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ARTICLES

IMAGE ABDUCTION OF A NORMAL PERSON IN A PUBLIC SPACE

Vicki Huang and Jason Taliadoros

This article discusses the lacunae in Australian law that permit the “image abduction of a normal person in a public space”. We define this as the circulation of a non-intimate image without consent with subsequent distress caused by that circulation or by third-party comments. We discuss this conduct as the inevitable consequence of smart phones and the commercialisation of social media, in particular the monetisation of online influence. In this article we argue that the harms to both a “normal person” (who has their image, agency and autonomy taken from them) and to society at large are underappreciated in Australian policy discourse. We conclude that in a world where image abduction will be ubiquitous, a tort of privacy that acknowledges these harms is imperative. This article uses the case study of Maree, whose image was appropriated into “kindness porn” TikTok videos, to explore the current legal landscape and recent inquiries into the development of an Australian tort of privacy.

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DATA SECURITY IN AUSTRALIA: THE OBLIGATION TO PROTECT

Joel Lisk

21st century businesses rely on leveraging consumer data to target consumers more accurately, customise services and learn more about the markets in which they operate. As the use of data in business has flourished, incidents of data breaches have also increased with criminal activity, and system and human errors all playing a role in the unintended or unauthorised release of consumer data. Recent increases in the prominence of data breaches have raised questions about the obligations to protect the consumer data at law. This article undertakes a practical and example-driven review of the Australian laws applicable to data protection – primarily, the Privacy Act 1988 (Cth). This article will also briefly touch on the provisions of the Consumer Data Right as an example of a comparative approach of mandating data protection. As Australian law currently stands, corporate data protection obligations are flexible and circumstance dependent, but do not impose prescriptive obligations.

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I KNOW WHO YOU ARE: THE NEED FOR A UNIFORM AUSTRALIAN DEFINITION OF BIOMETRIC DATA

Elizabeth Watford and Samuel White

In an age where technological personalisation beats privacy, individuals willingly give their data in return for a bespoke experience. Individuals are more likely to share their data when they know there are clear benefits to themselves or society. The opportunity cost in handing over personal data in return for a personalised experience can open the door to privacy breaches and criminal activity. Forming part of personal data is biometric data, which includes facial features, iris and retina, voice, and heartbeat. However, in Australia, a uniform legislated definition of biometric data does not exist. Every day, open sources grow with biometric data. A better understanding of the ways in which biometric data can be used and a best practice definition is key. This essay seeks to highlight, analyse, and ultimately resolve the legal and policy risks of not having a legislated definition of biometric data for privacy purposes.

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