Existing Legislations on Data Privacy: A Change to Data Sharing?

National Statistics Conference 2012

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Faculty of Law, University of Malaya

7 November 2012
Some of my books on ICT Law

- **Cyber Law: Policies and Challenges**
  - Butterworths Asia (1999)

- **Privacy and Data Protection**
  - Sweet & Maxwell (2002)

- **Internet Banking: Law and Practice**

- **Information & Communication Technology Law**
  - Legal & Regulatory Challenges
  - Thomson Reuters (2010)
May I recommend you to read this!
THE WORLD’S GREATEST NEWSPAPER 1843-2011

THANK YOU & GOODBYE
“Personal Data is the new ‘oil’ of the 21st century”

World Economic Forum (2011)
International Instruments

- OECD Guidelines 1980
- Council of Europe Convention 1981
- European Directive 1995
- APEC Privacy Framework 2004
- Madrid Resolution 2009
- Proposed EU General Data Protection Regulation (issued on 25 January 2012)
EU Data Protection Regulation

- One EU – Wide Data Protection Law
- Penalties for breaches up to 1 million Euro or 2% of global annual turnover
- Mandatory data breach notification
- Data Protection Officer – 250 or more employees
- Explicit consent
- Right to be forgotten
U.S Consumer Privacy Bill of Rights (February 2012)-work just started

- Individual Control
- Transparency
- Respect for context
- Security
- Access and Accuracy
- Focused Collection
- Accountability
End to data abuse

Posted on 23 October 2012 - 05:24am
Last updated on 23 October 2012 - 02:42pm
Pauline Wong
newsdesk@thesundaily.com

PETALING JAYA (Oct 23, 2012): Come Jan 1, you will be able to put an end to pesky telemarketers and report such harassment to the authorities.

This is because the Personal Data Protection (PDP) Act which criminalises unauthorised use of your personal data will finally be enforced after a two-year delay.

Information, Communications and Culture Minister Datuk Seri Rais Yatim told theSun recently that enforcement of the Act was held up due to a delay in the recruitment of personnel for the newly-formed Personal Data Department.

The department, which comes under his ministry, will oversee and be responsible for the enforcement of the Act.

"The department will be operational from Jan 1," Rais said in an SMS reply to queries from theSun as to the enforcement of the Act which had been gazetted in June 2010.
Malaysian PDPA: It’s Applicability

Federal & States Govts
Non-Application
Non-Commercial Transactions
Personal, Family, Household Affairs
Data Processed Outside Malaysia
Credit Reference Agencies
‘Federal Government’ means the Government of Malaysia which includes all the ministries and Prime Minister’s Department

‘State Government’ means the government of a state which includes organizations such as the state secretary’s office, state department, land and district offices and local authorities

‘Commercial transactions’ means any transaction of a commercial nature whether contractual or not... but does not include credit reporting business
Data Sharing

- Legal Justification for Sharing
- Data Sharing Agreement

- Sharing Data between Government Ministries/Departments
- Sharing Data between Government and Private Sector
- Sharing between Private Sectors
Exemptions

Partial
- Crime Prevention/Detection
- Offenders Apprehension/Prosecution
- Tax/Duty Assessment/Collection
- Physical/Mental Health
- Statistics/Research
- Court Order/Judgment
- Regulatory Functions
- Journalistic/Literary/Artistic

Total
- Personal
- Family
- Household
- Recreational

15
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Research and Statistics

- The exemption only applies where ‘preparing statistics or carrying out research’ is the sole purpose
- The data are not processed for any other purpose
- The resulting statistics or research are not made available in the form which identifies the data subject
RIGHTS OF DATA SUBJECTS

- Right to be Informed
- Right to Access
- Right to Correct
- Right to Withdraw Consent
- Right to Prevent Processing Likely to Cause Distress
- Right to Prevent Processing for Direct Marketing Purposes
<table>
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<tr>
<th>No.</th>
<th>Section</th>
<th>Offences</th>
<th>Penalty</th>
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<tr>
<td>1</td>
<td>S. 16(4)</td>
<td>Processing without a certificate of registration</td>
<td>Fine &lt;RM500,000.00/ Imprisonment &lt; 3 years/ Both</td>
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<td>2</td>
<td>S 18(5)</td>
<td>Processing after registration is revoked</td>
<td>Fine &lt;RM500,000.00/ Imprisonment &lt; 3 years/ Both</td>
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<td>3</td>
<td>S.5</td>
<td>Contravening Data Protection Principles</td>
<td>Fine &lt;RM500,000.00/ Imprisonment &lt; 2 years/ Both</td>
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<td>4</td>
<td>S. 29</td>
<td>Non-Compliance with Code of Practice</td>
<td>Fine &lt;RM100,000.00/ Imprisonment &lt; 1 year/ Both</td>
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<td>5</td>
<td>S. 37(4)</td>
<td>Failure to Inform the Refusal to Comply with the Data Correction Request</td>
<td>Fine &lt;RM100,000.00/ Imprisonment &lt; 1 year/ Both</td>
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<td>6</td>
<td>S. 38(4)</td>
<td>Processing after consent been withdrawn</td>
<td>Fine &lt;RM100,000.00/ Imprisonment &lt; 1 year/ Both</td>
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<td>7</td>
<td>S.40(3)</td>
<td>Processing of Sensitive Data</td>
<td>Fine &lt;RM200,000.00/ Imprisonment &lt; 2 years/ Both</td>
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<td>8</td>
<td>S.42(6)</td>
<td>Failure to Comply with the Commissioner’s Requirement</td>
<td>Fine &lt;RM200,000.00/ Imprisonment &lt; 2 years/ Both</td>
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<td>9</td>
<td>S. 43(4)</td>
<td>Failure to Comply with the Commissioner’s Requirement</td>
<td>Fine &lt;RM200,000.00/ Imprisonment &lt; 2 years/ Both</td>
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<td>10</td>
<td>S. 129(5)</td>
<td>Transfer of Data to Places Outside Malaysia without any law or adequate protection</td>
<td>Fine &lt;RM300,000.00/ Imprisonment &lt; 2 years/ Both</td>
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<td>11</td>
<td>S. 130(3)</td>
<td>Collects, disclose or procure to disclose data without consent of Data User</td>
<td>Fine &lt;RM500,000.00/ Imprisonment &lt; 3 years/ Both</td>
</tr>
<tr>
<td>12</td>
<td>S. 130(4) and (5)</td>
<td>Selling or offer to sell</td>
<td>Fine &lt;RM500,000.00/ Imprisonment &lt; 3 years/ Both</td>
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<tr>
<td>13</td>
<td>S. 131(1) and (2)</td>
<td>Abetment and Attempt to commit any of the offences</td>
<td>Half of the maximum term provided for that offence</td>
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Offences by a body corporate

A director, chief executive officer, chief operating officer, manager, secretary; or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management - may be charged severally or jointly in the same proceeding with the body corporate; and

If the body corporate is found to have committed the offence, he shall be deemed to have committed the offences unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves:

- that the offences was committed without his knowledge, consent or connivance; and

- that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence. (s.133)
Enforcement Mechanisms

- Data Protection Commissioner
- Advisory Committee
- Appeal Tribunal
- Codes of Practice
- Enforcement Notice
- Prosecution
- Revocation of Registration

- Customers should be made aware of the financial institution’s privacy policies and relevant privacy issues.

- Financial institutions should not share customer information with third parties for cross-marketing without prior explicit consent of customers.

- Customer information shall not be disclosed beyond what customers have authorized.

- Customers should be given the option to disallow financial institutions from disclosing their information to third parties, including the financial institution’s partners without affecting their access to the e-banking services rendered.
2. BNM Guidelines on Data Management and Management Information System (MIS) Framework

- Principle 5 – financial institutions should maintain effective controls over security and privacy.
  - Financial institutions must establish adequate and detection controls to ensure security
  - Appropriate safeguard must be put in place to ensure personal data is not misused or disclosed in a wrongful manner.
  - Personal information should be handled properly to ensure confidentiality of the information and compliance with the relevant legislation.
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