

CUTS INITIATIVES - DATA PROTECTION & PRIVACY

ABOUT CUTS:

Consumer Unity and Trust Society (CUTS)¹ is a global independent non-profit policy research and advocacy organization since 1983. It is registered under the 'Rajasthan Societies Registration Act, 1958 (Rajasthan Act No.28, 1953), Foreign Contribution (Regulation) Act, 1976, and comes within the ambit of section 80-G, Sub (5) of the Income Tax Act.

As a leading southern voice, CUTS has been extensively advocating for consumer rights and consumer welfare by taking a bottom-up approach, through optimal trade, infrastructure, regulatory, capacity and governance reforms. Work related to digital economy is undertaken by the Centre for Competition, Investment, and Economic Regulation (C-CIER). And our Centre for Consumer Action, Research & Training (C-CART), which is a dedicated centre for making innovative interventions contributes immensely in deploying our universal approach of evidence based **Research** leading to **Advocacy, Networking and Capacity building** (RANC model)² with the support of our on-ground grass-root level Centre for Human Development (CHD). Other important centres include: CUTS Centre for International Trade, Economics & Environment (CUTS CITEE)³, Delhi Resource Centre (DRC)⁴, Calcutta Resource Centre (CRC)⁵, and affiliated overseas centres in Lusaka⁶, Nairobi⁷, Hanoi⁸, Geneva⁹, Accra¹⁰ and Washington¹¹.

Moreover, a vast network has been developed across the globe due to extensive national as well as international projects undertaken by CUTS.¹² And the database of contacts emanating out of such wide network provides an institutional memory that is extremely useful in establishing and furthering partnerships/associations, etc.

¹ www.cuts-international.org

² Each of the components of the RANC methodology is inextricably linked to the other, wherein outputs of one component are used as inputs for the next.

³ <http://www.cuts-citee.org/>

⁴ <http://www.cuts-international.org/cuts-drc.htm>

⁵ <http://www.cuts-international.org/crc>

⁶ <http://www.cuts-international.org/ARC/Lusaka>

⁷ <http://www.cuts-international.org/ARC/Nairobi>

⁸ <http://www.cuts-hrc.org>

⁹ <http://www.cuts-geneva.org/>

¹⁰ <http://www.cuts-international.org/ARC/Accra/>

¹¹ <http://cuts-wdc.org/>

¹² http://www.cuts-international.org/pdf/Netpro_2017.pdf

Additionally, due to our continuous engagement with policy makers and influencers, we are seen as an important link connecting them with other key stakeholders. A forum for Parliamentarians in India called PARFORE -Parliamentarians Forum on economic policy issues is hosted by us on regular intervals to discuss the divergent opinions on the core economic policy issues.

With regard to digital economy, we have been actively highlighting consumers’ perspectives. Initiatives undertaken by CUTS within the area of data protection and privacy have been briefly tabulated below:

S. NO.	ISSUES	DEVELOPMENTS	CUTS’ APPROACH IN INDIA
1	Privacy and Data Protection	<p>In the last few months, significant judicial, legislative, policy and regulatory pronouncements affecting privacy and data protection of Indians have been delivered.</p> <p>The Puttaswamy judgement called upon the state to secure the informational privacy of its citizen in 2017, and laid down some principles in this regard.¹³</p> <p>In 2018, a panel headed by Justice B.N Srikrishna submitted its report as well as</p>	<p>We prepared a memorandum for the Standing Committee on Information Technology (2017-18) on Citizens’ Data Security and Privacy, highlighting consumer perspective.¹⁶ CUTS recommended the Committee to adopt and institutionalise undertaking Regulatory Impact Assessments (RIA) and Competition Impact Assessments (CIA), while framing/providing any suggestions on the policy, regulatory and/or legislative framework regarding ‘Citizen Data Security and Privacy’.</p> <p>In 2018, we undertook a consumer perception survey (in line with our recommendations mentioned above) in India to better understand users’ perspective, experience and expectation on privacy and data protection and accordingly provide policy and practice suggestions to improve privacy and data protection in the country. The survey reported that although 90% users are aware of their right to privacy, they don’t take measures to protect it- do not read privacy policies or use data protection tools. This is despite users perceiving unauthorized data collection as the highest risk. The suggestions</p>

¹³ It laid down three tests with regard to right to privacy- (1) backed by law, (2) legitimate state aim, (3) and proportionality <https://www.bloombergquint.com/aadhaar/aadhaar-a-quick-summary-of-the-supreme-court-majority-order#gs.0ts7il>

¹⁶ http://www.cuts-ccier.org/pdf/Advocacy-CUTS_Memorandum_to_the_Parliamentary_Standing_Committee_on_Information_Technology_Pertaining_to_Citizens_Data_Security_and_Privacy.pdf

		<p>a draft Personal Data Protection Bill, 2018 (PDPB) - India's first umbrella framework in this regard. The bill is yet to be tabled in the parliament.</p> <p>The Supreme Court gave its verdict on the much awaited Aadhaar case, and asserted it to voluntary and in case of mandatory requirement, must meet the three tests laid down in Puttaswamy case.¹⁴The Union Cabinet has approved the promulgation of an ordinance which would allow private companies to use Aadhaar for authentication and verification.¹⁵</p>	<p>include improving transparency and user capacity on privacy and capacity building issues.¹⁷</p> <p>Capacity building workshops for 'Creating more Consumer Voices on the issue of Data Protection in India'. This ongoing project aims to engage with the consumer organisations to upgrade their understanding about data privacy and protection. Consumers are largely unaware of the methods and tools to safeguard their informational privacy. With new regulation (PDPB) on the horizon, they will be unduly and unintentionally burdened with rights and entitlements- PDPB envisages informed consent on behalf of consumers.</p> <p>To this end, CUTS has been advocating the need to have nutrition label for privacy to improve transparency and give consumers a chance to exercise greater control over its data before consenting to the terms and conditions of privacy policies and empower users. Information presentation in readily intelligible format may engage users proactively, and help embed trust between consumers and service providers.</p> <p>Undertook several stakeholder interactions-</p> <ul style="list-style-type: none"> • Round Table on "Towards a Regulated Data Economy: Getting the Implementation Right" in Delhi -discussion on fundamentals of data-driven ecosystem, aspirations of stakeholders.¹⁸ It was recommended that the bill needs to put in place strong pillars of transparency, accountability, and decentralization. Additionally, for correcting information asymmetry, the regulators should use a pyramidal bottom up strategy, incorporating an ex-ante analysis of harm and risks, with respect to consumers, as eventually every other stakeholder is also a consumer at the end of the day in some capacity. • Conference on "Consumer Welfare in Emerging Regulatory Landscape in
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¹⁴ Supra note 12

¹⁵ <https://www.medianama.com/2019/03/223-aadhaar-ordinance-private-use/>

¹⁷ <http://www.cuts-ccier.org/cdpp/>

¹⁸ [http://www.cutsccier.org/EventRound Table Discussion on Towards a Regulated Data Economy Getting the Implementation Right-sept26-2018.htm](http://www.cutsccier.org/EventRound%20Table%20Discussion%20on%20Towards%20a%20Regulated%20Data%20Economy%20Getting%20the%20Implementation%20Right-sept26-2018.htm)

			<p>Data Economy" in Mumbai - discussed some contentious regulations in data economy, related to cross-border flow of data and digital payments.¹⁹</p> <p>It was recommended that an evaluated approach has to be taken for evolving specifics in each industry and data type rather than simplistically mandating data mirroring and localisation. Moreover, assumptions and fear ought to be replaced with evidence based research from various perspectives-economical as well as civil liberties. Fears pertaining to mass surveillance in the garb of governance need to be addressed systematically.</p> <p>These <u>evidence based interventions</u> can go a long way in improving privacy and data protection in the country.</p>
2.	Data Retention Limitation	<p>Draft Personal Data Protection Bill, 2018 places limitations on transfer of personal data. It brings in concepts like data localisation and data mirroring to this effect.</p> <p>Local data storage requirement for digital payments has been mandated by RBI directive on payment data storage.</p> <p>Draft e-commerce policy²⁰ explicitly mentions certain categories of data on which</p>	<p>Data localization is one of the trending issues in India due to the potential it holds to impact all the key stakeholders in the Indian economy, particularly consumers.</p> <p>We organised a stakeholder interaction in the form of a roundtable on "Consumer Sovereignty in Times of Data Localisation" which discussed contemporary challenges and benefits hinged to the issue of data localisation and consumer welfare.²² It was recommended that India would have to carefully balance possible enforcement benefits of localisation with the costs involved in mandating such a policy in law. Accordingly, undertaking Regulatory Impact Assessments (RIA) or Cost-Benefit Analysis (CBA) of the proposed data mirroring mandate becomes imperative in order to map its impact on various stakeholders before its enactment.</p> <p>We commissioned a Consumer Impact Assessment of Data Localisation. This ongoing project aims to assess the impact of restriction of cross-border</p>

¹⁹ http://www.cutsccier.org/EventConference_on_Consumer_Welfare_in_Emerging_Regulatory_Landscape_in_Data_Economy-sept24-2018.htm

²⁰ https://dipp.gov.in/sites/default/files/DraftNational_e-commerce_Policy_23February2019.pdf

²² http://www.cutsccier.org/EventRound_Table_Discussion_on_Consumer_Sovereignty_in_Times_of_Data_Localisation-Sep6-2018.htm

		<p>cross-border flow restrictions shall apply. It suggests creation of a legal and technological framework which can provide the basis for imposing restrictions on cross-border data flow from certain sources.</p> <p>A panel headed by Kris Gopalakrishnan is working on the Indian government's cloud computing policy. The policy will be the latest in a series of proposals that seek to spur data localisation in India.²¹</p>	<p>data flows on consumers.</p> <p>Over the years, we have amassed immense experience and expertise on conducting RIA.²³ Resultantly, we have been made a part of several governance committees on regulatory reforms, such as the recent Better Regulation Advisory Group (BRAG) formed by the Department of Industrial Policy and Promotion (DIPP), renamed as Department for Promotion of Industry and Internal Trade]</p> <p>We conducted RIA on Maharashtra City Taxi Rules, 2017, which was widely appreciated and acknowledged by Ministry of Road Transport and Highways (MORTH). The report submitted by us was showcased in the MOVE Summit²⁴, - India's first global mobility summit organised by NITI Aayog.</p> <p>Media Articles:</p> <ul style="list-style-type: none"> • Approach data localisation with care'²⁵ • Implications of data mirroring'²⁶ • Don't strangle Indian e-commerce'²⁷
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²¹ <https://tech.economictimes.indiatimes.com/news/corporate/kris-gopalakrishnan-headed-panel-seeks-localisation-of-cloud-storage-data-in-possible-blow-to-amazon-microsoft/65278052>

²³ <http://cuts-ccier.org/ria/>

²⁴ <http://movesummit.in/resources.php>

²⁵ <https://www.thehindubusinessline.com/opinion/approach-data-localisation-with-care/article24281271.ece>

²⁶ <https://www.livemint.com/Opinion/ELRMxxWJR0qwHgjmMN3wf0/Opinion--Implications-of-data-mirroring.html>

²⁷ <https://www.livemint.com/Opinion/cHB4Gb1xUCMRZevNl6aRIL/Dont-strangle-Indian-e-commerce.html>

3.	E-commerce	<p>The Department for Promotion of Industry and Internal Trade (DPIIT) released a draft e-commerce policy,²⁸ which addresses 5 other issues besides 'Data'. It attempts to address regulatory gaps from the PDPB, as well as ensure harmony amongst different policies in this regard.</p>	<p>We submitted our suggestions²⁹ to the DPIIT on the draft e-commerce policy. Broad recommendations entailed undertaking detailed analysis before going beyond the scope of PDPB, data governance to be restricted to e-commerce sector here, and conducting extensive and inclusive stakeholder consultations to understand the meaning and contours of community data. We asserted that the policy should have highlighted regulatory issues which need to be addressed in conjunction with strategies required in this sector.</p> <p>Media articles:</p> <ul style="list-style-type: none"> • An optimal way to usher small businesses into the digital age³⁰ • India needs to join WTO talks on e-commerce, for MSMEs' sake³¹
4.	Intermediary Liability	<p>Ministry of Electronic Information and Technology (MEITY) has proposed amendments to Intermediary Guidelines primarily to check the nuisance of fake news, and regulate social media platforms thereby.</p> <p>The amendments will impact the safe harbour provisions, and result in proactive</p>	<p>CUTS has been advocating for optimal regulation of intermediaries in India.</p> <p>We submitted our comments³² to MEITY on the Draft of 'The Information Technology [Intermediary Guidelines (Amendment) Rules] 2018. We recommended that such guidelines and self-regulation codes must be designed after robust public consultation, incorporating diverse point of views and upon ratification by legislature.</p> <p>Consequently, we organised a roundtable on 'Evolving Role of Online Intermediaries: Retaining Trust, Reimagining Safety', where intermediaries' responsibility to safeguard the consumers' interest was deliberated. And the likely impact on consumer trust in online economy due to shifting roles of online service providers/platforms was highlighted.³³</p>

²⁸ Ibid point 20

²⁹ http://www.cuts-ccier.org/pdf/Submission_of_comments_to_DPIIT_on_draft_National_E-commerce_Policy.pdf

³⁰ <https://www.livemint.com/opinion/online-views/opinion-an-optimal-way-to-usher-small-businesses-into-the-digital-age-1556214402619.html>

³¹ <https://www.livemint.com/opinion/online-views/opinion-india-needs-to-join-wto-talks-on-e-commerce-for-msmes-sake-1554317508852.html>

³² http://www.cuts-ccier.org/pdf/CUTS_comments_on_the_Information_Technology_Intermediary_Guidelines.pdf

³³ http://www.cutsccier.org/EventRound_Table_Discussion_on_Evolving_Role_of_Online_Intermediaries-feb12-2019.htm

		<p>moderation of online content by intermediaries, lack of sue process in ordering interception, and traceability. It also suggests automated tools to filter unlawful content.</p>	<p>Subsequently, suggestions³⁴ from this event were incorporated into our counter comments on the submissions made to MEITY on the Draft of 'The Information Technology [Intermediary Guidelines (Amendment) Rules] 2018.</p>
5.	Over The Top Services	<p>Telecom Regulatory Authority of India (TRAI) released a consultation paper discussing the possible regulation of over-the-top (OTT) communications platforms.³⁵</p> <p>Telecom companies in India have long been demanding that OTT players be brought in the ambit of the regulatory framework, as they offer similar services without attached licencing obligations, conditions and levies (such as licence fee) However, OTTs argue that a regulatory regime for them would stifle innovation.</p> <p>One of TRAI's express</p>	<p>Over-the-top (OTT) services offered over traditional telecom services have touched lives of consumers across spectrum. As internet penetration is on the rise (especially in developing nations such as India), these services have an effect on the consumer socially as well as economically. To examine the perceived impact of OTT services on the above mentioned scenario, we commissioned a user perception survey on OTT consumers in Rajasthan. The study documented use cases as well, in different geographic settings of consumers in Rajasthan.³⁶</p> <p>We filed our response to TRAI's Consultation Paper on the 'Regulatory Framework for the OTT Communication Services'.³⁷</p> <p>We submitted there is a need to revisit the regulatory framework for incumbent TSPs, and a structured consultative framework which considers costs and benefits of different possible regulatory approaches for OTTs. Consumer interest should be a pre-eminent criterion to determine the level of regulatory burden on OTT service providers as well as TSPs.</p>

³⁴ Some suggestions- (1) The government should look at intermediaries as partners, and not as law enforcement agencies;
(2) A graded approach should be explored to regulate information and intermediaries in online economy, depending on the associated risks;
(3) The government must be sensitized, that intermediaries vary in function, design and utility, and therefore cannot be clubbed under an umbrella provision
More Suggestions can be accessed at http://www.cuts-ccier.org/pdf/Event_report-Round_Table_Discussion_on_Evolving_Role_of_Online_Intermediaries-feb12-2019.pdf
³⁵ Technically, in India, the regulation of digital ecosystem is overlooked by the Ministry of Electronics and Information Technology (MEITY) in general.
³⁶ <http://www.cuts-ccier.org/OTT-Services/>
³⁷ http://www.cuts-ccier.org/pdf/CUTS_comments_on_regulatory_framework_for_OTT_communication_services.pdf

		<p>purposes to regulate OTT platforms is to create a “level playing field” between the latter and telecom service providers.</p>	
6.	Cyber Security	<p>During the FY2017-18 Union Budget speech, the finance minister had proposed to establish a Cert-Fin.</p> <p>Thereafter, the government had released a report of the working group for setting up the Cert-Fin (Computer Emergency Response Team in Financial Sector)in the country.</p>	<p>We presented comments on the report of the Working Group for setting up of CERT-Fin (Computer Emergency Response Team in the financial sector). We recommended public disclosure of information about incidents of breach, security by design to be adopted by financial institutions, and maintaining a balance between innovation, competition and growth of the vibrant financial sector.³⁸</p>

For queries and suggestions, please write to:

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³⁸ [http://www.cuts-ccier.org/pdf/Advocacy-CUTS Comments on Report of the Working Group for Setting up of CERT-Fin.pdf](http://www.cuts-ccier.org/pdf/Advocacy-CUTS%20Comments%20on%20Report%20of%20the%20Working%20Group%20for%20Setting%20up%20of%20CERT-Fin.pdf)