# THE FUTURE OF AI REGULATION:
AN ASIAN PERSPECTIVE
26 AUGUST 2021

Description:

As part of the Asian Dialogues, SMU is hosting a series of webinars to discuss some of the pressing issues in the field. This first session is about the Future of AI Regulation. New policy initiatives concerning the governance of data and AI signal the rise of new oversight in many jurisdictions. On 21 April 2021, the European Union announced draft legislation to harmonise its member states' AI rules. Countries in Asia have adopted a different approach to AI ethics and governance. Is AI regulation the solution to AI governance challenges? In this webinar, experts with different perspectives on the matter will discuss the future of AI regulation and its implications for Asia.

The first presentation was given by Juha Heikkila who spoke about Europe's digital future and the EU's draft legislation on AI. This set the comparative background for today's discussion on what the future holds for AI regulation in Asia and whether Asia is to diverge from the

European Strategy or whether it will follow suit. Yi Zeng's topic and recommendation for "deep coordination of sustainable development and governance" was choiced to engage with this debate. He offered our participants an insight into how AI governance is viewed by scholars in Asia and explored both Western-centric and Asia-centric approaches. At the end, he acknowledged how AI governance in Asia is still shaped and influenced by trends in the West. This smoothly transitioned into Ansgar Koene 's topic on standardization and AI policy development. Ansgar's presentation provided a timely and relatable platform for our panel members to discuss whether it is possible to standardize or harmonize AI principles in Asia. This led our panel to explore other "informal" approaches to AI governance in Asia, opening the debate on whether ethics operate as a sufficient framework to address AI governance issues and an exploration of other best-approaches.

- Keynote Speakers:
  - Juha Heikkila, Adviser for Artificial Intelligence at the European Commission.
  - Yi Zeng, Deputy Director of the Research Center for Brain-inspired Intelligence at the Chinese Academy of Sciences.
  - Ansgar Koene, Global AI Ethics and Regulatory Leader at Ernst & Young. Senior Research Fellow at the Horizon Digital Economy Research institute (University of Nottingham). Chair of the IEEE Standard for Algorithmic Bias Considerations working group.

- Panellists:
  - Moderator: Mark Findlay, Professor of Law at Singapore Management University, and Director of the Centre for AI and Data Governance
  - Yong Lim, Associate Professor at Seoul National University School of Law, Co-Director of the SNU AI Policy Initiative at SNU's Center for Law and Economics
  - Marcus Bartley Johns, Asia Regional Director for Government Affairs and Public Policy for Microsoft

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1. Nydia Remolina: Introduction

Nydia Remolina kicked off the webinar by introducing the SMU-Microsoft Asian Dialogues initiative, our keynote speakers, and panellist members. She briefed attendees on the background of today's topic (i.e., the EU's draft legislation to regulate AI) and then communicated that the webinar will be the first of many upcoming discussions on AI governance that the Centre is intending to host. Following which, Nydia posed the following question to all participants: How can we contribute to the discussion on AI regulation from an Asian perspective and how do we see this debate unfolding?

2. Juha Heikkila: Shaping Europe's Digital Future

Juha Heikkila was the first to respond to Nydia's question and he opened the discussion by presenting the EU's proposed legal framework to AI regulation.

2.1 Rationale Behind the EU Draft Legislation

Juha first introduced the rationale behind the European Parliament's legislative proposal for governing AI. He recalled that the proposal was first put on the table in April 2021 and emphasised that the legislation was introduced to manage the risks of emerging technologies. As he rightly pointed out, AI is incredibly powerful and can bring about many benefits for citizens and businesses. Many societal challenges can be resolved with AI that support improvements to the quality of our lives in both economic and efficiency terms. Yet, Juha reminds that there are also increased risks posed by the use of AI including concerns

surrounding the safety of consumers and users, including infringements on their fundamental rights. These shortcomings form the backdrop for the proposed legislative regulations coupled with the recognition that there is a critical need to secure citizens' trust.

On the need to secure citizens' trust, Juha elaborated that trust is important because AI can only be deployed and taken advantage of if there is trust in the technology. To this end, the proposed regulatory framework was introduced to better guarantee the conditions on which trust can be created and sustained.

Juha proceeded to explain that the act is not interested in regulating AI technology as such. Instead, what the act focuses on is on AI use cases and applications as the objects for legislative intervention. Juha emphasised that certain characteristics of AI systems make them unique - they can be complex, opaque, unpredictable (due to the self-learning capability), or, they can be autonomous/semi-autonomous consuming varying amounts of data depending on the case. All of <u>these features have the potential to impact users' fundamental rights and safety, leading on to legal uncertainty, mistrust, and fragmentation.</u> From the governance perspective of the European Union, Juha emphasised that fragmentation is one of their greatest concerns if each member state is legislating individually to regulate these common concerns. Regulation sought to prevent and remedy this fragmented legal landscape.

2.2 Defining "Artificial Intelligence" in the Act and the Risk-based Approach

Juha proceeded to discuss how "Artificial Intelligence" is defined in the proposed legislation. He described that the Act kept to a deliberately broad definition of AI in order to cover those AI techniques, uses, and applications not currently known. <u>This forward thinking approach is meant to ensure that the legislation keeps pace with the technology</u> and as such, the regulation would cover all AI, both traditional symbolic AI and also machine learning and deep learning capacities. <u>Following which, Juha communicated that a key aspect for understanding the EU's legislative proposal is first recognising its risk-based approach.</u>
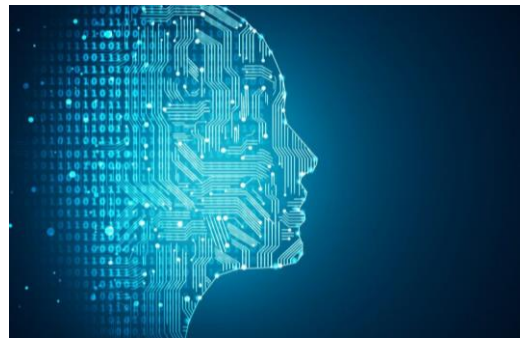
Risk is calibrated on a pyramid starting from the base with no or minimal risk where AI applications are permitted with no restrictions. The next progression is where the applications have some risks requiring that the systems should have some transparency and information obligations. Moving up to the higher risk categories, applications presenting these degrees and types of risks are permitted only if they comply with certain requirements set out in the proposed regulation and satisfy an ex-ante conformity assessment. The tip of the pyramid are the uses of AI which are entirely unacceptable and prohibited. This risk-based approach also affords AI developers the opportunity to subscribe to a voluntary code of conduct with specific transparency obligations (Art.69).

Expanding on the high-risk pinnacle further, Juha communicated that high-risk AI can be separated into 2 specific categories. The first category concerns applications of AI that are used as a safety component of regulated products. If the AI is used as a safety component (e.g., medical devices, machinery) and the system is already currently subject to 3rd party assessment under relevant sectorial legislation, the AI component is to be classified as high risk. The next category involves certain (stand-alone) AI systems in specific fields. The

application of AI in these fields involve high risk to rights or safety and therefore require a more interventionist regulation approach. Examples in such fields include biometric identification and categorisation of natural persons, the management and operation of critical infrastructure, education and vocational training, employment and workers management and access to self-employment, access to and enjoyment of essential private services and public services and benefits that are part of the system, law enforcement, migration, asylum and border control management and administration of justice and democratic processes.

Moving on to how these high risk AI should be regulated, Juha recommended that these products be affixed with a CE marking. This regulatory mode is based on standardisation to indicate that a product complies with the requirements of the relevant EU Legislation to be placed in the market or put into service. The process and regulatory steps are as follows: The first is to determine whether it is a high-risk system under the new regulation. Secondly, an evaluation is made as to whether the design, development and the quality management systems comply with the regulation. Next, the AI undergoes a conformity assessment procedure aimed at assessing and documenting compliance with this proposed regulation. Following which, a CE mark is affixed to the AI if the system is found to be in conformity and a declaration of conformity is then signed by the provider. Only after all the above steps have been satisfied can the system be placed on the market.

Diving deeper into the requirements that high risk systems need to fulfil, Juha expressed the following points: First, data used to test and validate testing has to be high quality, and there has to be some documentation and design logging features to enable the traceability and auditability of this system. Next, there has to be a certain degree of transparency, whereby users are provided with information on how to use the system. Further, there must be human oversight over the AI and it is required that measures are built into the system enabling user implementation. Finally, AI must satisfy requirements of robustness, accuracy, and cybersecurity. All of these conditions have to be fulfilled by a provider and they must establish and implement risk management processes which take into account the intended purpose of the AI system.

2.3 Obligations of Provider and Users for High-risk AI Systems

Juha then proceeded to discuss the various obligations owed by both providers and users of AI systems. He relayed that providers need to establish and implement quality management system in its organisation, draw and keep technical documentation up-to-date, log obligations to enable users to monitor the operation of the high-risk AI system, undergo conformity assessment and

re-assessment of AI systems, register AI system in the EU data base, affix CE marking and sign a declaration of conformity before putting any AI system on the market. Following on, he also reminded that it is necessary for providers to conduct post-market monitoring of the AI system and collaborate with the market surveillance authorities responsible to ensure that the system conforms and authorities have the required information.

Next, Juha reminded that AI users also owe several obligations under the new legislation. First, they must operate AI systems in accordance with their instructions of use. Second, they have to ensure human oversight when using the system. Third, users are to monitor the system for any possible risks and to inform the provider or distributor about any serious incidents or malfunctioning of AI. Finally, Juha confirmed that existing legal obligations (such as those under the GDPR) will continue to apply.

Discussing these relevant obligations further, Juha observed that the proposed legislation takes on a lifecycle approach that splits itself into various critical stages. Beginning with design requirements – the AI system must perform consistently for their intended purpose and comply with the requirements put forward in the regulation. Following on, the ex-ante conformity assessment stage must be satisfied and providers are then tasked to conduct post-market monitoring. During this stage, providers are to actively and systematically collect, document and analyse relevant data on the reliability, performance and the safety of the systems throughout their lifetime and to confirm they are continuously tracking compliance with the regulation. The next critical stage in this lifecycle is the legislative requirement to report serious incidents as well as malfunctioning AI that breaches fundamental rights. This will trigger proper investigations by competent authorities. Finally, new conformity assessments are also required if there are substantial modifications to the original system.

Finally, Juha reminded attendees that the list of high-risk systems is meant to be regularly renewed and updated in line with the advancement of emerging technologies. He emphasised that the mechanism for doing so is adequately provided for in the regulations.

2.4 Prohibited AI in the New Legal Framework

Juha then turned to examine the types of AI that are prohibited by the new legal framework. He explained that these systems belong to the tip of the risk pyramid earlier discussed. There are 4 different types of AI use so designated: AI that is used to subliminally manipulate its users resulting in physical/psychological harm, AI that exploits children or mentally disabled persons, AI used for general purpose social scoring and finally, AI employed for remote biometric identification for law enforcement purposes in publicly accessible spaces (with

certain exceptions). Juha communicated that these uses of AI are incompatible with fundamental rights and values of the EU and are thus prohibited.

Expanding a little further on the use of remote biometric identification, Juha explains that its use is slightly more complex and so there are certain exceptions enabling its employment. For instance, real-time remote biometric identification systems can be introduced to assist with the search for victims of crime, where there is a threat to life or physical integrity, terrorism, or in cases of serious crime (requiring an EU arrest warrant). In these limited contexts, permission may be generated. However, to note, even in these limited circumstances, ex-ante third party conformity assessment would still be required, along with enhanced logging requirements and the "Four eyes" principle.
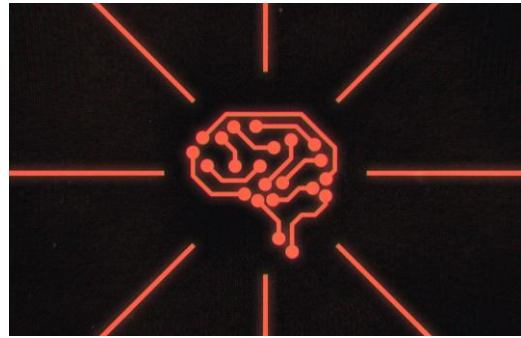
Juha then concluded his presentation by emphasizing that the conformity assessment component is reliant on standards. He commented that standardization will ensure that regulation can be implemented and enforced in a predictable and uniform manner across member States. He then handed the floor back to Nydia who thanked him for walking us through the EU proposal. Nydia then introduced Yi Zeng who proceeded to engage us in a discussion of responsible AI and deep coordination of sustainable development.

3. Yi Zeng: Deep Coordination of Sustainable Development and Governance

Yi Zeng first thanked the organisers for the opportunity to participate and highlighted that he wishes to share his views on AI regulation from an Asian perspective. He proceeded to introduce his framework of Responsible AI and its deep coordination between sustainable development and governance, and their inter-relationship.

3.1 The Visions of AI

First engaging us in the context, Yi Zeng explained the different schools of thoughts for the visions of AI. He recalls that in Japan, human-centric AI or humanistic AI is the predominant view. He then highlighted that the EU's focus is on trustworthy AI and the UAE more on AI for sustainable development. Turning to the Chinese example, Yi Zeng commented that the language of "friendly AI", "responsible AI", and "beneficial AI" have all been used. To this end, Yi Zeng remarked that China appears to present a more ecology-centric view of AI (as

compared to a more human-centric view). He commented that the ecology-centric view of AI places more weight on considerations surrounding the environment and society as a whole.

Moving on, Yi Zeng then presented a landscape of Asian AI principles. He shared the different national and institutional strategies to AI in Asia and their respective interests in these principles. They include: *for human, sustainability, collaboration, sharing, fairness, transparency, privacy, security, safety, accountability, and long term AI*. He conveyed that the research has revealed that most national governments tend to express an interest in almost every AI principle but institutions and industries have the tendency to neglect important AI principles such as sustainability.

3.2 Sustainable AI and AI for Sustainable Development

Yi Zeng then commented that he will focus on the sustainability principle to advance this comparative consideration. To begin with, Yi Zeng presented that sustainable AI is about creating truly intelligent machines and applying them to advance humanity and ecology, and avoiding or minimizing its negative effects on society. He cautioned that sustainable AI is not about building information processing tools that appear to be intelligent but without real understanding of the world. Additionally, he warned that providers should be careful to extend the capacity of such systems without careful consideration of the potential harms to society and ecology. Yi Zeng proceeded to observe that most AI innovations and applications are not primarily designed to be sustainable since these AI innovations are not intelligent machines that operate to benefit and advance humanity and ecology. These tools also have limited sustainable benefits and negatively impact on sustainable development goals.

Turning to AI for Sustainable Development Goals, Yi Zeng commented that this global initiative does not belong to any one country in particular but it belongs to all of us. He remarked that on analysing all the computer science and AI-related literature, with more than 8 million items, only 0.1% of the publications were concerned with directly contributing to the UN SDG. When the literature analysis was reduced down to 16 fields – it also became apparent that most providers were only interested in education and healthcare (where AI applications are recognised to be the most commercially profitable). He commented that there is definitely more room for AI practitioners to contribute to SDGs.

3.3 AI for Cultural Interactions and Green Development

Yi Zeng then moved to discuss how AI for cultural interconnectivity is essential for sustainable development. Developing a UNESCO global recommendation for AI, the idea was to use AI as an enabling technology to live in harmony. On this front, Yi Zeng observed that Asian contributors have been very consistently involved in the project. Despite different geolocations, cultures, and various ways of interconnecting with each other, there was a common goal to utilise AI to contribute to cultural interactions. He further remarked that AI can be used to link the world heritages of UNESCO to connect cultures and help us realise our interconnectedness.

Beyond cultural interconnectedness and the role AI can play, Yi Zeng commented that another dimension for AI to contribute to sustainability is to think about how AI can contribute to green development. Yi Zeng observed that huge AI models only contribute in minor ways to performance while contributing disproportionately to carbon emissions through power consumption.

3.4 Sustainable Development of AI vs AI Governance: Deep Coordination

Finally, Yi Zeng remarked that he did not see the sustainable development of AI and AI governance as being opposed to each other. Neither approaches have to be prioritized, or in competition with each other. Instead, he emphasized that there is a need for *deep coordination* to ensure more sustainable development in governance, and through better coordination comes more sustainable AI.

4. Ansgar Koene: Regulation & Standards for AI

Ansgar gave the final presentation of the day. His presentation focused on how AI regulations are developing globally and how they connect to standards.

4.1 Development of Policy Debate on AI

To introduce the topic, Ansgar first commented that as seen with many other kinds and types of regulation, there is a technical pattern to AI governance. The process is typically initiated by initially identifying whether there is an issue at hand that might trigger reviews like parliament enquiries and fact finding activities. This would normally lead to the development of AI

principles. As to the content of these principles, Ansgar commented that the principles tend to reveal a great deal of coherence globally, or at least not a lot of significant divergence. Following on, Ansgar observed that AI principles lead to the conceptualization of national AI strategies.

Ansgar proceeded to remind us that a country's AI strategy must be distinguished from its AI regulation. He emphasized that determining a country's AI strategy is about identifying the policy position of the country (as compared to the rest of the globe) when it comes to the use of AI. Following on from the national AI strategy stage (and for more than 50 nations currently), comes the thinking about legislative gap analysis. Here, the question posed is whether AI creates new challenges not already adequately covered by existing legislation in various sectors, or in horizontal legislation? This exercise prompts thinking and movement towards new or amending legislation.

In terms of how AI regulation develops, Ansgar observed that legislation tends to not result in a single piece of law but multiple legislation instruments are typically enacted to fit the realities that AI brings to the table. Ansgar commented that this is otherwise known as the deliberative approach towards regulation. In these cases, he noted that the government is not necessarily responding to any particular external pressure but instead, the State is contemplating the challenges that new technologies bring, in order to create a good governance environment.

4.2 AI-Related Policies Development at the EU

Moving on, Ansgar explained that the AI governance process in the EU similarly maps on to these different stages. From 2018-2020, a high level expert group on AI engaged in a fact finding exercise. This is then proceeded by the publication of a 2020 white paper – the ecosystem of excellence and trust – which provided the basis and statement for a regional AI strategy. Following on from this, the proposal for the AI Act was forwarded in April 2021 to address the identified legislative gaps. Ansgar noted however that the act will not be the only piece of legislation on AI from the EU.

4.3 Reactive Policy Development

Concurrently and in competition with the deliberative approach, Ansgar elaborated on the reactive policy development approach. In these cases, (perceived) abuse of power through the use of AI triggers reactive policy responses. As an example, Ansgar pointed to the

regulation of facial recognition technologies deployed by law enforcement and cities in the US. He explained that due to protest over bias in accuracy and deployment of the technology, various cities in the States moved to ban the use of facial recognition AI by the police or public sector.

Ansgar then referred to what Juha had previously mentioned and sought to address why the EU is looking to be a leader in the development of regulation in this space through the deliberative approach. He repeated that one critical reason why the EU is looking to regulate AI is to avoid differentiation between the respective member states and to maintain a single market. He cautioned that reactive policy making might drive to a breaking apart of coherence among member states, as in the US, with different states introducing different regulations.

4.4 Global Fora where AI Regulation is being Discussed

Moving on to why it is important to pay attention to the proposals coming out of the EU, Ansgar reminds that by virtue of being a "first mover" and being heavily represented in the global for AI, the EU proposal is likely to significantly impact other global AI discussions. He further explained that the EU AI Act is seen as unique because not many other countries are taking this approach. Additionally, he reminds that it is important to reflect on how much effort has been invested to maintain coherence globally, and how a lot of international institutions talk about developing uniform approaches.

Reflecting on the international fora concerned with standardisation, Ansgar pointed out that the OECD is one of the most developed in its thinking. He communicated that the OECD has a number of ongoing working groups that focus on important topics from trustworthy AI to deliberating on appropriate frameworks to classify AI systems. The latter group looks into the different types of AI (e.g. application spaces etc) to investigate the risks eventuating from it and the kind of regulatory requirements provoked.

Ansgar then proceeded to explain that the other important field of OECD's work is to look at how to implement trustworthy AI. He explained that the OECD is currently involved in developing an inventory of various tools (involving industry, academia, and other organisations) to manage AI systems to bring about better explainability and accountability. He reasoned that this endeavour would provide a more systematic way to understand these tools, learn from them and apply their potential.

4.5 The Regulatory Tapestry, Standards and Certification

Finally, Ansgar communicated that developments such as the AI act are only one part of a larger regulatory tapestry. Elaborating further, he noted ongoing concerns that the AI Act focuses mainly on product safety type issues but fails to address other concerns such as AI deployed in the education sector (e.g., using AI to monitor students).

Addressing these concerns, Ansgar reasoned that the Act is only one part of the tapestry and there must still be recourse to other legislation. For instance, when it comes to protecting privacy rights, the GDPR will still come into play. To this end, Ansgar highlighted that there is a need to continually update other legislation to adequately capture the issues coming out from AI. Further, he emphasized that part of reflecting on the bigger picture of this tapestry is to also look at AI standards to provide some of the more technical details for implementation. He explained that while regulation is more focused on outcomes, if we want to make sure that AI systems have the right type of transparency, only AI standards can help provide these technical details.
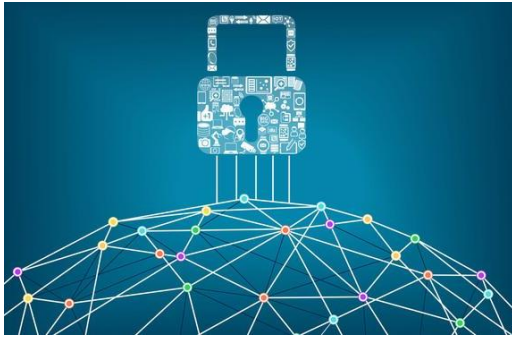
Elaborating further, Ansgar explained that standards play an important role for a lot of regulation to help in its implementation. For the GDPR, there are more than 12 standards that are GDPR related providing important guidance for developers of the system. Adherence to these standards means that a developer is more likely to be in compliance with the law. In other words, Ansgar opined that standards and regulations must go hand in hand. Governments will look at standards to get information, and standards will provide the technical details necessary for implementation.

Addressing the standards ecosystem, Ansgar explained that each country has a national standards body providing the needs for their local context. However, there is still a strong desire for an international standards level to avoid patchwork standards-making. Ansgar emphasized that technology is at its best when it can be deployed broadly. Therefore, many national standards bodies work together with the ISO to create international standards. In parallel to the ISO, Ansgar explained that there is also the IEEE who is similarly involved in creating international standards. Additionally, in between the international and national standards bodies, there are regional standard bodies including the EU and the CENELEC.

In addition to standards, Ansgar communicated that there is also the question about certification. Certification applies globally and there is obviously an interest from the consumer-end to be able to have some kind of mark to discern whether a technology is

reliable and ethical. Nonetheless, Ansgar acknowledged that the question about how best to provide clear standardized, recognizable ways of certifying AI systems is still in debate.

Parallel to this is also the question of how best to audit AI systems – Ansgar asked members of the audience how we can be sure that an AI system actually does what it claims to do and how do we ensure that AI systems are truly compliant? Again, he acknowledged that this is a space that still needs quite a bit of work as there are no actual audit standards on AI.

To conclude, Ansgar capped off his presentation by highlighting the importance of risk-assessment in addressing many of these questions posed.

5. Panel Discussion

Mark Findlay

The panel discussion was kicked off by Mark Findlay who conveyed that perhaps one of the more pertinent issues that is negatively impacting on the governance of AI (whether in a regional, local or national setting) is the ambiguity surrounding what AI truly represents. Mark elaborated that Juha had rightly pointed out that there are very ubiquitous notions of AI but it remains necessary for those interested in governing AI to create a definition that is suitable for their purpose. Expanding further, Mark considered that perhaps the discussion is missing a deeper debate and understanding of AI being a pipeline – that is, AI being a process from the idea, the concept through to its deployment and use. In emphasis, Mark communicated that all the way along that pipeline, there are different individuals involved, different decisions taken, different motivations that come into play, different applications of regulatory possibilities that will raise a range of different, interesting and problematic issues for regulators.

Moving on to certification, Mark communicated his interest in the idea and explained that the notion had been repeatedly raised throughout Asia. In Singapore specifically, he pointed out that there has been much discussion about certifying AI professionals as having ethical qualifications, and certifying AI that are deemed as trustworthy. Nonetheless, Mark cautioned that he is troubled by the certification process because a user/client can still take the product and deploy it to a range of other unfitting intentions and situations. In these cases, a counter-narrative will develop even against the best intentions of the regulator and the developer.

Turning to Juha's risk-pyramid, Mark conveyed that he was particularly interested to see what type(s) of AI systems would fall under prohibited use. He then mentioned that he largely

agreed with the classification set out and explained that two of these prohibited systems in particular are widely used in Asian jurisdictions. To this end, he pointed out that in regulating AI there will often be locational variation. In Asia for instance, there is an altogether different emphasis on rights protection, human capital and a more recent collapsing of public and private data spaces – where mass data sharing comes into play in relation to surveillance in certain Asian countries is evidence of this trend.

Mark then responded to Yi's discussion on sustainability and remarked that it is a rich and interesting platform to work from. Mark mentioned that he too often questioned when talking about sustainability whether we are talking about sustainability of AI or sustainability of its application, deployment, and the environments in which it works. He cautioned that distinguishing between the two is terribly important in the Asian region and especially in Singapore where there is a great variety of different capacities – political, economic, technological – in AI deployment. Elaborating further, Mark considered that if we see AI to some extent as a North World-generated phenomenon, of being introduced into the South World as part of, some might say, a hegemonic exercise, then the relationship between AI, its deployment (particularly if we see it as being relevant in assisting the SDGs), and its relationship with its economic, social and political locations becomes increasingly important. Additionally, Mark observed that the relationship between AI, clean environment, and pollution surveillance is also very prominent throughout Asia. However, he proceeded to warn that there's often also a question about the alternative uses for those surveillance mechanisms beyond the positive, anti-climate change applications.

Returning to Yi's proposal for deep coordination, Mark communicated that he fully concurs with Yi. However, one question that he would like us to consider is this: who is engaged and responsible for that deep coordination and the extent to which such said person/institution is held accountable. Following this line of thought, Mark raised that he considers one point to be critical across all the presentations and implores us to consider the position of the data subject in this picture. How do we employ our interest in the individuals who AI impacts upon and AI has the most relevance for in a community sense? He then proceeded to mention how the team at CAIDG is currently researching on the relationship between AI and humans in specific communities – he elaborated that this is quite an Asian approach to the idea of locating a technology in a community space with community responsibilities.

Moving on to Ansgar's presentation, Mark commented that he found the different approaches to regulatory progression fascinating and important. However, he would also like us to consider the relevance of law for all cases because it is known that the law often lags behind, lacks the language, or the flexibility to actively engage in certain areas of regulation. Mark then proceeded to concur with Ansgar's idea that individual pieces of legislation only form one part of the regulatory tapestry and emphasised the borderless nature of AI.

Mark proceeded to touch on the idea of standardization. He relayed that when looking at standardization, the question for him always boils down to 'standardization for what?' or 'what are we standardizing for?'. He commented that it is often very easy to standardize for technical efficacy, but much more difficult when looking to standardize for a complex emotional notion like trust. The same goes for this concept of good practice. Returning to his initial observation on AI being a pipeline, good practice/best practice impacts on each area of responsibility through that process because AI is a developmental phenomenon located in a community. Mark then concluded his observations by emphasizing on the importance of empowering and motivating data users/subjects though concepts like digital self-determination. He then proceeded to pass the floor to Yong Lim.

Yong Lim

Yong Lim first thanked the organisers for the invitation and commented on the importance of each presentation as providing plenty of food for thought. He then highlighted how he would like to focus his observations today on risk-based approaches to AI regulation and to comment on whether it is the right one to proceed with in AI governance discussion.

Yong Lim first acknowledged that the EU AI act explicitly adopts this approach but explained that some of the issues that he is intending to raise in his segment may not directly apply to the EU AI Act as it is currently presented. He then proceeded to comment on how the risk-based approach is one of several viable approaches to AI regulation, and recognised that it could well be the preferable approach, depending on the circumstances.

Yong Lim then proceeded to consider some of the advantages of a risk-based model as compared to a regulatory scheme that focuses primarily on illegality and attempts to prevent all possible harms. In sum, he remarked that a risk-based model is generally thought to be more effective based on its prioritization, better adaptability to changes in a target environment and ability to reduce regulatory burden for both the regulator and the regulated. He considered that this may perhaps form part of the thinking behind the risk-based model for the AI Act.

However, Yong Lim then cautioned that there are still several preconditions to consider in determining whether a risk-based approach would be successful for AI governance. The first being that the regulatory goals in question must be clear. The trade-offs must be subject to agreement between interested parties, and regulators must assess effectively the probability and consequences of these harms or risks that are potentially or actually unacceptable. Additionally, there must also be political and public tolerance for adverse outcomes defined as unacceptable.

In the case of AI, Yong Lim noted that there is pervasive uncertainty and a lack of transparency about the trajectory of the relevant technology and the associated risks. He observed that this uncertainty is prevalent not only for regulators but also for developers and providers of AI systems, individuals and users. This uncertainty is undergirded by a lack of institutional and technological capacity and experience to assess the technology and risks. Additionally, Yong Lim commented that there is also a more technical issue that emerges from implementing this risk-based approach through labels of defined categories in the AI Act. He explained that this will inevitably lead to disputes about which label is appropriate for any particular AI system, in any particular context or any use. Additionally, he pointed out the fear of the "unknown unknowns" since there is a lack of clearly-defined rights and obligations among interested parties.

Yong Lim observed that the AI Act appears to follow in the steps of the GDPR in terms of adopting a risk-based approach. However, he notes that the GDPR is different from the AI Act on several counts. First of all, there was significant expertise and experience in enforcing privacy law and while novel issues did arise within the data and digital economy, the industry and regulators both have a basic sense of what can and should be done in accordance with the preferences of individuals. Secondly, the GDPR was buttressed, or is buttressed, by a legislatively-supported strong rights-based system that is increasingly activated by individuals and civil society. In this regard, Yong Lim emphasized that there are significant differences between the GDPR and the EU AI Act and would caution those that believe that the risk-based approach would be successful for the AI Act in the same way that it is successful for the GDPR.

This leads Yong Lim to the question of whether there is a better approach to AI governance. He remarked that this is still up for debate and many are trying to figure out what the optimal approach and framework should be. He elaborated that he is already seeing earnest efforts in the field and pointed to the many wonderful initiatives that Ansgar had highlighted.

Yong Lim then urged regulators and members of the legal profession to try and identify, utilize and experiment with possible applications and extensions of existing laws to AI to the greatest extent possible. He mentioned that this thinking is in line with what Juha had earlier expressed and which also forms part of the thinking for the new AI Act, in terms of the tapestry and consistency with other laws. He emphasized that it is important to do this because existing frameworks and laws provide legal predictability and acceptance, while also making it possible to leverage accumulated experience and expertise of regulators.

To conclude, Yong Lim urged that we should not leave out other agencies when thinking about the institutional capacity and expertise of an AI-centric or a new AI agency or regulatory authority. He emphasized that other agencies and government authorities must also improve their game in terms of AI capacity, experience and expertise and by leveraging on existing

laws or frameworks and systems, governments can focus on boosting their capacities so that AI can be beneficial for all.

Marcus Bartley Johns

Marcus was then called on to share his thoughts and he first thanked the previous speakers for the rich discussion. He then moved the panel to comment on the future of AI governance in Asia by acknowledging the numerous advancements in the space in terms of development of AI principles, regulations, and related frameworks. He questioned where this is all going to end up and whether Asia is similarly moving towards a harmonised approach. Additionally, he relayed that he is also interested to know what this will mean for companies like Microsoft, and other smaller organisations operating across the region.

Before engaging the audience in the discussion, Marcus commented that he wanted to share a couple of thoughts. The first being that he recognises that Asia is not the EU and it is unlikely that the region will end up with one harmonised regulatory framework for AI. Expanding further, he explained that there is no supernational body in Asia that has the capacity to develop and enforce these laws. That being said, Marcus emphasized that there is still a need to to improve regulatory coherence across the region. Although Asia does not look like the EU, it does not mean that it should not explore the possibility of greater coherence through regional bodies. More specifically, Marcus emphasized that we can learn from areas like privacy regulation that has a fairly strong tradition of privacy regulators and the regional privacy community coming together to discuss privacy-related issues, despite the different legal contexts across the region.

Marcus's second point is on the finding of commonality among different AI principles and their interpretation. He explained that many AI principles have been developed to support the responsible use of AI across Asia, and there is increasing commonality between those and other principles in other regions. He acknowledged that this is an important starting point since there is at least agreement at the level of principle that certain issues like fairness, transparency, accountability are relevant regardless of the jurisdiction that we might be operating in. However, he proceeded to explain that the picture is more complex than that since AI systems are not just technical, but socio-technical systems. Touching on the socio part, Marcus elaborated that this is why there is a lot of the variation from one jurisdiction to the next, since legal and ethical traditions are all going to factor in. To this end, the principle of "fairness" may mean very differently across different jurisdictions. Marcus then explained that for a global organisation like Microsoft holding true to a baseline set of fundamental principles is vital for their operation. Acknowledging that this is going to be a complex process, Marcus remarked that it is perhaps possible to draw on the experience from other regulatory areas.

To conclude, Marcus commended the efforts of dialogue such as this one as having an important role to play in building the kind of exchange of information and coherence that is needed. He acknowledged that it will be a very long process but we can all learn from the effort that is ongoing in the EU to develop a regulatory proposal that is suitable for the region. Recognising that these proposals will not happen overnight in Asia, he nonetheless encouraged the efforts of groups like the Asian research dialogue on AI as driving the kind of exchange needed between researchers and other stakeholders in this field to progress and refine the debate on an "Asian" AI governance approach.

Mark Findlay

Following Marcus's comments, Mark wanted to address the topic of standardization and the tension surrounding it. He commented that there is some pressure for standardization to be applied to AI as it is applied to any other area of regulatory challenge. However, he explained that unlike other areas of regulation, there are different concepts of AI in different places, different community attitudes to AI, different ideas about its purposes, and how AI fits within the community. To this end, Mark wanted to hear from the speakers their ideas concerning this tension and the way(s) in which they would address the tension between international standardisation and regional standardisation while recognising also the important differences in different parts of the world to the purposes and location of AI.

Yi Zeng

Yi Zeng was the first to share his response and he raised two interesting points. The first point being that there is a need for more collectiveness if standardization is to be achieved. He commented that in many standardisation bodies, especially in working groups, there lacks a good balance of different ideas from different geolocations. In many cases, these organisations tend to already have some set standards and what they do is to simply ask different countries to agree with the standards without actual participation in the standardisation process. Yi Zeng communicated that this is a horrible process. His second thought linked to his point on the lack of collectiveness is the need to recognise different governance frameworks and strategies for AI governance. Elaborating further, he pointed to the example of the hosting of informal "tea meetings" with the Chinese government and relevant stakeholders and commented that AI goals can sometimes be achieved through this process. In thinking about how to make standardization effective, Yi Zeng emphasized the need to recognize the impact and use of different strategies in different geolocations.

Mark Findlay

Taking Yi Zeng's comments a step further, Mark turned to Juha to share his thoughts on whether he thinks that the approach in the EU Act (that is very much reliant on the recognition

of a rights framework) is a best-practice model that can be marketed around the world even in places where the rights of individuals are not quite so well-recognised or perhaps even inferior to communal responsibility.

Juha Heikkila

Responding to Mark's query, Juha highlighted that the European Commission needs to act in a way that is compliant with its values and existing legislation. Therefore, it is obvious that the rights discourse will feature prominently in the EU AI Act. That being said, the underlying principles of the Act, including respect for fundamental rights, have also been broadly incorporated in the United Nations charter and therefore the Act should be understood as being broader than just being European principles. Moving on, Juha communicated that the EC also engages the international community in these discussions and do take different voices into account.

Juha then proceeded to point out that perceptions may also change over time. He pointed to the enactment of the GDPR as a case on point where prior to its adoption, the GDPR was heavily criticized as stifling innovation. However, upon its adoption, which was roughly at the same time as the Cambridge Analytica affair, the tone towards the legislation changed and critics started to commend its creation. In the same way, Juha communicated that perceptions towards the AI act may change over time.

Mark Findlay

Mark agreed with Juha's comments and posed the next question to Ansgar who was asked to comment on whether the answer for standardisation is something that relates more to international organisations rather than regional, domestic or other forms of government frameworks?

Ansgar Koene

Ansgar responded by first acknowledging that there is definitely some recognition that standards are the most effective if they go beyond the national and regional level. Therefore, it is unsurprising to him that so much of the effort is focused at the ISO and IEEE, both of which are organisations acting at the international level. That being said, Ansgar highlighted that it is also important to realise that standardisation organisations are open for participation by everybody and it is not the case that they exist purely to serve industry participants. In recent times, there has been more concerted effort to get an equal split between industry, academic and civil society participation.

Addressing the bigger problem in standardisation, especially in the AI space, is the fact that standardisation for AI is still very much a Global North affair at the moment. Ansgar explained that technology leaders are mostly driving this conversation and the views of those who are going to be impacted by the technology are not really addressed in these conversations. That being said, it is interesting to reflect on the fact that there has been some initiation of standards specifically looking at ethics, trustworthiness, and the societal implications of AI. On the whole, there is some level of recognition that technology has a significant impact on society and technical experts need to be providing their input into this.

Ansgar then clarified that standards-setting is not about trying to impose particular kinds of values. It is also not about specifying 'this is what fair looks like' but rather providing a process that providers should follow to prove that they have taken into consideration what the issues are, that they have engaged with the relevant kind of stakeholders, that when a decision is made to optimise a certain kind of performance criteria that the justifications for doing so are clear and that it is communicated. Standards-setting is about focusing on a process that would provide clarity around what a provider does and documenting the decisions that have been made, as opposed to defining societal values.

Mark Findlay

On that note, Mark thanked Ansgar for his comments that allowed him to springboard the next question to Yong Lim who was asked for his thoughts on whether ethics as a self-regulatory framework has worked in Asia.

Yong Lim

To answer Mark's question, Yong referred to Yi Zeng's earlier observations on the different sorts of market intervention by authorities that are less clearly defined in the law. Yong explained that in Korea there is a "process" known as administrative guidance. Although not explicitly promulgated in the law, authorities regularly intervene in the market through guidance and dialogue. There are also legal restraints on their authority and how it is implemented and this sort of guidance forms part of Korea's "self-regulation". Therefore, when thinking about self-regulation broadly, Yong explains that "self-regulation" may take on a slightly different context and tone across Asia.

Yong then commented that perhaps why so many people are critical about AI ethics is the scepticism surrounding whether self-regulation would work and whether the industry, private firms or even big tech companies have the right incentives to properly self-regulate in the interest of the broader society. Additionally, he observed that there is another layer of scepticism in Asia, not over regulation or law, but over the kind of administrative interventions or administrative guidance earlier described which may/may not buttress self-

regulation. He explained that perhaps there is something promising to think about with co-regulation or meta-regulation as is happening in the EU and the US. However, he noted that this must still be within legal bounds providing certainty and predictability to those being regulated.

Mark Findlay

Mark thanked Yong Lim for the useful overview concerning the different Asian perspectives on the application of self-regulation. He then proceeded to mention that he would like to now move the discussion to consider the content of the different regulatory frames. He considered Yi Zeng's earlier mention of the notion of harmony, the Buddhist notion of compassion for the ethical application of AI in Thailand, and the concept of empathy across the West. He then posted the next question to Marcus who was asked for his thoughts on whether it is important for big tech companies such as Microsoft to take a country's cultural location into account when developing their services in various parts of the world.

Marcus Bartley Johns

In reply, Marcus highlighted that AI is not just a single technology, but a value chain or process where companies like Microsoft and other large technology companies are key players in that chain. Moving on, he commented that we need to be careful when thinking about universality in the AI governance context and in the way that these technologies are developed and deployed. Companies like Microsoft need to have an understanding of the different contexts that they are operating in. Even speaking from a commercial perspective, Microsoft will not be successful if they do not understand that the customers of their products are going to have different needs in the different contexts in which they operate. That aside, there will be different regulatory requirements in different jurisdictions that require complying with, and Microsoft needs to understand and adapt those technologies in their own contexts.

Mark Findlay

To sum up the webinar, Mark gave each presenter 2 minutes to share one observation on anything that's arisen in the discussion so far. Juha was asked to comment first.

Juha Heikkila

Juha commented that many interesting points have been made and he found it very stimulating to be a part of this dialogue. He then remarked that one observation that he would like to raise today is related to standards-setting, highlighting also that Ansgar had already spoken about this to some extent. He agreed with Ansgar that there is a way to see standards as something that is 'prior to'. Accordingly, any conclusions to draw from the legislative or the

policy perspective can be the common ground for defining things from the technological perspective. Juha's second point was on the pipeline aspect that was earlier mentioned by Mark. He raised that the notion of "AI being a pipeline" is something that has already been considered in the EU. For instance, post-market surveillance feeds into this idea of AI as a pipeline. Juha emphasized that this life-cycle approach is indeed very important to both highlight the high-risk uses of AI and to update what counts as "high-risk" AI.

Yi Zeng

Going back to the idea of AI being a 'pipeline', Yi Zeng cautions that we only have ethics-by-design, but not 'ethics by implementation' and 'ethics by service'. On that note, he explained that we should not only have ethical designers, but in every component of the recursive workflow, we need to have in mind how to implement the various ethical considerations in their various scope.

Ansgar Koene

Ansgar opted to answer one of the questions that came in through the QnA. The question that was raised was 'will different countries and cultures weigh AI principles differently? In response, Ansgar highlighted that they will - Different countries and cultures might weigh different principles differently, and even within the same country, when talking about different application spaces, the weight and focus on certain AI aspects will be different, whether we are talking about an AI application in healthcare or in transport. Connected to that thought is the importance of not focusing everything on a single AI regulator, a single kind of AI regulation, but also reflecting on the extent to which we need to potentially update sectorial-specific kinds of regulations to be able to deal with AI. Part of that is also addressing the other problem around the definition of AI being overly broad.

Yong Lim

Yong Lim added that he would like to add on to what Ansgar and Marcus had said and commented that for Korea, AI regulation is very much a trade issue. The AI Act talks about some expectation of mutual recognition and agreements for coordination. Similarly, the US and Japan had recently settled their digital trade agreement. There is a global environment that Korea has to be mindful of that will determine how AI governance or regulation will form within the Korean borders.

Marcus Bartley Johns

Taking it full circle back to the EU, Marcus commented that one of the hugely valuable aspects of this dialogue is having people come from outside the region to share their experience of

regulation on these issues. He added that there is a huge amount for Asia to learn from concerning the process behind the AI Act process (i.e., its detailed period of consultation, of defining principles, of having a multi-stakeholder process underpinning it.). Additionally, there is also something to learn about the substance of the regulation – for example, the risk-based framework, the recognition of the benefits of transparency. Having said that, Marcus acknowledged that there will be other things in the period ahead that needs to be unpacked further. For instance, issues concerning the distinction between a user and a producer. He emphasized again that these questions will all have huge relevance for Asia and so it is really valuable to have these perspectives.

Mark Findlay

In his closing remarks, Mark commented that the belief in ethics has changed remarkably in the last 2 years. The conversation on what ethics mean has also shifted towards a different direction and we are now in a situation/position where we are looking at "ethics plus". Additionally, Mark highlighted that today's discussion has been impacted by a very important shift, that is, the move towards AI as being the driver for economic growth to a genuine consideration of AI as having a role in social sustainability. He concluded that these developments are all very important and he looks forward to what the future holds for AI governance in Asia.