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The fantastic advances in the field of electronic communication constitute a greater danger to the privacy of the Individual

Earl Warren, 14th Chief Justice of the United States
(19th March 1891–9th July 1974)

Abstract

This introductory chapter provides the macro overview on how this book works and its interrelationship between the chapters. It is the ‘starter’ before readers will further proceed to the ‘main course’ and the ‘dessert’. The diversity of contributions could be seen through practical discussions, analysis, examples, case studies and opinions of the editors and the contributing authors. They derive these from their exposures, observations and interactions with diversified stakeholders across the globe (ranging from Europe, Middle East, Africa, South-east Asia, Asia Pacific, East Asia, Americas and to the rest of the world). Appropriately, the editors and the contributing authors have had this collective mission: leading data protection through knowledge sharing and capacity building.

As at Quarter 1 of 2012, eight Asian countries are ranked within the top 20 countries with the highest number of Internet users. Out of these, three ASEAN countries have made it into the list; Indonesia is ranked 8th, the Philippines and Vietnam are ranked 17th and 18th, respectively. Overall, China dominates the ranking with a total of 513.1 million Internet users, followed by the United States—245.2 million Internet users and India—121 million Internet users (see <http://www.internetworldstats.com/top20.htm>. Accessed 1st July 2012). In Malaysia, the penetration rates, at a glance, is divided into broadband, cellular

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phone and Direct Exchange Line. Based on the recent statistics issued by the Malaysian Communications and Multimedia Commission (MCMC), as at Quarter 1 of 2012, the broadband penetration rate per inhabitants (for every 100 inhabitants) is 19.6 % and per households (for every 100 households) is 62.9 % (see http://www.skmm.gov.my/attachment/Statistics/PR_glanceQ12012.pdf. Accessed 2 June 2012). These numbers indicate a healthy growth and it may be exponentially grow within the next decade.

1.1 The Masterpiece's Offerings for Malaysia

The actors representing the above numbers are the data subjects, data users and data processors. These are amongst the terms used in the Malaysian Personal Data Protection Act (PDPA) 2010. Prior to understanding how the terms apply, readers will be able to appreciate the infancy development of privacy law in Malaysia and the legislative rationale for the PDPA 2010, to which, is comprehensively addressed by Edwin Lee Yong Cieh (Edwin) in **Chap. 2**. Readers may learn that this chapter firms up the conceptual understanding on privacy development in Malaysian courts. The beauty of this chapter is that it heralds the historic milestone of Malaysia's journey towards the PDPA 2010 and the influences, which shaped it.

1.1.1 The Concepts in the PDPA 2010

Like any other data protection legislation, the PDPA 2010 starts by outlining the seven personal data protection principles; general, notice and choice, disclosure, security, retention, data integrity and access. This is further elaborated in **Chap. 3**. Exemptions of these principles, the rights of data subjects as well as criminal offences and liabilities of data users are also explained in an easy-to-read table form. **Chapter 4** suggests constructive appraisals of the PDPA 2010. At the time of this publication, the PDPA 2010 regulations/guidelines have not been published/gazetted in the Parliament yet. Alas, stakeholders are awaiting the gazetted enforcement date in anticipation. It is predicted that these will be taking place by end of 2012 or within the first quarter of 2013. Whilst this is quite uncertain, Edwin has gregariously put his practical thoughts on certain limitations of the PDPA and cross-referred its descriptive analysis with other sector-specific legislation that deal with data protection, albeit on a piecemeal basis.

The first three chapters formed the required fundamentals of this book. After having gone through these, it is pertinent to look into how the PDPA 2010 is addressed by way of issues-based. I take the task to illustrate, in plain English, the relevance of technology as an enabler in data protection. Substantially, the who's who in Malaysia and potential ASEAN member states which may embark on the similar move (the Philippines, Singapore and Indonesia). The illustration is further supported by the data protection 'bubble' between the government, businesses and consumers, which concludes **Chap. 5**. Perhaps, the focus of

issues-based that are linkable to the application of the PDPA 2010 within the context of Radio Frequency Identification (RFID) technology, associated with the Internet of Things (IoT) and the Cloud Computing (the Cloud) and Closed Circuit Television (CCTV) may make the readers potentially intrigued. **Chapter 6** offers practical guidance, considerations and pointers, as opposed to, lengthy analysis and criticism. It does not, however, explain the technical sophistication of the Cloud as seen in **Chap. 9**, written by Eva Rose Rahim (Eva) who details this succinctly. The value proposition is that, technology and business should and must not be the bar towards data protection. Likewise, data protection should not be the bar towards technology and business.

Acclaiming Accountability. Preaching Best Practices. These are the two key ‘X factor’ tips that I implore. Strategic consideration ranging from company, organisation, institution to governments are illustrated for potential adoption. The tone of **Chap. 7** is very much depending upon leadership, accountability and sustainability. It is a collective priority for all and what matter most are implementation, enforcement, review and reform—a potential roadmap for the PDPA 2010 subsequent to its enforcement and implementation.

1.2 The Masterpiece’s Offerings from the Global Practices

Eduardo Ustaran (Eduardo) leads the strategic tips on the scope of application of the EU data protection law and its territorial reach. As mentioned in the foreword, the DPD 95/46/EC (DPD) is the world’s leading and most comprehensive model, and by far, the ‘controversially’ best. The take home tips that readers will appreciate are the practical implications of the existing DPD rules, its proposed changes and how it affects the future of data protection.

The focus on **Chap. 8** puts detailed analysis on the criteria for the applicability of the current DPD, the need for change and the proposed criteria for the EU Data Protection Regulation. Readers are able to apprehend the complexity faced by, and the criticisms against, the proposed EU Data Protection Regulation. And Eduardo, who is the so-called ‘authority’ leads us to explain in this chapter.

A different dimension is designed for readers in this masterpiece—the interaction between data protection and freedom of information—how it is being governed and managed in the government. Indirani Viknaraja (Rani) articulates this by sharing with us her hands on public sector experience through case studies and guidance. This is supplemented by customised toolkit, which is informative, productive and authoritative for Malaysian and ASEAN governmental officials to consider its adoption. **Chapter 10**, by itself, is a stand-alone chapter that is beyond the PDPA’s application (which exempts Federal and State governments). Due to this, it is convinced that Rani’s thought leadership will potentially provide some headway for Malaysia and ASEAN member states.

Information Security. A topical issue tops most governments, businesses and organisations’ priority. Almost every seconds and within the blink of our eyes, one’s data is hacked, tampered, shared, transferred, deleted, archived and

aggregated. The Cloud evolution adds to the complexity and the technical attributes of technologies that are linkable and integrated between one to another poses compliance complexity and business challenge. Eva, through her technical acumen, illustrates on the information security in the Internet age. She relates this by way of technical solutions that are data protection-friendly. Readers will appreciate the comprehensive concerns and solutions in **Chap. 9**.

1.2.1 Audit and Enforcement Approaches

Germany, is perhaps, the first country in the world that introduces data protection auditor certification. Readers are given the rare privilege to appreciate the guidance, tips, dos and don'ts shared by Philipp E. Fischer (Philipp), who is a certified data protection auditor. In **Chap. 12**, he guides us through to explore the ins and outs of data protection audit and the challenges whilst auditing. To complement this chapter, Dan Manolescu (Dan) ends this masterpiece by narrating the data protection enforcement from the EU's experience in **Chap. 11**. This narration is particularly useful to data protection authorities in Malaysia and ASEAN member states. Dan's experience will help the readers to navigate the lessons learned from the European contour. The combination of Philipp and Dan's chapters, in a way, are inter-related due to non-compliance, lack of governance and supervision by the data controllers and data processors. It takes into account the previous chapters' insights on; Eva's information security writing in (**Chap. 9**); Edwin (**Chaps. 2–4**); mine (**Chaps. 5–7**); Eduardo (**Chap. 8**); and Rani (**Chap. 10**). Collectively, the diversity of chapters provide a very handy and practical insight into data protection law that span across several jurisdictions, and this itself, presents a very novel and unique approach for the readers' reading pleasure, and it's the first of its kind in Malaysia and ASEAN.

The title of this masterpiece: '*Beyond Data Protection: Strategic Case Studies and Practical Guidance*' is the first humble move to answer the questions for Malaysia and ASEAN. It may not be able to answer all (completely). To this end, it is hoped that it will be the beginning of a data protection journey from this part of the world.

Beyond Data Protection

Strategic Case Studies and Practical Guidance

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2013, IX, 271 p. 24 illus., 4 illus. in color., Hardcover

ISBN: 978-3-642-33080-3