



AMERICAS DIGITAL ECONOMY SERVICE

Monitors developments in digital economy regulation
in seven Americas countries

December 2016

SAMPLE

DIGITAL ECONOMY AMERICAS



ABOUT CULLEN INTERNATIONAL

Regulation made simple

Cullen International tracks, reports on and benchmarks competition law cases and regulation in four sectors – telecommunications, media, digital economy and postal - covering developments across Europe, the Americas, the Middle East and North Africa.

For almost thirty years, we have been providing comprehensive, neutral, unbiased, timely information that is trusted by industry and official institutions alike. We are widely recognised as the leading regulatory intelligence provider in the field.

Our services consist of a unique range of alerts, reports, benchmarks and enquiry services that are complemented by our training and consulting services. Our outstanding regulatory library contains over twenty-five years of source documents linked to expert analysis of events.

We are also regularly selected to carry out important research and studies for the European Commission and other organisations, and we are frequently sought out to chair or make presentations at industry events.

Our Clients

Cullen International is privileged to serve over 180 key market players and public organisations - all with a serious strategic focus on competition law or regulation in the telecommunications, media, digital economy and postal sectors.

These clients include operators, online service providers, broadcasters, equipment vendors, national regulatory authorities, competition authorities and ministries.

Strategically situated in Brussels, we are the eyes and ears on the ground for our clients, maintaining essential close links with all EU institutions, national regulatory authorities and our solid network of national regulatory experts in over fifty countries.

Cullen International in the Americas

Cullen International expanded its portfolio of regulatory intelligence services to Latin America in 2010, and to the US and Canada in 2016. Our Americas services, cover regulatory developments in the telecommunications, media and digital economy sectors, providing essential, timely insight into the region's ever-changing communications regulatory landscape.

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Cullen International

Americas Digital Economy Service

Sample December 2016



The service monitors developments in digital economy regulation in Argentina, Brazil, Canada, Chile, Colombia, Mexico, and the USA.

The service includes the following reports:

- **Cross-Country Analysis** - Comparative tables benchmarking specific regulatory topics in the seven Americas countries. Updated three times per year.
- **Flash messages** – News alerts summarising and analysing recent developments. Coverage: the above seven countries, plus, occasionally, other countries in the Americas. Issued shortly after the event has occurred.

Enquiry service - Customised research on specific regulatory questions at no additional cost.

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Cross-Country Analysis

Americas Digital Economy Cross-Country Analysis

Covering developments until November 29, 2016



E-COMMERCE

- Online consumer contracts
- Dispute resolution platforms over online sales
- Electronic signatures
- Online payment methods
- E-books and e-readers

OVER-THE-TOP (OTT) SERVICES

- Sharing economy

CLOUD

- Cloud Computing

PRIVACY AND SECURITY

- Personal data protection framework
- Reporting requirements for breaches of personal data
- Data retention
- Cybersecurity

INTERNET OF THINGS

- Internet of Things regulation

LIABILITY AND ROLE OF INTERMEDIARIES

- Liabilities of online intermediaries
- Child pornography – blocking requirements



Sharing economy

Nov. 29, 2016 - Carolina Limbatto

The 'collaborative' or 'sharing' economy is a new concept, brought forward by the creation of new (over the top) platforms in which entire communities share, buy, lend, give, rent, or swap services in areas such as, for example, transport, travel, retail, home services, real estate and accommodation. Although very popular among consumers, these platforms are often criticised by conventional actors since they do not have to comply with the same regulatory and fiscal obligations as them.

Europe

In June 2016 the European Commission issued guidance on how existing EU law applies to collaborative business models. The Commission is not planning any new regulation, but it made recommendations to EU member states on "*how to support a balanced development of the collaborative economy*".

The main issues addressed by the Commission regarded licensing requirements, consumer protection, liabilities of providers, and taxation.

In the meantime, the Court of Justice of the EU (CJEU) has been analysing whether Uber is providing an information society service, a transport service, or a combination of both. A ruling might be expected in December 2016. Should the CJEU decide that Uber is the provider of a transport service, it will be subject to transport legislation in the member states.

Americas

The debate on the collaborative economy in Latin America was mainly triggered by the entry of Uber into the major cities of the region. Controversy has mainly been around Uber-like and Airbnb-like services, and national and local government studies and decisions have been focused on trying to adapt regulation to these new forms of business.

In Argentina courts have banned Uber's services, but despite the ban Uber continues operating in the country. Mexico City has been the first city in Latin America regulating Uber services.

In Brazil Uber market entry was analysed by the competition authority CADE. In August 2016, Brasilia adopted the first law regulating Uber-like services in Brazil.

In North America, Canadian authorities have studied the sharing economy phenomenon, but regulatory debates are taking place mainly at the local level. In the US, the FTC published a report on the sharing economy in November 2016. Uber and similar services have so far faced challenges by local or state authorities.

National approaches on the sharing economy

Studies and/or laws/bills related to the sharing economy (Cullen International)

Countries	Studies	Laws/Bills
AR		
BR	✓	✓
CA	✓	
CL		
CO		✓
MX		✓
US	✓	

1. General overview

	Government report/study on sharing economy	Court rulings against/on online platforms	Current debates on the governance of these new platforms
BR	<p>Uber</p> <p>Two working papers about passenger transport (both by Brazilian Competition Authority CADE):</p> <ul style="list-style-type: none"> • Passenger transport market • Assessing Uber services impact <p>One opinion by the Brazilian Ministry of Finance (unit related to antitrust issues)</p>	<p>No. Every ruling against online platforms was overturned by an appeal court.</p> <p>Examples:</p> <ul style="list-style-type: none"> • Uber <p>São Paulo city: an injunction enabled Uber to offer its services, despite a municipal law that forbids Uber services.</p> <p>Rio de Janeiro city: an injunction enabled Uber to offer its services, despite a general municipal law from 2015 (regulating taxi services) and a specific municipal law (approved in November 2016) both forbidding Uber services.</p> <ul style="list-style-type: none"> • Whatsapp <p>Sergipe: A Brazilian appeal court ruled that WhatsApp should be back online approximately 24 hours after it was shut down due to an injunction requiring major telcos (Oi, Claro, TIM, Vivo and Nextel) to block it for 72 hours (Flash)</p>	<p>State and local governments are discussing how to regulate relevant companies (Uber and Airbnb, for instance).</p> <p>Uber</p> <p>- Pro Uber:</p> <p>Brasilia: Bill of law n. 777/2015. The first city to regulate Uber services through a law in the country (Flash)</p> <p>Sao Paulo city: Bill of law n. 421/2015 (an injunction enabled Uber to offer its services, despite a municipal law that forbids Uber services). Apart from that, the Sao Paulo Mayor signed a decree regulating Uber services. Uber (and competing companies) now must request a licence, provide information about rides and pay a fee for each ride (per km) to operate in the city. Applicable fee will vary according to the city zone, number of passengers and time (rush hour, for instance), among other criteria. Drivers will be registered by the City Hall. "Shared rides" (not for profit) won't pay a fee per km (but companies can still charge for intermediating them).</p> <p>- Against Uber:</p> <p>Sao Paulo state: Bill of law n. 1090/2015</p> <p>Curitiba city: Bill of law n.031.00058.2015 (approved, but recently vetoed by the Mayor)</p>

2. Examples of platforms available

	Hosting	Transport	Payments	Statistics on sharing economy
BR	Airbnb, couchsurfing, homeaway, house trip, Onefinestay, Roomorama and HotelUrbano	Uber, cabify, willgo, fleety, T81	PayPal, Google Wallet	A research by Cidade Colaborativa shows figures of sharing economy in a variety of areas, among them: mobility, shopping, culture, hosting/housing, education and work.



Internet of Things (IoT) refers to the interaction of connected devices and objects and their collection, process and transmission of relevant data.

Although the IoT presents interesting consumer and industrial benefits in many areas, such as health or energy administration, there are regulatory implications which are currently under debate.

The main regulatory issues concerning the IoT are currently related to privacy and security. Other aspects of relevance include spectrum, numbers, and IP addresses, amongst others.

Americas

The US has started a specific debate on IoT needs and implications. No specific rules or decisions concerning IoT have however been adopted so far. The Federal Trade Commission (FTC) published Report on IoT in 2015. The FTC raised three main issues as the main concerns for IoT service development: privacy, security, and consumer choice.

In addition, the FCC recently decided to allocate above 24 GHz spectrum for licensed, unlicensed, and shared use, including for 5G network deployments.

In Canada no studies or regulatory initiatives on IoTs have been undertaken so far.

Brazil, Chile, and Colombia are the countries in Latin America addressing IoT in their agendas, although no official position has been issued by the government or the respective country regulators.

Brazil is working on a M2M communication plan, whereas in Chile the regulator has begun specific training on these issues for its employees.

In Colombia the spectrum management authority ANE doubled the spectrum available for free use recently, including higher and lower bands, expecting that these frequencies may boost innovation and the IoT.

Europe

The EU Commission envisages that Europe may become a leading region in IoT products and services based on three principles:

- A single market for IoT: IoT devices and services should be able to connect seamlessly and on a plug-and-play basis anywhere in the EU, and scale up across borders.
- A thriving IoT ecosystem: Open platforms should be promoted that can be used across IoT applications as these will help developer communities to innovate.
- A human-centred IoT: The IoT in Europe should be based on European values, notably high standards for the protection of personal data and security.

The main regulatory action targeting the IoT to come from the Commission will be an initiative that will address emerging issues in relation to data ownership, access and liability that are important for the roll-out of the IoT. A proposal is expected in 2017.

	Specific laws or regulations on IoT ?	Licence requirements for IoT providers	Specific resources allocated for IoT			Any statistics / studies on the current 'reality' of IoT in the country?
			Spectrum	Numbering resources	IP addresses	
CO	Yes Colombian ICT regulator, CRC, published a consultation document on public policy and regulatory measures to promote the development of the Internet of Things (IoT) (Flash).	Unregulated	Yes The National Spectrum Agency (ANE) issued resolution 711/2016 which doubles spectrum availability (from 20 GHz to 40 Ghz) for unlicensed use, in order to meet the future needs of IoT. ANE also sets technical recommendations regarding unlicensed use of spectrum for IoT (Flash).	No	No	Yes CRC: <ul style="list-style-type: none"> • is consulting on the measurement of the digital economy (Flash) • proposed to continue with the analysis of indicators in 2018 (Flash) Qualcomm-IDC measure the QuSI Index that measures information and communications technologies' adoption by people, companies and government. The consultation on IoT regulation includes data from Qualcomm-IDC Study (Flash).



Personal data protection framework

Nov. 29, 2016 - Carolina Limbatto

All countries in the Americas have privacy and/or data protection frameworks.

Mexico adopted its Federal Data Protection law in 2010, while Brazil introduced its Internet Law ('Marco Civil') in 2014. The Brazilian internet law introduced fundamental rights for individuals in the use of the internet, as well as data retention and data protection obligations on telecoms providers and ISPs.

Canada has two different data protection frameworks, with different obligations respectively imposed on public and private organisations, while the US has no single, national legislation comprehensively regulating the collection and use of personal data. In addition, two separate consumer protection frameworks currently apply, depending on whether personal data are collected by common carriers and ISPs (both currently regulated by the FCC) or other entities, including among others OTT providers (regulated by the FTC).

Argentina's data protection law dates back year 2000, while Chile and Colombia revised their respective data protection frameworks quite recently.

Enforcement

Sanctions and other corrective measures apply in all countries in the Americas. Among the monitored countries, Chile is the only one where enforcement of the data protection law is mandated to judicial authorities and not also by dedicated administrative authorities.

Enforcement of data protection laws: relevant authorities
(Cullen International)

AR	Ministry of Justice and Human Rights
BR	Anatel, Senacon, CADE
CA	Office of the Privacy Commissioner of Canada
CL	None Judicial enforcement
CO	SIC and SFC
MX	INAI
US	FTC, FCC

Personal data protection framework						
	National data protection law	Main obligations regarding personal data collection, storing and use	Who is subject to these obligations? Any exemptions?	Any regulation regarding transferring personal data to other countries?	Authorities in charge of enforcement	Sanctions in case of non compliance
US	<p>There is no single, comprehensive federal law regulating the collection and use of personal data nationwide. The US has a system of federal and state laws and regulations that sometimes overlap.</p> <p>The main federal privacy law is the Federal Trade Commission Act (FTCA).</p> <p>In 2016 the US regulator, FCC adopted a new privacy and data protection framework that applies privacy requirements of Section 222 of the Communications Act.</p>	<p>Under the FTCA institutions can not disclose non public personal information to a non affiliated third party unless the consumer has been notified, and has given some form of consent.</p> <p>Notification procedures and type of consent vary.</p> <p>Under the new FCC privacy rules, ISPs must notify customers about the collection, processing and sharing of their personal data.</p> <p>Use of non sensitive information strictly needed for service provision is allowed.</p> <p>Other forms of consent:</p> <p><i>Opt-out</i> – use of non sensitive individually identifiable consumer information, for marketing other communications-related services</p> <p><i>Opt-in</i> – use of sensitive personal data – incl. geo-location data, children's, health-related, financial, web / apps usage history, content of communications. (Flash)</p>	<p>The FTCA is generally applied (along with other federal and state laws) for consumer privacy protection in general. It prohibits unfair or deceptive practices and has been applied to offline and online privacy and data security policies.</p> <p>The new FCC privacy and data protection rules apply to common carriers as well as to fixed and mobile broadband service providers.</p>	<p>Yes</p> <p>The US is part of the US-EU Privacy Shield, the new EU-US framework allowing EU-US transfers of personal data to companies that have adhered to its principles (Flash).</p> <p>In 2016:</p> <ul style="list-style-type: none"> the EU Commission adopted the adequacy decision that incorporates into EU law the EU-US Privacy Shield Principles; the US Congress enacted the Judicial Redress Act, giving Citizens of 'designated foreign countries' (including EU citizens) the right to seek redress in US courts for privacy violations when their personal information is shared with law enforcement agencies. 	<p>The FTCA is enforced by the Federal Trade Commission (FTC). The FTC has brought many enforcement actions against companies failing to comply with privacy policies and for the unauthorised disclosure of personal data.</p> <p>The new FCC privacy and data protection rules are enforced by the FCC. However, the rules do not regulate the privacy practices of websites or apps, such as Twitter or Facebook, over which the FTC has authority.</p>	<p>Yes</p> <p>Fines or up to 5 years imprisonment depending on the infringement and enforcement authority.</p>



E-books and e-readers

Nov. 29, 2016 - Carolina Limbatto

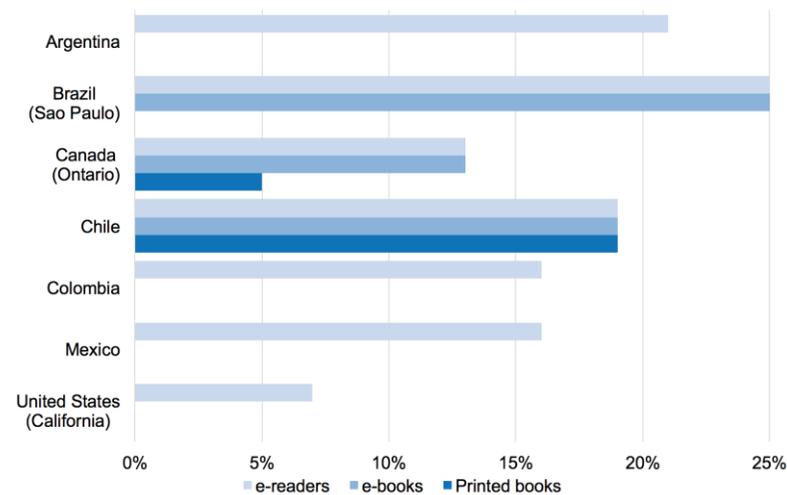
As part of their education policies, several countries in the Americas have adopted fiscal incentives on the purchase of books. Some countries have been adapting their policies by extending tax exemptions also to the purchase of e-books.

Chile is the only country where no tax exemptions apply, and general VAT applies to printed and electronic books, as well as to e-readers (i.e. devices exclusively used to read e-books).

In Brazil, fiscal exemptions currently apply to printed books. E-books are subject to retail taxes (defined at the State level). In the US and Canada sales taxes are also set at the State level. In some US states printed and electronic textbooks are tax exempt. In Canada certain provinces apply a lower tax.

In Argentina, Colombia and Mexico both printed and electronic books are VAT exempt. General VAT is applied, instead, on e-readers.

Retail taxes on books, e-books and e-readers (Cullen International)



	Is there a specific policy or regulation on the use of e-books in the country?	VAT and/or other taxes applicable to			Is there any specific copyright regulation for digital readers and books?
		Printed books	e-books	e-readers (i.e. devices such as kindle)	
CA	No	<ul style="list-style-type: none"> Goods and services tax Provincial tax Harmonized sales tax may apply. <p>For printed books there are currently exemptions in certain provinces, for example in Ontario, where the total tax is of 5% instead of 13%.</p>	<ul style="list-style-type: none"> Goods and services tax Provincial tax Harmonized sales tax may apply. <p>In certain provinces exemptions also apply to e-books. For example in British Columbia both are provincial tax exempt.</p>	<ul style="list-style-type: none"> Goods and services tax Provincial tax Harmonized sales tax may apply. <p>No exemptions.</p>	No



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