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RECOMMENDATIONS FOR INTEROPERABLE & CONSUMER- CENTRIC REDRESS IN THE EVENT OF PERSONAL DATA MISUSE IN INTERNATIONAL DATA-TRANSFERS

SUMMARY OF REPORT

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Cross-border data flows have become essential to the functioning of the global digital economy. They underpin social interactions, international business operations, logistics, supply chains and global communication. Critical in enabling more seamless, controllable and transparent cross-border data flows has been the development of harmonised legal frameworks. A large part of data crossing borders is personal data, subject to the more rigorous protection provided by personal data legal frameworks. However, in the context of international personal data transfers (IPDTs), and despite these enhanced protections, there is still significant risk to consumers that their personal data will be misused, and further, where regulatory frameworks are incompatible, that consumers' access to redress will be limited.

With the majority of global data processing taking place in upper-income countries, and with the volume of data being processed only likely to increase in the future, **robust redress mechanisms that serve consumers regardless of where in the world they live are a growing priority.**



Our report reviews and evaluates current options for consumers to seek redress when personal data is misused in the context of IPDTs. The misuse of personal data means any non-compliant processing of personal data. Common examples of personal data misuse include:

- breach of personal data,
- collection error (ie, an instance in which personal data is incorrectly or unnecessarily collected without a legitimate legal basis), and;
- unauthorised use (when personal data is processed for a certain purpose, but is ultimately used by the data controller for another purpose).

Redress means all available administrative and judicial remedies consumers may access to obtain compensation, or repair or restore a situation of data misuse. It also includes a consumer's rights as a data subject, such as rights to access, correction, erasure and objection, data portability, and the right to revoke consent.

This report reviews lawful mechanisms for IPDTs as they are represented in the following five legal frameworks:

1. The European Union's General Data Protection Regulation (GDPR)
2. The Council of Europe's Convention 108+
3. The Asia-Pacific Economic Cooperation (APEC)'s Privacy Framework
4. The Standards for Personal Data Protection for Ibero-American Data Protection Network (RedIPD – acronym in Spanish)
5. The Brazilian General Data Protection Law (LGPD).

The lawful basis for international personal data transfers (referred to in the report as the IPDT mechanism) varies across these legal frameworks. Within the selected frameworks are four varying and sometimes overlapping IPDT mechanisms: adequacy decisions; standard contractual clauses (SCCs); certification; and consent.

Using the [United Nations's Guidelines for Consumer Protection](#) as a point of reference, the report reviews options for redress for consumers within each of these IPDT mechanisms, in each of the legal frameworks in which they appear. Then, drawing on existing literature, case studies and interviews conducted with stakeholders from different regions and areas of expertise, the report highlights challenges to consumer-centric redress, and opportunities for improved consumer outcomes.

The report ends by providing recommendations to policy-makers, regulators, civil society and industry for strengthening the protection of consumer rights, and bolstering the overall consumer experience.

The report unearths a significant gap between the theoretical protections offered by international data protection frameworks and the practical realities faced by consumers seeking redress internationally. The complexities of international data transfers, the fragmented regulatory landscape, and the inconsistent implementation of data protection laws contribute to the challenges consumers encounter in exercising their rights effectively.

Addressing these challenges will require **a multifaceted approach**. For state and public sector entities, establishing clear pathways for consumers to access their rights and engage with personal data protection authorities is crucial. This includes fostering agreements between national and international authorities to facilitate complaint resolution across borders, and developing informal conflict resolution mechanisms that provide alternative avenues for redress (which may be most effectively executed together with the private sector). Strengthening collective redress mechanisms should also be a priority.

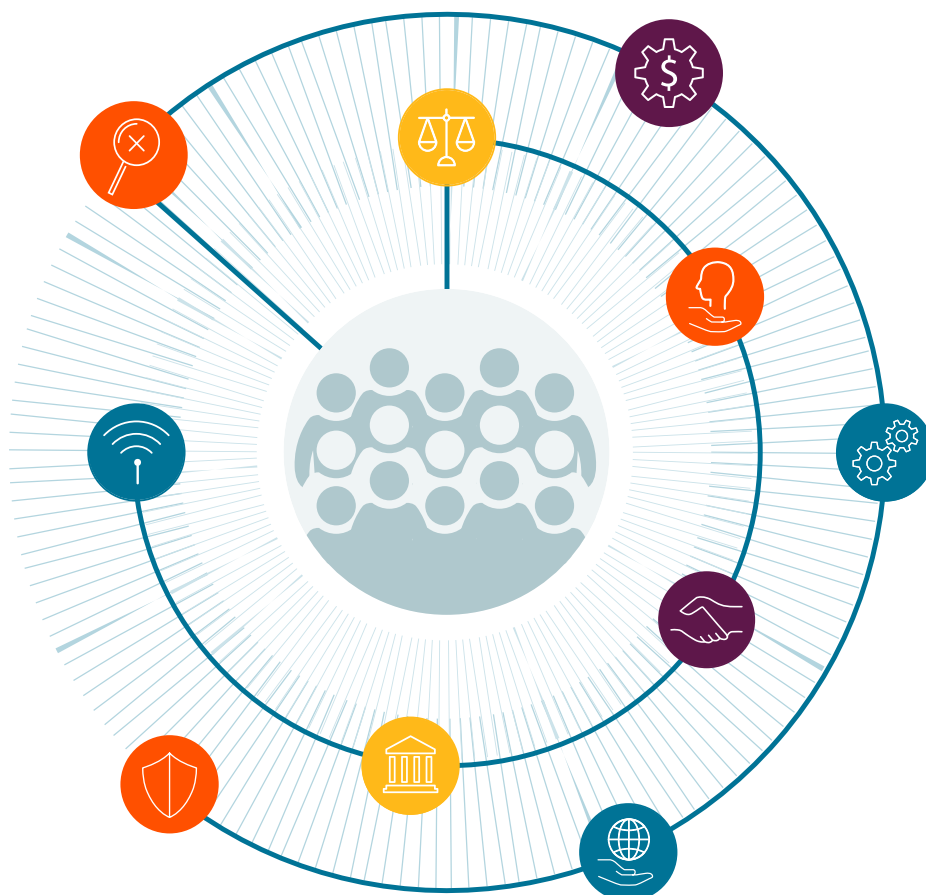
The report highlights the need for regulatory interoperability, to ensure consumers achieve redress, through individual or collective means, and discusses current efforts around Data Free Flow With Trust (DFFT). It emphasises that interoperable regulations have to be constructed bringing into consideration each jurisdiction's particularities, geopolitical position and, crucially, acknowledging consumer vulnerabilities, which may vary in each region. It identifies data sovereignty as a possible guiding principle to building interoperable frameworks that meet these criteria, enabling new initiatives to work towards interoperability in a manner that protects consumers and maintains a free and open internet, while based on the UN Guidelines on Consumer Protection.

The report further recommends that policy-makers and international organisations apply the highest possible consumer and data protection standards to promote equitable treatment of consumers across jurisdictions. This is an essential step towards mitigating disparities arising from varied national data protection laws. Increased regulatory interoperability through multilateral agreements and financial support for developing countries can help bridge the gap between different legal frameworks and jurisdictions, promoting a more cohesive global approach to data and consumer protection.

The report emphasises the need to engage not only global and local businesses of all sizes but also civil society and consumer protection bodies in the regulatory process, to enhance the effectiveness of regulations by incorporating diverse perspectives and local realities. Awareness-raising efforts, particularly through provision of transparent and appropriate information, will further empower consumers to better understand and exercise their rights, especially when accompanied by ongoing investment in data privacy and security.




By adopting these recommendations, policy-makers, regulatory bodies, and industry leaders can strengthen the protection of consumer rights and ensure that options for achieving redress are both effective and accessible. This holistic approach will contribute to a more equitable and responsive data protection landscape, ultimately reducing complexity, while enhancing consumer trust and confidence in international data practices.

The protection of consumers' personal data rights is a critical concern in the context of IPDT. The changing digital landscape, with its concordant growing power and information asymmetries, means that consumer vulnerability manifests in new and growing ways that are important to monitor. Because IPDTs have become integral to trade expansion and economic growth, it is imperative that the utmost care is taken to protect consumers, so as not to undermine confidence in the global economy.



RECOMMENDATIONS

 <p>FOR ALL STAKEHOLDERS: Recognise the growing vulnerability of consumers in the digital age</p>	<p>The changing digital landscape, with its concordant growing power and information asymmetries, means that consumer vulnerability manifests in new and growing ways that are important to monitor. It is essential that public and private entities consider this in any process for exercising consumer rights, ideally by working with advocates to understand, refine and track definitions, factors and conditions of vulnerability.</p>
 <p>FOR POLICY-MAKERS AND INTERNATIONAL ORGANISATIONS: Expand international arrangements to harmonise enforcement approaches</p>	<p>Policy-makers must ensure that Data Protection Authorities (DPAs) and other relevant authorities can communicate with each other to address complaints. It is important such agreements create a regulatory arrangement with well-defined processes to oversee its enforcement, favouring hard law and clearly defined collaboration mechanisms that promote clarity and certainty across jurisdictions, instead of depending on self-regulation and ad-hoc, unpredictable coordination.</p>
 <p>FOR POLICY-MAKERS: Strengthen the options for collective redress</p>	<p>Strengthening collective redress mechanisms is essential for addressing widespread data protection issues, as collective actions can better enforce rights for many individuals, compared to rare individual legal actions in this field.</p>
 <p>FOR POLICY-MAKERS AND THE PRIVATE SECTOR: Invest in and experiment with additional informal pathways to conflict resolution</p>	<p>Examples include online dispute resolution platforms and data fiduciaries. The existence of informal redress mechanisms should not preclude or replace a consumer's right to access to justice via formal means.</p>

 <p>FOR POLICY-MAKERS AND INTERNATIONAL ORGANISATIONS: Treat consumers equitably across jurisdictions</p>	<p>Develop regulations that support equitable treatment for consumers with different citizenship status, regardless of their nationality or the jurisdiction that is enforcing their rights, when they seek redress for violations arising from international data transfers. Stakeholders should aim to reflect the highest consumer and data protection standards available, rather than the lowest common denominator.</p>
 <p>FOR INTERNATIONAL ORGANISATIONS: Continue to pursue regulatory interoperability in the context of a free and open internet</p>	<p>Direct efforts towards establishing multilateral and bilateral agreements to facilitate rights-respecting IPDTs, putting consumers' access to redress at the centre of discussions:</p> <ol style="list-style-type: none"> Employ a multi-stakeholder approach (see recommendation 7.) to ensure that interoperability alternatives consider multiple contexts and vulnerabilities; Consider how regulations derived from the notion of data sovereignty account for multiple jurisdictions' perspectives, and are not simply imposed on low- and middle-income countries by upper-income countries; Establish transborder regulatory sandboxes in spaces of power such as the OECD and UN, to allow different stakeholders to test and improve the benefits and limits of old and new frameworks of personal data protection; Where appropriate, provide financial incentives to enable low-income countries to operationalise such agreements.
 <p>FOR INTERNATIONAL ORGANISATIONS: Consult with civil society and consumer protection bodies</p>	<p>In directing efforts towards regulatory interoperability, include a public process of gathering inputs on the local reality of each country, facilitating the creation of regulations that are effective locally and, consequently, globally.</p>

 <p>FOR THE PRIVATE SECTOR: Invest in transparency and the provision of appropriate information to empower consumers in making informed decisions</p>	<p>Enhance consumer awareness about available mechanisms for redress, by providing transparent information that is relevant, timely and inclusive. Such efforts should not preclude appropriate and ongoing investment in data privacy and security to protect consumers.</p>
 <p>FOR REGULATORY BODIES AND THE PRIVATE SECTOR: Use technology to facilitate the exercise of rights</p>	<p>Invest in technologies that facilitate the exercise of rights, especially in countries where digital literacy is lower. Ensure these technologies have undergone testing and impact assessments prior to being made available for consumer use, and on an ongoing basis. These arrangements should not preclude access to human assistance.</p>
 <p>FOR POLICY-MAKERS AND THE PRIVATE SECTOR: Explore the possibility of a collective fund for redress contributed to by private companies</p>	<p>Incentivise private companies to create a fund for redress for consumers. Such a fund, overseen by a multi-stakeholder board to decide the different cases, should be tasked to ensure that its outcomes are consumer-centred.</p>

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Consumers International brings together over 200 member organisations in more than 100 countries to empower and champion the rights of consumers everywhere. We are their voice in international policy-making forums and the global marketplace to ensure they are treated safely, fairly and honestly.

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