

Section 16 of the Argentine National Constitution (Constitution) provides that all inhabitants of Argentina are equal before the law. Therefore, privacy laws apply to all inhabitants of Argentina. However, privacy rights can be weighed against other constitutional rights, such as the right to freedom of expression. In cases involving public figures in Argentina, privacy rights are more strictly weighed against freedom of expression rights, and it is not unusual for freedom of expression rights to prevail.

Both legal theory and precedents (including the Supreme Court case of *Ponzetti de Balbín, Indalia c. Editorial Atlántida, S. A.*) have demonstrated that in cases where the offended party is a public figure, the privacy rights protecting a person's life (the sphere of intimacy) are significantly reduced as a consequence of being in the public domain, within what can be justified as being in the general public interest.

3. What privacy rights are granted and imposed?

The right to privacy is mainly protected by section 1770 of the Argentine Civil and Commercial Code, which prohibits arbitrary intrusion into the lives of others. Examples of arbitrary intrusion include publishing pictures, spreading correspondence, humiliating others about their individual customs or feelings, and/or disrupting their intimacy in any way.

Various civil and criminal remedies are available to redress the infringement of privacy rights protected by section 1770 of the Argentine Civil and Commercial Code (*see Question 5*).

Legal theory and precedents demonstrate that the scope of the right to privacy depends on the individual concerned. The sphere of privacy can cover many different aspects of life depending on what is considered to be private. From a general standpoint, to determine what may be considered a violation of privacy, it is necessary to take into account what is customary behaviour for individuals with similar characteristics to the individual whose privacy is involved (that is, if an actor is involved, what is customary for actors). From a more particular standpoint, another factor to consider is how the individual has previously acted in relation to his privacy, and the levels of tolerance shown to the press or public. If an individual has demonstrated tolerance for the disclosure of certain aspects of his life, the courts will interpret those aspects as not being private in the future.

In addition to any protection provided by the general right to privacy, there are specific regulations regarding the unauthorised use of images, regulated by section 31 of National Law 11.723 and Section 52 and 53 of the Civil and Commercial Code.

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

Argentine laws are mandatory for all people who inhabit the Argentine territory (*section 4, Argentine Civil and Commercial Code*). The Argentine Supreme Court has long held the opinion that as a principle of international law, the courts can only have direct jurisdiction over the persons and assets that are within their territory. Therefore, the general principle provides that Argentine law applies within the territory of Argentina (as opposed to the extra-territoriality principle).

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

rights?

The civil remedies available to redress the infringement of privacy rights are contained in section 1770 of the Argentine Civil and Commercial Code. The rule basically provides that in the case of an infringement of a third party's privacy rights, the offended party may request the judge to order the:

Offending party to cease performing the infringing acts.

Payment of adequate compensation to the offended party, which may include the publication of the judicial decision in a local journal or newspaper where the act was committed.

However, if an individual's right to personal honour is violated under section 52 of the Civil and Commercial Code, then section 1770 does not apply.

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

Section 109 of the Argentine Criminal Code punishes with a fine the slander or false accusation towards a natural person on the perpetration of a crime. Additionally, section 110 of the Argentine Criminal Code also punishes with a fine the person who intentionally dishonours or discredits a natural person. However, these sections do not apply to public servants who are being slandered or dishonoured.

Contributor profiles

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Areas of practice. General commercial advice to companies; M&A; banking; anti-

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Non-professional qualifications. LLM, London School of Economics, 2000

Recent transactions

Working on many cross-border projects of global clients involving multi-jurisdictional data privacy issues (including broad data protection questionnaires; international transfer of personal data, migration or centralisation of data processing; e-mail monitoring and other employees' privacy issues; Internet regulation, on-line child protection and websites' potential liability).

Representing a large global bank, obtaining the first ever resolution from the Argentine Data Protection authority allowing the local subsidiary of the bank to transfer personal data of its client to a global processing centre located outside Argentina. The Authority resolved that the agreement entered into between transferor and transferee afforded the transfer an "adequate level of protection", which made the transfer legal.

Languages. Spanish, English

Professional associations/memberships. Buenos Aires Bar Association; International Bar Association; ABA; AIJA.

Publications

"Protection of personal data in financial activities", Régimen jurídico de los datos personales, Tomo II Abeledo Perrot, Buenos Aires, 2014.

"The implementation of the National Registry of Databases", Jurisprudencia Argentina 2005-III-861.

"Bank secrecy and the obligation to report suspicious transactions" La Ley, 25/6/2004.

"The secrecy in the bill to amend the Anti-money laundering law", El Cronista, 3/4/2006.

Latin America's giant leaps in the data privacy field (Data Protection Law & Policy, printed edition, Cecile Park, September 2011), (co-authored).

"The legitimacy of workplace email monitoring in Argentina" (Data Protection Law & Policy, printed edition, Cecile Park, September 2010), (co-authored).

"Qué deben hacer las firmas para cumplir con el Registro No Llame?" ("What must companies do to comply with the Don't Call Registry?", Article for iProfesional.com, 2010).

"Third party content. Da Cunha Virginia c/Yahoo de Argentina SRL y Otro s/Daños y perjuicios" (E-Commerce Law Reports, printed edition, 2010), (co-authored).



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