COUNTRY REPORT: **MEXICO**

Mexico has made significant progress on implementing relevant cyberlaws. A good example is the recently adopted privacy legislation, including rules on data breach notification.

Mexico also has up-to-date cybercrime legislation in place and has been formally invited to accede to the Convention on Cybercrime.

Intellectual property laws in Mexico generally meet international standards, but enforcement action is rare and the bar is set very high for prosecution. Considerable improvement is required to gain confidence in intellectual property protection in Mexico.

Mexico is also one of the few countries in the study group that retains domestic preferences in government ICT procurement opportunities.

Internet use and broadband penetration remain very low in Mexico, and the country faces serious challenges in delivering a modern ICT infrastructure that can facilitate cloud computing.

Q MEXICO	RESPONSE	EXPLANATORY TEXT
DATA PRIVACY		
1. Are there laws or regulations governing the collection, use or other processing of personal information?	✔	The Federal Law for the Protection of Personal Data in Possession of Private Persons (Personal Data Protection Law) 2010 applies to the private sector. The Federal Law for Information Access and Government Transparency 2002 applies to the public sector.
2. What is scope & coverage of privacy law?	Comprehensive	Mexico has comprehensive privacy legislation in place, covering all sectors.
3. Is the privacy law compatible with the Privacy Principles in the EU Data Protection Directive?	◑	The Personal Data Protection Law is recent, and many of the more specific requirements are expected to be set out in regulations that have not yet been developed. At this stage the Mexican law could not be considered compatible with the EU Directive as many of provisions are quite vague, and there is no restriction on the onward transfer of data.
4. Is the privacy law compatible with the Privacy Principles the APEC Privacy Framework?	◑	Parts of the Personal Data Protection Law are similar to the APEC Privacy Principles, but the law is not entirely compatible at this stage. This may be resolved when further regulations are enacted.
5. Is an independent private right of action available for breaches of data privacy?	Available	In addition to the recent Personal Data Protection Law, the Constitution and the Civil Code both contain limited privacy rights — personality rights and implied privacy rights. However, cases are rare and the rights are limited to very specific circumstances, such as interception of communications.
6. Is there an effective agency (or regulator) tasked with the enforcement of privacy laws?	National Regulator	The Federal Institute for Information Access and Data Protection (Instituto federal de acceso a la información pública (IFIA)) <www.ifai.org.mx> has been established. It is a new organization and does not yet have a track record of enforcement.
7. What is the nature of the privacy regulator?	Collegial Body	The regulator consists of five Commissioners, with one acting as the lead Commissioner.
8. Are data controllers free from registration requirements?	✔	There are no registration requirements in Mexico's privacy law.
9. Are cross border transfers free from registration requirements?	✔	There are no registration or other cross-border privacy requirements in the law at this stage. However, these may be developed in regulations in the future.
10. Is there a breach notification law?	✔	The Personal Data Protection Law includes a general requirement that data subjects must be notified when a data breach occurs. However, this law is new, and more detailed rules for data breach notification are expected to be developed in regulations or guidelines.

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SECURITY		
1. Is there a law or regulation that gives electronic signatures clear legal weight?	✔	Mexico amended its Civil Code and other statutes in 2003 to include basic provisions recognizing electronic signatures. Further recognition of 'advanced digital signatures' was implemented by the Government in 2011.
2. Are ISPs and content service providers free from mandatory filtering or censoring?	✔	There is little Internet censorship in Mexico. During elections, the electoral regulator has threatened to remove some material that might breach electoral rules, but in practice this has not occurred.
3. Are there laws or enforceable codes containing general security requirements for digital data hosting and cloud service providers?	Limited coverage in Legislation	Security measures must be taken through administrative, physical and technical means (Personal Data Protection Law 2010). Future regulations will establish more specific security measures.
4. Are there laws or enforceable codes containing specific security audit requirements for digital data hosting and cloud service providers?	None	There are no enforceable security audit requirements in Mexico. This issue may be addressed in future regulations that are anticipated under the privacy law.
5. Are there security laws and regulations requiring specific certifications for technology products?	No requirements	Mexico does not participate in Common Criteria arrangements, and product certifications are not used at this stage.
CYBERCRIME		
1. Are there cybercrime laws in place?	✔	The Mexican Federal Criminal Code (FCC) contains comprehensive cybercrime provisions.
2. Are cybercrime laws consistent with the Budapest Convention on Cybercrime?	✔	The Mexican Federal Criminal Code (FCC) includes provisions that closely match the Council of Europe Cybercrime Convention, and Mexico has been formally invited to accede to the Convention — a request that is still being considered in Mexico.
3. What access do law enforcement authorities have to encrypted data held or transmitted by data hosting providers, carriers or other service providers?	Not Stated	There are no specific laws or regulations regarding encryption in Mexico. General access to data requires a warrant.
4. How does the law deal with extraterritorial offenses?	Limited coverage	Mexico's Federal Code of Criminal Procedure 2010 contains some limited guidance on jurisdiction. The exact extent of extra-territoriality is undecided. Mexico's planned accession to the Cybercrime Convention may lead to greater certainty.
INTELLECTUAL PROPERTY RIGHTS		
1. Is the country a member of the TRIPS Agreement?	✔	Mexico became a member of the TRIPS Agreement in 1995.
2. Have IP laws been enacted to implement TRIPS?	✔	In Mexico International Treaties are self-executing and do not need to be implemented by law. The Mexican Copyright Act 1984 (heavily amended in 1991 and 2003) and the Industrial Property Act 1991 cover most copyright and trade mark issues. They need to be read together with Mexico's international treaty obligations. Some critics argue that the absence of any rights to an injunction for copyright breaches in Mexico represents a breach of the TRIPS agreement. However, TRIPS does allow some flexibility in implementation and this breach appears minor.
3. Is the country party to the WIPO Copyright Treaty?	✔	Mexico signed the WIPO Copyright Treaty in 1997, ratified it in 2000 and it entered into force in Mexico in March 2002.
4. Have laws implementing the WIPO Copyright Treaty been enacted?	◑	The 2003 amendments to copyright legislation in Mexico attempted to implement the main provisions of the WIPO Copyright Treaty. The legislation has been the subject of significant criticism — as it sets a very high bar for criminal prosecutions and it does not include specific guidance on ISP liability.
5. Are civil sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	◑	It is assumed that civil sanctions are available, however there is little enforcement action or case law on Internet copyright issues.
6. Are criminal sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	◑	Criminal sanctions are available, but intellectual property rights in Mexico tend to be dealt with by the two administrative agencies — the PGR (Prosecutors Office at the Attorney General's Office) and IMPI (the Industrial Property Office). Court action is rare. Criminal action is very rare, and requires a direct complaint from the copyright holder.

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7. Are there laws governing ISP liability for content that infringes copyright?	◐	There is no specific legislation on ISP liability. It is assumed that ISPs are subject to the general liability principles in the copyright legislation, but there has been no enforcement or cases against ISPs. Provisions in the Telecommunications Law prohibit ISPs from disclosing personal information on customers to rights holders seeking civil recourse for copyright infringement.
8. Is there a basis for ISPs to be held liable for content that infringes copyright found on their sites or systems?	◐	There is no specific law on this issue, but it is assumed that liability may flow from the general principles in the copyright legislation in situations where the ISP was made aware of the infringing material.
9. What sanctions are available for ISP liability for copyright infringing content found on their site or system?	Civil and Criminal	Both civil and criminal sanctions are available, but in practice enforcement is very rare.
10. Must ISPs takedown content that infringes copyright, upon notification by the right holder?	✖	There is no take-down regime in place in Mexico.
11. Are ISPs required to inform subscribers upon receiving a notification that the subscriber is using the ISP's service to distribute content that infringes copyright?	✖	There is no specific notice requirement in place in Mexico.
12. Is there clear legal protection against misappropriation of cloud computing services, including effective enforcement?	Limited protection (criminal activity only)	Mexico has cybercrime laws and privacy laws in place. However, Mexican copyright law contains gaps in key areas and is poorly enforced. This may represent a risk for the protection of cloud computing services in Mexico.
INTEROPERABILITY		
1. Are there laws, regulations or policies that establish a standards setting framework for interoperability and portability of data?	✔	Federal Law on Metrology and Standardization.
2. Is there a regulatory body responsible for standards development for the country?	✔	Mexico has implemented the National Standardization, Metrology and Conformity Assessment System, which is coordinated by the Dirección General de Normas (DGN) — part of the Ministry of Economy <www.economia.gob.mx>.
INTERNATIONAL HARMONIZATION OF RULES		
1. Are e-commerce laws in place?	✔	The E-Commerce Act 2000 was implemented in Mexico in 2001.
2. What international instruments are the e-commerce laws based on?	UNCITRAL Model Law on E-Commerce	The E-Commerce Act amended the Mexican Civil Code, Code of Commerce and other statutes to implement the key provisions of the UNCITRAL Model Law on E-Commerce. Further amendments were made in 2003 to implement the UNCITRAL Model Law on E-Signatures.
3. Is the downloading of applications or digital data from foreign cloud service providers free from tariff or other trade barriers?	✔	There are no relevant tariffs or other trade barriers in place in Mexico.
4. Are international standards favored over domestic standards?	✔	Mexico has a strong focus on international standards in the ICT sector.
5. Does the government participate in international standards setting process?	✔	Mexico is a member of the ISO and an active participant in international standards development processes.
PROMOTING FREE TRADE		
1. Are there any laws or policies in place that implement technology neutrality in government?	✖	Mexico does not have any specific law or policy on technology neutrality, although there have been some positive statements by Government leaders, especially regarding the telecommunications sector.
2. Are cloud computing services able to operate free from laws or policies that mandate the use of certain products (including, but not limited to types of software), services, standards or technologies?	✔	Proposed legislation to mandate open source software (in 2001 and again in 2009) was unsuccessful.

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3. Are cloud computing services able to operate free from laws or policies that establish preferences for certain products (including, but not limited to types of software), services, standards, or technologies?	✔	Proposed legislation to mandate open source software (in 2001 and again in 2009) was unsuccessful.
4. Are cloud computing services able to operate free from laws that discriminate based on the nationality of the vendor, developer or service provider?	✖	The Law on Procurement, Leases, and Services by the Public Sector (LAASSP) allows agencies to include a 10% preference for local suppliers in most cases. Mexico is not a member of the WTO plurilateral Agreement on Government Procurement.
INFRASTRUCTURE, STATISTICS AND INDICATORS		
1. Is there a National Broadband Plan?	• By 2012, 22% broadband penetration	The e-Mexico Digital Agenda (2010-2015) strategy has a goal of delivering 22% broadband penetration by 2012 <http://e-mexico.gob.mx/web/agenda-digital/metas>.
2. Are there laws or policies that regulate the establishment of different service levels for data transmission based on the nature of data transmitted?	No Regulation and limited public debate	Issues of net neutrality have not yet been the subject of significant consideration in Mexico.
3. Base Indicators		
3.1. Population (2010)	113,423,047	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]
3.2. Urban Population (%) (2010)	78%	[World Bank, Data Catalog, Indicators, Urban Population % (2011) <http://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS>]
3.3. Number of Households (2009)	25,915,000	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (2009) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]
3.4. Population Density (people per square km) (2010)	58	[World Bank, Data Catalog, Indicators, Population Density (2011) <http://data.worldbank.org/indicator/EN.POP.DNST>]
3.5. Per Capita GDP (USD 2010)	$9,566	[International Monetary Fund (IMF), World Economic Outlook Database (April 2011) <http://www.imf.org/external/pubs/ft/weo/2011/01/weodata>]
3.6. ICT expenditure as % of GDP (2008)	5%	[World Bank, Little Data Book on ICT (2009) <http://data.worldbank.org/products/data-books/little-data-book-on-info-communication-tech>]
3.7. Personal Computers (% of households) (2010)	30%	In 2010, 29.8% of households in Mexico have personal computers. This is a 16% increase since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
4. ICT and Network Readiness Indicators		
4.1. ITU ICT Development Index (IDI) (2010) (Score is out of 10 and includes 152 countries)	3.75	Mexico has an ICT Development Index (IDI) score of 3.75 (out of 10), resulting in a rank of 75 (out of 152 economies). The 2010 IDI for Mexico has improved from a rank of 74 since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
4.2. World Economic Forum Networked Readiness Index (2010–2011) (Score is out of 7 and includes 138 countries)	3.69	Mexico has a Networked Readiness Index (NRI) score of 3.69 (out of 7), resulting in an overall rank of 78 (out of 152 economies) and a rank of 20 in the upper-middle income grouping of countries/economies. [World Economic Forum, The Global Information Technology Report (2010–2011) <http://www.networkedreadiness.com/gitr>]
4.3. International Connectivity Score (2011) (Score is out of 10 and includes 50 countries)	4.87	Mexico has a Connectivity Score of 4.87 (out of 10), resulting in a rank of 7 (out of 25) in the Resource-driven grouping of countries/economies. [Nokia Siemens, Connectivity Scorecard (2011) <http://www.connectivityscorecard.org>]

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4.4. IT Industry Competitiveness Index (2011) (Score is out of 100 and includes 66 countries)	37.00	Mexico has an IT Industry Competitiveness Index Score of 37 (out of 100), resulting in a rank of 44 (out of 66 countries/economies included in the index). The 2011 index score is a 12.1% increase on the 2009 score. Mexico has moved up the ranking by 4 places since 2009. [Business Software Alliance (BSA) / Economist Intelligence Unit (EIU), IT Industry Competitiveness Index (2011) <http://globalindex11.bsa.org>]
5. Internet Users and International Bandwidth		
5.1. Internet Users (2010)	35,161,145	[calculated from 8.3.1. and 8.5.2.]
5.2. Internet Users as Percentage of Population (2010)	31%	In 2010, 31% of the population in Mexico used the Internet. This is a 42.9% increase since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
5.3. International Internet Bandwidth (bits per second per internet user) (2010)	7,328	Mexico has increased its International Internet Bandwidth (per Internet user) by 65% since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
5.4. International Internet Bandwidth (2010) (total gigabits per second (Gbps) per country)	258	[calculated from 8.5.3 and 8.5.1]
6. Fixed Broadband		
6.1. Fixed Broadband Subscriptions (2010)	11,325,022	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]
6.2. Fixed Broadband Subscriptions as % of households (2010)	44%	Note: this is skewed by business usage (refer to OECD comments about this) [calculated from 8.3.3. and 8.6.1.]
6.3. Fixed Broadband Subscriptions as % of population (2010)	10%	Mexico has increased its Fixed Broadband Subscriptions (as a % of the population) by 49% since 2008. The OECD figures below present a breakdown on the type of broadband connections in Mexico. Mexico has continued its considerable growth of fixed broadband — with the highest growth rate in the OECD for the past 3 years. Mexico is ranked 32 (out of 34) for Fixed (Wired) Broadband Subscribers as a percentage of population [OECD Broadband Subscribers (Dec 2010) – http://www.oecd.org/sti/ict/broadband] • DSL: 8.3% • Cable: 2% • Fiber/LAN: 0% • Other: 0.1% Total: 10.4% (11,325,022 subscriptions) and this represents a 20% increase from 2009. The OECD average total is 24.9%. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]
6.4. Fixed Broadband Subscriptions as % of Internet users (2010)	32%	[calculated from 8.5.1 and 8.6.1]
7. Mobile Broadband		
7.1. Mobile Cellular Subscriptions (2010)	91,362,753	Note: This figure may be inflated due to multiple subscriptions per head of population, but excludes dedicated mobile broadband devices (such as 3G data cards, tablets, etc) [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]

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7.2. Active mobile-broadband subscriptions per 100 inhabitants (2010)	8%	Mexico has increased the number of Active Mobile-Broadband Subscriptions (as a % of the population) by 388% since 2008. The OECD figures below present a breakdown on the type of mobile broadband connections in Mexico. In the OECD, Mexico is ranked 34 (out of 34) for Terrestrial Mobile Wireless Broadband Subscribers as a percentage of population [OECD Broadband Subscribers (Dec 2010) – http://www.oecd.org/sti/ict/broadband] • Satellite: 0% • Terrestrial fixed wireless: 0.1% • Standard mobile broadband subscription: 0.3% • Dedicated mobile data subscriptions: 0% Total: 0.5% (515,334 subscriptions). The OECD average total is 41.6%. Note: The mobile broadband subscription types were first reported by OECD in 2010. Currently the ITU data does not have this granularity. Note: The OECD figures include mobile data subscriptions, whereas this is not counted in the ITU figures.
7.3. Number of Active mobile-broadband subscriptions per 100 inhabitants (2010)	7,583,108	[International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) <http://www.itu.int/ITU-D/ict/publications/idi/2011>]