



**BSA SUBMISSION
ON THE
DRAFT INDIA DATA ACCESSIBILITY AND USE POLICY**

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Ministry of Electronics and Information Technology,
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Dear Madam,

Subject: BSA Submission on the Draft India Data Accessibility and Use Policy

BSA | The Software Alliance (**BSA**) welcomes the opportunity to submit comments on the draft India Data Accessibility and Use Policy (**Draft Policy**) to the Ministry of Electronics and Information Technology (**MeitY**).¹

BSA is the leading advocate for the global software industry. Our members are among the world's most innovative companies, creating software solutions that help businesses of all sizes in every part of the economy to modernize and grow.² Many of BSA's member companies have made significant investments in India, and we are proud that many organisations and consumers from India continue to rely on our members' products and services to support the Indian economy.

Government-generated data is an important asset that can serve as a powerful engine for creating new jobs, promoting economic growth, and enabling innovation. We therefore welcome the Draft Policy and the sound foundation upon which it is built. Specifically, we appreciate the Draft Policy's focus on improving the institutional framework for government data sharing, promoting principles around privacy and security by design, establishing an open by default approach, protecting intellectual property rights, encouraging the use of anonymization tools and ensuring equitable access to government data for both the public and private sector.

In our submission, we share recommendations that are intended to help achieve the Draft Policy's goal of "catalysing large scale social transformation" by enhancing the use and availability of public

¹ MeitY India Data Accessibility and Use Policy, accessible at:
<https://www.meity.gov.in/writereaddata/files/India%20Data%20Accessibility%20and%20Use%20Policy.pdf>

² BSA's members include: Adobe, Alteryx, Altium, Amazon Web Services, Atlassian, Autodesk, Aveva, Bentley Systems, Box, Cisco, CNC/Mastercam, Dassault, DocuSign, Dropbox, IBM, Informatica, Intel, MathWorks, Microsoft, Nikon, Okta, Oracle, PTC, Rockwell, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc.

sector data.³ Effective open data policies can enhance the collective benefits of data by facilitating greater sharing, collaboration, and experimentation while protecting privacy and security.⁴

Our recommendations to the Draft Policy are as follows:

1. Promote greater open data sharing while safeguarding privacy

The Draft Policy aims to promote the availability of non-sensitive government data by establishing an “open by default” policy. Pursuant to the Draft Policy, government ministries and departments will be encouraged to audit their existing data resources to create a comprehensive inventory. As part of that process, ministries and departments will classify data resources as “open,” “restricted,” or “negative list”. Datasets deemed “open” will be made open by default on the Open Government Data Portal. Data deemed “restricted” will be shared only through a prescribed process with trusted users defined by concerned departments under a controlled environment.⁵ And, datasets that are under the “negative list” will not be shared. The Draft Policy’s approach is sensible, establishing an “open by default” policy for most non-sensitive and non-personal data assets, while leaving open the possibility of sharing “restricted” in special circumstances.

But the success of the Draft Policy will depend on whether government departments are provided with clear guidance on how to appropriately determine whether data assets should be categorized as. The Draft Policy indicates that such guidance will be provided through a “Data Sharing Toolkit” and in guidance “protocols” from the India Data Office (IDO). It is imperative that the Data Sharing Toolkit and guidance protocols provide clarity and incentives for government departments to make non-sensitive public sector data available by default. This could include providing guidance on appropriate protections and limitations of liability for government ministries and departments that share non-sensitive and restricted datasets in good faith.

The Data Sharing Toolkit and IDO Protocols should also provide guidance to encourage the adoption of standardized data licensing approaches. One major source of friction currently impeding the private sector’s use of government data globally is the inconsistent licensing practices that ministries and departments use to make their data available to the public, making it difficult to use government data. Ministries and departments currently make their data available under a variety of terms, conditions, and use restrictions that can undermine efforts to make robust use of government data. The problems are compounded when a project requires use of data from multiple ministries and that may be subject to a thicket of varying terms and conditions. To enhance the value of government data, MeitY should explore options for adopting standardized data sharing agreements for use across government ministries and departments, as well as the private sector. The value of a standardized government data sharing agreement will be enhanced if it is consistent with emerging best practices and industry standards. MeitY should therefore consider the adoption of a data license model already in use by the AI developer community, such as the Linux Foundation’s Community Data License Agreement⁶ and/or the Open Use Data Agreement.⁷ Regardless of the model, MeitY should ensure that government data assets are not subject to unnecessary restrictions on use, particularly for datasets classified as “open”.

³ Para 2, MeitY India Data Accessibility and Use Policy.

⁴ BSA Open Data Agenda, accessible at: <https://www.bsa.org/files/policy-filings/061120bsaopendata.pdf>

⁵ Para 7, MeitY India Data Accessibility and Use Policy.

⁶ The Linux Foundation Projects, Community Data License Agreement, <https://cdla.io/>.

⁷ Microsoft, The Open Use of Data Agreement, <https://github.com/microsoft/Open-Use-of-Data-Agreement>.

In addition, promoting the availability of data sharing tools and resources and promote the adoption of best practices that make it easier and less expensive to share data in ways that are consistent with rigorous privacy expectations. Technical tools, such as Application Programming Interfaces (APIs), can facilitate data exchanges that are fast and secure, if implemented properly. Promoting them within the Data Sharing Toolkit can create opportunities for empowering the public with greater access to their own data.

Notably, citizens regularly share data with the Government to access public services, to improve governance, and to enhance innovation. While the Policy focuses on the use of anonymisation tools, along with a principled push towards ensuring privacy, significant concerns remain in the absence of a dedicated and robust privacy legislation. In 2017, the Supreme Court of India in the case of *Puttuswamy v. Union of India* declared that the right to privacy is a fundamental right protected under the Constitution of India.⁸ The Draft Policy should safeguard privacy requirements while promoting greater open data sharing

2. Include appropriate safeguards to address concerns about privacy, security, intellectual property, consumer protection, and competition

Section 5 of the Draft Policy highlights a collection of data sharing and governance principles that are commendable. For instance, BSA appreciates that the Draft Policy recognises principles around privacy and security by design, intellectual property and ownership rights over data.⁹ We recommend that MeitY should clarify that these principles are to be taken into consideration in determining the classification of datasets. Consistent with our recommendation above, the India Data Office (**IDO**) should be directed to develop guidance for departments and ministries to make dataset classification decisions. The basis of such guidance should be built from the data sharing principles in Section 5.

3. Promote privacy enhancing technologies and data governance structures

Pursuant to Section 12 of the Draft Policy, ministries and departments will be provided with guidance on anonymisation tools. We applaud the Draft Policy's reference to anonymization tools to preserve privacy in data sharing arrangements.¹⁰ In addition to anonymization tools, we encourage MeitY to ensure that ministries and departments are also provided with guidance and resources to help them leverage "privacy enhancing technologies."¹¹ Emerging technologies like homomorphic encryption, differential privacy techniques, and federated machine learning can create opportunities for data sharing while preserving individual privacy. These technologies can be used to maximize both the value and the confidentiality of sensitive information and would be particularly relevant to help facilitate the sharing of data assets that are deemed "restricted." Similarly, MeitY should encourage ministries and departments to consider opportunities for leveraging innovative data governance structures—such as data trusts, data cooperatives, and data commons—that facilitate public and private sharing of data in ways that preserve privacy while enabling participants to benefit from the analysis of potentially sensitive data.

4. Ensure active industry participation

The Draft Policy draws out a comprehensive institutional framework to ensure effective government data sharing. This includes the set-up of an IDO to streamline and consolidate data access and

⁸ (2017) 10 SCC 1

⁹ Para 5.12, MeitY India Data Accessibility and Use Policy.

¹⁰ Para 12.1, MeitY India Data Accessibility and Use Policy.

¹¹ [Privacy-Enhancing Technologies: Opening Data, Powering AI | BSA TechPost](#)

sharing of public data across government departments; and the India Data Council (**IDC**) to perform key governance functions such as defining High Value Datasets, data and meta-data standards, reviewing the implementation of the policy, among others.¹² In addition, every government department will also create Data Management Units headed by Chief Data Officers (**CDO**).¹³ We commend this approach – while individual CDOs will help maximize the value of data within each individual government department, ensuring interoperability within the government through the IDO and the IDC will deliver a consistent approach to data governance.

However, the set-up proposed in the Draft Policy does not contemplate any industry participation or collaboration. This is concerning, since identifying the data assets that would be valuable to the private sector can prove difficult. We recommend that the Draft Policy should establish a public-private advisory council to provide recommendations to the IDC about data that would be most impactful to the public, industry, and government. By bringing together experts from the government, civil society, and industry, such a council will create a mechanism for ensuring that government data is published with purpose and that ministries and departments are prioritizing the release of data assets with the greatest potential for positive impact.

5. Modernize IT infrastructure to support data sharing

The ability to deliver on the Draft Policy's vision to leverage government data for social transformation will ultimately depend on whether government ministries and departments have the resources and infrastructure they need to make effective use of data. Reliance on aging physical data centres can result in data siloes that prevent departments from making use of data outside of the application the department used to generate it and make it exceedingly difficult to share with the public.

To that end, we recommend that the Draft Policy be supported by efforts to modernize the government's IT infrastructure through the adoption of commercial cloud offerings and best-in-class software solutions.

Thank you again for the opportunity to comment on the Draft Policy. If you require further information in respect of this submission, please contact Mr. Venkatesh Krishnamoorthy at venkateshk@bsa.org.

Sincerely,

BSA | The Software Alliance

Annexure: BSA Open Data Agenda

¹² Para 6.1, 6.3, MeitY India Data Accessibility and Use Policy.

¹³ Para 6.2, MeitY India Data Accessibility and Use Policy.