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Caracas, 5 December, 2005

Dear Sirs:

LATINLISTS

Atte: Mr Noel Poler

Ref: Privacy Opinion

Dear Mr Poler:

We are writing to you to give an answer to the request made about several aspects related to LATINLISTS performance. In this sense, we will provide an opinion on the following aspects: company activities from the point of view of capturing, handling and commercialization data, especially in regards to people's privacy rights whose information is included in the lists; to the possible impact that the client may have in regards to the data sources; and the adequacy of the commercial offers to applicable rules and regulations.

To elaborate the present opinion, an analysis of the following documents has been made:

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- a. Constitution of the Bolivarian Republic of Venezuela.
- b. Copyrights Law 2

- c. Ruling on Intellectual Property Rights and Regulation 351 of the Agreement Commission of Cartagena that contains the common Regime over Intellectual Property and related Rights 3;
- d. Messages Law of Data and Electronic Companies 4;
- e. Organic Law Telecommunications 5;
- f. Special Law on Computer Crimes- 6; y
- g. National and Internacional Doctrine and Jurisprudence.

Finally for better understanding of the points treated in the present opinion, it has been divided into 3 (three) chapters: (i) The right to privacy of the people whose information is included in the Database; (ii) The Database Ownership; and (iii) adequacy to the norms applicable in Venezuela of the commercial offerings of database.

The protection of personal data of the citizens and the fundamental rights to honor, privacy and communications inviolability are subjects that have been adequately developed by the doctrine, jurisprudence and legislation of the Latin American Countries, even if the compilation people's data could be used for political discriminatory practices,

1 Published in Official Gazette N° 5.453 on 24 March, 2000.

2 Published in Official Gazette N° 4.638 Extraordinary on, 1 October, 1993.

3 Decree 618 published in Official Gazette N° 4.891 Extraordinary on, 26 April, 1995.

4 Decree 1.204, published in Official Gazette N° 37.148, on 28 February, 2001.

5 Published in Official Gazette N° 36.970 on 12 June, 2000.

6 Published in Official Gazette N° 37.313 on 30 October, 2001.

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Religious, sexual o manipulated by illegal groups for terrorism, blackmailing or extortion.

In the Bolivarian Republic of Venezuela (hereinafter Venezuela) the protection to privacy, honor and the access to the information of the citizens (known as "Habeas Data") comprised in the article 28, 48 and 60 of the Constitution in force, pointing out:

Article 28. Everybody has the right to access information and the data that on him/herself or their property were listed in the official or private records with the

exceptions that are established by law, as well as to know what the information is going to be used for and why and to request the competent court the updating, rectification or destruction of those records, if they were mistaken or if they illegitimately affecting their rights. Likewise everybody will be able to access any kind of document that contains information whose knowledge will be of interest for communities or groups of people, with the exception of the secret of sources of journalistic information and other occupations determined by the law.

Article 48. The secret and inviolability of private communications is guaranteed in all its forms. Communications will not be interfered except with a court order, with the fulfillment of the legal dispositions and preserving the secret of what is private that does not relate with the corresponding process.

Article 60 everybody has the right to the protection of their honor, private life, intimacy, own image, confidentiality and reputation.

As it can be observed in the articles afore transcribed, the right to privacy of the citizens covers various spheres, it implies the access to the records where their information appears, the inviolability of private communications and the request for corrections of mistakes that appeared in the aforementioned databases, among other aspects.

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As far as the Constitutional Assembly of the Supreme Court, in recent jurisprudence has defined which are the rights that are developed in article 28 of the Constitution in force. They point out: To decide the Assembly observes: Article 28 of the Constitution in force establishes people's rights to know the information that about them has been compiled by others. Such norm reproduces a right recognized in various countries such as Sweden, Norway, France, and Austria, among others. The State as well as private people through different ways of compilation of data: manuals, computers, etc, register and store data and information about people, their property and considering that the compilation may affect their private lives, their intimacy, honor, reputation, their economic life and other constitutional values of private people or corporations, the Constitution to control such records, grants various rights to the citizens that are gathered in the aforementioned article 28. These rights are:

1) The right to know about the existence of such records.

- 2) The right to have individual access to the information, which may be nominative, or where the person is related to communities or groups of people.
- 3) The right to answer, which allows the individual to control the existence and accuracy of the information collected about him/her.
- 4) The right to know the use and purpose of the information by the person who records it.
- 5) The right to update, so that it can be corrected which could be inexact or which has been transformed by the passing of time.
- 6) The right to rectification of false or incomplete data.
- 7) The right to destroy wrong data or data that may affect illegitimately people's rights.

This right to privacy or habeas data is not meant to protect the interests of the administrators or proprietors of databases; on the contrary, its function is to demand the administrators the correct use of the information obtained. Nevertheless, it must be indicated that in Venezuela there is no law that legislates on the dispositions in the area of Databases and the right to habeas data of the citizens.

7 File: 04-0733, of December 7, 2004, Pedro José Cabellos Bonillo against the Police Information Center of the Body of Scientific and Criminal Investigation and Criminalistics (CICPC) Constitutional Remedy, Judge Rapportour Antonio García García

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The Intellectual Property Right Law and its Regulation only refer to the protection of the database as personal creations; however, they are silent regarding citizen's rights to request the rectification of the information contained in Databases.

As far as the Telecommunications Organic Law in its articles 12, 20 and 50 it ratifies the protection of personal data, and citizens' privacy regarding the use of the information that can appear in telephone guides, without mentioning the proceeding to carry out this protection.

Additionally, the special Law against Computer Crimes contains in its Title II, Chapter III, crimes against people's privacy and communications, pointing out privacy violation of data or information of a general kind, the reproduction or elimination of data messages or the unlawful disclosure of personal information.

The rest of the laws analyzed do not contain any mention in regards to the citizen's right to privacy. Other laws that are in force in the country only ratify the norm contained in these laws heretofore mentioned in regards to the citizens' private life. Thus the owner of Databases are in full liberty to dispose of any information obtained without limitations in respect to the way of acquisition of such information, if (i) such acquisition is not made through fraudulent means; and (ii) the information does not clearly invade or affect people's private life, honor, reputation or image.

From a different view point, we indicate that through the investigation performed in the Web we obtained a Preliminary Draft to the Bill of Data Protection and Habeas Data Law that would regulate 6 rights of the citizens to privacy and the way of obtaining information, the owner's rights of the data obtained, the data files records, the existence of a Control Organization and the procedures in case of administrative or criminal violations. Until the present opinion's date no notification has been obtained regarding the formation process of the Preliminary Draft to the Bill. In view of what has been expressed in this chapter, we can definitely conclude the following:

- 1) The Constitution in force in its article 28, 48 and 60 develop the principles that constitute the privacy right, honor, and the access of information of the citizens.
- 2) The Intellectual Property Law and its Regulation only make reference to the protection of the databases as personal creations; nevertheless, they are silent in regards to the citizens' rights to request the rectification of the information container in Databases.
- 3) LATINLISTS as owner and administrator of Databases has to use the information rationally; allowing citizens to have access to the information, to request its rectification or even to facilitate the removal of their file from the Database.
- 4) If LATINLISTS violates the citizens' right to privacy publishing false or inexact information or limiting its access to the information it may originate judicial actions against the company based on what is established in article 28 of the Constitution in force or it could be framed in any of the classified conducts as criminal in regard to the Special Law of Computer Crimes;

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- 5) Currently there are no norms that regulate how to execute this privacy right, to citizens' honor and access of information, there only exist a Preliminary Draft to the

Bill of Data Protection and Habeas Data that might regulate the citizens' rights to privacy and the ways of obtaining information, the rights to the owners of the data obtained, to the data files records, the existence of a Control Organization and the procedure in case of administrative or criminal violations.

(ii) Databases Ownership.

The Intellectual Property World Organization has defined databases as "...data compilations or of other materials, in any form..." protected when "...the selection or disposition of its contents constitute creations of intellectual character..."

The aforementioned has been accepted by the Intellectual Property Rights Law to protect databases as personal creations, nevertheless, we point out that this protection does not include data or material as such, or the citizens' rights that might be affected by the information contained in such databases.

Internationally, the concept of databases and their nature have evolved toward the granting of unique rights to their designers, in the sense of protecting the substantial investment, evaluated qualitatively or quantitatively, that their creators perform, be it financial means, time investments, efforts and energy to obtain, verify or present their contents.

Even in Europe there exist decisions of the Commission that regulate the transfer of personal data to a third country.

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In Venezuela, as we have indicated in chapter (i) of this opinion, there is no law that regulates databases of no original content in a precise way, as far as its scope and rights, except evidently the mentioned Intellectual Property Rights Law, regarding its qualification as a work of inventiveness different from the original work, as well as there does not exist a unique protection as the one which has been developed in the European Union. The aforementioned does not imply that a third party would not be able to make a claim when he or she is affected by the frequent substantial use of his or her unoriginal database. The substantial problem is limited to copy or transcription proof of the unoriginal database, on behalf of he who has been affected in possible judicial procedure. In the case of LATINLISTS, we consider that the best protection would be given by contractual regulation in cases of illegitimate use of databases by company clients. Actually, in spite of the actions that could be exercised in conformity with the Intellectual Property Rights Law to Project exploitation rights of

works of inventiveness, in the particular case of unoriginal databases, as there is no specific regulation, we believe that the major guarantees would be given by contractual treatment of the rights of use of the lists that LATINLISTS provides to his customers.

(iii) Adequacy in the commercial offerings of Databases to the legal regulations in Venezuela

Finally, after analyzing the points contained in the literals (i) and (ii) of the present opinion, we must indicate that LATINLISTS in handling and creating databases that are commercialized in the national territory has to recognize the right of the citizens in these respects, contained in the legislation in force, as well as those procedures that would be established by the Supreme Court while a Law is passed that develops the exercise of those rights.

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We ratify that the owner or administrator of a database has to have mechanisms for the citizens to have access, revise and may request a rectification or modification of the information that were registered. Thus the contracts that LATINLISTS celebrates with third parties must guarantee the constitutional principles expressed, to avoid the application of the penalties exposed in the present opinion.

As previously mentioned we expect to have given an answer to the concerns about this subject and we again make ourselves available to make any clarifications over any doubts that may arise over the particulars treated in the present opinion. We take advantage of the opportunity to thank the trust granted to us when submitting these matters to our consideration.

Yours Sincerely

José Vicente Melo Lopez Raif El Arigie H.

Gabriella Ducharne A.