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IAF Public Canadian Policy Guidance Project to Enable/Sustain Socially Responsible Beneficial Data Use

Problem Statement

Canada has been served well by the Personal Information Protection and Electronic Documents Act (“PIPEDA”) that went into effect in 2000. PIPEDA’s purpose was and is:

“to establish, in an era in which technology increasingly facilitates the circulation and exchange of information in a manner that recognizes the right of privacy of individuals with respect to their personal information, the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.”

PIPEDA is built on a foundation of ten principles but is heavily dependent on two pillars: consent and accountability. Canada’s future is digital, and a principles based legal infrastructure needs to support that future. The privacy and data protection risks raised by advanced data processing activities may not be adequately addressed by existing regulatory implementation of these key principles. Indeed, history has shown that generally privacy and data protection law has lagged technological advances. Thus, the questions raised are:

- How should principles-based approach be applied in this digital transformation?
- How should the principle-based approach evolve in a way that allows the beneficial uses of data act in concert with other global drivers?

Europe has responded to the same challenge with the General Data Protection regulation. The GDPR relies on accountability and a risk-based approach to data protection to achieve the full range of fundamental rights and freedoms. This approach implicitly includes the shared benefits of an information age. Unfortunately, a sense that data markets have not been fully accountable and technology advances have outpaced instruments such as the GDPR has led to guidance by the Article 29 Data Protection Working Party/ European Data Protection Board that has added substantially to the prescriptive obligations on business. In addition, the adequacy requirement of the GDPR has led to extraterritorial impact much broader than Europe.

Furthermore, global regulators are responding to information and communications technology (ICT) that sprinted beyond the plain wording of legacy privacy approaches, by requiring fair and ethical processing where traditional concepts such as consent have not been fully effective. Concerns around balance of power and technology company dominance, perceptions of economics always trumping data use choices, lack of controls and accountability are all driving the increasing risk of a public policy

(regulatory) response. While current law does not contain specific requirements relative to what fair data processing means, this vacuum is likely to be filled by regulatory guidance or geo-specific responses. These legislative/regulatory activities have the further potential to limit even beneficial uses of data as organizations seek to manage their own risk profile.

Opportunity

While Canada seeks to be a technology leader and recognizes ICT as a driver of economic growth, the need to re-confirm adequacy with the GDPR and other motivators (e.g. public policy competitiveness, trade, political party accountability) will likely drive an update to PIPEDA.

Canada's Privacy Commissioner has called for legislation to meet Canadians' privacy protection needs. The Commissioner's recent letter to the government referenced business legitimate interests where consent is not possible. An earlier report by the Office of the Privacy Commissioner referenced an exemption for "socially beneficial activities" approved by that Office. However, there has not been a description of how the law might be structured to truly make use of these concepts.

The Canadian government has made a strong commitment to artificial intelligence as a major driver of future economic growth, even as it has reinforced its commitment to privacy as a fundamental right to achieve adequacy. Linking "socially beneficial activities" with legitimate interest accountability creates an opportunity to inform policy making as to how a trustworthy accountability model might reconcile the friction between ICT driven growth, fundamental rights and fair data use. Leveraging data to achieve beneficial ends, including private profit, does not have to be in conflict with individual and societal interests.

Reconciling Canadian ambition and values requires a complete framework model for what "socially beneficial activities" means, how it would be parsed, governed and overseen. The resulting model would be used to provide public policy guidance in advance of proposed changes to PIPEDA. This same model and content could be created as either a reactive or proactive "package" for U.S. State legislative efforts (including potential changes to the California Consumer Privacy Act).

Process and Timing

The IAF is best positioned to do this work based on previous Canadian projects and the reputation it has with Canadian business, regulators and civil society. This work, as well as previous work in Europe ([Legitimate Interests](#)) and in Hong Kong ([Ethical Data Stewardship](#)), would form the nucleus of the development of a Responsible/Beneficial Data Use Framework and resulting Public Policy Guidance. **The deliverable would be a report outlining a responsible/beneficial use of data framework and model with accompanying recommendations to policy makers. An initial socialization effort would be undertaken with a subsequent broader socialization plan developed in consultation with the project sponsors.**

While the IAF would lead in the development of this content, it would be conducted in consultation with specific business sponsors and the holding of a final multi-stakeholder session with Canadian regulators and other key constituents. It is anticipated that the process would involve 2-3 business meetings and a multi-stakeholder meeting and would be completed in a 6-8-month timeframe.

Project Sponsor/Involvement Cost – TBD (dependent on the number of business sponsors)