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Privacy Challenges in LATAM

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Historical Background

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- Nowadays, the right to privacy has evolved and it is recognized as a fundamental and personal right in almost all constitutions and international legal systems.
- The modern concept of privacy is closely related to the right of controlling personal data transmission, since there is no possibility “to be alone” in the Digital Era.



Image: Creative Commons Zero

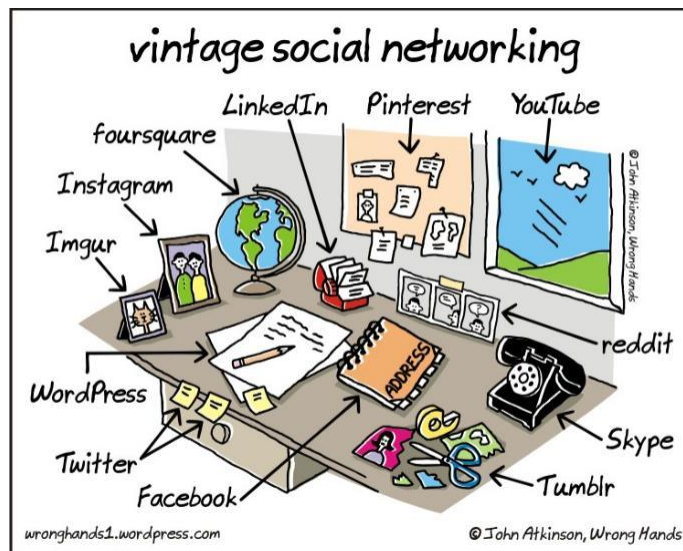
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Hyperconnected society

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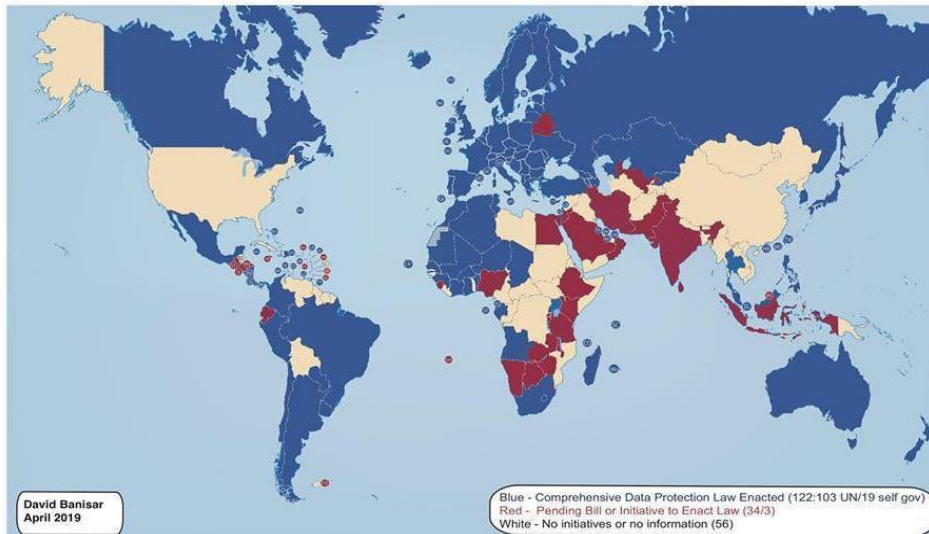
EXPECTATION OF PRIVACY SÃO PAULO STATE COURT DECISION



Violation of image rights, privacy, intimacy and honor by being photographed and filmed (in intimacy) on locations – **Spanish beach** – Injunction to terminate the exhibition of movies and photos on web-sites because of the presumption of lack of consent to the publication. Filling with a daily penalty payment of \$ 250,000.00, to inhibit infringement of the command to abstain. The paparazzi are known for aggressively working with the capture of images, which characterizes the illegality of their activities [voyeurism]. Denying injunctive relief would reward the work of these professionals that do not require authorization for their photos and, especially, to legalize the sensationalism and scandal propagated by the media, without permission of those involved.

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National Comprehensive Data Protection/Privacy Laws and Bills 2019



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Data Protection in Latin America



- General Law on Data Protection – Law 25.326/2000
- Adequate level of protection according to EU Directive



- Data Protection Act Law No. 18.331/2008; Decree 414/2009
- Adequate level of protection according to EU Directive



- There are federal Laws - 1.266/2008 and 1.581/2012
- Decree 1.377/2013 – and 886/2014



- Undisclosed Information Law - Law 7.975
- General Law on Data Protection – 8.968



- Federal Law on Protection of Personal Data held by Private Parties



- General Data Protection (LGPD) – Law 13.709/2018

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Argentina



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The current legal framework of the Argentine Data Protection Regulations (ADPR) is made up of the Constitution (Section 43), Personal Data Protection Law No. 25,326 (PDPL), Regulatory Decree of the PDPL No. 1558/2001.

The ADPR, passed in 2000, provides general protection for personal data stored in public or private databases and other processing platforms, just as Chapter VII of the Federal Constitution recognizes individuals' habeas data rights to access and correct information stored about them.

Source: <http://tinyurl.com/y8l45f37>

Source: <https://www.michalsons.com/blog/argentina-personal-data-protection-act/25090>

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Uruguay



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- On 21 August 2012, the European Union recognized Uruguay with an adequate level of protection, due to [its Data Protection Act of 11 November 2008](#) (the *Ley No 18.331 de Protección de Datos Personales y Acción de 'Habeas Data'*).
- The main consequence of [this Decision](#) is that personal data can be exported to companies established in Uruguay under the same terms as to any EU destination, and usage of the standardized clauses or other workaround solutions will no longer be necessary. Thus, cooperation with companies in Uruguay is now legally a bit simpler.

Source: <https://iapp.org/news/a/data-protection-laws-in-latin-america-an-overview>

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Colômbia



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- The Colombian Constitution provides the fundamental rights to intimacy and data protection. Such rights are regulated by the **Law 1266/08**, which tackles obligations regarding credit, financial and banking use of personal data, and **Law 1581/2012**, which encompasses comprehensive data protection provisions. This law was complemented by the **Decree 1377/2013**, that enacted proceedings related to consent, treatment of sensitive data, how data subjects can exercise their rights and cross borders transfer of personal data.
- Both Law **1581/2012** and Decree **1377/2013** apply to data processing conducted by public or private entities. Colombian legislation only applies to data processing performed inside Colombia, or outside Colombia, if the data controller is subject to Colombian law through international treaties and standards
- Decree 886 of 2014 (Decree 886) and Decree 090 of 2018 (Decree 090) issued by the Ministry of Commerce, Industry and Tourism as well as the Resolution 090 of 2018 issued by the Superintendence of Industry and Commerce, regulate the National Register of Data Bases and sets deadlines for registration of existing data bases in Colombia.

Source: <https://iapp.org/news/a/data-protection-laws-in-latin-america-an-overview>

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Costa Rica



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- Data privacy regulation in Costa Rica is contained in two laws, the "Laws": Law No. 7975, the Undisclosed Information Law, which makes it a crime to disclose confidential and/or personal information without authorization; and Law No. 8968, Protection in the Handling of the Personal Data of Individuals together with its by-laws, which were enacted to regulate the activities of companies that administer databases containing personal information. Therefore, the scope of the second law is limited.

<https://www.dlapiperdataprotection.com/index.html?t=law&c=CR&c2=>

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México



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- On June 12, 2018, a decree was published in the Official Gazette of the Federation approving two important documents: Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data dated January 28, 1981, and its Additional Protocol regarding supervisory authorities and trans-border data flows dated November 8, 2001.
- The Regulations apply to all personal data processing when:
 - Processed in a facility of the data controller located in Mexican territory
 - Processed by a data processor, regardless of its location, if the processing is performed on behalf of a Mexican data controller Where the Mexican legislation is applicable as a consequence of Mexico's adherence to an international convention or the execution of a contract (even where the data controller is not located in Mexico), or
 - Where the data controller is not located in Mexican territory, but uses means located in Mexico to process personal data, unless such means are used only for transit purposes
- The Law only applies to private individuals or legal entities that process personal data, and not to the government, credit reporting companies governed by the Law Regulating Credit Reporting Companies or persons carrying out the collection and storage of personal data exclusively for personal use where it is not disclosed for commercial use.

<https://www.dlapiperdataprotection.com/index.html?t=law&c=MX&c2=>

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Paraguay



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In Paraguay, data protection is regulated by laws 1682/2000 and 1969/2002, in which interested party holds a Constitutional guarantee action to request immediate update of personal data, called "Habeas Data"

Pursuant to the legislation in force, companies processing personal data in Paraguay do not need to notify the data protection authority, but may publish personal data whenever is requested by the individual or a judicial/legislative authority. Additionally, there is no deadline for updating notifications. The law states that personal data must be updated permanently.

Law 1682/01 provides that data explicitly classified as sensitive may not be published or disseminated. Sensitive data includes, for example, race, ethnicity, political preferences, health, and any data that may foster discrimination or affect the dignity, household privacy, and the private images of persons or families.

Fonte: https://www.martindale.com/information-services/article_Berkemeyer-Attorneys-Counselors_853438.htm

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- Peru's Data Protection of Personal Data (Act 29.733/2011), which was enacted in 2011, recognize habeas data and guarantee the fundamental right to protection of personal data processed in the public and private sectors. This protection will be provided through the correct treatment of personal data, as a way to respect other fundamental rights recognized by the constitution. Even though the law was enacted in 2011, most of its provisions only entered into force in 2013 based on further regulation by decrees.
- Peru's law mandates special rules for the processing of minors' personal data, and the DPA has held that all information that users of any age publish on social media profiles is considered private and thus cannot be used by others without consent.
- Peru is both an APEC economy and a Trans-Pacific Partnership signatory.
- Further, the law regulating private risk centers and the protection of the owner of the information is Law N° 27489, enacted in 2001 and later amended several times.

Fonte: <https://info.truste.com/rs/846-LLZ-652/images/TRUSTeClientAdvisory-LatinAmerica.pdf>

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Regulation in Brazil



- **CONSTITUTION**
 - Section 5.10** – Intimacy, privacy, honor and image of persons – INVOLABLE.
 - Section 5.12** – Secrecy of correspondence and Telecom – INVOLABLE.
- **CIVIL CODE**
 - Section 20** – Disclosure of writings, the transmission of the word, or publication, display or use the image of a person.
 - Section 21** – Private life of a person – INVOLABLE.
 - Section 11** – personality rights – VOLUNTARY RESTRICTION
- **CONSUMER PROTECTION CODE**
- **BRAZILIAN CIVIL RIGHTS FRAMEWORK FOR THE INTERNET**
- **LGPD – 13.709/18**

Additionally, there are laws on the treatment and safeguarding of documents and information handled by governmental entities and public bodies.

<https://www.dlapiperdataprotection.com/index.html?t=law&c=BR&c2=>

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Brazil will soon occupy a relevant role in the international data protection scenario for two main reasons:

- (i) the LGDP provides for an extraterritorial reach of its provisions
- (ii) by providing data subjects and private sector companies with greater legal certainty, which will consequently attract more investment into the national digital economy.

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TO WHOM LGPD APPLIES?

Materially, the LGPD will apply to **anyone** - whether a person or legal entity, governed by public or private law – **who processes personal data**, that is: anyone who performs activities involving personal data (**collection, storage, sharing, erasing, etc.**), including digitally.



WHAT IS PERSONAL DATA?

Pursuant to LGPD, personal data is, briefly, any information capable of leading to the **identification of a person**, directly or indirectly. Examples: **registration data** (name, SSN, address, etc.), **location data**, **digital identifiers**, **consumption habits**, **preferences**, etc.



PRACTICAL EFFECTS

The material applicability range of the LGPD is **extremely wide**, reaching **most projects and activities** of business practice.



EXAMPLES OF SITUATIONS WHERE LGPD IS APPLIED

Labour relations, consumer relations (including offline and brick and mortar), relations between user and internet services, B2B activities involving personal data from partners, representatives, etc.



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Rights of data subjects under LGPD

The personal data subjects have the right to request from the controller:

- Confirmation of processing activity
- Access to their data
- Correction of incomplete data
- Pseudonymization, blocking or erasure of unnecessary, excessive or illegally processed data
- Erasure of their personal data
- Portability of their data to other service or product providers
- Information about entities which their data was shared with
- Information on the possibilities of refusing consent
- Revocation of their consent
- Complaint to the DPA
- Opposition to processing, if irregular

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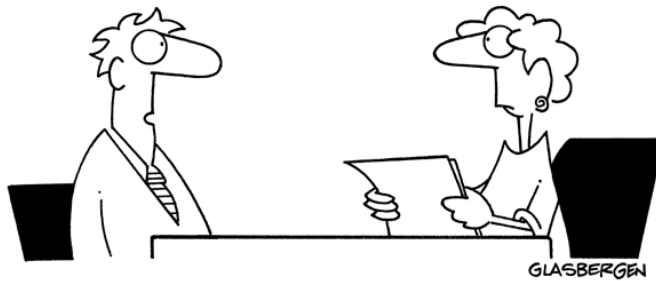


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**"For the sake of information security,
everything on my résumé is false."**

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ISO - LGPD

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NEWS

TACKLING PRIVACY INFORMATION MANAGEMENT HEAD ON: FIRST INTERNATIONAL STANDARD JUST PUBLISHED

By Clare Naden on 6 August 2019


[ISO/IEC 27701](#), *Security techniques — Extension to ISO/IEC 27001 and ISO/IEC 27002 for privacy information management — Requirements and guidelines*, specifies the requirements for establishing, implementing, maintaining and continually improving a privacy-specific information security management system. In other words, a management system for protecting personal data (PIMS).

Formerly referred to as ISO/IEC 27552 during its development, it builds on [ISO/IEC 27001](#), *Information Technology — Security techniques — Information security management systems — Requirements*, providing the necessary extra requirements when it comes to privacy.

Dr Andreas Wolf, Chair of the ISO/IEC technical committee that developed the standard, said almost every organization processes personally identifiable information (PII), and protecting it is not only a legal requirement but a societal need.

"ISO/IEC 27701 defines processes and provides guidance for protecting PII on an ongoing, ever evolving basis. Because being a management system, it defines processes for continuous improvement on data protection, particularly important in a world where technology doesn't stand still."

Microsoft is an active participant in the committee.



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Artificial intelligence, IOT and other tech developments

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1. Ethical Purpose and Societal Benefit
2. Accountability
3. Transparency and Explainability
4. Fairness and Non-Discrimination
5. Safety and Reliability
6. Open Data and Fair Competition
7. Privacy
8. AI and Intellectual property

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Researchers shut down AI that invented its own language

BY JAMES WALKER JUL 21, 2017 IN TECHNOLOGY

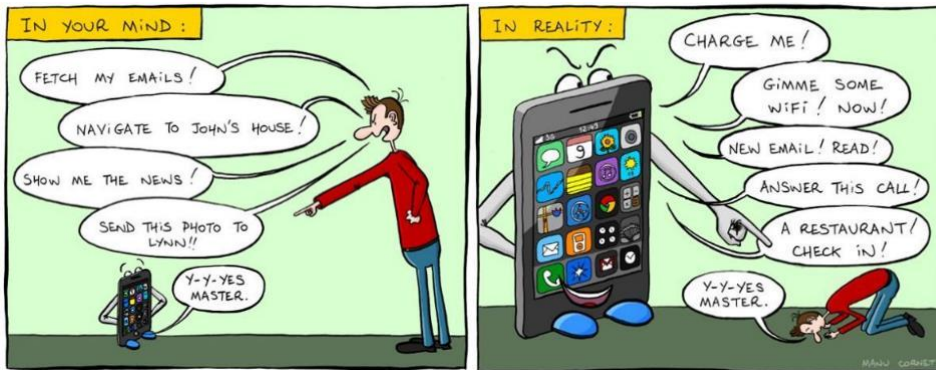
[LISTEN](#) | [PRINT](#)

An artificial intelligence system being developed at Facebook has created its own language. It developed a system of code words to make communication more efficient. Researchers shut the system down when they realized the AI was no longer using English.



<http://www.digitaljournal.com/tech-and-science/technology/a-step-closer-to-skynet-ai-invents-a-language-humans-can-t-read/article/498142>

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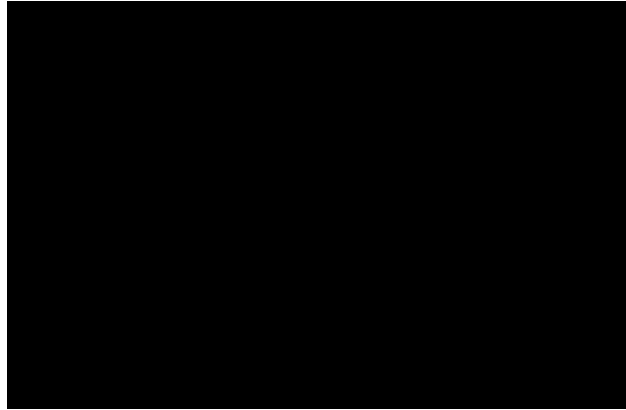
Final Considerations

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- Legal aspects are not all that companies need
- The goal is to provide an attractive regulation (plus non legal benefits) without keeping such a distance from Europe Union directives and the GDPR
- Adequacy recognition is a must in order to facilitate data transfer

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<https://www.youtube.com/watch?v=wjXYCrRWqc>

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 <p>DOE SANGUE, DOE VIDA!</p>	 <p>the hunger site®</p> <p>Acesse o site e ajude na luta contra a fome e a pobreza no mundo</p> <p>↓ ↓</p> <p>https://thehungersite.greatergood.com/clicktogive/this/home</p>	 <p>Instituto Anglicano</p> <p>Ajude esta causa!</p> <p>https://www.catedral-anglicana.org.br/</p>
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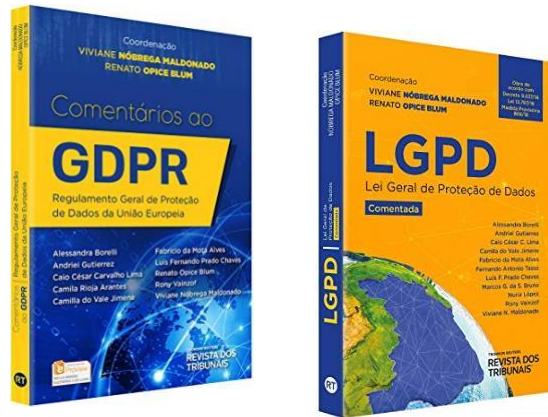


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