

UK Tech Sector:

What is the role
of data in today's
increasingly digital
world?



Introduction

“Data is the great opportunity of our time.” Opening our recent webinar, Roland Emmans, Head of Tech Sector at HSBC UK, quoted the first line of the government’s latest update on its data strategy.

But many consumers still view data in terms of a threat, rather than a force for good. How can businesses help to shift the data conversation to more positive territory? Our expert guests offered thoughts on developing healthy data relationships with tech users.



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The trust trade-off



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Beyond red tape



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1 > The trust trade-off

Time to explain the 'value transaction'

Apple has certainly put the privacy cat among the data pigeons. The launch of a user opt-in for app tracking transparency (ATT) in the latest version of the tech giant's software has alarmed Facebook and Google, and shaken up the world of digital marketing.

Given the choice, iPhone users are opting to switch off tracking in big numbers, early evidence suggests. By mid-May, the daily opt-in rate among US users was just 6%¹. This heralds a shift with big implications for business advertisers and digital marketers, who are scrambling to find ways to adapt.

One effect of the move is to throw a spotlight on the 'value transaction' that has been going on for years, in which consumers provide their data in return for access to websites or services.

For Jagvinder Singh Kang, Partner and International & UK Head of IT Law at leading national law firm, Mills & Reeve, this transaction is mutually beneficial if the balance is right. He believes the trade-off is more commonly acknowledged: "Consumers, as well as businesses, have now started to realise that data is a form of currency."

Nigel Bridges, co-founder and CEO at click fraud detection and protection firm Beacon, is less convinced that consumers have been knowing participants in the trade.

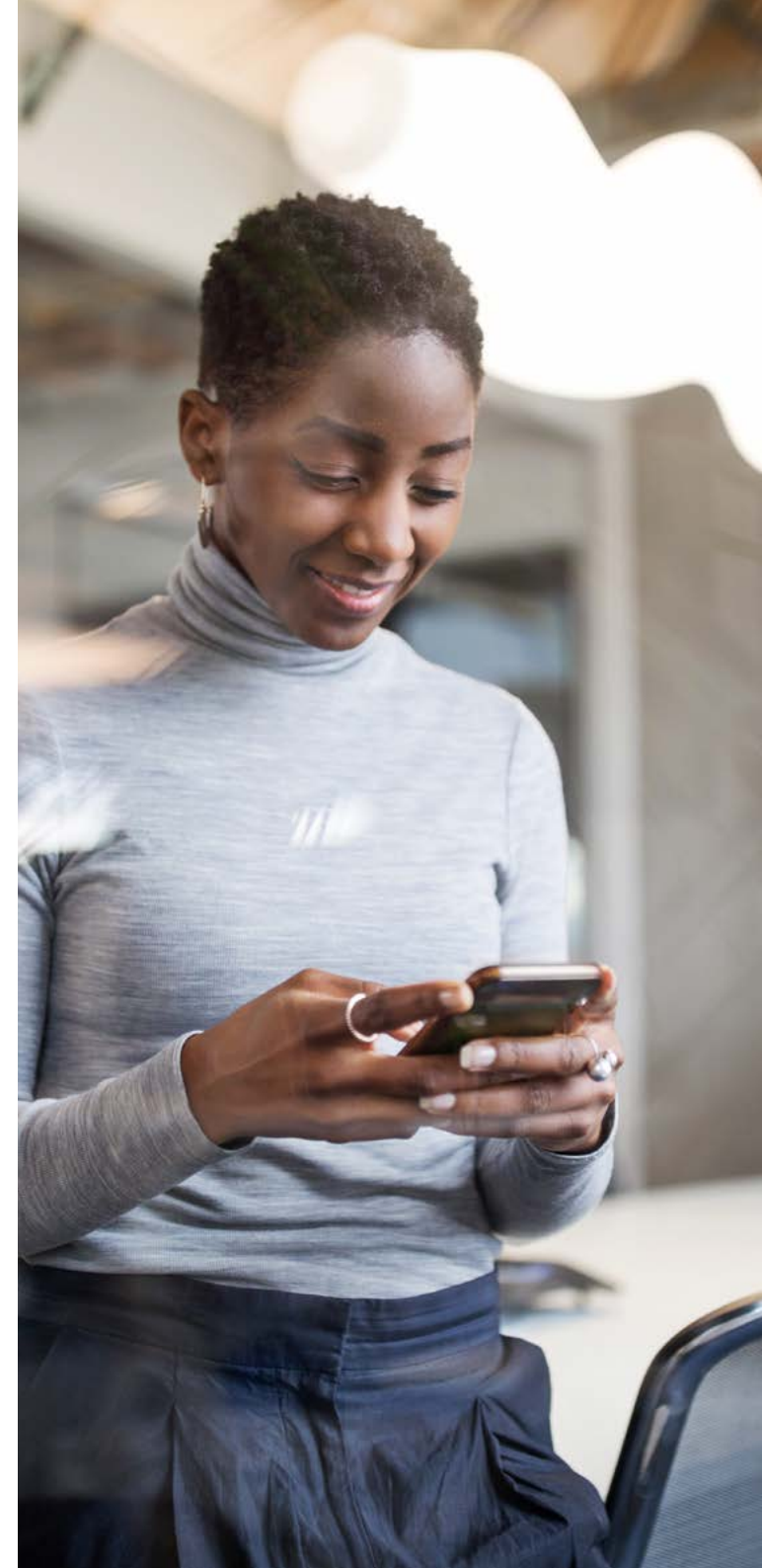
"The vast majority of people globally don't really understand that transaction," he believes. "I think there is an onus for organisations to explain that simply, but also for there to be some form of education, so that when we do start exchanging our data we understand why."

Both experts agree on the need for consumers to have clarity on how their data is to be used, and confidence that it will be treated with respect. The Apple move is part of a trend in that direction, led by regulation. "We've been through a period of 10 to 15 years where, quite frankly, it's been the Wild West," Bridges declares. "Legislation has been trying to play catch-up."

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¹<https://www.flurry.com/blog/ios-14-5-opt-in-rate-att-restricted-app-tracking-transparency-worldwide-us-daily-latest-update/>



2 > Beyond red tape

UK GDPR should be a boon, not a burden

UK GDPR now touches almost every UK business, as well as overseas businesses where they are caught by its extra-territorial scope. The potential fines for breaches – up to the greater of £17.5 million or 4% of global turnover – certainly help to focus minds. The reputational damage of a data breach might be even greater. And the consequences are lasting: Kang, who has advised on IT and data protection law for well over 20 years, has seen how historic and ongoing data problems can significantly weaken a company's valuation on sale, sometimes by millions of pounds.

But these are all sticks rather than carrots. Many businesses see GDPR (whether the UK or EU version, as we now have two versions thanks to Brexit) as nothing but unavoidable red tape. A token or tick-box approach is often the result. The rush to seek compliance in the final months before the original GDPR deadline in 2018 didn't help, as businesses 'cut corners' or engaged consultants who were 'dabblers' rather than experts in data protection. Such businesses are carrying the 'legacy baggage' from three years ago, which could undermine their business value if not now rectified.

“GDPR has caused a lot of work and heartache for businesses, when it should be about promoting transparency, security and confidence.”

Jagvinder Singh Kang, Partner and International & UK Head of IT Law, Mills & Reeve

It wasn't meant to be this way, says Kang. An overemphasis on risks and penalties has eclipsed the positive potential of data protection laws. "GDPR has caused a lot of work and heartache for businesses, when it should be about promoting transparency, security and confidence," he says.

If many consumers have only a hazy view of how data protection should work, the same is true of businesses. Bridges points to the complexity of the current rules: different data regulations covering B2B and B2C business in the UK, another set for selling abroad, and local and foreign rules governing overseas businesses who target UK customers.

Kang warns there's also a need to keep tabs on the development of the UK version of GDPR in the wake of Brexit: "There will be a slow divergence from the EU GDPR, and nuances that organisations will have to get to grips with." His firm advises innovative start-ups to global corporates on GDPR compliance and, as a consequence, he is able to highlight that: "Even some of the biggest names in their industry sectors are still getting to grips with certain aspects of UK GDPR, so it is not surprising that smaller organisations are still trying to find their way through it."

The data pressure on business is something the government has recognised in its National Data Strategy. In its response

to the strategy consultation, published in May, Culture Secretary Oliver Dowden emphasises "an outcomes-based approach to regulation, maintaining trust while removing the disproportionate burden on SMEs".

Bridges says it's essential this commitment is backed up by action. "Large organisations can afford to get GDPR right. But smaller, entrepreneurial companies often cannot afford legal fees. They will be looking for short-cuts because the difficult answer is expensive and slows them down," he says. "I think there's a huge challenge, but also a huge opportunity, to help smaller organisations fully understand this and get on board – which has to be better for the whole economy."

Kang cautions though: "New start-ups and SMEs don't want to remain small, they want to scale up and attract a great valuation on exit. Therefore, getting proper specialist data protection law advice upfront from those who understand the underlying tech is essential, to guard against the false economy of seeking to subsequently build upon weak foundations."

Such a pro-active approach will help promote confidence in a business, whilst also mitigating against the risks of reputational and regulatory fallout from the inevitable cyberattacks.

3 > Nice and simple

Don't be a stalker – be a personal shopper

Consumers loathe being faced with an unending stream of privacy conditions to scroll through every time they land on a new website. And businesses can struggle to invest the time needed to stay on the right side of the rules while still turning a profit. The obvious answer from both perspectives: simplicity.

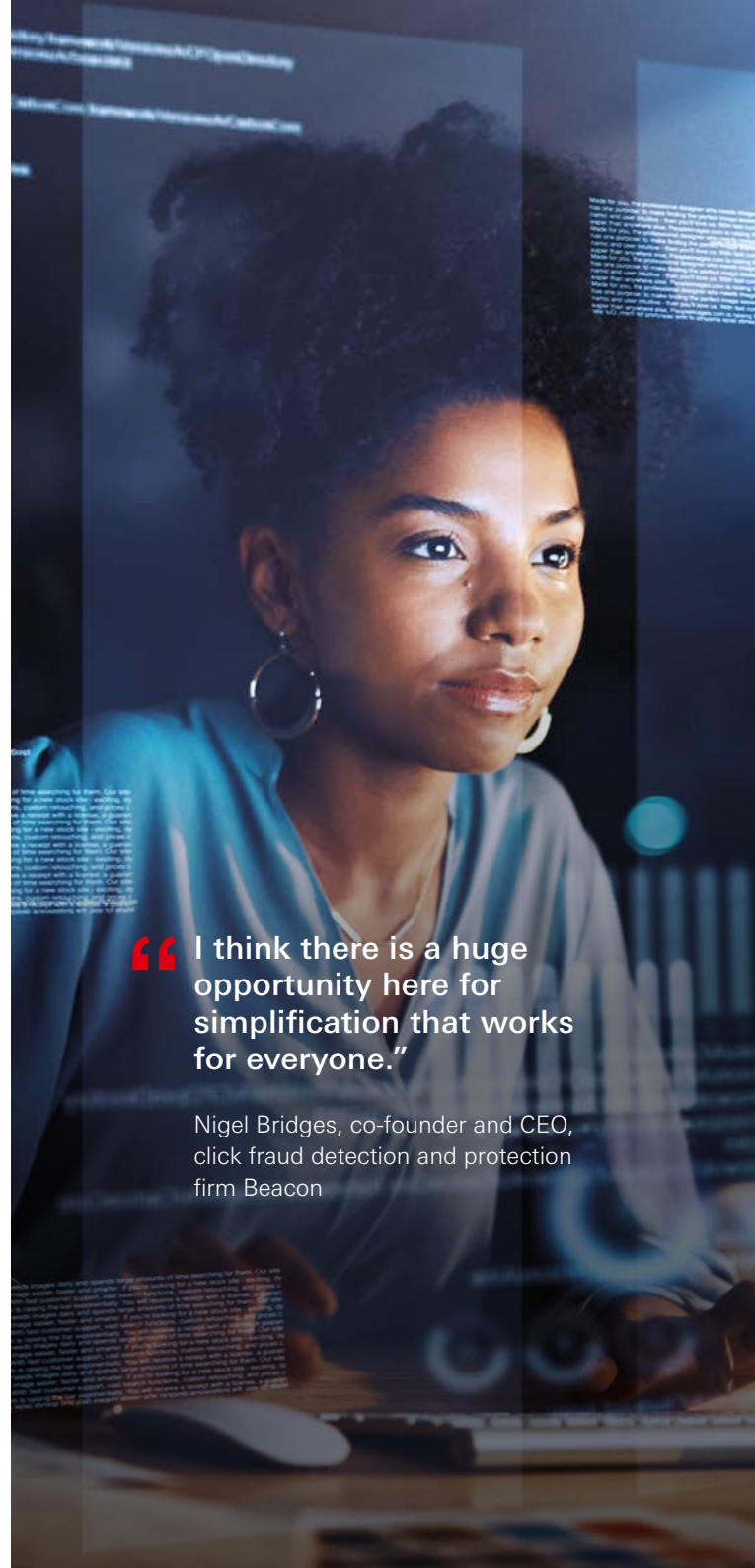
Kang is dismayed by companies' tendency to swamp their privacy clauses in legalese and buried hyperlinks. "The simpler you can make it, the better," he says. His firm advises clients to consider using more digestible 'just in time' prompts and pop-ups at relevant stages of the user's journey, to supplement the mandatory privacy notices.

Being upfront about your purpose is not only required by law, but it can also have welcoming effects. Kang illustrates this, through the analogy of transposing a consumer's physical presence at a department store to that of the digital world. A customer would feel uncomfortable if someone followed them around the store, taking notes about the products they were examining. However, if they were welcomed at the door and offered the option to benefit from the expertise of a personal shopper to help them find the right items more

efficiently, users might opt for that service. "That goes to the heart of GDPR: giving individuals confidence and empowerment through transparency and real choice," Kang says.

Our experts support the idea of a move to standardised privacy terms and conditions, where the onus would be on businesses to flag up any deviation from these. This would benefit consumers, SMEs and larger businesses alike, says Bridges: "I think there is a huge opportunity here for simplification that works for everyone."

However, standardisation doesn't mean using irrelevant, off-the-peg policies. To foster trust, Kang stresses that standard text must be combined with content tailored to the specific business: "There's no point drafting a vanilla privacy policy that isn't aligned with the organisation." Kang, who is also a qualified software engineer, says that: "Having a conversation with businesses to understand the technology, data, purposes and processes is fundamental to creating a privacy policy which works not only for the respective business, but also for the consumers or staff to whom it will apply."



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4 > Click fixes

Bad data, bad decisions

Data is valuable – but only if it's timely and accurate. In fact, bad data could be seen as worse than worthless. For digital marketers, 'click fraud' in online ads is a growing problem. One estimate suggests businesses lost \$35bn globally last year to this kind of fakery.

Bridges believes that figure is probably an underestimate. His firm, Beacon, is working with the Data and Marketing Association to try to quantify the impact of 'artificial engagement' – that is, where bots rather than humans are clicking on ad links. "It's hard to put a number on something that's so well hidden, but we estimate that 30 to 50% of those clicks are not made by humans," Bridges says.

That has obvious implications. "If a retailer has a billion data points about online shopping, that's worth a huge amount if 95% of it is accurate – but not a lot if half of it is wrong," he adds. Bad data makes for bad decisions, and wasted marketing spend.

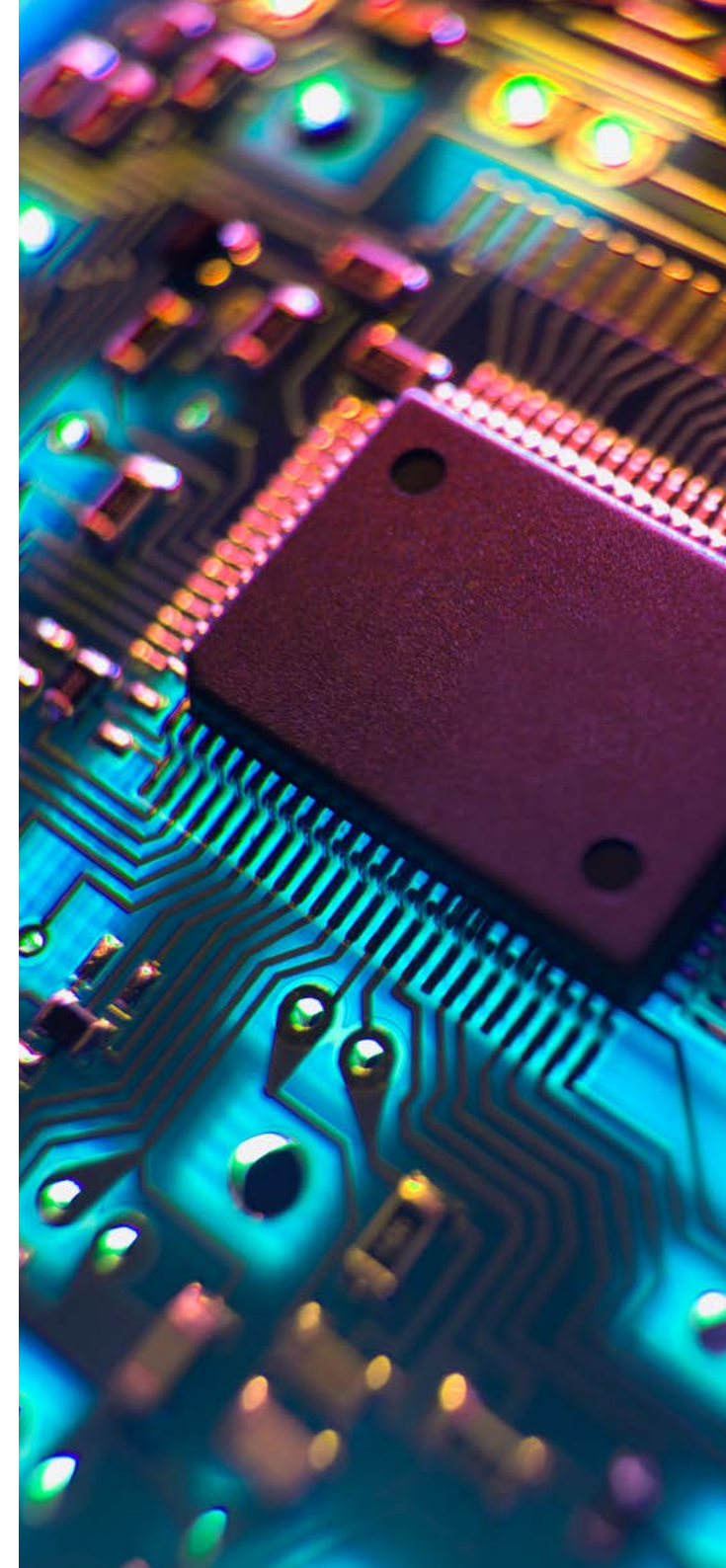
There is a solution to the bots – and it comes in the form of more bots. Artificial intelligence is proving itself a powerful tool to expose non-human online activity. "Using AI to clean up the internet is a huge area that has yet to be fully exploited," Bridges says.

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This exemplifies the coexistence of perils and potential in data technology. In a similar way, the government's data strategy seeks to tip the balance from risk to opportunity – pledging to continue to protect data, while harnessing it to foster growth.

It's an approach broadly applauded by our experts. For Kang, the strategy is a counterweight to the prevailing media narrative about risks and data breaches. "I think it's great PR for data," he says. "As data analytics and personalisation in a responsible manner can lead to great innovation – and we have great tech innovation in the UK."



Summary

Government has a big role to play in leading the conversation about data into more positive territory. But businesses can also improve their data dialogue with their customers and users.

- ◆ Do you see your data privacy policy as a necessary headache, or could you approach it in a more positive fashion – as an opportunity to build clarity and confidence?
- ◆ Are you ready to respond to changes in the UK GDPR and other regulations – treating your privacy policy not as a ticked box but as a live process?
- ◆ Are you upfront in presenting the benefits of data sharing to users? In the department store analogy, would they see you as a furtive stalker or as a helpful personal shopper?
- ◆ Are your terms and conditions as simple as they could be? For instance, rather than presenting an unreadable chunk of text as users enter, could you use concise prompts to aid their journey?

“**Data analytics and personalisation in a responsible manner can lead to great innovation.**”

Jagvinder Singh Kang, Partner and International & UK Head of IT Law, Mills & Reeve

To view the webinar in full, click [here](#)

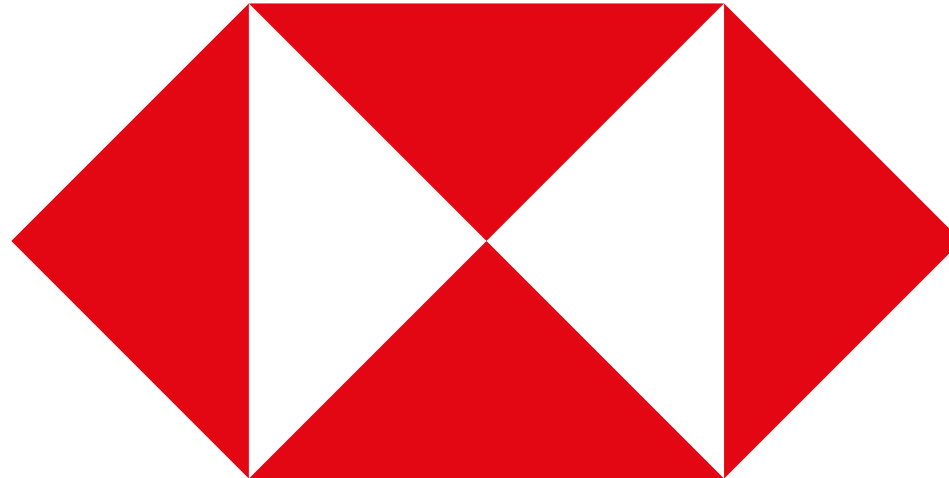


If you would like to discuss any of the topics raised here, please contact the Tech Sector team directly:

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