



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

Privacy & the media. Traditional and emerging protections in an online world.

IP/IT MEDIA & TELECOM- Workshop:

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National Report of Guatemala

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1. Privacy rights

Under Privacy right, we understand the right not to have information about a person to be disclosed to other persons without consent of the person to which the information refers to.

1.1. Are privacy rights statutory rights or are these case-law based?

Constitutional Rights. Guatemala is signatory of the Declaration of Human Rights (Article 12, Privacy Rights); American Declaration of the Rights and Duties of Man (Article 5, Protection of Honor, Personal Reputation and Privacy); International Pact on Civil and Political Rights (Article 17, Privacy Rights).

1.2. What type of information (including pictures, sounds, etc.) would be covered by the concept of “privacy rights” in the legal system of your country?

The secrecy of all types of correspondence, documents, books, telephone, wire or radio communications, as well as products of modern technology (pictures, software, emails).

1.2.1. Would the information included in that concept, or the extent of the privacy rights, depend upon the celebrity of the person, or upon other elements? Please describe briefly.

No, the above privacy rights include all persons. If the person is a political public figure, and certain private information leaks regarding their political work, it will be the exemption to the rule (Article 35, Constitution, Freedom of Speech). The Internal Revenue Department can have access to private tax books, documents or archives regarding taxation.

1.2.2. Would privacy rights also apply in relation to legal persons (vs. physical persons) ?

No. Corporations in Guatemala can't have bearer shares, they have to be registered shares. The Constitution regulates that the The Internal Revenue Department can have access to private tax books, documents or archives regarding taxation.

1.2.3. Would privacy rights encompass private information made available only to some chosen persons (authorized recipients). So, for instance, can disclosure to third parties, by one of the authorized recipients of the private information, be part of the privacy rights (e.g. disclosure



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of private correspondence, private phone calls, information shared on social media, etc.)

Yes. The only way disclosure of private information is legally valid, is by a legal resolution of a Judge, depending on each case. (public benefits over private benefits).

- 1.3. Is there a specific status for “fictional use” of information related to an individual ? And are disclaimers sufficient to allow such use ?

No.

2. Freedom of speech

- 2.1. Is there a on the one hand a statutory/ treaty based freedom or constitutional recognition of “Freedom of speech” or on the other hand is that freedom based on case-law.

Constitutional Right. Article 35. It states that anyone who, expressing their right of freedom of speech, offends the right of privacy of another, will be responsible according to law. There is a specific Constitutional Law that regulates Freedom of Speech.

- 2.2. If it is a statutory/treaty/ constitution based freedom is it based on domestic or supranational law?

Domestic Law and International Law

- 2.3. Describe the main characteristics of the “freedom of speech” as recognized in your jurisdiction:

2.3.1. beneficiaries; All persons

2.3.2. extent of the freedom of speech; By any means of difusion, without any censorship o prior authorization.

2.3.3. exceptions; Against public political figures or workers, specifically regarding work related issues.

2.3.4. specific status for press (including online press)? Total freedom. If a Judge finds that a certain publication against anybody is false or without proven sources, the resolution has to be published in the same way as the false or unproven allegations.



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3. Hierarchy between Freedom of Speech on one side and privacy rights on the other side.

- 3.1. Under the law applicable in your jurisdiction, is there a clear hierarchy between freedom of speech on the one hand and privacy rights on the other?

There is no established or regulated hierarchy between the two. Freedom of speech is a right of every person, always respecting the privacy of others. Both have legal means to protect their constitutional rights.

- 3.2. What would be the most significant criteria allowing freedom of speech or privacy rights to prevail over the other (e.g. public interest argument) ?

Freedom of speech of the media is of public interest, so it cannot be expropriated.

4. Remedies available in your jurisdiction to protect individuals against disclosure of information belonging to their privacy

- 4.1. Are there pre-emptive remedies to avoid disclosure of such information before disclosure occurs ? Describe briefly the main remedies available.

The only “pre-emptive” remedy to avoid disclosure of private information before the disclosure is the Constitutional Right of privacy itself.

- 4.2. Are “gagging orders”¹ or “super injunctions”² as known in the UK known under the legal system of your country? Describe briefly their main characteristics.

- 4.3. Are there other post-disclosure remedies, such as for example damage claims, rectification claims, right of answer. Describe shortly

Penal remedies: Slander (prison from 2 months to 2 years) and Defamation (prison from 2 to 5 years)

Civil remedies: damage claims and rectification of the disclosure or resolution of Judge by the same means as the disclosure.

¹See for details : http://en.wikipedia.org/wiki/Gag_order#United_Kingdom

² See for details: http://en.wikipedia.org/wiki/Injunction#UK_superinjunctions



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Constitutional remedies: Clarification, Rectification, Explanations and Refutations.

4.4. In the case of damages, how are they calculated ?

The Civil Court judges have a range of penalty charges, and will decide on the total amount due based on the moral damage of each case.

4.5. In case of disclosure of private information, who can be held liable for damages, especially online?

The person who “leaked” the private information, as well as the person or site who knowingly discloses to the public private information.

4.6. Are there special defences to a cause of action for information disclosed by the press/ media?

No

4.6.1. As part of your answer please explain what is range of news information organisations is covered by the definitions press/ media?

4.6.2. Is there a specific protection offered to informants/sources?

Freedom of speech of the media is of public interest, so it cannot be expropriated. Informants and reporters have free access to all sources of information without limitation by authorities. If a media outlet infringes privacy rights of a person, the media outlet cannot be closed, embargoed, intervened or confiscated. The media outlet can never be interrupted on their normal daily reporting routines, including the machines, printers, digital equipment

4.7. Are the principles described in your answers above also applicable to the online world ? Is there any specific case-law in your country relating to social media, and if so please summarise this?

Same principles. No specific case-law regarding social media in Guatemala. Constitutional privacy rights contain all digital information and data.

4.8. Are there specific remedies against disclosure of information that (could) damage an individual reputation (such as slander or libel) ? Describe these remedies briefly.



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Constitutional remedies: Clarification, Rectification, Explanations and Refutations.

4.9. Forum and applicable law

4.9.1. Describe shortly what rules exist in your jurisdiction for the determination of the forum and the applicable law.

The rule of law extends to all persons, domestic or foreign, resident or in transit throughout the territory of Guatemala.

4.9.2. Are there specific rules for breaches caused online (when the information is accessible from different jurisdictions) ?

No specific rules other than the territorial rule of law.

4.10. From your experience, what reforms should be made to the legal system of your country to better protect individual privacy, if any ?

The Constitutional Right of Privacy extends to all information, physical or digital. If there has to be a reform of this rule, I would recommend to specify the online protection of privacy rights of a person in Guatemala, based on: 1. Territorial access of the information, and 2. Location of the IP Address of the disclosure.

5. Interplay between data protection rules and privacy rights

5.1. Summarise how does data protection law in your jurisdiction protects privacy or other personal data being used in online media?

The Constitutional Right of Privacy extends to all information, physical or digital, therefore, the protection of information being used online has the same protection of the law. There is no specific data or online privacy protection law.

5.2. Is there an effective a right of opposition to collection of data?



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6. Right to be forgotten

6.1. Is there a statutory or case-law based “right to be forgotten” in your jurisdiction (whether under domestic or supranational law)?

6.2.

No.

6.3. Is there relevant case law in your jurisdiction regarding the right to be forgotten and/or are there other guidelines (whether under domestic or supranational legal procedure) for a successful claim under the “right to be forgotten”.

6.4. Did the view on the right to be forgotten change in your jurisdiction due to the European Court of Justice Case in Google Spain v. AEPD and González (C-131/12)? Is there any case law arising from this decision in your jurisdiction?

7. Are there other aspects to take into consideration in your jurisdiction in relation to freedom of speech, the privacy right and the right to be forgotten?