Global Dialogue on Best Practices in Implementing India’s Proposed Personal Data Protection Law in the Context of the Data Driven Economy

14 November 2019, New Delhi
Opening Remarks

Bojana Bellamy  
*President, CIPL*

Rahul Matthan  
*Partner, Trilegal*
Opening Keynote

India’s coming Data Protection Law: What are its principal promises?

Mr. Gopalakrishnan, S.
Additional Secretary, Ministry of Electronics and Information Technology (MeitY)
Topic I: India’s Future Data Protection Authority: Roles, Responsibilities and Challenges
Regulating for Results:
Strategies and Priorities for Leadership and Engagement

Richard Thomas
Global Strategy Advisor, CIPL
Former Information Commissioner, UK ICO
Chairman of Guernsey Data Protection Authority
The Importance of a Central Data Protection Authority of India

Centralized expertise to enable safe and reliable digital environment
Ensures consistency and legal certainty for organizations and individuals
Promotes uniform standards and best practices for organizations
Prevents organizations engaging in “forum shopping”
Harmonizes data protection across borders with other nations
Single voice and point of contact internationally
One national agenda for the development of data privacy law
Consistent interpretation and application of DP law
Consistent complaint, oversight and enforcement procedures

International representation and cooperation (e.g. ICDPPC, RIDP, APPA, GPEN, CPEA, etc.)
Single contact in cross-border enforcement matters

India DPA
Functions of the Authority

“It shall be the duty of the Authority to protect the interests of data principals, prevent any misuses of personal data, ensure compliance with the provisions of this Act and promote awareness of data protection”

• **Plus 24 specific functions (a)-(x):**
  • Leader / Teacher / Voice of Authority
  • Police officer
  • Ombudsman

• **Prioritise:**
  • “Selective to be Effective”
  • “Plagiarise with Pride”
Outcome-based and risk-based approaches produce better results than box-ticking or compliance for its own sake.

Deterrence and punishment have limited effectiveness - except for worst cases, as a last resort and to raise awareness.

Top Priority for Leadership role

Strengths and limitations of Police-Officer role

Dangers of being swamped by complaints

Exploit "Enlightened self-interest" - Most organisations are trying to do the right thing most of the time.
"Data Protection - Protecting People":

“Strengthening public confidence in data protection by taking a practical, down to earth approach – simplifying and making it easier for the majority of organisations who seek to handle personal information well, and tougher for the minority who do not”
Effective Regulators in the New World of Data

Regulating for Results – Shifting to outcome-based regulation

- Strategic, prioritised, risk-based, transparent regulatory policy
  - Innovative regulatory methods (e.g. Regulatory sandbox)

- Constructive engagement with regulated organizations
  - Maximum consultation, participation and frank exchanges

- Incentivise and encourage accountability
  - E.g. Showcase best practices and accountability efforts; differentiating factor in enforcement

- Act in a connected way with other regulators
  - Regulatory guidance, approaches to enforcement, mutual cooperation

- Build bridges with different regimes
  - Accountability frameworks (e.g. APEC CBPR and EU BCR)
Framework for Trusted Digital Age

Effective Regulators

Constructive Engagement

Accountable Organizations

Effective Protection for Individuals and Benefits for Digital Society
Topic I – Discussion Leads

- Dr. Renuka Sane
  Associate Professor, National Institute for Public Finance and Policy

- Gopalakrishnan, S.
  Additional Secretary to the Ministry of Electronics and Information Technology

- Christine Wilson
  Commissioner, US Federal Trade Commission

- Shuhei Ohshima
  Commissioner for International Cooperation, Japan PPC

- Hielke Hijmans
  Director, President of the Litigation Chamber, Belgian Data Protection Authority

- Ashish Aggarwal
  Senior Director and Head - Public Policy, NASSCOM

- Richard Thomas
  Global Strategy Advisor, CIPL
  Former Information Commissioner, ICO
  Chairman of Guernsey Data Protection Authority

Moderator
Bojana Bellamy
President, CIPL
<table>
<thead>
<tr>
<th>PPC's Activity Results (From 2018.4 to 2019.3)</th>
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<tbody>
<tr>
<td><strong>Consultations and counseling</strong></td>
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<tr>
<td><strong>17,590 cases</strong> Received by the PPC</td>
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<tr>
<td><strong>Public information activities</strong></td>
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<tr>
<td><strong>215 seminars</strong> Approx. 21,000 attendees</td>
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<tr>
<td><strong>Monitoring and supervision</strong></td>
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<tr>
<td><strong>1,495 cases</strong> Data breach notifications</td>
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<tr>
<td><strong>85 cases</strong> Onsite inspections</td>
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<tr>
<td><strong>325 cases</strong> Administrative instructions</td>
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<tr>
<td><strong>391 cases</strong> Requests of Report</td>
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<tr>
<td><strong>31 cases</strong> Mediations</td>
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Topic II: Key Requirements of India’s Data Protection Law in the Context of Innovation, Emerging Technologies and the Data Driven Economy
Topic II – Discussion Leads

Hielke Hijmans
Director, President of the Litigation Chamber, Belgian Data Protection Authority

Tanuj Bhojwani
Fellow, iSPIRT Foundation

Rama Vedashree
CEO, Data Security Council of India

Rudra Chaudhuri
Director, Carnegie India

Bojana Bellamy
President, CIPL

Belson Devarajan
Legal Counsel, Accenture

Moderator
Nikhil Narendran
Partner, Trilegal
Topic III: Enabling Cross-Border Data Flows
Impact Assessment of Data Localisation - A Macro and Micro Perspective, in the context of India's Digital Exports and Consumers of Digital Services

Shagufta Gupta
Director and Head - Centre for Competition, Investment and Economic Regulation, CUTS International
Moderator
Rahul Matthan
Partner, Trilegal

Sahil Kini
Co-Founder, Setu

Junichi Ishii
Director for International Affairs, Japan PPC

Betsy Broder

Shivnath Thukral
Public Policy Director, Facebook

Yolynd Lobo
General Manager – Public Policy, Amazon Web Services

Derek Ho
Senior Vice President and Assistant General Counsel, Privacy and Data Protection, Mastercard
Facilitating Personal Data Flow with Adequate Protection

Interoperability between the bilateral framework
✓ Increasing the volume of cross-border personal data transfer under the existing bilateral frameworks

Seeking New Certification Approach
✓ Enhancing global interoperability / scalability of certification systems for business operators

OECD Privacy Guidelines as global standard
✓ Being principles for personal data protection policy around the world
✓ Taking into account present-day risk factors
Future Interoperability across the borders

- EU
- US
- Self-certified companies under the US-EU Privacy Shield
- Japan
- Transfer based on the EU-US Privacy Shield
- Transfer based on the adequacy decision
- Onward transferrable to EU adequacy countries
- Automatically onward transferrable to Self-certified companies under the US-EU Privacy Shield
- Mutual Adequacy Findings
Towards global certification scheme

A global certification scheme

Certification under GDPR

APEC-CBPR
Topic IV: Consent Artefacts, Privacy Centric Architectures, and their potential to Transform the Indian Economy
Topic IV – Discussion Leads

Abhijit Bose
Head of India, WhatsApp

Siddharth Shetty
Data Empowerment And Protection Architecture Lead & Fellow, iSPIRT

Smriti Parsheera
Fellow, National Institute of Public Finance and Policy

Saranya Gopinath
Co-Founder, Digital India Collective for Empowerment (DICE)

Moderator
Vinay Kesari
General Counsel, Setu