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Essays on Neutrality, Identity, and the Regulation of the Information Environment

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On the Arrest of Google's Head in Brazil

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As you may know by now, Mr Fabio Coelho, the head of Google Brazil, has been arrested in connection with Google's Youtube service in Brazil.

The reason of the arrest was not Google's conscious and deliberate hosting of content that infringes the laws legitimately and democratically passed by the Congress of Brazil — though Google was indeed consciously and deliberately hosting content that infringes such laws. The reason of the arrest was not even Google's misinterpretation of such laws, for Google knows very well what they say.

The reason of the arrest was, simply, **contempt of court** — which, in electoral matters (as was the case), dealt with by the Federal courts of Brazil, carries the sanction of imprisonment. In the end, a challenge to the electoral courts — and to the electoral laws — of Brazil is a direct challenge to Brazilian democracy itself.

Google felt that both the electoral Magistrate and then the High Electoral Court of the State of Mato Grosso do Sul had interpreted the law wrongly, for Google trusts it has no liability whatsoever for the content it — even deliberately — hosts.

In fact, Google also thinks the Brazilian High Court of Justice itself interprets the laws of Brazil wrongly, for that Court has been consistently deciding that an Online Service Provider ought to take illegal content down in 24 hours from the moment it has actual knowledge of the existence of such content.

Actual knowledge is deemed to arise from a simple notice by the victim or by a third party. Let alone by a court order.

Contempt of court in other matters (non-electoral ones) does not generally carry the sanction of imprisonment. However, the conscious hosting of content that infringes the criminal laws of Brazil — for instance, child pornography — can of course motivate imprisonment as well.

The arrest episode does highlight that Brazil has an overly restrictive regime of protection of reputation (defamation, for instance, is a crime in Brazil) and even more restrictive electoral laws. This is indisputable.

Bad though these regimes may be, however, the fact remains that:

(a) As a matter of principle, Google violates 31% of all court orders in Brazil in full, and more than that in full or in part.

In other words, Google believes it has the authority to decide whether the judicial institutions of a democratic state are working properly or not — and to make its views prevail, *manu militari*, if it thinks they are not.

As [recently stated](#) by Google's Director of Public Policy for Brazil: "Google always evaluates whether court orders are within the letter and the spirit of the law". Of course, in part Google does that to assess whether it should appeal such decisions, which is fair enough. As the numbers above show, however, Google also evaluates whether those decisions match Google's views of what the letter and the spirit of the law should be — and resorts to its own modes of informational enforcement to make its views prevail.

(b) Google is lobbying stakeholders across the board in Brazil, in that same auspicious fashion [reported by Der Spiegel](#), to establish a regime of impunity for its **conscious,**

About

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even deliberate hosting of content that violates the laws of Brazil — including content that violates privacy rights, children's rights, rights against sexual discrimination, you name it.

In all its laxity, that is a regime that finds no parallel in the world and whose implications I have explored in detail [here](#) and in even more detail [here](#).

(c) given its timing, it is fair to conclude the arrest was a move calculated by Google itself to influence the outcome of the legislative process (of the so-called "Marco Civil da Internet") where this regime of impunity is being proposed.

Google has also taken other extreme measures recently in the context of that legislative process, such as explicitly suggesting that the principle of [network neutrality be outright removed from the Bill](#) in discussion — a move that was a conspicuous betrayal of the congressman Google had until then been supporting, probably motivated by despair as the process that would endow Google with the gift of impunity seemed to be stalling, in part because of the network neutrality issue.

(d) Google's move comes just as the Federal Prosecutorial Service of Brazil, an extremely respected institution that protects the interests of Brazilian society on matters ranging from environmental rights to children's rights — besides, of course, its criminal prosecutorial role —, has released a [note opposing the liability regime](#) that Google wishes to see approved.

At stake in all that is not really whether freedom of expression is being violated by the Brazilian courts or not.

What is at stake is whether the democratically elected officials of a country should bow to the normative, ideological impositions of a foreign monopoly — and a monopoly of a dangerously unprecedented sort; a never reached but always closer [monopoly over the means of construction of meaning itself; a semiotic monopoly](#), which the stories both in [Germany](#) and in Brazil, on the whole, beyond a decontextualised arrest, only render more evident.

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