Data Portability: Changes and Practical Challenges of the Underrated New Right

Frederick Richter, LL.M.

German Foundation for Data Protection
@DS_Stiftung
Study 2017: Practical Implementation of the Right to Data Portability
Portability

- Foreign material in data protection law?
Not privacy, but choice

- primary objective of legislator was not only to bring another right to data subject but to enhance competition between services
Portability

▪ Just another right to access?
Right to access 2.0?

- **Art 15 GDPR:**
  - all data related to data subject
  - in a commonly used electronic format

- **Art 20 GDPR:**
  - only data which data subject has provided (based on contract / consent)
  - in a commonly used, structured and machine-readable electronic format
Portability

- Something really new, without precedence?
pre GDPR cases of portability

• Post: change of address order

• Telecommunication:
  – fixed lines: local number portability (LNP)
  – GSM: full mobile number portability (FMNP)

• Insurance: no-claims bonus/discount
Google Take Out (2011)
The Data Liberation Front Delivers Google Takeout

Tuesday, June 28, 2011 | 1:51 PM

Since we began in 2007, the Data Liberation Front has been focused on one thing: making it easier for you to take your data in and out of Google. Our first step was to make it easier to get your data out of our products, one product at a time. While we’ve made great progress on this front, we’ve been on the lookout for even better ways to let you take your data out of Google.

Today we’re pleased to announce the Data Liberation Front’s first revolutionary product: Google Takeout.
Blue Button (2010)

- established by U.S. Office of National Coordinator for Health IT
- 2012 transferred to U.S. Department of Health and Human Services
- System for patients to view online and download personal health records
Green Button (2012)

• industry-led effort to provide electricity customers with easy access to their energy usage data in a consumer-friendly and computer-friendly format
Green Button (2012)

3. Download

"Download My Data"

For the Download My Data (DMD) method, ensure that you are getting the file in "XML" format (not CSV, XLS, or PDF). Only XML is the Green Button format (even if the utility interface says otherwise).

5. Give Data to a Provider

Hand-over XML File.

If you downloaded your XML data file, give it to a solar-installation company, energy-efficiency firm, or upload it into an app to view the data. Don’t worry about it falling into the wrong hands: compliant files should not have any personal information
Orange Button (2016)

- initiated and funded by U.S. Energy Department to standardize the way solar data is collected and exchanged
- formulate data taxonomies and interoperability standards
- develop a data exchange marketplace
• **common framework** for enabling personal data portability and turning it into an opportunity for innovation and customer relationship
Obstacles on the way to success

- Consumers:
  - nobody uses what nobody knows...
  - no erasure included (though likely expected)

- Companies:
  - nobody offers service that nobody asks for...
a clear scope?

Only data provided directly or also observed data?

- **GDPR text:** “providing to a controller”
- **WP29 guidance:** also *by using service/device*
recommendations

▪ further consultations needed to align expectations of DPAs and industry

▪ sectoral solutions to prefer

▪ EDPB should further clarify scope and provide examples for categories of portable data
halfway stuck?

- under Art 20 GDPR no obligation to offer
  - Interoperability
  - Compatibility
halfway stuck?

- “The Spotify Gap”

?!
Data portability - Where are we

- In the context of Data Regulation (GDPR)
  - Personal data of the data subject
  - Raw data only
  - Data provided by the consumer or observed data
  - Provision of the data in an open and machine-readable format
- In the context of Financial Regulation
  - When people change their car insurance (portability of some information are mandatory)
What are the challenges today?

- Development of a common set of interoperable standards and formats (e.g. rainbow button initiative in France and Japan)

- Companies have no guarantee on the quality of the data they will receive under the right to data portability

- Exponential data inflows may raise a cybersecurity issue as incoming data could come with viruses, malwares, etc.

- Sharing of best practices could enable to institute common data standards and more efficient data portability
What is happening

• First solution is always manual
  – Limited request today from our customers
  – Manual options is operationnal

• Automatisation comes with time and with new players
  – PIMS (Cozy Cloud, Meeco, Digi.me, etc)
  – Sectorial Initiatives (blue, green, orange button)
Data Portability - A new right

- Actively submitted data through consent or contract
  - name, address, date of birth, etc.
- Passively submitted data through service usage
  - browsing history, location, shopping history, etc.

Direct transmission when technically possible

Right to receive

Data controller 1

Right to transmit

Data controller 2
What did we get wrong with Portability?

Competition, Cooperation or BOTH?
Why is portability a revolution?

The person regains control over his or her personal data and make it circulate freely throughout all online services.

The organizations offers simple and totally personalized services, based on data from other services, directly given by users.
What are the problems?

- **Business:** losing customers by helping competitors
- **Business:** paid for data, must give it away for free
- **Legal & trust:** responsibility chains between data controllers
- **Tech:** heterogenous CRMs and exchange or security protocols
- **Tech:** which data formats and reference data catalogs
- **Strat:** fear of disintermediation
What are the options?

- B2C
- B2B
- B2C2B or PIMS
Portability use cases

Embedded Video

3 use cases: food, mobility, job
How far are we?

Organizations
- Do not see the opportunity yet and want to implement ‘a minima’ solutions

People
- Do not see use cases and benefits

Regulators
- Do not push companies too much yet

Various initiatives
- GAFA’s data transfer project
- Microsoft SAP Adobe open data initiative
- Tim Berners Lee Solid project
- Etc.
Contact information

Feel free to contact us!

Olivier Dion
CEO Onecub

www.onecub.com
olivier@onecub.fr
+33.6.73.42.80.18

Ressources:
• GDPR article 20
• Guidelines on the right to data portability
IAPP EUROPE
Data Protection Congress 2018
How Did Things Go? (We REALLY Want to Know)

Did you enjoy this session? Is there any way we could make it better? Let us know by filling out a speaker evaluation.

• Start by opening the IAPP Events App

• Select this session and tap “Rate the Session”

• Once you’ve answered all three questions, tap “Done” and you’re all set

• Thank you!