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BSA COMMENTS ON PUBLIC CONSULTATION ON PROPOSED ADVISORY GUIDELINES ON USE OF PERSONAL DATA IN AI RECOMMENDATION AND DECISION SYSTEMS

Submitted Electronically to the Personal Data Protection Commission

BSA | The Software Alliance (**BSA**)¹ appreciates the leadership by the Personal Data Protection Commission (**PDPC**) in developing Advisory Guidelines to promote and support Artificial Intelligence (**AI**) innovation, in particular the public consultation on proposed Advisory Guidelines on Use of Personal Data in AI Recommendation and Decision Systems (**Draft AI AG**). We welcome the opportunity to submit comments to the Government of Singapore on the Draft AI AG.

BSA is the leading advocate for the global software industry. Our members are enterprise software companies that create business-to-business technologies that help other businesses innovate and grow.² For example, BSA members provide tools including cloud storage and data processing services, customer relationship management software, human resource management programs, identity management services, and collaboration software. BSA members are on the leading edge of providing AI-enabled products and services, and tools used by others in the development of AI systems and applications. As a result, they have unique insights into the technology's tremendous potential to spur digital transformation and the policies that can best support the responsible use of AI.

Realising the benefits of AI requires public trust and confidence that these technologies can be developed and deployed responsibly. BSA has for years promoted the responsible development and deployment of AI, including through BSA's Framework to Build Trust in AI,³ a risk management framework to mitigate the potential for unintended bias throughout an AI system's lifecycle. BSA has testified before the United States Congress⁴ and the European Parliament⁵ on the Framework and its approach to mitigating AI-related risks.

First, we commend the PDPC on mapping obligations within the Personal Data Protection Act (**PDPA**) to relevant AI concepts. For instance, the Accountability Obligation under the PDPA is scoped closely to how personal data is used in the AI system rather than how the AI system works in general. Similarly, we appreciate PDPC's clarification on how businesses can avail "business improvement" and "research" exceptions under the PDPA in processing personal data for the development, testing and monitoring of AI systems.

¹ BSA's members include: Adobe, Alteryx, Altium, Amazon Web Services, Atlassian, Autodesk, Bentley Systems, Box, Cisco, Cloudflare, CNC/Mastercam, Dassault, Databricks, DocuSign, Dropbox, Elastic, Graphisoft, IBM, Informatica, Juniper Networks, Kyndryl, MathWorks, Microsoft, Nikon, Okta, Oracle, Prokon, PTC, Rockwell, Rubrik, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, TriNet, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc.

² See <https://www.bsa.org/policy-filings/artificial-intelligence-in-every-sector>.

³ See <https://www.bsa.org/reports/confronting-bias-bsas-framework-to-build-trust-in-ai>.

⁴ See <https://www.congress.gov/117/meeting/house/114125/witnesses/HHRG-117-BA00-Wstate-CooperA-20211013.pdf>.

⁵ See https://www.europarl.europa.eu/cmsdata/244265/AIDA_Verbatim_30_November_2021_EN.pdf.

BSA offers our extensive global experience in technology policy to serve as a resource and we hope that our comments in this submission will be helpful to the PDPC.

Consistent Terminology and Distinction Between Developer and Deployer

Any guidance on AI issues should recognise the different roles and responsibilities of different actors involved in the AI ecosystem, particularly the *developer* of an AI system and the *deployer* of an AI system. Clearly distinguishing between these different actors is critical to ensuring that the guidance is implemented appropriately. However, the terminology used in the Draft AI AG to denote these concepts is inconsistent and confusing. For instance, the term “service providers” used throughout “Part IV: Procurement of AI Systems – Best Practices for How Service Providers May Support Organisations Implementing AI Solutions” and corresponding references to “supply-side businesses” in Paragraph 11.5 appear to be referring to developers of AI systems. Likewise, different terms such as “user organisation,” “operator,” and “implementors” in the table within Paragraph 11.6 appear to be referring to deployers of AI systems.

Consistent use of these terms would provide greater clarity on where the various responsibilities lie. Accordingly, we recommend using uniform terminology in context of these important concepts and defining “developers” and “deployers” of AI as follows:

- **AI developers**: An AI developer is an entity that designs, codes, or produces an AI system.
- **AI deployers**: An AI deployer is an entity that uses an AI system. (If an entity develops an AI system for its own use, it may be both the AI developer and the AI deployer.)

In its Recommendation of the Council on Artificial Intelligence,⁶ the Organisation for Economic Co-operation and Development (**OECD**) states that effective AI policies must necessarily account for “stakeholders according to their role and the context” in which AI is being deployed. Distinguishing between AI developers and AI deployers ensures that specified obligations reflect an entity’s role in the AI ecosystem. Tailoring obligations to an entity’s role as an AI developer or AI deployer enables the company to fulfill the corresponding obligations and better protect consumers.

For example, an AI developer that designs an AI system is well-positioned to have access to information about the type of data that is used to train an AI system, the system’s known limitations, and its intended use cases. However, the AI developer would *not* have insight into how the AI system is used after another organisation has purchased and deployed the AI system. Instead, the AI deployer – the entity using the AI system – is generally best positioned to provide details on how the system is being used, the outputs from the AI system, the nature of any customer complaints, and other real-world factors affecting the system’s performance. AI deployers are also best positioned to understand the risk profile that an AI system may present to individuals.

Further, as explained above, while the Draft AI AG makes several references to concepts related to the developer-deployer distinction, it does not meaningfully address or explain the distinction. We recommend that the Draft AI AG should reflect the distinction between these two roles, for example within Paragraph 3.2, which sets out stages of AI System implementation. PDPC may refer to the BSA document entitled *AI Developers and Deployers: An Important Distinction*⁷ for more information about the nature and importance of the developer-deployer distinction. BSA recommends that the Draft AI AG define, consistently use, and make clear the distinction between the developers and deployers of AI systems. This would clearly assign obligations to the entity best positioned to both identify and mitigate the risk of harm.

⁶ Recommendation of the Council on Artificial Intelligence, May 2019, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>. Per the Recommendation, the AI stakeholder community “encompasses all organisations and individuals involved in, or affected by, AI systems, directly or indirectly.”

⁷ Please see <https://www.bsa.org/policy-filings/ai-developers-and-deployers-an-important-distinction>.

Further, in the second row of the table in Paragraph 11.6, the Draft AI AG lists a requirement that service providers should train the deployer's human decision-makers. The developer of an AI System (i.e., the service provider) should provide information to a deployer of the AI System about the system's intended uses, capabilities, and known limitations, but deployers should ensure their employees are equipped with knowledge on use of the system given they are best placed to know its intended end use case(s). We propose amending the Draft AI AG as follows:

- Where needed e.g., where the AI System is more complex, *the AI developer should provide sufficient information ~~training~~* for human decision-makers involved in the AI-assisted decision-making process to ensure that *the AI deployer has ~~they have~~* adequate and appropriate knowledge of how to use the AI System.
- Where the AI System is intended for autonomous decision-making, *the AI developer should provide ~~providing training or~~* a clear explanation to ensure that *the AI deployer ~~they~~* properly understands how the AI System operates.

Finally, we appreciate that, particularly in Paragraph 11.7, the Draft AI AG makes it clear that while the developer can support organisations (i.e., the deployer) in achieving their obligations under the PDPA, ultimately the organisations that deploy AI systems should bear primary responsibility for ensuring that the system meets their obligations under the PDPA.

Obligations of Data Intermediaries under the PDPA

The Draft AI AG specifies⁸ that Paragraph 11 is relevant for organisations that engage service providers such as system integrators who provide professional services for the development and deployment of bespoke or fully customisable AI Systems. Subsequently, Paragraph 11.2 uses the term “data intermediaries” to refer to service providers (such as system integrators) that process personal data on behalf of their customers while developing and deploying bespoke or fully customisable AI solutions. However, many enterprise software-as-a-service companies which are typically regarded as data intermediaries under the PDPA may also be developing AI systems as part of their products and services even though they are not “system integrators” which are the target audience here. Paragraph 11.2 can be confusing as it conflates a specific subset of AI service providers with “data intermediaries.”

Further, under the Draft AG, service providers that may occupy the position of data intermediaries are required to adopt specific practices that are better suited to organisations. Specifically: Paragraph 11.2(a) calls for data mapping and labelling of data used to form the training dataset, and Paragraph 11.2(b) calls for the maintenance of a provenance record to document the lineage of the training data. Neither of the two requirements is related to the protection obligation or the retention obligation required of data intermediaries under Section 24 and Section 25 of the PDPA respectively. Rather, the requirements appear to map more closely to the accountability obligation, which is the responsibility of the organisation rather than the data intermediary.

Therefore, BSA recommends that PDPC remove the reference to data intermediaries in Paragraph 11.2. Instead, we recommend PDPC evaluate and specify the obligations under the PDPA that would apply to this group of AI service providers, taking into consideration their role within the AI ecosystem.

⁸ See Paragraph 11.1 of the Draft AI AG.

Impact Assessments

Paragraph 10.9 points organisations to the Implementation and Self-Assessment Guide (**ISAGO**) and AI Verify Toolkit as additional resources. In addition to the ISAGO and AI Verify Toolkit, we encourage PDPC to include impact assessments as an accountability tool or additional resource to consider. Impact assessments are a tool which organisations can use to identify, document, and mitigate risks, especially in the fields of data protection and privacy. In fact, the PDPC has previously published a Guide on Data Protection Impact Assessments⁹ encouraging organisations to conduct data protection impact assessments. Impact assessments are also practical because they are holistic and iterative risk evaluations that can be carried out by developers and deployers of high-risk AI systems and do not rely on still-nascent technical standards.

Conclusion

BSA appreciates the opportunity to provide our comments and recommendations on the Draft AI AG. We hope that our comments will assist in the development of clear and rigorous guidelines for AI in Singapore and look forward to continue working with the PDPC and relevant agencies on AI Governance policies. Please do not hesitate to contact the undersigned at waisanw@bsa.org if you have any questions or comments regarding our suggestions.

Yours faithfully,

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⁹ See <https://www.pdpc.gov.sg/help-and-resources/2017/11/guide-to-data-protection-impact-assessments>.