

Examining the Rationale, Assumptions and Approaches to Non-Personal Data Sharing

Introduction

Globally, initiatives for sharing non-personal data (NPD) are being explored through frameworks, principles, codes, and mechanisms on different aspects such as: upholding data rights, ensuring trust, fostering fair competition and innovation, protecting consumers, preserving intellectual property, promoting research, enabling legitimate aims of the state, and spurring economic growth.¹

These initiatives are being led by the industry as well as the government. India has also taken a step in this direction, and a Committee of Experts on NPD Governance Framework has recently released its report (the Report).²

One of the key rationales of the Report pertains to the data asymmetry in the digital economy that is constraining the potential value of data for economic and societal benefits. In this regard, the Report recommends sharing of NPD for spurring innovation and enabling digital economy growth in India, with appropriate safeguards in place. Overall, the concerns regarding the basic premise, rationale, assumptions, and recommendations of the committee remain unaddressed, lacking evidence, and sparsely discussed.

Problematique

Despite being well-intentioned, the committee has not adequately established the rationale behind regulating NPD sharing in India. In this regard, concerns pertain to:

1. Lack of clarity on the market, regulatory and government failures that it aims to address.
2. Lack of adequate evidence in formulating assumptions around maturity and facets of data and digital economy in India.
3. Insufficient assessment of data protection, competition, intellectual property regimes, etc. in India to determine the policy maturity and interlinkages.

Consequently, the proposed data sharing framework may have unintended adverse consequences, rather than fostering the digital economy at this stage. Additionally, the

recommendations regarding sharing of NPD in the Report appear to be ambiguous and inconsistent and could potentially impact a wide gamut of stakeholders and India's potential to leverage its digital economy. Specifically, there are issues on:

1. Scope of data including categorisation of data between personal data, NPD and inference drawn from such data;
2. Lack of clarity on pre-conditions for processing sharing requests and principles determining the purpose of sharing;
3. Issues regarding incentivising data sharing including assessing intellectual property rights over NPD and exercising Fair, Reasonable and Non-Discriminatory (FRAND) terms in data exchanges; and
4. Checks and balances about privacy and adequate security of data.

¹ For instance, see Analytical report on EU law applicable to sharing of non-personal data, https://eudatasharing.eu/sites/default/files/2020-02/EN_AR%20on%20EU%20law%20applicable%20to%20sharing%20of%20non-personal%20data.pdf

² https://static.mygov.in/rest/s3fs-public/mygov_159453381955063671.pdf

CUTS Study

To assess these gaps and issues presented by the Report, there is a need to conduct an in-depth study on the issues of NPD sharing. Consumer Unity & Trust Society (CUTS) being actively involved in issues affecting the digital economy is undertaking this study with the objectives mentioned below.

Proposed Objective

The primary objective of the study is to dispassionately examine the aforementioned issues to consider appropriate evidence, by taking a comparative and multi-stakeholder perspective to:

- Review the rationale, premise, assumptions and targeted market, regulatory and government failures that the Report aims to address.
- Assess the approach and recommendations on NPD sharing as indicated in the Report.

Approach and Methodology

The study would be **implemented in two phases** by undertaking mix-methods research. Phase 01 of the study would focus on assessing and questioning the rationale and assumptions of the Report and Phase 02 would focus on comparing the recommendations of the Report with other jurisdictions on select indicators and issues as highlighted above. The broad methodology is set out below:

Desk Research

This will involve a literature review of international frameworks, regulatory and policy developments, industry codes of practice, principles and frameworks of data sharing. These may include analysis of evolving strategies and initiatives of data sharing across jurisdictions and sectors, along with other government reports, expert opinions, industry studies, journal articles, media reports, etc. Based on the literature review, assessment on rationales, assumptions, targeted government and market failures, harmonised and divergent recommendations/ provisions on data sharing would be undertaken.

Stakeholder Consultation

Consultations to be undertaken with consumer groups, civil society organisations, industry players, domestic start-ups, small and medium enterprises, representatives of government and regulators, policymakers, national and international experts, etc. Such interactions would aim to assess their perception, expectation, utility, feedback, suggestions, etc. concerning the proposed NPD sharing framework for India and the realities of the Indian digital economy.

Networking and Dissemination

A webinar would be organised to review the findings of the overall study and gather feedback from a group of key stakeholders, experts, etc.

Envisaged Outputs

- Comparison matrix to review objectives, rationales, assumptions, recommendations and approaches in other jurisdictions.
- Discussion paper synthesising the findings of the desk research, comparison matrix and stakeholder consultation
- A webinar with key stakeholders to present and review the findings of the overall study and the discussion papers from both phases.

Expected Outcome

The study will add value to the discourse on the need and scope of data sharing and governance by providing evidence-based inputs. Furthermore, the study will inform policymakers and other stakeholders on best practices and approaches on the subject of data sharing through objectively examining the developments in the Indian digital economy.

Project Duration

The project will be completed within six months.

