

An incident or a sign of the times?

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The latest reports about a data “leak” of some sixteen million land and mortgage register records raised some justified concerns and evoked a response from wide circles. According to news reports, a company registered in the Republic of Seychelles, in exchange for a small fee, provides data from the land and mortgage register, including information on owners and encumbrances secured by mortgages. Let us remind here that the records contained in the Polish land and mortgage register had been made available in 2011 via the Ministry of Justice website. While obtaining the information contained in the records via www.ekw.ms.gov.pl website requires providing a specific number of the record in the register, the above-mentioned company from the Seychelles Islands allows searching through the records by simply specifying the address of a given real property.

Several important aspects should be pointed out while evaluating this situation. First of all, the case at hand is hardly a “leak” *per se*. The “leaked” data are widely available, among others, on the Ministry of Justice website. The company merely changed the manner of searching and accessing publicly available records.

If experience of other countries can be used as a point of reference, such business practices may be a harbinger of the so-called “matching” of data retrieved from public sources. Such matching can actually be performed by anyone at this time. Some data can be obtained from the Polish Court Register, some from the land and mortgage register, and so on. Matching such data allows establishing a profile of a specific person (a person A is a management board member at company B, a supervisory board member at company C, and owns a real property X, with a bank loan in the amount Y secured by a mortgage). The above-mentioned example of data matching is possible, although it requires considerable effort and is time consuming. That is where the new technologies come in, allowing us to take some shortcuts through the process. Leaving aside the deliberations of R. Dębowski (*Rzeczpospolita*, 12 March 2013), in our view, the case at hand should be examined from another perspective. Given the technologies involved, we have a case of “Big Data” phenomenon which not only involves huge amounts of data collected into a single set, but also using and matching data from different sources. Making certain information publicly available and providing an easy access to it, no doubt contributes to encouraging and facilitating business activity.

Even if we assume, as a working hypothesis, that the data comes only from legal sources, we have a case of data aggregation effect resulting in “the whole being more than the sum of its parts”. Obviously, a picture (personal profile) created as a result of data matching can be inaccurate. Nevertheless, it is not the case of data “leak”. What may and should be reiterated, is what Rafał Wiewiórkowski, the Inspector General for the Protection of Personal Data, pointed out in the *Rzeczpospolita* daily (12 March 2013) – the matter concerns a potential further use of data for purposes different from those for which they were originally collected.

In theory, there are no impediments for the legislator to restrain or altogether prohibit commercial processing of data obtained from public domains in the manner carried out by the company from the Seychelles Islands.

However, another problem would appear – namely, the issue of effective execution of Polish law, imposed on a company registered in the Republic of Seychelles, offering a “product” available in the cyberspace. Apart from the complicated issue of enforcing legal regulations of one country by another country, it should also be noted that there is no shortage of “exotic” jurisdictions that could be used to launch similar practices as the one at hand. Yet again we have to face the issue of a gap between a globalized network, and “products”, such as

aggregated data, and national or regional legal regulations/solutions that are to protect personal data and ensure the enforcement of the rights of individuals.

In this way, given the nature of the Internet, before our very eyes, a well-known US phenomenon, may become – or is becoming, a reality. In the US, personal data is the object of commercial exchange between administrative bodies and commercial entities, while credit agencies that process consumer data constitute a sizable branch of the economy. The

The EU legislator tries to prevent such a scenario from happening in the EU, although technological advances prove that the task is becoming increasingly more difficult if not futile.

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