### **3(c)(i) Social media regulation in Brazil**

The Civil Framework of the Internet governs internet regulation in Brazil. It outlines the fundamental rights that internet users have, including freedom of expression, privacy protection, and preservation of net neutrality.

The Brazilian Government has prioritised combatting misinformation and online extremism, which increased significantly during Bolsonaro’s administration, and in the lead up to the 2018 and 2022 presidential elections.[[1]](#footnote-1) This came to a head on 8 January 2023, when thousands of Bolsonaro’s supporters stormed various government buildings in Brasilia following President Lula’s victory in the 2022 federal election. Similar to the US Capitol riot in 2020, social media platforms were used to spread misinformation about a ‘stolen election’ and organise the attack. A study conducted by Ozowa, Lukito, Bailez, and Fakhouri found that Twitter and WhatsApp were heavily used by right-wing extremists to spread propaganda and conspiracy theories and instigate violence.[[2]](#footnote-2)

Following the attack, the Supreme Court began investigating the incident and putting more pressure on social media platforms to filter hate speech and misinformation. Part of this involved introducing a Bill to combat misinformation, which ultimately failed after several platforms campaigned against its introduction.[[3]](#footnote-3)

### 3(c)(ii) Elon Musk and X under investigation

As part of the investigation led by Supreme Court Justice Alexandre de Moraes, in early April 2024, X was ordered to block several accounts that were accused of spreading misinformation. Elon Musk refused to do so, and in a series of posts, accused Moraes and the Brazilian Government of censorship and threatened to lift all platform restrictions on X. Moraes then commenced Inquiry No. 4957 under article 12 of the Civil Framework of the Internet, which allows the court to investigate internet-based obstruction of justice and criminal acts. The investigation was also concerned with leaked internal emails from X, which contained criticisms of the Superior Electoral Court and its decisions.

On 17 August 2024, X closed its office in Brazil and removed its legal representative. This contravened article 1134 of the Civil Code, which requires a foreign company operating in the country to have a legal representative. As a result of the inquiry, Moraes issued a summons to X by posting it on the platform.

At page 23 of Moraes’s judgement, he found that *‘*Musk confuses freedom of speech with a non-existent right to aggression, and deliberately confuses censorship with a constitutional prohibition against hate-speech and incitement of antidemocratic action’. Moraes also referenced the proceedings against X in Australia at pages 28-29 to find that X has a history of not cooperating with governments and judicial orders, and the platform is regularly involved in antidemocratic action.

Moraes ultimately ruled against X and ordered the platform to be blocked in Brazil due to its incitement of extremist activity, obstruction of justice, and lack of legal representation in the country.[[4]](#footnote-4) This decision was later affirmed by the other members of the Supreme Court. X has also been ordered to pay fines valuing at least 20 million Reais, roughly just over $5 million AUD, and Musk’s Starlink assets in the country were frozen.

### 3(c)(iv) Implications of the Brazilian decision

On 31 August 2024, X was blocked in Brazil and inaccessible to millions of users. Initially Moraes attempted to outlaw the use of VPNs in the country entirely, but instead the court ordered that users in Brazil who use a VPN specifically to access X face fines of up to 50,000 Reais (roughly $13,000 AUD). This has caused debate within the country, with activists calling for Moraes to reconsider fining users.

After X was blocked, rival platform BlueSky saw an increase of 2 million members in a week, and Meta’s Threads also saw a significant increase in activity.

Despite the verdict, there is still a possibility that X can be reinstated, provided they comply with court orders and pay the accumulated fines.

1. For more information on Brazil’s internet and cyber security regulation, see: Devanny, Joe and Russell Buchan, ‘Brazil’s Cyber Strategy Under Lula: Not a Priority, but Progress Is Possible’ (Working Paper. Carnegie Endowment For International Peace, 8 August 2023), 7 [↑](#footnote-ref-1)
2. Ozawa, João V.S., Josephine Lukito, Felipe Bailez, and Luis G.P. Fakhouri, ‘Brazilian Capitol attack: The interaction between Bolsonaro’s supporters’ content, WhatsApp, Twitter, and news media’ (2024) 5(2) *Harvard Kennedy School Misinformation Review* 3-4 [↑](#footnote-ref-2)
3. Elliott, Vittoria, ‘Brazil Proposed Internet Regulation. Big Tech Dug In Its Heels’, *Wired* (Online, 9 May 2023) [↑](#footnote-ref-3)
4. Prazeres, Leandro, ‘Moraes’ reasons to order blocking of X in Brazil after clashes with Elon Musk’, *BBC News Brasil* (Online, 30 August 2024) [↑](#footnote-ref-4)