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FEATURED Q&A

Has Peru Gone too Far in Granting Cell Data Access?



Peru's government has said the measure is needed to fight organized crime in the South American country. // File Photo: Victorigas.

Q Peru's government last month issued a legislative decree that requires telecommunications companies to grant police warrantless access to geolocation and other call data from cellphones in real time and requires companies to store that data for three years, a measure the government has said is necessary to fight organized crime in the country, adding that a warrant must retroactively be obtained to use that data in court. Is the new measure necessary to fight crime and corruption, or does it go too far and undermine parts of Peru's 2011 law that established protections for personal data? Does it impose an unnecessary burden on businesses? What are the best practices for balancing privacy concerns with the need to fight crime?

A Peter T. Knight, founding partner, researcher and member of the board of the Fernand Braudel Institute of World Economies in São Paulo: "The balance between privacy and security is a delicate one involving serious trade-offs. It is no accident that this balance was, together with the principle of net neutrality, the most actively debated in the elaboration of Brazil's Internet Bill of Rights that became law on April 23, 2014. In the last analysis the choice just how much privacy can be compromised to protect society from criminal activity is a political one. In a democratic society, that choice will be determined by the nature of the threats facing the country. This trade-off has been the subject of intense debate in the United States, Brazil and other countries, provoked by the Snowden revelations and growing cyber-security threats involving both state and non-state actors. In Brazil's case, the legal requirement is for Internet service providers to keep logs

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TODAY'S NEWS

ECONOMIC

Brazil's Economy Tumbles Into Recession in Q2

The gross domestic product of Latin America's largest economy contracted 1.9 percent in the second quarter after falling a revised 0.7 percent in the first quarter. Economists are forecasting a GDP contraction of as much as 2.1 percent this year.

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POLITICAL

Colombia to Offer Citizenship to Venezuelans in Border Crisis

Colombia is offering citizenship to some Venezuelans along the border after a mass deportation.

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POLITICAL

Scioli Widens Lead in Argentina's Presidential Race

Ruling party candidate Daniel Scioli widened his lead over rival Mauricio Macri, according to a new survey. Scioli's lead, however, would not be enough to avoid a second round of voting.

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Scioli // File Photo: Scioli Campaign.

ECONOMIC NEWS

Brazil Falls Into Recession as GDP Contracts in Q2

Brazil officially entered a recession in the year's second quarter as the country's gross domestic product contracted for the second consecutive quarter, according to official data released Friday, The Wall Street Journal reported. GDP shrank 1.9 percent between April and June as compared, in seasonally adjusted terms, to the previous three-month period, according to the Brazilian Institute of Geography and Statistics.

Brazil's rate of inflation is more than twice the central bank's target despite interest rate hikes.

In the first quarter, GDP shrank a revised 0.7 percent. A recession in Latin America's largest economy has long been expected. Falling demand for vehicles and other durable goods led the country's industrial production to drop sharply in the first half of this year after stagnating for years. A massive corruption scandal at state-run oil company Petrobras implicated some of the largest companies in the country's construction sector, paralyzing that industry. Consumer confidence has dried up, leading retail sales to fall. Unemployment has also been rising, and the annual rate of inflation is above 9 percent, more than double the government's target, despite interest rate hikes that have put the benchmark Selic rate at 14.25 percent, BBC News reported. Per capita incomes in Brazil have been declining since 2014, and prices for Brazil's commodities have been falling amid slower global growth. However, analysts told The Wall Street Journal that Brazil's biggest economic wounds were self-inflicted. "The vast majority of Brazil's problems were created at home, with the interventionist policy, the growth of the state, the lack of reform," Edwin Gutierrez, a manager of \$483 billion

in emerging-market debt at Aberdeen Asset Management, told the newspaper. Economists believe Brazil's economy will contract by as much as 2.1 percent this year and by 0.2 percent next year. Such an outcome would mark the first time that the country's economy has contracted for two consecutive years since 1930-1931. The downturn is a major disappointment for Brazil, which experienced average annual growth of 4 percent between 2002 and 2013. "What we're seeing now is a real reality check for Brazil, because we're seeing how it managed to sustain such high rates of growth during the commodities boom," Edward Glossup, emerging-markets economist at London-based Capital Economics, told The Wall Street Journal. "Now those props have been taken away. We're getting to the stage where Brazil will have growth of a very modest, low rate in the long term."

POLITICAL NEWS

Colombia to Offer Citizenship Amid Border Crisis

Colombia's government will offer citizenship to Venezuelan family members of Colombians who have been deported from the neighboring country, BBC News reported today. The government of Venezuelan President Nicolás Maduro recently deported more than 1,000 Colombians living on the Venezuela side of the countries' border amid a crackdown on smuggling in the area. The situation led to complaints that families were being split apart. Colombia's foreign minister, María Ángela Holguín, said her country's government wants to help Venezuelans who married Colombians move to Colombia. "We're going to give them Colombian citizenship, we want families to live together, not to break them apart," she told a Colombian radio station on Sunday. Maduro's government indefinitely closed a major border crossing following an incident earlier this month in which a civilian and three Venezuelan soldiers were wounded by smugglers.

NEWS BRIEFS

At Least 20 Killed as Storm Rakes Dominica

At least 20 people were killed as Tropical Storm Erika pummeled Dominica, the Associated Press reported Saturday, citing authorities on the Caribbean island. Another 31 were missing, officials added. The storm then drenched Haiti and the Dominican Republic early Saturday.

Guatemala's Congress Eye Vote Tuesday on Stripping President's Immunity

The head of Guatemala's Congress, Luis Rabbe, announced that lawmakers would decide on Tuesday whether or not to strip President Otto Pérez Molina of his presidential immunity so that he can be tried on corruption charges, the Associated Press reported today. This proposal would need two-thirds majority support in order to pass. On Saturday, a legislative commission recommended that Congress lift Pérez Molina's immunity from prosecution. This same corruption case led to the resignation and charges against Pérez Molina's vice president, while many other cabinet members have resigned.

Rolls-Royce Cooperating With Brazilian Authorities in Petrobras Graft Case

British engineering group Rolls-Royce said it is cooperating with Brazilian officials as they look into the company's possible bribery of Petrobras, Brazil's state-owned oil company, the Guardian reported on Sunday. The development is part of the massive corruption scandal that has implicated many top Brazilian public officials. The bribery allegations are not the first for the British company, which is currently facing bribery charges in Asia, as well. Word first came out of Rolls-Royce's possible involvement with the scandal in February, when a former Petrobras executive testified that the British company had given bribes to politicians and staff of the national oil company.

Scioli Widens Lead Ahead of Argentina's Presidential Election

Leftist Argentine presidential candidate Daniel Scioli saw an improvement in his poll numbers for August, though his margin over the second-most-popular candidate, Mauricio Macri, is not wide enough to avoid a runoff election, Reuters reported Sunday. A presidential candidate must receive either 45 percent of the vote, or 40 percent of the vote with a 10 percentage point margin over the runner-up in order to avoid a runoff in November. Scioli is a member of President Cristina Fernández's Front for Victory party, but unlike Fernandez, Scioli supports a more pro-market approach to policy and has vowed to make gradual



Macri // File Photo: Macri Campaign.

changes to move away from Fernández's more unpopular policies if he is elected. Macri is considered a more business-friendly candidate and supports more economically orthodox policies. According to the poll released Sunday by Management & Fit, Scioli and his vice presidential running mate, Carlos Zannini, have 39.3 percent support, while Macri and his vice presidential running mate, Gabriela Michetti, are favored by 31.2 percent of voters. The third place candidate and member of the Peronist party, Sergio Massa, has support from 18.3 percent of voters polled. The survey of 2,400 people was conducted between Aug. 20 and 26 and has a margin of error of plus or minus two percentage points. The first round of balloting is set for Oct. 25. [Editor's note: See [Q&A](#) on the election in the Aug. 3 issue of the Advisor.]

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of their customers' online activity in a secure environment for one year, but 'In any circumstance, the disclosure to the requesting party of the logs referred to in this article must be preceded by a court order,' that is, a warrant. 'The administrative or police authority or the public prosecutor may require precautionary keeping of connection records for longer periods...' But this also requires a court order. The Peruvian requirements for warrantless access to telephone records that have to be held for three years seems excessive, but mid-2013 Brazilian legislation requiring operators to maintain telephone call records for five years with warrantless access seem contradictory to the Internet law's stricter requirements. The constitutionality of these earlier laws has been challenged."

A **Wally Swain, senior vice president for emerging markets at 451 Research Mobility Team in Bogotá:** "One wonders if Peruvian legislators have been spending too much time on Netflix. In the 2008 comic-book movie, *The Dark Knight*, Batman orders Lucius Fox to tap every cell phone in Gotham City, turning on their microphones to listen into all conversations, not just phone calls. Fox reluctantly builds the system and the Joker's evil plans are thwarted, but both he and Caped Crusader have an attack of conscience and the machine is destroyed. There is a post-9/11 view that no investment is too large, no invasion of privacy too extreme in the cause of fighting terrorism and organized crime. Terrorism seems a remote threat in Latin America, but organized crime is an often crippling menace, as events in Mexico are unfortunately demonstrating. But real-time capture and storage of geolocation data is a huge task. Did anyone do the math? Where will it be stored? Who will pay for it? The U.S. National Security Agency is suspected of processing every e-mail sent anywhere in the world in massive datacenters. That is an expense that maybe

the United States can afford considering its more than 300 million citizens and over \$50,000 GDP per capita. But we doubt that Peru's 30 million citizens and just-under \$7,000 GDP per capita can absorb this, even

“ There is a post-9/11 view that no investment is too large, no invasion of privacy too extreme in the cause of fighting terrorism and organized crime.”

— Wally Swain

if the government sends the bill to the mobile operators. That is without touching the moral/legal/privacy argument. Even Batman decided he had gone too far."

A **Dardo López Dolz, president of PKS Consultores in Lima and former deputy interior minister of Peru:** "Peruvian intelligence services have been dedicating resources to monitoring the financial and private lives of the government's political adversaries. Nobody went to prison after a leak with a large list of illegal searches was made public (I myself have been illegally followed and investigated 12 times.) That said, it is highly dangerous to provide unrestricted access to a largely corrupt police force. Data could end up in the hands of criminals or be used for political intentions by government agents. A legally protected right to data privacy is not only about what we say, it's also about with whom we speak and where we are or have been before. A smart balance could be obtained if access to this data is clearly limited by law to a single specialized police unit with strict external control, working under dedicated judges and prosecutors. Additionally, this kind of access would provide

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telecommunications companies highly valuable data about behavior of its clients, giving them a tremendously unfair advantage over other companies."

A Erick Iriarte, principal partner and chief of information technology law at Iriarte & Asociados in Lima: "This is a regulation that will have dramatic effects, but unfortunately it's one that will not be effective, and even potentially a step back when considering respect for human rights. In simple terms, geo-location data under the new regulations can be obtained with no control under a prosecutor or judge, and data may be accessed through a simple request. However, the judge may revoke the use of the data but the data will already be in possession of the police. And what will they finally do with the unauthorized data? Who will store the data? What be the deletion log protocol? Who will have access to it? Not only to your smartphone, but any device connected to the telecom network that is geo-localizable, will be considered in this regulation. It is said that there will be a liaison unit to obtain the data, but there is no information on who will be authorized to access the data once it is delivered. The traffic data (who called, where did you call to, at what time, from which location) are

not considered private. Your call information will be stored for 12 months and telecommunications providers will have to store the metadata for 12 months, to be required at

“It is highly dangerous to provide unrestricted access to a largely corrupt police force.”

— Dardo López Dolz

any time by the police. The police have the discretion to decide when it is appropriate to use the data for investigations, in many cases. The telecommunications providers are not the problem at this point; they just want to avoid being sued afterwards for taking action without an order provided by a judicial or prosecution authority. If the government really wanted to do something useful about this issue, they would improve the procedures regarding coordination and communication between the police, the prosecutor's office and the judiciary."

The Advisor welcomes comments on its Q&A section. Readers can write editor Gene Kuleta at skuleta@thedialogue.org.

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