

*Translation by Ana Luiza Araujo – researcher at [InternetLab](#), law and technology research center – São Paulo, Brazil.*

PROCESS Nº: **0805175-58.2015.4.05.8400 - INNOMINATE PRECAUTIONARY**

PETITIONER: **PUBLIC PROSECUTOR'S OFFICE**

DEFENDANT: **TOP DOCUMENTS LLC**

**1st FEDERAL COURT**

## **01. DECISION**

02. Concerning the precautionary writ of prevention, moved by the Public Prosecutor's Office in face of the company TOP DOCUMENTS LLC, legal person with headquarters abroad, requests, in injunction character, without hearing the other party, that: a) companies that manage access services to backbones in Brazil are determined to insert technological obstacles capable of precluding, until the definitive trial of the main process, the access to the website "TUDO SOBRE TODOS" (<http://tudosobretodos.se>) in all national territory; b) companies that manage Personal Mobile Service (SMP) and the Fixed Switched Telephone Services (STFC) in Brazil are determined to insert technological obstacles capable of precluding, until the definitive trial of the main process, the access to the website "TUDO SOBRE TODOS" (<http://tudosobretodos.se>) in all national territory; c) is requested for the Kingdom of Sweden, via the Department of Asset Recovery/ National Secretary of Justice/ Ministry of Justice of Brazil, the temporary removal of the Internet of the aforementioned website, hosted on this country top-level domain (TLD), as well as to inform this Judge of the complete data of the natural persons that created and maintain it, including the IP numbers, access logs and email addresses.

03. I affirm, in synthesis, that: *"the defendant TOP DOCUMENTS LLC is the responsible for the maintenance and administration of the website 'TUDO SOBRE TODOS' (<http://tudosobretodos.se>), which commercializes, to anyone who is willing to pay, personal data of all Brazilians, like date of birth, tax payer's unique number (CPF), full address, profile of relatives and even neighbors. In reality, when typing someone's full name, for example, some of these informations are available without need for payment -- I did a test, for instance, using my own name, and found gender, date of birth and partial address (residence zip code). For other information, there would be the need for a registration and acquisition of 'credits'".*

04. I defend that the disclosure of strictly personal information, without previous consultation and consent from their owners, goes against the constitutional clauses of inviolability of intimacy, private life and personal data.

05. This is the brief report. I decide.

06. In the appreciated case there are the necessary reasons to grant the requested injunction.

07. With effect, the company demands, when making available through the website <http://tudosobretodos.se> personal data without having the authorization of their owners to do so, violates the Federal Constitution, affecting its nucleus of individual rights and guarantees, more specifically, the rights to intimacy and private life of article 5, item X, of the Federal Constitution, that disposes: "the privacy, private life, honour and image of persons are inviolable,

and the right to compensation for property or moral damages resulting from their violation is ensured”.

08. The severity of the facts is still intensified when considering the medium through which the personal data are being exposed, that is, the World Wide Web. It is a “communication medium that allows the exchange of information of all kind, in global scale, with a level of interactivity never seen before” [1].

09. In Brazil, Law n<sup>o</sup> 12.965, of April 23rd 2014, establishes principles, guarantees, rights and duties for the use of the Internet, bringing the following provisions:

“Art. 3<sup>a</sup> The discipline of internet use in Brazil has the following principles:

I - guarantee of freedom of speech, communication and expression of thought, in accordance to the Federal Constitution;

**II – protection of privacy;**

**III – protection of personal data, pursuant to law;**

(...);” (added highlights)

“Art. 7<sup>a</sup> The access to the internet is essential to the exercise of citizenship, and the following rights are guaranteed to the users:

**I – inviolability of intimacy and private life, safeguarded the right for protection and compensation for material or moral damages resulting from their breach;**

(...);

**VII – non -disclosure to third parties of users’ personal data, including connection records and records of access to internet applications, unless with express, free and informed consent or in accordance with the cases provided by law;**

(...);” (added highlights)

Art. 10. The retention and the making available of connection logs and access to internet applications logs to which this law refers to, as well as, of personal data and of the content of private communications, must comply with the protection of privacy, of the private life, of the honor and of the image of the parties that are directly or indirectly involved.

(...)

§1<sup>o</sup> The provider responsible for the retention of the records as seth for in art. 10<sup>a</sup> shall only be obliged to provide them, whether separately or associated with personal data or other information that allows the identification of the user or of the terminal, upon a judicial order, as provided in Section IV of this Chapter, in compliance with what is set forth in art. 7<sup>o</sup>.

(...);”

Art. 11. In any operation of collection, storage, retention and treating of personal data or communications data by connection providers and internet applications providers where, at least, one of these acts takes place in the national territory, the Brazilian law must be

mandatorily respected, including in regard the rights to privacy, to protection of personal data, and to secrecy of private communications and of logs.

(...)

§2°. **The established in Art. 11 applies even if the activities are carried out by a legal entity placed abroad, provided that it offers services to the Brazilian public** or at least one member of the same economic group is established in Brazil.” (added highlights)

10. In this way, it is evident that the conduct of the defendant also violates the basic rights of internet users described in the Law 12.965/2014, and should be fought, with great brevity, having in sight the easiness and speed of a possible dissemination of personal data of thousands of people, through the Web, capable of causing invaluable damages.

11. Furthermore, the disclosure and commercialization of personal data, existing in the records of the defendant company, elaborated in absentia of their owners, violate the Law nº12.414/2001, that treats the creation and consultation of data banks for commercial purposes and which demands, for the registering, previous authorization of the potential registred, upon informed consent through signature in specific instrument or separate clause. In addition, such law guarantees that all personal data of the registered person is only used for the specific purposes they were collected for.

12. As we can notice, the tool made available by the defendant company with aim to disclose personal data can be used by any person, indiscriminately, to any and every purpose, and even for the perpetration of frauds and other crimes.

13. The measures required by the Public Prosecutor’s Office show themselves consistent with the authority of the individual right to the inviolability of intimacy and private life of an undetermined number of people and its granting is urgent. By the way, I register here the excellent juridical piece presented by the petitioner.

14. Finally, it is worth highlighting that the petitioner justifies the need of composing the active party of the dispute by the Union, as there are credible reports that typos made by Brazilian taxpayers in their respective income statements are also in the profiles of these same users on the website “TUDO SOBRE TODOS”, such fact may point out the occurrence of clandestine and improper use of the Federal Revenue database.

15. According to the exposed, **I grant the preliminary injunction claimed** by the Public Prosecutor’s Office, to determine:

15.1. To the companies (...), **which, in Brazil, manage access services to backbones are determined to insert technological obstacles capable of precluding, until the definitive trial of the main process, the access to the website “TUDO SOBRE TODOS” (<http://tudosobretodos.se>) in all national territory**

15.2. To companies that, in Brazil, manage Personal Mobile Service (SMP) and the Fixed Switched Telephone Services (STFC) to insert in them technological obstacles capable of precluding, until the definitive trial of the main process, the access to the website “TUDO SOBRE TODOS” (<http://tudosobretodos.se>) in all national territory, the petitioner being authorized to directly transmit to these companies the digital letter, containing the present legal order.

15.3. To be requested for the Kingdom of Sweden, via the Department of Asset Recovery/ National Secretary of Justice/ Ministry of Justice of Brazil, the temporary removal of the Internet of the aforementioned website, hosted on this country top-level domain (TLD), as well as to inform this Judge of the complete data of the natural persons that created and maintain it, including the IP numbers, access logs and email addresses.

16. Cite the Union to, as their will, compose the active party of the decision, in the terms of article 6, paragraph 3 of the Law nº 4.717/65, here enforced by analogy.

17. Cite. Summon.

18. Natal, 29 de julho de 2015.

19. MAGNUS AUGUSTO DELGADO - FEDERAL JUDGE OF THE 1st COURT