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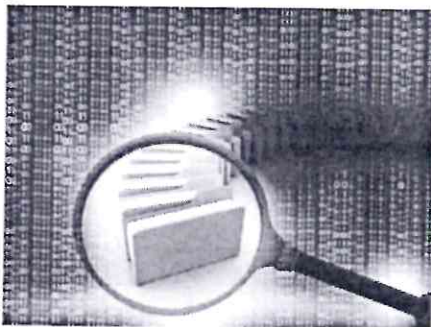
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Sensitive data definition to be sector-specific

By Surabhi Agarwal, ET Bureau | Updated: Oct 22, 2018, 06:40 AM IST

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NEW DELHI: The ministry of electronics and IT (MeitY), which is in the process of finalising of the data protection legislation, is likely to leave it to sectoral regulators and relevant departments to define what constitutes sensitive personal information. Such data will have to be necessarily stored only in India.

This will ensure that regulators such as the Reserve Bank of India (RBI), which has already mandated that payments data should be stored exclusively in the country, do not fall foul of the overarching law once it comes into force. The government has been encouraged

The govt has been encouraged by the hard stand of the banking regulator, which has refused to relax its local-storage requirement for payments data despite hectic lobbying efforts, especially by foreign companies.

by the hard stand of the banking regulator, which has refused to relax its local-storage requirement for payments data despite hectic lobbying efforts, especially by foreign companies.

"Now, there is no question of allowing mirroring of critical personal data since RBI has already set a precedent," a top government official said. The Centre also feels that copies of personal data that aren't important don't have to be stored in India. "There are trivial kinds of personal data as well, which don't even require mirroring," said the official.

MeitY has so far received over 600 submissions on the draft data protection Bill — submitted by the Justice BN Srikrishna committee in July — including that of the US government, the official said. India expects to finalise the draft and introduce the Bill in Parliament during the winter session.

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INDIAN AIRPORTS' DIRTY SECRET

It's Critical

Regulators, administrative departments to define what constitutes personal sensitive data. Such



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sectoral regulator is not a big hurdle, since every data type comes under some ministry or the other, be it data related to herbs or wildlife or ecommerce, and the ministries concerned can take a call on it," the person added.

Most multinational firms have been strongly opposed to the Indian government's recent push toward data localisation, arguing that it will increase the cost of doing business in the country besides stifling startups and innovation. Prominent lobby groups such as the US-India Business Council and the US-India Strategic Partnership Forum along with others have made several representations at various levels of government, asking for a complete rethink or a softening of the stand. These efforts have been as yet unsuccessful.

Google CEO Sundar Pichai championed the cause of free data flows in a recent letter to union IT Minister Ravi Shankar Prasad. "Free flow of data across borders—with a focus on user privacy and security—will encourage startups to innovate and expand globally and encourage global companies to contribute to India's digital economy," he said in a note thanking Prasad for his visit to Google's Mountain View campus in August. Companies such as Microsoft besides state governments such as Telangana have also batted in favour of cross-border data flows in the past.

On the other hand, homegrown companies such as Paytm, PhonePe and InMobi have called for measures to mandate data localisation, saying this was critical for the local economy. InMobi CEO Naveen Tewari expressed concern that India was already losing the data war.

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'MHA's order will lead to total surveillance system'

Cyber Security Experts, Lawyers Red Flag 'Power To Snoop'

Anam.Ajmal@timesgroup.com

TOT LINE OF NO CONTROL

SANDEEP ADHWARYU

GOVT AUTHORISES 10 AGENCIES TO SNOOP ON "ANY" COMPUTER

New Delhi: Cyber security experts, lawyers and activists have raised serious concerns over the Union ministry of home affairs (MHA) order that gives 10 investigating agencies the power to "snoop" into citizens' digital space.

Executive director of Internet Freedom Foundation Apar Gupta said the recent order will lead to "a complete surveillance system" without any options for safeguards as it is impossible to exist without leaving a digital footprint nowadays.

"The constitutional standing for privacy has become stronger after the Supreme Court's Aadhaar judgment in 2017. Section 69 was framed nearly a decade ago, so it did not conform to the same stan-

► 'Must cite reason', P 15

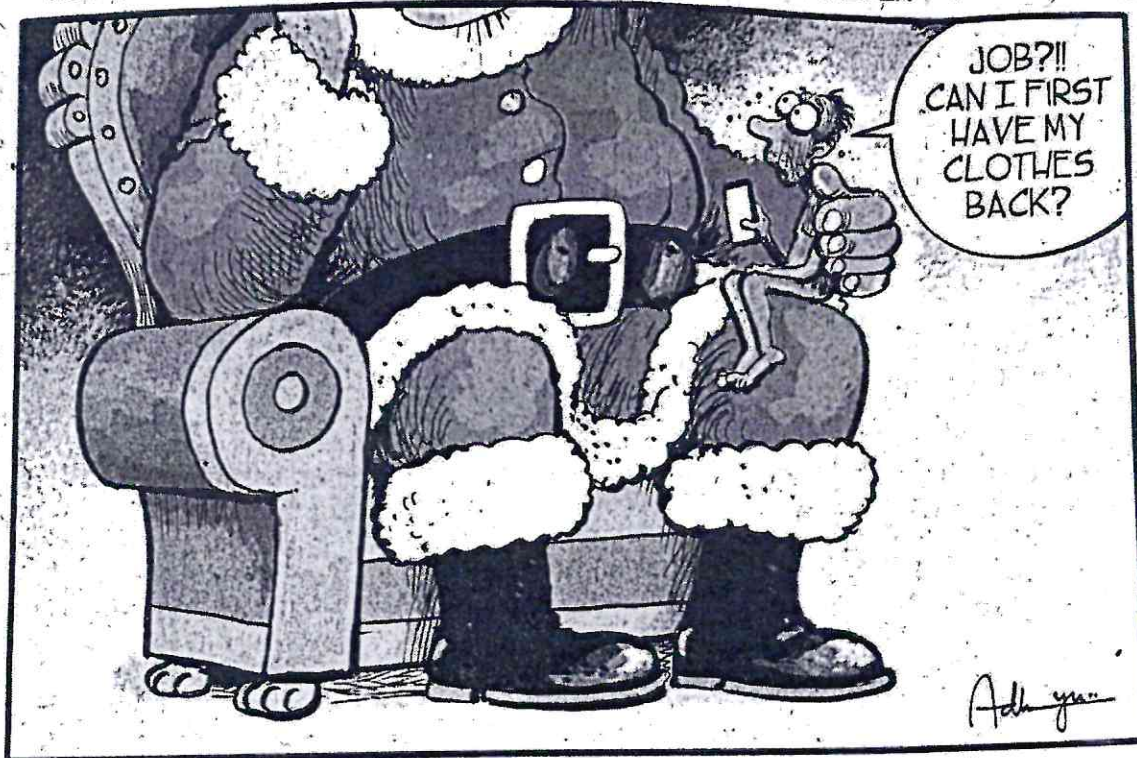
dards of privacy. The government cannot use it as grounds to cannot go snooping around without judicial sanctions," said Gupta.

Prasanth Sugathan, legal director of Software Freedom Law Center, an NGO that supports digital rights across the globe, also called the order an

attempt at "digital tapping", but highlighted that it is only a part of the problem. "Our concern should not be limited to just these 10 agencies. Section 69 should be struck down completely because it lacks judicial oversight. It works at the executive level alone," he said, adding the "entire sur-

veillance system supported by the state is a problem." On Twitter, too, several lawyers criticised the order as unconstitutional and a violation of individual freedom. "This is a gross violation of SC judgments, including Shreya Singhal. This is void for vagueness since the expression 'any in-

formation' could cover any thing from our Facebook profiles to WhatsApp messages to Twitter, it is being challenged as surveillance," tweeted SC lawyer Indira Jaising. Shreya Singhal v. Union of India is a 2015 Supreme Court judgment on online speech and intermediary liability.



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German children banned from sending their Christmas wishlists to Santa ...because it breaks EU's privacy laws

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- German town of Roth in Bavaria threatens to ban children's public Santa letters
- Children told Christmas tradition may be stopped due to new EU privacy laws
- GDPR rules prevent children leaving their personal details on trees in public
- A local radio station has since worked with experts to find a GDPR-compliant solution in a bid to save the event

By DAVID CHURCHILL BRUSSELS CORRESPONDENT

PUBLISHED: 02:04 GMT, 22 November 2018 | UPDATED: 12:40 GMT, 23 November 2018

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A German town has ditched its traditional ceremony where children hang their Christmas wishlists on a tree in the market – blaming new EU privacy laws.

Children in Roth, Bavaria, were said to be heartbroken after council officials ruled they can no longer leave their public letters to Santa.

The council lawyer said Brussels red tape introduced in May had left them with no choice to avoid risking a fine.

This is because the tradition involves children writing details including their name, age and address so that Father Christmas knows where to deliver their presents.

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But under the European General Data Protection Regulation (GDPR), the local authority must obtain written permission from the parents of the 4,000 children who usually take part, making it clear their data could be shared with third parties.

No Child's Play: Experts Fume as Baby Care Cos Seek Kids' Data

Amazon, FirstCry and J&J's BabyCenter among those seeking info to offer tailored content, discounts; move may violate proposed data law

Megha Mendavia
& Aditi Shrivastava

Bengaluru: Online retailers of baby care products that seek information about children from their parents could run afoul of India's proposed data protection law, according to privacy experts. E-commerce giant Amazon and digital parenting networks FirstCry and Parentlane as well as Johnson & Johnson's BabyCenter are among companies that offer services such as age-based con-

tent, recommendations or discount coupons to parents who share specific information about their children.

"Children are particularly vulne-

rable and require heightened privacy protection. Amazon, Parentlane and FirstCry must clarify and inform parents what (they) intend to do with the data being gathered,"

said Apar Gupta, director at Internet Freedom Foundation, a digital rights advocacy group.

India is currently debating the contours of a proposed law on data

protection based on recommendations by the Justice BN Srikrishna committee.



DATA SOUGHT

Name, gender, age or birth date, birth weight

WHAT PARENTS GET IN RETURN

Personalised messages on health, food, discounts

WHAT DRAFT PRIVACY LAW SAYS

Bans companies from profiling, tracking, carrying out behavioural monitoring of children or targeting them with ads

WHAT EXPERTS THINK

Children particularly vulnerable and require heightened privacy protection



Illustration: ANIRBAN BOHA

Draft Law Proposes Strict Curbs

► From Page 1

The draft legislation suggests barring companies from profiling, tracking or targeting children with advertisements. It proposes strict restrictions on guardian data fiduciaries — companies that operate commercial websites or online services directed at children or process large volumes of personal data related to children.

In response to queries from ET, a representative for Amazon India said, "The company is currently studying the draft legislation and would comply with all local laws, rules and regulations."

Launched in March this year, Amazon Family provides subscribers to its Prime loyalty programme exclusive offers, age-based content, recommendations and discount coupons if they agree to share details such as the name, gender and date of birth of the child. "The company's stringent data protection policies will ensure that the information is completely confidential and secure," an Amazon spokesperson told ET. The company did not specify the number of parents who had signed up for the initiative, which includes a 'Prenatal Store' and an 'Ages and Stages' programme.

FirstCry, one of India's largest e-commerce platforms for baby products, is seeking similar data through its parenting discussion forum — to offer personalised content. Until now, it has not used the data to direct parents towards more purchases, the company said.

"We collect data from parents to make personalised recommendations. Our service is only for parents and, therefore, we do not target children. We are fully compliant with the draft privacy law in its current form but will have to wait for the final policy to comment on it," said FirstCry founder Supam Maheshwari.

J&J's BabyCenter and baby care app Parentlane also ask for information on birth weight and photographs of children to offer personalised content.

Parentlane founder Vijay Anand MV said the draft Bill protects children and families from services that are used by children directly, while his company's service is targeted at parents. "Hence, we are not violating the proposed (provisions related to) protection of children's personal data in the Bill," he said.

Responding to emailed queries, a spokesperson for J&J's BabyCenter said, "BabyCenter does not collect information about children to market to them. At every step of using BabyCenter, we

urge users to carefully read our privacy policy that informs them of how their information may be utilised for certain benefit features or to participate in activities."

The company said ensuring privacy of user information is a priority and it makes sure that all users are informed of their choice to review, correct, update, restrict or delete personal information.

Saurabh Srivastava, director (category management) at Amazon India, told ET that Amazon's 'Prenatal Store' allows to-be parents to easily discover relevant selections and explore articles to guide them through the stages of pregnancy.

By enrolling for the 'Ages and Stages' programme, customers can create their children's profile to access content, product recommendations, discounts and offers based on age.

Privacy experts feel that though data is being shared by parents, the fear is that companies could potentially use this information for commercial gains in the future. "The question to be asked is whether these companies are sharing this data with third parties, and if children can request deletion of this data once they turn adults," said Gupta of Internet Freedom Foundation.

Data bill moots ban on transfer of sensitive personal info abroad

Pankaj.Doval@timesgroup.com

New Delhi: Global internet giants and social-media companies such as Facebook, WhatsApp, Google, Twitter, Amazon, Uber and Apple will not be able to transfer and process 'sensitive personal data' of Indians to their servers abroad with the much-awaited Data Protection Bill prohibiting cross-border movement of information such as passwords, financial and health data, caste, religious and political beliefs and sexual status and orientation.

Violations, including unauthorised processing of per-

WHAT IS SENSITIVE PERSONAL INFO?

Passwords; financial data; health data; official identifier; sex life; sexual orientation; biometric data; genetic data; transgender status; intersex status; caste; religious or political beliefs or affiliations

sonal data — run the risk of severe financial censure, with the maximum penalty pegged at Rs 15 crore or 4% of

the worldwide turnover (whichever is higher).

The exhaustive Bill — accessed and seen exclusively by TOI — follows a detailed report submitted to the government by a committee headed by Justice BN Srikrishna in July this year. It seeks the formation of a Data Protection Authority to handle the gamut of issues related to the handling of personal information; dealing with companies handling and processing data; and ensuring adherence to rules and regulations that would be notified.

► **Users' consent, P 15**

Cos must get users' consent on data: Bill

► Continued from P 1

While the bill — which the government hopes to introduce in Parliament at the earliest (only a few days left in this session) — does not bar cross-border transfer of 'personal data', it mandates that companies maintain a mirror copy of the information within India and, importantly, also seek 'consent' of the individual who generates the data. Personal data means any information — an individual's particular characteristic, trait, attribute or feature — which may lead to identification of the person.

The bill's recommendations, especially the one that bars the transfer of sensitive personal data, is likely to create discomfort for the global internet companies, many of which have termed such restrictions as 'anti-internet' and 'impractical'. Companies have often argued that they should have the right to store the data in servers across the globe, adding that any law man-

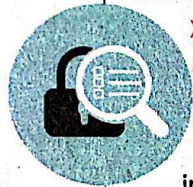
PROTECTION FOR INDIVIDUALS & KIDS

INDIVIDUALS

- Right to know what personal data is processed and how
- Right to correct 'inaccurate or misleading' personal data
- Right to be forgotten or prevent disclosure of certain personal data
- Seek compensation in case of violations in data processing/handling

CHILDREN (Aged below 18 yrs)

- No profiling, tracking, or behavioural monitoring of, or targeted advertising directed at children
- Appropriate mechanisms for age verification and parental consent
- 'Rights and best interests' need to be protected
- Data authority to notify guardian data fiduciaries



dating local storage increases their cost while being detrimental to their overall business interests.

The government, however, seems to think otherwise. While barring transfer of sensitive personal data, the bill even places restrictions on companies when they deal with personal data. "Every data fiduciary shall ensure the storage, on a server or a data centre located in In-

dia, of at least one serving copy of personal data."

The bill, in fact, also authorises the government to "notify categories of personal data as critical personal data that shall only be processed in a server or data centre located in India". Exemptions may be provided on the "grounds of necessity or strategic interests of the state", according to the bill. And while allowing of transfer of

personal data, the bill states that such cross-border movement should be allowed only if it is in line with contractual clauses that have been approved by the data protection authority. Also, the transfer needs to be to countries or organisations that have been prescribed by the central government in consultation with the authority.

"The central government may only prescribe the permissibility of transfers... where it finds that the relevant personal data shall be subject to an adequate level of protection, having regard to the applicable laws and international agreements, and the effectiveness of enforcement by authorities with appropriate jurisdiction," the Bill states. When it comes to penalties, the bill stipulates a fine of up to Rs2 crore or 2% of worldwide turnover if a company fails to take prompt action after a security breach, or does not carry out a data audit, or does not register with the authority or does not appoint a data protection officer.