

Privacy and You

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Law Protects Freedom of Artistic or Literary Expression

Jack was a photography enthusiast who often took part in the photography competitions, and also held some sole exhibitions. Recently he heard from his friend that the *Personal Data Protection Act* now has stringent regulation on the processing of personal data. As long as the people in the picture is identifiable, the consent of the data subject is required prior to the release of such pictures, otherwise this action may be considered as illegal. Jack was puzzled because many of his photographic subject involved into the character, and some were even taken in the public areas. It would be hard for him to obtain the consent of all of the data subjects every time. He deemed that it would affect his creativities.

After understanding his concerns, Raymond, another photography enthusiast, then explained, “Don’t worry! I have read the *Guidelines on Publication of Personal Data on the Internet* issued by the Office for Personal Data Protection, and there are some similar cases for your reference. One example mentioned that a photographer was allowed to release his photographic works in his own website when his action was aimed at the artistic expression merely and no sensitive data was involved. He also possessed the legitimacy of the processing of personal data even though no consent of the data subject in advance was obtained. This reflects that the law protects the public to enjoy freedom of artistic or literary expression.” Raymond then said: “Of course, any exercise of the right has to respect the other peoples’ rights, and it should be based on the principles of legitimacy, good faith and proportionality to strike a balance among the rights. If the photographer marks the telephone number or even identity card number of the data subject in the picture, it obviously exceeds the purpose of artistic expression, and may have violated the principle of proportionality of data processing.”

Jack still had some queries and said: “Definitely I won’t post peoples’ name and identification data in the pictures. However, I still think it has affected my freedom of publishing the photos online when I have to follow the *Personal Data Protection Act*.”

“I don’t think so”, Raymond argued, “The *Personal Data Protection Act* establishes a legal system on the processing and protection of personal data, instead of prohibiting any data processing. Everything is fine if we abide by the law. Simply say, if I upload a photo about you together with your telephone number regardless of whether you agree or not, what will you think? When your personal data is handled carelessly or even your privacy is revealed to the public, you will then understand the importance of protection of personal data.”

Jack finally understood, “The law is to combat the illegal activities. We are the law-abiding people who can exercise the freedom of artistic creation without any problem. I just worried too much.”

“Certainly”, said Raymond, “Take your time to read the *Guidelines on*

Publication of Personal Data on the Internet. Those infringing people's personal data should be the one to get worried."

(The text is provided by the Office for Personal Data Protection. The cases presented here are based on social reality and past real-life cases. Any enquiries about personal data protection can be referred to the Office for Personal Data Protection by phone at 2871 6006.)