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NORTH AMERICAN CONSUMER PROJECT ON ELECTRONIC COMMERCE

*“Developing Privacy Legislation
Under External Constraints”*

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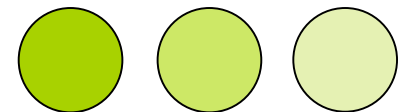
Director General

IGF Privacy Workshop II



Privacy Approach in Mexico

- 20.2 million Internet users (20% of the total population)
- No data privacy legislation to regulate private sector and absence of an independent DPA
- Two States with data protection laws (Colima, Jalisco)
- Regulatory Sectoral Oriented Approach dispersed in more than 26 laws and a few other regulations
- Privacy recognized in the Constitution (Art.16) as limitation of the state to intervene in the person's freedoms (No Habeas Data Right)
- Ongoing discussion in Congress since 2001. Six Draft Initiatives pending on Congress



External Constraints

- Int'l. Trade treaties as the “main external constraint” to regulate privacy and avoid restrictions to the free flow of information and exchange of data with trade partners (12 with 32 countries NAFTA vs EU)
- NAFTA-EU-Mexico Agreement: Article 904 of NAFTA provides “*the right of the parties to establish a level of protection that they consider appropriate in accordance with Article 907(2) pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers*”



“External” Constraints

- Article 51 EU-Mexico Agreement: *“Parties agree to accord a high level of protection to the processing of personal and other data, in accordance with the standards adopted by the relevant international organisations and the Community”*
- Clash Between both treaties on Privacy Regulations
- Competing Regulations (APEC Privacy Framework and EU Privacy Directives) Which Way to Go?



Other Relevant Constraints

- Constitutional reform to recognize the right to data protection as a fundamental civil liberty in the Mexican Constitution
- Lack of a Federal Budget to create an independent federal data protection agency to oversee the law
- Poor and lax knowledge on the topic by Legislators and other priority topics in their legislative agenda
- Danger of privacy rules to become too complex and burdensome for an average consumer to understand and comply



Challenges

- Bottom-Up approach; user awareness & information; PET's and consumer tools in Spanish; safeguards, codes of conducts and trust seals supported by legislation consistent with international recognized principles (OECD) to make the online marketplace work
- Overcome said barriers , recognize the right to data protection; enact a legal framework that protects the privacy right of consumers and avoid future regulatory patches to foster consumer trust
- Leave a door open to reform privacy regulations with the advent of other emerging technologies blogs, chats, et.al



Conclusions

- Prioritize the enactment of Privacy and Data Protection Legislation at the national level while reinforcing it with privacy standards and education and awareness tools
- The current need for a Universal Convention on Privacy and Data Protection to push for a consistent global privacy regime and to promote uniform privacy in developing countries while respecting social values
- International cooperation mechanisms for the enforcement of privacy laws (Common Law vs. Civil Law Systems)



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