

# Major 2021 Accomplishments, Highlights and 2022 Policy Directions

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When we think about global data protection policy we're looking towards where industry is going, not just where we've been. We're thinking about 2030, and we're pushing regulators to do the same.

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## Perspectives from the IAF Executive Office

*Barb Lawler joined Marty Abrams on the IAF executive team in 2021 bringing a more operational perspective to the foundation's policy research and education efforts. We reflect on key 2021 trends that will continue to impact information policy in 2022-23.*

**Marty:** Knowledge creation is a crucial and broad concept, and it is central to how organizations use data. Knowledge creation is everything that companies do with data to learn what they don't already know.

**Barb:** It includes using data to discover how to make your products and services work better and deliver more benefits for customers, and the messages that nudge consumers to buy them. It's how your products interact within an ecosystem of products created by others.

**Marty:** Knowledge creation doesn't typically have a specific legal permission as the basis for the use of the data. For example, in Canada, knowledge creation typically has been based on "implied consent." With more rigorous requirements for consent, the concept of implied consent has become tenuous. Data science is all about knowledge creation, and regulatory trends in the UK and Europe have raised questions about whether data science is permissible by anything other than consent. We have been tracking these issues since 2013, and as knowledge creation has become ever more important with the broad adoption of artificial intelligence, there has never been greater hostility to the process of data science.

**Barb:** That's why the IAF Model Legislation, THE FAIR and OPEN USE ACT, frames knowledge creation as an explicit legitimate use of data, and why the IAF has pushed for a new legal basis for knowledge creation in consultations in the UK and Europe.

**Marty:** The Model Legislation demonstrates how accountability-based legislation should and can optimize beneficial use of data while simultaneously minimizing risk of harm. It is intended to shape the ongoing debate (we don't lobby) and move discussions away from outdated concepts that we know don't work.

**Marty:** As we enter 2022, the IAF will lead a new project to define and socialize the principles, processes and controls to legitimize and make trustworthy knowledge creation.

**Barb:** It is increasingly clear that trust and "demonstratable" accountability is crucial for any organization with complex digitally-driven operations and business' use of data. An accountable ecosystem is based on many companies being able to demonstrate they have reached this accountable state. Regulator public comments, and the rhetoric around concepts such as "surveillance capitalism" and "data extraction," highlight significant gaps in perception of organizational accountability.

**Marty:** With these issues in mind, Barb initiated "The Path to Operational Accountability" project this year.

**Barb:** We brought members together to describe the onslaught of complexity that privacy officers juggle while leading accountable programs. We will continue this path in 2022. The outputs of this project are necessary to support public policy that underpins trusted rigorous data use and innovation excellence.

**Marty:** We as a community have been discussing global data flows since the EU Data Protection Directive in 1995, a dialog between the U.S. and the European regulatory community parsed what adequacy means for private sector organizations. Yet 25 years later, managing global data flows is more complex and vexing than ever.

**Barb:** Schrems II elevated the operational complexity for organizations of all sizes. In addition to the difficulties added by Schrems II are the data localization requirements in China, India and other jurisdictions. The IAF has been opportunistic in the issues it has focused on and published papers on HR data and Schrems II.

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**Marty:** We will continue the long focus on global data flows. Ultimately the solution lies in global agreements for accountability when governments request data. There are numerous roads forward, at the G7 and the OECD, but all have potholes that need to be patched or avoided. We will be selective and proactive in providing the patches for those potholes.

**Barb:** Lastly, we believe a new generation of data protection law and regulation is inevitable. We see ongoing debate in the U.S. Congress and concurrent efforts by the FTC to define what a modern approach to privacy is for Americans. In many ways Singapore has started that process with reforms to the legitimate interest exemption to consent based on robust accountability. The UK consultation on “Data: A new direction” raises key issues such as the difference between fair process, fair processing, and fair outcomes.

**Marty:** Multiple European data initiatives will trigger a confluence of enforcement jurisdictional issues and friction between data protection and national digital ambitions.

**Barb and Marty:** We’d like to thank our members for their ongoing support of the IAF’s policy education and research initiatives. Many thanks to the IAF team for delivering outstanding policy work in a challenging year: Stephanie, Peter, Lynn, Marc, Stan and Nancy. Please join us as we explore these issues in 2022.

The IAF recognizes the appeal of simple solutions but difficult digital challenges that evolve in real time cannot be solved with a short, simple solution. At IAF we don’t run from complexity. We embrace it.

## IAF 2022 Priorities

- Lead a Knowledge Creation Oversight Norms Project
  - Create a set of principles, procedures and controls to facilitate a “legal basis” or “legitimate use” for knowledge creation, for use by stakeholders – in business, governments and beyond.
- Repurpose key concepts from the FAIR and OPEN USE ACT for FTC rule making on data extraction and surveillance
  - Important because it gives policymakers the accountability-based concepts and specific legislative language needed to create accountability-based legislation, that can and should optimize beneficial uses of data while minimizing risk of harm.
- Opportunistic engagement with policymakers and regulators related to the use of data to create new insights
  - An evergreen priority, because the IAF understands that difficult digital challenges don’t need simplistic solutions based on outmoded concepts, and therefore we will continue to advance meaningful accountability-based solutions.
- Be consultative to the public policy process as next generation laws, such as revisions in the UK, EU and other jurisdictions become inevitable
  - At the IAF we are continually thinking about the digital opportunities and challenges of 2030 and policy solutions aimed at the future.
- Continue Path to Operational Accountability project and use outcomes as evidence points for regulatory discussions
  - This project will provide a substantive educational toolset designed to directly contribute to public policies that underpin trusted rigorous data use. It will also be made available as a resource for member companies.
- Bridge the polarization between progress of AI and other advanced analytics and sense that an observational world is an existential risk
  - A critical focus area, as we see rules impacting robust data use, AI and fair processing coming not from the data protection community, but from AI-focused organizations and initiatives.

## 2021 Research Reports

[IAF Model Fair and Open Use Act- May 2021](#)

[Guiding Risk Principles for IAF Model Legislation](#)

[Fair Processing Stewardship Elements- Table](#)

[Evolving AI Impact Assessments \(AIA\)](#)

[The Road to Expansive Impact Assessments](#)

[Addressing Human Resources Data Flows in Light of European Data Protection Board Recommendations](#)

Frameworks based on risk assessment and effective information governance will enable beneficial, data-driven innovation while protecting individuals and society from the myriad potential harms that may arise from data processing in the digital age.

## 2021 Research Reports *(continued)*

[HR Transfers to the United States Post EDPB Schrems II Final Guidance](#)  
[A Path to Trustworthy People Beneficial Data Activities](#)  
 Risk of What – 2021 Fall Workshop Report – ***Development in Progress***

## 2021 Public IAF Comments

[UK DCMS Consultation on Revising UK GDPR](#)  
[Response to the California Privacy Protection Agency CPR](#)  
[EU Proposed AI Regulation](#)  
["Modernizing Privacy in Ontario"](#)  
[ICO Consultation on International Transfers](#)  
[ICO Direct Marketing Code of Practice Comments](#)

## IAF Events

### Spring Summit and Fall Policy Workshop

The *Spring Summit* focused on “Mapping a Pathway for Functional Accountability through the Data Protection Chaos”. During three two-hour sessions the IAF community explored the resources needed by all stakeholders to make an accountability-based ecosystem work, examined the hard operational choices leaders must make when new requirements overwhelm old ones, and debated whether glass-breaking legislation is possible in an incremental world, and if not, whether innovation and fairness can function if glass isn’t broken.

The *Fall Policy Workshop* purpose was to explore what risk means to policymakers and regulators, where the IAF view is that procedural requirements will preempt the digital future unless we define the parameters for risk analysis. Policymakers and regulators around the world are explicitly asking “Risk of What” as they evaluate the effectiveness of their regulatory environments. The goals were to describe and broadly categorize the specific risks that accountable fair processing legislation and policymaking should address or resolve. The workshop deliverables are twofold and currently under development by the IAF team.

\* “Fair Processing and Risk of What” Guide, containing key talking points for use by your internal team and external policy/government affairs group.

\* “Fair Processing and Risk of What” Report, which can be used by you, and will be used by the IAF for policymaker and regulator education, and to further IAF research.

**IAF Chats are held two Thursdays a month.** They are an informal forum to share current topics.

## Organization

### Relocating the Home Office

The IAF Home Office moved from Plano, Texas to Elk Grove, California in the fall of 2021. The IAF remains a registered non-profit think tank in the state of Texas, USA.

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