CLARO VS. SEDECO AND THE "DO NOT DISTURB" LAW

A judicial milestone, digital rights and invasive advertising in Paraguay

Technology & Human Rights

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Funded by the European Union

WITH THE SUPPORT OF Diakonia

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TEDIC is a non-governmental organization founded in 2012, whose mission is the defense and promotion of human rights in the digital environment. Among its main issues of interest are freedom of speech, privacy, access to knowledge and gender on the Internet.

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JULY 2025

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KEYWORDS: *Law 5830/17, Do Not Disturb, personal data protection, digital rights, privacy, consent, digital marketing, case law, SEDECO, Law 1334/98, telecommunications, Paraguay.*

INTRODUCTION

The phone rings: “Sir, madam, we are calling from such-and-such company.” For many, this scene might sound familiar: unknown calls or unexpected messages that, when answered believing them to be important, turn out to be telemarketing attempts to sell phone services or other products.

In response to these invasive practices, Law No. 5839/2017[1] was enacted in 2017, creating the National “No Molestar” (Do Not Disturb) Registry, which allows individuals to register their numbers to block communications, including phone calls, text messages or emails, for advertising purposes. However, this tool has not proven to be entirely effective in protecting consumers from commercial bombardment, especially in a digital environment where marketing strategies are increasingly sophisticated and persistent.

According to the 2024 management report of the Secretariat of Consumer and User Defense (SEDECO), of 1,729 complaints, 3% correspond to citizen reports against companies that, despite being registered, continue to contact potential customers. At the administrative level, penalties for these practices are also mounting. In this context, ruling No. 495/2024 of the Criminal Chamber of the Supreme Court of Justice—which upholds the penalty imposed on the company AMX Paraguay S.A. (Claro)—sets an important precedent for the defense of consumer rights. Beyond the specific case, the ruling opens a broader discussion on the effectiveness of the current regulatory framework, the challenges facing its implementation, and the urgency of adapting regulations to new forms of invasive commercial contact, especially in digital channels

At TEDIC, we decided to look into this case, as it is closely linked to the protection of personal data, specifically regarding the processing of individuals’ phone numbers. It also relates to other fundamental rights such as privacy, consent, non-discrimination and access to clear and accurate information about commercial practices that affect us on a daily basis. In this regard, we have prepared this brief article based on a review of specialized literature, a comparative regulatory analysis at the regional level, a questionnaire directed at representatives of SEDECO and an analysis of the cited case law, with the aim of offering recommendations that contribute to fair, transparent and respectful online advertising and commercial practices for consumers.

1 To access the full text of the law, see: National Congress of Paraguay. (2017, June 30). Law No. 5830/2017 – Which prohibits unauthorized advertising by mobile phone holders. Legislative Information System of Paraguay (SILPy). https://silpy.congreso.gov.py/web/descarga/ley-137672?preview

METHODOLOGY

This article is based on a documentary and regulatory review of the case "AMX Paraguay S.A. v. Resolution No. 983/2020 on an action of unconstitutionality," a critical analysis of Supreme Court ruling No. 495/2024 and Law 5830/2017 "Do Not Disturb." To contextualize this law and critically assess it, a comparative legal analysis will be conducted, including anti-spam and personal data protection regulations from the region, such as those of Argentina and Colombia, as well as international standards and guidelines. The study will evaluate how Paraguayan law aligns (or does not align) with a comprehensive rights-based approach, emphasizing prior, express, free and informed consent, and informational self-determination as fundamental pillars for the processing of personal data.

Additionally, contributions from specialized legal doctrine are included, as well as findings from the report *Who has your back?* Paraguay 2024, prepared by TEDIC, which examines the privacy policies and transparency practices of the country's leading Internet and telecommunications service providers.

As supplementary input, an institutional query was submitted through the Unified Public Information Portal to understand SEDECO's stance on the practical application of the "Do Not Disturb" Law, its challenges and potential reforms. The responses highlight both operational limitations—such as staff shortages—and efforts made to strengthen the system through training for providers and ongoing proposals for regulatory improvements[2].

THEORETICAL AND REGULATORY FRAMEWORK

In general terms, personal data includes any information linked to an identified or identifiable person, including telephone numbers. This data must be collected and processed only for specific, explicit and legitimate purposes, within a limited timeframe, and its use must not deviate from the originally stated purposes (Galli, 2024).

In this context, the debate on the indiscriminate use of telephone numbers for digital marketing purposes becomes particularly relevant. The growing public discomfort with intrusive marketing practices—such as unsolicited calls, SMS messages, automated WhatsApp messages or targeted ads on social media (Sequera, 2017)—led to the enactment of Law No. 5830/2017, which *prohibits unauthorized advertising by mobile phone holders.*

The purpose of this law is to mitigate overexposure to unsolicited communications and protect both the right to privacy and personal time (Art. 1). To this end, it established the National "Do Not Disturb" Registry (Art. 3), a mechanism that allows users to exclude their telephone numbers from databases used for advertising or direct marketing purposes.

2 See: Unified Public Information Portal. *Response to public information request No. 93826 regarding "Question about ruling 495/2024 – SEDECO v. AMX case".* https://informacionpublica.paraguay.gov.py/#!/ciudadano/solicitud/93826

However, as demonstrated by the court case analyzed, this law does not provide a solid solution to the structural problem of personal data processing in digital environments. As Sequera (2017) points out, its scope of application is limited to mobile telephony[3], without being properly coordinated with other existing legal frameworks, and it lacks alignment with other regulatory frameworks, such as Law No. 4868/13 on Electronic Commerce, which already included specific provisions on unsolicited commercial communications (Articles 20 to 23).

This regulatory fragmentation creates overlaps, gaps and contradictions that hinder the effective protection of individuals from the intensive use of data for advertising purposes. In this context, the processing of telephone numbers for commercial purposes—since they are considered personal data—must be governed by fundamental principles such as privacy, informed consent[4] and transparency. When these principles are violated, not only are fundamental rights, such as informational self-determination[5], infringed upon, but users' trust in business practices is also undermined.

In this context, in its response to the public consultation, SEDECO (2025) adds that one of the main regulatory gaps currently is that the law does not assign direct responsibility to the sender of unwanted messages. Consequently, a reform proposal is under review, which includes joint and several liability for the sender, as well as automatic registration in the registry. This would introduce a more robust opt-in model that better respects informed consent.

In addition to the limitations of the current regulation, it should be noted that the available data show low usage of the National "Do Not Disturb" Registry. According to SEDECO's 2024 Management Report[6] (p. 10), as of December of that year, only 126,122 telephone numbers and 150 providers were registered in the "Do Not Disturb" registry, compared to a total of 8,665,064 active mobile phone lines in the country, which represents a service penetration of 142%, according to CONATEL figures[7].

3 Defined in Article 2, paragraph (a) of Law 5830/2017 as "all forms of communication that use mobile phones as a medium, such as voice calls, text messages, multimedia messages and any other type of messaging that uses the aforementioned medium."

4 In terms of personal data protection, this means that the data subject must receive accurate, clear and understandable information about what data is being collected, for what purpose it will be used, who will be responsible for processing it and to whom it may be disclosed. It is a concrete manifestation of the exercise of informational self-determination, and through it, it is expected that the individual will fully understand what they are authorizing when giving their consent, free from pressure or ambiguity.

5 Without going into an extended definition, informational self-determination can be understood as the principle that each person has the right to decide for themselves on the collection, disclosure and use of their personal data (Trovato, 2023). This principle, closely linked to privacy protection, has been regarded by legal doctrine as one of the traditional foundations of the right to data protection. According to Sanz Salguero (2016), informational self-determination acknowledges the relationship between the individual and their personal data as part of the protected domain of their private life and their freedom to make decisions regarding it.

6 To access the full text of the report, see: Secretariat of Consumer and User Defense (SEDECO). (2024). *Management report 2024*. https://drive.google.com/file/d/16Eb73fCq14jhmHOv6sX180YNgo9OrzJG/view

7 Paraguay's Public Information Access Portal. (2024). Request No. 85730 – *Percentage of the population subscribed to mobile phone services*. Retrieved from https://informacionpublica.paraguay.gov.py/#!/ciudadano/solicitud/85730

Added to this scenario is the rapid transformation of digital marketing strategies, which have shifted to more sophisticated channels such as instant messaging platforms, social networks and personalized advertising based on algorithms and behavioral data. In this context, SEDECO (2025) has pointed out that the broad definition of "mobile telephone service" provided for in Law No. 5830/2017 could encompass communications sent through platforms such as WhatsApp, as long as they use the telephone number as a means of contact. This interpretation is supported by Regulatory Decree No. 8000/2017 and SDCU Resolution No. 80/2018, whose Article 6 expressly includes "communications through messaging applications that use the telephone number as a means of contact."

However, SEDECO (2025) itself acknowledges that the effective application of this rule faces several challenges. In particular, it argues that the use of platforms such as WhatsApp, Instagram or Facebook—whose terms and conditions are accepted by users—raises doubts about the application of the law[8]. On this point, it is crucial to distinguish between advertising managed directly by the platforms (such as sponsored ads) and direct contact by companies or telemarketers through private messages, which are not always based on free, informed and specific consent.

This distinction is particularly relevant in a digital ecosystem where the boundaries between legitimate communication and invasive practices become blurred, and where generic contractual consent cannot be equated with valid authorization for the processing of personal data for commercial purposes. Furthermore, the ambiguity in the interpretation of expressions such as "using the telephone number" —especially in relation to techniques such as digital retargeting[9] or the use of bots on social media— enables many companies to circumvent effective compliance with regulations. This gap between the formal scope of the law and new forms of digital marketing weakens the protections offered to users and highlights the urgent need to review and update the current framework.

As Shoshana Zuboff (2019) warns, we are immersed in a model of "surveillance capitalism," in which technology platforms collect and monetize personal data for predictive and behavioral control purposes, often without the knowledge or informed consent of individuals. This logic underpins aggressive commercial personalization practices that weaken citizens' control over their information and blur the lines between legitimate communication and intrusion, to the detriment of essential data protection principles.

Among the exceptions provided in Law No. 5830/2017, it is established that advertising will not be considered unauthorized if it has been "expressly consented to by the consumer" (art. 6, paragraph b). In line with this, Regulatory Decree No. 8000/2017 indicates that such consent must be "free, express and informed," and must be in writing or by equivalent means (Art. 9). However, we cannot overlook the fact that this formal requirement contrasts with the actual contracting practices in the telecommunications sector, where most contracts are concluded in the form of adhesion contracts, defined by the Consumer Protection Law (Law No. 1334/98, Art. 4, paragraph h) as those in which the clauses are unilaterally imposed by the provider, without the possibility of substantive negotiation by the user. This contractual asymmetry seriously calls into question the validity of the consent given, as it does not reflect a genuine process of free and informed decision-making, but rather forced acceptance as a condition for accessing the service.

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8 See response to question 10, point 3. Response to public information request No. 93826/2025. Unified Public Information Portal.

9 Retargeting is a digital marketing technique that aims to re-engage users who have previously interacted with a brand, reminding them of sales or products in order to drive conversion. See: ISDI. (2022, March 28). *What does the term retargeting mean and what is it used for?* https://www.isdi.education/es/blog/que-significa-el-termino-retargeting-y-para-que-sirve

In practice, consent is incorporated as yet another clause within lengthy and complex contracts that are rarely read or fully understood by users. As Zuboff (2019) warns, these dynamics are part of a model in which users' rights are absorbed by automatic data capture systems, and consent becomes a legal fiction that often legitimizes the mass and indiscriminate commercial use of personal information.

At the regional level, countries such as Argentina and Colombia have also enacted laws aimed at limiting non-consensual or excessive advertising, granting consent a central role as an essential legal requirement for authorizing such communications. In Argentina, Law No. 26,951/2014 establishes the "No Llame" (Do Not Call) Registry, through which individuals can opt out of receiving unwanted advertising communications. This law was recently strengthened by Resolution 126/2024 of the AAIP, which consolidated and updated the penalty regime. In Colombia, Law No. 2300/2023, known as the "Ley No Me Molestes" (Do Not Disturb Law) or "Ley No Fregar" (Do Not Annoy Law), aims to limit abusive collection practices through clear rules on hours, frequency and forms of contact. Additionally, both Argentina and Colombia have general data protection laws and independent regulatory authorities[10], allowing for more comprehensive policies on supervision, sanctions and incentives for best practices. This regulatory and institutional infrastructure helps complement the limitations of specific mechanisms such as opt-out registries[11].

On this last point, it is important to remember that Paraguay still lacks a comprehensive personal data protection law[12]. Although SEDECO plays a limited role as the enforcement authority for Law No. 6534/2020 (on credit data protection), the current legal framework is fragmented and insufficient to address the challenges posed by mass digital marketing. As Galli (2024) argues, although the right to personal data protection is recognized in the Constitution, comprehensive legislation is still pending. This legislation needs to align with international standards and raise awareness among both citizens and businesses about the importance of this fundamental right. Robust legislation would enable progress towards more effective governance of data processing and help prevent abusive practices such as unwanted advertising or the sale of personal data—such as telephone numbers—for telemarketing purposes.

SEDECO expressly recognizes the need for a comprehensive personal data protection law, stating that its enactment is a priority objective of institutional management (SEDECO, 2025). Currently, the entity has only limited powers under Law No. 6534/2020 on credit data. This institutional self-limitation underscores the urgency of comprehensive legislation that aligns with international standards and enables effective control mechanisms, in line with the principle of progressivity in fundamental rights[13].

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10 In Argentina, Law No. 25326/2000 on Personal Data Protection establishes the legal framework on this matter, and its enforcement is overseen by the Agency for Access to Public Information (AAIP). In Colombia, Statutory Law No. 1581/2012 (compiled in Decree 1074/2015) regulates the processing of personal data, and its compliance is supervised by the Superintendence of Industry and Commerce (SIC), which acts as the national data protection authority.

11 To better contextualize this mechanism, it should be clarified that it allows individuals to refuse the processing of their personal data for specific purposes, such as direct marketing, even after initially giving their consent. For example, a user who initially agreed to receive promotions when signing a contract with their telephone company and later decides to stop receiving them can exercise their right to withdraw their data or be removed from the contact list. This model, adopted by the "Do Not Disturb" Law, aims to ensure greater individual control over the communications received and protect the right to privacy against intrusive commercial practices.

12 As of the writing of this article, the Personal Data Protection Bill in Paraguay (File D-2162170) was approved by the Chamber of Deputies in its ordinary session No. 77 on May 27, 2025, and is currently under review by the Chamber of Senators. For more details and to follow its legislative progress, you can consult the Legislative Information System (SilPy): https://silpy.congreso.gov.py/web/expediente/123459.

13 See response to question 10, point 2. Response to public information request No. 93826/2025. Unified Public Information Portal.

It is also important to consider inter-American standards. The case law of the Inter-American Court of Human Rights (IACHR), in cases such as Escher v. Brazil[14] and CAJAR v. Colombia[15], has established that both content data and metadata[16] must be protected by robust legal safeguards. These precedents emphasize the need to ensure informed consent and apply the principles of temporality and data minimization. Likewise, TEDIC, within the framework of the report *Who has your back? Paraguay 2024*[17] (Bogado & Sequera, 2025), conducted qualitative research on the privacy policies of the main internet service providers in Paraguay—most of which coincide with mobile phone companies, such as Claro.

In relation to the issues addressed in this article, the report reveals that, although some companies have made progress in terms of transparency regarding the use of data for commercial purposes, ambiguities and contradictions persist in their privacy policies. These inconsistencies make it difficult for users to understand how their data is collected, used and shared, particularly in the context of targeted or personalized advertising. Similarly, they raise doubts about whether the consent given is truly free and informed and whether users have effective tools to exercise control over these processes.

This situation is exacerbated by Paraguay's weak data governance framework, which enables unauthorized processing of personal information—including telephone numbers for advertising purposes—with little or no possibility for challenge. Many companies fail to clearly explain the purpose of personal data processing or how long they store it, and often lack accessible mechanisms for users to exercise rights such as objecting to or deleting their data (Bogado & Sequera, 2025). In this context, consumers are forced to navigate lengthy, costly and inefficient administrative and judicial processes in an attempt to align digital business practices with the minimum legal principles of consent, proportionality and respect for privacy

14 CIDH. (2009, July 6). *Inter-American Court of Human Rights Case of Escher et al. v. Brazil* (Preliminary Objections, Merits, Reparations, and Costs). https://www.corteidh.or.cr/docs/casos/articulos/seriec_200_ing.pdf

15 IACHR. (2023, October 18). *Case CAJAR v. Colombia. Judgment* (Preliminary Objections, Merits, Reparations, and Costs). https://www.corteidh.or.cr/docs/casos/articulos/seriec_506_esp.pdf

16 Known as "data about data," metadata is technical information that accompanies primary data, such as calls, emails or messages, and provides details such as their origin, destination, duration, frequency, geographic location or even the device used (Badman & Kosinski, 2024). Although it does not contain the actual content of the communication, its processing allows patterns of behavior, routines and personal interactions to be traced, thus facilitating the creation of complex individual profiles. Despite its complementary nature, the use and storage of metadata can severely compromise privacy. For this reason, the Escher et al. v. Brazil case (2009) is particularly relevant, as the IACHR recognized that this additional information, such as the duration, frequency, or recipients of communications, must also be protected by legal guarantees, as it can reveal sensitive aspects of personal life.

17 The full report is available at: https://www.tedic.org/wp-content/uploads/2025/02/QDTD_Paraguay_2024-ENG-WEB.pdf

CASE REVIEW: SEDECO VS. AMX PARAGUAY S.A.

In December 2024, the Criminal Chamber of the Supreme Court of Justice of Paraguay issued ruling No. 495/2024, in response to an appeal and motion for annulment filed by the company AMX Paraguay S.A. (Claro) against a decision by the Court of Accounts. This ruling, in turn, upheld an administrative sanction imposed by SEDECO, which fined the company 196 times the legal minimum wage (approximately G. 17,000,000 at the time) for contacting a person registered in the National "Do Not Disturb" Registry by telephone for advertising purposes, in violation of Law No. 5830/2017.

The case centered on the legality of the sanction, as the company argued that a previous ruling of unconstitutionality (issued in a different and earlier case) concerning Decree 21.004/2003 invalidated its application in this case. However, the Court dismissed the appeal for failure to comply with the required procedural requirements and fully upheld SEDECO's sanctioning authority, also ordering the definitive cessation of promotions via text messages and calls

Beyond the detailed legal analysis, this decision sets an important precedent for several reasons. First, it reaffirms the binding nature of Law No. 5830/2017 as a tool for informational self-determination, as it allows users to voluntarily opt out of unwanted commercial or advertising contacts. The ruling acknowledges that the right not to be contacted without consent must take precedence over freedom of enterprise, especially when there are explicit mechanisms for consumers to object.

Second, the ruling reinforces SEDECO's institutional role as the competent authority to monitor, sanction and implement corrective measures in cases of unauthorized advertising. According to the entity itself, the ruling constitutes a "confirmation of a job well done" by its technical team and explicitly reaffirms its authority to enforce the "Do Not Disturb" Law through administrative sanctions (SEDECO, 2025). At the same time, it sets a clear limit on companies' attempts to disregard regulations, invoking precedents that do not have general effects or alter the validity of the provisions applicable to each specific case, thus consolidating the legitimacy of institutional action against infringing companies.

Finally, the ruling underscores the urgency of a comprehensive personal data protection law in Paraguay. While there are sectoral regulatory frameworks and legislative projects under discussion, the growing digitalization of commercial practices calls for comprehensive regulations that include principles such as informed consent, data minimization and the right to object, in line with international and regional standards.

This case demonstrates that even with limited regulatory tools, it is possible to activate institutional defense mechanisms against the abusive use of data. Although the ruling does not directly develop the principle of express consent in the field of commercial communications, its interpretation aligns with international standards on data protection,which recognize individuals' right to decide on the use of personal information, including contact data such as telephone numbers. Additionally, it reaffirms the National "Do Not Disturb" Registry as a valid and effective exclusion mechanism, the disregard of which constitutes an illegitimate form of personal data processing.

RECOMMENDATIONS AND OPPORTUNITIES BASED ON THE ANALYZED CASE

- **Adopt a comprehensive personal data protection law** that ensures the effective exercise of ARCO rights (access, rectification, cancellation and opposition), through accessible procedures, without undue burdens, and applicable to all forms of contact, both analog and digital.

- **Establish clear, specific and detailed consent mechanisms** that allow users to "accept or decline" the use of their personal data for each specific purpose.

- **Strengthen SEDECO's technical, human and budgetary capacity** to ensure effective oversight of regulatory compliance and adequately address the increasing volume of complaints related to the misuse of personal data.

- Support SEDECO's initiative to **reform Law No. 5830/2017 with the aim of strengthening the "Do Not Disturb" Registry**, incorporating measures such as automatic user registration (opt-in model), requiring express consent for each commercial contact and including joint and several liability for senders of unauthorized messages.

- Establish a **gradual and proportional sanctioning system** that takes into account factors such as the volume of data processed, the severity of the infringement, recidivism and the company's financial capacity, to prevent fines from being treated as a mere operational cost.

- **Require periodic transparency reports and external audits** to verify that telecommunications companies manage personal data responsibly, transparently and in accordance with current regulations.

CONCLUSION

The Claro vs. SEDECO case sets an important precedent for the exercise of fundamental rights and freedoms in technology-mediated environments in Paraguay. Beyond affirming a penalty for unauthorized advertising contact, Supreme Court ruling 495/2024 highlights the tensions between the commercial model based on the exploitation of personal data and principles such as consent, privacy and informational self-determination.

This precedent underscores the need for robust institutional mechanisms to protect individuals from invasive commercial practices, while also demonstrating the structural limitations for fully defending user rights in increasingly complex digital environments.

The case presents an opportunity to move towards comprehensive data protection legislation that establishes clear obligations, guarantees transparency and provides effective mechanisms for oversight and redress. Similarly, it is urgent to strengthen the technical and legal capacities of authorities such as SEDECO to tackle the challenges of the digital environment.

At TEDIC, we believe that only through the coordination of robust regulations, efficient institutions and an informed citizenry can we build a digital ecosystem where personal data is not an opaque commodity, but a protected dimension of human rights. While implementation challenges remain, SEDECO's institutional response—supported by the Court's ruling—marks a step forward in consolidating administrative safeguards against the abusive use of data for commercial purposes.

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