

Magic Club

HKUST, Session 2015-2016

Law and Data (1)

② Data and Fundamental Rights.

Privacy

- The right to be let alone

- The right of a person to choose ^{隱私} 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)

- 'Anonymized 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 organization

(c) The organization has a legal obligation

(d) You have a vital interest, because your life is in danger

(e) The organization has a public task to perform

(f) It is in legitimate interest of the organization.

'consent':

(a) clear and plain language

(b) easy to withdraw

(c) not necessary for the performance of the contract.

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(7) The Data Subject

'Data Subject' = Natural Person

Note: No distinction on the basis of a person's economic status, literacy 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.

⑨ 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

① 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 certain elements ^{FIR} in the processor agreement

② Joint controllers.

- Common decision
- Result from converging decisions.

③ Processor.

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

④ Duty vs Obligation

⑤ Obligation of conduct vs obligation of result

⑥ Responsibility vs liability

⑦ Subjective responsibility vs objective responsibility

⑧ 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 organizational protection measures

② taken subsequent measures

③ involve disproportionate effort.

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(1) Protection by design.

- Minimisation

- Pseudonymisation