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Profile of judicial disputes involving the internet in Brazil: economic groups and jurisdiction

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SUMMARY

This paper integrates a series of studies conducted by IRIS on the field of international legal cooperation and internet. Previous papers, and other publications are available at www.irisbh.com.br/en[1].

1. Introduction

The widespread use of the internet around the world has caused a profound change in the way relations between States are carried out. The concepts of jurisdiction and sovereignty are just a few examples of categories submitted to conceptual and practical review, in order to adapt them to a scenario of intense globalization.

The changes caused by the internet occur mainly by its own nature. The internet presents decentralized architecture by definition. This feature contributes to complexifications of social and commercial arrangements that have never been possible before, such as the transaction of data between different companies, whose servers and administrative headquarters are located in different parts of the globe. The internet is an informational and communicational network with a high level of transnationality and, consequently, needs to be harmoniously adapted to the different jurisdictions in which it is inserted, considering the different laws and regulations of the States. At first, there was a belief in the success of an internet self-management model[2], that is, the possibility that the technology would exist peacefully in the absence of regulation, but this proved to be impossible.

As the internet expanded internationally and reached new heights of technological sophistication, it was possible to observe the emergence of conflicts between States on the limits of the exercise of the jurisdictional power to resolve these conflicts. In addition, other phenomena arising from the internet, such as the possibility of anonymity in the digital environment, the use of the tool for harmful purposes, the demand for greater security and trust in e-commerce transactions, issues concerning the internet service distribution model, the accountability of providers, among many others, resulted in the evident need to break with the ideal of non-regulation of the internet.

Thus, in order to solve the regulatory gaps that accompanied the rise of the internet, it was necessary to regulate the network. In this sense, several legal instruments have appeared around the world recently. In the Brazilian context, it is possible to mention, in particular, the Internet Bill of Rights. The law, approved in 2014, provides for the rights and guarantees of internet users, and regulates different kinds of legal relationships. The Internet Bill of rights was considered an international reference in internet legislation, and its validity served as the starting point for the accomplishment of the present study[3].

1 IRIS. *Books and Articles.* Available at: <https://bit.ly/3eYPvsv>. Accessed on: 27 nov. 2018.

2 John Perry Barlow was the author of the Declaration of Independence of Cyberspace and presented it at the World Economic Forum in Davos, Switzerland. At this text, the cofounder of the Electronic Frontier Foundation (EFF), expresses its nonconformity with the attempts of governments to regulate the internet. "I declare the global social space we are building to be naturally independent of the tyrannies you [the States] seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear." Full text available at: <https://bit.ly/2W3MMFu>. Accessed on: 03 feb. 2019. This ideology is still present in the digital environment, and culminated, for example, in the Cypherpunk movement, which advocates the use of encryption techniques to protect internet users against the interference of the State in the network. Julian Assange, in the book Cypherpunks, states: "The new world of the internet, abstracted from the old world of concrete atoms, dreamed of independence. However, States and their allies stepped forward to take control of our new world - by controlling their physical bases [the cable, satellite, and server infrastructure that makes up the internet]". ASSANGE, Julian. *Cypherpunks*. 1ª edição. São Paulo: Boitempo, 2013, p. 27.

3 More recently, the General Data Protection Law (GDPL), the General Data Protection Regulation (GDPR) and the

Among the issues on which there is still no consensus in domestic jurisprudence, there are cases involving economic groups formed by companies whose services are provided online. The global activities of companies represents a power that the States still can not control in a satisfactory way, particularly in relation to the exercise of different forms of jurisdiction (prescriptive, adjudicatory and executive) and the performance of the business activity on a transnational scale.

This paper aims to analyze the different perceptions of the theme involving jurisdiction and economic groups on the internet by the Brazilian courts, in the light of the Internet Bill of Rights (Law n. 12.965/2014). Particularly noteworthy are the cases involving companies headquartered abroad and belonging to economic groups in which one of the companies is headquartered in Brazil. In addition, the article establishes comparisons between the reasoning of judicial decisions and the remarks found in the specialized literature.

In the next chapter, the central concepts and underlying issues essential to the understanding of jurisprudence, which is the object of this research, will be presented. Subsequently the research methodology will be presented, followed by the decisions that were collected and an analysis of its jurisprudential reasoning. The conclusion of this paper intends to recapitulate the developed concepts and present possible solutions to the erroneous understandings presented by the courts on the current legislation in comparison with the theoretical foundations.

2. Theoretical contributions on economic groups and jurisdiction

In order to situate theoretically and conceptually the jurisprudential study carried out, two interconnected themes in the problem studied must be established in this section. One of them deals with the legal regime of economic groups in Brazil and their transnational aspects. The other refers to jurisdictional issues involving economic groups in comparative perspective.

2.1 Economic groups: legal regime and transnationality

Economic groups stand out in the current social and economic scenario. As an example, the Petrobras Group, consisting of the subsidiaries Petrobras Distribuidora, Transpetro e Gaspetro[4], is the first in the ranking of the thousand largest companies in Brazil[5], which demonstrates the economic influence of the company's group. Specifically, in the Telecommunications and Information Technology sector, Telefônica Brasil appears as a leader, with a net income of R$ 43,206.08[6]. It is currently present in 17 countries[7], and establishes itself as a widely recognized conglomerate in the national and international scenario.

Despite this relevance, microeconomic theory tends to focus on firm and market

CLOUD Act - in Brazil, the European Union and the United States, respectively, have come into force. These regulations represente an effort by several countries to safeguard the personal data of internet users and to foster international legal cooperation in favor of sharing data between countries for sanctioning purposes in internet litigation.

4 PETROBRAS. *Principais subsidiárias e controladas*. Available at: <https://bit.ly/3aJAhUT>. Accessed on: 26 nov. 2018.

5 VALOR ECONÔMICO. *As 1000 maiores*. Available at: <https://bit.ly/3eZzbYx>. Accessed on 26 nov. 2018.

6 Ibidem

7 TELEFÔNICA BRASIL. A Telefônica. Available at: <https://bit.ly/3aMNFrn>. Accessed on: 27 nov. 2018.

analysis, neglecting studies on the economic group[8]. The economic groups arise, to a large extent, due to the transnationalization of relations and capital and the allocation of resources for structuring the business activity in different markets, States and their territories. This aspect is the transformation of the nature of capitalist enterprise, with growth of equity and business relations that can be projected global scale[9].

In summary, according to Brazilian law, economic groups can be defined as "the set of companies or legally independent companies, submitted to unified direction"[10]. Within this concept can be added the possibility of companies being partially controlled by a single command[11]. This partiality as to the command unit can be explained to the extent that the companies of the same economic group are linked in specific situations or subjects. This link may exist through contractual relationships, capital sharing, and use of property (of specific assets) owned by individuals or institutions[12]. Thus, the sole command unit of the group will have interference over all companies in accordance with the established rules and the specified matters, safeguarding the autonomy of the companies in relation to other decisions. Therefore, one of the essential attributes of the structure and function of economic groups is to be a locus of accumulation of capital and power[13].

This generalist conception of economic groups is elaborated to cover the greatest number of situations, since the definition of this category varies according to the applicable legislation. Therefore, a legal interpreter ideally seeks to understand each microsystem belonging to a comprehensive legal system[14].

In the spectrum of business law, two concepts of economic groups deserve to be highlighted. The first would be the one received by corporate law and regulated by article 265, read together with article 271, both of the Law n. 6.404/1976, under the title "conventional economic groups". They are defined as those constituted by agreement or conventions filed in the trade register between the parent company and another controlled company. In this model, the concomitants are required to combine efforts to achieve a joint venture[15].

The second concept of business law group would be the "factual economic group"[16], regulated under the "principles and rules governing relations between isolated companies" and articles 30, § 1º , b, 244, 247 to 250, and the Company's' Law Act, in addition to being organized through equity participation, being related companies

8 About this issue, see: QUEIROZ, Maurício Vinhas de; MARTINS, Luciano. *Os grupos econômicos no Brasil.* In: Revista do Instituto de Ciências Sociais. v. 1, n. 2, 1962, p. 43-192; QUEIRÓS, José Antônio Pessoa de. *Os grupos bilionários estrangeiros*. In: Revista do Instituto de Ciências Sociais. v; 2, n. 1, 1965, p. 117-85; MARTINS, Luciano. *Os grupos bilionários nacionais*. In: Revista do Instituto de Ciências Sociais. v.2 n. 1, 1965, p. 79-116, 1965; QUEIROZ, Maurício Vinhas de. *Introdução à análise estrutural dos grupos econômicos*. 1965.

9 Free translation from Portuguese. Gonçalves, Reinaldo. *Grupos econômicos: uma análise conceitual e teórica*. In: Revista Brasileira de Economia. v. 45, n. 4, 1991, p. 491-518.

10 MAGANO, Otávio Bueno. *Os grupos de empresas no direito do trabalho*. In: Ed Revista dos Tribunais, 1979. p. 305

11 MONTE-CARDOSO, Artur. *Burguesia brasileira nos anos 2000: estudo de grupos industriais brasileiros selecionados*. 2014. p. 65

12 GONÇALVES, Reinaldo. *Grupos econômicos: uma análise conceitual e teórica*. In: Revista Brasileira de Economia. *v.* 45, n.4, 1991. p. 494.

13 Ibidem

14 CASTRO, Marina Grimaldi de. *As definições de grupo econômico sob a ótica do direito societário e do direito concorrencial: entendimentos doutrinários e jurisprudenciais acerca da responsabilidade solidária entre seus componentes*. p.3. Available at: <https://bit.ly/2Si1eZp>. Accessed on: 21 may 2018.

15 Ibidem

16 Free translation from Portuguese of the expression "grupo econômico de fato".

"those in which one participates with 10% or more of the capital stock of the other"[17] and controlling company that owns the control power of the company. That is, in the factual economic group, the bond between societies is only shareholding, not organizational or compulsory[18].

In Brazilian competition law, Resolution n. 02/2012 of CADE[19], in article 4[20], conceptualizes economic groups based on a preventive approach, characteristic of the Council[21], only for income purposes. The Law n. 13.467/2017, which instituted the labor reform, also affected the characterization of economic groups. It included at the article 2, § 3, the formal requirements for economic group characterization and attributed, according to the article 2, § 2, from CLT[22], joint liability to the companies of the economic group for the obligations arising from the employment relationship.

In Brazilian tax law, the Normative Ruling of the Federal Revenue N. 971/09 restricts itself to conceptualizing economic groups from the perspective of the formal exercise of activities. That is, many legal relationships are not included in this definition. Briefly, normative ruling states that two or more companies under the same direction comprise an economic group[23].

Since there are several conceptions of economic groups in their legal regime in Brazil, it can be seen that the understanding of group law faces a departure from reality and lack of unity in the legal system. This increases the possibility of confusion and uncertainty on the part of the judges.

In order to bring together the different concepts previously analyzed, the table below offers, non-exhaustively, the main legal provisions in Brazil involving economic groups:

17 Coelho, Fábio Ulhoa. *Manual de direito comercial: direito de empresa*. Saraiva, 2007. p. 224

18 Nelson Eizirik conceptualizes the factual economic group as "the one composed of related companies only by means of shareholding participation, without there being any formal or compulsory organization among them. The legal relations maintained between the companies belonging to the group must be based on the principles and rules governing the relations between the isolated companies. " (free translation) EIZIRIK, Nelson. *A lei das S/A comentada.* In: Quartier Latin. v. 3, 2011, p. 515-516.

19 Translator's note: CADE is the abbreviation for the Brazilian Administrative Council for Economic Defense - "Conselho Administrativo de Defesa Econômica".

20 Article 4.It is understood as parts of the operation the entities directly involved in the legal business being notified and the respective economic groups. § 1 - An economic group is considered, for purposes of calculating the invoices contained in article 88 of Law 12,529 / 11, cumulatively: I - companies that are under common, internal or external control; and II - companies in which any of the companies in item I holds, directly or indirectly, at least twenty percent (20%) of the social or voting capital.
BRASIL. *Resolução nº 2, de 29 de maio de 2012*. Disciplina a notificação dos atos de que trata o artigo 88 da Lei nº 12.529, de 30 de novembro de 2011, prevê procedimento sumário de análise de atos de concentração e dá outras providências. Available at: <https://bit.ly/2VHElka>. Accessed on: 26 nov. 2018.

21 CASTRO, Marina Grimaldi de. *As definições de grupo econômico sob a ótica do direito societário e do direito concorrencial: entendimentos doutrinários e jurisprudenciais acerca da responsabilidade solidária entre seus componentes*. Available at: <https://bit.ly/3cVcbYH>. Accessed on: 21 may 2018.

22 Translator's note: "CLT" is the abbreviation for the Brazilian Consolidation of Labor Rules - "Consolidação das Leis Trabalhistas".

23 Article 494. An economic group is characterized when two (2) or more companies are under the direction, control or administration of one of them, forming an industrial, commercial group or any other economic activity. (free translation)
BRASIL. *Instrução Normativa RFB Nº 971, de 13 de novembro de 2009*. Dispõe sobre normas gerais de tributação previdenciária e de arrecadação das contribuições sociais destinadas à Previdência Social e as destinadas a outras entidades ou fundos, administradas pela Secretaria da Receita Federal do Brasil. Available at: <https://bit.ly/2YbIKgS>. Accessed on: 26 nov. 2018.

Table 1 - Legislation on economic group, by field of law

Field of Law	Legal Devices	Provisions
Corporate Law	articles 265 and 271 of Law n. 6.404/1976	Conceptualize the conventional economic group
Corporate Law	articles 30, § 1º , b, 244, and to 247 from 250,of Law n. 6.404/1976	Conceptualize the factual economic group
Competition Law	article 4th of Resolution b/ 02/2012 of CADE	Conceptualizes the economic group for income purposes
Competition Law	article 2nd, IV and article 5 of Law n. 4.137/62	Provide for situations of abuse involving economic groups
Competition Law	article 2nd, d, e, f, §2nd of Decree n. 86061/81	Provide for situations of abuse involving economic groups
Tax Law	article 494 of Normative Ruling of Federal Revenue n. 971/09	Conceptualizes the formal economic group
Labor Law	article 2nd, §3rd of Law n.i 13.467/2017	Define the requirements for the characterization of economic groups
Civil Law	article 1098 and article 1099 of Law n. 10406/02 (Brazilian Civil Code)	Conceptualize a subsidiary and associated company, respectively

Source: elaborated by the authors

2.2 Jurisdiction

Despite the increasing decentralization of decisions and institutions, especially after the advent of the internet, the angular role played by the States for the continuation of social dynamics remains alive. Thus, structures historically attributed to this entity are preserved, such as the legitimate monopoly of violence, a term originating in the post-context of the Peace of Westphalia, 1648, and pointed out by Max Weber[24]. Another situation in which the State acts as a central element is the normative production, which is mostly conferred on the legislative power of the States. This is an essential aspect of jurisdiction.

Therefore, being responsible for the regulation of social order, the State's power of action directly influences the life of each person and commercial practices. This power is called sovereignty, a title that is susceptible of resignifications and permeated by multiple meanings. For example, the term sovereignty can acquire four different meanings: internal, independent, legal international, and westphalian sovereignty[25]. Considering the internationalist scope of this study, but also attentive to the nuances developed in the domestic sphere, sovereignty is defined as the power of control of internal dynamics exercised by those who hold authority and mutually recognized between States. Therefore, it is observed that the State no longer has the traditional

24 Weber, Max, Hans Heinrich Gerth, and Charles Wright Mills. *Ensaios de sociologia*. (1982).
25 Krasner, Stephen D. *Sovereignty: organized hypocrisy*. Princeton University Press, 1999.

absolute and perpetual power exposed by Jean Bodin[26].

The Charter of the United Nations (UN), especially in article 2 (1), determines one of the basic principles in the field of sovereignty: equality between States. Thus, in addition to being a right to exercise power within its territory, sovereignty, mostly, implies an obligation for States to recognize the sovereignty and independence of others[27].

The principles of international law, such as those set in the UN Charter, and the domestic norms of the States form, in consonance, the judicial protection, that is, the scope of political-legal action of a State. The limitation of State sovereignty is based on judicial protection, that is, the jurisdiction "define the limits of the powers of coexisting 'sovereigns', in particular, the scope of regulatory authority of States in international law"[28]. This limitation exists as the jurisdiction is the exercise of sovereignty in the territory of the State, over citizens, in cases affecting nationals or the *Jus Cogens*[29] [30].

With the recapitulation of what is exposed in this subtitle, it is inferred that: since individuals and entities are subject to State power, which is limited by judicial protection, this is a matter of direct interference in the life of individuals. Jurisdiction is a concept apparently related only to the domestic legal system, however, the subject involves from human rights violations to multi-billion dollar commercial transactions[31].

The concept of jurisdiction accompanies several situations involving business entities and economic groups. For example, an economic group consisting of companies located in different countries should comply with the laws and regulations of the countries in which the companies are located. This is because many States define that companies established in their territories must respect their legal rules (and sometimes even forum election clauses), that is, they are under the jurisdiction of that respective State.

2.2.1 The three dimensions of jurisdiction

Given the functionality of the jurisdictional activity, it is necessary to explain the dimensions of jurisdiction, which are: prescriptive, adjudicatory and enforcement jurisdiction[32]. Although this classification is not universally adopted, it represents the usual modern approach.

As an example, accompanied by explanations on the different dimensions of the jurisdiction, we will present decisions from international courts. The internationalist

26 PIRES, Adilson Rodrigues. "Integração econômica e soberania." *Direito internacional: perspectivas contemporâneas/ Fabio Luiz Gomes (coord)-SP: Saraiva*(2010)

27 Adamson, Liisi. *Sovereignty in cyberspace: organised hypocrisy?*. Diss. Tartu Ülikool, 2016.

28 UN,*Charter of the United Nations*, 1945. Available at: <https://bit.ly/3aKx7jN>.. Accessed on: 08 feb. 2019.

29 According to the article 53 of the Vienna Convention on the law of treaties, Jus Cogens or peremptory norm of general international law is "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." The convention was integrated to the Brazilian Law in 2009. UN. *Vienna Convention on the law of treaties*, 1969. Available at: <https://bit.ly/3cTaNpy>. Accessed on: 08 feb. 2019.

30 To learn more about the principles involved in the concept of jurisdiction, see: <https://bit.ly/2W2cCtw>.

31 Borchers, Patrick J. *Jurisdiction and private international law*. Edward Elgar: Cheltenham, UK, 2014

32 Dan Svantesson addresses a fourth level of jurisdiction, called investigative jurisdiction, which despite being mostly included in enforcement jurisdiction because it refers to the ability to investigate matters, he considers that is "the right time to distinguish, define, and delineate investigative jurisdiction."SVANTESSON, Dan. *Will data privacy change the law?*. 2015. Available at: <https://bit.ly/3bXigEd>. Accessed on:10 may 2018. For more on the topic, see also: KUNER; CHRISTOPHER. Data Protection Law and International Jurisdiction on the internet: (Part 1). *International Journal Of Law And Information Technology*, Oxford, v. 18, n. 2, p.176-193, mar. 2010. p. 184-185; and Mills, Alex. Rethinking Jurisdiction in International Law. *British Yearbook of International Law* 84.1 (2014): 187-239.

approach serves as a basis for the conception that the discussions and litigation experienced in Brazil should also be analyzed in comparison with the experience of other countries. In addition, especially in the scenario of information sharing and culture, the influence of the debates carried out beyond Brazilian territorial borders is directly perceptible within the formulation and application of law in the Brazilian law system.

a) Prescriptive jurisdiction

Prescriptive jurisdiction refers to the power to create norms, to regulate facts, situations and legal relationships, and thus is linked to the legislative exercise of power. As explained above, persons (legal or natural) are permanently subject to a specific legal system. When a rule provides for situations of application of the laws of that country, it is said that this country has prescriptive jurisdiction in these cases provided.

Many authors call the prescriptive jurisdiction of legislative competence. As an example, in Brazil, according to article 22, I of the Federal Constitution[33], the Union has exclusive competence to legislate on business law, one of the fields of law that regulates the practices of economic groups.

b) Adjudicatory jurisdiction

Adjudicatory jurisdiction is the power to issue decisions according to the standards developed in the function of resolving disputes. For example, if Spotify - streaming[34], music and video company - is a party of the sue, as its headquarters are domiciled in Sweden, then the Swedish court must solve the case - with exceptions to the possibility of exceptions from the legislation. This is because the Regulation (EU) n.° 1215/2012 defines, at the recital 15, as general rule, that the State Member competent to judge is the one of the requested party's domicile (passive pole)[35]. This regulation contains a typical rule of adjudicatory jurisdiction.

Some cases of international repercussions also demonstrate that the prescriptive and adjudicatory jurisdiction can be discussed together. An example is the case *Costeja*, a sue between the Google Spain SL and Google Inc against the Spanish Data Protection Agency(AEPD) and M. Costeja González[36], from 2014, on the application of European Union rules to legal relationships involving a company established in the United States of America and the recognition the of Spanish company Google Spain as an establishment[37]

33 Article 22. The Union has the exclusive power to legislate on: I – civil, commercial, criminal, procedural, electoral, agrarian, maritime, aeronautical, space and labour law; Text in English available at: <https://bit.ly/35bzpHD>. Accessed on 11 feb. 2019.

34 According to Victor Vieira, streaming is a technology that makes it possible to "make available certain content (video, audio, games) to one or more devices connected to the network without them needing a copy of that content on their machine to run it" (free translation from Portuguese). VIEIRA, Victor. Streaming online: o que é e qual a sua natureza jurídica?. Available at: <https://bit.ly/2ShfLoi>. Accessed on: 15 oct. 2018.

35 "(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well defined situations in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction". EUROPEAN PARLIAMENT. Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). *European Union Journal.* 20 dez. 2012. L 351/1. .

36 COURT OF JUSTICE. Grand Chamber. Judgment of the court nº C-131/12. Google Spain SL, Google Inc.. Agencia Española de Protección de Datos (AEPD), Mario Costeja González,. Rapporteur: V. Skouris. Luxemburgo, 13 de maio de 2014. Infocuria: Jurisprudência do Tribunal de Justiça. Luxemburgo. Available at: <https://bit.ly/2YaGS8h>. Accessed on: 31 oct. 2018

37 TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA. Comunicado de Imprensa n° 70/14: O operador de um motor de busca na internet é responsável pelo tratamento que efetua dos dados pessoais exibidos nas páginas web publicadas por

of Google Inc[38]. Another illustration for the jurisdictions' conflict is the decision from the Paris tribunal in 2000, about the case *Yahoo v. LICRA*, involving the Union Des Etudiants Juifs De France (UEJF) and Ligue contre la Racisme et l'Antisémitisme (LICRA) against the Yahoo! Inc (Yahoo! US) and the Société Yahoo France (Yahoo! France). The company accionated the californian tribunal, claiming that the services rendered in the United States were for the United States, but the request was rejected in view of personal jurisdiction and freedom of expression[39]. Also a case to be highlighted is the *Twentieth Century Fox Film Corp v. iCraveTV*[40]. Materially, the litigation relates to the illicit sharing of videos - copyrighted content - in a foreign country[41].

c) Enforcement jurisdiction

Finally, enforcement jurisdiction allows States to implement the law in order to prosecute, apprehend and punish individuals under applicable law and determine compliance with acts and decisions[42].

Judicial enforcement is directly linked to territorial criteria[43]. After all, most of the instruments for enforcing judicial decisions require the exercise of the coercive power of the State, for example police power, which is linked to sovereignty. Mechanisms for the recognition and enforcement of foreign judgments, for example, form part of enforcement jurisdiction.

2.3. Economic groups and their insertion in Private International Law

Relations involving companies or individuals domiciled in different territories raise doubts about the competences determined by each legal system. Thus, different countries construct their norms in order to determine various situations and kinds of competences to solve a conflict. To classify the jurisdiction at three levels - between prescriptive, adjudicatory and enforcement jurisdiction - thus serves to clarify which competence has that country.

This classification also allows for more than one State to contribute with different jurisdictional functions, exercising, for example, in one country the adjudicatory

terceiros. Luxemburgo, 13 maio 2014. Available at: <https://bit.ly/3f25aXS>. Accessed on: 31 oct. 2018.

38 Initially, the legal action was referred to the ASPD for consideration, which decided in favor of Mr Costeja, a Spanish citizen, requesting the withdrawal of certain information about the complainant from the Google search engine, based on Directive No. 46 of 1995, of European Union. Google Inc and Google Spain lodged an appeal with the National Court, which in turn referred to the European Court of Justice for a preliminary ruling in order, inter alia, to seek clarification on the territorial application of European law to the case, claiming that it would involve activities of the company Google Inc, located outside the European territory. Finally, it was defined that "Google Spain is a subsidiary of Google Inc. in Spanish territory and therefore an 'establishment' within the meaning of the directive", and it is applicable to European law, requiring Google Spain to withdraw from search engine specific information about M. González.

39 TECH LAW JOURNAL. Supreme Court Denies Cert in Online Freedom of Speech Case. Available at: <https://bit.ly/2SgLZQv>. Accessed on: em 30 nov. 2018.

40 USA. District Court of Pennsylvania. Temporary Restriction Order nº No. Civ.A. 00-121. Twentieth Century Fox Film Corporation e CBS Broadcasting, Inc. e outros. iCraveTV e TVRadioNow Corp. 2000 Wl 255989 (w.d.pa.) . Available at: <https://bit.ly/2yNs4lk>. Accessed on: 30 nov. 2018.

41 "The forum state in this case is Pennsylvania, and Pennsylvania's long-arm statute is codified at 42 Pa.C.S.A. Section 5322. The statute provides that jurisdiction is permitted to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contacts with the State" Idem. Thus, by having an office and commercial agents conducting advertising negotiations in US territory, iCraveTV meets the minimum contact criteria with the US.

42 MILLS, Alex. *Rethinking Jurisdiction in International Law*. British Yearbook of International Law, v. 84, n. 1, p. 187-239, 2014. P. 195.

43 Ibidem, p. 195.

jurisdiction, but with observance of prescriptive jurisdiction of another, and, also, the necessity of executory jurisdiction in diverse State.

The rules of private international law contribute to the systematization of multiple countries' actions in the achievement of material law. International legal cooperation is what allows the jurisdiction, unfolding in these dimensions, that have territorial base, coexist with international entities. Although in Brazilian procedural law the term jurisdiction is directly referenced to the manifestation of the power of the State via the judiciary, the other powers of the tripartite are also endowed with jurisdiction[44]. In addition, even in situations where the judiciary is activated, its conduct may also be prescriptive and enforcement, in addition to adjudicatory[45].

This judicial classification is not definitive, and its purpose is to achieve material law. Even though the rules of private international law (PIL) are intended to resolve conflicts of laws in space - being a formal source - PIL is not deprived of the protection of rights. In this way, the jurisdictional limits are bound to the standards of material law that must be accepted by the States in the construction of their respective legal systems.

Considering that this study aims to analyze decisions involving the characterization and legal responsibility of economic groups linked to information technology and operating in more than one country, a sample was collected in order to analyze the fundamentals and problems in this field.

3. Litigation in Brazilian courts involving economic groups of companies related to the internet

Economic groups provide situations that demand local legal attention, in order to elaborate solutions that are consistent with the international context and its own dynamics. A reaffirmation or reflection on the scope and dimensions of jurisdiction is necessary on the international scene, especially when specific cases are identified. In this section, we present the judicial decisions selected for an analysis of the Brazilian perspective on jurisdiction and groups of companies acting on a transnational scale.

3.1. Database methodology

The lawsuits selected for this study involve the recognition of passive legitimacy[46] to national companies that are members of a transnational economic group, regarding the possibility of being held jointly liable for obligations generated by the acts of affiliated or controlling companies headquartered abroad. These cases were collected from the databases on the websites of all Brazilian Provincial Courts and Federal Courts ("*Tribunais*

44 For more information on the matter, see: <https://bit.ly/2W7jyWf>.

45 As an example, there are the binding legal precedents, a legal institute whose object is the validity, interpretation and effectiveness of certain norms. Such precedents directly subject the judging organs of the Judiciary Power, since the statements of the overviews are covered with imperativeness and coercibility, as well as the laws, however issued by the Judiciary. In this situation, the judiciary performs a function that is typical of the Legislative power.

46 According to Fredie Didier Júnior, "legitimate part is the one that is authorized to be in court discussing certain legal situation". Passive legitimacy, therefore, concerns the characterization of a person - natural or legal - as a legitimate part to act in the passive pole of a judicial process. DIDIER JUNIOR, Fredie. *Curso de Direito Processual Civi*l. Volume 1. 18ª edição. Salvador: Jus Podivm, 2016, p. 290. Original in Portuguese: "parte legítima é aquela que tem autorização para estar em juízo discutindo determinada situação jurídica".

de Justiça Estaduais e Federais"), as well as those of the Superior Court of Justice ("Superior Tribunal de Justiça - STJ") and the Supreme Federal Court ("Supremo Tribunal Federal - STF"). The choice of these instances is justified by the availability of the decisions, as well as the accessibility of their contents, through online jurisprudential search mechanisms - unlike what occurs, for example, in the first instance.

The searches were performed by typing the following expressions in the search field of jurisprudence tools: ("12.965" and "economic group"), ("Internet Bill of Rights" and "economic group")[47], in Portuguese, with quotes and using the connective "e", enabling the tool to search for similar terms. The selected search terms are, in short, justified by the intention to analyze decisions that discuss the possibility of civil liability of domestic companies for demands directed to foreign companies belonging to the same economic group, during the term of the Internet Bill of Rights.

It should also be mentioned that the search for decisions was initially performed by adding the terms "art 11" or "article 11" to the others mentioned above. This is because it is § 2 of this legal provision of Marco Civil that contains the provisions for companies of the same economic group. These search terms were eventually disregarded, and the collection of decisions redone from the beginning, since it was noticed that several decisions on the subject do not mention article 11. The inclusion of these terms in the search, therefore, represented a limitation to the results of the analysis intended, which justifies the expansion of the search results.

Finally, the study only had access to the records contained in the case law databases in electronic format, not covering those eventually existing in the form of physical records. The disregard of the latter is justified by the logistical unfeasibility of conducting this research. Moreover, it was considered that the localized records may portray some recent positions on the subject, and the fact that they are digitally available may make them easier to refer to and to inform future decisions.

Simultaneously with the jurisprudential search routine, a shared table of contents was elaborated so that the researchers involved could record the information found in the online searches and observations. This allowed the data to be selected, identified and analyzed jointly by all researchers, and the information could be viewed in aggregate at a later stage of research. This table includes data such as the decision number, the judging body, the company involved in the case and, finally, the profile of each decision. This table is attached at the end of this paper.

This research has as time frame the beginning of the enforcement[48] of Law n. 12.065, April 23, 2014 (known as the Brazilian Internet Bill of Rights – MCI[49]) until the final search term of May 2nd, 2018. This is because, as pointed out in the objectives of this paper, the purpose of the research was precisely to analyze the way the statements of the referred law have been put into practice, especially the economic groups of internet companies.

In addition, in a scenario prior to the validity of the Internet Bill of Rights in Brazil, there was no specific legislation on conducts to be observed in cases involving the internet. Much of the regulation on contractual and non-contractual civil liability involving

47 Original expressions in Portuguese, respectively: ("12.965" e "grupo econômico"), ("marco civil da internet" e "grupo econômico")

48 The Law n. 12,965/2014 was effective 60 days after its publication, that is, on June 23rd, 2014.

49 Acronym for "Marco Civil da Internet", which is the name of this legislation in Portuguese.

internet companies prior to the Internet Bill of Rights, for example, was formulated by court decisions from higher courts. Thus, the choice of the criterion for delimitation of the timeframe, despite disregarding the set of judicial decisions prior to the validity of the bill, allows to establish analytical reference for continuity of monitoring future decisions on the subject and under the normative framework.

3.2 Judicial decisions

In this section, we will not analyze each of the 28 decisions collected individually. The decisions were divided into sets of judgments established according to the similarity present in the legal grounds of the decisions. One decision from each set will be detailed with the intention of representing the whole.

- The sets of decisions are subdivided into five:
- Decisions whose main argument was article 11, § 2, of the Internet Bill of Rights;
- Decisions Based on the appearance theory;
- Decisions based on the legal protection of consumer relations;
- Generally legal grounded decisions;
- Decision pointing to international legal cooperation.

This approach was chosen in favor of the paper's objectivity, as well as to prevent information from being repeated, since there is a strong similarity between most of the decisions collected.

In addition, the order in which cases are presented is justified both by quantitative and logical criteria. Therefore, we tried to present the decision groups with the largest number of examples first, while trying to maintain a cohesive logical order in order to facilitate the reader's understanding.

The decisions used to exemplify each group of decisions, in turn, were selected based on having addressed the key issues raised in all group decisions. Finally, it should be pointed out that we chose not to exhaustively detail each of the collected decisions so that the written analysis would not be repetitive.

Table 2 - Summary table of legal grounds for the collected decisions.

Legal ground	Recognition of passive legitimacy	Number of Decisions	Courts
Internet Bill of Rights (article 11, §2º)	Yes	11	State Courts of São Paulo (TJ-SP), Rio Grande do Sul (TJ-RS), and Santa Catarina (TJ-SC); Federal Court of 4th Region (TRF-4); and Superior Court of Justice (STJ).
Appearance theory	Yes	2	State Courts of São Paulo (TJ-SP), and Rio Grande do Sul (TJ-RS)
Consumer protection	Yes	8	Superior Court of Justice (STJ); and State Courts of São Paulo (TJ-SP), and Rio Grande do Sul (TJ-RS).
Generic Legal Ground	Yes (with one exception)	6	State Courts of Espírito Santo (TJ-ES), São Paulo (TJ-SP), and Rio Grande do Norte (TJ-RN)
International Legal Assistance Treaty (Decree n. 3810/2001)	No	1	State Court of Paraná (TJ-PR).

Source: elaborated by the authors

3.2.1 Internet Bill of Rights - article 11, § 2

The group of eleven decisions analyzed here was based on article 11, §2, of the Internet Bill of Rights to recognize the passive legitimacy of the company[50]. The article provides:

> Article 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. [...] §2º The established in Article 11 applies even if the activities are carried out by a legal

50 They are the Bill of Review ("Agravo de Instrumento") number 2184235-15.2016.8.26.0000 (TJ-SP); the Instruments of Appeal ("Apelações") numbers 0001824-63.2015.8.26.0294 (TJ-SP), and 1081911-23.2014.8.26.0100 (TJ-SP); the Bills of Review ("Agravos de Instrumento") numbers 70073908113 (TJ-RS), and 2238767-02.2017.8.26.0000 (TJ-SP); the Appeal in the Writ of Mandamus ("Recurso no Mandado de Segurança") number 55.344 - RJ (STJ); the Bill of Review number 2121521-19.2016.8.26.0000 (TJ-SP); the Writ of Mandamus ("Mandado de Segurança") 2008.04.00.035390-4/PR (TRF-4); the Bills of Review numbers 2138997-36.2017.8.26.0000 (TJ-SP), and 2099759-10.2017.8.26.0000 (TJ-SP); and the Writ of Mandamus 4020797-90.2017.8.24.0000 (TJ-SC).

> 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.

As it is observed, the law applies to the "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"; and establishes that the Brazilian law and the safeguards for privacy and data or communication protection apply, including when the activities are offered from abroad to the Brazilian public or any member of the economic group has activity in Brazil.

The first decision regards the Bill of Review[51] number 2184235-15.2016.8.26.0000, from the State Court of São Paulo. In this case, the company Facebook Services Online do Brasil (Facebook Brasil) was filed as a result of existing judicial demand regarding the WhatsApp instant messaging application. In this case, said offensive messages were directed to a politician from the city of São Bernardo do Campo-SP, who filed a lawsuit that demanded the provision of IP data[52] from who started sending the messages, and who shared it. This would require sending information stored on Facebook servers located in Ireland.

Although the Bill of Review was denied, due to the improbability of the right over which the appellant party requested urgent relief[53], the Court was clear in stating that there was legitimacy for Facebook Brazil to be a defendant of the case. Then, it was decided to recognize the passive legitimacy of Facebook Brazil on the grounds that the group to which it belongs acquired the company WhatsApp Inc., which has now joined the economic group Facebook[54].

Similar situation can also be observed regarding Yahoo do Brasil Internet Ltda. in the decision of Civil Appeal number 0001824-63.2015.8.26.0294, also from the State Court of São Paulo. Despite the company's indignation, which claimed its passive illegitimacy to

51 According to Humberto Theodoro Júnior, "the Bill of Review is the appeal against interlocutory decision (New Civil Procedure Code, article 1,015, *caput*), that is to say, against the judicial decisions that are not included in the concept of sentence (article 203, § 2º)." (Free translation. Original in Portuguese: "agravo de instrumento é o recurso cabível contra algumas decisões interlocutórias (NCPC, article 1,015, *caput*), ou seja, contra os pronunciamentos judiciais de natureza decisória que não se enquadrem no conceito de sentença (article 203, § 2º)". THEODORO, Humberto Júnior.Curso de Direito Processual Civil. Volume 3. 49ª edição.Rio de Janeiro: Forense, 2016. p. 1.037. It is worthy to mention that the sentence, also according to Theodoro, is "the last judicial act before the end of the acknowledgement procedural relation, and, at the executory process, is the judicial act that states the end of the execution." (Free translation. Original in Portuguese: "o último ato jurisdicional antes do encerramento da relação processual de conhecimento e, na execução, é ato judicial que decreta o fim do processo executivo"). THEODORO, Humberto Júnior. Curso de Direito Processual Civil. Volume 1. 58ª edição. Rio de Janeiro: Forense, 2017. p. 1.055.

52 The IP data refers to the address of the Internet Protocol, "a numeric sequence used to identify a device connected to the internet, and to guide the data packets arriving and leaving that device". (Free translation. Original in Portuguese: "uma sequência numérica usada para identificar um dispositivo conectado à internet, e para orientar os pacotes de dados que chegam e saem daquele dispositivo". INSTITUTO DE REFERÊNCIA EM INTERNET E SOCIEDADE, Portas lógicas e registro de acesso: das possibilidades técnicas aos entendimentos dos tribunais brasileiros. 2016. Available at: <https://bit.ly/2zBIkpT>. Accessed on 23 nov. 2018.

53 Emergency relief is a provisional relief, a court decision rendered in the course of the process, before the judicial conviction is formed, which may be reversed when the sentence comes (decision that extinguishes the process). It may be given in cases where there is a "demonstration of the likelihood of the right [...] and, together with this, the demonstration of the danger of harm or illicitness, or of compromising the usefulness of the final result that the delay in the process represents". (Free translation. Original in Portuguese: "demonstração da probabilidade do direito [...] e, junto a isso, a demonstração do perigo de dano ou de ilícito, ou ainda de comprometimento da utilidade do resultado final que a demora do processo representa"). DIDIER JR, Fredie; BRAGA, Paula S.; OLIVEIRA, Rafael A. Curso de Direito Processual Civil. Vol. 2. Salvador: Jus Podivm, 2016. p. 607.

54 'Facebook buys WhatsApp for $19 billion'. Adrian Covert. CNN, February 2014. Available at: <https://cnn.it/3f0jUXq>. Accessed on: 15 mar. 2019.

respond in the name of Tumblr Inc. (headquartered in the United States, and together with the same economic group as Yahoo Inc., also based in the US), the judge, as in the case mentioned above, invoked article 11 (2) of the Internet Bill of Rights to justify the recognition of passive legitimacy, dismissing the company's claim as unfounded.

The decisions of the cases exemplified above, involving the companies Facebook Brasil and Yahoo Brasil, represent the majority of the analyzed decisions. Article 11, § 2 of the Internet Bill of Rights, is the main normative instrument that justifies the attribution of procedural legitimacy for companies established in Brazil to configure the passive pole of the process.

However, this normative application is erroneous for reasons detailed in the next chapter. It can be seen that most of the decisions that follow this line of reasoning are from TJ-SP, the Court of Justice of the State of São Paulo. Since this is the Brazilian court with the highest number of demands related to internet law, it is relevant to observe that this is the case law established in the court.

3.2.2. Appearance theory

In another line of argument, although with the same result, there are two decisions that apply appearance theory to recognize the passive legitimacy of companies.[55]Appearance theory is related to good faith and is used "to assert that social relations are based on legitimate trust and deserve the special protection of law"[56]. In several situations, mainly in the consumerist context and by advertising actions, the consumer contracts or accepts circumstance believing the apparent offer. Thus, the legal grounds that mention this theory are intended to ensure that the person, legal or natural, who has created a situation of appearance that is not compatible with reality, inducing the consumer to error, responds for the effects arising from the apparent situation[57].

The Civil Appeal number 70076907690, from the State Court of Rio Grande do Sul, uses appearance theory to justify Facebook Brazil's passive legitimacy to respond in court to WhatsApp app. The report states that the claimant suspected of having his personal Whatsapp account hacked, so he demanded information as to who accessed his account and how this occurred so that he could later pursue the appropriate action. In this case, it is alleged that there is confusion on the part of consumers between the legal personalities of the companies concerned, such confusion being prompted by the widespread knowledge that WhatsApp Inc. (the company managing WhatsApp) was bought by Facebook Inc (US-based company that runs the Facebook economic group, which therefore includes WhatsApp and Facebook Brazil).

Not a very different solution can be observed in the decision of the Bill of Review number 2102739-61.2016.8.26.0000. There, the State Court of São Paulo used the reasoning that the Google group is comprised of several global companies (including Google International LLC and Google Inc.), to conclude that Google Brasil Internet Ltda. acts as an extension of these companies.

55 The judges who followed this theory are the Bill of Review number 2102739-61.2016.8.26.0000 (TJ-SP) and Civil Appeal 70076907690 (TJ-RS).

56 Free translation. Original in Portuguese: "para afirmar que as relações sociais baseiam-se na confiança legítima e merecem a especial proteção do Direito". PEREIRA, Fernanda Sabrinni. "Teoria da aparência e confiança na pós–modernidade: a tutela dos consumidores." *Revista da Faculdade de Direito UFU* 38.2 (2010).

57 Smith, Juliane. "Teoria da aparência: Uma análise crítica ao artigo 50 e 1.015 do Código Civil de 2002." *Revista Magister de Direito Empresarial, Concorrencial e do Consumidor, ano VI* 33 (2010).

Thus, Google Brazil would have the passive legitimacy to respond in court in place of the other companies of the economic group - in this case, the YouTube video platform and the social network Google Plus. In addition, it was determined that the company pay a fine of 5% of the adjusted amount of the case for bad faith in litigation, since the issue would have already been extinguished earlier.

3.2.3. Legal protection of consumer relations and consumer protection

There is also a relatively different decision-making on the subject, which is evidenced in eight court decisions collected for this analysis[58]. Although they do not necessarily employ identical reasons, these decisions essentially refer to the protection of consumer rights of those who use the online services provided by those application providers[59]. The main argument is that it would be too long and costly for an average internet user to suit, through rogatory letter, a company situated in a jurisdiction entirely different from his or her own.

Thus, these decisions advocate that the need for cross-border instruments of judgment to enable internet users to achieve their rights would be an ineffective measure of protecting their rights as consumers. It would be unreasonable, therefore, to impose on the consumer the burden of triggering a foreign company, given that in his country there is a company of the same economic group and, consequently, endowed with the necessary technical requirements to be able to comply with a court order intended to the company located in another jurisdiction.

It should be added here that the legal relationship between application providers and users of these services is unquestionably classified as a consumer relationship[60].

3.2.4. Generic legal ground

The collected decisions sometimes proved to be too generally grounded, without the arguments used by the court being spelled out. As a result, it is difficult to determine

58 They are the the Appeal in the Writ of Mandamus ("Recurso no Mandado de Segurança") number 54.105 - RS, from the Superior Court of Justice ("STJ"); the Bill of Review ("Agravo de Instrumento") number 2174916-23.2016.8.26.0000 (TJ-SP); the Appeal ("Apelação") number 1121734-04.2014.8.26.0100, (TJ-SP); the Civil Appeal ("Apelação Cível") number 70074881327 (TJ-RS); the Bill of Review ("Agravo de Instrumento") number 2067382-54.2015.8.26.000 (TJ-SP); the Appeal ("Apelação") number 1125792-16.2015.8.26.0100 (TJ-SP); the Civil Appeal ("Apelação Cível") number 70076172949 (TJ-RS); and the Appeal ("Apelação") number 1036686-09.2016.8.26.0100 (TJ-SP).

59 According to the Internet Bill of Rights, internet application is the "the set of features that can be accessed through a terminal connected to the internet". (Free translation. Original in Portuguese: "o conjunto de funcionalidades que podem ser acessadas por meio de um terminal conectado à internet". BRASIL. *Lei nº 12.965, de 23 de abril de 2014.* Estabelece princípios, garantias, direitos e deveres para o uso da internet no Brasil. Brasília, Available at: <https://bit.ly/2VIc2lO>. Accessed on: 21 nov. 2018.

60 This conclusion may not be instantly assumed, given that the online services in question are often distributed in a non-monetized manner - that is, without users having to invest money to gain access to the service. However, it is known that the monetization of the service is not necessary: the Consumer Protection Code, in its article 2, states that "consumer is any individual or legal entity that purchases or uses a product or service as a final recipient, which characterizes the use of internet application as a consumer relationship", (Free translation. Original in Portuguese: "consumidor é toda pessoa física ou jurídica que adquire ou utiliza produto ou serviço como destinatário final, o que caracteriza o uso de aplicação de internet como relação de consumo"). Moreover, it is known that the monetary environment is not the only way in which the onerousness of a service can be manifested as a relationship of consumption. This practice is common in the digital environment, where, for example, the personal and usage data of individuals accessing a particular service are used for the purpose of custom redirection of ads, which in turn are converted into income for the service provider. application - other than for profit. It is in this sense that the national jurisprudence, like the decision of the Special Appeal number 1316921, from the Superior Court of Justice ("Superior Tribunal de Justiça - STJ").

specifically what direction was taken to reach the decisions. In this group there are six decisions, five of which[61] concluded in favor of the accountability of the Brazilian business society and only one[62] pointed to the negative passive legitimacy of the Brazilian company to answer in court some questions related to the demand - at least in the moment of the summary cognition[63].

As an example, we can highlight the Writ of Mandamus number. 0000386-92.2017.8.08.9101 (TJ-ES). The case concerns the sharing of offensive content by Whatsapp. The court based its decision on the ground that Facebook would be a legitimate party to figure in the passive pole of the dispute because it is widely known the acquisition of Whatsapp by the company. That would be enough to impute liability to Facebook's Brazilian subsidiary (Facebook Brasil Internet Ltda.) in cases of sharing offensive content via Whatsapp, including being the only one of the cited companies that has representation in the national territory. It should be noted that the decision, besides being quite general, does not mention any normative reference in the reasoning, it just lists a series of summaries of other judicial decisions that also have generic grounds and do not resort to legal provisions to justify the decision of that decision. specific question.

The Writ of Mandamus number 20170090317 (TJ-RN), in turn, presents similar grounds, but makes reference to the entire articles 10 and 11 of the Internet Bill of Rights, without specifying why any of them apply to the case.

3.2.5. Negative of passive legitimacy

Among the decisions analyzed, there are only two that deny the passive legitimacy of the Brazilian company belonging to a foreign economic group to respond in court in place of its headquarters located abroad. The first of these is the Bill of Review number 2219128-03.2014.8.26.0000 (TJ-SP), already cited in the item above, for presenting too generic reasoning. This is the only decision that had characteristics of two distinct groups, but we chose to account for it in Table 2 as belonging to the group of the previous topic - decisions with generic grounds. This is because this feature was considered as most striking in this specific decision. In addition, it is observed that the negative passive legitimacy contained in the decision was justified only by the context of summary cognition in which it was inserted, allowing a change of attitude of the judge at the moment of the final decision of the demand.

Lastly, there is only one decision[64] which completely disagrees with the others, and which denies, by extensive reasoning, the existence of passive legitimacy for a national company to answer for another foreigner belonging to the same economic group. Of this, a more detailed description will be given further.

61 They are the Writ of Mandamus ("Mandado de Segurança") number 0000386-92.2017.8.08.9101 (TJ-ES); the Bill of Review ("Agravo de Instrumento") number 2108924-18.2016.8.26.0000 (TJ-SP); the Bill of Review ("Agravo de Instrumento") number 2212356-19.2017.8.26.0000 (TJ-SP); the Appeal ("Apelação") number 1020992-71.2014.8.26.0196 (TJ-SP); and the Writ of Mandamus ("Mandado de Segurança") number 20170090317 (TJ-RN).

62 It is the Bill of Review ("Agravo de Instrumento") number 2219128-03.2014.8.26.0000 (TJ-SP).

63 According to Alexandre Freitas Câmara, Summary cognition is characterized by causing the judge to issue a judgment-based provision. Thus, the provision to be issued should state only that the existence of the law is probable, that is, that there are strong indications in the sense of its existence, converging to such conclusion most of the factors put under the examination of the judge. CÂMARA, Alexandre Freitas. *Lições de Direito Processual Civil vol. 1*. 21. ed. Rio de Janeiro: Lumen Juris, 2011. p. 259.

64 The existence of a single decision in this regard may be related to the restrictions imposed for this study. Thus, a search using broader search terms and / or comprising a longer time frame could result in more court decisions that align with that understanding.

This the decision is the criminal Writ of Mandamus[65] number 1.396.365-4, (TJ-PR). O caso diz respeito a um pedido de quebra de sigilo de dados e interceptação de fluxo telemático, realizado diante de alegações de que alguns indivíduos teriam negociado a paternidade de uma criança através da rede social Facebook.

The Writ of Mandamus, in short, was filed by Facebook Brasil against a previous decision that arbitrated the daily fine in the amount of R$ 500,000.00 (five hundred thousand reais) per day, for an alleged breach of the court order.

It should be noted that, as the company stated in clarifications provided to the Court, requests were sent to foreign companies Facebook Inc. and Facebook Ireland, domiciled abroad, to provide the required data, as these would be in their possession. The decision also states that the data were, in fact, sent to the email of the Civil Police of the State of Paraná.

The court of the 3rd Criminal Chamber of the TJ-PR, in light of this, upheld the constitutional remedy under consideration. The reasoning came from article 10 (2),[66] of the Internet Bill of Rights. Although it determines that the availability of the contents of private communications can only take place by court order, it also limits this possibility to the provisions of Brazilian law and in items II and III of article 7[67] from the Internet Bill of Rights.

Subsequently, the Court invokes article 3rd[68], also from the Internet Bill of Rights, according to which the principles expressed in the legal text do not compose an exhaustive list (which intends to go through all hypotheses), and the other principles provided for in Brazilian law, including those mentioned in international treaties of which the country is a signatory part, must be applied.

Based on these provisions, it was argued that competence would not be of the Brazilian Justice, as the content of communications and the telematic interception of Facebook accounts that were to be investigated were stored on Facebook Inc.'s servers,

65 According to Bernardo Gonçalves, writ of mandamus is one of the instruments provided for in the Constitution to guarantee the exercise of fundamental rights, or synthetically, a constitutional action. The writ of mandamus is an action that "is intended to protect an injured or threatened clear right from injury" (free translation). The nature of the institute is civil, but the action can also be filed in the criminal court against judicial decision in criminal proceedings, as stated in the Precedent from the Supreme Court Number 701.l em processo penal, conforme consta na Súmula nº701 do STF. Gonçalves, Bernardo Fernandes. "Curso de direito constitucional." *Lúmen Júris Editora. Rio de Janeiro* (2012). p. 465

66 Article 10. The custody and availability of the connection records and access to internet applications covered by this Law, as well as personal data and the content of private communications, must take care to preserve intimacy, privacy, honor and image of the parties directly or indirectly involved. [...] § 2 The content of private communications may only be made available by court order, in the cases and in the form that the law establishes, respecting the provisions of items II and III of article 7. BRASIL. Lei nº 12.965, de 23 de abril de 2014. Marco Civil da Internet. Available at: <https://bit.ly/2KDd1NI>. Accessed on: 21 nov. 2018.

67 Article 7. Internet access is essential for the exercise of citizenship, and the users have the following rights: II – inviolability and secrecy of the flow of communications over the internet, except by court order, according to the law; III – inviolability and confidentiality of stored private communications, except by court order. BRASIL. Lei nº 12.965, de 23 de abril de 2014. Marco Civil da Internet. Available at: <https://bit.ly/2VNsb9H>. Accessed on: 21 nov. 2018.

68 Article 3. The discipline of internet use in Brazil has the following principles: I – guarantee of freedom of expression, communication and expression of thought, under the terms of the Federal Constitution;II – privacy protection; III – protection of personal data, as provided by law; IV – preservation and guarantee of network neutrality; V – preservation of stability, security and functionality of the network, through technical measures consistent with international standards and by encouraging the use of good practices; VI – accountability of agents according to their activities, in accordance with law; VII – preservation of the participatory nature of the network; VIII – freedom of business models promoted on the internet, provided as they do not conflict with the other principles established in this law. Sole paragraph. The principles expressed in this law do not exclude others specified in the Brazilian legal system that are related to the field, or in international treaties to which the Federative Republic of Brazil is a party. BRASIL. *Lei nº 12.965, de 23 de abril de 2014*. Marco Civil da Internet. Available at: <https://bit.ly/3f11vtq>. Accessed on: 21 nov. 2018.

subject to US jurisdiction.

For situations like this, the Court pointed out that, with respect to the aforementioned provisions, it should be obeyed the Decree Number 3,810/2001, which promulgated the Mutual Legal Assistance Treaty in Criminal Matters between the Government of the Federative Republic of Brazil and the Government of the United States of America - the MLAT[69]. Thus, the correct procedure to be followed to obtain the required conversations would be, as provided in Decree No. 3,810/2001, the direct provocation of the US jurisdiction.

4. Brazilian law: possible interpretations and legal debates

The decisions selected, with the exception of the last one presented in the item 3.2.4, consider that Brazilian companies are parties to the proceedings and are subject to Brazilian law - existence of prescriptive jurisdiction - regarding regulated legal relations. They also consider that Brazilian courts are competent to settle judicial disputes - they have adjudicatory jurisdiction.

In view of the categorization of the different dimensions of jurisdiction exposed at the beginning of this paper, this session offers an analysis on the reasoning presented by the judges. Preliminarily, subtopic 4.1 identifies ambiguities regarding the possible business categories for Brazilian members of foreign economic groups, subdividing into i) terminological inaccuracies; ii) modalities of foreign company and headquarters in Brazil; iii) classification of the defendant companies. Having defined the distinctions for each business type, the exercise of the dimensions of adjudicatory, prescriptive and enforcement jurisdiction over them is analyzed in subtopics 4.2, 4.3 and 4.4 respectively.

4.1. Terminological inaccuracies

As mentioned in article 21, item I, of the Brazilian Civil Procedure Code, the Brazilian authority is competent to prosecute and judge actions in which the defendant is domiciled in Brazil. Thus, if a company is headquartered in Brazil, Brazilian authorities may suit and prosecute claims against them. Specifically to define this condition, article 21, solearagraph, refers to the criterion for extensive interpretation of the defendant's domicile or defendant party: "its is considered as domiciled in Brazil the legal entity that has there an agency, affiliate or branch" [70].

The use of the terms "agency", "affiliate" and "branch", however, represents a problem in itself. These are concepts to which various meanings are attributed, which makes legal interpretation difficult. To this is added the use of the term "facility" in article 11 (1) of the Introductory Law on Brazilian Rules[71] ("Lei de Introdução às Normas do

69 MLAT refers to the *Mutual Legal Assistance Treaties*. These treaties are stated by governments to facilitate the exchange of information during investigations involving resident persons or evidence located in another country, among other possibilities.

70 Article 21. It is incumbent upon the Brazilian judicial authority to process and judge actions in which: I - the defendant, whatever his nationality, is domiciled in Brazil; II - in Brazil the obligation has to be fulfilled; III - the plea is a fact that occurred or an act practiced in Brazil. Sole paragraph. For the purpose of the provision in item I, a foreign legal entity that has an agency, affiliate or branch in the country is considered domiciled in Brazil.

71 Note of translation: due do the complex translation of the Law's name, it will be referred from now on only as "LINDB".

Direito Brasileiro" - LINDB)[72], which also deserves attention.

Due to this inaccuracy, the applicable consequences of article 21, sole paragraph, may lead to doubts as to the qualification of business companies for the purpose of determining the domicile of a legal person governed by foreign law. This aspect leaves room for discussion about the exact extent to which a foreign company can be considered to be domiciled in Brazil and, consequently, to be a defendant before the Brazilian courts.

4.1.1. Modalities of a foreign company operating in Brazil

In order to systematically analyze the applicability and scope of this device, each possible link between a company in Brazil and a foreign company can be considered. There are several modalities[73] whereby a foreign company - one that is headquartered in another country and incorporated under the law from which it originates - operates in Brazil:

A) Facility

Among the expressions to be addressed here, certainly "facility" is the one that holds the most extensive conceptualization in the legal text. Much of this conceptualization is found in articles 1,142 to 1,149 of the Civil Code, with its own title. In short, the definition of establishment is contained in article 1,142, according to which "the facility is involves all organized complex of goods, for the exercise of the company, the entrepreneur, or the enterprise society". The subsequent legal mechanisms deal with establishing the legal regime of the establishment.

In addition, article 969, *caput* and its paragraph, also from the Civil Code, allow interpreting establishment as a broader concept, which also encompasses the concepts of affiliate, branch and agency. These three concepts would therefore be secondary facilities of a business enterprise.

B) Affiliate and branch

The term "affiliate", in its turn, is an expression defined in both Portuguese dictionaries and legal literature in an uncertain way. It is often presented as a synonym for branch and agency, and there is no legal criterion to distinguish between these three terms.[74] Sometimes, however, there is a definition that gives the affiliate company a more

72 Article 11. Organizations intended for purposes of collective interest, such as societies and foundations, obey the law of the State in which they are constituted. § 1. However, they may not have in Brazil branches, agencies or facilities prior to the constitutive acts approved by the Brazilian Government, being subject to Brazilian law. BRASIL, Decreto-lei 4.657, de 4 de setembro de 1942. Lei de Introdução às Normas do Direito Brasileiro. Available at: <https://bit.ly/2SidsRP>. Accessed on: 21 nov. 2018.

73 FARION, Rafaela de Mattos. Sociedades Estrangeiras. 2004. 40 f. TCC (Graduação) - Curso de Direito, Ciências Jurídicas, Universidade Federal do Paraná, Curitiba, 2004. p. 20. Available at: <https://bit.ly/35cgiwY>. Accessed on: 26 out. 2018.

74 The Portuguese language dictionaries consulted were the Mini Aurélio, 8th edition, the Mini Larousse, 1st edition, and the dictionary integrated with Google's search engine. The three sources consulted present as the meaning of the word "affiliate" the concept of "business subordinate to another - the parent company". Among the meanings contained in the Google dictionary, one can also find the definition "it is said of a business group that, although linked to the administration and management of a parent company, has representation and autonomy to perform acts with legal validity, differentiating "branch or agency", which differs from the above, and illustrates the vagueness surrounding the concept of branch. FERREIRA, Marina Baird (Org.). **Mini Aurélio:** O Dicionário da Língua Portuguesa. 8. ed. Curitiba: Positivo, 2010. p. 349. REIS, Soraia Luana (Org.). **Minidicionário Larousse da Língua Portuguesa.** São Paulo: Larousse, 2006. p. 354. Nesse mesmo sentido, pode-se observar a referida imprecisão terminológica na definição de filial constante, por exemplo, na Enciclopédia Saraiva do Direito. FRANÇA, Rubens Limongi et al (Org.). *Enciclopédia Saraiva do Direito: Edição Comemorativa do*

stringent subordination to the parent company and is not endowed with any degree of autonomy.[75].

In addition, the word affiliate is mentioned together with "agency" (and "facility") in LINDB article 11 (1), which may further confuse the individual meaning of the term.

As for the equality of meanings that is repeatedly attributed to the terms "affiliate" and "branch", it is worth mentioning what Carlos Maximiliano says. The author mentions that the words in the legal text should be interpreted as having some efficacy[76], that is, it would not make sense to use two synonymous expressions in the Civil Procedure Code statement. Thus, the fact that there is no distinction between these concepts in the legal text, nor satisfactorily consistent in the literature, represents a flaw on the part of the Brazilian legislator.

C) Agency

From the possible interpretations of the term, arises the first possible disagreement in determining the applicable legal mechanism for defining the adjudicatory jurisdiction regarding the disputes analyzed.

A broader interpretation of this term, for example, may encompass companies headquartered in Brazil and belonging to the same economic group as foreign companies. According to this interpretation, an agency perspective is adopted as the "branch" of the foreign enterprise[77]. Thus, the recognition of domestic companies as foreign agencies characterizes the applicability of article 21 of the Civil Procedure Code, resulting in the configuration of the adjudicatory jurisdiction of the national authority - that is, the possibility for the Brazilian court to be competent in the matter.

A second possible - more restrictive - interpretation of the term "agency" revolves around the uncertainty of meaning about the three terms set out in the sole paragraph of article 21 of the Civil Procedure Code. More specifically, it refers to the understanding that there is a common feature that can be interpreted from this legal provision. Article 21, sole paragraph, according to this understanding, seems to concern companies - whether agencies, branches or branches - that operate in Brazil as extensions of foreign companies that command them, therefore, a manifestation of the legal entity of foreign law.

In this case, these companies must receive authorization from the Executive Power to carry out their activities in the national territory, and remain dependent on the foreign matrix, not being endowed with independence. The Corporate Registration and Integration Department - DREI, starting from Normative Instruction No. 7, establishes the procedures for the registration of these foreign companies. This is the procedure of approval of the constitutive act referred to in article 11 (1) of the LINDB.

Sesquicentenário da Fundação dos Cursos Jurídicos no Brasil. São Paulo: Saraiva, 1982. v. 37, p. 332-335.
Note of translate: the translation of the terms very often varied between "affiliate", "subsidiary" and "branch". However, the terms used followed the literal translation provided by the linguee dictionary, from the precise term in Portuguese to English. Available at: <https://bit.ly/2YkW3eW>. Accessed on: 03 feb. 2020.

75 FRANÇA, Rubens Limongi et al (Org.). *Enciclopédia Saraiva do Direito: Edição Comemorativa do Sesquicentenário da Fundação dos Cursos Jurídicos no Brasil*. São Paulo: Saraiva, 1982. v. 71, p. 260-261.

76 MAXIMILIANO, Carlos. Hermenêutica e aplicação do direito. 20ª edição. Rio de Janeiro: Forense, 2011, p. 204.

77 FARION, Rafaela de Mattos. Sociedades Estrangeiras. 2004. 40 f. TCC (Graduação) - Curso de Direito, Ciências Jurídicas, Universidade Federal do Paraná, Curitiba, 2004. Available at: <https://bit.ly/3f5jsY7>. Accessed on: 26 out. 2018. p. 20.

It is true that article 11 of the LINDB does not refer to branch companies at any time. However, the terminological inaccuracy surrounding this term, as well as the fact that it is often referred to as an affiliate, may lead to the conclusion that the method of obtaining the right to act as a branch in Brazil is at least, sufficiently similar to that of a subsidiary that it can be distinguished from a company properly registered in the Brazilian legal regulation. Moreover, it would be unlikely that the national legislature would have included in the same legal mechanism predictions for excessively different business models.

The term "agency", finally, without proper conceptualization, can be understood in a multitude of connotations[78]. It can mean anything from any company - autonomous but belonging to the same economic group as the foreign business enterprise in question - to a company under the full control of this legal entity governed by foreign law - duly registered in Brazil or even with the permission of the Executive Power to operate in our country. The fact that there is no discussion about the real practical meaning of this term results in extremely relevant legal repercussions, which, however, seem not to have been the subject of discussion by those who have the competence to resolve such a legal gap.

d) Subsidiary

In view of this, it is now appropriate to address a fourth concept, not mentioned in the wording of article 21, sole paragraph: that of a subsidiary company. Unlike the above terms, there is delimitation of the meaning of "subsidiary" in legal text. Article 20, sole paragraph, of Decree Number 55,762/1965, states that a "company subsidiary" is considered to be a legal entity, established in Brazil, of whose voting capital of at least 50% belongs, directly or indirectly, to the company. based abroad[79].

The legal text mentions that the concept of subsidiary company presented is valid only for the interpretation of the decree itself. However, as there are no more sources from which this meaning can be extracted, the most valid option left is to use it to remedy this gap in the Brazilian legal regulation[80].

It is also worth mentioning the equalization between affiliate and subsidiary. This has its origin in practical and regulatory issues of corporate law. Opening a foreign

78 It is added, in parentheses, that the absence of this terminological distinction in both law and doctrine is aggravated by a lack of knowledge of this matter even by public agencies that have it as one of their objects of work. During the writing of this work, researchers came to the headquarters of the Commercial Board in Belo Horizonte to understand which criteria employees of the agency should adopt to perform the registration of companies as subsidiaries, branches, agencies or subsidiaries. However, the employee who was appointed to meet the researchers could not explain these criteria. The information provided was that those interested in setting up the company - whether in the form of an agency, branch or subsidiary - should fill out the Feasibility Inquiry form on the Commercial Board website. However, responsible for analyzing the viability would be the City Hall, for this reason the Commercial Board does not know to inform the criteria of differentiation of the types of company.

79 In this regard, Américo Lourenço Masset Lacombe adds that the use of the conjunction "or" in the legal text suggests the conclusion that a non-subsidiary company may have the majority of its capital owned by foreigners, as it is also possible for a subsidiary company to have the same. majority of its capital belonging to nationals, disregarding the voting situation. LACOMBE, A. L. Conceituação de filial, subsidiária e empresa de capital estrangeiro no direito brasileiro. *Revista de Administração de Empresas* v. 5. n. 16. 1965. p. 59-68

80 The Brazilian Corporation Law (Law Number 6,404 / 1976) has its Chapter V, Section V, intended for wholly owned subsidiary companies, but this concept is entirely different from that of a subsidiary company, and therefore does not apply to mentioned in the case law proposed to study in this article. This is because, according to article 251 of the aforementioned law, the wholly owned subsidiary has as its sole shareholder a Brazilian company, which shows a significant discrepancy between the concepts of subsidiary and wholly owned subsidiary. BRASIL. Lei nº 6.404, de 15 de dezembro de 1976. Dispõe sobre as sociedades por ações. *Diário Oficial da União*. Brasília, 15 dez. 1976. Available at: <https://bit.ly/2W2dSge>. Accessed on: 21 nov. 2018.

company affiliate formally requires authorization from the Executive Branch to operate in Brazil. In contrast, the creation of a Brazilian company whose partners are wholly foreign-owned does not require any formality other than the opening of a nationally-owned company. This context gave rise to the figure of subsidiaries, which are, in practice, companies incorporated in Brazil whose sole partners are holding companies, foreign companies created to control others in the group without the need to formally constitute a subsidiary[81].

4.1.2. Company classification in the analyzed decisions

By analyzing the registration forms of the companies involved in these court decisions, available in the database of the São Paulo State Commercial Board, it is possible to conclude that all of them fit the concept of subsidiary company presented above. More specifically, they are all companies originally registered in Brazil, with voting capital in all cases wholly owned by foreign-based companies[82].

However, it is noticeable that, in a considerable portion of the judicial decisions selected in this research, the magistrates pointed out that the Brazilian company constitutes an "affiliate" of the headquarters located abroad. Thus, the terminological inaccuracy of the legal text generates reproduction of this confusion by the judges, which allows situations in which the attribution of responsibility is casuistic, without predicting in advance which situations and business arrangements give rise to solidarity in obligations assumed. This aspect provides bases for understanding the risks of legal certainty in the country.

Therefore, the companies submitted to this study (the subsidiaries installed in Brazil) are not formally characterized as affiliates, branches or agencies of foreign companies that control their respective economic groups.

4.2 Jurisdiction to adjudicate disputes involving companies: headquarters and subsidiary of the foreign economic group

We now observe the rules regarding the admissibility of a foreign company as a defendant in Brazil, which entities are considered legitimate to answer it. This is the issue around which we can present more considerations about the existing legal mechanisms and the way the selected jurisprudence addresses the matter.

It can be concluded, at first, that the Brazilian judicial authority would not be competent to adjudicate these claims, when the obligation was only possible to the foreign company - an issue that will be detailed below. However, it is worth remembering what was already discussed in the previous topic regarding the similarity of the subsidiary and

81 FARION, Rafaela de Mattos. *Sociedades Estrangeiras*. 2004. 40 f. TCC (Graduação) - Curso de Direito, Ciências Jurídicas, Universidade Federal do Paraná, Curitiba, 2004. Available at: <https://bit.ly/35jHJVF>. Accessed on: 26 out. 2018. p. 21-22.

82 More specifically, foreign companies that hold voting capital in the Brazilian companies involved in the cases analyzed are: RAINFOREST HOLDCO 1 LLC and RAINFOREST HOLDCO 2 LLC, in the case of AMAZON SERVICOS DE VAREJO DO BRASIL LTDA.; FACEBOOK GLOBAL HOLDING I LLC and FACEBOOK GLOBAL HOLDING II LLC, in the case of FACEBOOK SERVICOS ONLINE DO BRASIL LTDA.; GOOGLE INTERNATIONAL LLC and GOOGLE LLC, in the case of GOOGLE BRASIL INTERNET LTDA; MICROSOFT CORPORATION, MICROSOFT ROUND ISLAND ONE and MSHC LLC, in the case of MICROSOFT INFORMATICA LTDA.; AOL HOLDINGS (BRAZIL) LLC and YAHOO HISPANIC AMERICAS LLC., in the case of OATH DO BRASIL INTERNET LTDA. (former YAHOO DO BRASIL INTERNET LTDA.); and T.I. BRAZIL HOLDINGS LLC and TWITTER INTERNATIONAL COMPANY, in the case of TWITTER BRASIL REDE DE INFORMACAO LTDA.

subsidiary business models.

In this case, it can be argued that the incorporation of subsidiaries in Brazil by foreign companies - rather than affiliates directly linked to the company based abroad - would merely be a ploy to remove liability from those companies for claims relating to only one of them. Or, in addition, to make it difficult, from the point of view of procedural legitimacy, for the formation of litigation, with the participation of the defendants in the same pole of the action, in this case, as passive co-plaintiff.

According to this logic, the analyzed subsidiary companies could be considered as subsidiaries for the purposes of the application of article 21, since, materially, this is the relationship that can be observed between the foreign headquarters and the coalition of Brazilian business companies in the economic group.

Although the above argument is not considered valid, the Brazilian regulation must impose that the foreign company has a legal representative in Brazil if it wishes to be a shareholder of business companies in the country. This legal representative is able to receive summons in a lawsuit on behalf of the foreign company - as stated in article 119 of the Brazilian Corporation Law[83]. This is precisely so that it is the competent Brazilian authority to judge cases involving these companies.

Therefore, it is observed that despite the enormous terminological difficulties in Brazilian law involving the determination of competing international jurisdiction for claims against foreign companies (article. 21, sole paragraph), the Brazilian authority to adjudicate the claims remains competent, regardless of whether civil liability rests with the Brazilian subsidiary company or its foreign headquarters. Among the formal operational aspects that lead to this state is the obligation to maintain a legal representative in Brazil.

This issue unfolds into a complex integration between material and procedural law, since: 1. the joint liability of a Brazilian company in relation to the foreign group's host company, considering them as components of the same business activity that also occurs in Brazil, attracts the jurisdiction of the Brazilian courts on the case, whereas; and 2. if the liability is considered limited to the activities performed by each[84] may not be a legitimate party, but the claim may be filed in Brazil either because the foreign shareholder company operates here, either the corporate bond or the presence of its legal representative empowered to receive a summons.

From this, a new discussion arises: which of the companies has the legitimacy to appear as defendant of the judicial disputes under analysis, those headquartered abroad and controlling companies of their respective economic groups or their Brazilian subsidiaries? There are a few factors that can be observed to arrive at an answer.

83 "Article 119. A shareholder resident or domiciled abroad shall maintain in Brazil a representative entitled to receive summons in lawsuits against him, proposed based on the precepts of this Law. Sole paragraph. The exercise, in Brazil, of any shareholder rights, gives the agent or legal representative the quality to receive judicial summons." BRASIL. Lei nº 6.404, de 15 de dezembro de 1976. Dispõe sobre as Sociedades por Ações. Diário Oficial da União. 17 dez. 1976.

84 "Article 243. [...] § 2 A company is considered as a controlled company in which the parent company, directly or through other controlled companies, holds shareholder rights that assure, in a permanent manner, preponderance in the corporate resolutions and the power to elect most managers of the Company". BRASIL. Lei nº 6.404, de 15 de dezembro de 1976. Dispõe sobre as Sociedades por Ações. Diário Oficial da União. 17 dez. 1976.

4.3. Law applicable to foreign economic group members: headquarters and subsidiary

Firstly, the prescriptive jurisdiction (applicable law) is considered, i.e. the authority to draft and apply the laws themselves in cases involving a foreign element. In order to systematize the analysis, we consider the different hypotheses involving Brazilian interests in relation to foreign companies or members of a foreign economic group.

With regard to the subsidiary, it is clear that there are at least two legal provisions in force in Brazilian law that state the prescriptive jurisdiction in the context defined in the cases under analysis: article 11, *caput*, of the Law on Introduction to Standards of Brazilian Law - LINDB, which stipulates that organizations intended for purposes of collective interest obey the law of the state in which they are constituted - and article 11, §2[85] from the Internet Bill of Rights, which establishes mandatory compliance with Brazilian law in the activity of collection, storage, storage and processing of records, personal data or communications by internet connection or application providers, when it occurs in national territory.

Both legal provisions may indicate conflict or antinomy between rules. However, the devices are ruled and conceived as different normative policies. The first establishes foreign law as applicable to matters relating to the existence, operation and extinction of the foreign legal entity, and the second elects Brazilian law to regulate or discipline legal relations involving operations of observance of privacy rights, protection of personal data and confidentiality of private communications and records. Therefore, since LINDB and MCI have different normative scope, hierarchical analysis of norms is not appropriate.

The relevant question is which provision should be taken into consideration when defining the applicable law in the judicial conflicts under consideration when the obligation opposed to the foreign company with regard to data protection operations.

Defined the applicability of article 11, § 2, of the Internet Bill of Rights, against article 11, *caput*, of LINDB, for the purposes of determining applicable law applicable to Brazilian law in cases involving application providers - even those based abroad -, provided that at least one of the acts involved in the legal relationship takes place in Brazil.

It should be pointed out that article 11, in its *caput*, rightly points to the need to observe Brazilian law, making no mention of the other dimensions of jurisdiction[86]. The power to exercise adjudicatory and enforceable jurisdiction in the cases to which this legal provision applies, therefore, must be based on other statements of Brazilian law - although article 11 is often used as a court clause which would itself justify the

85 Article 11. In any operation for the collection, storage and treatment of records, personal data or communications by connection providers and internet applications in which at least one of these acts occurs in national territory, Brazilian law and rights to privacy, protection of personal data and confidentiality of private communications and records must be respected. §2º The provisions of the *caput* apply even if the activities are carried out by a legal entity headquartered abroad, provided that it offers services to the Brazilian public or at least one member of the same economic group has an establishment in Brazil. (free translation)

86 Bruno Garcia Redondo briefly mentions in one of his texts that article 11 of the MCI states only the duty to respect Brazilian legislation and the rights to privacy, the protection of personal data and the confidentiality of private communications and records in the collection, storage, storage and treatment of records, personal data or communications by connection providers and internet applications in which at least one of these acts occurs in national territory. The author doesn't mention a determination of Brazilian adjudicatory jurisdiction by this legal provision. REDONDO, Bruno Garcia. Infrações e sanções cíveis, penais e administrativas. In: LEITE, George Salomão; LEMOS, Ronaldo (Org.). *Marco Civil da Internet*. São Paulo: Atlas, 2014. p. 728.

jurisdiction of the national court[87].

As far as the Brazilian company is concerned, the case is simpler to verify: there is no such opposition of the legal commands presented to the foreign company. Both provisions (MCI and LINDB) point to national law enforcement.

4.3.1. Legislation on joint liability in economic group

Some decisions analyzed in this research justified the extension of the passive legitimacy of the parties based on the argument that, being from the same economic group, the companies had joint and several liability for damages arising.

This is the case of Civil Appeal Number. 0001824-63.2015.8.26.0294, which extracts the following :

> [...] The claim to separate any liability for the provision of data and exclusion of content on the grounds that the service is provided by a separate company, without any corporate relationship with the applicant, should be thrown away. This is because both companies belong to the same economic group and the applicant here is registered in Brazil and provides its services in the national territory.

In general terms, there are some arguments that, in certain cases, are often referred to as ruling out joint liability between companies belonging to the same group - more specifically, two: i) the lack of legal provision that imposes solidarity, in compliance with the article 265 of the Civil Code, previously mentioned in this work; and ii) the preservation of the legal personality and patrimony of the companies - provided for in artcle 266 of the Brazilian Corporation Law[88], being responsible only for obligations contracted directly on their behalf[89].

Liability can only be extended in case of disregard of the legal entity. It is up to the judiciary to analyze the specific case and assign the due obligations to companies, given the lack of legal solidarity obligation[90].

87 This can be seen, for example, in the first group of decisions presented in chapter 3 of this work. In addition, this extensive interpretation can also sometimes be found in the legal literature. This is what can be extracted, in a way, from the doctrine of Victor Hugo Pereira Gonçalves, according to which "The Marco Civil, in an unusual situation, determined that there is Brazilian competence to judge cases of protection of personal data in which the data is transferred on Brazilian servers, because data traffic, ultimately, is a technical procedure for transmitting or processing data. This way, if there is data traffic on Brazilian servers, the national law must be applied to judge and settle possible conflicts and legal and constitutional violations "(free translation). From this excerpt, it is clear that the first period seems to employ article 11 of the MCI to expressly assign adjudicatory jurisdiction to the Brazilian authority, but the second sentence allows for a more restrictive interpretation that can only imply compliance with Brazilian law. GONÇALVES, Victor Hugo Pereira. Marco Civil da Internet Comentado. 1ª edição. São Paulo: Atlas, 2017. p. 110. Such an uncertain interpretation can be extracted from the summary table of the main legal effects of the Marco Civil presented by Patrícia Peck Pinheiro in one of her texts. Article 11 of the MCI appears as having an effect of extraterritoriality in one of the categories, which can be interpreted as mere applicability of the legal text. However, article 11 (more specifically, its §§ 3 and 4) are mentioned as enunciating the "duty of law and Brazilian venue", also implying the competence to judge the demands by the Brazilian authority. PINHEIRO, Patrícia Peck. Abertura e colaboração como fundamentos do Marco Civil. In: LEITE, George Salomão; LEMOS, Ronaldo (Org.). *Marco Civil da Internet***.** São Paulo: Atlas, 2014. p. 95-96.

88 Article 266. The relations between the companies, the administrative structure of the group and the coordination or subordination of the administrators of the affiliated companies will be established in the group's convention, but each company will retain distinct personality and assets. BRASIL. Lei nº 6.404, de 15 de dezembro de 1976. Dispõe sobre as sociedades por ações. *Diário Oficial da União*. Brasília, 15 dez. 1976. Available at: <https://bit.ly/3cTR7BP>. Accessed on: 21 nov. 2018.

89 CASTRO, Marina Grimaldi de. "As definições de grupo econômico sob a ótica do direito societário e do direito concorrencial: entendimentos doutrinários e jurisprudenciais acerca da responsabilidade solidária entre seus componentes". p. 14-15.

90 CARVALHOSA, MODESTO DE S. BARROS. Comentários à lei de sociedades anônimas. Editora Saraiva, 2017. P. 117.

Listed below are the legal provisions that determine the extent of joint and several liability between companies of the same economic group:

a. In employment relations the companies of the same economic group respond jointly - Law number 13,467/17[91];

b. In case of economic offenses - Law number 12,529/117;

c. For Social Security purposes - Law number 8,212/91[92];

d. For the purpose of payment of tax in the event of effective participation in the chargeable event - Law number 5,172/66;

e. For the payment of fine for violation of articles. 10 and 11 of the Internet Bill of Rights - Law number 12,965 / 14.

4.3.2. Joint liability for data protection

Within the scope of this research, the most specific device that mentions joint and several liability is article 12, sole paragraph, of the Internet Bill of Rights:

> Article 12. Without prejudice to any other civil, criminal or administrative sanctions, the infringement of the rules set forth in articles 10 and 11 above are subject, in a case basis, to the following sanctions applied individually or cumulatively:
>
> I - a warning, which shall establish a deadline for the adoption of corrective measures;
>
> II - **fine of up to 10%** of the gross income of the economic group in Brazil in the last fiscal year, taxes excluded, considering the economic condition of the infractor, the principle of proportionality between the gravity of the breach and the size of the penalty;
>
> III - the temporary suspension of the activities that entail the events set forth in article 11; or
>
> IV - prohibition to execute the activities that entail the activities set forth in article 11.
>
> Sole paragraph. **In case of a foreign company, the subsidiary, branch, office or establishment located in the Country will be held jointly liable for the payment of the fine set forth in article 11**.

The interpretation of this provision allows two different conclusions: i) the possibility of joint liability of a national company that is part of a foreign economic group; or ii) its impossibility.

This variation occurs because the term 'office' is not legally conceptualized. Thus, an extensive understanding of the concept "office" can be applied and understood as any unit that may then be owned or owned by the foreign legal entity in a country other than its place of incorporation. In this case, the Brazilian company is jointly and severally liable for the payment of the fine for non-compliance with the foreign company's own obligation.

Still in favor of accountability, it can be considered, as already presented in

91 § 2o Whenever one or more companies, although each one has its own legal personality, are under the direction, control or administration of another, or even when, even though they each retain their autonomy, they are part of an economic group, they will be jointly and severally liable for the obligations arising from the employment relationship

92 Article 33. Companies or entities belonging to an economic group, in fact or by law, will be jointly liable, when at least one of them violates the economic order.

section 4.1.1, item "d", of this article, that the constitution of foreign affiliates in Brazil leads to a large bureaucratization[93]. For this reason, many foreign companies decide to set up wholly owned or majority owned subsidiaries - as it appears to all companies that are part of the disputes discussed in this paper.

These arguments in favor of joint liability can be understood as unfolding of the appearance theory, according to which "if related societies benefit from the acts performed by one of them, they shall all bear the costs of a possible conviction of compensation for damages caused to others."[94] Thus, even if a company only really belongs to an economic group, because it shares the financial results with others, it would be economically responsible for the obligations of any member of the group.

The extension of liability to comply with the obligation to the company established in Brazil may ultimately be justified by the intention to intensify two aspects of jurisdiction - prescriptive and adjudicatory. Thus, legal cooperation mechanisms and international treaties would be needed less frequently. However, that is not what determines at first sight articles 13 and 26 of the Code of Civil Procedure. They respectively determine, to the national judge, to resort to treaties and conventions to which Brazil is party to establish civil jurisdiction and to trigger mechanisms for international legal cooperation.

In contrast to the theoretical current of joint and several liability for damages caused as a result of internet activities and business, it may seem strange to require a fine to be paid by a company that has no technical means or means of fulfilling the original obligation, such as the delivery of data. In this sense, it is possible to understand article 12 of the MCI more narrowly.

A common argument on the part of foreign company subsidiaries, when treated as an extension of foreign company activities by the Brazilian judiciary, is that they are not responsible for the processing of internet application data provided by foreign companies.

Their functions in the domestic market, therefore, would be just to adjust the platform's advertising strategies, which allegedly meant that they would not even have the technical conditions to comply with court orders issued - which, as already reported, regards the protection or delivery of data held by the foreign parent company of the national one.

In this sense, the solidarity responsibility, conceptualized in an earlier moment of this study, is not something that can be assumed. As stated in article 265[95] Civil Code, the only situations in which solidarity can result are the force of the law or the will of the parties.

It cannot be assumed that the activity carried out by the company includes the processing of data on which the court order addressed to it - which may be under the sole control of another affiliate of the group.

93 FARION, Rafaela de Mattos. Sociedades Estrangeiras. 2004. 40 f. TCC (Graduação) - Curso de Direito, Ciências Jurídicas, Universidade Federal do Paraná, Curitiba, 2004. Available at: <https://bit.ly/3aI2lbb>. Accessed on: 26 out. 2018. p. 21-22.

94 CASTRO, Marina Grimaldi de. As definições de grupo econômico sob a ótica do direito societário e do direito concorrenciaL: entendimentos doutrinários e jurisprudenciais acerca da responsabilidade solidária entre seus componentes. **Direito e Economia I**. Florianópolis: CONPEDI, 2014. p. 17. Available at: <https://bit.ly/2KEgjjO>. Accessed on: 28 nov. 2018.

95 Article. 265. Solidarity is not presumed; results from the law or the will of the parties.

If solidarity is not presumed, for a company to be in the defendant in the processes analyzed, it is necessary that the data relevant to the production of evidence in the judicial process be processed by it in the performance of its activities. This is what can be extracted from article 19 of the Internet Bill of Rights, which restricts the liability of an application provider to the technical limits of the service provided. Therefore, it is necessary that the Brazilian company has refused to hand over to the judiciary or protect data under which it would have technical control, except for the exception presented in article12, as mentioned earlier in this topic.

This being the case, it is noted that not only the defendant company is domiciled in the national territory, but also that it is in Brazil that the obligation must be fulfilled. These are the requirements stated in the *caput* of article 12 of LINDB and in article 21 of the CPC, which justifies the election of the Brazilian forum for the resolution of the dispute. However, if it is not the Brazilian company that is responsible for complying with a court order, the legitimacy of the foreign company controlling the economic group remains to act in the passive pole of the process. The foreign company, which owns the servers on which the data relating to the internet application provided is stored - and therefore responsible for the processing of such data - may be the addressee of the court order issued by the Brazilian authority.

As already mentioned in the topic about jurisdiction, such cases involving foreign companies that perform activities on the internet are not exclusive to the Brazilian judiciary. In this sense, it is appropriate to add to the topic discussion raised from the case cited above Yahoo vs. LYCRA. In determining jurisdiction, applicable law or liability, it is not necessary to consider only the letter of the law, isolated from the context in which its effects take place. In that case, as well as in the judgments analyzed, it is clear that the head office operates in other countries through its local subsidiaries, which earn profits for the group.

While carrying out these activities and making a profit in foreign countries, the headquarters of the groups argue in court that they cannot be held responsible for the jurisdiction of the countries in which they operate, nor are they subject to its laws. This is a reality to which national judicial authorities have been responding coherently to, incorporating in the formal rule some principles. That is to say that the economic activity through relations with citizens of a given country, when a company major shareholder is a foreign company, implies its submission to local law and jurisdiction in order to safeguard the values it protects, democratically selected by those citizens and their representatives[96].

4.4. Enforcement of Brazilian decisions by foreign-based companies

Finally, the last jurisdictional dimension for which power over data and the activities carried out with them is enforcement jurisdiction, that is, the competence of the national authorities to oppose compliance with Brazilian decisions to the companies under consideration in this study.

In the first analysis, when there is the passive legitimacy of companies based in Brazil to comply with court orders, the competence of the national authority to enforce them is undisputed. This is because the installation of these companies in Brazil

96 REIDENBERG, Joel Yahoo and democracy on the internet. Jurimetrics. Primavera de 2002. p. 261-280. Available at: <https://bit.ly/2ScwJ7a>. Accessed on: 27 nov. 2018. p. 271, 278.

presupposes their submission to the Brazilian jurisdiction in all the dimensions that were addressed in the present study - that is, the laws, the jurisdiction and, finally, the police power of the national authority.

On the other hand, when the passive legitimacy to act in the process belongs to the foreign company controlling the economic group, the situation is reversed. Because they do not reside in Brazil, these companies are likely to be required by law and even the Brazilian court, but it is impracticable to submit a company registered and duly registered in a different country to the police power of the Brazilian authority. This is because this act would be a serious offense to the sovereignty of the country in question - one cannot imagine the Brazilian authority entering a territory over which it has no power to force a company to comply with a court order without resulting in negative consequences[97]. Because of this, Brazilian law points to international legal cooperation as a way of ensuring compliance with procedural acts for which the Brazilian authority has no competence.

4.4.1. International legal cooperation

Article 27[98] from the Code of Civil Procedure mentions cooperation for purposes ranging from the summons, subpoena and notification (both judicial and extrajudicial) of persons to the process to the ratification and enforcement of decisions, international legal assistance, among others.

In the terms of the article 26[99], also under the CPC, international legal cooperation should as a rule be governed by treaties - international legal cooperation agreements, also called MLATs[100]. Thus, these are the ideal way to enforce Brazilian judicial decisions in foreign territory. The correct procedure often involves submitting an application to the competent authority of the other country, under the jurisdiction of which the undertaking concerned, to grant *exequatur*[101] to this coercive act. This is also enunciated

97 As already mentioned in chapter 2.2, each State guarantees its respective powers to intervene in situations linked to its territories, as a rule. Thus, two principles of international law, the principle of non-intervention in matters of internal jurisdiction and sovereign equality, as provided for in article 2 of the UN Charter, prevent the Brazilian authority from coercing foreign agents in foreign territory: "Article 2. The Organization and its members, in order to achieve the purposes mentioned in Article 1, shall act in accordance with the following Principles: 1. The Organization is based on the principle of sovereign equality for all its members. [...] 7. No provision of this Charter shall authorize the United Nations to intervene in matters that essentially depend on the jurisdiction of any State or compel members to submit such matters to a settlement, under the terms of this Charter; this principle, however, will not prejudice the application of the coercive measures contained in Chapter VII." ORGANIZAÇÃO DAS NAÇÕES UNIDAS. Carta das nações unidas, 1945. Available at: <https://bit.ly/3eZRjS5>. Accessed on: 21 dec. 2018.

98 Article 27. International legal cooperation will have as its object: I - summons, subpoena and judicial and extrajudicial notification; II - collecting evidence and obtaining information; III - ratification and compliance with the decision; IV - granting of urgent judicial measure; V - international legal assistance; VI - any other judicial or extrajudicial measure not prohibited by Brazilian law.

99 Article 26. International legal cooperation will be governed by a treaty of which Brazil is a party and will observe: I - respect for the guarantees of due legal process in the requesting State; II - equal treatment between nationals and foreigners, whether or not they reside in Brazil, in relation to access to justice and the processing of cases, ensuring legal assistance to the needy; III - procedural advertising, except in cases of secrecy provided for in Brazilian law or in the requesting State; IV - the existence of a central authority for receiving and transmitting requests for cooperation; V - spontaneity in the transmission of information to foreign authorities. § 1 In the absence of a treaty, international legal cooperation may take place on the basis of reciprocity, expressed through diplomatic channels. § 2. The reciprocity referred to in § 1 will not be required for homologation of a foreign sentence. § 3. In international legal cooperation, the practice of acts that contradict or that produce results incompatible with the fundamental rules governing the Brazilian State will not be allowed. § 4 The Ministry of Justice will exercise the functions of central authority in the absence of specific designation.

100 Acronym for "Mutual Legal Assistance Treaties".

101 "The "exequatur" is a concept specific to private international law that designates the decision handed down by the court of a country and which allows the execution of a judicial decision, an arbitral award, an authentic instrument or

by the Law of Introduction to the Rules of Brazilian Law, in its article 12 (2).

It is true that, currently, the MLATs model is the target of several criticisms, among which stands out the length of the procedure involved in order to be fulfilled[102]. Probably with the intention of circumventing this delay for the execution of the foreign judgment - which in many cases may result in the ineffectiveness of the measure - the 2015 Brazilian Code of Civil Procedure also provided for the form of direct assistance for international legal cooperation.

Direct assistance consists of immediate communication between central authorities of the States, in cases of cooperation and judicial and administrative assistance, and other bodies that are responsible for the communication and fulfillment of such requests for cooperation[103]. Thus, the request is fulfilled without the need for a ruling on the appreciation by the authority of the requested State for legal cooperation made by the authorities of the other State.

It should also be pointed out that, as it involves the direct fulfillment of foreign demand, direct assistance must have its form of compliance detailed in international treaties and conventions. This means that, unless an MLAT specifically provides for the possibility of direct assistance for a kind of claim, the usual route of *exequatur* application by the requested State judicial authority should be employed.

In any case, international legal cooperation agreements are the most advisable means we have today for harmonizing jurisdictions between the various countries that coexist in the internet context.[104]. Whether by applying for foreign decision enforcement or by direct aid solution, when possible, the conclusion of MLATs among the multiple States inserted in the context of the internet represents the apparently most viable solution to overcome the challenges involved in the coexistence of this tool by several legal systems, subject to different regulatory models.

5. Conclusion

The intensification of transnational relations with the internet has also allowed new business arrangements. The activities of a company dealing with internet services or the online processing and transfer of digital data may be performed outside the country in which the holder is located and, consequently, outside the territory in which the jurisdiction over which he is located.

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a judicial transaction handed down abroad." COMISSÃO EUROPEIA, Glossário. Available at: <https://bit.ly/3f5Edmv>. Accessed on: 21 dec. 2018.

102 According to Fabrício Polido, this delay is due to the fact that the fulfillment of the necessary formalities for the fulfillment of MLATs occurs through analogue means, through notary instruments, in the presence of central authorities or liaison bodies. These communications, according to the author, are today challenged by the speed of communication and information flow and by the ubiquity of acts and facts practiced and occurred on the internet. POLIDO, Fabrício Bertini Pasquot. *Direito Internacional Privado nas Fronteiras do Trabalho e Tecnologias*: Ensaios e Narrativas na Era Digital. Rio de Janeiro: Lumens Juris, 2018. p. 86-88. IRIS has also discussed in more detail the advantages and disadvantages of adopting a model based on MLATs for international legal cooperation in the document it produced, under the status of Amicus Curiae, in contribution to the Declaratory Action for Constitutionality nº 51/2017. IRIS. *Sigilo Online, Investigações Criminais e Cooperação Internacional*: Contribuições para a ADC 51/2017. Belo Horizonte: IRIS, 2018. p. 21-25.

103 POLIDO, Fabrício B. P. *Fundamentos, estruturas e mecanismos da cooperação jurídica internacional e o Código de Processo Civil brasileiro*. In: Cooperação Jurídica Internacional. Revista dos Tribunais vol.990. Caderno Especial. Apr. 2018. p. 60-64.

104 The theme of international legal cooperation, containing a detailed discussion of MLATs, their advantages and disadvantages, was addressed in the text produced by IRIS in its contribution as Amicus curiae to Declaratory Action for Constitutionality nº 51/2017. The product can be accessed through the following link: <https://bit.ly/35eQoJ0>.

In view of this reality, when there is a pretense of protection over data processed by a service or platform on the internet, the company belonging to the group that is located in the applicant's country is triggered. However, the legal basis for the joint and several liability of the company located in a country other than its headquarters is not always clear. Considering this context, the judicial demands involving data protection by court order, when it comes to transnational economic group, were the object of the present study.

First, in order to provide input for the analysis, the legal provisions dealing with economic groups in Brazilian legislation were listed. Second, the peculiarities brought to private international law by these new forms of business organization were mentioned. The three dimensions of jurisdiction - prescriptive, adjudicatory and enforcement - were then examined in order to ascertain the provisions governing their definition in international law.

Having these concepts, it was conducted a survey of Brazilian judgments on the passive legitimacy of a company operating on the internet domiciled in Brazil and belonging to a foreign economic group. The collection of judgments showed that the decisions recognize the subsidiary's passive legitimacy, and five groups of reasons can be identified - based on i) the provisions of the Internet Bill of Rights about the joint and several liability of the subsidiary, branch, office or establishment in Brazil ; ii) in the appearance theory, according to which the economic group presents itself as parts of a legal entity with converging interests; iii) in consumer law, which argues that the costs of sending a letter of request or filing a demand abroad (where the head office would be located) would be prohibitive to the user interested in any data protection; iv) decisions that do not cite legal provisions or doctrine to support liability, referring to other decisions or assuming joint liability without justifying it, and within this group there is also a decision that does not assign joint liability, also without adequate reasoning; and v) a judgment that held that there was no possibility of liability of the subsidiary company for matters pertaining to technical activities of the head office, and the jurisdiction that would fall to this would be foreign, and the appropriate route would be international cooperation.

In a critical analysis of the founding groups for these decisions, we sought to compare and contrast the content of the judgments with the provisions and doctrine about jurisdiction and responsibility in the economic group. Some terminological inaccuracies have been identified with respect to the classification of a company domiciled in Brazil, such as the distinction between establishment, agency, affiliate, branch, head office or subsidiary - which occurs both in judgments and in legislation.

Due to these indefinitions, the concept of economic group was refined, which allowed us to characterize the various arrangements in which a foreign company may participate in the business field in Brazil, what types of operations that related companies may have and to what degree they are dependent or autonomous from their headquarters. It was presented as the law defines which is the legitimate state to exercise each of the jurisdictional dimensions in these cases. We sought to analyze the cases in which a foreign subsidiary or associate company may be jointly and severally liable to the group to which it belongs, based on the joint liability regulation applicable to this type of business arrangement.

It was concluded that, in the analyzed sample of judges, companies operating

in the area of services or internet applications domiciled in Brazil and belonging to a transnational group are subsidiaries. From research on the incorporation of a company in Brazil, it was realized that this is the most common corporate arrangement when it comes to foreign shareholders, due to the high bureaucratization for setting up an affiliate.

Analyzing the normative system, in order to constitute a subsidiary, it is necessary that the host company has a legal representative in Brazil with powers to receive judicial summons. This joint interpretation of article 21, of the Code of Civil Procedure, regarding the jurisdiction to judge a company that has an agency, affiliate or branch here, with the provision 119 of the Brazilian Corporation Law, which determines the need for a legal representative in Brazil to receive citations, is which allows the Brazilian adjudicatory jurisdiction over the head office that holds subsidiary in the country.

This normative logic may have, as a background, the imposition of greater responsibility to a foreign company that is a shareholder in the country, allowing for a procedural way to incur the adjudicatory jurisdiction, that is, the competence to sue and judge the foreign company by the Brazilian authorities. Excessive legalistic interpretation of article 21 of the CPC would lead to the need for processing of the headquarters by the authorities of their country, even if they were directly responsible, as a shareholder, for the activities of its subsidiary, as it is not an agency, affiliate or branch.

The conceptual system is also relevant to the prescriptive jurisdiction, since, starting from the same logic, and equating, for practical purposes, the subsidiary to the subsidiary, it was observed, by the provisions of the Law of Introduction to the Rules of Brazilian Law (LINDB), together with the Internet Bill of Rights, that these companies are subject to Brazilian law. However, MCI also gives rise to debate when it observes under the formal bias of the terms used, which would allow the subsidiary to be excluded from liability because there is no express mention of this corporate type when defining sanctions for breach of data protection or for noncompliance with a court order, in article 12 of that law.

Moreover, it is clear that only the “fine” sanction is applicable to corporate types located in Brazil, which denotes the economic character under which the provision was shaped. The other sanctions provided for in article 12 of the MCI, of a more practical nature, are not applicable to those companies over which the Brazilian judiciary is in fact enforceable when it comes to an activity performed by a foreign company of the same economic group.

Further research into this matter may be made in order to verify the motives of the model adopted by the Internet Bill of Rights that lead to the solidarity of a Brazilian company whose main shareholder is foreign not being recognized for application of practical sanctions. One hypothesis raised from the reading of the judgments would be that headquarters data processing activities do not always result in access or sharing, with the subsidiary or affiliate in Brazil, of all data held by foreign headquarters. Thus, this argument can be used to prevent sanctions on the operation of the company in Brazil in cases of infringement by foreign headquarters.

Regarding enforcement jurisdiction, it is noted that in this dimension is the greatest importance of international legal cooperation. This is because some coercive measures against a foreign company will only take effect if practiced by authorities of

the place where it is established (for example, seizure of property or search and seizure). Thus, although the Brazilian authorities are competent to judge and apply their own laws regarding actions involving foreign headquarters of a transnational economic group, as it is a shareholder and controls activities in Brazil, some measures are beyond the territoriality under which the Brazilian authorities have power. Only economic sanctions on the subsidiary located in Brazil may not be sufficient as a coercive or effective act of judicial protection.

Transnationality of service and business relations, intensified by the internet services market, requires in-depth study of the territorial and extraterritorial relationships of jurisdiction. The execution of acts by an authority in a country other than that in which it has sovereignty is only possible through cooperation with foreign authorities. In this sense, international law, with its instruments of cooperation, is what gives meaning to the judicial process involving international economic groups, by enabling the protection of rights to be effectively enforced after the judicial process with attribution of legal consequences, even in the face of complex business arrangements that are held under multiple jurisdictions.

Excessive focus on a punitive view of the local enterprise, or attempting to exercise full authority locally, can lead to ineffectiveness of law and court procedure. The application of purely economic sanctions to subsidiary companies, that is, with lower concentration of the group's finances, can be innocuous before the mechanisms of remote operation of the foreign headquarters. The answer to problems arising from the context of transnational action of private entities requires the displacement of some functions previously considered as State-owned in the international context, making it necessary for countries to act jointly in order to maintain their sovereignty.

The analysis of judgments that was undertaken represents, however, only an exploratory research on the subject. In order to obtain a broader picture of the attribution of responsibility to subsidiary companies, more focused studies on the dynamics between the legal and the economic worlds can be carried out, checking the reflexes of the treatment given to the action and formation of the economic groups. Just as the subsidiary companies arise to economically solve the legal problem posed by the regulation that required authorization to establish an affiliate company, the liability of the subsidiary may generate new business practices. Investigating whether it is in the interest of companies to have this accountability and focus on the economic aspect by implementing local fines rather than seeking effective tutelage at headquarters can reveal new background to the discussion.

Another possibility is to observe what are the cultural results of this judicial action, checking its observance not only to the letter of the law, but to the principles underlying it. Investigating whether there would be a tendency for economic groups to avoid responsibility for the rights of the local population, while expanding global action, is another interesting possible development from what has been presented here. It should also be recognized that the Brazilian judicial discussion on the subject lacks this contextual perception. The reflections pointed out in the judgments go beyond an interpretation of the principles protected by the legislation or the debate that involves joint liability in a business group. This points to the need for further study on this reality, and continuous monitoring of judicial adaptations related to it.

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7. Appendix: Table of decisions

Group	Application provider	Case	Court
Consumer protection	Facebook Serviços Online do Brasil	RECURSO EM MANDADO DE SEGURANÇA Nº 54.105 - RS	STJ
Consumer protection	Google Brasil Internet Ltda.	AI 2174916-23.2016.8.26.0000	TJSP
Consumer protection	Facebook Serviços Online do Brasil	Apelação 1121734-04.2014.8.26.0100	TJSP
Consumer protection	Facebook Serviços Online do Brasil	Apelação Cível 70074881327	TJRS
Consumer protection	Google Brasil Internet Ltda.	AI 2067382-54.2015.8.26.000	TJSP
Consumer protection	Microsoft Informática Ltda.	Apelação 1125792-16.2015.8.26.0100	TJSP
Consumer protection	Facebook Serviços Online do Brasil	Apelação Cível 70076172949	TJRS
Consumer protection	Facebook Serviços Online do Brasil	Apelação 1036686-09.2016.8.26.0100	TJSP
Generic legal ground	Facebook Serviços Online do Brasil	MS 0000386-92.2017.8.08.9101	TJES
Generic legal ground	Facebook Serviços Online do Brasil	AI 2108924-18.2016.8.26.0000	TJSP
Generic legal ground	Amazon Serviços de Varejo do Brasil Ltda.	AI 2212356-19.2017.8.26.0000	TJSP
Generic legal ground	Facebook Serviços Online do Brasil	Apelação 1020992-71.2014.8.26.0196	TJSP
Generic legal ground	Facebook Serviços Online do Brasil	MS 20170090317	TJRN
Generic legal ground, but doesn't grant legitimacy	Facebook Serviços Online do Brasil	AI 2219128-03.2014.8.26.0000	TJSP
MCI article 11	Facebook Serviços Online do Brasil	AI 2184235-15.2016.8.26.0000	TJ-SP
MCI article 11	Yahoo do Brasil Internet Ltda.	Apelação 0001824-63.2015.8.26.0294	TJ-SP
MCI article 11	Google Brasil Internet Ltda.	Apelação 1081911-23.2014.8.26.0100	TJ-SP

MCI article 11	Google Brasil Internet Ltda.	AI 70073908113 RS	TJ-RS
MCI article 11	Facebook Serviços Online do Brasil	AI 2238767-02.2017.8.26.0000	TJSP
MCI article 11	Facebook Serviços Online do Brasil	RECURSO EM MANDADO DE SEGURANÇA Nº 55.344 - RJ	STJ
MCI article 11	Yahoo do Brasil Internet Ltda.	AI 2121521-19.2016.8.26.0000	TJSP
MCI article 11	Google Brasil Internet Ltda.	MS 2008.04.00.035390-4/ PR	TRF-4
MCI article 11	Twitter Brasil Rede de Informação Ltda.	AI 2138997-36.2017.8.26.0000	TJSP
MCI article 11	Facebook Serviços Online do Brasil	AI 2099759-10.2017.8.26.0000	TJSP
MCI article 11	Google Brasil Internet Ltda.	MS 4020797-90.2017.8.24.0000	TJSC
MLAT	Facebook Serviços Online do Brasil	MS 13963654 PR Crime 1.396.365-4	TJPR
Appearance theory	Google Brasil Internet Ltda.	AI 2102739-61.2016.8.26.0000	TJ-SP
Appearance theory	Facebook Serviços Online do Brasil	Apelação Cível 70076907690	TJRS