4.12 Accountability and Regulation

Rising concern about the use of data influences public opinion. Policy makers seek a more joined-up approach to regulation, governance, and accountability

Context

Ten years ago, such was the confidence and faith in the new technology companies, that many believed that the best approach was to allow the industry to self-regulate. It was certainly the cheaper and more time-efficient option. The view was that by creating an effective and credible self-regulation framework, companies would be able to react faster to the rapid pace of innovation. This was supported by an implicit trust that technology companies were acting for the good of society.

The message from our workshops was stark: today, that confidence has evaporated. Very few people now believe that a 'data free-for-all' will automatically produce the best of all possible worlds. Given the sweep of technology issues which are now shaping our economies, democracies, and personal lives, there is a need for governments to take a more active and assertive approach to regulation. The discussion has moved from whether tech companies should be regulated, to how.

This debate is both intense and complex. Issues and dilemmas discussed in the workshops included:

- How to marry effective regulation with the speed of technology change. In general, the policy regulatory cycle takes anything from 5 – 20 years, while a new digital service can sweep the world in just a few years; how can policy makers and regulators keep up?

- Given the pace of change, the lack of transparency of some organisations, and the consequent difficulties policy makers and regulators have to keep abreast of the new technologies and their implications, what is the best process to develop new rules and regulations? If rulemaking is to be a collaborative industry/governmental effort, how should this collaboration be organised?

- What is the best level to regulate? The digital revolution is a global phenomenon. Some in our workshops argued for an international body to create common rules and frameworks that can be applied globally. But is that practical? If not, is a regional approach better - or does that encourage the system to splinter? And do national regulators really have the clout to deal effectively with multinational corporations whose resources sometimes dwarf those of national states?

- What is the appropriate focus and scope of any new rules and regulations? For the past few decades, the regulatory priority has been to address real/potential consumer harms. But should this be broadened to include the health of data ecosystems and economies as a whole? If so, how?

- What are the best levers and frameworks by which to develop rules and regulations? Should they revolve around issues such as competition, or should they perhaps focus on more technical issues of financial reporting, accounting, and taxation?
- Who should we trust to develop policy? Can we trust national policy makers and regulators, as they may have a vested interest to install data capture and surveillance operations that potentially harm citizens as much as benefit them? Alternatively, can we trust technology companies which are founded to generate profit, not necessarily to protect the interests of citizens?

- How can we avoid the pitfalls of badly drafted regulation which has counter-productive effects, or stifles innovation?

"There is a need to co-design a regulatory framework for the digital age."

Frankfurt workshop

Keeping up with Change

Throughout our workshops, there was a strong sense that, over the last 20 years or so, the capacity of governments to deliver for their constituents is shrinking, at the same time as technology companies have emerged as a political force in their own right. Some, particularly those in the US, have been encouraged by a long period of laissez-faire government to innovate and disrupt at will. In so doing, they have created significant social benefits. But the perceived disregard by a select few, highly profitable technology firms for accepted standards of behaviour around issues such as privacy, security, and indeed tax, has caused widespread alarm. It is hardly surprising, therefore, that there is a regulatory and political backlash.

It is clear that technology companies and regulators must work more closely together and become more aligned to work out new ways to protect citizens' data. There are many good and thoughtful people in both camps who, if they use their combined expertise, are capable of building regulatory measures that protect users, without stifling innovation - perhaps considering incremental regulation, rather than waiting for an issue to mature. Whatever approach is ultimately decided, there was almost universal consensus during our workshops that this requires a change of mindset on both sides, and that the first step in this journey is the creation of a shared language about data, the establishment of common principles around data use, and common approaches to their implementation.

Common Purpose

Although we live in a time when the geopolitical landscape seems to be fracturing, governments need to cooperate more effectively with each other, given the way technology is oblivious to national borders. As with regulation around arms controls, the creation of international rules would help nations react and respond collectively, should they be violated. Work is already in progress in this regard; for example, the EU–U.S. Privacy Shield, acts as a framework for regulating transatlantic exchanges of personal data for commercial purposes, and, in 2018, President Emmanuel Macron launched the Paris Call for Trust and Security in Cyberspace. This high-level declaration in favour of the development of common principles for securing cyberspace has already received the widespread backing from state, international, and civil society organisations and the private sector. Although this doesn't require governments or corporations to legally adhere to any specific principles, it does act as a symbol of the need for diplomacy and cooperation in cyberspace, where it's hard to enforce any single country's laws.[164] At the same time, some countries have chosen to act unilaterally around issues such as online harm, content moderation, and malicious attacks.

"As we move forward, we are likely to see more pockets of regulation that attempt to emulate or build on regulation elsewhere – such as GDPR."

Johannesburg workshop

Many in our workshops voiced the view that, in order to develop robust international frameworks, it is vital to bring together those countries who are willing to address these new and fast-moving challenges, and to build momentum by leaving the door open for others to join the initiative. The US, for example, has yet to support the Paris Call, but building a coalition of those who are, is a good way to encourage its involvement and support.[165] In addition, the creation of international rules would certainly make it easier for countries to respond effectively, should those rules be violated.

We need to recognise that some issues may not lead to global consensus. Views around privacy, freedom of expression, and human rights, are viewed very differently in different countries. For example, China, which has the largest Internet user base in the world and ambitions to be the leading cyber superpower, and although it has moved to protect young people from online harm, it has little interest in empowering its citizens - rather it has followed its own distinct policy; shutting down websites and censoring content.

Despite this, the issues surrounding the development of new technologies require initiatives that are both multilateral and multi stakeholder in scope. In democracies, government policy makers, who have been given the authority to apply the laws under which we live, are uniquely placed to lead here.

Building or Constraining Monopolies

As John Naughton, for one, has summarised it, "one of the paradoxical things about digital technology is that, while in theory it fosters competition, in practice it leads to winner-takes-all outcomes. The reasons for this are complex – they include zero marginal costs, powerful network effects, power-law distributions, and technological lock-in." The five biggest companies in the world are now all digital giants, each wielding huge power in their markets.[166] Just as with previous interventions into the oil, steel, and telecom industries, regulators are seeking to curb their influence. The EU in Brussels is often seen as leading this drive, but it is not alone. Indeed in 2018, many highlighted the potential role of the OECD to have a broad impact across the board. The October 2019 OECD proposal to shake up global taxation on the digital leaders is one of the first visible examples of this building momentum.[167]

In the EU, efforts to rein in firms that abuse their monopoly power, have resulted in, for example, a record $5 billion fine against Google - which is more than the tax that they currently pay.[168] In addition, GDPR is having a profound effect on the advertising and data gathering ecosystem.

"There needs to be a more clearly articulated government data strategy to enable community-driven initiatives that have wide public benefit."

Singapore workshop

Elsewhere, California has already passed a sweeping data-privacy law, set to go into effect in 2020; the Indian government, as a reaction to what some saw as an attempt at colonialism, banned Facebook from allowing users to browse, without paying for mobile data[169]; even in China, the government is becoming more involved in controlling the dominance of Alibaba, Tencent, Baidu, and JD.com, rejecting, for example, a credit-scoring system by Alibaba's affiliated payment company, Ant Financial, in favour of one of its own. Some say that this is a cynical effort to benefit domestic actors - think of China's enormous tech industry, or India's burgeoning e-commerce giant, Flipkart. Others see it as evidence of the tide turning against the previous regulatory freedoms.

The problem of tax

Understanding how best to tax the different parts of the data value chain may become critical to enable a more equitable distribution of the profits that data-driven businesses can generate, while maximising the growth of the data-driven economy and ensuring good practice. The EU's proposed digital services tax, which seeks to tax revenues generated within national or bloc jurisdictions, and bypass the knotty issue of how to tax profits that are registered overseas, is one potential answer, but it also raises questions around fairness and application. In some of our workshops, it was pointed out that we are likely to see a period of piecemeal, attempts by different governments to tax digital and data-driven businesses, before we see more coherent strategies around digital/data wealth redistribution.

Surveillance and State Interference

The other major concern is the increasing control of data by government, and especially the focus on surveillance as a primary purpose. While the Russian, Chinese, and US instances are the most commonly shared globally, there were multiple additional examples. Control of data was brought up in Hong Kong and London, where the negative impact of government surveillance on democracy, particularly given the growing prevalence of facial recognition technology, is becoming a matter of public concern.

> "It is more likely that self-regulation will drive community standards. These in turn will drive localised regulation."
>
> Manila workshop

What We Heard

There was also broad agreement that, given the extraordinarily rapid pace of technological change, it is unrealistic to expect governments to devise, update, and enforce effective data regulation without the cooperation of technology companies, particularly given the transnational nature of data. Some sort of collaboration between policy makers and technology companies is necessary. Although a number of business-driven consortia have cropped up to serve as independent standards-creation bodies, for example, not all have been effective, and the disconnect between regulation and industry remains.

The solution that was identified during our workshops was a global body to act as the focal point for governance activities. In Jakarta, the view was that there should be *"an independent global data regulation framework (maybe like the G20)."* In Bangkok, it was for *"a global data authority (like the WTO)."* In Singapore, there was the need for *"a global organisation (like the WEF, IMF, or WHO).* In Mexico, the proposal for 2030 was for *"an international body able to act at global level (like the UN),"* while in a London discussion, technology companies backed the role of the OECD in potentially coming up with an answer. All are looking for a higher authority to set the standards, define the common ground, and ensure balance and independence. All recognised that this may be a long way off.

Those in Jakarta, felt that regulatory change should be government-led, primarily because governments rather than corporates have a democratic mandate to represent the people. Others, such as those in Frankfurt and Bangalore, considered that co-regulation is more effective when the public and private sectors ideally *"co-design a regulatory framework for the digital age."*[170] In Hong Kong, a proposal was that this should be *"a framework of common principles allowing public and private use of data across multiple jurisdictions. To achieve this, first there has to be collaboration around a set of principles on standards."*

Rather than a global framework for data governance and a dedicated organisation to oversee this, many felt it would be more likely that a number of regulatory regions, within which common policies are adopted, will emerge. Europe, China, and the US are evidently three, and an ASEAN-focused approach building on the APEC data privacy framework is promised. In Africa and Latin America, some are considering their own regional regulatory methods. Europe's GDPR, which has harmonised data protection rules and given individuals greater rights over how their data is used, was often mentioned as a template for other nations to follow. *"GDPR will change the data landscape in Nigeria and bring in new standards."*[171] In Johannesburg, it was considered that *"as we move forward, we are likely to see more pockets of regulation that attempt to emulate or build on regulation elsewhere – such as GDPR."* That said, not everyone felt that regulation is necessary. In Manila, it was felt that it was *"more likely that self-regulation will drive community standards that in turn will drive localised regulation."*

"There is a need to co-design a regulatory framework for the digital age."

Frankfurt workshop

Either way, calls for a more joined up approach to regulation were common. So far, it was argued, the response to rapid technological change has been too piecemeal to be truly effective. From our first workshop in Bangalore; *"government policy is currently very scattered, with little uniformity of purpose,"* to our final meeting in Santiago; *"the challenge will be how different jurisdictions take control of the issues around data,"* there was recognition that the current plethora of different regulation does not solve the big issues.

In terms of regulatory levers, one suggestion was that if regulators can help put a value on data, or at least define the parameters by which data can be valued, then there could be a significant change in views around how it is managed. Putting a value on data, it was argued, would drive more informed debate on how that value should be better shared. As well as improving financial reporting, it could aid the formulation of tax policies, while also influencing organisations' own data strategies.

Another suggestion, which was also recently raised in the FT, is to shift to an earlier interpretation of antitrust regulation that focuses, not just on consumers, but rather on whether the larger economic ecosystem is being harmed.[172] Linked to this was the notion that better governance for data could unlock numerous positive opportunities for society. In India, for example, they looked forward to *"government guiding the private sector more on the development of 'social value of data' policies."* In Singapore, the call was for *"a more clearly articulated government data strategy to enable community-driven initiatives that have wide public benefit."* Participants in Nairobi wanted *"data to better drive development, become more accessible, and reduce poverty."*

"As we move forward, we are likely to see more pockets of regulation that attempt to emulate or build on regulation elsewhere – such as GDPR."

Johannesburg workshop

At the same time, there was widespread suspicion about governments and state actors, and the possibility that they could use new regulatory powers to assert their own control, especially over personal data for the purposes of surveillance. In Johannesburg, it was suggested that *"there is a risk that certain governments could increasingly use data regulation to drive top-down state control of very powerful data sets,"* while in Pretoria students debated how *"the centralisation of data creates a greater opportunity for government control."* Their fear was that, across Africa, *"some governments can limit access to data under the guise of national security."* In January 2019, the Zimbabwe government cut internet access for 3 days, to curb opposition protests. Further north in Abuja, the forecast was that *"government will want to control the data, while people do not realise the value."* In South America, anxiety about growing state surveillance collating more information about citizens, was also expressed in both Bogota and Santiago. The view in Hong Kong was that there are mounting instances of *"data creating power, shaping the wielding of power, the balance of power, and the accountability of power."*[173] Many there were concerned about the impact that this is having on society.

And there is the ever-present danger that regulation can create problems, as well as solve them.

In Hong Kong, concern was expressed that *"over-regulation could diminish the value of data and hinder innovation for social utility."*[174] They also observed the cultural effects of regulation. *"It is also important to consider the implication of the different ideologies within national boundaries, and their potential ambition,"* and *"what would be the implications of China winning the debate around data, and what would happen if it exported its values around the world?"* China's Great Firewall has already effectively caused two internets to develop. Looking ahead, if a US-China trade war deepens, and China's leaders feel they need to turn tech companies to their advantage, it is perfectly possible to see that those countries which are part of the Chinese Belt and Road Initiative, may well be encouraged to take on the Chinese tech infrastructure.[175]

> Governments will want to control the data, while people do not realise the value."
>
> Abuja workshop

Implications for Data Value

How then can regulators regulate effectively, given the challenges of technological change and the scale of the data revolution? Most in our workshops agreed that, to date, too little has been done to protect the public interest, and that governments need to step up to address this. There was also recognition that, despite the pressing nature of the challenges, global alignment may well be too hard to achieve in the short term, not just because of the scale of the ambition and agreements required, but also because of the distrust between some governments, existing international institutions, and large corporations. Indeed, in some countries, the disenchantment with globalisation and lack of enthusiasm for Western culture, alongside a growing recognition of China's increasing influence, there were strong indications that different regional policy models may well emerge, which could be to the detriment of the global data economy.

Many issues will require compromise – this will be hard for business leaders in particular, given they are not used to regulatory constraint, but it is something that they are beginning to acknowledge and accommodate. In the short term, this may also affect how data can be valued and may even limit the growth trajectories of some organisations. However, in the long term, many in our workshops agreed that multi stakeholder collaboration is a pragmatic stepping stone in the shift from reactive to proactive policymaking, which will ultimately better protect human rights and freedoms, and at the same time, ensure the long-term development potential of data-driven innovation which benefits us all.

"Overregulation could diminish the value of data and hinder innovation for social utility."

Hong Kong workshop

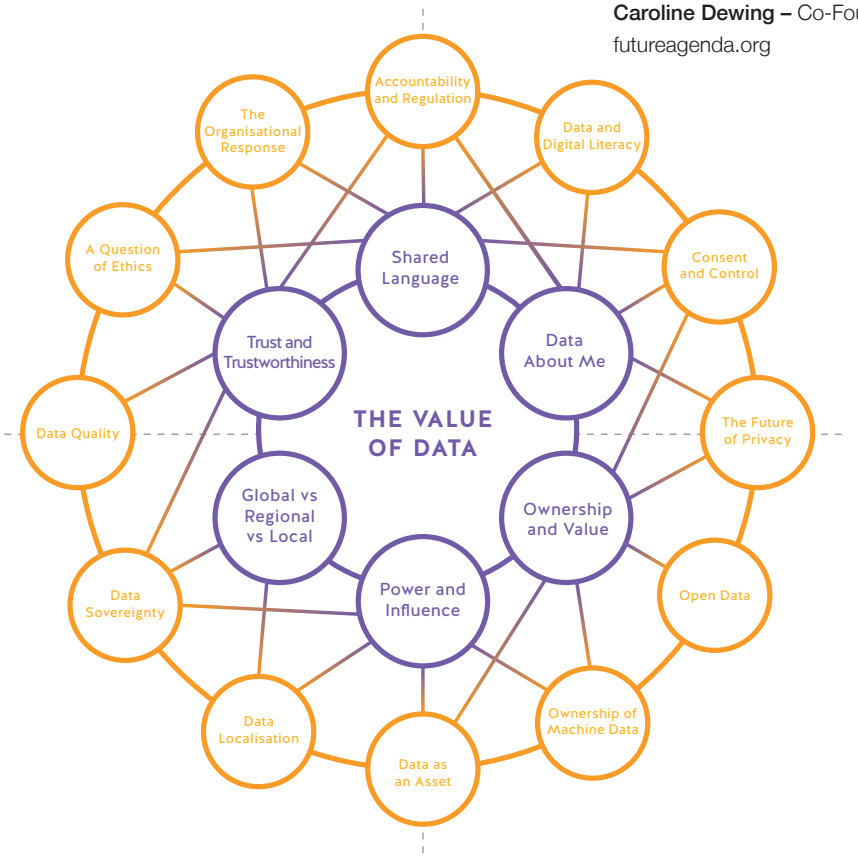
Context

This is one of 18 key insights to emerge from a major global open foresight project exploring the future value of data.

Throughout 2018, Future Agenda canvassed the views of a wide range of 900 experts with different backgrounds and perspectives from around the world, to provide their insights on the future value of data. Supported by Facebook and many other organisations, we held 30 workshops across 24 countries in Africa, Asia, the Americas, and Europe. In them, we reviewed the data landscape across the globe, as it is now, and how experts think it will evolve over the next five to ten years.

The aim of the project was to gain a better understanding of how perspectives and priorities differ across the world, and to use the diverse voices and viewpoints to help governments, organisations, and individuals to better understand what they need to do to realise data's full potential.

From the multiple discussions 6 over-arching themes were identified alongside 12 additional, related future shifts as summarised in the diagram below.



Details of each of these, a full report and additional supporting information can all be found on the dedicated mini-site: www.deliveringvaluethroughdata.org

About Future Agenda

Future Agenda is an open source think tank and advisory firm. It runs a global open foresight programme, helping organisations to identify emerging opportunities, and make more informed decisions. Future Agenda also supports leading organisations, large and small, on strategy, growth and innovation.

Founded in 2010, Future Agenda has pioneered an open foresight approach bringing together senior leaders across business, academia, NFP and government to challenge assumptions about the next ten years, build an informed view and establish robust growth strategies focused on major emerging opportunities. We connect the informed and influential to help drive lasting impact.

For more information please see:
www.futureagenda.org

For more details of this project contact:
Dr Tim Jones – Programme Director, tim.jones@futureagenda.org
Caroline Dewing – Co-Founder, caroline.dewing@futureagenda.org

First published November 2019 by:
Future Agenda Limited
84 Brook Street
London
W1K 5EH