

Personal Data (Privacy) Ordinance

1. Pursuant to the provisions of the Personal Data (Privacy) Ordinance, the collection and publication of photographs containing identifiable images of individuals, with the intention or attempt to ascertain their identities, constitute **the collection and use of personal data*** and are subject to regulation under the Personal Data (Privacy) Ordinance.
2. In relation to the scope of personal data privacy, personal data obtained from the public domain (including the internet, including school webpages) remains subject to regulation under the Personal Data (Privacy) Ordinance, wherein:
 - ✧ The collection of personal data must be **relevant to the functions and activities of the data user**, and the methods employed for data collection must be **lawful and fair**.
 - ✧ Personal data must be used (**including disclosure and transfer**) for purposes directly related to the original collection or with the **explicit and voluntary consent** of the data subject.
3. While Hong Kong legislation does not explicitly establish a right of publicity, the unauthorized use of someone's likeness may potentially contravene other laws (such as defamation).
4. Any person who suspects the misuse or mishandling of their personal data may **first express their concerns to the party alleged to have misused their personal data**. If dissatisfied with their response and able to provide prima facie evidence, a complaint may be lodged with the Office of the Privacy Commissioner for Personal Data. The Office of the Privacy Commissioner for Personal Data will undertake appropriate follow-up actions on the complaint in accordance with established policies.

Remarks:

***The legal question is whether the photograph in question qualifies as personal data.** If it does not meet the criteria of personal data, the provisions of the Ordinance may not apply to the aforementioned case.

- In a 2000 case (Eastweek Publisher Limited and another v Privacy Commissioner for Personal Data), the Court of Appeal held that personal data can be collected through photographs, but this does not imply that all photographs necessarily constitute personal data.
- The judge pointed out that when collecting personal data, the data user must be gathering personal data of an identified or identifiable individual. In other words, if a photograph merely depicts someone's appearance and its purpose is not to collect that person's personal data for identification (i.e., the person is merely an "anonymous subject" of the photograph), taking such a photograph would generally not be considered as collecting personal data and thus does not fall within the purview of the data protection principles.
- The judgment further elucidates that the Ordinance solely safeguards citizens' privacy in relation to personal data and does not establish a comprehensive right to privacy that precludes any form of privacy infringement (thus allowing individuals to be completely undisturbed in all circumstances).

Copyright Ordinance

1. The Copyright Ordinance currently in force in the Hong Kong Special Administrative Region (the Hong Kong SAR) has come into effect since 27 June 1997. The Ordinance as reviewed and revised from time to time provides comprehensive protection for recognised categories of literary, dramatic, musical and artistic works, as well as for films, television broadcasts and cable diffusion, and works made available to the public on the Internet. Furthermore, performers of live performances and persons having exclusive recording contracts with performers are also entitled to protection.
2. Copyright is an automatic right that is granted upon the completion of a creative work. Once the work is created, it becomes subject to copyright protection. Unlike other categories of intellectual property such as patents, trademarks, and industrial designs, copyright in Hong Kong does not require registration and can be protected under the laws of the Hong Kong Special Administrative Region. In fact, there is no official registration office in the Hong Kong Special Administrative Region for copyright works.
3. There are no formalities required to obtain copyright protection for a work in the Hong Kong SAR. **The author of a work is the first owner of the copyright in that work.** Therefore, the author of a particular work is also the copyright owner of that work. As for works created by employees, unless there is an agreement to the contrary between the employer and the employee, the employer is considered the first owner of the copyright. In other words, the copyright in works created by an employee is fully owned by the employer. Regarding **commissioned works, ownership of the copyright depends on the agreement between the author and the commissioning party.**

Civil Remedies:

- A copyright owner can take civil legal action against any person who infringes the copyright in the work. The activities that the owner can prevent vary according to the various types of works; but essentially the owner has the exclusive right to copy the work and to distribute it to the public. The owner may seek all necessary relief against the infringer, such as an injunction to prevent further infringement, an order for delivery up of the infringing items, disclosure of information about the supply and/or dealings of the infringing items and an award for damages as well as costs.

Immediate Action:

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