

María Cecilia Chumbe Rodriguez

De: Jose Alvaro Quiroga Leon
Enviado el: viernes, 12 de octubre de 2012 10:19
Para: Maria Cecilia Chumbe Rodriguez
Asunto: RV: US Comments on the Draft Regulation to Implement Peru's Privacy Law -- Qualcomm
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Peru.Privacy.Comments.Qualcomm.docx

De: Barbara Wanner [<mailto:bwanner@uscib.org>]
Enviado el: viernes, 12 de octubre de 2012 10:16
Para: Jose Alvaro Quiroga Leon
CC: vrivas@mincetur.gob.pe; Krysten Jenci; mgavin@qualcomm.com; Rodriguez, Monique
Asunto: US Comments on the Draft Regulation to Implement Peru's Privacy Law -- Qualcomm

Dear Mr. Quiroga:

Attached please find comments from Qualcomm, a member of the US Council on International Business, concerning the Draft Regulation to Implement Peru's Privacy Law. Ms. Krysten Jenci of the US Department of Commerce advised us to forward these comments to you. Thank you for your consideration, and please let me know if you have any questions.

Sincerely,

Barbara Wanner

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Article number	Proposed Language	Issue/Recommendation
2, no. 4	Definition of personal data	Broad definition including concepts like graphics, photos, acoustic information or any other information; add "by the possessor of the information" to the end of the definition.
2, no. 6	Definition of sensitive data	This definition is out of the ordinary; based on this definition the fact that someone likes to jog or go to book club would be considered sensitive information.
5, paragraph 4	This law applies to the holder of a database or controller not established in Peruvian territory, but uses means located in said territory, except if such means are used only for transit purposes that do not imply processing	Request clarification of what constitutes "means". Would software downloaded on a mobile device constitute a "mean" if the server for processing and storage is located outside of Peru?
7	"unequivocal consent"	Term "unequivocal" is too high of a standard
9	"database must precisely be in line with reality"	Term "precisely in line with reality" too high of a standard
10	Security principle	This appears to be an absolute security requirement creating a strict liability standard. In other words, even if a company took all available means to prevent a security breach, they would still be liable in case of a breach.
11	"unequivocally aware"	Term "unequivocally" is too high of a standard
12	"The conditioning of the performance of a service or the notice or warning of threat of denying access to a benefit or service that normally have unrestricted access, if it affects the freedom of the person consenting to the processing of	[There's a translation mistake, I looked at Spanish version to understand this section] Seems understandable that in the consent notice it would say that if the person doesn't consent, then they won't have access, however this would not

	his data.”	be considered free consent. Would be good to have examples of benefits or services considered to have unrestricted access.
14	“In the case of sensitive data, the consent must be granted in writing, by handwritten signature, digital signature or any other mechanism of authentication guaranteeing the unequivocal will of the subject”	Too onerous of a requirement especially based on the definition of sensitive data. This req’t would impede mobile commerce or mobile health where people need to consent via mobile screen.
16	“but may be simpler, if so indicated in said opportunity.”	Vague and ambiguous
17, last para	“The processing of data obtained from public access sources must respect the principles established in the Law and in this regulation”	Too strict; this would require notice and consent in order for people to use a phone book or do a Google search
27	“For the processing of personal data of a minor,”	Add, “that is known by the controller to be a minor “after this first part of the sentence