Data and Intellectual Property Protection: Getting the Balance Right

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About ITIF

- The world's leading science and technology policy think tank.
- Supports policies driving global, innovation-based economic growth.
- Focuses on a host of issues at the intersection of technology innovation and public policy across several sectors:
  - Innovation and competitiveness
  - IT and data
  - Telecommunications
  - Trade and globalization
  - Life sciences, agricultural biotech, and energy

Increasingly Digitalized Global Economy

- Digital economy accounts for 25% of global GDP.
- Half of all value created in the global economy over the next decade will be created digitally.
- 75% of the value of data flows over the Internet accrue to traditional industries.

Sources: Accenture, "Digital Disruption: the Growth Multiplier"; McKinsey Global Institute, "Digital Globalization: The New Era of Global Flows"

How Should We Think About Data?

- Oil?
- Oxygen?
- Infrastructure?
- Creative content?
- How about data?

Source: TradeEx, “Key Benefits of Blockchain Technology in Trade Finance”

Who Should Own Personal Data?

- Calls for individuals to have ownership rights have grown:
  - "Digital privacy rights require data ownership" *Financial Times, 2018*
  - "If you tick the box, your information can be exchanged with others. You give away something that was valuable." EU Commissioner of Competition Vestager, 2018
- But such calls would have negative impact on innovation

Who Should Own Personal Data?

- Four Kinds of PII; that suggest different data rights:
  1. Observable Information
     - Photographs, Videos, Emails, Recordings, etc.
  2. Observed Information
     - Geolocation, Date of Birth, Search History, etc.
  3. Computed Information
     - Advertising Profiles, Biometrics, Credit Scores, etc.
  4. Associated Information
     - Social Security Numbers, IP Addresses, Land Titles, etc.
- Giving consumers exclusive rights of control would limit innovation as companies would earn less from data.

Who Should Own Private, Non-PII Data?

- The owner of the machine? The machine maker? The third-party system integrator?
- Some governments are seeking to regulate contracts.
    - European Commission aims: “to ensure fair and competitive markets for Internet of Things objects and for products and services that rely on non-personal machine-generated data created by such objects.”

- But these concerns appear to be misplaced, or at least premature. The norm is for machine buyers to own the data, at least for commercial and industrial applications.
- Technical and market reasons to believe that “machine buyers” will decide.

- But regulations could limit innovation business models.

Forced Sharing

- Calls for “compulsory licensing of data.”
- “A Big Choice for Big Tech: Share Data or Suffer the Consequences” Viktor Myer-Schonberger and Thomas Ramge, *Foreign Affairs,* Sept/Oct 2018

- Bad Idea
  - Negative implications for privacy.
  - Reduces incentives for collecting and curating data.
  - Difficult to administer.

Forced Access I

- Some industries use control of data to limit competition. (e.g., real estate, banking, airlines)
- In the banking industry, financial institutions prevent financial data aggregators from accessing customer account information via application programming interfaces (APIs).
- Customer data or data that can be accessed manually should be available by open-APIs or automated text and data mining

Forced Access 2

- Some data can track disease breakouts, energy usage, air quality, educational results and a host of other areas important to advancing public missions.
- Some governments have called for mandatory access of private data for public functions.
- French government has called for legislation to mandate repurposing private sector data to enable public-interest uses of artificial intelligence by government or others, depending on the sensitivity of the data.
- The risk is that the definition of public purpose will be too broad, and the definition of legitimate business interests will be defined too narrowly.

Political Economy of Data

- Progressives believe consumers should be given an ownership right to their data, while companies should face limits to data ownership and even be subject to forced sharing
- Free-market conservatives are generally skeptical of the idea that consumers should own personal data and argue that companies should have rights to data they possess.
- International Issues: Some countries see data policy as intimately linked to the challenge of American “big tech”.
    - European Commission has talked about enshrining the right of data ownership as a way to keep American tech giants from owning “their data,” and gives EU consumers the right to own their own data.

Thank You!

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