



## MEXICO DECLARATION

### **IV ENCUESTRO IBEROAMERICANO DE PROTECCIÓN DE DATOS PERSONALES (FOURTH LATIN AMERICAN CONFERENCE ON PERSONAL DATA PROTECTION), 2<sup>nd</sup> TO 4<sup>th</sup> NOVEMBER 2005**

The members of the *Red Iberoamericana de Protección de Datos* (Latin American Data Protection Network), who met in Mexico City and in Huixquilucan (Mexico State) from 2<sup>nd</sup> to 4<sup>th</sup> November 2005, were encouraged by with the developments that occurred during the *IV Encuentro Iberoamericano de Protección de Datos Personales* (Fourth Latin American Conference on Personal Data Protection), and wish to make the conclusions reached at this event public.

The Congress featured two particularly outstanding innovations this year. Firstly, its sessions were open to attendance by participants from outside the *Red Iberoamericana* (Latin American Network). The influx of attendees at the Conference panels unquestionably accredits the growing awareness and importance of issues related to personal data protection for an increasingly large number of people and public and private entities.

Secondly, the conclusions reached at the Conference were not based solely on the debates held during the event, but also include detailed working documents, the fruit of a much more exhaustive study of the topics dealt with. This fact is an indicator that the *Red Iberoamericana* is equipped to tackle and offer rigorous alternatives to the problems affecting personal data protection.

In this respect, it is important to note the opinions put forth in the *Declaration of Cartagena de Indias* (Colombia), which stated that the *Red Iberoamericana* constitutes an objective and impartial reference point for the effective implementation of the Fundamental Right to Personal Data Protection, and its views can have a decisive influence on the institutional, social and economic development of Latin America.

Therefore, taking into account the panels held and the documents drawn up by the working groups, the members of the *Red Iberoamericana* hereby publish the following CONCLUSIONS and attached documents.



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### I. THE FUNDAMENTAL RIGHT TO PERSONAL DATA PROTECTION

The right to personal data protection is a sovereign right; its essential content is clearly distinguishable from other fundamental rights and, specifically, from the right to privacy, honour and personal image.

The right to privacy tends to be viewed as the right to be left alone and as a check to interference in citizens' private life.

The right to data protection gives the data subject with the power to dispose of and control the data affecting him/her, and recognises that such data will be processed by public and private parties. The data controllers responsible for this processing are under strict obligation to respect the system of guarantees that are an integral part of this fundamental right.

On occasion, the issue has been raised that the right to data protection constitutes a barrier for the protection of other fundamental rights or safeguards of the public good, such as freedom of information, transparency and access to information held by public bodies, and the development of economic activities.

In response to such views, it is essential to emphasise that what arises between such rights are not actually conflicts, but rather contact areas that can be accommodated by seeking a balance point at which they become compatible.

However, it is important to remember that only respect for the fundamental right of all individuals to the protection of their personal data will allow attainment of the suitable framework to sustain respect for freedom of expression, access to information and the suitable evolution of the economic market.

In particular, the factors that enable reaching this balance point between personal data protection and access to public information are specifically envisaged in one of the documents attached to this Declaration.



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### II. THE NEW DEMANDS OF INFORMATION TECHNOLOGIES

The *Declaration of Cartagena de Indias* encompassed a consideration of the importance of the personal data processing in the telecommunications and Internet sectors, referring specifically to the problems posed by unauthorised and unsolicited electronic communications or data messages popularly known as “spam”.

This document was based on the premise that the evolution of telecommunications and services in the Information Society necessarily entails the processing of personal data, and thus underscores the need to adapt the guarantees inherent in the fundamental right protecting such data to the specific circumstances of their processing.

This view has converged with the need to build the Information and Knowledge Society, creating a global challenge for the new millennium as set out in the Declaration of Principles of the World Summit on the Information Society held in Geneva in 2003, to be continued in Tunisia in 2005.

The connection between these two factors was the topic of an express declaration at the International Conference on Privacy and Data Protection held in Montreux (Switzerland) from 13<sup>th</sup> to 15<sup>th</sup> September 2005.

Amongst other issues, the aforesaid Declaration of Principles recognised that Information and Communications Technologies (ICT) should play a major role in the development of education, information and knowledge and enhance economic growth as a result of the advances they offer in reaching greater efficiency and productivity.

To achieve this goal, the Declaration lists a number of requirements, including, as a prior necessity, the need to heighten user trust and security, and to deal with the “spam” phenomenon.

In this respect, the Declaration considers that a transparent, competitive, technologically neutral, predictable legal framework adapted to the needs of each country is an absolutely essential element.

From the perspective of data protection, the structure of this legal framework must envisage criteria such as technological neutrality, which enables the guarantees



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inherent to such protection to be applicable regardless of the technology used, as well as the articulation of these guarantees as subjective rights of customers and users, so that they may exercise such rights before any third party infringing upon them.

Likewise, the fact that such guarantees must protect both legal entities and individuals must also be considered.

Moreover, response to the “spam” phenomenon must encompass a legal framework equipped with the instruments necessary to impose penalties and must envisage cooperation amongst the competent authorities, service providers and users in its application, promoting user awareness and international cooperation.

Within the scope of information society services, it is also necessary to consider the need to develop instruments for digital signature and to contemplate the problems related to protection of intellectual property rights in a manner that is compatible with the right to personal data protection.

In addition, the evolution of the Information Society affords new options for public bodies to improve citizens’ services and information, upgrades the efficiency and effectiveness of government management and substantially increases government transparency and citizen participation.

Therefore, it is essential to stimulate the implementation of e-government projects that enable attainment of the aforesaid goals that encompass the right of the individual to personal data protection.

A detailed description of the implications of personal data processing in the telecommunications sector and in the implementation of e-government are set out in a separate document attached to the present Declaration.

### **III. LEGISLATIVE DEVELOPMENTS AND GLOBALISATION**

In light of the debates that took place during the *III Encuentro Iberoamericano*, the *Declaration of Cartagena de Indias* set out a number of conclusions with respect to the implications of personal data protection on other spheres of economic activity such as the financial sector, the commercial sector, the use of data for marketing purposes, and international data transmission as essential factors in the development of trade in both the regional and the world markets.



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During this year's Congress, these same implications in the aforementioned spheres were once again studied, projecting such implications on the whole of economic activity.

In this respect, it is patently clear that data protection mechanisms must be put in place to neutralise the challenges and risks posed by globalisation, without impairing the economic, industrial and technological progress of society.

Within the framework of this analysis, particular attention was paid to the elements that must be included in the legislative framework to ensure personal data protection.

In this regard, one issue considered was the relationship that should exist between State approval of compulsory general or sector regulations and the initiative undertaken by the operators themselves in implementing self-regulatory instruments for data protection.

The latter option must be ruled out as the sole instrument to be implemented in reaching a suitable balance between the needs of economic operators in the course of their activity and the protection of personal data, as it provides inadequate legal protection to safeguard a fundamental right. In this case, such right would be subordinate to the decisions taken by the affected entities and there would be no intervention of government bodies.

However, this does not mean that self-regulatory initiatives are not useful in supplementing a legislative framework previously defined by the State.

In effect, such self-regulatory instruments may afford added value to personal data protection, whether corporate initiatives are undertaken to provide greater quality in the processing of customers' personal data, given the insufficient nature of the regulations approved by the State, or endeavour to offer further guarantees in addition to those envisaged in such legislation. Such initiatives may enable adaptation of the legislation to the specific characteristics of data processing in a certain sector, allowing the creation of standards specifically adapted to the needs of that sector, and thus facilitating their observance.



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### **IV. HEALTH-RELATED DATA AS SPECIALLY PROTECTED DATA AND THE SECURITY OF THE SAME**

Specially protected data must be envisaged as a specific whole, given that within the regulatory framework for personal data protection such data requires additional guarantee mechanisms.

The first issue involved in specially protected data is the demarcation of the same, by open or closed listing.

However, health-related data must undeniably be classified in this category.

The processing of health-related data requires prior definition addressed at determining its use.

Both this analysis and the study of how to legitimise the processing of and access to health-related data must be based on a uniform interpretation of data protection legislation and health sector regulations.

This will make it possible to reach a balance in the control of clinical records, the purposes justifying access to the same, the obligation to preserve such data, security measures and confidentiality.

Such balance points must take into account not only the fundamental right to personal data protection, but must also define the legally envisaged public policies which, in the interest of the general good, imply access to and processing of health data, and may even relate to other specially protected data, such as racial or ethnic origin and sexual preferences.

### **V. THE RED IBEROAMERICANA DE PROTECCIÓN DE DATOS (Latin American Data Protection Network)**

Amongst other issue, the Declaration of the Twelfth Latin American Summit of Heads of State and Government held in Santa Cruz de la Sierra (Bolivia) established that personal data protection is a fundamental right of citizens, highlighted the importance of Latin American regulatory initiatives and formally recognised the significant role that the *Red Iberoamericana de Protección de Datos Personales* plays in the attainment of such goals.



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The *Declaration of Cartagena de Indias* sets out the steps to be taken to reach these goals, indicating that the first priorities to be undertaken must be the definition of a Network Strategy and a study of the viability of creating supervisory authorities in Latin America.

Both of these tasks have been completed, and their analyses and conclusions are set out in the relevant documents attached to the present Declaration.

### VI. PROMOTION OF DATA PROTECTION REGULATIONS IN MEXICO

The *IV Encuentro Iberoamericano de Protección de Datos Personales* happily coincided with the final stages of the parliamentary legislative process dealing with in the Federal Personal Data Protection Act Bill.

Mexico is currently undergoing a legislative process that aims to create a legal framework applicable to personal data processing. To do so, this process must take into account the international experience acquired in this respect, the need to allow an efficient balance between the regulated and necessary flow of information to markets in continual development and expansion, and the protection of the private citizen with respect to his/her personal data. Moreover, this law must uphold the concept of data protection for the public so that it becomes a fundamental value of our society.

Thus, a personal data protection act in Mexico must contemplate the internationally recognised personal data protection principles applicable both to public and private entities. Furthermore, the social, political and economic conditions of the country must be taken into account, whilst at the same time establishing clear and simple rules that enable not only their implementation and observance, but also a balance between the flow of personal data and their protection. Finally, the law must guarantee the effective exercise of the right to personal data protection by citizens and promote an atmosphere of trust and respect for human rights through independent institutions.

The *Red Iberoamericana* congratulates Mexico on this initiative and firmly believes that it will provide a new drive in guaranteeing personal data protection in the Region.



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### VII. THE 28<sup>th</sup> INTERNATIONAL DATA PROTECTION CONFERENCE: BUENOS AIRES 2006

The *Red Iberoamericana de Protección de Datos* also heartily congratulates the *Dirección Nacional de Protección de Datos* (National Directorate of Data Protection) of the Republic of Argentina for having taken on the enormous responsibility of organising the 28<sup>th</sup> International Privacy and Data Protection Conference, which will take place in Buenos Aires in November 2006.

The venue of this event indisputably represents international recognition of the intense work undertaken by the aforesaid National Directorate in guaranteeing the fundamental right to protection of personal data and in being an unquestionable factor in the promotion of personal data protection in the countries of Latin America.

### VIII. COOPERATION BETWEEN THE IFAI, THE AEPD AND THE DNPD

In 2003, the Spanish Data Protection Agency (AEPD) formalised instruments for cooperation, technical assistance and training with the National Directorate of Data Protection of the Ministry of Justice and Human Rights of the Republic of Argentina (DNPD).

Subsequent to this initiative and within the framework of the *IV Encuentro Iberoamericano*, cooperation activities have continued to be promoted amongst the institutions charged with personal data protection authority.

To this effect, a Letter of Intent of Collaboration in data protection matters was signed by the AEPD and the *Instituto Federal de Acceso a la Información Pública de los Estados Unidos Mexicanos* (Federal Institute of Access to Public Information of the United Mexican States - IFAI) on the one hand, and between the latter and the DNPD on the other.

### IX. CREATION OF WORKING GROUPS

The *Declaration of Cartagena de Indias* concluded with the creation of working Sub-groups commissioned to study various topics mentioned throughout the present Declaration.

The experience gained in the operation of these Sub-groups and the valuable contribution made by the work documents drawn up and presented at the *IV*



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*Encuentro Iberoamericano* have made the advisability of continuing with this type of work clearly evident.

To this effect, the *Red Iberoamericana de Protección de Datos* has deemed it necessary to institute Permanent Working Groups on Regulatory Development and the “on-line” *Red* website, given that its strategy encompasses assessment and continual advice on the regulatory initiatives related to personal data protection in the area, as well as constituting a new instrument for the diffusion of information.

Likewise, the following Sub-groups have also been established:

- Self-regulatory instruments, which will study the validity and efficiency of codes of conduct and similar mechanisms in accordance with the criteria set out in the present Declaration.
- Processing of health data in relation to medical records.

The documents drafted by these Sub-groups will be presented at the next *Encuentro Iberoamericano de Protección de Datos*.

Huixquilucan (Mexico State), 4<sup>th</sup> November