

A call to the Brazilian Supreme Court to recognize the importance of encryption in safeguarding fundamental rights – Global Encryption Coalition

GEC admin -- 06-06-2023

On 6 June, academic and civil society organizations from all over the globe make urgent plea to the Federal Supreme Court of Brazil: Protect fundamental rights by acknowledging encryption's critical value in protecting privacy and freedom of expression, especially for vulnerable groups.

The Federal Supreme Court of Brazil is set to resume the trial for constitutional cases ADPF 403 and ADI 5527. These cases involve the question of whether court orders issued to block the use of an application as a penalty for noncompliance with wiretapping orders are constitutional. The outcome of these cases holds significant implications as it may also address the validity of end-to-end encryption, thereby impacting people's ability to communicate privately and securely in the country. The repercussions of such a decision would extend beyond Brazil to Latin America and the rest of the world.

When the trial commenced in 2020, Justices Fachin and Weber, who serve as the rapporteurs for these cases, recognized the vital importance of encryption. They acknowledged that encryption is a critical tool in maintaining confidentiality, anonymity, and safeguarding a range of human rights, including privacy, freedom of opinion and expression, and freedom of peaceful assembly and association. This recognition aligns with the positions taken by various human rights authorities, such as UN organs (see references [here](#), [here](#) and [here](#)).

Encryption is a technology relied upon by millions of users worldwide to establish private, secure, and safe connections. Its significance is particularly pronounced for journalists, human rights defenders, activists, and vulnerable groups. Encryption-based communication is essential in protecting sources, enabling these individuals to fulfill their missions, and ensuring the public's right to be informed and access information. Undermining it would not only harm fundamental rights, but it would make it easier for criminals and other malicious actors to violate the data and communications of millions.

Therefore, we urgently appeal to the honorable Justices of the Brazilian Federal Supreme Court to consider the following actions:

1. Declare the constitutionality of end-to-end encryption, as advocated by the rapporteurs, who recognize it as a "means to ensure the protection of rights that are essential for public life in a democratic society" (Justice Edson Fachin).

2. Recognize that it is unconstitutional to block a private messaging platform due to the technical impossibility of providing the content of encrypted messages as “the State cannot compel an application to provide a service in a less secure manner under the pretext of using that vulnerability to access data in criminal investigations” (Justice Rosa Weber).

By taking these measures, the Federal Supreme Court Justices will play a crucial role in safeguarding the fundamental rights of individuals, ensuring privacy, and upholding democratic principles. We urge the Court to lead the way in protecting encryption as a vital tool for secure and confidential communication.

Signed*

IRIS – Institute for Research on Internet and Society

ISOC Brazil – Brazilian Chapter of the Internet Society

CIPESA- Collaboration on International ICT Policy for East and Southern Africa

International Press Institute

The Tor Project

Center for Democracy & Technology

Fight for the Future

Global Partners Digital

Internet Society

Internet Freedom Foundation

DNS Global Initiatives

DNS Africa Media and Communications

Myntex Inc.

IP.rec – Law and Technology Research Institute of Recife

KOBOKINGs Limited

Cornerstone Broadcasting Media

Fundación Karisma

AC-LAC – Alliance for Encryption in Latin America and the Caribbean

CETYS (UESA – Universidad de San Andrés- Argentina)

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