

Major 2022 Highlights and 2023 Policy Directions

Perspectives from the IAF Executive Office:

In 2022 we saw increased pressure and scrutiny on digital economy activities, from AI applications, to AdTech, from increased cybersecurity threats to international data transfers, and crucial issues arose about individual body autonomy and safeguarding our youth. Here or just around the corner is the activation of several U.S. State privacy laws plus anticipated legislation in Canada (C-27) and the UK, and European Regulation (Digital Services and Digital Marketing Acts). The U.S. Congress renewed its evergreen debate about Federal Privacy Legislation. It is against this backdrop that the IAF's policy work is focused on reframing, enhancing and modernizing long-standing principles about risks to people, challenges in corporate research and knowledge discovery, and proportionality in three dimensions. We are bringing governance to the forefront of executive conversation – centering on data sustainability and organizational resiliency – while keeping accountability at the core.

- Barb Lawler and Marty Abrams

Maintaining the Digital Innovation Path



The IAF believes it's critical that accountable organizations be able to think with data and engage in knowledge discovery and creation, within accountable frameworks, in order to achieve a trusted global digital ecosystem. The pathway to innovation is clear. There needs to be permission to originate and use data and transform that data to usable information. That information is then processed to create knowledge in the form of predictions that maximize a set of objectives. Those insights are then used to make decisions or take action that are within the bounds of legal and ethical behavior. Break the path at any point, then actions taken will be less than optimal. Bad decisions, or even the reluctance to take actions that should be taken may harm people. There are no new actions such as cancer therapies, smart car safety, pollution abatement, and specialized education without the ability to think with data to create knowledge. Brightline rules tend to block the people beneficial uses of data as well as the bad. There needs to be means to differentiate good behavior from bad. All IAF research and education endeavors are focused on furthering the ability for demonstrably accountable companies to use to data pertaining to people to maintain the Data Innovation Path. IAF projects triangulate around this core concept.

Risk of What, Knowledge Creation, and Multi-Dimensional Proportionality Triangulation

The IAF is focused on the triangulation of Risk, Corporate Research and Proportionality to address the policy and strategy concerns of IAF members and community. Businesses are seeking more certainty when using data and advanced algorithmic processes to improve corporate operations and uncover benefits to people, groups and society. We began the year with the learnings from the "Risk of What" project that risk is in the eyes of the stakeholder from their perceived worst-case scenario.

As part of the “Risk of What” project we began to graphically represent stakeholders so their interests might be recognized. Stakeholder analysis is not new to the IAF. For a number of years, the team has been developing assessments based on the concept of multi-stakeholders. This has always been wedded to the IAF’s early work on the difference in risks associated with thinking with data – general research, versus acting with data, and the decisions and actions that organizations take that impact people.

The pandemic and acceleration in AI drive the need for a modernized definition of proportionality. The “Risk of What” project provided a pathway forward to recontextualizing proportionality. The IAF team began to look to graphically represent the full range of fundamental rights and interests impacted by processing, not just privacy and data protection, and began to associate those rights and interests with stakeholders. One also graphically incorporated the “Adverse Processing Impacts” identified as part of the IAF model legislation. It became crystal clear that the Multi-Dimensional Proportionality work linked with the Knowledge Creation and Risk of What work. Those concepts will be developed and workshopped in 2023.

Regulators over the years have run hot and cold as it relates to differentiating thinking with data from acting with data, with a correlation to how the regulator balances data subject rights and the full range of stakeholder rights and interests. IAF Strategists Lynn Goldstein and Peter Cullen in 2022 explored how companies govern internal research, knowledge creation, how that is permitted within data protection law. Artificial Intelligence begins with a research design phase – setting purpose and goals, yet that is not consistently applied at companies. To reap the full benefits of advanced analytics such as AI, there needs to be a demonstrable process that will be seen by regulators and others as trustworthy. Lynn Goldstein and Peter Cullen are exploring how this might be associated with the growing interest in regulatory sandboxes.

Data Minimization Is Not the Simple Answer to Complex Processing Anxiety

Data minimization was a simple and straightforward principle to apply in the early days of privacy and data processing of the 1970s, 80’s and 90’s. Data was hard to collect, expensive to transmit, limited in scope, inflexible in its processing, and costly to store. Fast forward 50 years and the global ecosystem generates massive amounts of observed data, bandwidth speeds are instantaneous, voluminous storage relatively cheap, and computer processing resources abundant. The ever-expanding nature of the digital society and the recognizable potential adverse outcomes have created a nostalgia for data minimization as a simple solution. The problem is there is nothing simple or straightforward about data minimization in a 21st century global digital ecosystem. The minimal amount of necessary data is relative to the legitimate objectives and data lifecycle of the organization. An IAF member referenced this “relativity” as the “journey to data minimization.” For example, fair AI requires abundant data sources, often about protected classes of people, to drive machine learning so that bias and discrimination might be avoided. The same is true for security and anti-fraud monitoring, where AI-based decisions and actions require much more restricted data sets. Risk mitigation becomes part of the data minimization equation. The policymaker desire for simple answers will not disappear, so the IAF team will give explore giving shape and definition to the journey to minimization.

Fair AI

AI is being used for an incredibly wide range of beneficial applications by organizations, some aimed at mundane organizational efficiency, while others seek to solve profound societal problems. It is being used for such things as to improve customer service chat bots, automated car braking, diabetes monitoring, detecting financial fraud, and securing global networks. Fair AI is a legislative

issue in all geographic regions such as Europe with the EU AI Regulation, Canada with the Artificial Intelligence Data Act, and from individual U.S. States. Policymakers are trying to capture AI that may have extremely harmful consequences for some, without burdening AI being used for non-sensitive purposes. That is a laudable goal. However, organizations need to understand the stakeholders impacted by AI, and what the adverse processing impacts are, before the level of risk associated with AI might be determined. That might be light touch in theory, but it requires rigorous demonstrable processes, such as supported by the NIST AI Risk Management Framework. Furthermore, fair AI often needs massive data flows to be fair, both for training and monitoring. The IAF's projects on Multi-Dimensional Proportionality and Knowledge Creation are aimed at resolving this dilemma.

Legislation

The IAF developed the [FAIR AND OPEN USE ACT](#) primarily for U.S. Federal audiences. However, its components have applicability in almost every jurisdiction, beyond the U.S. States, such as Canada and the UK. Those components include adverse processing impacts, parameters for assessing and measuring risks, and demonstrable accountability. In 2022, the IAF placed the emphasis on adverse processing impacts in our policymaker education. Adverse processing impacts will be important in 2023 as well, but there will be greater emphasis on demonstrable accountability.

More Sophisticated Enforcement by More Enforcement Agencies

The days of spotty and sporadic enforcement cases are over. Not only were there more cases in 2022, those cases were more sophisticated in scope. Late December 2022 the FTC announced a record-breaking settlement with Epic Games of \$520 million and placed executive-level controls against Drizzly and its CEO. Already in January the Irish DPC fined Meta 390M Euros over the legal basis for personalized ads and WhatsApp 5.5M Euros over transparency and consent issues, and the Canadian OPC fined Home Depot for similar transparency and consent issues; California is conducting multiple CCPA compliance sweeps for mobile apps and cookie consents, and Illinois is aggressively pursuing violations of the state's Biometric Information Privacy Act (BIPA).

Agencies are now looking beyond the policy and procedural documentation for decisions and executive accountability, including communications between executive decisionmakers. The IAF has also seen an acceleration of cases now that the GDPR is in its fifth year, with new mechanisms for the EU supervisory authorities to reach consensus on market-wide cases. DPAs are taking a harder line, focusing like a laser on the fundamental right privacy, even where other rights are in play.

For years there has been a demand that agencies enforce the law at a level that would encourage organizations to make wise, balanced choices about what they do with data. Agencies' increased sophistication is a real plus in enforcing on edge riders. However, enforcement means looking at the full range of rights and interests in play, and agencies, based on what we actually see, rarely do so.

The hope was that enforcement would lead to better governance. However, governance requires looking at the impact to all stakeholders in using and not using data. The IAF will continue to encourage through its education mission that companies have in place the robust processes to assure data serves people. It will also continue to encourage that regulators to have mechanisms to look at the full range of stakeholder rights and interests.

Rational Data Transfer Mechanisms

Thirty-eight OECD member states and European Union in December 2022 agreed to the "OECD Declaration on Government Access to Personal Data held by Private Sector Entities." This took place as the European Commission released the preliminary adequacy decision related to the EU-US Privacy Framework. There is now a set of principles in place, to assist governments in creating

accountability when governments request companies for their data. The EU preliminary adequacy opinion, in great detail, provides a description of what the OECD principles mean in the U.S.

There are indications that privacy regulators in many jurisdictions aren't there yet. For example, there is draft BCR document, out for comment, that takes a hardline on the possibility of government access to data, rather than the probability. And the European Union Court of Justice still requires some persuasion. However, the IAF, in its encouragement of the governed free flow of data, is more optimistic than it has been for some time that the free flow of data is still possible.

IAF Operational Changes in 2022

During 2022, the IAF completed a full rebranding and restructuring of its website and publications page. We chose to evolve the Executive Office - Barbara Lawler has taken the lead as IAF President, while Marty, as Chief Policy and Strategy Officer, focuses on near term and long-range strategic policy issues. Six new member companies joined the IAF in 2022.

We continue to seek new members – please contact Barb about potential new members.

- Board-level members contribute \$60,000+ annually to the IAF. The board provides strategic direction and focus to the IAF, in addition to supporting IAF research and education projects.
- Other companies contribute \$30,000 annually to support the IAF's initiatives, research projects and work on Accountability.
- Some companies contribute specific dollar amounts to designated projects.
- Very small organizations may negotiate custom funding arrangements.

We thank our members, community and IAF team for their dedication, commitment and support.
Our Team is: Stephanie Pate, Peter Cullen, Lynn Goldstein, Marc Groman, Stan Crosley, Nancy Lowrance.



2022 Research Reports

[A Principled Approach to Rights and Interest Balancing \(December 2022\)](#)

[Risk of What Report v1 \(April 2022\)](#)

[Adverse Processing Impact and Defining Risk \(April 2022\)](#)

2022 Public IAF Comments

[IAF Comments on FTC ANPR on Commercial Surveillance \(November 2022\)](#)

[IAF Comments to Brazilian LGPD International Transfer Requirements \(July 2022\)](#)

[IAF Comments to the Colorado Attorney General on the Colorado Privacy Act Stakeholder Sessions \(August 2022\)](#)

[IAF Comments to the California Privacy Protection Agency Stakeholder Sessions \(May 2022\)](#)

[Adverse Processing Impact Definition from IAF Fair and Open Use Act \(February 2022\)](#)

IAF Events

Monthly Policy and Strategy Calls (On the third Thursday of the month)

Thursday bi-weekly Policy Chats (open topics)

Annual Retreat: Wednesday June 21, 2023, Palo Alto, California

Find us at: <https://informationaccountability.org>

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