



March 18, 2022

## BSA SUBMISSION TO THE REPUBLIC OF KOREA ON REGULATING ARTIFICIAL INTELLIGENCE

### Overview

BSA | The Software Alliance (**BSA**)<sup>1</sup> seeks to provide general comments to the Ministry of Science and ICT (**MSIT**) on the regulation of AI in Korea. BSA notes from MSIT's Workplan for 2022<sup>2</sup> that one of MSIT's key priorities for 2022 is develop legislation to regulate AI in Korea, and would like to contribute to this important endeavor by proffering the following recommendations:

Key Recommendations	
<b>Recommendation 1: Adopt a risk-based approach to regulation</b>	The Government should take a systematic, risk-based approach by limiting regulation to AI systems which are deployed in high-risk sectors in a manner where significant risks are likely to arise.
<b>Recommendation 2: Ensure free movement of data and open access to government data</b>	To promote Korean AI innovation the Government should: 1) ensure that data can move freely across borders; and 2) make all non-sensitive government data assets freely available and useable for the general public.
<b>Recommendation 3: Account for the different roles and responsibilities of stakeholders</b>	AI regulations should recognize the varying roles and responsibilities of stakeholders. Relatedly, clear language for broad stakeholder involvement should be included in future legislation on AI.
<b>Recommendation 4: Promote interoperability of regulations and standards</b>	In designing regulations for AI, the Government should align them with global norms, and strive to make them interoperable with other jurisdictions.

<sup>1</sup> BSA's members include: Adobe, Alteryx, Altium, Amazon Web Services, Atlassian, Autodesk, Aveva, Bentley Systems, Box, Cisco, CNC/Mastercam, Dassault, DocuSign, Dropbox, IBM, Informatica, Intel, MathWorks, Microsoft, Nikon, Okta, Oracle, PTC, Rockwell, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc.

<sup>2</sup> 2022 MSIT Work Plan Announcement, December 2021,

<https://www.msit.go.kr/eng/bbs/view.do?sCode=eng&mPid=4&mPid=2&pageIndex=1&bbsSeqNo=42&nttSeqNo=610&searchOpt=ALL&searchTxt=>

## Introduction

BSA is the leading advocate for the global software industry before governments and in the international marketplace. Our members are at the forefront of software-enabled innovation that is fueling global economic growth, including cloud computing and AI products and services. As leaders in AI development, BSA members have unique insights into both the tremendous potential that AI holds to address a variety of social challenges and the governmental policies that can best support the responsible use of AI and ensure continued innovation.

We are encouraged that one of MSIT's key priorities for 2022 is develop legislation to regulate AI in Korea. AI has the potential to generate substantial economic growth and enable governments to provide better and more responsive government services, while addressing some of the most pressing societal challenges. However, a flexible policy framework is necessary to enable the successful deployment of AI products and services. BSA has identified the following key recommendations for consideration when developing AI regulation:

- Adopt a risk-based approach to regulation;
- Ensure free movement of data and open access to government data;
- Clearly delineate the roles and responsibilities of AI stakeholders; and
- Promote interoperability of regulations and standards.

## Recommendation 1: Adopt a Risk-Based Approach to Regulation

**We encourage the Government to take a systematic, risk-based approach by limiting regulation to AI systems which are deployed in high-risk sectors in a manner where significant risks are likely to arise.**

As a general principle, the scope of any regulatory obligations should be a function of the degree of risk and the potential scope and severity of harm. Many AI systems pose extremely low, or even no, risk to individuals or society, and imposing onerous regulations on them would only unduly hamper AI innovation. AI regulations should therefore focus on high-risk scenarios, where the deployment of AI-based technologies poses a threat to fundamental rights. To this end, it will be important to carefully assess scenarios that should be deemed as high-risk and hence be subject to legal requirements. BSA's proposed two-pronged approach – to consider both the sector the AI system is deployed in and the risks which may arise – provides a framework for assessing high-risk scenarios.

When developing regulations, we urge the Government to extend this two-pronged approach to all possible high-risk scenarios, rather than identifying specific sectors where – regardless of its purpose and use – AI would be considered high-risk by default. This would allow for a more homogeneous application and understanding of the possible requirements for high-risk AI, providing for the necessary proportionality and legal certainty as AI technologies and tools are developed and deployed.

**Relatedly, we urge the Government not to pursue a regulatory scheme based on prescriptive conformity assessment requirements.** The risks that AI poses and the appropriate mechanisms for mitigating those risks are largely context-specific. The appropriate mechanisms and standards for training data, record keeping, transparency, accuracy, and human oversight will vary depending on the nature of the AI system and the setting in which it is being deployed. The Commission should therefore avoid creating prescriptive, one-size-fits-all requirements around these categories. Such ex-ante requirements could impede efforts to address the very risks they are intended to address, add unnecessary costs and require extremely complex compliance checks. Given the nascent nature of

the technology and sociotechnical quality of many of its most significant challenges, BSA believes that an approach which identifies broad objectives and the processes that developers and deployers should follow to achieve them, will be more effective than a prescriptive one.

## **Recommendation 2: Ensure Free Movement of Data and Open Access to Government Data**

AI systems are “trained” by ingesting enormous volumes of data. The benefits of AI are therefore dependent on the quantity and quality of data that is available for training. As a result, government policies affecting the ability to access and share data have a significant influence on the development of AI. **To promote Korean AI innovation, the Government should: 1) ensure that data can move freely across borders; and 2) support an open government data policy to make non-sensitive government data assets freely available and useable for the general public.**

### *Ensure data can move freely across borders*

The free flow of data is integral to every stage of the AI life cycle, from the development of predictive models to the deployment and use of AI systems. Data used in AI systems often originates from many geographically dispersed sources. Many AI solutions used in Korea are developed internationally and offered over the cloud. Likewise, AI solutions developed in Korea need to rely on data flows both for their development and deployment. Therefore, it is imperative that AI regulations do not impose further data localization requirements, and that data be allowed to move freely across borders in an interoperable and secure way.

### *Access to government data and public sector information*

BSA supports an open data policy through which non-sensitive government data should be made open, available, and useable for the general-public. Government-generated data is a resource that can serve as a powerful engine for creating new jobs and promoting economic growth. At both the local and national level, governments collect and generate vast quantities of data that can be harnessed in the development of AI systems.

- ***Putting government-held data to use:*** Sound data policies and regulations should ensure that non-sensitive government-generated data asset is made freely available to the public in machine-readable formats. This data — a resource that would otherwise be unused — can improve services and lower prices. For instance, an AI system designed to improve supply chain efficiency might rely on government data about historical traffic flows, law enforcement event advisories, and weather patterns to recommend delivery routes that minimize congestion, reduce emissions, and improve public safety.
- ***Preventing data lock-up through procurement:*** Governments should carefully consider the effect that procurement policies can have on the availability of data. As a general matter, governments should avoid service agreements that would grant exclusive access or use rights to government datasets to any single private entity. Increasingly, government data is being generated by third-party vendors. For instance, local transit authorities may contract with third-party vendors to analyze data generated by buses and trains, or by sensors embedded in street lights and roadways. Governments contracting for such services should ensure that any statistical data created or maintained on its behalf as part of the agreement is not subject to access or use restrictions. Rather, data provided to governments as part of such procurement contracts should be treated like any other government data asset and should be made freely accessible for public use.

As a starting point, the Government should consider mechanisms for identifying and mitigating sources of friction that could inhibit the sharing of government data. Such an effort should include an evaluation of how agencies can leverage emerging technologies and data governance processes to enhance privacy protections, while also making more data available to the public.

### Recommendation 3: Account for the Different Roles and Responsibilities of Stakeholders

**AI regulations should recognize and account for the varying roles and responsibilities of stakeholders.** The Organization for Economic Co-operation and Development (OECD) recognized the critical importance of distinguishing the multiple stakeholders involved in AI when it adopted the principles underlying the Recommendation of the Council on Artificial Intelligence (Recommendation).<sup>3</sup> Specifically, the Recommendation recognizes that effective AI policies must necessarily account for “stakeholders according to their role and the context” in which AI is being deployed. For instance, the *deployer* of an AI solution should be distinguished from the *developer* of said AI solution. Including such a conceptual distinction would be helpful to different stakeholders as they carry out risk assessments to determine the appropriate measures to adopt for AI development, deployment, and use. In addition, it would also be useful for both AI solution providers and entities that deploy and use AI to consider who the ultimate end user of the AI solution will be — in general, end-user businesses should be considered more sophisticated users than end-user individuals — and this would in turn have implications on internal risk assessments and commercial viability.

Relatedly, it is important to carefully assess the scenarios where the use of AI systems would be deemed “high-risk” and thus subject to legal requirements. Stakeholder involvement is crucial in this context, as this assessment will be both sector and use-case dependent. As such, **BSA recommends ensuring that clear language for broad stakeholder involvement<sup>4</sup> is included in future legislation**, to promote a beneficial interaction between AI developers - which may not have extensive experience or presence in a specific sector now deemed high-risk - and deployers. We also urge the Government to continually engage with stakeholders throughout the legislative process, and *especially* in the implementation and enforcement phase.

### Recommendation 4: Promote Interoperability of Regulations and Standards

AI systems are developed and deployed in an international context. It follows that AI regulations and standards should ideally operate across different jurisdictions, so as to facilitate and promote further adoption and use of AI technologies. **BSA urges that, in designing regulations for AI, the Government should align them with global norms, and strive to make them interoperable with other jurisdictions.**

For example, the Recommendation represents an important first step toward establishing global norms around the governance of AI. Those norms are predicated on a risk management-based approach for enhancing the benefits of AI and safeguarding against unintended harms. Future regulation should seek to align with OECD’s guiding principles. There are also various efforts underway to establish internationally recognized standards for AI, including within International Organization for Standardization (ISO) and Institute of Electrical and Electronics Engineers (IEEE).<sup>5</sup>

---

<sup>3</sup> Recommendation of the Council on Artificial Intelligence, May 2019, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>. Per the Recommendation, the AI stakeholder community “encompasses all organizations and individuals involved in, or affected by, AI systems, directly or indirectly.”

<sup>4</sup> Per the Recommendation, the AI stakeholder community “encompasses all organizations and individuals involved in, or affected by, AI systems, directly or indirectly.”

<sup>5</sup> See: <https://www.iso.org/committee/6794475.html> and <https://standards.ieee.org/initiatives/artificial-intelligence-systems/>.

To minimize further international fragmentation, the Government should also consider the international regulatory landscape as it evaluates new legislation, and preference should be given to options that are interoperable with similar policies in foreign markets.

## Conclusion

We hope that our comments will assist in the development of clear and rigorous regulations for AI in Korea. Please do not hesitate to contact me if you have any questions regarding this submission or if I can be of further assistance.

Sincerely,



Tham Shen Hong  
Manager, Policy – APAC