



CLARIFICATION NOTE in virtue of the decision issued by the Honorable Judge of the 1st Lower Criminal court of São Bernardo do Campo, ordering the suspension of the Internet application “Whatsapp” in the national territory of Brazil.

VERSÃO EM PORTUGUÊS | VERSIÓN EN ESPAÑOL

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The Brazilian Internet Steering Committee (CGI.br), after taking notice of some excerpts of the decision issued by the Honorable Judge of the 1st Lower Criminal court of São Bernardo do Campo, ordering fixed and mobile Internet Service Providers in Brazil to suspend for 48 hours the access to the domains whatsapp.net and whatsapp.com and the inherent subdomains by blocking the traffic of any content as well as all IP addresses related to such domains and subdomains, including by adopting measures aimed at clearing cache memories related to the latter, among other measures.

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clarifies that Article 12 of Law 12.965/2014 (or simply “Marco Civil”) only authorizes the temporary suspension of the activities expressly and exhaustively listed in the caput of article 11 of Marco Civil, i.e., the collection, storage, retention and treatment of logs,

personal data or communications by Internet access/connection and application providers. Accordingly, article 12 of Marco Civil cannot be construed as something that entails the full and unrestricted suspension of all activities of Internet services and applications providers that operate in Brazil.

Moreover, the Steering Committee takes up this opportunity to reiterate some of the terms of a clarification note previously adopted by its board members on March 3, 2015, by which they evaluated a similar decision adopted by a lower court of the state of Piauí, specially in relation to the following aspects:

1) Article 12 of Law 12.965/2014 comprises a group of sanctions, namely warnings, fines, the temporary suspension of activities involving the acts specified in Article 11 as well as the prohibition of exercising those same activities. Those sanctions shall be applied gradually and must be strictly aimed at entities that violate the rules related to the protection of logs, personal data and private communications.

2) Any action taken against illicit activities on the network must be aimed at those directly responsible for such activities and not at the means of access and transport, always upholding the fundamental principles of freedom, privacy and the respect for human rights (Resolution CGI.br/Res/2009/03/P);

3) Item VI under Article 3 of Marco Civil restricts the liability of Internet stakeholders to the specific extent of the activities they perform; and

4) Article 18 of the same Law states that “the Internet connection provider shall not be subject to civil liability for damages resulting from content generated by third parties”.

The members of the board of CGI.br believe that Marco Civil does not provide any legal ground for the unrestricted suspension of Internet services and other activities and measures that adversely affect a diffuse and indiscriminate group of Internet users in Brazil and in neighboring countries that use the infrastructure and services provided by Brazilian companies.

Therefore, CGI.br takes note of the efforts entailed by telecommunications and network providers in the country to cope with the court order, in full compliance with Brazilian Law, in spite of not being parties to the respective action; and commends the Honorable Justice Dr. Xavier de Souza, of the Court of Appeals of the State of São Paulo, who issued a writ of mandamus to revoke the lower court's decision, normalizing the operation of Whatsapp in Brazil. His action realigned the jurisdictional process to the general principle of non-

liability of the network comprised in CGI.br's Decalogue of Principles for the governance and use of the Internet, which provided the normative basis for the principles, guarantees, rights and duties enshrined in the Federal Law 12.965/2014.