Why data law cannot be reduced to data protection law ?

(Nicolas OCHOA)

The second is often taken for the first whereas they considerably differ. Data protection only exists as a part of data regulation. This last has a larger goal, which includes to set a legal frame for data processing system and – thus – to computer science, so that its full development can be compatible with human rights.

As a consequence, there is no difference in the philosophy underlying the french law relative to informatics and freedom (Loi du 6 janvier 1978) and the EC 95/46 directive. Their main purpose equally comes to promote the effectiveness of freedom of personal data processing.

Conceptualizing the substance of that freedom does not come immediately to sense and requires to imagine what we would lose if the object of data law were purely data protection. Actually, what we would lose if informatics development were crippled comes to two freedoms :

- the freedom of administration, which means the freedom for any institution to manage itself in the best way serving its interests by processing data.
- the freedom of information, i.e global free flow of information.

A ban on such freedom to process personal data would have had two outcomes :

- excessive rigidity in the management of any institution, thus leading to a structural lack of efficiency in basic management.
- crippled development for anything related to freedom of information : freedom of speech, internet, trade of services liberalization.