

# LEGAL CONTROL ON COOKIES\*

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## ABSTRACT

Cookies are equipment, used by third parties including website owners and third-party advertisers, collecting and tracking internet users' personal data and privacy while internet users are surfing on the internet. In this regards, website owners and third-party advertisers use cookies without internet users' knowledge and consent by installing cookies on internet users' terminal equipment such as computers, laptops, and mobile phones. Therefore, the aforementioned action of website owners and third-party advertisers shall be deemed as infringement of internet users' right of privacy and personal data.

In Thailand, website owners and third-party advertisers also use cookies without internet users' knowledge and consent because while surfing on the internet, there is no any notice of the use of cookies on the sites. Therefore, it shall be deemed that most internet users have no idea of what cookies are, how harm cookies are and what the purposes of cookies are. In this regards, the current Thai law are not sufficient to control the use of cookies since there is no specific law to apply for this matter.

However, the developed states are aware of the infringement of internet users' privacy and personal data; therefore, they changed several legal provisions to control the use of cookies.

Regarding this matter, this thesis aims to study on the problems of the use of cookies and analyze the current and proposed Thai law whether they are suitable to control the use of cookies. Furthermore, it also provides and analyzes the principles of foreign legislations in accordance with the legal control on the use of cookies in the following states or countries: the European Union, the United Kingdom, Italy, and the United States of America. Then, it will provide recommendation to solve this matter in Thai law.

**Keywords:** Cookies, the Use of Cookies, Privacy, Personal Data

### บทคัดย่อ

คุกกี้เป็นอุปกรณ์ชนิดหนึ่งที่ใช้สำหรับเก็บข้อมูลของผู้ใช้อินเทอร์เน็ต และติดตามพฤติกรรมของผู้ใช้อินเทอร์เน็ตในขณะที่กำลังใช้อินเทอร์เน็ตเพื่อกระทำการใดๆ โดยบุคคลที่สามซึ่งรวมไปถึง เจ้าของเว็บไซต์ และนักโฆษณาที่เป็นบุคคลภายนอก ซึ่งในกรณีดังกล่าว เจ้าของเว็บไซต์ และนักโฆษณาที่เป็นบุคคลภายนอกจะติดตั้งคุกกี้บนเครื่องมือที่สามารถเข้าถึงอินเทอร์เน็ตได้ อันได้แก่ คอมพิวเตอร์ คอมพิวเตอร์โน้ตบุ๊ก และมือถือ โดยปราศจากการรับรู้และความยินยอมของผู้ใช้อินเทอร์เน็ตแต่อย่างใด โดยการ

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กระทำได้กล่าวเป็นการละเมิดต่อสิทธิในข้อมูลส่วนบุคคล และสิทธิความเป็นส่วนตัวของผู้ใช้อินเทอร์เน็ตเป็นอย่างมาก

ในประเทศไทย เจ้าของเว็บไซต์ และนักโฆษณาที่เป็นบุคคลภายนอก ก็ใช้คุกกี้โดยปราศจากการรับรู้และความยินยอมของผู้ใช้อินเทอร์เน็ตเช่นกัน เนื่องจากเมื่อผู้ใช้อินเทอร์เน็ตมีการเข้าถึงหน้าเว็บไซต์ต่างๆ ก็ไม่ได้มีข้อความใดๆ ที่ระบุถึงการใช้คุกกี้ของเว็บไซต์ให้แก่ผู้ใช้อินเทอร์เน็ตรับทราบ ดังนั้นอาจจะสันนิษฐานได้ว่าผู้ใช้อินเทอร์เน็ตส่วนใหญ่ไม่มีความรู้ว่าคุกกี้คืออะไร คุกกี้มีผลเสียอย่างไร และคุกกี้มีไว้เพื่อใช้ทำอะไร ซึ่งในกรณีนี้ กฎหมายไทยที่บังคับใช้ในปัจจุบันไม่สามารถบังคับได้เพียงพอกับการใช้คุกกี้ ดังนั้น จึงไม่มีกฎหมายโดยเฉพาะที่ควบคุมการใช้คุกกี้แต่อย่างใด

อย่างไรก็ตามสำหรับประเทศที่พัฒนาแล้วได้มีการตระหนักถึงการละเมิดสิทธิส่วนบุคคลและสิทธิในข้อมูลส่วนบุคคลของผู้ใช้อินเทอร์เน็ต ดังนั้นประเทศเหล่านี้ได้มีการแก้ไขเปลี่ยนแปลงบทกฎหมายที่ใช้สำหรับการควบคุมการใช้คุกกี้

ดังนั้นวิทยานิพนธ์ฉบับนี้จึงมุ่งศึกษาถึงปัญหาที่เกิดจากการใช้คุกกี้และวิเคราะห์ว่ากฎหมายที่บังคับใช้ในปัจจุบันและร่างบทบัญญัติที่ถูกเสนอเกี่ยวกับเรื่องการควบคุมคุกกี้ในประเทศไทยนั้นเหมาะสมและเพียงพอหรือไม่ นอกจากนี้ ยังมีการศึกษาถึงบทบัญญัติเกี่ยวกับการควบคุมการใช้คุกกี้ในประเทศต่างๆ ได้แก่ สหภาพยุโรป สหราชอาณาจักร อิตาลี และสหรัฐอเมริกา และพิจารณาว่าควรจะมีข้อเสนอแนะเกี่ยวกับการแก้ไขปัญหาในประเทศไทยอย่างไร

**คำสำคัญ:** คุกกี้ การใช้คุกกี้ สิทธิส่วนบุคคล สิทธิในข้อมูลส่วนบุคคล

## Introduction

Generally, people usually understand that personal information is the information about their lives such as names, addresses, birthdays, telephone numbers, credit cards' numbers or ages but in the eyes of law, personal information is not only information about one's life but it is also deemed as human fundamental right, which includes information privacy, territorial privacy, bodily privacy and communication privacy as declared in section 12<sup>1</sup> of Universal Declaration of Human Rights or UDHR 1948.<sup>2</sup>

In the current business environment, most companies serve consumers more convenient by creating their own websites; therefore, consumers can easily search on the internet about the needed products or information, but this convenience might bring some drawbacks to consumers themselves. As the internet provides new opportunities to trade business and to communicate with third parties, it also gives more opportunities for third parties to collect internet users' personal data and track internet users' behavior while surfing the internet without their knowledge and consent by using an instrument called "Cookie".

Cookies are essential for online shopping websites since cookies are used to remember products that the internet users choose in the shopping basket. In addition, several websites use cookies for the purpose of remembering emails and passwords of internet users. As

<sup>1</sup> Section 12 of UDHR 1948 states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."

<sup>2</sup> น้าทิพย์ บุญเกิด, ความรับผิดทางอาญากรณีละเมิดข้อมูลส่วนบุคคล: ศึกษาเฉพาะกรณีข้อมูลส่วนบุคคลที่จัดเก็บในระบบคอมพิวเตอร์, หน้า 1 (เมษายน 21, 2548) (Namthip Boonkerd, **Criminal Liability for the Transgression of Personal Data: Particularly Study about Personal data which be Kept in the Computer System**, 1 (April. 21, 2005)).

aforementioned, it seems that cookies provide benefits to internet users since it can help transaction on online shopping website to be completed and it can save time for internet users to enter into emails or websites.

However, several website owners and/or third-party advertisers also use cookies in bad faith for tracking internet users' behavior and collecting internet users' personal data regarding interest of product, then place web ads on each internet users for each interest of advertisement in order to promote brand and increase sale. In addition, the information received from such collection can be sold to any person interested in personal data, which cost enormous value.

In this regards, since internet users have their own right on their personal data and privacy; therefore, using cookies for collecting internet users' personal data without their prior consent shall be deemed as infringement of personal data. In addition, using cookies for tracking internet users' behavior without internet users' knowledge and consent is also deemed as infringement of privacy.

As aforementioned, many developed countries; for example, the United States of America and the European Union, realized on the damages caused by the use of cookies to the internet users' personal data and privacy. They amended their legal provisions to apply for the use of cookies. However, Thai laws provide neither specific legal provision to be applied for the use of cookies nor legal provision to be controlled for website owners or third-party advertisers. It therefore becomes questioned that whether current Thai laws are sufficient to be applied with the infringement of personal data and privacy from the use of cookies by website owners and/or third-party advertisers. In addition, since there are various organization drafting Data Protection Act B.E...., this shall be realized whether the provisions provided in the draft are sufficient to cover the use of cookies.

### **Problems of the use of cookies**

Cookies are used by website owners and third-party advertisers without internet users' knowledge and consent. Although cookies provide facility to internet users if cookies are used in good faith; for instance, it provides consistency for websites, it helps to complete online shopping, it provides security purpose for bank transaction. However, cookies are also used in an inappropriate manner to deceive internet users for the purpose of commercial ads on marketing; for example, third-party advertisers disguise cookies to track and collect internet users' personal data without internet users' knowledge and consent while internet users are surfing internet in order to scope targeted advertisement and place interested web ads on each internet user's webpage once internet users open websites.

Furthermore, website owners collect internet users' personal data and sell this information to others such as insurance company and marketing company, which may cost annoyance and damages to the owner of data since these companies might call or send emails to the owner of data in order to offer or sell their products. In addition, if anyone has large

amount of information for both online and offline data, he may be able to create internet users' profiles; for instance, DoubleClick case<sup>3</sup>.

However, not all type of cookies are dangerous to internet users, only the use of cookies for some purposes is effected to right of personal data and privacy of internet users.

## **Legal Control on Cookies in Foreign Countries**

### **The European Union**

Regarding legal control on the use of cookies, at the beginning, Section 5(3) of the Directive on Privacy and Electronic Communications 2002/58/EC of the European Union Parliament (the Directive 2002/58/EC) states that *“(3) Member States shall ensure that the use of electronic communications networks to store information or to gain access to information stored in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned is provided with clear and comprehensive information in accordance with Directive 95/46/EC<sup>4</sup>, inter alia about the purposes of the processing, and is offered the right to refuse such processing by the data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.”*

Referred to section 5(3) of the Directive 2002/58/EC, it can be concluded that if website owners would like to use cookies in order to gain access to information stored in the terminal equipment of the internet users, such website owners are required to inform internet users of such use of cookies clearly and comprehensively. However, there are two exemptions, which are not required to follow the rules, which are the use of cookies for sole purpose to carry out the transmission of communication over the network and the strictly necessary used, which are explicitly requested by internet users.

Although the Directive 2002/58/EC provides the rules for the use of cookies, it might not help to decrease the infringement of privacy and personal data. Hence, the European Union (the EU) had changed the rules in Section 5(3) by issuance the Directive on Privacy and Electronic Communications 2009/136/EC (the Directive 2009/136/EC), which states that *“Member States shall ensure that the storing of information, or the gaining of access to information already stored, in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned has given his or her consent, having been provided with clear and comprehensive information, in accordance with Directive 95/46/EC, inter alia about the purposes of the processing. This shall not prevent any technical storage*

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<sup>3</sup> DoubleClick used cookies for collecting internet users' personal data and tracking internet users' behavior. Hence, DoubleClick had been investigated into privacy breaches. In this regards, DoubleClick had to pay \$1.8 million for the settlement.

<sup>4</sup> The Data Protection Directive (officially Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data) is a European Union directive adopted in 1995 which regulates the processing of personal data within the European Union. It is an important component of EU-privacy and human rights law.

*or access for the sole purpose of carrying out the transmission of a communication over an electronic communications network, or as strictly necessary in order for the provider of an information society service explicitly requested by the subscriber or user to provide the service.”*

In this regards, Section 5(3) of the Directive 2009/136/EC provides that in the event that website owners wish to use cookies, they are required to inform the internet users of purpose of the use of cookies clearly and require prior consent from internet users, which shall be shown expressly and freely given. The method to give notice and receive consent may be in form of pop-up window and if internet users consent or refuse the use of cookies, internet users can represent their intention by ticking in or off the box, provided in pop-up window notice.

Nevertheless, the exemptions of the rules are the same as provided in Section 5(3) of the Directive 2002/58/EC.

### **The United Kingdom**

The United Kingdom (the UK) is the first country of the EU that changed their regulations in order to comply with Section 5(3) of the Directive 2009/136/EC. The amendment of the use of cookies is in Regulation 6 of the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, which are similar to the details of Section 5(3) of the Directive 2009/136/EC, details of this provision are stated as follows:

*“(1) Subject to paragraph (4), a person shall not use an electronic communications network to store information, or to gain access to information stored, in the terminal equipment of a subscriber or user unless the requirements of paragraph (2) are met.*

*(2) The requirements are that the subscriber or user of that terminal equipment –*

*(a) is provided with clear and comprehensive information about the purposes of the storage of, or access to, that information; and*

*(b) is given the opportunity to refuse the storage of or access to that information.*

*(3) Where an electronic communications network is used by the same person to store or access information in the terminal equipment of a subscriber or user on more than one occasion, it is sufficient for the purposes of this regulation that the requirements of paragraph (2) are met in respect of the initial use.*

*(4) Paragraph (1) shall not apply to the technical storage of, or access to, information*

*(a) for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network; or*

*(b) where such storage or access is strictly necessary for the provision of an information society service requested by the subscriber or user.”*

Referred to the above section, if website owners wish to use cookies in order to gain access to information stored or use cookies to collect information, website owners are required to provide clearly and comprehensively of the purpose of the use of cookies and provide internet users opportunity to consent or refuse of such use of cookies by showing their intention expressly. However, there are also exemptions of this rule, which are the same as

provided in the Directive 2009/136/EC.

If website owners fail to perform as the legal control provided in Regulation 6 of the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, stated in the aforementioned, website owners have to be fined in the amount of not exceeding £500,000, determined by the Commissioner. After website owners have been fined, the monetary penalty shall not be kept by the Commissioner but shall be paid to the Consolidated Fund, which is owned by HM Treasury.<sup>5</sup>

## **Italy**

Referring to Section 5(3) of the Directive 2009/136/EC, Italy had amended their legal control on the use of cookies by issuance of Personal Data Protection Code, Legislative Decree No. 69 of 28 May 2012, regarding consent and privacy policy for using cookies is held by the Italian Data Protection Authority.

Regarding the use of cookies, Italy had divided cookies into two major types, which are technical cookies and profiling cookies. In this regards, technical cookies are installed by website owners only, third-party advertisers are not involved and the use of technical cookies is not harmful to internet users because technical cookies are used for the two following purposes: (i) carrying out the transmission of a communication on an electronic communication and (ii) strictly necessary using to provider of information society services that has been explicitly requested by internet users, such as online shopping for the process of purchasing item system and authenticating themselves to access certain sections. In addition, functional cookies and analytical cookies are in the scope of technical cookies. Technical cookies neither require requesting consent from internet users nor informing the use of cookies to Italian Data Protection Authority (“Garante”). Nevertheless, website owners are still required to send notification of the purpose of the use of cookies to the internet users.

On the other hand, profiling cookies are used for the purpose of creating users’ profiles by accessing and collecting internet users’ personal data. Website owners would send advertisement messages in line with the preferences shown by the users during navigation. Hence, before the website owners or third-party advertisers use this type of cookies on their websites, they need to inform the internet users of the purpose of the use of cookies, which briefly state in short notice providing clickable link that provide more details of such cookies, and need to receive prior consent from the internet users, which the implied consent is acceptable – if internet users do not tick in a box of refuse to use cookies and click anything provided in websites, such action shall be deemed as “consent” for the use of cookies.

Failure to perform as the law said, website owners are required to be punished categorized as follows: (i) Failure to provide adequate notice to internet users, they shall be fined €6,000-30,000; (ii) Failure to receive prior consent before installation of cookies from internet users, they shall be fined €10,000-120,000; and (iii) Failure to submit a complete notification to the Garante, they shall be fined €20,000-120,000.

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<sup>5</sup> Affilinet, *EU Cookie Law : Understand the EU’s ePrivacy Directive*, 17, (2011).

## **The United States of America**

The United States of America (the US) had concerned on the individual's privacy and personal data regarding the use of internet for several purposes. In addition, the most awareness would be the use of cookies for online behavioral advertising by third-party cookies because third-party cookies are commonly used to track internet users across different websites by companies that are hidden on websites, which falls in the scope of privacy infringement. According to the legal control on cookies, especially for the online behavioral advertising, the US has legislated Do-Not-Track mechanism to control anyone using cookies for this purpose.

Do-Not-Track mechanism would allow internet users to choose whether they want all websites to collect information about their internet activity and use to deliver targeted advertisements and for other purposes.<sup>6</sup>

Under the Do-Not-Track proposal, by using a universal setting through the browser, a user could switch between allowing third-party cookies tracking for all purposes, allowing tracking for certain narrow purposes, never allowing tracking at all, simply with the click of a button.<sup>7</sup> A Do-Not-Track mechanism is technologically method because it would avoid banning certain technologies over others.<sup>8</sup> Instead, it would alert ad-networks not to track a specific user, no matter what technology was used.<sup>9</sup>

## **Legal Control on Cookies in Thailand**

### **Thai Civil and Commercial Code B.E. 2535**

Section 420 of Thai Civil and Commercial Code B.E. 2535 or Section 420 of TCCC states that "*A person who, willfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore.*"

Regarding the use of cookies, website owners or third-party advertisers intentionally use of cookies for the purpose of tracking and collecting internet users' personal data while surfing the internet. In addition, website owners use cookies without internet users' knowledge and consent of such use – website owners neither send prior notice to internet users nor receive prior consent from internet users. Furthermore, such use of cookies causes damages to internet users because if internet users' information is collected in vast amount and sold to third party, that third party can build each internet user profile or third party may cause telemarketing and spam mails, which annoys users. However, such damages are mental injury and it is hard to bring wrongdoer to be punished under this law.

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<sup>6</sup>"Do Not Track", available at <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy/do-not-track> (last visited June 21, 2015).

<sup>7</sup> Matthew S. Kirsch, *Do-Not-Track: Revising the European Union's data protection framework to require meaningful consent for behavioral advertising*, 18 *Rich. J.L. & Tech.* 1, 41 (2011-2012).

<sup>8</sup>*supra* note 7, at 42

<sup>9</sup>*supra* note 7, at 44

## **Thai Penal Code B.E. 2499**

Regarding the legal provisions provided in Thai Penal Code B.E. 2499, there is no any legal provisions that can protect internet users' right of personal data and privacy from the use of cookies. In addition, because internet users' personal data are intangible property, several actions are not deemed as committing offences under criminal law; for instance, approaching users' information shall not be punished by criminal sanction since it requires physically action to access the immovable property.

## **Draft of Data Protection Act B.E. ...**

There are two draft of Data Protection Act B.E.... in the stage of legislative process. One proposed by Office of the Official Information Commission, hereinafter referred to as "OIC", and the other one proposed by Electronic Transactions Development Agency (Public Organization), hereinafter referred to as "ETDA".

### **(i) Draft of Data Protection Act B.E. ... proposed by OIC**

According to the Draft of Data Protection Act B.E. ... proposed by OIC, section 3 provides the meaning of personal data, which is any information identified individual such as education, financial, profile of health, profile of criminal action, or others that providing name or code that can be identified individual such as finger print, photo, or recorder. Also, it includes any data specifically identified the dead. In this case, the information that using cookies for gaining access, collecting and tracking internet users' personal data is under the scope of this section.

Furthermore, section 5 under this draft also provides the meaning of personal data controller and it can be concluded that personal data controller is the person having authority to manage with the business management of personal data, including the collection of the personal data of third person. Thus, website owners are the personal data controller in accordance with this section. In addition, third-party advertisers, who use cookies for the purpose of business or commercial – collecting internet users' behavior and placing targeted advertisement on internet users' terminal equipment in order to promote and make profit from sale, such third-party advertisers are also personal data controller.

Referring to this draft, it provides that if personal data controller wishes to use cookies, such personal data controller has to inform the internet users of the purpose of the use of cookies, other relevant information related to cookies such as name, period of collection and way to contact personal data controller. However, there are also exemptions thereof, which are related to virtue of law, court's order and benefits of internet users. Therefore, if the use of cookies is in the scope of aforementioned, the personal data controller is not required to notify of the use of cookies and to receive internet users' prior consent for the use of cookies.

### **(ii) Draft of Data Protection Act B.E. ... proposed by ETDA**



Referring to this draft, the meaning of personal data under Section 5 means that any information related to person, which can be identified to that person directly or indirectly. In this regards, the information collected by cookies are in the scope of personal data under this draft.

Furthermore, personal data controller under this section is the person that has authority to manage of personal data management including collection, use and disclosure. In this regards, it shall mean website owner only, not including third-party advertisers.

Regarding this draft, if personal data controller wishes to use cookies, the personal data controller is required to inform the owner of personal data of such collection before or at the time of collecting period. The details to be notified to the internet users are (i) purpose of collection; (ii) details of information to be collected; (iii) people or organization that collect personal information; (iv) information of personal data controller such as contact method or place; and (v) right of owner of personal data. However, personal data controller is not required to receive prior consent from internet users before installation of cookies. In this regards, if internet users have perceived the use of cookies and they are not agree to have cookies installed on their terminal equipment, they can opt-out of such use.

## **Conclusion and Recommendation**

Internet users' right of personal data and privacy are human rights; therefore, the use of cookies for accessing, collecting and tracking internet users' personal data while they are surfing the internet without internet users' knowledge and consent infringes the internet users' right, especially the use of cookies for behavioral advertising – using cookies to remember each internet user' interests and place web ads of interesting products on the website that internet users are opening by pop-up window.

Referred to the aforementioned problems, foreign states are aware of their internet users' right of personal data and privacy. They therefore had amended their legal control on the use of cookies; for example, the EU applied opt-in method instead of opt-out method – informing internet users for the purpose of cookies and receive prior consent before installation of cookies. The UK and Italy also apply the rules set out in the EU into the UK and Italian law; therefore, the legal control on cookies in the UK and Italy also use the method of opt-in required prior notice to internet users and prior consent from internet users before installation of cookies. However, the consent in Italian law requires only implied consent, which is different from the UK, which requires expressed consent. In addition, the USA use Do-Not-Track policy to provide opportunity to internet users to choose whether they agree to have website owners use cookies while internet users are surfing internet.

Nevertheless, there are no specific current Thai laws to control on the use of cookies. However, the proposed laws, i.e. Draft of Data Protection Act B.E. ... proposed by OIC and Draft of Data Protection Act B.E. ... proposed by ETDA, have several provisions that can be used for protection of internet users' right of personal data and privacy. Therefore, if these drafts would be enacted into law, it will be useful for internet users because there would be legal control and punishment to protect internet users' personal data. In addition, both drafts provide that prior notice for the use of cookies is required and internet users' personal data and privacy can be collected in case of by virtue of law, internet users' benefits, court's order

and other circumstances related to the aforementioned. However, the writer opines that the draft proposed by OIC is more applicable to Thai society because this draft not only provides notice declaring purpose of cookies but also requests internet users' consent before the use of cookies. Furthermore, the draft proposed by OIC also provides both legal control for general personal data controller, i.e. website owners, and personal data controller for business or commercial purpose, i.e. third-party advertisers; therefore, this draft is more concise than the other one. Nonetheless, there are several provisions are required to be added into this draft in order to make it more effective, the details of which set out below:

(i) Definition of personal data

The definition of the draft is too narrow. It should provide both identified and identifiable data to the owner.

(ii) Form of notification

According to the draft, it does not state how to inform internet users; for instance, providing pop-up window. In addition, it also does not inform that the prior consent required from internet users shall be explicitly or impliedly consent.

(iii) Exemption of the rules

Referred to types of cookies, the draft does not state clearly of the types of cookies to be used for the rules. The draft states only all collection of cookies requires prior notice and consent. In addition, the draft states the exemption thereof, which is related to benefits of data owners, by virtue of law or by court's order. Although these exemptions are reasonable, they are not clearly enough. The writer is of the opinion that several purposes of the use of cookies, i.e. strictly necessary for websites and transaction cannot be done without cookies, such as security process for bank transaction or completion of online shopping websites, the use of cookies for those purposes shall be exempted from prior notice and consent before the use of cookies.

(iv) Access and Tracking of personal data

The legal provision in the draft states only the event of collecting, using and disclosing the personal data, but does not state about the access to personal data or tracking of internet users' behavior. Therefore, if personal data controller accesses to personal data of internet users or tracks internet users' behavior without any collection or use or disclosure, such personal data controller shall not be liable for such action since the draft does not provide specific provision to apply for accessing and tracking internet users' personal data. The writer's opinion is that the provision in the draft should increase the action of accessing to personal information and tracking of internet users' behavior as well.

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## Other Materials

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