

Cyber Law 406: Writing Assignment Spring 2024

MEMO ON TOPICS OF PRIVACY AND DATA PROTECTION

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To: Governor Commonwealth of Virginia

From: Rebecca R. Hight, Intern

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Subject: Memorandum on Privacy and Personal Data Protection Concerns in Virginia

1. Overview of Privacy and Personal Data Protection

Privacy is intrinsically about the right of personal data possession control and determination in an information society. It reflects a general idea that people should have their own opinions and decide what kind of information about themselves is collected, how this information is being used, and who the person is that can view it. Personal data or information will be collected and defended before such data is allowed to be shared. The data must be protected because, without such protection, individuals may suffer consequences, such as identity theft, financial fraud, unauthorized tracking and surveillance, discrimination, the loss of sovereignty over their personal lives, and much more. Biometric data include fingerprints, patterns for face recognition, and DNA profiles. Personal Identifiable Information (PII) includes information such as social security numbers, addresses, phone numbers, and email addresses. This type of data, which is particularly private, requires advanced protective measures to avoid misuse and protect people's privacy.

2. The General Data Protection Regulation (GDPR)

The General Data Protection Regulation (GDPR) stands out as a highly significant regulation enacted in the EU on May 25th, 2018 (Hayes, 2019), utterly transforming the data privacy landscape. Also, beyond EU companies, its jurisdiction spreads to non-EU companies that either offer goods and services to EU residents or collect data. The GDPR gives legal effect to principles like lawfulness, fairness, transparency, purpose limitation, data minimization, accuracy, storage limitation, integrity, and confidentiality, which

form the basic structure for data protection regulation (Hayes, 2019). The request of the organizations under GDPR is to implement necessary security measures suitable to protect personal data against unauthorized access or breaches, recognize the rights already assigned to the individuals by enabling them to inquire, correct, or delete their data upon request, and report on any data breaches within the allocated period. This regulation focuses on consent as the foundation service for processing personal data and large fines can occur for organizations that break the rules, thus demonstrating the heavy-duty commitment an organization must make to ensure consumer data protection. GDPR not only gives a lesson and benchmark for other jurisdictions around the world but also encourages the introduction of such strict legal instruments for data privacy protection.

3. Privacy Protection in Other States

Consequently, privacy issues are gaining a lot of attention around the country, and many states in the U.S. are taking action and passing state legislation, which is an active role taken by the states to create privacy protection regulations. It's important to note that California made the first preparation by passing the California Consumer Privacy Act (CCPA), which came into effect on January 1st, 2020 (Baik, 2020). The passing of this ground-breaking legislation will pave the way for personal information autonomy throughout the U.S. It urges other states to pass laws that protect the American people's privacy rights. The CCPA grants residents the right to know about personal information collected by businesses, the reasons it is collected, and whether it has been shared with others. Moreover, the Act allows consumers to opt-out if their personal information is to be sold, thus assigning more power to the individuals in their privacy rights. The businesses might have to follow these mandates, which serve as a basis for the bigger trend of higher data regulation practices. Though the CCPA does not prevent other states from considering alternative solutions, the Act has inspired states to replicate and improve their privacy laws (Chander et al., 2020), and these changes not only emphasize the growing significance of personal data but also point out the beginnings of a movement to eliminate privacy infringements.

4. Opinion on Legislative Action for Virginia

To decide which personal information/data protection law for the state of Virginia and to promote the federal legislation is the most appropriate course of action, it is crucial to consider the advantages and disadvantages of every approach. Apart from enacting a state-specific law at the forefront of the CCPA in California, Virginia can equally regulate its residents' protection aspects and concerns, which will immediately bring light to privacy data concerns. It would thus highlight the state's readiness to magnify the security of its residents. On the other hand, such an approach may result in a fragmented system where companies face difficult compliance requirements and possibly hinder interstate commerce. A contrary aim might be consolidating federal laws, which are supposed to ensure a common scale of protection across the U.S. and facilitate business compliance. Although getting agreement at the federal level is a time-consuming process, the eventual legislation may not pass on the specific problems of individual citizens not from Virginia.

Considering the emergency of the issue Virginians conveyed and growing uncertainty at the federal level, this could be the time to discuss state legislation. The point made here does not mean that you need to eventually support or vote for federal laws once they are enacted. It is a pragmatic approach that considers two aspects: today's protections for the residents of Virginia and the future ability to adjust as the national standards change.

References

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