



Policy Discussion on Managing Cross-Border Data Flows: Regional/Global Experiences and Good Practices

Assistant Director Marie Sherylyn D. Aquia
DTI Bureau of International Trade Relations
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- 1. Background**
- 2. PH current regime on data governance**
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Global data flows is increasing exponentially



10~40%

Global flow of goods, services, finance, people and data contributed 10% of world GDP

Some estimates put this as high as 40%



US\$2.8T

...of which data flows accounted for USD 2.8 trillion

And is expected to grow to USD 11 trillion by 2025.

Source: McKinsey Global Institute (2016; 2022); International Chamber of Commerce (2022)

1. Background

“
While numerous examples of international and regional collaboration continue, it seems possible that the noted trend of inward-looking policies will be both amplified and intensified by the current pandemic crisis that has gripped the world.
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Data localization measures in 40 jurisdictions:

Argentina, Australia, Belarus, Belgium, Brazil, Brunei Darussalam, Bulgaria, Canada, People’s Republic of China, Colombia, Denmark, the EU, Finland, France, Germany, Hungary, India, Indonesia, Iran, Jamaica, Kazakhstan, Korea, Luxembourg, Malaysia, the Netherlands, New Zealand, Nigeria, Peru, Poland, Russian Federation, Sweden, Switzerland, Chinese Taipei, Thailand, Turkey, the United Kingdom, the United States, Uruguay, Venezuela, and Viet Nam

Source: OECD (2020)

Data localization refers to requirements for storing, processing and moving data within geographic boundaries

Countries that adopt or plan to adopt data localization do so with the following considerations:

- Ensure the security of a country's data and to prevent data from leaving the country;
- Support law enforcement by enabling national authorities to access data needed for investigation of crimes;
- Develop the indigenous IT skill base, create a data center economy, and develop the local digital economy; and
- Protect or improves citizens' individual privacy.

Source: OECD (2020)

2. Philippines' regime on data governance



Data Privacy Act of 2021 (RA No. 10173)

Is a **21st century law** to address 21st century crimes and concerns. It (1) protects the privacy of individuals while ensuring free flow of information to promote innovation and growth; (2) regulates the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of personal data; and (3) ensures that the Philippines complies with international standards set for data protection through National Privacy Commission (NPC).

The DPA provides a high level protection of data privacy rights:



The right to be informed



The right to access



The right to object



The right to erasure or blocking



The right to damages



The right to file a complaint



The right to rectify



The right to data portability

Source: NPC website, <https://privacy.gov.ph/the-data-privacy-act-and-its-irr/>

Other relevant domestic laws/regulations related to data flows.

Bangko Sentral ng Pilipinas (BSP)

- BSP Circular 1135 - Guidelines on the Settlement of Electronic Payments Under the National Retail Payment System (NRPS) Framework (2022)
- BSP Circular No. 1161 (2022) - Amendments to the Manual of Regulations for Payment Systems (MORPS) to Incorporate the National Retail Payment System (NRPS) Framework
- BSP Circular 1122 – Adoption of the Open Finance Framework (2021)
- BSP Circular No. 958 – Guidelines on Multi-Factor Authentication (MFA) (2017)

National Privacy Commission

- NPC Advisory No. 2017-01 - Designation of Data Protection Officers
- NPC Circular No. 16-03 on Personal Data Breach Management

3. Issues for consideration

Implications of data localization, data sovereignty and data protection

Will data localization requirements increase the cost of doing business by forcing Internet companies and online platforms to build redundant server locations?

Under the DPA, no data export limitations apply except under the ‘accountability’ requirement making a controller ‘responsible’ and ‘accountable’ for compliance with the DPA when data is disclosed to third parties, whether domestically or internationally.

Trade Agreements

Do we need detailed frameworks to govern cross-border electronic commerce and data flows? How can international norms and protocols ensure the flow of data? Is there a forum for settling disputes when they arise?

4. International standards

Rules on data governance are being brought into major RTAs and mega-regional trade agreements

Agreement	Date Signed	Cross-Border Data Flow Restrictions	Data Localization Requirements	Treatment of Personal Information
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	8 March 2018	Prohibits, with narrow exceptions	Prohibits with narrow exceptions (financial data excepted; Viet Nam exempt for five years)	Requires legal frameworks for the protection of personal information
United States-Mexico-Canada Agreement (USMCA)	30 Nov 2018	Prohibits, with very narrow exceptions	Prohibits exceptions) (no	Allows privacy laws that include non-discriminatory data transfer restrictions; recognizes APEC CBPR as a valid transfer mechanism

4. International standards (PH)

RTAs and mega-regional trade agreements PH is party to

Agreement	Date Signed	Cross-Border Data Flow Restrictions	Data Localization Requirements	Treatment of Personal Information
Regional Comprehensive Economic Partnership (RCEP)	15 Nov 2020	Prohibits, with broad exceptions	Prohibits, with broad exceptions	Requires legal frameworks for protection of personal information, with broad exceptions
ASEAN Agreement on E-Commerce	Officially signed on 22 January 2019; PH signed in 2018	Minimize restrictions, with broad exceptions, but subject to DS	Prohibits, with broad exceptions, but subject to DS	Requires legal frameworks for protection of personal information, but with broad exception on the timeline of implementation
Upgraded AANZFTA Chapter on E-commerce	For Signing	Prohibits, with broad exceptions, but certain commitments are subject to DS	Prohibits, with broad exceptions, but certain commitments are subject to DS	Requires legal frameworks for protection of personal information

4. International standards (PH: non binding)



APEC Cross-Border Privacy Rules (CBPR) System

A voluntary, accountability-based system that facilitates privacy-respecting data flows among APEC economies. There are currently nine participating APEC CBPR system economies.

ASEAN Framework on Personal Data Protection

Strengthens the protection of personal data in ASEAN and facilitates cooperation among the Participants to contribute to the promotion and growth of regional and global trade and flow of information



ASEAN Framework on Digital Data Governance

To harmonize approaches to data governance, sets out four strategic priorities, principles and initiatives to guide ASEAN Member States in their policy and regulatory approaches in the digital economy

Other data-related regional and international agreements

(1) WTO Declaration on Global Electronic Commerce; (2) ASEAN Agreement on Customs; (3) UN Convention on the Use of Electronic Communications in International Contracts (has acceded, for ratification); and (5) Budapest Convention on Cybercrime.



The Philippines has bilateral engagements on personal data protection.



On 13 January 2021, NPC signed a **Memorandum of Understanding (MOU) with the Information Commissioner Office of the United Kingdom**

- ensuring a robust data privacy environment while fostering innovation and business growth between both Parties
- exchanging best practices in governance, policy making and enforcement
- keeping both countries abreast of privacy and protection developments in their respective jurisdictions.

An MOU on personal data protection was also signed between NPC and Singapore's Personal Data Protection Commission (PDPC) on sharing best practices in personal data protection

- developing compatible mechanisms to facilitate trusted cross border data flows, including mutual recognition of comparable protection



Ongoing negotiations

Agreement	Date Signed	Cross-Border Data Flow Restrictions	Data Localization	Treatment of Personal Information
WTO Joint Statement Initiative (JSI) on E-commerce	Statement released on 25 Jan 2019; PH signed on in January 2020	Discussions ongoing <i>(small group on data flows and data localization)</i>	Discussions ongoing <i>(small group on data flows and data localization)</i>	Discussions ongoing <i>(small group on data privacy)</i>
Indo-Pacific Economic Framework (IPEF)	Launched on 23 May 2022	Discussions ongoing	Discussions ongoing	Discussions ongoing
ASEAN Digital Economy Framework Agreement (DEFA)	On-going preps for targeted launch in September 2023	May be covered by proposed element on Cross-border Data Flows and Data Protection	May be covered by proposed element on Cross-border Data Flows and Data Protection	May be covered by proposed element on Cross-border Data Flows and Data Protection

THANK YOU!

Questions? Email us bitr@dti.gov.ph

