

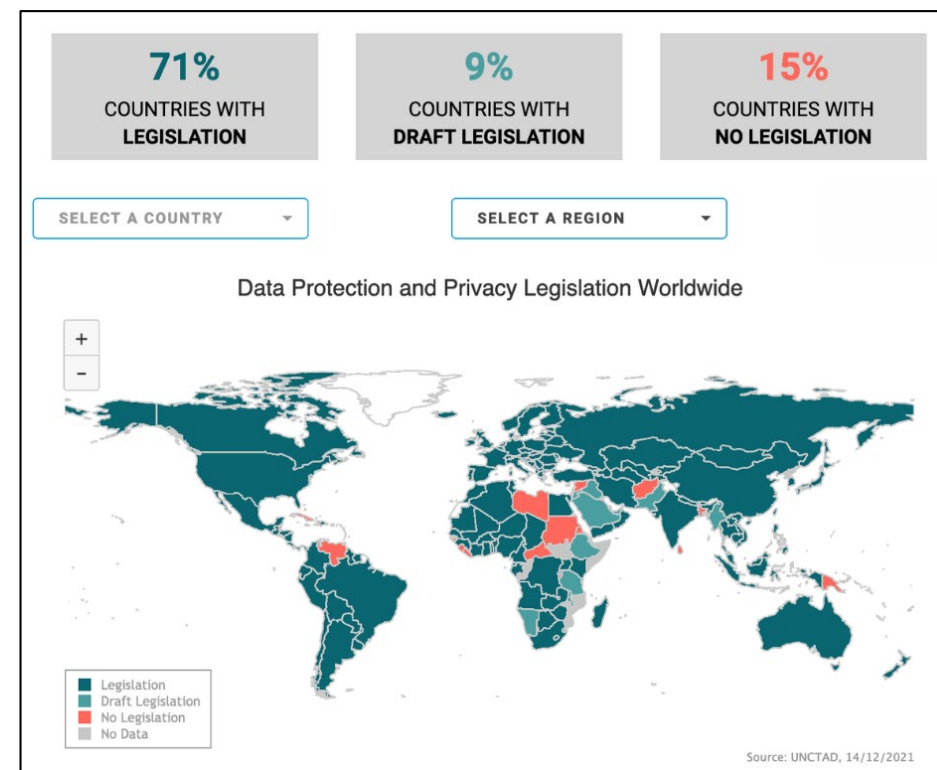
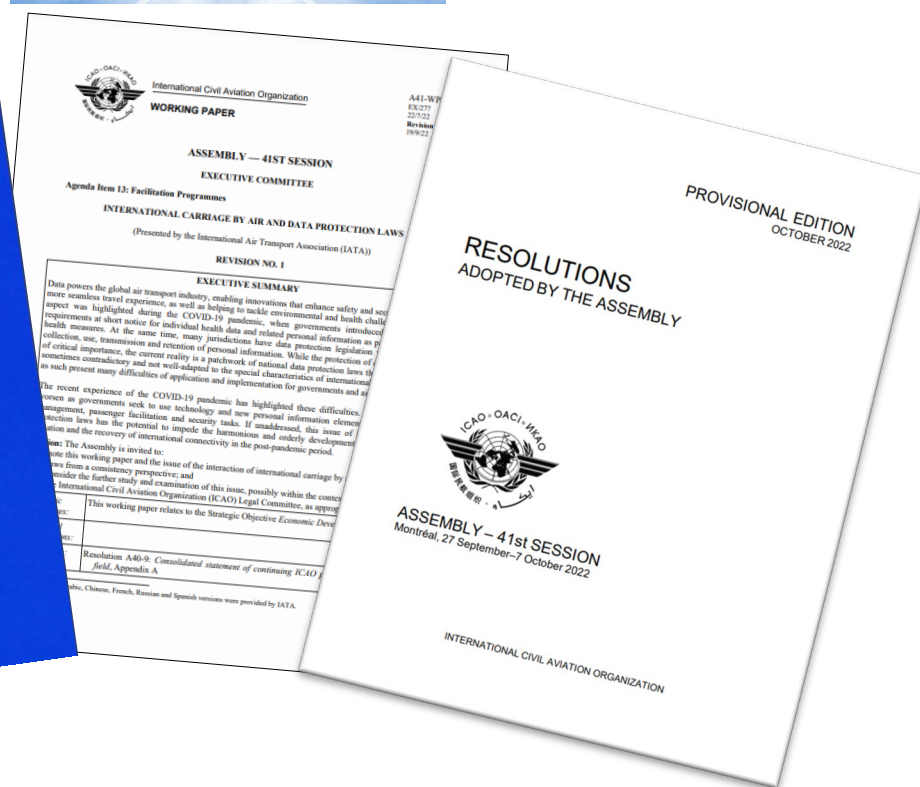
Session 2: Addressing issues of concern to the international aviation community through the implementation of air law

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Balancing data protection rights and obligations with the international civil aviation regulatory system



Key Data Protection/Privacy Concepts

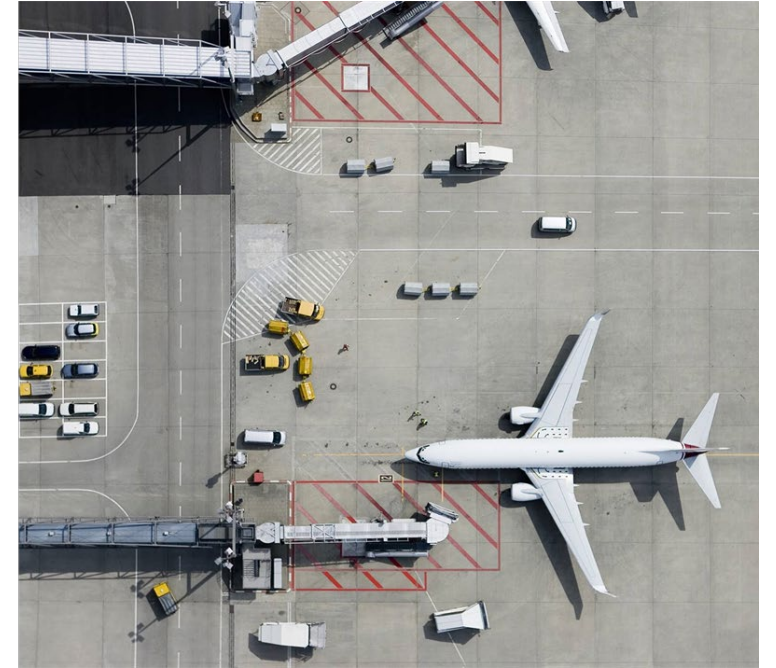
- Personal Information – definition and scope
- Rights to Protection and Obligations to Protect
- Collection, use and storage and the legal basis to do so
- Cross Border transfer limitations
- Data localization

Nature of the Problem

Personal information and international civil aviation

What information **needs** to move across jurisdictions?

What information is **required** under civil aviation law and what **obligations** are there under data protection/privacy law that might apply to that information?



Why should civil aviation regulators be concerned?

- **137 countries** have introduced data protection laws covering the **collection, use, transfer and retention** of data
- These do not recognise the **unique operational and regulatory characteristics of civil aviation** – there is **no guidance** for the application of data protection laws to international carriage by air
- **Inconsistent rules** permitting use of personal information creates **uncertainty** in the collection and use of personal information required by safety and security regulations
- **Obligations** under civil aviation regulatory framework **not recognised** as a justification for use
- **Fragmentation** – application of data protection laws based on citizenship/domicile takes precedence over a standard regulatory framework applying to air operations
- **Extraterritorial application** – domestic law follows passengers

Consequences of absence of civil aviation data protection principles

○ For states

- Challenges introducing new data-based processes (esp. for smaller/developing states) to collect personal information relating to international travellers
- Obligations between states
- Disconnect between data regulators and civil aviation regulators
- Enforcement challenges

○ For passengers/crew

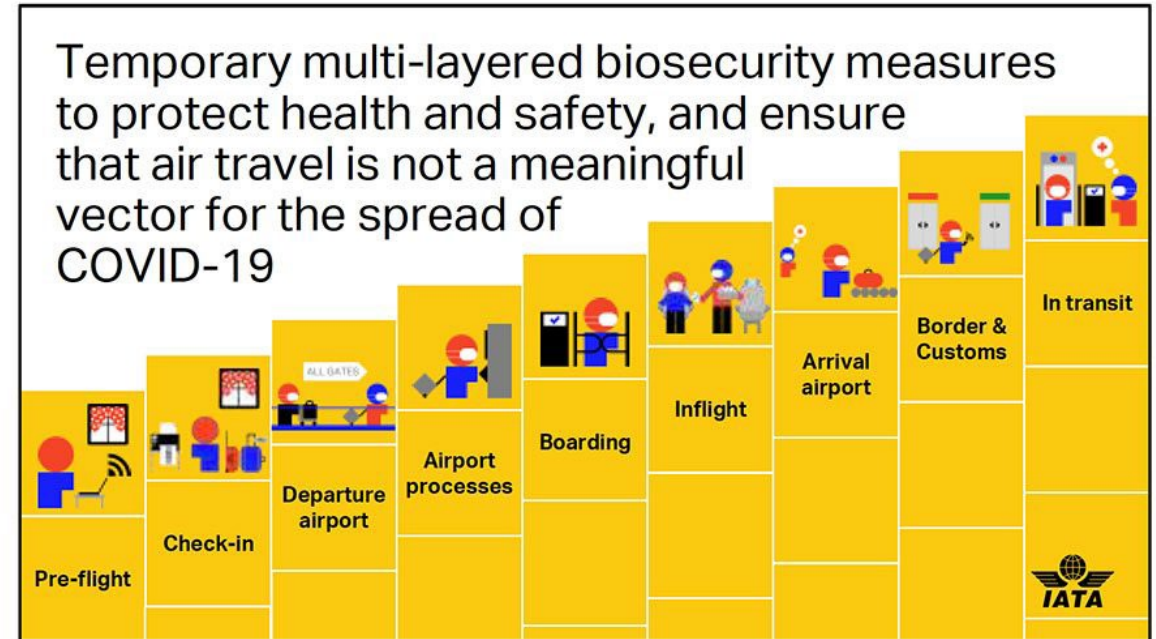
- How are rights protected?
- Connectivity restrictions as a result of cross border limitations meant to protect rights
- Multiple, confusing notices under different national laws

○ For airlines

- Inconsistent compliance obligations = complexity
- Compliance uncertainty and costs
- Potential financial penalties/delays - airlines could be used as a proxy for conflicts between States
- Conflicts could lead to suspension of landings rights which could impact connectivity

Three sharp issues and examples

- Legal basis for Collection, Use and retention of Personal information
- Cross border transfer restrictions
- Data Localisation



References - International work on Data Protection and Privacy

OECD

- Privacy Guidelines
- Recommendations on Cross Border Cooperation on Enforcement of Privacy Laws

<https://www.oecd.org/digital/privacy/>

APEC - Asia Pacific States Cooperation

- Digital Economy Steering Group
- Privacy Principles

<https://www.apec.org/groups/committee-on-trade-and-investment/digital-economy-steering-group>

Query – Are Civil Aviation Data Protection Privacy Principles a potential way forward?

Civil Aviation Data Protection Privacy Principles could:

- recognise the importance of the protection of personal information through data privacy laws;
- promote the consistent application of data privacy concepts to international air transport;
- provide guiding principles to assist States in the development, implementation and enforcement of data protection/privacy laws;
- establish a framework for the application of data protection/privacy concepts to international carriage by air by regulators;
- set out material that could be adopted into other documents such as ICAO guidance material or an industry code, where authorised by domestic legislation.

IATA's proposal for a way forward

IATA briefed the ICAO Council on 14 February and invited the Council to establish a group consisting of legal and data protection experts, facilitation experts, industry representatives, international organizations, etc. to:

- ✓ *Consider in detail the interaction of data protection laws in international carriage by air.*
- ✓ *Develop high-level guidance for use by States when developing, benchmarking, or amending data protection laws and for when conflicts arise.*

In summary

- The interaction between the growing body of national data protection laws and international carriage by air represents a number of ‘rough edges’.
- Unaddressed, these could increasingly burden States, passengers and airlines, pose conflicts and impede connectivity.
- In our view, the international community should devote some energy to examining this interaction and considering how it may be improved through cooperation.