Ctrl-Shift

A New Paradigm for Personal Data:

FIVE SHIFTS TO DRIVE
TRUST AND GROWTH

June 2016

Foreword

Stephen Deadman,
Global Deputy Chief Privacy Officer, Facebook

My observation from the years I've spent working on privacy and data related issues is that the personal data debate has been largely grounded in a limiting premise – that the desire to innovate with data is generally incompatible with preserving individuals' rights to privacy and self-determination. This premise is entrenched by regulators, policymakers and industry, as we tend to talk in terms of trade-offs, as though these two equally desirable goals will always be in tension with each other, and our only choice is to balance them off against each other.

I firmly believe that such trade-off thinking is undesirable – it leads to suboptimal outcomes – and I also believe it's unnecessary: we now have the skills, technology and motivation to transcend this supposed trade-off. The past decade (in particular) has brought about a massive transformation in people's adoption of technology that benefits them, and their confidence and skills in using it. And those new skills are now being matched by the creation of innovative and value-creating services that enable people to play an increasingly active role in choosing how their data is used. Self-determination in fact, not just theory.

So we are transitioning to an era in which individuals have both the skills and the opportunity to choose how they manage and share their data to achieve a range of beneficial outcomes. Facebook and other social media services are a great demonstration of this, with more than a billion people using such services to actively communicate and manage information about themselves to organisations and each other. In this new era, innovation and economic growth through data, on the one hand, and the desire to preserve our fundamental rights in respect of that data, on the other, are not in tension – in fact, they are positive and mutually reinforcing.

I strongly believe that data (including personal data) is a powerful force for good – not only for companies with commercial objectives but for individuals and society too. But so far, too much of the debate has focused on risks and harms, at the expense of consideration of the opportunities and benefits. The debate also entrenches an assumption that only organisations can control data, ignoring the ability and potential of individuals to take a more active role, exercising agency, choice and control over their own data.

I don't think the evidence supports this assumption. What is more, when people have more control over their own data, more growth, innovation and value can be created than when they don't. This is a fundamentally important point. And it has important implications for how we think about policy concerning data, and how we think about regulating data.

We need a policy and regulatory environment that creates space for the right sort of innovation – innovation that creates value for all parties and inspires trust and confidence – while, of course, minimising any risks and harms. For the data-driven economy to flourish we (as private individuals, citizens and customers) need and deserve both value and safety when it comes to our data.

Facebook commissioned this project to explore this opportunity from multiple perspectives. This report draws on the contributions of 175 experts around the world to identify the shifts we need to make to accelerate our progress towards a more positive data driven future – shifts in our approaches to personal data, policy thinking, regulation and organisational practice. It draws on in-depth discussions in 21 roundtables across Europe, North and South America, and Asia-Pacific, involving business leaders, policymakers and regulators, academics, privacy and consumer advocates, think tanks, technologists and innovators. This report is the result of their contributions and thinking. It's intended to stimulate a new, inclusive and constructive conversation; one that leads us to an approach that sustainably maximises the contribution personal data makes to individuals, society, and the economy as a whole.

Introduction from the authors, Ctrl-Shift

Ctrl-Shift is a specialist consultancy helping organisations to create new services and strategic market positions based on trust and control around data.

We were commissioned by Facebook to contribute our accumulated insight and understanding to a process of external engagement that considers the question:

How can we sustainably maximise the contribution personal data makes to the economy, to society, and to individuals? Where:

- 'We' means all participants in the data ecosystem – for example, large and small brands, innovators, policymakers and regulators, consumers, consumer advocates, technologists, data scientists

- 'Sustainably' means in a way that preserves fundamental human values and rights, while creating and sustaining trust in, and uptake of, services

- 'Maximise the contribution' means taking strategic decisions to ensure the best possible combination of social, economic, business, and personal benefits

Our first report, produced in **October 2015**, set the context for our roundtable discussions. In it, we described the evolution of the data driven economy and explored some scenarios for its future, setting out a series of questions.

Our second report, produced in **December 2015**, gave an overview of the themes emerging from the 12 European roundtables held by that time.

And this, our third and final report, represents the complete series of 21 discussions held across Europe, North and South America, and Asia-Pacific.

As with our previous work, the content of this paper has been independently produced by Ctrl-Shift to reflect the views expressed during the roundtables. In order to give a starting point for discussions, we focused on data-driven digital services adopting a 'free to use' model funded by advertising. But we acknowledge that services like this represent just a sub-set of the existing and potential products and services of the data driven economy, and that the issues discussed in this paper are emerging in other areas of this economy.

Across the roundtables we gathered a huge quantity of expert input; it has not been possible to represent every contribution in this report. Contributions were made in the context of discussion of the topics and questions posed in our first report. Contributions have been cited with participants' permission. In drafting the report, we have distilled the questions and contributions into a small number of themes that we believe represent a basis for progress.

Our goal is to portray the key issues facing participants within the data driven economy, rather than focus on any individual company or actor. Therefore readers should note that the paper does not necessarily reflect the views of its commissioner, Facebook, and should not be interpreted as stating any specific intent on their part.

Ctrl**Shift**
Unleashing the power of trust

Contents

Setting the context

We're transitioning into an era in which people's data will turbocharge the creation of value for the economy and for society, but increasingly for them as individuals. In this era, we have the opportunity to generate mutually reinforcing benefits for all stakeholders, while ensuring any risks and harms are minimised.

This report is intended to provide a positive basis for progress towards this goal. It identifies five key shifts we believe are necessary to make in order to progress – shifts of state, mindset and behaviour.

Before we present the shifts, we want to update and re-emphasise some of the cross-cutting considerations we identified in our first report. Contributions to our roundtables reconfirmed the importance of these considerations, and they form a framing context for what follows:

Different parties to the debate do not always surface their agendas and assumptions, and this hampers progress: For some parties, the potential economic value of personal data is of paramount importance, while others are concerned with the civil liberties implications of its misuse. Some start with an assumption of the sanctity of human rights, others start with caveat emptor assumptions about rational agents entering freely into contracts. Some come to the debate making cool calculations of competitive or other advantage, others come with highly emotional agendas of fairness and equity. The attitudes, agendas, assumptions and values people bring to a debate will shape how it is conducted, and the outcomes. If we don't surface them, the result is mutual incomprehension and fruitless argument. All parties in this debate should therefore clarify and surface their assumptions – and expect them to be challenged.

Facts and fiction are often confused: Over the last few years, the data practices of both governments and industry have attracted increasing coverage and scrutiny. As a result, people have been on a rapid journey from 'ignorance is bliss' to 'a little knowledge is a dangerous thing,' leaving many thinking: 'I don't understand what's happening with my data, but I'm pretty sure I don't like it'. Unfortunately, much debate about personal data confuses what might or could be happening with what is happening. It's difficult to conduct a mature debate or make workable policies without clearly distinguishing between fact and fiction, actual harms and potential harms, real risks and imagined risks. Any debate also needs to be informed by an equal consideration of the benefits and opportunities – actual and potential.

Data will transform all industries: Personal data is not a 'sector' such as automotive. It has universal significance and impact, affecting all industries including retail, financial services, health, transport, e-commerce and public administration. We should recognise that personal data is a horizontal 'enabler', not a vertical industry or sector, and design our approaches accordingly.

This is an immature market: Comparisons to other industries and their regulatory environments are tempting, but not always helpful. A distinguishing characteristic of the data driven economy is its relative newness: other industries have had decades to develop norms, rules, standards, ways of working and infrastructure in which benefits are realised while potential risks and harms are understood and addressed. The personal data ecosystem is still developing, and needs time to evolve. This means that a search for 'the right solution' that ticks all boxes right now is unlikely to be successful. Designing a *process* that can enable the right solutions to emerge will be more important.

There is a clear basis for a common agenda: A truly flourishing data-driven economy will see data being used for social benefit, and by individuals for their own personal goals and needs, as well as by commercial organisations and governments. This broader perspective on innovation – from purely commercial to commercial *and* social *and* personal benefit – will be key to unlocking sustainable ways forward. The common agenda must transcend the trade-off thinking mentioned in the report's foreword; it's a potentially fatal barrier to progress. In front of us is an era-defining innovation challenge – one that presents the opportunity for stakeholders to unite in developing a common agenda and goal: 'how to create a flourishing and sustainable personal data ecosystem?'

On the following pages, we outline the five shifts we believe are necessary to help move the participants in that ecosystem toward that goal.

Shift 1:
From education to confidence

Most people have little knowledge or understanding of what data is collected about them or how it is used. Transparency, education and data literacy are an essential element of a healthy personal data ecosystem, but they are not a panacea. Trying to formally 'teach' people about personal data in will have limited results; creating opportunities for people to develop knowledge and confidence through their day-to-day usage is likely to have a greater impact.

Transparency and education are important ingredients of a healthy personal data ecosystem. A lack of transparency can generate fear, uncertainty and doubt and prompt people to choose a default option (such as saying 'no' to every request to share data). And often, simply feeling informed about what is happening provides reassurance.

"If you know your environment, you feel in control. If you have little knowledge, you will soon feel threatened." Guillaume Buffet, Renaissance Numérique, Paris roundtable

"We recently did a survey of 130,000 users of our product, and the overwhelming majority, around 90%, said that the most important thing to them in regard to their digital selves is just to 'know' what's happening." Todd Ruback, Ghostery, New York roundtable

However the practicalities of transparency and education are challenging. At some point, too much transparency and education becomes 'too much information' – leading not just to cognitive overload, but the potential additional counter-productive effect of unsettling and intimidating people, rather than informing and

reassuring them. As an example, the pervasiveness of cookie banners in Europe has been cited as an example of transparency that has failed to achieve its purpose: because virtually every website uses cookies, consumers tend to ignore cookie notices or accept them as a cost of doing business, even if they feel a vague sense of uneasiness from agreeing to something they may not fully understand.

"We need a multi-layer approach to transparency and communications. For some, a small amount of information is enough; for others, more is needed." Jacob Turowski, Facebook, Warsaw roundtable

"There was a report from the Conseil National Numerique about digital literacy; a shocking conclusion was that the way digital literacy education is done today makes pupils and parents afraid, and doesn't make them feel secure." Henri Isaac, Université Paris Dauphine, Paris roundtable

The desire for individuals to be educated about data usage is competing with the desire for education on many other topics – for example, healthy eating, immunisation, care for the environment. There is a finite limit on people's

Consumers are not going to understand every business model, or everything the government does. But there are mediators who need to know – like Parliament, journalists and consumer groups."

Jeroen Terstegge, Privacy Management Partners, Amsterdam roundtable

available attention for 'education', so when it comes to personal data usage, we need to be clear about what levels and degrees of transparency and education are truly beneficial or effective.

In the case of many services, people should not need education because their usage of the service should just be 'safe by default'. (A 'safe by default' environment being produced through a combination of appropriate regulation that provides a secure foundation, and responsible organisational data practices; themes we explore elsewhere in this report).

"People don't always want to understand and they don't want to be educated. They want to be able to trust the company to do the right thing." Ilana Westerman, Create with Context, California roundtable

"We don't operate using a notice and consent model in any other industry or area of our lives. When you buy a package of hamburgers, there's no immediate in-the-moment exchange of information that forces you to be part of the regulatory system that put that packet in front of you." Brenda Leong, Future of Privacy Forum, New York roundtable

Somebody needs to understand. But because transparency can impose a heavy cognitive load, it often works best when mediated through trusted experts such as journalists, consumer advocates and regulators. Either implicitly or explicitly, a core part of their role is to understand, interpret and review the data behaviours and practices of organisations, and then make judgments about which issues require the broader population to be either informed or educated. And when the need for that information or education arises, the fact that populations are increasingly

connected – to both digital services and each other – ensures that the delivery of that message is efficient and effective.

"Consumers are not going to understand every business model, or everything the government does. But there are mediators who need to know – like Parliament, journalists and consumer groups." Jeroen Terstegge, Privacy Management Partners, Amsterdam roundtable

Where increased data literacy in the general population is needed, skills and understanding may be best absorbed over time rather than 'taught'. People become keen to learn and become sophisticated users of products and services (for example of mobile phones and computers) when they can see the value and are keen to use them. Often the way they develop skills and confidence is not via formal education, but through familiarisation – either directly via use of the product or service, or indirectly via media exposure of issues relating to personal data. A positive way forward is to design education into day-to-day activities.

"When we talk about digital literacy, I think there's a passive trend of critical mass; when services exist, are useful and easy to use, it's just a matter of time before they reach critical mass and become mainstream. Keeping this innovation alive is the way forward – it helps people who are not so literate become literate." Rodrigo Moura Karolczak, São Paulo Law School of Fundação Getulio Vargas, São Paulo roundtable

A confident user base is necessary for a sustainable personal data ecosystem, but it is not sufficient on its own. The next four shifts both help build confidence and realise the benefits this confidence brings.

If you know your environment, you feel in control. If you have little knowledge, you will soon feel threatened."

Guillaume Buffet, Renaissance Numérique, Paris roundtable

People don't always want to understand and they don't want to be educated. They want to be able to trust the company to do the right thing"

Ilana Westerman, Create with Context, California roundtable

Shift 2:
From partial to full value

For the data-driven economy to be sustainable, all parties need to feel they are getting a fair share of value. Until now, organisations have been the main users of personal data, simply because they had the technology and resources to do so. Naturally, that has focused attention and resource on the organisational benefits of data use, and has resulted in a perception that the data value exchange is unbalanced. This is beginning to be addressed as data relationships are being recalibrated and new forms of data relationship are being created that enrich the value exchange. The more empowered people are, the more likely they are to feel the system is working fairly.

Fairness has two dimensions: fair process (people's sense that their interests and concerns are being taken into account) and fair outcomes (the realisation of mutual rather than one-sided benefit). Both dimensions need to be addressed if we are to maximise the value of data for all those with an interest in it. This requires clarity about the value exchange: clarity not just about how organisations use personal data, but also about business models and commercial incentives.

"Companies should have to convince me that they need the data to benefit me, to benefit society. Not just say 'trust me'. The burden is on you, the company, to convince me, the individual." Jan-Hinrik Schmidt, Hans-Bredow Institute, Berlin roundtable

"In B2B scenarios, there are contractual agreements about data collection and processing between two equal parties. In B2C scenarios, relationships are not as equal, and that creates hesitation." Piotr Marczuk, Microsoft, Warsaw roundtable

We need a healthy debate about what is 'fair' and 'not fair', and as part of that debate, expectations may need adjusting: for example, some people's expectations that everything online should be 'free'; some organisations' expectations that people will allow unconditional access to and use of their data in exchange for free services. Even as this debate unfolds, organisations have an opportunity to signal positive intentions: to demonstrate that they are not trying to exploit or take advantage; that they are trustworthy. One way to do this is to provide mechanisms that clearly and simply give people choice and control.

"I think you need to see the relationship with customers as a partnership. Partnership implies joint ownership of data, education, joint decision-making on what is being done with the data." Igor Ostrowski, Dentons and Chairman of The Polish Digitisation Council, Warsaw roundtable

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Choice and control are more active than mere 'consent'. Policies and practices that treat individuals as passive 'data subjects' have a tendency to become self-fulfilling. Services that recognise personal agency – the capacity of the individual to play an active role to achieve positive outcomes – help change attitudes, expectations and outcomes.

"If we see the 'data subject' as a powerless or stupid entity, then the answer will always be 'we need more protection'. The acknowledgement that individuals have power allows us to develop a more healthy and balanced relationship. Transparency on the use of data is essential for that." Gerrit-Jan Zwenne, Leiden University, Amsterdam roundtable

Many organisations are recognising the link between personal agency and improved consumer perceptions of the value exchange, introducing new features, controls and products that provide the mechanism for greater individual empowerment.

Others still are working to create entirely new forms of the value exchange. A new generation of services is emerging that help people use their data to make better decisions and manage different aspects of their lives. For these services, 'consumer control of data' is embedded into the central logic of how the service works. While some of these entrepreneurs are driven by a strong belief in trust and control over data, they are also motivated by enlightened economic self-interest – they see the market potential in such services and are pursuing it.

"We're trying to help catalyse a race to the top where companies are going to respect your data, give you transparency and control, stop using the data when you ask. By earning your trust, they'll get access to even more data than they have today to do even more amazing and delightful things for you." Shane Green, TeamData by Personal, Inc, New York roundtable

"The data opportunity is commercial, but it's also about value, not necessarily money. If you turn up to hospital with your child and you have information that can save their life, then the value exchange of having that information and being able to hand it over in that moment is way beyond anything that is economic." Katryna Dow, Meeco (Europe and Australasia), Hong Kong roundtable

There are also multiple ways of using data to deliver social benefit. This is an essential part of getting the value exchange right, and an important part of creating a sense of fairness and equity.

"The delivery of public services could be more inclusive, efficient and effective, but the lack of public-private data sharing agreements constrains these opportunities. How can we empower stakeholders with access to better data so that shared social outcomes can be achieved?" Bill Hoffman, World Economic Forum, New York roundtable

The innovation and growth opportunities opened up by personal data are still growing. It is only by pursuing them at all levels – at the personal level, the corporate level and the level of society and the economy – that we will ensure that people understand and value the benefits, and therefore feel that the system is working fairly.

> **Until now, the alignment between business goals and individual goals has not been very good. But there are ways to make them align better, and good reasons to do so. There is an opportunity to surprise and delight end users with data sharing and control options, and this leads to trust."**
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> Eve Maler, ForgeRock, California roundtable

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Shift 3:
From restrictive to enabling

The challenge for policymakers is to enable and encourage the 'right' sort of innovation – innovation designed to maximise growth and value for individuals, society and the economy while minimising any causes for concern over privacy issues. The challenge for regulators is to frame regulations that help achieve both of these policy objectives simultaneously. Overly prescriptive regulation can be counter-productive, but at the heart of most existing data regulations are principles and values that provide a foundation for progress, and the opportunity for industry and regulators to work together to create practical ways of fulfilling these principles.

Our roundtables traversed a range of regulatory environments at different levels of maturity, complexity and scope. Where the regulatory environment surrounding data is nascent, there is an opportunity to build a flexible and responsive regulatory environment: one that focuses on developing trust in data practices, adapts quickly and effectively to emerging technologies, and creates a platform for positive practice to thrive (while providing sufficient supervision and enforcement to drive out poor practice):

"If you create a values-based framework that you expect the market to operate within, you can then regulate to the margins and the boundaries of that – what is unfair, what is misleading – and you then get specific about what practices are acceptable by developing individual case examples." Brenda , Future of Privacy Forum, New York roundtable

Roundtable participants from markets that already had principles-based data protection environments advocated for the flexibility they offer, for example, the flexibility to respond to market-based innovation, and low costs to adapt implementation regimes as and when circumstances require:

"As a privacy commissioner, I seek to protect individuals' privacy and data security, and at the same time allow innovation to flourish as new business models and technologies develop." Stephen Wong, Privacy Commissioner for Personal Data, Hong Kong, China, Hong Kong roundtable

Participants also pointed to examples from other industries with flexible and effective regimes, for example, food regulation in the US, where outbreaks of food poisoning are effectively investigated without triggering a "complete re-evaluation of the way the industry is formulated and works", and chemical regulation in the Netherlands:

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"Dutch inspections have developed a risk based approach. Non-compliant companies are to be inspected heavily and enforced whereas compliant companies are to be treated on a trust based approach. In that case, the Dutch inspections are seeking different kinds of monitoring - for example, on how their systems function, rather than each and every output." Oscar Delnooz, Dutch Ministry of Economic Affairs, Amsterdam roundtable

But many territories have mature rather than nascent data regulatory environments, with little opportunity (or appetite) to redesign regimes from the ground up. This begs the question – what is the 'right' approach in such environments? Even though many roundtable participants referred to these environments as prescriptive and restrictive, they also argued that it didn't necessarily need to be so – that flexibility is possible, with a greater level of collaboration between lawmakers and industry.

"We need to start a process of dialogue and an exchange of views amongst all stakeholders about the practical aspects of implementation [of Europe's General Data Protection Regulation]." Michał Boni, Member of the European Parliament, Warsaw roundtable

"As industry we should be able to convince policymakers that there is a way to have a win-win relationship with us, but the set-up needs to be different to how it has been so far... we've never challenged ourselves as to what is needed to breach the trust gap with regulators." Stephan Loerke, World Federation of Advertisers, Amsterdam roundtable

Practical ways of doing this include:

1. Encouraging methods by which different arms of government – for example, departments fostering innovation and growth and departments focused on consumer protection and regulation – can discuss and generate 'joined up' approaches.

"In Brazil, we have different perspectives inside Government that are not always aligned. My remit is innovation, so I'm concerned about the impact that regulation may have on that. How do we deal with these different perspectives? We need a common language." Marcos Vinicius Souza, Ministry of Development, Brazil, Brasilia roundtable

2. Collaborating to build bodies of evidence about key issues that all parties can accept

3. Creating new forums that enable policymakers, regulators and industry to discuss issues and 'educate' each other 'without prejudice'.

"The regulator and industry should talk more, and it's also important to listen to users. We need to find the right balance between what users want and what public protection needs." Ignacio Gónzalez Royo, Garrigues, Madrid roundtable

"It's important to build a neutral industry coalition that has integrity to properly discuss these issues: a group working together for the integrity of this digital society." Arie van Bellen, ECP: Platform for the Information Society, Amsterdam roundtable

4. Testing, experimenting and innovating around new ways to reach regulatory goals – via existing services and by acknowledging the significance and impact of entirely new categories of service that challenge the traditional regulatory view of the 'passive data subject'.

"In the future consumers will be powerful. That won't solve all problems, but it should help us regulate to the edge cases rather than trying to regulate for all the problems in our day-to-day lives." Stephen Deadman, Facebook, Madrid roundtable

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Shift 4:
From compliance to sustainable customer relationships

Compliance and accountability processes need to be more than mechanistic; they should create an environment in which people feel that their data is safe, even if they do not make an explicit decision to protect it. This requires action from many actors in the data ecosystem, but there is much that organisations can do to reassure people that when their data is collected and used, the process and outcomes will be fair and safe. This is a strategic responsibility that requires senior leadership within organisations.

In a prescriptive paradigm, rules are a form of regulatory 'call', and a 'tick-box' compliance-based approach is the natural organisational response. It's a flawed response in the context of personal data.

"Compliance is a bottom-up approach; people look at data protection laws section by section to find out if they're out if they're complying with each section in order to achieve a pass mark." Henry Chang, The Office of the Privacy Commissioner for Personal Data, Hong Kong, China, Hong Kong roundtable

But as accountability processes become more mainstream, and evolve into formal seals and standards, there is a risk that they too become viewed by organisations as just another externality with another set of 'tick box' rules to follow.

As described in Shift 3, roundtable participants consistently expressed a desire for policymakers and regulators

to adopt a principles-based operating mode. The complementary action is for organisations to transform their accountability processes into mechanisms that create and sustain mutually beneficial and trusting relationships between them and their customers. Such a process would ensure that:

a) organisations set and clearly communicate the boundaries of their data collection and use

b) day-to-day decisions about the collection, use and management of people's data are fair, equitable and create value for individuals while minimising unwelcome surprise

c) the collective and cumulative outcomes of those decisions lead to long-term opportunity and value for all parties.

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> Dennis Hirsch, Ohio State Moritz College of Law and Capital University Law School, New York roundtable

"Companies need to rebuild trust by redrawing lines. Showing consumers the lines they will and won't cross." Gesa Diekman, Bitkom, Berlin roundtable

"There needs to be focus on what's fair, what's unfair, what's in bounds, what's out of bounds, in order to create an environment that sustains trust." Dennis Hirsch, Ohio State Moritz College of Law and Capital University Law School, New York roundtable

A process like this requires leadership, rather than technical compliance, which has typically been the case to date:

"Organisations need people at a senior level with responsibility for considering and creating the data principles and culture for that organisation. This is a strategic leadership function - not a role focused on formalistic compliance duties." Cecilia Álvarez Rigaudias, Pfizer, Madrid roundtable

The contribution of this leadership role is to interpret and apply principles in context; to understand how an organisation's approach to data intertwines with other, seemingly unrelated issues that might impact levels of confidence and trust; and to ensure that;

"as the technology changes, and the needs of the business model change, the company retains my faith and confidence, and not just arbitrarily and unilaterally changes the rules on me." John Edwards, New Zealand Privacy Commissioner, Amsterdam roundtable

It would also identify where a broader set of perspectives would be useful to accountability processes and data decisions, for example, the perspectives and expertise of sociologists, anthropologists and ethicists.

The personal data ecosystem contains organisations of many different sizes and levels of complexity, and we acknowledge that mature processes like those we describe require a certain level of resourcing to be adopted and effective. But as has been shown in other areas like information security or app ecosystems, the standards and ways of working set by ecosystem leaders can have a galvanizing effect on the practices adopted by other organisations, no matter what their size.

Ultimately, the process is about demonstrating accountability not just to policymakers, regulators and influencers, but also to the people who use services.

"The whole data driven economy is shifting from having a strong relationship with regulators, to a strong relationship with users. 21st century 'regulation' will be based on the strength of connection with users." Guillaume Buffet, Renaissance Numérique, Paris roundtable

With strong and healthy relationships having greater upside potential for those organisations who choose to pursue them:

"What we're finding is that where the trust and transparency are established, customers are opening up and sharing more information that's contextual - providing they understand the purpose for which it will be used and for a specific period of time." Katryna Dow, Meeco (Europe and Australasia), Hong Kong roundtable

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Shift 5:
From good intentions to good outcomes

Many policies and regulations relating to personal data assume that individuals have a higher level of interest and attention to data-related decisions than is the current reality. If we are to improve from today's position – that is, if we are to move beyond mere compliance to creating a real conversation with consumers about data – we need to address the realities of human behaviour and not demand of people endless attention to small print. Shifting to an approach that is more practical while preserving fundamental rights requires innovation, and these efforts need to be led by those with the right experience.

Many regulations relating to personal data have been introduced with the best of intentions, only to generate counter-productive results. Organisations trying to comply find themselves struggling with expectations founded in an unrealistic view of how people behave. Current approaches to consent and control are a case in point. Many of the proposed solutions:

a) **ignore the realities of human behaviour.** When faced with a choice, we humans are far more likely to accept the status quo than to invest time and energy trying shift from this default setting. We are cognitive misers, not wanting to invest time and effort reading small print. We are 'hyperbolic discounters' valuing immediate benefits (such as access to a desired service) much more than longer term, more vague concerns about the uses of our personal data. We are also inclined to 'learned helplessness', not even trying to assert ourselves in situations where we feel powerless.

"One of the big misunderstandings we have is that the more information and opportunities to consent you provide, the better protected the consumer will be. The reality is that people are making many of those decisions in a millisecond and in a manner that is not always rational."
Stephan Loerke, World Federation of Advertisers, Amsterdam roundtable

b) **assume that individuals' only role in the personal data ecosystem is to be passive,** consenting to other parties processing of their data, rather than active – either making active choices about how others collect and use their data, or collecting and using it for their own purposes. The more people are 'in control' the less they need 'consent'.

"The current model doesn't include the user very much - the more we do to involve the user, the more we will create balance and transparency."
Shane Green, TeamData by Personal, Inc, New York roundtable

> **By definition, regulators are not very innovative. That's why we need to turn to companies to come up with innovative answers and solutions that provide meaningful user controls."**
>
> Henry Chang, The Office of the Privacy Commissioner for Personal Data, Hong Kong, China, Hong Kong roundtable

c) **are not fit for the emergence of new technologies like IoT**

"IoT materially changes the game because of the data volumes and sources. There are many models of consent that are poorly understood, and in IoT we will need all of them. Consent often can't be explicit, but it could be contextual. It could be explicit non-consent. You could walk up to a beacon and give it a thumbs up or down." Eve Maler, ForgeRock, California roundtable

So if these are examples of problems with current approaches, what are the solutions? We need to encourage experimentation and innovation around the core issues of trust, control and transparency.

Large firms are uniquely well positioned to lead the development of more effective tools and mechanisms and to share the work and results so that others can benefit. They are able to bring to bear their access to the right skills (researchers, designers and engineers) and hard-won experience drawn from services run at scale:

"By definition, regulators are not very innovative. That's why we need to turn to companies to come up with innovative answers and solutions that provide meaningful user controls." Henry Chang, The Office of the Privacy Commissioner for Personal Data, Hong Kong, China, Hong Kong roundtable

"Generally speaking, there isn't good agreement on standards around control because the creation of cross-industry solutions has traditionally been led by lawyers adopting a compliance approach. These are not just legal or policy problems – they're also design and engineering problems." Stephen Deadman, Facebook, São Paulo roundtable

They can help design, test and create standards that better fulfill the principles enshrined in regulation, but also provide real evidence about users' behaviours and expectations, in order to work out where defaults and standards should be set:

"We need to talk about standards and defaults; where they're set, and where and how we prompt the user to change them." Francisco Brito Cruz, InternetLab, São Paulo roundtable

There will be no magic bullets – but instead a process that produces better results with each iteration:

"Design is hard. It may take 100 iterations. Regulators need to understand that." Ilana Westerman, Create with Context, California roundtable

Although industry has the scale and skills to power such a drive, an effort involving all of the stakeholders who care about getting this right will be more credible and successful:

"Problems that are really big are usually solved through collaboration – achieving better solutions for data privacy and control will require regulators and the market to work together." Guillaume Desnoes, formerly Dashlane, now Alenvi, Paris roundtable

> **Problems that are really big are usually solved through collaboration – achieving better solutions for data privacy and control will require regulators and the market to work together."**
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> **The current model doesn't include the user very much – the more we do to involve the user, the more we will create balance and transparency."**
>
> Shane Green, TeamData by Personal, Inc, New York roundtable

> **Design is hard. It may take 100 iterations. Regulators need to understand that."**
>
> Ilana Westerman, Create with Context, California roundtable

Conclusions

Notes

We set out to identify how the participants in the personal data ecosystem could sustainably maximise the contribution personal data makes to the economy, to society, and to individuals.

Below, we've drawn on the expert input of roundtable contributors to present a definition of the characteristics of a sustainable personal data environment, and the priority steps that ecosystem participants can take to start creating it.

The collected contributions to our roundtable discussions lead us to conclude that a sustainable personal data environment is one in which:

- People using data driven-services feel confident, and that the value exchange is fair

- Policymakers and regulators have a united agenda: to maximise the benefits of data while minimising the harms

- Organisations are visibly demonstrating their responsible and accountable practices

- Solutions to concerns that arise are designed and iterated to be effective, and reflect the realities of human behaviour

There are many steps ecosystem participants can take to start to build this environment, and to transcend 'trade-off' thinking, but our discussions suggest the three steps below will deliver the most impact.

First, commercial organisations can demonstrate leadership by taking responsibility for finding positive, practical ways forward – thereby improving the overall climate of debate so that policymakers and regulators can, in turn, focus on creating the space for positive innovation as well as minimising risks and harms.

Second, both industry and policymakers and regulators can acknowledge and explore new ways of realising the value of data for all stakeholders, including recognising the transformative effect of emerging new business models.

Third, all participants need to bring the right expertise to bear to create mechanisms of trust, transparency and control that work with the realities of mass human behaviour. This is not a theoretical question; it's an empirical question requiring experimentation, testing and careful research.

In closing, the conversations we held across the world were rich specifically because they included a diverse set of participants with different skills, experience, and perspectives. The interplay between those varied points of view gave us both quality input, and confidence in the goodwill of different actors in the personal data economy to find the best way forward. The roundtables were founded on open dialogue and collaboration – a process that we hope participants continue in pursuit of a positive future for the data driven economy.

Annex: Acknowledgements

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