

Data Protection & Privacy

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COMMONWEALTH
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Introductory Remarks

- Personal data
 - As private life & as an asset
 - ‘fuel of the information economy’
- Individual risks
 - Interference & loss
- Commercial risks
 - Asset management & reputational damage
 - e.g. Sony Playstation
- Societal concerns
 - Balancing privacy, security, efficiency....

Privacy laws

- Cameroon
 - Constitution
 - Preamble: “the privacy of all correspondence is inviolate”
 - Article 12: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.”
 - Law N° 2010/012, Part IV ‘Protection of Privacy’
- European Union
 - EU Charter of Fundamental Rights
 - Article 7 ‘Respect for private and family life’
 - Everyone has the right to respect for his or her private and family life, home and communications.

Data protection laws

- EU Charter of Fundamental Rights
 - Article 8 ‘Protection of personal data’
 1. Everyone has the right to the protection of personal data concerning him or her.
 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
 3. Compliance with these rules shall be subject to control by an independent authority.
- Commonwealth Model Law on Privacy (2002)
 - Processing of ‘personal information’ by ‘public authorities’
 - Office of Privacy Commissioner

EU Data Protection Law

- Directives 95/46/EC
 - Sectoral: Directive 02/58/EC ‘electronic communications privacy’
- Data controllers
 - Determine purposes and means
 - ‘data processors’
- Processing principles
 - Interests relating to data subjects
 - Transparency, consent, access & objection
 - Interests relating to data quality
 - Accuracy, adequacy, complete, up-to-date, secure

Subject matter

- Personal data
 - ‘can be identified directly or indirectly’
 - Anonymity & pseudonymous techniques
- More personal than other data
 - ‘special categories of data’
 - racial/ethnic origin, political, religious or philosophical beliefs, trade-union membership, health or sex life, criminal data
 - ‘traffic data’ & ‘location data’

Data subject rights

- Right of access
 - personal data processed
 - Portability right?
 - meta-data (purposes, recipients source...)
- Right to object
 - ‘compelling legitimate grounds’
 - Right to be forgotten?
 - For the purpose of direct marketing
- Right to rectification, erasure or blocking
 - notification to third-parties
- Compensation

International data flows

- Preventing a loss or circumvention of protection
- Controlling transfers
 - WTO General Agreement on Trade in Services
 - Article XIV(c)(ii): “the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts”
 - EU Data Protection law
 - Prohibition except to countries with an ‘adequate level of protection’
 - Approved countries, e.g. Australia, Argentina...
 - Exceptions, e.g. consent
- Impact on trade?
 - e.g. business processing outsourcing, cloud computing

Self-regulation

- Privacy-enhancing technologies (PETs)
 - confidentiality
 - Internet-based payments, e.g. SSL and SET Standard
 - Platform for Privacy Preferences (P3P)
 - World Wide Web Consortium (W3C)
- Labelling
 - e.g. TRUSTe (www.truste.org)



Questions & discussion