

SOCIAL CLIMATE CHANGE AT THE 40TH DATA PROTECTION COMMISSIONER'S CONFERENCE

By: Annelies Moens

Participating in the jointly hosted 40th Data Protection Commissioner's Conference in Brussels and Sofia this year was a rewarding experience – one of the best Data Protection Commissioners' conferences I have attended from both speaker and content perspectives. Global perspectives came through with issues beyond the EU and USA keenly debated.

The new meme from this year's conference was that of 'social climate change' – there were no holds barred as a diverse set of speakers spoke up against the tech industry's manipulation of individual data without betterment of society. Google and Facebook wore much of the criticism, but came out to defend and explain improved practices with presentations from their CEOs for the first time at the Data Protection Commissioners' conference (albeit by video).

Giovanni Buttarelli, the European Data Protection Supervisor, and Ventsislav Karadjov, Chairman of the Commission for Personal Data Protection of Bulgaria and Deputy Chair of the European Data Protection Board and their staff were instrumental in making this conference themed 'debating ethics: dignity and respect in data driven life' a stand-out event. They deliberately chose not to have sponsors involved.

There were so many great speakers and ideas that I can only summarise a few of them here. If you would like to find out more, please contact me.

The Tech Turn Around

Tim Cook, CEO of Apple, led the tech industry's turnaround and acknowledged that our data is weaponised against us every day. Decisions are being made daily based on our data that is traded and sold and companies know us better than we know ourselves. Our preferences are being hardened into convictions and customised content reinforces that. Our world views are being narrowed – "if green is your favourite color, you may find yourself reading a lot of articles – or watching a lot of videos – about the insidious threat from people who like orange". This should make us uncomfortable and unsettle us.

Tim Cook said, "we won't achieve the potential good of technology without the trust of users. We must keep asking ourselves a simple question – what kind of world do we want

to live in?" This is the same question I asked Directors during my presentation at the annual AICD Governance Summit earlier this year. "We need to build core human values and ethics into our products and services. We must keep individuals at the centre and build technology that respects human values, including privacy and security." See: ["Data is your organisation's core business: Are you prepared to govern it?"](#)

Apple, along with Google and Facebook voiced their support at the conference for a Federal Privacy Act in the USA. To see the full transcript of Tim Cook's speech at the conference please click [here](#).

Our Asian Neighbours

India:

Former Chief Justice of India, Jagdish Singh Khehar spoke about Aadhaar, the Indian biometric identification system, focusing on the [26 September 2018 decision](#) of the Supreme Court of India which sought to apply the three tests from the [Puttaswamy](#) decision in August 2017 that recognised a constitutional right to privacy. For any invasion of life or personal liberty, three requirements must be met including: (1) the existence of a law, (2) a legitimate State interest; and (3) the said law should pass the test of proportionality – i.e. proportionality of the legitimate State interest with the objective being sought to be achieved.

The *Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016* (Aadhaar legislation) was found to be constitutional and not a violation of the right to privacy, though certain aspects of the legislation were held to be unconstitutional and were struck down. In particular, section 57 of the Aadhaar legislation to the extent it permitted use of Aadhaar by the State or any body corporate or person, pursuant to any contract was held to be unconstitutional and void. This effectively means that Aadhaar cannot be used where contract is the mere basis for the transaction, which particularly [affects the private sector](#). This is not dissimilar to (though potentially more stringent than) Australian privacy legislation where APP 9.2 requires that government related identifiers cannot be used or disclosed by the private sector, unless one of many exceptions are met, such

as verification of identity in APP 9.2(a). It will also be interesting to see whether the decision affects thinking around the National Facial Matching Biometric Capability in Australia and its potential application in the private sector, and Australia Post's Digital ID which already services the private sector.

China:

Clement Yongxi Chen, Research Assistant Professor at the Faculty of Law, University of Hong Kong and Malavika Jayaram, Executive Director, Digital Asia Hub spoke about the new social scoring system in China, which affects the daily lives of billions of people (both positively and negatively). Clement was of the view that the system restricts human agency and autonomy and that a right not to be profiled is required in China. Malavika was concerned with the fundamental issues around mobility, gender, things that you can't change, and the inferences that technology makes (whether rightly or wrongly). The social scoring system in China determines whether people can take transport (such as planes and trains), how easy or difficult it becomes to access services, and every day interactions (ie good score: easy access, bad score: no or limited access). As such, privacy impacts the level of other freedoms. On the flip side, it is also seen as a system that is meant to increase trust and reduce bad behaviour and non-compliance.

Thought leadership

Tristan Harris, co-founder of the Centre for Humane Technology spoke on technology undermining the social fabric. He is an advocate for redesigning technology to be more humane. The new centre based in San Francisco is working to change technology platforms that exploit human psyche such as enable addictions, undermine social relationships, spread propaganda, and manipulate children.

This theme was echoed by other speakers including a keynote video address by Jaron Lanier, the author of "You are not a gadget", "Who owns the future" and "Dawn of the new everything". Jaron spoke about the advertising model not being aligned with what customers want or with regulation. He said it was akin to a hypothetical car industry world where you are only allowed to drive to certain stores. Whereas, safety in cars was something on which more stakeholders could align. He was also of the view that battery life in mobile phones would last longer if there was less spying. We pay extra to enable data manipulation and spying on our phones. There is also a massive carbon footprint attributable to surveillance and bloatware in phones and other platforms.

Regulators Partnering with Industry and Civil Society

A highlight in Sofia was the fintech panel, especially as Bulgaria is positioning itself as a major IT hub with many international companies outsourcing their IT needs to Bulgarian companies. Through the help of its fintech sector, Bulgaria has burgeoning electronic commerce, electronic governance and electronic identification systems under development. Anecdotally, one of the fintech participants advised me that the electronic identification system helps individuals ensure their ID is not misused. For example, a politician experienced this when a hotel he had stayed at sold his ID information to a hospital. That hospital then falsely admitted him as a patient to claim government funding. This fraud was discovered because the individual politician had an alert to let him know when their ID was used and by whom. This type of approach has also been recently recommended by the [Australian Strategic Policy Institute](#), ie: "providing citizens with an online log every time their personal information is accessed by any arm of government or the private sector, and with a one-click process for contesting any access they believe may be unauthorised". The Commission for Personal Data Protection of Bulgaria is partnering with the fintech startups through the Sophia Lab to ensure privacy by design is built into new innovations.

Isabelle Falque-Pierrotin, Chair of the ICDPPC Executive Committee, also communicated to delegates that the data protection authorities during the closed session agreed to consider setting up a [consultation platform](#) to include external stakeholders, in particular civil society organizations, to facilitate dialogue on regulator activities and preparation for the annual conference. She said it is important to give a voice to civil society and create a permanent link through such a structure.

Giovanni Buttarelli will be missed by many when he leaves his role – standing ovations to him and his staff marked the end of the 40th data protection commissioners' conference – a conference marked by great social climate change.

As this is the final edition of Privacy Unbound for iappANZ before winding up after 10 successful years, I would like to take the opportunity to thank all my fellow co-founders who founded iappANZ in 2008 and subsequent Board members. It was a pleasure to be on the Board for the first six years. Together, we made this Association one we can all be proud of as the catalyst for developing and recognising privacy professionals in Australia and New Zealand. I look forward to IAPP serving the needs of our profession in the region going forward.



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Annelies is a widely recognised global privacy expert and thought leader, trusted by business executives, government and privacy professionals with nearly 20 years' experience. She has a tremendous depth of experience on privacy issues at the national and international levels.

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