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DON'T SHOOT THE MESSENGER: CIVIL LIABILITY FOR ISPs AFTER *VIRGINIA DA CUNHA V. YAHOO! ARGENTINA & GOOGLE INC.*

*Julieta Andrea Grinffiel**

I. INTRODUCTION

ON August 13, 2010, the National Court of Civil Appeals of Argentina (Cámara Nacional de la Apelaciones en lo Civil de la Capital Federal) reversed a 2009 lower court ruling that previously placed civil liability on Google Inc. and Yahoo! Argentina for the illicit content found through their search engines.¹ The issue that this appeal sought to resolve was whether Internet Service Providers (ISPs), such as Google and Yahoo!, could be found civilly liable for the illicit content created by third parties.² In a 2-1 decision, the National Court of Civil Appeals declared that an ISP could be civilly liable for the contents of a third party only if it had knowledge of the illegal content and failed to take appropriate action.³ The decision left the injured party, Virginia da Cunha, with the option of either bringing the illegal content to the attention of the search engines so that it could be properly removed, or bringing suit against the third party websites, many of which were created anonymously.⁴

Virginia da Cunha brought a civil suit against the two juggernauts, Google Inc. and Yahoo! Argentina, in 2009 after she realized that when her name was entered into their search engines, her image and her name, neither of which she authorized to be used, would be included in websites that contained “sexual, erotic, and pornographic content.”⁵ Virginia da Cunha, relying on her right to privacy⁶ and right to dignity and honor,⁷

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1. Cámara Nacional de la Apelaciones en lo Civil de la Capital Federal [CNCiv.], 13/8/2010, “D.C., V. c/Yahoo de Argentina SRL y Otros/Daños y Perjuicios,” La Ley [L.L.] (2010-E-107) (Arg.) at 2-3, *available at* http://www.diariojudicial.com.ar/documentos/Agosto2010/Bandana_Google_Yahoo.pdf [hereinafter *Da Cunha*].

2. *Id.* at 7.

3. *Id.* at 16, 19.

4. *Id.* at 22-23.

5. *Id.* at 2.

6. CONST. ARG. art. 19.

7. American Convention on Human Rights art. 11, Nov. 22, 1969, No.17955.

demanded that Google and Yahoo! not only remove the damaging links and images, but also compensate her for the moral damage she suffered.⁸ The defendants insisted that they were simply offering information on existing third-party websites and had no control over what information was posted on the Internet, thus the legal action should have been brought against those third-party websites instead.⁹ This paper will analyze the judges' holdings first by providing the legal background of Argentina's judicial system and the laws that govern the case (Part II), then it will compare the analyses of the majority and the minority (Part III-A and III-B), and finally conclude with a discussion of the future implications that will arise out of this holding (Part III-C) that will undoubtedly tilt the scale in favor of broader freedom of expression at the expense of citizens' individual rights.

II. LEGAL BACKGROUND

The key legal issue in this case was whether Google Inc. and Yahoo! Argentina could be held civilly liable for their search engines' abilities to access and display third-party websites and, therefore, link Virginia da Cunha's "identity, image, and name"¹⁰ to those websites' "sexual, erotic, and pornographic"¹¹ contents, resulting in the violation of her "highly personal rights"¹² under Argentine law.¹³ Argentina recognizes the right to freedom of expression,¹⁴ an individual's right to privacy,¹⁵ and the right to his or her image,¹⁶ while providing moral damages when those rights are violated.¹⁷ To better understand the analysis of the majority and the minority, a brief overview into the Argentine legal system and the applicable laws that govern the abovementioned rights is required.

A. THE ARGENTINE JUDICIAL SYSTEM

Argentina is a civil law nation and as such, protection of certain rights is found in the expansive set of rules that have developed through the years by way of court interpretation of several statutes.¹⁸ Part of Argentina's civil law tradition culminates in the infrequent application of stare

8. Virginia Simari, *Primera condena a buscador por uso no autorizado de imágenes* [First sentence for the search for an unauthorized use of images], HABEAS-DATA.ORG, 30 de julio de 2009, available at http://www.habeasdata.org/wp/2009/07/30/fallo_da_cunha_v_yahoo/.

9. *Da Cunha*, La Ley [L.L.] (2010-E-107) at 3.

10. *Id.* at 7.

11. *Id.* at 2.

12. Guillermo Cabanellas, *The Right of Publicity Under Argentine Law*, 18 LOY. L.A. ENT. L.J. 449, 451 (1998).

13. CONST. ARG. art. 19.

14. American Convention on Human Rights art. 13, Nov. 22, 1969, No.17955.

15. CONST. ARG. art. 19.

16. Law No. 11,723, art. 31, Sept. 28, 1933 [1920-1940] A.D.L.A. 443 (Arg.), available at http://www.uacopi.org.ar/files/ley_11723.pdf.

17. Cód. Civ. [CIVIL CODE] art. 1078 (Arg.), available at http://www.justiniano.com/codigos_juridicos/codigo_civil/libro2_secc2_titulo7a19.htm.

18. Cabanellas, *supra* note 12, at 449.

decisive because courts are not required to follow court precedent and are only required to follow the laws passed by the legislature.¹⁹ This in turn causes the judges to create a myriad of guidelines that apply to narrow, fact-specific legal questions.²⁰ According to Article 31 of the Argentine Constitution, the only binding decisions are those decided by the Supreme Court (Corte Suprema de Justicia de la Nación) as the final interpreter of the law.²¹ The Argentine courts can contradict even their own precedents as long as the analysis or the decision itself is not arbitrary or incoherent.²² In this instance, the judges of this court had to follow laws divided into two categories: those that protect the freedom of expression and those that protect against the unlawful and unauthorized use of an individual's image and provide for damages to the injured party.²³

B. THE MAJORITY VOTE

Two of the three judges, Judge Patricia Barbieri and Judge Ana Maria R. Brilla de Serrat, agreed with the appellants in this action and freed them from liability.²⁴ First, the judges established that though there is no legal standard for the specific regulation of ISPs,²⁵ freedom of expression extends to the Internet and has the same considerations as other forms of social communication.²⁶ The judges then stated that if the press exceeds the proper limits of its freedom to inform, it incurs civil responsibility for the abuse of that right.²⁷ The judges then equated the ISPs' responsibility to that of the press and applied the same standards that regulate its civil responsibility.²⁸

When the press abuses its freedom of expression, it can be held either objectively or subjectively responsible.²⁹ It can be objectively responsible and liable for the damages incurred by a third party under its control or authority³⁰ from the theory that the primary party created the risk that led to the resulting damage.³¹ Alternatively, a party can be deemed subjectively responsible if it performs an action that, through either fault or negligence, causes an injury.³² Before determining which law governed this case, Judge Barbieri first outlined the three types of ISPs that exist:

19. Alberto Garay, *Federalism, the Judiciary, and Constitutional Adjudication in Argentina: A Comparison with the U.S. Constitutional Model*, 22 U. MIAMI INTER-AM. L. REV. 161, 186 (1991).

20. Cabanellas, *supra* note 12, at 449.

21. CONST. ARG. art. 31; Garay, *supra* note 19, at 198.

22. COD. PROC. CIV. Y COM. [CIVIL AND COMMERCIAL PROCEDURE CODE] art. 34, cl. 4. (1988) (Arg.).

23. *Da Cunha*, La Ley [L.L.] (2010-E-107) at 7.

24. *Id.* at 23-24.

25. *Id.* at 7.

26. *Id.*; Decreto 1279/97, Nov. 25, 1997 B.O., 1, available at http://www.abgra.org.ar/documentos/pdf/Internet_Dec_1279.pdf.

27. *Da Cunha*, La Ley [L.L.] (2010-E-107) at 10.

28. *Id.* at 8.

29. *Id.* at 12.

30. COD. CIV. [CIVIL CODE] art. 1113 (Arg.).

31. *Da Cunha*, La Ley [L.L.] (2010-E-107) at 12.

32. COD. CIV. [CIVIL CODE] art. 1109 (Arg.).

(1) Internet access providers, such as “Dial-up, Edge, ADSL, [or] Cable m[o]dem,”³³ (2) hosting service providers that store and publish content online for clients, and (3) search engines that locate content on the Internet based on search parameters defined by the user.³⁴ After determining that Google Inc. and Yahoo! Argentina belong to the third category,³⁵ Judge Barbieri held that the appellants could only be subjectively responsible because the content that the search engines displayed was not created, edited, or uploaded onto the network by them.³⁶

Article 1109 of the Argentine Civil Code, when read in conjunction with Article 512, places responsibility upon a party when a failure to act, or an omission, results in a damage.³⁷ Therefore, the question arose as to what the appellants actually did or failed to do that created their liability in this suit.³⁸ Judge Barbieri reminded the court that the appellants were not responsible for the illegal content and that even the expert witness in the lower court confirmed that anonymous third parties uploaded the illegal content.³⁹ Further, by making the distinction between the search engines and the Internet access providers, Judge Barbieri stated that if any party should be liable for the harm to the actress, it should be the service operators because they are in the position to upload the material onto the network, know the identities of their clients, and exercise vigilance and control over their domains to make sure that nothing illegal is posted on the Internet.⁴⁰ With regard to the omission, Judge Barbieri stated that preceding any civil liability, the search engines must have *known* about the illegal content and must have subsequently failed to take the appropriate action that would eliminate that content or end the culpable party’s activity.⁴¹ Quoting Fernando Tomeo, Judge Barbieri states that if the social network was not notified of the illegality, it cannot be responsible for them *even if* those contents can be found on its own website.⁴² To hold otherwise would place an undue burden on that social network to monitor and moderate millions of websites, images, commentaries, and opinions that might be found on the Internet.⁴³

Judge Barbieri considered U.S., European, and Spanish law in determining that ISPs are immune from liability for the illegal content third parties publish.⁴⁴ Judge Barbieri pointed to the U.S. Communications

33. *Da Cunha*, La Ley [L.L.] (2010-E-107) at 13.

34. *Id.*

35. *Id.* at 14.

36. *Id.*

37. Cód. Civ. [CIVIL CODE] arts. 512, 1109 (Arg.).

38. *Da Cunha*, La Ley [L.L.] (2010-E-107) at 16.

39. *Id.*

40. *Id.* at 17.

41. *Id.* at 19.

42. *Da Cunha*, La Ley [L.L.] (2010-E-107) at 19 (citing Fernando Tomeo, *Las Redes Sociales y su Régimen de Responsabilidad Civil* (2009), available at <http://www.aftabogados.com.ar/pdf/LAS%20REDES%20SOCIALES%20Y%20SU%20REGIMEN%20DE%20RESPONSABILIDAD%20CIVIL.pdf>).

43. *Id.*

44. *Da Cunha*, La Ley [L.L.] (2010-E-107) at 20-21.

Decency Act of 2006 that states that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”⁴⁵ She also referenced Directive 2000/31/EC of the European Parliament and of the Council that states that a service provider is not liable when transmitting a communication so long as the provider (1) does not originate the transmission, (2) does not select the beneficiary of the transmission, and (3) does not change or choose the information contained within the transmission.⁴⁶ Article 15 of this directive further provides that member states are barred from obligating ISPs to monitor the information that they transmit, though the member states have the option of establishing a duty upon the ISPs to inform the proper authorities about existing illegal content.⁴⁷ Finally, Judge Barbieri cited a more conservative Spanish law that places more responsibility on the ISPs to act with due diligence in either the elimination of, or limited access to, illegal content to avoid liability for the actions of a third party.⁴⁸

Before rendering her final vote in support of the appellants, Judge Barbieri specifically mentioned Google’s terms and conditions.⁴⁹ The terms and conditions explicitly state that the information that a user receives through the use of Google’s search engine is the sole responsibility of the person who created it, that Google responds to notifications of alleged violations of authorship rights in accordance with the international intellectual property law, and that Google reserves the right to cancel the accounts of repeat offenders.⁵⁰ Using the law cited throughout her opinion and the terms and conditions that Google already has in place, Judge Barbieri stated that the only options available to Virginia da Cunha for her injuries are either to contact Google herself and give them the names of the websites that contain the illegal content, or bring the creators of the websites themselves to court.⁵¹

C. THE DISSENT

The dissenting vote in this case offers insight into the intricacy of the decision. Judge Diego C. Sanchez began by stating that freedom of expression, as a characteristic of a free society, is important, but he also cited the American Convention on Human Rights that protects every individual’s right to honor and dignity.⁵² Although he champions the prohibition of prior censorship, he realized that there are certain limits to

45. 47 U.S.C. § 230 (2010); *Da Cunha*, La Ley [L.L.] (2010-E-107) at 20.

46. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000, art. 12, 2000 O.J. (L 178), *available at* http://www.ebu.ch/CMSImages/en/leg_ref_ec_directive_e_commerce_080600_tcm6-4338.pdf.

47. *Id.* art. 15.

48. Servicios de la Sociedad de la Información y de Comercio Electrónico art. 17 (B.O.E. 2002, 34).

49. *Da Cunha*, La Ley [L.L.] (2010-E-107) at 22.

50. *Id.*

51. *Id.* at 22-23.

52. American Convention on Human Rights art. 11, Nov. 22, 1969, No.17955.

one's freedom of expression.⁵³ According to Judge Sanchez, the primary role of these search engines is to facilitate a user's access to different Internet websites through programs designed by humans that select and order a search and then display findings based on their defined parameters.⁵⁴ Although the majority argued that the search results are a function of the user's input,⁵⁵ Judge Sanchez demonstrated how the search engines' algorithms determine what websites and what links are presented to the user; and, because of their abilities to prevent results that contain certain words from surfacing on the results displayed, he further demonstrated that the search engines are in the ideal position to prevent any eventual injury.⁵⁶ The heart of Judge Sanchez's argument was that the search engines put themselves in the position of displaying all suggested results, in accordance with the user's input and the system's algorithms, and once the damaging content is displayed, the search engines become the cause of the injury.⁵⁷

Judge Sanchez followed the logic of Judge Barbieri and Judge Serrat, conceding that an ISP is only liable when it has knowledge of the damaging and illegal content, but still found the ISPs liable.⁵⁸ He pointed out that Google Inc. was notified of Virginia da Cunha's suit against it and Yahoo! in 2006 and yet the damaging content, both links and images, was accessible through the search engine website until the beginning of 2010 through the date of the decision, over three years after being notified of the illegal content.⁵⁹ Accordingly, Judge Sanchez found such inaction relevant to liability and ultimately intolerable.⁶⁰

III. THE FUTURE IMPLICATIONS

As stated earlier, due to Argentina's civil law tradition, courts do not strictly adhere to the concept of *stare decisis* but rather follow laws;⁶¹ instead of applying the laws to the cases as they arise, courts apply the cases to the laws.⁶² The lower court noted that when existing law cannot determine an issue, judges may use analogous laws to reach a conclusion.⁶³ Furthermore, it is established that a judge cannot avoid deciding a matter by claiming that the laws are "silent, obscure, or insufficient."⁶⁴ In this instance, the majority erred in its determination for two main reasons. First, the judges failed to address the search engines' objective responsibility by claiming that no risk was created on their part. Second,

53. *Da Cunha*, La Ley [L.L.] (2010-E-107) at 30-31.

54. *Id.* at 35-36.

55. *Id.* at 14.

56. *Id.* at 35-36.

57. *Id.* at 40-41.

58. *Id.* at 55-56.

59. *Id.*

60. *Id.* at 56.

61. Garay, *supra* note 19, at 186.

62. *Id.*

63. Cód. Civ. [CIVIL CODE] art. 16 (Arg.); *Da Cunha*, La Ley [L.L.] (2010-E-107) at 7.

64. Cód. Civ. [CIVIL CODE] art. 15 (Arg.).

although the majority claims that personal knowledge of the illegal content is required before a duty arises, by avoiding discussion of the details and intricacies of the searches that both engines conduct,⁶⁵ the judges failed to address the actions of the defendants during time between the commencement of the initial action in 2006 and the date that the appeals decision was rendered in August of 2010. During this period, Google failed to remove or reduce accessibility of any of the injurious websites, links, or images.⁶⁶

A. THE SEARCH ENGINES HAD OBJECTIVE RESPONSIBILITY

In the instance where harm is caused by a created risk, there is a rebuttable presumption of responsibility on the creator of that risk; to rebut that presumption, the creator must show that he had no fault in the injury.⁶⁷ The majority incorrectly applied this law because it assumed that the risky object in the matter was the computer⁶⁸ and, therefore, did not explore whether the appellant successfully rebutted the presumption.⁶⁹ The risky object was actually the display page of the search engines' results, as that is what *caused* the harm to Virginia da Cunha—seeing these links and images on the search results page when she entered her name.⁷⁰ Had the majority reached the rebuttable presumption stage in its analysis, it would have found that the appellants would still be liable because they facilitated access to the illicit material and disclosed a harm that would not have occurred but-for the search engines' actions.⁷¹

The majority made an incorrect leap in its discussion regarding the search engines' role in this matter.⁷² The judges erroneously believed that because the expert witness in the trial referred to the search engines' role of "analyzing the content"⁷³ as a technical phrase used in the process of digitally storing information, the entire process is done through a computer with no human intervention.⁷⁴ Immediately after taking this position, the majority stated, "there is no doubt but to conclude that the responsibility of the search engines must be analyzed in light of article 1109 of the Civil Code."⁷⁵ Because this article does not have a presumption against the appellants, the judges apply it and bypass discussion of

65. *Da Cunha, La Ley* [L.L.] (2010-E-107) at 14-15 (citing the testimony of the expert witness and his discussion on third parties' ability to create meta tags, but not discussing testimony about search engines' designs later cited by Judge Sanchez).

66. *Id.* at 55-56.

67. Cód. Civ. [CIVIL CODE] art. 1113 (Arg.).

68. *Da Cunha, La Ley* [L.L.] (2010-E-107) at 14.

69. *Id.* at 15.

70. *Id.* at 2.

71. *Id.*

72. *Id.* at 15, 35-36 (comparing Judges Barbieri and Serrat's belief that no human intervention is involved with Judge Sanchez's determination of human-designed programs required for search engine capabilities).

73. *Id.* at 15.

74. *Id.*

75. *Id.*

the search engines' participation in the injury caused.⁷⁶ Consequently, they focused their energies on stating that the search engines are not the ones who created or edited the illicit websites or *were even responsible for displaying them* in their search engine results.⁷⁷

Judge Sanchez, however, recognized that there are several aspects of human programmer intervention even within the user's search due to the designers' programs and the parameters that are defined by those designers.⁷⁸ Further, the majority did not take into account that humans evaluate the relevance of the different results.⁷⁹ Harder to justify is the majority's statement that the search engines are not responsible for the *display* of the illicit websites, even when their own programs are the ones that suggest them and the display is the programs' core purpose.⁸⁰ The search engines place themselves in the risky position of potentially disclosing harmful information, though initially created by a third party, due to their function as facilitators.⁸¹ The dissent correctly states that it is *this* facilitation that causes the harm, for if search engines did not perform this activity, or did so with more care, the danger never would have occurred.⁸²

B. THE SEARCH ENGINES HAD THE REQUISITE KNOWLEDGE OF THE ILLICIT CONTENT TO BE LIABLE

Assuming that the majority was correct in applying article 1109 of the Civil Code and that it was correct in stating that the third party website editors were liable as those who subjectively caused the damage, the search engines would still be liable because they were aware of the illicit material in their display page, yet they failed to remove it.⁸³ Three years passed between the notice of the lawsuit against them and this recent opinion, during which time the images and links remained on display through the search engines' results screens.⁸⁴ Regardless of any argument that could be made in its defense, this is the only fact necessary to find the search engines liable.⁸⁵

C. FUTURE IMPLICATIONS FOR ARGENTINA AND THE SURROUNDING LATIN AMERICAN COUNTRIES

This case will undoubtedly impact the manner in which liability is placed on ISPs. Although this case does not create precedent, the attor-

76. *Id.* at 35-36 (Judge Sanchez argues this point and provides in-depth analysis).

77. *Id.* at 16.

78. *Id.* at 35-36.

79. See generally CHRISTOPHER D. MANNING ET AL., INTRODUCTION TO INFORMATION RETRIEVAL 121 (2007).

80. *Da Cunha, La Ley* [L.L.] (2010-E-107) at 13.

81. *Id.* at 40-41.

82. *Id.*

83. *Id.* at 41.

84. *Id.* at 55-56.

85. Cód. Civ. [CIVIL CODE] arts. 512, 1109.

neys for Virginia da Cunha have already declared their intent to bring the issue before Argentina's Supreme Court, so the case has the potential of becoming precedent if the Supreme Court decides to hear it and affirms the appellate court's decision.⁸⁶ The holding in this case has three main implications: (1) it could encourage legislators to pass a current bill that effectively protects search engines,⁸⁷ (2) it has far-reaching consequences for other social networking sites such as Facebook, Twitter, and Myspace,⁸⁸ and (3) freedom of expression has seemingly gained much more power.⁸⁹

Though it has been established that the search, reception, and diffusion of information is protected by the constitutional guarantee of freedom of expression,⁹⁰ both the majority and the dissent discuss the lack of legal standards regarding ISPs' liability in particular.⁹¹ This ruling, with its inescapable broadening of freedom of expression as it applies to ISPs, can be seen as championing the bill presented by the President of the Commission of Systems, Communication Media, and Freedom of Expression, Senator Guillermo Jenefes.⁹² The senator's bill would codify this ruling because it states that ISPs, including search engines, only have a duty to act when they are notified about illegal content and must take all the appropriate measures to impede access to the illegal content upon notification.⁹³ The bill further states that the determination of what is and what is not objectively illegal will be up to the determination of the judiciary, so the courts will be an integral part in the implementation of this bill, if it is passed as law.⁹⁴ This particular ruling is especially important because of the number of celebrities that have filed lawsuits against search engines that have also damaged their reputations and rights to privacy.⁹⁵

The far-reaching consequences of this decision are also not lost on the social networking websites, particularly Facebook.⁹⁶ This decision, if codified into law, would allow Facebook to escape any liability if any person who has a Facebook account in Argentina chose to upload injurious content or illegal pictures, as long as Facebook had no knowledge of the content.⁹⁷ Finally, the broadening of freedom of expression in Argentina

86. Vinod Sreeharsha, *Google and Yahoo Win Appeal in Argentine Case*, N.Y. TIMES, Aug. 19, 2010, at B4, available at <http://www.nytimes.com/2010/08/20/technology/internet/20google.html>.

87. Fernando Tomeo & Roberto Abieri, *Responsabilidad de los Buscadores de Internet* [*The Responsibility of Internet Search Engines*], 3-4 (2009), <http://www.aftabogados.com.ar/pdf/RESPONSABILIDAD%20DE%20LOS%20BUSCADORES%20DE%20INTERNET.pdf>.

88. See generally Tomeo, *supra* note 42.

89. See *Da Cunha*, La Ley [L.L.] (2010-E-107) at 16.

90. *Id.* at 8 (citing Ley 26.032/05).

91. *Id.* at 34-35 (citing Simari, *supra* note 8).

92. Tomeo, *supra* note 87, at 3.

93. *Id.* at 3-4.

94. *Id.* at 4.

95. *Id.* at 1.

96. Tomeo, *supra* note 42, at 4.

97. *Id.* at 7.

in the past two years, culminating in this recent decision, has not gone unnoticed. In September of last year President Cristina Fernandez proposed a bill to decriminalize libel and slander⁹⁸ and then in November of the same year, criminal defamation was appealed.⁹⁹ Soon after the President's statements, other South American countries, including Columbia, Costa Rica, and Chile, followed the Argentine president's guidance and dismissed criminal charges pending against journalists.¹⁰⁰ Because of the trend that is appearing in South America, due to Argentina's broadening of freedom of expression, this ruling might start another trend among South American countries.¹⁰¹

IV. CONCLUSION

This decision has expanded freedom of expression by placing a duty on search engines *only upon* being notified of an illegality.¹⁰² The dissent persuasively argued that search engines do have a hand in the results that are displayed on its webpage, but this was insufficient to cause an affirmation of the lower court's decision.¹⁰³ The widespread implications of this decision will ultimately tilt the law in favor of freedom of expression and neglect the individual and personal rights that each person possesses.¹⁰⁴ By having the Supreme Court make the final determination, not only will this matter be put to rest, but also the proper guidelines that the court will provide will undoubtedly assist future cases with insight on the civil liability of ISPs.¹⁰⁵

98. President Cristina Fernandez, Speech Given in Commemoration of 30 Years of the Visit of the Commission on Human Rights in Argentina (Sept. 11, 2009) (transcript available at http://www.caserosada.gov.ar/index.php?option=com_content&task=view&id=6375).

99. Carlos Lauría, Posting on *Criminal Defamation Eliminated in Argentina*, THE COMMITTEE TO PROTECT JOURNALISTS, (Nov. 19, 2009, 12:03 PM ET), <http://cpj.org/2009/11/criminal-defamation-eliminated-in-argentina.php>.

100. José Barbeito, *Latin America Takes Steps Against Criminal Defamation*, THE COMMITTEE TO PROTECT JOURNALISTS, (Feb. 26, 2010, 5:33 PM ET), <http://cpj.org/blog/2010/02/latin-american-rulings-steps-against-criminal-defa.php#more>.

101. *Id.*

102. *Da Cunha*, La Ley [L.L.] (2010-E-107) at 16.

103. *See generally id.* at 35-36.

104. *See generally id.* at 47 (Judge Sanchez's dissent).

105. Garay, *supra* note 19, at 198.