

Legal Aspects of Computing

Slides Set 6

Kevin K H Pun

PhD(Computer Science) LLM(Intellectual Property)
Department of Computer Science



- personal data shall not, without the prescribed consent of the data subject, be used for a new purpose ie. any purpose other than
 - the purpose for which they were to be used at time of collection; or
 - a directly related purpose



- "prescribed consent": s.2(3)
 - express consent given voluntarily
 - excludes consent withdrawn by notice in writing

NB. "Prescribed consent" need not be in writing!

Q: How do DPP1 and DPP3 operate when a data user obtains personal data from another data user?



 a "relevant person" (eg. parent of a minor, guardian of a mentally incapacitated: s.2(1)) may give prescribed consent on behalf of the data subject if he has reasonable grounds for believing that use for the new purpose is clearly in the interest of the data subject



NB. Even with prescribed consent from the relevant person, data user must not use personal data for the new purpose unless has reasonable grounds for believing that such use is clearly in the interest of the data subject.



Y who is advised that the data purpose includes processing of his application and servicing of his accounts at the bank. X then transfers the data to a credit reference agency Z for advice on Y's creditworthiness.

E2: Similar to E1. Z transfers the data to an insurance company W.



Special Data Use: Direct Marketing (Part VIA)

- Part VIA has come into effect since 1 April 2013 ("commencement date")
- s.35A(1): "direct marketing" =
 - offering or advertising of availability of goods, facilities or services; or
 - solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or other purposes

through direct marketing means



- s.35A(1): "direct marketing means" =
 - sending information or goods, addressed to specific persons by names, by mail, fax, email or other means of communication; or
 - making telephone calls to specific persons
- Q: Is the following "direct marketing means"?
 - sending SMS to the mobile of a named individual
 - sending advertising leaflets by mail to occupiers of a building
 - sales person knocking on the door of a potential customer to promote his products



NB. Excludes unsolicited messages sent to telephones, fax machines or email addresses without addressing to specific persons by name; face-toface promotions; or telephone calls made to phone numbers randomly generated. (*RR: Guidance on Direct Marketing)

Q: What if email address contains the name of a person?



- s.35C: data user who intends to use personal data in direct marketing must
 - inform the data subject its intention and that it will not so use the data without the data subject's consent; AND
 - provide the data subject with the following information
 - » the kinds of personal data to be used;
 - » the classes of "marketing subjects" (goods, services, or purposes of donations) in relation to which the data is to be used
 - provide a free channel through which the data subject may send his consent



NB. Above requirement applies whether or not the personal data is collected directly from the data subject: s.35C(3). But it does not require communications between data user and data subject to be in writing.

NB. Use of personal data in direct marketing without taking each of the actions above is an offence (\$500,000 + 3 yrs): s.35C(5).



NB. "Consent" to use of personal data in direct marketing includes an indication of no objection: s.35A(1). Same for provision of personal data to another for use in direct marketing (see below).



- s.35E: data user must not use personal data in direct marketing unless
 - data subject's consent has been received;
 - if consent is given orally, data user has, within 14 days from receiving it, sent a written confirmation to the data subject confirming the permitted kind of data and permitted class of marketing subjects; and
 - use is consistent with the consent (ie.
 personal data falls within the permitted
 kind, and marketing subject falls within the
 permitted class)



 s.35F: when using personal data in direct marketing for the 1st time, data user must inform data subject that it will cease to use the data in direct marketing if data subject so requires

 s.35G: data subject may, at any time, require data user to cease to use his personal data in direct marketing, and data user must comply



NB. Contravention of s.35E, 35F or 35G is an offence (\$500,000 + 3 yrs).

NB. S.35H: prescribed consent for direct marketing deemed to be obtained if data user has not contravened ss.35C (inform before use), 35E (use after consent) or 35G (cease when required).



- s.35J: data user who intends to provide personal data to another for use in direct marketing must
 - inform the data subject in writing its intention and that it will not so provide the data without the data subject's written consent; AND
 - provide the data subject with the following written information
 - » whether the data is provided for gain;
 - » the kinds of personal data to be provided;
 - » the classes of persons to receive the data;



- » the classes of "marketing subjects" in relation to which the data is to be provided
- provide a channel through which the data subject may send his consent free of charge
- s.35K: data user must not provide personal data to another for use in direct marketing without data subject's written consent



NB. Contravention of s.35J or 35K is an offence (for gain: \$1M + 5 yrs; not for gain: \$500,000 + 3 yrs).

 s.35L: data subject may, at any time, require data user to cease to provide data to another for use in direct marketing and to notify any recipient to cease such use, and the data user and recipient must comply



NB. Contravention of s.35L is an offence

- data user: \$1M + 5 yrs (for gain);\$500,000 + 3 yrs (not for gain)
- recipient: \$500,000 + 3 yrs.

NB. Prescribed consent for provision of data to another for use in direct market is deemed to be obtained if data user has not contravened s.35J (inform before provision), 35K (provide after consent) or 35L (cease if required).



NB. Part VIA does not apply to the offering or advertising of social or health care services provided or subsidised by the government, unless it is provision of personal data for gain: ss.35B, 35I.



E1: X, a provider of interest classes for young children, expands its business into manufacturing toys for young children. It sends out advertising leaflets for its toys to customers on its database. Any liabilities?

E2: Y, who works for an insurance company, obtains a HKU telephone directory from his friend Z, a lecturer at HKU. Y uses the directory to give "cold calls" to HKU staff.



- all practical steps shall be taken to protect personal data against unauthorised or accidental
 - access;
 - processing;
 - erasure;
 - loss; or
 - use



- all practical steps shall be taken to ensure that a person can
 - ascertain a data user's policies and practices in relation to personal data;
 - be informed of the kind of personal data held by a data user;
 - be informed of the main purposes for which personal data held by a data user are used



- a data subject shall be entitled to
 - ascertain whether a data user holds personal data of which he is the data subject;
 - request access to personal data
 - » within a reasonable time;
 - » at a fee, if any, that is not excessive;
 - » in a reasonable manner; and
 - » in a form that is intelligible
 - be given reasons if an access request is refused;



- object to a refusal of an access request;
- request the correction of personal data;
- be given reasons if a correction request is refused;
- object to a refusal of a correction request

NB. Requests may be made by another person on behalf of the data subject eg. parent of a minor cf. "relevant person" defined in s.2(1).



Recommended Reading

Guidance on Direct Marketing