

Consumers as Data Brokers: Should They Sell Their Own Personal Data?

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Abstract

It is an exciting time for personal data markets. In the past three years, multiple companies have emerged to directly offer individuals a platform for leveraging their personal data trail. Beagli, Datacoup, Handshake, and Meeco help their users create profiles that connect up key data points like their social media accounts, mobile devices, web browsing history, and even financial statements. Once users have gathered an adequate amount of data, the platforms broker deals with brands to license their data for market research and user studies. As these Direct Personal Data Markets (DPDMs) emerge and build their user bases, there are legal ambiguities regarding privacy ownership and market inefficiencies that must first be addressed.

There are many privacy market inefficiencies and just as many proposed solutions to fix them. The property approach entails defining a property right in personal information that accrues solely to the individual. This property right can be supported by a variety of different mechanisms -- from a centralized National Information Market to a Uniform Electronic Person Protection Act, from the technology of P3P to defining a superior claim or a bundle of interests. All of these proposals address some aspect of today's privacy market inefficiency.

Alternatives to the property approach include creating a licensing framework, refining tort law, and appealing to a moral foundation. The most promising licensing framework is grounded in trade secrecy law and its ability to restrict access and usage of private information. The benefits to individual privacy can clearly be seen in the trade secrecy definitions of contractual agreements, disclosure of information in confidence, and unauthorized disclosure. They all reduce the alienability of personal data.

Two of the most promising ways to refine tort law to protect privacy are to redefine the classic intrusion tort and to employ a more extreme interpretation of the breach of privacy tort. Both of these provide a path to efficient data privacy ownership. But appealing to a moral foundation may be the strongest way to protect individual privacy, although it might be the most difficult to implement.

The development of DPDMs is a bright light in the advancement of privacy rights, but it will not solve all privacy market inefficiencies. Our hope is that DPDMs find popularity and increase the public's knowledge about data ownership, while offering users immediate returns for their participation. In the long-term, engaging the public in such a manner could encourage them to pursue further ownership over their data trail, and as a result, seek the creation of a legal framework that the markets and our society sorely lack.