Creation and Evolution of the Colombian DPA

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Introducing Nymity

A Data Privacy Research Company

Focus: Dedicated to global data privacy compliance research

Established: 2002

Headquarters: Toronto, Canada

Research: Inventor of several compliance methodologies & frameworks

Funding: Partially funded by government R&D grants.

Supporting The Privacy Office

- Extensive range of global solutions and products
- Effectively communicate Privacy, increase efficiency and save time
- All solutions are based on ongoing, empirical research
- A dedicated research team provides up-to-date information, analysis and best practices
- Enables you to comply with confidence
Background:

1991 - 2008

- Data protection included as fundamental right in Constitution
- Individual redress possible through constitutional protection actions (effective to address individual rights but no real deterrent for companies to “shape up”)
- Wide body of jurisprudence at Constitutional Court level

2008 - 2012

- Enactment of Credit Reporting “Habeas Data” Law
- Enforcement powers granted to the SIC and SF
- Enforcement conducted by ad-hoc groups within SIC and SF (Fines up to USD $350.000)

2012 - 2015

- Enactment of General Data Protection Law (L.1581/12)
- Creation of Deputy Data Protection Superintendence within SIC (dedicated resources and personnel)
- Expanded enforcement powers granted to the SIC (Fines up to USD $425.000) + Educational mandate + Government advisory mandate + International Cooperation mandate
Choosing an Agency:

Institutional challenges

- Under the institutional framework created by the 1991 Constitution, the incorporation of an Independent DPA involved a constitutional reform
- Existing human rights agencies (i.e. Defensoría del Pueblo offered challenges for efficient enforcement)
- Fiscal austerity prevented the creation of a single standing DPA

Using a credited agency: SIC as DPA

- SIC had a long and proved history as consumer protection, patents and trademarks and competition agency
- L. 1266 assigned functions for credit reporting violations which gave a taste of its capacity as DPA
- Experience handling complaints and enforcement actions in consumer and competition
- Good perception by the public as an efficient agency
- Back-office resources allowed to set up a special data protection unit without major costs
SIC as DPA:

Operational basics

- Deputy Data Protection Superintendency of SIC created in December 2011 as part of an ongoing internal reorganization restructuring process that reinforced the whole entity.
- Structure: incorporated as 1 of 6 Deputy Offices within SIC with dedicated staff of 12 pax.
- Deputy Superintendents appointed by Superintendent of Industry and Commerce. No fixed term, freely removable. Superintendent of Industry and Commerce appointed and removed by the President.
- After OECD observations as part of the Colombian accession mission, a project to assign fixed 4 year terms is under evaluation.
- Appeals guaranteed for investigations through a subdivision in two levels:
  - Deputy Superintendent
  - Investigations Director
- Mandatory claim review distributed through two units within the Direction of Investigations: (i) Habeas Data Unit and (ii) Investigations Unit.
- Deputy Superintendence operations guaranteed through general budget allocated to the SIC.
2015 figures:

General Budget and investment
- SIC is funded by the General Treasury and by patent and trademark filing fees
- SIC doesn’t “eat what it kills”

<table>
<thead>
<tr>
<th>Budget type</th>
<th>Allocation (in USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General (operational)</td>
<td>$22,000,000</td>
</tr>
<tr>
<td>Investment</td>
<td>$23,000,000</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$45,000,000</strong></td>
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- **USD $254,000** assigned directly to DPA. Indirect benefits and impact from other investment allocations (i.e. technology update, citizen support systems, etc.)

Staff
- DPA started operations in 2012 with dedicated staff of **12**. For 2015 staff has raised to **33**
Key mandates:

Individual redress

- SIC has a mandate to address each individual claim received in the entity
- Review of claims impacts efficiency as a large percentage (i) have already been solved, (ii) are not within the SIC’s mandates and/or (iii) are not material
- Handled mostly by Habeas Data Unit

Supervision and control

- Instruction capabilities (i.e. credit reporting instructions, RNBD minimal information requirements, etc.)
- Order external audits

Administrative police

- Conduct investigations
- Inspection visits
Operational results:

Claims vs. Enforcement

- **Complaints**
  - 2009: 654
  - 2010: 1215
  - 2011: 1987
  - 2012: 2296
  - 2013: 3812
  - 2014: 4889
  - 2015: 5000

- **Enforcement actions**
  - 2009: 0
  - 2010: 66
  - 2011: 216
  - 2012: 217
  - 2013: 212
  - 2014: 199
  - 2015: 201
Operational results:

Total fines 2010 – 2015: USD$ 4,051,000.

Estimate values
DPA’s special projects, education and Public Policy work:

**Colombian Accountability Guidelines**

- Launched in May 2015 to develop accountability principle included in 2013 secondary regulations.
- Borrowed from Canadian and Hong Kong accountability guidelines. Input from “Essential elements of Accountability (Galway Project) and Nymity’s Privacy Management Framework ®."

**SISI and RNBD**

- RNBD will launch 2015 as per legal mandate.
- Integrated with SISI (supervision model based on RNBD input).

**Education, awareness and training**

- 4000 people attended training events in 14 different cities.
- 16 SIC MOVIL
- 2 Online courses for the general public
- Government agencies training and awareness program projected for 2016
Going forward…

• SIC has positioned itself as a credited LatAm DPA which efficiently addresses the safeguard of the fundamental right to Data Protection.

• Guidance to stakeholders on how to implement and maintain an effective privacy program will be key to advance in the implementation of an accountability based approach and further the protection of individuals.

• Announced advances towards independence in appointments will positively influence the DPA’s role.

• International cooperation will play an increasingly important role in the protection of individuals.