PDPC PUBLIC CONSULTATION

ON

REVIEW OF PERSONAL DATA PROTECTION ACT 2012 – PROPOSED DATA PORTABILITY AND DATA INNOVATION PROVISIONS

COMMENTS

FROM

BSA | THE SOFTWARE ALLIANCE

17 JULY 2019

Contact:
Jared Ragland,
Senior Director, Policy - APAC
jaredr@bsa.org
300 Beach Road, #25-08 The Concourse, Singapore 199555

PDPC PUBLIC CONSULTATION ON REVIEW OF PERSONAL DATA PROTECTION ACT 2012 – PROPOSED DATA PORTABILITY AND DATA INNOVATION PROVISIONS

COMMENTS FROM BSA | THE SOFTWARE ALLIANCE

Introduction and Summary of Comments

BSA | The Software Alliance (**BSA**)[1] appreciates the opportunity to provide comments in response to the public consultation by the Personal Data Protection Commission (**PDPC**) on *Review of Personal Data Protection Act 2012 (**PDPA**) – Proposed Data Portability and Data Innovation Provisions* (**Proposed Provisions**). BSA supports PDPC's commitment to address how amendments to the PDPA can strengthen accountability and consumer trust in personal data management. This is important for creating a trusted digital economy that encompasses legislative frameworks that are flexible and pro-innovation. In summary, BSA provides the following feedback and recommends:

- Further clarifying the types of data that constitute "user activity data" and the need to study associated compliance costs for the inclusion of such data under a portability requirement;
- Avoiding prescriptive approaches to data portability;
- Further clarifying the legislative framework for binding codes of practice and the commitment to consult further with all affected organizations.

Comments

A.   Comments on the Proposed Provisions

BSA supports PDPC's efforts to provide a clear and flexible regulatory environment to support data-driven innovation. BSA supports the inclusion of a right to data portability and providing more clarity to organizations looking to re-purpose existing datasets that have been obtained for business innovation purposes.

As PDPC seeks to further refine the Proposed Provisions, BSA appreciates the opportunity to recommend the following changes to improve their clarity and precision.

A.1. Further clarify the principles for assessing whether certain data falls under "User Activity Data" and the associated additional compliance costs for the inclusion of such data under a portability requirement
(*Relating to Part II Question 2 — What are your views on the proposed Data Portability Obligation, specifically: (a) scope of organizations covered; and (b) scope of data covered?*)

Regarding Q.2(a), **BSA supports the proposal to carve out data intermediaries from the data portability obligation**. Data intermediaries act on behalf of responsible organizations and generally do not have visibility over individuals' data and would not be in a position to process data portability requests made by individuals. Data intermediaries also do not generally have direct relationships with individuals and are therefore unable to meaningfully or effectively communicate to data subjects directly on the porting of data.

Regarding Q.2(b), BSA broadly supports the principle of a consumer right to access and port one's data, and hence generally the proposal to include "user activity data" into a data portability

---

requirement. We note, however, that we are currently not aware of any international best practices for defining or requirements surrounding the portability of such data. Practical compliance could therefore be challenging if the PDPC does not provide clear guidance on what types of data would fall into "user activity data". For example, it is unclear whether the data to be included extends to meta-data related to user-transaction activity, or geo-spatial data related to a user-location activity, or other "non-personal" data that has been incidentally generated due to user activity.[2]

In this regard, **BSA recommends that, if the portability is required, PDPC include, either via a legislative *Schedule* or subsidiary legislation, an exhaustive list of "user activity data", and seek separate public consultation on this list of data types.** As part of this separate public consultation, it is imperative for the PDPC to also study and consider the relative incremental cost of compliance, for Small and Medium Enterprises, Large Local Enterprises and Multinational Corporations alike, as more categories of "user-activity data" are included under the data portability obligation. PDPC also should consider whether the porting of "user-activity data" should be confined to specific circumstances, rather than included as a broad requirement applicable to all instances of data portability requests, particularly as there may also be commercial value in such "user-activity data".

A.2. Avoid prescriptive approaches to facilitate portability that could impede innovation
(*Relating part II question 4 on "proposed requirements for handling data portability requests*)

The software industry has undergone dramatic transformation. BSA members provide a wide array of Internet-enabled services, such as cloud computing services, data analytics, security solutions, and much more. This is in addition to a full range of software solutions that are more often downloaded online or used on remote servers. Today, software solution and cloud service providers already facilitate migration and portability in creative and innovative ways absent regulatory intervention. This is consistent with their commercial interests to attract customers from competitors — and there are many commercially available tools in the market to facilitate migration.

Paragraphs 2.37 to 2.41 outline a highly prescriptive process to managing requests for data to be ported, and how data should be received. **BSA recommends that instead of prescribing such a process at the outset, PDPC should consider taking a more flexible approach and instead encourage the adoption of voluntary, transparently developed, industry-led international standards and practices, while also working to minimize conflicting legal obligations on organizations, particularly technology service providers.**

The specific mechanisms for transferring data from legacy systems to cloud-based service providers and from one service provider to another will depend heavily on the specifics of each organization and their existing data structures. BSA members offering software and cloud computing services have developed a variety of solutions that can be tailored to their customers' needs for secure transfer of data from one system to another. In some cases, this may be straightforward. In others, it may be more difficult, such as when the data is tightly associated with particular applications and is not easily convertible to alternative systems.

As software, cloud computing, and other emerging technologies continue to evolve, it is likely additional voluntary internationally recognized standards and practices will emerge, and governments should support industry-led efforts to promote data portability. Therefore, a prescriptive regulatory approach is likely to be counter-productive and would likely limit the services available in the marketplace without improving data migration capabilities.

---

[2] For the avoidance of doubt, PDPC should also make clear that the "user activity" data covered by the data portability obligation is limited to "personal data" as defined pursuant to Section 2 of the PDPA, and does not extend the scope of data covered beyond the purpose of the PDPA. Hence, data held by an organization that is not "personal data" under the PDPA, would not be part of this obligation. Wherein "personal data" means data, whether true or not, about an individual who can be identified —
(a) from that data; or (b) from that data and other information to which the organization has or is likely to have access.

A.3. Further clarity and commit to consult with affected organizations on binding codes of practice
(*Relating to part II question 6 on "proposed binding codes of practices"*)

The PDPC has proposed to create the power to prescribe binding codes of practices for data portability. Based on the current proposal, the power appears to be broad and it is unclear what guiding principles or under what circumstances the PDPC will exercise its power to prescribe such binding codes of practices.

While PDPC has also stated that it would develop such codes of practices in consultation with the relevant sector regulators and industry stakeholders, it is likewise unclear whether such a process would be open to any and all affected industry stakeholders, and subject to public consultation. Furthermore, it is unclear whether the intention is: (a) for organizations to voluntarily enter into a "binding code of practice"; or (b) for the codes of practices to be mandated, at least where the PDPC has that power. In the case of (b), it is necessary that PDPC lay out a process for appeals and recourse, especially in circumstances where it is impracticable for organizations to comply with a "mandated" code of practice. More generally, codes of practices work best when they are voluntary guidelines, developed in coordination with the industry in a multi-stakeholder environment. PDPC may should consider developing incentives for voluntary guidelines, rather than issuing binding codes.

Therefore, **BSA recommends that PDPC provide further clarity on the legislative intent and framework for "binding codes of practices" and commit to consult with *all affected stakeholders.* In addition, if it intends for such codes of practices to be "mandated" on certain organizations, PDPC should provide a clear process for appeal and recourse to organizations for such a decision.**

Regarding the areas or topics covered by such codes, **BSA encourages the PDPC to monitor global standard setting efforts related to cloud computing interoperability and data portability[3], and avoid setting mandatory standards[4] that are Singapore-specific or inconsistent with regional and international best practices and standards**.

B.   Other Comments

B.1. Support for proposed measures to support data-driven innovation
(*Relating to Part III on "Proposed Data Innovation Provisions"*)

The exponential increase in data, combined with increases in remote computing power and development of more sophisticated algorithms, has fueled advances in cutting-edge technologies, including machine learning and artificial intelligence. Capitalizing on these developments to facilitate the development of digital economy requires sound data innovation policies, ensuring data can move freely across borders, avoiding the creation of new rights in business data, and maintaining predictable, technology-neutral competition policies. At the same time, organizations and governments must remain vigilant in addressing increased security and privacy risks.

Enhanced measures that respect informed consumer choices while ensuring the ability to deliver valuable tailored products and service is a key component to a sound data innovation policy. BSA therefore supports PDPC's proposed Data Innovation provisions (Part III of the Public Consultation). These proposals provide an appropriate and necessary balance between the need to allow for sound data innovation while protecting a consumers' right to privacy protection.

BSA has worked closely with governments around the world in relation to the need create sound and consistent data innovation policies to encourage the development of data-driven and

---

[3] Some examples include: ISO/IEC 19941:2017 on Cloud Computing Interoperability, or the work that the Monetary Authority of Singapore has done, in supporting open APIs in the banking industry, which could be leveraged for data portability.

[4] For example, in areas such as data formats and standards for transmission of data and the integrity and security of participating systems.

emerging technologies. To share our experiences, BSA has published a document on ***"Spurring AI Innovation with Sound Data Policy"*,[5]** which sets out a snapshot of the relationship between sound data policies and AI Innovation. A copy of the document is attached as an **Annex** to our submission.

Conclusion and Next Steps

BSA once again expresses our support of the PDPC's efforts to continually review and update the personal data protection regime in Singapore, responding to the ever-evolving needs of the digital economy and data innovation. We hope that our comments will support PDPC's efforts and to ensure that Singapore continues to be a hub of cutting-edge innovation and a leader for the creation of sound data innovation policy.

Please do not hesitate to contact us if you have any questions or comments regarding our suggestions. We remain open to further discussion and look forward to further opportunities to work with PDPC on the development of data protection and data policy issues in Singapore.

---

[5] https://www.bsa.org/files/policy-filings/BSA_2018_AI_DataPolicy.pdf

ANNEX

SPURRING AI INNOVATION WITH SOUND DATA POLICY

SPURRING AI INNOVATION WITH SOUND DATA POLICY

The Impact of Data Policy on AI Development

At its core, Artificial Intelligence (AI) is a technology that augments human intelligence, helping people make better-informed decisions by identifying relationships, patterns, and trends in data that would be imperceptible to humans. Although AI research dates back several decades, advances in the availability of computing power, highly sophisticated algorithms, and data have recently accelerated its use in the marketplace.

AI systems are "trained" by ingesting enormous volumes of data. The benefits of AI are therefore dependent on the quantity and quality of data that is available for training. As a result, government policies affecting the ability to access and share data have a significant influence on the development of AI.

This issue snapshot discusses the relationship between sound government data policies and AI innovation.

1 Ensure Data Can Move Freely Across Borders

The free flow of data across borders is critical for the services that sustain global commerce, improve health and safety, promote social good, and enable the technologies of the future. In fact, data transfers are integral to every stage of the AI life cycle, from the development of predictive models to the deployment and use of AI systems.

The data used in AI systems often originates from many geographically dispersed sources, making it imperative that data can move freely across borders. Rules that limit cross-border data transfers invariably limit the insights and other benefits that AI systems can provide. For instance, the future of agriculture will be driven by data from drones and sensors that precisely measure the soil acidity, moisture retention, and fertility rates of every inch of a farmer's land. A cloud-based AI system can analyze this agricultural data to recommend real-time adjustments that improve crop yields while lowering the costs and environmental effects of farming. The ability for such a system to provide insights to farmers in remote regions of the world will, of course, depend on the free flow of data.

2 Access to Government Data and Public Sector Information

Government-generated data is a resource that can serve as a powerful engine for creating new jobs and promoting economic growth. At both the local and national level, governments collect and generate vast quantities of data that can be harnessed in the development of AI systems.

more >>

> The future of agriculture will be driven by data from drones and sensors that precisely measure the soil acidity, moisture retention, and fertility rates of every inch of a farmer's land. A cloud-based AI system can analyze this agricultural data to recommend real-time adjustments that improve crop yields while lowering the costs and environmental effects of farming. The ability for such a system to provide insights to farmers in remote regions of the world will, of course, depend on the free flow of data.

» **Putting government-held data to use:** Sound data policies should ensure that any non-sensitive government-generated data asset is made freely available to the public in machine-readable formats. This data — a resource that would otherwise be unused — can improve services and lower prices. For instance, an AI system designed to improve supply chain efficiency might rely on government data about historical traffic flows, law enforcement event advisories, and weather patterns to recommend delivery routes that minimize congestion, reduce emissions, and improve public safety.

» **Preventing data lock-up through procurement:** Governments should carefully consider the effect that procurement policies can have on the availability of data. As a general matter, governments should avoid service agreements that would grant exclusive access or use rights to government datasets to any single private entity. Increasingly, government data is being generated by third-party vendors. For instance, local transit authorities may contract with third-party vendors to analyze data generated by buses and trains, or by sensors embedded in street lights and roadways. Governments contracting for such services should ensure that any statistical data created or maintained on its behalf as part of the agreement is not subject to access or use restrictions. Rather, data provided to governments as part of such procurement contracts should be treated like any other government data asset and should be made freely accessible for public use.

3 Facilitate Value-Added Data Services

Data is the key to growth in all sectors of the economy, but each piece of data has little inherent value. It is only when used as an input to other value-added services, such as AI, that it contributes to the projected $15 trillion addition to global GDP by 2030.[1]

Policies that artificially increase the costs for acquiring the data used to train AI systems will ultimately increase the costs of these technologies for customers and decrease the incentive to develop and use new technology — potentially reducing overall consumer welfare.

> Government-generated data is a resource that can serve as a powerful engine for creating new jobs and promoting economic growth. At both the local and national level, governments collect and generate vast quantities of data that can be harnessed in the development of AI systems.

Governments should pursue policies that facilitate the business-to-business exchange of data and boost the development of AI services, including by:

» Ensuring companies can enter enforceable contracts that create data sharing arrangements;

» Avoiding the creation of new rights in business data that could add unnecessary transaction costs; and

» Allowing companies to freely perform data analytics, including text and data mining, on any content to which they have lawful access.

4 Maintain Predictable Competition Policies

Fierce competition among AI providers is creating dynamic efficiencies that push the creation of new services. This benefits every sector of the economy — helping companies optimize their manufacturing processes, improve their supply chains, secure their networks, and enhance their products and services. These downstream benefits have been driven by a diverse set of AI companies, with small- and medium-sized firms playing an important role.[2]

Policymakers should avoid creating AI-specific competition rules, such as compulsory licensing of data sets. Creating and structuring data sets is resource intensive. A regulatory prohibition on maintaining the exclusive benefits of that investment will deter the investment and impede the development of AI.

AI remains a burgeoning field with quickly evolving market dynamics. The existing framework of competition law is intentionally designed to be flexible enough to address technological innovations, and is better suited than ex-ante regulatory intervention.

---

[1] BSA, *What's the Deal with Big Data,* available at http://data.bsa.org/wp-content/uploads/2015/12/bsadatastudy_en.pdf.

[2] There are currently more than 2,000 AI startups that have raised nearly $30 billion in funding. See Vala Afshar, "AI Is Transformational Technology and Major Sector Disruptor," *Huffington Post* (December 5, 2017), available at https://www.huffingtonpost.com/entry/ai-is-transformational-technology-and-major-sector_us_5a259dbfe-4b05072e8b56b6e.