

Data protection and consumer law

Key Takeaways



General framework of Consumer Laws in LatAm and Class Actions

- There are no common rules, but certain similarities. Tendency to copy creative ideas from one jurisdiction to another (example, nutritional labeling).
- Mostly no extraterritorial effect (but increasing with ecommerce and digital services)
- Warranties that cannot be waived
- Class actions, imported from common law system. Not common but there are exceptions recently included in Argentina, Brazil and Chile.
- State bank in Chile ordered to reimburse clients for failing to include consent in commission change.
- SERNAC (Chile Consumer protection agency) very active: budget increase YoY, convinced the Congress to expand its powers and fines.
- 300% increased fines. New bill to increase SERNAC powers. Focused in the digital world, will have authority on data protection cases in which consumers are affected.
- Class action cases: take the lead on high profile cases.
- Argentina, Uruguay and Paraguay:
 - Argentina law from 1993: many law cases. Local and Federal authorities. No framework for class actions, partially regulated by specific rules, like consumer protection law and civil code. Important precedents of class actions involving rights of a collective interest, concerning individuals.
 - Environmental claims and product liability cases, utility rates, financial services. Require a collective interest, with a common factual situation.
 - Affected party, NGO or Ombudsman.
 - Individual claims may be initiated subsequently to prove damages.



Agencies competing with the same powers on the same cases, overlapping SERNAC once the DPA is enacted. Not good to have two different authorities overlapping on the same matters.

- Consumer organization will take higher interest in data protection cases, in which they have not been active so far.



Punitive Damages

- Imported concept from the common law
- Only Argentina includes provision for punitive damages
- In Venezuela data subjects don't have a data privacy law, so any claims fall under the constitution and civil law to protect data rights, which allow them to seek damages and remedies.
- There may not be a local DPA but affected parties may look for remedies at court.



In the future

- Consumer protection issues
- Data Privacy issues: the trend will be content moderation, balancing safety and security, and fake news. Tech companies should look at this issues and each jurisdictions should be analyzed on a case by case basis. There are take down notices in some jurisdictions.
- Chile ecommerce regulations require platforms to comply with 20-30 information required to post in the platform. Manufacturers should disclose the expected use of the product, to regulate waste and planned obsolescence, very challenging as most manufacturers are not used to provide this information anywhere in the world. It will be challenging and risky. What is expected use under normal circumstances (desert, temperature)?
- New rule to regulate digital platforms in general: to regulate content. This bill introduces concepts not present: necessity of neutrality, nondiscrimination, freedom of digital expression, protection of vulnerable individuals.
- The authorities are entering into content regulations, probably problematic. If they get into the content of a site, many cases may end up in court.
- Grey areas in Telecom industry after convergence, impossible to determine if a service requires a license as a telecom or for content.
- Consumer law are aiming to regulate transactions made digitally like the regret button, cancelation button, cooling off period. This approach will increase in the coming years.
- The downside is in our view there's a temptation to regulate any and every technical and legal aspects. That approach is not advisable in a changing environment of tech companies. They should focus on concepts that can easily adapt to changes.
- Integration: in the near future there will be more integration, at a regional level. More interaction of enforcement authorities and courts, more laws of similar content regulating consumer law and data privacy.
- The regional DPA are more sophisticated and more active than consumer protection authorities
- DPA are in contact with each other. Once an investigation is open in the EU, it shortly opens up in Latin America