

# How IMS Health tackles privacy in Latin America

Anita Fineberg explains how a proactive approach to privacy compliance can ease the administrative burden of meeting legal requirements across multiple jurisdictions.

For companies operating in the global marketplace, the management of the potential corporate risk associated with current and emerging privacy legislation can represent both a formidable challenge and a business opportunity. On the one hand, even the environmental scanning activities necessary to maintain awareness of new laws and proposed regulation requires full time attention. Translation, analysis and visibility to often less than transparent legislative processes exacerbate an organisation's ability to inform itself of potential compliance requirements. On the other hand, legislators frequently welcome the assistance of companies that have had experience with privacy legislation in other jurisdictions, to not only raise awareness of the details of such legislation, but also to help them avoid some of the rules that have subsequently posed problems for both government enforcement and the business community alike.

The risk assessment approach that IMS HEALTH Inc. has taken to managing this issue in Latin America provides an example of how both goals may be achieved.

IMS is an international global provider of information, statistical research and analysis to the health sector. It transforms de-identified personal health information into sector intelligence. IMS data is utilised by governments, health researchers, and the medical, pharmaceutical and biotech communities. It has business operations in over 100 countries worldwide.

There are, however, a number of factors that distinguish IMS from other global corporations that manage privacy compliance on a global basis. First of all, it is a relatively small company with only 5,900 employees; in some Latin American countries we have only 3 employees. A critical distinguishing factor is our busi-

ness model of B2B transactions – our clients are not individual consumers. Because we operate within the sensitive health sector, we must have the trust of both our data suppliers and clients to provide the necessary assurances that we understand the implications of any health sector privacy rules, or rules of general application.

## LEGISLATIVE DEVELOPMENTS

In Latin America today, several countries are actively involved in developing new privacy legislation:

**Argentina** - The positive European Commission decision on the adequate protection of personal data in Argentina was, of course, issued on June 30th, 2003. See the decision at: [http://europa.eu.int/comm/internal\\_market/privacy/docs/adequacy/decision-c2003-1731/decision-argentine\\_en.pdf](http://europa.eu.int/comm/internal_market/privacy/docs/adequacy/decision-c2003-1731/decision-argentine_en.pdf).

Among other matters, it considers the provisions of the Personal Data Protection Act, Act No 25.326 of 2000.

**Mexico** - Given the selection of new Deputies for Mexico's Lower House, we will see how the government of Mexico proceeds with the Garcia Torres Bill, which was apparently headed for rejection prior to the House rising in June. However, following the ChoicePoint scandal - in which a US list broker was accused of illegally collecting data on around 65 million voters - apparently any rejection of the proposed privacy law was viewed as 'politically incorrect'.

**Brazil** - Brazil's Bill 3494/2000, the *Bill for the structuring and use of databases regarding third parties and regulating the procedural right of habeas data*, suffered a minor setback because of the resignation of the government Rapporteur who was to provide a report on the Bill to the Committee on Constitution.

**Columbia** - The Ley Por la Cual se regula el derecho de acceso a la informacion de interes publico, en particular la de caracter comercial, financiero, la que tiene que ver con el pago de servicios publicos domiciliarios, y se dictan otras disposiciones of Colombia (see the draft Bill at: <http://ulpiano.com/colombia.pdf>) has also run into some stumbling blocks when the Comisión of the Chamber of Representatives decided in June not to study the details of the Bill. This means that it will have to be redrafted for presentation in the next legislative session which commenced in July.

**Uruguay** - Senador Partido Blanco introduced a new Data Protection Bill in Uruguay on May 8th, 2003. See the draft Bill at: [www.ulpiano.com/dataprotection\\_uruguay.pdf](http://www.ulpiano.com/dataprotection_uruguay.pdf)

Despite some political setbacks, it appears likely that these government initiatives will proceed later this year for a number of reasons. First of all, the European Commission's decision on the adequacy of the Argentine law may well inspire other Latin American countries to move forward.

The ChoicePoint scandal has also drawn public attention to the issue of data privacy in Latin America. Despite the fact that the Argentine Data Commissioner has apparently few, if any, resources to oversee the application of that law, he has filed criminal charges against ChoicePoint.

Finally, trade agreements with Europe, such as that of Mexico which sets out the country's agreement to "accord a high level of protection to the processing of personal and other data, in accordance with the standards adopted by the relevant international organisations and the Community" will likely provide additional impetus to get these legislative initiatives 'back on track'.

### ASSESSING THE RISKS

From a risk management perspective, IMS analyses each of these proposals to determine their impact on commercial products and services, the ability to offer the same products in multiple countries to satisfy our clients' needs and the impact on our ability to transfer data between countries. Because global data protection legislation contains varying definitions of 'personal data' and in particular the 'identifiability' of such data, we need to ensure that our anonymisation and encryption technology will satisfy these requirements. Disclosure and collection provisions are obviously relevant to our relations with data suppliers and clients. Given that we are looking to improve efficiencies in our data processing operations, any legislative provisions regarding the rules on external data transfers must be carefully assessed.

public policy goals, particularly those that involve healthcare reform. Given the difficult economic situation of many Latin American countries, and each governments' priorities, it is also important that legislators recognise the economic impact and compliance costs that such legislation will have on an already-challenged private sector.

### PROACTIVE PRIVACY COMPLIANCE

Despite these challenges, IMS has decided that it is critically important to manage these risks to ensure that we make informed, proactive decisions with respect to the impact of such legislation on our business. This approach transforms the business risk into one of opportunity – the opportunity to work with governments to, in effect, educate them; not only about our business, but data protection legislation in general. It

promote new contacts in Latin America because of our many contacts globally. Given that frequently Latin America follows Canada's lead, we are fortunate that being 'Canadian' often brings immediate credibility and interest to the table.

Corporate and senior regional management buy-in is a critical component of any successful privacy compliance programme, no less so in Latin America. We use every opportunity to educate regional and local managers on the importance of taking privacy and emerging legislation very seriously.

The overall approach has been to manage the local programmes centrally to provide education and coaching, and to nominate a local person who is very familiar with the business operations to be the 'privacy champion' and effect a gradual 'hand-off' for the establishment of a local programme.

This leverages IMS' global learning and credibility through a 'virtual' CPO until such time as each country has sufficient expertise to function more independently. This operates with the assistance of outside counsel and local privacy experts and consultants who assist with specific issues as they arise. It is an ongoing and iterative process.

In summary, companies operating on a global basis need to have in place a system that will provide them with information on proposed new privacy regimes on a timely basis. They need to have a clear idea of the corporate issues that may be challenged by such legislation and be prepared to assess the risk of such legislation being implemented in that form. Taking a proactive approach to privacy advocacy can transform potential privacy challenges into business opportunities and make it easier for local compliance once legislation is actually enacted. Smaller companies need to be particularly aware of these issues and be prepared to leverage whatever privacy resources they may have in other countries, or centrally, to accomplish these goals.

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### CHALLENGES

The challenges in Latin America stem from a number of sources. From a legislative perspective, there is obviously a divergence in the approach taken between the EU and the Americas. Not surprisingly, many Latin American countries look to an EU country where the same language is spoken as the source of their precedents. For example, the Brazilian Bill is modeled after the Portuguese, much as the Argentine has similarities to the laws of Spain and Italy. However, this is often done without an in-depth understanding by Latin American legislators of the practical impact of such legislation, as well as the manner in which certain implementing legislation in the EU has recently been characterised as 'problematic' and not representing a correct transposition of the EU Directive (See *PL&B Int*, May/June 2003, p.22).

Moreover, as is also the case with many other countries, such as Canada, there is a failure to reconcile proposed data protection initiatives with other

affords us the opportunity to work more closely with our local offices to educate them on privacy issues and on the importance of engaging government and stakeholders on their operations. Finally, it provides an opportunity to leverage our global privacy knowledge and expertise to create efficiencies in a compliance programme that, given the company's relatively small size, would not otherwise be possible.

Advocacy is the linchpin to our proactive approach to privacy risk management. We consult with data commissioners, government agencies, and the privacy community on a local level. The business community, such as local chambers of commerce, as well as industry groups such as pharmaceuticals, physicians and technology, are an important part of our 'outreach' activities. Obviously, our business partners are also an integral part of establishing relationships. This is possible because of our recognition that globally the 'privacy community' is very small and our centralised privacy capability allows us to

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