing the image, provided the person represented in the image does not object"]¹⁹²; and

d. "a citação em livros, jornais, revistas ou qualquer outro meio de comunicação, de passagens de qualquer obra, para fins de estudo, crítica ou polêmica, na medida justificada para o fim a atingir, indicando-se o nome do autor e a origem da obra" ["the quotation in books, journals, magazines, or any other means

of communication of small excerpts of creative works, provided its purpose is to educate or contribute to critical discussion of an issue, and the author's name and where the original work was published are cited"].¹⁹³

D. Sanctions for Copyright Violations

142. Articles 102 to 110 of the Copyright Act set out the civil sanctions that apply to copyright violations. They provide that an author may request:

- a. the seizure of unauthorized copies of his or her work;
- b. a court order to prevent publication or broadcast of his or her work;
- c. the public recognition of his or her status as the work's author; and
- d. moral and pecuniary damages.¹⁹⁴

143. Copyright violations may also result in criminal sanctions, as provided for in Article 184 of the Criminal Code. The sentence may vary from three months of *detenção* to four years of *reclusão* and the payment of a criminal fine.¹⁹⁵ The sentence varies with the severity of the violation.

E. Copyright and Image Rights

144. In Brazil, issues related to copyright and image rights routinely arise together. For example, the publication of a photograph, video, or text that uses others' creative works may be restricted by both copyright and image rights. In such cases, authorization for the use of copyrighted works must be given by the author or person to whom the patrimonial copyright has been assigned and authorization for the use of works protected by image rights must be given by the person or persons portrayed in these works.

USEFUL RESOURCES

145. Several organizations host websites that provide useful information for journalists and fact-checkers, including:

- a. **Abraji:** Abraji's website provides pages dedicated to access of information and freedom of speech. Abraji also publishes guides on journalist safety and how journalists should deal with harassment.¹⁹⁶ Its on-going projects include "Control-X," an initiative that monitors cases filed by politicians who are trying to prevent information about them from being released.¹⁹⁷
- b. **ITS Rio:** The Institute for Technology & Society (ITS) has several publications regarding freedom of expression, the right to be forgotten, privacy, and digital rights, mainly focused on internet-related matters within these topics.¹⁹⁸
- c. **Congresso em Foco:** Created in 2004, the Congresso em Foco presents up-to-date information about the day-to-day workings of the Brazilian Congress.¹⁹⁹ In the organization's words: "[c]obrimos o dia a dia do Parlamento e da política sem virar as costas para o país e o mundo. Daí o espaço aberto para columnistas e contribuintes eventuais, de diferentes perfis, campos de atuação e origem geográfica, sempre assegurando a liberdade de expressão e a pluralidade de opiniões" ["[w]e cover the day-to-day life of Parliament and politics without turning our backs on the country and the world. Hence this is an open space for columnists and eventual contributors of different profiles, fields of action and geographical origin, always ensuring freedom of expression and plurality of opinions."].²⁰⁰
- d. **Artigo 19:** This non-governmental organization promotes freedom of expression and access to information worldwide. The Brazilian website includes several publications and guidelines discussing these rights.²⁰¹
- e. **Executive Committee on the National Forum of Judiciary and Freedom of the Press:** This Committee, established under the auspices of the National Justice Council, examines cases of censorship, legal claims brought against journalists, and other matters that can result in restrictions on the press.²⁰² In 2018, the Committee released a statistical report analyzing the cases before Brazilian courts surrounding freedom of the press.²⁰³

END NOTES

¹ Brazilian Constitution, Art. 5.

² Brazilian Constitution, Art. 5(IV).

³ Brazilian Constitution, Art. 5(IX).

⁴ Brazilian Constitution, Art. 5(XIV), (XXXIII), and (LX).

⁵ Brazilian Constitution, Art. 5(X).

⁶ Brazilian Constitution, Art. 5(X).

⁷ Honor rights are regulated both by the Brazilian Criminal Code of 7 December 1940 (Criminal Code) (Articles 138 to 140) and the Brazilian Civil Code of 10 January 2002 (Arts. 11 to 21). Privacy rights are regulated by the Brazilian Criminal Code (Arts. 150 to 151), the Brazilian Civil Code (Arts. 11 to 21), and Special Legislation, including General Data Protection Law (Act No. 13.709 of 2018) and Interception of Communications Law (Act No. 9.296/96). Image rights are regulated by Articles 11 to 21 of the Brazilian Civil Code. Copyright is regulated by Act No. 9.610 of 19 February 1998 (“Copyright Act”).

⁸ See below at Sections III-V.

⁹ Brazilian Constitution, Art. 220 § 1 (“No law shall contain any provision which may represent a hindrance to full freedom of press in any medium of social communication, with due regard to the provisions of Article 5, IV, V, X, XIII and XIV.”).

¹⁰ G. de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comment n. 1 to Title I, Chapter V of the Brazilian Criminal Code (electronic version).

¹¹ G. de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comment n. 2 to Title I, Chapter V of the Brazilian Criminal Code (electronic version).

¹² See below at para. 44.

¹³ See Brazilian Criminal Code, Art. 145. See also Brazilian Criminal Code, Art. 100 §2; Brazilian Code of Criminal Procedure, Art. 30.

¹⁴ Brazilian Criminal Code, Art. 138.

¹⁵ G. de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comments to Article 138, para. 11 (electronic version).

¹⁶ R. Grecco, *Código Penal Comentado*, 11th ed., 2017, at p. 615, at <https://forumdeconcursos.com/wp-content/uploads/wpforo/attachments/8733/935-Codigo-Penal-Comentado-Rogério-Greco.pdf>.

¹⁷ For instance, it is not calumny to state that someone is a thief. To constitute calumny, the person accused of calumny must describe the theft and the circumstances in which the crime has happened. See G. de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comment to Article 138, para. 10 (electronic version).

¹⁸ G. de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comments to Article 138, para. 14 (electronic version).

¹⁹ L. Fragomeni and P. Mena Barreto, *Chapter 2: Brazil*, in C. Glasser, Jr. (ed.), *International Libel and Privacy Handbook – A Global Reference for Journalists, Publishers, Webmasters, and Lawyers*, 2016-2017, at p. BRA-4, para. 2.01[2].

²⁰ Decision of the Superior Court of Justice, Apn 473/DF, Corte Especial (*Special Court*), dated 21 May 2008 (Rapporteur Justice Gilson Dipp), at https://ww2.stj.jus.br/docs_internet/revista/eletronica/stj-revista-eletronica-2009_213_capCorteEspecial.pdf (“O dolo específico (animus calumniandi), ou seja, a vontade de atingir a honra do sujeito passivo, é indispensável para a configuração do delito de calúnia. Precedentes.”).

²¹ See G. de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comment to Article 138, para. 5 (electronic version).

²² Brazilian Criminal Code, Art. 138, §1o.

²³ See G. de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comment to Article 138, para. 5-A (electronic version).

²⁴ Brazilian Criminal Code, Art. 138, §2o.

²⁵ Law No. 9.605/1998. Under Brazilian Law, legal entities’ criminal liability is generally limited to environmental crimes. See R. Cunha, *Manual de direito penal: parte especial (arts. 121 ao 361)*, 10th ed., 2018, at pp. 185-186.

²⁶ Brazilian Criminal Code, Art. 138. The fine will be calculated in accordance with the Brazilian Criminal Code, Art. 49.

²⁷ Brazilian Criminal Code, Art. 138, § 3o, I, II and III.

²⁸ See above at para. 11.

²⁹ See below at para. 44.

³⁰ A person offended by a statement made in the press can demand the offender’s retraction via the same method of communication. Brazilian Criminal Code, Art. 143.

³¹ See “*Blogueiro é condenado por calúnia e difamação contra Moro*,” Mgalhas, dated 28 March 2018, at <https://www.mgalhas.com.br/Quentes/17,MI277278,21048-Blogueiro+e+condenado+por+calunia+e+difamacao+contra+Moro>.

³² See Decision of the Federal Court of the 3rd Region, Criminal Appeal No. 0013800-35.2015.4.03.6181, 5th Class, dated 19 March 2018 (Appeal Court Judge-Rapporteur André Nekatschalow).

³³ See Decision of the Federal Court of the 4th Region, Criminal Appeal No. 5002571-26.2014.4.04.7013, dated 26 July 2016 (Appeal Court Judge-Rapporteur Márcio Antonio Rocha). See also J. Martins, “*Jornalista que criticou promotor no PR é absolvido da acusação de calúnia*,” Consultor Jurídico, dated 15 August 2016, at <https://www.conjur.com.br/2016-ago-15/jornalista-criticou-promotor-absolvido-acusacao-calunia>.

³⁴ Brazilian Criminal Code, Art. 139.

³⁵ For instance, it is not enough to state that someone is in constant breach of agreements. To be considered criminal defamation, the defamatory statement would have to add information about which agreements have been breached and in which circumstances.

³⁶ See G. de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comment to Article 139, para. 25 (electronic version).

³⁷ See *below* at para. 32.

³⁸ See G. de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comment to Article 139, para. 23 (electronic version).

³⁹ Compare Decision of the Supreme Federal Court, Criminal Investigation No. 800, Pleno, dated 10 October 1994 (Rapporteur Justice Carlos Velloso) with Decision of the Superior Court of Justice, RHC No. 8.859-RJ, 5th Class, dated on 16 November 1999 (Rapporteur Justice Felix Fischer).

⁴⁰ Brazilian Criminal Code, Art. 139. As noted above, the fine will be calculated in accordance with the Brazilian Criminal Code, Art. 49.

⁴¹ Brazilian Criminal Code, Art. 143.

⁴² Brazilian Criminal Code, Art. 139, sole paragraph.

⁴³ Brazilian Criminal Code, Art. 140.

⁴⁴ See G. de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comment to Article 140, para. 34 (electronic version).

⁴⁵ See Decision of the Superior Court of Justice, HC 103.344/AL, dated 14 May 2009 (Rapporteur Justice Nunes Maia Filho, 5th Class) (“Nos crimes contra a honra, além do dolo, deve estar presente um especial fim de agir, consubstanciado no animus injuriandi vel diffamandi, consistente no ânimo de denegrir, ofender a honra do indivíduo. Processar alguém que agiu com mero animus narrandi, ou seja, com a intenção de narrar ou relatar um fato, inviabilizaria a persecução penal.”). [“In crimes against honor, in addition to intention to cause harm, there must be a special purpose to act, which is the *animus injuriandi vel diffamandi*, consistent in the spirit of denigrating, offending the honor of the individual. To prosecute someone who acted with mere *animus narrandi*, that is, with the intention of narrating or reporting a fact, would prevent criminal prosecution.”]

⁴⁶ Brazilian Criminal Code, Art. 140 §1; see *below* at para. 42.

⁴⁷ See Guilherme de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comment to Article 140, para. 32 (electronic version).

⁴⁸ As noted above, the fine will be calculated in accordance with the Brazilian Criminal Code, Art. 49.

⁴⁹ Brazilian Criminal Code, Art. 140 §1.

⁵⁰ See Brazilian Criminal Code, Art. 140 §2.

⁵¹ See *above* at para. 11.

⁵² See Brazilian Criminal Code, Art. 145.

⁵³ See Brazilian Criminal Code, Article 140 §3.

⁵⁴ See *above* at paras. 34.

⁵⁵ See “*Questionar os poderes de uma autoridade pública não é uma afronta*,” Consultor Jurídico, dated 21 September 2014, at <https://www.conjur.com.br/2014-set-21/questionar-poderes-autoridade-publica-nao-afronta>; Decision of the 10th District Court of Rio de Janeiro, Case No. 0018877-28.2014.4.02.5101, dated 11 September 2014. See also “*Juiz rejeita denúncia do MPF contra colunista do GLOBO*,” O Global, dated 20 September 2014, at <https://oglobo.globo.com/brasil/juiz-rejeita-denuncia-do-mpf-contra-colunista-do-globo-14001673>.

⁵⁶ See *above* at para. 46.

⁵⁷ See A. Pompeu, “*Paulo Henrique Amorim é condenado por injúria racial contra Heraldo Pereira*,” Consultor Jurídico, dated 9 June 2018, at: <https://www.conjur.com.br/2018-jun-09/paulo-henrique-amorim-condenado-injuria-racial>.

⁵⁸ Decision of the Supreme Court of Justice, ARE No 983531 AgR, 1st Class, dated 21 August 2017 (Rapporteur Justice Roberto Barroso), and Decision of Supreme Court of Justice, AC No. 4216 MC, dated 8 July 2016 (Justice Rapporteur Teori Zavascki).

⁵⁹ Decision of the Criminal Court of Appeals in the Court of Justice of the Federal District and Territories, Criminal Appeal No. 2010 01 1 117388-3 APR, 3rd Class, dated 20 June 2013 (Appeal Judge Rapporteur Nilsoni de Freitas Custódio).

⁶⁰ See Brazilian Criminal Code, Art. 141.

⁶¹ R. Cunha, *Manual de direito penal: parte especial (arts. 121 ao 361)*, 10th ed., 2018, at fn. 280 (“Antes do julgamento da ADPF 130, as infrações contra a honra cometidas por meio da imprensa não sofriam o aumento do art. 141, III, do CP, pois constituíam crimes previstos na Lei 5,250/67. Com a decisão de não-recepção da referida Lei especial, o crime contra a honra pelos meios de comunicação social passa também a se ajustar ao CP, com o aumento em estudo.”). [“Before the judgment of the ADPF 130, the violations against honor committed by means of the press were not subject to the increase of the art. 141, III, of the Criminal Code, since they constituted crimes provided for in the Law 5,250 / 67 (Press Act). With the (STF) decision to not receive the aforementioned Special Law (the Press Act), crimes against honor committed by means of the press are also subjected to the Crime Code, with the increase in discussion.”]

⁶² See Brazilian Criminal Code, Art. 141 (IV).

⁶³ See Brazilian Criminal Code, Art. 141, sole paragraph.

⁶⁴ Brazilian Constitution, Art. 5(X).

⁶⁵ See Brazilian Civil Code, Arts. 11-21.

⁶⁶ See Superior Court of Justice, Súmula No. 221. “Súmulas” are statements issued by a court summarizing the court’s majority view on a particular issue that has been submitted to judgment of the court in many instances. They are revised if need be after repeated court decisions ruling in the same way on that issue.

⁶⁷ Brazilian Civil Code, Art. 12.

⁶⁸ Brazilian Civil Code, Art. 12 (“Anyone may demand that a threat or injury to his or her personality rights cease, and may claim losses and damages, without prejudice to other sanctions provided for by law.”).

⁶⁹ Brazilian Civil Code, Art. 20 (“Except if authorized, or necessary for the administration of justice or the maintenance of public order, divulgation of writings, transmission of speech, and publication, exhibition or use of the image of a person may be prohibited, on application by the person and without prejudice to any indemnification to which he or she may be entitled, if they affect the honor, the good reputation or the respectability of the person, or are intended for commercial purposes.”).

⁷⁰ Brazilian Civil Code, Art. 11.

⁷¹ Brazilian Civil Code, Art. 206 § 3(V). If multiple violations of a person’s image rights continue to happen over a certain period, every new violation is considered a new offense and, as a result, the limitations period is renewed. “A violação do direito de imagem ocorre a cada publicação não autorizada, renovando-se o prazo prescricional a cada ato ilegítimo.” Decision of the Superior Court of Justice, AgInt no AREsp 1177785/PR, 3rd Class, dated 3 December 2018 (Justice Ricardo Villas Bôas Cueva) (a violation to image rights occurs every time a non-authorized publication is made, renewing the statute of limitations (of a claim) in every unlawful act”). One example is a book that has been reedited several times, and all editions contain an unauthorized image of a person. In this case, the statute of limitation for a compensatory claim will re-start every time a new edition of the book is published.

⁷² Brazilian Civil Code, Art. 953 (“Indemnification for injury to honor, defamation or calumny shall consist of reparation of the damage that results therefrom to the offended party”, and the sole paragraph complements “if the offended party cannot prove material damage, the judge shall have the power to fix, in an equitable manner, the amount of the indemnification, in conformity with the circumstances of the case”).

⁷³ See S. Martins, *Rston. Dano à imagem e as tutelas inibitória e ressarcitória*, in *Revista do Instituto dos Advogados de São Paulo*, Vol. 14, 91, at p. 93 (2014) (citing O. Donnini, *Imprensa livre, dano moral, dano à imagem, e sua quantificação à luz do novo Código Civil (LGL\2002\400)*, 2002).

⁷⁴ Decision of the 25th Class of the State Court of Rio de Janeiro, Civil Appeal No. 0264417-77.2017.8.19.0001, dated 22 March 2019 (Appeal Judge Rapporteur Luiz Fernando de Andrade Pinto). See also R. Bomfim, *Editora Globo é condenada a pagar R\$ 150 mil por difamar juíza*, Consultor Jurídico, dated 22 March 2019, at <https://www.conjur.com.br/2019-mar-22/editora-globo-condenada-pagar-150-mil-difamar-juiza>.

⁷⁵ Decision of the Court of Justice in São Paulo, Appeal No. 9220360-38.2008.8.26.0000, 4th Class, Private Law Section, dated 4 August 2011 (Desembargador Relator Fábio Quadros).

⁷⁶ Decision of the Court of Justice in São Paulo, Civil Appeal No. 635.649.4/1-00, dated 30 April 2009 (Appeal Court Judge-Rapporteur Francisco Loureiro).

⁷⁷ Brazilian Constitution, Art. 5(X).

⁷⁸ See below at paras. 86-99.

⁷⁹ Brazilian Constitution, Art. 5(XI) (“the home is the inviolable refuge of the individual, and no one may enter therein without the consent of the dweller, except in the event of *flagrante delicto* or disaster, or to give help, or, during the day, by court order”).

⁸⁰ Brazilian Constitution, Art. 5(XII) (“the secrecy of correspondence and of telegraphic, data and telephone communications is inviolable, except, in the latter case, by court order, in the cases and in the manner prescribed by law for the purposes of criminal investigation or criminal procedural finding of facts.”).

⁸¹ Brazilian Constitution, Art. 5(X) (“The **privacy, private life**, honor and image of persons are inviolable, and the right to compensation for property or moral damages resulting from their violation is ensured.”) (emphasis added). See A. Lacerda Gonçalves, M. Bertotti and V. Campos Muniz, *O Direito Fundamental à Privacidade e à Intimidade no cenário brasileiro na perspectiva de um direito à proteção de dados pessoais*, 8 *Doutrinas Essenciais de Direito Constitucional* 597, 601 (2015).

⁸² C. Semíramis Machado Vianna, *Da Privacidade como Direito Fundamental da Pessoa Humana*, 17 *Revista de Direito Privado* 102 (2004), at pp. 103-104.

⁸³ C. Semíramis Machado Vianna, *Da Privacidade como Direito Fundamental da Pessoa Humana*, 17 *Revista de Direito Privado* 102 (2004), at pp. 103-104. See also C. Palhares, *Direito à informação e Direito à privacidade: conflito ou complementariedade?*, 878 *Revista dos Tribunais* 42, 50 (2008).

⁸⁴ See A. Lacerda Gonçalves, M. Bertotti and V. Campos Muniz, *O Direito Fundamental à Privacidade e à Intimidade no cenário brasileiro na perspectiva de um direito à proteção de dados pessoais*, 8 *Doutrinas Essenciais de Direito Constitucional* 597, 602 (2015).

⁸⁵ Decision of the Supreme Federal Court, RE No. 583937, dated 19 November 2009 with General Repercussion (Repercussão Geral) (Justice Rapporteur Cezar Peluso).

⁸⁶ Law No. 9.296 of 1996.

⁸⁷ Súmula No. 531 da VI Jornada de Direito Civil (“ENUNCIADO 531 – A tutela da dignidade da pessoa humana na sociedade da informação inclui o direito ao esquecimento”. Justification: “Os danos provocados pelas novas tecnologias de informação vêm-se acumulando nos dias atuais. O direito ao esquecimento tem sua origem histórica no campo das condenações criminais. Surge como parcela importante do direito do ex-detento à ressocialização. Não atribui a ninguém o direito de apagar fatos ou reescrever a própria história, mas apenas assegura a possibilidade de discutir o uso que é dado aos fatos pretéritos, mais especificamente o modo e a finalidade com que são lembrados.”).

⁸⁸ Decision of the Superior Court of Justice, Resp No. 1.334.097, Rapporteur Justice Luis Felipe Salomão, 4th Class, dated 28 May 2013, DJe 10 September 2013.

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- ⁸⁹ See Decision of the Superior Court of Justice, REsp 1335153/RJ, dated 28 May 2013 (Rapporteur Justice Luis Felipe Salomão, 4th Class).
- ⁹⁰ See above at para. 4.
- ⁹¹ L. Barroso, *Colisão entre liberdade de expressão e direitos de personalidade, Critérios de ponderação. Interpretação constitucional adequada do Código Civil (LGL\2002\400) e da Lei de Imprensa*, in *Os princípios da Constituição de 1988*, 2006, at p. 267 *apud* C. Palhares, *Direito à informação e Direito à privacidade: conflito ou complementariedade?*, 878 Revista dos Tribunais 42, 50 (2008).
- ⁹² See A. Lacerda Gonçalves, M. Bertotti and V. Campos Muniz, *O Direito Fundamental à Privacidade e à Intimidade no cenário brasileiro na perspectiva de um direito à proteção de dados pessoais*, 8 Doutrinas Essenciais de Direito Constitucional 597, 602 (2015).
- ⁹³ Decision of the Superior Court of Justice, REsp 984.803/ES, dated 26 May 2009 (Rapporteur Justice Nancy Andrighi, 3rd Class).
- ⁹⁴ See above at paras. 75-76 (discussing the “right to be forgotten”).
- ⁹⁵ See above at para. 71a.
- ⁹⁶ Decision of the Superior Court of Justice, REsp 706.769/RN, 4th Class, dated 14 April 2009 (Rapporteur Justice Luis Felipe Salomão).
- ⁹⁷ C. Palhares, *Direito à informação e Direito à privacidade: conflito ou complementariedade?*, 878 Revista dos Tribunais 42, 50 (2008).
- ⁹⁸ Brazilian Criminal Code, Art. 150.
- ⁹⁹ Brazilian Criminal Code, Art. 150, § 4.
- ¹⁰⁰ See G. de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comment to Article 150, para. 58.
- ¹⁰¹ The fine will be calculated in accordance with the Brazilian Criminal Code, Art. 49.
- ¹⁰² Brazilian Criminal Code, Art. 151, § 3o (II).
- ¹⁰³ Brazilian Criminal Code, Art. 151, § 3o (I).
- ¹⁰⁴ Brazilian Criminal Code, Art. 151.
- ¹⁰⁵ Brazilian Criminal Code, Art. 151, § 1o (I).
- ¹⁰⁶ See G. de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comment to Article 150, para. 85 (“Finalmente, na forma genérica, o tipo penal prevê a utilização abusiva da comunicação telegráfica ou radioelétrica, demonstrando que fazer uso da mensagem entre “A” e “B”, para qualquer fim indevido, ainda que não haja divulgação ou transmissão, também é crime. A despeito de o termo abusivamente circunscrever-se à utilização da mensagem, cremos que foi um cuidado exagerado do legislador inseri-lo no tipo penal, tendo em vista que a utilização indevida é também abusiva. O elemento normativo do tipo – indevidamente – já seria suficiente.”). [“Finally, in a generic way, the definition of the crime provides for abusive use of telegraphic or radioelectric communication, demonstrating that making use of a message exchanged between ‘A’ and ‘B’ for any undue purpose, even if there is no disclosure or transmission, is also a crime. Although the term ‘abusively’ is in respect to the message’s use, we believe that the legislator was redundant to insert it in the crime definition, since any misuse is also abusive. The normative element of the crime - unduly - would already be sufficient.”]
- ¹⁰⁷ Brazilian Criminal Code, Art. 151, § 1o(I).
- ¹⁰⁸ The fine will be calculated in accordance with the Brazilian Criminal Code, Art. 49.
- ¹⁰⁹ See G. de Souza Nucci, *Código Penal Comentado*, 15th ed., 2015, at comment to Article 150, para. 115 (“Deverá ser aumentada da metade a pena do agente, quando o crime provocar dano a outrem. Entenda-se o dano na sua forma ampla: material ou moral.”). [“The sentence of the offender shall be increased up to double when the crime provokes damages to the victim or others. Damages shall be understood in its extensive form: property or moral.”]
- ¹¹⁰ See above at paras. 5, 56.
- ¹¹¹ See above at paras. 56-61.
- ¹¹² Brazilian Civil Code, Art. 21.
- ¹¹³ Brazilian Constitution, Art. 5(V) and (X).
- ¹¹⁴ Brazilian Civil Code, Arts. 11, 21.
- ¹¹⁵ C. Palhares, *Direito à informação e Direito à privacidade: conflito ou complementariedade?*, 878 Revista dos Tribunais 42, 45 (2008).
- ¹¹⁶ See above at para. 10.
- ¹¹⁷ R. Santos Neves, *O direito à imagem como direito da personalidade*, 8 Doutrinas Essenciais de Direito Constitucional 545, 546 (2015).
- ¹¹⁸ Justice D. Franciulli Netto, *A proteção ao Direito à Imagem e a Constituição Federal*, 16(1) Informativo Jurídico da Biblioteca Ministro Oscar Saraiva 1, 35 (Jan./Jul. 2004), at <https://ww2.stj.jus.br/publicacaoainstitucional/index.php/informativo/article/download/442/400>.
- ¹¹⁹ Decision of the Superior Court of Justice, Recurso Especial No. 794.586/RJ, 4th Class, dated 15 March 2012 (Rapporteur Justice Raul Araújo).
- ¹²⁰ Brazilian Civil Code, Arts. 12 and 20.
- ¹²¹ See above at paras. 60-61.
- ¹²² See above at para. 57.

¹²³ See *above* at paras. 62-63. See S. Martins Rston, *Dano à imagem e as tutelas inibitória e ressarcitória*, 14 Revista do Instituto dos Advogados de São Paulo 91, 93 (2014) (citing O. Donnini, *Imprensa livre, dano moral, dano à imagem, e sua quantificação à luz do novo Código Civil* (LGL\2002\400), 2002.

¹²⁴ Superior Court of Justice, Súmula 403.

¹²⁵ Decision of the Superior Court of Justice, Case No. REsp 1307366-RJ, 4th Class, dated 3 June 2014 (Rapporteur Justice Raul Araújo).

¹²⁶ Brazilian Civil Code, Art. 20.

¹²⁷ See G. Tepedino, H. Barboza and M. Bodin de Moraes, *Código Civil Interpretado conform a Constituição da República*, in *Parte Geral e Obrigações*, Vol. I, 2nd ed., 2007, at p. 52.

¹²⁸ See G. Tepedino, H. Barboza and M. Bodin de Moraes, *Código Civil Interpretado conforme a Constituição da República*, in *Parte Geral e Obrigações*, Vol. I, 2nd ed., 2007, at p. 53.

¹²⁹ Decision of the São Paulo State Court, Appeal n. 0101449-22.2005.8.26.0100, 5th Class, dated 28 August 2013 (Rapporteur Appeal Judge Fabio Podestá).

¹³⁰ See, e.g., Decision of the Superior Court of Justice, Recurso Especial No. 1.449.082- RS, 3rd Class, dated 21 March 2017 (Rapporteur Justice Paulo de Tarso Sanseverino).

¹³¹ Decision of the Superior Court of Justice, Case No. REsp 595.600/SC, 4th Class, dated 18 March 2004 (Rapporteur Justice Cesar Asfor Rocha).

¹³² See Decision of the Superior Court of Justice, AgInt no REsp No.1279361/SP, 4th Class, dated 17 May 2018 (Rapporteur Justice Luis Felipe Salomão).

¹³³ The woman pictured in the topless images almost lost her job as an architect and did not have her contract as professor renewed. Her sons were also bullied in school, and her ex-partner threatened to request sole custody over the children. See Decision of the Superior Court of Justice, AgInt no REsp 1279361/SP, 4th Class, dated 17 May 2018 (Rapporteur Justice Luis Felipe Salomão).

¹³⁴ This presumption applies when “a) se tratar de pessoa notória, mas isso não constitui uma permissão para devassar sua privacidade, pois sua vida íntima deve ser preservada. A pessoa que se torna de interesse público pela fama ou significação intelectual, moral, artística ou política não poderá alegar ofensa ao seu direito à imagem se sua divulgação estiver ligada à ciência, às letras, à moral, à arte e à política. Isto é assim porque a difusão de sua imagem sem seu consento deve estar relacionada com sua atividade ou com o direito à informação; b) se referir a exercício de cargo público, pois quem tiver função pública de destaque não pode impedir, que, no exercício de sua atividade, seja filmada ou fotografada, salvo na intimidade;”. M. Diniz, *Curso de Direito Civil Brasileiro*, 29th ed., 2012, Vol. I, at p. 149; M. Nery Selders, *A proteção jurídica da imagem de pessoas públicas*. *Revista de Direito Privado*, Vol. 64, 2015, at p. 45 (“(a) there is a well-known person involved, but this is not a permission to invade her privacy, because her intimate life must be preserved. The person who becomes of public interest for her intellectual, moral, artistic or political fame cannot claim an offense to her image if the image’s publication is linked to science, literature, morals, art and politics. This is because the image publication without her consent must be related to the activity she is famous for or related to the right of information; b) (the public figure) exercises a public office, since anyone with a prominent public function cannot prevent that, in the exercise of her activity, she is filmed or photographed, except in intimate circumstances.”).

¹³⁵ Decision of the Sao Paulo Appeal Court, Appeal No. 0009610-54.2008.8.26.0020, 4th Class, dated 13 January 2016 (Appeal Judge Rapporteur Maria da Cunha).

¹³⁶ Decision of the Superior Court of Justice, REsp 1200482/RJ, 4th Class, dated 9 November 2011 (Rapporteur Justice Luis Felipe Salomão).

¹³⁷ See M. Nery Selders, *A proteção jurídica da imagem de pessoas públicas*, 64 Revista de Direito Privado 39, 44-46 (2015).

¹³⁸ Brazilian Constitution, Art. 5(XIV) (“access to information is ensured to everyone and the confidentiality of the source shall be safeguarded, whenever necessary to the professional activity”); Brazilian Constitution, Art. 5(XXXIII) (“all persons have the right to receive, from the public agencies, information of private interest to such persons, or of collective or general interest, which shall be provided within the period established by law, subject to liability, except for the information whose secrecy is essential to the security of society and of the State”); and Brazilian Constitution, Art. 5(LX) (“the law may only restrict the publicity of procedural acts when the defense of privacy or the social interest require it”).

¹³⁹ Brazilian Constitution, Art. 37, §3 (II) (“the law shall regulate the forms of participation of users in governmental entities and in entities owned by the Government, especially as regards ... the access of users to administrative records and to information about Government initiatives, with due regard for article 5, items X and XXXIII.”).

¹⁴⁰ Brazilian Constitution, at Art. 93 (IX) (“[A]ll judgements of the bodies of the Judicial Power shall be public, and all decisions shall be justified, under penalty of nullity, but the law may limit attendance, in given acts, to the interested parties and to their lawyers, or only to the latter, whenever preservation of the right to privacy of the party interested in confidentiality will not harm the right of the public interest to information....”).

¹⁴¹ Brazilian Constitution, Art. 216, §2 (“It is incumbent upon the Government, in accordance with the law, to manage the keeping of the governmental documents and to make them available for consultation to whomever may need to do so.”).

¹⁴² Law No.12.527/2011.

¹⁴³ LAI, Art. 1.

¹⁴⁴ LAI, Art. 2.

¹⁴⁵ LAI, Art. 3 (I).

¹⁴⁶ For complete list, see AI, Art. 23.

¹⁴⁷ Complementary Law No. 105/2001.

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- ¹⁴⁸ Law No. 5172/1966.
- ¹⁴⁹ Decree No. 7.724, dated 16 May 2012, Art. 6(I).
- ¹⁵⁰ LAI, Article 6 (III).
- ¹⁵¹ LAI, Art. 7, §2.
- ¹⁵² Decree No. 7.724, dated 16 May 2012, at http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/Decreto/D7724.htm.
- ¹⁵³ Access to Information Website, at “Map of LAI,” at <http://www.acessoinformacao.gov.br/assuntos/conheca-seu-direito/a-lei-de-acesso-a-informacao/mapa-da-lai>
- ¹⁵⁴ Access to Information Website, at <http://www.acessoinformacao.gov.br/>.
- ¹⁵⁵ Act of the Director Committee, No. 9 of 2012, at https://www12.senado.leg.br/transparencia/leg/pdf/normas/ATC92012_compilado.pdf.
- ¹⁵⁶ Ato da Mesa [administrative resolution enacted by the House of Representatives], No. 45, dated 16 July 2012, at <https://www2.camara.leg.br/legin/int/atomes/2012/atodamesa-45-16-julho-2012-773823-norma-cd-mesa.html>.
- ¹⁵⁷ For Senate, see Website for Senate, at <https://www12.senado.leg.br/transparencia>, and for House of Representatives see Website for House of Representatives, at <https://www.camara.leg.br/transparencia/>.
- ¹⁵⁸ LAI, Arts. 8 and 30.
- ¹⁵⁹ For Senate, see Website for Senate, at <https://www12.senado.leg.br/transparencia/formtransparencia>, and for House of Representatives see Website for House of Representatives, at <https://www2.camara.leg.br/transparencia/acesso-a-informacao>.
- ¹⁶⁰ See Resolution No. 528, dated 3 June 2014, at <http://www.stf.jus.br/ARQUIVO/NORMA/RESOLUCAO528-2014.PDF>.
- ¹⁶¹ See Supreme Federal Court website, at <http://portal.stf.jus.br/transparencia/>.
- ¹⁶² See Supreme Federal Court website, the e-SIC system, at <http://stf.jus.br/portal/centralDoCidadao/enviarDadoPessoal.asp>.
- ¹⁶³ See Supreme Federal Court Website, at Resolution No. 14, dated 22 June 2016, at http://www.stj.jus.br/sic/projects/ouvidoria/wiki/Resolu%C3%A7%C3%A3o_STJGP_n_14_de_22_de_junho_de_2016.
- ¹⁶⁴ See Supreme Federal Court Website, at Transparency page, at http://www.stj.jus.br/sites/STJ/default/pt_BR/Transpar%C3%Aancia.
- ¹⁶⁵ See Supreme Federal Court Website, at the Registration Page for the e-SIC system, at <http://www.stj.jus.br/sic/account/register>.
- ¹⁶⁶ See Resolution No. 249, dated 2 May 2012, at https://pesquisa.apps.tcu.gov.br/#/documento/ato-normativo*/TIPO:%2528Resolu%C3%A7%C3%A3o%2529%20NUMATO:%22249%22%20NUMANOATO:%222012%22/DTRELEVANCIA%20desc,NUMATOINT%20desc/0/%20?uid=ca649500-307f-11e9-97e9-7d63e146d72c.
- ¹⁶⁷ See TCU Website, at “Access to Information in TCU,” at <https://portal.tcu.gov.br/transparencia/>.
- ¹⁶⁸ See TCU Website, at “Request for Information Access,” at https://contas.tcu.gov.br/ords/f?p=1864:4:2483803130021::NO::P4_TIPO_DEMANDA:P&cs=1euWey_V9JMjvFP8gwuDn4GskRpc.
- ¹⁶⁹ See by Resolution No. 89, dated 28 August 2012, at http://www.cmp.gov.br/portal/images/Normas/Resolucoes/Resolu%C3%A7%C3%A3o_n%C2%BA_89_Alterada_pela_Res_100.2013_e_115.2014.pdf.
- ¹⁷⁰ See MPF Website, at “Transparency at TCU,” at <http://www.transparencia.mpf.mp.br/>.
- ¹⁷¹ See MPF Website, at the e-SIC system, at <http://www.mpf.mp.br/para-o-cidadao/sac>.
- ¹⁷² See Brazilian Code of Civil Procedure, Art. 189; Brazilian Code of Criminal Procedure, Art. 792.
- ¹⁷³ See Brazilian Code of Civil Procedure, Art. 189 (subsections); Brazilian Code of Criminal Procedure, Art. 792 § 1; Law No. 5172/1966, Art. 198; Complementary Law No. 105/2001.
- ¹⁷⁴ Brazilian Code of Criminal Procedure, Art. 792.
- ¹⁷⁵ Brazilian Code of Civil Procedure, Art. 189.
- ¹⁷⁶ Brazilian Constitution, Art. 5(XXVII) (“the exclusive right of use, publication or reproduction of works rests upon their authors and is transmissible to their heirs for the time the law shall establish”; and Brazilian Constitution, Art. 5(XXVIII): “under the terms of the law, the following are ensured: a) protection of individual participation in collective works and of reproduction of the human image and voice, sports activities included; b) the right to authors, interpreters, and respective unions and associations to monitor the economic exploitation of the works which they create or in which they participate”).
- ¹⁷⁷ See Act No. 9.610, dated 19 February 1998 (“Copyright Act”), at http://www.planalto.gov.br/Ccivil_03/leis/L9610.htm.
- ¹⁷⁸ Some examples set out in Article 7 of the Copyright Act are literary, artistic or scientific works; photographic works and works produced by a process similar to photography; illustrations, geographical maps and other works of the same nature.
- ¹⁷⁹ See Copyright Act, Art. 8.
- ¹⁸⁰ Specific items excluded from copyright protection under Article 8 of the Copyright Act include (i) ideas, normative procedures, systems, methods, projects or mathematical concepts as such; (ii) schemes, plans or rules to carry mental acts, games or business; (iii) blank forms to be completed with any kind of information, whether scientific or not, as well as their instructions; (iv) texts of treaties and conventions, laws, decrees, regulations, court decisions and other official acts; (v) information of common use such as calendars, agendas, registries or captions; (vi) isolated names and titles; (vii) and the industrial or commercial use of ideas contained in the works.
- ¹⁸¹ See *above* at paras. 4-133.

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- ¹⁸² Copyright Act, Art. 49 (I).
- ¹⁸³ Copyright Act, Art. 29.
- ¹⁸⁴ Copyright Act, Art. 31.
- ¹⁸⁵ Copyright Act, Art. 30.
- ¹⁸⁶ Copyright Act, Art. 41.
- ¹⁸⁷ Copyright Act, Art. 49.
- ¹⁸⁸ Copyright Act, Art. 36.
- ¹⁸⁹ See Decision of the São Paulo State Court, Appeal No. 0214684-25.2009.8.26.0100, dated 11 September 2013 (Appeal Rapporteur Judge Luiz Antonio Costa). See also M. Frullani Lopes, “*Republicação de artigos na internet deve ser autorizada*,” *Consultor Jurídico*, dated 24 September 2013, at <https://www.conjur.com.br/2013-set-24/marcelo-lobes-republicacao-artigos-internet-autorizada>.
- ¹⁹⁰ Copyright Act, Art. 46 (I)(a).
- ¹⁹¹ Copyright Act, Art. 46 (I)(b).
- ¹⁹² Copyright Act, Art. 46 (I)(c).
- ¹⁹³ Copyright Act, Art. 46 (III).
- ¹⁹⁴ Copyright Act, Arts. 107 and 108.
- ¹⁹⁵ The fine will be calculated in accordance with the Brazilian Criminal Code, Art. 49.
- ¹⁹⁶ See Abraji Website, at <https://www.abraji.org.br/>.
- ¹⁹⁷ See Control-X Website, at <http://www.ctrlx.org.br/#/infografico>.
- ¹⁹⁸ See The Institute for Technology & Society Website, at <https://itsrio.org/pt/home/>.
- ¹⁹⁹ See Abraji Website, at “Help Desk,” at <https://abraji.org.br/help-desk/regulamentacoes-da-lei-de-acesso-a-informacoes-nos-estados> (accessed on 7 May 2019).
- ²⁰⁰ See Congressoemfoco Website, at <https://congressoemfoco.uol.com.br/quem-somos/> (accessed on 7 May 2019).
- ²⁰¹ See Artigo Website, at <https://artigo19.org/>.
- ²⁰² Resolution n. 163 of 13 November 2012, at <http://www.cnj.jus.br/atos-normativos?documento=1632>. See also “*Liberdade de imprensa: Cármen Lúcia cria comissão para mais garantias*,” CNJ, dated 3 May 2017, at <http://www.cnj.jus.br/noticias/cnj/84706-carmen-lucia-cria-comissao-para-garantir-liberdade-de-imprensa>.
- ²⁰³ CNJ Statistical Report: Freedom of the Press (2018), at <http://www.cnj.jus.br/files/conteudo/arquivo/2018/06/fe4133ad3d044846ba3b8ff5594bb7a7.pdf>.

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