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Six principles for the future of UK data governance

March 2022

Overview

Data is a foundational part of the UK's economic growth and competitiveness; its use is projected to have added at least £241 billion in value to the UK economy between 2015 and 2020.[1] During the pandemic, we have seen an unprecedented pace of innovation and take-up of data-driven digital products and services. The collection, use and analysis of large data sets has been central to delivering the economic and social interventions to tackle the pandemic, and the medical research needed to develop vaccines and treatment.

As the world becomes even more connected, and the deployment of new technologies such as artificial intelligence rapidly accelerates, the importance and need for good, high-quality data and trust from all actors involved in data processing increases.

Setting the right data governance framework for the UK will be vital in facilitating this and in realising our ambition to be a world leading innovative economy and society. The UK's data governance framework must support good data availability, promote good data quality, trusted pathways, and transparency for the sharing, use and re-use of data and be underpinned by strong data protection rights. This will be key for supporting innovation, accelerating the digitalisation of the UK economy, and improving policy making at all levels of Government.

Data governance is also inherently global. For example, the UK's, as well as other countries' data regimes contain extra-territorial and oftentimes overlapping or competing provisions, meaning that organisations handling personal data often need to comply with multiple legal systems. This is manageable when there are shared principles and values between trading partners. However, the proliferation of diverging approaches to data governance and uncertainty over avenues for data transfers, such as were highlighted by the Schrems II ruling at the Court of Justice of the European Union (CJEU), has led to persistent uncertainty for businesses around what services they can use, as well as increased compliance costs.

1. The Value of Big Data and the Internet of Things to the UK Economy, Feb 2016, CEBR & SAS

The Department for International Trade estimates the UK exported £190.3 billion digitally delivered services (representing 67.1% of total UK services exports).[2] Significant divergences could threaten the pace of data-driven innovation and the ability for firms to be able to collect, analyse and exchange findings from data with partners across the globe. Therefore, it is important for likeminded countries to share similar underlying values for data sharing.

The UK's withdrawal from the European Union (EU) has created a unique opportunity to tackle these questions with an approach tailored for the UK and its envisaged place in the world. The Government's National Data Strategy (NDS) and DCMS consultation *Data: a new direction* outlines ambitious proposals which we believe will enable the UK to set principles for data governance at home and lead debates on global data governance. However, to make the most of this opportunity, the UK needs to be bold and seize the initiative for reform. techUK and our members have identified six principles which should be embedded into the implementation of the NDS and the UK's future data protection regime to help achieve this aim.

2. Understanding and measuring cross-border digital trade 2020

The six principles are:

1. Securing strong safeguards for personal data protection and a pro-innovation regulatory environment,

2. Setting the UK on the right track to unlock the value of data across the economy and society (non-personal and personal data),

3. Improving data access for cutting-edge research and development (R&D),

4. Strengthening the UK's cyber resilience to protect UK data infrastructure,

5. Enabling the global free flow of data with safeguards,

6. Taking a firm line against data localisation at home and abroad.

1. Securing strong safeguards for personal data protection and pro-innovation regulatory environment

The UK already has a world-class reputation for upholding individuals' data rights when storing and processing personal data, making it an attractive and trusted destination to innovate. Maintaining strong public trust in the system is essential as individuals become increasingly aware as to how their personal data can be misused.

It is crucial that any reform to the data protection regime seeks to maintain these high levels of confidence in the system by protecting effective mechanisms for redress in the GDPR. This includes making sure subject access requests remain free and guaranteeing human reviews of automated decisions remain where those decisions have significant or legal effects.

Any reforms must also ensure the independence of the regulator, the ICO, remains without question. This will be vital for the UK's perception as a trusted destination for personal data.

2. Setting the UK on the right track to unlock the value of data across the economy and society (non-personal and personal data)

The use of personal and non-personal data is growing rapidly, enabling a pace of innovation that is allowing businesses to offer individuals access to new and improved products and services. Beyond this, greater sharing of industrial data will be key in increasing cross-sector efficiencies, output, and value through the uptake of technologies including connected devices, automation, and real-time data analytics.

To drive this, the Government needs to step up work in the National Data Strategy to appropriately equip individuals with the right data skills to participate in the digital economy. There is also a need for increased collaboration between Government, and the public and private sector by seeking to improve data availability to different sectors of the economy and creating trusted avenues for voluntary data sharing. This includes accelerating reforms to smart and open data.

3. Improving data access for cutting-edge research and development

Data is the engine for modern R&D and innovation. The Government has recognised this, aiming to increase investment to 2.4% of GDP by 2027 and committing to expand the UK's R&D Tax Credit to cover data and cloud costs. When pursuing research and product development, accessing data and being able to use it frictionlessly is a key challenge for businesses.

In techUK's recent Digital Economy Monitor survey of technology companies, 76% said conducting R&D activities in the UK is important and 29% believe a reduction in regulatory barriers would encourage them to allocate more of their R&D activities in the UK.[3]

The current GDPR is an example of regulation that has caused legal uncertainty for businesses seeking to innovate, with some being unable or choosing not to use data to the fullest extent due to a lack of clarity in the law, or inability to absorb the administrative and legal burdens that come with compliance.

The Government has proposed several reforms that if upheld by proper safeguards and regulatory guidance, would offer organisations effective and trusted mechanisms to re-use personal data for research purposes. The introduction of a limited, exhaustive list of common processing activities under legitimate interests will also be step change for UK based innovators. This proposal would offer businesses greater legal certainty, reduce administrative and legal burdens, and mitigate limitations associated with consent, which businesses often rely on as a lawful base. A similar approach has been taken in Singapore's national data protection law, which has created a place for commercial development processing activities.

This is a major opportunity which must be seized; to ensure these benefits are captured as widely as possible, product development should be kept within scope of the GDPR's statutory definition of "scientific research," to reflect the contribution of UK businesses to R&D, which amounted to £25bn or over two-thirds of all R&D funding in 2018.[4] These benefits are not solely commercial, but also have huge opportunity for societal gain, fraud prevention, increasing competition, protecting the vulnerable and wider public interest, and crisis management.

4. Strengthening the UK's cyber resilience to protect UK data infrastructure

As well as facilitating the free flow of data across borders, it is equally important for Government to ensure that data remains protected in transit and when stored or processed at home or abroad. Robust data infrastructure is crucial for this, as well as for delivering our national security objectives and allowing the UK's economy and critical services to continue operating securely and undisturbed.

Government must seek to understand the scale and nature of potential cybersecurity risks, as well as develop appropriate escalation paths to address them, including keeping track of new and emerging trends. To achieve this, the Government must continue to collaborate with industry to understand the cybersecurity landscape and develop a proportionate and pragmatic approach to managing associated risks.

3. Digital Economy Monitor Q1 2022 results (techuk.org)

4. UK Research and Development Roadmap (webpage) - GOV.UK (www.gov.uk)

5. Enabling the global free flow of data with safeguards

International data flows uphold modern digital economies and will become increasingly depended as our use of data grows. Globally, there is a role for governments to facilitate predictable regulatory environments that provide organisations continued confidence in the system when transferring both personal and non-personal data internationally.

The UK has already sought to lead international efforts here by agreeing a G7 roadmap on Data Free Flow with Trust. Further to this, the Government's proposal to shift to a more proportionate and risk-based approach to its own adequacy agreements with likeminded third countries and regional blocs is a positive step-forward in setting a new international model for international data flows.

However, the Government should take steps to ensure the confidence of international partners in the UK system. This includes ensuring there are strong protections around onward transfers of personal data, local pathways for redress of non-UK citizens if their data is mishandled in the UK, limits to law enforcement and national security access to personal data, and effective oversight of the data governance system from regulators and the courts. Achieving this will be vital to maintaining the UK's adequacy decision with the EU.

6. Taking a firm position against data localisation at home and abroad

As countries develop their thinking on data protection, there has been a concerning shift towards data localisation policies which pose a serious threat to the future of international trade and innovation. One study has shown that data localisation requirements could limit the competitiveness of sectors such as financial services by imposing the need for firms to build dedicated data centres in each jurisdiction they operate in, and thereby incurring additional costs and limiting choice.[5]

Choice and competition are essential for innovation, particularly in fast moving digital markets. Therefore, where high standards of data protection and data security are maintained, data flows should not be unduly restricted based on location. Involved actors must be allowed to and supported in following a risk-based approach, having the necessary tools to be able to assess foreign laws and their data protection standards.

Through leveraging the ambitions of the National Data Strategy, the UK can take the lead internationally by advocating for the free flow of data across the borders of likeminded countries and taking a firm stance against countries who already have, or plan to implement data localisation policies. However, to be an effective advocate, the UK Government must address its own disconnect between its global commitment to push back against this trend, and its policy interventions at home, which have contained provisions that promote data localisation.

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5. James M. Kaplan & Kayvaun Rowshankish, "Addressing the Impact of Data Location Regulation in Financial Services", Global Commission on Internet Governance, Centre for International Governance Innovation and Chatham House, May, 2015

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About techUK

techUK is a membership organisation that brings together people, companies and organisations to realise the positive outcomes of what digital technology can achieve. We collaborate across business, Government and stakeholders to fulfil the potential of technology to deliver a stronger society and more sustainable future. By providing expertise and insight, we support our members, partners and stakeholders as they prepare the UK for what comes next in a constantly changing world.

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