

## IGF 2017 Workshop Report

- Session Title: Emerging challenges for data protection in Latin American countries
- Date: December 19<sup>th</sup>, 2017
- Time: 9h - 10h30
- Session Organizer: Mr. Hartmut Glaser and Ms. Jamila Venturini, Brazilian Network Information Center (NIC.br), and Romina Garrido, Datos Protegidos
- Chair/Moderator: Luiz Fernando Castro, Brazilian Internet Steering Committee (CGI.br), and Carolina Aguerre, University of San Andres
- Rapporteur/Notetaker: Jamila Venturini
- List of Speakers and their institutional affiliations:

Danilo Doneda, UERJ  
Marcel Leonardi, Google Brazil  
Romina Garrido, Datos Protegidos  
Amalia Toledo, Fundación Karisma  
Martin Borgioli, Hiperderecho

- Key Issues raised (1 sentence per issue):
  - Overview of data protection frameworks in Latin America and their history, with an emphasis on the influence exerted by the European legislation on the countries which adopted unified data protection laws *versus* local contexts and particularities of countries like Chile;
  - Context involves several countries discussing the adoption or reform of their data protection frameworks in the region, with the European General Data Protection Regulation (GDPR) as a key driver;
  - Country reports on how local discussions regarding data protection from Brazil, Peru, Argentina and Chile and report of abuses to privacy and data protection in Colombia with a case involving sensitive health data;
  - General sense that different countries are facing similar problems in the region and discussion around why transnational companies do not respect local data protection legislation in Latin America if they are already prepared to cope with European standards;
  - Discussion on how strict data protection rules can affect small local businesses with no consensus among speakers: while some believe that compliance with data protection requirements will be fundamental for businesses to survive on the digital economy, one speaker shared a concern on how these rules can affect the development of the region's economy;

- Digital and data literacy are presented as something necessary for the following years. One speaker highlighted that users should not be blamed for what is being done with their personal data;
- While recognizing the difficulties faced in the region in terms of its integration as a single digital market, speakers agreed on the need for a common approach to data protection among the different countries.

- If there were presentations during the session, please provide a 1-paragraph summary for each presentation:

- Danilo Doneda gave an overview of the history and current situation of data protection in Latin America, highlighting both the European influence and local particularities. He mentioned the *habeas data* mechanism as one example of how data protection concerns emerged in the region – although highlighting that *habeas data* itself is not a regulatory model for data protection. He argued that it was natural for Latin American countries to follow the European tradition on data protection due to the nature of legal practice in the region, highlighting the inherent obstacles and dangers to changing this tradition by fiat, since legal operators are trained in the European Continental Law system. According to him, mixing different legal languages could lead to uncertainties. Finally, he brought up examples of local particularities in the application of data protection rules, mentioning the case of Brazil and Colombia.
- Marcel Leonardi brought the perspective of the private sector and the context of its activities in Brazil. In his analysis, while the State is attempting to regulate the private sector, the Brazilian State itself is pushing for more access to data retained by companies. As an example he brought some real cases involving Google, pointing to an imbalance in how that topic is being treated by regulators in the country.
- Martin Borgioli presented a brief history of the adoption of a data protection law in Peru, highlighting that the Constitution protects both privacy and data protection. He brought some cases that evidenced the challenges of having a data protection authority in an administrative office and how the data protection law was used to restrict online content. Accordingly, an exception to the exercise of freedom of expression and journalism was only added by a reform after several cases and claims of the so-called “right to be forgotten”.
- Carolina Aguerre made a quick presentation of the situation in Argentina, highlighting that the new bill pushes for a greater control of databases. She presented some of the critics the new bill attracted, but considered that the greater challenge in the country is the implementation of the law both by private and public entities. In her opinion, despite having legislation enacted on the matter since 2011, data protection is not yet embedded in the organizational culture of institutions.
- Amalia Toledo presented a case from Colombia involving the sharing of sensitive health data for commercial purposes and questioned the alleged consent given in this case. Considering this context, she presented her organization’s concerns regarding Colombian government’s attempt to create an electronic health system

between healthcare providers; especially due to its reliance on private intermediaries to deal with citizens' data.

- Romina Garrido presented the case of Chile, pointing out to the flaws on the existing legislation which was adopted in a pre-Internet period. One of the problems she identified was the lack of a data protection authority. She finally presented the bills that are being discussed to reform the existing law, identifying their particularities such as the creation of a data protection authority and the introduction of new rights such as portability and the right to dispute automatic decisions.

- Please describe the Discussions that took place during the workshop session (3 paragraphs):

One of the issues introduced to the debate by the audience was how Latin American countries are dealing with cybersecurity and if this discussion is somehow present in the debates around the adoption or reform of data protection laws. Security was mentioned as key, but speakers from Argentina and Peru mentioned challenges regarding how to make this type of connection.

A great part of the discussion focused on how data protection standards could affect developing countries' economies and speakers presented different perspectives on this issue. A participant from the audience argued that the European case showed how companies could comply and develop their businesses according to data protection rules. He questioned why this wouldn't be the case in countries like Brazil, for instance. In his opinion, an eventual difficulty from small local companies to comply with the Law was a matter of culture that involved other elements.

The final part of the discussion focused on data and digital literacy and its importance for the future generations. According to the moderator, the Law is not enough and literacy is fundamental. Another speaker argued that it is necessary to be careful not to blame people for what is being done with their data. He questioned if people really have choices on what they do online and defended that legislation and regulation play a key role in supplying people with real and concrete choices.

- Please describe any Participant suggestions regarding the way forward/ potential next steps /key takeaways (3 paragraphs):

The session tried to identify common trends and challenges regarding data protection regulation in Latin America. Speakers noted that there were several common issues faced by different countries in the region. One of the main challenges identified in the conversation was related to the implementation of data protection rules and the development of an organizational culture of data protection inside both public and private institutions.

Most speakers seemed to agree that the European standard was an inspiration for local legislation and the role of the GDPR in driving reforms of existing laws in Latin America.

At the same time, it was highlighted that attention should be given to the particularities of the regional context.

There was a call for the continuation of dialogue among countries aiming at the development of a common approach to the subject, although speakers showed some skepticism in this regard, especially due to the difficulties for integration in the region. Mercosur was mentioned as a driver for the adoption of data protection laws in previous years, but it was recognized that its role in this matter has diminished.

## **Gender Reporting**

- Estimate the overall number of the participants present at the session: 45 people in the audience.
- Estimate the overall number of women present at the session: 20.
- To what extent did the session discuss gender equality and/or women's empowerment? None. One of the speakers presented a case involving the sharing of sensitive health data of a woman in Colombia for commercial reasons. Despite dealing with reproductive rights, the topic did not emerge in the discussion that was much focused on regulatory aspects of data protection.
- If the session addressed issues related to gender equality and/or women's empowerment, please provide a brief summary of the discussion: not applicable.