



## CONFERENCE REPORT

### DAY ONE

#### Welcome Remarks

The conference was opened by **Atalá Correa**, Academic Coordinator, Instituto Brasiliense de Direito Publico (IDP), who welcomed the opportunity this conference created for informing a forward-looking privacy regime for Brazil.

Next, **Laura Schertel Mendes**, Academic Director, Centro de Direito, Internet e Sociedade do Instituto Brasiliense de Direito Público (CEDIS/IDP), also welcomed the participants on behalf of IDP, noting the purpose of this conference to allow the different stakeholder groups to discuss the best way to transform technical, academic and scientific knowledge into effective public policy and a privacy regime. She noted the need for any privacy framework to foster rather than obstruct innovation and that privacy regulation must protect consumers and enable businesses.

**Bojana Bellamy**, President, Centre for Information Policy Leadership (CIPL), then welcomed the participants on behalf of CIPL, highlighting the importance of developing a sustainable framework for both data protection and beneficial use of information in the modern information age.

#### Two Introductory Keynotes: *Why Privacy Matters in our Global, Digital and Interconnected World*

**Virgilio Almeida**, Secretary for Information Technology Policy, Ministry of Science, Technology and Innovation gave an overview of Brazil's history of privacy and described a path towards the digital economy, noting the importance of digital technologies for the future of Brazil's political, social, industrial and economic agendas.

**Peter Hustinx**, Former European Data Protection Supervisor (EDPS), discussed how the lack of transparency about how data is processed has led to impatience and frustration with the lack of control by individuals over their data. The fact that we want to be both protected and connected at the same time makes privacy such a complicated issue. He called for privacy protections that continue to be based on the central principles of data protection as repeatedly confirmed by the OECD and the EU while recognizing the need for other sources of "legitimacy" for data processing other than consent, which has proven to be insufficient in the modern data use context. He also noted the importance of corporate accountability as a mechanism to implement privacy protections as well as the importance of a national data protection authority.

## **Session I: The Modern Data Landscape**

This panel, moderated by **Marcel Leonardi**, Senior Public Policy and Government Relations Counsel, Google Brazil, was designed to set the factual scene for this workshop and place privacy regulation and information management into context by raising awareness and taking stock of the technological and business realities of the current information-based economy. The panelists discussed what technological and business facts modern privacy laws need to account for. The discussion touched on issues relating to Big Data, the Internet of Things, cloud computing and global data flows. It also considered other technological developments in the foreseeable future and the risks and benefits associated with such developments.

**Demi Getschko**, Board Member, Brazilian Internet Steering Committee/CGI.br, highlighted the possibilities of the IoT, noting that everything that can be connected will be connected. He emphasized the importance of privacy by design in this environment. He noted the fact that our technology curve is quicker than our culture curve, which makes it hard to manage and regulate new technologies.

**Enylson Camolesi**, Director of Corporate Affairs, Telefónica Brazil, noted that information has been a valuable asset for thousands of years and that there can be no absolute protection. He also noted the privacy legislation must be flexible and adaptable to changing circumstances and developments.

**Daniel Korn**, Director of Corporate Affairs, Microsoft Latin America, explained how cloud computing, in addition to creating efficiencies, also drives equality and enables the democratization of communities as well as other benefits. The key question is how to maximize the benefits of new technologies while also preserving privacy. To attain both privacy and the benefits of the internet, we need two things: transparency and an internet governed by the rule of law. Noting a currently existing political opportunity, he expressed support for the idea of a new global framework for privacy, particularly as regards cross-border law enforcement requests for data. He also noted the use of standards (like ISO cloud privacy 27018) to “trust but verify”.

**Francisco Soares**, Senior Director, Government Affairs, Qualcomm, discussed the need for a more nuanced approach to compliance and privacy protections based on different levels of risk associated with a product. He also pointed out that there is too much reliance on consent in cases where it is not necessary, such as where there is no risk at all.

**Woodrow Hartzog**, Associate Professor, Cumberland School of Law, Samford University, noted that we have to answer five key questions: (1) what to do about consent and its overuse, (it’s really a risk-shifting mechanism from companies to individual consumers); (2) how to manage predictive information in a non-discriminatory fashion; (3) how to ensure data security, including physical safety, in an era where everything is a computer; (4) how do we not cross the line between acceptable advertisement and manipulation; and (5) what kind of transparency do we want? Do we want algorithmic transparency? He also discussed the need to develop public trust to enable long-term sustainable relationships between individuals and organizations. There are four key characteristics that describe companies that build trust: (1) discreet (they share the right amount of information with the right

number of people); (2) honest; (3) protective; (4) loyal (i.e., not overly manipulative of its customers).

During the Q and A, panelists pointed to the usefulness of de-identified data, noting that the majority of data does not have to be personally identified and could be handled outside of data protection laws. They also addressed the need for better transparency and notice, for example, in connection with data collection through sensors. One panelist advocated caution, given that we are just at the beginning of an innovation curve and that we need to work with principles rather than detailed prescriptive rules. He also urged an increased focus on data use (as opposed to collection) and a focus on punishing use of data that is actually harmful. Finally, one speaker noted the importance of privacy by design so that individuals are not overburdened with worrying about privacy. We cannot ask too much of individuals. It's unreasonable to expect them to understand all privacy risks.

## Keynote

**Juliana Pereira da Silva**, Secretary of the National Consumer Protection Secretariat, Ministry of Justice, described the Ministry's efforts to develop a high level legal framework that is compatible with the 21<sup>st</sup> Century. While citizens must be entitled to controlling their data, they cannot be burdened with difficult decisions on very complex topics. Elected officials and experts should have the burden of making those decisions and are responsible for creating minimum standards that people can rely on.

## Session II: Brazil's Draft Privacy Law

This panel, moderated by **Rafael Dubeux**, Deputy Chief for Legal Affairs, Casa Civil da Presidencia da Republica, discussed the draft privacy bills in Brazil.

**Danilo Doneda** Advisor, National Consumer Protection Secretariat, Ministry of Justice, **Dennys Antonialli**, Director-President, InternetLab and **Leonardo Palhares**, Partner, Almeida Advogados and Vice President of Strategy, Camara-e.net, provided an update on the status of the various drafts for a Brazilian privacy law as well as the key outstanding issues that need to be resolved, focusing in particular on the issues of consent and its alternatives, de-identified or anonymous data and rules against re-identification, as well as the importance of an independent national authority and its specific functions and authority.

**Vanessa Araujo Lopez Butalla**, Legal Manager, Serasa Experian, specifically raised how express consent requirements would preclude the establishment of credit reporting databases, which are vital for credit markets and the economy. She called for balance and proportionality on the issue of consent in any new privacy law. **Murillo Laranjeira**, Head of Public Policy and Government Relations, MercadoLivre, stressed that a new law should be principles based and designed to enable innovation, big data and the IoT. **Bruno Magrani**, Head of Public Policy, Facebook, Brazil, suggested that what is needed is a global treaty on jurisdiction and an open internet or a global mechanism for international data transfers through which the adequacy of other jurisdictions is recognized.

### **Session III: Developments in the Americas, Asia and Europe**

This panel, moderated by **Sérgio Alves Jr.**, Executive Director, Centro de Direito, Internet e Sociedade do Instituto Brasiliense de Direito Publico (CEDIS/IDP), discussed legislative and other significant privacy developments in other jurisdictions.

**Woodrow Hartzog** gave an overview of the privacy landscape in the United States. He also urged global harmonization of high-level principles and that details be provided by standards such as the ISO technical standards.

**Frederico Ceroy**, President, Instituto Brasileiro de Direito Digital (IBDDIG), and Prosecutor for the Ministerio Publico do Distrito Federal, highlighted the importance of focusing the privacy discussion on Asia and the Trans Pacific Partnership countries, in addition to the traditional focus on the US, EU and Canada triangle.

**Laura Nahabetián Brunet**, Data Protection Unit Representative, Unidad Reguladora y de Control de Datos Personales (URCDP) and Manager of Citizens Rights Division, AGESIC, Uruguay, provided an update on privacy initiatives in Uruguay including primary and secondary school education, Privacy by Design, new regulations and international cooperation.

**Laura Juanes Micas**, Senior Legal Director, International Privacy & Policy, Yahoo! Inc., gave an overview over Latin American privacy developments in general. She also pointed out that many Latin American countries forget about the EU's "legitimate interest" based processing when they adopt much of the EU approach, inappropriately leaving consent as the primary basis for legitimizing processing. She pointed to Mexico as an appropriate use of "consent" in that it reserves express consent as a basis for processing only where it is meaningful. She also addressed the so called "right to be forgotten" and advocated for incentives for companies to establish accountability within their organizations, pointing to the examples of Mexico and Colombia.

**Peter Hustinx**, Former EDPS, stressed that privacy has to be part of innovation and that this would be the focus of the new EU General Data Protection Regulation.

**Sóstenes Cavalcante**, Deputy, Câmara dos Deputados, the newly appointed rapporteur of one of Brazil's draft privacy bills (4060/2012), brought a Brazilian legislative perspective to the discussion on the current state of each legislative bill and their key points and risks.

### **Closing Remarks for Day One.**

**Gilmar Ferreira Mendes**, Justice, Supremo Tribunal Federal (STF), and founder of the Instituto Brasiliense de Direito Público - IDP made a surprise appearance at the end of the first day. In his remarks, he underscored the importance of this conference, thanking the panelists and participants for their engagement in the important ongoing discussion about data protection and privacy in Brazil.

## DAY TWO

### **Session IV: How to Effectively Protect Privacy within the Context of Cross-border Data Flows**

This panel, moderated by **Markus Heyder**, Vice President and Senior Policy Counselor, CIPL, considered the reality of modern data flows across jurisdictional boundaries and the implications for data protection and privacy. The panel considered the implications of cross-border transfer restrictions and data localization initiatives and discussed various solutions for governing cross-border data flows, including codes of conduct, cross-border privacy rules, seals marks and similar mechanisms that create interoperability between different legal regimes and ensure continuous privacy protections as data moves around the globe.

**Carlos Affonso Pereira de Souza**, Director, Instituto de Tecnologia & Sociedade do Rio (ITS Rio), described how cross-border data transfers are currently handled in Brazil and how they would be handled under the draft privacy laws.

**Bruno Bioni**, Master in Law, University of São Paulo and Researcher, Fundação de Amparo à Pesquisa do Estado de São Paulo, discussed how privacy by design could be operationalized as a mechanism to legitimize cross-border data transfers.

**Michael Rose**, Policy Advisor, International Trade Administration, US Department of Commerce, discussed the range of cross-border data transfer mechanisms used in the United States, including the EU/US Safe Harbor, the APEC Cross-Border Privacy Rules and the EU Binding Corporate Rules.

**Anick Fortin-Cousens**, Programme Director, Corporate Privacy Office and Privacy Officer for Canada, Latin America, Middle East and Africa, IBM, and **Florian Thoma**, Senior Director of Global Data Privacy, Accenture, explained the realities of global data flows from the perspective of global businesses and described how their organizations manage these data flows and what transfer mechanisms they rely on.

The consensus of the panelists was that the ability to move data across borders is fundamental to the modern economy and that any privacy law that imposes restrictions on cross-border data flows must also include appropriate data transfer mechanisms that are flexible and adaptable so that organizations can continue to engage in legitimate global business operations. Moreover, the cross-border transfer mechanisms must include or recognize the full range of internationally available mechanisms to ensure seamless data flows and interoperability with all regions of the world.

### **Session V: How to Effectively Protect Privacy in the Modern Information Age**

This panel was moderated by **Danilo Doneda**. The panelists discussed the role of key data protection and privacy principles and concepts such as notice, consent, purpose limitation, and de-identified data in the context of modern information uses, as well as the available alternatives and exceptions to consent where consent is not feasible or appropriate.

**Steven Emmert**, Senior Director, Government & Industry Affairs, RELX Group, highlighted through examples the need for alternative bases for processing other than consent and argued for a reinterpretation of the principles of notice and consent for the big data context. He gave examples of how using data for new purposes not previously contemplated can lead to positive results. He also pointed out that much of the benefits of big data can be achieved through de-identified data, but that there must be a legitimate basis for re-identifying data, where appropriate.

**Juan Jung Lusiardo**, Coordinator, Regulatory Affairs and Studies, Asociación Interamericana de Empresas de Telecomunicaciones (ASIET), emphasized that there needs to be new bases for processing other than consent.

**Paulo Rená da Silva Santarém**, Director, Instituto Beta para Internet e Democracia (IBIDEM), argued that in order to devise sensible privacy regulation, the different stakeholder groups – civil society, businesses, and government – must listen to each other and understand each other’s positions and interests.

**Laura Schertel Mendes** questioned whether consent is always the best way to protect the individual and pointed that transparency coupled with other mechanisms might be more effective in some modern data use contexts. She called for a more flexible and less formal legal framework as well as for the inclusion of “legitimate interest” as a basis for processing. She also noted the useful role codes of conduct can play.

**David Smith**, Deputy Commissioner and Director of Data Protection, UK Information Commissioner’s Office, discussed how the core privacy principles are still valid in the era of big data. He specifically addressed the continued relevance of consent and the alternative bases for legitimizing information processing, such as performance of a contract, compliance with a legal obligation, protection of vital interests, performance of a task in the public interest and “legitimate interest.” He also addressed transparency, privacy by design, breach notification and accountability of data controllers.

**Jonny Shipp**, Head of Digital Confidence, Telefonica, shared the results of Telefonica’s research on the issue of individuals’ attitudes towards privacy risks in the online environment, demonstrating a substantially equal distribution of four categories of attitude across the population: skepticism; pragmatism; laissez faire; naiveté.

## **Keynote**

**Maximiliano Martinhão**, Secretary of Telecommunications, Ministry of Communication, addressed the issue of empowerment of the individual and the steps needed to accomplish it in the context of a privacy and data protection framework suitable for the age of big data and the Internet of Things.

## **Session VI: How to Design Effective Organizational Compliance and Information Management Programs**

**Bojana Bellamy** moderated this panel to discuss how to design effective organizational privacy compliance and privacy risk and information management programs as well as the role of the Data Protection Officer (DPO) within an organization. After a brief introduction by Bojana Bellamy into the rise of the concept of accountability programs and their core components, the panel considered such programs in the context of both public and private sector organizations, large, medium-sized and small businesses, and consumer and employee data.

**Anick Fortin-Cousens** discussed IBM's information management program based on the concepts of accountability. **Florian Thoma** gave an overview over Accenture's approach to its global, comprehensive, risk-based and verifiable privacy program. **Steve Wright**, Chief Privacy Officer, Unilever, similarly addressed Unilever's approach to ensuring compliance based on the organizational accountability model. **Peter Hustinx**, elaborated on proactive data protection through organizational accountability and how this concept will be captured in the new European General Data Protection Directive. Finally, **Vitor Morais de Andrade**, President, Associação Brasileira das Relações Empresa Cliente (ABRAREC), provided the perspective of his organization.

## **Session VII: The Role of the Data Protection Authority**

This panel, moderated by **Laura Schertel Mendes**, considered the critical role of the data protection authority in ensuring (a) consistent interpretation and enforcement of privacy laws, (b) effective cross-border cooperation with counterpart authorities in other jurisdictions, (c) competent national representation in international data protection networks and the global privacy policy dialogue and (d) authority/enforcement over public/government data/agents.

**Hugh Stevenson**, Deputy Director, Office of International Affairs, US Federal Trade Commission, provided remarks in a pre-recorded video, outlining the various roles and responsibilities of a national data protection authority using the example of the FTC. **David Smith**, **Laura Nahabetián Brunet**, and **Jose Alejandro Bermudez**, Managing Director, Latin America, Nymity and former Colombian Superintendent for Data Protection, elaborated on the role of a data protection authority on the basis of their personal experiences in the U.K, Uruguay and Colombia, focusing on key functions such as education, guidance, enforcement, complaint handling, inspections and audits and promoting good practices, as well as the issue of independence of a data protection authority, the need for proper resourcing and the ability to prioritize enforcement actions based on risk assessments. Finally, **Woodrow Hartzog** provided an academic's perspective on the role of data protection authorities.

## **Closing Remarks for Day Two.**

**Ricardo Morishita Wada**, Director of Research and Projects, Instituto Brasileiro de Direito Público - IDP gave the final closing remarks to the second day, thanking everyone for their participation and effort in making this important conference a successful one.

## **Side Meetings**

On 7 October, CIPL held a special breakfast meeting with Juliana Pereira da Silva, Secretary of the National Consumer Protection Secretariat at the Ministry of Justice. Participants discussed the latest developments in the Ministry of Justice draft data protection bill and provided examples of how key provisions would impact industry. Pereira invited CIPL to submit comments on the next draft bill once it is released.

On 8 October, CIPL arranged a special meeting with Senator Aloysio Nunes Ferreira's parliamentary advisor Fabricio da Mota Alves. The participants discussed the details of key proposed amendments to the draft Senate bill and how they would impact industry.