

DIGITAL CROSSROADS

Unlocking the Potential of India-US Cooperation in Cyberspace



THE ASIA GROUP





The Asia Group is the premier strategic advisory firm to the world's leading companies seeking to excel across the Indo-Pacific region. Built on decades of senior-level experience in diplomacy, finance, and industry, The Asia Group has cultivated unique networks, experience, and expertise at the highest levels of government and business across South Asia and the broader Indo-Pacific region. Our team brings passion and experience across policy, law, and banking in Asia to unlock opportunities and overcome the toughest challenges. Headquartered in Washington, DC, The Asia Group is a dynamic team of over 50 professionals with diverse backgrounds and skill sets including former senior-level U.S. diplomats, trade and investment lawyers, management consultants, investment bankers, and industry experts.



Propelled by the process of reforms initiated in the 1990s, ORF, over the past 25 years of its existence, has effectively narrated and participated in India's story as the country has acquired an unmistakable global footprint. From primarily looking inward and engaging with domestic reforms, to gradually forging global partnerships, ORF today plays a seminal role in building political and policy consensus that enables India to interact with the world.

As new powers re-emerge onto the global stage, existing systems face challenges of agreeing on a new set of rules to control and regulate the new frontiers of space, the oceans, the internet and the human mind. The world continues, also, to navigate persisting concerns related to security and strategy, economy and development, energy and resources. As India begins to play a larger role in the 21st century, ORF continues to push normative boundaries, bring new ideas into the policy discourse and provide a platform to a new generation of thinkers. It is supported in its mission by leading intellectuals, academicians, policymakers, business leaders, institutions and civil society actors.

ORF's aim is to encourage voices from all quarters, geographies and gender, both those that fall in and those that question dominant narratives. It is this plurality of thought and voice—in a country of over a billion individuals—that ORF seeks to carry abroad, while simultaneously bringing contemporary global debates to India.

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CONTENTS

- 3** Introduction
- 4** 10 Recommendations to unlock the potential of india-US Cooperation in cyberspace
- 5** Technology Policy Roundtable
- 6** Navigating Challenges in the Digital Era
- 8** 10 Recommendations to Unlock the India-US Digital Potential
- 11** The Way Forward

Introduction

 Over the past few years, governments, businesses and civil society coalitions in India and the United States (US) have searched for the next big idea in the bilateral relationship. Digital cooperation presents an opportunity: if harnessed properly, it will allow both countries to realise a grander vision in the arc of their strategic partnership. The full gamut of cyberspace issues that confront India and the US today range from national security concerns to the future trajectory of their digital economies. As such, it is among the few domains of governance where security and economic considerations are interwoven in an inextricable manner. A successful blueprint for cooperation between the world's most advanced cyber-power and the biggest digital democracy will not only be a breakthrough in bilateral terms; it could also offer a template for the rest of the world.

Both India and the US acknowledge that conversations on cybersecurity and the digital economy must be pursued together and not in silos. India's digital economy is undergoing a historic evolution, as rising Internet use, smartphone adoption, and entrepreneurial innovation continue to unlock new growth opportunities across the country. Today, India's 500 million netizens are firmly embedded within an expanding digital ecosystem, where the urban elite do not have a monopoly over the use of mobile phones, social media, e-commerce, digital

payments, and e-governance services; indeed, these are becoming increasingly more common among India's large rural populations. The US, for its part, is already a key player in this ecosystem with its steady investments, technology and know-how shaping India's digital future. With the digital economies of both countries reaching maturity in the midst of the churning in the international system, there is immense benefit for both to facilitate a symbiotic relationship based on shared ideas and principles.

Beyond the transactional aspects, how can India and the United States create a joint framework for cooperation in cyberspace? The answer lies in crafting compatible models of data governance that address national interests and help preserve an open and secure Internet. While the rapid growth in India's digital economy has generated profound transformations, it has also animated the Government of India's (GOI) efforts to craft new policy frameworks for its digital ecosystems that in its assessment align more closely with its larger national interests. Over the past two years, the GOI has advanced a number of policies and regulations to assert greater agency over its digital economy, including through proposed legislation or policies on data protection, e-commerce, taxation, and foreign direct investment.

Some of these efforts were galvanised by a landmark Indian Supreme Court ruling upholding the right to privacy. Others are an outcome of

10 Recommendations to Unlock the Potential of India-US Cooperation in Cyberspace

1

Champion Narratives that Secure Data and Generate Economic Value for the Digital Economy

2

Lead on Articulating and Legislating Cross-Border Data Flow Regimes with Key Economies

3

Develop Processes that Institutionalize 'Multistakeholderism' in Practice

4

Convene an Annual Standing Conference to Promote Indian Leadership in "Digital Public Goods" as Articulated by Prime Minister Narendra Modi

5

Harness Private Sector Technology Innovation for the Sustainable Development Goals

6

Create a Working Group Focused on International Regimes for Data Governance During India's G20 Presidency in 2022

7

Establish New Advisory Boards in India and the United States to Build Trust Among Industry and Security Officials

8

Set Up India-U.S. Working Groups to Coordinate Approaches to Emerging Technologies

9

Strengthen India-U.S. Cooperation on Data Sharing Through a New Bilateral Agreement

10

Bolster Indian Leadership on Combating Cybercrime

the current global mood: (a) that places greater public scrutiny on the actions of transnational technology companies— whether real or perceived; (b) that is more sensitive to concerns of domestic businesses and communities; (c) that is influenced by deepening tensions between law enforcement, foreign governments, transnational corporations and civil society groups on privacy and security issues; and (d) that is increasingly going to be influenced by escalating strategic

competition across the Indo-Pacific, including with China. As an economic actor and a key strategic partner to India, the US has keenly followed these developments even as it has experienced headwinds at home. The current challenge for both sides is to convert shared understandings on Internet governance into workable policy frameworks that will advance and sustain economic engagement for the coming decades.

Technology Policy Roundtable

Convening Stakeholders in Delhi

In line with this goal, The Asia Group (TAG) and Observer Research Foundation (ORF) convened a high-level, closed-door roundtable in New Delhi on 10 July 2019, which drew the participation of over 30 high-level Indian and US policy stakeholders – including senior government officials, industry executives from prominent multinational and domestic tech companies, distinguished think tank scholars, and startup leaders. Over the course of three sessions, participants focused their discussions around the following key areas:

- Assessing emerging regulatory trends shaping India's digital economy
- Identifying solutions to interlocking challenges

in privacy, security, and technology

- Exploring opportunities to align visions for digital governance between India, the United States, and international partners

Key Recommendations

Building on the roundtable discussions, TAG and ORF have outlined ten high-impact and actionable recommendations to promote digital commerce and development in the 21st century. If implemented zealously, these measures could also foster greater cooperation and alignment between US and Indian policymakers, industry and civil society. The recommendations are outlined here and discussed in greater depth later in the report.

Navigating Challenges in the Digital Era

As India looks to catalyse growth in its digital economy and harness technology as a force for inclusive development, policymakers, industry leaders, and think tank scholars will have to address critical challenges as they: (a) craft new policy and regulatory frameworks for the digital economy; (b) balance imperatives to protect privacy and security; (c) navigate bilateral trade tensions with key partners; and (d) align visions for international data governance. These dynamics and challenges are by no means unique to India, and similar policy choices confront leaders in Washington, Tokyo, Brussels, Beijing and beyond. Even so, New Delhi's approach to challenges in tech sector regulation carry significant weight and consequence – for India and for markets globally.

Crafting New Frameworks for India's Digital Economy

India has charted an ambitious target to create a US\$ 1-trillion digital economy by 2025. The legal and regulatory environment that the GOI establishes around data flows and digital commerce will help drive sustained innovation, investment, and job creation from the private sector. However, recent attempts to regulate the digital economy have also introduced some degree of uncertainty into the business landscape and created several challenges for multinational tech companies and startups looking to deepen investment in the Indian market. These include:

- **Regulatory Uncertainty:** Indian ministries and regulators are attempting to keep pace with rapid technological change and disruption by quickly advancing various new regulatory measures or overhauling existing frameworks. These frameworks should be aligned with the further evolution of new technologies, the investment cycles of businesses, the ease of technology adoption by first- or second-generation Internet users, and the right to privacy of all Indians. While it may not be possible to strike a golden balance between these considerations in all cases, Indian policymakers must reorient their regulatory tendencies with a clearly articulated framework that represents the nation's considered, best interests.
- **Overlapping Policy Frameworks:** Lack of alignment among ministries and sectoral regulators – including the Ministry of Electronics and Information Technology (MeitY), the Reserve Bank of India (RBI), the Department for Promotion of Industry and Internal Trade (DPIIT), and the Telecom Regulatory Authority of India (TRAI) – has given rise to either dissonant, or else overlapping e-commerce, data protection, data localisation, and content liability frameworks.
- **Limited Stakeholder Consultations:** Ministries and sectoral regulators have often provided limited opportunities for stakeholder

consultations, with little time, if at all, offered to stakeholders to comment on proposed rules and regulations.

- **Balancing Privacy, Innovation, and National Security:** Governments across the world are attempting to navigate interlocking challenges in technological innovation, data privacy, and national security. India is no exception to this trend, with lawmakers, industry, and civil society groups seeking to create new frameworks to safeguard user privacy, shape data practices of platforms and industry, and mediate lawful government access to private user data.
- **Protecting User Privacy:** A string of high-profile data breaches of multinational companies has heightened global sensitivities to create new personal data protection frameworks. Public debates around data privacy have accelerated in India over the past two years – especially after the Supreme Court enshrined privacy as a fundamental, constitutional right in August 2017; thereafter, the Srikrishna Committee submitted its recommendations on data protection. These recommendations are a useful starting point to address any trust deficiencies that may exist between global technology giants and their users in emerging markets. The bilateral relationship must nudge the US private sector to absorb the concerns of Indian users, and respond adequately with strong privacy frameworks.

Facilitating Legitimate Access to Cross-Border Data

Alongside these efforts, law enforcement and national security officials have triggered a new round of debates focused on government access to user data – especially data generated by users of popular social media, encrypted messaging, and payment platforms. The delays in securing cross-border access to data — sometimes by as much as a year in response to their requests — have prompted Indian authorities to press for swift access to user data that can aid investigations into criminal or terrorist activities. A lack of a timely response from jurisdictions that currently host and hold data has added an urgency for governments around the world, including India, to seek data localisation and message tracing.

Navigating Bilateral India-U.S. Trade Tensions

India's approach to data and e-commerce regulation has drawn criticism from the White House and senior members of the Trump administration. US trade officials have focused primarily on the RBI's data localisation circular, MeitY's data protection bill, and DPIIT's Press Note 2 and e-commerce policy to date, alleging that these measures are creating unfair market access barriers that harm foreign companies. India, meanwhile, has criticised the US approach to Indian requests for access to cross-border data, pointing to shortcomings in the mutual legal assistance treaty (MLAT) as an important rationale for its data localisation measures. Moreover, the US market is difficult to navigate and is often inaccessible to all but a few Indian entrepreneurs and businesses, despite the long legacy of cross-border cooperation in IT services. Indian policymakers are also keenly aware that India's transformation from a low- to a middle-income country would be affected by its ability to retain the largest share of the value that accrues from the data economy, and they believe data policies must privilege greater investments in India and Indian enterprises. While both sides initially tried to separate these challenges from broader trade discussions, the data suite of issues are likely to persist in Washington and New Delhi.

Keeping Pace with International Digital Economy Frameworks

The global cyber norms-making process has stalled, and the political stalemate at the recently concluded G20 summit at Osaka is evidence of it. Earlier this year, the United States expressed reservations against a proposal floated at the G20 meeting of finance ministers to levy a "digital tax" on large technology companies. India is one of the prime movers of this proposal, which has gained traction in the international community amid concerns in New Delhi that the explosive growth of Silicon Valley companies over the past decade has generated insufficient economic value in the local jurisdictions in which they operate. As a result, New Delhi and other emerging markets have expressed wariness over participating in multilateral conversations on digital commerce. The stalemate does little to advance diplomacy around digital issues, which India and the United States are uniquely positioned to lead.

10 Recommendations to Unlock the India-US Digital Potential

INDIA'S digital economy is likely to see continued growth as new netizens, startups, and companies deepen engagement and investments in the market. Unlocking the potential of India-US digital cooperation, however, will require policymakers and private sector leaders on both sides to navigate critical challenges and proactively seize opportunities to promote growth and development. To advance this goal, TAG and ORF outline the following ten recommendations for government, private sector, and civil society leaders:

1. **Champion Narratives that Secure Data and Generate Economic Value for the Digital Economy:**

Most policy debates in India have focused on creating local value from data. The equitable distribution of economic advantages on account of data generation and curation is undoubtedly a matter of concern to any regulator. National policies must also enhance data's ability to "teach" and inform economic growth, understand changing consumer behaviour, pilot e-governance initiatives, and generate sustainable skills to weather the disruptions caused by 21st-century technologies. To this end, US and Indian companies should collaborate to put forward practical solutions on data portability and sharing, with a view to generate local value for the digital economy, while respecting the privacy and security of users. This effort must be driven by establishing engagement forums

between security communities, civil society and enterprises in India and the United States so as to ensure that domestic players and multinationals are able to navigate the two ecosystems productively. Fintech regulations in the United States must also reflect the desire for Indian entrepreneurs to build global products, which often require the expertise and resources available in advanced economies. India needs to enter into agreements that will allow Indian products and platforms to become global in the coming decade.

2. **Lead on Articulating and Legislating Cross-Border Data Flow Regimes with Key Economies:**

Rapid growth across India's digital economy has the potential to make India the receptacle of world's data and a digital superpower in its own right. This fundamental insight should be the foundation for India's technology policy frameworks. As such, India should aim to put in place data protection legislation that promotes open and freer exchange of data across borders consistent with emerging international norms. Moreover, India should engage at the WTO, G20, and RCEP forums to lead on issues pertinent to cross-border data flows, helping craft a suitable framework that preserves open data flows as the heart of the global digital economy. Such frameworks must be based on reciprocity, equitable market access and consistency across IPR regimes.

3. **Develop Processes that Institutionalise ‘Multistakeholderism’ in Practice:** The Government of India (GOI) and the US Government should facilitate robust and inclusive consultation processes that give all players – foreign and domestic industry, as well as civil society groups, big and small – adequate time and opportunity to carefully consider draft measures and to submit inputs prior to promulgation of a final law or order. Creating standard processes and timelines for stakeholder comments is important to exchange ideas and interests, and align future proposals on regulating the digital economy. As the two largest digital democracies, it is incumbent upon both countries to make each of their policymaking processes more inclusive and representative.
4. **Convene an Annual Standing Conference to Promote Indian Leadership in “Digital Public Goods” as Articulated by Prime Minister Narendra Modi:** India is pioneering innovation in e-governance and the mass application of technology through its IndiaStack suite of “digital public goods” – especially Aadhaar, UPI, DigiLocker, and eKYC. The success of IndiaStack programs and their wide-ranging impact on India’s development trajectory offers New Delhi a powerful diplomatic asset in its engagement with other developing countries and established digital economies. As India, the United States, Japan, and other partners seek to promote digital development across the Indo-Pacific, New Delhi should create a new diplomatic initiative to train and equip countries to implement local versions of IndiaStack programs. To further these efforts, the Ministry of External Affairs and MeitY could host an annual international e-governance conference in New Delhi that would draw representatives from developed and developing economies as well as leaders from the private sector. This annual conference could aim to foster discussion on best practices and use cases in e-governance, new innovative technologies created in the developing world, as well as opportunities for countries to partner with tech companies on their key development priorities. The United States and other like-minded countries must serve as founding partners of such an effort.
5. **Harness Private Sector Technology**

Innovation for the Sustainable Development

Goals: Companies should proactively seize opportunities to demonstrate the applications of their technologies for the public good, working with state and central government authorities as well as civil society groups to tackle some of India’s most pressing development challenges – from education and skilling, to women’s empowerment and digital infrastructure.

To catalyse this engagement, the GOI could entrust NITI Aayog with developing a series of public-private working groups on specific development challenges and how they could be advanced through unified cooperation with tech companies. These efforts must be closely aligned with the impact investment community in the United States that is engaged with meeting the sustainable development goals (SDGs). A technology-for-development bridge must be created between the two countries.

6. **Create a Working Group Focused on International Data Regimes During India’s G20 Presidency in 2022:** India’s presidency of the G20 in 2022 presents a critical opportunity for New Delhi to articulate an ambitious, forward-looking vision on cross-border data flows and digital commerce. Over the course of 2020 and 2021, the GOI should help create and actively participate in a working group comprised of government leaders, industry experts, and policy stakeholders to help develop specific work-streams and recommendations for India to put forward at the G20. The recommendations could cover cross-border data flows, e-commerce, digital taxation, and data privacy. TAG and ORF are well-positioned to help support and advance this group, drawing on both institutions’ unique ability to engage relevant stakeholders.
7. **Establish New Advisory Boards in India and the United States to Build Trust Among Industry and Security Officials:** The GOI and the USG should create Advisory Boards in both countries that would convene leading tech companies – both foreign and domestic – as well as national security and law enforcement officials for ongoing conversations on the pressing privacy and security issues of the day.
8. **Set Up India-U.S. Working Groups to Coordinate Approaches to Emerging Technologies:** India and the United States

should set up bilateral working groups to coordinate their responses to the new risks to national security and international stability posed by emerging technologies and actors. The security concerns around 5G are perhaps only the first of many such disruptions that both countries will grapple with. A permanent India-US working group alert to such development should discuss digital connectivity in the Indo-Pacific, the need for updated legal regimes, and interest-based cooperation on global norms-making processes. India and the United States should also lead the incubation of new global arrangements to prevent the proliferation of weaponised digital technologies.

9. **Strengthen India-U.S. Cooperation on Data Sharing Through a New Bilateral Agreement:**

India and the United States should aim to sign a bilateral data-sharing agreement – potentially modeled on the Clarifying Lawful Overseas Use of Data (CLOUD) Act – which could help both sides reduce digital trade frictions, resolve conflicts of law, and harmonise enforcement regimes across jurisdictions. As

part of this, both sides should look to create new mechanisms and appropriate safeguards to help law enforcement swiftly obtain evidence stored in India and the United States. Addressing issues of legitimate data access through a bilateral data-sharing treaty would also eliminate one of the central justifications for data localisation policies, which has emerged as an irritant in India-US trade ties.

10. **Bolster Indian Leadership on Combating Cybercrime:** India should better coordinate with other digital economies on preventing cybercrime, a transnational challenge that poses massive threats to Indian citizens and businesses. New Delhi should help craft new institutions and arrangements that reflect and carry forward the spirit of the Budapest Convention, while “updating” it for a wholly new set of challenges posed by the advent of IoT and AI. Participating actively in these discussions will help bolster India’s status as a leading digital power and deliver cross-cutting benefits if New Delhi looks to advance digital norms as part of its G20 presidency in 2022.

The Way Forward

NDIA is at a pivotal crossroads, and New Delhi's next steps and policy choices will determine whether it will succeed in nurturing the world's leading digital economy of this century. TAG and ORF hope that the recommendations outlined in this report will help policy, industry, and think tank leaders confront the emerging and complex challenges facing India today, at the domestic, bilateral, and international levels.

As a part of this process, industry, and civil society groups should play a vital role. This effort will require domestic and multinational companies to engage regularly with ministries, deepen their commitment to local economies and communities, and demonstrate how new tech innovations do not only disrupt, but more importantly, empower and uplift. It will also require civil society groups to play a more active role in promoting dialogue among key stakeholders, especially to ensure that the benefits of India's digital revolution are felt across the country. Forging and sustaining these critical linkages will be vital to create the physical, digital, and social infrastructure needed to support the growth of India's digital citizenry.

Indeed, India will only realise its true digital potential when every one of its 1.3 billion citizens can fully participate in the digital economy, connecting to family, friends, and businesses within India, but also across the world. This connectivity is the country's greatest asset. Through sustained international leadership and willingness to engage

all stakeholders, India can forge a new digital order that propels economic growth, protects civil liberties and national security, and positions future generations to harness technology as a force for positive change. This is the time to think about a New Delhi Consensus for our digital futures, and the United States, and other like-minded nations, could act as important partners in this effort and in the overall endeavour of building the model digital economies—and democracies—of this century.

Digital Crossroads

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