



# LATIN AMÉRICA

IN A GLIMPSE

**HUMAN RIGHTS AND THE INTERNET**  
INTERNET GOVERNANCE FORUM  
MEXICO 2016

This document is a summary of the most relevant information on the human rights and internet situation in Latin America during 2016.

We hope that this initiative will increase the knowledge of the international community, gathered in the Internet Governance Forum 2016, about our region.

This initiative is coordinated by Digital Rights, Association for the Advancement of Communications (APC) and Coding Rights, from Brazil.

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# Freedom of speech

Probably the human right most strongly associated with internet use, online freedom of speech is also one of the most heavily attacked. While some see in the Net an opportunity for the democratic exercise of criticism, denunciation and access to information, for others it is a source of attacks and defamation that needs to be restricted. During 2016, various judicial decisions and bills in Latin America reaffirm the need to keep an eye on the threats that seek to limit online freedom of speech in the region, drawing an ever more complex normative, political and cultural scenario.

## What happened in 2016?

In *El Salvador*, after five years of discussion, the Special Law on Computer and Related Crimes was passed, regulating a large number of behaviors, from computer fraud to “revenge porn”. An important part of the discussion focused on article 24 of the draft, which imposed sanctions of up to three years’ imprisonment on “crimes against honor and privacy through computer media”, including social networks. Fortunately, the article was excluded from the law for violating freedom of speech.<sup>1</sup>

In early May, *Paraguay* National Congress passed a bill that restricts “harmful content for minors” in public internet<sup>2</sup> access places as a way to combat online abuse and harassment. In addition to not defining what is considered to be harmful, for local activists, the law violates freedom of speech, promotes censorship and excessive surveillance,<sup>3</sup> while at the same time is unable to guarantee the protection of children and adolescents against harassment on the internet.

In *Bolivia*, several bills were announced that sought to regulate shared content in social networks.<sup>4</sup> The most well-known of these initiatives, of the legislators Víctor Borda and Leonardo Loza, included the prohibition of anonymity on the internet and punished the defamation of public officials online.<sup>5</sup> None of these projects prospered.<sup>6</sup>

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1 New Law on Computer Crimes of El Salvador. March 28, 2016. <http://oiprodat.com/2016/03/28/nueva-ley-de-delitos-informaticos-de-el-salvador/>

2 Legal and technical analysis on “Protection of children and adolescents against harmful content on the Internet”. May. [https://www.tedic.org/wp-content/uploads/sites/4/2016/05/PUBLICACION%20C3%93N-sobre-el-proyecto-de-ley-de-contenidos-nocivos-TEDIC\\_18may-1.pdf](https://www.tedic.org/wp-content/uploads/sites/4/2016/05/PUBLICACION%20C3%93N-sobre-el-proyecto-de-ley-de-contenidos-nocivos-TEDIC_18may-1.pdf)

3 Twitteraction: We have 5 business days to request the President’s veto, help us!<https://blog.parlamentoabierto.org.py/twitteraccion-censura-en-internet/>

4 At least three bills are ready to regulate social networks in Bolivia. May 1, 2016.<http://eju.tv/2016/05/al-menos-tres-proyectos-ley-se-alistan-regular-redes-sociales-bolivia/>

5 Why Bolivia wants to regulate social networks and ban anonymity online? March 10, 2016. <https://www.accessnow.org/por-que-bolivia-quiere-regular-las-redes-sociales-y-prohibir-el-anonimato-en-linea/>

6 The MAS disregards the law for the regulation of social networks. July 26, 2016. <http://www.paginasiete.bo/nacional/2016/7/26/desestima-para-regulacion-redes-sociales-104045.html>

In *Peru*, the National Authority for the Protection of Personal Data rejected a complaint against a media outlet, the website ojo-publico.com, and journalist Elizabeth Salazar. The plaintiff was Judge Javier Villa Stein, former president of the Judiciary, accused in a newspaper article of increasing his personal wealth during the time he held public office. Villa Stein alleged that the publication violated the data protection law; the ruling was categorical in stating that there was a public interest in accessing the complainant's personal information,<sup>7</sup> setting an important precedent for the protection of the right to freedom of speech on the internet.

In *Brazil*, the right to honor was invoked on a recurring basis to censor the internet and proposed several bills aimed at punishing such situations.<sup>8</sup> On the other hand, the courts repeatedly dealt with the issue in a severe and often disproportionate way: in early October, a court order threatened to block Facebook across the country for 24 hours if the platform did not remove Hudo Caduco's profile, a parody to politician Udo Döhler, candidate for Mayor for Joinville.<sup>9</sup>

On the other hand, Facebook itself has been questioned in innumerable opportunities in that country, for censoring content according to arbitrary use policies, which is usually exercised against women, sexual and ethnic minorities, and issues related to gender, sexual and cultural diversity.<sup>10</sup> It is worth recalling a bustling case occurred in 2015, when a publication of the Ministry of Culture was removed for including the image of a Botocuda Indian with exposed breasts. Same luck ran the photograph of the cover of an album by singer Karina Buhr, which got removed for showing her nipples.<sup>11</sup>

### Right to be forgotten

The discussion of the controversial "right to be forgotten" is increasingly present in Latin America, through judicial decisions and bills that account for the complex conjunction of technology, privacy, freedom of speech and freedom of press.

In *Chile*, the Supreme Court ordered the removal of the computer record of a story published more than 10 years ago in the digital version of the newspaper El Mercurio, about the participation of a police officer in a bustling case of child abuse and child prostitution, crime for which he was sentenced to prison. The sentence appeals to "the right to honor and an adequate social reintegration after the sentence has been served" for both the convicted and his family. To com-

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7 Personal Data Authority rejects Villa Stein's complaint against Ojo-Publico.com. September 14, 2016. <http://ojo-publico.com/299/autoridad-de-datos-personales-rechaza-denuncia-de-villa-stein-contra-ojo-publico>

8 Recent developments in draft law 1547/2015, but also other developments of the mapping available at <https://codingrights.gitlab.io/pls/>

9 O que o Facebook fez para quase ser bloqueado por 24 horas no Brasil? October 10, 2016. <http://gizmodo.uol.com.br/justica-eleitoral-bloqueio-facebook/>

10 The article "The Silicon Valley and its" protection "of the community: colonialism, censorship and anonymity", from the issue on Online Violence and Anonymity of the newsletter Antivigilancia, lists several cases of this kind of censorship: <https://antivigilancia.org/es/2016/09/colonialismo-censura-fin-del-anonimato/>

11 Facebook proibiu os mamilos de Karina Buhr e o MinC considera a atitude da rede social uma 'censura'. September 18, 2015. [http://www.brasilpost.com.br/2015/09/18/karina-buhr-mamilos\\_n\\_8160530.html](http://www.brasilpost.com.br/2015/09/18/karina-buhr-mamilos_n_8160530.html)

ply with the court order, the newspaper removed the article from the web.<sup>12</sup>

In *Peru*, a court recognized for the first time the so-called “right to be forgotten”: in March, the General Directorate of Personal Data Protection ordered Google to hide search results that included the name of a citizen accused of committing a crime against public shame in 2009. After several years of initiating the process against him, no evidence was found sufficient to convict him and the Fifth Criminal Court of Lima acquitted him. As the news continued to appear in the search engine, the affected person asked the court to order the removal of any information related to the case. Google was also sanctioned with a fine of USD 75,000 for refusing to cancel the data.<sup>13</sup>

In mid-July, a bill of “right to be forgotten” was presented in *Panama*, which would force Internet sites to erase data, immediately and completely, when in the criteria of whoever claims that their right to privacy honor and image is affected. Those who does not comply with this requirement risks a fine of up to USD 10,000.<sup>14</sup>

In *Mexico*, the Institute of Access to Public Information and Protection of Personal Data of the Federal District (InfoDF) proposed to include the “right to be forgotten” in the Mexico City’s Constitution. If approved, it would involve the removal of photographs and videos from search engines at the request of the interested parties, as well as the criminal information of people who during their adolescence had committed crimes once the sentence had been served.<sup>15</sup> In response to this proposal, civil society organizations expressed concern about the high risk of censorship.<sup>16</sup>

It should be recalled that in Mexico there are worrying precedents: in January 2015, the Federal Institute for Access to Information (now INAI) ordered Google Mexico to deindex information related to businessman Carlos Sánchez de la Peña. Fortuna magazine appealed to the decision and in August of 2016 a court granted a safeguard, annulling the order.<sup>17</sup>

In *Brazil*, the right to be forgotten is part of four bills. Project 7881/14<sup>18</sup> seeks to safeguard the

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12 Supreme Court applies “right to be forgotten” and orders to remove news from a decade ago. January 22, 2016. <http://www.elmercurio.com/legal/movil/detalle.aspx?id=904517&Path=/OD/CD/>

13 Google is sanctioned for the first time in Peru for not acknowledging the Right to be Forgotten. June 21, 2016. <http://www.hiperderecho.org/2016/06/google-sancionado-datos-personales-peru-derecho-olvido/>

14 Draft Bill openly violates the right to freedom of speech. July 25, 2016. [http://www.prensa.com/politica/Controvertido-derecho-olvido\\_O\\_4536296367.html](http://www.prensa.com/politica/Controvertido-derecho-olvido_O_4536296367.html)

15 ‘Right to be forgotten’, a novelty that will be included in the Constitution of the CDMX. July 11, 2016. <http://www.noticiasmvs.com/#!/noticias/derecho-al-olvido-una-novedad-que-sera-incluida-en-la-constitucion-de-la-cdmx-821>

16 The wrongly called “right to be forgotten” is not a right, it is a form of censorship. July 12, 2016. <https://r3d.mx/2016/07/12/el-erroneamente-llamado-derecho-al-olvido-no-es-un-derecho-es-una-forma-de-censura/>

17 We won! Court overturns INAI ruling on the false “right to be forgotten”. August 24, 2016. <https://r3d.mx/2016/08/24/amparo-inai-derecho-olvido/>

18 See <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=621575>

honor of politicians by eliminating links in search engines. This project is the work of Eduardo Cunha, deputy removed from office and later detained for bribery.<sup>19</sup>

Laws 1,589 / 2015<sup>20</sup> and 2712/2015<sup>21</sup> seek to modify the “Marco Civil”, the celebrated law that governs the internet, to introduce the right to be forgotten: the first, in cases where a person has been acquitted of a crime; The second seeks to force internet application providers to eliminate, at the request of the interested party, what loosely calls “references to records about his person on the internet”.

On the other hand, the criticized “PL spy”,<sup>22</sup> in addition to raise the possibility of the right to be forgotten in cases related to honor, seeks to extend the powers of the authorities to access the records of communications and navigation, without warrant, in the investigation of these cases.



#### FEATURED CASE: POLITICAL CENSORSHIP IN ECUADOR

In *Ecuador*, Twitter was one of the central stages of the dispute over freedom of speech. Beginning the year, two people were sentenced to prison for criticizing government officials through the microblogging platform, accused of uttering expressions of disrepute or dishonor.<sup>23</sup> In addition, several accounts critical to the Government were closed or suspended, after being denounced for “sharing personal information”<sup>24</sup> or infringing copyright.<sup>25</sup> On the other hand, attacks to websites have become a common practice in the country. It is a tactic aimed at silencing critical voices and allegations of corruption.<sup>26</sup>

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19 Eduardo Cunha é preso em Brasília por decisão de Sérgio Moro. October 19, 2016. <http://g1.globo.com/pr/parana/noticia/2016/10/juiz-federal-sergio-moro-determina-prisao-de-eduardo-cunha.html>

20 See <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=1279451>

21 See <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=1672348>

22 PL Espião vai exigir mais mobilização em 2016. February 1, 2016. <http://ibidem.org.br/pl-espiao-vai-exigir-mais-mobilizacao-em-2016/#more-2367>

23 2 people sentenced in 52 days for commenting on Twitter. January 6, 2016. <http://www.elcomercio.com/actualidad/ecuador-sentencias-twitter-carcel-justicia.html>

24 Twitter continues to suspend critical user accounts against the government. January 20, 2016. [http://myemail.constantcontact.com/Twitter-contin-a-suspendiendo-cuentas-de-usuarios-cr-ticos-con-el-gobierno-.html?aid=\\_PMbHIC1syc&soid=1107361599700](http://myemail.constantcontact.com/Twitter-contin-a-suspendiendo-cuentas-de-usuarios-cr-ticos-con-el-gobierno-.html?aid=_PMbHIC1syc&soid=1107361599700)

25 The abuse of the DMCA, 22 complaints to take down content in 3 months. July 29, 2016. <http://www.usuariosdigitales.org/2016/07/29/ecuador-el-abuso-del-dmca-22-denuncias-de-baja-de-contenido-en-3-meses/>

26 Three web portals in Ecuador denounce cyber attacks. May 3, 2016. <http://www.eluniverso.com/noticias/2016/05/10/nota/5572110/tres-portales-web-ecuador-denuncian-ciberataques>

Threats:

- The defense of honor, particularly of powerful people, has become a recurring argument for censoring online forms of expression, whether through judicial decisions or bills.
- The right to be forgotten has begun to be applied in the region, often without a substantive discussion on its implications or a basic understanding of the minimum criteria that the debate should consider, resulting in poor decisions from the point of view of freedom of speech.

Opportunities:

- The defense of freedom of speech has been used as an argument against bad bills, as in the Salvadoran case.
- There are regional standards for the protection of online freedom of speech, issued by such bodies as the Inter-American Commission on Human Rights (IACHR), which civil society organizations can use to defend their right to express themselves.

# Access to online knowledge and copyright reform

When talking about copyright, the common ground is that there must be a balance between the rights of people to access and participate in cultural life, while respecting the interests of rights holders. In 2016 the balance continues to lean in favor of the latter.

## What happened in 2016?

In *Colombia*, the fifth attempt to modify the intellectual property law is under discussion, in the framework of the commitments acquired after signing the Free Trade Agreement with the United States. The initiative is popularly known as the “Ley Lleras”, in reference to Germán Vargas Lleras, who was the Minister who presented the first two projects and is currently Vice President of the Republic. The main problem of the project is that the discussion is not born of the intention of carrying out a serious reform of the copyright regime, but of the need to fulfill commercial commitments, with a marked bias towards the interests of the rightholders, which in turn is shown by the low number of exceptions contemplated in the text and the limited consideration given to input given by civil society and academia in the four previous consultation processes.<sup>27</sup>

On the other hand, in early March several Twitter, Vine and other social networks accounts of Colombian users were closed for publishing short videos of football matches, whose right of transmission are owned by Win Sport and RCN, sports television signals. Arguing that posting clips of key plays constituted a violation of their rights of retransmission, they managed to eliminate the accounts, a clearly disproportionate measure.<sup>28</sup>

A similar situation occurred in *Venezuela*, where Luigino Bracci Roa’s Twitter account was suspended for posting videos of the Olympics held in Rio de Janeiro. The rules imposed by the International Olympic Committee banned sharing any content related to competition to those who were not official sponsors. However, sharing these videos in Venezuela does not constitute a violation of copyright law.<sup>29</sup>

In *Uruguay*, an attempt to reform copyright legislation, which expanded the number of exceptions contemplated in the law, permitting the use of protected material in the context of educational activity and copies for private non-profit uses, among others, is heavily threatened thanks to the

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27 After 3 years, the Lleras Law practically did not change. August 30, 2016. <https://karisma.org.co/despues-de-3-anos-la-ley-lleras-practicamente-no-cambio/>

28 Between notifications, counter-notifications and the team of my loves. April 28, 2016. <https://karisma.org.co/entre-notificaciones-contra-notificaciones-y-el-equipo-de-mis-amores/>

29 They close their Twitter account for publishing videos of Rio 2016. August 9, 2016. <https://www.fayerwayer.com/2016/08/cierran-su-cuenta-de-twitter-por-publicar-videos-de-rio-2016/>



lobbying of rights management societies.<sup>30</sup> The project is now in the Chamber of Deputies.

Meanwhile, the *Uruguayan* court sentenced fourteen owners of copy shops to seven months in prison, accused of illegal reproduction of books. The photocopied texts corresponded, mainly, to academic material used by law students.<sup>31</sup>

In *Chile*, a bill that sought to extend the rights of audiovisual workers attempted to seriously discourage the use of open licenses, such as Creative Commons. The proposal sought to make non-waivable and compulsory collection for any use of an audiovisual work, through a collecting society. Given that under this scheme payment is inescapable, open licenses lose much of their appeal. The law was passed, but it was left out the part that made it compulsory for the collection to be made through a rights management society, leaving more room for action for filmmakers who want to find other ways to share their work.<sup>32</sup>

In *Brazil*, different proposals to remove content and block platforms for infringement of copyright are being processed in Congress. While the discussion on the amendment to the copyright law has been detained since 2011, various projects seek to create specific provisions to protect copyright and related rights disproportionately and without a substantive debate. The 5204/2016<sup>33</sup> project, which seeks to block any site or “illegal” application provided by companies without representation in the country, explicitly mentions file sharing sites and streaming platforms as a target. On the other hand, projects 3442 / 2015 and 5203 / 2016 propose the removal of infringing content without the need for a court order<sup>34</sup> and the removal of those identical contents to others that have already been discarded by copyright,<sup>35</sup> reproducing the paradigms of “notice and take down” and “notice and stay down”. If approved, these projects threaten the creativity and culture of the remix, expand the possibilities of censoring content and force the platforms to monitor and judge the behavior of their users.

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30 See “We all win rights” <http://www.todosganamosderechos.org/>

31 Justice condemned 14 photocopier owners. October 24, 2016. <http://ecos.la/UY/13/Sociedad/2016/10/24/8770/justicia-condemno-a-14-duenoscofes-de-photocopiadoras/>

32 Chilean government insists on a project that will hinder the use of Creative Commons. July 21, 2016. <https://derechosdigitales.org/10352/gobierno-chileno-insiste-en-proyecto-que-obstaculizara-el-uso-de-creative-commons/>

33 See <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=2083675>

34 See <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=2025430>

35 See <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=2083673>



## FEATURED CASE: END OF TPP NEGOTIATIONS

In terms of copyright, the year began with a bitter note: on February 4, Peru, Mexico and Chile signed the final text of the Trans-Pacific Partnership (TPP), after seven years of negotiations. Although the signature does not imply the entry into force of the treaty, it is the first step in that direction. With the exception of Brunei, Malaysia and Singapore, the decision is now in the hands of the national Congress of each of the countries participating in the negotiation, who can approve or reject the treaty in its entirety, but not make modifications to the text.<sup>36</sup>

In the field of intellectual property, the enforcement of the TPP entails raising the global standard of works protection, which in turn implies less public dominance and more obstacles to the use of cultural heritage; higher fees for internet providers; copyright-related censorship and more criminalization of legitimate or innocuous practices, such as circumvention of technological protection measures.

### Threats:

- The discussion on copyright continues to have a strong commercial bias, in favor of the interests of the holders, and without considering the needs of access to the culture of the general population.
- The main decisions on copyright are being taken in the framework of international trade agreements, in closed discussions, without the participation of the political representatives of the citizens.

### Opportunities:

- The unexpected election of Donald Trump as President of the United States seems to have closed the doors to a possible ratification by that country, which supposes the death of this Treaty, although certain similar ones will surely come in the future.
- Despite the announced withdrawal of the TPP by the US, the leaders of the others countries of the Pacific basin have shown their interest in continuing to ratify the agreement, so there is scope for action to influence legislators.

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<sup>36</sup> TPP: the fight is just beginning. February 4, 2016. <https://derechosdigitales.org/9709/tpp-la-lucha-recien-comienza/>

# Privacy and online monitoring

Undoubtedly, the discussion on privacy in the internet age is one of the biggest in the world right now. Online surveillance is a growing industry in Latin America and most governments have acquired software to intercept communications and track down citizens' equipment, under dubious legal criteria.<sup>37</sup> On the other hand, personal data processing policies do not seem to be able to meet the security standards necessary to protect sensitive information of people and, therefore, their right to privacy. But it is not only the governments that implement surveillance practices: the private sector have also incurred in surveillance practices, especially in search of revenue.

## What happened in 2016?

At the beginning of September, it was announced that the *Mexican* government invested USD 15 million in the Pegasus surveillance software of the Israeli firm NSO Group, which allows them to capture images, text messages, listen to phone calls and steal information from any smartphone. There is sufficient evidence to state that Pegasus was used to attempt to access the communications of journalist Rafael Cabrera, who has been involved in corruption investigations in the Mexican government.<sup>38</sup>

In May, the Supreme Court of Justice (SCJN) reviewed two articles of the controversial Ley Telecom, which was pointed out by experts and members of civil society as a threat to the right to privacy and freedom of speech. In its ruling, the SCJN endorsed the obligation for telecommunications companies to retain, for a period of two years, the metadata of their clients' communications, but clarified that a court order is necessary to access them, since they have the same Standard of protection than the content of communications. However, it further stated that the same authorization is not required to monitor, in real time and continuously, the location of a device.<sup>39</sup>

In mid-June, a reform was approved to the Federal Law against organized crime, which empowers the Attorney General's Office to intervene in private communications without having to prove that the spying person is involved in organized crime. It also reduced the deadline for processing judicial authorization from twelve to six hours and recognized the possibility of "gathering information in public places, using means and instruments and any tools that are necessary for the generation of intelligence" as a research technique, enabling "electronic sur-

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37 See Hacking Team: malware for surveillance in Latin America. <https://www.derechosdigitales.org/wp-content/uploads/malware-para-la-vigilancia.pdf>

38 The Million Dollar Dissident: NSO Group's iPhone Zero-Days used against UAE Human Rights Defender. August 24, 2016. <https://citizenlab.org/2016/08/million-dollar-dissident-iphone-zero-day-nso-group-uae/>

39 The SCJN and #LeyTelecom: The bad, the good, the absurd and what follows. May 5, 2016. <https://r3d.mx/2016/05/05/la-scn-y-la-leytelecom-lo-malo-lo-bueno-lo-absurdo-y-lo-que-sigue/>

veillance” and “people tracking”.<sup>40</sup>

On the other hand, in April it was known that the information of 93.4 million Mexican voters was leaked and was, without any security, on an Amazon server. As stated by the Executive Directorate of the Federal Register of Voters (DERFE), this information was accurate and up-to-date by February 2015. Information includes birth dates, occupation, age, gender, voter identification number, registration date, electoral and voter’s residence data, among others.<sup>41</sup> At the end of the same month, the Senate approved the Personal Data Protection Act which, among other things, punishes political parties, trusts, officials, unions, institutions and companies that allow data leaks, with fines of up to USD 5600 and to be added into a blacklist.<sup>42</sup>

In *Peru*, in August of this year, the so-called “Pisco Project” made public, a statewide large-scale communications interception plan launched last year. The government paid USD 22 million to Verint for software that can intercept phone calls, text messages, emails, chats, and users’ internet history, track up to five thousand people, and record up to three hundred conversations simultaneously.<sup>43</sup> In addition, it was learned that the National Intelligence Directorate (DINI) spent USD 1 million on SkyLock, another product of Verint, which allows locating and tracking cell phones inside and outside the country.<sup>44</sup>

In *Paraguay*, at the end of August, the ABC newspaper reported that the government’s integrated intelligence system illegally spied two cell phones from a journalist who investigated a corruption case involving the wife of General Luis Gonzaga Garcete, in order to identify the source that provided such information.<sup>45</sup> This complaint shows that the Government uses illegal communications spy software,<sup>46</sup> contrary to what the National Anti-Drug Secretariat had declared in May.<sup>47</sup>

In *Brazil*, following the Rio de Janeiro Olympic Games, police and army acquired new technol-

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40 PGR will be able to spy on public places and intervene in communications if it suspects criminal ties. June 16, 2016. <http://www.animalpolitico.com/2016/06/pgr-podra-espiar-en-lugares-publicos-e-intervenir-comunicaciones-si-sospecha-nexos-criminales/>

41 Mexico begins demand after data leak of millions of voters. April 22, 2016. <https://www.cnet.com/es/noticias/filtra-base-datos-ine-93-millones-mexicanos-en-amazon/>

42 Senate plenary approves personal data law. April 29, 2016. <http://eleconomista.com.mx/sociedad/2016/04/29/pleno-senado-aprueba-ley-datos-personales>

43 Peru paid \$ 22 million USD to spy on the communications of its citizens. August 4, 2016. <https://www.derechosdigitales.org/10389/peru-pago-usd-22-millones-para-espiar-las-comunicaciones-de-sus-ciudadanos/>

44 The communications espionage system that Humala left behind. August 7, 2016. <http://www.hiperderecho.org/2016/08/proyecto-pisco-skylock-peru-verint/>

45 The government used its intelligence system to spy on journalists. August 25, 2016. <http://www.abc.com.py/edicion-impresa/notas/gobierno-uso-su-sistema-de-inteligencia-para-espiar-periodista-1511976.html>

46 Espionage to journalist confirms that the State intercepts communications illegally. August 25. <https://www.tedic.org/espionaje-a-periodista-confirma-que-el-estado-intercepta-comunicación-ilegalmente/>

47 Senate assumes purchase of software to locate people. May 18, 2016. <http://www.paraguay.com/nacionales/asumen-compra-de-software-espia-144642>

ogy for mass surveillance. Under the argument of ensuring the security of the Games, cameras were installed with facial recognition systems, surveillance balloons<sup>48</sup> and IMSI Catchers,<sup>49</sup> used to intercept communications through cell phones and to track mobile devices. The acquisition of these equipment becomes even more worrying considering the situation of social unrest in front of the questionable process of impeachment of President Dilma Rouseff, the history of police violence in the country<sup>50</sup> and the monitoring of social movements.<sup>51</sup>

New tactics used by law enforcement to monitor digital communications, such as infiltration in social networks, have also been detected; the most recent news came from an Army representative infiltrated in Tinder to find protestors,<sup>52</sup> which ended with the arrest of 21 youths who were organizing to go to a protest. After some hours, the youths were released;<sup>53</sup> the judge in charge considered the action as abusive.

In July, a new Police Code was approved in *Colombia*. According to civil society organizations, a huge surveillance system was validated, including the excessive use of cameras, the tracking of cell phones and the creation of the National Registry of Corrective Measures, a database that includes the identification of the person, the charge imputed to him, the type of corrective measure imposed and the state of payment of the fine or compliance with the ordered measure.<sup>54</sup>

In *Chile*, the Supreme Court rejected a protection action to end the massive surveillance by means of camera-balloons in two municipalities of the capital, even recognizing that these cameras are capable of violating the right to privacy and the inviolability of the home.<sup>55</sup>

On the other hand, in March, a vulnerability was reported in the computer systems of the Ministry of Health, which could extract up to three million medical files from the public system with highly sensitive information of patients, affecting their right to privacy.<sup>56</sup> In addition, the Senate

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48 Lack of limits on vigilant balloons in the Olympics puts privacy of the population in check. August 5, 2016. <http://gizmodo.uol.com.br/baloes-vigilantes-olimpiadas-rio-2016/>

49 Como as Olimpíadas ajudaram o Brasil a aumentar seu aparato de vigilância social. July 27, 2016. [http://motherboard.vice.com/pt\\_br/read/como-o-brasil-aprimorou-seu-aparato-de-vigilancia-social-para-as-olimpiadas](http://motherboard.vice.com/pt_br/read/como-o-brasil-aprimorou-seu-aparato-de-vigilancia-social-para-as-olimpiadas)

50 Violência policial no Brasil é destacada em relatório internacional. January 29, 2015. <http://politica.estadao.com.br/blogs/roldao-arruda/violencia-policial-no-brasil-e-destacada-em-relatorio-internacional/>

51 Governo brasileiro espiona movimentos sociais e de trabalhadores. April 11, 2013. <https://pt.globalvoices.org/2013/04/11/brasil-espionagem-belomonte-suape-abin/>

52 Governo Alckmin infiltrou PM em Tinder para prender manifestantes, dizem vítimas. 8 de septiembre de 2016. <http://ponte.org/alckmin-infiltrado/>

53 Ver <http://ponte.org/wp-content/uploads/2016/09/decisao-manifestacoes-relaxamento.pdf>

54 From the Truman Show to the Colombia Show. June 14, 2016. <https://karisma.org.co/del-show-de-truman-al-show-de-colombia/>

55 What the Supreme Court does not understand about surveillance balloons. June 8, 2016. <https://www.derechosdigitales.org/10051/lo-que-la-corte-suprema-no-comprende-sobre-los-globos-de-televigilancia/>

56 The vulnerability of our personal information, an incurable disease? March 10, 2016. <https://www.derechosdigitales.org/9794/la-vulnerabilidad-de-nuestra-informacion-personal-un-mal-incurable/>

advanced a project to build a public registry of evaders of the payment of public transport, a disproportionate measure, stigmatizing and not able to ensure the security of the data it contains.<sup>57</sup>

With just over a month of government, the president of Argentina, Mauricio Macri, announced the implementation of Facebook At Work for the organizational management of state institutions. Although the negotiation was done in a short time and the specific conditions are unknown,<sup>58</sup> the Government publicly announced that a pilot version will initially be used free of charge in the Secretariat of Management and Public Innovation of the newly created Ministry of Modernization.<sup>59</sup>

Meanwhile, at the end of July, it was ruled that the National Social Security Administration (ANSES) should share personal data of the Argentinians, including name and surname, ID, address, telephone numbers, email, date of birth, studies with the Secretariat of Public Communication, to help it improve its communication strategies. This violates the Personal Data Protection Act, which, while empowering institutions to manage citizens' data even without their consent, prohibits them from being used for different purposes for which they were collected.<sup>60</sup>



#### FEATURED CASE: DISPUTE OVER ENCRYPTION IN BRAZIL

The use of encryption in messaging applications continues to be a hotly contested topic in *Brazil*. During 2016, several court orders imposed the temporary blocking of Whatsapp nationwide as the company refused to cooperate with the court by delivering information exchanged through the messenger service requested in the framework of criminal investigations; this negative even led to the arrest, for 24 hours, of the president for Facebook Latin America, company that owns WhatsApp.<sup>61</sup>

As early as May 2015, faced with a similar situation, the company declared that it was impossible to comply with the requirement of justice, since communications are encrypted and do not have access to the required messages.<sup>62</sup>

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57 Public registry of Transantiago evaders: more problems than solutions. September 12, 2016. <https://www.derechosdigitales.org/10486/registro-publico-de-evasores-del-transantiago-solucion-o-problema/>

58 Dazzles at the request of information on Facebook At Work. May 24, 2016. <https://cpr.org.ar/article/evasivas-ante-pedido-de-informacion-sobre-facebook>

59 Macri announced the delivery of state information to Facebook. February 17, 2016. <http://pausa.com.ar/2016/02/macri-anuncio-la-entrega-de-la-informacion-del-estado-a-facebook/>

60 The State and personal data. July 28, 2016. <https://adcdigital.org.ar/2016/07/28/estado-datos-personales/>

61 Diego Dzodan, vice president of Facebook for Latin America, is arrested by the Federal Police. March 1, 2016 [http://brasil.elpais.com/brasil/2016/03/01/tecnologia/1456843819\\_998702.html](http://brasil.elpais.com/brasil/2016/03/01/tecnologia/1456843819_998702.html)

62 The Facebook vs. Justice dispute could lead to a new WhatsApp lock in Brazil. May 3, 2016. <http://gizmodo.uol.com.br/disputa-facebook-justica-bloqueio/>

Considering this, in the last known case to date, a judge asked the company to disable encryption to allow real-time monitoring of communications from a group of suspects.<sup>63</sup>

#### Threats

- The purchase of surveillance software is a growing trend in the region, providing states with disproportionate monitoring capabilities and lacking safeguards against abuse.
- The purchase of surveillance software falls into a gray legal area, when it is not completely illegal.
- The use of surveillance technologies against journalists and political opponents is of concern.
- In general, Latin American countries lack strong and effective protection of personal data, making people vulnerable to all types of abuse.

#### Opportunities

- After knowing the scope of Hacking Team in Latin America, it has been learned of the purchase of other surveillance software in countries like Mexico and Peru. Given that the capabilities of this kind of software often exceed the proportionality standards, the acquisition of these tools by different governments is in a gray legal area, when it is not completely illegal. This situation allows civil society organizations to press for a deep and serious discussion about the surveillance capabilities of Latin American states, as well as the necessary safeguards in the field of human rights.

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63 Judicial decision increases pressure on WhatsApp to open data in Brazil. July 20, 2016. <http://www1.folha.uol.com.br/mercado/2016/07/1793445-decisio-judicial-aumenta-pressao-para-whatsapp-abreu-dados-no-brasil.shtml>

# Other subject

The increasingly central place that technology occupies in daily life has broadened the circle of areas in which it is pertinent to discuss its scope and implications from a public policy and human rights perspective.

## “Marco Civil” in Brazil is threatened

Approved in 2014, Marco Civil (Civil Framework), the Brazilian law regulating the internet, was widely celebrated as one of the best legislative efforts for its protection of fundamental rights in the web.

In 2016, the law has been heavily attacked with a series of modification attempts that severely restrict its potential. This is a trend that began in 2015, with a project that sought to establish massive surveillance mechanisms and limit the right to freedom of speech based on lax and not well defined criteria.<sup>64</sup> Based on the report presented by the Parliamentary Investigation Commission on Cyber Crimes,<sup>65</sup> in late April 2016, the Brazilian Congress debated seven bills that jeopardized the freedoms guaranteed by the Marco Civil.<sup>66</sup>

In response, the main civil society organizations linked to the theme formed the “Coalition for rights in the Web”,<sup>67</sup> as a way of working together for the defense of Marco Civil and digital rights. Among the activities of the coalition is the mapping of all bills that try to change the Civilian Framework.<sup>68</sup>

## Electronic vote

Recently, the discussion on the adoption of electronic voting has begun to take hold in some Latin American countries. Understood as a way to “modernize” the electoral system, advocates of this idea often overlook the problems that an electronic voting system might entail, how easy it is to manipulate existing machines and the threat it poses to the anonymity of the vote and the privacy of voters.

One of the countries that has advanced the most in this direction is *Argentina*: the single elec-

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64 Brazil: The bill threatens the Civil Code. 21 September 2015. <http://derechosdigitales.tumblr.com/post/129589673126/brasil-proyecto-de-ley-pone-en-eligro-el-marco>

65 See [cpiciber.codingrights.org](http://cpiciber.codingrights.org)

66 Joint statement to Brazilian congress: Drop dangerous cybercrime bills. April, 2016 <http://www.apc.org/en/pubs/joint-statement-brazilian-congress-drop-dangerous>

67 Coalition Rights in the Web is recognized as a heroine in human rights award on the Internet. September 27, 2016. [https://medium.com/@cdr\\_br/coalization-rights-in-the-rede-%C3%A9-recognized-like-heroes-in-pr%C3%A9-amio-sobre-derechos-humanos-na-inter-net-d784fedee7f1#.ezd2z5j8a](https://medium.com/@cdr_br/coalization-rights-in-the-rede-%C3%A9-recognized-like-heroes-in-pr%C3%A9-amio-sobre-derechos-humanos-na-inter-net-d784fedee7f1#.ezd2z5j8a)

68 A daily update of what happens in the National Congress is available at <http://codingrights.org/pls>



tronic ballot is already used in some provinces of the country, including Buenos Aires, where it was introduced in 2015 flooded by critics<sup>69</sup> of civil society and the technical community, which has denounced irregularities in the system.<sup>70</sup>

In September, the use of electronic voting for the general elections was approved by the Chamber of Deputies Commission, but was later rejected by the Congress.<sup>71</sup>

In the middle of this debate, in late July, the criminal proceedings against Argentine programmer Joaquín Sorianello was declared dismissed. The house of Sorianello was raided in mid-2015, accused of altering the results of the elections in Buenos Aires. After a year of process, it was demonstrated that its intention was not to alter the results, but to warn about the vulnerabilities of the system implemented by the company Magic Software.<sup>72</sup>

Another country that has begun to implement electronic voting is Peru, which has been implementing it progressively since 2005. It was expected that in the general elections, held in April 2016, almost three million people, from thirty districts throughout the country, vote with this system. But before the strong criticism of civil society and the technical community,<sup>73</sup> a week before the elections, the National Office of Electoral Processes (ONPE) reported the reduction of districts from thirty to nineteen,<sup>74</sup> which were maintained for the second round of the presidential election.

## Cybersecurity

Several countries in the region have begun work on proposals for cybersecurity policies, which are in different stages of progress. In general, these are projects strongly marked by a military perspective, without much room for inclusion of aspects related to fundamental rights.

At the end of January, the draft national policy on digital security was publicly presented in *Colombia*. The document was socialized through sectorial workshops and various civil society organizations, such as the Fundación Karisma, FLIP, Comisión Colombiana de

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69 A democratic state should guarantee the secret ballot. September 13, 2016. <http://www.noticiasurbanas.com.ar/noticias/un-estado-democratico-debe-garantizar-el-voto-secreto/>

70 The hacked vote: file shows irregularities in electronic voting in Federal Capital. August 8, 2016. <http://www.politicargentina.com/notas/201608/16044-voto-caba-2015.html>

71 Electronic Ballot: the software would do 3 companies and Arsat would process the results. September 29, 2016. <http://www.lanacion.com.ar/1942509-boleta-electronica-el-software-lo-harian-3-empresas-y-arsat-procesaria-los-resultados>

72 Macri lost the electronic voting. November 24, 2016. <https://www.pagina12.com.ar/5022-a-macri-se-le-tildo-el-voto-electronico>

73 Electronic voting in Peru, or how to play with the fundamental right of our democracy. May 23, 2016. <http://www.hiperderecho.org/2016/05/voto-electronico-peru-jugar-derecho-fundamental-nuestra-democracia/>

74 The crisis of electronic voting in Peru. April 8, 2016. <http://www.hiperderecho.org/2016/04/la-crisis-del-voto-electronico-peru/>

Juristas; and some citizens submitted comments to the document.<sup>75</sup>

Among the main shortcomings are the lack of a human rights perspective; lack of proposals on mechanisms and bodies for monitoring and supervision of State surveillance activities; lack of references to issues that surveillance could lead to groups such as human rights defenders, journalists, activists, political opponents and others; the definition of spectrum monitoring set forth in the intelligence law, which is not considered by the current legislation as interception of communications and therefore is not subject to any judicial control; rules on data retention, encryption and illegitimate use of hacking tools by state agencies.<sup>76</sup>

*Paraguay* is in the final stage of the comments on the national cybersecurity strategy, a process initiated in November 2014 and aimed at developing a plan for the protection of critical infrastructure, raising awareness of digital security to users and collaboration for the prosecution of punishable acts carried out through the internet.<sup>77</sup>

For TEDIC, an organization of *Paraguayan* civil society, the document lacks a human rights and economic development approach; there is no mention of the risks involved in the acquisition of mass surveillance tools; does not include encryption policies or protection of the right to privacy, nor does it emphasize the importance of security by design, as well as conceptual errors that confuse rather than clarify.<sup>78</sup>

In *Chile*, the first version of the National Cybersecurity Policy Proposal 2016-2022 was presented in early 2016, which was made available for public consultation by the Ministry of Interior and Public Security. It is a highly ambitious project, which sets out five strategic objectives in the areas of infrastructure, rights, culture, cooperative relations and promotion of the cybersecurity industry and envisages the implementation of 42 measures for the current and next year.

As in the case of *Colombia* and *Paraguay*, one of the main criticisms is the lack of a human rights perspective, rather than a mere mention of them. The measures are not clear, lack adequate hierarchy and indicators to measure their impact, and raise serious doubts about the way the plan is financed. On the other hand, it seems that the plan seeks to address shortcomings of other public policies, such as the so-called Digital Agenda.<sup>79</sup>

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75 About cybersecurity in Colombia: a lot of noise and few nuts. April 5, 2016. <https://karisma.org.co/sobre-ciberseguridad-en-colombia-mucho-ruido-y-pocas-nueces/>

76 Civil Society Letter to the Special Rapporteur on the right to privacy. March 14, 2016. <https://karisma.org.co/carta-sociedad-civil-al-relator-especial-on-right-to-privacy/>

77 Cybersecurity in Paraguay. June 15, 2016. <https://www.tedic.org/ciberseguridad-en-paraguay/>

78 Comments on the draft of the cyber-security plan 2016. June 2016. [https://www.tedic.org/wp-content/uploads/sites/4/2016/06/observations-on-the-plan-of-ciberseguridad\\_v14jun-.pdf](https://www.tedic.org/wp-content/uploads/sites/4/2016/06/observations-on-the-plan-of-ciberseguridad_v14jun-.pdf)

79 Surveillance in Chile: towards a national cybersecurity policy. July. <https://derechosdigitales.org/wp-content/uploads/Politica-Nacional-de-ciberseguridad.pdf>

It is expected that by the end of the year, the Government will deliver a second draft that will take care of the comments made to the first version.

### **Economic, social, and cultural rights**

The relationship between internet access and its use, and the realization of economic, social and cultural rights (ESCR) has been little explored. Latin America faces crucial challenges in terms of development and democracy and looking at strengthening economic, social and cultural rights is an inescapable task for the coming years. The questions are multiple: What is the role of the internet in exercising ESC rights? Has the internet become essential for the exercise of rights? How does the internet affect the social and economic rights of women? What is the role of the state when formulating internet policies related to these rights? What is the role of the private sector? Who are the key players? What aspects stand in the way?, among others.

Through the Global Information Society Watch 2016 (GISWATCH)<sup>80</sup> some examples have been identified that illustrate the relationship between internet and ESCR:

- In situations where certain government processes and services can be carried out only online and in the predominant language, the conditions of discrimination are aggravated for certain population groups. This is the case of mechanisms for access to social services in Argentina by indigenous populations.
- In Peru, the Sonoro1 project, online phonetics, aims to challenge indigenous structural exclusion by giving visibility to marginalized indigenous languages for educational purposes and access to knowledge.
- Telework has become an advantageous alternative to work, but if it is not regulated can lead to labor exploitation, as is the case of Panama.
- In the case of Venezuela this year, the internet was used intensively by the population to mitigate the lack of food and medicines. Through social networks, the population organized barter. The government, which has denied the crisis, set up a centralized database system linking supermarkets and pharmacies for the purpose of monitoring and controlling the supply and purchase of products.
- Despite the obstacles it has faced, the Ceibal program in Uruguay has managed to connect more than 50% of the poor population to the Internet. It is an example of how online education initiatives can be used to empower communities' socio-economic rights and how education policies contribute to social inclusion.
- The establishment of rural technological hubs in Costa Rica has shown to have value for the social and economic empowerment of rural women in the country.

Some basic recommendations are:

- Continue in the effort to deploy policies and public strategies aimed at connecting rural populations, ethnic minorities, groups in a situation of marginalization and ex-

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<sup>80</sup> See <http://www.giswatch.org> All the examples mentioned below are in the 2016 report, available online from the second week of December 2016.

clusion. The promotion of community and autonomous networks and infrastructures initiatives is essential.

- Accompany the efforts to universalize access to the internet with strategies to develop capacities for the use of the internet and other ICTs.
- Promote the development of local content.

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