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Cyber regulation in Latin America and the Caribbean

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Cyber regulation in Latin America

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The participation of the vast majority of the countries of Latin America in the World Summit on the Information Society, as well as in the eLAC2007, eLAC2010 and eLAC2015 Action Plans, has decisively influenced the development of national harmonized instruments for cyber regulation consistent with the regional context. In addition to these forums, the region's countries participate in international bodies, such as the General Assembly of the United Nations, and take part in the activities of its conferences, commissions and other specialized agencies directly concerned with diverse trade and development issues related to information and communication technologies (ICT), such as the Economic Commission for Latin America and the Caribbean (ECLAC), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Commission on International Trade Law (UNCITRAL), the International Telecommunication Union (ITU), the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO) and the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT).

Furthermore, and in addition to the ratification of multiple bilateral, trilateral and multilateral agreements by many of them, the region's countries participate in other multinational organizations and forums with specialized committees in these areas, such as the Organisation for Economic Cooperation and Development (OECD), Asia-Pacific Economic Cooperation (APEC), the Latin American Integration Association (ALADI), the Latin American and Caribbean Economic System (SELA) and the Organization of American States (OAS), the latter three being Latin American regional organizations. In addition, the countries participate through their governmental agencies, or through industry, in the technical committees of the above-mentioned organizations, as well as in other global and regional organizations, such as the Internet Corporation for Assigned Names and Numbers (ICANN), the Latin American and Caribbean Internet Address Registry (LACNIC), the Internet Society (ISOC), the International Organization for Standardization (ISO) and the Ibero-American Data Protection Network, to mention a few of the most representative, which have contributed favourably to the development of ICT and electronic commerce in the region.

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> *"The largest strides in harmonization have been made in the area of intellectual property, with the vast majority of the region's countries having adopted the Agreements administered by WIPO."*

has also been significant progress in the area of electronic transactions, electronic signatures and authentication. For example, in Mexico, Colombia and Guatemala, legislation has been adopted that incorporates the UNCITRAL Model Laws on Electronic Commerce and Electronic Signatures.

There has also been forward movement in the laws and regulations governing online taxation, particularly as relates to the development of public key infrastructure for the administration of digital certificates for fiscal, social security and foreign trade transactions. Countries such as Mexico, Chile, Colombia and Guatemala have made real progress. El Salvador has partially incorporated the UNCITRAL model laws into its fiscal and customs laws, as well as into draft legislation on communications and electronic signatures and on electronic commerce. At the subregional level, special mention should be made of the ratification of the Central America Uniform Customs Code and Implementing Regulations by Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica in their capacity as member countries of the Central American Integration System (SICA), as well as the obligatory ratification of the Customs Code of the Southern Common Market (MERCOSUR) by Argentina, Brazil, Paraguay and Uruguay.

With respect to cybercrime and information security, there are important windows of opportunity in the substantive and procedural laws of the region's countries. Except for the Dominican Republic, which has incorporated the provisions of the Council of Europe's Convention on Cybercrime into its laws, and the efforts of Argentina, Paraguay and Mexico to become signatories to the Convention and participate in the International Multilateral Partnership Against Cyber Threats (IMPACT), an ITU initiative, the other countries' laws, while containing substantive or procedural measures, are incomplete with respect to this instrument, which is the best international cooperation tool for fighting cybercrime as a multijurisdictional phenomenon.

Data protection in the region

The matter of personal data protection has acquired great importance following the recent publication of laws on this issue in Mexico and Uruguay, as well as legislative advances in Brazil and Colombia. Importantly, the regulatory trend in the region is a strengthening of legal, technological and control measures to ensure that personal data is handled more securely within and between countries. The work done in the Ibero-American Data Protection Network—in which Argentina, Brazil, the Plurinational State of Bolivia, Chile, Colombia, the Dominican Republic, Ecuador, Mexico, Panama, Paraguay, Peru, Puerto Rico, Uruguay and the Bolivarian Republic of Venezuela participate—has had a positive impact on the development of legislation modelled on the Directives for the Harmonization of Data Protection in the Ibero-American Community, e.g. in Argentina, Mexico and Uruguay.

It should be mentioned that Chile and Mexico have received input from OECD and APEC in the formulation of their public policies and legislation on personal data protection. Peru has received input from APEC too.

Brazil has prepared draft legislation on personal data protection and submitted it for public consultation. As part of this process, a blog that allows the public to make comments on each article of the bill is being used as a tool for civic dialogue. In the case of Colombia, in addition to the Law on Habeas Data (No. 1266), which applies to the financial sector, the National Congress has issued a General Law on Data Protection that is currently under review by the Constitutional Court and once enacted, will serve as a data protection law of general application.

Telework: Is a regulatory framework needed?

Due to the development of information and communication technologies (ICT), the phenomenon of working off site has gone from being an exception to becoming a central theme in the world of labour relations. Moreover, the circumstances under which "distance work" takes place are completely new and unrecognized by the current body of laws and regulations, pointing up the inadequacy of provisions established for the production of objects made "at home" and giving rise to renewed concern for the situation of these workers.

The provision of remote services through the use of ICT, aside from the specific nature of these services, is not a conceptual category or a type of autonomous contractual work, but rather a crosscutting modality that can take place in the context of both autonomous and dependent employment relationships, and it is the latter that have been deemed in need of regulation in Argentina.

Viviana Laura Díaz
Coordinator of the
eLAC2015 Telework Group

Through the Telework Coordination Group, in 2008 the Pilot Programme to Monitor and Promote Telework in Private Enterprise (PROPET) was launched. The first and only programme of its kind in Latin America and the Caribbean, it helps to facilitate the application of telework in a company's labour relations, providing the framework for legal certainty that firms need. This is accomplished through constant monitoring of the teleworker, his or her new work environment and the remote supervisor, with full respect for the general principles of employment rights.

The regulatory project contains the essential criteria needed to bring the corresponding national laws and regulations in line with the guidelines that have emerged from recently enacted international laws, while serving as the framework for a programme that will enable the State and social actors to find ways to respond to the challenges that ICT development will continue to present in the future, recognizing telework as a useful tool for creating real jobs and consolidating existing employment sources.

The law is essentially based on the public policy governing telework, so the Argentine project has taken into consideration the promotion of equal treatment of teleworkers and other wage workers, particularly with respect to the right to organize, protection against discrimination in employment and occupation, occupational health and safety protection, remuneration, social security protection, access to information, minimum working age and maternity protection.

The project identifies five special aspects, which are also included in the PROPET programme, that apply to this type of work:

1) Employer systems for the control of goods and information shall not violate the privacy of the teleworker's home.
2) Allowance for equipment, whether provided or not by the employer.
3) The obligations of the teleworker with respect to the proper use of that equipment.
4) The reasonable distribution of hours to be worked on site and remotely, to prevent isolation and ensure the participation of teleworkers in union activities, in personal contact with the rest of the on-site workers and in the firm's promotion policies.
5) In the case of transnational arrangements, the law most favourable to the teleworker shall apply.

Lastly, taking into consideration that telework cuts across a range of activities, it is up to the social actors to consider it within their collective agreements, respecting equal treatment for teleworkers and on-site workers, with equal rights for all workers in a dependent employment relationship. The law is not an indispensable condition for this work arrangement to exist, but it does establish rules that guarantee certainty and protection for all.

Dominican Republic: Towards a regulatory framework for telework

Amparo Arango
Technical Coordinator of the National Commission
for the Information and Knowledge Society (CNSIC)

Telework is a work arrangement that has been emerging in the Latin American and Caribbean region in response to the unemployment and economic crisis. This form of work has benefitted from the development of new information and communication technologies (ICT) and the widespread adoption of these technologies by the middle classes. Telework is now an option not only for people with disabilities but also for any worker who wishes to better integrate his or her work and family life, among other reasons.

The Dominican Republic, through the Dominican Telecommunications Institute (INDOTEL), participated alongside eight other countries in the 2009 study "Teletrained: Telework for the labour inclusion of people with disabilities" funded by Canada's International Development Research Centre (IDRC). The study found that although the country does not have a regulatory framework for telework and telework is not formally covered by Dominican labour law, telework experiences do exist—although they are not very widespread or numerous—among some groups of people with disabilities and at multinational companies linked to the telecommunications sector especially.

The study paved the way at the national and regional level to continue working towards an initiative to promote this type of work arrangement. In 2010 the country was invited to participate in "Telework: public policies and legislative models," a project aimed at shaping national public policy in the region's countries to advance and promote pro-telework laws.

As a result of this project, a draft Law for the Promotion and Dissemination of Telework has been introduced by the Dominican Chamber of Deputies' Telecommunications Committee. Consultations on this bill are presently being conducted with the country's various economic, labour and governmental sectors. The legislation is important because it would provide the country with a clear, specific set of regulations enabling workers who choose to work in a telework arrangement—whether as own-account workers or employees in a subordinate or dependent relationship—to do so with a full guarantee of their labour rights and the protection of the social security system in effect in the country, which protects workers in subordinate and dependent employment relationships.

The bill also seeks to incentivize a set of public policies to help create an ecosystem in which workers—including those with disabilities—can count on capacity, Internet access, equipment and software, as well as have access to incentives, subsidies, credit and loans for own account workers, among other opportunities. In addition, the legislation provides for the registration and control of the country's teleworkers by the Ministry of Labour and establishes sanctions in the event that the labour, union and social security rights accorded to teleworkers by law are violated.

If enacted as expected in 2011, this legislation would give the country a modern instrument for promoting, disseminating and regulating telework as a work arrangement for workers in the Dominican Republic, guaranteeing for them a framework of rights, certainty and guarantees within the country's labour and social security regime. Accordingly, support is being sought from the Dominican Congress and all public and private sector institutions that can help to forge the public policies needed to make telework an option not only so workers can integrate their work and family life, but also so people with disabilities can be productive, perform dignified work with the opportunities now provided by technology, reduce informality and address the lack of labour protections and other disadvantageous conditions that this type of work entails in the absence of due protection. Choosing telework could also contribute to a cleaner environment by reducing vehicular travel, fuel consumption and traffic congestion, among other advantages.

José Clastornik:

"We must give priority to initiatives that create greater synergies between the region's countries"

The Executive Director of Uruguay's Agency for the Development of e-Government and the Information and Knowledge Society (AGESIC) also believes that the best practices of other countries should be considered when preparing e-government strategies in the region.

AGESIC is an agency of the Office of the President of the Republic of Uruguay with technical autonomy that seeks to improve the services provided to the public, tapping the opportunities given by information and communication technologies (ICT). Its permanent activities include defining and disseminating rules and regulations on information technology, ensuring enforcement, analysing technology trends, developing ICT projects and advising government institutions on information technology, as well as training and disseminating information on e government and supporting the transformation and transparency of the State.

Its Executive Director, Mr. José Clastornik, discussed in this interview the main achievements that Uruguay has made in the area of e-government and the role of these accomplishments, as well as the importance of developing a regulatory framework to implement it.

Do you believe the regulatory environment is a fundamental pillar to facilitate the development of the information society? Why?

If we look at the development of the information society from a systemic perspective, the regulatory environment constitutes part of the macro conditions, establishing clear rules in the new environment, incentives for its development and safeguards to protect the rights of individuals in the new situations specific to the information society. In the case of Uruguay, for example, there are four pillars for the development of e-government: digital citizenry, simplification of processes, technology and the legal framework. The regulatory environment falls under the latter.

What are the essential aspects that must be regulated to advance the development of e government?

Above all, the term "to regulate" must be interpreted broadly, which means it should not be restricted to laws and regulations only; rather, other types of guidelines should be generated, such as technical standards, best practices and procedures, etc. In the legal sphere, AGESIC has identified the core issues as access to public information, protection of personal data, electronic signatures and a general framework for e-government that enshrines a citizen's right to be able to interact with the government by electronic means and the obligation of government entities to work together. Especially important is the creation of an institutional framework, a key factor for bringing sustainability to the public policies shaped by the normative channels described above.

What type of legal authority does AGESIC have?

AGESIC has legal authority to dictate and promote rules on the use of ICT in public administration, which cover different aspects, such as information security, use of information resources by the government, information sharing between public entities, etc.

AGESIC has deconcentrated units with competencies that go beyond the realm of public administration, related to personal data protection, access to public information and electronic certification.

What do you believe are Uruguay's main achievements in this area?

Uruguay has made significant progress in developing its regulatory base to make headway with the information society and e-government. The principal laws and regulations that have been approved since the creation of AGESIC are the Law on Personal Data Protection, which established the right to protection of data that are continually challenged in as much as technological advances are increasing data processing, storage and communication capacities, and created the Personal Data Regulatory and Control Unit, which specializes in this area (URCDP). There is also the Law on Access to Public Information, which develops the concept of transparency of government information and establishes access as a right, improving the quality of the democratic system through citizen control. The law also created the Access to Public Information Unit (UAIP), an agency specializing in enforcing the provisions of the law. Lastly, we have the Law on Electronic Signatures, a key instrument for increasing the flow of electronic transactions through the incorporation of legal certainty and thus, confidence in those transactions. The government has positioned itself as an early promoter of the use of electronic signatures in various public services offered electronically, to generate the critical mass needed for electronic signatures to be used throughout the various sectors of society. The law also creates an institutional presence in the form of the Electronic Signature Unit (UCE), a technical body that regulates electronic certification in the country.

Uruguay has made significant progress in developing its regulatory base to make headway with the information society and e-government

How important has the role of AGESIC been in these achievements?

AGESIC has promoted and coordinated the different initiatives, working interconnectedly, incorporating the actors involved at the different agencies. It has also contributed its technical capacity and resources to prepare and implement the proposed initiatives.

What has been the largest obstacle to overcome in developing rules and regulations for e government in Uruguay?

The main challenges are the creation of infrastructure and generation of capacities, both "multifaceted" concepts: the necessary infrastructure is, simultaneously, of a technological, legal and institutional nature, and the required capacities are cultural, educational, technological and institutional.

Can the best practices of more developed countries in this area be adopted and adapted for our region?

The models and best practices at the international level are a necessary point of reference for developing an e-government strategy. They should be used to prepare comparative charts, in order to take and adapt the models and practices that are most applicable to the national reality. You always learn from the experiences of those who have gone first, both from their successes and their mistakes, and learning from those experiences is an unavoidable journey that we know we have to make, keeping in mind that not all models are transferrable to the reality of our countries.

If there were a critical path for developing rules and regulations for e-government, what would it be?

AGESIC chose to identify a set of laws and regulations conceived complementarily; all address different aspects linked to the development of e-government. Even those that appear to be mutually contradictory are actually complementary, such as the protection of personal data and access to public information. As we see it, the critical path depends on the national realities, for example the relative level of development of the various regulatory areas, or how critical one or another of these areas is, at a given moment.

What are the regional challenges in terms of ICT rules and regulations that must be tackled?

The global nature of the information society does not recognize borders, so I would give priority to those initiatives that seek to protect people in the use of ICT, such as protection of personal data and cybercrime, and those that help to create greater synergies between the region's countries, boosting trade and economic development, for example the recognition of electronic signatures between countries, and other regulatory instruments for promoting e commerce.

How can we move forward on regulatory harmonization at the regional level, especially with respect to personal data protection, digital signatures and cybercrime?

It is absolutely necessary to appeal to supranational entities and multilateral agreements that meet the conditions of confidence and drawing power needed for the region's countries to join standardization initiatives in these areas.

Interview with Claudio Orrego, Mayor of Peñalolén,
on the regulatory framework and e-government:

"The partnership with the European Union has been key"

The municipality of Peñalolén, located in Santiago, Chile, is one of the 10 largest in the country and is very economically diverse. In recent years, it has successfully implemented e-government initiatives that have met with considerable acclaim.

What prompted Peñalolén to implement an e-government model?

First, my conviction about the importance of information and communication technologies (ICT) for government, to improve management, to make it more transparent, to do more with less. When you have scarce resources, you have to find ways to use them to provide more and better services to the community, and when used well, ICT have a democratic potential but also an expression in day-to-day life, as in the case of a municipality where people can feel that the authorities closer, demand accountability, participate in decision-making; the potential is there, and there is much more to do than what we have done so far in Peñalolén.

You have been successful in implementing

possible to complete the entire process online, without any paper, an as of yet unequalled application that has allowed us to increase vehicle registration revenue from 300 million to 5 billion Chilean pesos. We have invested a great deal in training, in information literacy. We have trained nearly 22,000 people in the community and all of our municipal government workers.

Does the municipality have some regulatory instrument to implement e-government?

We have a digital policy, we have made strides in practical terms, but we have not created an official municipal document, that is still pending. More than a regulatory document, we have institutional practices to handle these issues. I continue to think that despite everything we have