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30 August 2023

Ms. Denise Wong
Assistant Chief Executive (Data Protection & Innovation Group) and Deputy Commissioner of the Personal Data Protection Commission
Infocomm and Media Development Authority
10 Pasir Panjang Road
#03-01 Mapletree Business City
Singapore 117438

Re: US-ASEAN Business Council Feedback on Proposed Advisory Guidelines on Use of Personal Data in AI Recommendation and Decision Systems

Dear Deputy Commissioner Denise,

On behalf of the US-ASEAN Business Council (US-ABC) and our members, I would like to thank your organization for providing us with the opportunity to comment on the proposed Advisory Guidelines on the Use of Personal Data in AI Recommendation and Decision Systems. We welcome the approach taken by PDPC to provide a set of guidelines clarifying how AI Systems can be ethically developed and deployed when using personal data.

In this regard, we would like to provide input on the below areas, to add nuance and further policy recommendations. We hope that this can help strengthen the Guide's operationalization and promote its wider industry use. Please also see our enclosed **Appendix** for detailed feedback and recommendations.

1. Adopting a risk-based and proportionate approach towards different uses of AI Systems. We would like to see more contextualized recommendations for use-cases at different levels of risk
2. Improving the clarity and consistency in working terms and definitions used. We noticed that there remains some definitional ambiguity and terms used interchangeably and have proposed edits accordingly.
3. Suggestions to clarify and better delineate the shared responsibilities among the developers, deployers and end-users. We have put forth some edits for consideration.
4. Recommendations to promote the safeguarding of commercially sensitive information. We have proposed edits to reflect the nuances and sensitivities in AI Systems use-cases, where such discretion is needed.

Thank you again for your efforts and receptiveness to engage the U.S. business community on this emerging technology and as the Government of Singapore begins working with other ASEAN member states to develop an ASEAN Governance Framework for AI. I hope that you will continue to view the Council as a trusted resource and partner. Should you have further queries, please feel free to contact me or your staff may follow up with our Manager for ICT and Singapore, Ms. Jileen Yong (jyong@usasean.org) and Associate for AI Policy, Ms. Maya Crowden (mcrowden@usasean.org).

Sincerely,

Marc Mealy
Chief Policy Officer & Senior Vice President of Research

cc: His Excellency Lui Tuck Yew, Ambassador of Singapore to the U.S.
The Honorable Jonathan Kaplan, U.S. Ambassador to Singapore

Appendix

Topic	Concern	Details
General Feedback *Terminology Ambiguity and Consistency of Use*	We would like to highlight that there remains some ambiguity in the language of the current draft. For example, it is unclear what the reference to *"outcomes that have a higher impact on the individual"* (paragraph 10.6) specifically refers to. Additionally, the terms "*ML models"* and *"AI Systems"* have specific definitions but seem to be used interchangeably through the paper.	We also suggest that the AG provide more definitional clarity and specify the scope(s) more, to ensure clearer messaging and a more tailored application of the AG.
Part I: Introduction and Scope *Para 1.2*	The AG appears to adopt the same approach towards all types of AI Systems. It does not differentiate between high and low risk use-cases or contextualize the deployments. AI is increasingly embedded in the delivery of many products and services. Invariably, we would use some form of AI to make decisions in a lot of circumstances – though to varying degrees. It would therefore be impracticable to apply these Guidelines to every situation where humans are assisted by AI in making decisions.	We strongly recommend that PDPC adopt a risk-based and proportionate approach towards different uses of AI Systems – by applying a materiality threshold. We propose the following edits: *"The focus of the Advisory Guidelines on the Use of Personal Data in AI Recommendation and Decision Systems under the Personal Data Protection Act ("Guidelines") is to clarify how the PDPA applies to the collection and use of personal data by organisations to develop and deploy systems that embed machine learning (ML) models ("AI Systems") which are used to make decisions autonomously or play a material role in ~~to~~ assisting a human decision-maker through recommendations and predictions."*
Part I: Introduction and Scope *Para 3.2*	With the rapid advancement of technology and the shortening of timelines for products and services to go to market, a product / service could undergo testing and monitoring for continuous improvement and enhancement – even after it has been deployed. The stages of AI System implementation may therefore not be linear – in the way the current draft depicts.	We propose that PDPC acknowledges this reality in the AG, so that the exceptions such as the *"Business Improvement Exception"* and *"Research Exception"* can still be applicable. Our suggested edits are below. *"These Guidelines are organised according to the typical stages of AI System implementation, which are meant to be illustrative only, as an AI System in reality could be in more than one stage at the same time, or loop back to a previous stage. ~~as follows:~~ ..."*
Part II: Using Personal Data in an AI System Development, Testing and Monitoring	It is reassuring that PDPC recognizes the need to use personal data for bias assessment (paras 5.8-5.9). In the absence of personal data, organizations	We would like to flag that in some instances, it may not always be operationally possible to square traditional privacy best practices (i.e., data minimization) with measures to

Para 7.3	may not be able to assess their AI Systems against fairness metrics – much less to say minimize any systematic biases in the AI Systems.	ensure fairness. The objectives for data minimization and fairness may not be completely aligned and reconcilable. Given so, we suggest that any calls for data minimization should be encouraged, instead of them being required. We would also like PDPC to highlight this situation in the Guidelines. Please find our edits below. *"In the context of developing AI Systems, organisations ~~should~~ are encouraged to practise data minimisation as good practice. Using only personal data containing aributes required to train and improve the AI System or ML model will also reduce unnecessary data protection and cyber threat risk to the AI System. To similarly reduce such risks, organisations should use the volume of personal data necessary to train the AI System or ML model and base this on relevant time periods and any other relevant lter e.g., market/customer segment, aributes, etc. An example of a situation where data minimisation may not be desirable is the need to collect personal data for bias assessment, as explained in paragraphs 5.8 and 5.9. Organisations may wish to refer to the PDPC's Guide to Data Protection Practices for ICT systems for further guidance in this area."*
Part III: Deployment – Collection and Use of Personal Data *Para 9.1*	The latest version focuses heavily on notice and consent mechanisms, giving very specific instructions on how to provide that and what to include. It does not provide enough details on a valuable exception to consent, i.e., legitimate interests.	There should be a section discussing how the Legitimate Interests exception to consent could be used. For instance, an example of a legitimate interest for processing personal data in an AI without consent would be the use of personal data as input in an AI model to prevent fraudulent activities, or to guard against bad actors. Personal data processing is subjected to PDPA, and therefore all the exceptions to consent should be clearly made available to AI system providers. It would be beneficial to provide examples on its proper use as well. It should be emphasized that consent should not be considered as the exclusive legal basis available to organizations deploying AI systems, since there may be exceptions to its use, such as guarding against illegal activity.

Part III: Deployment – Collection and Use of Personal Data *Para 9.5*	We would like to highlight that the information in Para 9.5 (c) and (d) below may contain proprietary details – that needs to be kept confidential. Para 9.5 (d) may also be too specific for certain AI/ML systems and models. *Bearing in mind the above, organizations are encouraged to provide information on the following in crafting their notifications:* *a) The function of their product that requires collection and processing of personal data (e.g., recommendation of movies);* *b) A general description of types of personal data that will be collected and processed (e.g., movie viewing history);* *c) Explain how the processing of personal data collected is relevant to the product feature (e.g., analysis of users' viewing history to make movie recommendations); and* *d) Identify specific features of personal data that are more likely to influence the product feature (e.g., whether movie was viewed completely, viewed multiple times, etc.).*	We agree with the Guide's recommendation for information in (a) and (b) to be provided in the notification. For information in (c), we would like to suggest for the notification to be optional (and never mandatory) instead. Furthermore, the requirements should be flexible – so that they can be tailored to services. This would also protect against bad actors gaming the AI Systems. We want to ensure our users are appropriately informed, whilst also ensuring that platforms can protect commercially sensitive information. Overly broad disclosure requirements could allow bad actors to influence the product / service and game the system – if all specific data or signals collected have to be disclosed at the point of use. Lastly, we also recommend the following edit: "*Bearing in mind the above, organisations are encouraged to provide information on the following, to the extent practicable, when crafting their notifications*:
Part III: Deployment – Collection and Use of Personal Data *Para 9.6*	While we understand that the example is more for illustration, we would recommend that a different example be used instead. *Example: A bank uses AI to assist in credit scoring when assessing whether to approve applications for credit cards. It prepared a policy document entitled "Bank's Credit Assessment Policy Statement" which provides information about what personal data it collects from applicants and how they are processed by AI when the bank assesses applications. The policy document is provided to applicants who request for the information.*	Today, most banks rely on third-party credit bureaus to provide credit scores. This would have implication on the responsibilities of service providers, as addressed in Part IV of the AG. Thus, we do not find that the example very realistic. While it is only for illustrative purposes, we still recommend for this example to be removed and/or replaced.
Part III: Deployment – Collection and Use of Personal Data	We would like to highlight that excessive use of pop-up notifications may severely interfere with the user	In line with the PDPC's shift from compliance to accountability, we recommend the AG specifies that

Paras 9.6 – 9.8	experience (e.g., consent fatigue). This was observed upon the implementation of the EU GDPR in 2018. Cookie banners were implemented across the web to enable compliance (to the GDPR). In spite of complying with the letter of the law, the reality was that most users clicked away the banners without reading or understanding the privacy notice that was presented to them.	organizations make the assessment instead – on whether privacy notices or pop-ups are more appropriate. Overly prescribing the information, that should go into privacy notices, may not achieve the intended outcome.
Part III: Deployment – Collection and Use of Personal Data *Para 10*	This section is a welcome improvement. The removal of specific requirements on how to achieve *Accountability* and *Explainability* reflects the industry's recommendation to focus less on specific requirements, and more on developing guidelines and a risk-management framework as a way forward. We support the approach to encourage companies to focus on internal practices and policies to document their procedure and efforts to promote outcomes such as fairness, quality of outputs, etc. This is the right approach.	While the recommendations are positive, we do feel that they can be further nuanced. We suggest that the documentation of practices and processes should be tailored based on risk, and not be uniformly applied to all AI Systems.
Part III: Deployment – Collection and Use of Personal Data *Additional Resources Paras 10.9-10.11*	Apart from pointing organizations to the Implementation and Self-Assessment Guide (**ISAGO**) and AI Verify Toolkit, we also encourage PDPC to include impact assessments as a potential accountability tool.	Impact assessments are a tool for organizations to use to identify, document, and mitigate the risks posed by technology. They are widely used in the fields of privacy and data protection. Additionally, many organizations are already familiar with the use of impact assessments. They are required under privacy laws globally, including the *EU General Data Protection Regulation*. They are also practical for a holistic and iterative risk evaluation to be carried out by a developer and deployer of a high-risk AI tool, and do not rely on still-nascent technical standards.
Part III: Deployment – Collection and Use of Personal Data **&** **Part IV: Procurement of AI Systems – Best Practices for How Service Providers May Support Organisations**	In several instances in these Parts, there are references to Notification, Consent and Accountability Obligations.	For better alignment with the PDPA, we suggest having express references to Purpose Limitation and Retention Obligations.

Implementing AI Solutions *Obligations Captured in the PDPA*		
Part IV: Procurement of AI Systems – Best Practices for How Service Providers May Support Organisations Implementing AI Solutions *Para 11.2, 11.5 and 11.6*	The AG seems to use different terminologies to refer to the same entity. For instance, *"customers"*, *"user organisations"* and *"operators"* are used to refer to organisations; "supply-side businesses" is sometimes used to refer to the service providers. Meanwhile, *"customers"*, *"users"* and *"individuals"* are used to refer to the organisations' customers (in para 11itself, and intermittently in other sections).	We recommend that the same terminology be used throughout the Guidelines to avoid confusion. In this regard, PDPC may wish to consider using the following terms: 1. "Organisations" to consistently refer to those that engage service providers; 2. "AI service providers" to refer to service providers that provide professional services for the development and deployment of *"bespoke or fully customisable AI Systems"*; and 3. "Users" to refer to the organizations' customers.
Part IV: Procurement of AI Systems – Best Practices for How Service Providers May Support Organisations Implementing AI Solutions *Para 11.2(a) and (b)*	In the AG, business-to-business AI service providers are likened to "data intermediaries", implying that they are subject to the applicable obligations under the Singapore PDPA. We note that they are also encouraged to provide support to their customers who need to meet their Notification and Consent Obligations and Accountability Obligation. We believe it should not be assumed that only business-to-business AI service providers (e.g., system integrators) are "data intermediaries". An enterprise SaaS company that develops AI/ML systems, as part of their product and service offerings, would typically also be regarded a "data intermediary" or "data processor" in the data protection context. Hence, the reference to "data intermediaries" in Para 11.2 is potentially confusing.	Service providers should not be obliged to comply with additional obligations that are not expressly provided in the PDPA. If the policy intent is to make clear that business-to-business AI service providers are still subject to the PDPA (where applicable), we would recommend taking out the reference to "data intermediaries" and state the following in para 11.2: "*Where service providers, as part of developing and deploying bespoke or fully customisable AI Systems, process personal data on behalf of their customers, they are encouraged to adopt the following practices:* (a) *At pre-processing stage, use techniques such as data mapping and labelling to keep track of data that was used to form the training dataset;* (b) *Maintain a provenance record to document the lineage of the training data that identifies the source of training data and tracks how it has been transformed during data preparation.*"
Part IV: Procurement of AI Systems – Best Practices for How Service Providers May Support	AI service providers may not always have full knowledge of how organizations (e.g., their customers) deploy the AI Systems. Even if they understand the context at the point of	We strongly urge PDPC to amend the AG to reflect the shared responsibilities between organizations and their AI service providers. Please find our proposed edits below:

Organisations Implementing AI Solutions *Para 11.5*	procurement, organizations may deploy the same AI Systems to a different context – without fully informing their service provider. As a result, the Guidelines would be imposing obligations that are potentially impracticable for AI service providers to fulfil.	*"…To do so, ~~supply-side businesses~~ will AI service providers may have to ~~pay attention~~ work with the organisations to understand the context and impact the AI System ~~will~~ may have on ~~individuals~~ users and data subjects. Information that is likely to be relevant should be identified~~, and supply-side businesses are encouraged to engage their customers on what will be helpful for them~~ by organisations and their AI service providers."*