

# Privacy, People and the Pandemic

On-line events 21-23 June co-hosted by

**OECD Working Party on Data Governance and Privacy in the Digital Economy (WPDGP)**



**Global Privacy Assembly (GPA)**



**The UN Special Rapporteur on the Right to Privacy**



# Privacy, People and the Pandemic

## On-line events 21-23 June

More than one year since the onset of the COVID-19 pandemic, governments continue to take drastic measures to curb the spread of the virus. The use of data, and in some cases personal data, have been central to some of these measures, but have raised a number of privacy and data governance concerns. As a result of the pandemic unprecedented volumes of personal data have been collected, processed, stored and shared, and as governments plan their next steps moving forward with vaccination programmes and plans for the road to recovery, it is crucial that they reflect on some of the lessons learned.

The OECD Working Party on Data Governance and Privacy in the Digital Economy (WPDGP), the Global Privacy Assembly and the mandate of the UN Special Rapporteur on the right to Privacy have collaborated together in different ways in different fora over the past several years. In June 2021 they will be getting together again, this time to hold two back-to-back workshops offering complementary – and sometimes challenging - points of view of the impact of the COVID-19 pandemic with a special focus on privacy and data governance. These two workshops will be spread across three days 21-23 June 2021. Articulated around three sessions, the first two days, are organised by the OECD WPDGP with the support of the Global Privacy Assembly (GPA). The topics follow on from two previous workshops held in April 2020 and September 2020. The first session will provide an opportunity for policy makers and regulators to share perspectives one year later on the varying privacy and data governance frameworks that were developed in support of their response efforts.

This will lead onto two sessions on innovative insights on countries' plans for the road to recovery with a specific focus on "Data privacy aspects in the workplace during the pandemic" and "Vaccination programmes and travel passports."

The third and last day will be an intensive workshop organised by the UN Special Rapporteur on the Right to Privacy, also with the support of the Global Privacy Assembly (GPA). It will be dedicated to a more in-depth evaluation of the evidence available on the impact of the pandemic on privacy across the world. The intensive sessions on this third day will also afford NGOs, academics and others, both within and outside OECD countries, with the opportunity to discuss similar issues as those presented during the first two day workshop or outside it.

## OECD with the support of the Global Privacy Assembly (GPA):

### Online Workshop on

## One Year Later: Addressing the Data Governance and Privacy Implications of the COVID-19 Pandemic and the Road to Recovery

### Date and time:

**21 June 2021, 12:00 – 15:15 (CEST)**

**22 June 2021, 12:00 – 15:00 (CEST)**

### Draft Agenda

More than one year since the onset of the COVID-19 pandemic, governments continue to take drastic measures to curb the spread of the virus. The use of data, and in some cases personal data, have been central to some of these measures, but have raised a number of privacy and data governance concerns. As a result of the pandemic unprecedented volumes of personal data have been collected, processed, stored and shared, and as governments plan their next steps moving forward with vaccination programmes and plans for the road to recovery, it is crucial that they reflect on some of the lessons learned.

This workshop is organised by the OECD Working Party on Data Governance and Privacy in the Digital Economy (WPDGP) with the support of the Global Privacy Assembly (GPA), following on from two previous workshops held in April 2020 and September 2020. The workshop will run back-to-back with an event on the same topic areas by the United Nations Special Rapporteur on the Right to Privacy (UNSRP), Mr. Joe Cannataci, which will be held on 23 June 2021.

The workshop will comprise of three sessions:

- The first session will review one year later how governments have approached the COVID-19 pandemic and in particular focus on the privacy and data governance policy and legal frameworks that were developed to support the exceptional surveillance and contact-tracing measures. It will examine how and in what ways countries have evaluated their approaches and what changes were required over one year later.
- The second session will discuss practices to manage COVID-19 in the workplace and the data protection and privacy challenges. It will assess what data employers are permitted to collect about their employees and whether these measures are necessary and proportionate and in line with privacy regulations.
- The third session will focus on vaccination programmes and COVID-19 “travel passports”. It will examine the privacy, data governance and potential ethical implications of COVID-19 “travel passports” and the role PEAs are playing in introducing guidance to governments on the matter.

This event is a contribution to Phase III of the OECD Going Digital Project, which aims to provide policymakers with the tools they need to design and implement better data policies to promote growth and well-being. For more information, visit [www.oecd.org/going-digital/project](http://www.oecd.org/going-digital/project).

## Day 1

|               |  |
|---------------|--|
| 11:40 – 12:00 | <b>Meeting registration and check-in</b>   |
| 12:00 – 12:10 | <b>Opening and welcome remarks</b> <ul style="list-style-type: none"> <li>Elizabeth Denham CBE, Chair of the Global Privacy Assembly, Information Commissioner, UK</li> <li>Andrew Wyckoff, Director for Science, Technology and Innovation, OECD</li> </ul>   |
| 12:10 – 13:40 | <p><b>Session 1: Reflecting on the varying policy and legal frameworks in response to the COVID-19 pandemic</b></p> <p>This session seeks to review one year later how governments have approached the COVID-19 pandemic and the policy and legal frameworks that were developed in support of their response, in particular of contact tracing and containment efforts. It will examine how and in what ways governments have evaluated their approaches and what changes were deemed necessary. It will build on lessons learned from countries across world regions and explore possible lessons that can be learned for future crises.</p> <p>This session will focus on questions such as:</p> <ul style="list-style-type: none"> <li>What policy and legal frameworks were developed to enable the exceptional surveillance measures (e.g. contact tracing apps) in combatting the COVID-19 pandemic?</li> <li>Have these policy and legal frameworks changed throughout the pandemic? If so, why and in what ways have countries evaluated their contact tracing and containment approaches one year after the pandemic?</li> <li>What lessons can be learned from these countries' approaches to the COVID-19 pandemic and their road to recovery?</li> </ul> <p><b>Moderator:</b> Raymund Enriquez Liboro, Privacy Commissioner and Chairman, Philippines National Privacy Commission and Chair of the GPA COVID-19 Taskforce</p> <p><b>Lead discussants [8 mins each]:</b></p> <ul style="list-style-type: none"> <li>Discussant 1 – Daniel Kaufman, Acting Director, Bureau of Consumer Protection (US)</li> <li>Discussant 2 – Guido Scorza, Office of the Garante (Italy)</li> <li>Discussant 3 – Sangwoo Tak, Director, Division of Risk Assessment, Korea Disease Control and Prevention Agency (Republic of Korea)</li> <li>Discussant 4 – Mr. Vitelio Ruíz Bernal, Director-General of Investigation and Verification of the Private Sector, National Institute for Transparency, Access to Information and Personal Data Protection (Mexico)</li> <li>Discussant 5 - Mr Yeong Zee Kin, Deputy Commissioner, Personal Data Protection Commission (Singapore)</li> </ul> |

- Discussant 6 - Gary Davis, Global Director of Privacy & Law Enforcement Requests, Apple

**Followed by open discussion**

13:40 – 13:50 **Short Break**

13:50 – 15:15 **Session 2: Data privacy aspects in the workplace during the pandemic**

Throughout the pandemic, employers have collected a greater level of data on their employees in an attempt to ensure business continuity, including symptom checks, temperature checks, travel history, testing for COVID-19 and vaccination records. In this session panelists will discuss the balancing of employee rights and public/occupational health and safety rights in the management of COVID-19 in the workplace. They will also discuss how the shift to working from home may be changing monitoring and surveillance practices.

The session will focus on questions such as:

- What data are employers permitted to collect about their employees during the pandemic?
- Have PEAs issued guidance to employers on the data protection and privacy challenges arising from employers responses to COVID-19?
- What role should governments and PEAs play to ensure that measures and necessary and proportionate and provide sufficient data protection and privacy protections for employees during the crisis?
- Has the agency of the employee been diminished as result of provisions introduced in the workplace in response to the pandemic?

**Moderator:** Anna Byhovskaya, Senior Policy Advisor, TUAC

**Lead discussants** [8 mins each]:

- Discussant 1 – Marguerita Lane, Labour Market Economist, OECD
- Discussant 2 – Elizabeth Hampton, Deputy Commissioner, Office of the Australian Information Commissioner (Australia)
- Discussant 3 – Andrew Pakes, Research Director, Prospect Union (UK)
- Discussant 4 – Chris Calabrese, Senior Director, Privacy and Data Policy, Microsoft

**Followed by open discussion**

**Close of Day 1 – 15:15**

## Day 2

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|---------------|--|
| 11:40 – 12:00 | <b>Meeting registration and check-in</b>   |
| 12:00 – 12:10 | <b>Opening and welcome remarks</b> <ul style="list-style-type: none"> <li>Steve Wood, Deputy Commissioner (Policy), UK ICO and Chair of the WPDGP</li> </ul>   |
| 12:10 – 12:25 | <b>Presentation by ICO-GPA on joint statement for international travel</b><br>ICO/GPA will present on the joint statement on sharing of health data for domestic and international travel. <ul style="list-style-type: none"> <li>Melissa Mathieson, Head of High Priority Investigations and Intelligence, ICO UK</li> </ul> <p style="text-align: center;"><b>Followed by Q&amp;A</b></p>  |
| 12:25– 12:40  | <b>Presentation on the OECD Initiative for Safe International Mobility during the COVID-19 Pandemic</b><br>The OECD will present its initiative for Safe International Mobility during the COVID-19 Pandemic (including Blueprint). <ul style="list-style-type: none"> <li>Mark Pearson, Deputy Director, Employment, Labour and Social Affairs, OECD</li> </ul> <p style="text-align: center;"><b>Followed by Q&amp;A</b></p>   |
| 12:40 – 12:50 | <b>Short Break</b>   |
| 12:50 – 14:30 | <b>Session 3: Vaccination programmes and travel passports</b><br><br>This session will focus on the challenges raised as governments embark on national vaccination programmes, including questions surrounding the extent of data required to measure the effectiveness of vaccines. In particular, as more and more countries, as well as the EU, are considering the introduction of COVID-19 “travel passports”, this session will explore the ethical and privacy issues of this measure. These concerns may include inequality, exclusion and discrimination particularly in relation to those individuals who do not have access to the vaccine, do not wish to take it, or cannot take it.<br><br>The session will focus on questions such as: <ul style="list-style-type: none"> <li>How are governments monitoring the effectiveness of vaccination programmes? Are they leveraging data collected during contact tracing to assist vaccination efforts?</li> <li>What are the privacy and data governance implications of COVID-19 “travel passports”?</li> <li>What role should PEAs play in introducing guidance to governments on travel passports?</li> <li>What public and private partnerships are emerging to enable these initiatives?</li> <li>What potential privacy concerns may these initiatives raise?</li> </ul> |

**Moderator:** Steve Wood, Deputy Commissioner (Policy), UK ICO and Chair of the WPDGP

**Lead discussants** [10 mins each]:

- Discussant 1 – Alessandra Pierucci, Chair of the Committee of Convention 108 of the Council of Europe
- Discussant 2 – Elizabeth Renieris, Berkman Klein Centre, Harvard University (US)
- Discussant 3 – Florence Raynal, Deputy Director/Head of Department of International and European Affairs, CNIL (France)
- Discussant 4 – Frank Ulrich Montgomery, President, Standing Committee of European Doctors
- Discussant 5 – Alan Butler, Executive Director and President, Electronic Privacy Information Center (EPIC)

**Followed by open discussion**

14:30 - 15:00

- Elettra Ronchi, Head of Data Governance and Privacy Unit, OECD
- Joe Cannataci, United Nations Special Rapporteur on the Right to Privacy

**Close of Meeting**

- Steve Wood, Deputy Commissioner (Policy), UK ICO and Chair of the WPDGP

## Day 3

## The UN Special Rapporteur on the Right to privacy (UN SRP) with the support of the Global Privacy Assembly (GPA):

### Online Workshop on

## COVID-19: the available evidence... ...and a little bit of hindsight.

Date and time: Wednesday 23 June 2021

First session 08h00-11:00 (CEST)

Second session 15h00-18h00 (CEST)

### Draft Agenda

In July 2020, barely six months into the first public signs of the pandemic, the UN Special Rapporteur on the right to Privacy (SRP), Prof. Joe Cannataci, submitted a preliminary report to OHCHR which he then presented to the UN General Assembly in October 2020 <https://undocs.org/A/75/147>. In that report he considered that the evidence base required to reach definitive conclusions on whether privacy-intrusive, anti-COVID-19 measures are necessary and proportionate in a democratic society was not yet available. The Special Rapporteur examined two particular aspects of the impact of COVID-19 on the right to privacy: data protection and surveillance. COVID-19-related surveillance and contact tracing may take various forms, and could be manual or technological, anonymous or not, consensual or non-consensual. The SRP suggested that concerns arise when surveillance apparatus traditionally employed for State security purposes is proposed or hurriedly deployed for a public health purpose to track health data in the context of a pandemic. If a State decides that technological surveillance is necessary as a response to the global COVID-19 pandemic, it must make sure that, after proving both the necessity and proportionality of the specific measure, it has a law that explicitly provides for such surveillance measures. The law must include safeguards, which, if not spelled out in sufficient detail, cannot be considered adequate under international law.

This June 2021 workshop is intended to form part of the consultation intended to examine the next batch of available evidence. More specifically it is intended to provide the wider privacy community, including NGOs and academics as well as Governments and independent regulators, with an opportunity to articulate further and hopefully seek some answers to questions such as

*... what would we have done differently re COVID-19...and privacy? What did we get right? Which are the mistakes which should be avoided?*

*To determine the necessity and proportionality of a tool used in the fight against COVID, which are the true metrics for measuring success or failure? Total number of infections or deaths per capita? Both? Is an economic context essential for answering these questions and if so which is ethically acceptable?*

*To what extent, if any, were smartphone apps or other forms of surveillance, successful tools in fighting COVID? Which? Where? When? Why? How?*



*Voluntary vs. Mandatory use of Apps. What works best if at all? Which is acceptable?*

*If, in a pandemic situation, smartphone apps can be proved to be a necessary and proportionate measure in a democratic society, what type of apps would be permissible and what kind of safeguards and remedies would need to be in place?*

*How can the mandatory use of “vaccine passports” for travel be justified in a democratic society? What safeguards must be in place for the protection of health data on such passports?*

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|---------------|---|
| 07:40 – 08:00 | <b>Meeting registration and check-in</b>  |
| 08h00-08h15   | <b>Opening and welcome remarks</b> <ul style="list-style-type: none"> <li>• Joe Cannataci, UN Special Rapporteur on the right to privacy</li> </ul>   |
| 08h15 – 11h00 | <b>Session 1 - COVID-19 and Privacy in Asia, Australasia and Europe</b><br>Governments, NGOS and academics will be allocated 10-15 mins speaking time during this session on a first-come first serve and by invitation basis. They will be invited to address some or all of the questions outlined above and/or those which figured prominently in their own countries.<br><br><b>Moderator:</b> TBD<br>Rapporteur: Ketan Modh (India)<br><br><b>Participants:</b> <ul style="list-style-type: none"> <li>• Dr. Katherine Kemp, Senior Lecturer, Faculty of Law &amp; Justice, University of New South Wales (Australia)</li> <li>• Prof. Graham Greenleaf, Professor of Law &amp; Information Systems, University of New South Wales (Australia)</li> <li>• Dr. Ram S Sharma, CEO, National Health Authority (India)</li> <li>• Prof. Park Kyung-Sin, Professor, Korea University Law School (South Korea)</li> <li>• Dr. Claudia Pagliari, Senior Lecturer and Director Global eHealth Group, University of Edinburgh Medical School (United Kingdom)</li> <li>• Prof. Yuval Shany, Hersch Lauterpacht Chair in Public International Law, Faculty of Law, Hebrew University of Jerusalem (Israel)</li> <li>• Prof. Nikolaus Forgó, Professor of IT and IP Law, University of Vienna (Austria)</li> </ul> <b>Open discussion</b> [approx. 30 mins] |
| 15h00– 17h00  | <b>Session 2: Covid-19 and Privacy in the Americas and Africa</b><br>Governments, NGOS and academics will be allocated 10-15 mins speaking time during this session on a first-come first serve and by invitation basis. They will be invited to address some or all of the questions outlined above and/or those which figured prominently in their own countries.<br><br><b>Moderator:</b> TBD  |

Rapporteur: Halefom Abraha (Ethiopia)

**Participants:**

- Dr. Johanna Caterina Faliero, Faculty of Law, University of Palermo (Argentina)
- Dr Simisola Akintoye, Lecturer in Law, Leicester De Montfort Law School (Nigeria)
- Dr Rachel Adams, Chief Research Specialist, Human Sciences Research Council (South Africa)
- Teki Akuetteh Falconer, Founder & Executive Director, Africa Digital Rights' Hub (Ghana)
- Adam Schwartz, Senior Staff Attorney, Electronic Frontier Foundation (United States)
- **Open discussion** [approx. 30 mins]

**Summing up and Closing remarks**

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|--------------|---|
| 17h00-17h20  | • Ketan Modh (Rapporteur Session 1)   |
| 17h20-17h40  | • Halefom Abraha (Rapporteur Session 2)   |
| 17:40 –17h50 | • Steve Wood, Deputy Commissioner (Policy), UK ICO and Chair of the WPDGP (TBC) |
| 17h50- 18:00 | • Joe Cannataci UN SRP  |