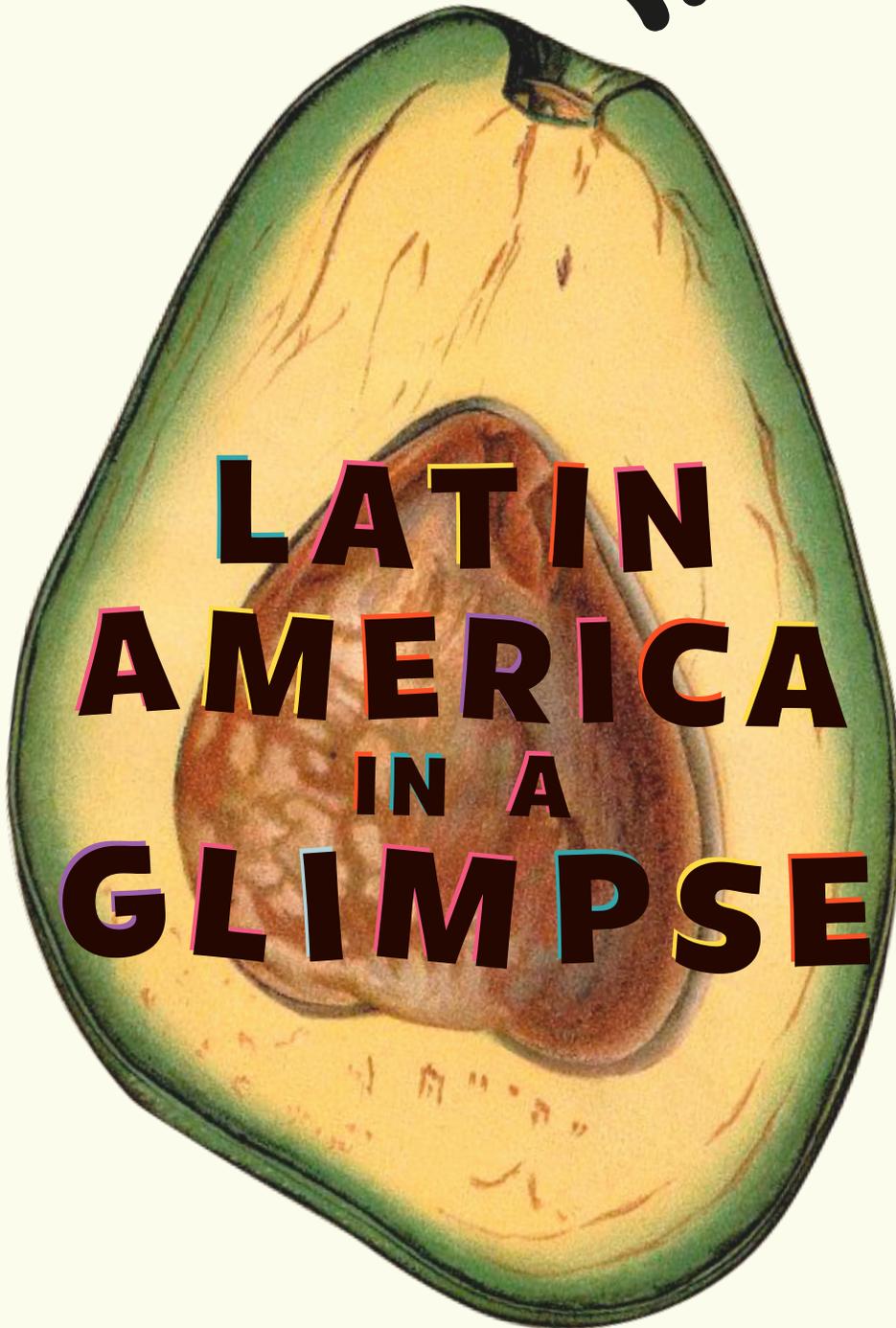


An initiative by:



# LATIN AMERICA IN A GLIMPSE

**HUMAN RIGHTS AND THE INTERNET**  
INTERNET GOVERNANCE FORUM, BRAZIL 2015



This document presents a summary of the most relevant events with respect to human rights and the internet in Latin America in 2015. As the international community gathers at the Internet Government Forum 2015, it is our hope that this summary can help broaden participants' knowledge about the region.

Derechos Digitales has coordinated this initiative, and developed it in partnership with the Association for Progressive Communications (APC) and Coding Rights of Brazil. It was completed on October 15, 2015.



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# Net Neutrality

Several Latin American countries have legal protections for net neutrality,<sup>1</sup> a principle that guarantees the possibility that the internet will be a platform for open communication and freedom of expression for all citizens. However, in spite of this, the threat to net neutrality was one of the most debated themes in our countries in 2015.

## What has happened in the past year?

- **Internet.org/Free Basics arrived in the region:** After Paraguay served as the guinea pig in the region, Internet.org (now known as Free Basics), announced its arrival in Latin America at the Summit of the Americas. In the region, opposition to Facebook's project has come from voices within civil society, the technical community and other parties interested in internet governance.<sup>2</sup> It has been criticized for presenting itself as a false solution to the problem of connectivity in Latin America, for putting the privacy of its users at risk and for not taking into account the opinion of civil society. Despite this, governments, internet suppliers and Facebook have continued to move ahead with implementation in countries such as Colombia, Panama, Brazil, Bolivia, Peru and Guatemala.
- In **Brazil**, 34 civil society organizations delivered a letter to the government<sup>3</sup> that criticized Internet.org/Free Basics on the grounds that "it could threaten the future of information society, the economy in a digital environment and the rights of the users of the internet, in addition to privacy, liberty of expression and net neutrality." For its part, the government announced an interdepartmental commission to study the project.<sup>4</sup> In addition, the matter of zero-rating is an important part of the public consultation process regarding the way that the Marco Civil law of the internet will enter into force.
- **Ecuador:** After a rather short debate and with only limited participation of the citizenry, the National Assembly of Ecuador approved the new Organic Law of Telecommunications. One of the objectives of the law is to protect net neutrality, but local activists denounced that the regulation permits service providers to establish "pricing plans consisting of one or several services, or of one or several products of a service," which violates the net neutrality principle and leaves its users defenseless in the face of potential abuses by ISPs.<sup>5</sup>
- **Colombia:** At the start of the year, the Colombian government announced its intention to repeal Article 56 of the 2010-2014 National Development Plan, which consecrates net neutrality in the country. This is because it considered the regulations concerning net neutrality found in Resolution 3502 of 2011 to be sufficient. A diverse array of organizations from Colombian civil society<sup>6</sup> asked the government not to do away with the article, arguing that it is "beyond being a simple attribution of the government's regulatory power is in fact the norm that recognizes and gives substance to the principle of net neutrality." In the end, the government did not do away with the article.

1 .....  
Visit: <https://www.thisisnetneutrality.org/>

2 Civil society's declaration regarding Internet.org / Free Basics en América Latina. August 8, 2015. [https://www.derechosdigitales.org/wp-content/uploads/DeclaracionInternet.org\\_.pdf](https://www.derechosdigitales.org/wp-content/uploads/DeclaracionInternet.org_.pdf)

3 Em carta a Dilma entidades criticam parceria com Facebook April 24, 2015. <https://www.brasil247.com/pt/247/midiatech/178339/Em-carta-a-Dilma-entidades-criticam-parceria-com-Facebook.htm>

4 Governo cria comissão para estudar o Internet.org do Facebook June 10, 2015. <http://www.telesintese.com.br/governo-cria-comissao-para-estudar-o-internet-org-facebook>

5 La neutralidad de la red se debilita en Ecuador January 31, 2015. <http://www.digitalrightslac.net/es/la-neutralidad-de-la-red-se-debilita-en-ecuador/>

6 La neutralidad en internet en riesgo con el PND. March 5, 2015. <http://laotraorilla.co/index.php/noticias/107-http-flip-org-co-es-content-carta-abierta-al-gobierno-y-los-congresistas-colombianos-sobre-la-neutralidad-de-internet>

### **Case study: Civil Society and Internet.org/Free Basics**

44 civil society organizations from Latin America made a statement about Internet.org/Free Basics at the last IGF Regional meeting of Latin America and the Caribbean, which took place in Mexico City in August 2015, and declared that:

1. Internet.org/Free Basics is not the solution to problems of access to the internet for millions of people in our region.
2. Additionally, there are serious concerns regarding the lack of protection of personal data for users of this service.
3. By favoring a reduced group of services over others, Internet.org/Free Basics constitutes a flagrant violation of the net neutrality principle.
4. The absence of civil society, the technical community and other parties interested in internet governance in the decision-making process around the implementation of Internet.org/Free Basics in the countries of the region is worrisome.

\*More info in Eng/Spanish is available at: [derechosdigitales.org/internetesnuestra](http://derechosdigitales.org/internetesnuestra)

### **Threats**

- Though regulations concerning net neutrality exist in the region, they do not appear to be an obstacle to prevent the offering of zero-rating services. Since the laws do not explicitly deal with zero-rating plans, the ISPs have come up with ways to circumvent the regulations, and organizations responsible for ensuring compliance with the law do not have the necessary competencies or resources for carrying out this function.
- Governments appear to confuse zero-rating services with policies that offer real access to the internet to the great number of marginalized people in our region. This sets up a false dilemma between net neutrality and access to the internet.
- Facebook, the governments and the ISPs implicated in Free Basics have failed to consider the public interest, as represented by civil society, in the planning and implementation of this project. In addition, in many of the countries where they have announced an agreement, relevant voices from within civil society have not been listened to, and the opposition has an uphill battle.

### **Opportunities**

- The emergence of zero-rating services (such as Free Basics) has returned to shed light on a theme that seemed to have been forgotten by many of our governments: real access to the internet for much of the population in our region.
- Latin America can help bring the global discussion on net neutrality to the next stage, enriching the concept through its experience in legal initiatives and its application; such as its relation to themes like access to the internet, technological neutrality, and privacy, among others.
- The region's civil society organizations can leverage their vast experience to develop arguments for and support the implementation of alternative solutions to negotiate the digital divide. These include advocacy for public access strategies, the spread of community wireless networks and the adoption of measurements for infrastructure sharing, among others.

# Cybersecurity

Governments, businesses, civil society organizations and regional groups in Latin America have become increasingly preoccupied with cybersecurity, and many countries are working to expand their policies in this area.

## What has happened in the past year?

- The **Fifth Summit of Latin American Security Analysts** took place in Santiago, Chile this year and Kaspersky,<sup>7</sup> the expert cybersecurity company that has collaborated in this area with Interpol since 2014, presented the data it has collected: From January through August 2015, there were 398 million instances or digital attempts to compromise users' information. Brazil, Mexico and Peru registered the biggest number of threats.
- A report solicited by the OAS (**Organization of American States**) and produced by Trend Micro<sup>8</sup> determined that Latin America is one of the zones that runs the biggest risk of cyberattacks due to lack of investment by governments and companies. The report showed that there were attempts to manipulate the systems of government institutions, such as through a network or control system, in 14 countries, including Mexico, Brazil, the United States, Chile, Panama and Peru.
- The OAS, through the Interamerican Committee Against Terrorism (CICTE), has developed a regional cybersecurity program that seeks to strengthen the security of and monitor the protection of critical information infrastructure in the entire continent, and in this year has lent help to various countries in the region through its cybersecurity policies.<sup>9</sup>
- **Colombia** announced the structuring of a new policy that will enable the public, private, academic sectors and civil society to work together to fight and prevent cyber delinquency.<sup>10</sup> **Paraguay** began a multisectoral discussion on the development and articulation of a National Strategy of Cybernet Security, which will also take input from civil society.<sup>11</sup> **Chile** created the Interministerial Committee on Cybersecurity, which aims to raise the country's standards to the international level in order to fight eventual threats on the internet,<sup>12</sup> while the United States advised **Uruguay** in this area.<sup>13</sup> For its part, **Bolivia** plans to create a "sovereign cloud" to increase its cybersecurity.<sup>14</sup>
- **Brazil** armed itself with an investigatory parliamentary commission on internet crimes in order to deal with themes such as bank fraud,<sup>15</sup> but in the hearings that followed, representatives from the Motion Picture Association (MPA) emphasized piracy, advocating for the removal of content protected by

7 Crecen los ataques en línea. August 29, 2015. <http://www.cooperativa.cl/noticias/tecnologia/internet/seguridad/crecen-los-ataques-en-linea-dos-de-cada-10-chilenos-han-sido-victimas/2015-08-29/121128.html>

8 OEA advierte contra amenaza de ciberataques en América Latina. August 25, 2015. <http://www.cioal.com/2015/08/25/oea-ciberataques-amenazan-a-america-latina/>

9 Seguridad cibernética en Latam: actuación de la OEA. June 17, 2015. <https://antivigilancia.org/es/2015/06/construye-tu-seguridad-la-actuacion-de-la-oea-en-seguridad-cibernetica/>

10 La hoja de ruta de la ciberseguridad. August 3, 2015. <http://www.elespectador.com/noticias/economia/hoja-de-ruta-ciberseguridad-articulo-576914>

11 Abrirán debate sobre plan nacional de ciberseguridad. May 5, 2015. <http://www.lanacion.com.py/2015/05/05/abriran-debate-sobre-el-plan-nacional-de-ciberseguridad/>

12 Gobierno crea comité interministerial para la seguridad en internet April 20, 2015. <http://www.publimetro.cl/nota/cronica/gobierno-creo-comite-interministerial-para-la-seguridad-en-internet/xlQodt!qru6laKnLKik/>

13 EEUU asesora a Uruguay en ciberseguridad. April 9, 2015. <http://www.elobservador.com.uy/eeuu-asesora-uruguay-ciberseguridad-n302337>

14 Bolivia planea crear una nube soberana para aumentar su ciberseguridad. February 25, 2015 <http://www.minci.gob.ve/2015/02/bolivia-planea-crear-una-nube-soberana-para-aumentar-su-ciberseguridad/>

15 See <http://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-temporarias/parlamentar-de-inquerito/55a-legislatura/cpi-crimes-ciberneticos/conheca-a-comissao/criacao-e-constituicao/ato-de-criacao>

copyright with mechanisms that violate net neutrality, freedom of expression and due process.

**Case study: OAS and civil society**

The last edition of “Latin America in a Glimpse” mentioned how the report “Cybersecurity Trends in Latin America and the Caribbean 2014,” done by the OAS, was worrisome due to its lack of human rights language.

In 2015, the regional body began to involve civil society organizations in discussions relating to cyber security. In reality, the OAS has made a public call for interested organizations to sign up to participate in its related activities.

A positive outcome of this new approach would be cybersecurity policies that reinforce and strengthen national security, while at the same time protecting and respecting the human rights of all citizens.

**Threats**

- Many of the governments have recently further expanded their cybersecurity policies, and security often seems to take precedence over human rights, especially given a general climate in which there is a tendency to militarize questions of cybersecurity. There is a lack of resources, training and knowledge on the technical aspects necessary to generate an approach that compromises neither human rights nor network security.
- Civil society in the region has only recently begun to work on these themes, so the lack of knowledge and experience, coupled with the lack of participation in spaces that are usually only reserved for the state, makes their participation more difficult.

**Opportunities**

- Some of the governments of the region have not only shown an openness to creating policies around cybersecurity, they have also included participation from civil society that can help introduce a human rights perspective. Thus, it is essential to take advantage of such spaces and to demand such spaces in countries where they do not exist presently.

# Freedom of Expression

This year, the region saw many noteworthy threats and attacks on freedom of expression online. One of the most important themes in this area was the so-called “right to be forgotten.”

## What has happened in the past year?

- **Satire is persecuted:** The president of Ecuador, Rafael Correa, publically denounced @CrudoEcuador, which published humorous memes about political figures, as being part of a network paid by the opposition to disqualify and destabilize the government. This triggered a series of incidents that forced the webmaster to relinquish his anonymity and endure threats to his family.<sup>16</sup> This led to a statement of concern by the Special Rapporteur for Freedom of Expression of the Inter-American Commission for Human Rights (CIDH).<sup>17</sup> In Brazil, different courts reviewed and discarded cases attempting to prosecute satire on the internet.<sup>18</sup> Meanwhile, in Mexico, a bill was presented before the local Congress of the state of Sonora to regulate memes and other types of publications on social networks that could be considered offensive.<sup>19</sup>
- **Pursuit of anonymity:** In **Chile**, a proposed amendment to the press law would have put social networks in the same category as “digital newspapers,” implying that they should be registered addresses and held legally responsible, among other requirements that impact freedom of expression on the internet. After a public debate, the language of the amendment was modified.<sup>20</sup>
- In **Argentina**, some legislators have proposed a “National Anti-Discrimination Act” which seeks to eradicate all forms of discrimination through regulations that employ overly lax definitions and strict monitoring criteria. This creates incentives to stifle criticism and prevent the free flow of ideas on the internet, and consequently endangers the right to privacy and freedom of expression.<sup>21</sup>
- In **Colombia**, a bill seeks to regulate streaming services operating in the country, turning them into a public service and assigning additional obligations to them. However, in the eyes of local activists, the initiative threatens the exercise of fundamental rights such as freedom of expression or access to information.<sup>22</sup>
- **Attack on media and journalists:** In **Brazil**, several journalists have received multiple threats,<sup>23</sup> with the most extreme case being that of a blogger who was decapitated and killed.<sup>24</sup> Additionally, there have been virtual attacks on blogging platforms, such as the blog Reporter Brasil, which promotes the

16 El creador de Crudo Ecuador apareció por primera vez frente a una cámara de televisión. March 22, 2015. <http://www.elcomercio.com/actualidad/aparece-creador-crudoecuador-television-facebook.html>

17 Relatoría especial insta a Ecuador a velar por la seguridad de ciudadano detrás de “Crudo Ecuador”. February 25, 2015. <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=979&IID=2>

18 O riso na rede: novos desafios à liberdade de expressão. August 31, 2015 <http://www.internetlab.org.br/pt/opiniao/o-riso-na-rede-novos-desafios-a-liberdade-de-expressao/>

19 Ley Antimemes: ¿Amenaza a la libertad de expresión? July 1, 2015. <https://www.derechosdigitales.org/9073/amenaza-a-la-libertad-de-expresion/>

20 Diputados modifican redacción del polémico “proyecto de ley de medios digitales”. April 23, 2015. <https://www.derechosdigitales.org/8582/chile-diputados-modifican-redaccion-del-polemico-proyecto-de-ley-de-medios-digitales/>

21 Argentina: La censura de internet como forma de combate contra la discriminación. July 21, 2015. <https://www.derechosdigitales.org/9198/la-censura-de-internet-como-forma-de-combate-contra-la-discriminacion/>

22 La ley Netflix y la gobernanza de Internet. September 29, 2015. <https://karisma.org.co/la-ley-netflix-y-la-gobernanza-de-internet/>

23 Brazilian bloggers encounter threats online and off. March 23, 2015. <https://cpj.org/blog/2015/03/brazilian-bloggers-encounter-threats-online-and-of.php>

24 Asesinado y decapitado un bloguero en Brasil. May 22, 2015. [http://internacional.elpais.com/internacional/2015/05/21/actualidad/1432227173\\_211319.html](http://internacional.elpais.com/internacional/2015/05/21/actualidad/1432227173_211319.html)

protection of human rights and denounced the existence of slave labor: the site was hacked and a series of investigative reports that with complaints against important economic sectors were changed.<sup>25</sup> Similar threats have also occurred in countries such as **Ecuador**<sup>26</sup> and **Colombia**,<sup>27</sup> among others. Cyber attacks against media outlets have become common and have been recorded in **El Salvador**, **Guatemala**, **Bolivia**, **Ecuador**, **Venezuela** and **México**.<sup>28</sup> It is worth remembering that last year, the Inter-American Commission on Human Rights (IACHR) asked Venezuelan president Nicolas Maduro to investigate blocking of internet news portals.

• **The right to be forgotten:** After the famous decision was issued in the Google Spain case in Europe, some countries in Latin America began to propose legislation concerning the right to be forgotten,<sup>29</sup> often without considering questions of freedom of expression and the right to information. In **Brazil**, the Law No. 215<sup>30</sup> of the Chamber of Deputies allows anyone to request the exclusion of content deemed offensive to his honor or of having links to a crime for which he has been cleared. In contrast to the laws in the European Union, in which courts can only order search engines to exclude certain results, the Brazilian proposal would allow public figures to apply for exclusions and would leave open the possibility for courts to order host websites to delete defamatory content.

#### **Case study: the “right to be forgotten” and censure**

In addition to the relevant legal initiatives, the data protection authorities and various judicial and administrative authorities have ruled on the right to be forgotten on the internet:

**Colombia:** In July, the Constitutional Court overturned a lower court ruling that had required a Colombian newspaper to remove certain news items linking the claimant with white slave traffic, a crime for which she had been prosecuted but not convicted. In its ruling, the Constitutional Court said that the newspaper did not have to remove the items, but that it had to update the information to include that the claimant had not been convicted. In addition, it ordered the newspaper to use technical tools to prevent the items appearing a search of the claimant’s name in search engines. The ruling is limited with respect to cases concerning public notoriety or violations of human rights.<sup>31</sup> In late August, the Supreme Court joined the discussion and decided that publically available court rulings with the name of people who have completed their sentences could be deleted. Today, public discussions focus on setting the parameters of what constitutes information that is in the public interest information.<sup>32</sup>

**México:** The Mexican authority with control over personal data has ordered that links be de indexed from Google, similar to what has been proposed elsewhere as a “right to be forgotten,” with negative implications on the flow of information and on human rights. While the judicial

25 .....  
A Repórter Brasil sofre pesado ataque digital. September 21, 2015. <http://reporterbrasil.org.br/2015/09/a-reporter-brasil-sofre-pesado-ataque-digital/>

26 Periodistas y activistas sufren repetidos intentos de hackeo. May 7, 2015. <http://www.fundamedios.org/alertas/periodistas-y-activistas-sufren-repetidos-intentos-de-hackeo/>

27 Periodista colombiano recibe amenazas en Facebook. August 20, 2015. [http://www.ifex.org/colombia/2015/08/20/jaramillo\\_amenaza/es/](http://www.ifex.org/colombia/2015/08/20/jaramillo_amenaza/es/)

28 Se necesita investigación por ataque cibernético contra diario en El Salvador. August 13, 2015. [http://www.ifex.org/el-salvador/2015/08/13/website\\_clone/es/](http://www.ifex.org/el-salvador/2015/08/13/website_clone/es/)

29 Recientemente en Colombia se presentó un proyecto. <http://www.eltiempo.com/politica/justicia/proyecto-de-ley-para-modificar-ley-de-habeas-data-en-internet/16404925>

30 Cuidado: querem acesso a todos os seus dados! Reaja! September 16, 2015. <https://antivigilancia.org/pt/2015/09/pl215/>

31 No habrá ‘derecho al olvido’ en Colombia. July 2, 2015. <http://www.elespectador.com/opinion/no-habra-derecho-al-olvido-colombia>

32 Cumplidas las penas, condenados saldrán de bancos de datos de fallos. August 31, 2015. <http://www.eltiempo.com/politica/justicia/corte-suprema-bases-de-datos-de-condenados-deberan-actualizarse/16318575>

order used the European Court’s ruling as a precedent, in this case there was no consideration of the public interest.<sup>33</sup>

### **Threats**

- As shown in the report “Freedom of expression, encryption, and anonymity,”<sup>34</sup> the growing persecution of anonymity online in the region is worrisome.
- Removal of content, censorship, persecution of humor and satire with the justification of a right to privacy is a constant threat in the region. When there is a broader context of political polarization, it becomes even more common (and dangerous) to use honor, political stability or national security as an excuse for censorship.
- The action taken on the right to be forgotten in the region has occurred without a thorough discussion of the legal and technological challenges the topic poses.

### **Opportunities**

- Regional bodies with standards for the protection of freedom of expression online, such as the Inter-American Commission on Human Rights (IACHR), have actively issued statements and reports on the subject. Civil society organizations can take action to disseminate information in this area, particularly to relevant decision-makers in government.

.....  
33 Fallo de IFAI, ¿olvido o censura en Internet? February 8, 2015. <https://www.derechosdigitales.org/8368/mexico-fallo-de-ifai-olvido-o-censura-en-internet/>

34 Visit <https://www.derechosdigitales.org/wp-content/uploads/freedom-of-expression-encryption-and-anonymity1.pdf>

# Copyright and intellectual property

Copyright and intellectual property have been used as justification for censure as well as for limiting access to knowledge and participation in cultural life.

## What has happened in the past year?

- In **Uruguay**, a judge ordered the seizure of computer equipment used by the weekly newspaper “El Eco de Colonia” after receiving a complaint about possible illegal software used in many of these machines. Various local organizations described this as a serious violation of freedom of expression.<sup>35</sup>
- In **Chile**, there were two widely known cases pertaining to domain names and freedom of expression, but both were eventually dismissed in judgments which ended litigation. One was the case of opus-gay.cl, owned by MOVILH (Movement for the Integration and Liberation of Homosexuals), which was contested by the Opus Dei in Chile.<sup>36</sup> Another was casopenta.cl, which published reporting on a corruption scandal involving Chilean politicians and Penta businesses (the large Chilean conglomerate), which was disputed by Penta in alleged defense of its intellectual property.<sup>37</sup>
- In **Mexico**, the House of Representatives introduced a bill to reform the Federal Industrial Property and Copyright Law, and an effort to protect intellectual property, proposed a series of preventive measures regarding the use of internet. However, digital rights advocates warned that the initiative could open the door to internet censorship and the blocking of the right to access information and culture, and could threaten freedom of information through direct attacks that do not adequately protect anonymity on the internet.<sup>38</sup>
- Meanwhile, in **Peru**, there are 12 bills that seek to modify the Copyright Act. On the one hand, they are seeking to provide transparency parameters for the operation of copyright collective societies; on the other, they are looking to extend the limits and exceptions to copyright in order to expand access to culture and knowledge in the country.<sup>39</sup> At the writing of this report, the proposals had not yet been discussed in the plenary of the Congress.
- A bill introduced by deputies in **Argentina** proposes to extend the private domain of photographs from 20 years from the date of publication to the entire life of the author plus 70 years after his death. Local activists have denounced the enormous harm to the public domain and access to culture that this would cause.<sup>40</sup>
- **Chile, Perú and México** are the three countries in Latin America that are part of the Trans-Pacific Partnership (TPP), a treaty negotiated in secrecy with nine other Pacific Rim countries, and, at the writing of this report, has been recently finalized and sent back to each country’s national legislature. For the countries in the continent, the TPP is dangerous as it could import the rules of the DCMA from the U.S.,

35 Denuncian censura indirecta de una jueza a un semanario. February 19, 2015. <http://www.elobservador.com.uy/denuncian-censura-indirecta-una-jueza-un-semanario-n298580>

36 Rechazan solicitud del Opus Dei para revocar dominio del sitio web “Opus Gay” que usa el Movilh. May 27, 2015. <http://www.biobiochile.cl/2015/05/27/rechazan-solicitud-del-opus-dei-para-revocar-dominio-del-sitio-web-opus-gay-que-usa-el-movilh.shtml>

37 La ofensiva de Empresas Penta S.A. contra la libertad de expresión en internet. June 23, 2015. <https://www.derechosdigitales.org/9062/la-ofensiva-de-empresas-penta-s-a-contra-la-libertad-de-expresion-en-internet/>

38 Los dudosos fundamentos y efectos del proyecto de Ley Beltrones. February 19, 2015. <https://www.derechosdigitales.org/8388/los-dudosos-fundamentos-y-efectos-del-proyecto-de-ley-beltrones-en-mexico/>

39 ¿Cómo va la reforma de la Ley sobre Derechos de Autor? March 2, 2015. <http://www.hiperderecho.org/2015/03/reforma-derechos-autor/>

40 Organizaciones contra la privatización del patrimonio fotográfico en Argentina. Octubre 2, 2015. <http://www.vialibre.org.ar/2015/10/02/organizaciones-contra-la-privatizacion-del-patrimonio-fotografico-en-argentina/>

placing new obligations on internet providers for allegedly infringing content, penalizing unlocking devices, and increasingly prosecute threats to copyright on the internet.

**Case study: Student can go to jail for sharing**

The case of a Colombian graduate student on trial for sharing an academic article will resume in February 2016. The author of the academic article filed charges of copyright violation against Diego Gómez for uploading it to the web-sharing site Scribd, although Gómez says that he was just trying to share the conclusions of the study with his classmates, and did not profit from his actions. The 27-year old could face a maximum sentence of eight years in prison.

**Threats**

- The signing of the TPP has meant that the three Latin American countries involved have bowed to pressure from the United States, and have agreed to take maximalist positions on copyright that threaten access to knowledge and freedom of expression on the internet.
- The TPP will become the standard in the next international commercial negotiations with respect to intellectual property and copyright.

**Opportunities**

- The TPP must still be approved, ratified and implemented by the congresses of Peru, Chile and Mexico. This means that there is still time for advocacy on the risks of the treaty.
- Given the total lack of transparency in the TPP negotiations, Wikileaks has been fundamental in leaking various drafts of the document, so that civil society has access to them and can identify which battles to wage.

# Privacy and Personal Data

Many Latin American countries took steps this year to modernize their laws on personal data.

## What has happened in the past year?

- Many countries are in the process of modifying their laws on personal data. In **Chile**, the government has continually delayed entering a new draft law to Congress, for which it got a warning from the OECD.<sup>41</sup> In **Honduras**, meanwhile, the development of a new law is well underway, which, among other things, penalizes data trafficking.<sup>42</sup> In **Brazil**, three distinct proposals for a law of protection on personal data are under debate: one in the Chamber of Deputies, one in the Senate and a third public consultation of the Ministry of Justice. One has its origins in the advertising industry, and the other follows the European model of protection. Additionally, another law is being proposed for the creation of a register that stores unique identifying biometric data information.<sup>43</sup> In the absence of an existing data protection law, this proposal is worrisome.
- In **Peru**, there has been an important debate on the enactment of a Law on the Protection of Personal Data (LPDP), which imposes fines on private entities for the misuse of personal data for a purpose that the holder of the personal data did not authorize. The law has many critics among experts and civil society, because its maximalist and protectionist tenor would conflict with other freedoms, such as transparency and access to information.<sup>44</sup>
- In **Bolivia**, the Authority for the Regulation and Control of Telecommunications and Transport (ATT) finally launched the electronic signature (“firma digital”), which allows parties to conduct business online in a streamlined and efficient manner. For local activists, however, it is still necessary to improve access and internet infrastructure in Bolivia to broaden its benefits for a greater portion of the population.<sup>45</sup>
- A major controversy erupted in **Nicaragua** with the draft Law on the Promotion and Development of the National Network of Broadband Telecommunications Services, which, according to many local activists, contained provisions which in practice would result in the absolute state control of the flow of information leaving and entering the country via the internet. Due to pressure from the private sector and independent journalists, the measure was not ultimately approved.<sup>46</sup>
- The “Plan Ceibal” is a technological and social inclusion program that provides a computer with free Wi-Fi to each student and teacher in the public education system in **Uruguay**. A government agreement with Google allows beneficiaries of the “Plan Ceibal” to use all “Apps for Education” applications for free and without advertising. Local activists and academics opposed the initiative for the problems of technological neutrality and concerns that it would jeopardize the privacy of students. In response, the Regulatory Control Unit Personal Data (URCDP) ruled that the agreement

41 OCDE envía carta de advertencia a Chile por retraso en protección de datos personales. July 23, 2015. <http://www.pulso.cl/noticia/economia/economia/2015/07/7-67305-9-ocde-envia-carta-de-advertencia-a-chile-por-retraso-en--proteccion-de-datos.shtml>

42 Anuncian sanciones contra el tráfico de datos. August 17, 2015. <http://www.elheraldo.hn/pais/869895-214/anuncian-sanciones-contra-el-tr%C3%A1fico-de-datos>

43 Brasil anuncia projeto para identificação unitária com dados biométricos. Como anda o tema na América Latina? Julio 7, 2015. <https://antivigilancia.org/pt/2015/07/1339/>

44 The friction between transparency and personal data protection in Peru. July 14, 2015. <http://www.digitalrightslac.net/en/la-friccion-entre-la-transparencia-y-la-proteccion-de-datos-personales-en-peru/>

45 Firma digital brinda 7 ventajas a los sectores público y privado April 13, 2014. [http://www.la-razon.com/index.php?url=/suplementos/financiero/Firma-ventajas-sectores-publico-privado-financiero\\_O\\_2031996905.html](http://www.la-razon.com/index.php?url=/suplementos/financiero/Firma-ventajas-sectores-publico-privado-financiero_O_2031996905.html)

46 El Gobierno de Nicaragua crea una ley para controlar Internet. May 13, 2015. [http://internacional.elpais.com/internacional/2015/05/13/actualidad/1431535413\\_014757.html](http://internacional.elpais.com/internacional/2015/05/13/actualidad/1431535413_014757.html)

was signed in compliance with all current regulations regarding the protection of personal data.<sup>47</sup>

- In **Argentina**, the Ombudsman of Buenos Aires asked Google and YouTube to remove content that violated the rights of a teenager who claimed to be a victim of cyberbullying.<sup>48</sup>

**Case study: Rejection of the metadata retention law**

In **Paraguay** a draft bill was proposed that would oblige internet service providers to keep for 12 months the details of who communicated with whom, for how much time, and from where. It also would have permitted authorities to have access to this data by an order of an investigating judge, exposing the geolocation information revealing the physical whereabouts of Paraguayans through time. The given excuse for keeping this data was to fight against organized crime and child pornography.

After an arduous campaign against the project led by the local NGO TEDIC, the law popularly known as “Pyrawebs” was rejected. The general consensus was that the initiative allowed the Paraguayan government to massively monitor its citizens, thus damaging their privacy, free association, anonymity and freedom of expression.

**Threats**

- Development of a proposed rule for the protection of personal data in Ecuador is underway. Because the project has not been made public, its focus and scope are unknown.
- The prosecution of cybercrime and child pornography are often used as an excuse by states in the region to introduce laws that infringe on the privacy of individuals.
- Despite the successful rejection of the law that sought to retain the metadata of internet traffic in Paraguay, there are countries in the region that have similar regulations; such is the case of Chile, where ISPs must store this information for up to two years.

**Opportunities**

- Countries that are in the process of working on their rules on personal data have the opportunity to pass laws that are current and consistent with the challenges that new technologies pose to the protection of privacy.

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47 Tras las críticas de la Udelar, Plan Ceibal sale a defender su acuerdo con Google. July 10, 2015. <http://www.elobservador.com.uy/tras-las-criticas-la-udelar-plan-ceibal-sale-defender-su-acuerdo-google-n659849>

48 Intiman a Google a eliminar información de un adolescente, víctima de ciberacoso. October 14, 2015. <http://www.lanacion.com.ar/1836404-pidieron-a-google-y-youtube-que-eliminen-informacion-de-un-adolescente-victima-de-ciberacoso>

# Spying and surveillance

Revelations of the use of the internet for espionage and surveillance practices, directed towards various Latin American countries, had an enormous impact this year. News leaks confirmed what many activists have suspected for years.

## What has happened in the past year?

- In **Argentina**, at the beginning of 2015, the prosecutor Alberto Nisman was found dead in his building with a gunshot wound to the head. Given the importance of the causes that the prosecutor was investigating, the case had global significance. In the investigation into his death, it was discovered that Nisman was targeted by the Remote Access Toolkit (RAT), a software that allows a hacker or spy remote access to someone's computer or mobile device.<sup>49</sup> After his death, the intelligence system was reformed and a new intelligence agency was created in the country, complemented by a New Doctrine of National Intelligence (NDIN). While the latter scored a breakthrough in transparency, there is still a need to explicitly recognize the protection of human rights.<sup>50</sup> These developments come amid accusations that the government of Cristina Fernandez de Kirchner has spied on powerful businessmen, political opposition leaders, renowned journalists, judges, prosecutors and students.<sup>51</sup>
- In addition, documents provided by Edward Snowden denounced "Operation Quito," a secret program of cooperation between the US National Security Agency (NSA) and UK Government Communications Headquarters (GCHQ), which included covert operations on social networking sites and the interception of communications and military security, in order to be informed about Argentina's plans regarding the Falkland Islands and influence public opinion.<sup>52</sup>
- In **Uruguay**, the Ministry of Interior and Justice launched "El Guardian", a program for intercepting calls, emails and social networks.<sup>53</sup>
- In **Peru**, the National Intelligence Directorate, under the government of Ollanta Humala, purchased modern phone and internet interception equipment for external purposes that included combatting drug trafficking, among others, but soon there were allegations that the DINI watched political opponents and had intercepted their communications.<sup>54</sup>
- In the context of new revelations of the NSA having spied on the government of Dilma Rousseff,<sup>55</sup> **Brazil** will form a Center to Fight Against Terrorism (CIET) in preparation for the 2016 Olympics, to exchange information and work towards the prevention of terrorism. It is not known what kind of database integration will be done, but interviews with the government have made it clear that part of the plan is to "strengthen allianc-

49 Un hacker explica el virus que tenía el celular de Nisman. October 12, 2015. [http://www.clarin.com/politica/Alberto\\_Nisman-celular-hacker-Black\\_Hat\\_USA\\_2015-Marquis-Boire-fiscal\\_Viviana\\_Fein-peritaje-equipos\\_de\\_Nisman-investigadores\\_0\\_1411059122.html](http://www.clarin.com/politica/Alberto_Nisman-celular-hacker-Black_Hat_USA_2015-Marquis-Boire-fiscal_Viviana_Fein-peritaje-equipos_de_Nisman-investigadores_0_1411059122.html)

50 Análisis de la ADC de la Nueva Doctrina de Inteligencia Nacional. July 13, 2015. <http://www.genteba.com.ar/index.php/politica/item/77064-an%C3%A1lisis-de-la-adc-de-la-nueva-doctrina-de-inteligencia-nacional>

51 Espiados: cómo nos vigilan las redes del Gobierno. August 23, 2015. [http://www.clarin.com/politica/Espiados-vigilan-redes-Gobierno\\_0\\_1417658396.html](http://www.clarin.com/politica/Espiados-vigilan-redes-Gobierno_0_1417658396.html)

52 Espionaje británico por las Malvinas. April 3, 2015. <http://www.pagina12.com.ar/diario/elpais/1-269645-2015-04-03.html>

53 "El Guardián": gobierno pone en marcha súper espía informático. March 5, 2015. <http://www.elpais.com.uy/informacion/guardian-gobierno-pone-marcha-super.html>

54 La DINI hizo rastreo masivo vía el Reniec. May 7, 2015. <http://diariocorreio.pe/tema-del-dia/la-dini-hizo-rastreo-masivo-via-el-reniec-58547/>

55 Estados Unidos espionaram assistente pessoal de Dilma e avião presidencial. July 4, 2015. [http://brasil.elpais.com/brasil/2015/07/04/politica/1436023048\\_802199.html](http://brasil.elpais.com/brasil/2015/07/04/politica/1436023048_802199.html)

es with countries of Interpol<sup>56</sup> and, according to the Brazilian Intelligence Agency (ABIN), the country already has relationships with 80 other countries to exchange information.

- According to the latest report by Citizen Lab, **Mexico, Venezuela and Paraguay** are purportedly using the spying software FinFisher, traditionally used to monitor software activists and political dissidents.<sup>57</sup>

#### **Case study: How has Hacking Team affected the region?**

The hackers that hacked into Hacking Team revealed that the Italian company counts various Latin American governments as customers: **Brazil, Chile, Colombia, Ecuador, Honduras, Mexico and Panama**. In addition, **Argentina, Paraguay and Uruguay** have been in talks with the company about the use of its services. Although the scope of these tools in the customer countries is still not 100% clear, there are likely violations of the right to privacy and freedom of expression and opinion. 16 civil society organizations rejected the purchase of this technology in the region.<sup>58</sup>

In **Brazil**, the spying software was purchased by the Federal Police. The only official response to the controversy came from the Army Command, which admitted negotiations with the company but denied making any purchases.<sup>59</sup>

The Investigations Police of **Chile** have spent USD 2.85 million on the tool. Emails show that the police would use this program for warrantless spying, although police said the opposite.

In **Colombia**, the National Police Intelligence spent USD 335,000 for the software known as Galileo, along with USD 35,000 in annual maintenance. Leaked emails also show that Hacking Team has sold its software to the United States Drug Enforcement Administration (DEA), and that the DEA has used it to intercept all ISP traffic from Colombia.

The Ministry of Intelligence **Ecuador** (SENAIN) also bought spyware. According to the Associated Press,<sup>60</sup> in leaked emails there is evidence that the government of Rafael Correa used the malware Hacking Team to spy on Carlos Figueroa, physician and member of the opposition, who in 2014 was sentenced to six months in prison for “insulting” the president through his criticism. For its part, SENAIN denied having any contractual relationship with the company Hacking Tem.

In 2014, The National Bureau of Investigation and Intelligence (DNI) of **Honduras** paid USD 355,000 to Hacking Team.

**Mexico** is the most important client of Hacking Team at the global level in terms of spending and the number of clients. Leaks identified up to 14 individual contracts with the company. So far, there is evidence that in the state of Puebla, the state govern-

56 Rio de Janeiro terá Centro de Enfrentamento ao Terrorismo na Olimpíada. July 30, 2015. <http://www.brasil.gov.br/defesa-e-seguranca/2015/07/rio-de-janeiro-tera-centro-de-enfrentamento-ao-terrorismo-na-olimpiada>

57 Pay No Attention to the Server Behind the Proxy: Mapping FinFisher's Continuing Proliferation. October 15, 2015. <https://citizenlab.org/2015/10/mapping-finfishers-continuing-proliferation/>

58 Sociedad Civil de América Latina rechaza software espía de Hacking Team. July 7, 2015. <https://www.derechosdigitales.org/9081/sociedad-civil-de-america-latina-rechaza-software-espia-de-hacking-team/>

59 Hacking Team é hackeada e tem seus documentos vazados. July 10, 2015. <https://antivigilancia.org/pt/2015/07/hacked-team/>

60 Correction: Ecuador-Hacking The Opposition story. Agosto 7, 2015. <http://bigstory.ap.org/article/6f41d49888174b45857d34511fda1caf/apnewsbreak-email-leak-suggests-ecuador-spied-opposition>

ment used the tools of Hacking Team to spy on political opponents and journalists.<sup>61</sup>

The emails reveal that the Security Office of the Presidency of **Panama** was in talks with Hacking Team since 2012. The first Anti-Corruption Prosecutor's Office launched an investigation into Panama for the purchase and subsequent disappearance of spy equipment purchased by the government of Ricardo Martinelli (2009-2014).<sup>62</sup>

### Threats

- There is total secrecy and lack of transparency on the objectives, scope and limits of surveillance systems.
- In the context of overall mass surveillance in the region, the increasing use of surveillance on political opponents and activists is worrisome.
- Due to the secrecy of these state surveillance programs and the lack of accountability mechanisms that allow citizens to control the actions of their government, there is still much to learn about the state of spying and surveillance in Latin America.

### Opportunities

- Reports such as those from Citizen Lab as well as other leaked documents have enabled civil society organizations to at last have evidence of what until now they had only been suspicious.
- Mexico is one of the most troubled countries in this regard. Nevertheless, the NGO Red en Defensa de los Derechos Digitales (R3D) mounted a legal challenge to the articles of the Federal Telecommunications and Broadcasting Act that deal with the exchange of information between internet companies and federal security agencies, and this will be taken up by the Supreme Court of Justice (SCJN).<sup>63</sup>

61 El gobierno de Puebla usó el software de Hacking Team para espionaje político. Julio 22, 2015. <http://www.animalpolitico.com/2015/07/el-gobierno-de-puebla-uso-el-software-de-hacking-team-para-espionaje-politico/>

62 Panamá pesquisa gestión de Martinelli por caso Hacking Team. Agosto 10, 2015. <http://es.panampost.com/thabata-molina/2015/08/10/panama-investigara-a-martinelli-porescandalo-de-hacking-team/>

63 SCJN revisará artículos de cibervigilancia de Ley telecom. Agosto 4, 2015. <http://m.cnnexpansion.com/tecnologia/2015/08/03/suprema-corte-mexicana-revisara-articulos-de-cibervigilancia>

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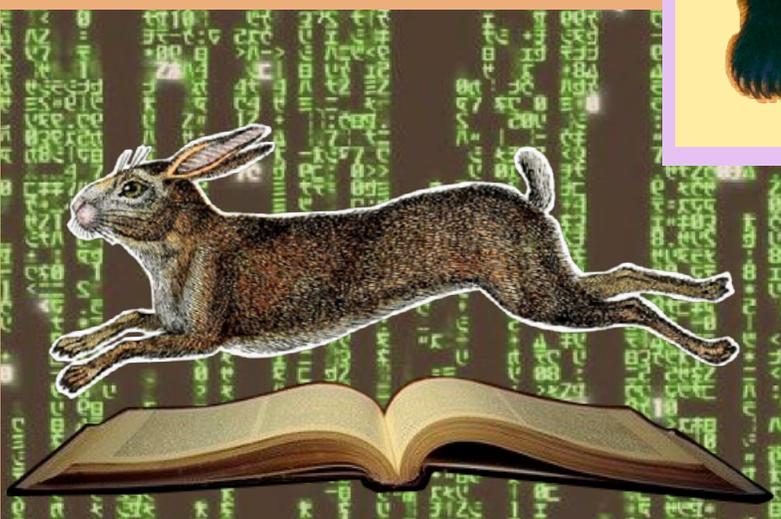
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