

立法會 CB(2)363/10-11(01)號文件
(只備英文本)
LC Paper No. CB(2)363/10-11(01)
(English version only)

Amendments to the PDPO

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List of Issues

1. Sensitive data
2. Notification
3. Specific purpose for each opt-out
4. Right to retain control of transfers of personal data
5. Civil torts to provide an alternative mechanism for compensation

Sensitive Data

- ⦿ Need for additional protections for sensitive data
- ⦿ Difficulty of defining sensitive data in general as what is sensitive is contextual
- ⦿ Need to define classes of sensitive data in legislation that need additional protection:
 - Authentication/identification (e.g. biometrics)
 - Reputational data (e.g. HIV status)
 - Group membership that could be discriminated against (e.g. gay/Jewish)
 - Location (e.g. protecting against spousal abuse or stalking)

Notification

- ⦿ Voluntary notification is inadequate (plenty of evidence from US where it is mandatory in most states and for all medical data)
- ⦿ Distinguish notification of PCPD from notification of data subjects
- ⦿ Need to limit notification to PCPD to situations with meaningful potential damage, such as financial and medical data with personal identifiers (PCPD in best position to decide)
- ⦿ Mandatory notification of data subjects essential when chance and potential damage from leaked personal data both meaningful

Specific purpose for each opt-out

- ⦿ Octopus case shows that some data users are dishonest by hiding some purposes or bundling purposes together
- ⦿ Need to offer opt-out specific to each purpose as otherwise consumers will not know what they are agreeing to

Right to retain control of transfers

- ⊙ Essential that consumers retain control over their personal data.
- ⊙ Hence must have rights to:
 - Know about transfer destinations
 - Have data corrected or deleted (need to be able to amend decision to allow transfer)
- ⊙ Not sufficient to ask direct marketer where data came from

Civil Torts for compensation

- ⦿ Need to offer some recourse for cases like Octopus - consumers did not obtain redress
- ⦿ Government is reluctant to allow PCPD to award compensation, although that is the most efficient mechanism to address damages
- ⦿ Alternative is to enact the two privacy torts that the LRC proposed, which would allow consumers to seek damages for unfair collection and unfair release of personal data