



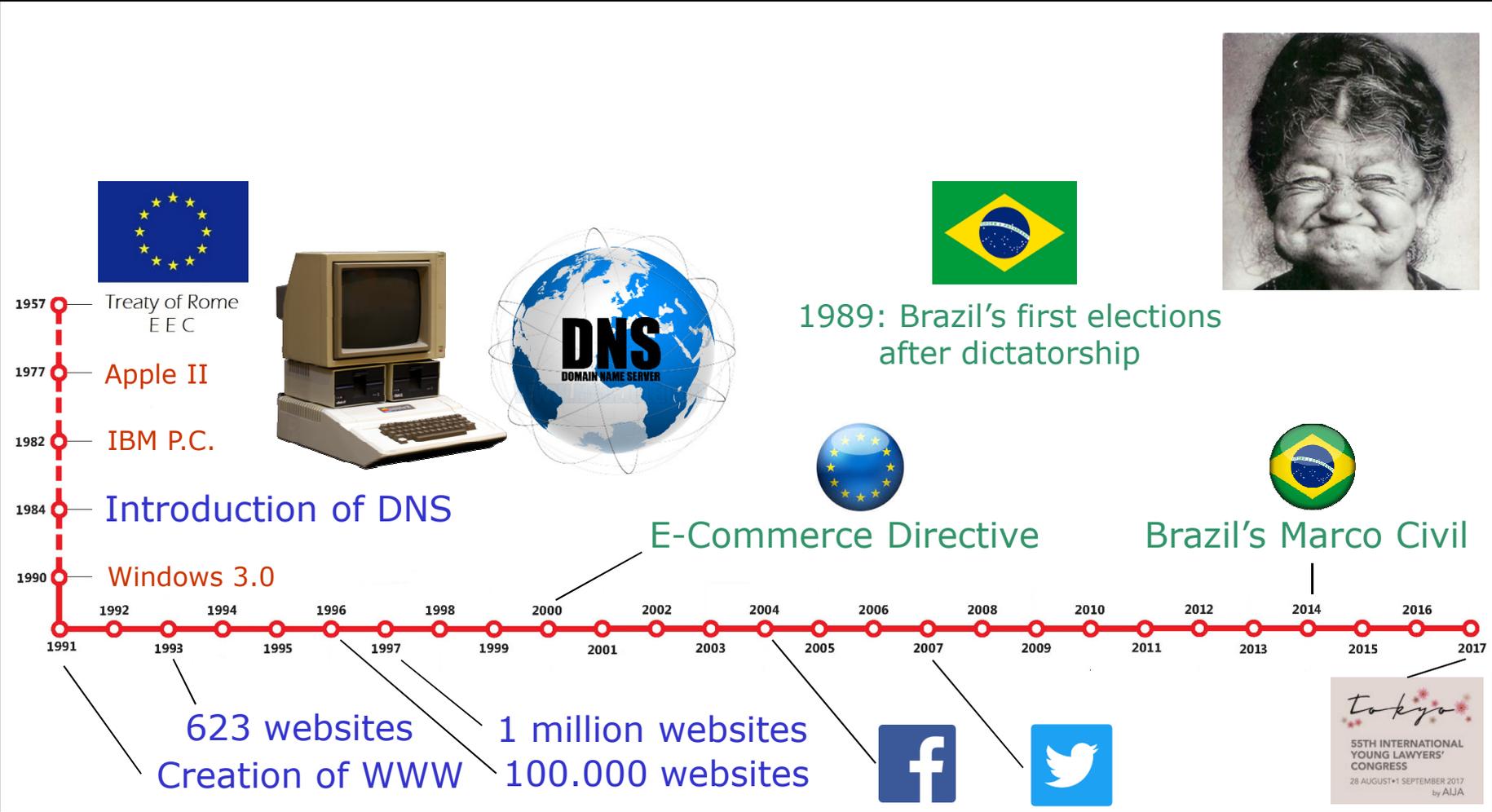
# Liability of Service Providers

## Introduction

Dublin, 31 March 2017

Sergio Calderara

# E-Commerce Directive 2000/31/EC: an old Lady ?



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

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# EU vs Brazil



## E-commerce directive (2000/31/EC)

- Focus: e-commerce (free movement)

(«This Directive seeks to contribute to the proper functioning of the internal market by **ensuring the free movement of information society services** between the Member States. »)

- Article 15: No general obligation to monitor

*Mere Conduit*

Caching



## Marco Civil

(Law 12.965 of 23 April 2014)

- Focus: constitutional rights

(«This Law establishes **principles, guarantees, rights and obligations** for the use of the internet in Brazil»)

- Article 18: The provider of connection to internet shall not be liable for civil damages resulting from content generated by third parties.

(Mere Conduit principle)

# A quick glance at some Brazilian case law

- Superior Court of Justice, Orkut (Google Brasil Internet LTDA), Special Appeal No. 1512647/MG (2013/01628832), May 13, 2015 *[copyright, hosting provider, Orkut, user generated content, linking]*
- Superior Court of Justice, Fourth Panel, Google Brazil v. Dafra, Special Appeal No. 1306157/SP, March 24, 2014 *[copyright, video-sharing, You Tube, technical capability, takedown, precise indication of URL]*
- Superior Electoral Court, Twitter Brazil, Special Electoral Appeal No. 7464.2012.6.20.0003 September 12, 2013 *[electoral propaganda, free speech and intellectual liberty, social network, Twitter]*
- Superior Court of Justice, Third Panel, Google Brazil, Special Appeal No. 1323754/RJ, August 28, 2012 *[social network, Orkut, moral damages, personal offense, notice and takedown]*
- Superior Court of Brazil, Civil, Google Brasil Internet Ltda. vs. Maria da Graça Xuxa Meneghel, Special Appeal No. 1.316.921 RJ (2011/6), June 30, 2012  
*[Civil and Consumer law. Internet. Consumer relations. Applicability of the Consumer Protection and Defense code. Irrelevance of gratuity service. Internet search engine, Lack of necessity to prior filtering of the searches. Non applicability of restrictions to results. Public content. Right of information.]*
- Superior Court of Brazil, Civil, Google Brasil Internet LTDA, Special Appeal No. 1.186.616 – MG (2010/00512263), August 31, 2011  
*[Civil and Consumer law. Internet. Consumer relations. Applicability of the Consumer Protection and Defense Code. Irrelevance of gratuity of service. Internet Content Provider. Lack of duty of prior fiscalization of user generated content. Offensive content warning. Lack of inherent risk to the enterprise. Duty of immediate takedown upon knowledge of infringing material. Duty of identification of every user. Sufficiency of IP number.]*
- THE WHATSAPP CASES



# The application of Directive 2000/31/EC in Italy:

## Picking up some (non-exhaustive) examples of case law

### Protection of Copyright

(repression of online piracy)

- Yahoo/About Elly (Court of Rome 20/03/2011 and 11/07/2011)
- Various RTI decisions (vs Google, vs Italiaonline, vs, Yahoo )



Resolution 680/13/CONS of 12/12/2013

### Freedom of Expression

(protection from defamation)

- Google Suggest Cases (Court of Milan 24/03/2011 and 25/03/2013, Court of Pinerolo 30/04/2012, Court of Florence 25/05/2012)
- Yahoo Answers (Court of Bologna 11/08/2011)

(as well as Google Vividown, below)

#### Art. 700

of the Italian Civil  
Procedure Code  
(*interim measures*)

### Personal Data Prot.

- Google/Vividown (Court of Milan 24/02/2010, Court of Appeal of Milan 21/12/2012, Court of Cassation 17/12/2013 (n. 5107/14, 3° Section))



Other topics such as  
Right to be forgotten:  
ECJ C-131-12 – Google Spain  
Court of Rome 03/12/2015

# Observations on the E-Commerce Directive

- ❑ It was enacted for e-commerce but has constituted a valid point of reference for Case law.
- ❑ EU approach («bringing down barriers to unlock online opportunities» - DIGITAL SINGLE MARKET strategy)



## ❑ Time for a reform...?

- Lack of any reference to third party content aggregators, social networks and search engines;
- uniform criteria in relation to the liability and relevant sanctions should be established;
- A principle of effective legal knowledge of unlawful acts should also be inserted;
- Removal procedures of illegal digital content (notice + take down) to be added.
- Liability exemption for passive ISPs executing removal of unlawful digital content is necessary, as now the removal is illicit.



# Thank you

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