

Intelligence MEMOS



From: Konrad von Finckenstein and Elizabeth Denham
To: Canada's Digital Regulators
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Re: CANADA NEEDS COHERENT DIGITAL REGULATION (I)

Recent digital innovations have created abundant opportunities, but societal problems related to technology have emerged as well.

Fortunately, Canada has strong privacy laws and regulatory bodies that protect citizens by keeping tabs on governments and companies that operate in the digital realm.

Regulating data processes, technology platforms and digital marketplaces is difficult. Legislative reforms inevitably lag advances in data-driven businesses. And formerly siloed policy areas overlap: privacy protection, fair markets, and content moderation.

The federal government is now reviewing its privacy legislation and competition policy as well as considering new online-harms regulation. The current situation demands that we align these separate pieces of legislation. Only then can regulators effectively manage Big Data and protect Canadians, no matter their level of legal understanding or computer literacy.

Four regulatory bodies in Canada can help guide developments in the digital economy. They are the Office of the Privacy Commissioner, the Canadian Radio-Television and Telecommunication Commission, the Competition Bureau and the Superintendent of Financial Institutions. Each agency monitors the use of data, combats its misuse, fosters positive innovation and protects the rights of individuals. Cross-agency collaboration is rare, however, because these bodies have unique authorizing statutes that grant and restrict powers.

Today, Canadians need these agencies to share (within legal bounds) experiences, knowledge and plans for improving the way they work.

The need to enable regulatory cooperation is clear but not yet part of the government's agenda. Even if it were, we might see strong opposition. Bureaucratic entities tend to guard against incursions into their mandates. However, we believe that linking regulatory duties across independent agencies will strengthen their important work on behalf of Canadians.

Regulators can work together within their established mandates (and the law) to develop joint approaches. When such endeavors prove successful, policy makers will see the value of cooperation and the need for legislation that empowers a coherent, harmonized and updated approach to digital regulation.

The United Kingdom recently adopted a team-spirit approach to managing advanced technology and the commodification of data. The UK's Competition and Markets Authority, Financial Conduct Authority, Information Commissioner's Office and Office of Communications have created a forum for cooperation.

Canada can only benefit from the example set by this body, which has been prosaically named the Digital Regulators Cooperation Forum (DRCF).

Recently, its representatives explained the need for its existence to the UK's House of Lords in these terms:

Many tech companies have sought to take responsibility for managing risks people may face when using their services. However, given the scale of the economic and social impact that these companies now have, governments and a wide range of other stakeholders are calling on strong, independent regulation to deliver a safer and fairer experience online.

Regulators need to respond to the scale and global nature of many of the firms, and the speed at which they change and innovate. Meanwhile, to support innovation and ensure that people have the confidence and trust to use new services, regulatory regimes will need to be clear and understandable. This will require effectively engaging with new interplays between competition, data, content, financial services, and consumer issues. Consumers and businesses rightly expect regulators to be joined up. By working together through the DRCF, we will be better able to support more coherent and coordinated regulatory approaches.

Clearly, the same requirements apply in Canada, and our citizens likewise deserve comprehensive and coordinated protections. Tomorrow we take up solutions.

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