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Global Affairs Canada Consultation:  
*Canada's possible accession to the Digital Economy  
Partnership Agreement (DEPA)*

Submission from Cybera Inc.

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## **Introduction**

Cybera is the not-for-profit, technology-neutral organization responsible for driving Alberta's economic growth through the use of digital technology. One of its core roles is the operation of Alberta's Research and Education Network. This is the dedicated network for the province's unmetered, not-for-profit internet traffic, and is used by schools, post-secondary institutions, municipalities, research institutions, and business incubators.

Cybera commends the Government of Canada for accepting public comment on the possibility of Canada joining the Digital Economy Partnership Agreement (DEPA). The issue of global, cross-border data governance will be of increasing importance in the coming decades. The centrality of data processing in global trade will necessitate international partnerships, as well as agreements that strike a balance between the relative free-flow of data over international borders, while maintaining the trust of the originators of that data. This will require countries to maintain flexible, principles-based privacy protection regulations based on globally recognized best practices to facilitate interoperability across multiple jurisdictions.

With respect to the possibility of Canada joining DEPA, this submission will focus on those modules concerning privacy rights, digital identities, emerging technologies, and digital inclusion.

### **1. Module 4 - Data Issues**

1. Notably, Canada has itself been undergoing significant legislative and regulatory updates with respect to personal information protection, including passing the Consumer Privacy Protection Act, and creating new administrative bodies such as a national Data Commissioner. Cybera recommends that the Government of Canada build on these standards to advance the protection of privacy rights in the era of data interconnection, both in discussions surrounding DEPA, and other similar global trade initiatives such as the WTO Joint Statement Initiative on E-Commerce and the data-flow provisions of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CTPP).
2. In Cybera's view, the existing text of DEPA could be updated to be brought more in line with Canada's legislative regime, particularly as it relates to the Personal Information Protection and Electronic Documents Act (PIPEDA). As PIPEDA forms the basis of consumer privacy protection in Canada, Cybera is of the view that potential issues with respect to cross-border data governance could be significantly mitigated if the overarching personal information protection regime of DEPA best reflects the principles of Canada's existing privacy legislation.
3. Section 4.2(3) of the text of DEPA reads;

"The Parties recognise that the principles underpinning a robust legal framework for the protection of personal information should include:

- (a) collection limitation;
- (b) data quality;
- (c) purpose specification;
- (d) use limitation;
- (e) security safeguards;
- (f) transparency;
- (g) individual participation; and
- (h) accountability."

4. This section is notable in that it is essentially identical to the principles of Canada's PIPEDA, except it does not make reference to the principle of consent in data collection. As consent forms the basis of Canada's existing personal information protection regime, Cybera recommends that, to the degree possible, the text of DEPA should more explicitly outline a consent regime in the section referenced above, and in other sections where it is relevant.
5. With respect to cross-border data flows, Cybera recommends that the wording of DEPA be expanded to include non-business activities where appropriate, including transfers for academic, scholarly and research purposes.
6. Section 4.3.2 of DEPA reads;

"Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person."

7. Cybera recommends that the text of DEPA be updated to reflect similar provisions in PIPEDA and the Privacy Act, which respects the importance of data-flows for academic research, including offering substantially reduced rules regarding the use of anonymized data. Cybera is of the view that there is a meaningful distinction to be made between transfers of data made for commercial uses, and those made for scholarly or research purposes – one being driven by profit, with the other largely motivated by the public good. Furthermore, there exists within academia additional layers of ethical standards, with respect to scholarly research based on personal information, that do not exist in the commercial sector. These additional standards should factor into how sets of data are permitted to be used for each of these purposes. As such, international agreements with respect to personal information protection should be cognizant of personal data used for research purposes and, where possible, separate such data usage from commercial uses.

## **2. Module 8 - Emerging Trends and Technologies**

8. As it pertains to Artificial Intelligence (AI), Cybera is of the view that DEPA is insufficiently detailed or comprehensive in how it defines and governs AI. Notably, the sections on AI are relegated to three provisions, none of which include a definition of AI or a best-practices privacy regime that parties to DEPA could use as a model for their own AI/privacy guidelines.
9. Cybera argues that the use of automation, by its nature, presents a disruption to legacy forms of processing, and should therefore be given a distinct definition within DEPA.
10. Cybera recommends the sections relevant to AI governance in DEPA should outline a definition of both 'artificial intelligence' and 'automated decision making' as a basis for the section outlining principles around AI governance.
11. In Cybera's view, these definitions should be modeled on the Government of Canada's Treasury Board Directive on Artificial Intelligence<sup>1</sup>, which reads;

**Artificial Intelligence:** Information technology that performs tasks that would ordinarily require biological brainpower to accomplish, such as making sense of spoken language, learning behaviours, or solving problems.

**Automated Decision System:** Includes any technology that either assists or replaces the judgement of human decision-makers. These systems draw from fields like statistics, linguistics, and computer science, and use techniques such as rules-based systems, regression, predictive analytics, machine learning, deep learning, and neural nets.

## **3. Module 11 - Digital Inclusion**

12. Currently, Section 11.1 of DEPA reads;

"The Parties recognise the importance of expanding and facilitating digital economy opportunities by removing barriers. This may include enhancing cultural and people-to-people links, including between Indigenous Peoples, and improving access for women, rural populations and low socio-economic groups."

13. In Cybera's view, the wording of this section in DEPA on digital inclusion is insufficient and does not adequately reference the potential of personal information to be used for discriminatory purposes. Notably, the Government of Canada has acknowledged this

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<sup>1</sup> <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32592>

possibility in other proceedings with respect to cross-border data governance agreements, including the WTO Joint Statement Initiative (JSI) Agreement on E-Commerce. Cybera recommends that the text of DEPA be changed to include the Government of Canada's proposed amendment to the World Trade Organization (WTO) JSI Agreement, which reads;

"No Party/Member shall use the personal information of users of digital trade to persecute or discriminate against a natural person on the basis of race, colour, sex, sexual orientation, gender, language, religion, political or other opinion, national or social origin, property, birth or other status, or disability."<sup>2</sup>

## **Conclusion**

Cybera thanks Global Affairs Canada for this opportunity to comment on Canada's possible ascension to the Digital Economy Partnership Act. We look forward to the Government of Canada's ongoing discussions with respect to personal information protection and global trade agreements. Cybera looks forward to participating in future discussions on Canada's possible ascension to DEPA, and personal information protection policies more generally, where possible.

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<sup>2</sup><https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/statement-concept-ecom-declaration-reflexion-09.aspx?lang=eng>