

Data Privacy

Privacidad de datos

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DOI: 10.35429/JEH.2020.4.6.9.12

Received February 21, 2020; Accepted June 19, 2020

Abstract

The objective of this article is to analyze current situation and relevant historical events to Mexican Data Privacy Law and how it was influenced by another domestic dispositions around the world. Due to GDPR (General Data Protection Regulation) is about to enter into effect in EU (European Union), is it perfect moment to analyze the differences between the Mexican Law published 8 years ago and the most recent and sophisticated law in the world.

Resumen

El objetivo de este artículo es analizar la situación actual y hechos históricos relevantes a la Ley de Privacidad de Datos Mexicana y cómo fue influenciada por otras disposiciones domésticas alrededor del mundo. Debido a que el GDPR (Reglamento General de Protección de Datos) está a punto de entrar en vigencia en la UE (Unión Europea), es el momento perfecto para analizar las diferencias entre la Ley Mexicana publicada hace 8 años y la ley más reciente y sofisticada del mundo.

Citation: CASTAÑEDA-TOTOZINTLE, Edgar Eduardo. Data Privacy. Journal-Economic History. 2020. 4-6: 9-12

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Introduction

In order to correctly address the purpose of this article, it is essential to have a clear understanding of the concept of data privacy or personal information. In Mexico’s law it was defined as “any information related to a person, that could make the person identifiable”, for instance, name, address, social security number, salary, credit/debit card number, religion, sexual habits, clinical history, etc.

Since the publication of Universal Declaration of Human Rights in December of 1948, it was stated in the article 3 that “Everyone has the right to life, liberty and security of person”, although this is a very general statement, it is clear that the protection to privacy is one of the elemental rights for all population around the world.

Data Privacy

Law in Mexico

There are at least 4 countries that published their data privacy laws before the Mexican one.

Country	Year of publication
USA	1974
Spain	1999
Argentina	2000
Uruguay	2008
Mexico	2010
Perú	2011
Colombia	2012
Nicaragua	2012

Table 1

In fact, it is known that first attempts of the approval of the law in Mexico were frustrated due to it was a literal copy of the Spain law. In 2010 the last initiative of the Data Privacy in Mexico was influenced by the Spanish one, which was very logical due to the experience of almost 2 decades since it was published. In the process a very experienced group experts were came from Spain to share the best and the worst of those 20 years.

After almost 8 years of having being published the balance and lessons learned in Mexico could sum up as follows:

At the beginning, there were big expectations about the difficulties to comply with the requirements, but most of decisions makers in enterprises though that it was just necessary the privacy statement publication.

Fines were imposed to big, medium and small enterprises, mainly in financial sector.

GDPR

The GDPR was designed to harmonize data privacy laws across Europe, to protect and empower all EU citizens data privacy. the GDPR was finally approved by the EU Parliament on 14 April 2016 and it will be mandatory on May 25th 2018. Organization had 24 months to be in compliance to avoid to be imposed fines.

GDPR replaces the Data Protection Directive 95/46/EC that was published and approved in October 1995. It is important to understand that GDPR must be applied in its entirety across the EU, while the Data Protection Directive set out a goal that all EU countries must achieve. However, it was up to the individual countries to decide how to apply it.

The GDPR not only applies to organizations located in the EU, this regulation also applies to organizations located outside of the EU if they offer goods, services or monitor the behavior of data of EU citizens. It applies to all companies processing and holding the personal data of people residing in the European Union, regardless of the company’s location.

Organizations can be fined up to 4% of annual global turnover or €20 Million (the maximum fine) in case of being in non-compliance with GDPR. Some of the cases in which organizations will be fined are the following:

- Not having sufficient customer consent to process data
- Violating the core of privacy by design concepts
- Not having their records in order
- Not notifying the supervising authority and data subject about a breach
- Not conducting impact assessment

Both controllers and processors (a controller is the entity that determines the purposes, conditions and means of the processing of personal data, while the processor is an entity which processes personal data on behalf of the controller).

GDPR improvements

Although the key principles of data privacy are the same that the previous directive, many changes have been proposed to the regulatory policies. The most important changes are the following:

Increased Territorial Scope (extra-territorial applicability)

The biggest change with the regulatory is the extended jurisdiction of the GDPR, as it applies to all companies processing the personal data of people residing in the EU, regardless of the company's location. The GDPR will also apply to the processing of personal data of data subjects in the EU by a controller or processor not established in the EU, where the activities relate to:

- Offering goods or services to EU citizens
- The monitoring of behavior that takes place in the EU

Penalties

Organizations in breach of GDPR can be fined up to 4% of annual global turnover or €20 Million (whichever is greater).

Consent

The conditions for consent have been strengthened, and companies will no longer be able to use long illegible terms and conditions. The request for consent must be given in an intelligible and easily accessible form, with the purpose for data processing attached to that consent.

Breach Notification

Under the GDPR, breach notification will become mandatory in all member states where a data breach is likely to “result in a risk for the rights and freedoms of individuals”. This must be done within 72 hours of first having become aware of the breach.

Right to Access

Part of the expanded rights of data subjects outlined by the GDPR is the right for data subjects to obtain from the data controller confirmation as to whether or not personal data concerning them is being processed, where and for what purpose.

Right to be Forgotten

Also known as Data Erasure, the right to be forgotten entitles the data subject to have the data controller erase his/her personal data, cease further dissemination of the data, and potentially have third parties halt processing of the data.

Data Portability

GDPR introduces the right for a data subject to receive the personal data concerning them, which they have previously provided in a 'commonly use and machine-readable format' and have the right to transmit that data to another controller.

Conclusion

Due to Mexican Congress create the Mexican Data Privacy Law with advisory of experts and their recommendations of 20 years (specially from Spain), it was a very strong regulation. The biggest challenges for Mexican regulation in the last 8 years, it has been the compliance and the government's ability to monitor all organizations.

It was obvious that Data Protection Directive from 1995 need an update after almost 25 years. This update came with GDPR and exactly as the Mexican one in 2010, took the best of other domestic dispositions.

When key changes and improvements of GDPR (according to Directive) are analyzed and compared with the Mexican law, it is clear that almost all of them were stated since 2010 in Mexico.

- Territorial
- Consent
- Breach notification
- Right to access
- Right to be forgotten

This is a strong proof that Mexican Law was not a bad copy of the European Directive, in fact it was reference for other countries for their local dispositions.

Now the challenge for the Mexican regulation is to update new proposals of GDPR, for example Data Portability.

References

EU GDPR Portal (s.f.). CERT SEI. [En línea]
Disponible
<https://www.eugdpr.org/eugdpr.org.html>

Doctor Alfredo Reyes Krafft, Dra. Cynthia Solís (2018), C Simposio de Privacida de Datos. [Conferencia] Universidad Iberoamericana CDMX