

**Data protection between Intellectual property right
law and new data protection law**

Sara Raouf Mounir

**Data protection between Intellectual property right law and
new data protection law**
Sara Raouf Mounir

Methodology:

This research will take the deductive method to start with the general knowledge and end up with specific conclusion.

Introduction:

By way of introduction, Data Protection means how to control the collection, use, and dissemination of personal information. In addition, data security is the protection of personal information from unauthorized access or use. Before 2002 there was no comprehensive law protecting all the IPRs, most importantly including Undisclosed Information, Trade secrets and the ideas of Copyright. The international movement towards the protection of individual privacy in light of technological advancement created the need for regulating adequate protection, which would serve the flexible nature of Data without exposing data owners to the risks of violation and abuse.

In light of all above mentioned, this research aims to demystify the scope of data protection between Intellectual property right (IPR) law and new data protection law, through the analysis of data protection in both laws and the differentiation between commercial information and personal information.

First

Data under IPR law and data protection law

There is a difference in the definition of “Data” in both IPR law and data protection law.

A- What Does Data mean.?

-Definition of Data under IPR law No.82 of 2002:

The Egyptian Intellectual Property Law did not establish a specific definition of DATA, but it protected what called “**Undisclosed information**” from article 55 to article 62.

As well as protecting “Undisclosed information”, The Law protects “**the rights of authors**” to their literary and artistic works from article 138 to article 188.

- Definition of Data under new Data Protection Law No.151 of 2020:

Contrary to the Intellectual Property Act the data protection law put a specified definition for data, the act divided data into two types “personal information” and “sensitive information”. In addition to, the law can show the right of people of privacy as to protect their personal data and it is criminalized to collect data illegally or without the consent of the data owner and the criminalization of fraudulent or fraudulent treatment of them not conforming to the purposes authorized by the data owner ¹

B- Why is the protection of the data important?

Many countries have adopted the laws that govern the protection of data. It has been a challenge for the investment in the

technology sector in Egypt and internationally, data protection can convert Egypt into a global hub for technology industries.¹

On other way, there is a wide sharing of personal data of individuals. It is a double-edged weapon that makes life easier through smooth transactions, but that may also cause harm as it exposes to be violated if not properly protected. The personal data also became a material value, which led to the trade of personal data, which become reason for many companies and individuals to profit²

Accordingly, Data Protection Law aims to protect personal data from abuse through requiring consent for the processing and use of personal data within the scope of authorization.

Second

Established data protection in both laws

A- The protection of data under the Data Protection Law:

The Law prohibits the collection, processing or disclosure of any personal data without the explicit consent of the Data Subject or any cases other than those permitted under the Law.

The data protection law stipulates for the protection of two types of data:

-Personal data: which includes any data related to a natural person whether directly or indirectly such as: name, voice, picture, identification number or any data that identifies physical, cultural or social identity or economic status of a natural person;

¹الجامعه البريطانيه فى مصر ,دراسه نقيه لقانون حمايه البيانات الشخصيه رقم 151 لعام , 2020

² حسام محمد نبيل الشنراقى : حماية البيانات الشخصية عبر الإنترنت والتحديات والحلول، المجلة العربية لإدارة، ملحق العدد الثاني، المجلد 38، 2018،

-Sensitive data: which includes psychological, mental, genetic, financial data, religious, political beliefs and/or data related to children.... Article 1 and 2

The Data Protection Law applies to any natural person to whom electronically processed personal data is attributed which identifies the person legally or factually and enables the identification of such person (the “Data Subject”).

The Law excludes the following data from its scope of protection, Article (3)

- Personal data held by natural persons for personal purposes;
- Data processed for official statistics purposes.
- Data processed for media purposes, if such data is accurate and valid.
- Any data obtained for the purpose of investigations and lawsuits.
- Personal data held by national security authorities.
- Data held by the Central Bank of Egypt (“CBE”) and the entities subject to its supervision and control. Money transfer and exchange companies are not, however, excluded from the application of the law.

B- The protection of data under IPR Law:

As mentioned before there is no specified protection for data under IPR law, but the Law protects “undisclosed information” and “Copyright”, so we are going to discuss it briefly:

I- UNDISCLOSED INFORMATION:

Although there is no legal system to allow the recording of undisclosed information, as in the case of patents, the legislator has put in place a fence of guarantees through which the confidentiality and seriousness of this information can be confirmed, it can be prevented from intermingling with other potentially non-

confidential information.¹ Perhaps the process of keeping the commercial information has become difficult to achieve which is a burden on its owner especially with the public calling for more transparency.² Therefore, the Intellectual Property Act enters into force and establishes a framework for the protection of information that is confidential, in particular. Articles 55 and 56 of the Egyptian Intellectual Property Act regulate the conditions for the enjoyment of protection by:

Article (55):

“Undisclosed information shall be protected under the provisions of this Law when they meet the following criteria:

(1) Information, which is confidential, in the sense that it is not, as a body or in the precise configuration or assembly of its components, generally known or common among those, involved in the industrial art within the scope of which the information falls.

⁴⁾ Information that has commercial value because it is confidential.

(2) Information that depends on the effective measures taken by the person lawfully in control of it, to keep it confidential.”

Also, article (56)

“Protection conferred by the provisions of this Law shall extend to undisclosed information that involved a considerable effort, submitted on request to the competent authorities for marketing of pharmaceutical or agrochemical products, which utilize new chemical components necessary for the tests undertaken to allow such marketing.

¹ منى السيد عادل المعلومات الغير مفصح عنها كنظام بديل لاتفاقيه تريس و القانون المصرى و الفرنسى.
بحث

² Rouge (O) / Le SECRET D AFFAIRES : UNE PROTECTION JURIDIQUE DES DONNÉES STRATÉGIQUES / Août 2018

The competent authorities who receive such information shall protect it against disclosure and unfair commercial use from the date of its submission to the competent authorities until it is no longer confidential, or for a period not exceeding five years, whichever comes first.

Disclosure of information, by the competent authorities, where necessary to protect the public shall not be deemed to constitute an infringement of the information owner's rights.”

It is clear from Article (55), paragraph 1 that it is not required for protection that all information should be disclosed, but it is enough that a part of the information is disclosed. In addition, confidentiality does not affect the information that bona fide third parties receive at the same time. Moreover, according to Article 60 of the aforementioned law, the owner of undisclosed information or his successors may assign that information with or without compensation.

It should be noted that non-disclosed information is not subject to a specific period of protection if it remains protected as long as it retains its confidential nature and is not shared with the information contained therein.¹

Finally, the confidentiality required by the Trips Agreement and Egyptian law is relative, not absolute, and allows workers or employees of the project to have access to confidential information, but such information must not exceed the limit of the project and is not easily accessible to others.

¹ Attal (S.)/Le secret en propriété industrielle, Paris/ édité par l'auteur/ 1996

Third

The difference between commercial information and personal information

There is a big difference between both commercial and personal information from the definition and the applicable law, as following:

	Commercial information	Personal information
Definition	<p>According to Article (100) and (101) of IPR law.</p> <p>Article (100)</p> <p><i>In the application of the provisions of this Law, "trade indication" means any clarification connected directly or indirectly with the following:</i></p> <p>(1) <i>Number, quantity, dimension, measure, capacity or weight of any products.</i></p> <p>(2) <i>Place or country in which the</i></p>	<p>According to Article (1) of Data protection law.</p> <p><i>Personal Data: any data relating to an identified natural person, or one who is identifiable, directly or indirectly, by reference to such data and to other data such as a name, a voice, a photograph, an identification number, an online identity identifier, or any data referring to the person's psychological,</i></p>

	<p><i>products were manufactured or produced.</i></p> <p><i>Method of manufacturing or producing the product.</i></p>	<p><i>medical, economic, cultural or social identity.</i></p>
Applicable Law	<p>(4) <i>Elements and components of which the products are composed.</i></p> <p>(5) <i>Name or capacity of the producer or manufacturer.</i></p> <p>(6) <i>Patents or any other industrial property rights, or any commercial or industrial concessions, awards or distinctions.</i></p> <p>(7) <i>The name or form under which certain goods are usually known.</i></p>	

	<p>Article (101)</p> <p><i>Trade indications shall be factual in all aspects, whether placed on the products, packaging, invoices, correspondence, advertisements or other means used for offering the products to the public, or whether on signboards, inside the shops or in warehouses.</i></p>	
The Jurisdiction	IPR law no.82 of 2002	Data protection law no.151 of 2020

Conclusion

Egypt has come a long way in the road of data protection, and this progress can be seen through the recent updates in relevant Legislations. Although both Personal and Commercial Data are protected under different laws in Egypt, Data Protection Law no151 for the year 2020 and IPR Law no.82 for the year 2002 accordingly, Data Protection Law focuses solely on protection of personal data while IPR Law handles Commercial Data protection under Trade Secrets, Undisclosed Information and some articles of Copyright. Protection of data improve the right of privacy for everyone, there are different regulations that govern the data protection in Egypt and internationally and we have to know whether Egyptian law have adequate protection or not? We have to look for other legislations to gain experience from them.

References

- (١) الجامعة البريطانية في مصر ,دراسة نقديه لقانون حمايه البيانات الشخصية رقم 151 لعام 2020 , 2020
- (٢) حسام محمد نبيل الشنراقي : حماية البيانات الشخصية عبر الإنترنت التحديات والحلول، المجلة العربية لإدارة، ملحق العدد الثاني، المجلد 38 ، 2018
- (٣) منى السيد عادل المعلومات الغير مفصح عنها كنظام بديل لاتفاقيه تريس و القانون المصرى و الفرنسى ا بحث
- 4) Rouge (O) / Le SECRET D AFFAIRES : UNE PROTECTION JURIDIQUE DES DONNÉES STRATÉGIQUES / Août 2018.
- 5) Attal (S.)/Le secret en propriété industrielle, Paris/ édité par l'auteur/ 1996.