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New legal obligations related to personal data in possession of companies.

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“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”

New legal obligations related to personal data in possession of companies.

by Juan Antonio Tiscareño.

The current context of globalization and technology has made impressive advances in the mechanisms of data processing. The privacy of personal data has become a topic of major importance that requires our attention. In this article I will analyze the background and principal characteristics of the Federal Law of Protection of Personal Data in Possession of Particulars that is in force in Mexico (hereinafter the “Law”).

“The privacy of personal data has become a topic of major importance that requires our attention”.

Background

The first international efforts on this subject worth mentioning are from the Organization for Economic Cooperation and Development (OECD) institution, of which Mexico is part, and date from 1969, with the formation of the Data Bank panel, which analyzed and studied different aspects of privacy.

Later, the Vienna Symposium, that was organized in 1977 at the request of the Data Bank Panel of the OECD, created a set of basic principles that remain valid today. In the subsequent years, the OECD continues working with the European Economic Community (ECC) and the Council of Europe (CE) in order to find consensus in the matter. Over time, these institutions concluded that there was a need to ensure the privacy of personal data.

In 1980 the OECD issued the Guidelines on Protection of Privacy and Trans-border Flows of Personal Data, which sets forth eight basic principles¹ related to this topic, and recommend to its members to maintain local legislation similar and according to those principles, to facilitate the execution of the provisions of protection of personal data in any jurisdiction.

The bill of the Law² affirms that the Guidelines of the OECD were taken into account to realize its creation, by a compromise acquired by Mexico as a member of the OECD. The bill also noted that the subject of personal data held by the State was resolved on the basis of the recent amendments to article 6 of the Mexican constitution and its regulatory law, therefore the task at hand was raised in respect of personal data, used or exploited by private sector entities.

1- The 8 principles are: (i) Collection Limitation Principle; (ii) Data Quality Principle; (iii) Purpose Specification Principle; (iv) Use Limitation Principle; (v) Security Safeguards Principle; (vi) Openness Principle; (vii) Individual Participation Principle, and (viii) Accountability Principle.

2- There were 6 different bills for this Law, since 2001 up to date. In this case I refer to the last one.

Principal characteristics

The Law regulates the conduct of those responsible for the collection and processing of personal data. It seeks to establish what third parties can do with the personal data of an individual. It is intended that the titleholders of data maintain control of the data to be able to define, through specific mechanisms, if they will share their personal data and for what purposes. This scheme has the advantage of allowing the titleholders to decide which data to share, and does not establish unnecessary restrictions on commercial activity, and it establishes in a practical way and with full force and effect, the right to informational self-determination of individuals regarding their personal data.

“The Law prevents the misuse of personal data and therefore the damage that could be caused to the titleholders of personal data by such misuse”.

The Law prevents the misuse of personal data and therefore the damage that could be caused to the titleholders of personal data by such misuse. The Law does not focus only on punishment for the misuse of the personal data, but also in providing mechanisms for individuals to effectively exercise the rights they have in relation to personal data.

The principal obligation of the companies according to the Law will be the responsible handling of personal data and the issue of a privacy notice to be submitted to the owners stating the data they will collect, why they collect it and any secondary purposes for which such data could be used.

Also, the privacy notice issued by the company must contain the information related to the mechanisms of contact by which the titleholders may exercise their rights before the responsible entities.

Moreover, the Law specifies the need for the information to be complete and for the company to keep it up to date. However, the Law recognizes that it requires the participation and consent of the titleholder to achieve this goal since the titleholder is the one who has control over his information and can provide it. This seems positive to me, because establishing the obligation of the company to keep the information current and accurate, without recognizing that this depends not only on the company, would establish an unfair and disproportionate obligation.

The Law determines the existence of the Federal Institute of Access to Information and Data Protection, which is responsible for the compliance of the Law and can impose fines of substantial amount against law breakers (which may vary from \$6,233.00 Mexican pesos to \$19'945,600.00 Mexican pesos). The Federal Institute of Access to Information and Data Protection is particularly focused on the obligations that the companies responsible for the data have to give, to allow access and correction of data to the titleholders.

The Law recognize the need for data transfer for commercial operations, however, states that the responsibility for the data not only does not cease before the transfer but that the conditions specified in the notice of privacy must be maintained by third parties and the effective levels of protection should be maintained by such third parties that processes the data, thereby establishing an effective level of protection for the titleholder.

■ “The principal obligation of the companies according to the Law will be the responsible handling of personal data”.

Moreover, the Act establishes two procedures for granting effective protection for titleholders. The first is the procedure of access to data between responsible parties. It sets the conditions for personal data titleholders to exercise their rights of access, correction, cancellation and opposition to the responsible party concerned with the transfer of personal data.

The second establishes a procedure before the authority that is intended to correct errors or omissions that may have been made by the responsible party, establishing penalties for failure. The possibility that the responsible party correct the situation that arouses the complaint of the titleholder should be the main reason for the procedure and not the penalty itself.

Railroad operations decreased 13.5% in Mexico at the beginning of 2012.

The Association of American Railroads reported a decrease in the operations of railroads in Mexico during the beginning of 2012, recording a decrease in January of the 13.5% in the movement of railway rolling stock and 24.7% in the movement of containers, compared with the beginning of 2011. La Voz de la Nación. 13/February/12.

Brazil wants a complete NAFTA with Mexico.

Brazil demands the execution of the Agreement of Economic Complementation 55 in the same commercial terms that Mexico has with the United States of America through the North American Free Trade Agreement, due to the fact that Brazil feels aggrieved in their automotive sector. el Excelsior. 21/February/12.

PEMEX and REPSOL constitute a reciprocity partnership.

Petroleos Mexicanos (PEMEX) and the Spanish oil company Repsol, announced a long term partnership that contributes to a better development, and for the generation of new ways and mechanisms for a mutual cooperation. This partnership will last ten years, and their connection will be based in principles of reciprocity, benefits, mutual collaboration and long term results. The agreement covers activities of exploration, production, refining, and training and exchange of professionals. La Jornada. 29/February/12.

Supreme Court: Resolutions of the COFETEL are administrative acts, not jurisdictional.

The resolutions issued from the Federal Telecommunication Commission COFETEL, such as the settlement of interconnection fares when phone companies don't get into an agreement, are administrative acts and not jurisdictional, determined the Supreme Court of Justice (SCJN), derived from the discussion of the *amparo* proceedings filed by the phone companies against the COFETEL. The Supreme Court determined when the COFETEL resolves differences between concessionaires; this Commission assumes the role of governing body of the State in matters of telecommunications, with full liberty and autonomy. La Jornada. 29/February/12.

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