

Comparison of Privacy Provisions in UL and DPDP Act

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Privacy - Definition

☀ Def. of privacy

= the claim of individuals, groups and institutions to determine for themselves, when, how and to what extent information about them is communicated to others

☀ 3 dimensions of privacy:

1) Personal privacy

Protecting a person against undue interference (such as physical searches) and information that violates his/her moral sense

2) Territorial privacy

Protecting a physical area surrounding a person that may not be violated without the acquiescence of the person

♣ Safeguards: laws referring to trespassers search warrants

3) Informational privacy

Deals with the gathering, compilation and selective dissemination of information

Privacy - Definition

- ☀ The free and unsupervised use of ICT means for confidentiality and integrity of data and flow, without active or passive listening
- ☀ As more and more information is stored, processed or transmitted over telecommunication networks, the need to ensure that this information will not be altered, corrupted misused and/or stolen becomes more significant
- ☀ Need to be integrated in an appropriated legal framework, which must be enforceable
- ☀ Privacy protection can be undertaken by:
 - ♠ Privacy and data protection laws promoted by government
 - ♠ Self-regulation for fair information practices by codes of conducts promoted by businesses
 - ♠ Privacy-enhancing technologies (PETs) adopted by individuals
 - ♠ Privacy education of consumers and IT professionals

Obligation of Data Fiduciary Sec 4-9

- ☀ The Licensee shall take necessary steps to ensure that the Licensee and any person(s) acting on its behalf observe confidentiality of customer information.
- ☀ The Licensee shall, prior to commencement of Service, confirm in writing to the Licensor that the Licensee has taken all necessary steps to ensure that it and its employees shall observe confidentiality of customer information.
- ☀ the Licensee shall take all necessary steps to safeguard the privacy and confidentiality of any information about a third party and its business to whom it provides the Service and from whom it has acquired such information by virtue of the Service provided and shall use its best endeavors to secure that

Obligation of Data Fiduciary Sec 4-9

- ☀ No person acting on behalf of the Licensee or the Licensee divulges or uses any such information except as may be necessary in the course of providing such Service to the Third Party
- ☀ No such person seeks such information other than is necessary for the purpose of providing Service to the Third Party
 - ♠ The information relates to a specific party and that party has consented in writing to such information being divulged or used, and such information is divulged or used in accordance with the terms of that consent; or
 - ♠ The information is already open to the public and otherwise known

Obligation of Data Fiduciary Sec 4-9

- ☀ Calling Line Identification (CLI) shall be provided. The network should also support Malicious Call identification
- ☀ Calling Line Identification (CLI) shall never be tampered as the same is also required for security purposes and any violation of this amounts to breach of security.
- ☀ CLI Restriction (CLIR) should not be normally provided to the customers. Due verification for the reason of demanding the CLIR, must be done before provision of the facility
- ☀ The subscribers having CLIR should be listed in a password protected website with their complete address and details
- ☀ While providing CLIR facility to subscriber, it shall be ensured that the CLI is carried from end to end on the network. However, CLIR must not be provided in case of bulk connections, call centres, telemarketing services.

Special Provisions (Sec 16-17)

- ☀ The complete list of subscribers shall be made available by the Licensee on their website (having password controlled access), so that designated Security Agencies are able to obtain the subscriber list at any time, as per their convenience with the help of the password. The list should be updated on regular basis. Hard copy as and when required by security agencies shall also be furnished.
- ☀ The Licensee shall maintain all commercial records/ Call Detail Record (CDR)/ Exchange Detail Record (EDR)/ IP Detail Record (IPDR) with regard to the communications exchanged on the network. Such records shall be archived for at least one year for scrutiny by the Licensor for security reasons and may be destroyed thereafter unless directed otherwise by the Licensor. Licensor may issue directions /instructions from time to time with respect to CDR/IPDR/EDR

Special Provisions (Sec 16-17) -Lawful interception

- ☀ Requisite monitoring/interception facilities /equipment for each type of service, shall be provided by the Licensee at its own cost for monitoring as per the requirement specified by the Licensor from time to time
- ☀ The Licensee shall furnish all necessary means and facilities as required for the application of provisions of Section 5(2) of the Indian Telegraph Act, 1885, whenever occasion so demands. Nothing provided and contained anywhere in this License Agreement shall be deemed to affect adversely anything provided or laid under the provisions of Indian Telegraph Act, 1885 or any other law on the subject in force.
- ☀ As per the provision of Section 5 of Indian Telegraph Act, the Licensee will provide necessary facilities to the designated authorities of Central/State Government as conveyed by the Licensor from time to time for interception of the messages passing through its network.
- ☀ The LICENSEE shall ensure protection of privacy of communication and ensure that unauthorized interception of messages does not take place

Special Provisions (Sec 16 -17)

- ☀ The LICENSEE is obliged to provide, without any delay, all the tracing facilities to trace nuisance, obnoxious or malicious calls, messages or communications transported through his equipment and network, to the agencies of Government of India as authorized from time to time, when such information is required for investigations or detection of crimes and in the interest of national security
- ☀ Along with the monitored call, Call Related Information (CRI) shall be supplied in the format prescribed from time to time, which shall at least have the following records:
 - ♠ (i) Called/calling party mobile/ PSTN numbers, even when subscriber is roaming.
 - ♠ (ii) Time/date and duration of call.
 - ♠ (iii) Location of target subscribers/coordinates and name of BTS site.
 - ♠ (iv) Telephone numbers if any call-forwarding feature has been invoked by target subscriber.
 - ♠ (v) Data records for failed call attempts.
 - ♠ (vi) CDR (Call Data Record) of Roaming Subscriber.

No Routing beyond the country (Section 3 b)

- ☀ Domestic traffic of such entities as may be identified/ specified by the Licensor shall not be hauled/ routed to any place outside India. For this purpose, location of satellites serving India for domestic traffic shall not be treated as outside India.
- ☀ The Licensee Company shall take adequate and timely measures to ensure that the information transacted through a network by the subscribers is secure and protected.
- ☀ The Licensee shall not transfer the following to any person/place outside India:-
 - ♠ Any accounting information relating to subscriber (except for international roaming/billing) and
 - ♠ User information (except pertaining to foreign subscribers using Indian Operator's network while roaming and IPLC subscribers).

Rights and duties of Data Principal

- ☀ The Subscriber Identification Module (SIM) or equivalent device for the purpose used in the subscriber terminal is non-transferable to other subscriber

Thank You!