**Case Information**

1. **Case Title:** S M S vs. Google Brazil Internet Ltda;
2. **Meta Data:**
3. **Case Number**: AgInt no Recurso Especial nº 1.593.873 - SP (2016/0079618-1);
4. **Corresponding Law Reference**: Brazil, Superior Court of Justice (STJ), Specific Appeal (Agravo Interno) in Special Appeal (Recurso Especial) nº 1.593.873 - SP (2016/0079618-1). Justice Rapporteur: Nancy Andrighi. Federal Online Gazette (DJe) publication on 11-17-2016;
5. **Date of Decision**: 11-10-2016;
6. **Featured Case**: n/a;
7. **Region**: Latin-America and Caribbean;
8. **Country**: Brazil;
9. **Mode of Expression**: Electronic/Internet-based communication;
10. **Judicial Body**: Superior Court of Justice (STJ);
11. **Type of Law**: Civil Law; Constitutional Law
12. **Main Theme**: Privacy, Data Protection and Retention; Content Regulation/Censorship;
13. **Outcome**: Affirmed Lower Court; Right to be forgotten not affirmed;
14. **Status**: Closed;
15. **Tags**: Right to be forgotten; Search engines;
16. **Excerpt**:

**Case Tracking - url?**

<https://processo.stj.jus.br/processo/pesquisa/?src=1.1.3&aplicacao=processos.ea&tipoPesquisa=tipoPesquisaGenerica&num_registro=201600796181>

**Case Analysis**

1. **Summary and Outcome**
   1. **Summary**: S.M.S filed a lawsuit against Google Brasil Internet Ltda to remove search results in her name due to the risk of leading to pages that reproduced nude images of her. S.M.S brought the suit to the court on the basis of the right to be forgotten and the right to human dignity. State Court of Sao Paulo (second instance) granted the order, stating that the content does not hold public interest and it is limited to the private life of the plaintiffs. Google appealed to the Superior Court of Justice. The controversy before the court is whether search engine providers are liable for the search results content and users are protected by the right to be forgotten.
   2. **Outcome**: The third panel of the Superior Court of Justice granted the Special Appeal filed by Google. The Court recognized search engine providers’ absence of obligation to remove search results of a particular term, expression or photo, regardless of the indication of the page where it is inserted. It reasoned that such content is associated with sites that are independent and accessible without the use of such search platforms. In this way, the requirement of filtering the content of searches made by each user goes beyond the nature of the activity of these companies.
2. **Facts**
   1. **Facts giving rise to cause of action**

S.M.S filed a lawsuit to require Google to block search results associated with the author's name and determined keywords that could depict the reproduction of nudity images of her on the Internet.

In the first instance, the suit was denied, on the grounds that two procedural requirements were not met: need for judicial protection and legitimacy of Google to figure in the suit as defendant.

The plaintiff appealed to the second instance of the State Court of Sao Paulo. The Court granted the appeal on the grounds of the right to human dignity and the right to be forgotten, holding that it is not a public interest content, as it is limited only to the private life of the exposed person. ,

* 1. **Cause of action or law at issue**

As a result, Google Brazil Ltda. filed a special appeal, claiming violation of article 19, § 1º of Brazil’s Internet Bill of Rights (Law n° 12.965/2014 - “Marco Civil da Internet”). The company argued that it was impossible to block the search results that led to the nudity images, because Brazilian Internet Bill of Rights requires the clear and specific indication and individualization of the content the person wants to see removed, in order to allow the search provider to locate the material.

* 1. **Procedural history**

After analyzing the case, the third panel of the Superior Court of Justice (“STJ”) granted the Special Appeal and reestablished the first instance understanding of Google’s passive illegitimacy, according to the vote of the Justice Rapporteur Nancy Andrighi.

1. **Decision Overview**
   1. **Deciding judge & type of opinion**

The Special Appeal was analyzed by Justice Rapporteur Nancy Andrighi within the third panel of STJ, who based her decision on the analysis of Brazil’s Internet Bill of Rights (Law n° 12.965/2014), Consumer Defense Code (Law n°8.078/1990) and precedents of the Court (“STJ”).

* 1. **Issue statement**

The main issue before the court was whether internet users’ right to be forgotten should be protected and search engine providers and Google should be held liable for the content of search results containing the plaintiff's name.

* 1. **Parties’ arguments**

Google claimed the inability to block keywords that eventually lead to nudity images of the plaintiff because Brazil’s Internet Bill of Rights demands the clear and specific indication and individualization of the infringing content, in order to allow the search provider to locate the material. In such manner, it would be impossible to grant the plaintiff's request, since she only requested the total blocking of the results appearing under her name, without specifying the content to be removed.

* 1. **Court’s rulings & legal grounds**

In her opinion in 2016, Justice rapporteur Nancy Andrighi held that the right to be forgotten must be recognized, but only when the circumstances demand so, due to its importance for the protection of privacy. She cited the soft law norm “Enunciado 531 na VI Jornada de Direito Civil”, which stated that “The protection of human dignity in the information society includes the right to be forgotten.”

She further emphasized Superior Court of Justice precedents which states that this right is grounded on general principles of law and on the Consumer Defense Code, “which imposes a time limit on the use of truthful information that is unfavorable to the consumer”. [In 2021, the Supreme Court stated that the right to be forgotten is inconsistent with the Brazilian Constitution. (RE 1.010.606/RJ)].

Justice Andrighi mentioned the case of M. Costeja González vs. La Vanguardia Ediciones SL, Google Spain and Google Inc, to highlight that the right to be forgotten is based on legal data protection framework in Europe, while in Brazil it could be based on the article 7, I and X, of Brazil’s Internet Bill of Rights, due to the absence of data protection legislation [Brazilian Data Protection Law was approved in 2018, and came into force in 2020].

​​According to Brazil’s Internet Bill of Rights, an user of a platform has the right to have his personal data definitively deleted as long as (i) the individual himself has provided the information to (ii) an internet application provider.The Superior Court of Justice held that Google would be an internet application provider, since it provides services related to the operation of the World Wide Web, by making available tools that allow the user to find websites or other resources, according to the search terms entered in the search service.

The Court added that filtering the content of searches is not an intrinsic activity of these platforms because it is impossible to have prior control over the content that comes from the search results. Therefore, such providers should not be liable for blocking content.

* 1. **Concluding statement**

Given the arguments presented, the Superior Court of Justice acknowledged and granted the Special Appeal filed by Google to affirm the first instance decision due to the company's passive illegitimacy in the lawsuit. Essentially, Google did not store the information that the plaintiff intended to have deleted and, at the time, there were no Brazilian normative acts that required search providers to implement the right to be forgotten on information that was not provided by the user. Moreover, the precedent from the European Court also could not be applied to the case, since it would create an obligation to the search engine controller - not prescribed by law - of what could or could not be accessed by the users of the platform. Finally, it concluded that S.M.S. 's request should have been addressed to the person responsible for hosting/making the intimate photos available on the Internet, since there was no regulation in the Brazilian legal system capable of charging Google with implementing the right to be forgotten.

* 1. **Dissenting or Concurring opinions**

N/A

**Direction**

1. **Decision Direction**: Expands expression.
2. **Information**: The Court’s decision expands freedom of expression by protecting the freedom of information in the public domain. Despite recognizing that the right to be forgotten can be granted in the circumstances of each specific case to protect privacy of individuals, it also argues that it is not possible to compel search platforms to moderate and filter content if there is no prior law that imposes these obligations. In this way, the Court’s decision to uphold freedom of information over an individual’s right to be forgotten protects the media’s ability to share information with the public.

**Perspective**

1. **Global Perspective:**
2. **International, Regional, and National Laws or Cases**

Braz., Law no. 12,965/2014, Articles 5, I; 7, I e X.

Braz., Consumer Defense Code, Law no. 8,078/1990, Article 14.

EU, Google Spain v. AEPD and M. Costeja González, C-131/12, ECLI:EU:C:2014:317, quoted at 8-9.

1. **Other National Standards, Law or Jurisprudence**
2. **General Notes**:

**Significance**

1. **Case significance**

The case is important because it establishes that search engine platforms are not liable for de-indexating search results since it is not intrinsic to their activities.

1. **Precedential Effect**

Considering it is the highest appellate court in Brazil for non-constitutional questions of federal law, lower courts are expected to follow its understanding.

1. Persuasive Effect
2. Related Cases
3. Additional Citations

**Documents**

1. Official Case Documents

<https://dissenso.org/wp-content/uploads/2017/03/REsp-1593873-SP-Solange.pdf>

1. Amicus Briefs and Other Legal Authorities
2. Reports, Analysis and News Articles
3. Relevant Materials in Foreign Languages