
WhatsApp offline and the violation to the Network Neutrality

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Abstract: Controversial decision from São Bernardo do Campo Criminal Court demands the access blockage to Whatsapp in the whole country for the period of 48h and violates the Rights established in the Brazilian Legislation.

Brazil is apprehensively following the process of blocking the WhatsApp application for the period of 48 hours, which has started on December 17th, 2015 at midnight. The 1st Criminal Court of São Bernardo do Campo (Stated of São Paulo) issued a judicial order demanding mobile phone operators to interrupt the data traffic to the app in the whole national territory during said period.

In an official note, the São Paulo's Court of Justice informed that the decision was issued in criminal procedure that is protected by legal secrecy and that it is a result of a reiterated refusal from WhatsApp to comply with an earlier judicial order, from July 23rd, 2015, in which the Courts requested information to be disclosed by the company, order that was ratified in August 7th, 2015.

The dimension of such decision is easily identified by the numbers presented in a recent research poll that informed that the WhatsApp is currently the most popular app of choice by the Brazilian Internet users. According to the

research, 93% of the almost 100 million Brazilian internet users use WhatsApp. Facebook (79%), YouTube (60%) and Instagram (37%) are right behind in the polls.

It is not the first time that a successful and resourceful technology service is placed under attack by the Brazilian Judiciary. This is not even the first attack against WhatsApp, even though the State of Piauí's Court of Justice decision was overruled before it was enforceable. The biggest issue in discussion is the consequences to the Brazilian market.

This week's decision used as basis the wrong interpretation of Section 12, III, of the Brazilian Internet Civil Rights Act ("Marco Civil"), that sets forth as a possible sanction to the companies that violate the right to protection of the users registers, the temporary suspension of their activities. However, WhatsApp, by not sharing the information and/or content of conversations between its users did not violate any users' rights. Such rule must be only used in cases in

which the activities developed by the application or by the services were the ones to violate users' right to personal data protection, of their connection registers or their own private communications.

Furthermore, the decision also violates Section 9 of the Marco Civil, that sets forth the principle and the general rules regarding network neutrality. According to this section, the connection supplier shall treat the data packages duly transferred in an equitable way, without making any kind of distinction of data type, especially to services, terminals and applications, as we were able to identify in this case.

Additionally, the judicial order was originated from a criminal procedure, protected by legal secrecy, and therefore, shall not have Plaintiffs or Defendants disclosed, but the consequences of such order affect millions of Brazilian users.

Finally, it is important to point out the Brazilian Judiciary, the economy and market have been affected and subject to criticism all over the world today due to this decision. Facebook Founder, Mark Zuckerberg, presented an open letter in his social network profile regretting the case and saying that "this is a sad day for Brazil"

Almeida Advogados holds a Team specialized on Data Protection and Digital Law and is following up closely any news regarding the

case. The Team is on disposal to clarify any doubts regarding this project that promises to change the whole Brazilian internet that we are familiar with.

Almeida Advogados has a specialized data protection an digital law team that will follow the matter closely. Our staff is available to clarify any doubts regarding the case or data protection in general.