Towards A National Data Strategy

The case for more active governance

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Project Summary

Digital technology has allowed data to be collected and used far more cheaply and easily than ever before. This generates considerable economic opportunities, and indeed we have seen how business models have evolved with data at their center. But just as the economic opportunities cannot be overstated, a digital transformation has raised numerous concerns. To date, Canada has insufficiently updated its laws, regulations and policies to govern the use and data and ensure that our fundamental values are upheld in the digital sphere.

A national data strategy involves a coordinated whole-of-government approach to data governance. We will focus on two issues in particular - competition and national security – which stem from inadequate data governance, and discuss how Federal policy changes can address these issues.

First is the issue of competition. Data is now a source of competitive advantage for private companies, yet the theories of harm which underpin our antitrust laws have yet to adequately recognize this fact. As a result, several companies have been able to exploit their monopoly of personal data to reduce competition, manage the flow of digital information, and offer little privacy safeguards.

Secondly is the issue of national security. Digital data requires physical infrastructure in order to be transmitted and stored. Currently, Canada is not entirely technically self-reliant, often relying on infrastructure located in the U.S. Without network sovereignty, our data is 'boomeranged' between Canada and the U.S., subjecting our data to U.S. surveillance without Canadian legal protection.

Third, effective data governance requires data sovereignty, which is not only a matter of legislation and regulation, but also about having adequate technical infrastructure. The current infrastructure is not adequate enough for the economic growth that is needed to recover from the global pandemic, nor is it sufficient to support existing usage which results in data boomeranging through U.S.servers. Data infrastructure is one of the key building blocks of our modern economy and the federal government is barely paying attention to it.

As the Economic Nationalism Team of the Policy Innovation Initiative, we have highlighted each of these three concerns in its own op-ed style article.

A More Appropriate Competition Policy Begins with Recognizing the Role of Data in the 21ˢᵗ Century

By Hugh Ragan

The digital revolution has fundamentally altered our economy, and offered innumerable benefits – that much is well known. But the rapid pace by which digital data has become a cornerstone resource of our economy has far outpaced the capacity for governments to update their laws, regulations and policies to govern the digital sphere. Perhaps nowhere is the need for government action so pressing, and the cost of inaction so apparent to the public, as in the case of Big Tech and the threats that arise from their unchecked market power. Additional regulation is needed in this area, among others, to ensure that our fundamental values are upheld in the digital sphere, and that we can prosper from the digital revolution.

Five of the world's six largest companies have a data-driven business model. The massive quantity of personal data collected by these companies generate sophisticated models of user preferences in order to predict future behaviour and tailor company services towards them accordingly. This model of "surveillance capitalism" – a term coined by Shoshana Zuboff – pushes up hard against our notion that property rights and individual rights allow us to be autonomous, self-determining individuals. Because your actions on Facebook now become bits of data, owned exclusively by Facebook, and fed into an algorithm which then steers your behaviour by selecting which information you are exposed to.

Facebook, Google and Amazon, among others, have exploited their unencumbered access to personal data to crowd out or buy out competitors and establish themselves into effective gatekeepers of the internet.

This is made possible by enormous technical advances, allowing data to be harvested and analyzed exponentially more cheaply with each passing year. But the business models have also been enabled by laissez faire government policies. A sluggish competition bureau is still bickering about whether this amounts to consumer harm – the products in question are mostly free, after all! And privacy laws have been equally slow to adapt, resulting in data collection methods that are so confusing and opaque to the average consumer that the harvesting and use of your personal information could hardly be considered consensual.

If we fail to recognize data as the incredibly valuable resource that it is, then we will surely fail to develop a rationale for intervention, and fail to update our tools in competition law and wider platform governance accordingly.

Take the recent actions of Facebook – a company whose chief executive has developed a reputation for callously abdicating responsibility for the societal harms caused by his company – which eventually established an oversight board merely because the mounting public backlash grew so fierce as to begin jeopardizing their long-term reputation, while regulators applauded the move from the sidelines. A laughable sign of glacial government action if ever there was one.

And Twitter's silencing of a sitting president may have been cheered by many, but following that event is it really still possible to question whether these companies have too much power?

So, we are left with the question: what can little old Canada do?

In 2019, Canada introduced the Digital Charter, laying out the general principles for a digital economy, and in 2020 enacted Bill C-11 which was the first step in implementing those principles.

One of the most important components of Bill C-11 was the introduction of data portability, which would essentially transfer ownership rights of personal data from the company to the user, allowing the user to bring the data with them to another provider if they wish. In so doing, this would help to establish a level playing field between the Big Tech companies hoarding mounds of data and their competitors.

But Bill C-11 is only tepidly embracing the tool, and is incorporating it slowly on a sector-by-sector basis starting with banking. While pushing for it's speedier implementation, other agencies can also make strides. Competition law should revise its merger and acquisition criteria, adopting a more holistic evaluation for how a merger might affect future levels of competition in light of the fact that data is an immense source of competitive advantage. For example, Google's acquisition of Youtube in 2005 should be viewed not as a merger of companies in two disparate industries, but an agglomeration of two already-dominant data-harvesting, algorithm-generating powerhouses.

Additionally, the maximum penalties for competition law are nowhere in the ballpark big enough to act as a deterrent. Unless we want to simply wait for the U.S. and Europe to develop stricter regulations which cause policy change of these multinationals, our competition policy has to have some genuine teeth to be meaningful.

No doubt it is a difficult task awaiting our competition bureau, and they should not go it alone. Competition law regarding Big Tech and the role of data also requires discussions of privacy and human rights, and should therefore be considered as one aspect of a wider strategy of platform governance. But the costs of inaction are now apparent, and the laissez faire policies that reigned in the dawn of the internet are no longer excusable, nor is a government which fails to adapt it's principles of competition law to reflect the realities of the 21st century digital economy.

Insecure Canada: How Data Sovereignty Could Enhance Canadian Security

By Samantha Odrowaz-Sekely

Another benefit of increased data sovereignty is improved data security. In 2021, it is no secret that corporations like Google and Facebook collect and sell their users' data in order to turn a profit. While widely criticized and certainly morally dubious, this comes with security consequences, too. For one, Canadians' data is not only in the hands of corporations, but by large corporations that are *not* situated in Canada, and thus are subject to American (or whichever other home country's) laws. Consequently, the use of data undermines Canadian national security, as Canadians do not get to have a say via democratic vote about how foreign companies conduct

their affairs, leaving Canadian users' data in the hands of non-Canadian companies, to operate in a way to maximize their profits. Consequently, Canadians cannot exert much influence over how their data is used, and, given the ubiquity of social media and data gathering, it would be almost impossible to refrain from using such devices.

Moreover, a lack of data sovereignty means that Canadian data is endangered if foreign servers are hacked. Given that many of the largest data-collecting companies are situated in the United States, this is indeed something to be concerned about. During both the 2016 and 2020 presidential elections, evidence suggests that various social media platforms, as well as election databases, were hacked. Fortunately for Canadians, the US election is not a situation where their data would be particularly valued by hackers, but these incidents demonstrate that American servers, which hold many Canadians' data, are penetrable, and thus insecure.

Lest we think this security concern is overdramatic, other governments have considered data sovereignty in order to strengthen their cybersecurity. The Australian Government is currently contemplating adopting data sovereignty, due to its (not unreasonable) fear that US servers are too susceptible to hacking. Similarly, there is the proposed Gaia-X Cloud which would create a European-wide cloud, as opposed to relying on the American one. Its development originated from a desire to construct a more secure and "trustworthy" data cloud, demonstrating again that the present reality of data collection is widely perceived as inefficient.

Data Infrastructure: The Missing Piece of Canada's Economy

By Jessica Macdonald

As we career into the second year of the pandemic it can be tempting to continue to focus solely on immediate pandemic issues – How many vaccines will Canada be getting? Who will receive them next? How is it possible that some people still do not know how to wear a mask properly? – and yet if our government does not urgently double down on bringing Canada's digital infrastructure into the 21ˢᵗ century we will be left behind. It is becoming increasingly clear that data is an important national resource. However, to date the Canadian government has been very slow to sufficiently invest in the data infrastructure needed to harness its power and growth potential. And now is the time to act.

Even before the pandemic, the Information and Community Technology (ICT) industry was one of the fastest growing sectors in Canada and around the world. Internationally, many of the strongest national economies, and companies, are those built on the back of digital innovation

and intellectual property (Google, Facebook, and Amazon to just name a few). Despite this, Canada has dragged its feet in building sufficient infrastructure to keep up globally.

The pandemic itself has painfully highlighted the need for better data infrastructure across the country. Employees and students have been frantically trying to set up home offices with sufficient broadband for all of their video calls, and businesses have desperately been trying to transform their business models into the digital space. Stronger infrastructure will not only encourage growth of the tech sector in Canada, but it will allow for the overall economy to adapt to the realities of a post-pandemic world. It is likely that our businesses will never be exactly the same – many companies have been catapulted into the world of online commerce and will remain there, and other businesses may no longer require their employees to come in 5 days a week. Without strong infrastructure we will be stunted in our ability to sustain this change long-term.

As we look forward, the world can seem economically bleak. High unemployment, shuttered businesses, and low consumer spending can be daunting. However, if we have the digital framework to do so, the possibilities for economic growth are significant, and there are strides to be made in all sectors - energy, agriculture, health, the list goes on. Although it is true that there is a digital divide that needs to be bridged, if we invest now we can work to narrow that divide. For example, innovation in the digital space and providing people with the flexibility to work from anywhere can ease housing pressures in urban centres, and could ensure services are provided more efficiently in rural locations.

One of the 5 major incentives of the federal government's current Infrastructure Growth Plan is bolstering broadband in underserved communities. This is a start, but the plan is woefully insufficient. Canada must aggressively move forward in creating a national digital strategy, passing more comprehensive legislation on data privacy, supporting skills training, and providing funding for the construction of sufficient international exchanges within Canada to reduce data boomeranging through the United States (a serious data security issue that merits its own discussion).

It is a very unpopular time to be talking about spending on anything other than pandemic relief. It is inevitable that should the Liberal government make a stand on this issue, that both the Conservatives and the NDP will push back firmly. The Conservatives will likely argue that fiscal discipline and less spending is vital, and the NDP will likely argue that if we spend it should be on additional economic support for those crushed by the pandemic. However, the Liberals must ignore these complaints and do what is needed for our recovery – meaningfully and urgently invest in digital infrastructure. Without it, the Canadian economy is unlikely to truly recover.

Thankfully, there are people, such as Michael Sabia, in the government who are recognizing this need. Even still, it will take iron political will for the government to make this type of investment in the current environment. While I may not hold my breath for the government to increase its investment in this area, I sincerely hope that I will be pleasantly surprised.