DATA PRIVACY ACT

IVY D. PATDU, MD JD
National Privacy Commission

DP 7

NATIONAL PRIVACY COMMISSION

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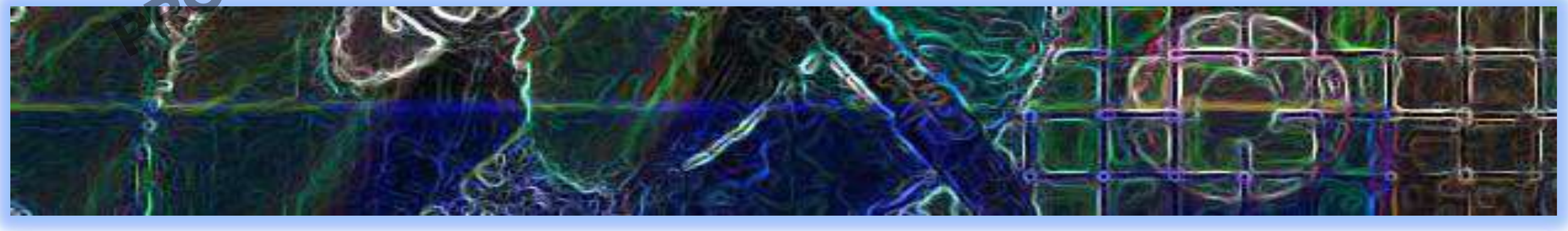
Right to Privacy



Right to Privacy

"the right to be let alone - the most comprehensive of rights and the right most valued by civilized men"

[Brandeis J, dissenting in Olmstead v. United States, 277 U.S. 438 (1928)].

HIPPOCRATIC OATH

Whatever I see or hear,

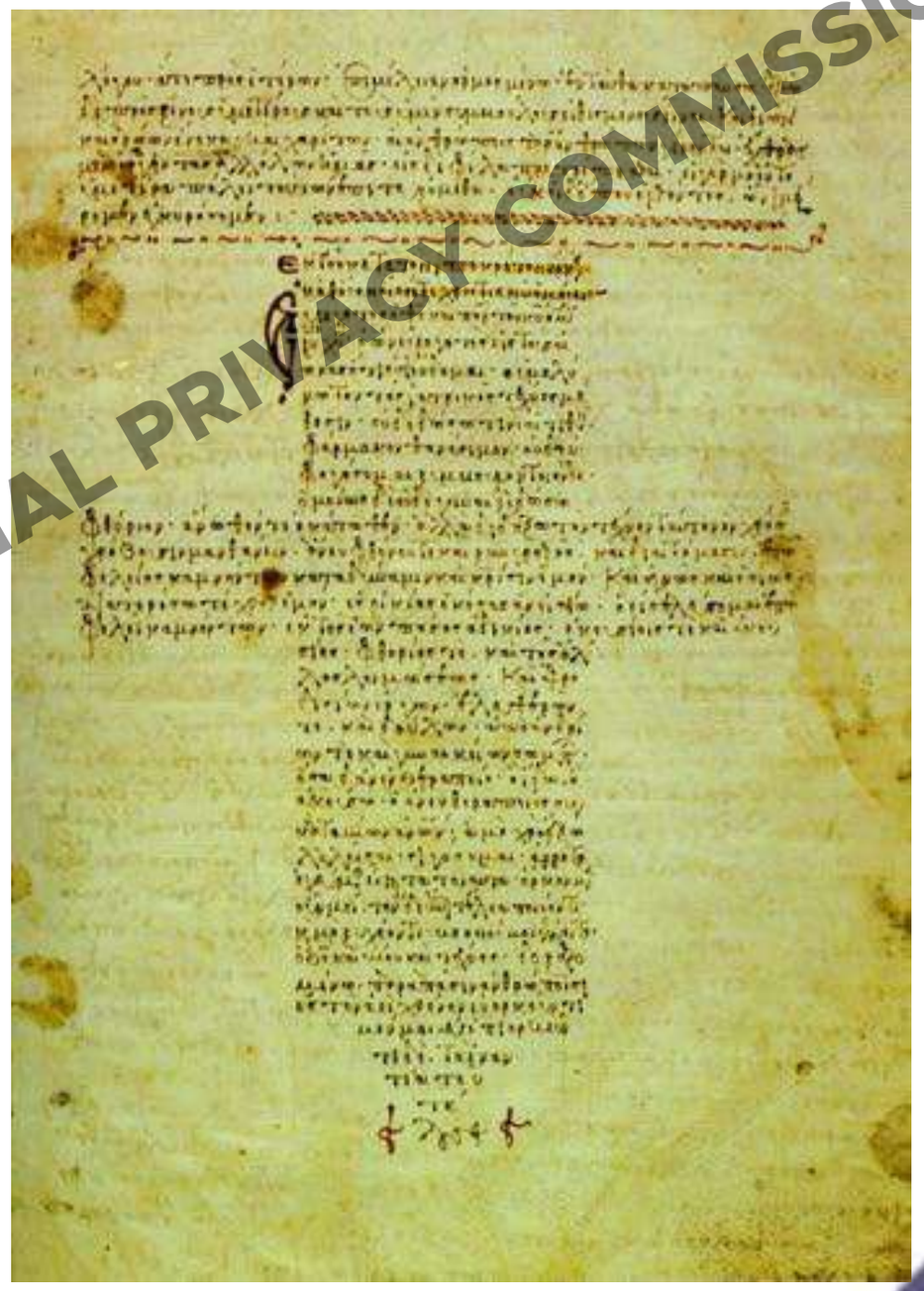
whether professionally

or privately which ought

not to be divulged

I will keep secret

and tell no one.



Doctor-Patient Confidentiality

- Full disclosure of information on the part of the patient is a prerequisite to quality care and better health outcomes.
- Communication between doctor and patient is generally considered privileged and should not be inquired upon even by the Courts. The provision is intended to make sure that information obtained by physicians in the course of treatment will not be used to blacken the reputation of a patient (Rules of Court).

Carl Abelardo T. Antonio, Ivy D. Patdu & Alvin B. Marcelo, Health Information Privacy in the Philippines: Trends and Challenges in Policy and Practice, 50(4) ACTA MEDICA PHILIPPINA: THE NATIONAL HEALTH SCIENCE JOURNAL (Oct-Dec 2016).

Protecting Patients from Harm includes Respect for their Right to Privacy

Health information is valuable and its unauthorized use or disclosure may put patients at risk for unwanted publicity, discrimination, identity theft and other acts prejudicial to the patient.

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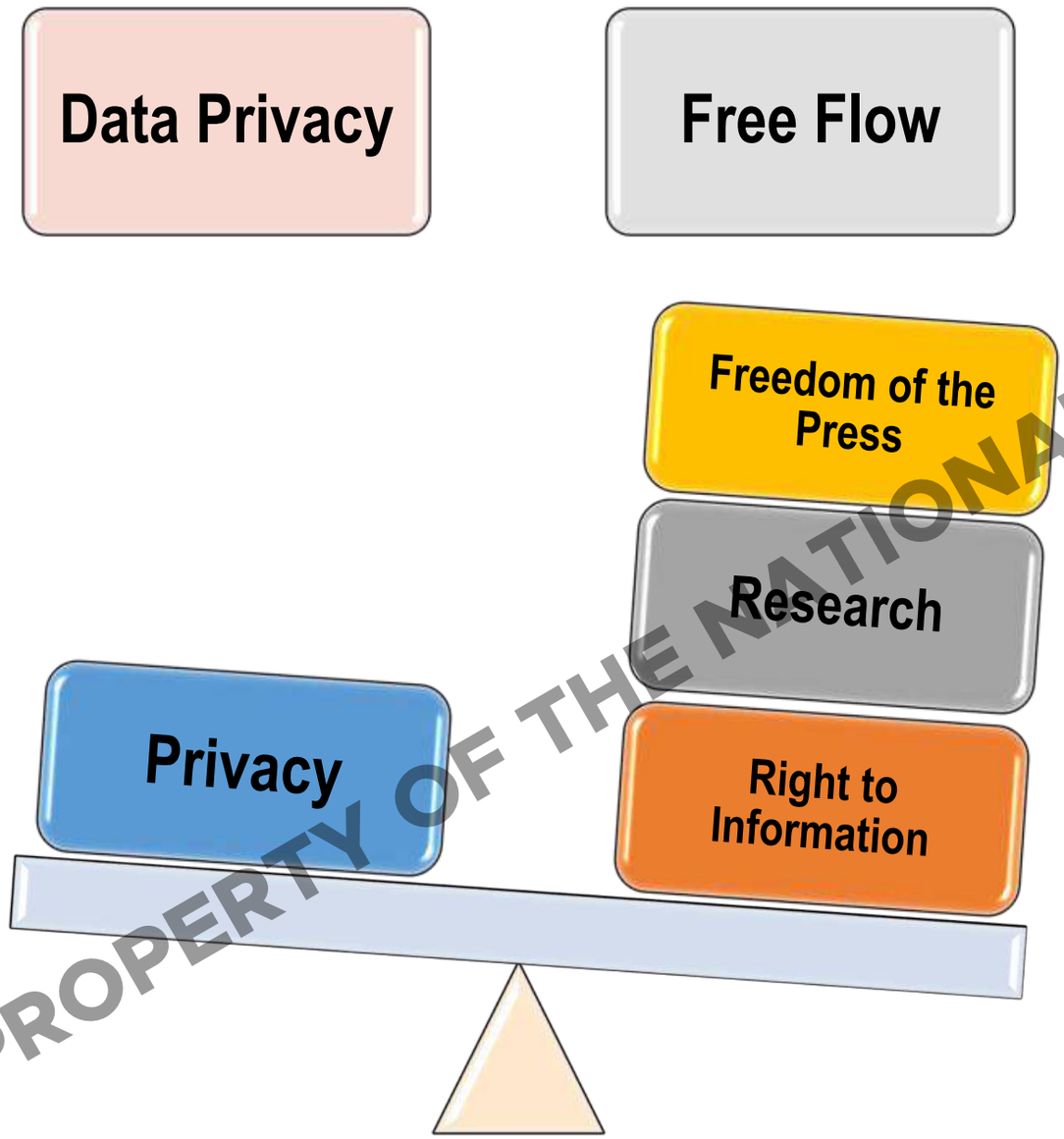
RIGHT TO INFORMATION PRIVACY

The individual's ability to control the flow of information concerning or describing him, which however must be overbalanced by legitimate public concerns. To deprive an individual of his power to control or determine whom to share information of his personal details would deny him of his right to his own personhood.

Dissenting Opinion of Justice Consuelo Ynares-Santiago in G.R No 167798 Kilusang Mayo Uno, et al., v. The Director General, National Economic Development Authority, et al., and G.R No. 167930 Bayan Muna Representatives Satur C. Ocampo, et al., v. Eduardo Ermita, et al. (19 April 2006)

Data Privacy Act



It is the policy of the State to protect the fundamental human right of privacy, of communication while ensuring free flow of information to promote innovation and growth.

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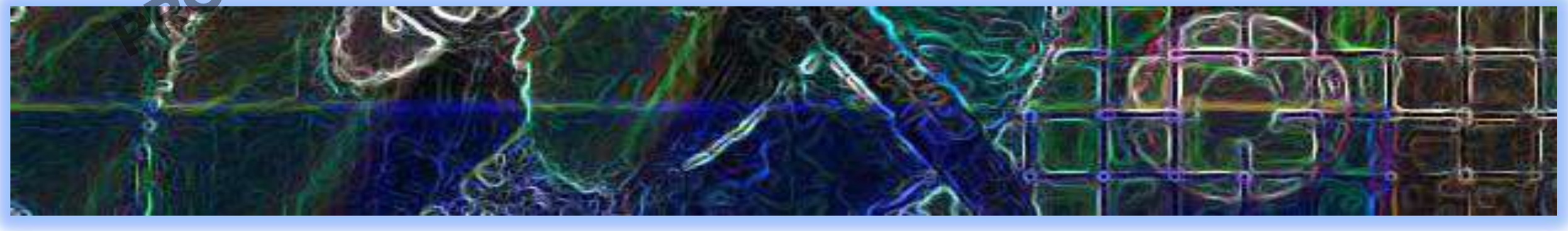
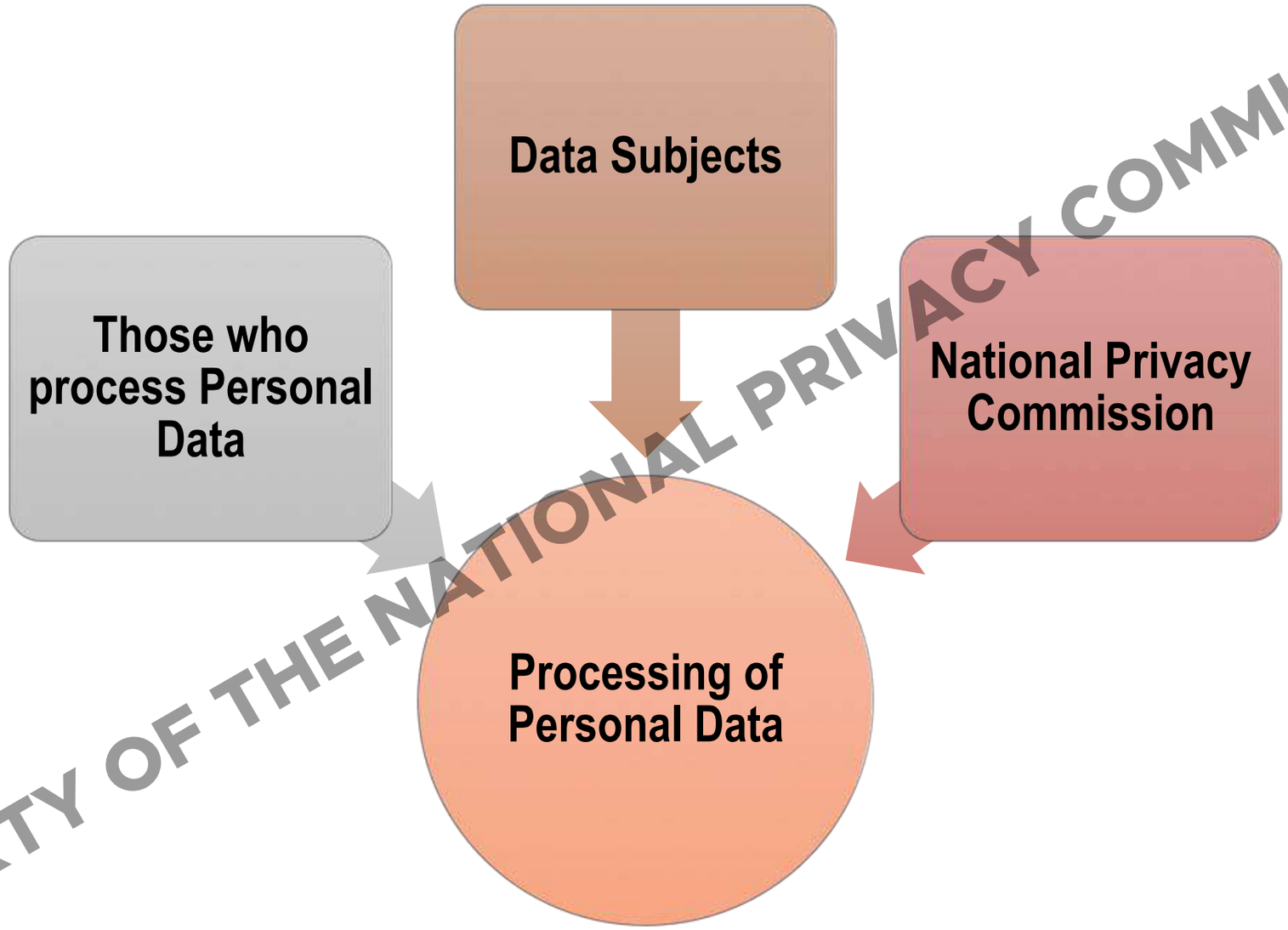
Scope and Definitions



Scope of the Data Privacy Act



Data Privacy Act applies to the processing of personal data by any natural and juridical person in the government or private sector.

Personal Data

- Any information from which the identity of an individual is apparent
- Any information that can be put together with other information to reasonably and directly identify an individual
- Includes sensitive personal information such as your health, education, genetic or sexual life
- Includes information that is classified or privileged

Are these personal data?

A. "Man born on June 19, 1861"

B. "Philippine national hero born on June 19, 1861"

C. "Jose Protacio Rizal"

D.

Jose Rizal, available at https://en.wikipedia.org/wiki/Jos%C3%A9_Rizal

De-Identification

1. Names
2. All geographic subdivisions smaller than a state, including street address, city, county, precinct, ZIP Code, equivalent geocodes, except for the initial three digits of the ZIP code if more than 20,000 people
3. All elements of dates except years (ages over 89 → age 90 or older)
4. Telephone numbers
5. Fax numbers
6. Email addresses
7. Social security numbers
8. Medical record numbers
9. Health plan beneficiary numbers
10. Account numbers
11. Certificate/license numbers
12. Vehicle identifiers and serial numbers including license plates
13. Device identifiers and serial numbers
14. Web URLs
15. Internet protocol addresses
16. Biometric identifies (i.e. retinal scans, fingerprints)
17. Photos
18. Any unique identifying number, characteristic or code

Khaled El Emam, "The 18 HIPAA Safe Harbor Elements", Guide to De-Identification of Personal health Information (2013)

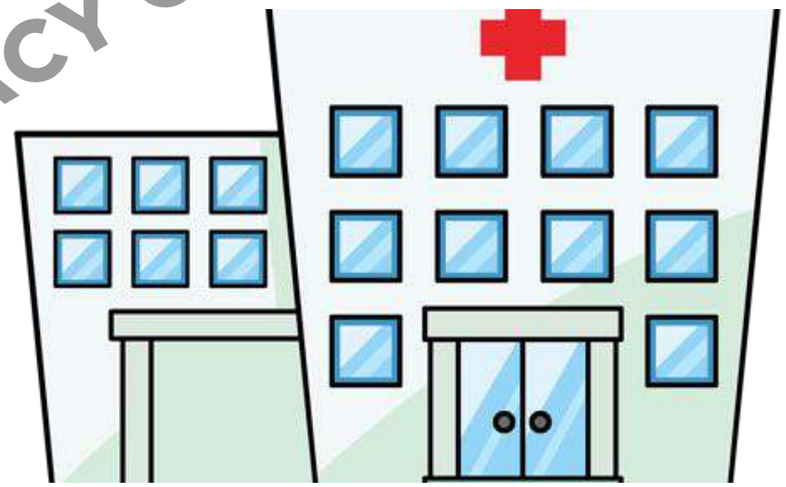
Those who process Personal Data:

***Personal Information Controller**

***Personal Information Processor**

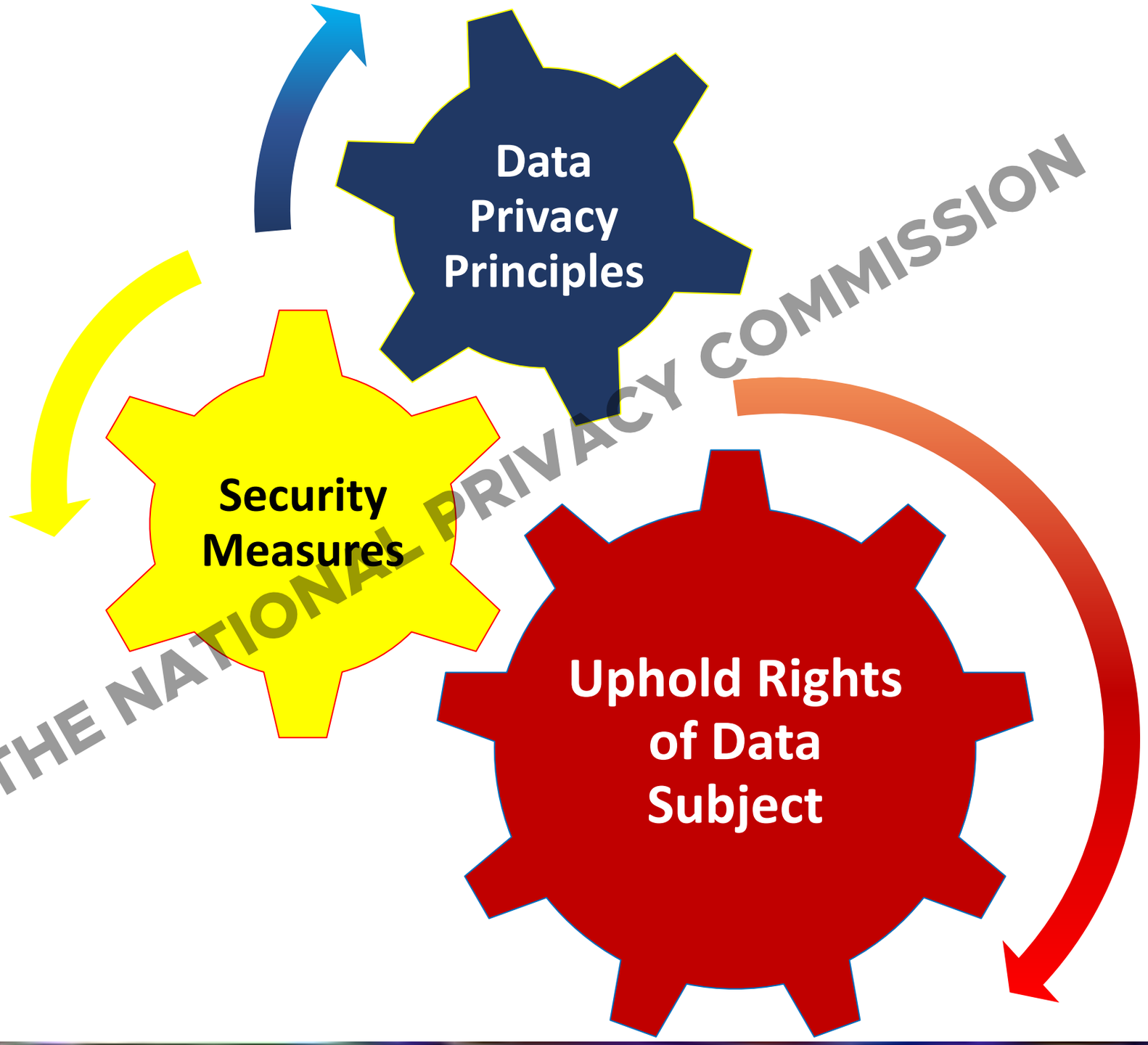
Personal Information Controller

- Individual, Corporation, other body → the one who controls the processing of personal data, the one who decides
- There is control if the natural or juridical person or any other body decides on what information is collected, or the purpose or extent of its processing.



Personal Information Processor

- Individual, Corporation or other body who processes the personal data for a Personal Information Controller
- Personal information processor should not make use of personal data for its own purpose



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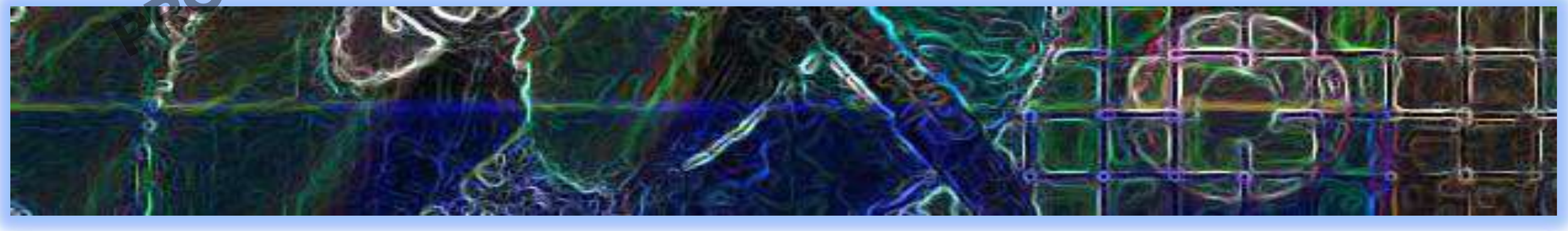
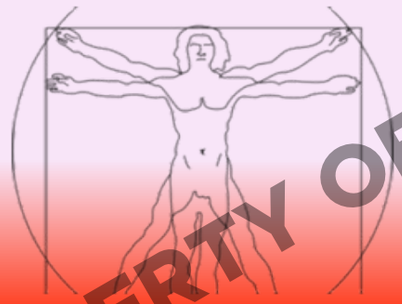
DATA PRIVACY PRINCIPLES



NOTICE

TRANSPARENCY

LEGITIMATE PURPOSE



PROPORTIONALITY

General Data Privacy Principles

- **Transparency.** The data subject must be aware of the nature, purpose, and extent of the processing of his or her personal data, including the risks and safeguards involved, the identity of personal information controller, his or her rights as a data subject, and how these can be exercised.
- Any information and communication relating to the processing of personal data should be easy to access and understand, using clear and plain language.

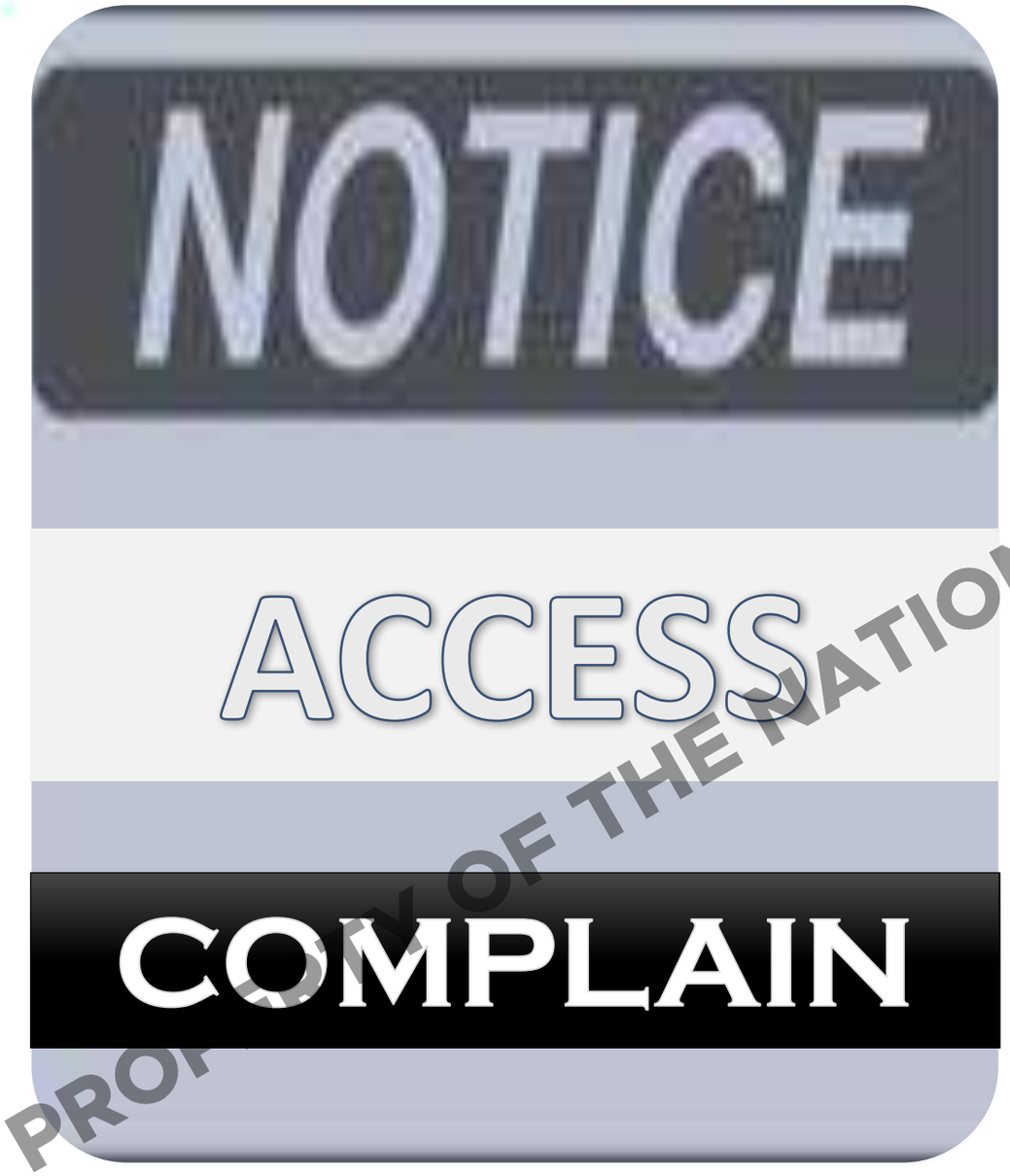
PRIVACY NOTICE

- WHAT personal data will be collected
- WHY personal data is processed
  - Purposes of collection and processing, including direct marketing, profiling or research;
  - Basis of processing not based on the consent of the data subject;
- HOW personal data will be collected, used, accessed and stored, including security measures in place
  - Automated processing that will be basis of making decisions that would affect data subject
  - The period for which the information will be stored

PRIVACY NOTICE

- WHO will process personal data
  - The identity and contact details of the personal data controller or its representative
  - The recipients or classes of recipients to whom the personal data are or may be disclosed
  - Transfer of personal data outside the country
- RIGHTS OF DATA SUBJECTS, including the right to file a complaint before the National Privacy Commission.

Rights of Data Subjects



1. Right to Information
2. Right to Object
3. Right to Access
4. Right to Correct
5. Right to Erase
6. Right to Damages
7. Right to Data Portability
8. Right to File a Complaint

General Data Privacy Principles

- **Legitimate purpose.** The processing of information shall be compatible with a declared and specified purpose which must not be contrary to law, morals, or public policy.
- Processing of personal data should have the individual's consent, or must be authorized or allowed by the Constitution or by law.

If It's NOT CLEAR It's NOT Consent

- CONSENT refers to any freely given, specific, informed indication of will, whereby the data subject agrees to the collection and processing of personal information about and/or relating to him or her.
- The consent shall be evidenced by written, electronic or recorded means.

CASE STUDY 1/97

https://www.dataprotection.ie/docs/Case-Study-1-97-Hospital-Patient's-Data/156.htm

- The complainant attended the accident and emergency department of a public hospital. A few months later, **she was contacted by an organisation carrying out research.** The researchers knew when she had attended the hospital and why, and they asked her to answer some questions.

CASE STUDY 1/97

https://www.dataprotection.ie/docs/Case-Study-1-97-Hospital-Patient's-Data/156.htm

✓Registered

✓Notice

- The hospital was in fact aware of its obligations under the Data Protection Act, but it contended that it had met these in two ways:

1. It listed "personnel engaged in medical research" as disclosees in its entry in the Public Register of Data Controllers.
2. It made patients aware of the research project by putting a NOTICE in the waiting area of the accident and emergency department. **This notice told patients that the hospital intended to disclose their information to the researchers, and invited them to let the receptionist know if they objected.**

- On the Noticed Placed in the waiting area: The issue to be decided was whether this was an adequate way of informing patients that their information would be disclosed to the researchers.
- In different circumstances, it might have been. In this case, however, account ought to have been taken of the particular environment in which patients' data were obtained. Many patients presenting themselves at the casualty department of a hospital may be expected to be in a state of some anxiety or discomfort. Consequently, they may not be expected to be alert to matters not relating directly to their condition. In such circumstances there is a special need for the data controller to satisfy itself that any uses of the data which are unlikely to be anticipated by the data subject are fully explained.

Sometimes, Consent is NOT Necessary

Contractual or Legal Obligation

National Emergency, public order, public safety

Personal Information (not Sensitive)

To protect life, health, vitally important interests

Legitimate interests

Sometimes, Consent is NOT Necessary

Law/ Regulation

To protect life and health

Sensitive Personal Information

Provided to government under legal mandate

Protection of rights in court

SUBPOENA

When is consent NOT required?

- Processing is necessary to protect the life and health of the data subject or another person, and the data subject is not legally or physically able to express his or her consent prior to the processing (Emergency, Public Health Emergency)
- Processing is **necessary for purposes of medical treatment,** is carried out by a medical practitioner or a medical treatment institution, and an adequate level of protection of personal information is ensured

Medical Treatment?

Available at https://www.youtube.com/watch?v=iJQHWgQvDaE

Johns Hopkins Hospital to pay $190M settlement after gynecologist secretly recorded patients

General Data Privacy Principles

- **Proportionality.** The processing of information shall be adequate, relevant, suitable, necessary, and not excessive in relation to a declared and specified purpose. Personal data shall be processed only if the purpose of the processing could not reasonably be fulfilled by other means.

Saturday, April 29, 2017 CHOOSE A DATE April 29 2017 Today

SIGN UP

NAME * Kristine
(First Name) (Middle Name) (Last Name)

BIRTH DATE *

GENDER Female

CIVIL STATUS Married

HOME ADDRESS
(Address)

HOME TEL. NO.

OCCUPATION

OFFICE/SCHOOL ADDRESS
(Address)

OFFICE/SCHOOL TEL. NO.

MOBILE NO. *

EMAIL *

ONLINE USERNAME *

SPOUSE'S NAME
(First Name) (Last Name)

MOTHER'S MAIDEN NAME *
(First Name) (Last Name)

CHILDREN

	NAME	BIRTHDATE	EMAIL	MOBILE NO.

Add Child Delete Child

Do you and/or your family members want to receive SMS or e-mail alerts on Shang Cineplex promotions, discounts and special events? Yes * No

PREFERRED MOVIE GENRE (MAY CHOOSE MORE THAN ONE)

Action Adventure Animation Art Films Biography
Comedy Crime Documentary Drama Family
Fantasy Horror Live Telecast Local-Tagalog Martial Arts
Musical Mystery Others Romance Science Fiction
Sports Suspense Thriller

REFERRALS TO SHANG CINEPLEX LOYALTY PROGRAM

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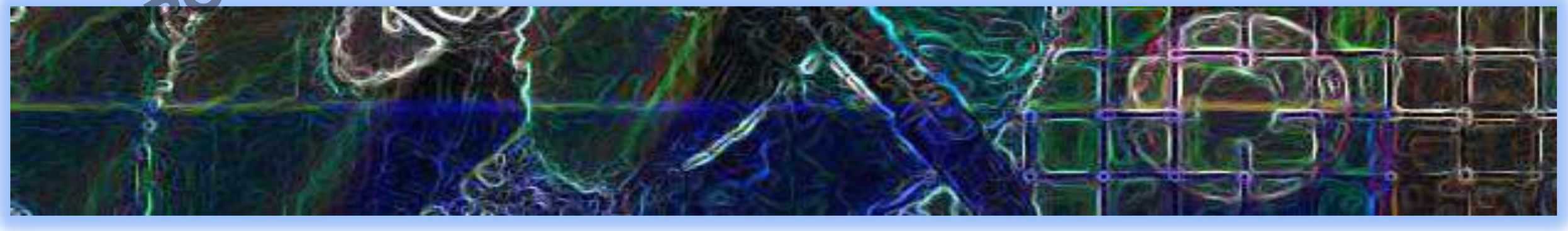
SECURITY MEASURES



Organizational

Physical

Technical

Confidentiality

Integrity

Availability

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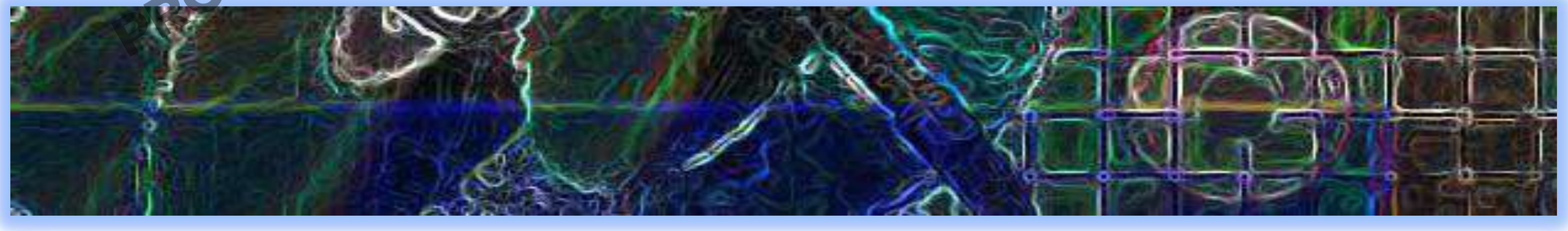
Organizational Security Measures



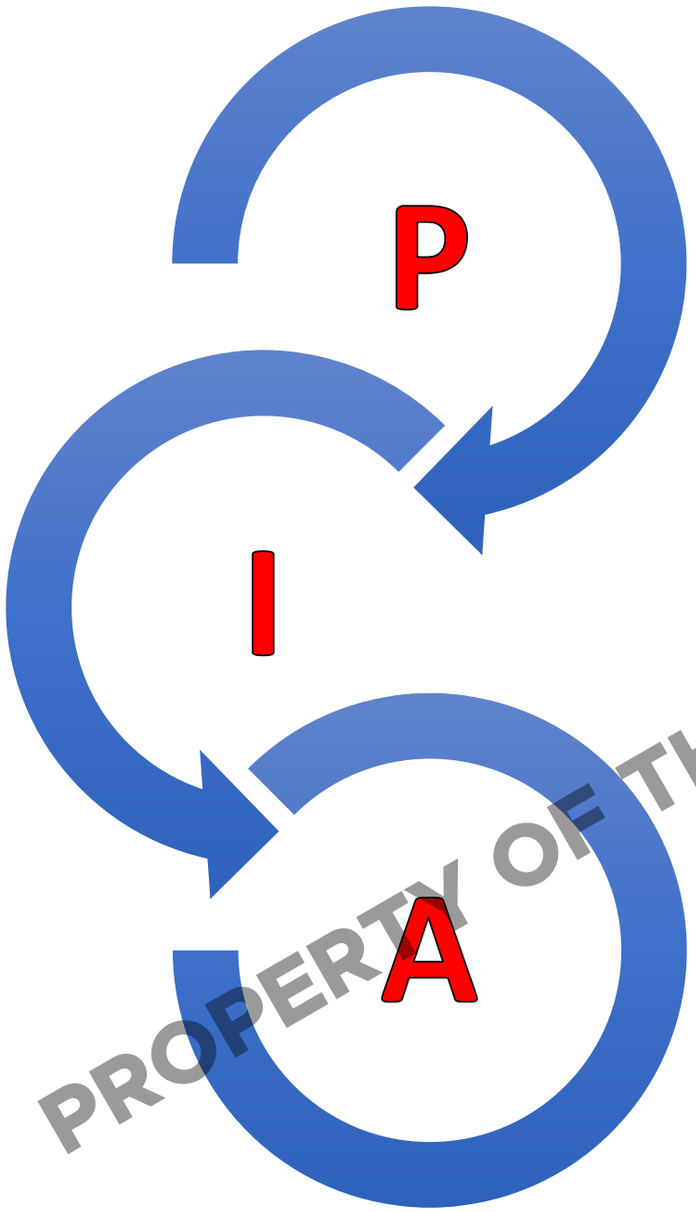
Data Protection Officer

- Relevant privacy or data protection policies and practices
- Processing operations
- Sector or Industry

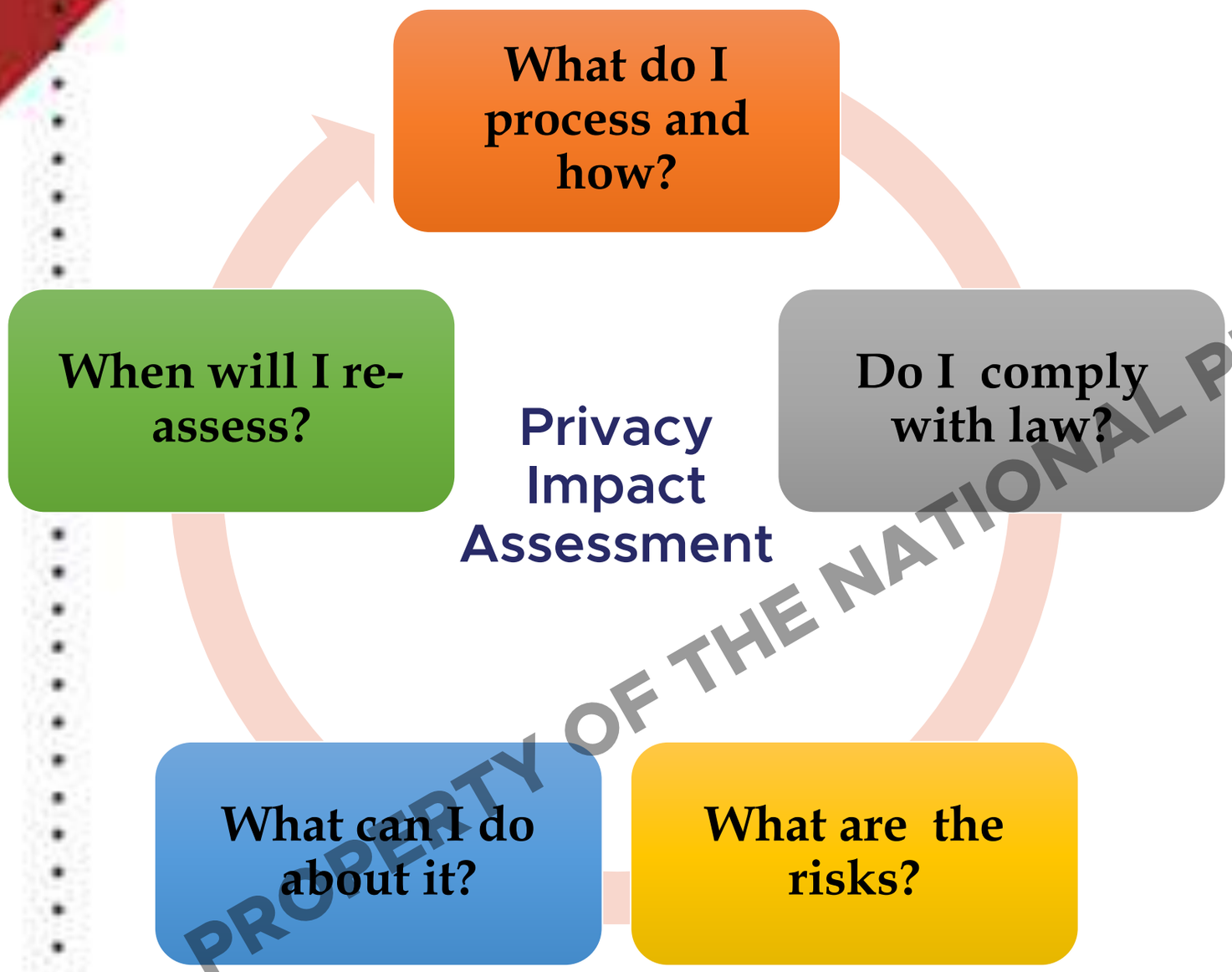
THE DPO SHOULD POSSESS SPECIALIZED KNOWLEDGE AND DEMONSTRATE RELIABILITY NECESSARY FOR THE PERFORMANCE OF HIS OR HER DUTIES AND RESPONSIBILITIES.

Picture from http://www.computerweekly.com/news/450402719/GDPR-will-require-75000-DPOs-worldwide-study-shows

Privacy Impact Assessment



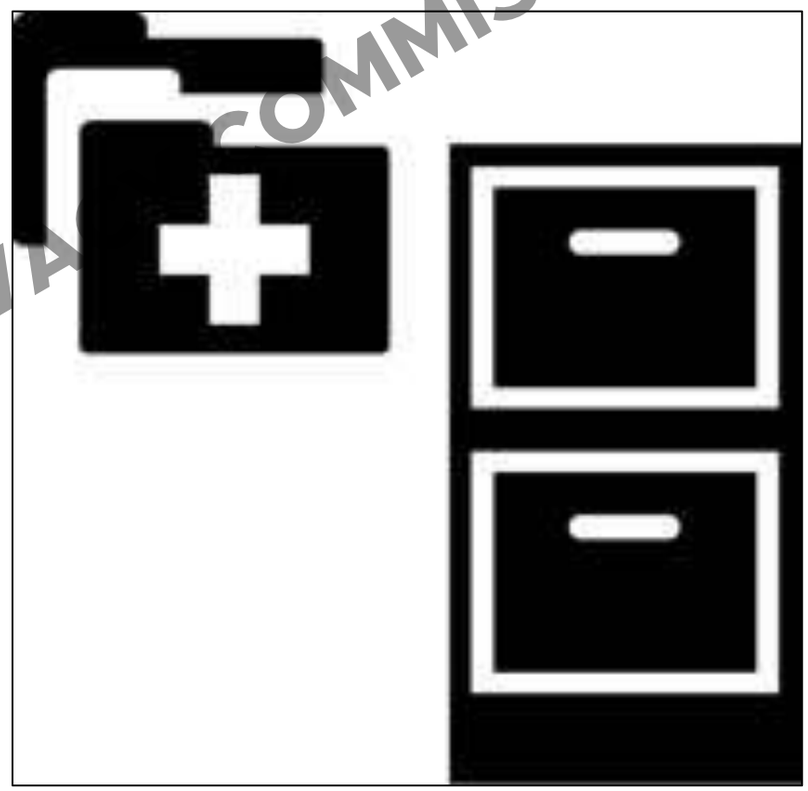
- **Personal Data Flow**
  - Source and Collection
  - Accountable and responsible persons
  - Purpose of processing
  - Personal Data Processing
  - Security measures
  - Transfer outside country
- **Identify and Assess Privacy Risks**
  - Privacy Risk Identification
  - Privacy Risk Analysis
  - Privacy Risk Evaluation (Level of Impact and Likelihood of Risks)
- **Address risks**



- The determination of the appropriate level of security must take into account the **nature** of the personal data to be protected, the **risks** represented by the processing, the **size** of the organization and **complexity** of its operations, current **data privacy best practices** and the **cost** of security implementation.

Privacy Manual

- Overview
- Scope and Limitations
- Records of Processing Activities
- Data Protection Policies and Security Measures
- Policies and procedures for data subjects to exercise their rights under the Act
- Regular review and monitoring of privacy and security policies



Procedure for collection, use or disclosure, storage and disposal of personal data

Revised Rules of Evidence, Rules of Court, (March 14, 1989)	Section 24 (c), Rule 128: Disqualification by reason of privileged communication. — The following persons cannot testify as to matters learned in confidence in the following cases: A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in capacity, and which would blacken the reputation of the patient
An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes, "Anti-Violence Against Women and Their Children Act of 2004", Republic Act No. 9262, (March 8, 2004)	Section 44. Confidentiality. – All records pertaining to cases of violence against women and their children including those in the barangay shall be confidential and all public officers and employees and public or private clinics to hospitals shall respect the right to privacy of the victim. Whoever publishes or causes to be published, in any format, the name, address, telephone number, school, business address, employer, or other identifying information of a victim or an immediate family member, without the latter's consent, shall be liable to the contempt power of the court. Any person who violates this provision shall suffer the penalty of one (1) year imprisonment and a fine of not more than Five Hundred Thousand pesos (P500,000.00).
Philippine National AIDS Council Resolution No. 1, Rules and Regulations Implementing the Philippine AIDS Prevention and Control Act of 1994 (RA 8504), (April 13, 1999)	Sec. 41. Medical Confidentiality. Medical confidentiality shall protect and uphold the right to privacy of an individual who undergoes HIV testing or is diagnosed to have HIV. It includes safeguarding all medical records obtained by health professionals, health instructors, co-workers, employers, recruitment agencies, insurance companies, data encoders, and other custodians of said record, file, or data. Confidentiality shall encompass all forms of communication that directly or indirectly lead to the disclosure of information on the identity or health status of any person who undergoes HIV testing or is diagnosed to have HIV. This information may include but is not limited to the name, address, picture, physical description or any other characteristic of a person which may lead to his/her identification. To safeguard the confidentiality of a person's HIV/AIDS record, protocols and policies shall be adopted by concerned officials, agencies and institutions.

Antonio, Patdu & Marcelo. *Health Information Privacy in the Philippines: Implications for Policy and Practice* (Privacy in the Developing World—Philippines Monograph Series 04/2013)

COMMENTARY

PHILIPPINE JOURNAL OF OTOLARYNGOLOGY-HEAD AND NECK SURGERY VOL. 31 NO. 1 JANUARY – JUNE 2016

Ivy D. Patdu, MD, JD

National Privacy Commission
Republic of the Philippines

Recommendations for Social Media Use in Hospitals and Health Care Facilities

Social Media is the new avenue for creating connections and sharing of information. Through social media, one can reach a global community. In recent years, we have seen how social media has changed the way we do things. Social Media has been extensively utilized for health education and promotion, proving itself to be an invaluable tool for public health, professional networking and patient care benefit.

- Ivy D. Patdu, *Recommendations for Social Media Use in Hospitals and Health Care Facilities*. 31(1) PHILIPPINE JOURNAL OF OTOLARYNGOLOGY HEAD AND NECK SURGERY (June, 2016). Available at https://apamedcentral.org/Synapse/Data/PDFData/0011PJOHNS/pjohns-31-6.pdf

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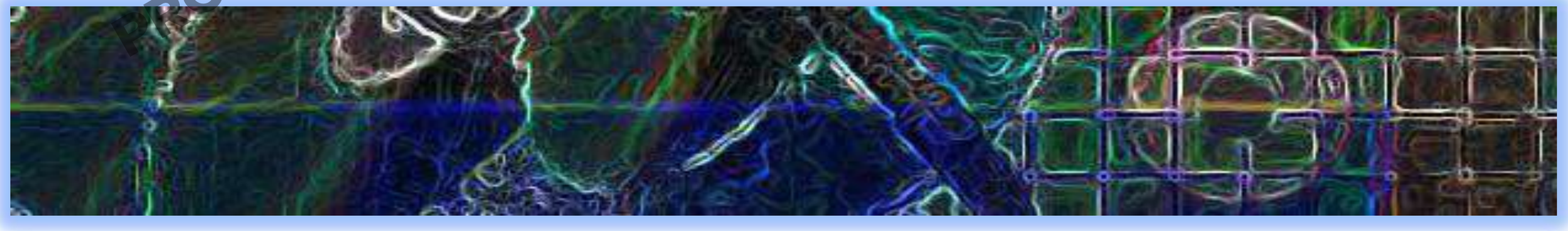
Physical Security Measures



Physical Security Measures

- Design of office space and work stations, including the physical arrangement of furniture and equipment, shall provide privacy to anyone processing personal data, taking into consideration the environment and accessibility to the public
- The room and workstation used in the processing of personal data shall, as far as practicable, be secured against natural disasters, power disturbances, external access, and other similar threats.

Picture available at http://www.symbianize.com/showthread.php?t=706016&page=3

Records room, work stations and data centers should have limited access.

Innovative Electronic Medical Record System Expands in Malawi (2014) available at http://www.cdc.gov/globalaids/success-stories/innovativemalawi.html (last accessed June 20, 2016).

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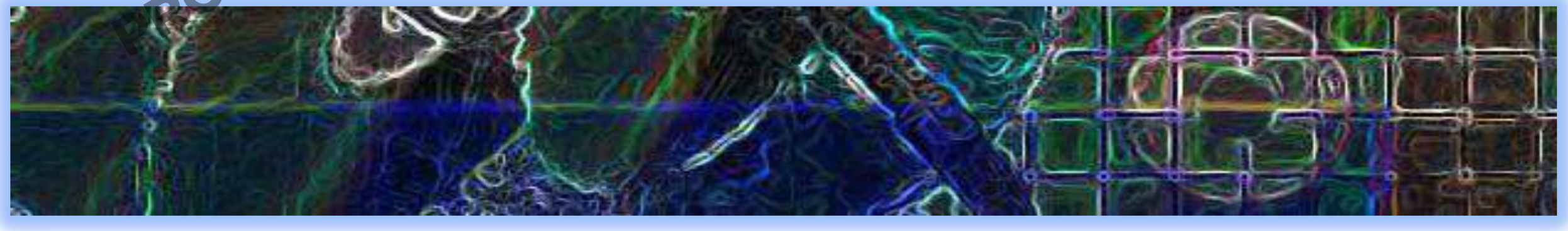
Technical Security Measures



Photograph by Philippe Lopez – AFP/Getty Images

ASHLEY MADISON®
Life is Short. Have an Affair.®

The Ashley Madison hackers have posted personal data like e-mail addresses and account details from 32M of the site's members. The group has claimed two motivations: First, they've criticized Ashley Madison's core mission of arranging affairs between married individuals. Second, they've attacked its business practices, in particular its requirement that users pay $19 for the privilege of deleting all their data from the site (but, as it turns out, not all data was scrubbed).

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Robert Hackett, What to know about the Ashley Madison hack (Aug. 26, 2015)available at http://fortune.com/2015/08/26/ashley-madison-hack/ (last accessed 2/22/17).

Technical Security Measures

SECURITY POLICY
SYSTEM MONITORING

SAFEGUARDS:
ENCRYPTION,
AUTHENTICATION
PROCESS

INCIDENT RESPONSE,
CORRECT AND
MITIGATE BREACH,
RESTORE SYSTEM

National Privacy Commission Issuances

16-01 **SECURITY OF PERSONAL DATA IN GOVERNMENT AGENCIES**

16-02 **DATA SHARING AGREEMENTS INVOLVING GOVERNMENT AGENCIES**

16-03 **PERSONAL DATA BREACH MANAGEMENT**

Circular 17-01 **REGISTRATION OF DATA PROCESSING SYSTEMS**

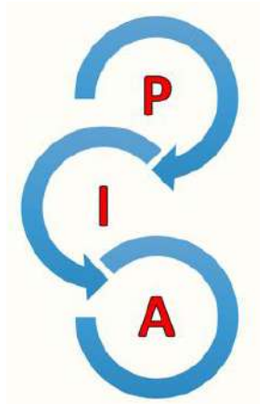
Advisory 17-01 **DESIGNATION OF DATA PROTECTION OFFICERS**

16-04 **RULES OF PROCEDURE OF THE NATIONAL PRIVACY COMMISSION**

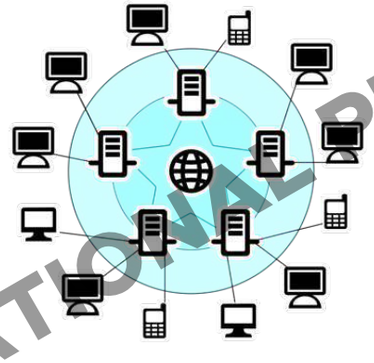
Demonstrate Compliance

1. Governance

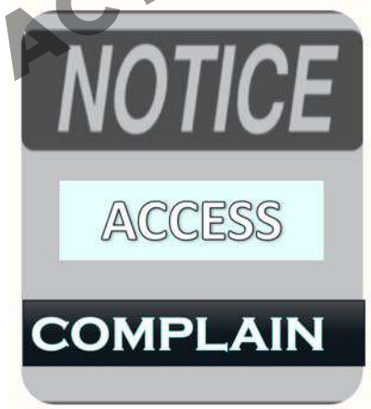
2. Risk Assessment



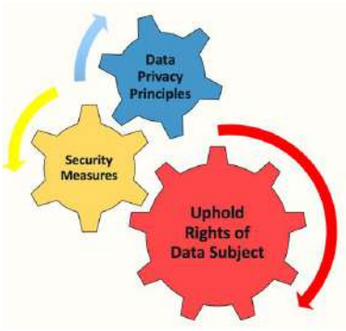
3. Organization



4. Day to Day



5. Data Security



6. Breaches

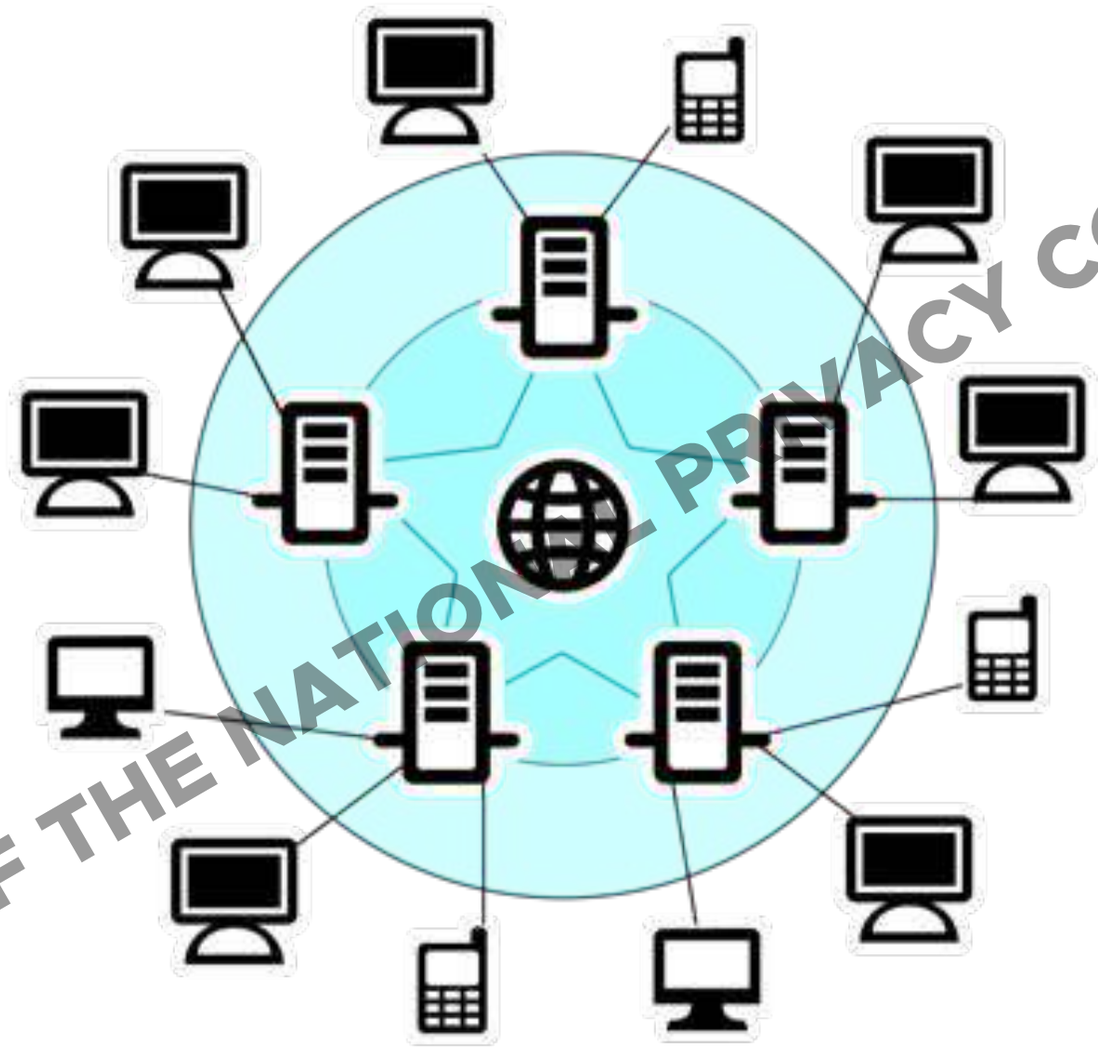
7. Third Parties

8. Manage HR

9. Continuity

10. Privacy Ecosystem

WHY SHOULD PERSONAL DATA BE PROTECTED?



ACCOUNTABILITY

CRIME		IMPRISONMENT	FINE
Processing of Personal/Sensitive Information for Unauthorized Purpose	Processing information when not authorized (purpose other than medical treatment)	1yr 6mos – 7 years	Php500,000 to Php2,000,000
Access to Personal/Sensitive Information due to Negligence	Persons who provide access due to negligence shall be liable	1-6 years	Php500,000 to Php4,000,000
Concealment of Security Breach	Duty to notify Privacy Commission in case of breach	1yr 6mos – 5 years	Php500,000 to Php1,000,000
Improper Disposal	Negligently dispose, discard or abandon personal data of an in an area accessible to the public or placed in its container for trash collection.	6 months – 3 years	Php 100,000 to Php 1,000,000

"In this digital era, information is the currency of power – valuable, coveted, but at a very high risk."

-Senator Edgardo Angara, sponsorship speech for the Data Privacy Act

What can you "buy" with your personal data?

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Four people nabbed in Recto for producing counterfeit documents

Gerg Cahiles, CNN Philippines, Four people nabbed in Recto for producing counterfeit documents, available at http://cnnphilippines.com/incoming/2017/02/16/Four-people-nabbed-in-Recto-for-producing-counterfeit-documents.html

PUBLIC SCHOOL TEACHER IN P800K DEBT AFTER POSTING PRC ID ON FACEBOOK

Date - Saturday, February 27, 2016

In an interview, he said that he posted his PRC ID on Facebook when he passed the licensure exam. He also posted his papers when he was regularize in a public school.

Few months later, he was starting to received notifications from banks saying that he borrowed a total of P800,000 in salary loans.

Though he denied applying for the loans, the banks still deducted P9,000 from his payroll account every month. It surprised him because he did not sign any document authorizing them to deduct the amount.

Available at: http://www.socialtrendsph.com/2016/02/public-school-teacher-in-p800k-debt_37.html

5/12/2016
12:01 AM

Kelly Jackson Higgins
News

Healthcare Suffers Estimated $6.2 Billion In Data Breaches

Nearly 90 percent of healthcare organizations were slammed by a breach in the past two years.

The 911 call has come in loud and clear for the healthcare industry: nearly 90% of all healthcare organizations suffered at least one data breach in the past two years with an average cost of $2.2 million per hack.

Kelly Jackson. Healthcare suffers estimated 6.2 Billion in Data Breaches. Available at http://www.darkreading.com/threat-intelligence/healthcare-suffers-estimated-$62-billion-in-data-breaches/d/d-id/1325482

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Thank you!

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National Privacy Commission