The Million Dollar Question: Who Owns My Data?

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Agenda

1. What is actually bothering us?
2. The concept of (legal) ownership
3. Who owns the data
4. Personal data ownership
   - Consent
   - Data subject/control rights
5. Data subject control rights & the BD economy
6. Looking for solutions
1. What is actually bothering us?
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- The broad consent option used
- No notice
- No way to track the data
- No authority involved

- Open questions:
  - Power asymmetries
  - (Lack of) meaningful agency

July 2015  September 2015  November 2015
NHS approached  DSA signed  Data flow starts
2. The concept of legal ownership
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3. Who owns the data

- Copyright
- Sui Generis Right
- Data protection
- Trade secrets
- Licenses / contractual clauses
- Public law provisions

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4. Personal data ownership

EU

• Charter of fundamental rights of the EU, Article 8 (2): "... Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified."

• GDPR, Recital 13: “Natural persons should have control of their own personal data.”

• Normative v. instrumental view

Consent, control rights

Privacy and data protection as fundamental rights
# 5. Data subject control rights

<table>
<thead>
<tr>
<th>The right to information</th>
<th>The right to access</th>
<th>The right to erasure (the R2BF)</th>
<th>Data portability</th>
<th>The right not to be subject to a decision based solely on automated processing</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Conditio sine qua non</em></td>
<td>Grounded in the idea of freedom to access</td>
<td>Emphasizes the importance of consent and the purpose limitation principle</td>
<td>Two-part definition</td>
<td>“Fully automated” decisions</td>
</tr>
<tr>
<td>Before/at the moment when the processing starts</td>
<td>In the course of data processing</td>
<td>“Follow the data” obligation? Only partially.</td>
<td>Open interpretation</td>
<td>Decisions “significantly affecting” an individual</td>
</tr>
<tr>
<td>A catalogue of information revealed to data subject information about the existence and envisaged consequences of profiling</td>
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</tbody>
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What are the challenges?

I. The Right to Information
   - Archaic, paper tiger – information overload
   - An algorithm can only be explained if the trained model can be articulated and understood by a human

II. The Right to be Forgotten
   - “... no longer being necessary for the purpose ...”
   - Data sharing
   - Technical limits – deleted URLs can be in 30-40% still identifiable; Google’s global domain

III. The Right to Data Portability
   - Open definitions
   - Limited scope
   - Lack of standards
6. Looking for solutions

- Technical tools
  - MyData, blockchain solutions

- Novel regulatory visions
  - Stronger state intervention

- Holistic approach
  - Antitrust
  - Consumer protection law
Questions?