CAIDP Update 2.31 (Aug. 23 2021) – *China Adopts Sweeping Data Protection Law*

In one of the most remarkable developments in the history of data protection law, China has adopted a comprehensive privacy law, the Personal Information Protection Law. The PIPL, modelled after the European GDPR will have far-reaching consequences for the processing of personal data, transborder data flows, and for AI. (Translation by Stanford DigiChina here. Excellent analysis by FPF here.)

In an op-ed published by the People's Court Daily, the National People's Congress called for limitations on the use of algorithms for targeting. "Personalization is the result of a user's choice, and true personalized recommendations must ensure the user's freedom to choose, without compulsion. Therefore, users must be given the right to not make use of personalized recommendation functions."

China has come under widespread criticism for the use of advanced surveillance techniques to suppress the Muslim Uyghur minority in the Xinjiang province, for the crackdown on democracy protesters in Hong Kong, and for the use of "social scoring" of Chinese based on whether their behavior aligns with the goals of the Central Communist Party. Human rights organizations, national governments, and international organizations have called for an end to these practices.

CAIDP highlighted key AI provisions in the PIPL in the CAIDP Update 2.18 (May 9, 2021). In the final text, these provisions are Article 7 (principle of transparency), Article 24 (algorithmic transparency including explanation, with a new clause to limit price discrimination) Article 28 (establishing the use of personal identity recognition equipment in public venues), Articles 55 and 56 (the renamed "personal information protection impact assessments"), and Article 62 (coordination of AI by state cybersecurity authority). Many other provisions align with the GDPR, such as the definition of personal data, deidentification, and anonymization, as well as the need for a legal basis to process personal data. FPF noted that the PIPL moves away from consent as the primary basis for processing which reflects the original intent of the EU Data Protection Directive, the predecessor of the GDPR.

Article 34 extends the PIPL obligations to all state authorities. And provisions on data minimization and purpose specification should make fewer personal data available to the state for public security purposes. Other provisions limit the export of personal data out of China (Article 36). And other provisions limit the use of children's data (Articles 28 and 31).

Over the last several years, many governments, from Brazil to Saudi Arabia, have enacted GDPR-like data protection laws. But none exert the economic power of China, a point well understood by the drafters of the PIPL. One of the key aims of the law is that "The State vigorously participates in the formulation of international rules for personal information protection, stimulates international exchange and cooperation for personal information protection, and promotes mutual recognition of personal information protection rules and standards, . . ." (Article 12) Other provisions point to bilateral and multilateral data transfer mechanisms, in contrast to the adequacy determination within the GDPR.