



STRATEGY DOCUMENT FOR THE *RED IBEROAMERICANA DE PROTECCIÓN DE DATOS*

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I. INTRODUCTION

The *Red Iberoamericana de Protección de Datos* (Latin American Data Protection Network, hereinafter, the Network), was established in the Declaration of the *Encuentro Iberoamericano de Protección de Datos* (Latin American Conference on Data Protection, hereinafter the EIPD), held in La Antigua, Guatemala from 1st to 6th June 2003, with the approval of the representatives from 14 Latin American countries.

Conscious of the significant role played by data protection within the framework of the information society and of the growing commercial relations between the countries of Latin America, the Network was constituted as a response to the need to promote, maintain and develop a constant exchange of information, experiences and know-how amongst the countries of this region through the establishment of permanent channels open to dialogue and cooperation on personal data protection matters. Likewise, the Network is open to all those Governments of Latin American countries who wish to promote and undertake initiatives and projects in this field.

The Network endeavours to create an integral forum to understand, study and deal with a reality that involves a number of players, both in the public and private sectors.

This initiative, undertaken by leading figures in institutions, academia, the law and the private sector within the scope of data protection in Latin America, found immediate, decisive and unequivocal political support that was reflected in the Final Declaration of the Thirteenth Summit of Heads of State and Government of the Latin American countries held in Santa Cruz de la Sierra, Bolivia, on 14th and 15th November 2004, which states the following:

“Likewise, we are aware that the protection of personal data is a fundamental right of the individual and we emphasise the importance of the Latin American regulatory initiatives undertaken to protect the privacy of citizens contained in the Declaration of La Antigua, which establishes the creation of the Red Iberoamericana de Protección de Datos, open to all the countries in our Community.”



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Thus, the Network became a forum for the promotion of data protection in this region, fuelled and led by the political leaders of the respective Declaration of Santa Cruz de la Sierra signatory States.

Given the foregoing, the present document was drawn up as commissioned at the Third III EIPD, at the meeting held during the Latin American Seminar on Data Protection in Cartagena de Indias, Colombia from 7th to 9th June 2005.

II. NETWORK ORGANISATION

The Declaration of La Antigua establishes the basic organisation of the Network, which is headed up by a Chairman and administered and coordinated by the Office of the Permanent Secretary. Dr. José Luis Pinar Mañas, Director of the *Agencia Española de Protección de Datos* (Spanish Data Protection Agency), was elected as Chairman for a term of two years at the Third EIPD, and it was agreed that the aforesaid Agency would also be responsible for the Office of the Secretary. Since that time, this body has been instrumental in promoting the majority of the functions set out in the Declaration of La Antigua.

1. NETWORK PARTICIPANTS

The criteria for participation in the Network were not established in the Declarations of La Antigua or Cartagena, and we believe it is appropriate to do so in this strategy document.

In this respect, it is important to remember that one of the main activities of the Network has been to promote regulations and to act as advisor on bills to be submitted to national Parliaments. This is likewise recognised in the Declaration of Heads of State and Governments, which highlights the importance of fostering regulatory initiatives in the area of data protection.

Therefore, at this stage, it is essential that the members of the Network represent institutions, administrations and bodies in the countries of Latin America that contribute in one way or another to promotion, drive and decision-making in this legislative and regulatory task, and the Governments that implement the data protection and privacy policies in each country.



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Within this framework, members of the Network may be founding, full or associated.

The founding members are be those who participated or were called to the Latin American Conferences in La Antigua (Guatemala), Cartagena de Indias (Colombia) and Mexico and those who have held the Presidency of the Network.

Representatives of the national Institutions and Authorities with powers in legislative matters and Data Protection and Habeas Data Supervision may apply for full membership (Parliaments, Ombudsmen, independent Supervisory and Judicial Authorities), as well as Administrative and Governmental Centres of national scope with regulatory authority and empowered to put data protection measures into practise within their sphere of influence.

Founding and full members are entitled to:

- 1) Attend the meetings (EIPD's and all others) organised and take decisions on the matters related to the structure, operation and activities of the Network.
- 2) Elect the member to act as Chairman.
- 3) Approve the constitution of Working Groups.
- 4) Participate in the Working Groups.
- 5) Collaborate in the identification and admission of potential members and in spreading knowledge of the Network.
- 6) Cooperate actively and regularly with the Office of the Secretary to update the information related to the national regulatory developments and news items or judicial rulings that may be relevant in the assessment of the data protection scenario in each of our countries.
- 7) Spread and promote knowledge of the Network in their countries of origin.

Founding and full members have both voice and vote.

Representatives of public bodies that operate in the sphere of privacy and personal data protection, universities involved in educational activities or research in the field of data protection, and private entities interested in privacy and data protection may join the Network as associated members.

Associated members have voice, but are not entitled to vote.

Likewise, public and private entities operating in the field of privacy and personal data protection in other geographical areas with particular links to Latin America



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due to their proximity or to the existence of a large Hispanic sector in their own countries may also cooperate with the Network as participants or observers.

All public and private entities that have applied for membership in the Network may also join as observers until their applications are duly assessed.

Observers have neither voice nor vote.

2. THE GENERAL ASSEMBLY

At the EIPD's, which are held once a year and during which the various topics proposed by the members of the Network are discussed and studied, the Chairman will resolve to call the General Assembly, at which all members, founding, full and associated may participate. The call will be issued by the Office of the *Pro-tempore* Secretary, will include the agenda for the Assembly and, if appropriate, the decision taken on the new members admitted and the election of the Network Chairman.

3. THE PRESIDENCY

The Declaration of La Antigua contains certain specific and other temporary provisions—until the next EIPD- regarding the presidency of the Network:

“... The task of coordinating the Network shall be undertaken by a Chairman and by the Office of the Permanent Secretary created on the occasion of the First EIPD. The Spanish Data Protection Agency shall undertake such duties until the next EIPD, when a definitive decision in this respect shall be taken...”

The next EIPD held in 2004 included a special section on Network operation, and it was agreed that the Office of the Secretary and the Presidency would be held for the next two years by the Spanish Data Protection Agency. In addition, a with a view to spreading our activity through graphic media, the following logo was approved:





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The goals pursued to date by the Network Presidency and ratified in the present strategy document, given that they follow the priorities defined at the Conferences in La Antigua and Cartagena, are as follows:

- Represent the Network in all forums that deal with data protection-related matters.
- Promote greater knowledge of the Latin American scenario and its regulatory evolution.
- Support all legislative initiatives and bills that promote the fundamental right to personal data protection in the national Parliamentary bodies of the countries in the region.
- Facilitate broader knowledge of the Network through the media.
- Foster awareness and the presence of the Network with the other players operating in Latin American society whose activities influence this fundamental right.
- Represent the Network before the Office of the Permanent Secretary of Summits of Heads of State and Governments, and promote the development of the commitment undertaken in Santa Cruz de la Sierra with regards to support for data protection regulatory initiatives.
- Spread knowledge of the Network's activities and goals to the governmental authorities in the member countries, as well as all others who may be interested in sharing their experiences and consulting with its technical advisory service.
- Call and preside over the EIPD's.
- Execute the resolutions adopted by the General Assembly.

The Chairman of the Network is elected each two years at the General Assembly called on the occasion of the annual EIPD. A qualified two-thirds majority of the founding and full members present at the General Assembly called on the occasion of the Conference shall be required for the election of the Chairman. The first Network Chairman shall hold the Honorary Chairmanship, as founder of the Network.

4. THE OFFICE OF THE PERMANENT SECRETARY

The Office of the Permanent Secretary was envisaged in the Declaration of La Antigua, which entrusted it with the tasks of Network coordination. Later, in the Declaration of Cartagena, the Spanish Data Protection Agency was appointed as the body that would assume these tasks. The Office of the Permanent Secretary is, from this point of view, a technical and monitoring body for Network activities.



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This body has undertaken and will discharge the following duties:

- Coordinate and plan the work to be done by the Network.
- Establish contacts with national and international bodies, similar institutions and other organisations with a view to possible technical and logistical support for the performance of the Network's activities.
- Take decisions regarding the operation of the Network in the interim period between the annual Conferences.
- Prepare the agenda for the EIPD sessions and execute the decisions and projects approved thereat.
- Endeavour to maintain open lines of communication and the exchange of information amongst members of the Network.
- Draw up quarterly reports on progress made in Network projects and activities.
- Call the EIPD's, at the request of the Chairman.
- Register all applications for membership in the Network.
- All other duties entrusted to it at the EIPD's.

The Office of the Permanent Secretary will be exercised by the Spanish Data Protection Agency, in the interests of guaranteeing institutional continuity and stability in the growing number of tasks and duties the Network has acquired.

5. THE OFFICE OF THE *PRO-TEMPORE* SECRETARY

At the end of each yearly Conference, an Office of the *Pro-tempore* Secretary is established and entrusted with the task of preparing the next EIPD. This group is comprised of the Office of the Permanent Secretary, the Institution that organised the preceding Conference and the Institution that will organise the next Conference.

During the interim period between one Conference and the next, the Office of the *Pro-tempore* Secretary will coordinate the working groups, draw up the agenda for and take the steps necessary to hold the sessions at the next Conference.

Likewise, it will act as an Accrediting Committee for Network membership applications for membership and will assess such applications with a view to submitting them, if appropriate, for approval at the next EIPD.



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6. THE ANNUAL *ENCUENTRO IBEROAMERICANO DE PROTECCIÓN DE DATOS*

The EIPD's comprise the keystone of the Network and are direct forums for discussion, decision-making and documents.

Driven forward by the independent Spanish Data Protection Agency, they also have the support of the *Agencia Española de Cooperación Internacional* (Spanish International Cooperation Agency - AECI) and the *Fundación Internacional y para Iberoamérica de Políticas Públicas* (International and Latin American Foundation of Public Administration and Policies - FIIAPP), which have collaborated decisively in these forums for gathering and international cooperation of the countries of Latin America.

The Declaration of La Antigua (Guatemala) created the *Red Iberoamericana de Protección de Datos* as an integral forum for the exchange of knowledge and experiences among its members, with the aim of paving the way for the process of development in the fundamental right to data protection throughout the area of Latin America. It also appointed the first Chairman (until the next EIPD) and appointed the Spanish Data Protection Agency as the head of the Office of the Permanent Secretary.

The following year, the Third EIPD, held from 25th to 28th May 2004 in Cartagena de Indias (Colombia), brought together over 40 authorities and high-ranking representatives from the public and private sectors in 15 Latin American countries (Argentina, Brazil, Chile, Costa Rica, Colombia, El Salvador, Ecuador, Spain, Mexico, Nicaragua, Peru, Panama, Portugal, Uruguay and Venezuela). Representatives of the US Federal Trade Commission also attended the Conference as observers.

This meeting consolidated the idea of making the EIPD's a type of Network General Assembly, where the problems arising with regards to data protection are discussed and solutions adapted to the legislative realities of each of the participating States are sought. This Third Conference was focused around a new data protection concept, summarised in its title: "*Personal Data Protection as a guarantee of service quality: New challenges and opportunities for the Financial, Commercial and Telecommunications Sectors in Latin America*" and ended with the adoption of a final Declaration setting out its conclusions and significant proposals that affected each of the topics discussed.



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From this point on, the organisation entered into a new stage, in which systematic work on specific topics is proposed, and sub-groups or “ad hoc” working groups are created to undertake the same.

As a result of the favourable experiences at the Conferences, one of the new strategic goals of the Network is to definitively consolidate this forum as the suitable channel for decision-making, the adoption of documents and mapping out future strategies.

The Fourth EIPD was held in Mexico City and Huixquilucan (Mexico State) from 2nd to 4th November 2005, and featured two particularly relevant innovations. First was the obvious importance of the work done by the four sub-groups created pursuant to the Declaration of the Third EIPD held in Cartagena de Indias (Colombia), which met at the venue from 7th through 9th June 2005 to discuss and finalise the documents to be presented at the Fourth EIPD. Secondly, the Network sessions were opened to participation from non-member attendees, thus underscoring the growing process of awareness in relation to a culture of personal data protection.

The Network has thus consolidated as a body able to tackle and offer rigorous alternatives to the problems related to personal data protection in Latin America.

7. WORKING GROUPS

Although the Declaration of La Antigua did not contain any reference to the organisation of working groups, the need for separate study of the matters handled at each EIPD and for drawing up the subsequent documents gave rise to the creation of various working groups, which were established in the Declaration of Cartagena de Indias.

These Working Groups are comprised of Network members, and their goal is to carry out the projects deemed appropriate by the EIPD. Their creation and composition is established at each Conference.

The Working Groups are temporary or permanent depending upon the activities they undertake and as decided by the EIPD's. These groups regularly inform the Network Office of the *Pro-tempore* Secretary of the progress made on the working documents they have been commissioned to draw up and they present the results of their work at the next EIPD.



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III. OPERATION OF THE NETWORK

The Office of the Permanent Network Secretary will draw up two projects on the regulation of Network operation, one for the General Assembly, and the other for the Offices of the *Pro-tempore* Secretary and of the Permanent Secretary itself.

Such projects shall be submitted for deliberation by the founding and full members of the Network during a hearing period of one month, so that members may make the comments they deem appropriate.

When such comments have been incorporated, the project for the rules of operation of the General Assembly will be ready for discussion and, if the case may be, approval by the General Assembly called on the occasion of the next EIPD. The rules of operation for the Offices of the Permanent Secretary and the *Pro-tempore* Secretary will be submitted for the approval, if appropriate, of the Network Chairman.

IV. THE ROLE OF THE NETWORK

Since its inception, the Network has been actively involved in performing the majority of the duties attributed to it in the Declaration of La Antigua, which basically encompass acting as a channel of communication on legislative innovation and developments with respect to data protection in Latin America.

Thus, and to the degree possible, the Network has focused its efforts on:

- Offering technical assistance and transfer of know-how to the Latin American countries that request the same;
- Promoting the preparation and publication of working documents and other studies that serve to spread knowledge of the results attained in its activities;
- Fostering international cooperation and dialogue amongst the key players in the development of data protection initiatives and policies;
- Encouraging alliances with public or private institutions that enable the development and execution of the projects at hand;



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- Promoting the establishment of policies, technologies and methodologies addressed at guaranteeing increased protection of the fundamental right to personal data protection;
- Participating in international forums;
- Ensuring transparency and universal diffusion of all the Network activities.

The result of the foregoing is that the Network now provides an easy, manageable source to learn about the status of data protection legislation in all the countries of the region.

Likewise, it has afforded a fairly clear identification of the problems and circumstances that at times promote or obstruct regulatory work and the effective implementation of this fundamental right. There are now continual, fluid and rapid channels of communication amongst those directly responsible for these matters and the players involved in data protection issues in each country.

With respect to third party States, the Data Protection Authorities of the European Union are now more fully informed of the status of data protection in Latin America. New lines of cooperation have been developed with US authorities charged with the defence of privacy and the fundamental rights, particularly with the Federal Trade Commission, which is responsible for overseeing and supervising privacy in commercial e-mail communications, and which participated as an associate member in the Third EIPD, given its interest in instituting active policies favouring the Spanish speaking population in the US.

V. NEW CHALLENGES AND PRIORITIES

The Network's activities have proven significantly positive in the first two years of its operation.

However, in addition to its consolidated activities, the Network must now tackle new challenges and goals that arise from the interest of all its members in taking new steps forward on its chosen path. These new steps mainly point to the need to seek uniform regulatory solutions adapted to the legislative traditions of each country, to provide more widespread diffusion of what the Network does and furnish greater information to the public:

- **Attain greater uniformity and promote awareness of the Network:**



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The commitment undertaken at the Summit of Heads of State and Governments in Santa Cruz de la Sierra must translate into concrete actions. To this effect, the Network must assume the role of advisor to the governmental and legislative figures in each country. An essential value of the Network is that its members are qualified experts and key players in data protection matters, who understand the legislative situation in their respective countries, whilst also having access to the experience and knowledge of the rest of their colleagues in the Network who play the same roles in their countries of origin.

Given that the performance of this advisory function requires special attention, the creation of a Permanent Working Group on "*Promotion and Adaptation of Regulations*", to be available to Parliaments and Governments, will be instrumental in moving this task forward. In this respect and with a view to enabling the group to reach its goals with the greatest efficiency, the group should be composed of the largest number of members possible, so that the various sub-regions of Latin America are covered and represented by the corresponding area expert, who can thus provide more detailed knowledge of the regulatory scenario and circumstances of the topic to be studied.

The Network Chairman will act as Chairman of the group and its work will be coordinated by the Office of the *Pro-tempore* Secretary.

- **Spread knowledge and awareness of respect for data protection matters**

With the goal of facilitating general and comparative knowledge of the rights of the public to privacy and data protection, the Network will draw up a guide to data protection that will include information on the various participating States and clear, simple explanations of the vital issues for the citizens of Latin America. This guide will be published "*on-line*" through the website created for the Network.

Likewise, it is also appropriate to plan and set up a Data Protection Observatory, which will compile and study information that will enable it to measure the evolution and progress made in Data Protection in the countries of Latin America, and to draw up the indicators for progress in this area. This observatory will publish its activities on the Network website. To this effect, it will promote the creation of instruments that favour moves forward in the data protection regulatory framework.



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- **Creation of a Network website.**

The Network's activities should be published internationally and continually updated; the ideal tool for this purpose is, of course, the Internet. A Network website or domain will be created, and will be maintained and managed by the Office of the Permanent Secretary, assisted by another Permanent Working Group on "*The Network on-line*", which will be created especially for this purpose. This group will be comprised of all those founding, full and associated members who are interested in participating in this team and inform the Office of the Permanent Secretary of their interest.

The content of the website will expressly include a forum for publications and ideas.

Contributions from members and observers will be enormously valuable, as they will enable us to learn first-hand about the concerns, priorities and evolution of the various sectors involved in data protection.

Huixquilucan (Mexico State), 4th November 2005