

Privacy in Mexico: overview

Begoña Cancino
Creel, García-Cuéllar, Aiza y Enríquez, SC

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LEGISLATION

1. What national laws (if any) regulate the right to respect for private and family life and freedom of expression?

Privacy

Mexico recognises the right to private and family life as a fundamental right in Article 16 of the Mexican Constitution (Constitution). Article 16 establishes that:

- No one can be bothered in their private and family life, residence, papers or possessions unless by written commandment issued by a competent authority.
- Any interference from a competent authority must be properly established and justified.

Article 16 also contemplates that all the individuals have the right to the protection of their personal data according to the terms established under the Federal Law of Transparency and Access to the Governmental Public Information and the Federal Law of Personal Data held by Private Parties and its regulation.

Freedom of expression

Freedom of expression is regulated as a fundamental right in Articles 6 and 7 of the Constitution.

Article 6 establishes that, in Mexico, the manifestation of ideas must not be subject to any judicial or administrative inquiry, unless the expression is deemed to be:

- Attacking the morals, private life or rights of third parties.
- Inciting criminal actions.
- Disturbing public order.

In addition, under Article 7, freedom to disseminate opinions, information and ideas through any medium is a fundamental right. This right cannot be restricted by indirect methods or means such as government or private controls of:

- Newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information or any other means.
- Equipment, information and communication aimed at preventing the transmission and circulation of ideas and opinions.

In addition, no law or authority can establish prior censorship or restrict the freedom of dissemination unless the censorship complies with the cases of exception established in Article 6 of the Constitution.

International agreements

In addition to constitutional protection for private and family life and freedom of expression, Mexico has signed and adopted the following agreements:

- Universal Declaration of Human Rights (UDHR).

- International Pact of Civil and Political Rights (IPCP).R).
- American Convention for Human Rights (ACHR).

Other international treaties recognising private and family life and freedom of expression as human rights are also respected and protected.

2. Who can commence proceedings to protect privacy?

Who can commence proceedings depends on the type of privacy that needs to be protected. If the privacy is related to a moral damage inflicted by a third party, the affected individual can claim a civil action of damages against the infringing party. However, if the proceeding is intended to protect personal data, administrative proceedings can be used to protect and guarantee that the personal data is duly processed and the provisions of the applicable law are observed. Administrative proceedings can be brought either:

- Directly by the affected party (data subject).
- At a later stage by the Federal Institute for Access to Public Information and Data Protection (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*).

Finally, crimes relating to any unlawful processing of personal data, violation of private communications or revelation of secrets may be subject to prosecution by the federal Public Prosecutor.

3. What privacy rights are granted and imposed?

Civil Code

Private life, feelings, affections, physical aspects (for example, a person's image or voice), honour and beliefs are protected under the Civil Code. Under the Civil Code, violations or abuses of these rights will result in economic reparation being paid for the moral damage caused to the individual.

Federal Law of Personal Data held by Private Parties (Federal Personal Data Law)

Under the Federal Personal Data Law, data subjects are granted with ARCO rights (that is, the right to access, rectify, cancel and object to the processing of their personal data). The data controller's obligation to provide access to information is satisfied when the data controller:

- Makes the personal data available to the data owner.
- Issues uncertified copies, electronic documents (or makes available by any other means) in the privacy notice.

4. What is the jurisdictional scope of the privacy law rules?

Since privacy is a matter recognised as a fundamental right in the Constitution and is recognised by international conventions subscribed to by the Mexican State (see *Question 1*), the jurisdictional scope covers all Mexican territory. In addition, privacy and data protection are also regulated by federal laws, which have an obligatory effect over all Mexican territory.

5. What remedies are available to redress the infringement of those privacy rights?

If data subjects suffer harm or damage to their property or rights following a breach of the provisions of the Federal Personal Data Law by a data controller or data processor, they can exercise the rights they deem appropriate. Data subjects can also file a petition for annulment against decisions ruled by the Federal Institute for Access to Public Information and Data Protection before the Federal Tax and Administrative Court.

In addition, if the infringement is committed by a public individual working for a public organisation of the Mexican Government, the individual can face any of the following administrative sanctions:

- Public warning.
- Temporary suspension.
- Economic sanction.
- Termination of employment.
- Temporary disqualification for maintaining a public charge in the federal administration.

See also *Question 6*.

6. Are there any other ways in which privacy rights can be enforced?

In the case of criminal conduct related to privacy (data protection or violation of private communications or revelation of secrets), the criminal conduct can be enforced and prosecuted by the Public Prosecutor, in order to punish the criminal behaviour against the privacy of individuals.

Practical Law Contributor profiles

Begoña Cancino, Partner

Creel, García-Cuellar, Aiza y Enriquez, SC

T +52 (55) 4748 0679

F +52 (55) 4748 0690

E begona.cancino@creel.mx

W www.creel.mx

Professional qualifications. Mexico, Lawyer,

Areas of practice. Intellectual property and entertainment.

Non-professional qualifications. Universidad La Salle, Mexico, 2001; post-graduate diplomas in IP, Universidad de Buenos Aires (UBA), Universidad Nacional Autónoma de México (UNAM) and Ilustre Nacional Colegio de Abogados

Recent transactions

- Counsel to a multinational alcoholic beverages company in several transactions intended to grow its tequila segment including the acquisition of two premium brands in Mexico.
- Counsel to a multinational dairy and food corporation in the acquisition of a brand of dairy products in Mexico.
- Counsel to several clients in litigious actions with the Administrative Authorities and Federal Courts.
- Counsel to several clients on data privacy matters in order to align their legal structure to the specific provisions of the recently enacted Mexican Data Privacy Law.

Languages. Spanish, English

Professional associations/memberships. International Trademark Association (INTA); Mexican Association for the Protection of Intellectual Property (AMPPI).

Publications. *MCI can look but not touch*, *World Intellectual Property Review*, July/August, 2013, article on amendments to the Mexican Copyright Law.