

National Unique Identifiers,
Publicly Available Data,
Journalistic purpose exceptions,
and Origins of Data Protection
Law

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Contents

1. need to leave “publicly available data” out of data protection law
2. need for absolute ban on “unique national identifier”
3. Are there publicly available data that work as UNI?
4. What do we learn about the future directions of data protection law?

Origins of “Property”-like Personal Data Right

- “Data Surveillance” Alan Westin <Privacy and Freedom> (1967)
- Traditional surveillance – obtaining of data about another against his will
- Data surveillance – obtaining of data voluntarily made available by data subjects
- What is wrong? – incomplete agreement on scope of use and transfer upon turning over the data
 - > (1) unconsented use and transfer
 - > (2) data imbalance -> control
- Solution: Contract law not sufficient, need a Property right!

Publicly Available Information

- Publicly available information:
 - (1) involves no unique point of 'turning over'
 - NO "incomplete agreement" problem
 - Rebuttal?: "All personal data are originally from data subjects." Is this true?
 - (2) Is it surveillance to collect information that everyone knows, i.e., NO data imbalance?
 - ___ I know that you know X about me VS.
 - ___ I don't know that you know X about me

“Journalistic Purpose” exception

- Does publication of information for everyone to read constitute ‘data surveillance’?
 - no data imbalance

Solutions

- 1995 EU Directive's "journalistic purpose" & 2004 APEC's "publicly available data" exception (Canada, Australia, Belgium, etc.)

Free speech v. data protection

- Speech = exchange of data
- Data protection = “property-like” right on data about oneself
 - Right to consent for collection, use, transfer
 - Right to inspect and correct
- Data subject controlling flow of data →
Data subject as a Censorer

Origin of Repulsion against Unique National Identifiers

- “function creep”, it is bad but what does it really mean? = (1) Dependence on UNI + (2) Data Breachability by Availability → hacking and surveillance (3) made even more easy by Uniformalization
- “Paradox of Trust” explains how Reliability causes Both Dependence and Data Breachability, destroying Reliability
- → all national identifiers come with restriction on collection **cf.** Korea has 866 exceptions!

Problem

- UNI cannot be collected with or without consent. Strict liability! No consideration for potential for data surveillance → publicly available or not, no processing allowed.
- Now, when does Personal Data become Unique National Identifier? How about face image? Where do you draw the line?