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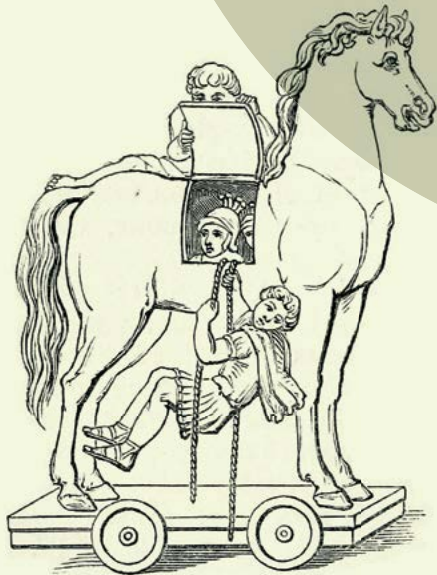
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LATIN AMERICA IN A GLIMPSE:

Human Rights and the Internet

Internet Governance Forum, Istanbul 2014





This document presents a summary of some aspects in the discussion in Latin America regarding human rights and the internet. This initiative has been especially made to increase the understanding of the region in the international community gathered at the Internet Government Forum 2014.

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Latin America

Brief General Context

- Latin America is a whole of 22 countries where the two first languages are Spanish and Portuguese. Currently, the population is estimated in almost 600 million.
- Social inequality and poverty remains as the major challenges throughout the region: according to UNDP report from 2013,¹ Latin America is the most unequal region in the world.
- The high level of inequality leads to a wide diversity of social conflicts, such as organised crime, drug trafficking and urban and rural guerrilla movements.² This situation gets exacerbated by some authoritarian legacies of the young Latin American democracies: corruption, weak political parties, politicised militarism, compromised judiciary and widespread citizen distrust.³

Internet Development

- According to ECLAC,⁴ the Internet market in Latin America has expanded rapidly, reaching 133 million people in 2012 (ComScore, 2012). During 2008-2012, the region was the second fastest growing population using the Internet (15 % annually), after the Middle East-Africa.
- In spite of rapid growth, Latin America is still far behind the developed world in overall connectivity to the internet. On average, only 40 % of the total population of Latin America uses the internet, compared with almost 80 % in the OECD countries as a whole. The countries with the highest

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1 América Latina sigue siendo la región más desigual (2013) <http://www.infobae.com/2013/04/24/1070333-america-latina-sigue-siendo-la-region-mas-desigual>

2 Rolando Cordera Campos, Revista CEPAL N° 113 (2014) <http://www.cepal.org/publicaciones/xml/5/53455/RVE113Completa.pdf>

3 UNDP, Understanding Social Conflict in Latin America (2013) <http://www.undp.org/content/undp/en/home/librarypage/crisis-prevention-and-recovery/Understanding-Social-Conflict-in-Latin-America/>

4 CEPAL, Economía social para el cambio estructural y la igualdad (2013) http://www.cepal.org/publicaciones/xml/5/49395/Economia_digital_para_cambio_estryigualdad.pdf

rate of connectivity, such as Chile and Uruguay, barely surpass 50 %.⁵

- ECLAC argues that in a context of economic growth and poverty reduction in many Latin American countries, they must address the challenge of coordinating and consolidating its digital economy.
- ECLAC, in several of its studies about the development of information society in the region, says that the prevailing technological paradigm has been exogenous, which directly affects in a slow and uneven development from the center to the periphery, extending existing structural gaps into the digital sphere.⁶

Human Rights on Internet

- While Latin America is a region with a very common culture and similar languages, it has no unified and coherent legislation between countries or with government agencies or specialised courts in dealing with specific issues related to human rights, with the remarkable (but sometimes insufficient) exception of the Inter American Human Rights system.⁷
- In addition to the aforementioned issues, there is the pressure from the negotiation of free trade agreements, especially with the United States (the Trans-Pacific Partnership -TPP- is one of the most important examples, affecting Mexico, Peru and Chile) and with the European Union (a Free Trade Agreement with the Mercosur). With different emphases, these are creating obligations that encourage countries to change their laws to comply with the US standards (copyright reform being one example) which threaten human rights in the digital environment.⁸

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5 ECLAC, Broadband in Latin America: Beyond connectivity (2013) http://www.cepal.org/cgi-bin/getProd.asp?xml=/publicaciones/xml/6/52116/P52116.xml&xsl=/publicaciones/ficha-i.xsl&base=/publicaciones/top_publicaciones-i.xsl#

6 Valeria Betancourt, Las TIC para el desarrollo en América Latina en sus inicios <http://info25.org/es/alc-ict4d>

7 Amenazas y oportunidades legales para los derechos humanos en el entorno en línea en Latinoamérica (2013) https://redlatam.org/_files/reporte%20leyes%20latam.pdf

8 Carlos Furche, Chile and the TPP Negotiations (2013) <https://www.derechosdigitales.org/wp-content/uploads/TPP-furche-EN.pdf>

Net Neutrality

Brief context

- Even though the net neutrality concept was coined more than 10 years ago,⁹ Latin America was the region where it finally took off. Responding to civil society concerns and campaigns,¹⁰ Chile and also Peru set the ground for banning arbitrary internet blocking and throttling, with other countries like Netherlands or later the European Union following suit.
- In particular, Chile passed in 2010 the first net neutrality law in the world,¹¹ stating explicitly that Internet Service Providers (ISP) were not allowed to block, interfere, discriminate nor restrict the right of any internet user to use, send, receive or offer any content or legal service through the net.

Threats

- There are still countries like Paraguay¹² that haven't adopted net neutrality policies, thus leaving internet users unprotected from abuses like content throttling or arbitrary blockings from ISP or other actors, while a questionable initiative like internet.org is taking off.¹³
- In Colombia, tiered mobile Internet access packages were offered under the excuse of improving internet access to underserved communities. Advertised as "internet access", packages meant only for email, chat and social networks were offered.
- A common excuse to implement traffic management or tiered services schemes is the lack of better internet connectivity both outside and inside within the Latin American region. This problem not only needs

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9 In 2003, the Columbia Professor Tim Wu defined Net Neutrality http://en.wikipedia.org/wiki/Net_neutrality

10 The first Net Neutrality Law was product of a grassroots campaign started by NeutralidadSi <http://www.neutralidadsi.org/history-of-the-project/>

11 Chile: A Leader in Net Neutrality Legislation <https://openmedia.ca/plan/international-comparisons/chile>

12 Paraguayan ISP censoring site for mocking stockholder's paper -the largest in the country <http://cc.tedic.org/2012/09/25/paraguayan-isp-censoring-site-for-mocking-stockholders-paper-the-largest-in-the-country/>

13 Is A Free, Ad-Laden, No-Privacy, Walled-Off Version Of The Internet Better Than No Internet At All? <https://www.techdirt.com/articles/20140224/11315426332/is-free-ad-laden-no-privacy-walled-off-version-internet-better-than-no-internet-all.shtml>

market-driven solutions, but a comprehensive approach and cooperation between regional governments.

Opportunities

- Chile has issued rulings to ensure ISP transparency and forbidding discriminatory zero-rating service providing,¹⁴ reinforcing the non-discriminatory traffic management principle. This is an opportunity to move the debate forward, taking stock of the complexity of the issue from a public interest point of view, specially in a country where there is evidence suggesting that the enforcement of net neutrality policies has not hurt nor stalled the telecommunications industry.¹⁵
- Other countries like Argentina and Mexico are looking forward to prepare or enforce net neutrality regulations, which can grow the regional adoption of this principle. The upcoming regulation and implementation of Marco Civil in the Brazil can also represent a significant step forward on the enforcement of net neutrality or, due to the influence of the country in the region, can jeopardise similar initiatives in other countries.

Featured Case

- In Brazil, a new bill called the Marco Civil was passed on April 2014, including net neutrality provisions. It was signed into Law by the Brazilian president in the context of the NetMundial meeting and still needs to be regulated.¹⁶
- This is a groundbreaking law for two reasons. First, the Marco Civil was conceived through a bottom-up participatory process and civil society was a key actor in all the discussion, beyond merely providing feedback. Second, Brazil is the biggest country in the region, and one of the members of the BRICS bloc,¹⁷ which sets a model for their regional and alliance partners.

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14 Chile Bans Free Delivery Of Social Media Services To Uphold Net Neutrality
<https://www.techdirt.com/articles/20140603/05442127439/chile-bans-free-delivery-social-media-services-to-uphold-net-neutrality.shtml>

15 Alberto Cerda, An evaluation of the Net Neutrality Law in Chile (2013) <http://www.digitalrightslac.net/en/una-evaluacion-de-la-ley-de-neutralidad-de-la-red-en-chile/>

16 Sara Moreira, Brazil Scores Before “the Internet World Cup” Begins: Marco Civil Approved by the Senate (2014). <http://globalvoicesonline.org/2014/04/23/brazil-marcocivil-netmundial2014-senate-approves-bill/>

17 Brazil, Russia, India and China.

Cybersecurity

Brief context

- Cybersecurity is a discipline that focuses on protecting computers, networks, programs and data from unintended or unauthorised access, alteration or destruction.¹⁸ But from a policy perspective, it encompasses different issues such as cybercrime, cyber defence, and other “cyber” terms related with security and stability.
- With the rise of internet penetration in the region, cybersecurity debates have also scaled up,¹⁹ usually without hard evidence that supports the adoption of certain measures.²⁰
- The main venue where these issues are being discussed in the region is the Organization of American States (OAS), through the Inter-American Committee against Terrorism (CICTE) and publishing a yearly report on cybersecurity trends, which last issue dates from 2014. There are also other regional venues increasingly working in these issues, like Mercosur and, specially in the last year, UNASUR.²¹

Threats

- The latest cybersecurity trends report from the OAS²² lacks a consistent human rights approach, mostly focusing in cybercrime threats and State response mechanisms, but without mentioning privacy or

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18 Definition available at <http://www.umuc.edu/cybersecurity/about/cybersecurity-basics.cfm>

19 Organization of American States: Latin American + Caribbean Cyber Security Trends Report (2014) http://www.symantec.com/content/en/us/enterprise/other_resources/b-cyber-security-trends-report-lamc.pdf

20 There is not a common methodology to measure cyber security issues like cybercrime or cyber-attacks that allow comparing and planning a policy in the region. There are isolated attempts to analyze hard evidence to inform policy, like this research paper prepared by researchers from ONG Derechos Digitales (2014) <http://www.rchdt.uchile.cl/index.php/RCHDT/article/viewArticle/32222>

21 Unasur busca seguridad digital y autonomía tecnológica <http://www.mediatelecom.com.mx/index.php/agencia-informativa/noticias/item/48613-unasur-busca-seguridad-digital-y-autonomia-tecnologica.html>

22 Organization of American States: Latin American + Caribbean Cyber Security Trends Report (2014) http://www.symantec.com/content/en/us/enterprise/other_resources/b-cyber-security-trends-report-lamc.pdf

freedom of expression impacts of those responses.

- Recent cybercrime laws: In Peru, the Congress passed a law that had to be reformed within months for its evident mistakes. In Argentina, the Congress also passed a poorly drafted grooming law, subject to harsh criticism for penalising acts prior to abuse, endangering constitutional rights.²³ Costa Rica enacted a cybercrime law that originally affected journalists that were working in national security issues, by criminalising the leak of information as “espionage”.²⁴ In Brazil, the drafting of Marco Civil itself was a reaction to a harmful cybercrime draft bill with provisions criminalising daily behaviours of internet users. A reduced version of the bill was approved even before the civil rights framework and there is more to come.
- Several countries in the region have been invited to sign the Convention on Cybercrime of the Council of Europe, which represent several risks for digital privacy of internet users. To date, only the Dominican Republic and Panama have ratified the agreement in Latin America.

Opportunities

- Last year’s revelations from Edward Snowden about the mass surveillance programs carried by the NSA sparked concern and varied reactions from Latin American governments in regards to digital privacy. UNASUR dedicated a special meeting on the issue, and the Brazilian government organised the NetMundial meeting, gave urgency to the Marco Civil and co-sponsored, with Germany, a resolution in the UN General Assembly that addresses mass surveillance.²⁵ This is an opportunity to sensibilise national governments about the balance between cybersecurity and fundamental rights.
- Also, some Latin American countries, like Colombia,²⁶ are working to improve or create national cybersecurity strategies, while the OAS keeps their work in

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23 Nuevas críticas a la ley de ‘grooming’ reavivan un debate irresuelto <http://www.infotechnology.com/revista/Nuevas-criticas-a-la-ley-de-grooming-reavivan-un-debate-irresuelto-20140320-0002.html>

24 Renata Ávila, Costa Rica: Cybercrime Law Threatens Internet Freedom (2012) <http://advocacy.globalvoicesonline.org/2012/07/20/costa-rica-cybercrime-law-threatens-internet-freedom/>

25 Resolution: Privacy in the Digital Age. More in https://antivigilancia.wiki.br/boletim_antivigilancia/7#assembleia_geral_da_onu_aprovam_resolucao_contra_vigilancia_em_massa

26 Colombia prepares new Cyber Security Strategy <http://www.nearshoreamericas.com/colombia-prepares-overhaul-cyber-security/>

the issue through the CICTE and UNASUR is entering these issues. The lack of civil society involvement in all of these venues, while being an undesirable situation, also presents an opportunity to get involved in those processes and introduce a human rights approach to cybersecurity discussions.

Featured case

- Peruvian law against cybercrime in 2013 was deeply contested by civil society, after being presented to Congress, then switched for a different text and passed without debate in the same day.²⁷ Its provisions were far from helpful, written in vague language that ended up criminalising far more than its intended targets, and assigning high penalties for offenders for conducts as simple as deleting or modifying computer files.²⁸
- Only days after the law was passed, at least five different bills tried to address the more serious problems with a law that in theory was modeled after the Budapest Convention. One of those was enacted in March 2014, correcting many flaws in the previous law and putting back into the Penal Code the sanction against traffic of personal data.²⁹ While some issues remain unsolved (such as the broad criminalisation of child grooming), it appears that many in Congress and government learnt a big lesson.

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27 Francisco Vera, In closed debate, Perú Congress approves new cybercrime law threatening online freedom of expression (2013) <https://www.accessnow.org/blog/2013/09/20/peruvian-congress-approves-new-cybercrime-law>

28 Miguel Morachimo, Cómo me convertí en el primero que violó la nueva Ley de Delitos Informáticos (2013) <http://www.blawyer.org/2013/10/22/como-me-converti-en-el-primero-que-violo-la-nueva-ley-de-delitos-informaticos/>

29 Law No. 30.171 [http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Cont-doc02_2011_2.nsf/d99575da99ebf305256f2e006d1cf0/e0589bd-1613de56e05257c97004d0f7a/\\$FILE/30171.pdf](http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Cont-doc02_2011_2.nsf/d99575da99ebf305256f2e006d1cf0/e0589bd-1613de56e05257c97004d0f7a/$FILE/30171.pdf)

Freedom of Expression

Brief context

- The Inter-American system for human rights protection strongly sanctioning States for censorship, and there are many cases where regional courts have reaffirmed this principle,³⁰ condemning film censorship.
- The internet has provided new means for traditional media outlets to have a bigger potential audience reach to carry their message. At the same time, it has allowed for the creation and growth of new media outlets, including press sites, weblogs and social media platforms.
- The internet has also served as a channel not only to share news and information, but also to provide opinions, to organise public demonstrations, require public information and appeal directly to public officials.

Threats

- The new Communications Law in Ecuador, enacted in 2013, has provided a new legal framework for the media in that country, applying its rules to most content outlets, public or private, by companies or by people. Then, it extends a duty to disseminate “facts of public interest”, imposing sanctions for those who fail in that duty. It also holds media liable for their comment sections, imposing identification duties that have the effect of banning anonymity. These new conditions are detrimental to freedom of expression online.³¹
- In Mexico, the domain for Idmx.org, a website that served as a portal for receiving, sorting and publishing videos, photographs and testimonies about human rights violations committed by the security forces, was suspended for an alleged violation of the terms of use. NGOs in the region considered this move to be an act of political internet censorship.³²
- In Colombia, slander and defamation rules have been used to condemn one person for expressing strong political opinions online, in the form of comments directed to a particular political figure. The mere expression

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30 Inter-American Court of Human Rights decisions can be consulted at <http://www.corteidh.or.cr/index.php/en/decisions-and-judgments>

31 Francisco Vera, Mixed bag for freedom of expression in Ecuador’s new Communications Law (2013) <https://www.accessnow.org/blog/2013/06/27/mixed-bag-for-freedom-of-expression-in-ecuadors-new-communications-law>

32 Luis Fernando Garcia, Political Internet Censorship: a reality in Mexico (with a little help from the United States and GoDaddy.com) (2014) <http://www.digitalrightslac.net/en/censura-politica-en-internet-una-realidad-en-mexico-con-un-poco-de-ayuda-de-estados-unidos-y-godaddy-com/>

“semejante rata” (“such rat”), was considered reason enough to prosecute and jail an internet commenter, installing a chilling effect on political expression, which should be open to more aggressive forms of speech.³³

- In Brazil, restrictions in the electoral and defamation law allow for expedite content removal in many cases used to criticise government officials or candidates.³⁴

Opportunities

- The Special Rapporteur for Freedom of Expression of the Interamerican Commission of Human Rights, has released a full report regarding the impact of the internet on freedom of expression, and the optimal conditions under which it can operate in the digital environment. This sets the stage not only for generating those conditions in each country, but also to rely on the Inter-American Human Rights system for the defence of the freedom of expression.³⁵
- A popular case in Chile of wrongful prosecution of a parody Twitter account on the basis of identity theft was struck down in 2013, with part of the reasoning concluding that it was an exercise in freedom of expression, not meant to be prosecuted as there was no real harm, and no real proof of any crime. Thus, expression through parody found full recognition in courts.³⁶
- The Audiovisual Communication Services Law, about to be passed in Uruguay, sets a positive precedent on how to regulate media without affecting freedom of expression, considering pluralism, transparency that has been lauded by UN Special Rapporteur on Freedom of Expression.³⁷

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33 Colombia court throws man in prison over slanderous comment on news website <http://colombiareports.co/cali-citizen-thrown-prison-leaving-comment-news-site/>

34 Melody Patry, Brazil: Towards an internet “bill of rights” (2014) <http://www.indexonensorship.org/2014/06/brazil-towards-internet-bill-rights/>

35 Catalina Botero, Freedom of Expression and the Internet (2013) http://www.oas.org/en/iachr/expression/docs/reports/2014_04_08_Internet_ENG%20_WEB.pdf

36 Daniel Álvarez, On the parody on Twitter: lessons to learn (2013) <http://www.digitalrightslac.net/en/sobre-la-parodia-en-twitter-lecciones-que-aprender/>

37 Call for continuing transparency and dialogue in passage of Uruguay’s media law https://www.ifex.org/uruguay/2014/04/08/continuing_transparency/

Featured case

- In February 2014, many internet users in Venezuela complained that certain parts of the internet were without access, including pictures on Twitter during days of protests, though the government denied intervention.³⁸ Internet access overall was cut in Táchira for two days, at the same time that militarised forces controlled the city following protests against, and for the government.³⁹

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38 Twitter reports image blocking in Venezuela <http://www.usatoday.com/story/news/world/2014/02/14/twitter-image-blocking-venezuela/5497219/>

39 Marianne Diaz, Venezuela: The Internet Goes Dark in Táchira (2014) <http://advocacy.globalvoicesonline.org/2014/02/22/blackout-in-venezuela-the-internet-goes-dark-in-tachira-censorship-access/>

Right to Freedom from Discrimination and the Internet

Brief context

- The UN Special Rapporteur on contemporary forms of racism states that “[c]ombating the use of the internet and social media to propagate racial, ethnic and xenophobic content and incitement to violence requires a multi-stakeholder approach” (A/HRC/26/49, para 66).
- A recent study in the United States found that nearly half (42 %) of LGBT youth reported being harassed or bullied online, three times more than non-LGBT youth. One in four LGBT youth said they had been bullied or harassed online in the past year because of their sexual orientation or gender identity. One in five experienced similar harassment via text message.⁴⁰
- The right to freedom from discrimination is enshrined within the Inter-American system, through its foundational charter, general human rights instruments, and conventions dedicated to eliminating discrimination and racism. In addition it has codified a Convention Against All Forms of Discrimination and Intolerance.
- The former OAS Special Rapporteur for Freedom of Expression, Dr. Catalina Botero, addressed the issue of freedom from discrimination online in her most recent annual report.⁴¹

Threats

- Latin American is the most unequal region in the world. Those inequalities are expressed at the level of internet access and use. Voices of targets of discrimination most often remain absent because of their lack of access to the internet and social media, therefore often leaving racist and sexist

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40 GLSEN’s “Out Online: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth”, First National Report to Look In-Depth at LGBT Youth Experience Online <http://www.glsen.org/press/study-finds-lgbt-youth-face-greater-harassment-online>

41 The Special Rapporteur recommended that steps be taken “to progressively promote universal access not only to infrastructure but also the technology necessary for its use and to the greatest possible amount of information available on the Internet; to eliminate arbitrary barriers to access to infrastructure, technology and information online, and to adopt measures of positive differentiation to allow for the effective enjoyment of this right for individuals or communities who face marginalization and discrimination”. Available in <http://www.oas.org/en/iachr/docs/annual/2013/informes/LE2013-eng.pdf>

ideas unchallenged.⁴² Inequalities in access to the internet and social media as well as media ownership and internet governance amplify intolerance.

- There is a significant gap in legal and regulatory frameworks in the region.

Opportunities

- The inter-American system has established a number of mechanisms to monitor compliance with human rights norms. In addition to the Inter-American Commission and Court on Human Rights, there are “rapporteurships” on specific issues that are closely related to the right to freedom from discrimination, including on the rights of indigenous peoples, the rights of women, the rights of migrants, the rights of children, the rights of persons of African descent and against racial discrimination, the rights of lesbian, gay, bisexual, trans and intersex persons (LGBTI), as well as for freedom of expression and on human rights defenders.

Featured Cases

- In Colombia, women activists and human rights defenders and NGO, network or movement members have been the victims of hackers, phone hacking and spyware or have had their computers stolen. These aggressions are committed to intimidate and threaten women’s right but also to acquire confidential information such as databases with information about the victims of the Colombian conflict, claims and court cases, among others.⁴³
- In Argentina, research has found that traffickers use social networks, email, online chatting or mobile phones to build a relationship of trust online and convince the victims to leave their homes, families or even their country and exploit them. This method is frequently used with teenagers, who find in these relationships the possibility to escape from family problems.⁴⁴

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42 Mutuma Ruteere, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (2014) <http://www.ohchr.org/Documents/Issues/Racism/A-HRC-26-49.pdf>

43 Olga Paz Martinez, Women’s rights, gender and ICTs (2013) <http://giswatch.org/en/country-report/womens-rights-gender/colombia>

44 Flavia Fascendini y Florencia Roveri, Convergences between ICTs and the trafficking of women in Argentina (2013) <http://giswatch.org/en/country-report/womens-rights-gender/argentina>

Privacy Rights and Net Surveillance

Brief context

- While most of the countries in Latin America already had a sectorial data protection law, such as those focused on medical records, population census, etc., in the latest years the number of general data protections laws, which also address traffic, usage and storage of data over the internet, has increased significantly. The European Union's data protection regulation has been the most influential in such Latin American legislative developments,⁴⁵ particularly in the existing laws from Argentina, Uruguay, Mexico, Peru, Costa Rica and Colombia.
- Brazil, Chile and Paraguay are also considering a new data protection legislation.⁴⁶ On the other hand, such debate is a real challenge in Bolivia, El Salvador, Guatemala, Nicaragua, Dominican Republic, Venezuela and Cuba, which, though recognising privacy rights, so far have no comprehensive law on data protection or even an elaborated habeas data right.⁴⁷
- Import and implementation of surveillance technologies is also on the rise in the region, with little or nonexistent public information about its usages. That has been the case in Brazil in preparation for the World Cup and Olympics,⁴⁸ but also for countries like Mexico and Colombia, among others.
- All these technological and institutional changes represent a challenge for data protection, but there are relatively few NGOs working specifically on privacy rights and digital security in the region.⁴⁹

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45 Nelson Remolina, Latin America and Protection of Personal Data: Facts and Figures (1985-2014) (2014) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2412091

46 More information at <https://redlatam.org/es/country>

47 Aldo Leiva, Data Protection Law in Spain and Latin America: Survey of Legal Approaches, in *International Law News*, vol. 41 n 4 (2012) http://www.americanbar.org/publications/international_law_news/2012/fall/data_protection_law_spain_latina_america_survey_legal_approaches.html

48 Joana Varon, Copa do Mundo deixará esquema de vigilância como herança para o país? (2014) https://antivigilancia.wiki.br/boletim_antivigilancia/9#copa_do_mundo_deixara_esquema_de_vigilancia_como_heranca_para_o_pais

49 Katitza Rodríguez and Renata Ávila, Privacy Rights Activism in Latin America (2012) <https://www.eff.org/deeplinks/2012/09/privacy-activism-latin-america>

Threats

- There appears to be a worrying dangerous trend to implement provisions establishing mandatory data retention.
- There is a lack of public awareness of data protection and privacy rights.
- Increasingly, there are also significant changes on legislation regarding integration of databases from different governmental authorities or even private companies without users privacy concerns.
- New surveillance technologies are being implemented, but citizens remain largely unaware of what types of information are being collected and how it is being used against them. In Brazil, a draft bill that allows authorities to have access to geolocalization data from mobile phones without a court order is on its way to be approved.⁵⁰
- Protecting anonymity in the digital environment is also a challenge. In Brazil, where anonymity in the context of freedom of speech is forbidden by the Constitution, a court ruling has just determined that Google and Apple stores to remotely remove an app called Secret directly from their client mobile phones.⁵¹ In Ecuador, the current Communication Law compromises anonymity by forcing media companies to collect personal information about users that post comments on their websites.⁵²

Opportunities

- Many countries are debating or recently approved/modified bill on data protection, but approval or full implementation is still underway. Enforcement will depend on the creation of legal and technical expertise in privacy rights and digital security.
- Different countries have different institutional arrangements for a Data Protection Agency, which can serve as an interesting pool for a comparative study based in the region.
- Many countries have approved access to information laws which are now conflicting with privacy debate about the right to be forgotten. Recent European ruling on the issue puts pressure for the subject to be addressed; balancing this idea with freedom of speech is an interesting challenge.
- Jurisdictional conflicts and Snowden revelations have led to attempts

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50 More information at <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=465572>

51 Apple removes Secret from App Store in Brazil <http://www.cnet.com/news/apple-removes-secret-from-app-store-in-brazil/>

52 Ecuador's new Communications Law: Progress on access and spectrum allocation, but a reverse for freedom of expression <http://www.apc.org/en/node/17905>

to address concerns about current localization of databases and applicable law for companies providing cloud computing.

Featured Case

- After Snowden revelations, the text of Marco Civil was changed to address many issues on privacy rights. These changes represent a challenge for regulation and implementation of the bill and should be closed follow.
- Even though is not a properly an “internet issue”, close attention shall be given to implementation of biometric identification in Argentina. Efficiency and safety of such procedure is questionable, but it can be seen as a precedent for the region, especially if there were initiatives to facilitate the transfer of the information gathered by such systems.

The Internet Governance Debate in Latin America

Background

- On July 2000, the governments of the region adopted the Declaration of Florianopolis which was intended to orientate the use of the internet for economic growth and social development. That commitment resulted in the Bavaro Declaration (2003),⁵³ which establishes the basis for building information societies in Latin America and the Caribbean (LAC) and served as the foundation for the Action Plan of the Information Society in Latin America and the Caribbean, eLAC.⁵⁴
- Civil society organisations from the region were instrumental in putting on the table the need to embrace a rights focus and a development approach for the structuring of the information society policies and strategies. At that time, they also raised their concern about the importance of addressing how the internet is accessed, used and developed.
- In 2007, the Brazilian government hosted the second IGF and the region saw the birth of the first internet governance capacity building programmes in Spanish. While the IGF in Brazil marked a turning point for the region in terms of addressing the issue of internet governance, the meeting drew only a limited number of LAC participants and did not include specific regional perspectives.
- The discussion around internet governance from a regional perspective gained particular momentum in 2008, when different actors from the region were brought together to promote a multi-stakeholder political dialogue on the subject, in preparation for the global Internet Governance Forum (IGF). Since then, the regional meeting held annually has served as one of the most important platforms for defining priorities, substantive discussion on the most important issues in the region, and collaboration among different stakeholders.
- In 2013, the speech of the Brazilian President, Dilma Rousseff, at the 68th UN General Assembly emphasised the need to develop a framework for the governance and use of the internet to create mechanisms to ensure basic principles are guaranteed. As a follow-up, the Brazilian government led the organisation of the Global Multistakeholder Meeting on the Future of Internet Governance, NETmundial, which was held in April 2014.
- In summary, for approximately a decade, the countries in the region were focused on defining measures and policies to strengthen their own internet sector and advance in development objectives through the direct

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53 Declaración de Bávaro <http://www.eclac.cl/prensa/noticias/noticias/9/11719/Bavarofinalesp.pdf>

54 More information at <http://www.cepal.org/elac/>

application of measures in priority areas. Internet governance was not a substantial part of the regional agenda. In the past five years, the region has significantly matured in structuring the reflection, analysis and practice on internet governance, as well as its level of participation in internet policy fora and global spaces.⁵⁵

Subjects that have permeated the evolution of regional internet governance agenda

- Ensure the free flow of information and the prevalence of the public interest in internet access and development.
- Promote, respect and defend freedom of expression, privacy and other human rights in the internet sphere.
- Guarantee open access to knowledge.
- Stimulate shared access to infrastructure and encourage the deployment of community networks to create market and competition environments that are favorable for innovation and for the coexistence of different business models.
- Promote the development and use of open technologies, particularly free and open software.
- Protect net neutrality.
- Deploy efforts to formulate and implement broadband access strategies.
- Take advantage of the levels of penetration of mobile telephony and mobile internet access for contributing to development goals.

Current key issues

- Develop regulation (in terms of quality and cost) of mobile internet.
- Promote the development of local content and applications for mobile devices.
- Define and agree on principles for internet governance, especially from the perspective of ensuring the establishment of pluralistic, democratic, participatory and transparent mechanisms to ensure multi-stakeholder internet governance.
- Safeguard the open, egalitarian and public nature of the internet.
- Defend human rights online.
- Monitor and respond to violations and restrictions on human rights online.
- Confront the radicalization of the enforcement of intellectual property laws.

Threats

- When dealing with internet governance issues, there is the tendency to underestimate the complexity and importance of the regional and the national realities and the need to provide context-specific solutions and responses.

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55 Valeria Betancourt, From ICT4D to Internet Governance: Where are we in the region? <http://info25.org/en/internetgov>

- The increasing interest of governments to control the internet sphere and the predominance of private sector in the internet arena resulting in policies and practices that impact net neutrality and/or in the enjoyment of human rights online, because of political or commercial interests.

Opportunities

- The progressive consolidation of the annual regional internet governance meeting as a legitimate multistakeholder space for contributing to the development of a regional agenda that puts the public internet and human rights at its core. The NETmundial outcome document serves as key starting point to build on its principles and roadmap.
- The existence and the increasing creation of mechanisms to support internet governance related multistakeholder models at national levels.

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