


Data is Different: Why the World Needs a New Approach to Governing Cross-border Data Flows

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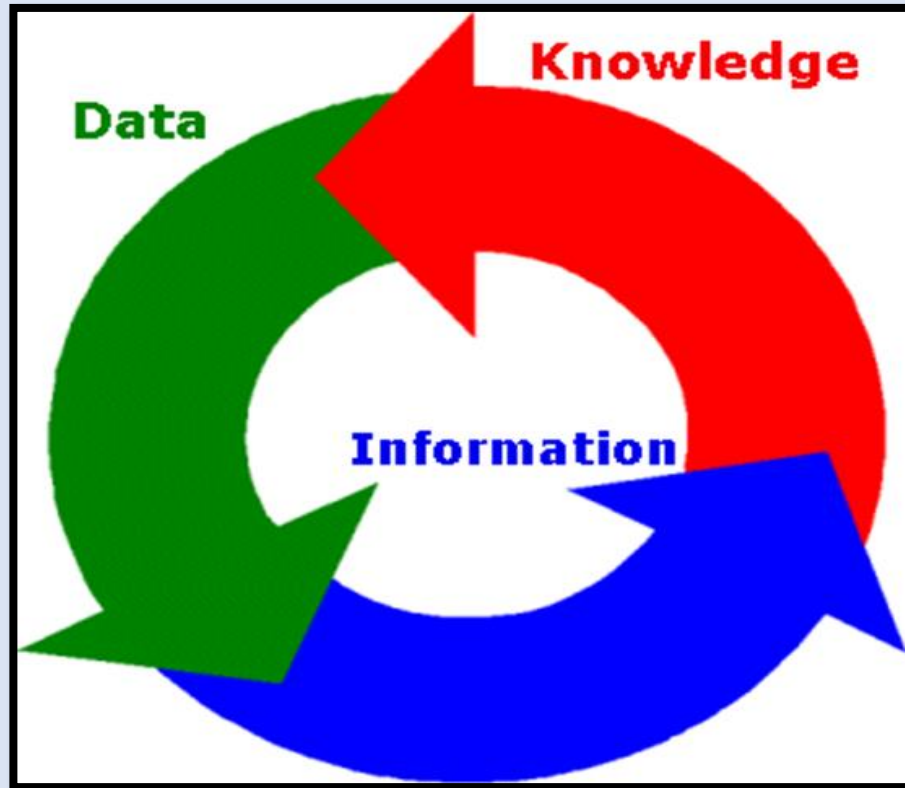
GWU and Centre for International Governance Innovation



Overview : What's at stake for countries in the data driven economy?

- Data is different from other traded goods and services
- Data governance is uneven: most developing countries and many industrialized countries are not yet ready or able to develop rules governing personal and public data (key sources of data for new data driven services.) Nor do they have rules for mixing public and personal data.
- The current approach to governing cross- border data flows through trade agreements has not led to binding, universal, or interoperable rules governing the use of data.
- Policymakers must devise a more effective approach
- Failure to think comprehensively could  policy incoherence and internet fragmentation.

Data is Different than other goods and services...



- Data can be a good, a service or both.
- Many types of information are a global public good. If governments restrict such information → can have spillovers for human rights, scientific progress **and** internet stability.
- Digital trade in data occurs on a platform that is shared—a global commons.



Why are cross-border data flows different from the exchange of goods or other services?

- Suppliers and consumers do not need to be in the same location
- Trade in data is fluid and frequent. Can repeatedly trade same data.
- Many types of data exchanged=personal data
- Location is hard to determine, hence hard to determine what is an import or an export.
- However, when data flows across borders it may or may not be affiliated with a transaction.
- Hence, cross-border data flows may not fit traditional definition of trade

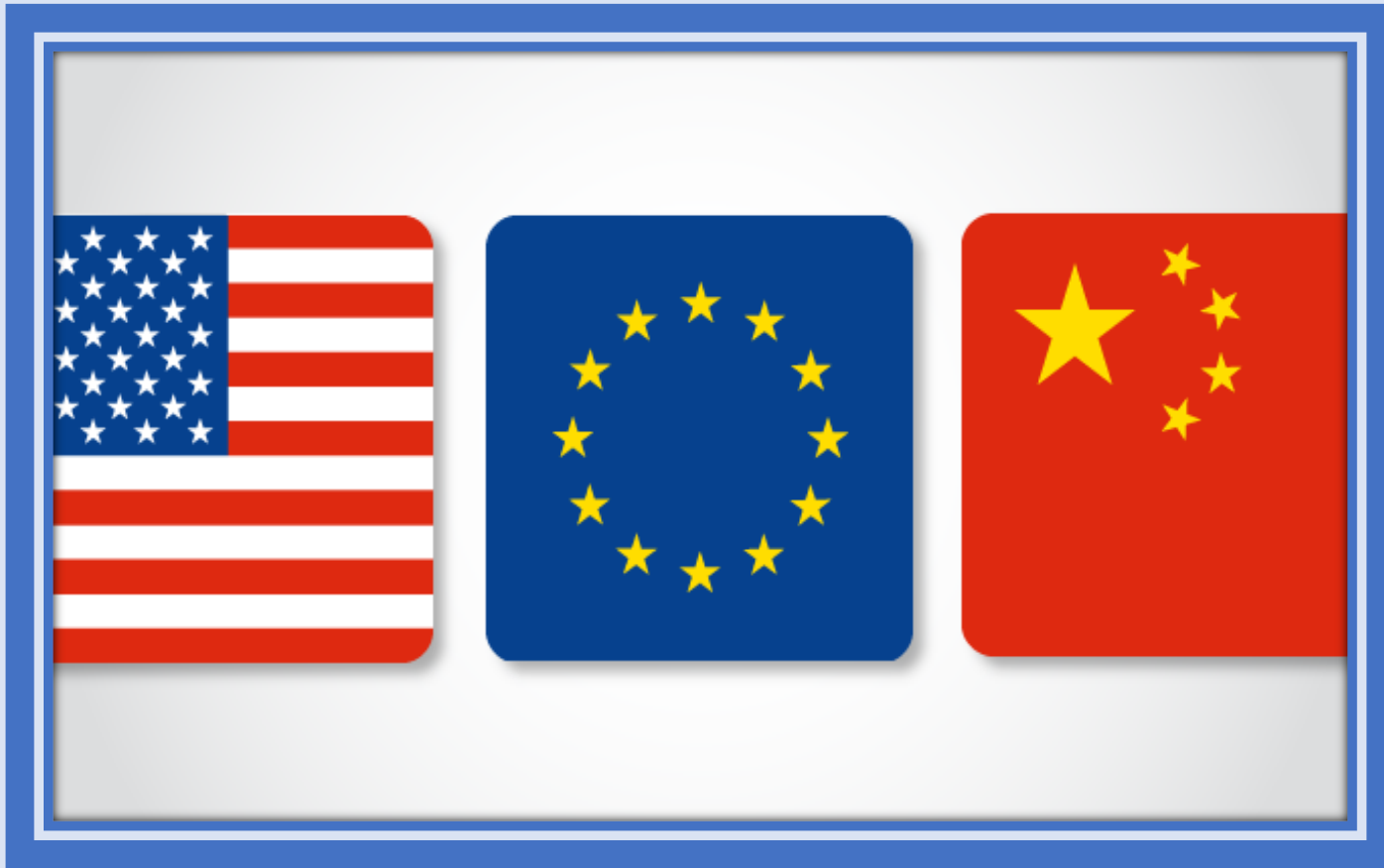


Developing countries are the future of data-driven economy, but these countries are not consistently open to cross-border data flows



- US is home to 6 of 10 top global Internet properties but some 80% of their users came from outside the United States. Chinese firms are increasingly global as well.
- While the growth of the Internet is in the developing world many of these countries increasingly restrict cross-border data flows, For example, USITC (2017) found data localization doubled 2010-2016. Even democratic governments such as India censor and have at times shut down the internet. A growing number of nations require firms or governments to regulate disinformation. Yet trade agreements do not regulate censorship, filtering, or malware.

Data powers have different:



Definitions of how to encourage cross-border data flows;

Definitions of barriers (although no strategies to address those barriers);

Priorities and strategies to protect personal data; and

Approaches to opening and sharing “public data”

Several different FTA Variants:

CP-TPP

- Binding and disputable language requiring free flow of data
- Personal data protection floor
- Traditional exceptions
- Ban on disclosure of proprietary source code and data localization

NAFTA 2.0

- CP-TPP plus explicitly bans mandated disclosure of algorithms
- Public information is supposed to be provided in a machine readable and open format that can be “searched, retrieved, used, reused, and redistributed.”
- Language to facilitate AI

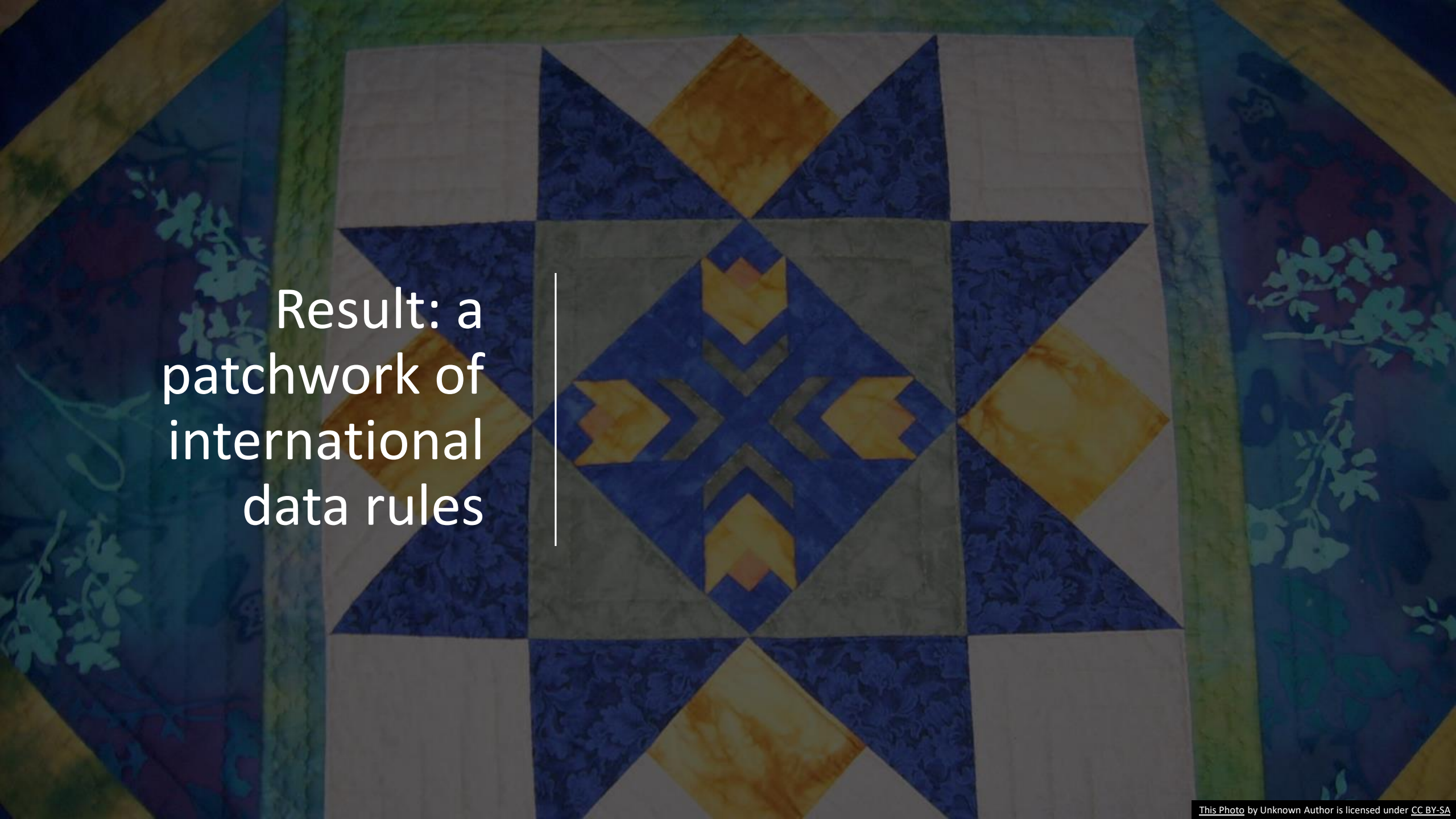
EU / Japan

- Personal data protection first. Signatories of EU trade agreements must create independent data protection agencies, register databases with those agencies, and in some instances, obtain prior approval from the European Commission before personal data processing may begin.
- Ban on data localization and traditional exceptions.

Meanwhile, China has not put forward trade rules to govern data.

- Restricts the free flow of data and information across borders and within China.
- Few restrictions regarding the use of personal data coupled with government involvement and purchase of data to monitor citizenry.
- China has huge supply of public and private data but data is of uneven quality.





Result: a
patchwork of
international
data rules

Also a Patchwork of Rules Governing Cross-border Data Flows



Challenges for Developing Countries to Capture Value from Data



- US, EU, Canada, Australia, China already have access to high quality big data sets—early mover advantage in AI and data analytics
- Developing countries do not have highly educated citizens to innovate with data, must retool education strategies.
- While many countries have laws protecting **personal data**, do not have funds, tools to enforce these laws.
- Many developing countries are **opaque** and do not **share** public data
- Few states have rules encouraging mix of personal and public data to encourage innovation.






Developing countries don't see data as a resource to increase growth

Don't know how to think about data, how to govern the control and use of data, how to effectively regulate personal data of their citizens and how to encourage home grown data driven sectors.

Developing countries are not ready: lack data know-how, governance skills, statistical capacity, and open data

- We chose a mix of 42 from the WB's categories of developing countries). We tried to disperse the countries among regions. We then compare these countries to Canada, the US and the EU average (choosing 11 of the EU 28).
- Metrics: 4 indices which provide some means of assessing if these countries are ready to govern data. First we focused on capacity (does the country have citizens/policymakers with know how). Second we examined governance in general--does the country govern in an effective and accountable manner? This metric is an indicator of a country's ability to regulate data used in AI, whether personal; public, satellite or proprietary). Next we examined statistical capacity, which relates to the ability of the government to monitor its operations, the economy, and its people), and finally, we provided the Open Data Index Score, which refers to the percentage of government data sets that are fully open, free and in open file formats).
- **Not surprisingly, greater wealth is associated with better scores on all the metrics. To put it differently, developing countries are not well-positioned to govern data and to benefit from a data driven economy.**

Metrics of Ability to Create a Data-Driven Economy

	Average Know-How Subindex Score (0-100)	Average Regulatory Governance Score (0 =worst 5= best)	Average Statistical Capacity Indicator Score (0-100)	Overall Global Open Data Index Score (Average)
	65.9	5.0	No Data	69.0%
	69.0	5.0	No Data	65.0%
 (Belgium, Estonia, France, Germany, Hungary, Italy, Netherlands, Poland, Romania, Spain, UK)	64.2	4.6	79.3	53.4%

Developing Country Metrics of Ability to create a Data Driven Economy

Developing Countries	Average Know-How Sub index Score (0-100)	Average Regulatory Governance Score (0 =worst 5= best)	Average Statistical Capacity Indicator Score (0-100)	Overall Global Open Data Index Score (Average)
Low-Income Economies \$995 or less (Benin, Ethiopia, Gambia, Guinea, Haiti, Liberia, Madagascar, Nepal, Senegal, Tajikistan, Tanzania, Uganda, Yemen, Zimbabwe)	45.1	1.4	64.0	17.7%
Lower-Middle-Income Economies \$996 to \$3,895 (Bangladesh, Bolivia, Georgia, Ghana, Honduras, India, Indonesia, Morocco, Nicaragua, Nigeria, Pakistan, Philippine, Tunisia, Vietnam)	46.1	2.6	75.0	26.8%
Upper-Middle Income Economies \$3,896 to \$12,055 (Armenia, Brazil, China, Colombia, Equatorial Guinea, Ecuador, Gabon, Jamaica, Malaysia, Mexico, Peru, South Africa, Russia, Thailand)	51.8	3.3	76.4	41.2%

Patchwork of Domestic Data plans!



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Estimated Countries with National Data Plans (CIGI Analysis) *

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Estimated Countries with Data Protection Laws (UNCTAD)

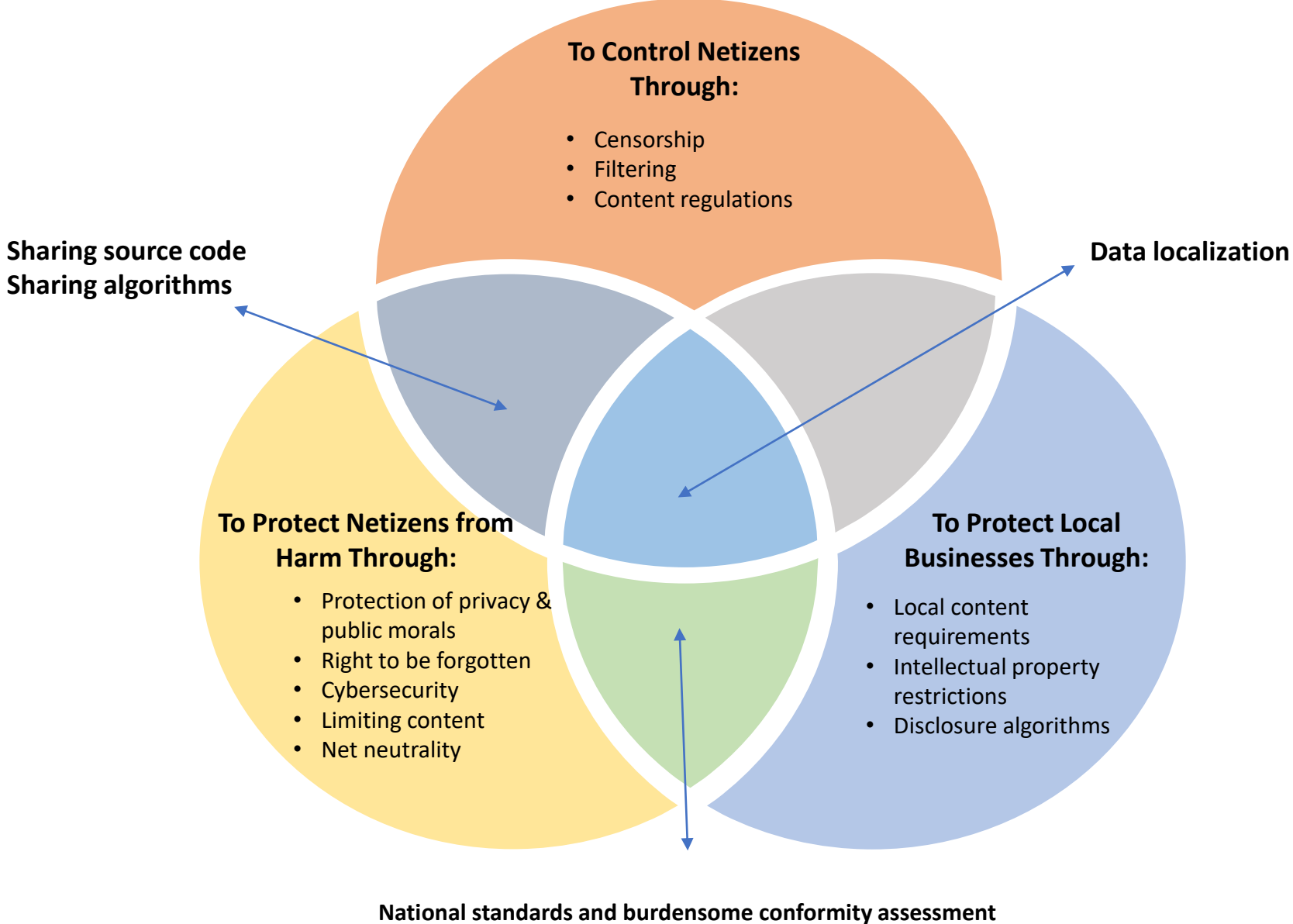
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Estimated Countries with Open Data Commitments under the Open Government Partnership (OGP)

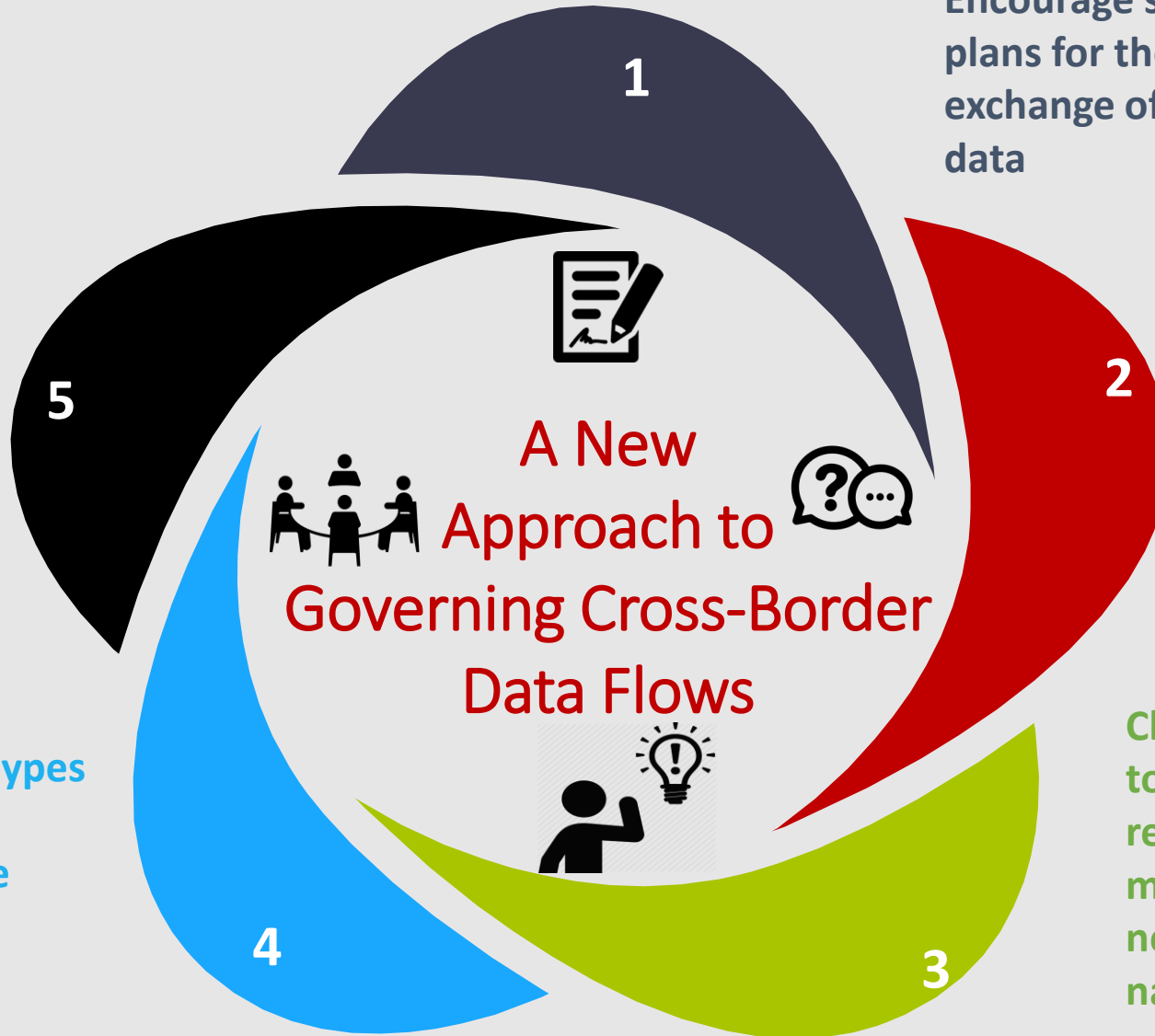
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Estimated Countries with Artificial Intelligence Strategies (CIGI Analysis)*

A Rise in Trade Distorting Data Governance: Why & How Do Governments Restrict Cross-Border Information Flows?



Because no nation has put forward a strategy--
delineate how nations should or should not respond to state actions that distort cross-border data flows



Encourage states to develop plans for the regulation & exchange of different types of data

Give people greater voice and greater control over their data

Clarify the rules and exceptions to the rules so nations do not restrict cross-border data flows more frequently or broadly than necessary, especially in the name of national security or cyber security

Provide clarity on what types of practices should be banned because they are trade distorting

Conclusion

If data is
different, we
must think
differently

- No consensus on how to regulate data at the national or international levels.
- Many nations are not ready or able to develop norms and rules regarding data.
- Developing and developed countries must collaborate to build capacity for data governance
- Because trade in data is different from trade in other goods and services; policy makers must find common ground on norms and then rules.
- Moreover, trade policy makers must do a better job of helping states delineate an appropriate enabling environment for data as they did for e-commerce, so nations can both encourage cross-border data flows while limiting allegations of digital protectionism through data governance.

