

Self control in a digital age

Paul Trevithick, The Mee Foundation

March 27, 2023. Revised April 23, 2023

Abstract

We propose a set of individual rights designed to give people control over their online personal information. We show how these rights be implemented by through a combination of user agent technology, licensing contracts, and enforcement by a trusted intermediary organization.

1 Introduction

John Locke is commonly regarded as the originator of “self-ownership”—the idea that humans have a property right in their person. In 1689 he wrote, “Every man has a property in his own person: this nobody has any right to but himself.” [4]. The self-ownership that Locke believed was self-evident in the seventeenth century does not obtain in the digital realm.

Hundreds of years later, and despite the adoption of increasingly sophisticated privacy regulation, we still have little control over our digital selves. Almost all of our human information (e.g., our preferences, interests, affiliations, friends, medical records, location data) is collected, and held by external organizations that effectively have control over it. Often it is held, bought, sold, and leveraged for corporate economic advantage [9]. The resulting loss of privacy and lack of control over our personal data is well-known, despite our belief that having control over our digital selves is vitally important to the future of civil society and democracy.

The main goal of this paper is to define a set of personal rights which establish an individual’s control over their personal data¹. A secondary goal is to increase the relative power of individuals compared to that of the digital service providers with which they interact.

We propose a set of data rights that are tightly coupled with technical mechanisms to

¹By personal data we mean any information which are related to an identified or identifiable natural person.

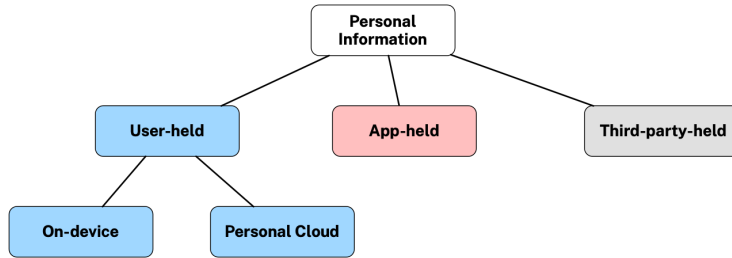


Figure 1: Where personal information is stored

implement them (e.g., APIs, user agents, etc.), that together overcome the limitations of traditional privacy rights alone—limitations that Solove has recently described[7] as follows:

...[E]ffective privacy protection involves not just facilitating individual control, but also bringing the collection, processing, and transfer of personal data under control. Privacy rights are not designed to achieve the latter goal, and they fail at the former goal.

We differentiate personal data by where it is stored as shown in figure 1. If it is stored on an individual’s own “edge” devices or in a personal cloud, we refer to it as *user-held*. If it is stored by a digital service provider with which the individual interacts we refer to it as *app-held*. We refer to the provider’s mobile app or website as simply an *app*. Lastly, if it is held by third-parties (e.g. data brokers, etc.) with which the user doesn’t directly interact and about whom they are likely not even aware.

1.1 Rights for User-held Data

Although it seems natural that individuals should own data about themselves, this is far from settled in the American and European legal literature.² In fact creating a property

²“Until recently the prevailing approach in the European and American legal literature has been to deny the idea of exclusive data ownership. The widely accepted view has been that such a justification for conferring data ownership rights did not and cannot exist, is not yet proven, is “unlikely to provide the level of control wished for”, and that “the courts are yet to discover it.” The leading legal experts suggested that there was no legal principle or theory that would per se justify the allocation of exclusive property rights over data. Therefore, any recognition of a new property right, such as an ownership right in (personal or non-personal) data, would require an additional and sound justification. One of the main reasons for such a position has been the fact that the notion of (personal) “data” was not specifically defined or was discussed in rather abstract terms.”[2] Other examples include, RadicalxChange.org’s (<https://radicalxchange.org>) Data Freedom Act (<https://www.radicalxchange.org/media/papers/data-freedom-act.pdf>), which is “...informed by a model of social, overlapping claims to data. This view of data, which challenges more familiar notions of individual data ownership, is echoed by top researchers in the fields of data privacy,

right in personal data may be objectionable to those who consider information privacy to be a fundamental civil right³.

Despite the challenges of the data-as-property approach for data “at a distance” it applies naturally to user-held data. This is especially true when the individual holds their data on their own hardware, and thus no hosting entity is in any way involved⁴. The computing system holding the data affords capabilities which we describe here in the language of a set of “rights”:

- **Collect, Create.** The right to collect or create information about themselves.
- **Access, Update, Delete.** The right to access, update and/or delete their data.
- **Process.** The right to process their data. This includes leveraging it with *local* applications, algorithms, and “personal AI” that process it by direct access to the datastore and without creating remote copies.
- **Share.** The right to share data with others.

1.2 Rights for App-held Data

App-held personal information is data that a provider has collected through (i) interactions between the user of the provider’s app, or (ii) through observations made by the app or associated sensors, or (iii) through data generated by the app as direct byproduct of these interactions but excluding (iv) data inferred by the provider about the individual based on these interactions. App-held data in (i) above includes information that the user may have shared both manually (e.g., by filling in a form) and/or automatically (e.g., via a user agent).

To emphasize duty of care and loyalty expectations, we refer to the provider as a *data custodian*. We propose these app-held rights:

- **Consent.** The right to require opt-in consent to all collection, transfer, disclosure, retention and use, by the data custodian as well as disclosure of the purpose for each of these.
- **Access, Update, Delete.** The right, to access update, and delete, personal data held by the data custodian.

security, and network economics.” See also the Technium Data Manifesto <https://kk.org/thetechnium/data-manifesto/> whose first tenet reads, “Data cannot be owned. By anybody.” Data cannot be owned, but must be governed.”[5]

³As Samuelson has written, “A person may have a civil liberty interest in voting or speaking freely on issues of public importance in a public forum. These civil rights may be legally enforceable, but they are not commodifiable interests akin to property rights. If information privacy is a civil right, it may make no more sense to propertize it than to propertize voting rights to protect the franchise.”[6]

⁴See ‘on-device’ in figure 1

Traditional privacy law does not recognize the rights above⁵. Instead we use an approach by Samuelson[6] that relies on intellectual property licensing⁶.

1.3 Human Information License

The specific legal mechanism we propose is the Human Information License (HIL)⁷. The HIL is a contract between two parties. The first is the digital service provider which in this contract is referred to as a *data custodian*. The second is an organization that represents the community of agent users. This organization is a *Mediator of Individual Data* (MID), a term coined by Lanier et al.[3], that enforces the terms of the HIL.

The HIL obligates the provider to respect the app-held rights, but it also dictates the technical means by which this must be done. It requires the provider to implement *data rights* application programming interfaces (APIs) that a user agent can consume to remotely control app-held data.

The HIL's provisions are intentionally generic because they are designed to meet the needs of the broad community of all agent users. To meet the needs of more specialized communities (e.g. people interested in a specific rare disease, etc.), we expect that other contracts adding specific relevant provisions will be required. These communities can amend the basic HIL to meet the specifics they require, provided that they do not weaken or remove the HIL's existing provisions and protections. These more specialized communities would organize, govern, and operate independent MIDs that enforce their more specialized contracts. These MIDs would enter into agreements with providers who would be held to both the generic terms of the HIL as well as the additional, specialized terms.

References

- [1] Marshall W Van Alstyne, Georgios Petropoulos, Geoffrey Parker, and Bertin Martens. 'in situ' data rights. *Communications of the ACM*, 64:34–35, 2021. URL: <https://cacm.acm.org/magazines/2021/12/256948-in-situ-data-rights/fulltext>.
- [2] Paulius Jurcys, Christopher Donewald, Mark Fenwick, Markus Lampinen, Vytautas Nekrošius, and Andrius Smaliukas. Ownership of user-held data: Why property law is the right approach. *JOLT*, 2021. URL: <https://jolt.law.harvard.edu/digest/ownership-of-user-held-data-why-property-law-is-the-right-approach>.
- [3] Jaron Lanier and E Glen Weyl. A blueprint for a better digital society. *Harvard Business Review*, 26, 2018. URL: http://eliassi.org/lanier_and_weyl_hbr2018.pdf.

⁵They have similarities to the 'In-situ' Data Rights proposed by Van Alstyne et al.[1].

⁶Also advocated by Zittrain[8, p225]

⁷docs.google.com/document/d/13aGk5adoncMxxfl5637NfqP6fl6q-op1CF50UrJNjg

- [4] John Locke. *Second treatise of government: An essay concerning the true original, extent and end of civil government*. John Wiley and Sons, 2014.
- [5] Matt Prewitt. A view of the future of our data: Welcome to the era of data coalitions. *Noema Magazine*, 2 2021. URL: <https://www.noemamag.com/a-view-of-the-future-of-our-data/>.
- [6] Pamela Samuelson. Privacy as intellectual property. *Stan. L. Rev.*, 52:1125, 1999.
- [7] Daniel J. Solove. The limitations of privacy rights. *SSRN Electronic Journal*, 2 2022. URL: <https://papers.ssrn.com/abstract=4024790>, doi:10.2139/SSRN.4024790.
- [8] Jonathan Zittrain. *The future of the internet—and how to stop it*. Yale University Press, 2008.
- [9] Shoshana Zuboff. *The Age of Surveillance Capitalism*. Profile Books, 2019.