



Building Integrity and Trust



MINISTRY OF COMMUNICATIONS



2017
**DATA PROTECTION
CONFERENCE**



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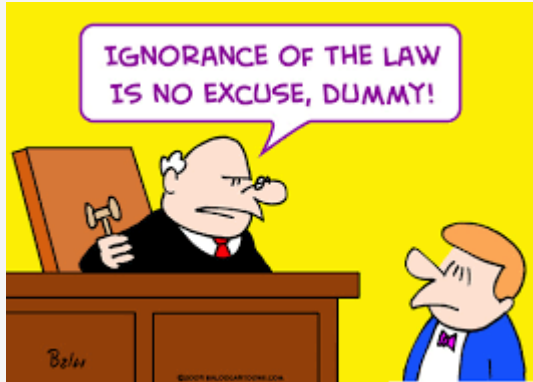


MINISTRY OF COMMUNICATIONS



CONTRACTING DATA PROCESSORS

EXAMINE THE TOPIC WITHIN THE CONTEXT OF THE LAW



LEGAL REQUIREMENTS



SANCTIONS



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1992 REPUBLICAN CONSTITUTION.

18 (2) No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of the rights or freedoms of others



The principal law on Data Protection in Ghana is the Data Protection Act, 2012 (Act 843).

- Sets up Data Commission
- Principles for Data Protection
- Enforcement of the Data Protection Principles

Standards to be observed in contracting a data processor are contained in the law. Breach of the law will result in sanctions.



Article 75 of the 1992 Constitution allows the president to execute treaties on behalf of the nation and for parliament to ratify international treaties.

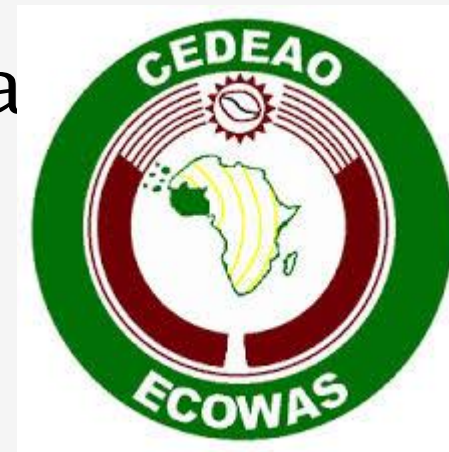
Section 87 of Act 843 International co-operation

- *‘The Commission shall perform the data protection functions that are necessary to give effect to any international obligations of the Republic.’*



- Legally speaking, these obligations include compliance with International Treaties such as

- Supplementary Act on Personal Data Protection Within ECOWAS



and



- African Union Convention on Cyber Security and Personal



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- DEFINITION OF DATA PROCESSOR-within the context of our law
- **Section 96 of Act 843** defines Data Processor “*data processor*” in relation to personal data means any person **other than an employee** of the data controller who **processes the data on behalf of the data controller.**”
- **The Supplementary Act on Personal Data Protection Within ECOWAS** defines Data processor as “*any public or private individual or legal entity, body or association who* **processes data on behalf of the data controller;**”



EXAMPLES OF DATA PROCESSORS

- Data centers
- Call centers



- **Per S. 96 of Act 843, “data controller”** means a person who either alone, jointly with other persons or in common with other persons or as a statutory duty determines the purposes for and the manner in which personal data is processed or is to be processed;”
- **ECOWAS Act** defines data controller as “Data controller means any public or private individual or legal entity, body or association who, alone or jointly with others, decides to collect and process personal data and determines the purposes for which such data are processed.”



- **African Union Convention on Cyber Security and Personal Data Protection**, “*Data controller means 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.”*”

EXAMPLES OF DATA CONTROLLER

- Law Firms
- Hospitals
- Schools
- MDA's



DIVISION OF RESPONSIBILITY BETWEEN DATA CONTROLLER AND DATA PROCESSOR

Article 29 of Supplementary Act on Personal Data Protection Within ECOWAS *“Where processing is carried out on behalf of a data controller, the latter must choose a data processor providing sufficient guarantees, it is the responsibility of the data controller as well as the data processor to ensure compliance with the security measures defined in this Supplementary Act.”*



PRINCIPLES-Data processor must be in a position to ensure:

1. Privacy
2. Minimality
3. Consent, justification, objection
4. Purpose: Specific, data-subject aware
5. Period of retention
6. Further processing



Where the data controller does not exercise the requisite care, sanctions set out in the law will apply to the data controller, the data processor or both:

- S. 43. States inter alia that where by virtue of a data controller's *failure to adhere* to the Act a person suffers damage or distress, that person is entitled to compensation from the data controller for the damage or distress.
- S 56. A Sanctions is also prescribed for persons who fails to register as a data controller but processes personal data nonetheless. Such persons may be tried and convicted to a fine of not more than two hundred and fifty penalty units or a term of imprisonment of not more than two years or to both.



- It is an offence for a person to fail to comply with an enforcement notice or an information notice from the Data Commission and may be fined up to one hundred and fifty penalty units or to a term of imprisonment of not more than one year or to both.



S. 30 of Act 834 requires that:

There should be a written contract governing the processing of personal data for a data controller by a data processor.



- A data controller shall ensure that a data processor who processes personal data for the data controller, establishes and complies with the security measures specified under the Act.
- The contract between a data controller and a data processor shall require the data processor to establish and maintain the confidentiality and security measures necessary to ensure the integrity of the personal data.
- For data processor domiciled abroad, the data controller shall ensure that the data processor complies with the relevant laws of Ghana.



A person who, in compliance with an enforcement notice,

- ❖ (a) makes a statement which that person knows to be false in a material respect, or
- ❖ (b) recklessly makes a statement which is false in a material respect commits an offence and may be convicted to a fine of not more than one hundred and fifty penalty units or to a term of imprisonment of not more than one year or to both.



There is also a general penalty under S. 95 to deal with breaches of the Law that have no specific penalty attached. Where a penalty is not specified, the person is liable on conviction to **a fine of not more than five thousand penalty units** or a **term of imprisonment of not more than ten years or to both.**

The legal requirements for contracting a data processor, are such that the data controller and the data processor are jointly responsible to ensure that the data protection principles (hereinafter referred to as 'principles') are adhered to.



EXCEPTIONS

Processing personal data in regard to the following are exempt from principles and tenets of the Act are

1. Crime
2. National security



LESSONS FROM OTHER JURISDICTIONS

Following this ruling (Google -v- Vidal-Hall/Hann/Bradshaw, 27 March 2015), the legal footing upon which to obtain compensation in court claims for data protection infringements has moved forward significantly and may pave the way in general for class actions.



- Misuse of private information is now classified as a **tort**, thereby in this case enabling proceedings to be issued against a party outside the jurisdiction of the UK;



- ***Financial compensation for distress*** caused by breaches of the Data Protection Act 1998 (“the DPA 1998”) may now be claimed, **despite there being no monetary loss**, the UK legal provision which had to date prevented this having now been disapplied;



In a recent case, Plymouth Hospital NHS Trust was ordered to pay compensation to a patient after one of its employees unlawfully gained access to the man's medical records. The nurse who accessed the data was the man's partner at the time. The patient claimed that the breach of the Data Protection Act 1998 (DPA) and the way his subsequent complaint regarding the matter was handled had made worse a pre-existing paranoid personality disorder and prevented him from working. He was awarded damages of £12,500 for exacerbation of his pre-existing medical condition and £4,800 for loss of earnings.



RIGHT TO BE FORGOTTEN PRINCIPLE- complaint against Google Spain and Google Inc.



S. 18 (2), “A data controller or processor shall in respect of foreign data subjects ensure that personal data is processed in compliance with data protection legislation *of the foreign jurisdiction* of that subject where personal data originating from that jurisdiction is sent to this country for processing.”



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EFFECTS OF NON-COMPLIANCE



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THANK YOU.

