

**COMMENTS ON THE**  
**TRAI CONSULTATION PAPER ON PRIVACY, SECURITY AND OWNERSHIP OF DATA**  
**IN THE TELECOM SECTOR**





## ABOUT THE COMMENTATOR

**TRA is a law firm which specializes in representing new-technology businesses. We advise a number of clients on data privacy and protection, use of big data, and artificial intelligence, among other areas.**

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## PRELIMINARY

1. We have commented on questions 6 and 10 of the TRAI Consultation Paper.
2. Question numbers referred to in our submission correspond to those in the TRAI Consultation Paper.

## RECOMMENDATIONS

Q. No.	Issues	Comments
6.	Should government or its authorized authority setup a data sandbox, which allows the regulated companies to create anonymized data sets which can be used for the development of newer services?	<ol style="list-style-type: none"><li>a. In our view, the government may setup a data sandbox, allowing regulated companies to create aggregated, anonymized data sets for the development of newer services.</li><li>b. We use “aggregated, anonymized data” to mean non-personally identifiable user information, where information of multiple users of a platform or, of multiple platforms has been combined, and such data sets do not personally identify individual users.</li><li>c. We understand that at present, companies including Airbnb,<sup>1</sup> Amazon,<sup>2</sup> Facebook,<sup>3</sup> Google,<sup>4</sup> Twitter,<sup>5</sup> and Uber,<sup>6</sup> subject to</li></ol>

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<sup>1</sup> For details see Airbnb, *Updated Terms of Service*, [https://www.airbnb.co.in/terms/privacy\\_policy](https://www.airbnb.co.in/terms/privacy_policy) (accessed 07 November, 2017.)

certain conditions, collect different kinds of user information, used for a range of purposes. In our opinion, user information that a platform possesses may be divided into two categories: *first*-personal ‘un-aggregated’ information<sup>7</sup> and *second*- aggregated information shared by the platform with certain types of third parties.<sup>8</sup>

- d. Accordingly, we suggest that aggregated, anonymized information of the sort that falls into the *second category* (above) be placed in the data sandbox sought to be set up. Needless to say, there should not / cannot be any obligation on the platform to place any personal

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<sup>2</sup> For details see Amazon.in, *Privacy Notice*,

[https://www.amazon.in/gp/help/customer/display.html/ref=ap\\_desktop\\_footer\\_privacy\\_notice?ie=UTF8&nodeId=200534380](https://www.amazon.in/gp/help/customer/display.html/ref=ap_desktop_footer_privacy_notice?ie=UTF8&nodeId=200534380) (accessed 07 November, 2017.)

<sup>3</sup> For details see Facebook, *Data Policy*, “Sharing with Third-Party” Partners and Customers, [https://www.facebook.com/full\\_data\\_use\\_policy](https://www.facebook.com/full_data_use_policy) (accessed 07 November, 2017.)

<sup>4</sup> For details see Google, *Privacy Policy*, <https://www.google.com/policies/privacy/> (accessed 07 November, 2017.)

<sup>5</sup> For details see Twitter, *Privacy Policy*, <https://twitter.com/privacy?lang=en> (accessed 07 November, 2017.)

<sup>6</sup> For details see Uber, *Privacy*, <https://privacy.uber.com/policy> (accessed 07 November, 2017.)

<sup>7</sup> For example: Personal ‘un-aggregated’ information available with Facebook includes, among others, its users’ name, email address, content viewed, groups, networks, and location. For details see Facebook, *Data Policy*, <https://www.facebook.com/policy.php> (accessed 07 November, 2017.) Similarly, Twitter also possesses personal ‘un-aggregated’ information including “basic account information,” and “contact information.” For details see Twitter, *Twitter Privacy Policy*, <https://twitter.com/en/privacy> (accessed 07 November, 2017.)

<sup>8</sup> For example: Twitter may share “aggregated or device-level reports to advertisers about users who saw or clicked on their ads,” the number of voters participating in a poll on the platform, or, “the number of users who clicked on a particular link.” See Twitter, *Twitter Privacy Policy*, “Non-Personal, Aggregated, or Device-Level Information,” <https://twitter.com/en/privacy> (accessed 07 November, 2017.) Similarly, Facebook may share with advertisers, information about the number of people that viewed an advertisement on its platform. See Facebook, *Data Policy*, “Advertising, measurement and analytics services (non-personally identifiable information only),” <https://www.facebook.com/policy.php> (accessed 07 November, 2017.)

un-aggregated information in the data sandbox.

- e. We opine that personal ‘un-aggregated’ information (to be excluded from the proposed data sandbox) should be interpreted broadly, to also include any data which may be reasonably linked to an individual or a device. We caution that information that on the face of it does not appear to be personally identifiable information may, in an aggregated form, become personally identifiable.<sup>9</sup> This view has also been expressed by the United States’ Federal Trade Commission (“**FTC.**”)<sup>10</sup>
- f. We echo the Indian Supreme Court (“**the Court**”) recognizing “information and data flow,”<sup>11</sup> as “increasingly central to economic and social ordering.”<sup>12</sup> We agree with its opinion that national

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<sup>9</sup> See, generally, Edith Ramirez, *Keynote Address of FTC Chairwoman Edith Ramirez*, “Protecting Consumer Privacy in the Digital Age: Reaffirming the Role of Consumer Control,” [https://www.ftc.gov/system/files/documents/public\\_statements/980623/ramirez - protecting consumer privacy in digital age aspen 8-22-16.pdf](https://www.ftc.gov/system/files/documents/public_statements/980623/ramirez_-_protecting_consumer_privacy_in_digital_age_aspen_8-22-16.pdf) (accessed 07 November, 2017.)

<sup>10</sup> Id. See also *Comment of the Staff of the Bureau of Consumer Protection of the Federal Trade Commission*, [https://www.ftc.gov/system/files/documents/advocacy\\_documents/comment-staff-bureau-consumer-protection-federal-trade-commission-federal-communications-commission/160527fcccomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-bureau-consumer-protection-federal-trade-commission-federal-communications-commission/160527fcccomment.pdf) (accessed 07 November, 2017); Jessica Rich, *Keeping Up with the Online Advertising Industry*, <https://www.ftc.gov/news-events/blogs/business-blog/2016/04/keeping-online-advertising-industry> (accessed 07 November, 2017); Julie O’Neill and Joseph Roth Rosner, *The Scope of “Personally Identifiable Information is Changing*, <https://www.mofo.com/resources/publications/160830-scope-pii.html> (accessed 07 November, 2017.)

<sup>11</sup> *Justice K S Puttaswamy and Anr. v. Union of India*, W.P (Civil) No. 494 of 2012, para 175 (Chandrachud J.) (Hereafter referred to as “*Puttaswamy judgment*”).

<sup>12</sup> Id., Para 175, footnote 396.

security may not be the only “justifiable reason” for a state to collect and store data; the state may also be driven by welfare and development considerations.<sup>13</sup>

- g. In the *Puttaswamy* judgment, the Court lists “encouraging innovation and the spread of knowledge”<sup>14</sup> as a “legitimate aim of the state.”<sup>15</sup>
- h. In our assessment, a data sandbox aimed at developing new services will promote innovation and knowledge creation, and is therefore a legitimate state purpose on which the government is empowered to act, in line with the *Puttaswamy* judgment. In the interests of clarity for enforcement, we suggest that the government define “regulated companies,” and “newer services.”
- i. We caution that the aggregated, anonymized data sets sought to be used for the data sandbox may not be used for any other unauthorized, “extraneous purposes.”<sup>16</sup> We further caution that any invasion on an individual’s privacy must fulfill the Supreme Court’s

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<sup>13</sup> Id., Para 181.

<sup>14</sup> Id.

<sup>15</sup> Id., Conclusion 5, section T.

<sup>16</sup> Id. note 11, Para 81, 181 and 182. See also Nariman J. at para 81, who opines that *unauthorized use* (emphasis, ours) of personal information is an infringement of the fundamental right to privacy.

three part test.<sup>17</sup>

10. Is there a need for bringing about greater parity in the data protection norms applicable to TSPs and other communication service providers offering comparable services (such as Internet based voice and messaging services). What are the various options that may be considered in this regard?
- a. In our view, there is no need to distinguish between data protection norms applicable to TSPs and other communication service providers (such as Internet based voice and messaging services).
  - b. Issues of data protection, and data privacy principles for redressal of those issues, are not contingent on the means of communication. This approach is also reflected in the United States of America<sup>18</sup>.
  - c. Under the United States’ Communications Act of 1934 (“**the Communications Act**”), telecommunication carriers are tasked with protecting the privacy of customer information.<sup>19</sup> In 2016, the Federal Communications Commission, established under the Communications Act, extended the obligation of protecting privacy of customer information to broadband Internet access service and interconnected Voice over Internet Protocol (VoIP) services.<sup>20</sup>

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<sup>17</sup> Id. note 11, Conclusion 4.

<sup>18</sup> Communications Act, 1934.

<sup>19</sup> Communications Act, 1934, Sec. 222, Title II.

<sup>20</sup> 13925, Order 16-148, Federal Communication Commission (27<sup>th</sup> October, 2016), [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-16-148A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-148A1.pdf) (accessed 07 November, 2017.)



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