

Notes Open Net Korea AI and Ethics - SEOUL

Preliminary thoughts

- ⑩ on the premise that ML is a monolithic approach, disregarding a number of different techniques for which data might not even be that important;
- ⑩ on the a premise that data is the way to correct bias;
- ⑩ the scale of the global data protection harmonized framework we're currently attempting is unprecedented;
- ⑩ on the premise that regulation (and a general one) is the right way forward; governance approach neglected

Two concerns: an economic one, and a HRs one

an argument for each, that might have not been framed that way yet

- ⑩ no point in preventing the use of data to generate economic, social value;
- ⑩ it's not that we own data; we are data

the concern should be towards an adequate, responsible, fair and accountable use

The proposed issues

not a dilemma; rather a problem

focus less on the justification of the Korean Government or on the GDPR or other public authority justification as such, but rather on the quest for an adequate approach for each raised issue

a. sensitive data

- ⑩ even if no objective distinction is made between sensitive or non-sensitive data for the concepts of “compatible purpose” or “pseudonymization”, the bar for the “reasonable duty of care” standard is obviously set higher
- ⑩ no objective ban; provided the nature of the data is respected
- ⑩ Brazil, LGPD, Art 11, paragraph 3, 4, 5, Article 13

b. disclosure to third parties/linking

- ⑩ data protection is currently a risk-based legal framework in all the main jurisdictions of the world
- ⑩ pseudonymization should not be an aim in itself; it is rather a technical solution
- ⑩ data minimization is what we should be looking for
- ⑩ disclosure pseudonymized databases exponentially increases the risk of breaching the essence of data protection rights, and should not be done without careful assessment
- ⑩ Brazil reserves the power of the national regulator to ban or regulate for-profit disclosure or linking of databases, after

consultation with competent public branches (LGPD, Art 11, paragraph 3)

- ⑩ applicable solely for sensitive data
- ⑩ specific exceptions for health data (paragraphs 4 and 5)

c. commercial scientific research

- ⑩ GDPR, Recital 159 "... technological development and demonstration, fundamental research, applied research and privately funded research."
- ⑩ EDPS & WP29 criteria
- ⑩ general ethical standards
- ⑩ Brazil opted for a general ban on for-profit research using non-consented sensitive data, stemming from a legal restriction of research institutions (LGPD, Article 5, XVII)
 - ◆ includes fundamental or applied research of historical, scientific, technological ou statistical nature, but confines it to not-for-profit legal persons constituted under Brazilian law and established in the country
- ⑩ Berne 3-step-test criteria or a "fair use" factor approach?