

THE DATA SUBJECT'S RIGHTS: AN OVERVIEW OF AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION

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ABSTRACT

The paper focuses on the rights of data subject's and the overview of African Union Convention on cyber security and personal data protection. Data is information stored in an electronic form through computer by a person whom originally owns the data and as such is protected by law. The paper discusses data in a form of computer technology with an overview of African Union Convention on some related provisions of the law as existing rights attribute to the data subjects. The methodology of the paper adopted is doctrinal approach method wherein relevant data collected were analysed and the finding brought out. The findings of the paper reveals data subjects are original work created for the purpose of benefiting from that invention which are also intellectual property rights that are protected by the law and as such immensely contribute to the economy of the nation and further recommends that countries should strengthen its national laws in ensuring the rights and protection of data subject's.

Key words: Computer data, data subject's rights, AU Convention

Introduction

The paper focuses on the rights of data subject's which involves the information and communication technology couple with the capacity to manage a large potential of data. The aim of the paper is to discuss data in relation to the owner's right with particular reference to computer data and considering the fact the data is important information, thus have a right that needs to be protected from being jeopardize. This give rise to a number of significant concerns on how such data will essentially be used, of whose benefit and stored.¹ Data is a set of ideas which are potentially varies in degrees and part of individuals information.² Data is information usually emanated from computer or any technical devices. Most of these data are information privacy or data privacy and is a relationship between collection and dissemination of data, technology, the public privacy protection expected and the legal framework.³ The rational in chosen this area is one aspect that deals with individuals potentials, looking at the creativity of ideas and their reaction to the law requires the intervention of qualitative research in the area. The benefit of such is to interact with the individual and seeks their opinion for the protection of economic gain and personal data. The research problem central on the use of computer and other elated devices to exploits data from the original owner and the application of law in protecting their rights.

Computer Data

Computer data are essentials for individual user's business and administrations while completely depend on the reality and accessibility of the data.⁴ Computer data is medium of communication processed or keep by a computer. This communication varies from text documents, images, audio clips, software programs, or other types of data. Computer data may be processed by the computer's CPU and is stored in files and folders on the computer's hard disk.⁵ Data stored in a computer can be transferred to another computer through a network communication or other technology storage devices for number of period of time without been damage except if interfere or alter the data for another purpose or otherwise.⁶ Ability to access a data can lead to a serious damage for instance financial data which is very crucial. Criminals easily break the veracity of data by interfering with the data through deletion, suppressing and altering the data.⁷ One instance of deletion of data is the computer virus.⁸ Initially, the

¹ United Nations Economic Commission for Europe, 'Information and Communication Technology and Legal issue for Central Asia, United Nations Publication, New York & Geneva, 2007, p. 37.

² Data Wikipedia, available at en.wikipedia.org/wiki/data, Accessed on 12/3/2015.

³ Information privacy, Wikipedia, available at en.wikipedia.org/wiki/Information-privacy, Accessed on 12/3/2015.

⁴ International Telecommunication Union (ITU), 'Global Cybersecurity Agenda / High-Level Experts Group', Global Strategic Report, 2008, page 32, available at: www.itu.int/osg/csd/cybersecurity/gca/global_strategic_report/index.html.

⁵ Data, Tech Terms.com available at <http://techterms.com/definition/data>, 12/3/2015

⁶ Ibid.

⁷ Sieber, Council of Europe Organised Crime Report 2004, p. 107.

⁸ A computer virus is software that is able to replicate itself and infect a computer, without the permission of the user, to harm the computer system; Spafford, The Internet Worm Program: An Analysis, page 3; Cohen, Computer Viruses –Theory and Experiments, available at: <http://all.net/books/virus/index.html>; Adleman, An Abstract Theory of Computer

emergence of computer viruses threatened the users who failed to install powerful and protectable software.⁹ That was the beginning of the spread of computer viruses and its number significantly increased,¹⁰ that has not only been the limit of virus infection but it keeps multiplying the number of the virus attack and the process will affect the functions of the computer system.¹¹

Earlier, computer crimes were distributed through storage devices, for example floppy disk, USB, CD Rom, SD Card etc. whereas, today most of the viruses are distributed through the avenue of internet as attachments files, emails or accessing websites or blogs through a download format with a viruses lurk.¹² These are the easiest ways of virus infection to a computer and that has recorded an outrageous speedy virus infection and estimated to infect almost 90 percent of susceptible computer system in about 10 minutes of its first spreading.¹³ The financial damage caused by virus attacks in 2000 alone was estimated to amount to USD 17 Billion.¹⁴ In 2003, it was around USD 12 Billion,¹⁵ a report sponsored by McAfee estimates the annual damage to the global economy at USD 445 Billion every year.¹⁶ The report is from the Centre for Strategies and International Studies (CSIS) said cybercrime was a growth industry that damage trade competitiveness and innovation.¹⁷

Currently, the generational computer viruses used to delete data or display a message that will infect a computer by a click on a button displaying the message and that gives the virus control over the data in the system completely. Recently payloads varied¹⁸ and the new innovative viruses were able to self-control of the victim's computer system or coded files so as to deny victims access to their own files until they receive money for the code.¹⁹

Data Subject's Right Protection

Data is an information or knowledge that is closely related terms, but each has its own function in relation to the other. Data is collected and analysed to create information suitable for making decision,²⁰ while knowledge is derived from extensive amounts of experience dealing with information on a subject.²¹

Data subject is defined as a human being to whom personal data relates,²² also data subject is referred as where a person whose data is stored in a computer-support system.²³ Data processing encompasses a system that possess information after it has been determined or programmed into data which includes performance of operation upon data such as handling, merging, sorting, and computing.²⁴

A data processor is a specialized form of an information processing system, the main variation is that the inputs to a data processing system are converted into data by a process called encrypt prior to being processed which resulted the run processed data through a decoding process before the information can be output from the system.²⁵ Today, these data personal created by individual, scientists and organizations require a protection of personal data.

Viruses, *Advances in Cryptography – Crypto, Lecture Notes in Computer Science*, 1988, page 354, Regarding the economic impact of computer viruses, Cashell, et al, *The Economic Impact of Cyber-Attacks*, page 12; Symantec Internet Security Threat Report, Trends for July-December 2006, available at:

http://eval.symantec.com/mktginfo/enterprise/white_papers/entwhitepaper_internet_security_threat_report_xi_03_2007.en-us.pdf.

⁹ Kabay, *A Brief History of Computer Crime: An Introduction for Students*, 2008, page 23, available at www.mekabay.com/overviews/history.pdf.

¹⁰ White, Kephart and Chess, *Computer Viruses: A Global Perspective*, available at: www.research.ibm.com/antivirus/SciPapers/White/VB95/vb95.distrib.html.

¹¹ Payload describes the function the virus performs after it is installed on victims' computers and activated. Examples of the payload are displaying messages or performing certain activities on computer hardware, such as opening the CD drive or deleting or encrypting files.

¹² Regarding the various installation processes, see: *The Crimeware Landscape: Malware, Phishing, Identity Theft and Beyond*, page 2, available at: www.antiphishing.org/reports/APWG_CrimewareReport.pdf.

¹³ BBC News, Virus-like attack hits web traffic, 25.01.2003, <http://news.bbc.co.uk/2/hi/technology/2693925.stm>;

¹⁴ Critical Infrastructure Protection Department Of Homeland Security Faces Challenges In Fulfilling Cybersecurity Responsibilities, GAO, 2005 GAO-05-434, page 12, available at: www.gao.gov/new.items/d05434.pdf.

¹⁵ Cashell, et al, *The Economic Impact of Cyber-Attacks*, page 12, available at: www.cisco.com/warp/public/779/govtaffairs/images/CRS_Cyber_Attacks.pdf.

¹⁶ Reuters, Cybercrime cost global economy \$ 445 billion a year, available at <http://www.reuters.com/article/2014/06/09/us-cybersecurity-mcafee-csis-idUSKBN0EK0SV20140609>. Accessed 12/3/2015.

¹⁷ Ibid.

¹⁸ Cashell, op. cit.

¹⁹ Szor, *The Art of Computer Virus Research and Defence*, 2005.

²⁰ Joint Publication 2-0, Joint Intelligence". Defense Technical Information Center (DTIC). Department of Defense. 22 June 2007. pp. GL-11. Retrieved February 22, 2013.

²¹ Data, Wikipedia, available at en.wikipedia.org/wiki/Data, Accessed 12/3/2015.

²² The Opt-4 Data Protection Dictionary, <http://www.opt-4.co.uk/dictionary/datasubject.asp>. Accessed 12/3/2015.

²³ John Daintith, 'data subject,' *A Dictionary of Computing*. 2004, Encyclopedia.com, 10 Mar. 2015, <http://www.encyclopedia.com>, Accessed 12/3/2015.

²⁴ Data Processing Law & Legal Definition, USLEGAL.com, definition available at uslegal.com/d/data-processing/. Accessed 12/3/2015.

²⁵ Ibid.

Everyone has the right to the protection of personal data, under the European Union, personal data can only be gathered legally under strict conditions for a legitimate purpose.²⁶ In addition, persons or organizations collect and manage personal information's must ensure absolute protection to a person's data and against misuse and must be respected. Certain rights of data owners have emerged and guaranteed by the European Union Law.²⁷ Data protection laws are legislation enacted to protect personal, commercial and governmental data from unauthorized access, alteration, corruption, destruction or use.²⁸

Data protection is all about someone's fundamental right to privacy,²⁹ and confidentiality is one aspects that has to be protected where a data collection and storage process handles private information, a breach or short of confidence allowed the criminals accesses to steal data which can be used for multiple purposes for example accessing valuable information, financial accounts and extracting cash inclusive.³⁰ Also data controller is a person who, either alone or with others controls the content and use of personal data.³¹

An Overview of African Union Convention on Cyber Security and Personal Data Protection

The overview of the Convention centrally focused on the data subject's rights. The African Union (AU) Convention is a recent regulation covering cybercrimes. This Convention seeks to establishment a Legal Framework for Cyber-security and Personal Data Protection embodies the existing commitments of African Union Member States at sub-regional, regional and international levels to build the Information Society.³²

The Convention defines Data controller to mean any natural or legal person, public or private, any other organization or association which alone or jointly with others, decides to collect and process personal data and determines the purposes;³³ it also referred data subject to mean any natural person that is the subject of personal data processing.³⁴

The Convention further defines personal data as any information relating to an identified or identifiable natural person by which this person can be identified, directly or indirectly in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity;³⁵ in addition to this personal data file means all structured package of data accessible in accordance with set criteria, regardless of whether or not such data are centralized, decentralized or distributed functionally or geographically;³⁶ and finally, processing of Personal Data means any operation or set of operations which is performed upon personal data, whether or not by automatic means such as the collection, recording, organization, storage, adaptation, alteration, retrieval, backup, copy, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination and locking, encryption, erasure or destruction of personal data.³⁷

The Convention provides for Interconnection of personal data files³⁸ and further provides that the interconnection of files laid down in Article 10.4 of this Convention should help to achieve the legal or statutory objectives which are of legitimate interest to data controllers. This should not lead to discrimination or limit data subjects' rights, freedoms and guarantees, should be subject to appropriate security measures, and also take into account the principle of relevance of the data which are to be interconnected.³⁹

The Section IV of the Convention provides for the Data Subjects' Rights,⁴⁰ where it provides for the Right to information⁴¹ and provides that the data controller shall provide the natural person whose data are to be processed with the following information, no later than the time when the data are collected, and regardless of the means and facilities used, with the following information:⁴²

- a) His/her identity and of his/her representative, if any;
- b) The purposes of the processing for which the data are intended;
- c) Categories of data involved;
- d) Recipient(s) to which the data might be disclosed;
- e) The capacity to request to be removed from the file;

²⁶ European Commission-Justice, 'Protection of Personal Data', available at ec.europa.eu/justice/data/protection/, Accessed 12/3/2015.

²⁷ Ibid.

²⁸ Data Protection Laws, definition, Business Dictionary.com, available at www.businessdictionary.com/definition/data-protection-laws.html, Accessed 12/3/2015.

²⁹ Data protection, Data Protection Commissioner available at <https://www.data-protection.ie/viewdoc.asp?DocID=4>. Accessed 12/3/2015.

³⁰ 'Economic Crime', A threat to Business Globally', PWC's, Global Economic Crime Survey, 2014, at p. 31, available at download.pwc.com/ie/pubs/2014_global_economic_crime_survey.pdf. Accessed 12/3/2015.

³¹ Data Protection Commissioner, 'A Guide to your Rights', Data Protection Act 1988 and 2003, p. 3.

³² First opening Paragraph of the Preamble of African Union Convention on Cyber Security and Personal data Protection, Adopted by the 23rd Ordinary Session of the Assembly of the Union, Malabo, 27th June 2014.

³³ Article 1 on definitions for the purposes of this Convention, Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Article 15, Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Article 16, Ibid.

⁴² Ibid.

- f) Existence of the right of access to and the right to rectify the data concerning him/her;
- g) Period for which data are stored
- h) Proposed transfers of data to third countries.

The Convention further provides for the Right of access⁴³ and proceed to provide for any natural person whose personal data are to be processed may request from the controller, in the form of questions, the following:⁴⁴

- a) Such information as would enable him/her to evaluate and object to the processing;
- b) Confirmation as to whether or not data relating to him/her are being processed;
- c) Communication to him/her of the personal data undergoing processing and any available information as to their source;
- d) Information as to the purpose of the processing, the categories of personal data concerned, and the recipients or categories of recipients to whom the data are disclosed

In addition to the Convention, it provides for the Right to object⁴⁵ and provides for any natural person has the right to object, on legitimate grounds, to the processing of the data relating to him/her. He/she shall have the right to be informed before personal data relating to him/her are disclosed for the first time to third parties or used on their behalf for the purposes of marketing, and to be expressly offered the right to object, free of charge, to such disclosures or uses.⁴⁶

Finally, the Convention provides for the Right of rectification or erasure,⁴⁷ therefore provides for any natural person may demand that the data controller rectify, complete, update, block or erase, as the case may be, the personal data concerning him/her where such data are inaccurate, incomplete, equivocal or out of date, or whose collection, use, disclosure or storage are prohibited.⁴⁸

As part of the efforts put in place by the Convention in ensuring protection to the data subject's rights couple with the responsibility of personal data controller, provides in section V: Obligations of the Personal Data Controller. Which further provide for Confidentiality obligations,⁴⁹ that a processing of personal data shall be confidential. Such processing shall be undertaken solely by persons operating under the authority of a data controller and only on instructions from the controller.⁵⁰

The Convention provides measure for the data controller for security obligations.⁵¹ And provide that the data controller must take all appropriate precautions, according to the nature of the data, and in particular, to prevent such data from being altered or destroyed, or accessed by unauthorized third parties.⁵²

There is provision for Storage obligations⁵³ to the personal data controller and which further provides that the personal data shall be kept for no longer than is necessary for the purposes for which the data were collected or processed.⁵⁴ Finally, the last provision is on Sustainability obligations;⁵⁵

- a) The data controller shall take all appropriate measures to ensure that processed personal data can be utilized regardless of the technical device employed in the process.
- b) The processing official shall, in particular, ensure that technological changes do not constitute an obstacle to the said utilization.

Findings

The findings of the paper reveal that data are information's stored in a computer which can be generated in any form. The data is a subject's rights that must be protected since the data belongs to the person who created, invented and works on must be stored; such data must be protected and thus referred as data subject's and there is rights attributed to the data which is personal data protection. Though the custody of the data is on the data controller and further to this, it is the finding of the paper that the data subject is the most crucial areas that need the protection of law. Looking at the objectives of the paper reveals that the machineries for the protection of data rights has been put in place but requires fully implementation of the law. The paper divulges that the data protection involves immensely the right of privacy on the subject which affects the intellectual property law. Further, the paper finds that the provisions of African Union Convention on the data subject's meant not only to deal with the subject rights at hand but to address all issues involved information and communication technology across the Africa. And thus preferred a legal institution for proper guidance and that will enhance the security measures in the protection of intellectual property rights within its jurisdictions.

⁴³ Article 17, Ibid.

⁴⁴ Ibid.

⁴⁵ Article 18, Ibid.

⁴⁶ Ibid.

⁴⁷ Article 19, Ibid.

⁴⁸ Ibid.

⁴⁹ Article 20, Ibid.

⁵⁰ Ibid.

⁵¹ Article 21, Ibid.

⁵² Ibid.

⁵³ Article 22, Ibid.

⁵⁴ Ibid.

⁵⁵ Article 23, Ibid.

Conclusion and Recommendations

Generally data application covers the information stored in computer system, there are several data that were stored in devices which are computer related machines but data is a subject's right. This are information that seeks to be stored by the owner and that requires a legal protection from being used, altered or deleted whereas sometimes these data are processed in the computer and have a rights of protection and safeguard. The European Union, African Union Convention and other institutions highlighted the rights of data subject's and put all the measures to ensure the protection of personal data reasonably, lawfully and only used in legal context. The protection of personal rights to the data subject obliged to inform the data controller to provide information in respect of the data subject and such must be registered for protectable safety measures unless consented otherwise such data cannot be accessible or obtained. At this point, the African Union Convention enumerates the data subject's rights premised on its importance.

In the event of the above discussed, the paper recommends that the government shall ensure the data subject's rights is fully protected through the application of national laws in order to preserve the intellectual property rights and law. In addition to this there should be a code of conducts to observe and regulates the relationship between persons, organizations and data controller. The internet service providers ISP's are a strong stakeholders in the application of legal principle in the protection of the data subject's rights.

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