

Magic Club

HKUST, Session 2015-2016

Law and data ☺

② Data and Fundamental Rights.

° Privacy

- The right to be let alone
- The right of a person to choose ~~privacy~~ ^{seclusion} from the attention of others if they wish to do so
- A response to recent technological development

* Privacy as private

* Privacy as intimate

* Privacy as personal

Privacy is one of the fundamental element of democratic development.

③ Data protection as fundamental Right.

- Human Rights
- Constitutional Rights → Limit the power of the government.
- Fundamental Rights

° General Data Protection Regulation (GDPR)

- Applies to the processing of personal data
- 'Personal data': any information relating to an identified or identifiable natural person.
- 'Natural person' = living person.
- 'Pseudonymized data': The processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information (can be re-identified)
- 'Anonymous data' (cannot be re-identified)
- 'Nonpersonal data': Data other than personal data.

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° Principles relating to processing of personal data.

- ① Lawfulness, Fairness, Transparency = The quality of conforming to law
- ② Purpose limitation = specified, explicit, legitimate, not further processed
in a manner that is incompatible
- ③ Minimization = adequate, relevant and limited to what is necessary
- ④ Accuracy - keep up to date
- ⑤ Storage limitation
- ⑥ Integrity and Confidentiality
- ⑦ Accountability = The controller shall be responsible for, and be able to demonstrate compliance with accountability

° Lawfulness of the processing sensitive personal data.

- (a) You have consent for a specific use of your personal data
- (b) You have a contract with the organisation
- (c) The organisation has a legal obligation
- (d) You have a vital interest, because your life is in danger
- (e) The organisation has a public task to perform
- (f) It is in legitimate interest of the organisation.

'Consent':

- ① Clear and plain language
- ② easy to withdraw
- ③ not necessary for the performance of the contract.

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③ The Data subject

'Data Subject' - Natural person

Note: No distinction on the basis of a person's economic status, literacy^{sk} level, age, gender, mental capacity, nationality

◦ Children data protection.

- Specific protection

- In particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles.

◦ Special Categories of personal data.

① Racial or ethnic origin

② Political opinions

③ Religious or philosophical beliefs

④ Trade union membership

⑤ Genetic data, biometric data

⑥ Health

⑦ Sex life

⑧ Sexual orientation.

⑧ Data Rights in the GDPR

① Right to information

② Right of Access

③ Right to Rectification

④ Right to Restriction of Processing

⑤ Right to object

⑥ Right to Erasure

⑦ Right to Data Portability

→ Traditional Data Rights

→ New Data Rights

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⑨ Controllers and Processors

◦ Controllers

BOTH!!!

- Determines the purposes and means of the processing of personal data
- There is no limitation as to the type of entity that may assume the role of a controller. (Individuals / organisations)
- Even though decisions on non-essential means can be left to the processor, the controller must still stipulate ^{規定} certain elements in the processor agreement

◦ Joint controllers.

- Common decisions
- Result from converging decisions.

◦ Processor.

- Processes personal data on behalf of the controller
- A controller might also decide to engage one processor.

◦ Duty vs obligation

◦ Obligation of conduct vs obligation of result

◦ Responsibility vs liability

◦ Subjective responsibility vs objective responsibility

◦ liability in solidum vs partial liability.

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⑪ Security

Notification and communication of data breaches.

- Notification of a personal data breach to the supervisory authority without undue delay

↳ where feasible, not later than 72 hours after having become aware of it

↳ Accompanied by reasons for the delay

- Contents of the notification.

① Describe the nature of the personal data breach

② Communicate the name and contact details of the data protection officer

③ Describe the likely consequences of the personal data breach

④ Describe the measure taken or proposed to be taken by the controller to address the personal data breach

- When the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall communicate the personal data breach to the data subject without undue delay.

- Contents of the communication

① Name and contact details of the data protection officer

②

③

unless

① the controller has implemented appropriate technical and organisational protection measure

② taken subsequent measures

③ involve disproportionate effort.

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(15) Protection by design.

- Minimization

- Pseudonymisation.