

The Distinction between ‘Privacy’ and ‘Personal Information’ Issues of Personal Information Protection Act in Japan

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Abstract

It seems that the relation of the concept of privacy and the concept of the personal information are misunderstood. The privacy comes from the personality, and it is a normative concept. On the other hand, personal information is a fact about each individual. In Japan, Privacy protection is often confused with personal data protection when talking about the Internet. But the leakage of personal information is not privacy infringement per se.

Because of this confusion, now in Japan, when collecting and using all kind of information, it is demanded to obtain the individual's consent for the use and processing of personal data. There may be the risk that regulating excessively with all information concerning the person without using the term of privacy at all. Such an excessive regulation may hinder the corporate and public activities.

It should then be distinguished ‘the use of personal information which does not infringe someone’s privacy’ from ‘the use of the information relating to the privacy’. And only ‘privacy-related information’ should be the subject matter of the Personal Information Protection Act of Japan from the standpoint of a smooth circulation of information. Of course, basically the individual’s consent should be required, but the high chance of being sued for every activity concerning the processing of information by excessive regulation is an issue that should be solved soon.

The Relation between Privacy and the Protection of Personal Information

The raise of the Internet prompted the existence of many legal issues that might not be expected beforehand. At first, the Internet was not subject to any existing regulation back then. But now it is recognized as an important issue because it cannot be separated from the real world.

When user navigates the Internet, the personal information of the user is collected directly or indirectly by the information collector. Such information may include personal sensitive information, which is part of someone’s

privacy. With a technical problem of the network, the negligence of the information manager, and a massive personal information leakage due to hacking attacks, the issue of privacy infringement became more and more serious. Because of these reasons, the protection system for personal information is justified.

However, it seems that the relation of the concept of the privacy and the concept of the personal information are misunderstood. If we do not clarify this misconception, we cannot handle privacy issues appropriately in the information society.

The privacy comes from the personality, and it is a normative concept. On the other hand, personal information is a fact about each individual. In other words, personal information are the building blocks of the concept of privacy, and when the information about a person is identified by the norms and context, the ‘personal information’ becomes ‘privacy’. Because these two concepts are not distinguished in the current Personal Information Protection Act in Japan, there are certain positions, which assume that all personal information concerns privacy.

Because the issue of privacy protection in the information society is intimately close to the advancement of the Internet industry, the use of personal information should not be impeded if such use does not constitute a privacy infringement. In this work, I will outline the Personal Information Protection Act of Japan and point out the controversial issues of overreaction to the Act.

The Framework of the Personal Information Protection Act of Japan

The debate on privacy protection in Japan began with the National Government in 1974. Shortly after the Administrative Management Committee started a study, in 1976, the ‘Management Regulation for the Computer Processing Data Protection’ was passed.

The protection of personal information in the private sector is regulated by the 'Rules for the Privacy Protection' of each local prefecture.

There was no comprehensive general law for the private sector at that time, and the protection offered by the governmental guidelines, and independent regulations were the only source.

In September 1980, the protection of personal information was subject to public debate when the government got acquainted with the 'Guidelines governing the Protection of Privacy and Trans-border Flows of Personal Data' of the OECD. In July 1982, the Privacy Protection Study Group of the government reported the 'Privacy Measures for Personal Data Processing'.

In July 1985, the government formed Study Group for the Protection of Personal Information of Administrative Agencies. The study group approached the public sector and the private sector separately.

In Japan, two institutions - the Cabinet Office and the Ministry of Internal Affairs and Communications - promote privacy protection. The Cabinet Office is competent for privacy protection in the public sector nationwide. The Ministry of Internal Affairs and Communications is competent for protection of personal information in administrative agencies and the independent administrative organizations.

Another act worth noting is the 'Act for Protection of Computer-Processed Personal Information Held by Administrative Organs', which was passed in December 1988. For the private sector, the 'Guidelines for Protection of Computer-Processed Personal Information in the Private Sector' was formulated in 1989 by the Ministry of Economy, Trade and Industry.

Still, there was no general statute for personal information protection in the private sector, but only an individual enactment in the partial domain existed.

There was no sanction for administrative agencies, and the guidelines for the private sector were not binding, therefore it was difficult to say that personal information was fully protected.

From July 1999, the Special Legislation Committee for Personal Information Protection in High Information and Communication Society Promotion Headquarters reviewed the system including the private sector. In 2001, the Committee announced the 'Fundamental Principles for the Basic Legal System of Personal Information Protection'.

After the scandal of the politicians' affair (2000), the broadcasting company's personal data leak case (2002) and the start of The Basic Resident Registration Network System (2002), the five Acts relating to the Protection of Personal Information were submitted to the Diet in 2002.

The Personal Information Protection Act was abandoned once because there were opposition campaigns for the bill that it would allegedly infringe the freedom of the press. The bill provided that anyone who acquires personal

information should clearly inform the usage of personal information to the person in question.

But the bill was deliberated again, and passed in May 2003(in force from April, 2005).

The Issue of Overreaction

In the Act, each personal information holder can provide the information to a third party without the consent of the person with respect for the operation of the state in necessity and use of fair scope, but some refuse to give their information to the state operation such as election campaign or the census, in the name of privacy. Everyone who lives in Japan is obliged to declare their information for the census. So if you reject to cooperate in the name of protection of personal information, it shall be illegal.

Also a list on name and address was debated relating with privacy. When there is a large-scale accident, announcing the 'Survivors' Information' or the 'Missing Persons List' to the public is interpreted as reasonable use of personal information. However, when the Niigata Chuetsu Offshore Earthquake in 2007, there would have been a high chance to lessen the number of dead people if the local government had shared the list of residents with each neighborhood associations. But there was no clear idea about deal with the list of residents relating the Personal Information Protection Act, so the local government preferred not to run the risk.

Because of the broad interpretation of the personal information, there are also many situations. The employees' address book of a company or the emergency network of the elementary and junior high school may not be shared because of the risk of infringing the Personal Information Protection Act. In these situations, the Japanese Cabinet Office criticized such overreaction and misconception, and provided some examples which do not conflict with the Personal Information Protection Act.

The important thing to be noted is that 'personal information protection' is not equal to 'privacy protection'. 'Personal information protection' means protection of the 'data itself' from a leak, loss, manipulation, or wrongful use. On the other hand, when considering about 'privacy protection', it should be considered if the person in question's right is infringed, balancing with another person's right.

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