Data Portability Series: Capitalising on the Market for Interoperability

*In the next post in the Data Portability Series curated by our colleagues at the Interdisciplinary Centre for Law and ICT (ICRI) of the KU Leuven – University of Leuven, LSE Alum and lawyer **Paul Moura** argues that a focus on interoperability is key to ensuring data portability inspires innovation rather than resistance.*

With the data protection reform discussion centred around privacy and security issues, it may seem counter-intuitive that the European Commission is proposing to make data portability easier. Yet the consumer protection benefits are clear. As Inge Graef mentioned in the inaugural post of this series, data portability can also be seen as a competition issue. By reducing the likelihood of being "locked-in" to online services, users would have better control over their data and can more easily switch from service to service. But will a strict portability requirement work in practice, or will platforms balk at the thought of transmitting their user base to competitors?

The Problem of High Switching Costs

High switching costs are not uncommon in cyberspace. As users incorporate more and more data into the services that they use, it becomes increasingly difficult to switch services, even if better, cheaper, or more privacy-enhancing platforms become available. For example, given the challenge of simply switching messaging services, particularly where users have established lists of contacts over long periods, it is no surprise that the U.S. Federal Trade Commission has notified Facebook and WhatsApp about their obligations to honor the privacy rights of existing users following the proposed merger. Additionally, with services that rely on testimonials, such as Uber or eBay, switching costs can be generated as a result of the time taken to build reputation and trust among the user base, and lock-in effects may foreclose new entrants in the market.

Challenges to Enforcement

Some service providers have sought to resist portability of user data. For example, in 2008, Facebook sued Power.com for allowing users to enter their Facebook login information to fetch their profile data and manage all of their social networking accounts from one place. More recently, Craigslist, a widely-used website for classified advertisements, filed suit to stop competitors from aggregating and porting user-provided advertisements listed on its website.

Mandating data portability would reduce switching costs, but critics argue that strict portability requirements would place a significant burden on data controllers, thereby reducing dynamic efficiency and lowering incentives to innovate. Where formats and services vary significantly among competitors, smooth portability can be a significant challenge. Moreover, judging by the history of mandated mobile number portability, it is possible that rigid regulatory requirements can present high implementation costs or deficient transfer experiences, and service providers may have an incentive to develop products in a way that will deter adoption of portability.

Fueling the Market for Interoperability

Perhaps the key to promoting competition among online services will be to utilise a co-regulatory approach to enforcement of data portability that focuses on enabling access to a service's data troves so that competitors may create interoperable products and services, rather than compelling those services to offer direct switching. Such an approach is likely to be less costly than mandating portability technologies, and can incentivise the creation of new services. Indeed, many products have developed as a result of interoperability with Google Maps API data or Facebook

SDK profile data. The European Commission is also encouraging member states to adopt interoperability laws in the public sector in order to enhance eGovernment services, promote efficiencies, and reduce costs.

Portability is a good thing, but the key is to implement it in a manner that promotes and ensures take-up by both users and service providers. The European Parliament's focus on interoperability as part of its proposed amendments is therefore a welcome initiative in advancing Internet governance. The right to data portability is an empty right if not implemented properly, but also a driving force for innovation if done the correct way.

This article gives the views of the author, and does not represent the position of the LSE Media Policy Project blog, the London School of Economics, or any other entity.

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