Center for AI and Digital Policy (CAIDP)

Statement for the 2023 G7Japan

***on Artificial Intelligence, Data Protection,
and Digital Free Flows with Trust (DFFT)***

24 February 2023

We welcome the opportunity to provide our input to the G7 for the upcoming 2023 G7 Summit and the Digital Ministers' meetings under the presidency of Japan. We applaud the G7 for its efforts to ensure human-centric and trustworthy AI and to promote fairness, accountability, and transparency in digital technologies. We also acknowledge the important contributions of the data protection and privacy authorities of the G7 member countries who issued the statement on Data Free Flow with Trust following the September 2021 roundtable and continue to contribute to the work of the G7. At the same time, we have concerns about the current formulation of DFFT, which we believe is different from the original vision. We also believe that more needs to be done to address the growing challenges of AI, and for the G7 to develop specific actionable standards. We sent a statement on these topics before the 2022 G7 Summit in Germany. We urge you to review that statement as well as this one prior to your meetings later this year.[1]

The Minister of Digital Affairs of Japan Taro Kono has stated that "Japan would like to take the opportunity of the G7 to reach agreement on accelerating institutional cooperation and technological responses to DFFT and to propose an international framework for public-private partnerships that will serve as the core of this DFFT effort."[2] We believe this is an appropriate starting point for our contribution.

The Center for AI and Digital Policy (CAIDP) supports the ongoing work of the data protection officials and underscores the need to ensure that DFFT builds upon principles of privacy protection, data minimization and privacy-enhancing-technologies (PETs), and human-centric artificial intelligence (AI). We have emphasized that "the aim of PETs is not to enable further transfers of personal data but rather to limit the collection of personal data in the first instance."[3]

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[1] CAIDP Statement to the G7 on Artificial Intelligence (May 18, 2022), https://www.caidp.org/app/download/8392171163/CAIDP-Statement-G7-18052022.pdf, See generally CAIDP, G7 Japan 2023, https://www.caidp.org/resources/g7-japan-2023/
[2] Digital Agency, https://www.digital.go.jp/en/international-strategy-en/
3 CAIDP, *Comments to the OSTP on the Promotion of Privacy Enhancing Technologies (PETs),* July 8, 2022, https://www.caidp.org

We are also concerned about the emerging threat to democratic values posed by AI-driven technologies that maximize the collection of personal data. We urge the G7 to follow through on its commitment to create a Secretariat that will make available best practices for DFFT, based on a clear commitment to privacy and data protection. [4]

About CAIDP

CAIDP is a global organization, incorporated in Washington, DC, established "to promote a better society, more fair, more just — a world where technology promotes broad social inclusion based on fundamental rights, democratic institutions, and the rule of law."[5] We publish *Artificial Intelligence and Democratic Values*, a comprehensive review of AI policies and practices worldwide.[6] We identified the G7's work, and the leadership of Japan, as critical for the development of AI policy.[7] CAIDP currently serves as an advisor on AI policy to the Council of Europe Committee on AI, the OECD, the Global Partnership on AI, the European Parliament, UNESCO, and other national and international organizations.

The G7 and AI

At the 2016 G7 under the leadership of former Japanese Prime Minister Shinzo Abe, Japan set out a vision for human-centric AI that safeguards human dignity and privacy.[8] As we noted in our report, *Artificial Intelligence and Democratic Values:*

> Japan is a pioneer in the field of AI policy and has endorsed the OECD/G20 AI Principles. The Conference toward AI Network Society, established in 2016, is broadly influential. The Japanese R&D Guidelines provided the basis for the OECD AI Principles. Japan also hosted the G20 Leaders' meeting in Osaka in 2019 at which time the G20 nations endorsed the OECD AI Principles. And former Prime Minister Shinzo Abe promoted the concept of Data Free Flow with Trust (DFFT), a core concept for human-centric AI, that carries forward in the policy recommendations of the OECD, the G20, and the European Commission.[9]

Regarding Data Free Flows with Trust, we explained:

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[4] G7 Leaders' Statement (Dec. 12, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/12/12/g7-leaders-statement-4/

[5] CAIDP, https://www.caidp.org

[6] Center for AI and Digital Policy, *Artificial Intelligence and Democratic Values* (2022), https://www.caidp.org/reports/aidv-2021/

[7] *Id.*

[8] Japan Times, Japan pushes for basic AI rules at G-7 tech meeting (Apr. 29, 2016), https://www.japantimes.co.jp/news/2016/04/29/national/japan-pushes-basic-ai-rules-g-7- tech-meeting/

[9] *AI and Democratic Values* at 263.

Prime Minister Abe also put forward the concept of Data Free Flows with Trust (DFFT) in a speech at the World Economic Forum in January 2019. Abe said, "We must, on one hand, be able to put our personal data and data embodying intellectual property, national security intelligence, and so on, under careful protection, while on the other hand, we must enable the free flow of medical, industrial, traffic and other most useful, non-personal, anonymous data to see no borders, repeat, no borders." Abe underscored the importance of privacy protection, explaining that the DFFT regime should be built on "non-personal data." Abe further emphasized that the appropriate framework for protection and governance on data according to their sensitivity would allow higher freedom of data flow across borders.[10]

And we noted the strong support expressed by the OECD Secretary General for the DTTF initiative:

At the 2019 G20 Summit in Osaka, OECD Secretary Gurria described Abe's vision for Data Free Flows with Trust as "ambitious and timely." The G20 Leaders adopted the concept at the 2019 Summit, and reaffirmed the goal at the 2020 Summit in Riyadh. The phrase "Data Free Flows with Trust" also appears, with emphasis, in the December 2020 Joint Communication from the European Communication, proposing a New US Agenda for Global Change.[11]

The G7 leaders at the 2021 Summit warned that "new forms of decision-making have surfaced examples where algorithms have entrenched or amplified historic biases, or even created new forms of bias or unfairness."[12] The G7 leaders said they would "take bold action to build more transparency in our technologies." In the 2021 Summit, G7 Leaders also committed to working together for a "values-driven digital ecosystem for the common good that enhances prosperity in a way that is sustainable, inclusive, transparent and human-centric."[13] They called for a "human centric approach to artificial intelligence."

The Digital Ministers declared that G7 countries "will continue to make concerted efforts to maintain a free, global, open, interoperable, reliable and secure Internet that supports innovation and strengthens respect for democratic values and universal human rights. We reaffirm our opposition to measures which may undermine these values and rights."[14] The Digital Ministers also stated in 2022, "We welcome the intention of the Japanese G7 Presidency in 2023 to continue work on the basis of this declaration on

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[10] Id. at 258.

[11] Id.

[12] Carbis Bay G7 Summit Communiqué (June 13, 2021) https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/13/carbis-bay-g7- summit-communique/

[13] Id.

[14] G7/8 Digital and Technology Ministers, Ministerial Declaration: G7 Digital Ministers' Meeting (May 11, 2022), http://www.g8.utoronto.ca/ict/2022-declaration.html

online safety and DFFT, including promoting regulatory cooperation for DFFT, in particular through roundtable discussions of data protection and privacy authorities."[15]

The G7 Data Protection Privacy Authorities recalled the existing international commitment to "democratic principles and fundamental human rights in the digital world has recently been underlined by the European Union, the United States of America and many other nations."[16] The Communique focused on efforts to implement "effective data protection and privacy laws and to build upon existing frameworks and approaches, such as the Convention 108+ of the Council of Europe, the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, and the OECD Recommendation on Cross-border Co-operation in the Enforcement of Law".[17]

However, the 2022 Communique does not include any commitments by the G7 countries to ensure creation of robust mechanisms for independent oversight of AI systems, transparency and accountability in the procurement and implementation of AI systems for public services, or opportunities for public participation in AI policymaking. The 2022 Communique also does not propose red lines for technologies that violate fundamental human rights, such as facial recognition and biometric surveillance technologies.

The G7 and the Digital Ministers must now address these challenges. The former UN High Commissioner for Human Rights has called for a prohibition on AI practices that violate international human rights law and a moratorium on the use of facial recognition for mass surveillance.[18] The UNESCO's Recommendation on the Ethics of Artificial Intelligence states clearly that "AI systems should not be used for social scoring or mass

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[15] Id.

[16] Roundtable of G7 Data Protection and Privacy Authorities, Communiqué (Sept. 8, 2022), https://www.bfdi.bund.de/SharedDocs/Downloads/EN/G7/Communique-2022.pdf?__blob=publicationFile&v=1 ; see Para 3.

[17] *Id,* para. 9

[18] United Nation Human Rights Office of the High Commissioner, Artificial intelligence risks to privacy demand urgent action – Bachelet (Sept. 15, 2021), https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27469&LangID= E

surveillance purposes."[19] The UNESCO AI Recommendation also found that "greater transparency contributes to more peaceful, just, democratic and inclusive societies."[20]

G7 nations have made clear the risks of AI. We call your attention to the US *AI Bill of Rights* and President Biden's recent call for establishment of laws to govern AI, to promote algorithmic transparency and accountability, and to limit algorithmic bias.[21]

Beginning with the work of Prime Minister Abe, the G7 has encouraged the development of AI policies that support fundamental rights, democratic institutions, and the rule of law. DFFT was intended to ensure the protection of personal privacy for transborder data flows. It is important to carry forward Abe's vision when the G7 meets this year in Japan.

Our Recommendations

The Center for AI and Digital Policy (CAIDP) recommends that:

1. The G7 reaffirm support for AI policies that advance democratic values, fundamental rights, and the rule of law.

2. The G7 establish actionable standards to measure progress toward these goals, specifically:

    (a) creation of robust mechanisms for independent oversight of AI systems,
    (b) transparency and accountability in the procurement and implementation of AI systems for public services
    (c) opportunities for public participation in AI policymaking
    (d) red lines for technologies that violate fundamental human rights, including facial recognition and biometric surveillance technologies.

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[19] UNESCO Finalizes Recommendation on AI Ethics, CAIDP Update 2.25 (July 2, 2021), https://www.caidp.org/app/download/8330514463/CAIDP-Update-2.26.pdf; See also UNESCO Clearinghouse on Global Citizenship Education, UNESCO dialogues with the G20 meeting of digital ministers (Aug. 10, 2021) ("The Recommendation is a compass for international consensus on the 'what' as well as the 'how' of ethical governance of AI to protect and advance human rights, human dignity, inclusion, and non-discrimination," stated Gabriela Ramos, Assistant Director-General for Social and Human Sciences, who leads UNESCO's work on the Ethics of AI), https://www.gcedclearinghouse.org/news/unesco- dialogues-g20-meeting-digitalministers; See also, Center for AI & Digital Policy (CAIDP) Statement to the G7 on Artificial Intelligence 18 May 2022

[20] UNESCO Finalizes Recommendation on AI Ethics, CAIDP Update 2.25 (July 2, 2021), https://www.caidp.org/app/download/8330514463/CAIDP-Update-2.26.pdf

[21] Joe Biden, Republicans and Democrats, Unite Against Big Tech Abuses (Jan. 11, 2023), https://www.wsj.com/articles/unite-against-big-tech-abuses-social-media-privacy-competition-antitrust-children-algorithm-11673439411

3. The G7 reaffirm support for Data Free Flows with Trust that safeguard personal data while promoting the free flow of non-personal information.

4. The G7 follow through on its commitment to create a Secretariat to provide information about best practices for DFFT that safeguard privacy and data protection.

5. **The G7 strengthen its engagement with civil society organizations and provide meaningful opportunities for public input.**

Thank you for your consideration of our recommendations.

We welcome the opportunity to discuss further and answer any inquiries you may have.

Sincerely,

Marc Rotenberg
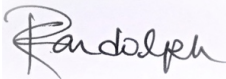 CAIDP President

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