



# Data protection on the Internet and its lack of regulation in Paraguay: adequate regulation for call centres

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## Abstract

This research focuses on data protection regulations in Paraguay in order to analyse whether it contains provisions regulating the computerised processing of personal data and transborder data flows. The aim of this research is to highlight how an inefficient regulation can affect the economy and citizens' rights, and to call the attention of policymakers to make an in-depth study on this subject and update the existing regulations and create new policies. This study consists of an analysis of existing regulations, consultations, and interviews with national and international experts, analysis of the economical and political situation, and citizens' consciousness about their data and its protection. The research found that the existing data protection law is sectoral and does not cover a broad range of activities. A sector that is affected by this inefficient legislation is the call centre. With the establishment of foreign call centres, mainly Spanish companies, it is necessary to update and harmonise them with the regional laws. Since the European market is the main target, they will follow Argentina's example, and recently that of Uruguay to comply with European standards in order to acquire EU adequacy status. Doing so will bring important benefits to the country's economy, increasing first-job opportunities for young people, and give adequate protection to citizens' personal data.

**Keywords:** data protection regulation; call centres; adequate country; first job; e-commerce; Paraguay

## Introduction

Data protection in Paraguay is regulated by laws 1682/2000 and 1969/2002. *Habeas data* was introduced in the last modification of the National Constitution in 1992, and Internet in Paraguay appeared in 1997. These two regulations are not adequate for the Internet era, although they aim at protecting people's personal information as their primary objective, they address mainly financial information, thus acting as sectoral laws. *Habeas data* is not commonly used except for eliminating data registered in the Public Registry of Alfredo Stroessner's dictatorship era.

Internet use is slow and expensive; there is a high percent of illiteracy in new technologies, which are mostly accessible to the middle and upper classes only. Nonetheless,

with the liberalisation of the Internet<sup>1</sup> in 2009, its usage has grown more than 2% in 18 months, evidencing its high development potential and private international investment attraction. One such example is the Spanish call centres established in Paraguay.

With the recent liberalisation of the Internet, established call centre enterprises are starting to look for international clients. For rapid development, however, they are await-

<sup>1</sup> The state used to have the monopoly for Internet service, according to the late Telecommunications Regulator's (Conatel) provisions, which was contrary to what the National Constitution in Article 30 establishes. The monopoly led to high prices and low use of Internet services. In 2009, the liberalisation of the Internet has been possible thanks to the pressures of areas related to communication. The new provision was released in 11 March 2010. This new provision authorised all legal Internet service providers (ISPs) to connect to the international signal ending the state monopoly.

ing the liberalisation of IP Voice, a subject that requiring further research.

Apart from IP Voice liberalisation, an appropriate data protection law and the establishment of a Data Protection Agency are also lacking. These could adopt the European model, as Argentina and Uruguay did, which has demonstrated the openness of the market to Europe and employment growth.

An adequate data protection law for call centre activities must ensure a secure international data transfer, protecting people's privacy and their personal data. Having this protection will allow local call centres to broaden their borders and to conduct business with other countries, specifically within the European Union.

The Paraguayan government is also foreseeing the potential and importance of this sector, especially for the growing unemployed and underemployed labour force. To promote this industry and e-commerce development it is necessary that Paraguay harmonise its legislation on data protection with other countries of the region, specifically countries from the Southern Common Market (Argentina and Uruguay) which have done so and have become adequate countries for international data transfer to the European Union.

The first section of this paper will analyze the economical and political situation of Paraguay and the existing regulations.

## Objectives

The objective of this paper is to analyse whether the existing regulations on data protection in Paraguay are adequate for the new era of the Information society. It is also to determine whether it is geared towards allowing new business development, such as call centres that use information and communication technology (ICT) tools and regularly make international data transfers. This research will study the awareness of Paraguayans in relation to data protection to find out if they will be comfortable with new legislation.

## Background

### Paraguay's economic situation

Paraguay is a landlocked country situated in the heart of South America surrounded by Argentina, Brazil, and Bolivia. It lies 800 kilometres from the Pacific Ocean and 600 kilometres from the Atlantic Ocean. Its area covers 406 752 square kilometres with a population of approximately 6 million inhabitants. It has the youngest population of the region, with 70% under 34 years of age. It is a bilingual country; the official languages are Spanish and the native language Guaraní. The capital city is *Asunción* and the biggest cities are *Ciudad del Este* along the border with Brazil and *Encarnación* along the border with Argentina.

There is a high potential to develop the call centre industry in Paraguay because of the low tax index and its strategic geographical position in South America – just two hours from major cities of the region, such as Buenos Aires, Santiago, and São Paulo (REDIEX, 2010). Paraguay's population is predominantly young (70%) with the facility to speak Portuguese as the population of the border cities near Brazil speak both Spanish and Portuguese fluently.

Despite having the most expensive and lowest Internet penetration of the region, the Ministry of Industry and Commerce through REDIEX<sup>2</sup> (Manager of Investment of Attraction, pers. comm. 2011) agrees that technology and connectivity represent no problems and that the import prices of hardware are the lowest in the region. The Chamber of Contact Centres (hereinafter 'the Chamber'), is working on the renewal of an agreement between the Ministry of Industry and Commerce, CONATEL (regulator), and COPACO (State Telecommunications Agency) to grant benefits and special prices for those companies that are developing an export of services.

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2 REDIEX is a net of investment and exportation project with the aid of the IADB within the Ministry of Industry and Commerce in charge of the guidance for future investors either national or international and to be a pivotal partner between private and public sector to reach common agreements for the benefits of the economy.

The Director of Contact Market SA, Carlos Sosa, said that renewing this agreement will allow the service to acquire competitiveness in the region and in the world, in terms of communication costs and flexibility in technology use. Sosa said that ‘currently the call centre industry is providing employment to 2000 young Paraguayans. 80% of services are for the local market and the rest are services for the rest of the world.’ (ABC Digital, 2010) When asked by the Ministry of Industry about their returns if granted the extension of the agreement, the union manager members of the Chamber (said they could come to employ over 20 000 Paraguayans in the next three years. This would be directed primarily to people in their first job. They claim that their aim is to follow the examples from other countries in the region that are growing in the call centre business.

For real call centre development not only is a new agreement required, along with VoIP liberalisation, a youth labour policy and business incentives, but also an adequate regulation for international data transfers since this is the main service offered. Because the main traffic consists of personal data through the Internet, an adequate data protection regulation is mandatory.

### Personal data protection and regulations

The term ‘data protection’ first appeared in legislation in 1970 in the German State of Hesse after a totalitarian regime sought to place limits on the ability of public and private sector bodies to process personal data (Lloyd, 2001). Nearly the same has happened in Paraguay. After the defeat of the totalitarian regime of Alfredo Stroessner, a new democratic constitution was enacted in 1992, for the first time regulating the constitutional right of *habeas data*, an instrument for data protection.

With the historical National Constituent Assembly meeting for the reform of the constitution passed in 1967 and amended in 1977 (Pappalardo Zaldivar, 1993), in 1992 *habeas data* was regulated for the first time, completing the right to privacy protection catalogue. Under Article 50, the 1967 constitution protected honour and reputation. The 1992 constitution, in accor-

dance with Article 11 of the Pact of San José of Costa Rica, refers to the scope of privacy in Article 33.<sup>3</sup> It also ensures the freedom of expression in Article 26,<sup>4</sup> the right to information in Article 28,<sup>5</sup> the correct use of electromagnetic media in Article 30,<sup>6</sup> the right of inviolability of personal documentation in Article 36,<sup>7</sup> and access to personal information (about oneself and ones

3 Article 33. About the Right to Privacy. (1) Personal and family privacy, as well as the respect of private life, are inviolable. Individual behaviour that does not affect public order as established by law or the rights of third parties is exempted from the authority of public officials. (2) The protection of the privacy, dignity, and private image of each individual is hereby guaranteed.

4 Article 26. About Freedom of Expression and of Press. (1) Free expression and the freedom of the press, as well as the dissemination of thoughts and opinions, without any type of censorship, and with no more limitations than the ones established by this Constitution, are hereby guaranteed. In consequence, no law is to be passed that restricts or makes these rights unfeasible. There will be no press crimes; they will be considered common crimes committed through the press. (2) Everyone has the right to generate, process, or disseminate information and to use any legal, effective instrument to achieve these goals.

5 Article 28. About the Right to Obtain Information. (1) The people’s right to receive true, responsible, and equitable information is hereby recognized. (2) Everyone has free access to public sources of information. The laws will regulate the corresponding procedures, deadlines and sanctions, in order to turn this right effective. (3) Anyone affected by the dissemination of false, distorted, or ambiguous information has the right to demand that the offending media organization rectify or clarify the report under the same conditions in which it was originally conveyed, without any other compensatory rights being affected.

6 Article 30. About Electromagnetic Communication Signals. (1) The transmission and programming of electromagnetic communication signals fall within the public domain of the State which, exercising its national sovereignty, will promote the full use of these signals in compliance to the rights of the Republic and ratified international agreements. (2) The law will ensure equal opportunities for everyone to have free access to the electromagnetic spectrum, as well as the electronic instruments used to collect and to process public information, without limitations other than those imposed by international regulations and technical rules. Government officials may not violate personal or family privacy or the other fundamental rights ensured by this Constitution.

7 Article 36. About the Inviolability of Personal Documents and Private Correspondence. (1) Personal documents are inviolable. Records, regardless of the technique used, accountings, printed matter, correspondence, writings, telephonic communication, telegraphic communication, or any other type of communication, collections or reproductions, testimonies or objects of testimonial value, as well as their respective copies, cannot be reviewed, reproduced, intercepted, or seized unless a court order is issued in specific cases established in the law, and then only when action are essential for clearing up matters falling within the jurisdiction of the respective competent authorities. The law will establish special procedures for reviewing commercial accounting books and mandatory record books. (2) Evidence obtained in violation of the above provisions is not admissible in court. (3) In every case, strict reservation will be observed regarding matters irrelevant to the investigation.

assets) in third-party registration public or private or *habeas data* in Article 135.<sup>8</sup>

Later in 2001 Law 1682 was passed, regulating personal information: following the UN guidelines for the regulation of computerised data files, and providing sensitive data and financial data sources protection. The law also regulates databases, but only refers to private and not public databases, considering that the general principle is that everyone is entitled access to public records, including those created by Law 879/81 – Code of Judicial Organization and its amended law, as follows from Article 28<sup>9</sup> of the constitution. This recognises for all natural and legal persons, the right to request in writing and receive truthful, responsible, and fair information. In 2002, Law 1969 was passed, modifying some articles of Law 1682/2001. In this regard, Article 1<sup>10</sup> of the novel law extended the scope of application including public databases.

Law 1682/2001 in accordance with the constitutional provision establishes the right to access in Article 8.<sup>11</sup> Article 4 provides a definition of sensitive data as all information relating to race or ethnic background, political preferences, individual health sta-

tus, religion, personal philosophy, and sexual orientation. In other words, all sensitive personal data that promotes prejudice and discrimination or affects the dignity and privacy of individuals or families. The law prohibits the publicising or disseminating of this kind of information, when people are explicitly individualised or identifiable. On the other hand, Article 6 authorises the publication and dissemination of 'data consisting of name, surname, ID number, address, age, date and place of birth, marital status, occupation or profession, workplace and occupation', which we can consider public personal information. Data can also be published and disseminated when 'the case of information requested by the individual involved and when information is collected in the exercise of their functions, judges, prosecutors, committees or other authorities legally entitled to that effect'.

Article 5<sup>12</sup> of Law 1969/2002 requires written authorisation for trade and financial obligations publications. They can be published in three instances: when the owners authorise their public release, when the information is released following legal procedure or request, and when the data is not already published in public sources of information. The bill requires companies and entities that provide information about financial position, financial solvency, and compliance with trade and financial commitments to implement computerised mechanisms that automatically remove unpublished data from the information system, in accordance with the deadlines established in the law. The right to forget is established in Article 9 but only to entities that provide credit reports.

It should be noted that neither Law 1682/2001 nor Law 1969/2002 establishes specific rules concerning the databases. Neither of them defines

8 Article 135. About Habeas Data. Everyone may have access to information and data available on himself or assets in official or private registries of a public nature. He is also entitled to know how the information is being used and for what purpose. He may request a competent judge to order the updating, rectification, or destruction of these entries if they are wrong or if they are illegitimately affecting his rights.

9 Article 28. About the Right to Obtain Information. (1) The people's right to receive true, responsible, and equitable information is hereby recognized. (2) Everyone has free access to public sources of information. The laws will regulate the corresponding procedures, deadlines and sanctions, in order to turn this right effective. (3) Anyone affected by the dissemination of false, distorted, or ambiguous information has the right to demand that the offending media organization rectify or clarify the report under the same conditions in which it was originally conveyed, without any other compensatory rights being affected.

10 This Act is to regulate the collection, storage, distribution, publication, modification, destruction duration and, in general, the processing of personal data contained in files, records, databases or other technical ways of data processing, public or private, to give reports in order to ensure the full exercise of owners rights. This Act shall not apply in any case, databases or information sources or journalistic freedom of opinion and reporting.

11 Everyone can access the information and data on its own, on your spouse, about people stating that are under guardianship or conservatorship, or on his property contained in official records or public or private entities that provide credit information on income and wealth, and know the use made of it or its purpose.

12 The data from natural or legal persons, individual, that reveal, describe and measure their financial situation, financial compliance with trade and financial obligations, may be published or released, only: a) when such persons have given express written authorisation for obtaining information on the performance of its obligations unclaimed court; b) in the case of information or skills that state or private entities must publish or released in compliance with specific laws, and c) when not appear on public sources of information.



or regulates its creation, performance, competition, nor does either provide the information minimum they should contain.

Privacy protection in Paraguay is complemented by criminal laws. In this sense, the Penal Code in chapter VII regulates ‘crimes against life and personal privacy’ in conjunction with its amendment Law 3440/08. Article 141 criminalises the violation of domicile, punishable with imprisonment of up to two years or a fine. Article 143, which defines personal privacy injury – punishable by fine, refers to public exposure of personal privacy relating to family life, sex, and health. Article 144 criminalises the right of communication and image infringement (wiretapping), punishable with imprisonment of up to two years or a fine. Article 146 criminalises secrecy of communication violation, punishable with imprisonment up to one year or a fine. Article 148 criminalises private secrets revelations by public servants or people with special duty, punishable with imprisonment up to three years or a fine.

In the international arena, Paraguay has approved and ratified a couple of treaties that contain privacy regulations, for example, the International Covenant on Civil and Political Rights by Law 5/92,<sup>13</sup> and the American Convention on Human Rights Pact of San José of Costa Rica approved and ratified by Law 01/89.<sup>14</sup>

In the regional arena, Paraguay as a member of the Southern Common Market Group (MERCOSUR) is part of the Sub Working Group 13 of Electronic Commerce, currently working on a MERCOSUR Resolution to protect per-

sonal data and data free movement. The agreement would include the protection of personal data that may affect the honour, disturb the privacy, or serve as an instrument of discrimination. The agreement also involves the convergence rules for free data movement between member countries to create an environment conducive to data ‘border’ flow with appropriate security level.

Despite all these regulations, Paraguay does not comply with international standards regarding international data transfers hindering the international free flow of data, very important to call centre activities. The national legislation is not adequate for the new era of Information society. Not only does it not regulate international data transfer but it also lacks the security means for data protection and an independent regulatory agency to enforce and protect personal data.

In the project ‘Digital Mercosur’, the EU is assisting member countries in reaching an equivalent level for e-commerce, and one of its aims is to help all member countries acquire EU adequacy status. Of all members, Argentina is the only one who achieved the expected EU adequacy; Uruguay is close to achieving it; and Brazil and Paraguay still have a long way to go.

## Methodology

In addition to existing legislation and web-based literature review, surveys were collected. For the survey, interviews and questionnaires were sent via e-mail to nationally and internationally renowned experts on the subject. The aim was to learn about their experiences and how they think an adequate data protection law would affect the economy and the legal system. Most of them are lawyers but some are also experienced entrepreneurs. To find out if Paraguayans are aware of the value of their personal data and how they can protect it, a poll was made available online for ten days. The target was citizens from Paraguay aged 25 to 45 who use social networks. The link was sent via e-mail and through social networks. The questionnaire contained seven questions, asking people about their social network activities, how aware they are of the value of their data, how much information they share, and how unprotected they think they are

13 Article 17 establishes that: ‘No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation.’

14 Article 11: Protection of Honor and Dignity. 1. Everyone has the right to respect for his honor and recognition of their dignity. 2. No one shall be subjected to arbitrary or unfairness in his private life, his family, his home or correspondence, nor to unlawful attacks on his honor or reputation. 3. Everyone is entitled to the protection of the law against such interference or attacks. Article 14: Right of Reply. 1. Anyone injured by inaccurate or offensive statements injury through media legally regulated and targeted to the general public, is entitled to perform the same communications outlet correction or response under the conditions established by law. 2. In any case, the correction or reply exempt from other legal liabilities that have been incurred. 3. For the effective protection of honor and reputation, any publication or media company, film, radio or television will have a responsible person who is not protected by immunities or special privileges.

on the Internet. The average age of respondents was between 25 and 45. Only 14 answered the poll, due to the language barrier as it was written in English. Also, foreign experts, mainly from Argentina and Uruguay, were contacted and asked to talk about their experiences regarding the European model data protection law. The questionnaires and polls are listed in Annex 1.

## Results and findings

### Technology and connectivity is not a problem.

The Manager of Investment Attraction of REDIEX<sup>15</sup> (pers. comm. 2011) believes that although telecommunications have the highest international prices in the region and could be improved, it does not prevent the development of competitive businesses. REDIEX, through its desk sector information technology, is assisting the Chamber with developing the sector and is following the progress of negotiations by the private sector and the Ministry of Industry and Commerce.

### Economic benefits of call centres development

The manager also believes that the development of call centres will not only provide jobs to all unemployed young people but export services and knowledge in a second stage to other countries without people having to migrate to provide them. Consequently, foreign exchange earnings and foreign customer knowledge will be transmitted to local officials, generating skilled manpower and, above all, placing Paraguay as an outsourcing service base. Besides this, Paraguay will have the versatility of staff that speak different languages and will be the only country along the wider dry Brazilian border to provide ser-

vices to the largest market in the region. Over 80% of young people living in border cities with Brazil speak fluent Portuguese with the appropriate native accent and vocabulary. The industry development would entail a preference for training in technology careers – contrary to current education where the demand is on human sciences and/or administrative careers, neglecting the enormous demand that exists in technology careers – and could become an opportunity for young people who opt for this training, as help desk services and technical assistance are the most popular in the industry.

### Problems found

One of the problems encountered is the lack of human resource training and the absence of technical education at national level. There is a need for clear policies to support this industry. The country's labour potential, technology transfer, and growth potential has not yet been recognised, as has been done in Colombia and Peru. The government has not yet been able to encourage the development of the sector. It is necessary to implement more incentives for entrepreneurs and, above all, to capture the interest of young working age people who have not yet considered this industry as a job opportunity, not to mention as a personal and professional development opportunity.

### Work to be done

There is a data protection draft bill being studied and promoted by a political sector in Paraguay, but it still has not managed in-depth analysis and regulation. There is no international agreement on this subject. This should be a priority for the government, adopting a policy to promote and develop the sector. This will substantially improve opportunities to enter international markets. Today these deficiencies are being saved by the Maquila regime, using companies in Argentina that have agreements with Spain and through Paraguayan subsidiaries that provide service from Paraguay, although the contract or obligation has been signed in Argentina.

15 REDIEX is a net of investment and exportation project with the aid of the IADB within the Ministry of Industry and Commerce in charge of the guidance for future investors either national or international and to be a pivotal partner between private and public sector to reach common agreements for the benefits of the economy.

## Data protection in Paraguay

A Paraguayan researcher from Hannover University (pers. comm. 2011) explains that:

‘In Paraguay, the data protection regulation is bound to its recent historical past. Having experienced the process of a dictatorship for nearly 35 years with the corresponding violations of individual liberties, the right of access to information was severely infringed. With the advent of a democratic system in 1989 and the enactment of the new constitution in 1992, the right of access to information has evolved substantially. Thus, the new constitution has adopted for the first time the “Habeas Data”. Due to this reason, there is a tendency to prioritize the right of access to information rather than the right to privacy and data protection. The legislation in Paraguay needs to take into account new challenges and should be aside new technological enhancements. The first goal should be to achieve stronger means of data protection and data security, our National legislation is no longer adequate and it is essential to reform it.’

### Regulation weakness

The researcher also pointed out that:

‘...our legislation is very weak in comparison to other countries. Which means, with our current legislation we cannot guarantee the protection of personal data in particular when such data travels from server to server in the internet. A good example of this is the so called “Transfer of Data Principle” which can be found in European legislation. The transfer of data principle aims at ensuring that such processing covers the security level while personal data is being transferred to third countries. The EU Commission considers that the security of transferring personal data to third countries is a relevant factor to improve and enhance the productivity of private and public enterprises, thus, EU member states will benefit from safety warranties of transferring personal data. For this reason, the Commission engages in dialogues with non-EU member states, encouraging third countries to ensure a high level of protection when exporting personal data to those countries. For this reason,

the EU Commission creates “working groups” in order to discuss and engage public authorities of third countries for implementing and improving their legislation. In the MERCOSUR the best example of this adequacy level of requirement is Argentina. After several negotiations, the European Commission, based on article 26 (6) of the EU Data Protection Directive, declared that Argentina has an adequate level of protection for the transfer of personal data.’

### Examples to follow

Argentina followed the Spanish law model and in 2000 Congress enacted Law 25.326, becoming the first South American country to achieve the EU adequacy status. Another MERCOSUR member, Uruguay, is close to achieving the EU adequacy status as well, after passing Law 18.331/2008 on the Protection of Personal Data and Habeas Data Action (Renuncio-Mateos, 2011). According to a Uruguayan staff member from the e-government Agency-AGESIC (pers. comm. 2011): ‘the Article 29 data protection working party-WP29 established that Uruguay has an appropriate level of personal data protection, but the Council has not yet recognized full EU adequacy status’. She explains that the process takes more than a year with no requested clarifications; if supplementary information is required, the time will depend on those circumstances. Uruguay started the process in late 2008. She continues by stating that acquiring the EU adequacy status will bring benefits to her country, especially in the economic, financial area, as the country will be seen as a data protection guarantor. In the social area, the impact will be made by creating new jobs for the inhabitants and may lower the existing unemployment rate. It will also affect the economic field since more investors will come to the country knowing that it provides the necessary guarantees for their establishments. Regarding data protection consciousness the Uruguayan staff member says that ‘it can help build credibility and awareness of data protection when serving to find an easier way of international relations connected to the data traffic’. Finally, she does not recommend adopting the exact same European model since Paraguay and Uruguay are not in the same situation. It should be a model that is

adapted to the environment. It is important that all countries in the region adapt the EU model to assure fluid data communication in the region.

### Paraguayans data protection consciousness

The poll showed that respondents are aware of the value of their personal data and the danger in sharing it over the net. Surprisingly, they are not very aware that they do give information away when offline, completing coupons, etc. This shows that there is consciousness of personal data value: they are aware that they need protection online and offline, they do not want to be harmed by its misuse and they know everyone can have access to them. What is lacking is real legal protection. Respondents will be very comfortable with a new and updated legislation.

As a result, it turned out that Paraguayans are very aware of the economic value of their personal data: eight answered it has great value, five that it has some value and only one answered that it has no value.

On the other hand, when asked about how often they give information to marketers it turned out that 35.71% answered sometimes and never and 28.57% answered that they always do.

But they do not exchange information for free software or site access: nine answered they do not and four answered they do.

Surprisingly, all of them (100%) answered they think it is dangerous to share information over the net.

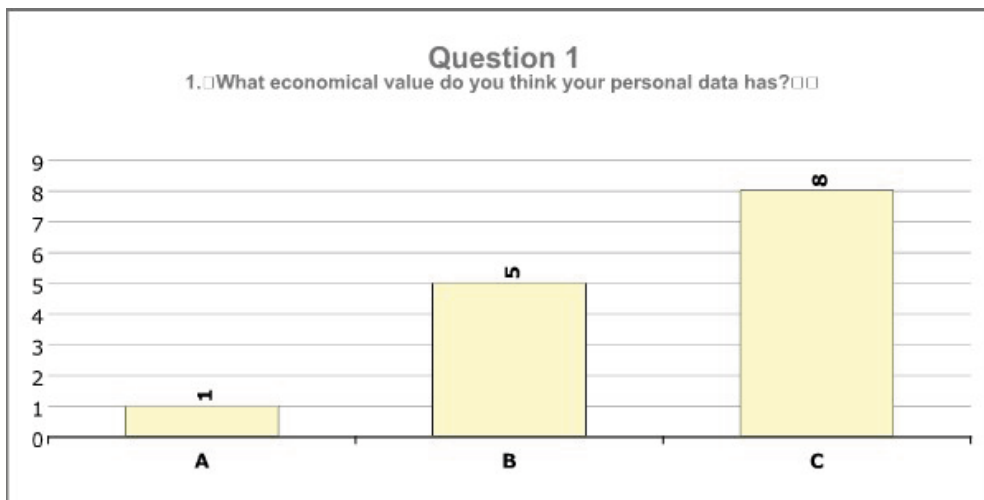


Figure 1. Perception of personal data economic value.

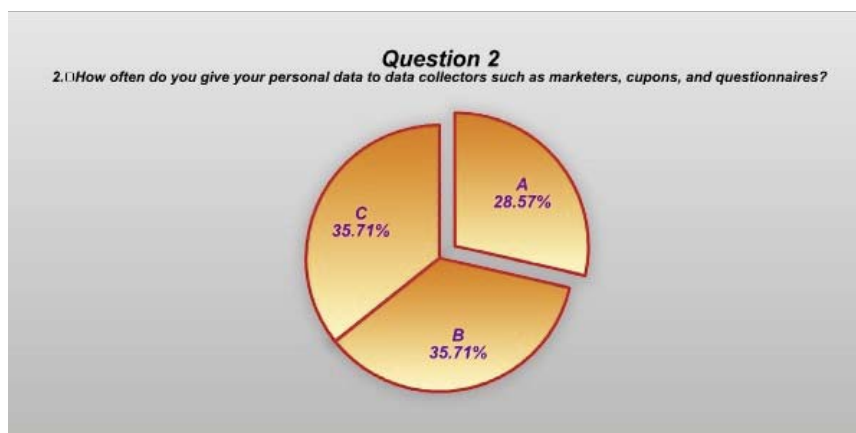


Figure 2. Frequency of personal data supply to data collectors.



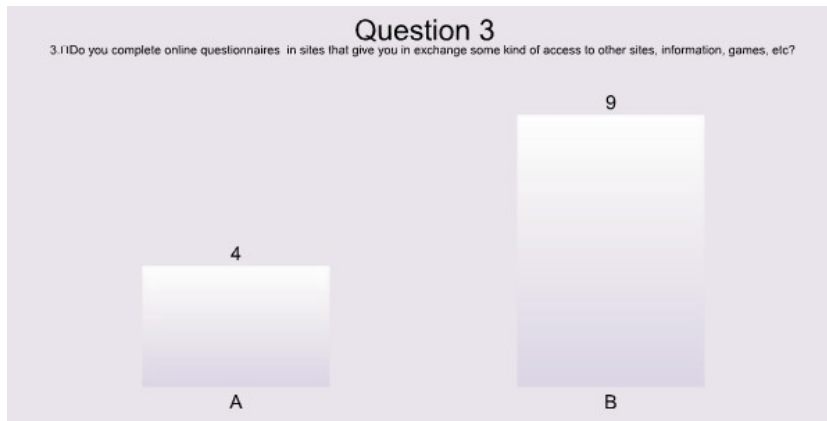


Figure 3. Frequency of information given online in exchange of freebies.



Figure 4. Perception of danger in sharing personal information over the net.

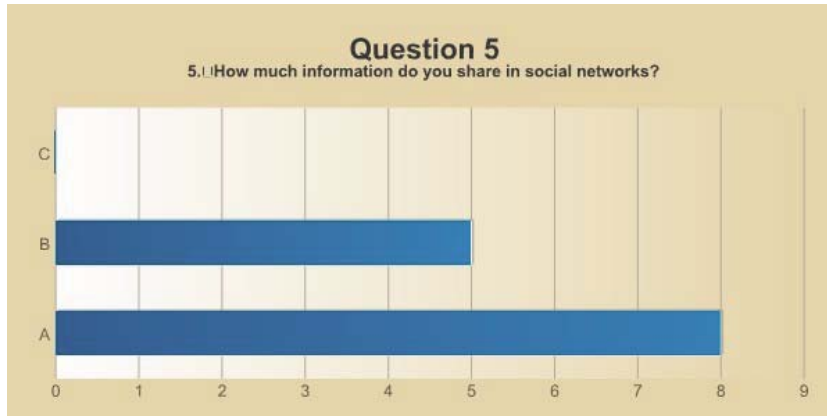


Figure 5. Amount of information shared in social networks.

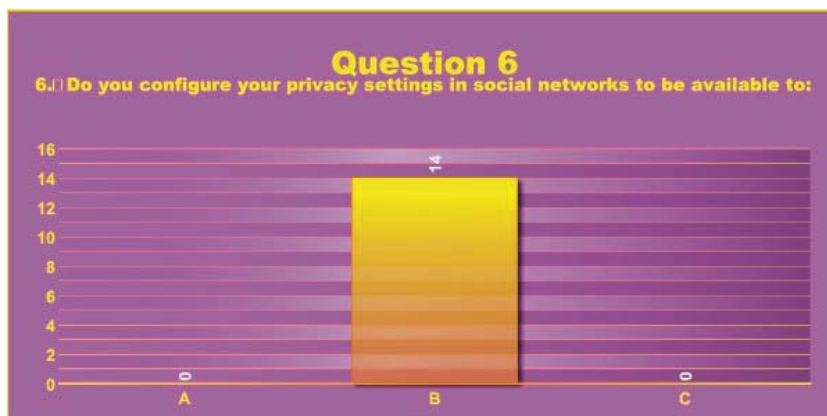


Figure 6. Privacy settings in social networks only for friends.

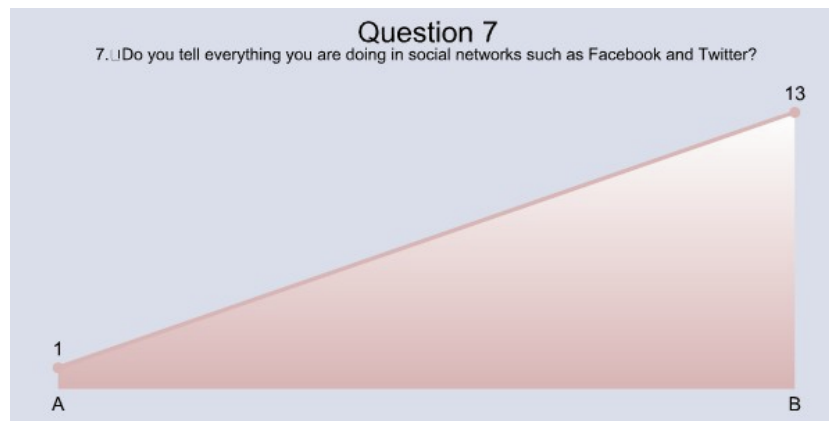


Figure 7. Information given in social networks status.

They share minimum information in social networks (8 out of 14) and 5 share something.

But all of them set their privacy settings available only for friends.

They do not tell everything they are doing on the Internet (13 out of 14).

## Conclusion

Paraguay has a lot of work to do to in updating and making adequate its privacy and data protection regulations for this new Internet era. There is also much progress to be made in regulating civil and commercial activities, giving protection to national and international data so as not to become a 'data haven', and in following the path of country leaders in the region with the benefits that it will bring to the economy and security.

To ensure an adequate level of protection, Paraguay has to follow what Articles 25 and 26 of the Directive 95/46/EC indicate. 'WP29 verifies the adequate level of data protection, analysing two elements: the rules concerning the processing of personal data and the means of ensuring the effective application of the data protection provisions. The basic rules of data processing, which shall be ensured in a third country, comprise the purposefulness principle, the data quality and adequacy principle, the information obligation principle, the data protection principle, access to personal data and right to object, and limitation of further processing. The purposefulness principle is that data shall be processed for a specific purpose, and further data process-

ing of may only take place if it is not contrary to the primary purpose of data processing. The data quality and adequacy principle is that data shall be specific and when necessary kept up to date; data shall be adequate in relation to the purpose for which they were collected. The information obligation principle says the data subject shall be provided with the information concerning the purpose of the processing of personal data and the data controller in the third country. The data protection principle is that appropriate technical and organizational measure, commensurate with the existing risks shall be implemented to protect personal data. Access to personal data and right to object means the data subject shall have an access guarantee to the information concerning him or her, the right to rectify the data and the right to object to the processing of personal data. Limitation of further processing means that as a rule, further processing of personal data by an entity residing in a third country shall be permitted only if the next body which is to receive the personal data is also bound by the principles of proper data protection.' (GIODO, 2011)

Paraguay does not ensure a high level of compliance with the rules. It only complies with the purposefulness principle, data quality and adequacy principle, information obligation principle when referring to financial databases, and it gives general access to personal data and the right to object. It does not, however, guarantee limitation of further processing and does not give appropriate technical and organisational measures for data protection. It does not provide support or help to individual data subjects in the exercise of their rights and does not

provide appropriate redress to the injured party where rules are not complied with – except when is a financial data base.

Quoting Renuncio-Mateos (2011) it must be said that:

‘...the Paraguayan legislation is insufficient to protect personal data. The legislative advances introduced in 2000 and 2001 are still very modest and lax compared, for instance, with Uruguayan standards. A new data protection law and the creation of a regulating agency will be needed in order for the country to advance towards the recognition of EU adequacy status. In addition, it is important to stress that Paraguay lacks the legal norms which regulate the trans-actional traffic or transfer of personal data.’

Although the Ombudsman’s Office ensures human rights and personal data is considered in its catalogue, it does not have the ability to control database owners, sanction infringements and verify international data transfers which are not yet regulated. There must be an appointment of a supervisory agency to monitor the activities of those processing personal data and to assist individuals when misuse of their data is found, which might be independent from the government as it is recommended internationally.

The legislation has to change immediately. It is not acceptable that in the Internet era we do not have adequate regulation, especially when other MERCOSUR members have demonstrated the benefits gained. The data protection legislation should provide protection to individuals whose data is processed, in every kind of database, not only financial ones. There should be a combination of rights to data owners and obligations to those who process data or exercise control over such processing. It should take into account the rights and obligations under the Directive 95/46/EC, the Council of Europe Convention N°108 (1981), the OECD Guidelines (1980) and the guidelines of the UN (1990).

Not only for the benefits of call centres but for the development and security of e-commerce, a new data protection regulation is strongly recommended following Argentina and Uruguay’s path: reaching a legal unifor-

mity as a bloc, developing common approaches for dealing with issues related to trans-border data flows and harmonizing solutions as mentioned in the Declaration on Transborder Data Flows by the OECD in April 1985. Being a country with lax or no data protection standards allows for potential ‘data havens’ for the processing or storage of sensitive data. Control over trans-border data flows is mandatory as they are essential for commercial activities.

In daily life (online and offline), people are also aware of the necessity of personal data protection, not only for commerce. The poll results showed that most of those interviewed are aware of their personal data and its value and the danger of sharing everything on the Internet and social networks. They follow good practices for security on the Internet; they are informed but also afraid. Having a real consciousness of personal data value and its needs of protection is an indication that people are eager for new legislation according to the new economy.

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## ANNEX

### INTERVIEWS

#### MARCELO CORRALES, Researcher at Hannover University:

- 1) How do you see the data protection regulation situation in Paraguay? How has it evolved?
- 2) Do you think is it appropriate for the Information Society era?
- 3) Is it adequate to the Regional regulation?
- 4) What changes would you suggest?
- 5) Do you think Paraguay would benefit from the adoption of the EU Data Protection Directive model? Why?

#### GUSTAVO GIMENEZ, Manager of Investment's attraction, REDIEX, Ministry of Industry and Commerce:

- 1) What can you tell about the economic situation of Paraguay and private investment? What work is REDIEX doing for its growth?
- 2) Have you worked in the establishment of call centres? What problems did they find and what were the advantages?
- 3) What is necessary for the real development of call centres? What is the government doing to help?
- 4) What benefits will call centres bring to the country?
- 5) Is there any public policy regarding data protection?

#### Study case: interviews to Maria Jose Viega, Beatriz Rodriguez, Federico Carnikian (Uruguay) Agestic staff, e-government agency.

1. How did the EU model law adaptation in data protection take place in your country?
2. How much time did it take?
3. What changes were introduced?
4. Did it bring benefits? Which ones? Disadvantages? Which ones?
5. What social impact did it have?
6. What economic impact did it have?
7. Did it generate more consciousness about data protection?
8. Do you think it was an important change?
9. Are there any case studies on it? What are they?
10. Do you think the whole region should adopt the EU model on data protection? Why?



## POLL

- 1) What economic value do you think your personal data has?
  - a. None
  - b. Some
  - c. Much
- 2) How often do you give your personal data to data collectors, such as marketers, coupons, and questionnaires?
  - a. Always
  - b. Sometimes
  - c. Never
- 3) Do you complete online questionnaires on websites that give you in exchange for access to other sites, information, games, etc?
  - a. Yes.
  - b. No.
- 4) Do you think there is any danger in sharing personal information on the Internet?
  - a. Yes.
  - b. No.
- 5) How much information do you share within social networks?
  - a. Minimum
  - b. Something
  - c. Everything
- 6) Do you configure your privacy settings within social networks to be available to:
  - a. Public
  - b. Only friends
  - c. Friends of my friends
- 7) Do you tell everything you are doing within social networks, such as Facebook and Twitter?
  - a. Yes.
  - b. No.