



CONSUMER'S GUIDANCE SOCIETY



Door No. 57-14-16, 2nd Lane, Church Street, New Postal Colony, Patamata, VIJAYAWADA-520 010.
Andhra Pradesh, India, Phone : +91-866-2495324, E-mail : cgsuja95@gmail.com, consumerssociety@yahoo.com

Affiliated to : Consumer Unity & Trust Society, Jaipur.

Recognised by : Telephone Regulatory Authority of India (TRAI), New Delhi, Securities Exchange Board of India (SEBI) Mumbai, Petroleum & Natural Gas Regulatory Board (PNGRB), New Delhi.

Member : Drug Advisory Counsel & Food Advisory Counsel.

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“SUBMISSION OF COMMENTS ON TRAI CONSULTATION PAPER ON “PRIVACY, SECURITY AND OWNERSHIP OF THE DATA IN THE TELECOM SECTOR”.

Q.1 Are the data protection requirements currently applicable to all the players in the eco-system in India sufficient to protect the interests of telecom subscribers? What are the additional measures, if any, that need to be considered in this regard?

COMMENT:

The data protection requirements currently in vogue are grossly inadequate to effectively deal with and regulate over a plethora of State and non- State agencies that are handling, keeping and processing increasing volumes of private and personal data at different levels. The glaring shortcomings in the existing regulations, limited meaning assigned to personal data, increasing use of sophisticated devices, new technological innovations, absence of even a semblance of regulatory mechanism over cross border transfer of data, ineffective monitoring over the data handlers and processors, lack of any co-ordination between sectoral regulators etc., have cumulatively resulted in the unauthorized usage



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and transfer of personal data resulting in misuse and abuse of personal data and sensitive information to the loss and detriment of subscribers. Hence, certain additional measures should be put in place to protect and safeguard the personal data and privacy of users and which include inter-alia:

- I. The personal data should never be shared by TSPs and Broad band service providers without taking affirmative consent from a user.
- II. The data security procedures and practices of mobile set manufactures and TSPs and broad band service providers should be put in the public domain in order to enable the public to exercise their informed choice.
- III. The scope and extent of personal data should be widened so as to encompass even the data shared with broad band service providers, software appliance developers and device manufacturers. Thus, the categories of data that sought to be protected must be clearly be delineated.
- IV. The obligations of different stakeholders, who are bound by the requirements of data protection, should be clearly defined along with liabilities in the event of breach of such obligations.
- V. There should be compulsory registration of data handlers and processors for facilitating effective regulation and monitoring
- VI. There should be foolproof mechanism for effective enforcement of data protection regulations.



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VII.

There should be proper co-ordination and consultation among sectoral regulators in curbing and combating unauthorized cross-border data transfers and breaches

VIII. The remedies available to the users in the event of violation data privacy should be clearly delineated and provided.

IX. Stringent penalties should be slapped on the entities violating data safety and security eco- system

X. International Best practices on the sound communication eco-system should be benchmarked and emulated by adopting the policy of sui generis.

Q. 2 In light of recent advances in technology, what changes, if any are recommended to the definition of personal data? Should the User's consent be taken before sharing his/her personal data for commercial purposes? What are the measures that should be considered in order to empower users to own and take control of his/her personal data? In particular, what are the new capabilities that must be granted to consumers over the use of their Personal data?

COMMENT:

The scope and ambit of personal data should be widened so as to cover data secured by broad band service providers; mobile set manufacturers, device and software appliance developers. The



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affirmative assent of users must be taken for usage of personal data for commercial and trade purposes.

- Any information of the user that comes within the broad ambit and sweep of his or her privacy should be treated as the personal data as per the "Ratio" delivered by the Apex Court in the recent case of "K.S PUTTA SWAMY VS. UNION OF INDIA" so as to protect and preserve information privacy.
- An explicit right should be recognised on the part of every user for assuring him/ her for maintaining absolute confidentiality of data except for investigation, National Security and other Compelling reasons of the State and National integrity.
- User should be recognised as the title holder of his/her personal data and therefore, he/she should have free access to modify and amend data as and when expedient. .
- No personal and sensitive information should be disclosed except by taking the user into confidence.
- Information Privacy should be recognised as a fundamental right and accordingly rules and regulations should be formulated.



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User should be informed in advance about the different purposes for which his/her data would be used by the handlers, processors, data controllers, apps etc in order to promote his/her informed choice and further informed about remedies available to him in the event of misuse and abuse of his personal data.

Q.3 What should be the Rights and Responsibilities of the Data Controllers? Can the Rights of Data Controller supersede the Rights of an Individual over his/her Personal Data? Suggest a mechanism for regulating and governing the Data Controllers.

COMMENT:

There should be perfect balancing of interests in between the rights of Data Controllers and interests of individuals. The data controllers should have limited right to use data only for the purpose for which it has been procured. A specific duty should be cast on the data controllers to part with personal data of an individual only after taking the explicit consent of the individual concerned. The individual should be treated as the owner of his personal data and therefore, personal data can be transferred or used by the data controllers only after taking affirmative



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consent from the individual concerned. The legal mechanism governing data controllers should be founded on the principle of “information privacy” as a part and parcel of fundamental right to privacy enjoyed by every person

Q. 4 Given the fears related to abuse of this data, is it advisable to create a technology enabled architecture to audit the use of personal data, and associated consent? Will an audit-based mechanism provide sufficient visibility for the government or its authorized authority to prevent harm? Can the industry create a sufficiently capable workforce of auditors who can take on these responsibilities?

COMMENT:

The need of the hour is to put in place a technology enabled architecture to audit the use of personal data and associated content. It definitely provides sufficient visibility for the Government and its agencies to prevent harm. However, self regulation of the industry doesn't work due to involvement of conflict of interest and therefore such idea should be discarded.



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Q. 5 What, if any, are the measures that must be taken to encourage the creation of new data based businesses consistent with the overall framework of data protection?

COMMENT:

With foolproof data safety and cyber security systems in place, India definitely has an advantage to become an epic centre for out sourcing business and E-commerce. Hence, sound communication eco- system should be put in place.

Q.6 Should government or its authorized authority setup a data sandbox, which allows the regulated companies to create anonymized data sets which can be used for the development of newer services?

COMMENT:

It is not pragmatic idea and therefore, not worth considering.



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Q. 7 How can the government or its authorized authority setup a technology solution that can assist it in monitoring the ecosystem for compliance? What are the attributes of such a solution that allow the regulations to keep pace with a changing technology ecosystem?

COMMENT:

The latest technological innovations should be integrated and adopted to enable the Government and its agencies to effectively monitor data privacy and security systems of every entity handling personal and private data.

Q. 8 What are the measures that should be considered in order to strengthen and preserve the safety and security of telecommunications infrastructure and the digital ecosystem as a whole?

COMMENT:

Technology improvements and innovation should be encouraged to promote cyber security and sound communication eco-system. International best practices should be considered and such best practices suited to our country should be integrated into sound communication eco-system. Timely reviews and monitoring of existing communication eco-system should be analysed to plug out loopholes and further strengthening of the eco system.



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Q.9 What are the key issues of data protection pertaining to the collection and use of data by various other stakeholders in the digital ecosystem, including content and application service providers, device manufacturers, operating systems, browsers, etc? What mechanisms need to be put in place in order to address these issues?

COMMENT:

Every entity and person involved in data collection, process and handling, including device manufacturers, operating systems and browsers should be subject to mandatory registration and should be mandated to declare their privacy policy wedded to consumer centric that aims at promoting informed choice of consumers and further recognising consumers as the owners of their personal data. In order to address these issues a Data Protection Authority should be established with power to regulate over these entities.



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Q. 10 Is there a need for bringing about greater parity in the data protection norms applicable to TSPs and other communication service providers offering comparable services (such as Internet based voice and messaging services). What are the various options that may be considered in this regard?

COMMENT:

There is definitely a need to bring about greater parity in the data protection norms applicable to TSPs and other communication service providers offering comparable services. Data privacy norms and procedures and practices should be made uniform except in such situations warranting heterogeneity.

Q. 11 What should be the legitimate exceptions to the data protection requirements imposed on TSPs and other providers in the digital ecosystem and how should these be designed? In particular, what are the checks and balances that need to be considered in the context of lawful surveillance and law enforcement requirements?

COMMENT:

The legitimate exceptions to the data protection requirements should be preservation and promotion of security of the State, National integration, investigation of crimes, peace and tranquillity and public order and morality. These exceptions should be clearly defined and the



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situations and circumstances under which these exceptions can be given effect to should be clearly set out in order to minimise the scope for misuse of discretionary powers. The authority on whom power is vested to invoke and enforce these exceptions should be made accountable for exercise of power on the ground of any of these exceptions in a transparent and accountable manner, subject to proper checks and balances. No surveillance should be allowed except with the sanction of the court and further any such surveillance should be subject to the monitoring of the authority approved by the court. The grounds on which surveillance could be allowed should be clearly defined in law so as to minimise any scope for misuse of surveillance powers. The country specific requirements should necessarily be taken into consideration in formulating exceptions to data security and privacy exceptions and exemptions.



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Q.12 What are the measures that can be considered in order to address the potential issues arising from cross border flow of information and jurisdictional challenges in the digital ecosystem?

COMMENT:

- There should be proper consultation and co-ordination among Telecom and other sectoral regulators across the World for facilitating effective regulation over cross border flow of information.
- Multi-lateral agreements among nations to address jurisdictional challenges, concerns, issues arising out of cross border flow of information for facilitating Jurisdictional Co-operation and ensuring effective compliance of data protection and privacy regulations.
- The international best practices on cyber security and data security should be studied and emulated.
- The jurisdiction of the regulatory authorities should be extended to cover the personal data of users in India but stored outside India by the different service providers. Hence, extra-territorial jurisdiction should be conferred on the regulators to address on the data stored outside India but have data privacy violations in India to effectively address the challenges arising out of cross border flow of information.

Date: 02.09.2017

Station: Vijayawada

Yours sincerely,

Dr.Ch.Divakara Babu,

Secretary,

Consumers Guidance Society