



The Protecting Americans' Data from Foreign Adversaries Act

Effective June 24, 2024, the Protecting Americans' Data from Foreign Adversaries Act (PADFA)¹ prohibits some companies from disclosing, sharing or selling some common market research data² with the People's Republic of China, Russia, North Korea, and Iran, or any company based in, or under minimal control by, them.

PADFA makes it "unlawful for a data broker to sell, license, rent, trade, transfer, release, disclose, provide access to, or otherwise make available personally identifiable sensitive data of a United States individual to": (1) "any foreign adversary country"; or (2) "any entity that is controlled by a foreign adversary."

The Insights Association, which represents the market research and analytics industry, has been counseling our members to move away from business with such countries, especially China and Chinese-owned companies, since they are inherently risky for privacy and data security, among many other concerns.

Unfortunately, compliance with the new law will be difficult (if not impossible) for most affected companies.

There are small improvements that could be made to the law to ease compliance, such as exempting publicly-available information from the definition of "sensitive data," or setting thresholds for data transfers. However, the "controlled by a foreign adversary" definition, and the lack of any knowledge standard in PADFA, remain big hurdles to compliance.

"Controlled by a foreign adversary" means, "with respect to an individual or entity, that such individual or entity is":

- (A) "a foreign person that is domiciled in, is headquartered in, has its principal place of business in, or is organized under the laws of a foreign adversary country";
- (B) "an entity with respect to which a foreign person or combination of foreign persons described in subparagraph (A) directly or indirectly own at least a 20 percent stake"; or
- (C) "a person subject to the direction or control of a foreign person or entity described in subparagraph (A) or (B)."

Figuring out ownership of private companies, especially if not publicly-traded, can be extremely complicated. Unless a company discloses such detail on its website, an insights company may need to do much more extensive research and may still not know if a business partner qualifies as controlled by a foreign adversary.

Potential solutions:

1. Authorize the DOJ or Treasury to compile a listing of companies that meet the criteria of (B) or (C), delay enforcement until the listings are available, and prevent liability for companies accessing the listings on a reasonable basis.
2. Add a knowledge standard, e.g., actual knowledge or knowledge fairly implied on the basis of objective circumstances. Currently, even inadvertent/accidental violations are prosecutable.

¹ Section 1, Division 9 of Public Law No: 118-50, signed into law on April 24, 2024.

² "An individual's race, color, ethnicity..." are mostly common demographic data used in most research studies, while "Information identifying an individual's online activities over time and across websites or online services" and "Information revealing the video content requested or selected by an individual" are both commonly used in audience measurement.