

# The Patent Lawyer

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## Discussion on Chinese service invention-creation and rights ownership thereof

Zhongling HAN and Xiaodong WANG of Beijing Sanyou Intellectual Property Agency Ltd. offer advice for determining an “Employer-First” and “Employee-First” duel model as a solution for invention-creation ownership.

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# Argentina: “right to be forgotten”

**Santiago R. O’Conor, Managing Partner of O’Conor & Power, reviews a person’s rights to have their information deindexed from Google, calling in to question the protection of personal information over information for public interest.**

## I. Introduction

In a unanimous decision, the Argentine Supreme Court overturned the judgment of the Civil Chamber that granted Natalia Denegri’s claim, which -invoking the “right to be forgotten” admitted by the Court of Justice of the European Union in the “Costeja” case- requested that Google be ordered to remove the contents in the results of such search engine that made reference to her name and to the facts related to the famous “Coppola Case”, which took place more than two decades ago.



Santiago R. O’Conor

## II. Facts from the case and prior decisions

In this case, Natalia Denegri filed before the Argentine courts a lawsuit against Google Inc. in which she requested the suppression and elimination from the search engines of all the links and sites that led to information or images of her as well as those associated with the so called “Coppola Case” that took place at the end of the 1990s, case in which the plaintiff was accidentally involved. She admitted that the information found in the search engines were true to the events in which she was involved concerning a criminal case that obtained a large media coverage, but that the information belonged to a past that she wished to forget and that it was already old, irrelevant, unnecessary and obsolete, lacking of all informative and media importance, currently being of no public and general interest.

The judge in the First Instance partially upheld the action, establishing that, instead of suppressing, the defendant had to deindex, the Google and YouTube platform of any link or association between the words ‘Natalia Denegri’, ‘Natalia Ruth Denegri’ or ‘Natalia Denegri caso Cópola’ and any image or video which content could include physical

or verbal aggression, insults, discussions, signing and/or dancing scenes, as well as videos of possible interviews in which the plaintiff would have given information of her personal life, since, in those cases, it was about scenes whose relevance was linked more to be “grotesque than to the informative” and it lacked any general interest. Consequently, the Civil National Chamber of Appeals confirmed the decision arrived by the First Instance Court detailing that it resulted assertive because it restricted the access to news that specifically reproduced scenes of a sensible matter in which the plaintiff was involved, taking into consideration that they



**Therefore the exercise of the “right to be forgotten” in this case should be balanced with the right to the free flow of information and the freedom of speech.**



## Résumé

### Santiago R. O’Conor, Managing Partner

Santiago R. O’Conor was born in Buenos Aires, Argentina. He is an attorney and graduate of the Faculty of Law of the State University of Buenos Aires. He has undertaken postgraduate studies at Harvard Law School and the Fordham IP Institute of New York, and has been a professor of international private law. Santiago is a patent and trademark agent specialized in intellectual and industrial property fields, advising domestic and foreign companies on local and international IP law, prosecution, and litigation in Argentina and throughout Latin America with more than 35 years of practice and experience and is the managing partner of O’Conor & Power. He is an active participant in many IP International Associations, with a main focus at INTA, CITMA, ECTA, PTMG, AIPPI and ASIPI, among others.

were events of undeniable public interest that demanded their dissemination for the acknowledgement from the society since they were related to a criminal case that ended in the dismissal and conviction of a federal judge, a secretary and former police officers, and that therefore the exercise of the "right to be forgotten" in this case should be balanced with the right to the free flow of information and the freedom of speech.

Against this decision, Google Inc. deducted an extraordinary federal appeal which was denied because it was considered as arbitrary, so in turn, they filed a complaint before the National Supreme Court of Justice, where it claimed that the sentence issued by the Civil Chamber violated the right to the freedom of speech recognized in the Argentine National Constitution, in international human rights treaties with constitutional hierarchy and in the jurisprudence of the Supreme Court on the matter, and that it imposed an unreasonable limitation on its activity and an indiscriminate censorship of legal content linked to a public figure and on a matter of public interest based on a "right to be forgotten" of imprecise reach and without legal basis.

### III. The Supreme Court ruling

Finally, the Supreme Court gave way to the complaint submitted because of the extraordinary federal appeal and rejected the lawsuit through a decision issued on June 28th, 2022.

#### A. "The freedom of speech and its vast constitutional protection"

Among the arguments put forward by the Court in its ruling, it is possible to highlight the importance of the constitutional protection of freedom of speech. The judges of the Court detailed that the circulation of information through the Internet is included in the protection provided by freedom of speech, and that this is also recognized by the Congress through Article N° 1 of Law N° 26.032 related to the service of internet.

The Supreme Court set forth two interpretative criteria according to the jurisprudence concerning the responsibility of the search engines:

In first place, the Supreme Court affirmed that, given the importance of freedom of speech in the Argentine Constitutional System, its limitations must be understood in a restrictive manner. Consequently, it also established that the assumptions of prior censorship should be presumed unconstitutional, and that this implies – in addition to the reversal of the burden of proof referred to above – that the Supreme Court interprets in a restrictive manner the

assumptions in which it could be appropriate to make an exception, if conceded, then the adopted measure must be strictly essential to satisfy the purpose.

In this case, it is considered that a judicial ruling that stipulates the deindexation of results in certain search engines would censor communication and imply a strong restriction on the circulation of information of public interest, especially since the activity of search engines plays a decisive role in the global dissemination of data. Therefore, such a claim would constitute an extreme measure in which a strong presumption of unconstitutionality.

#### B. Lawfulness of the Content and Public Interest

The Supreme Court, in a certain manner also recognizes the existence of a right to be forgotten by establishing that, in matters of restriction requests, an assumption of preventive protection could be accepted, on an exceptional basis, based on the illegality of the content provided and the damage suffered, which continues to be generated at the present time. However, this was not appropriate for this particular case, since such requirements were not fulfilled: the plaintiff herself admitted that the information appearing on the internet sites are true, but it is due to the time that has passed that she alleges that the news currently lacks any informative or media importance for society in general, even though it embarrasses and seriously affects current personal, professional, work and family life.

In this sense, the Supreme Court mentions that the passage of time of a piece of news or information that was part of a broad public debate does not justify its suppression, since this implicates a serious risk to history, which is fed by different facts of culture, even when the past is unacceptable and offensive by the standards of the present. In turn, it is established that, for a democratic society, the true information referring to a public person and an event of relevant public interest requires its permanence and free access by the individuals that compose it, since it is part of history, whose knowledge cannot deprive the members – both current and future – of a society.

In turn, the Supreme Court highlighted the difference compared to previous Supreme Court precedents such as "Rodríguez, María Belén", "Gimbutas" and "Paquez" cases, since in those cases the claim was the deindexation of the links based on the illegality of such information, while in the present it was not argued that the information was illegal, but rather that the maintenance of the availability of true information would have generated a "future and possible illegality". The Supreme Court concludes that this situation was not proven in this case.



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#### C. Affectation of personal rights

The Supreme Court also studied the possible affectation of the personal rights of the plaintiff, especially her right to honor and her right to privacy. The latter held that it is not possible for an illicit affectation of the right to honor to occur through the dissemination of truthful information related to a matter of public interest and referring to a public person, such that the authorization to the restriction on the exercise of another fundamental right, as the freedom of speech. The Supreme Court also considered that the “tacky” character that the lower courts assigned to the scenes in which the plaintiff participated, did not constitute a reason to support the ruling, since these verdicts cannot depend on the subjectivity of the judges involved in this case.

Finally, with regards to privacy, the Supreme Court recognized that it is a right that enjoys strong constitutional protection, but this protection does not extend to those aspects of the personal life that the owner consents to reveal to the public. In turn, it reiterated that there were not enough elements in the case to consider that the consent of the plaintiff had been invalidated when the events occurred, in addition to the fact that it was not a grievance raised in the lawsuit.

#### IV. Closing comments

The Supreme Court concluded that, in the circumstances described, no legal or constitutional basis was found in the plaintiffs demand, since no sufficient arguments were provided to evidence that a person who was and is a public



**No sufficient arguments were provided to evidence that a person who was and is a public figure has the right to limit access to truthful and public interest information.**



figure has the right to limit access to truthful and public interest information that circulates on the internet about them and is accessible to the public according to his own discretion and preferences, thus restricting that information to the aspects that she herself considers relevant or, on the contrary, inappropriate to the self-perception of her current identity.

The Supreme Court ruling in this case constitutes a valuable precedent for future cases where alleged infringement to the freedom of speech on the Internet collides with personal rights. Through the ruling, the Supreme Court once again reaffirms the protection that this right has in the Argentine legal system, and at the same time gives rise to the possibility that if the right to be forgotten is applied in situations that warrant the exercise of such a mechanism.

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