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Fundamentals of Legal Aspects in Arts Groups: Personal Data (Privacy) Law – an overview

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20.02.2023

Agenda

- What aspects of privacy does the law (Hong Kong Law) protect?
- Personal Data (Privacy) Ordinance (Cap. 486)



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What aspects of privacy does the law (Hong Kong Law) protect?



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One day, Mr AAA discovered that
an unknown stranger has
“stolen” his photo as Instagram’s
profile picture...

What can Mr AAA do?

What legal rights / reliefs does Mr AAA have?

- Civil rights - Ownership of “rights”?
 - Portrait right (肖像權)?
 - Copyright (版權)?
- Civil action – Defamation
- Potential infringement of criminal law
 - Theft?
 - Fraud / obtaining property by deception

What aspects of privacy does the law (Hong Kong Law) protect?

- Personal Data (Privacy) Ordinance Cap. 486, s2(1)
 - personal data (個人資料) means any data—
 - (a) relating directly or indirectly to a living individual;
 - (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and
 - (c) in a form in which access to or processing of the data is practicable;

Personal Data (Privacy) Ordinance Cap. 486

Principle 1—purpose and manner of collection of personal data

Principle 2—accuracy and duration of retention of personal data

Principle 3—use of personal data

Principle 4—security of personal data

Principle 5—information to be generally available

Principle 6—access to personal data



Principle 3—use of personal data

Principle 3—use of personal data

(1) Personal data **shall not**, without **the prescribed consent** of the data subject, be used **for a new purpose**.

(2) **A relevant person** in relation to a data subject may, **on his or her behalf**, give the prescribed consent required for using his or her personal data for a new purpose if—

(a) the data subject is—

(i) a minor;

(ii) incapable of managing his or her own affairs; or

(iii) mentally incapacitated within the meaning of section 2 of the Mental Health Ordinance (Cap. 136);



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Principle 3—use of personal data

(b) the data subject is incapable of understanding the new purpose and deciding whether to give the prescribed consent; and

(c) the relevant person has reasonable grounds for believing that the use of the data for the new purpose is clearly in the interest of the data subject.



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Principle 3—use of personal data

(3) A data user **must not** use the personal data of a data subject for **a new purpose** even if the prescribed consent for so using that data has been given under subsection (2) by a relevant person, unless the data user has reasonable grounds for believing that the use of that data for the new purpose is clearly in the interest of the data subject.



Principle 3—use of personal data

(4) In this section—

new purpose (新目的), in relation to the use of personal data, means any purpose **other than**—

- (a) the purpose for which the data was to be used at the time of the collection of the data; or
- (b) a purpose directly related to the purpose referred to in paragraph (a).

Prescribed Consent

S2(3)

- (3) Where under this Ordinance an act may be done with the prescribed consent of a person (and howsoever the person is described), such consent—
 - (a) means the express consent of the person given voluntarily;
 - (b) does **not** include any consent which has been **withdrawn by notice in writing** served on the person to whom the consent has been given (but **without prejudice** to so much of that act that **has been done pursuant to the consent at any time before the notice is so served**).

Relevant Person

Section 2(1)

- relevant person (有關人士), in relation to an individual (howsoever the individual is described), means—
 - (a) where the individual is a **minor**, a person who has **parental responsibility** for the minor;
 - (b) where the individual is incapable of managing his own affairs, a person who has been appointed by a court to manage those affairs;
 - (c) where the individual is mentally incapacitated within the meaning of section 2 of the Mental Health Ordinance (Cap. 136)—
 - (i) a person appointed under section 44A, 59O or 59Q of that Ordinance to be the guardian of that individual; or
 - (ii) if the guardianship of that individual is vested in, or the functions of the appointed guardian are to be performed by, the Director of Social Welfare or any other person under section 44B(2A) or (2B) or 59T(1) or (2) of that Ordinance, the Director of Social Welfare or that other person

Principle 1—purpose and manner of collection of personal data

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- (1) Personal data shall not be collected unless—
 - (a) the data is collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;
 - (b) subject to paragraph (c), the collection of the data is **necessary** for or directly related to that purpose; and
 - (c) the data is adequate but not excessive in relation to that purpose.
- (2) Personal data shall be collected by means which are—
 - (a) lawful; and
 - (b) **fair in the circumstances of the case.**

Principle 1—purpose and manner of collection of personal data

(3) Where the person from whom personal data is or is to be collected is the data subject, all practicable steps shall be taken to ensure that—

- (a) he is **explicitly or implicitly informed**, on or before collecting the data, of—
 - (i) whether it is obligatory or voluntary for him to supply the data; and
 - (ii) where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data; and

Principle 1—purpose and manner of collection of personal data

(3) Where the person from whom personal data is or is to be collected is the data subject, all practicable steps shall be taken to ensure that—

- ...
- (b) he is explicitly informed—
 - (i) on or before collecting the data, of—
 - (A) the purpose (in general or specific terms) for which the data is to be used; and
 - (B) the classes of persons to whom the data may be transferred; and
 - (ii) on or before first use of the data for the purpose for which it was collected, of—
 - (A) his rights to request access to and to request the correction of the data; and
 - (B) the name or job title, and address, of the individual who is to handle any such request made to the data user,

Principle 1—purpose and manner of collection of personal data

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- unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data was collected and that purpose is specified in Part 8 of this Ordinance as a purpose in relation to which personal data is exempt from the provisions of data protection principle 6.



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Thank you 😊
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