

The Governance of Privacy: Lessons for Brazil

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Justifications for Privacy Protection

■ As a Right of the Person

- The “Right to be Let Alone” (United States)
- La Vie Privée (France)
- Privatsphäre (Germany)



■ As a Political Value

- A Check against Powerful State and Private Organizations

■ As an Instrumental Value

- To ensure that the right data are used by the right people for the right purposes
- To build “trust” in e-commerce and e-government

The Information Privacy (Data Protection) Principles

- Accountability
- Purpose identification at time of collection
- Informed consent for collection
- To limit use and disclosure (finality)
- Retention limitation
- Data quality
- Data security
- Openness about policies and practices
- Individual access and correction



The Governance of Privacy: The Privacy 'Toolbox'

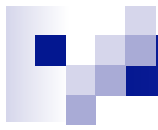
- **International Instruments**
 - **Council of Europe Convention (1981)**
 - **OECD Guidelines (1981)**
 - **EU Data Protection Directive (1995)**
 - **APEC Privacy Principles (2004)**
 - **Mercosur?**
- **Regulatory Instruments**
- **Self-Regulatory Instruments**
- **Technological Instruments**



Regulatory Instruments

- Comprehensive Data Protection (Information Privacy) Laws in over 30 countries in Europe, Canada, Oceania, Asia, Latin America
- Sectoral Data Protection laws
- Oversight by expanding network of Privacy and Data Protection Commissioners





Contemporary Roles for Data Protection Authorities

- Ombudsmen
- Auditors
- Consultants
- Educators
- Policy Advisors
- Negotiators
- Enforcers
- International Ambassadors

Instruments of Self-Regulation

- Privacy Commitments
- Privacy Codes
 - organizational*
 - sectoral*
 - functional*
 - professional*
- Privacy Standards
 - technical*
 - management*
- Privacy Seals
- Privacy Impact Assessments



Technological Instruments

- **Privacy by Design**

<http://www.privacybydesign.ca>

- **Instruments for Individual Empowerment (PETS)**

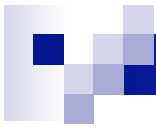
- Encryption Tools**
- Tools for Anonymity and Pseudonymity**
- Filtering Tools**





A Few Lessons learned in 40 Years of Data Protection Policy

- There is a common consensus on what it means for the responsible organization to protect personal data – the fair information principles.
- A convergence of goals – a divergence of means
- Information privacy (data protection) is more than information security
- Rules must be “technology neutral”
- **Comprehensive** information privacy/data protection law is essential – public and private sectors, manual and automated data
- BUT it is not sufficient – law must be combined with self regulatory and technological solutions, and it must be supported by sympathetic public opinion, supportive organizational cultures and civil society advocacy



THE PRIVACY ADVOCATES

RESISTING THE SPREAD OF SURVEILLANCE



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Key Policy Choices for Brazil

- The powers of the oversight body
 - Independence
 - The “privacy advocacy” role
 - Proactive and reactive powers
 - Resources and expectations
- Notification of databases?
- Privacy protection and access to information?
- The regulation of data exports
 - Border control or accountability?





THE BIG CONCLUSION



*BRAZIL IS RELATIVELY LATE IN CONSIDERING THIS ISSUE BUT HAS THE OPPORTUNITY TO LEARN FROM OTHERS' MISTAKES AND PRODUCE A COMPREHENSIVE DATA PROTECTION FRAMEWORK IN THE MOST POPULOUS COUNTRY TO DATE. **BUT WATCH OUT FOR THE BUSINESS LOBBYISTS!***

BOA SORTE!
MUITO OBRIGADO!

