



eBay and PayPal's response to the Proposed Consumer Data Protection Regime for Singapore

ABOUT EBAY INC.

As the world's leading ecommerce company, eBay Inc.'s global portfolio of businesses, including eBay and PayPal, enables hundreds of millions of people to buy, sell and pay online.

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With more than 97 million active users globally (as of Q2 2011), eBay is the world's largest online marketplace, where practically anyone can buy and sell practically anything. Founded in 1995, eBay connects a diverse and passionate community of individual buyers and sellers, as well as small businesses. Their collective impact on ecommerce is staggering: In 2010, the total value of goods sold on eBay was \$62 billion -- more than \$2,000 *every second*.

ABOUT PAYPAL

With more than 100 million active registered accounts worldwide (as of Q2 2011), PayPal has made it possible for individuals and businesses to pay and get paid online across different locations, currencies and languages. Responding to the eBay community, which had quickly adopted PayPal as its preferred payment method, eBay Inc. acquired the company in 2002. Since then, PayPal's customer base has grown, both on eBay and across e-commerce. Having built a single global payments engine that has some of the best risk and fraud detection capabilities in the payments industry, PayPal continues to be one of the leading ways to pay online. Today, PayPal is available in 190 markets, 24 currencies, and is accepted by millions of online merchants around the world.

eBay and PayPal welcome the opportunity to comment on the questions posed and some of the issues laid out in the Consultation Paper on the Proposed Consumer Data Protection Regime for Singapore (the "Consultation Paper").



Questions in relation to objectives and principles of proposed DP Framework:

Question 1: Do you have any views/comments on the impact of the proposed DP law on specific sectors? Do you have any suggestions on measures to mitigate this or any other anticipated impact?

Question 2: With reference to paragraph 3.8, do you have any views/comments on the concurrent application of the DP law with existing sectoral regulations?

In general, we are very supportive of MICA's efforts and much of the concepts being discussed are in line with eBay & PayPal's global approach to privacy. We have a strong track record of innovating to empower our users to protect their own privacy online. With Privacy and Security as a backbone of all eBay Inc.'s portfolio of businesses, we look forward to continuing development of a Singapore Data Protection law and would be happy to assist with further refinement of the consumer Data Protection regime.

We are heartened by MICA's acknowledgement of the need for balance between trends in Europe and US, such as a stricter, but often impractical, regulation with the need to keep business costs manageable. We also appreciate that strengthening Singapore's overall economic competitiveness and enhancing its status as a trusted hub for global data management is given equal priority status to ensuring appropriate safeguards for consumer data, and the recognition that, to achieve a positive economic impact, any legislation should facilitate data flow rather than impede it.

We believe the adoption of a general baseline law to ensure a minimum standard of data protection, accompanying the existing sector-specific legislation is a positive step towards engendering consumer trust while providing flexibility.

Questions in relation to the definition of "personal data":

Question 3: Do you have any views/comments on the proposed definition of personal data outlined in paragraphs 3.9 to 3.11?

The proposed definition of personal data and paragraph 3.10 referenced definitions adopted by Canadian and UK DPAs. It is also consistent with how eBay and PayPal classifies personal information.



At the same time, we also agree with MICA's view that what constitutes personal data is context-specific and with continuous technological developments, would render efforts to populate a definitive list of personal data types unfeasible.

However, when the DPC publishes the DP guidelines, it should make clear that uniqueness should not be associated with identifiability, as eBay and PayPal employ de-identification or encryption techniques to protect the privacy of their users. The data is still unique and research can be conducted that leads to innovation and fraud prevention, but it is not as likely to be used to directly identify an individual.

For example, an encrypted PayPal ID with various account attributes and segment data whose true identity is only known by PayPal and not by a partner. This information has been anonymized and is not considered personally identifiable by the partner as the information could not be used to directly identify an individual by any 3rd party or a partner. Therefore, it should not be considered personal data.

eBay and PayPal do not have comments as to whether the DP law should cover deceased individuals.

Questions in relation to the organisations and activities covered by the DP law:

Question 5: Do you have any views/comments on the proposed organizations covered by the DP law?

Question 6: With reference to paragraphs 3.20 to 3.22, do you have any views/comments as to whether the DP law should extend to organizations located outside Singapore, so long as they engage in personal data collection or processing activities in Singapore? Do you have any suggestions as to how this DP law could be implemented if it should apply to such organizations?

We agree with the pragmatic approach that limits the coverage of Singapore's DP law to all data collection and processing by organizations in Singapore, and not beyond its borders. Given the pervasiveness of the Internet (which is global in nature), we echo MICA's view that there would be practical difficulties in enforcing the DP provisions on organizations located outside Singapore.

Where users had agreed to eBay and/or PayPal's user agreement, their personal data would already be subject to protection under the prevailing DP laws of that jurisdiction.

In this regard, we believe data collected by the Singapore, such as PayPal's 3PL's collection of user data, may be subject to the law since a physical presence in Singapore is maintained. However collection of a Singapore resident's personal information by a foreign entity, for example, eBay International AG, should not be



subject to the law since there is no physical presence and the protection of personal information would already be governed by Switzerland laws.

Questions in relation to the general exclusions from the DP law:

Question 10: Do you have any views/comments on the proposed general rules under the DP law?

Question 11: With reference to paragraph 3.35, do you have any views/comments as to whether individuals should be deemed to have given consent for organizations to collect, use or disclose their personal data if they are notified and given reasonable time to opt out but do not?

Although it may be reasonable to require that “an organization may not, as a condition of supplying a product or service, require an individual to consent to the collection, use or disclosure of personal data *beyond what is necessary* to provide the product or service,¹ it should be understood that this limitation should not preclude the possibility of improvements to the same products or services, which ideally will not trigger a separate consent requirement. We believe that if collection goes beyond the stated privacy policy a “just-in-time” notice should be considered adequate.

Regarding the possibility of adopting an “opt-out” approach, we are proponents of an opt-out regime whereby our users are provided with adequate notice prior to providing their personal information.

We support measures to provide individuals with control of personal data, such as the option to withdraw consent described in Paragraph 3.36. We have products and services in place to allow users to opt-out of receiving marketing communications from us or participate in our ad-customization programs. They can simply indicate their preference by logging into their account and going to the Profile sub-tab under the My Account tab and adjusting their preferences under Account Information, or by following the directions provided with the communication or advertisement.

However, we would like to point out that the provision that allows an individual to withdraw his consent to the collection, use or disclosure of his personal data may too broad. Ideally, we should be able to retain the ability of collection and flexibility of using data for non-commercial uses, such as security, Trust and Safety, and fraud detection.

¹ §3.31



Additionally, we should be able to retain data in compliance with applicable law and would no longer collect additional information about the user. Practically speaking, withdrawing consent would also result in the closure of a user's account.

Questions in relation to the proposed rules on collection, use and disclosure of personal data:

Question 12: Do you have any views/comments on the proposed rules on collection, use and disclosure of personal data?

Question 13: Do you have any views/comments on the proposed exceptions to the rules on collection, use and disclosure? Should an exception be provided for organizations to collect, use and disclose an individual's personal data for the purposes of identifying him or her as a member, or for circulation within the organization? Are there any other exceptions that should be provided?

Question 14: Do you agree with the proposed approach to the transfer of personal data outside Singapore outlined at paragraphs 3.60 to 3.61?

We are supportive of the inclusion of an *accountability principle* which will ensure that there will be internal mechanisms in place for demonstrating such compliance.

The accountability principle should also require that organizations be transparent with their users regarding the collection, use and process of the collected personal data.

However, for paragraphs 3.38 and 3.41, it might be more practical to disclose business contact information, such as that of a customer care team, as alternatives to an "officer" or "employee". This is especially important for businesses with millions of users. What is important is that the user be provided with a means to contact the controller of the information.

Paragraph 3.38 would be problematic for an internet-base company like eBay and PayPal, if the individual must be named to the public. While internally, a Data Protection Official could be appointed, the geographical location of the official should not be limited (e.g. eBay Inc.'s Global Privacy Office in San Jose).

A functional "contact us" form or general email address such at privacy@paypal.sg should be considered adequate rather than an individual.

eBay and PayPal agree that Singapore should adopt a flexible approach to allow cross border data flows where similar principles have been adopted or are agreed to, such as the principles articulated in the OECD and APEC forums.



Questions in relation to the proposed rules on access to and correction of personal data:

Question 16: Do you have any views/comments on the proposed rule on access to and correction of personal data?

We agree with the proposed approach especially that was raised in paragraph 3.73.

As we state in our privacy policy, users can access much of the information we store about them via their account profile page. Likewise much of the information may be updated via the same means.

In general, as stated in our “Privacy policy” that is easily searchable online, user’s information personal information is primarily collected to ensure a secure, smooth, efficient, and customized experience on our websites. It can also be used for the following purposes:

- provide the eBay/PayPal Services and customer support as requested by user;
- process transactions and send notices about user’s transactions
- resolve disputes, collect fees, and troubleshoot problems;
- prevent potentially prohibited or illegal activities, and enforce our User Agreement;
- customize, measure, and improve the PayPal Services and the content and layout of our website and applications;
- deliver targeted marketing, service update notices, and promotional offers based on your communication preferences;
- compare information for accuracy and verify it with third parties.

However paragraph 3.69 requires that corrected data be sent to third parties who may have received the data. In the context of a PayPal or eBay transaction, this would not be feasible.

Users should only have the right to view the information a company retains about them so long as it is commercially reasonable and requests are not abused. Limited information may be redacted to help ensure privilege, confidentiality, security and/or the identity of a third party.

As such, we seek further discussion on **the extent** to which MICA expects Service Providers to provide individuals with information about the ways in which personal data has been and is used by the organization.



Some of this information is proprietary and confidential in nature. Subjecting them to an access request and would create an unreasonable burden on a company to provide such detailed information.



CONCLUSION

Thank you again for the opportunity to provide comments. We hope that our above comments are useful to you in your preparation of the bill.

Please do not hesitate to contact Isabelle Neo from Singapore at isneo@ebay.com should you require further information on the contents of this submission.

Yours sincerely,

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