



Public Consultation on Digital Ethics

SUMMARY OF OUTCOMES



Public Consultation on Digital Ethics

SUMMARY OF OUTCOMES

25 September 2018

INTRODUCTION

On 15 June 2018, the European Data Protection Supervisor (EDPS) launched a public consultation on Digital Ethics. The consultation is an essential part of the ongoing EDPS Ethics Initiative, a series of actions aimed at exploring the consequences of new digital technologies on society and their implications for data protection and the right to privacy. This long-term initiative aims to encourage the European and global community to reflect on the rights and values in data-driven life and intends to stimulate public debate on how digital ethics can serve to strengthen core data protection principles and legal compliance.

The initiative began in September 2015 with the publication of the first EDPS ethics Opinion, *Towards a New Digital Ethics: Data, Dignity and Technology*.¹ This Opinion urged the EU and other international figures and organisations to promote an ethical approach to the development and employment of new technologies. This was followed by the establishment of the EDPS Ethics Advisory Group (EAG), composed of six independent experts tasked with analysing the relationship between fundamental values and rights, technology and markets.²

The final stage of the initiative involved opening up the debate to the general public through the launch of the public consultation on Digital Ethics. The questionnaire designed for this consultation built upon the 2018 EAG ethics report, *Towards a Digital Ethics*.³ It invited all sections of society to share how the shift to digital affects them, the specific challenges they face and to what extent they are addressing these challenges using an ethics-based approach. Most of the twelve questions were open to qualitative answers, with only some requiring a yes or no answer or consisting of a set of pre-defined answers to choose from.

When the consultation closed on 15 July 2018, the EDPS had received 76 contributions. These were submitted by a broad variety of stakeholders, the majority of them from the private sector, the health sector, research and education, public administration and civil society, but also from individuals, including two artists, and a religious body. Responses came from various European countries, Australia and the USA and were submitted in four languages.

These responses produced an extraordinary range of perspectives and suggestions, which will guide further EDPS work on digital ethics. Most notably, the responses will be used to inform the discussion at the 2018 International Conference of Data Protection and Privacy Commissioners, which will be hosted this year by the EDPS and dedicated to *Debating Ethics: dignity and respect in data-driven life*. The conference and the consultation will bring an end to the Ethics Initiative by inciting an open, inclusive and cross-disciplinary debate about ethics in the digital age.

1 https://edps.europa.eu/sites/edp/files/publication/15-09-11_data_ethics_en.pdf

2 The Ethics Initiative also involved two workshops on digital ethics, broadening the discussion to members of the data protection community and to specialists in data science and data engineering: https://edps.europa.eu/data-protection/our-work/publications/ethical-framework/data-driven-life-workshop-0_en; https://edps.europa.eu/data-protection/our-work/publications/ethical-framework/edps-eag-workshop-ethics_en.

3 The results of the EAG's work were summarised in a final report published in January 2018 and entitled *Towards a Digital Ethics*, EAG Report 2018: https://edps.europa.eu/sites/edp/files/publication/18-01-25_eag_report_en.pdf

Overview of the results

This overview summarises the answers received for each question. It does not aim to be exhaustive, but rather seeks to give a qualitative representation of the contributions and to identify trends and potential trajectories for the application of digital ethics. This summary is an EDPS working document and the views presented in it do not constitute an EDPS policy position or proposal.

Is ethics about new technologies and innovations on the agenda of your organisation? If so, why?



More than 80% of respondents affirmed that ethics relating to new technologies is, or will soon be, on the agenda of their organisation, many of them considering it “important”, “extremely relevant”, or even “mandatory” and “a priority”. When explaining their motivations, respondents referred to the need for technology to serve humankind, the limitations of the legal system, as well as the scale of the challenges faced.

Several answers stressed that every “ordinary person” is affected by the digital shift, experiencing infringements - whether conscious or not - on their rights as individuals and as members of society. In many responses digital ethics was linked to fundamental values and principles, human rights, democracy, and to the risks posed to them. Solidarity and a fair digital dividend, for instance, were perceived as threatened by “technology that is benefitting a small part of a society” as this “leads to polarisation and power accumulation and can have a negative impact on social stability.”

“We want to be a good corporate citizen”, and other similar comments referring to corporate responsibility, show that ethical considerations about what is good behaviour in the digital age are also taking hold in the private sector. Many acknowledged that “often this means doing more than the law requires” and that “best practice goes beyond the law - the law is the floor.” Only a few entries from the private sector built on an instrumental understanding of ethical behaviour as a competitive advantage in the market, noting that “failing in the transparent and fair processing of data can have disruptive effects on the business.”

“
Digital ethics are core to our mission because we believe that technology should support humanity and allow humans to flourish, which means that it must be imbued with human values in ways the law alone can't control.”

“
Because we care about human rights and European values of liberty, equality, freedom, democracy.”

What sort of ethical challenges does your organisation currently address (not only technology related)? How does your organisation identify these ethical challenges?



While this question aimed at understanding what other kinds of challenges are addressed through an ethics-based approach, all responses were technology related, several of them mentioning “fair processing of personal data”, questions of consent, and GDPR compliance. A significant number of participants raised the problem of balancing “legitimate interests” and “the potential of using data” with data protection and the rights of individuals.

Beyond data protection, participants listed challenges as diverse as “the problems that social media currently create”, the current inability of individuals “to benefit from their data themselves”, biases in algorithms and discrimination, the transparency and reproducibility of Artificial Intelligence, patents and copyright issues, fake news and online fraud, cyber bullying and research ethics and big data.

Awareness of the wide range of risks appears to be high, with many respondents sharing concerns as fundamental as equal access to new digital technologies and fair distribution of benefits, or as ontological as the loss of human contact with nature. Phrases such as “securing human dignity and privacy” and “treating each customer with fairness and respect”, as well as an acknowledgement that individuals need to “understand and want” the services and products offered to them, provide further evidence that respondents are eager to debate digitalisation in the language of values, rights and ethics.

What does your organisation do today to deal with these ethical challenges? What do you plan to do in the future?



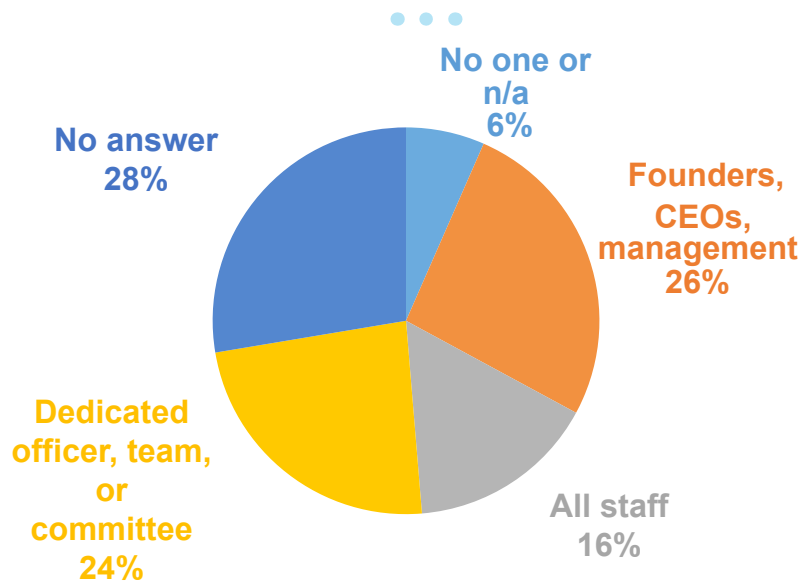
Most answers to this set of questions mentioned adherence to codes of conduct, declarations, charters and similar guidance documents,

the establishment of ethics committees and engagement in awareness raising activities and advocacy, such as organising training courses, roundtables, and campaigns. Other respondents pointed to the importance of being and keeping informed in this fast-changing environment, fostering public dialogue in different formats and taking part in the debate with policy makers.

Several contributors also plan to invest in research about the ethical implications of new technologies and emphasised the importance of “considering ethical questions already in R&D innovation phases”. Some respondents, mostly software developers, referred to services and tools they developed to enable users to better protect their privacy, autonomy and self-determination.

Overall, 63 out of the 76 participants answered that they are dealing with or planning to deal with ethical challenges. This illustrates the variety and number of organisations facing ethical challenges, as well as the growing interest in, or demand for, an ethics-based approach to digitalisation.

Who is responsible for and involved in ethical assessment in your organisation?



Do you believe public authorities should play a role in governing digital ethics? Why?

The question with the most conclusive results concerned the role of public authorities in governing digital ethics. 86% of participants answered “yes”, providing a broad array of reasons as to why they felt this way.

Many of these reasons revolved around the risks of self-regulation. Participants referred to recent scandals, such as the Cambridge Analytica case, as evidence that “companies usually place financial gains before what is good for the public and individuals.” Similarly, another participant noted:

Developments over the last 20 years indicate that ‘waiting for the market’ to address all ethical issues will be a long wait. The increased attention to privacy simply because of the scale of the fines under GDPR suggest that the only language that some companies understand is financial risk.

Following a similar rationale, several respondents pointed to the responsibility of public authorities “to level out the playing field between organisations that abide to an ethical

approach and other organisations prepared to sacrifice ethics in the pursuit of a perceived economic advantage.”

Another set of respondents cited the scale of the challenges humanity currently faces, referring to the digital shift as an historical moment involving societal risks that require structural intervention. These answers often included reflections about the role of states, their responsibility “to protect the individual” and to place “the public good at the core of their mission.” Again, respondents identified several fundamental rights and values as being at risk, such as autonomy, dignity, equality, democracy, and civil liberties. In line with this were answers that focused on the function of the state as an instigator and moderator of public debate.

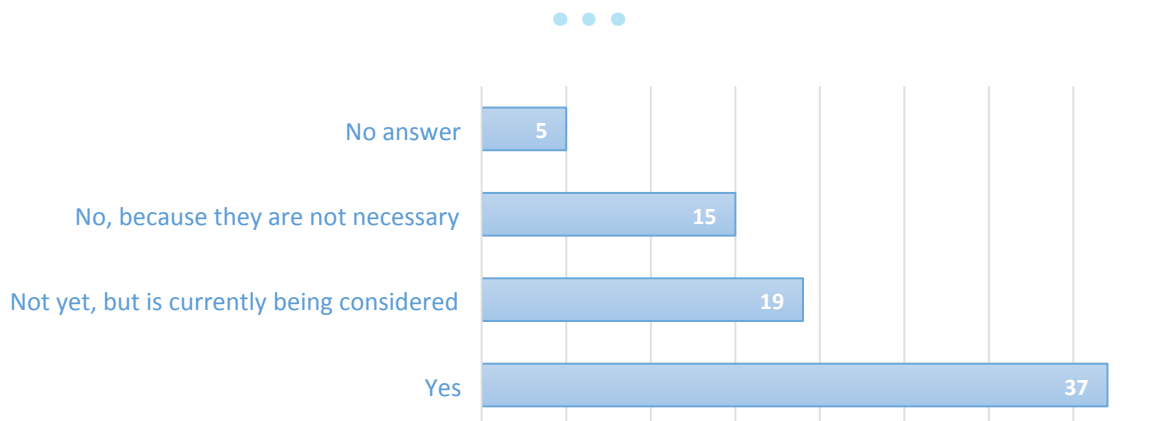


Other submissions revolved around the state in its democratic function, noting that institutional public dialogue “is the way we coordinate as a population.” In other words, given that “all groups across society have a role to play in governing digital ethics,” “guidance should be developed by a representative group of the society.” This viewpoint was particularly prevalent among participants who represented vulnerable groups, such as people with disabilities, the elderly and children.

Other answers reflected that, as “the largest controllers of personal data and sensitive personal data”, public bodies have both the responsibility and visibility needed to “lead by example” and to show that “GDPR compliance is not enough”. This set of answers also included thoughts about the role of ethics in continuously scrutinising legal frameworks and identifying when they require updating.



Does your organisation have any policies and/or procedures in place for ethical assessment?



What are the most important incentives to develop such policies/procedures?

To answer this question, participants could choose one or more of six pre-defined motives. Out of the 36 answers to this question, most participants (30) considered respect for customers/users as the primary incentive for developing policies and procedures for ethical assessment. This motive was followed by demonstrate accountability towards customers/

users (28), legal compliance (27), added value for customers/users (25) and reputational risk (25). As other incentives (11) respondents mentioned ethical behaviour in itself, trust, security, and compliance with codes of conduct.

In chapter two, the EAG report maps and analyses the socio-cultural shifts of the digital age. Has your organisation experienced these shifts?



The 2018 EDPS Ethics Advisory Group (EAG) report, *Towards a digital ethics*, mapped seven 'shifts' that mark the landscape of digitalisation: from the individual to the digital subject; from analogue to digital life; from governance by institutions to governmentality through data; from a risk society to a scored society; from human autonomy to the convergence of humans and machines; from individual responsibility to distributed responsibility; and from criminal justice to pre-emptive justice.

This question was aimed at understanding whether and how these shifts are being experienced by organisations. 47 of the 68 participants who answered this question responded affirmatively, some of them explaining their answer with short examples.

The World Medical Association (WMA) listed opportunities brought about by the shift from analogue to digital which have enabled "patient empowerment by new technology or information", a "rationalisation of work (automatisation of complex processes, like biochemical diagnostics, radiological evaluation)", "better communication through electronic media" and a "shift in scope of practice" as "technology seemingly or factually allows us to do things which previously required higher qualification". Yet WMA also reported "patient disempowerment by useless technology, false or overwhelming information", "confusion and disappointment by unfinished products or a bad application", "unreal expectations on cost-savings" and "gross violations of patient confidentiality by electronic media".

Privacy4Cars, a company developing tools that protect the privacy and autonomy of car users, noted that several of the shifts described in the EAG report are reflected in the automotive ecosystem, most notably the shift from a risk society to a scored society with algorithmic insurance classification. Moreover, they noted that connected driving and big data analytics,

promoted for their potential to reduce accidents, traffic congestion, and pollution, may also,

alter the behaviour of vehicle users, albeit without users being conscious of it. A vehicle may take a different route for a given user to pass in front of a store where that person has a higher propensity to shop. Based on the call and text history or on a user's contact book, the vehicle may have a different priority in going through traffic.



The Center for Democracy and Technology elaborated on the shift from governance by institutions to governmentality through data, pointing to the trend for corporate and government institutions to replace thoughtful policymaking with data analytics instead of limiting data analytics to supporting good governance models.

We are seeing this especially in the criminal justice system in the United States, where the money bail system, which desperately needs to be reformed, is simply being replaced in some jurisdictions with algorithmic risk scores, which are often outsourced to technology vendors and re-entrench historical discrimination. We are also seeing it in the workplace, where vendors are marketing systems that claim to optimize employee satisfaction and productivity by aggressively monitoring employees and analysing the data, rather than thinking critically and contextually about how to provide supportive and inclusive work environments.

The various examples given by respondents related to the values at stake identified in chapter four of the EAG report. Comments submitted by the World Medical Association show how the dignity and trust of patients can be jeopardised by the rushed application of new digital technologies in the health sector. Privacy4Cars highlighted the risks for human autonomy and freedom when cars are capable of transporting their drivers on the basis of data histories retrieved from mobile devices and navigation systems. Justice is at stake when insurance providers base the classification of their clients on automated credit scoring, or when algorithms decide about the fate of defendants and prisoners, as reported by the Center for Democracy and Technology. Surveillance at the workplace is another example of how trust, human autonomy and freedom can be undermined.

In chapter two, the EAG report maps and analyses the socio-cultural shifts of the digital age. Has your organisation experienced these shifts?



The EAG identified eight values as both essential and at risk in the digital age: dignity, freedom, autonomy, solidarity, equality, democracy, justice, and trust. 65% of the respondents who answered the first question affirmed that these values are part of ethical assessment procedures in their organisations. In their comments relating to the second question, various criteria and actions were listed.

A research centre mentioned the development of an assessment method to evaluate how human autonomy is affected by a new technology. Another respondent explained how a rights-based approach can help to safeguard fundamental values. Several answers referred to the importance of fostering education and research on the issue, including the drafting of codes of conduct and opinion papers.

Other suggestions included reforming archiving systems, through encryption for example, and the intensification of checks with strong control tools, such as tracking tools that monitor how sensitive patient information is

accessed and used in the health sector. Once more, several respondents pointed to the importance of compliance with the GDPR and with internationally recognised declarations, such as the Declaration of Taipei on ethical considerations regarding health databases and biobanks.



CONCLUSION

The consultation demonstrated that stakeholders widely discuss and support digital ethics, many of them having successfully integrated ethics assessments into their organisations. The high number of entries demonstrates the widespread interest in the debate, while the variety of respondents, ranging from CEOs to researchers, musicians, and other individuals, proves that the digital shift affects everyone and in many aspects of life. Moreover, the many stories told about challenges and risks show the range of questions that require urgent ethical deliberation.

What does the right to privacy mean in an age of continuous and ubiquitous tracking, measuring, and profiling? What does data protection mean in the age of big data processing and its apparent and real opportunities? How can human dignity and autonomy be upheld? And how can the benefits brought about by new digital technologies be equitably shared among all?

These are only a few of the challenges identified by respondents to the consultation, showing the urgent need to re-think the role of data in the digital era.

This consultation, and the EDPS Ethics Initiative in general, is based on an understanding of ethical deliberation as the process of societal self-reflection upon which the members of society establish values and norms and enact legal systems. History has shown that ethical notions of good and bad must be debated and defined, and continuously re-debated and re-defined by means of democratic consultation. In this spirit, the EDPS Public Consultation on Digital Ethics successfully instigated, and proved demand for, an open exchange of views, concerns and suggestions aimed at defining a path into a digital future that re-affirms and protects the long-standing European culture of values and rights.

Report by the European Data Protection Supervisor,
the EU's independent data protection authority

www.edps.europa.eu



www.edps.europa.eu

 @EU_EDPS

 EDPS

 European Data Protection Supervisor