

IAPP Asia Privacy Forum 2019

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Opening Keynote Speech

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1. It is my distinct privilege to be able to attend the IAPP Asia Privacy Forum in this vibrant garden state of Singapore.
2. IAPP has long been the largest and most comprehensive pool of privacy professional excellence. Its acclaimed conferences, workshops, training, online resources, news digests, etc. help us navigate the complex landscape of today's data-driven world. As a data protection regulator, I commend the mission of and efforts made by IAPP in

defining, supporting and improving the privacy profession globally.

3. Nowadays, Data Protection Officers' (DPO) roles and responsibilities have never been more pivotal and instrumental in the data ecosystem. If the regulator is the referee in a football match, the DPO is the team manager, the coach, and the player, often as the goalkeeper. DPOs help set the game plan, execute it and ensure that no goals are scored against their own teams. Indeed DPOs also educate their team members and facilitate the attainment of their teams' targets.

From compliance to accountability to data ethics

4. Globalisation of commercial and data processing activities means that businesses now have to comply with multiple regulatory regimes. Given the legislative fragmentation in data protection across the globe, due diligence has to be exercised by businesses to ensure that they do not fall

short of the legal requirements in the jurisdictions in which they have operation. This mission is proved to be challenging to businesses by a few high-profile data breaches in recent years in which individuals in multiple jurisdictions were affected, leading to probes by multiple regulators at the same time.

5. Meanwhile, despite relentless attempts to revamp data protection laws, the development of technological innovation invariably outpaces regulatory efforts. As a result, meeting regulatory requirements alone would not be effective enough to adequately protect and live up to individuals' expectations in privacy protection, let alone rendering the brand reputation and competitiveness, especially in jurisdictions which lack robust deterrent sanctions.
6. Organisations in general that amass and derive benefits from personal data should be held to a higher ethical

standard that meets stakeholders' expectations alongside the requirements of laws and regulations. Reiteration by enterprises about their compliance with regulatory requirements does not spare them from the devastating damage to their hard-earned corporate reputation and consumers' trust. In this regard, data ethics could bridge the gap between legal requirements and the stakeholders' expectations. It is time for data users or controllers, as well as regulators, to promote and practise data governance and ethics.

7. Compliance with statutory requirements has sometimes been taken as burdensome, if not a liability. Since 2014, my office has been advocating a paradigm shift through the Privacy Management Programme by which law and good practices could be entrenched, and compliance transforms to accountability alongside the commitment of the top management in better corporate governance.

8. Accountability is the mechanism for assuring data stewardship and protection. Data privacy is no longer a legal compliance concern only, but also a business concern which should be addressed by the top management as a corporate governance concern, linking internal policies with data protection law. Businesses ought to treat privacy as an asset rather than a liability – as an opportunity to cultivate a competitive advantage that wins market reputation and the trust of customers.
9. While the resonance of accountability starts to tune up, my office has been advocating complementing compliance with the law by the adoption of data ethics, which is the bedrock for nurturing and flourishing personal data protection in times of change.
10. Data ethical values focus on fairness, respect and mutual benefits. In practical terms, they involve genuine choices, meaningful consent, absence of bias or discrimination, and

fair value exchange between individuals (data subjects) and organisations (data users or controllers).

11. At the 40th International Conference of Data Protection and Privacy Commissioners held in Brussels in October 2018, a *Declaration on Ethics and Data Protection in Artificial Intelligence* was passed, of which my office was one of the co-sponsors. The Declaration sets out six guiding principles to preserve human rights in the development of artificial intelligence, i.e. (i) fair; (ii) continued attention and vigilance; (iii) transparency and intelligibility; (iv) ethics by design; (v) empowerment of every individual; and (vi) reducing and mitigating biases or discriminations.

12. A new permanent working group has been set up pursuant to the Declaration to further promote and develop the six guiding principles across the globe. Being one of the co-chairs of the permanent working group, my office will

continue to work closely with multi-stakeholders, both at home and abroad, to nourish a culture and environment that respects privacy. We hope that a proper balance would be struck between privacy protection and free flow of information that will facilitate and not stifle technological innovation.

Hong Kong's unique and irreplaceable attributes

13. Just like Singapore, Hong Kong has long been an international financial centre and trading centre. In recent years, we have set off on a journey to diversify our strengths to serve also as a regional data hub, an innovation centre and dispute resolution centre, in particular in light of mainland China's national strategies of Belt and Road¹ and Greater Bay Area² initiatives.

¹ The Belt and Road Initiative refers to the Silk Road Economic Belt and 21st Century Maritime Silk Road, a significant development strategy launched by the Chinese government in 2015 with the intention of promoting economic co-operation among countries along the proposed Belt and Road routes. As in July 2019, more than 130 countries and regions around the world were involved in the Belt and Road Initiative, with total GDP and population amounting to more than US\$34 trillion and 5.8 billion respectively. (Source: The Hong Kong Trade Development Council: <https://beltandroad.hktdc.com/en/country-profiles>)

14. Digital data plays an indispensable role in all of these initiatives. Smooth and secure flow of digital data across borders and boundaries are imperative to business success. Facilitating data flow is high on every regulator's agenda. In Hong Kong, we have continued to leverage our unique advantages under "One Country, Two Systems" principle to achieve this end:

- (1) In "One Country", Hong Kong has benefited from mainland China's reform and opening-up and enjoyed enviable room for growth and development in social, economic and financial areas.
- (2) With "Two Systems", Hong Kong is still internationally recognised as one of the freest

² The Guangdong-Hong Kong-Macao Greater Bay Area (Greater Bay Area) comprises the two Special Administrative Regions of Hong Kong and Macao, and the nine municipalities of Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing in Guangdong Province, China. As at the end of 2017, the total area of the Greater Bay Area was 56 000 km² and the total population was around 70 million. (Source: Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area: <https://www.bayarea.gov.hk/en/outline/plan.html>) The GDP of the Greater Bay Area in 2017 was US\$1.51 trillion, approach that of South Korea. (Source: 2022 Foundation, *Creating the Greater Bay Area of the Future – Opportunities for Hong Kong*: <http://www.2022foundation.com/article/index/Publications#>)

economies in the world, practising capitalism, having high degree of autonomy, and enjoying executive, legislative and independent judicial power, including that of final adjudication.

15. Under “One Country, Two Systems”, Hong Kong possesses some other unique and irreplaceable attributes that enable us to fly high as a regional data hub and an innovation centre:-

- (1) First of all, Hong Kong has free flow of information. The freedom is guaranteed by the constitutional document – the Basic Law of Hong Kong.
- (2) Secondly, Hong Kong has a comprehensive legal regime for protecting privacy and personal data.
- (3) The third attribute is related to our language. Hong Kong is the only region in China where English is an official language. This is particularly important for maintaining Hong Kong’s international connections.

Data protection development in mainland China

16. Information and communications technology (“ICT”) development in mainland China over the last two decades has been impressive, to say the least. For example, according to the Boston Consulting Group, mainland China *“is currently well ahead of the rest of the industrialized world in AI implementation.”*³

17. One major reason behind the rapid ICT development in mainland China is the size of our country. As of 2018, mainland China has nearly 1.4 billion population and more than 1.3 billion 3G and 4G mobile accounts. Mobile data traffic in mainland China in 2018 was more than 71 billion gigabytes⁴, or 31% of the world’s total.⁵ For example, Alibaba, which operates some of the world’s largest e-

³ BCG, *Mind the (AI) Gap - Leadership Makes the Difference* (Dec 2018): <https://www.bcg.com/de-de/perspectives/208836>

⁴ Source: 2018 statistics by the National Bureau of Statistics of China (Feb 2019): http://www.stats.gov.cn/tjsj/zxfb/201902/t20190228_1651265.html

⁵ According to Statista, global mobile traffic in 2018 was about 228 billion gigabytes. Hence China accounted for 31% (71 out of 228 billion gigabytes) of the world’s mobile data traffic.

commerce platforms, recorded US\$30.8 billion sales on the Singles' Day on 11 November 2018 alone.⁶ These provide a lot of data to fuel ICT development.

18. Another catalyst for ICT development in mainland China is the relatively unfocussed regulations in data protection. As Jack Ma of Alibaba once said, in mainland China, entrepreneurs start to solve problems before thinking about regulation; and a lack of regulation around the internet in the early days allowed the mobile internet of mainland China to flourish and Alibaba to thrive.⁷

19. That said, the regulatory privacy landscape in mainland China is changing for the better, with considered and expedited will and efforts. Over the last few years, a large number of laws, regulations, administrative measures and

⁶ SCMP, Alibaba sets record US\$30.8 billion for Singles' Day sales, underscoring resilience in consumer spending (11 Nov 2018): <https://www.scmp.com/tech/enterprises/article/2172523/alibabas-singles-day-sales-hit-1-bl-yuan-less-60-seconds>

⁷ SCMP, Alibaba's Jack Ma says he is 'worried' Europe will stifle innovation with too much tech regulation (17 May 2019): <https://www.scmp.com/tech/big-tech/article/3010606/alibabas-jack-ma-says-he-worried-europe-will-stifle-innovation-too>

guidelines have been introduced in mainland China aiming at strengthening personal data protection. Notable examples include,

- (1) the General Provisions of the Civil Law, which came into effect in October 2017, formally recognising individuals' rights to privacy and personal information protection;
- (2) the Cybersecurity Law, which came into force in June 2017, provides quite comprehensive, albeit broad-brush, regulation on the processing of personal information by network operators, such as the principles for collection and use of personal information, obligation on data security and data breach notification, and individuals' rights to correction and deletion of personal information ;
- (3) the Personal Information Security Specification implemented in May 2018 provides detailed guidelines on data protection measures similar to EU's GDPR. Although the Specification itself is not

legally-binding, non-compliance with the Specification may be considered as a breach of relevant laws, such as Cybersecurity Law;

- (4) the E-Commerce Law implemented in January 2019 requires e-commerce operators to provide non-personalised goods or services recommendations to individuals.

20. So far data protection regulations in mainland China are still piece-meal and fragmented. In September 2018, the Standing Committee of the National People's Congress published the legislative agenda. Included in the priority list of the legislative agenda is the comprehensive and nation-wide Personal Information Protection Law. This indicates that the conditions for this piece of legislation are mature enough and the relevant bill will very likely be

deliberated by the Standing Committee within its current term, that is by March 2023.⁸

International connection and cooperation

21. Data is borderless in the digital age. Even the long arm of a statute does not provide a data protection authority with sufficient capacity to regulate around the world. International cooperation among data protection authorities is not only essential for effective enforcement, it also saves a data user the hassle to deal with multiple regulators for one single issue.

22. International cooperation should not be limited to enforcement, but should also include policy-setting, research and education, to name but a few. Cooperation in policy-setting is particularly important amidst the

⁸ Xihuanet, *What laws will be made in the next five years? The 13th NPC Standing Committee publishes legislative agenda* (7 Sep 2018) (In Chinese only): http://www.xinhuanet.com/legal/2018-09/07/c_1123397463.htm

legislative fragmentation in data protection laws. According to Professor Graham Greenleaf, as in April 2019, globally 134 countries or regions have put in place their data protection laws. Data protection authorities should have consistent regulatory policies to improve interoperability of regulations in different jurisdictions, preventing “regulatory shopping” and facilitating compliance.

23. We are particularly pleased that in May this year, my office signed a Memorandum of Understanding (“**MOU**”) with the Personal Data Protection Commission of Singapore to strengthen our cooperation in personal data protection. The MOU provides a solid framework for promoting collaborative initiatives and information exchange in personal data protection. It also clearly demonstrates the two regulators’ strong commitment to stepping up cross-jurisdictional collaboration in exchange

of expertise and information so as to better prepare Hong Kong and Singapore to enter into the new ‘post-digital’ era.

Hong Kong remains stable and strong

24. Yesterday when I was on board a flight coming to Singapore, I read a report in a local newspaper about the recent incidents in Hong Kong. There have been concerns that the incidents will affect the stability of Hong Kong, jeopardising our positions as international financial centre, trading centre, data hub, innovation centre and arbitration centre. I can assure you that it is not the case.

25. The recent incidents do not have an adverse impact on the fabrics and bedrock of the fundamental values of Hong Kong within the principle of “One Country, Two Systems”. The government of Hong Kong has taken immediate and active steps to address the views and voices expressed during the incidents. The market remains normal and the

economy keeps being stable. This is also evidenced by the Aa2 ratings of Hong Kong published by Moody's last week. The ratings included Moody's assessment of political risk for Hong Kong that took into account periodic challenges to the government's policies in recent years, and particularly the recent large-scale protests. Moody's considered that these protests were part of the working checks and balances in Hong Kong, and supported the institutional strength of the city. Indeed, the recent incidents show that Hong Kong people continue to enjoy all sorts of freedoms and rights that one can expect in a free society, as guaranteed under Hong Kong's laws, whether at the local, national and international level, including personal data privacy right.

26. It is also worth noting that Moody's highlighted the Greater Bay Area initiative as presenting economic opportunities for Hong Kong. The future of Hong Kong is further strengthened by the opportunities as a result of

further collaboration with 10 other cities in the region of 70 million people in total for the common good.

27. Ladies and Gentlemen, I am confident that with the successful implementation of “One Country, Two Systems” and capitalisation of Hong Kong’s unique and irreplaceable attributes, we in Hong Kong are able to strike a balance between free flow of information and personal data privacy protection without compromising economic and ICT development, so as to facilitate Hong Kong to develop as a regional data hub, as well as a key link and prime platform for economic, social and cultural development particularly in the Belt and Road economies and the Greater Bay Area.

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