HR Committee Event

Social Media: New opportunities and challenges for HR practices – Data Privacy

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Outline

– Vietnam’s Legal Framework on Data Privacy
– Definitions of Protected Information
– Consent Requirement
– Exceptions
– Social Media – Privacy and Monitoring
– Social Media – Risks for Businesses
Vietnam’s Legal Framework on Data Privacy

- No single law on individual privacy rights:
  - Civil Code
  - Information Technology Law
  - Consumer Protection Law
  - Telecommunications Law
  - Penal Code
  - Decree 72/2013/ND-CP on management, provision and use of Internet services and online information
  - Decree 52/2013/ND-CP on e-commerce
  - Decree 64/2007/ND-CP on information technology application in state agencies' operations
Vietnam’s Legal Framework on Data Privacy

– Vietnam has no single comprehensive law addressing individual/organizational privacy rights.
  • General principle: protecting information pertaining or belonging to individuals/organizations that is personal or private in nature is protected by laws.

– No consistent definition of Personal Information which is protected by Vietnamese Data Privacy law.
  • General principle: Information that would enable the identification of an individual/organization should be considered Protected Information.
## Definition of Protected Information

<table>
<thead>
<tr>
<th>Law / Code</th>
<th>Personal Information</th>
<th>Private Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Code</td>
<td>Information and materials on the private life of an individual</td>
<td></td>
</tr>
<tr>
<td>Consumer Protection Law</td>
<td>Information about consumers</td>
<td></td>
</tr>
<tr>
<td>Penal Code</td>
<td>Privacy of an individual's communications made by letter, telegram, telex, facsimile, telecoms or computers</td>
<td></td>
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<tr>
<td>IT Law</td>
<td>No definition</td>
<td></td>
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<tr>
<td>Telecom Law</td>
<td></td>
<td>Name, address, caller number, call number, position of caller, position of call recipient, call duration, etc.</td>
</tr>
</tbody>
</table>
## Definition of Protected Information

<table>
<thead>
<tr>
<th>Decree</th>
<th>Personal Information</th>
<th>Private Information</th>
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</thead>
<tbody>
<tr>
<td>72</td>
<td><em>Information associated with the identifications of individuals</em> (e.g., names, ages, addresses, ID numbers, phone numbers, email addresses)</td>
<td><em>The online information of an organization or individual not publicized by that organization or individual, or only provided to a group of identified recipients</em></td>
</tr>
<tr>
<td>52</td>
<td><em>Information contributing to identify a specific individual</em>, including his/her name, age, home address, phone number, medical information, account number, information on personal payment transactions, and other information that the individual would like to keep confidential</td>
<td></td>
</tr>
<tr>
<td>64</td>
<td><em>Information which is adequate to accurately identify the identity of an individual</em>, covering at least one of the following types of information: full name, date of birth, profession, title, contact address, email address, telephone number, I.D. number, passport number</td>
<td></td>
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</tbody>
</table>
Protecting Information of Organizations

– Unclear as to what extent organizational information is considered Protected Information.

– Implicit protection of organizational information:
  • Decree 72: Private information protected by laws includes online information of an organization (not publicized to unknown recipients by the data subject)
  • E-Transaction Law: Prohibiting the use of private information of an organization without consent.
  • Enterprise Law and Accounting Law: several types of organizational information are required to be disclosed by law.
Consent Requirement

– Expressed Consent:
  • Individuals and organizations must grant their prior informed consent to the collection, use and transfer of their Protected Information.

– Implied Consent:
  • Data subject is deemed to have provided prior consent under certain cases.

– In practice: Vietnamese authorities and courts would consider the balance between:
  • the comprehensiveness of the consent, and
  • the sensitivity of the information, the manner of its use, and the extent of its publication.
Statutory Exceptions

– The collection, use or transfer of Protected Information without informed consent is permitted in special cases such as:
  • pursuant to a decision of an authorized State Agency;
  • the information has been publicized on e-commerce websites by the data subject;
  • the information is used for:
    ▪ signing, modifying or performing contracts for use of information, products or services in the network environment;
    ▪ pricing or calculating charges for use of information, products or services in the network environment;
    ▪ performing other obligations in accordance with the law.
Possible Implied Exceptions

– Where a Data Subject himself/herself publishes otherwise Protected Information to unknown third parties.

– Decree 52:
  • Article 3.13: “other information that the individual would like to keep confidential”
  • Article 70.4:
    ▪ Personal information publicized on e-commerce websites may be collected without consent
    ▪ As needed to sign or perform contracts
    ▪ As needed to calculate the price for online products and services
Social Media – Privacy and Monitoring

- Are employers permitted to monitor?
  - Based on expressed or Implied Consent
- What is being monitored?
  - Work related or personal?
Social Media – Risks for Businesses

- Blurred lines between personal and professional behaviours on social networks
- Controlling and monitoring of work devices
- Potential lawsuits for violations of laws (on data privacy, IPRs, advertising, etc.)
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