



CONSUMERS ASSOCIATION OF SINGAPORE

170 Ghim Moh Road, #05-01, Ulu Pandan Community Building, Singapore 279621

Hotline: 6100 0315 Fax: 6467 9055

Website: www.case.org.sg

24 October 2011

Ministry of Information, Communications and the Arts
140 High Street
#02-02 MICA Building
Singapore 179369

by email and post

Dear Sir / Madam

PUBLIC CONSULTATION ON PROPOSED CONSUMER DATA PROTECTION REGIME

Our views are as follows :

Question 1 - Proposed DP Law on Specific Sectors

The proposed Act will have a great impact for consumers against telemarketers especially from the Timeshare industry. Time and again the telemarketers are amongst themselves sharing personal data of consumers who are involved in sale and purchase of Timeshare interest. Consumers are being swamped by calls from rogue Timeshare companies or telemarketers engaged or connected to Timeshare businesses. With the proposed law, consumer data will be better protected. At the moment Timeshare businesses and photo makeover businesses are the ones infringing consumer privacy and if no action is taken, other industry players may use the same telemarketing tactics. This proposed Act is timely for the Timeshare industry.

Question 2 - Concurrent application of the DP law and existing sectoral regulations

CASE agrees that apart from standards across all sectors, law being introduced will go hand in hand with particular regulations like Banking Act, Official Secrets Act and other similar privacy regulations.

Question 3 - Definition of personal data

The definition of personal data which is defined as "information about individual or identifiable individual where individual mean a natural person whether living or dead" is acceptable especially as it is similar to the definitions in other jurisdictions and as far as possible there should be uniformity among nations.

Question 4 – Personal Data of Deceased

The proposed data protection law should cover the personal data of the deceased. For the deceased the law is not applicable for someone who has died for more than 20 years.



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Question 5 – Proposed Organisations covered

We believe breaches of data protection are committed for financial gain. We would therefore like to suggest that the application be extended by reason / purpose of breach. This means individuals who breach the data protection law in any capacity (personal, domestic or otherwise) for financial gain or other tangible gains, benefits or advantage should also be subjected to the regime.

One example we came across was Naughty by Nature Pte Ltd, a makeover-cum-photoshoot company. It entices consumers to their premises with a free makeover-cum-photoshoot and two complimentary photographs on a CD. Once there, consumers are pressured to sign up for packages costing more than \$3000. A number of consumers were asked to fill up referral forms – if their friends sign up for packages, Naughty by Nature would pay these consumers a cash sum. CASE is of the view that these individuals, although acting in their personal capacity, are in fact “selling” their friends’ or colleagues’ contact information for a potential financial gain and should be subjected to the data protection regime.

We agree that the DP Law should apply to all private sector organisations regardless of the size of the organisations.

Question 6 – How DP Law can apply

CASE believes the government has very good international relations with quite a number of countries and would have no problems getting information from these countries. Although prosecution may be impracticable, it would help to obtain information from these countries on entities known for infringing consumer data privacy and share this knowledge with the public. The public could then be vigilant when dealing with requests for consumer data.

We are of the view that DP Law should extend to personal data collection and process activities in Singapore regardless of where the organisation is located bearing in mind the issue of jurisdiction difficulties if the organisation is located overseas.

If the organisation which is overseas uses the service of a Singapore organisation or person then action can be taken against that local organisation or person and the authorities should be able to ascertain the identity of the foreign organisation and the authorities could apart from taking action against the local organisation or person, publicise the wrongful act of the foreign organisation though legal action may not be feasible.

Question 7 - General Exclusion from DP law

The exclusion of the DP law under certain circumstances proposed is reasonable. As such, exclusion of data recorded on documents of a court, use of personal data carried out by news organisations and business contacts information are fine.

Question 8 - Exclusions for artistic and literary purposes

Similar to news organisations which are excluded under DP Law, data for artistic or literary purposes like biographies plays, musical compositions, photographs should be similarly excluded. As Canada has similar provisions on this issue it should be studied and incorporated into our DP Law.



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Question 9 - Exclusions

No suggestions for other exclusions except for comment on question 8 above.

Question 10 - Proposed General Rules

Agreeable to paragraphs 3.28 to 3.38 of the Paper with regards to general Rules.

Question 11 – Deemed Consent

CASE believes in an opt-in scheme. This will also be in line with the Consumer Protection (Fair Trading) (Opt out Practices) Regulations 2009 which prohibit opting out.

CASE does not agree with the British Columbia provision which says it is deemed consent if the consumer does not pose an objection to the request by the business. CASE is strongly of the view that consent must be expressly given by the consumer.

Question 12 - Collection, use and disclosure of data

Collection

Agree that there is a need for the organisation when collecting data to disclose the name of the employee of the organisation collecting the data to the person.

It is also acceptable that consent is not required where data is available to the public or at a sports meet and events open to the public at which the individual voluntarily appears.

It is also acceptable that employers be allowed to collect data of their employees but the employee need to be informed the purpose of the data collection. Similarly organisations should be allowed to collect data of their members with similar safeguards.

Acceptable also that the use of the data must be reasonable and fulfill only the purpose for which it is collected. If it is to be used for a different purpose then fresh consent need to be given.

Disclosure

Acceptable that disclosure is allowed by law enforcement agency for purpose of investigation into an offence . Same for National Archives data.

Agree that data in Singapore should receive same protection under the Act if the data is transferred outside Singapore. Agree that under the DP law the onus is on the organisation to ensure that appropriate means are taken to protect such data if it is transferred outside Singapore.

Question 13 - Exceptions to the rules on collection, use and disclosure

CASE is agreeable to the exceptions to allow organisations doing research including statistical research. However need to guard against organisations calling themselves researchers in order not to be subject to DP disclosure law.



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Question 14 - Transfer of Personal Data outside Singapore

Yes. Transfer of data overseas should be allowed subject to answer to question 12.

Question 15 - Accuracy, protection and retention of personal data

Organisations should be required to specify the retention period of data although this might be difficult to determine in some instances. A consumer should be told that it could be retained up to a specified number of years.

Question 16 - Specifying the retention of data period

Yes. See answer to question 15 above.

Question 17 - Access to and correction of data

Agree that consumer should be given reasonable access to their data and correction to inaccurate data.

Question 18 - Enforcement Powers of DPC

Agree to the procedure and power of the DPC and the Appeals Board and Court.

Question 19 – Proposed Financial Penalty

Can we clarify that the criminal penalty mentioned in the paper refers to financial penalty only? We are concerned about the veil of incorporation. What if a company gathers significant consumer data and sells this data to many rogue companies and when slapped with a financial penalty, does not pay the penalty? Would DPC expend the resources to wind up the company? Even if so, what good does it do to consumers whose data have been sold and are being harassed? Can DPC seek an injunction to prevent the use of such data by the recipient companies and deletion of such data?

Stiffer penalties should be imposed for repeat offenders and where there is great harm caused in respect of the breach. CASE proposes that DPC be given the authority to charge offenders (including the managerial staff running the errant company or business) in court for a jail sentence.

Question 20 – Specific Guidelines DPC should provide

We would like to suggest that DPC adopt a consultant role in respect of data protection compliance. This means that an organisation can request an audit of current processes by DPC to ensure that they are in compliance with the law, by paying a fee.

Question 21 – Sunrise Period

As pointed out by our President Mr Yeo Guat Kwang at our meeting on 6 September 2011, the sunrise period of one to two years is too long. We would propose a sunrise period of six months. The transition team, which will eventually form the DPC, should start planning awareness-building activities now and launch mass education roadshows once the legislation is passed in Parliament.



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As you have pointed out in paragraph 3.3 of your paper, organisations involved in global commerce would already be complying with the DP standards in other countries. The impact on SMEs should also be minimal if they do not collect, process or retain large amounts of personal data.

Question 22 - Proposed treatment of existing personal data

Publicity should be given to consumers that if they had given consent before the passing of the Act they can withdraw their consent after the Act is passed. This is to ensure that present telemarketers do not use data that was obtained before the Act is implemented.

Question 23 - Organisations that may require different transitional arrangements

No suggestions.

Question 24 – National Do-Not-Call Registry

A National Call Registry should be set up instead of a National Do-Not-Call Registry. CASE would propose that consumers who want to receive telemarketing calls opt in to the Call Registry. This is because consumers who have existing or prior dealings with companies or businesses would have already given their consent to be contacted (or not to be contacted) for future marketing calls. Companies or businesses should therefore not be calling non-customers from contact lists obtained from third parties.

Thank you.

Yours faithfully,

T Pillay
for Consumer Law Review Panel Committee
Consumers Association of Singapore (CASE)