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Privacy & the media. Traditional and emerging protections in an online world.

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National Report of Cyprus

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1. Privacy rights

Under Privacy right, we understand the right not to have information about a person to be disclosed to other persons without the consent of the person which the information refers to.

1.1. Are privacy rights statutory rights or are these case-law based?

The right to privacy is enshrined under Article 15 of the Cypriot constitution, which states that every person has the right to respect for their private and family life, as well as Article 17 of the Cypriot constitution, which provides that every person is entitled to respect and privacy in their correspondence and other means of communications. The right to privacy is also protected in Cyprus pursuant to European instruments such as Article 8 of the European Convention of Human Rights (ECHR), which is considered part of the laws of Cyprus. The ECHR is in fact superior to national legislation, but subject to the provisions of the Constitution. Another significant European instrument includes the EU Data Protection Directive 95/46/EC. In terms of the practical regulation of privacy rights, these are regulated by statutes passed by Parliament such as the Processing of Personal Data (Protection of Individuals) Law of 2001 (L.138(I)/2001), which transposed the EU Data Protection Directive as well as statutes such as the Tort Law (Cap. 148), which regulates the tort of defamation. Through the operation of common law, further protection and interpretation of the legislation is provided by case law.

1.2. What type of information (including pictures, sounds, etc.) would be covered by the concept of “privacy rights” in the legal system of your country?

Pursuant to the definition of privacy rights as provided at (1) above, under the Cypriot Processing of Personal Data (Protection of Individuals) Law of 2001 (the “Personal Data Law”) information which is subject to protection by the state includes any information which refers to a natural person currently alive and which can be identified, either directly or indirectly, from the data in question. The Personal Data Law expressly excludes from this definition any form of statistical data from which it is not possible to identify the subject of the data.

Additionally, under the Tort Law Cap. 148 (the “Tort Law”) any person who “publishes by means of print, writing, painting, effigy, gestures, spoken words or other sounds, or by any other means whatsoever, including broadcasting by wireless telegraphy of any matter which: imputes to any other person a crime, or; imputes to any other person misconduct in any public office, or; naturally tends to injure or prejudice the reputation of any other person in the way of his profession, trade, business, calling or office, or; is likely to expose any



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other person to general hatred, contempt or ridicule, or; is likely to cause any other person to be shunned or avoided by other persons [*free translation*]” commits the tort of defamation and is liable to pay damages.

1.2.1. Would the information included in that concept, or the extent of the privacy rights, depend upon the celebrity of the person, or upon other elements? Please describe briefly.

The definitions of privacy described above have not been drafted in a manner which would be interpreted differently depending on the celebrity or other characteristics of the data subject, and there is no known case law which changes the definition of privacy depending on the personal characteristics of the individual.

1.2.2. Would privacy rights also apply in relation to legal persons (vs. physical persons)?

In relation to the Personal Data Law, the data subject must be a living individual.

However, the data controller, that is to say the person controlling the contents and use of personal data, may be either a natural or a legal person.

In relation to tort law, a tort may be committed by and against either a natural or a legal entity.

1.2.3. Would privacy rights encompass private information made available only to some chosen persons (authorized recipients). So, for instance, can disclosure to third parties, by one of the authorized recipients of the private information, be part of the privacy rights (e.g. disclosure of private correspondence, private phone calls, information shared on social media, etc.)

In the context of data protection, data belonging to a data subject may only be processed with the express consent of the data subject as described at (5.2) below. As a result, the disclosure of information about a data subject to a third party without the consent of the data subject would constitute a breach of privacy, even if the person disclosing the information is an “authorised recipient”.



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We note that any evidence for a court case which has been obtained illegally is strictly inadmissible in court and will not be recognised.

1.3. Is there a specific status for “fictional use” of information related to an individual? And are disclaimers sufficient to allow such use?

In relation to a cause of defamation, common law has directed that in an action for defamation, the publication need not refer to a person directly and that it may be made by insinuation.

Following this, although “fictional use” disclaimers are widely used in Cyprus as derived from English common law, there has yet to be a Cypriot case dealing with this scenario directly.

2. Freedom of speech

2.1. Is there a on the one hand a statutory/ treaty based freedom or constitutional recognition of “Freedom of speech” or on the other hand is that freedom based on case-law.

As in the case of privacy rights, the freedom of speech in Cyprus is enshrined by the Constitution. Article 19 of the Constitution provides that every person is entitled to free speech and to express themselves freely in any manner.

Additionally, as a party to the ECHR, Cyprus is bound to observe the provision of Article 10 ECHR providing for the right to freedom of expression.

2.2. If it is a statutory/treaty/ constitution based freedom is it based on domestic or supranational law?

As mentioned at (2.1) above, freedom of speech is protected both on a national level, through the operation of the Constitution, as well as at the supranational level, given that Cyprus is a party to the ECHR and is therefore bound by Article 10 ECHR.

2.3. Describe the main characteristics of the “freedom of speech” as recognized in your jurisdiction:

2.3.1. beneficiaries;

Article 19(1) of the Constitution provides that every person has the right to freedom of speech and to express themselves in any manner.

2.3.2. extent of the freedom of speech;

Articles 19(2) specifies that freedom of speech includes the freedom to have an opinion, and to receive and transmit



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information and ideas with any interference from public authorities, irrespective of borders.

2.3.3. exceptions;

Cypriot common law has given rise to certain principles governing the freedom of speech, which provide that any restriction to such freedom is an exception which:

- a. must be sanctioned by law,
- b. must pursue a cause allowed by Article 10 ECHR, and
- c. the restriction must be shown to be necessary to achieve the said cause.

Additionally, Article 19(3) of the Constitution also provides specifically that this freedom of speech may be subject to conditions, restrictions or penalties prescribed by law and which are necessary in the interests of the security of the Republic, the constitutional order, the public safety, the public order, the public health, the public morals, the protection of the reputation or rights of others, the prevention of the disclosure of information received in confidence, or the maintenance of the authority and impartiality of the judiciary.

2.3.4. specific status for press (including online press)?

Article 19(4) of the Constitution specifies that seizing newspapers and other printed documents is not allowed unless written leave is granted by the Attorney General of the Republic, and any such seizure should be further validated by a competent court within 72 hours of the seizure at the latest. A seizure which is not subsequently validated in this way is considered invalid.

The Constitution does not make express reference to online publications, and this matter has yet to be tested in the Courts.

We note that the above do not preclude the government from requiring that radio, film or television stations obtain a licence to operate.

3. Hierarchy between Freedom of Speech on one side and privacy rights on the other side.

3.1. Under the law applicable in your jurisdiction, is there a clear hierarchy between freedom of speech on the one hand and privacy rights on the other?

There is no express hierarchy in the legislation determining what the balance between the freedom of expression and the right to privacy is. Both rights are key provisions of the Constitution, and the Constitution does not comment on the interplay between them.



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However, Cypriot common law has directed that the freedom of speech is the rule, and any restriction to this is an exception which should comply with the provisos set out at (2.3.3) above to be valid.

Additionally, as Cyprus is a signatory to the ECHR and a Member State of the EU, case law on the matter decided by the European Court of Human Rights (the “ECtHR”) and the European Court of Justice (the “ECJ”) would be binding on Cypriot courts, subject always to not contravening the Constitution, which is considered the highest form of law in the Republic. Additionally, as Cypriot law was founded on English common law, it was recognised in the key decision *Cochino v Irfan* that in the absence of any specific regulation or jurisprudence under Cypriot law, English common law will apply.

3.2. What would be the most significant criteria allowing freedom of speech or privacy rights to prevail over the other (e.g. public interest argument)?

Does not apply – please refer to (3.1) above.

4. Remedies available in your jurisdiction to protect individuals against disclosure of information belonging to their privacy

4.1. Are there pre-emptive remedies to avoid disclosure of such information before disclosure occurs? Describe briefly the main remedies available.

The most widespread legal measure taken to prevent a party from going ahead with any action is an injunction. Any court in Cyprus, in the exercise of its civil jurisdiction, may issue an injunction if it deems it fit.

Where a case is still in the process of being decided, an interim injunction may also be obtained if the person applying for the order can satisfy the following criteria:

- a. A serious question arises to be tried at the hearing of the main proceedings;
- b. It appears that the applicant has a probability to obtain a favourable judgment in the main proceedings;
- c. There is a great risk that, if the injunction is not issued, then it will be difficult or impossible to do justice at a later stage; and
- d. The balance of convenience is in favour of the applicant.

4.2. Are “gagging orders”¹ or “super injunctions”² as known in the UK known under the legal system of your country? Describe briefly their main characteristics.

¹See for details : http://en.wikipedia.org/wiki/Gag_order#United_Kingdom



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“Gagging orders” are available and widely used in Cyprus. They are particularly used in support of disclosure and discovery orders against banking institutions and other service providers.

4.3. Are there other post-disclosure remedies, such as for example damage claims, rectification claims, right of answer. Describe shortly.

In relation to a breach of the Personal Data Law, the data controller is obliged to compensate a data subject who has incurred damage due to any breach of the Personal Data for which the data controller was responsible.

In relation to a successful claim in tort, such as for example a defamation or an injurious falsehood claim, damages may be payable under tort law.

More generally, although no strict statutory framework exists, the Court has a wide discretion in making any kind of remedial order, including a rectification order.

4.4. In the case of damages, how are they calculated?

As a general principle, damages are calculated on the basis of compensating the victim for any losses sustained, with the aim of restoring a victim to the position he or she would be in had the wrongful action not been committed, to the extent that it is possible to do so with a monetary award. Where it has not been shown that a loss has been sustained, the Court may award nominal damages.

4.5. In case of disclosure of private information, who can be held liable for damages, especially online?

As mentioned at (4.3) above, the Personal Data Law provides that a data controller must compensate a data subject for any damages incurred by any breach of the Personal Data Law for which the data controller was responsible.

4.6. Are there special defences to a cause of action for information disclosed by the press/ media?

There are no defences which are specifically available to the press/media.

² See for details: http://en.wikipedia.org/wiki/Injunction#UK_superinjunctions



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However, if the cause of action is one for defamation, then the press/media may put forward the following available defences:

- a. the publication was true
- b. the publication was in the public interest
- c. the publication was an entirely privileged publication. In an entirely privileged publication it does not matter whether the publication was true or not, whether the person making the publication knew if it was true or not and whether it was made in good faith. This defence mainly concerns exempting state institutions (e.g. the President or the Council of Ministers) from incurring liability for formal publications made.
- d. the publication was a qualified privileged publication. In a qualified privileged publication, the publication must have been made in good faith. The most significant circumstances which give rise to a qualified privileged publication are as follows:
 - i. where the publication is made to protect the rights or interests of the person making the publication or the person the publication is about;
 - ii. where the publication is a precise report of what has been said, done or published in any legislating body;

4.6.1. As part of your answer please explain what is range of news information organisations is covered by the definitions press/ media?

Not applicable – the special defences for defamation described under (4.6) above are not specific to the press/media.

4.6.2. Is there a specific protection offered to informants/sources?

Informants and/or sources who provide information to authorities which subsequently leads to a case being brought against a person cannot be sued for malicious prosecution, unless such information was maliciously given to the authorities knowing it was false with the purpose of leading to the prosecution of the claimant.

4.7. Are the principles described in your answers above also applicable to the online world? Is there any specific case-law in your country relating to social media, and if so please summarise this?

There is no specific case law yet declaring that these provisions extend to online breaches of privacy.

4.8. Are there specific remedies against disclosure of information that (could) damage an individual reputation (such as slander or libel)? Describe these remedies briefly.



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Slander and libel do exist under Cypriot law and they both fall under the tort of defamation, as described at (1.2) above. A claimant in an action for defamation may claim damages.

Another tort which also relates to the disclosure of information which may damage one's reputation is injurious falsehood. This tort only applies to situations where a falsehood is maliciously published regarding the profession or occupation, the property, or the title of ownership of another. A claimant in an action for injurious falsehood may claim damages.

4.9. Forum and applicable law

4.9.1. Describe shortly what rules exist in your jurisdiction for the determination of the forum and the applicable law.

The Jurisdiction of the Courts is determined in accordance with the EU Judgment Regulations (Reg. 44/2001 as succeeded by Reg. 1256/2012). Domestic law governing the jurisdiction of the national Courts is the Courts of Justice Law 14/60. Additionally certain statutes may create specific jurisdictional requirements such as the Tort Law, Cap. 128.

4.9.2. Are there specific rules for breaches caused online (when the information is accessible from different jurisdictions)? Not applicable.

4.10. From your experience, what reforms should be made to the legal system of your country to better protect individual privacy, if any?

Generally speaking, the data protection regime has proven to be quite effective in Cyprus for what seems to be the current needs of the public, offering citizens a satisfactory variety of legal relief where their privacy rights are violated. Nonetheless, as may be obvious from this report, there are various aspects of privacy rights – particularly aspects relating to technology, the internet and social media – which remain regulated within archaic frameworks, which have not been updated to reflect the modern concerns for violations of privacy. Additionally, it would further be recommended that certain concepts left which have not been so closely defined or analysed in national case law are further developed for the sake of greater legal certainty and heightened protection for individuals. This includes providing greater depth to the balance between the freedom of expression and the right to privacy, as well providing more exhaustive and updated definitions for what constitutes the “media” and clearer guidance on what would constitute a violation of these rights.



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Although these issues are partly due to the lack of case law on the matter in a country as small as Cyprus, it would be advisable that the authorities take a proactive stance to implement the necessary legislation to offer sufficient protection.

5. Interplay between data protection rules and privacy rights

5.1. Summarise how does data protection law in your jurisdiction protects privacy or other personal data being used in online media?

As a fundamental rule, data may not be collected or processed without the express consent of the data subject and certain types of data may not be collected at all. This requirement for consent is analysed further at (5.2) below.

Additionally, under the Personal Data Law a data controller is obliged to notify the competent authority, the Data Protection Officer, in writing that a file for collecting and/or processing personal data has been set up.

Section 2 of the Personal Data Law defines a data controller as any person which directs the purpose and the manner in which personal data is processed.

5.2. Is there an effective a right of opposition to collection of data?

Under the Personal Data Law at section 5(1), data processing is only lawful if the subject of the data has given express consent. Section 5(2) details certain exceptions in which data may be processed without the consent of the subject, which are as follows:

- a. the processing is necessary for the fulfilment of the obligations of a data controller, which obligations arise from statute or EU Regulations;
- b. the processing is necessary for the execution of a contract to which the data subject is a party, or to take measures at the request of the data subject, prior to concluding a contract;
- c. the processing is necessary to defend the vital interests of the data subject;
- d. the processing is necessary for the execution of a project of public interest or a project which falls within the ambit of a public authority and has been assigned to the data controller or a third person, and to whom the personal data is announced; and
- e. the processing is necessary to satisfy a legal interest pursued by the data controller or a third person to whom the personal data is



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announced, insofar as this does not override the rights, interests and fundamental freedoms of the data subjects.

In relation to points (d) and (e), section 13 of the Personal Data Law provides that every data subject has the right to object to processing of their personal data for necessary and reasonable reasons which are directly related to their personal circumstances.

Furthermore, section 6 of the Personal Data Law strictly forbids the collection and processing of sensitive data. Sensitive data is defined as data which concerns the racial or national origins, political, religious or philosophical beliefs, participation in a union, organisation or trade union, the health, love life and sexual orientation and details about any criminal charges or convictions of a data subject.

Section 6(2) of the Personal Data Law provides that sensitive data may be collected under certain circumstances, the most significant of which are as follows:

- a. where the data subject has given their express consent, provided that such consent was freely given or where a law specifies that consent does not lift the prohibition;
- b. where the processing is necessary to defend the vital interests of the data subject or another person, where the subject is naturally or legally unable to give consent;
- c. where the processing concerns exclusive data which is published by the data subject, or which is necessary to defend a right in court;
- d. where the processing concerns medical data and the processing is carried out by a professional in the medical field who is bound by a duty of confidentiality, subject to the condition that this processing is necessary for medical prevention, diagnosis, or management; and
- g. where the processing is necessary to serve national requirements or national security, or to assist in the punitive procedures conducted by the relevant bodies duly authorised to do so by the government.

6. Right to be forgotten

6.1. Is there a statutory or case-law based “right to be forgotten” in your jurisdiction (whether under domestic or supranational law) ? Describe it briefly.

As of yet, there has not been any national legislation or case law expressly implementing or interpreting the “right to be forgotten” as established by the European Court of Justice (the “ECJ”) in *Google Spain v AEPD and González*. As a member of the EU however, Cyprus is bound to follow the decisions of the ECJ and would therefore be obliged to recognise such a right.



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- 6.2. Is there relevant case law in your jurisdiction regarding the right to be forgotten and/or are there other guidelines (whether under domestic or supranational legal procedure) for a successful claim under the “right to be forgotten”.**

As mentioned at (6.1) above, no national case law or official guidelines have been issued in Cyprus in relation to the “right to be forgotten”. Nonetheless, the fact that it has been recognised at the European level means that it is necessarily recognised in Cyprus as well, by virtue of Cyprus’ membership in the EU.

- 6.3. Did the view on the right to be forgotten change in your jurisdiction due to the European Court of Justice Case in Google Spain v. AEPD and González (C-131/12)? Is there any case law arising from this decision in your jurisdiction?**

As mentioned at (6.1) above, the ECJ case Google Spain v AEPD and González has yet to be tested in the Cypriot courts, in order to lead to any national interpretation of the principle. However, as a member of the EU, Cyprus is bound to follow the decisions of the ECJ and would therefore be obliged to recognise such a right.

- 7. Are there other aspects to take into consideration in your jurisdiction in relation to freedom of speech, the privacy right and the right to be forgotten?**

The main legal principles applicable to the operation of freedom of speech, right to privacy and the right to be forgotten are covered within the above questions. Should you need any clarifications or believe that certain parts of this report should be elaborated upon, please do not hesitate to contact me.