

THE LEGAL PROTECTION OF PROFILE ACCOUNTS: MORAL DAMAGE AND CIVIL LIABILITY IN ONLINE ELECTRONIC GAMES

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Abstract: This study analyzes the unlawful exclusion of players profiles in online gaming platforms and the impacts of this practice on users' personality rights. The research is based on the understanding that a player's digital profile is not merely a simple identification but rather a true extension of an individual's personality rights in cyberspace. The study adopts a deductive approach and employs a bibliographical method, based on doctrinal, legislative, and jurisprudential analysis concerning the protection of fundamental rights in the digital environment and the legal framework applicable to consumer relations in this sector. The research is structured around three main axes: (i) the characterization of electronic games as spaces for social interaction and the formation of a digital identity; (ii) the exclusion of profiles and its relation to personality rights; and (iii) the civil liability of gaming platforms in cases of improper profile exclusion. It concludes that the arbitrary exclusion of a player profile without proper justification and without a fair trial constitutes a violation to personality rights and may give rise to the civil liability of gaming platforms, requiring appropriate compensation for the damages caused to the user.

Keywords: online games; personality rights; civil liability.

INTRODUCTION

The expansion of the digital era transformed significantly the way individuals interact and build their identities. The universe of electronic games interconnected through the web, which was once mostly an entertainment activity, became a space for social interaction and for many players, an environment quintessential to their lives. With games becoming more dependent of internet connection, and their virtual communities, the

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digital account of its user acquires an ever-increasing importance, surpassing a mere virtual id, but signifying their personality, history, social connections and conquests inside virtuality.

In this digital context, the arbitrary exclusion of a player's profile by the platform that maintain his games becomes legally relevant. Several companies operate these systems according to their own "guidelines" (User's agreement or terms of service), which regulates the way in which a user can partake in its games, being a common provision in these contracts the possibility of sanctions, such as suspension or exclusion of its account, and sometimes even the prohibition of reengaging with other games or properties of the same company. However, this private exercise of one's company legislatorial management should not cross the fundamental rights of its user, particularly the due process of law in all its aspects.

The central theme of this research is an analysis of the legality of companies wrongly excluding a user profile, and how this can lead to civil liability and moral damages. After all, if the digital profile of an individual becomes part of its identity in the cyberspace, its unlawful suspension or exclusion might represent an attack to their dignity and their personality rights.

The relevance of the investigations is justified by the exponential growth that the game industry has been experiencing as a whole, and the economic and social impacts that follow. When it's taken into account that nowadays a significant part of social interactions is construed through a digital medium, the discourse on the legal aspects of the governance of a player's account becomes increasingly urgent. Therefore, this research aims to analyze, through doctrines in the Brazilian tort system, the possibilities of electronics and games companies being held liable for the excess committed while handling the exclusion of a users' profile, as well the mechanisms available to the defense of a suspended player and, or, compensation of a wrongly excluded user.

On regards to methodology, it's a deductive study, whose premises are the fundamental rights and the personality rights theories applied to the exam of companies excluding users accounts in on-line games. The research is bibliographical because it approaches the problem trough the analysis of foreign and national doctrines, as well legislation and scientific publications related to the thematic field, aiming to identify theoretical and normative elements applicable to the discourse on the legal aspects of the governance of accounts of players. This methodological frame was designed to instill a systematic and critical dialog in this field, without empirical aspirations, but with solid theoretical and legal bases.

I. THE CURRENT SCENARIO OF INTERCONNECTED VIRTUAL GAMES

With the strong advancement of internet¹, it's possible to affirm that we live in a digital world, and even when we are not directly in it, its protagonism² is clearly affirmed in our contemporary society in a myriad of ways; the same occurs with entertainment, that has shifted towards being predominantly digital, shifting from its mostly material form into one fit to the cyberspace³, making Castells' prevision that a considerable amount of human ways of expression would be coopted by the digital universe, therefore establishing a fully "new symbolic environment"⁴ as part of our reality. It's possible to confirm that the internet "overcame its notion as a mere technical service to effectively become the characteristics of particular social space"⁵.

The cyberspace, this digital frontier that gains more importance in social interactions every day, has its backbones conditioned to its code, direct product of the human ingenuity⁶, which bounds the possible conducts inside such space, just as "prison bars"⁷.

Following the trend of virtualization and its consequences⁸, even games

¹ On the origins of the internet, Castells mentions: "A criação e o desenvolvimento da Internet nas três últimas décadas do século XX foram consequência de uma fusão singular de estratégia militar, grande cooperação científica, iniciativa tecnológica e inovação contracultural. A Internet teve origem no trabalho de uma das mais inovadoras instituições de pesquisa do mundo: a Agência de Projetos de Pesquisa Avançada (ARPA) do Departamento de Defesa dos EUA. Quando, mais tarde, a tecnologia digital permitiu o empacotamento de todos os tipos de mensagens, inclusive de som, imagens e dados, criou-se uma rede que era capaz de comunicar seus nós sem usar centros de controles. A universalidade da linguagem digital e a pura lógica das redes do sistema de comunicação geraram as condições tecnológicas para a comunicação global horizontal." Manuel Castells, *A Sociedade em Rede* 82 (6th ed., Paz e Terra 2013).

² Rodrigo Róger Saldanha & José Sebastião de Oliveira, *Persona digital: a ampliação da proteção civilista da expressão humana por meio da autodeterminação informativa da pessoa*, 83 *Revista da Faculdade de Direito da Universidade Federal de Minas Gerais* 459, 470 (2023), <https://www.direito.ufmg.br/revista/index.php/revista/article/view/2637>.

³ "O ciberespaço pode ser conceituado, sinteticamente, como o ambiente virtual que possibilita aos indivíduos interações entre si, sem necessidade de presença próxima no espaço material, por meio da digitalização das informações, tendo como aparato físico de acesso um dispositivo informático e a internet como via de conexão." Leonardo Machado Acosta, *Cibervulnerabilidade: a vulnerabilidade agravada dos consumidores no ciberespaço* 62 (Master's dissertation, Universidade Estadual Paulista 2025), <https://hdl.handle.net/11449/261077>.

⁴ Castells, *supra* note 1, at 458.

⁵ Juliano Madalena, *Regulação das fronteiras da internet: um primeiro passo para uma Teoria Geral do Direito Digital*, 974 *Revista dos Tribunais* 81, 85 (2016).

⁶ Georges Abboud, *Verdades inconvenientes sobre direito e ciberespaço: uma pequena introdução ao mundo digital*, 1000 *Revista dos Tribunais* 291, 292 (2019).

⁷ Lawrence Lessig, *Code 2.0* (Basic Books 2006).

⁸ Lévy asserts that "A virtualização atinge mesmo as modalidades do estar junto, a constituição do "nós": comunidades virtuais, empresas virtuais, democracia virtual..." Pierre

have become virtual; initially they were simulacrum of physical games of yore, after they started to being developed with the digital aspect in mind, and today they are fully integrated in this cyber environment through internet connection. In this context, Pinheiro and Lopes assert that “digital games are an important entertainment form in certain cultures. Developed in the 80’s as an experiment, they expanded their influence, in such a way that as they continue to become more accessible, they also grow more lucrative”⁹. In the same tone Picon *et al.*:

In this last decade the electronic games have become ever more popular, and today are one of the most important leisure activities to children’s, adolescents and also adults. The technological advancement allowed an even greater degree of realism in images, sounds, interactivity and speed in games. The connection with internet brings as a fundamental change, the possibility of several players, scattered through all the world, to partake in the same game. It’s possible to create a persistent, parallel, always active digital space, and with it, the craving to remain on-line most of the available time.¹⁰

Therefore, web based electronic games can be defined as an interactive software oriented to entertainment that uses internet to connect its players, allowing interplay between multiple participants, social connections and access to dynamic content. The main characteristic of this type of game is its existence within the cyberspace, allowing any individual to join in synchronized and simultaneous activities.

The space occupied by electronic games in the social time sphere grows, and about “74,5% of Brazilians affirm to play regularly”¹¹, demonstrating that this scenario outgrows mere forms of entertainment and become its own particular dimension, with its own importance to the market and society, its social effects no longer being possible to ignore by the legal studies¹².

It’s important to notice that beyond the mere participation in the on-line games themselves, the participants can interact through text-chats and, or, as well voice-chats; this way they, might create communities, some, that even

Lévy, O Que É o Virtual? 11 (Editora 34 1997).

⁹ Gabryel David Pinheiro & Tacyana Karoline Araújo Lopes, Práticas abusivas e comércio de loot boxes em jogos eletrônicos à luz do Código de Defesa do Consumidor no Brasil, 18(1) Revista Brasileira de Estudos Jurídicos 186, 192 (2024), <https://portalunifipmoc.emnuvens.com.br/rbej/article/view/36>.

¹⁰ Felipe Picon et al., Precisamos falar sobre tecnologia: caracterizando clinicamente os subtipos de dependência de tecnologia, 17(2) Revista Brasileira de Psicoterapia 44, 47 (2015), <https://pesquisa.bvsalud.org/portal/resource/pt/biblio-848156>.

¹¹ André Lopes, 74,5% dos brasileiros jogam videogames com frequência; classe C está mais incluída no consumo, Exame (2024), <https://exame.com/tecnologia/745-do-brasileiros-jogam-videogames-com-frequencia-classe-c-esta-mais-incluida-no-consumo/> (last visited Sept. 24, 2026).

¹² Pinheiro & Lopes, *supra* note 9.

last for years, developing strong bonds of friendships and camaraderie among players. Therefore, web base electronic games can act as social networks, stablishing “(...) on-line relations that modify off-line relations and vice-versa, making the digital frontier ‘real’ granting it a certain symbiosis (...)”¹³.

We can conclude, therefore, that internet connected virtual games are beyond the scope of mere entertainment, bringing repercussions that can affect the life and social interactions of an individual, just as shaping the behaviors and tendencies of a community, instigating its users to become addicted and to remain inserted in its virtual torpor¹⁴.

II. THE PROFILE-ACCOUNTS OF PLAYERS AND PERSONALITY RIGHTS

As most web-based electronic games are operated by platforms within the digital frontier, it’s common, as a requirement to ingress in these services, that players create an account and agree to “terms of service” (TOS), granting access to their personal data, establishing a profile within the game to represent itself. It is through the mediation of this profile-accounts that an individual will effectively partake in activities inside the on-line game, it will be through it that his conducts will be manifested in the virtual environment, as well through it that he will be identified by other players.

In this context, its noteworthy that this aforementioned “terms of service” become contractual in nature, specifically as an adhesion contract¹⁵, the typical contract type in the digital consumption world. The adhesion is established through an electronic medium, without possibility of individual negotiation, revealing a surmount inequality among the parts. These contractual instruments contain, most of the time, broad stipulations that attribute to the supplier, the game platform, unilateral powers to suspend or exclude accounts, using vague, generic or open terminology, such as “according to our internal guidelines”, “inadequate behavior” even, sometimes, “to our own discretion”. As an example, it’s shown below the first disposition of the third section “Access to service and Account Security”,

¹³ Claudia Lima Marques & Guilherme Mucelin, Vulnerabilidade na era digital: um estudo sobre os fatores de vulnerabilidade da pessoa natural nas plataformas, a partir da dogmática do Direito do Consumidor, 11(3) *civilistica.com* 5 (2022).

¹⁴ Azevedo and Torres note the phenomenon of “digital situational vulnerability by captivity” in these scenarios. Fernando Costa de Azevedo & Julia Fátima Gonçalves Torres, A hipervulnerabilidade digital situacional de crianças, adolescentes e do núcleo familiar no jogo eletrônico Fortnite, 12(3) *civilistica.com* 11 (2023).

¹⁵ As Marques points out on adhesion contracts “é aquele cujas cláusulas são preestabelecidas unilateralmente pelo parceiro contratual economicamente mais forte (fornecedor), ne varietur, isto é, sem que o outro parceiro (consumidor) possa discutir ou modificar substancialmente o conteúdo do contrato escrito”. Claudia Lima Marques, *Contratos no Código de Defesa do Consumidor: o novo regime das relações contratuais* 54 (9th ed., Thomson Reuters Brasil 2019).

from the “terms of service” of the supplier “Epic Games”:

We may remove or modify the Services, and any related service or content, or restrict access (including by means of cancellation, termination, modification, or suspension of a user account) for all or certain users (including you) without prior notice and without any liability to you at our sole discretion. In addition, due to your geographic location, the Services or some of its features, services, or content may not be available to you. Notwithstanding anything to the contrary herein, we may terminate or suspend access to the Services based on your violation of these Terms. (October 2025 Brazilian version; translated by the authors)¹⁶

The interpretative magnitude allowed by the terminology used can lead, by the platform, the practice of potentially abusive practices, in vexation against articles 46 to 51 of the Brazilian Consumer Defense Code¹⁷, which demands from providers of services adequate and transparent terminology, as well a balanced disposition of demands. The absence of clarity and of mechanisms oriented towards a fair trial to the player, increases its vulnerabilities as a consumer, converting such a digital contract in an instrument of servitude, disproportional in rights, toiling even the most fundamental rights, as the ones related to identity, freedom of expression and sociability.

It is important to take notice that all the time a player spends in the platform is registered in his history, most notably his trophies and conquest, matches played, social interactions (as conversations logs), items acquired through microtransactions¹⁸ and other data, which will be permanently linked to his account-profile. Therefore, this profile effectively becomes a digital identity of a player, encompassing not only his name and image (both real and fictional), but also his honor, trajectory, bonds, emotional behavior; it becomes the materialization of the self within the digital environment of the game.

This metaphysical representation of the player personal real characteristics into the cyberspace has been called by legal scholars “digital

¹⁶ Epic Games, Termos de Serviço, <https://legal.epicgames.com/pt-BR/epicgames/tos> (last visited Oct. 8, 2025).

¹⁷ Art. 46. Os contratos que regulam as relações de consumo não obrigarão os consumidores, se não lhes for dada a oportunidade de tomar conhecimento prévio de seu conteúdo, ou se os respectivos instrumentos forem redigidos de modo a dificultar a compreensão de seu sentido e alcance.; Art. 51. São nulas de pleno direito, entre outras, as cláusulas contratuais relativas ao fornecimento de produtos e serviços que: Lei No. 8.078, de 11 de setembro de 1990, arts. 46–51, Diário Oficial da União [D.O.U.] de 12.9.1990 (Braz.) (Código de Defesa do Consumidor), https://www.planalto.gov.br/ccivil_03/leis/18078compilado.htm.

¹⁸ Pinheiro & Lopes, *supra* note 9.

persona”¹⁹, “electronic body”²⁰, “cyborg personality”²¹ and “virtual identity”²². Each denomination encompasses a certain interpretation of the same phenomena, which is the expansion of human personality into the digital frontier, a fact that carries significant legal importance. Specifically, can be commented that “digital persona” recollects the legal body and identity information of an on-line individual, defining it as a combination of data, interactions and personal records. On the other hand, “electronic body” emphasizes the sensorial e symbolical spheres of an individual within the virtual world, consequently becoming an extension of the body, or an electronic one, protected by law. Distinctively, “cyborg personality” expresses the hybridization, the symbiosis, between humans and technologies, suggesting that exists a profound existential connection among subjects and the digital interfaces, a view that challenges the traditional interpretations of personality rights. Lastly, “virtual identity” conceptualizes the public and social representation of an individual in the cyberspace, connected to his image, reputation and previous behaviors.

In this context, it’s noteworthy the remark made by Bassan and Faleiros Júnior in this subject:

The projection of a personality, an avatar, an electronic body or digital persona leads to a whole new interpretation of the value of individual dignity – possibly under legal protection –, setting up a certain preoccupation on the account of the many foreseeable consequences this individual might face in his “digital life”. (...) In the same light, the legal systems must create new means for the protection of fundamental and personality rights, in all of possible existing ways of social interaction, especially ones involving trade and consumption. (Translated by the authors)²³

The virtual subject is comprised of a myriad, allowing him to fully immerse into the cyberspace while using different social masks, allowing him to “experiment new and different ways of being”²⁴; this hybridization

¹⁹ Roger Clarke, *The Digital Persona and Its Application to Data Surveillance*, 10(2) *Journal of Law, Information and Science* (1994), <https://doi.org/10.1080/01972243.1994.9960160>.

²⁰ Stefano Rodotà, *Intervista su Privacy e Libertà* (Laterza 2005).

²¹ Don Ihde, *Bodies in Technology* (University of Minnesota Press 2001).

²² Iuri Bolesina, *Direito à Extimidade: as Inter-relações entre Identidade, Ciberespaço e Privacidade* 131 (Empório do Direito 2017).

²³ Arthur Pinheiro Basan & José Luiz de Moura Faleiros Júnior, *A tutela do corpo eletrônico como direito básico do consumidor*, 1021 *Revista dos Tribunais* 133, 138–39 (2020), <https://www.thomsonreuters.com.br/content/dam/ewp-m/documents/brazil/pt/pdf/other/rt-1021-a-tutela-do-corpo-eletronico-como-direito-basico-do-consumidor.pdf>.

²⁴ Taziane Mara da Silva, Talita de Oliveira Teixeira & Sylvia Mara Pires de Freitas, *Ciberespaço: uma nova configuração do ser no mundo*, 21(1) *Psicologia em Revista* 176, 188 (2015), https://pepsic.bvsalud.org/scielo.php?script=sci_arttext&pid=S1677-11682015000100012.

between human and technology opens up the individual to the possibility of living unreachable desires by common means, just as much temporarily freeing him of his concrete existence and reality²⁵.

Following this guise, Soares, Moraes and Centurião observe that:

Analyzing the electronic body theory, which focus on the study of the virtual existence of an individual, it becomes clear the necessity to equate the tutelage conferred to personality rights over a physical body to certain elements of this digital body, as a way to create an integral protection of the individual, allowing the complete development of humans, especially because they suffer considerably from events that unfold within the digital frontier (...). (Translated by the authors)²⁶

Considering the above studied characteristics of the account-profiles, it is evident how intimately it connects with personality rights. This understanding can be justified by the very own way that these profiles are created, by means of merging personal data of a subject, notably his name, image, and social-digital capital in order to create a true projection of a subject's identity into the cyberspace, along the same lines of what has been researched by Saldanha and Oliveira:

Finally, it can be comprehended that the existence of an informational set relating to the digital person can be conferred legal protection, precisely because it is a new way of human expression, a digital personality. It is our opinion, on the present matter, that the current classification of personality rights does not fully comprehends this new way, thus we defend the expansion of personality right to a quadruple system, because without a doubt the digital persona exists. (Translated by the authors)²⁷

In this sense, the running definition of the personality rights has been as “a legal faculty in which the object of regulation is the multiple aspects of a subject itself, as well his essential projection into an exterior world”²⁸. This understanding can be applied to the digital person, because it encompasses teleologically as objective the protection of “human values, particularly the dignity, in its physical, moral and intellectual facets, protecting its identity, freedom, equality, existence, security, honor, private life and possibility to a

²⁵ Sibilia recognizes that “A rede mundial de computadores se tornou um grande laboratório, um terreno propício para se experimentar e criar novas subjetividades: (...). Como quer que seja, não há dúvidas de que esses reluzentes espaços da Web 2.0 são interessantes, nem que seja porque se apresentam como cenários bem adequados, para montar um espetáculo cada vez mais estridente: o show do eu (...)”. Paula Sibilia, *O Show do Eu: a Intimidade como Espetáculo* 27 (Nova Fronteira 2008).

²⁶ Marcelo Negri Soares, Alender Max de Souza Moraes & Luis Centurião, *O corpo eletrônico como um direito da personalidade do consumidor*, 51(2) *Revista da Faculdade de Direito da Universidade Federal de Uberlândia* 430, 440 (2025).

²⁷ Saldanha & Oliveira, *supra* note 2, at 480.

²⁸ Rubens Limongi França, *Instituições de Direito Civil* 1025 (Saraiva 1988).

full development”²⁹.

Consequently, in the virtual environment of web-based games, the personality of a player is mirrored and project through its account-profile, that virtualizes, as a personal data set, quintessential aspects of his individuality, sociability and reputation. This virtual representation not only identifies the consumer in the game environment, but also carries aspects of his real, physical, civil identity, deeply influencing his image rights; as Bittar points out “the bond between the person and its virtual projection, taken as a whole, or in defining real prints (as images of the mouth, eyes, and legs, as identifying of a singular individual)”³⁰. Thence, if a physical image of a person is under legal protection because of its possibility of reflecting on the individual represented in it, so must this digital image, including the elements attached to the account-profile receive equal protection, because it is the most contemporary form of human self-expression and it receives recognition within the cyberspace.

Along the lines of the digital profile of players, the personal right to individual identification, is not explicitly expressed in Brazilian legislation, it is understood that “encompasses not only the protection given to the name, going further, reaching the protection of elements by which a person can be socially identified and represented”³¹; as Schreiber writes:

In Brazilian legal system, the law confers protection to identity because it’s a relevant aspect of human dignity. It is true that such a disposition is not clearly present inside the Brazilian Civil Code. However, this is not something traditionally inserted in personality rights. Its definition is altogether too recent, but this is not an obstacle to its wholly protection. The personality rights are an open category, which embarks historically variable aspects. Its content tends always to be expanded, moving toward an integral legal protection of human person. (Translated by the authors)³²

Hence, it is possible to affirm that all categories analyzed thus far points out that the account-profile created by each player encompasses a real set of personality rights attributed to him. In them it is contained the quintessential elements of his identity, honor, image, and freedom of expression of the user, projected into the digital frontier his dignity and individuality. For these reasons, any unilateral intervention made by the platform, such as the suspension or exclusion of a profile, infringes directly in the personality rights of a player, possibly violating these rights and generating a civil demand to repair. The recognition of this virtual projection of the human,

²⁹ Cristiano Colombo & Eugênio Facchini Neto, *Violação dos direitos de personalidade no meio ambiente digital: a influência da jurisprudência europeia na fixação da jurisdição/competência dos tribunais brasileiros*, 8(1) *civilistica.com* 7 (2019).

³⁰ Carlos Alberto Bittar, *Os Direitos da Personalidade* 209 (8th ed., Saraiva 2015).

³¹ Anderson Schreiber, *Direitos da Personalidade* 211 (2d ed., Atlas 2013).

³² Schreiber, *supra* note 31, at 217.

imposes to legal scholars a reinterpretation of classic institutes of Civil Practice, especially the personality rights as put forth in the articles 11 to 21 of the Brazilian Civil Code³³, as to make the protection of human dignity also achieve its repercussion in the digital frontier, following the cardinal principles related to it expressed in the Brazilian Constitution.

Considering the discourse so far, it is clear that the account-profile created by a player to access web-based electronic games incorporates fundamental elements of personality rights, such a consideration leads to the inevitable conclusion that violations against this digital construct affect him directly, in an attack against his most personal elements; this correlation, thence, demands an adequate and profound answer by Law.

III. ANALYSES ON THE EXCLUSION OF ACCOUNT-PROFILES OF PLAYERS

The natural individual legally ceases to exist with its death; however, personality rights continue to exist beyond its biological dimension of origin, being possible to debate “a symbolic death” in its identitarian aspects. In this perspective, the arbitrary exclusion of the account-profiles can be interpreted as a “symbolic murder”: the complete annihilation of the current digital persona built by the player, with a violent severing of his social connections, histories e identitarian representations stored in such a profile.

As shown, the desire to access these virtual games impose upon the consumer the compulsory creation of an account-profile and the acceptance of an adhesion contract³⁴, usually denominated “terms of service”, “terms of use” or “user’s agreement. This contractual asymmetry, summed with other types of dangers present in the digital space, sets the use as a cybervulnerable³⁵ individual.

As previously exemplified, these contractual instruments usually contain some form of disposition in which is established the possibility of the account

³³ Lei No. 10.406, de 10 de janeiro de 2002, arts. 11–21, Diário Oficial da União [D.O.U.] de 11.1.2002 (Braz.) (Código Civil), https://www.planalto.gov.br/ccivil_03/leis/2002/110406compilada.htm.

³⁴ Its noteworthy that the manifestation of a consumer consent in such contracts is usually done through the “click-wrap” method, in which the user must simply click one option among “I agree” or “accept” etc. Cíntia Rosa Pereira de Lima, Contratos de adesão eletrônicos (“shrink-wrap” e “click-wrap”) e termos e condições de uso (“browse-wrap”), 133 Revista de Direito do Consumidor 109 (2021).

³⁵ Acosta defines cibervulnerability as “trata-se da hipervulnerabilidade do consumidor ocasionada pela maior fragilidade deste sujeito nas relações consumeristas estabelecidas no ciberespaço diante da existência de mais incertezas, riscos e ocorrências de danos neste ambiente, o que aumenta a distância de poder entre o consumidor e o fornecedor e exige meios mais robustos para a proteção do consumidor e reestabelecimento da igualdade material na relação de consumo. Assim, passemos à análise pormenorizada dos elementos que compõem tal conceito.”. Acosta, *supra* note 3, at 86.

being excluded, blocked or deactivated, along with some hypotheses that could lead up to such an action by the provider. In this context, the very companies responsible by the service acts simultaneously as “legislator” and “judiciary”, as presented by Mendes and Fernandes in a similar study, but at which the focus had been social networks:

Not only acting as the creator of the rules revolving around the data treatment and content of users, these intermediaries also assume the function of dispute resolution among participants in the networks, just as well between user and the platform itself. While enforcing the regulations and terms of service, these companies engage in a true adjudicatory capacity of rights. In this sense, the cyber platforms act effectively as a court of law, when we consider that they themselves have the power to decide over the exclusion or maintenance of content inside their boundaries, in as much the exclusion or maintenance of users, without any interference of a single State Organ, either administrative or judiciary. (Translated by the authors)³⁶

Infront of this perspective, the most adequate key of interpretation to understand the consequences of arbitrarily excluding an account-profile is the theory of horizontal effectiveness of fundamental rights. As Sarlet³⁷ lectures, this efficacy is the determinant factor to the fundamental rights, especially the ones oriented towards human dignity, not only compelling the action of the State, but also private agents, creating repercussions in the private sphere relations. Consequently, these digital companies, when exercising their rightful powers in moderation and profile exclusion, must also abide to the Brazilian constitutional principle of fair trial, under the sanction of, if not abiding, violating the fundamental right of its users.

Trough another perspective, it's a valid interpretation that extreme measures, as the exclusion of the account-profile, can be applied in cases where there is enough supporting evidence of misconducts, such as tampering with the game (hacking and, or, cheating), discriminative or hateful actions against other players, or grave violations against the general principles of fair game and lawful social behaving. Its noteworthy Margalho's argument:

In general, Law also protects the freedom of expression within digital environments, nevertheless it is important to people understand that legal limitations likewise liabilities also apply to manifestations done in the internet, in order to ensure that their freedom of expression does not cause harm to the privacy, security or rights of others. (Translated by the authors)³⁸

³⁶ Gilmar Ferreira Mendes & Victor Oliveira Fernandes, Eficácia dos direitos fundamentais nas relações privadas da internet: o dilema da moderação de conteúdo em redes sociais na perspectiva comparada Brasil-Alemanha, 31 *Revista de Direito Civil Contemporâneo* 33, 35 (2022).

³⁷ Ingo Wolfgang Sarlet, *A Eficácia dos Direitos Fundamentais: uma teoria geral dos direitos fundamentais na perspectiva constitucional* (10th ed., Livraria do Advogado 2010).

³⁸ Rafael Andrade de Margalho, *Redes sociais digitais e direitos da personalidade*, *Revista Judicial Brasileira* 641, 651 (2023),

Another frequent conduct encountered in the digital frontier, that can lead to a rightful banishment of a player is cyberbullying, in which an individual acts with the “clear intent of humiliating, scaring, coercing and isolating another considered different or weaker”³⁹.

Thus, the protection conferred to account-profiles should not be interpreted under an absolute shroud, because there a considerate number of situations in which temporary restrictions or even definitive one to the player can be lawful, working as a mechanism to protect human dignity. Under specific circumstances, unmeasured exercise of freedom within the digital realm can lead an individual to harmful situations, as the excessive use of microtransactions or paid content, compromising his real subsistence and personal balance. Moreover, in this such cases, the blocking of a user, if carefully justified, in a proportional and transparent way, does not configure a violation of personality rights, but a different expression of the duty to protect also enclosed in the principle of human dignity. Ergo, the challenge to legal scholars and legislators, is to find the balance amidst protecting the player from himself while also recognizing their right to create and preserve an autonomous digital persona, with its own existential value within the cyberspace.

Thereupon, even when substantial evidence exists to justify an exclusion, its elementary that the player is given a fair trial by the platform, maintaining to the whole legal system the importance of such a fundamental principle, even in a completely private relation. In the same tone Bastos and Pedra (2024, p. 179) agree that “(...) it is important to investigate if the observance of a fair trial by social networks, when excluding a profile, is also a fundamental right of private entities”⁴⁰.

This way, we can affirm that the exclusion of account-profiles in web based electronic games can only be lawful when strictly aligned to the parameter set according to the protection of the fundamental rights of their users. Any measure that extrapolates these boundaries, specifically when the action is taken using generic terminology or discretionary action as base, must be categorized as illicit and abusive practice.

Thence, the unlawful exclusion must not be interpreted only as an isolated contractual or civil violation, but as a direct attack against fundamental rights in the private sphere, mostly aggravating against personality rights. The

<https://revistadaenfam.emnuvens.com.br/renfam/article/view/238>.

³⁹ Maluh Duprat, Cyberbullying: ofensas e humilhações na internet, in Conectados: pequenas reflexões sobre a tecnologia no cotidiano 35–36 (Ivelise Fortim ed., Homo Ludens 2020).

⁴⁰ Rafael Calhau Bastos & Adriano Sant’Ana Pedra, Exclusão de perfis em redes sociais e o dever fundamental de respeito ao contraditório e à ampla defesa: uma análise à luz da eficácia horizontal dos direitos fundamentais, 29(1) Revista Direitos Fundamentais & Democracia 165, 180 (2024).

interpretation according to the horizontal efficacy obliges these companies to protect the dignity of their players, even if restricts their economical and administrative freedom.

In conclusion, the digital frontier must be interpreted as an environment capable of aggrandize human existence. The fundamental rights, in such a context, does not exist only to the public sphere, but must also be observed in the digital bonds established among private persons, but tying platforms in the duty to protect its layers against arbitrary or abusive action.

IV. NEW WAYS TO MANIFEST PERSONALITY AND MORAL DAMAGE

Personality rights are unassailable and damages caused to them are assured to be repaired, as is stated in the tenth provision of the fifth article of the Brazilian Federal Constitution⁴¹; therefrom “no human being can have their personality rights violated under the watchful care of the State”⁴², their efficacy needing to be protected even in private relations.

Among the functions attributed to personality rights, it’s important to take notice of the preventive function, which is the one oriented towards avoiding an attack to happen, and also the reparatory function as a central point of analysis, because of their importance on the understanding on moral damages owed by a wrongful account-personality exclusion, as a direct violation of quintessential personal elements.

It can be affirmed, in this way, that the harm caused to the individual personality⁴³ rights, also presumes the existence of moral damages; concur to

⁴¹ Art. 5º Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade, nos termos seguintes: (...) X - são invioláveis a intimidade, a vida privada, a honra e a imagem das pessoas, assegurado o direito a indenização pelo dano material ou moral decorrente de sua violação. Constituição Federal [C.F.] art. 5, X (Braz. 1988), https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm.

⁴² Saldanha & Oliveira, *supra* note 2, at 479.

⁴³ Schreiber points that “A categoria dos direitos da personalidade não tem como escopo cristalizar o rol dos atributos essenciais ao ser humano. Suas funções jurídicas são outras, como, por exemplo: (i) evidenciar as diferentes ameaças que cada um desses atributos pode sofrer, facilitando a prevenção de danos (função preventiva); (ii) permitir, por meio do desenvolvimento de instrumentos específicos, a mais plena reparação das lesões que venham a atingi-los (função reparatória); (iii) auxiliar a formulação de parâmetros próprios para a ponderação nas hipóteses de colisão entre os próprios direitos da personalidade ou entre eles e outros direitos fundamentais (função pacificadora); e (iv) estimular o desenvolvimento desses atributos por meio de políticas públicas e iniciativas sociais adequadas (função promocional). A construção dos direitos da personalidade como uma categoria geral tem a utilidade de evidenciar, para fins práticos, as semelhanças e as diferenças entre os vários atributos da condição humana, sem ameaçar a indelével unidade que os vincula, como aspectos de um todo indivisível”. Schreiber, *supra* note 31, at 224.

this opinion Gagliano and Pamplona Filho:

Moral damages originate from the harm caused against rights that cannot be immediately traduced in monetary terms. In another perspective, we can affirm that moral damages are the ones related to the most intense and personal sphere of rights, such as his right to privacy, honor, image, and constitutionally protected legal goods. (Translated by the authors)⁴⁴

Even though traditional doctrine has consolidated the distinction between personality rights and liability for moral damages, the digital environment imposes a significant need to reinterpret these concepts; other researchers point to the same direction as Colombo and Facchini Neto descry “violations to personality rights occur both on-line and off-line (...) and whether is on-line or off-line, in both hypothesis, everything happening is real, affecting real subjective individuals”⁴⁵. Hence, digital moral damages cannot be reduced to a mere metaphor or minimized in relation to damages suffered in the material world, because their effects are concretely felt in the honor, image and identity of the subject within the cyberspace.

For this reason, it is imperative that Law keeps up with the technological transformations of the material world, recognizing that personality right acquire new dimensions and are challenged in ever novel ways. As Bittar announces “the emergence of the digital era imposes new challenges to Law. Particularly, legal theory should not remain static in the face of this new challenges”⁴⁶, in agreement Molinaro and Sarlet counsel that “(...) the systemic character of technology challenges us to think innovative questions, demanding, contemporary interpretations of the dimensions of human responsibility”⁴⁷.

Accordingly, the violation of personality right within the digital frontier demands a functional reinterpretation of civil liability: more than simply repay the damages, it is necessary to restitute the *status ante quo*, stablishing anew the moral and symbolic dimensions of an individual, recognizing the existential value of such damages. Thus, it’s important that in cases of wrongful exclusion of account-profiles from the platforms of these virtual games, to assert that the moral damages are manifest when the abrupt suppression of his virtual identity happens, likewise when he loses records of

⁴⁴ Pablo Stolze Gagliano & Rodolfo Pamplona Filho, *Novo Curso de Direito Civil: Responsabilidade Civil* 103 (vol. 3, 17th ed., Saraiva Educação 2019).

⁴⁵ Colombo & Facchini Neto, *supra* note 29, at 8, <https://civilistica.emnuvens.com.br/redc/article/view/400>.

⁴⁶ Eduardo C. B. Bittar, *A teoria do direito, a era digital e o pós-humano: o novo estatuto do corpo sob um regime tecnológico e a emergência do sujeito pós-humano de direito*, 10(2) *Revista Direito e Práxis* 933, 938 (2019).

⁴⁷ Carlos Alberto Molinaro & Ingo Wolfgang Sarlet, *Apontamentos sobre direito, ciência e tecnologia na perspectiva de políticas públicas sobre regulação em ciência e tecnologia*, in *Direito, Inovação e Tecnologia* 42 (vol. 1, Gilmar F. Mendes et al. eds., Saraiva 2015).

actions and social interactions in the digital environment.

Therefore, in special attendance to the need of wholly protecting human rights, even more so of his dignity, that their “protections must encompass both the ‘material’ and the “electronic” body as a collection, demanding for them the due protection of law”; assert similarly Saldanha and Oliveira:

The central question of the present research is to address the possibility of the informational data that composes the virtual representation of the individual be conferred the same protections that its regular body has, and in the debate presented above, it becomes clear that a fourth classification of personality rights can exist; if we were to observe this new set, we would have that the personality rights are composed of the right to life and physical integrity; psychical integrity and intellectual property; moral integrity and the right to preserve the informational virtual body. (Translated by the authors)⁴⁸

From this comprehension, moral damages originated from the wrongful exclusion of account-profiles from players must be recognized as attack to the personality rights, when we take in consideration that this profile is a virtual representation of the individual in the digital frontier. When such a profile is deleted, are suppressed from existence elements intrinsic to the identity, history and image, provoking a “symbolic murder” of his digital manifestation⁴⁹.

This virtual attack can be understood as just as vicious than an attack that happens in the real world, and just as equally produce material effects on real individuals, because “any and every action within the digital world creates two main repercussions, one in the same environment, and another in the analogical world”⁵⁰. Hence, the exclusion of account-profiles does not represent the mere loss of a technical elements, but an attack to the dignity of a being, deserving full legal repercussions.

Ergo, the recognition of moral damages in cases of wrongful exclusion in web-based electronic games demands the application of civil liability, in

⁴⁸ Basan & Faleiros Júnior, *supra* note 23, at 138.

⁴⁹ Saldanha & Oliveira, *supra* note 2, at 479.

⁵⁰ On the digital excluded individual, Marques: “Efetivamente, a internet mudou a maneira como consideramos os computadores, de simples instrumentos de trabalho (uma substituição melhorada da máquina de escrever), a instrumentos essenciais da nova conexão mundial de comunicação, gestão do tempo e dos negócios e de criação. Quem não usa o meio eletrônico é um novo tipo de excluído, um novo analfabeto-cibernético, um “excluído digital”, um novo tipo de discriminado da sociedade de consumo e informação, seja nos preços que lhe oferecem os bancos, seja nas possibilidades de compra, nos contatos de seu meio social, na quantidade de informações que está à sua disposição, dividindo a sociedade (digital divide) entre aqueles que detêm e aqueles que nunca deterão a informação (information haves e information have-not)!”. Claudia Lima Marques, *Proteção do consumidor no comércio eletrônico e a chamada nova crise do contrato: por um direito do consumidor aprofundado*, 2 *Doutrinas Essenciais de Direito do Consumidor* 827 (2011) (source manuscript cites p. 14).

respect to personality rights, comprehending full payment of the damages supported, and equal efforts to repair the symbolic dimension. The reparatory function, in this context, signifies the constitutional protection conferred to human dignity and reaffirms that in the cyberspace, personality remains just as important and valuable to every other projection of human inventiveness.

V. THE CIVIL LIABILITY OF PLATFORMS

The civil liability originates from the violation of one's particular right, coercing the liable party to compensate monetarily the damaged party when it's not possible to return the situation to the *status ante quo*, the situation before the damage was caused. In this sense, the defining elements of civil liability are: "a) action (positive/deliberate or negative/faulty); b) verifiable damage; c) adequate causal link"⁵¹.

In the platforms of the web-based electronic games, the presence of all three defining characteristics of civil liability can be clearly and objectively found. The actions are originated from the company, the sole entity entitled by its own terms to forcibly suspend or exclude an account-profile of a player. These actions become unlawful when enacted arbitrarily, without a well-reasoned justification or by not allowing a fair trial, not meeting the burden of proof by not showing sufficient evidence of misconduct by the player. The damage is caused by the violation of a players personality rights, affecting his image, honor and visual identity. The adequate causal link is easily established, once we take into consideration that it's the company the only entity technically capable of executing the exclusion that produces the damage, either by arbitrarily enacting its own "terms of service" or by not sufficiently protecting its players from third party elements.

Consequently, the liability of this platforms must always be analyzed by the consumers law link existing among parties, once it's considered that the player is clearly a consumer of a product offered by the company in its virtual game, as is set forth by the Brazilian Consumers Code of Defense. Thus, in this understanding, civil liability by the platforms is always objective⁵², not being necessary to its full characterization any kind of faulty action, being necessary only the existence of a verifiable damage and adequate causal link. It is an interpretation that favors the principle of enterprise risk, which establishes that a company that profits from an activity must also bears the

⁵¹ Gagliano & Pamplona Filho, *supra* note 44, at 49.

⁵² "O Código do Consumidor deu uma guinada de 180 graus na disciplina jurídica até então existente na medida em que transferiu os riscos do consumo do consumidor para o fornecedor. Estabeleceu, como veremos, responsabilidade objetiva (independentemente de culpa) para todos os casos de acidente de consumo, quer decorrente do fato do produto (CDC, art. 12), quer do fato do serviço (CDC, art. 14)." Sergio Cavalieri Filho, *Programa de Direito do Consumidor* 311 (5th ed., Atlas 2019).

risks inherent to such activity, including the ones derived from a faulty service or abuse of a right.

Considering this scenario, moral damages assume the central stage in establishing the liability of these platforms. The unlawful exclusion of an account-profile represents the arbitrary suspension of a player's virtual identity, causing him to violently lose his history, conquests, record of social interactions and overall his symbolic projection within the digital frontier. This damage affects directly his digital personality, which originates from his fundamental rights, along with human dignity. The liable action does not end with the mere satisfaction of contractual clauses, because it signifies a direct attack to the moral and existential integrity of a consumer inside the cyberspace, hence why it needs to be fully repaired.

In face of ever-increasing similar situations, Brazilian courts of law have started to establish precedents that recognize the presence of payable moral damages in cases of improper suspension or arbitrary exclusion of account-profiles of digital players.

As an example, the appellate court of Paraná State recognized that an abrupt restriction of access to an account can cause a consumer moral suffering, once taken into consideration that it creates an obstacle to his usual activities, equally hindering his enjoyment of products or services acquired in the platform⁵³. In another case, the appellate court of São Paulo State, interpreted that moral damages occur in the illicit exclusion of a player's account, because it creates a barrier to the exercise of his leisure and socialization⁵⁴. The appellate court of Rio de Janeiro recognized expressly the damages to personality rights along with moral damages, considering that behind a player exists a real person, with feelings and dignity, hence his virtual images are equivalent in value to his real human images, and deserving similar repayment⁵⁵.

The discourses presented in these precedents point out that even though the approach taken by each Court of Law is distinct, they reach similar conclusions: the arbitrary exclusion of an account-profile of a videogame player produces enough damage to his personality, that reaches the threshold of civil liability, creating a duty to repay, including the moral damages supported by the player.

The digital frontier demands new solutions to the problems of modern life, or even the creative application of already existing solutions. Hence why

⁵³ Tribunal de Justiça do Paraná [TJPR], Proc. No. 0001442-23.2023.8.16.0018, 1ª Turma Recursal (Nov. 13, 2023) (Braz.).

⁵⁴ Tribunal de Justiça de São Paulo [TJSP], Proc. No. 1001635-72.2023.8.26.0590, 28ª Câmara de Direito Privado (Dec. 11, 2024) (Braz.).

⁵⁵ Tribunal de Justiça do Rio de Janeiro [TJRJ], Proc. No. 0033863-56.2016.8.19.0203, 24ª Câmara Cível (Oct. 16, 2019) (Braz.).

the internet and the virtual reality inside it cannot be forgotten. When we interpret these situations under an evolutionary theory, it's reasonable to consider that the virtual image might have a similar value to the real human image, notably in the concrete cases presented; besides behind a participant in a virtual competition, exists a real individual, with sensibilities and dignity, for which any damage caused, is clearly a moral damage. If the exclusion of the virtual name of the player remains, moral damages exist, civil liability follows.

As shown by Gagliano and Pamplona Filho “the fundamental function of civil liability is to restore the balance between the moral and the patrimonial elements of an individual, that had them damaged by the illicit actions of a party, seeking as much as possible, to go back to the *status quo ante*.”⁵⁶ The financial compensation, however, it's not the only possible sanction. Beyond the payment for moral damages, and when applicable material damages, it is also an important possibility to discuss the petition of inhibitory damages as well retributory ones, especially in the digital environment; ergo, when an unlawful exclusion happens, the reestablishment of the account-profile, the reactivation of acquired digital goods inside the platforms, the payment of all above mentioned damages will serve as a strong precedent to ensure that such arbitrary violations do not happen anew.

Then, as shown, the compensation of aforesaid damages is not limited only to repay the losses suffered, but aimed at covering the damages suffered by the players dignity while restoring the balance to the contractual relations established inside the cyberspace. Equally, the inhibitory and declaratory functions of liability gain relevance because they are oriented towards avoiding that new illicit damages are caused, reaffirming the duty of the platforms to observe the fundamental rights in their private negotiations, binding the particulars and imposing an essential limit to their autonomy.

An analysis of the practical implications of this liability shows that the actions of theses digital electronic games platforms, when unlawfully excluding an account-profile, creates a myriad of damages, in a web of sizeable complexity. Because, beyond the straightforward moral damage, frequently subsists patrimonial damages, as the loss of virtual currency and virtual acquired goods, just as the frustration generated by the legitimate expectations of player in its virtual interactive campaign. In such cases, the duty to repair damages must encompass all of the dimensions in which it happened, aiming to maintain the sanctity and effectivity conferred to the protection of personal rights, while also reaffirming the importance of human dignity even in the context of the virtual space.

Concludingly, in the present research it has been sufficiently

⁵⁶ Gagliano & Pamplona Filho, *supra* note 44, at 49.

demonstrated that the civil liability by platforms responsible for virtual games that unlawfully suspend or exclude the account-profile of one of its players exists when it does not follow the due process of law or does not meet sufficient elements to prove misconduct by the player or does not follow the broad constitutional protections. The compensation of this damages, either by indemnifying, reinstating the account and, or, inhibitory measures, are the necessary actions to confer integral protection to the digital personality, while also reaffirming the compromise of contemporary legal thinking in assuring the effectivity of fundamental rights, particularly aiming to protect human dignity within the new digital frontier.

CONCLUSIONS

Considering the arguments presented in this research, it is possible to conclude that the suspension or exclusion of an account-profile belonging to a player of web-based electronic games hosted in digital platforms must not be considered a discretionary act within the regular scope of actions of said companies. This kind of digital profile is not a mere users account, as it represents the very own identity of the player inside the digital frontier, and as such, it is legally protected, being understood as manifestation of an individual personality rights. The arbitrary removal of this profile, without well-reasoned justification or a fair trial, is a clear violation of this right, ensuing civil liability by the faulty party.

Through this research, it was possible to comprehend that virtual games are no longer just a simple form of entertainment, but in themselves a new form of social and economic market. Therefore, the link created between the player and the platform is one protected under consumer rights, imposing to the companies a duty to transparency, predictability and respect to the users' rights. The existence of a "term of service" and any other form of internal policy does not legally disown these companies from their primordial duty to protect its users.

Thus, the civil liability of platforms becomes enforceable whenever unlawful suspensions or exclusions occur, especially when the player loses access to purchased content and, or, records of his interactions and social relations. Beyond the payment of all types of eligible damages, it is necessary that these platforms establish clear criteria for moderation and punishment of misconducts of players, in a way that the balance among the company's rights to self-management and the players fundamental rights is keenly respected.

Conclusively, the research indicates that the Brazilian Parliament needs to design a new, or supplementary, legal and regulatory framework to ensure that the protection of the fundamental rights of individuals that engage with games within the cyberspace is fully protected. Law has the obligation to maintain itself timely, following the technological innovations and ensuring

that the digital frontier does not become a place of lawlessness, but a safe space for social exchanges and hopes for a brighter future.

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