
Information Policy Country Report:

Argentina

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Executive Summary

Argentina's financial strength in the late 1930s and 40s is remembered nostalgically, especially in light of subsequent financial and political crises. In the late 30s and early 40s Argentina's "economy was bigger than Italy's and Japan's, four times the size of Brazil. Today Argentina is firmly in the ranks of the third world. No other country has fallen so far."^a Their history of financial and political crises led the government to act boldly in privatizing much of the economy in order to encourage competition and a more liberal economy. These actions had considerable implications on all areas of information policy.

Telecommunications were an early focus of Argentina's privatization efforts, which eventually caused the government to push for increased competitive policies and de-concentrated industries. Regulatory bodies were created with the intention of supporting liberal economic policies. Argentina's telecommunications are advanced in comparison to other Latin American countries. For example, Argentina has a high broadband penetration rate and has implemented policies to promote development of new technologies.

Argentina is encouraging foreign investment and attempting to repair its poor international credit reputation, by enacting stronger antitrust laws that protect privatization and by making public commitments to repay its international debts. Argentina has made efforts to conform to international standards in areas such as intellectual property, but has stumbled in implementation and therefore has had difficulty attracting foreign investment.

Argentina's history of corruption and opaque government has led to laws for strong data privacy and information security. However, its' weak tradition of investigative journalism combined with an absence of governmental initiative have led to a lack of freedom of information legislation. Argentina uses e-government policies and initiatives to combat corruption and increase transparency. There have been successes and failures, but Argentina is learning from its mistakes and incorporating more e-government initiatives and policies.

^a James Surowiecki, "The Argentine Machine," New Yorker, January 14, 2002.
http://www.newyorker.com/archive/2002/01/14/020114ta_talk_surowiecki

Introduction

Argentina's recent history of financial and political problems has necessitated attempts to restore the economy to its previous strength. This goal has impacted a variety of policy decisions such as privatizing the economy, encouraging foreign investment, and working toward government transparency.

This paper presents an overview of Argentina's information policy regime. We have divided the broad subject into five sections: the first section presents Argentina's telecommunications policy. Section two concerns Argentina's investment and industrial policy. The third section presents Argentina's intellectual property policy and is followed by a section focusing on privacy, security, and freedom of information policies. The final section presents Argentina's e-government policies and initiatives.

Our conclusion notes three information policy challenges facing Argentina. These challenges look for improvements in the areas of freedom of information, intellectual property rights, and e-governance.

Telecommunications Policy

Background

Argentina offered telephone service as early as 1880 soon after the invention of the telephone.¹ The first telecommunications company formed, the Société de Pantelephone de Loch² was quickly followed by the emergence of Gawer Bell and Continental de Telefonos Bell.³ By 1886 the three companies merged forming Unión Telefónica del Río de la Plata, commonly referred to as Unión Telefónica.

Unión Telefónica provided telephone services without a legal monopoly until 1929.⁴ In 1927 the International Telephone and Telegraph Corporation (ITT) took control of Unión Telefónica.⁵ At the time, ITT had roughly 195,000 telephone lines.⁶

In 1946, after Juan Peron's rise to power, the federal government nationalized Unión Telefónica.⁷ Thereafter, the government created Teléfonos del Estado, later called Empresa Nacional de Telecomunicaciones ("ENTel").⁸ Furthermore, ENTel practiced a closed legal monopoly as permitted by the Argentine government.⁹

Carlos Menem, president of Argentina from 1989 to 1999, began to modernize the Argentine economy due to financial crisis in Argentina throughout the 1980's. To do this, he installed economist Domingo Cavallo who reversed many of the policies of previous years.¹⁰ The new economic policies encouraged investment and growth, moving away from ownership by public monopolies and nationalized entities toward a privately owned industry.¹¹

Telecommunications was one of the first industries to be privatized. Congress passed an Emergency Law in 1989 that "gave the government executive authority to privatize two television stations," and soon after "the authorities decided to quickly privatize the national [...] telephone company."¹² For phone service ENTel "was divided up between two firms, Telecom [...] and Telefonica."¹³ The phone infrastructure greatly improved; however charges were "much higher than in countries with more effective competition."¹⁴ The effects of the 1989-1990 reform of Argentina's telecommunications industry became most visible in 1993 when the country's once public telecommunications industry had been fully privatized.

Regulating Bodies

Efficient regulatory bodies are needed for the telecommunications industry; their primary objective is to ensure and protect competitive industry practices. Also, some scholars believe that regulation is necessary to protect specific industries and to ensure external ties between countries.¹⁵

Since the early twentieth century the Argentine government has moved away from influencing the telecommunications industry through laws that restrict private ownership.¹⁶ The Comisión Nacional de Comunicaciones [“CNC”] was established under the supervision of the Communications Secretary during the privatization wave sweeping Latin America in the late twentieth century. The CNC’s primary function is to act “as advisor to the Communications Secretary, the governmental agency in charge of issuing such [telecommunications] licenses.”¹⁷ The CNC has the explicit mission of promoting competitive behavior in the private telecommunications sector.¹⁸

The CNC’s primary tasks include “ensuring the quality and technical compatibility of the public telecommunications network [...] supervising regulatory compliance by all providers of telecommunications services.”¹⁹ This body is closely tied to the Communications Secretary which acts to “propose and enforce telecommunication policies, protect clients of telecommunication agencies [...], issue interconnection regulation for various services, manage the radio-electric spectrum, manage appeals for decisions made by the CNC [...] and finally grants licenses for telecommunication services.”²⁰

In effect, both the CNC and the Communications Secretary set the telecommunications policy for Argentina. Both parties have significant leverage for interpreting telecommunication

law and enforcing regulatory measures. Thus, since the late twentieth century both bodies have jointly been central to the telecommunications industry in Argentina.

Development of Competition

Telecom and Telefónica were each in charge of providing basic telephone service to their respective region; Telecom was in charge of the northern part of Argentina, and Telefónica was in charge of the southern region.²¹ The government additionally granted an exclusive license to provide international telephone services to Telecomunicaciones Internacionales de Argentina SA (“Telintar”).²²

The government granted these three companies licenses for an indefinite period, but only allowed exclusivity rights for a seven year period starting on November 8, 1990.²³ Each company could have these rights extended for an additional three years, provided they satisfied certain requirements.²⁴ Some of the requirements that Telecom and Telefónica had to fulfill were: to add more telephone lines to the Argentine network, install public telephones, increase call and operator efficiency levels, and repair the time delays within the network.²⁵ These two companies were only granted partial extensions limited to only basic telephone services, because they did not fully meet the requirements.²⁶

On September of 2000, the government issued Decree 764/00, which deregulated telecommunications in the country.²⁷ The Decree emphasized the importance of a competitive market and rejected any action that favored monopoly and exclusivity.²⁸ The decree forced Telecom and Telefónica to rent out their lines that passed through public telephone networks to third parties.²⁹ This opened the telephone companies to competition and prompted a drop in the price of telephone service.³⁰

Under Decree 764/00 companies can get a license to offer any type of telecommunications service.³¹ There are about 300 basic telephone service providers in Argentina; they are known as independent operators.³² The independent operators all work in a competitive market. However, they must pay Telecom and Telefónica a fee in order to use the public telephone network, and cannot interconnect among themselves.³³ The two major companies do not have to pay a fee to use the independent operators' networks.³⁴ Independent operators are allowed to provide other services besides basic telephone services.³⁵

In privatizing telecommunications service, the Argentine government made it clear that they wanted a competitive market for mobile, wireless, and internet services.³⁶ Opening telecommunications to competition also allowed for companies to compete in new territories and encouraged the growth of Internet companies,³⁷ as has “high-level political support” in “remov[ing] barriers to the growth of the Internet,” including lower leased line rates and methods of making Internet dial-up cheaper, and initiatives to make the Internet more accessible through Community Technological Centers.³⁸

However, the current regime allows would-be competitors that meet minimum standards to be awarded licenses. Market entrants do not always carefully assess their ability to recoup their investments, and the smaller competitors end up going out of business or consumed by larger competitors.³⁹

De-concentration of Telecommunications Holdings

For a variety of reasons, most likely including Argentina's long history of dominant companies with ties to the government,⁴⁰ and the “important role” played by “foreign groups,”⁴¹ large media conglomerates have grown to play a dominant role in the telecommunications

industry. The telecommunication “legislation was written during Argentina's bloody dictatorship,” and has been commonly held to be in need of change.⁴² The current president, Cristina Fernandez de Kirchner, has recently pushed through an “Audio-Visual Communication law” which creates “a regulatory agency and spells out ownership rules regarding how many and what kind of outlets one company can hold,”⁴³ including “set[ting] limits on the number of television and radio licenses that one sole owner may hold.”⁴⁴

Watchdogs and those involved with the media point out that Fernandez de Kirchner and her husband, former president Nestor Kirchner, have long had conflicts with the media, especially the conglomerate Clarin Group. They note that the new law increases government control over telecommunications in several ways: “[t]he executive would be heavily involved in the designation of the members” of the new regulatory body and will “directly handle” license allocation;⁴⁵ that “broadcasters [must] renew licenses every two years”; and that one-third of broadcast frequencies would be reserved for government use, while “private media” and non-profits would each get a third.⁴⁶ The basic requirements put in place to ensure non-commercial access were developed by a coalition of community groups and other civil actors, and have garnered much support for the new law both domestically,⁴⁷ and internationally.⁴⁸

Some of the additional regulations in the new law specifically harm the Clarin Group, which runs a paper critical of the Kirchners, who have in turn been very supportive of the new law. For example the new law requires that “a company that owns a cable business would not be allowed to own any over-the-air broadcast channels. Also, the owner of a cable company would be allowed to have only one channel on that system.”⁴⁹ While some view this as a needed diversification of telecommunications power, others see this regulation as a punishment of the Clarin Group. While their newspaper business would not be affected, Clarin’s “other business

interests in cable, television and radio would be forced to be sold off or restructured,” likely at a loss.⁵⁰

Broadband Penetration

Privatization and increased competition has made broadband penetration easier and more widespread. According to Internet World Statistics, the number of Internet users in Argentina has increased from 2,500,000 in 2000 to 20,000,000 in 2008.⁵¹ Today, Internet users comprise half of the Argentine population, 6.4 percent of whom use a broadband connection to access the Internet.⁵²

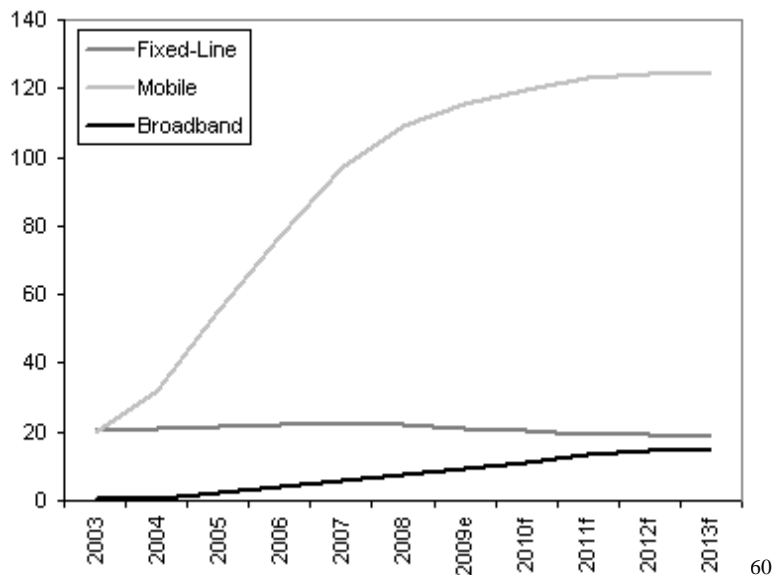
The broadband market is the fastest growing sector of the telecommunications industry in Argentina.⁵³ Recent reports by Cisco, a corporation that designs and sells communications and networking technology, show that the Argentina broadband market should reach five million connections by 2010.⁵⁴ Cisco has decided that in Argentina it will focus on broadband expansion.⁵⁵ Companies like Cisco, and the Argentine Government realize that broadband connections are important for the future of Argentina. The government fully approved of Cisco’s broadband connection goals.⁵⁶

Increasing broadband penetration outside metropolitan areas has proved difficult due to the size and geography of the country; it is cheaper and easier to provide fixed-line connections to urban areas.⁵⁷ The majority of broadband penetration has occurred in urban areas in the past ten years; however broadband demand has increased steadily in rural areas because of improvements in broadband technology.⁵⁸ Therefore, broadband service providers have begun using a variety of alternative technologies to increase penetration at a lower cost than presented

by the fixed-line standard, including Worldwide Interoperability for Microwave Access (WiMAX) technology to supply wireless transmissions.⁵⁹

Competition between service providers has supported the growth in broadband connections, as have demands of Internet users in rural areas. Therefore, broadband service providers are being challenged to find ways to provide broadband services for users all over the country. In addition to WiMAX, mobile phones have been increasingly utilized for Internet access.

Argentina's Telecommunication Penetration Rates: Historical Data and Forecasts



As shown by the graph above, the rate of broadband penetration has been increasing steadily while fixed-line connections have been decreasing. Also, this graph shows how much mobile telecommunication markets have penetrated the market; the data seems to show that wireless and mobile connections are the best way to increase broadband penetration in Argentina. Moreover, incumbent broadband service providers are facing increased competition from new companies

that implement different technologies and services designed to provide broadband penetration to rural users.⁶¹

Universal Service Policies

The revised National Telecommunications Act (1997) is regarded as a first step towards implementing a universal service policy in Argentina. This act established that “everyone has the right to use telecommunications services...”⁶² However, it neglected to set a price for telecommunications services and therefore telecommunications services are still out of the reach of many.⁶³ In addition universal service access is defined in Argentina to mean that every household will have convenient access to a phone, but not that there will be a phone in every household.⁶⁴ As previously stated, the government has enforced universal service policies by requiring the major telephone companies, Telefonica de Argentina and Telefon, to install over 1000 semi-public phones in various places all over the country.⁶⁵ The phones were placed in charities, municipalities, schools, and first-aid centers; they were not placed in streets for fear that the phones would be damaged or destroyed.⁶⁶

Decree 764/00, passed in 2000, has taken first steps towards universal service by including a fund “whereby 1 per cent of the revenues from telecoms will have to be used for fulfilling universal service obligations.”⁶⁷ Argentina has not yet widely implemented policies that encourage telecommunications companies to promote new technologies, such as wireless and mobile phones Internet access.

Foreign Investment and Competition Policy

In 2001 and 2002, Argentina struggled to meet its sovereign debt obligations to creditors abroad, thus damaging its credit reputation abroad.⁶⁸ In response to rising inflation and an unpredictable economy, Argentine officials cycled through new economic policies in hopes they would abate the ensuing chaos, thereby increasing the economic instability of the country.⁶⁹ The effect for private investors and companies has been a shift from long-term to short-term investment strategies.

Although Argentina is currently more economically stable than in 2001 and 2002, the worldwide recession combined with Argentina's credit history is affecting the country's credit procurement. In 2009, Argentina set out to rectify its credit history by making a public commitment to honoring its debt obligations.⁷⁰ However the world-wide recession makes re-entry into the international credit arena problematic.

Investment and the Cordoba Model

It is becoming more apparent to international technology organizations that Latin America is a better potential ally for developing lower cost technologies than other developing countries.⁷¹ In 2005 Craig Barrett, then chairman of Intel, stated that "Buenos Aires and Latin America are not technology backwaters" as once commonly perceived.⁷² The foreign investment policies instituted in Argentina may be a factor in attracting foreign investment.

For example, the Argentine government affords foreign investors the same protection under the law as it does domestic investors.⁷³ The Foreign Investment Act (Law 21.382) specifies that non-Argentine persons or corporate entities are afforded the same rights and are subject to the same obligations as domestic persons.⁷⁴ Moreover, foreign investors are not

subject to regulation involving investment in Argentina, unless a law regulating the acquisition of an asset or a specific activity exists.⁷⁵

In addition, Argentina is part of several bilateral investment treaties in conjunction with the United States and several other nations.⁷⁶ These treaties reinforce some of the rights given to foreign investors under the Foreign Investment Act, but also specify foreign investors' rights in relation to "reciprocal benefits and repatriation of capital."⁷⁷ Furthermore, countries that have signed a bilateral treaty can seek protection under bilateral investment treaties Argentina has signed with other countries.⁷⁸ Besides the protection given via the Foreign Investment Act, Argentine provinces are offering foreign investors with optimal investing environments supported by the government, business, and educational sectors.⁷⁹

In the words of Intel's Barrett, "Latin America is aggressive," and "government leaders know what they want to do."⁸⁰ Although this is not the common conception of Latin America's involvement in technology, potential investors like Barrett are acknowledging that Argentina is not a technological backwater. The province of Cordoba is evidence of the shift in technology growth.

Cordoba is one province engaging in a large effort to persuade foreign investors of Argentina's capacity to support growth economically. Cordoba's mission to bring in the technology sector has brought foreign investors into the country to create jobs for its population.⁸¹ In Cordoba, government officials are baiting potential investors away from other major players, such as China and India, by offering salary subsidizes, tax breaks to companies in the technology sector, and a skilled workforce.⁸² Additionally, Argentina's geographical location with respect to the United States and the continuing devaluation of the peso has enhanced

investor interest in the country.⁸³ Officials have been successful in luring foreign investors, and are aware of their need to stay competitive.⁸⁴

In conjunction with government officials, universities are redesigning their curricula to advance the technology industry. Universities in Cordoba have teamed up with the “technology sector [,]...companies and the local government” to establish “one of the best-educated work forces in Latin America.”⁸⁵

Considering the Argentine government’s friendly attitude toward foreign investors, it is unsurprising that Intel, Motorola, and Electronic Data Systems Corporation (EDS) have contributed millions of dollars into developing Cordoba’s technological infrastructure.⁸⁶ By 2001, these companies had invested about 50 million dollars, and in 2007, they planned on collectively investing 200 million by 2012.⁸⁷

Cordoba is a microcosm of the Argentine economy as it relates to the information and technological sectors. It is an embodiment of the goals and mission of the late 1980s privatization efforts in the telecommunications industry. It is difficult to comprehend the full trajectory of Cordoba’s efforts. Nevertheless, it is clear that Cordoba’s efforts are vulnerable to the negative effects of the economic atmosphere.

Competition Policy

There have existed three major waves of antitrust law reform in Argentina. The reform epochs correspond with the following overarching laws: first, law 11.210 instituted in 1933, followed by law 22.262 in 1980, and finally by the current law, 25.256.⁸⁸ In the second wave of reform, law 22.262 created the National Commission for the Defense of Competition (NCDC), the government reform body charged with antitrust regulation.

Finally, in 1991, law 25.256 replaced the former antitrust law (22.262) in Argentina.⁸⁹ This law focused on preventing “anticompetitive practices and control of economic concentrations.”⁹⁰ Argentine antitrust law is unconventional because specific practices are not condemned within the law. Rather, the law broadly claims to encompass any action or practice that may promote anti-competitive behavior concerning “production and trade of products and services.”⁹¹

Furthermore, this law creates an environment wherein those that adjudicate antitrust cases are given much power and autonomy for determining the extent of the violation.⁹² In effect, the adjudication process is capable of being extraordinarily subjective.⁹³ Nevertheless, the law does contain a list of illegal practices (such as price fixing or abuse of a dominant position) that may be referenced once a court has found a party guilty of manipulating either production or trade in an anticompetitive fashion.⁹⁴

In addition to addressing anticompetitive behavior, the law also intends to manage or curtail efforts to create “control of economic concentrations.”⁹⁵ This law stipulates when antitrust regulators (NCDC) must approve proposed transactions, sets a limit for the amount of money that can be moved without government approval, and presents restrictions for total business value that may occur in any given transaction.⁹⁶ Finally, this law defines the circumstances under which businesses must undo a business transaction that is deemed anticompetitive.⁹⁷ This last measure has never been enforced.⁹⁸

Argentina, like many other developing countries, is moving toward adopting mechanisms by which to protect its privatizing efforts.⁹⁹ Thus, Argentina has begun to enact antitrust laws that are more in line with liberal economic principles so as to accommodate privatization

goals.¹⁰⁰ The objective of the antitrust law is to halt imitation of the “inefficiencies of the former state sector” and increase competition among emerging and existing entities.¹⁰¹

Historically, industrialized and developing countries have had opposing views concerning the implementation of antitrust laws. Industrialized countries have urged developing countries to adopt free market or “liberal economic policies” and principles.¹⁰² Industrialized countries usually prefer that developing countries implement protection for antitrust measures so that they may all participate in the “free play of market forces.”¹⁰³

Argentina, like many other developing countries, is moving from mere legislation of liberal economic laws to implementation of the same. Argentina’s efforts to privatize are an indication of the nation’s acceptance and implementation of liberal economic principles.¹⁰⁴

Intellectual Property Policy

Copyright

Argentina’s copyright policy is governed by the Intellectual Property Act (“IP Act”).¹⁰⁵ The IP Act only protects author’s works, and not ideas.¹⁰⁶ To be eligible for copyright protection, the author’s work must show a degree of minimum originality or novelty,¹⁰⁷ and it must be fixed in a tangible medium.¹⁰⁸

A copyright is granted to the author of the work, the author’s legal heirs or successors, those who have the author’s permission to form a derivative work, or to any employee the author contracts to create a computer program for the work.¹⁰⁹ The duration for copyright protection is the life of the author plus seventy years.¹¹⁰ For collaborative works, the seventy years begins the January 1st after the death of the last collaborative author.¹¹¹

Under the IP Act, the author has certain rights to the work that cannot be revoked, assigned, or transferred to third parties, such as the right to preserve the integrity or the ownership of the work.¹¹² The author, however, has the right to fully assign the economic benefits derived from the copyrighted work.¹¹³ In order to receive copyright protection, the author(s) must register his or her work with the National Register of Copyrights, and deposit a physical copy of the work with them.¹¹⁴

Argentina has some problems enforcing copyright. Argentina does not effectively prosecute individuals engaging in software piracy.¹¹⁵ This may be due to the government's possession of illegal software copies.¹¹⁶ In early 2000, eighty percent of the software used in government offices was illegal.¹¹⁷ Additionally, there are long delays in prosecuting copyright infringement cases.¹¹⁸ Other than these issues, Argentina offers adequate protection of copyright.¹¹⁹

Patent

Argentina is a party to the international agreement on Trade-Related Aspects of Intellectual Property ("TRIPS Agreement").¹²⁰ Under the Patent Law, which conforms to the TRIPS Agreement, patent owners have the following exclusive rights: when the patent is a product, the right to prevent third parties from making, using, or selling the product without the patent owner's consent; and where the patent is a process, the right to prevent third parties who do not have the patent holder's consent from using or selling the process.¹²¹ Patent owners also have the right to assign or transfer their rights by succession or contract.¹²² In passing the Patent Law,¹²³ Argentina conformed their patent standards to the standards imposed by the TRIPS Agreement.¹²⁴

The Patent Law grants protection to inventions of products or processes that: are novel, deal with an inventive activity, and are capable of industrial application.¹²⁵ The patent law defines an invention as a human creation that allows material or energy to be transformed for exploitation by man.¹²⁶

Patent holders are granted on a first to file basis¹²⁷ and also a term protection of twenty years from the date of filing with the National Institute of Industrial Property.¹²⁸ Patents may be granted to individual people or to legal entities, regardless of their nationality.¹²⁹ If a patent is developed by an employee during the scope of their employment, the employer may claim ownership of the patent rights.¹³⁰ Moreover, patents may be transferred or licensed through third parties, but these agreements must be registered with the National Institute of Industrial Property in order to be enforceable.¹³¹

While Argentina has an adequate framework for patent law, the country does not effectively protect patent rights as the country has not always fulfilled its obligations under the TRIPS agreement.¹³² Argentina uses its status as developing country to delay changes required under their international obligations.¹³³ Additionally, the country still does not offer proper regulations to deter patent infringement.¹³⁴ Argentina's insufficient enforcement of patent rights and lack of sufficient regulations prevent them from having a strong patent system.

Trademark Law

Argentina's trademark law is governed by the Trademark and Trade Name Law ("Trademark Law").¹³⁵ Under the Trademark law, any sign used to label a product or service that can distinguish itself from others can be defined as a trademark.¹³⁶

The right to a trademark can be obtained through registration with the Argentine Registry of Trademarks.¹³⁷ No prior use is required, but the owner of an unregistered mark can oppose the registration if the person seeking registration should have known that the mark belonged to a third party.¹³⁸ In order to be registered, the mark must satisfy three elements: (1) the mark must distinguish or identify a product or service; (2) the mark must not resemble any previously registered trademarks; (3) and the mark must be in compliance with Argentina's laws.¹³⁹ Trademarks are granted on a first to file basis.¹⁴⁰ Trademark holders are granted a ten year term beginning with the date it was registered, and also with unlimited ten year period renewals.¹⁴¹

Privacy, Security, Freedom of Information

Privacy and Security

Argentine data protection laws are considered advanced compared to the rest of Latin America. A reason for this includes the public's collective memory of the "dirty war" – specifically the inability to get information about "disappeared" family members, the desire "to never be denied that information again," and high profile cases of governmental abuse of data.¹⁴² Data is protected by a combination of Constitutional statutes and the Law for the Protection of Personal Data.

The Argentine Constitution contains clauses speaking to both privacy and security of information. In part it reads, "The home is inviolable as is personal correspondence and private papers; the law will determine what cases and what justifications may be relevant to their search or confiscation."¹⁴³ The Constitution also grants that "The private actions of men that in no way offend order nor public morals, nor prejudice a third party, [...] are free from judicial authority."¹⁴⁴ The *habeas data* clause is in the revised version of the Constitution, enacted in

1994, further protects information by allowing “Every person [to] file an action to obtain knowledge of the content and purpose of all the data pertaining to him or her contained in public records or databanks, or in private ones whose purpose is to provide reports,” to correct it or have it deleted if used for discriminatory purposes; and to demand confidentiality.¹⁴⁵

The *habeas data* statutes are common in Latin America, and in Argentina the law has been interpreted broadly.¹⁴⁶ The Supreme Court in *Urteaga v. Estado Nacional* permitted third party access to personal information.¹⁴⁷ This led to a series of cases that expanded the meaning of *habeas data*.¹⁴⁸ *Habeas data* is an important legal principle for many Latin American countries but Argentina places a greater emphasis on its principles than many other countries in the region.¹⁴⁹

In 2000, Argentina passed the Law for the Protection of Personal Data (LPDP). Strongly influenced by legislation in the European Union and Spain,¹⁵⁰ the act contains legislation pertaining to many aspects of data protection including rights of the subjects, duties of the controllers, sanctions, and limits on international personal data transfer to “countries without adequate protection.”¹⁵¹ The LPDP also established the National Directorate for Protection of Personal Data (NDPDP), an agency dedicated to ensuring that data privacy laws are obeyed.¹⁵² All data banks must register with the DNPDP and inform them about issues including their use of the data, how it is being protected, and how long it will be used.¹⁵³ These laws operate at a national level; provinces are encouraged to enact their own regulations.¹⁵⁴

One misstep was 2004’s Data Retention Law, which required that all telecommunications companies and Internet Service Providers “record, index and store traffic data” for ten years in order to have it available to the government.¹⁵⁵ After an outcry, this law was suspended.¹⁵⁶

Another oversight was the lack of regulation preventing privacy violations on a computer, but this was resolved with an amendment to the Criminal Code in 2008.¹⁵⁷

Due to the strength of Argentina’s data protection regulation, it is “the only country in Latin America that is considered adequate for data protection purposes under the EU Data Privacy Directive.”¹⁵⁸

Freedom of Information

In contrast to Argentina’s notable data privacy and security legislation, its Freedom of Information legislation and practice are perceived to be lacking. This seems to be caused by a combination of “Argentina’s notably weak tradition of investigative journalism,”¹⁵⁹ the fact that “there are practically no requests filed by ordinary citizens,”¹⁶⁰ and political obstacles presented by the executive and legislative branches.¹⁶¹

The Argentine Constitution does not provide for freedom of information, and there is no existing Freedom of Information Act (“FOIA”). However, the 1994 Constitution “gives international treaties ratified by Argentina precedence over national laws,” and several such treaties have “referenced” freedom of information.¹⁶² Additionally, several provinces have passed FOIA-style acts, but these are rarely used and badly designed.¹⁶³ A member of an environmental activist group stated, in reference to the FOIA law in his province, “We don’t use it. We make reference to international treaties instead.”¹⁶⁴

A better law (Law 104) was passed in Buenos Aires, and a similar one nearly became national. Law 104 was based on the United States’ FOIA and passed easily, with little opposition on the local level.¹⁶⁵ The Ombudsman’s office makes most of the requests and has found that much of the time the agencies holding the information do not respond quickly or accurately but

still has proved useful.¹⁶⁶ To draft a national bill, the national Anticorruption Office introduced a process whereby “government officials and civil society come to consensus on specific measures to send to Congress” so that the final draft of the bill had “remarkably wide consensus and support.”¹⁶⁷ This bill passed the lower house of Congress in 2003, but the version approved by the Senate the following year contained “several problematic modifications” introduced by a commission led by then-President Néstor Kirchner’s wife, Cristina.¹⁶⁸ One modification which lost the bill much support was an expansion to include private businesses in the scope, not only government.¹⁶⁹ With clear opposition from the Executive Branch, the lower house failed to approve either version of the bill.¹⁷⁰ Currently, without a law in place, the only aid to freedom of information is a 2003 Presidential Decree that applies only to the Executive Branch.¹⁷¹

E-Government Initiatives

E-government is the use of communications technology to better serve and inform citizens and businesses, and to increase intra-government communication.¹⁷² Argentina is ranked highly on a United Nations e-government benchmarking report rating nations in terms of web presence.¹⁷³ Having a high web presence aids in the success of any e-government initiatives, and means that the citizenry are adept at navigating the Internet and using different types of websites.¹⁷⁴

In recent years Argentina has implemented several e-government initiatives and policies; most of these have been aimed at increasing transparency in government and decreasing corruption.¹⁷⁵ Other goals of e-government initiatives and policies include improving service deliveries and increasing general access to government information.¹⁷⁶

There are five phases to e-government development: emerging, enhanced, interactive, transactional, and connected.¹⁷⁷ Argentina's local, state and federal governments have achieved the first two phases. For example, documents such as forms are available for downloading. Additionally, the federal government is able to offer services for phase three, allowing users to conduct certain transactions entirely online.¹⁷⁸

Cristal Government Initiative

The most significant e-government initiative the Argentine government implemented was the Cristal Government Initiative. In the late 1990s, Argentina was facing a severe financial crisis, compounded by a high public perception of corruption. In 1999, Argentina passed a mandate that required all information about the administration of public funds to be made available to anyone interested.¹⁷⁹ During the presidential election that same year, one of main campaign issues was corruption.¹⁸⁰ Fernando de la Rúa promised to take steps towards eliminating corruption, especially with regards to government spending and the corrupt practices of the previous administration.¹⁸¹ Accordingly, he implemented the Cristal website with the goal of accurately informing citizens so they could have better influence on their political representatives.¹⁸² Journalists and reporters, while not the target audience, were important audience members for this website, since they were able to disseminate information to a wide range of citizens.¹⁸³

This site contained specific information about the amount of money dedicated to certain governmental departments and about the actual process by which the funds are dispersed.¹⁸⁴ One area focused on how public funds are distributed between central and provincial governments.¹⁸⁵ A second area collected information about national policies in order to examine how they are

managed and funded.¹⁸⁶ The last area combined information about corruption in both governmental and non-governmental sectors.¹⁸⁷ As an extra measure of accountability, there was an external body with representatives from 15 transparency-focused NGOs that audited the website annually.¹⁸⁸

This website was launched in February 2000.¹⁸⁹ It was heavily advertised, but failed to meet citizen's expectations as promised content was not immediately available.¹⁹⁰ Several months later, it was re-launched with less advertising but in a more successful form. It was user friendly, had a more attractive design aesthetic, and contained much more information.¹⁹¹ Although more people used the website in late 2000 and 2001, the political and financial crises in 2001-02 lessened the momentum for the project.¹⁹² The site is no longer active as the Cristal website, but the information contained on the site is now located at <http://www.argentina.gov.ar/>.

Cristal was a recognition of the importance for transparency, but also an illustration how important it is for e-government initiatives to live up to citizen's expectations.¹⁹³ While the original Cristal website had limited success, it was certainly a step in the right direction and the developers of the website learned from its lessons. Also, the fact that Cristal was widely used while Argentina's FOIA laws are underused show that Argentines are very comfortable with digital governance. These factors combine to show that Argentina is capable of making strong use of digital governance.

Other e-government initiatives

The 2003 Presidential Decree regarding access to information includes government documents in digital formats.¹⁹⁴ As mentioned above, this regulation only concerns the executive

branch; however, it does take into account the increase of government information in digital formats.

Another step Argentina has taken to better incorporate e-government policies is the creation of a new agency called the Modernization Secretary. It is responsible for the “implementation, advancement, development, and promotion of e-government to ensure that the development of digital government continues to improve at a steady rate and in accordance with the increasing needs to its citizens.”¹⁹⁵

Argentina also has an electronic system for paying taxes. In October 2002, steps were taken to allow a pre-existing website to be able to handle the electronic payment of taxes. The process took about eight months to finish; the impetus behind the system was to modernize the management of taxation services to make it more efficient and transparent.¹⁹⁶ Gradually the system has been expanded to allow different types of users to access to the system. Many people use this system; over 30 percent of users use the system outside of normal business hours.¹⁹⁷ Additionally, government employees are able to interact through technology, according to phase four.¹⁹⁸ Although citizens do not have the same ability, steps are being taken to make more services available through the internet.

The above systems illustrate Argentina’s incorporation of new technologies into their government processes. While e-government is not perfect in Argentina, clear and strong efforts are being made toward the transactional and connected phases of digital governance, and thereby toward greater transparency.

Conclusion

The Argentine government is looking to strengthen their economy. It began doing so via privatization and deregulation in the late 1980's. The goal to regain first world status has led the Argentine government to accept liberal economic principles and implement information policies. Argentines recognize that strong information policy is a necessary condition for economic growth. However, the country still faces some challenges in information policy.

First, Argentina needs to improve its FOIA regulation and awareness. Argentines have labored to pass national Freedom of Information bills, but for various reasons no significant legislation have passed. Local laws that do exist are under-utilized and often are not fully followed by government agencies. The only applicable law on a national level is a Presidential Decree, which only applies to the Executive Branch and could be revoked. These facts lead to the conclusion that Argentina must improve freedom of information legislation and increase awareness and use of existing laws.

Second, the government needs to strengthen its enforcement of copyright and patent laws. The current laws provide an adequate framework for these rights. However, the country needs to fully address the issue of piracy. To begin, the government could replace the illegal software in their offices with legal software, which will remove their conflict of interest. Additionally, the government can create a more efficient way to address copyright and patent infringement in order to prevent long delays in the court system. They could do so by establishing specialized intellectual property courts. This will allow Argentina to fully comply with the TRIPS Agreement.

Third, Argentina has implemented several e-government initiatives that have been somewhat successful; however these initiatives have mostly been on a federal level. Argentina

should push the local and state governments to incorporate more e-government techniques. Argentines have shown themselves to be adept with many telecommunications technologies; therefore there is strong reason to believe that e-government initiatives have a large chance of success. Additionally, the federal government should fully implement the interactive stage of e-government and push themselves towards the transactional stage. Furthermore, the government should make sure that e-government policies and initiatives are advertised well, and that their citizens are aware of what e-government opportunities there are.

If Argentina is able to successfully address their information policy challenges, they will be more likely to experience increased government transparency, stable economic growth, innovation, and a more involved citizenry.

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