![aiia - australian information industry association]

Productivity Commission Draft Report: Data Availability and Use

AIIA Response

December 2016

About AIIA

The Australian Information Industry Association (AIIA) is Australia's peak representative body and advocacy group for those in the digital ecosystem. AIIA is a not-for-profit organisation that has, since 1978, pursued activities to stimulate and grow the digital ecosystem, to create a favourable business environment and drive Australia's social and economic prosperity.

AIIA does this by: providing a strong voice on policy priorities and a sense of community through events and education; enabling a dynamic network of collaboration and inspiration; and curating compelling content and relevant information.

AIIA's members range from start-ups and the incubators that house them, to small and medium-sized businesses including many 'scale-ups' and large Australian and global organisations. We represent global brands including Apple, Adobe, Deloitte, Gartner, Google, HP, IBM, Infosys, Intel, Lenovo, Microsoft and Oracle; international companies including Optus and Telstra; national companies including Ajilon, Data#3, SMS Management and Technology and Technology One. While AIIA's members represent around two-thirds of the technology revenues in Australia, more than 90% of our members are SMEs.

Our national board represents the diversity of the digital economy; more detailed information is available on our web site.

Overview

AIIA welcomes the opportunity to respond to the Productivity Commission's Draft Report on Data Availability and Use.

AIIA supports the intent of the Draft Report and the focus on increasing the availability and use of data in Australia. Facilitating open access to and use of data has the potential to unlock the significant economic value of Government and private sector data holdings.

AIIA applauds the Productivity Commissioner for his preparedness to challenge existing practices, his focus on customers and willingness to push the boundaries to realise the economic opportunities presented by data and digital technologies.

AIIA's key areas of focus in this response are:

- Release of public data in formats that enable it to be manipulated and used for other valued purposes;
- The use of web scraping to deliver real time benefit for consumers;
- The use of APIs as the current best practice for data sharing in the technology industry – balanced by the need to resist being locked into specific technology solutions;
- Development of a workable definition of consumer data - limited to personal data and information relating to interactions/transactions such as payment data, frequency and historical data;
- Balancing the rights of consumers to access their data with risk and cost;
- Ensuring a framework for consumer rights to data does not disincentivise innovation or introduce perverse incentives for providers to withhold access to data;
- Clarification of the rights of smaller data holders in terms of requirements to provide data in a portable, machine-readable format;
- Further clarification of the National Interest Datasets (NIDs) concept;
- Further details regarding the joint right to data as data moves away from its original source;
- The need for clear and transparent governance arrangements to support the access of 'Trusted Users' to NIDs;
- Cost-benefit analysis of, in particular the Comprehensive Rights element of the proposed future framework; and
- The need to ensure on-shore and off-shore cloud providers are treated on an equal basis.

December 2016

These issues are discussed further below.

Addressing specific impediments to public sector data access

AIIA believes that Government has a key role in setting the tone for open data both by making its own data available and shaping the policy environment. Making government data available also sets the tone for openness among other institutions and organizations. In this respect, government plays a critical role in shaping both confidence in open data and the policy environment in which data is made available and used more broadly. This includes policy relating to the type of information that can be made available, who can access information and appropriate privacy, confidentiality and intellectual property requirements. Similarly government has a role in educating the public about the potential benefits to the economy and to society of making data more open.

Potential value, not simply the ease with which the data can be made available, must guide priorities for the release of data.

Data that is made available must be in formats that are relevant to those that will use it and add appropriate value. While AIIA applauds the focus on agencies making their data available in formats that are consumer facing, this is not a format that is optimal for third party developers. Despite best intentions, the reality is that big data is not easily digestible and only a small number of consumers will actually dig into the data in a comprehensive way. Developers, on the other hand, who are skilled in using data and transforming it into uses/applications that are relevant and digestible to consumers, are limited in what they can do due to the unsophisticated way in which the data is made available to them.

A key focus of future government data releases, should be on making data available in formats that can be appropriately leveraged by application develops who seek to manipulate and add value to the raw data.

Making data more useful

In relation to web scraping, AIIA would emphasise the importance of innovation that can be derived from this technology – with customer permission. Customers receive benefit from real-time information as well as a standard of user experience that comes from web scraping of information. AIIA members advise that web scraping is an effective tool for innovators to build and test products for consumers and small businesses.

AIIA applauds government agencies sharing their data widely for innovators to build on and create value for Australian consumers and businesses.

APIs are a current best practice for data sharing in the technology industry. APIs allow for a seamless customer experience and provide real-time information to consumers. Due to their reliability, flexibility and ease of use, they open the door for new innovations that can benefit consumers.

Machine-readable data on the other hand can be static – ultimately impacting the usability of data and its long-term value to the consumer.

However, while APIs are a desirable standard, there may be other best practices/standards that develop over time. It is important not to limit future opportunities by locking in specific technology solutions available today.

AIIA recommends that relevant and timely reviews of standards are built into approaches moving forward and that these include both government and industry input.

Value and pricing data

Further clarification of recommendation 2.1 is required.

AIIA would resist a government agency determining which private sector databases should be made public. Industry engagement in this process, including examples of relevant high value datasets need elaboration.   Governance of this process should also include appropriate appeal/review arrangements.

A framework for Australia's data future

AIIA supports in principle recommendation 9.1 - the introduction of a definition of customer data for the purposes outlined in the Draft Report and specifically in support of reforming data availability to increase the rights of consumers.

However, AIIA seeks greater clarity on the proposed definition, noting from the outset that there is already a level of uncertainty related to the definition of personal information as defined in the *Privacy Act 1988 (Cth)* (see Telstra v Australian Information Commissioner - the 'Ben Grubb case').

A clear and robust definition of Consumer Data is central to reforming data availability and increasing the rights of consumers. There is a risk that the lack of clear definition will lead to unnecessary costs imposed on industry - with little real value returned to the consumer.

AIIA recommends a workable definition limited to personal data and information relating to interactions/transactions such as payment data, frequency and historical data.

AIIA also supports in principle the Comprehensive Rights of consumers to access digitally held data held about them, although we would make the point that 'access to my data' issues can be challenging. The degree to which individuals are not only notified but are given the opportunity to participate in controlling the personal data that is collected, held and used, continues to be an issue of debate in many countries. While it is critical that data collected by organizations, both private and public, is accurate and timely in order to improve products and services, the process for gathering and storing this data is just as important.

While AIIA agrees that access of consumers is essential to improving data accuracy, such rights should be reasonable and assessed having regard to risk and cost. There should be some limits on the degree and means of access based on the extent and nature of the risk that data raises and the cost of providing that access. Logistical challenges associated with the ability to verify the identity of the person requesting access and determining which cases are frivolous versus those that have true merit also need consideration.

In the case of sensitive data or data that can be used to make a decision that affects an individual in some significant way, access to their specific information and the opportunity to correct, delete, challenge or amend the data is necessary. However, in cases where the use of that data will not result in a decision that significantly affects the individual, access should be limited.

AIIA would also make the point that data holders often 'add value' to the data they hold, leveraging internal and proprietary data analytics processes. In some cases the 'transformation' of this data will fall short of the threshold of not being re-identifiable (recommendation 9.1).

Given the implied definition of the Comprehensive Right (i.e., based on the definition of Consumer Data in 9.1), there is a risk that data holders will be disincentivised to innovate or create further value from the data on the basis that it may, at some point later, be transferred to a competitor.

There may also be a perverse incentive to transform data such that it does meet the threshold in order to avoid the need to grant access or transfer consumer data.

December 2016

The balancing of incentives to innovate and ensuring a new framework does not introduce perverse incentives that undermine the policy objectives of making data available must be given further consideration.

AIIA is also keen to clarity how the Comprehensive Rights relates to small businesses. AIIA believes it is important for the Productivity Commission to detail that small businesses also have rights to their data under the proposed framework.

It is also necessary to understand whether smaller data holders will be required to provide data in a portable, machine-readable format, or if there are size exceptions to the enforceability of the Rights.

In relation to Recommendation 9.4, AIIA seeks further details regarding the National Interest Datasets (NIDs) concept. In particular we are keen to understand how potential NIDs would be collected and shared, having full and appropriate regard of the commercial interests and incentives of entities that originated the data sets?

AIIA would also like to better understand how the joint right to data works as data moves away from its original source. Would multiple entities have joint rights to similar sets of data as each adds their own value to the data? How does the Productivity Commission foresee joint rights to data being enforced?

In relation to the access of 'Trusted Users' to NIDs, AIIA strongly recommends clear and transparent governance arrangements, particularly as it is assumed such 'users' will be nominated from public sector agencies.

While AIIA strongly supports the public policy objective of increasing the availability and use of data, consideration must also be given to balancing benefits and costs. For example, the Draft Report appears to make the assumption that the usefulness of a copy of the Consumer Data (which can range between 'of no use to the individual at all' to 'extremely useful to the individual') outweighs the costs to data holders for making the data available in the required format and timeframes and for government enforcement of compliance and dispute settlement.

Therefore, AIIA strongly encourages further cost-benefit analysis of, in particular the Comprehensive Rights element of the proposed future framework. This should include industry specific analysis. The implications and costs across different industry sectors will vary. It would be inaccurate and inappropriate to apply a generic one size fits all cost-benefit assumption across the board.

The potential compliance cost impost on small businesses and start-ups must also be clarified and assessed.

Other

AIIA would like to clarify a number of comments relating to 'offshore cloud services' in the Report which appear to imply that offshore cloud solutions are more risky and 'uncertain' for government and business customers.

The risks of outsourcing customer data handling to a service provider arises regardless of whether this occurs through remote access to a customer data centre, dedicated link to a shared or other third party administered data centre, or by 'as-a-service' provision from an onshore or offshore cloud provider.

The methodologies and standards for assessing, evaluating and mitigating outsourcing risks are already well developed in all instances. New capabilities do not need to be developed.

Given the increasingly high level sophistication, expectations and reputations of third parties managing customer data including cloud service providers), there is arguably more risk continuing

in house storage and management of data. In-house systems are often platform constrained and unable to fully derive economies of scale and scope. They are more vulnerable to legacy issues, generally costly to maintain and difficult to re-integrate with replacement systems.

Management of information security requires sophisticated and current information security skills. Typically these skills are most effectively and efficiently accessed through professional service providers.

Many as-a-service offerings such as enterprise resource planning, customer relationship management and other business process services are designed for global markets and used across many industry sectors. In fact, the risk of a customer being 'orphaned' on a legacy software system are significantly reduced by moving to widely available cloud services.

Competition of cloud based and other outsourcing services is increasing and with it, rapid innovation to improve services and reduce costs. The rapid expansion in availability and range of cloud based services also addresses concentration risk.

Further, cloud "as-a-service" providers (on-shore and off-shore) are increasingly offering interoperability and data portability as features of their products. Many make available secure mechanisms and gateways to facilitate data sharing with customer nominated third parties.

Concerns regarding dependency risks on service providers can be managed by ensuring customer data portability is appropriately included in contractual provisions.

For all these reasons, AIIA strongly advises that the Productivity Commission make it clear that both on-shore and off-shore cloud providers are treated on an equal basis.

Conclusion

AIIA is hopeful that over time, Australians will come to better appreciate the degree to which the collection and use of our collective personal data can improve our lives on everything ranging from more efficient public transportation systems to more reliable healthcare. AIIA predicts that services in virtually every sector of the economy will dramatically improve due to the accuracy of data collected, analysed and used to create new services for individuals, small businesses and communities.

AIIA applauds government empowering industry to find mutually agreeable outcomes for data availability and use. We strongly encourage the government to set some desired deadlines for when that work should be accomplished or evaluated by government.