

URUGUAYAN
DATA PROTECTION SYSTEM
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Holding a degree of Doctor of Jurisprudence and Social Sciences from the Universidad de la República - Uruguay, and being council adviser in the Uruguayan Parliament, Senate and Chamber of Representatives (since 1992), Dr. Brian teaches at Universidad de la República, School of Law - Legal Informatics Chair (since 2003). Principal Consultant at Estudio Jurídico Briann, Montevideo, Uruguay, she works as a legal consultant at the

Uruguayan College of Attorneys (since 2003). She is also a foundational member of the Institute of Computer Law at the School of Law (2000) and of the Red Iberoamericana de Protección de Datos (2003). Member of the IWGDPT (2004), of the Uruguayan FIADI Chapter (2006), of the IAPP (2007), she published "Protección de datos personales en Uruguay" in 2009.

CONSUMER PRIVACY ON ONLINE MARKETING

There are legal limits for the processing of data used for this purpose, determined by article 21 of law 18331.

The mentioned disposition sets the rules that follow on consumer privacy on online marketing.

The data processed for the purposes shown ut supra or in occasion of :

1. Compilation of home address,
2. distribution of documents,
3. advertising,
4. commercial prospection,
5. sale or
6. similar activities,

can be used for direct marketing if:

1. this data are suitable for promotional profiling, commercial or advertising purposes, or
2. the data are suitable to establish consumer habits.

In those two cases, the data should appear:

- in documents accessible to the public,
- or must have been supplied by the individual,
- or consented by the affected individual.

Right to access, remove and block data can be applied at any time at no cost.

COMMERCIAL DATA

The first law approved by the Uruguayan parliament that created a controlling authority on data protection was law 17838, passed on September 24, 2004.

Its regime was only comprehensive of commercial and financial data.

In this sense, the legislative history of Uruguay places the country close to Andorra and to Colombia, as the three of them had their first dispositions of data protection referring to commercial data.

In what concerns to Andorra, the country is now considered by the European Commission ---for the purposes of Article 25(2) of Directive 95/46/EC--- as providing an adequate level of protection for personal data transferred from the European Union, according to decision adopted at Brussels the 19th October 2010.

Colombia's statute with the EU, on the other hand, includes several cases of international transferences of commercial data, totalizing 57 from 2008 until the 31 March 2011, according to the records of the Spanish Data Protection Agency.

In the case of Uruguay, the mentioned law 17838 was abolished in 2008, when a new law was passed to regulate data protection in general.

Law 18331, (August 11th, 2008) expressly abolished law 17838 in its article 48.

To know the credit performance of the people is a good way to make credit less expensive, and this is of public interest of the countries.

In that interest, article 22 of such provision (18331) excludes commercial and financial data from the obligation of requesting previous consent of the data holder.

This is possible, according to the law, when the following conditions are accomplished or fulfilled:

1. Data must be drawn from sources which everyone can access, or
2. Data must be drawn from sources given by the creditor.
3. Data must always be obtained within the procedures adopted by the law.

Concerning terms:

1. Maximum period for the registry is five years.
2. A re registration is accepted only once, for a second period of five years, if the creditor requests it.
3. The cancellation of the debt must be informed and this fact must be registered.
4. The new situation must appear in the registry in a maximum term of three days.

In the case of legal entities, the law must admit the data processing.

DATA PROTECTION AUTHORITIES ENFORCEMENT

Name of the authority with competence in data protection: Unidad Reguladora y de Control de Datos Personales (URCDP).

CREATION:

article 31, law 18331 of August 11, 2008.

MANAGEMENT:

Executive Council of three members:

- The Executive Director of AGESIC
- Two appointed by the Executive Power

ASSISTANCE:

Advisory Council of five members:

- One, appointed by Legislative Power.
- One by Judicial Power
- One by Public Ministry
- One of the Academy
- One from the private sector

URCDP PROVIDES:

- Assistance
- Advice
- Regulations
- Records of databases
- Monitors compliance with regulations
- Security and confidentiality
- Issues opinions
- Investigations
- Inspections

SANCTIONS

- Warning
- Fines
- Suspension of database.