Purchasing personal data - How to avoid legal violations without hindering economic development in the Industry 4.0 Era

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In recent years, the practice of collecting and selling or, intentional/ unintentional disclosing and disseminating personal information is a well discussed and argued matter on many mainstream platforms and social media. As many organizations and individuals have conducted or been involved in the act of illegally purchasing, selling, and utilizing online personal information (in the form of personal data)1, one may argue that there is a need to tighten the regulations regarding the practice of sharing personal data. On another hand, there are bold recommendations from governmental authorities about approving/allowing the practice of "charging a service fee for supplying and sharing residential data"2. In this Legal Newsletter, NHQuang will analyze certain aspects of the practice of acquiring, exploiting, and utilizing personal data in Viet Nam, and provide recommendations to improve these practices in the Industry 4.0 Era.

Legal framework on personal information in Viet Nam

Legal framework on the protection of personal information

The concept of "personal information" is defined in the Law on Cyber Information Security 2015 as "information related to the identification of a specific individual"[3]. Also, in other laws, "personal information" is recognized in many different forms, namely "personal secrets", "family secrets", "private information", "secrets of mail, telephone, telegram and other forms of private information exchange". Moreover, by combining the definitions of "data"[4] and "personal information", "personal data" can be perceived as the information related to the identification of an individual in the forms of symbols, letters, numbers, figures, audio, and the like. Hence, this information is inalienable and protected

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[1] Ministry of Public Security (2019), *Report on the status of personal data protection work*. See further at: http://bocongan.gov.vn/vanban/Pages/van-ban-moi.aspx?ItemID=418

[2] Trong Phu, *President of Hanoi talked about the proposal to share residential data*, Ho Chi Minh City Law Online Newspaper, March 7, 2018. See further at: https://plo.vn/phap-luat/chu-tich-ha-noi-noi-ve-de-xuat-chia-se-du-lieu-dan-cu-779753.html

[3] Law on Cyber Information Security 2015, Article 3, clause 15

[4] Law on Electronic Transactions 2005, Article 4, clause 5

by the law[5]. When one's personal information is infringed, he or she can make complaints, denunciation, or initiate legal proceedings to protect their legitimate rights and interests[6]. Therefore, it can be said that Viet Nam's legal system has a relatively complete legal framework for the self-protection of personal information.

The legal framework on the acquisition and sharing of personal information

In principle, the acquisition of personal information can only be conducted with the consent of the information owner[7]. In reality, when individuals provide their personal information when performing some common activities, such as filling in application forms for loyalty cards, participating in surveys, creating emails and social media accounts, etc., they have technically agreed to provide their information to information processing organizations. The information acquisitions mentioned above oftentimes serve the purpose of managing customers' information, analyzing customers' shopping behaviors, etc.

It should also be noted that the information processors can only provide, share, and spread the acquired, accessed and controlled personal information to third parties when (i) acquiring the information owners' consent or (ii) upon the request of competent agencies[8]. The laws on electronic transactions also prohibit the use, provision, or disclosure of information, which is accessed and controlled during the process of the transactions, about personal secrets or information of agencies, organizations or individuals other than the processor without the consent of the information owners[9]. Thus, the consent of the information owner is the basis for personal information exchanges. Moreover, the provision of personal information upon the request of the competent agencies only occurs in several specific cases, in particular, to serve the purpose of guaranteeing the national defense and security, social order, and safety[10].

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[5] Constitution 2013, Article 21; Civil Code 2015, Article 38; Incorporated Document 01/VBHN-VPQH 2017 incorporating the Penal Code, Article 159, Article 288; Article 290, Article 291; Law on Cyber Security 2018, Article 17, Clause 1; Law on Cyber Information Security 2015, Article 4, clause 2

[6] See the articles on procedures in the following legal documents: Civil Procedure Code 2015, Law on Administrative Procedures 2015, Law on Complaints 2011, Law on Denunciation 2018

[7] Law on Cyber Information Security 2015, Article 17, clause 1

[8] Law on Cyber Information Security 2015, Article 17, clause 1, point c

[9] Law on Electronic Transactions 2005, Article 46, clause 2

[10] For instance: the specialized national security protection agency has the right to request agencies, organizations, and individuals to provide information, documents, and instruments when there is solid evidence involving activities of infringing upon national security (according to the National Security Law 2004, Article 24, clause 1, point c), or the People's public security forces have the right to request agencies, organizations, and individuals to provide information, documents, and instruments when there is solid evidence involving activities of infringing upon national security, social order and safety (according to the Law on People's Public Security 2018, Article 16, clause 16)

On the basis of clarifying a number of issues regarding the information acquisition and processing as well as contributing to strengthening the protection of personal information, and combating the illegal purchase/sale and sharing of personal information, on September 29, 2020, the Prime Minister approved the proposal to develop a Decree on personal data protection and assigned the Ministry of Public Security to study and develop the Decree[11], which will be submitted to the Government in the first quarter of 2021[12]. It should also be noted that the protection of personal data cannot only be addressed by a legal document but requires a comprehensive legal system as well as concrete and drastic actions from the competent agencies.

Recommendations

Determining the connotation of the terms "personal information" and "personal data"

Currently, there is no official document defining the scope of the terms "personal information" or "personal secrets", "family secrets", "information on private life", "information on private secrets", "private information". The lack of a specific regulation on the scope of these terms is an obstacle in the protection and utilization of personal information, including personal data. There have been many cases of spreading and utilizing personal information without the consent of information owners, causing many societal consequences. On the other hand, there are also cases of acquiring personal information to effectively serve social interests without revealing "personal secrets", "family secrets", or "information on private life", for instance, the information acquisition process of the Bluezone application[13]. Therefore, there is a need to provide detailed and concrete definitions of the terms "personal information", "personal data" to strengthen the protection of personal information and data, thereby fulfill social and economic development goals.

Setting criteria for personal data

In conjunction with properly defining personal data, personal data's criteria should also be set to support the protection as well as exploitation and utilization of personal

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[11] According to the Resolution 138/NQ-CP dated September 29, 2020 of the Government on the approval of the proposal to develop a Decree on personal data protection.

[12] Vu Phuong Nhi, *The Government approved the proposal to develop a Decree on personal data protection*, Government electronic newspaper, September 30, 2020. See further at: http://baochinhphu.vn/Phap-luat/Chinh-phu-thong-qua-de-nghi-xay-dung-Nghi-dinh-bao-ve-du-lieu-ca-nhan/409106.vgp

[13] Bluezone is an application to alert if its user has been exposed to someone infected with COVID-19. This application anonymizes its users and does not collect information of users' location information, as well as is committed to information and data security. See further at: https://bluezone.gov.vn/

information in achieving higher efficiency. Thus, personal data can be classified as follows:

- Personal data directly related to "personal secrets", "family secrets", "information on private life" that has not been processed. This type of data will not be allowed to be collected, shared, or used without the information owners' consent, except for cases required by a competent agency under the law;
- Personal data indirectly related to "personal secrets", "family secrets", "information on private life" that other organizations and individuals can collect, share, and use with certain conditions; and
- Personal data that is allowed to be shared, disclosed, and spread after being analyzed and processed in many forms and levels to no longer be able to extract "personal secrets", "family secrets", "information on private life" of any information owner.

Improving personal data protection mechanism

Practically, the procedures of complaint, denunciation, or proceedings settlement related to infringement on the internet and electronic environment are still quite challenging for both the infringed information owner as well as the competent agency with regard to resolving the cases as well as enforcing the administrative decisions or judgments. This hence requires the competent agency to issue instructions or precedent(s) for the actual damage compensation for the infringed information owners in addition to the sanction for the infringement. Additionally, the police agencies and inspection agencies of communication information and culture should be more active in monitoring, inspecting, and investigating to detect illegal purchasing/selling and using of personal information, including personal data.

Creating a mechanism to share personal data

The laws should provide comprehensive procedures and conditions by which agencies, organizations, and individuals can access, utilize, and share personal data of other information owners without violating the regulations of the protection of personal information and personal data. By providing comprehensive regulations on the above-mentioned process, procedures, and conditions, it will both support better personal information management and facilitate the access, utilization, and sharing of personal data in accordance with the needs for state management, economic development, health and environmental protection. As witnessed, applications on disease prevention like Bluezone or traffic alert, air quality and air pollution measurements, etc. recently have brought remarkable benefits to the society as well as the practice of public governance without infringing on the right to have "personal secrets", "family secrets", "information about private life" securely protected.

To summarize, Viet Nam's legal system needs to issue regulations, guidelines, or establish case law to address the issues analyzed above to better protect personal information and data, yet still create favorable conditions for development in the Industry 4.0 Era. In addition, legal protection and personal information management agencies need to be more proactive in the protection of personal information as well as prevention of the illegal acquisition, sale, and spread of personal data. If these tasks are performed well and thoroughly, it will significantly impact people's awareness about the protection of personal information in the current times./.