INTERNATIONAL ASSOCIATION OF ENTERTAINMENT LAWYERS

Nationalism vs Globalism: Regional and Transnational Legal Issues Reshaping the Entertainment Industry.

Edited by William Genereux & Marijn Kingma



Message from the President: Jeff Liebenson



Welcome to our 2021 IAEL book. The topic of Nationalism vs Globalism has exceeded my expectations, even covering issues arising from working during a pandemic.

We can only hope that the devastation the pandemic has brought across the globe will subside and we will once again meet in France in next June for our annual IAEL meeting during Midem.

The ongoing relevancy of the topics in the book reflects the world we live in today as the rise of nationalism separates countries and globalization brings them together. While the book focuses on digital and other entertainment deals crossing borders, it also addresses what legal needs still should be considered on a national or country-by-country basis.

I want to thank Marijn Kingma from The Netherlands and William Genereux from Canada, our co-editors who have brought their experiences from where they live and their legal expertise to life in this book. Our contributors from around the world illuminate these developments from their own perspectives which inform their articles.

Thanks to Duncan Calow and Marcel Bunders for your continued support, guidance and humor with respect to the many adversities we have weathered these past two years.

Our hope is that exploring these legal trends will help us in guiding our clients to deal with our multicultural world of entertainment law, notwithstanding the nationalistic urges of our time. Perhaps this mirrors our IAEL meetings with members from around the world enjoying our different cultures and coordinating our common interests.

We hope this book furthers that spirit, our 35th annual book published by the IAEL, Nationalism vs Globalism: Regional and Transnational Legal Issues Reshaping the Entertainment Industry.

Editors' Introduction: William Genereux & Marijn Kingma





When we had our last IAEL General Meeting in June 2019, we could not have foreseen we would not be able to come together in Cannes for the next two summers – or that as a result of a pandemic we would not be publishing the entire book until well into 2021. We also could not have foreseen how relevant the topic of our book would turn out to be. Over the last year and a half we have been on a global rollercoaster ride and it has become more clear than ever that we do not live in separated worlds, and that national borders do not mean anything when push comes to shove. We have also learned that global efforts are needed to solve global problems. Many countries came together to find the vaccines needed to get us out of this situation. The COVAX program is trying to provide global equitable access to vaccines so that not just some countries, but the whole world can hopefully return back to normal soon. Hopefully we will learn from this experience for that other, even more pressing, global emergency: climate change.

Although it was a difficult decision to postpone the release of our book last year, we believe it was the right decision. It gave us the opportunity to include additional contributions dealing with the impacts of the pandemic on the entertainment industry and take a look at how to move forward. The chapters that were written last year have been updated, resulting in a comprehensive publication that we believe was worth waiting for.

The chapters in this year's IAEL book explore the longstanding conflict between nationalism and globalism as it relates to the entertainment industry. Originally we had intended to use the term "globalization" in the title rather than globalism. That probably would have been more correct, insofar as globalization is a word used by economists to describe a process by which businesses or other organizations develop international reach or increase the international scale of their operations. Globalism, on the other hand, tends to be more of a raw, emotional, political concept. It describes a potential threat that can be rallied-against. It's often rejected by nationalists, conspiracy theorists and indeed anyone who might be content to sit in their own backyard and let the rest of the world be damned. It's used often in a defensive way – to describe existential threats that are perceived to have been created by others, like having rules or market forces emanating from outside our own borders that nevertheless come to affect us.

We decided to go with the more difficult word, globalism, because it more accurately describes the zeitgeist of our times. Our entertainment industry already is global, and international trade, which is what globalization is all about, has been occurring and disrupting markets since at least the early days of spice trading thousands of years ago. Now of course the Internet allows us unprecedented new types of access to foreign markets and the promise of having our services and products seen, heard and used by countless millions of others. This development has moved up a gear due to the pandemic. But here's the thing, there are a lot of vested interests that get in the way. The forces of disruption invariably leave footprints across the backs of incumbents. There usually are winners and losers, and even the venue where this all happens – our planet Earth – becomes a stakeholder as we take environmental issues into consideration. The discussion about what's best for the entertainment industry moving forward becomes nuanced, because it's not simply about changes that make things cheaper, faster or most transparent. Folded into the discussion are issues about people, culture, autonomy, stability, flexibility, privacy, freedom and sexuality. The tension between all these forces is beguiling. It makes for interesting reading but leads to much deeper conclusions. One region or territory might want to defend its culture from being diluted by outside influences, yet might want that same culture to find an audience abroad. A territory or region might enact laws that purport to have transnational reach, yet this might directly encroach on the sovereignty of others. Our willingness to embrace change is tempered with fears of losing the status quo. Ultimately, these are

all political issues laced with policy considerations that demand to be understood.

The 2020-2021 IAEL book examines an array of regional and transnational forces that currently are shaping the entertainment industry. Chapters have been subdivided into three major categories, as shown in the table of contents. The first category focuses on issues in specific jurisdictions and markets. The second attempts to map-out the expansion of regional forces into wider applications. The third seeks to bring a holistic view that reconciles many of the vital issues affecting the industry at large, and which are shaping our future world.

The first part of the book focuses on regional issues and differences. This part includes articles on sometimes underexposed but increasingly important markets: India and Nigeria. A contribution from Italy focuses on documentary films and cultural heritage, and the viability of specific Italian legislation in the light of Europe's DSM Directive. There are several articles about major legislative developments in the U.S. and the EU, including the U.S. Music Modernization Act and the EU Audiovisual Media Directive. A comparative contribution from three of our authors describes the limitations and exceptions to copyright in three major territories: the EU, the U.S. and Asia.

The second part of the book shows that regional developments can have global consequences. The GDPR, for example, has left its marks all around the world as countries are adapting their data protection legislation to keep up with Europe's strict rules. The infamous article 17 of the EU DSM Directive is bound to have an impact on the rest of the world. These global influences of regional legislation are discussed in this part of the book. This chapter also looks at the global impact of new technology and new industry economics. Important issues that are discussed include licensing in the age of globalization, how to deal with aggregators, and new types of platforms. And let's not forget something that we all have in common: paying taxes. A contribution from the Netherlands looks at the influence of globalization on international tax principles. Finally, we have an article that focuses on jurisdiction of U.S. courts. Under what circumstances can a non-U.S. entity be hauled into a U.S. Court thousands of miles away to defend itself under United States law?

The third part of the book takes a look at some of the broader social and environmental issues of our current and future world. A contribution from Denmark discusses the changing expectations for artists as global role models. Another article looks at the (im)possibility to regulate fake news and political advertising on social media platforms. We also have a very helpful contribution on transgender music artists and the legal issues they encounter. We are also very pleased to have an article on what is no doubt the biggest challenge of our times: global warming. And then there are pandemic-related chapters that we never thought we'd be writing about. They are intended to provide useful information. There's information on data protection laws and privacy from the perspective of several different global regions, and there's information on how the pandemic has affected contractual relations. We also have chapters looking at the effect of the pandemic on future of the entertainment market, such as the acceleration of the shift to streaming and the changed relationship between brands and customers. As the global entertainment industry becomes more entwined, we believe these topics are instructive for everyone in all regions.

We would like to thank IAEL's president Jeff Liebenson for his time, effort and leadership as we've planned, changed our plans, planned again and finally executed on the making of our book. We would also like to thank Janneke Popma, associate at Höcker, for her indispensable organizational skills. Additionally, the authors all need to be recognized for their creativity, diligence and flexibility. A lot of energy that could have been directed toward remunerative, billable work instead has been gifted to us all, so that we can see the issues in their chapters through their specialists' eyes. Without the generosity of all the contributors this book could not have happened. Thank you everyone.

Finally, to quote Vera Lynn who passed away last summer at the respectable age of 103: we'll meet again.

William Genereux & Marijn Kingma

The Processing Of Sensitive Personal Data In Latin America And The Covid-19 Pandemic:

How Data Protection Concerns Will Impact The Media And Entertainment Industry





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1. Introduction

2018 was the ultimate year of "techlash"[2]: the contemporary term coined by "The Economist" in 2017 that represents a turning point for companies whose core business relies on technology. That is, in order to remain competitive and attractive to customers, they will have to adapt to the new privacy and data protection scenario by providing transparent and open clarification improvements to their privacy tools and practices. 2020 on the other hand, as a result of the covid-19 pandemic, was the year that highlighted the importance of cybersecurity and data protection, especially due to the collection, use and potential exposure of health-related data to mitigate the spread of covid-19.

Within this context, the impacts of covid-19 have far-reaching effects on the media and entertainment ("M&E") industries, mainly by virtue of changing behaviours, which included the boosting of TV and streaming services and, on the other hand, the severe drop on live events' attendance, considering the social-distancing measures adopted by governments worldwide. Also, it is expected that individuals might continue to avoid mass gatherings after covid-19 restrictions are lifted, so companies will need to start planning how to continue and adapt their activities around different levels of attendance and production costs, while adopting higher safety protocols.

Beyond that, most movie and TV productions have been suspended, which is creating a potential gap or "dark period" that companies will be forced to address in terms of content and distribution strategy. Moreover, this shift will also involve the need to require health-related data from actors and production teams to resume movie and TV production[3].

However, the bright side is that the M&E industry is well known for dealing with disruptive events – even before the covid-19 pandemic (i.e., Netflix recreated the way we watch motion pictures; Spotify changed the way we listen to music). Bearing that into consideration, a study conducted by IBM[4] points out that companies must also adopt a disruptive approach to the post-covid-19 world, by developing or expanding three capabilities: (i) digital and agile services, that is, create new digital and mobile services and revenue streams, for example, by digging deeper into studio archives and creating original digital content and services using existing material; (ii) building smarter operations by transforming business processes into a digital data-driven operating model, based on intelligent workflows powered by artificial intelligence, automation, cloud services, amongst others; and (iii) establishing deep consumer engagement, so that M&E companies start building personalized platforms and capabilities.

The M&E industry will also face a new issue when resuming live and present events, that is, how to ensure that all individuals will be medically safe and how to avoid the risk of contamination by covid-19. The most likely solution to that problem will be to ask attendees or personnel to prove they have been vaccinated for covid-19 to attend live events, or to undergo testing for covid-19 prior to the entrance of live events.

However, those measures directly involve data protection, since, for the purpose of proof of vaccination, or to demand covid-19 tests, sensitive personal data (data concerning health) will be processed and, thus, the event producer will have to adopt a legal basis foreseen in the data protection regulation applicable in the country where the event will take place, to have proper legal grounds for the activity. If sensitive health data is shared, or transferred to other processors or to other countries, participants will need to be informed in advance.

In response, companies have been developing rapid screening testing services facilities to detect covid-19, which should benefit event organizers throughout the world. The new service, which can already be found in the United Kingdom , for example, and in Singapore[6], can enable large-scale gatherings and events to be held in a covid-secure environment. In Singapore, results of antigen rapid tests could be out within 30 minutes and the tests can be conducted at the event venue or off-site at a separate testing facility; for tests done off-site, attendees must produce a certificate showing a negative test result, which is valid for a 24-hour period, that includes the duration of the event[7].

All that said, this brief article aims at answering the following question: considering the impacts stemming from the covid-19 pandemic in Latin America, and the relevance of the media and entertainment industry for our society and the expectation to resume live events, will M&E companies be obliged to collect consent from events' attendees demanding proof of vaccination, or to require attendees to undergo covid-19 testing?

For the purposes of responding this question, this article will explore (i) how Latin American countries, especially Mexico, Argentina, Peru and Brazil, are dealing with the need to collect consent prior to the processing of health-related data; and (ii) how M&E companies would have to proceed in Brazil, under data protection regulations, when seeking health-related data prior to staging a live event.

To conclude, we will address the fact that, notwithstanding the argument that obtaining the attendees' consent would be the safer choice, it can also be burdensome; thus, the Brazilian General Data Protection Laws offers a second alternative, which would not require consent, but rather the need to protect the life or physical safety of the data subject or a third party, making tests mandatory.

2. Consent For The Processing Of Covid-19 Sensitive Personal Data In Latin America

Countries in Latin America have demonstrated their concern with regards to the protection of personal data, as most of those countries already rely on specific legislation on the matter. With the coronavirus pandemic situation, processing of personal data both by public and private entities has become critical, since health-related data, such as covid-19 exam results or information regarding vaccination, when combined

with information capable of identifying an individual, are deemed as sensitive personal data by all data protection laws which will be analysed in this article.

First, it should be noted that the processing of sensitive personal data demands special attention of data controllers, as said types of information may be used for discriminatory purposes, which is expressly prohibited by all privacy and data protection regulations hereby considered. Also, from a labour perspective, the processing of sensitive personal data of employees is a delicate matter, which peculiarities must be carefully observed by employers, on account of the power dynamics in employment relationships. That said, we will then present how processing of sensitive personal data is regulated in Argentina, Peru, Mexico and, in part 3, in Brazil.

The Argentinian Personal Data Protection Law (Law No. 25,326), for instance, was enacted on October 4, 2000 to set forth the principles and conditions related to the processing of personal data in Argentina.

In this sense, the abovementioned law establishes that personal data shall only be processed without data subjects' consent in the following circumstances : (a) if data is obtained from sources of unrestricted public access; (b) if data is collected for the exercise of functions proper to the powers of the State or by virtue of a legal obligation; (c) if data is limited to name, the national identity card, tax or social security identification, occupation, date of birth and address; (d) if data derives from a contractual, scientific or professional relationship of the data subject, and is required for its development or fulfilment; (e) if data concerns operations carried out by financial institutions and information they receive from their clients in accordance with the provisions of the law.

Nevertheless, when the processing of sensitive personal data is involved, the law expressly states that no one shall be obliged to provide such type of information, except when it is necessary for reasons of general interest, and provided that it is authorized by law, statistical or scientific purposes, if duly anonymized .

Furthermore, in the context of the current health crisis, the Argentinian Access to Public Information Agency has issued specific guidelines indicating the criteria to be adopted in the processing and sharing of personal data related to an individual's vaccination status[10]. Thus, it will only be possible to handle said type of data, in an identified format, by means of a free, informed and express consent from the data subject.

Similarly, the Peruvian Data Protection Regulation (Law No. 29,733), which was enacted many years later, on July 3rd, 2011, also provides for hypotheses where it is possible to process personal data without consent. In fact, the Peruvian Law provides the data controllers with even more circumstances in which personal data may be processed without prior consent, such as to safeguard the legitimate interests of the data subject or to prevent terrorism financing[11].

However, when it comes to the processing of sensitive personal data, it will always be necessary to obtain the data subject's consent, except if specifically authorized by law and if it is in the public interest. It is also worth mentioning that the consent obtained to enable the collection of exam results, for example, is even stricter than in other regulations, as it is mandatory that said consent is obtained from the data subject in writing.

In the same sense as the Argentinian Authority, the Peruvian Authority issued a press note on March 12th, 2020 stating that data subjects' consent is always mandatory when sharing information on the diagnosis of covid-19 infected individuals. Therefore, it is important to assure that sensitive personal data is not being shared with unauthorized entities, especially because the illegal sharing of covid-19-related information could result in fines up to 215,000 Soles (approximately 58,964 US Dollars)[12].

In Mexico, the processing of personal data is ruled by two distinct regulations, one specifically directed to the public sector, that is the Federal Law of Transparency and Access to Public Governmental Information, and another specifically directed to the private sector, that is the Federal Law

for the Protection of Personal Data in Possession of Private Parties.

Since this article exclusively addresses the matters relevant to the processing of personal data by the M&E industry, only the law relating to the processing of personal data by private parties will be discussed. In this sense, establishing a comparison with the Argentinian and the Peruvian legislation, the Mexican Law also requires the collection of data subjects' consent with regards to the processing of sensitive personal data.

The abovementioned law also sets forth several situations in which the authorization of the data subject is not necessary for the processing of personal data by private entities. Equally to the Argentinian and the Peruvian laws, the fulfilment of obligations arising from a legal relationship between the data subject and the data controller is also deemed a legitimate legal basis in the Mexican data protection legislation. It should be noted that the processing of personal data in emergency situations, in which there is a potential harm to data subjects or to third parties, is also allowed[13].

The Mexican law brings two different types of consent: (i) tacit and (ii) explicit. As in the other regulations herein discussed, the transparency to data subjects is mandatory and a key principle for all data processing activities, therefore, individuals must be duly informed about the processing of their personal data. Nonetheless, in Mexican Law, if a privacy notice has been made available to the data subject and there is no objection, the consent obtained is considered tacit. This is not applicable, however, to the processing of financial and patrimonial data, cases in which the explicit consent of the data subject will be required[14] and, specifically regarding sensitive personal data, an explicit and written consent will be required[15].

In observance of the regulations described above, as a rule, companies, including those that belong to the M&E industry, will have to obtain data subjects' prior consent to collect health related data in the abovementioned countries. In any case, it is worth mentioning that, besides establishing the legal bases for the processing of personal and sensitive data, it is crucial to observe the data protection principles, especially regarding transparency. Thus, data subjects must always be informed about the purposes and forms through which processing will be conducted.

3. Legal Bases For Processing Sensitive Personal Data In Brazil

Data protection and privacy laws are relevant to support rapid responses to stop the spread of the coronavirus. An important response to limiting the spread of the infection is the practice of identifying and monitoring anyone who may have been in contact with an infected individual, and this necessarily involves obtaining and potentially sharing personal information, including data about an individual's health, which is considered sensitive personal data in Brazil.

Yet, as seen in the previous topic, data protection regulations in Latin America are not unison regarding the processing of personal sensitive data, which is the reason why we will, hereby, address how M&E companies would have to proceed in Brazil, in a data protection effort, when asking health-related data before staging a live event or conducting any other type of crowding. Before, however, we shall take a few notes on the Law that regulates data protection in Brazil, as follows.

The Brazilian Data Protection Law (Law No. 13,709/18 or the "LGPD") entered into force on September 18th, 2020, with the exception of the administrative sanctions, which will only be effective as of August 1st, 2021, as per Law No. 14,010/20. In spite of the fact that the sanctions are not yet enforceable, the LGPD has been currently used to enforce data subjects' privacy rights by a number of consumer protection bodies (PROCONs, for example), the Federal Prosecutor's Office in Brasilia (through an Especial Unit for Data Protection and Artificial Intelligence) and by lower courts in Brazil. Thus, companies and individuals collecting and processing personal data (and sensitive personal data) in Brazil[16] necessarily need to abide by the rules of the LGPD as of now.

At the outset, it is also important to note that the rights of data subjects and the principles of the LGPD shall be at all times observed; in other words, personal data - including the data processed for health purposes - should be processed only when strictly necessary to achieve specific purposes and for the benefit of the individual and/or the society. Thus, the processing of health-related data should not result, for example, in the data being processed for other purposes or shared with third parties, including by employers themselves or by insurance companies.

That said, as a result of the potential harm to the data subject arising from the misuse of sensitive personal data, the processing of said data is subject to a more restrictive regime in the LGPD[17], according to which entities, including media and entertainment companies, would have two options when processing data related to the data subjects' health: (i) obtaining specific and express consent from the data subject - or the data subject's legal representative - for specific purposes[18]; or (ii) without consent from data subjects, in the situations when the processing is indispensable for protecting the life or the physical safety of the data subject or a third party[19].

Regarding scenario (i), the M&E company, when obtaining consent from the data subject, must consider the following guidelines prior to requiring the proof of covid-19 vaccination or to demanding covid-19 testing, given that the company itself, as controller[20] of the data, will bear the burden of proving that consent has been obtained in accordance with the provisions of the LGPD:

- consent should be an informed, unambiguous, and free indication of the data subject's agreement for processing their personal data for a specific purpose, thus, generic authorizations for the processing of personal data shall be deemed void;
- valid consent must be given explicitly, via opt-in mechanisms, if applicable;
- the data subject is entitled to receive information on the possibility of not giving consent and its consequences;
- where consent is required, it should be given prior to the processing of personal data, in writing, or by other means that clearly indicate the agreement of the data subject;

- in the event the consent is given in writing, it shall be presented in a section or clause apart from all other contractual clauses;
- consent may be withdrawn by the data subject at any time, by means of a free and facilitated procedure;
- when given by a parent or legal guardian, the data controller shall use all reasonable efforts to confirm that such consent was given by the actual person responsible for the child, considering the available technologies; and
- personal data can never be processed for a discriminatory purpose, and even when processing is validly consented to by the data subject, the controller must still ensure that all other principles and rights set forth in the LGPD are being observed.

Considering that the use of health data in the case at hand does not fit the hypothesis of developing public policies or studies by a research entity, or even of protecting the individual's health in a procedure carried out exclusively by a health professional or a sanitary authority, which would be the most common cases to process health data, obtaining the data subjects' consent may be seen as the safest approach. Under this scenario, an M&E company would have to previously inform and obtain express consent from the data subject regarding the need to present proof of vaccination before entering or registering to an event, for instance, following the guidelines presented above; or, under the same rationale, the data subjects should be informed about the fact that, before entering the event, they will need to undergo a covid-19 test, and expressly consent to the undertaking of the procedure.

In said cases, opt-in, when available, is the best practice advisable for all organizations to adopt. It is paramount for consent to be valid, that the data subject fully understands that their action will be taken as consent, and exactly what they are consenting to. There must be a clear and prominent statement, apart from a general privacy policy, explaining that the positive action of 'ticking the box', for example, indicates consent to providing proof of vaccination or to undergo covid-19 testing.

"In light of the guidelines for valid consent as highlighted above, consent may be a burdensome legal basis to substantiate the processing of covid19-related personal data"

Note that the necessity of providing information to the data subject should not be confused with the need for consent as a legal basis for processing. Any processing activity, regardless of the legal basis that substantiates it, must offer data subjects with clear information on the processing activities that will be carried out by the controller, for instance, in order to enable the provision of services or goods they have requested.

In light of the guidelines for valid consent as highlighted above, consent may be a burdensome legal basis to substantiate the processing of covid19-related personal data, which is the reason why one can also sustain the processing of said data under the legal basis of protecting the life or the physical safety of the data subject or a third party may be more feasible.

The protection of the life or the physical safety of an individual will only be applicable in connection with serious issues that actually and presently endanger the life or physical integrity of the data subject. In view of this, said criteria is extremely restrictive and will only take place in a very limited range of scenarios[21]. In the view of the authors, said limited scenarios include the demand of presenting proof of covid-19 vaccination or testing for covid-19, prior to the staging of an event by an M&E company.

It is important to note that, even though consent would be irrelevant when processing health data under the legal basis of protection of life or physical safety of the data subject, the M&E company would still need to inform the data subject about the purpose, form and duration of the processing, prior to the processing, with no exemption of the other principles and rights foreseen by the LGPD, including safety technical measures to avoid data breaches.

Beyond that, the M&E company will have to be certain about the timeframe during which it will retain the data subjects' medical data; hence, it will have to provide information the data subject on how long it will store the proof of vaccination or the results of the covid-19 testing, under which legal grounds and where those documents will be retained (i.e., if in a cloud system or if in a physical storage). At the end of the processing, that is, as soon as the purpose of processing reaches its goal, the data shall be eliminated or anonymized, following the provisions of LGPD. Also, note that the communication or shared use of sensitive personal data referring to health between controllers (or between M&E companies, i.e.) in order to obtain an economic advantage is prohibited, except in hypotheses related to the provision of health services, pharmaceutical assistance and health insurance[22].

Therefore, as demonstrated above, M&E companies in Brazil may require proof of vaccination or request attendees and personnel to undergo a covid-19 test, prior to staging live events, whenever they are able to prove that one of the presented legal bases were complied with, either consent (more conservative approach) or the protection of life or physical safety of an individual (more flexible approach), with no exemption of the other duties and guarantees provided for in the LGPD. It shall be highlighted that, in both cases, the data subjects have the right to refuse to provide their health data and, as a consequence, may be prevented from attending the event.

Notwithstanding the above, it is worth noting that there is an undeniable need to balance personal privacy with the public interest, and the collection and processing of health-related personal data within the covid-19 pandemic raised many discussions around data protection limitations. At the same time, the increasing use of AI and big data to handle the covid-19 outbreak have required a responsible and limited collection and use of data during this public health crisis, in order to prevent violations of individual's fundamental rights.

On the same note, and to conclude our analysis, it is worth pointing out that the Brazilian Data Protection Law has an important exception to its applicability whenever data processing is performed for the exclusive purposes of public security, which still needs to be further regulated by the Brazilian Data Protection Authority. This exception could possibly be used to avoid the applicability of the LGPD during a public health crisis, nonetheless, no concrete measures have been yet taken, neither by public authorities nor by private entities, in an effort to confirm or legitimate said possibility.

"The LGPD provides for an alternative to consent when it comes to the processing of sensitive data"

4. Conclusions

In conclusion, if media and entertainment companies decide to stage live events in Latin America in the near future and consider demanding proof of vaccination or require attendees or personnel to undergo covid-19 testing, they will not be necessarily obliged, in the analysed countries - Argentina, Peru, Mexico and Brazil - to collect consent from the data subjects prior to said activities. However, overall, it is clear that health-related personal data is bound to a stricter regime of protection far and wide, so M&E companies shall pay close attention prior to collecting said information in relation or on the occasion of live events or productions.

It is worth highlighting that in Argentina, Peru and Mexico it is necessary to observe the specific restrictions related to the processing of sensitive personal data and, therefore, M&E companies will have to obtain the data subject's explicit consent prior to the collection of health-related data whenever the processing cannot be considered of public interest. Furthermore, in addition to the stricter regime of protection applicable to the processing of sensitive personal data, the penalties applied in case of a breach involving said type of information are also more severe and, as shown in the present article, companies that illegally share or disclose covid-19 related information may be subject to specific fines.

Notwithstanding, in Brazil, the LGPD provides for an alternative to consent when it comes to the processing of sensitive data, or, in the case at hand, health-related personal data, as proof of vaccination or results of covid-19 testing; thus, in general, an M&E company may lawfully process health data under the basis of protection of life or physical safety of the individual, rather than consent. In spite of that, the company will have to ensure compliance to the principles set forth by the LGPD and guarantee all the rights foreseen by the LGPD to the data subject, which encompass, among others, facilitated opt-out possibilities.

The future of live events is still uncertain and challenges the viability of concerts, theatre plays, shooting new motion pictures, among other events. It is certain, on the other hand, that the media and entertainment industry have the inherent ability to adapt and design its future steps, including in the post-covid world. Hence, M&E companies, before proceeding with live events or productions, either regarding its own personnel or the attendees, will have to ensure everyone's' safety, for instance, by demanding proof of vaccination or covid-19 testing, even if this requires obtaining the consent of data subjects. perspective it remains highly disputable. For example, a genuine vaccination requirement can touch on the right to bodily integrity and may also affect other fundamental rights, such as freedom of belief and conscience.

[1] *With special thanks and credits to: Cecilia Alberton Coutinho Silva and Fernanda da Cunha Cintra Azarite*

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[8] *Article 5, item 2, "a" to "e", Law 25,326 of Argentina. Available at: https://www.oas.org/juridico/pdfs/arg_ley25326.pdf. Access on Feb 28, 2021.*

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[13] *Article 10, items IV and V, of the Mexican Federal Law for the Protection of Personal Data in Possession of Private Parties. Available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/LFPDPPP.pdf. Accessed on Feb. 28, 2021.*

[14] *Article 8, of the Mexican Federal Law for the Protection of Personal Data in Possession of Private Parties. Available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/LFPDPPP.pdf. Accessed on Feb. 28, 2021.*

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[16] *Art. 3 of the LGPD: This Law applies to any processing operation carried out by a natural person or a legal entity of either public or private law, irrespective of the means, the country in which its headquarter is located or the country where the data are located, provided that: I – the processing operation is carried out in the national territory; II – the processing activity is aimed at the offering or provision of goods or services, or at the processing of data of individuals located on the national territory; or III – the personal data being processed were collected in the national territory.*

[17] *Section II. Processing of Sensitive Personal Data. Art. 11. The processing of sensitive personal data shall only occur in the following situations: (…).*

[18] *Article 11, I, LGPD.*

[19] *Article 11, II, "e", LGPD.*

[20] *Art. 5 For purposes of this Law, the following definitions apply: (…) VI – controller: natural person or legal entity of either public or private law in charge of making the decisions regarding the processing of personal data;*

[21] *LIMA, Caio César Carvalho. Capítulo II: Do Tratamento de Dados Pessoais. In: MALDONADO, Viviane Nóbrega; BLUM, Renato Opice. LGPD: lei gral de proteção de dados comentada. 2. ed. São Paulo: Thomson Reuters Brasil, 2019. pp. 184-185.*

[22] *Pursuant to Article 11, §§4 and 5, LGPD.*