



SINGAPORE TELECOMMUNICATIONS LTD

SUBMISSION TO THE PERSONAL DATA PROTECTION COMMISSION

IN RESPONSE TO THE

**PUBLIC CONSULTATION ON USE OF PERSONAL DATA IN AI
RECOMMENDATION AND DECISION SYSTEMS**

DATE OF SUBMISSION: 31 AUGUST 2023



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SUBMISSION TO THE PERSONAL DATA PROTECTION COMMISSION IN RESPONSE TO THE PUBLIC CONSULTATION ON USE OF PERSONAL DATA IN AI RECOMMENDATION AND DECISION SYSTEMS

1. INTRODUCTION

- 1.1. Singapore Telecommunications Limited and its subsidiaries (collectively **Singtel**) are licensed to provide info-communications services in Singapore. Singtel is committed to the provision of state-of-the-art info-communications technologies and services in Singapore.
- 1.2. Singtel has a comprehensive portfolio of services that includes voice and data services over fixed, wireless and Internet platforms. Singtel services both corporate and residential customers and is committed to bringing the best of global info-communications to its customers in Asia Pacific and beyond.
- 1.3. Singtel welcomes the opportunity to make this submission on the Public Consultation on Use of Personal Data in AI Recommendation and Decision Systems issued by the Personal Data Protection Commission (**PDPC**) (**Consultation Paper**).
- 1.4. Singtel would be pleased to clarify any of the views and comments made in this submission, as appropriate.
- 1.5. This submission is structured as follows:
Section 2 – Executive Summary;
Section 3 – Specific Comments; and
Section 4 – Conclusion.



2. EXECUTIVE SUMMARY

- 2.1. The PDPC is consulting on the proposed Advisory Guidelines on use of Personal Data in AI Recommendation and Decision Systems (**Proposed Advisory Guidelines**) which provide guidance on how the Personal Data Protection Act (**PDPA**) will apply to organisations that collect and use personal data to develop or deploy AI systems.
- 2.2. The proposed Advisory Guidelines focus on three aspects of AI Systems implementation, namely (a) the development, testing and monitoring of AI Systems, (b) the deployment of AI Systems, and (c) the provision of support services for AI Systems by service providers.
- 2.3. Singtel is generally supportive of the proposed Advisory Guidelines. The issuance of advisory guidelines on this topic is timely given the rising concerns of using AI responsibly. The proposed Advisory Guidelines highlight the importance of and the need to strike a balance between responsible use of AI systems in businesses on one hand and ensuring data protection on the other hand.
- 2.4. However, Singtel also considers that certain aspects of the proposed Advisory Guidelines require further clarification. Our submission therefore focuses on the aspects that require the PDPC's further refinement or clarification.

3. SPECIFIC COMMENTS

Definition of AI Systems

- 3.1. The proposed Advisory Guidelines define AI Systems as systems that embed machine learning (ML) models which are used to make decisions autonomously or to assist a human decision-maker through recommendations and predictions.
- 3.2. We request that the PDPC include examples of what falls within the definitions of machine learning and AI Systems and what is out of scope for uniform understanding across organisations.
- 3.3. We seek the PDPC's confirmation that:
 - (a) the proposed Advisory Guidelines do not apply to generative AI, and
 - (b) where more complex systems are used which leverage on ML models as the foundation, the proposed Advisory Guidelines will similarly apply.
- 3.4. We would also suggest that the PDPC considers future consequences of complex systems combining multiple branches of artificial intelligence.

3.5. We also request clarification as to whether there will be a hierarchy to the application of different advisory guidelines should the PDPC issue separate advisory guidelines for different artificial intelligence branches.

Organisation of the proposed Advisory Guidelines

3.6. The proposed Advisory Guidelines have been structured as follows:

Section	Stage of AI System Implementation	Topics
Part I	<u>Development, testing and monitoring:</u> Using personal data for training and testing the AI System, as well as monitoring the performance of AI Systems post deployment.	<ul style="list-style-type: none"> • Consent • Business Improvement and Research Exceptions • Implementing data protection measures • Anonymisation
Part II	<u>Deployment:</u> Collecting and using personal data in deployed AI Systems (“ business to consumer ” or B2C).	<ul style="list-style-type: none"> • Notification and Consent Obligations • Accountability Obligation
Part III	<u>Procurement:</u> AI System or solution provider providing support to organisations implementing the AI System (“ business to business ” or B2B).	<ul style="list-style-type: none"> • Notification and Consent Obligations • Accountability Obligation

3.7. It is not clear from the structuring of the proposed Advisory Guidelines whether the topics covered in Part II of the proposed Advisory Guidelines are meant to apply similarly to Part I. If so, the PDPC may wish to consider reviewing the structure and/or wording of the proposed Advisory Guidelines for clarity. The following paragraphs 3.8 to 3.11 expand further on some of the aspects we are unclear on.

AI System development, testing and monitoring: applicability of other exceptions

3.8. Based on the proposed Advisory Guidelines, organisations can rely on two statutory exceptions in the PDPA instead of obtaining consent, namely the business improvement exception and the research exception.¹ The proposed Advisory Guidelines set out the

¹ Refer to paragraph 4.1 of the Proposed Advisory Guidelines.

considerations that organisations need to consider when seeking to rely on these exceptions. The PDPC has also recognised the benefits of using personal data in place of anonymised data in developing or training AI systems, by allowing an organisation to use personal data in place of anonymised data if the organisation assesses the advantages and disadvantages of using either type of data and documents this assessment internally.

- 3.9. While we recognise that the proposed Advisory Guidelines have provided clarity on how organisations may rely on the business improvement and research exceptions to consent, the proposed Advisory Guidelines do not mention any other exceptions that organisations may rely on. There is thus some ambiguity as to whether the PDPC has intended that *only* the business improvement and research exceptions can apply to AI system development, testing and monitoring, or more prominence has been placed on these two exceptions given their relevance to AI system development, testing and monitoring, without precluding the applicability of other exceptions. If the other exceptions continue to apply to AI system development, testing and monitoring, then the PDPC should consider wording this clearly within the proposed Advisory Guidelines.
- 3.10. The proposed Advisory Guidelines should expand on obtaining consent (in its direct application to Part I i.e., development, testing and monitoring) as well as consider how other exceptions to the consent obligation would apply during this stage of AI Systems implementation, in particular the legitimate interests exception. The proposed Advisory Guidelines have focused on consent for Part II (the deployment of AI Systems stage),² without any similar focus on consent for Part I (the development, testing and monitoring stages). It is not clear whether organisations are expected to adopt similar practices as found in paragraphs 9.4 to 9.8 of the proposed Advisory Guidelines during the development, testing and monitoring stages when obtaining consent.
- 3.11. The Advisory Guidelines on Key Concepts in the PDPA consider the legitimate interests exception from a general overview and application angle. However, in the context of AI system development, testing and monitoring, the PDPC should include examples on the legitimate interests exception in the proposed Advisory Guidelines. Assuming organisations can also rely on the legitimate interests exception, the PDPC can consider reusing the existing examples³ on fraud detection within the Advisory Guidelines on Key Concepts in the PDPA and incorporating them specifically within the AI guidelines so that organisations can have a better understanding of how they can

² Refer to paragraph 9.1 and 9.4 of the Proposed Advisory Guidelines.

³ Refer to paragraph 12.63 of the Advisory Guidelines on Key Concepts in the PDPA.

rely on the legitimate interests exception in the specific context of AI system development, testing and monitoring.

AI System development, testing and monitoring: business improvement exception

- 3.12. The business improvement exception applies to the sharing of personal data between entities belonging to a group of companies.⁴ We request that the PDPC clarify further on this data sharing arrangement in relation to obtaining sufficient data to build the AI system. Under the business improvement exception, company A is allowed to share personal data to company B for learning or understanding behaviour and preferences of customers⁵ (who must either be existing or prospective customers of company B). If company B wants to build an AI system and requires data to train its model, can the PDPC clarify whether the data shared by company A must be limited to only existing or prospective customers of company B?⁶ Where company B is building an AI system which relies on data from company A, there may be situations where the profile of customers (shared by company A) may not be sufficient to be used to train the model, improve accuracy and de-bias the model.
- 3.13. We also request the PDPC confirm that when relying on the business improvement and research exceptions, undertaking a data protection impact assessment is not mandatory or a pre-requisite. The data protection impact assessment is only encouraged, bearing in mind the principles and considerations on when a data protection impact assessment should be conducted.⁷

Deployment of AI Systems: declining the AI feature

- 3.14. The proposed Advisory Guidelines state that the consent, notification and accountability obligations apply to the collection and use of personal data in the deployment of AI Systems. The proposed Advisory Guidelines further expand on how organisations would be able to meet these obligations. For the consent and notification obligations, users must provide meaningful consent. The proposed Advisory Guidelines have provided organisations a checklist of what would constitute sufficient information for organisations to meet their obligations.⁸

⁴ Refer to paragraph 4.1 a) of the Proposed Advisory Guidelines.

⁵ Refer to paragraph 5.2 c) of the Proposed Advisory Guidelines.

⁶ Refer to paragraph 12.77 of the Advisory Guidelines on Key Concepts in the PDPA. Company A needs to ensure that the personal data disclosed must be individuals who are (i) company A's customers and (ii) company B's customers or prospective customers.

⁷ Refer to the PDPC's Guide to Data Protection Impact Assessments.

⁸ Refer to paragraph 9.5 of the Proposed Advisory Guidelines.

3.15. The PDPC has provided an example of a video streaming service in which the organisation informs users that its service uses AI to provide recommendations and explain how the AI works.⁹ The user would be provided the option to consent or decline the use of this feature. We seek the PDPC's further clarification on the following.

(a) Firstly, assuming the AI feature can be turned on or off, we ask the PDPC to confirm that this means that:

- (i) the organisation must be prepared to offer two versions of their service to users i.e., one which uses the AI system (that the user consents to) and one which does not (in the event that the user does not consent), and
- (ii) based on the user's consent response, the organisation is required to render the correct version to the user.

(b) Secondly, it is possible that use of the AI system is intrinsic to the service such that it cannot be easily separated from the service. If so, it may not be so simple as to just decline the use of the feature. We ask that the PDPC confirms that organisations therefore can rely on the deemed consent or exceptions to the consent obligation to proceed with the collection, use or disclosure of personal data.

Deployment of AI Systems: written notifications and policies

3.16. The PDPC has recognised that organisations may have valid reasons to withhold commercially sensitive and security information of the AI System from being shared with users. The proposed Advisory Guidelines thus allow organisations to provide more generalised information to users when notifying them of the purposes of collecting and using their personal data, provided organisations document such justification internally.¹⁰ We request that the PDPC provide some examples in the proposed Advisory Guidelines to illustrate how general the explanation can be to be considered acceptable.

3.17. It is also not clear from the proposed Advisory Guidelines how organisations should handle requests from individuals who do not accept the general explanations and insist on knowing the AI Systems in detail. We request the PDPC to clarify whether organisations are required to provide the internal documented justifications to such individuals.

⁹ Refer to paragraph 9.7 of the Proposed Advisory Guidelines.

¹⁰ Refer to paragraph 9.8 of the Proposed Advisory Guidelines.

- 3.18. To satisfy the accountability obligation, organisations are required to develop policies and practices to ensure that personal data used in the deployment of AI Systems is used responsibly. The PDPC has provided a list of measures that could be included in the policies, such as (a) measures taken to achieve fair and reasonable recommendations, predictions and decisions, (b) safeguards and technical measures taken to protect personal data and (c) if useful, measures on the robustness of the AI System and the implementation of human agency and oversight.¹¹ The PDPC leaves it to the organisation to decide what measures to be included based on sufficiency and reasonableness.
- 3.19. In a similar vein, we request that the PDPC include an example in the proposed Advisory Guidelines of a written policy that includes the measures in (a) – (c) so that organisations have a better understanding of the depth expected for such written policies, given the potentially non-technical audience the written policies are for.
- 3.20. With reference to our response in paragraph 3.7 above, we note that the proposed Advisory Guidelines mention that not all measures stated in paragraph 10.6 of the proposed Advisory Guidelines are required; organisation should adopt reasonable measures for model development and testing (i.e., Part I), and in deployed AI Systems (i.e., Part II). This suggests that section 10 of the proposed Advisory Guidelines is intended to apply to both Parts I and II, which contradicts how the proposed Advisory Guidelines have been structured.
- 3.21. We therefore request the PDPC to relook the structuring of the proposed Advisory Guidelines as the relevance of sections 9 and 10 of the proposed Advisory Guidelines to both the development, testing and monitoring stages on one hand, and the deployment stage on the other hand is confusing.

Service Providers supporting organisations to implement AI solutions

- 3.22. Based on the proposed Advisory Guidelines, the PDPC confirms that service providers who provide professional services for the development and deployment of bespoke or fully customisable AI Systems may be considered data intermediaries. Obligations of data intermediaries, namely the protection and retention obligations, would therefore apply to these service providers.¹² The PDPC should consider including the obligation of the data intermediaries to notify the organisation of data breaches within the proposed Advisory Guidelines for completeness.

¹¹ Refer to paragraph 10.6 of the Proposed Advisory Guidelines.

¹² Refer to paragraph 11.2 of the Proposed Advisory Guidelines.

- 3.23. The proposed Advisory Guidelines state that the organisation is still ultimately responsible for ensuring that the AI System complies with the PDPA, not the service provider.¹³ The PDPC has set out some best practices that the service provider should adopt. Since these are encouraged and not mandatory as part of data intermediary obligations, we ask that the PDPC explains whether it expects the organisation to incorporate these best practices as contractual obligations of the data intermediary or whether it expects that would an organisation is considered to have failed in its protection obligation for not imposing these best practices on the service provider.
- 3.24. The proposed Advisory Guidelines encourage service providers to provide organisations support to meet their notification, consent and accountability obligations. The PDPC already acknowledges that organisations may rely on the technical expertise of the service providers. In relying on service providers to provide the technical help in crafting notifications and written policies, the PDPC should advise if the organisation is responsible for any inaccuracies of the details provided by the service provider that may lead to errors in notification and notices, since the organisation may not be able to validate certain details provided by the service provider e.g., proprietary information, technical knowledge.

4. CONCLUSION

- 4.1. Singtel requests that the PDPC consider our comments as it works on producing the final guidelines.

¹³ Refer to paragraph 11.7 of the Proposed Advisory Guidelines.