



30 April 2012

**EBAY & PAYPAL'S RESPONSE TO THE
PROPOSED PERSONAL DATA PROTECTION BILL (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.

ABOUT EBAY

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.

PayPal is headquartered in San Jose, California. Its European Headquarters is in Luxembourg and its international headquarters is located in Singapore



eBay and PayPal appreciates the opportunity to comment on some of the issues laid out in both the Public Consultation Paper issued on 19 March 2012 and the current draft text of the Personal Data Protection Bill (“the Bill”).

We believe that having a data protection regime in Singapore goes a long way to boost consumer confidence in ecommerce and online payment services, and we are supportive of a DP regime that creates a balance between the need to protect individual’s personal data against an organization’s need to obtain and process such data for legitimate and reasonable purposes. As such in language and implementation, the law to prevent the misuse of personal data should not impede the industry’s capacity to innovate with the use of information that will benefit society.

A modern framework would recognize that data collection is necessary in the normal course of business for operations, especially for companies in the internet or ecommerce industry. For instance, organizations need to collect data for numerous reasons such as to understand user behavior, improve site design, fraud detection, security defense, billing, delivering targeted advertising, or comply with auditing requirements. It needs to recognize that businesses depend on the use of personal data, in order to maintain and enlarge their customer base and effectively manage the delivery of products and services, which their customers in turn appreciate.

We are encouraged that MICA has incorporated substantial inputs from the previous consultations, and we think that the Bill generally succeeds in adopting language implementing its stated intent.

It is with the above in mind that we submit the following views so that further improvements may be made in FIVE key areas, as follows:

1. Definition of Personal Data

The Bill now defines “Personal Information” as data, whether true or not, about an individual who can be identified

- (a) From that data,
- (b) From that data and other information to which the organization is likely to have access.”

MICA has replaced the phrase “identifiable individual” with “who can be identified” which seems to provide more consideration to its context. However, we believe that the new definition may still be overboard and would propose that Personal data be defined pragmatically, **“based on the likelihood of identification” or “data, whether true or not, which can be reasonably identified”**.

While it is possible for an organization like PayPal or eBay to possess data that, with the application of sufficient technology and resource, could identify an individual, but nonetheless in the context of its collection of data, the organization could not reasonably be expected to take



the requisite steps towards identification due to the cost of it and the massive volume of data involved.

2. Distinction between “Data Controller” and “Data Intermediary”

The new consultation paper saw MICA defining a category of organizations called the “*Data Intermediaries*” which are “*organizations that process personal data on behalf of another organization but does not include an employee of that other organization*”. A “Data Intermediary” will not be subject to the general rules on protection of personal data and the same obligations that a “Data Controller” will be.

The Bill seems to suggest that the liability of breach by these “*Data Intermediaries*” will inevitably fall onto the “*Data Controller*” in Sec 4(3), which makes it too onerous a requirement on the “*Data Controller*”. Does this mean that it is necessary for “*Data Controllers*” to take all of these services in-house to ensure effective control? As eBay and PayPal outsources some of our data management and storage services (eg. Customer, operations support centers etc), we are extremely concerned about the unequal liability that may potentially fall on us in the event “*Data Intermediaries*”.

This should go beyond the contractual agreement between a “*Data Controller*” and a “*Data Intermediary*”, as the liability of breach by the “*Data Intermediary*” may result in severe loss in reputation and trust that consumers have on the “*Data Controller*” (not to mention the penalties imposed by this Act). Without at least a baseline requirement to ensure that “*Data Intermediaries*” do not fall short of their contractual promises to the “*Data Controller*”, this provision would be extremely burdensome on the “*Data Controller*”.

3. Designation of individuals by organization to comply with Act

Article 2.38 of the Consultation Paper states that:

“...organizations may identify officers so designated [as the appropriate contact point accountable for DP issues] by their positions or titles, instead of names of the officers.”

This is absent from the Bill. We therefore propose to include the phrase “*Such designation may be made by reference to the functions, positions or titles of individuals, instead of their names*” to Sections 13(3) and (4) so that it reads:

“(3) An organisation shall designate one or more individuals to be responsible for ensuring that the organisation complies with this Act. Such designation may made by reference to the functions or positions or titles of individuals, instead of their names.

“(4) An individual designated under subsection (3) may delegate to another individual the duty conferred by that designation. Such delegation may made by reference to the function or position or title of the individual, instead of the name of the individual.



In addition, we would also like to reinforce that there should be no restriction to the geographical location of the individual(s) appointed by the organization to comply with the Act.

4. Requirement on Fresh Consent for Different Purposes

Section 2.84 of the Consultation Paper discusses the need for “*Fresh Consent for Different Purposes*” and Section 22(1) of the Bill requires an organization to inform the individual about “(a) the purposes for the collection, use or disclosure of the personal data, as the case may be, on or before collecting the personal data; (b) any other purpose of the user or disclosure of the personal data of which the individual has not been informed under paragraph (a), before the use or disclosure of the personal data for that purpose”

We agree that consumers ought to be informed and be aware when their data is used for new purposes. However, we strongly submit that if an existing customer (who has already agreed and consented to terms and conditions in relation to personal data and the way in which we may notify that customer of any changes of purpose) fails to opt-out after he or she has been given a reasonable notice prior to the change in purpose, then the customer should be considered as having given consent to the change in purpose.

Such flexibility is especially important for internet and technology-based companies like eBay and PayPal, which are inherently fast-moving industries. Constant innovation forms the backbone of such companies, as we constantly reinvent ways to provide our users with a more secure, smoother, and more efficient experience. Such innovation may create a new purpose for the use of personal data to which existing users will be notified of in accordance with standard practices.

For an internet service provider, with over a million customers, it is standard practice to notify customers of policy updates, or changes to terms and condition of use, through email notification and publishing the proposed change on the relevant webpage(s). In that way, the need to obtain fresh consent for a different purpose will be far less burdensome on organizations, both administratively and operationally, and user experience will be consistent with standard practice.

5. Transfer of data out of Singapore and sharing of data within the company

While this was written in the consultation papers, there is no mention of it in the Bill itself. The consultation merely urged organizations to comply with the obligations of the PDPA on consent for collection, use and disclosure.

We think that the lack of its mention in the Bill is acceptable and consistent with standard practice, but would like to seek clarification from MICA that this is the case.



CONCLUSION

Thank you again for the opportunity to provide comments. We hope that our above comments are useful to you in your review of the Personal Data Protection Bill before it passes through the legislative process.

Please do not hesitate to contact our Privacy Counsel Michael Lee at milee@ebay.com or Isabelle Neo from Government Relations who is based in Singapore at isneo@ebay.com should you require further information on the contents of this submission.

Yours sincerely,

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