

TRANSBORDER ACCESS AND JURISDICTION

June 7th 2012

Renato Opice Blum

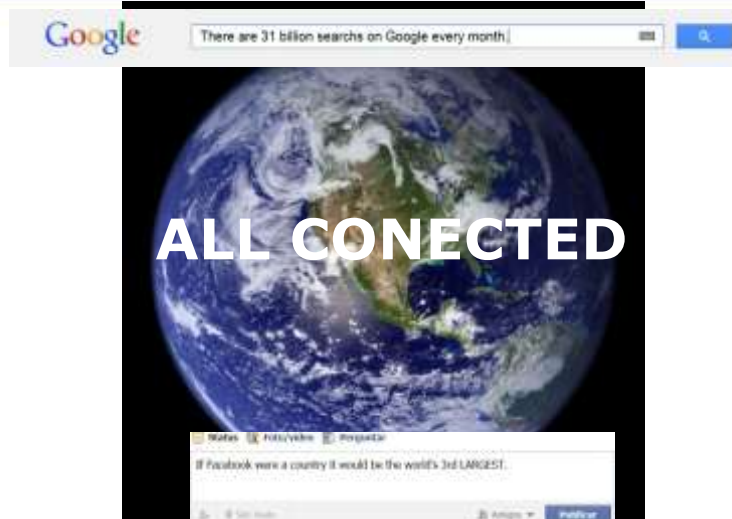
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WELCOME TO THE REVOLUTION



The internet and their accessories are a fundamental shift in the way we communicate.

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BRAZIL

Brazilian Population **190.732.694** millions.



In Brazil, **60%** of the population use the Internet daily.

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INFORMATION TECHNOLOGY

BRAZIL – SOME CASES

MEDICAL CLINIC

database copy / unfair competition

M COMPANY

illegal video

BROKER COMPANY

database breach / unfair competition

T COMPANY

database breach

CHEMICAL INDUSTRY COMPANY

database breach

RACE DRIVER

image damage

BEVERAGE COMPANY

483 confidential files

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PERSONAL DATA BILL OF LAW

Article 1. The aim of this project guarantees and protection, in the area personal information specially dignity and fundamental rights of the person, specially with regard to his/her freedom, equality and personal privacy in terms of art 5 of Federal Constitution.

Article 2. Everybody has the right to the protection of his/her personal data.

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PERSONAL DATA BILL OF LAW

Article 35. The international transfer of personal data is only allowed to countries that provide a level of data protection comparable to the one of this law, unless the following exceptions:

I - when the owner has expressed his own free consent, express and informed to the transfer;

II - when it is necessary for the implementation of obligation under a contract of which the holder is a party;

III - when it is necessary to guarantee a significant public interest specified by law;

IV - when it is necessary for international cooperation among government agencies for intelligence and research, according to international law instruments to which Brazil is bounded;

V - when it is necessary to defend a right in court, if the data are transferred solely for this purpose and for the necessary period of time;

VI - when it is necessary to protect the life or physical safety of the owner or third party, if the holder cannot provide its consent because of physical impossibility, incapacity to act or understand.

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BRAZIL – PARANA STATE COURT



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NEWS ON THE INTERNET CAUSES HARM TO CITIZEN'S HONOR. HE WAS NOT GUILTY, BUT THERE WAS NO NEWS ABOUT THAT, ONLY ABOUT THE ONGOING LAWSUIT.



PARANA STATE COURT 1819/2008



JUDGE ORDERS
GOOGLE TO SET UP
A FILTER TO
RANDOMIZE
RESULTS WITH THE
PLAINTIFF'S NAME,
ENABLING VARIETY
OF NEWS.

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BRAZIL



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PRIVACY SÃO PAULO STATE COURT DECISION

Breach of confidentiality of correspondence, telegraphic, data and telephone communications - Nonoccurrence - Seizure of emails in possession and knowledge of the recipient by a court order - strong suspicions that the material might enlighten the criminal infraction – interpretation of art. 5, XII of the Constitution.

THERE IS NO VIOLATION OF THE SECRECY OF CORRESPONDENCE.



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CASE – BEVERAGE COMPANY *VERSUS* GASB

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GASB, in breach of position of trust, without authorization, obtained and disseminated knowledge, information and confidential data, used by the corporation X, obtained through employment bond.

The complainant contracted technical analysis specialized company, which detected that the complainant sent confidential files, owned by the complaint by *e-mail*.

After identifying that the e-mail belonged to GOOGLE INTERNET BRAZIL LTDA., it was sent an extrajudicial notification to the company, but it refused to send the information required, saying that it could not provide the requested taking into consideration the Electronic Communications Privacy Act ("ECPA") and the U.S. Wiretap Act, in force in the United States, and also for lack of Brazilian courts to impose such provisions, as required.



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CASE – CLINIC and EBN *VERSUS* GOOGLE BRASIL INTERNET LTDA.

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The authors used Google Maps service, provided by the defendant, to facilitate the location of their clinics. However, were inserted into the virtual location of the **clinics offensive posts against its image and its majority shareholder, Dr. EBN**. In those comments, they argued, among other things, **that author was a pedophile**.

By the time authors were aware of the offensive postings, they attempted, among the defendant, to disable the digital location service and therefore exclude illegal insertions.

By court order, was determined that the defendant to withdrew the service offensive posts, as well provide the data needed to identify the responsible for such postings. Only part of the decision has been met, since the defendant have disabled the electronic identification. Nevertheless, the requested data was not provided in order to locate the authors of the offensive messages.

The defendant justified its deny to comply the court decision alleging that brazilian courts were not competent to rule access records from other countries, and the denial was based in the alleged lack of competence of the brazilian justice, since was noted that the IP numbers are not from Brazil and they understood that it would have limitation of the "activity of brazilian judges and courts only in the brazilian territory" and the provision of such data, which is possessed, would be an aggression to the "sovereignty of the foreign state". Thereby defendant insisted in not provide them, even facing a court order and the authors continue waiting to get offensive messages authors.

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"INTERLOCUTORY APPEAL – Provisional remedy – Preliminary order determining the provision of cadastral information and IPs account access to Hotmail.com e-mail provider, runned by foreign company – Legal capacity to be sued of Brazilian society, which is the foreign partner - Technical impossibility rejected - Inapplicability of the constitutional clause on inviolability of data – Pretension of dispatching a written notice addressed to Microsoft Corporation - Solution offered by the appellant that, although feasible in theory, does not present advantage that overlaps the decision of the lower court, endowed with its mandatory force - Understanding that, to the irreversible effects of the urgency guardianships must also oppose the irreparable consequences that judicial inaction could cause - Presence of '*fumus boni iuris*' and of '*periculum in mora*' essential to grant the injunction - Decision upheld - Dismissed."

(INTERLOCUTORY APPEAL, N°: 9037322-23.2008.8.26.0000, Relater: Viviane Nicolau, Territory: São Paulo, Judicial Organ: 9th Chamber of Private Law, Date of judgement: 03/17/2009)

LETTERS ROGATORY FROM GERMANY TO BRAZIL



1. The District Court of Düsseldorf, Federal Republic of Germany, calls upon this letters rogatory, that the company "X" reports the data of the person who blocked access to sites served by company "Y". The rogatory is based on survey research to "computer sabotage", as shown in the translation of the text rogatory.
2. Previously notified, the claimant presented its rejection, arguing that it is necessary, first, to ratify the decision handed down by Justice who sent letters rogatory, so it can provide information about the user in question. Call upon the constitutional principle of the inviolability of data under clause 5º, XII, of Federal Constitution of 1988, which, as said, prevents the breakdown of confidentiality of registration data.



The Superior Tribunal of Justice has already rendered a decision in the sense that the provision of registration data, like address, is not protected by confidentiality, as shown on the abstract of court reproduced below:

"Income tax. Info. Requisition. The elements contained in the declarations of assets are of a confidential nature, which should not be removed unless in special situations, as in relevant interest of the administration of justice. This not configured when if it only treats to locate assets to be seized, which is routine in forensic practice. Unjustifiable, however, to refuse the request to seek the address belonging to the judgement debtor. In this respect there is no reason for confidentiality" (REsp 83824/BA, Rapporteur Minister Eduardo Ribeiro, DJ 5/17/1999). (...)

As said, satisfied the precedent conditions, I grant the *exequatur*. Send court records to the Federal Court of São Paulo State, for the appropriate action.

(LETTERS ROGATORY Nr 297. District Court of Düsseldorf versus UOL - UNIVERSO ON LINE)

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JURISDICTION

RESPONSABILIDADE CIVIL- INTERNET. REDE SOCIAL.
Agravado de instrumento contra a decisão que, em ação combinatória com pedido de indenização por danos morais, deferiu parcialmente a antecipação da tutela para impedir a exibição de vídeo supostamente ofensivo à honra do agravante.

1. Diante da prova de que todos os vídeos divulgados são ofensivos à honra do agravante, deve a administradora da rede social tomar as providências necessárias no sentido de impedir a exibição de todos os vídeos difamantes.

2. Reformulação da noção clássica de soberania. A rede social administrada pela agravante tem alcance mundial. É instrumento de propagação, quase instantânea, de mensagens e informações. Assim, como a atividade tem alcance global e o ofendido pode estar em local totalmente diverso do usuário ofensor, não se pode utilizar os limites de soberania dos Estados para afastar o cumprimento de medidas protetivas daqueles que foram lesados por ofensas. Não é por outra razão que este Tribunal tem entendimento no sentido de que a origem estrangeira da identificação do computador não constitui óbice ao cumprimento das decisões, principalmente por ser a agravante empresa com atuação em diversos países.

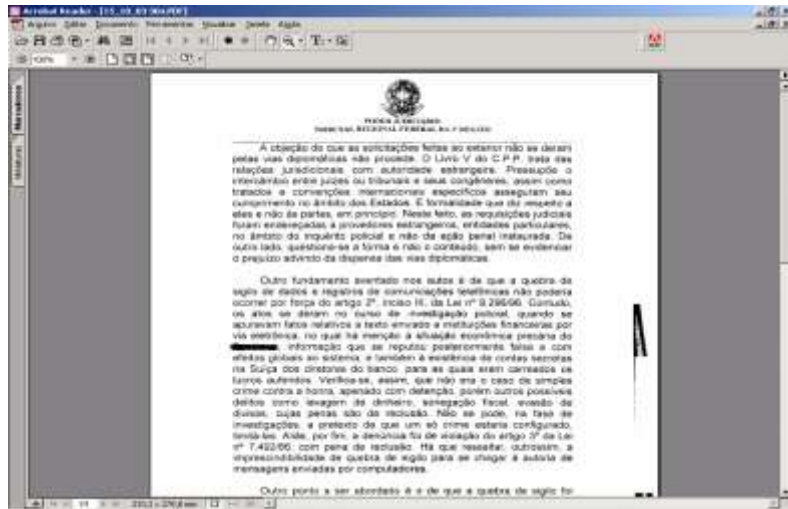
3. A Internet criou um novo ambiente livre de fronteiras e enquanto não existir regulamento ao seu uso, que é livre, não se pode aplicar às relações jurídicas que se estabeleceram através

Agravado de instrumento nº 0061115-05/2012-8-26-0000 - (Tribu nº 8.950) LPRD - Página 2 de 11.

mento foi assinado digitalmente por CARLOS ALBERTO GARB
is, para conferência acessar o site <https://www.trf4.jus.br/visualizar> informo o processo 0061115-05/2012

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3rd FEDERAL COURT – LETTERS ROGATORY?



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Greetings

"The children of darkness are always faster than the children of light." (Lucas chapter 16 verse 8)

"May God give the serenity to accept the things they cannot change, courage to change the things they can change and the wisdom to know the difference."

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Recommendations and Practices for the Safe Use of Internet to Entire Family



Link: http://www.opiceblum.com.br/download/OABMack_Safety.pdf

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