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Pricing privacy – the right to know the value of your personal data

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A B S T R A C T

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The commodification of digital identities is an emerging reality in the data-driven economy. Personal data of individuals represent monetary value in the data-driven economy and are often considered a counter performance for “free” digital services or for discounts for online products and services. Furthermore, customer data and profiling algorithms are already considered a business asset and protected through trade secrets. At the same time, individuals do not seem to be fully aware of the monetary value of their personal data and tend to underestimate their economic power within the data-driven economy and to passively succumb to the propertization of their digital identity. An effort that can increase awareness of consumers/users on their own personal information could be making them aware of the monetary value of their personal data. In other words, if individuals are shown the “price” of their personal data, they can acquire higher awareness about their power in the digital market and thus be effectively empowered for the protection of their information privacy. This paper analyzes whether consumers/users should have a right to know the value of their personal data. After analyzing how EU legislation is already developing in the direction of propertization and monetization of personal data, different models for quantifying the value of personal data are investigated. These models are discussed, not to determine the actual prices of personal data, but to show that the monetary value of personal data can be quantified, a *conditio-sine-qua-non* for the right to know the value of your personal data. Next, active choice models, in which users are offered the option to pay for online services, either with their personal data or with money, are discussed. It is concluded, however, that these models are incompatible with EU data protection law. Finally, practical, moral and cognitive problems of pricing privacy are discussed as an introduction to further research. We conclude that such research is needed to see to which extent these problems can be solved or mitigated. Only then, it can be determined whether the benefits of introducing a right to know the value of your personal data outweigh the problems and hurdles related to it.

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1. Introduction: from passive defence to active empowerment

The commodification of digital identities is an emerging reality in the data-driven economy.¹ Personal data of individuals represent monetary value in the data-driven economy and are often considered as a counter performance for “free” digital services or for discounts for online products and services.² A recent proposal for an EU directive on the supply of digital content has acknowledged that personal data in the modern digital economy can be used, instead of money, to pay for digital content.³ At the same time, customer data and profiling algorithms are already considered a business asset and protected through trade secrets.⁴ However, problematic in this context is that individuals are not often aware of the monetary value of their personal data and tend to underestimate their economic power within the data market and to passively succumb to commodification of their digital identity.⁵

Awareness of individuals is a core element in the big data era and the data-driven economy: it is the optimal balancing between fostering innovation (through the free flow of data) and protecting individuals’ human rights. Privacy and personal data protection has often been declined as a *passive defence* of individuals from collection, use and reuse of their data⁶. However, in the big data era, this seems to be both unrealistic and ineffective, because the limiting access and use of data is difficult to enforce and limits the opportunities that big data has to offer.⁷ Instead, a more realistic and effective approach towards effective protection of data subjects’ interests would be an *active empowerment* of individuals in their personal data management.

An effort that can increase the awareness of and the control over their own personal information could be making consumers/users aware of the monetary value of their personal data.⁸ In other words, if individuals are shown the “price”

of their personal data, they can acquire higher awareness about their power in the digital market and thus be effectively empowered for the protection of their information privacy.⁹

This is possible by several means. From a theoretical perspective, several solutions have been proposed to make individuals the active players in the data economy, e.g. by forms of “quasi-property” of individuals on their own data.¹⁰ From a more practical perspective, empowering individuals would mean enhancing controllership and awareness of data subjects in the data market. *De lege lata*, this is possible on the one hand through a full exercise of control rights (such as the right to data access, the right to rectification, the right to data portability, the right to be forgotten and the right to block the processing) and on the other hand through the right to receive appropriate information about data processing. While controllership might be enhanced through quasi-property theories,¹¹ increasing awareness of data subjects in the digital market is still an open issue. An effort to address this challenge could be making data subjects aware of the monetary value of their personal data.¹²

The traditional, passive approach to informational privacy has only protected data as per their personal/emotional (qualitative) value. In order to reduce information asymmetry in the big data era and to make individuals stronger players in this data-driven economy, what is necessary is to provide more and more information about the monetary (quantitative) value, i.e., the quantum of their personal data value. This may better indicate the power that individuals really have or can have. It has been shown that if individuals were shown the price of their personal data, their awareness about data processing implications would strongly increase.¹³ In this paper we propose – *de lege ferenda* – to introduce a new right of data subjects to receive from data controllers (or an obligation for data controllers to provide to data subjects) information about the monetary value of their personal data.

Firstly, it is analyzed how different types of business models trade personal data in the data-driven economy. These business models can be categorized according to their incentive structures (i.e., monetary and non-monetary) and types of use

¹ Corien Prins, *The Propertization of Personal Data and Identities* (2004), EJCL, www.ejcl.org/83/art83-1.html (accessed 12 June 2017). Nadheza Purtova, *The Illusion of Personal Data as No One’s Property* (2015), Law, Innovation and Technology, vol. 7, n. 1, 2015.

² See Wolfie Christl and Sarah Spiekermann, *Networks of Control: A Report on Corporate Surveillance, Digital Tracking, Big Data & Privacy* (Facultas Verlags – und Buchhandels AG, 2016), 65–67.

³ See Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content, COM(2015) 634 final, Article 3 (1).

⁴ Brenda Reddix-Small, ‘Credit Scoring and Trade Secrecy: An Algorithmic Quagmire or How the Lack of Transparency in Complex Financial Models Scuttled the Finance Market’, (2011) 12 U.C. Davis Bus. L.J. 87, 117–18.

⁵ Frederik Z. Borgesius, *Behavioural Sciences And The Regulation Of Privacy On The Internet* (2014), Amsterdam Law School Legal Studies Research Paper No. 2014-54.

⁶ World Economic Forum, *Rethinking Personal Data: Strengthening Trust* (2012), http://www3.weforum.org/docs/WEF_IT_RethinkingPersonalData_Report_2012.pdf (Accessed 9 June 2017), p. 9.

⁷ Bart H.M. Custers, ‘Click here to consent forever; Expiry dates for informed consent’, (2016), *Big Data & Society*, 1–6.

⁸ See, e.g., Arslan Aziz and Rahul Telang, ‘What Is a Digital Cookie Worth?’ (March 31, 2016). Available at SSRN: <https://ssrn.com/abstract=2757325> (accessed 12 June 2017).

⁹ Richard G. Newell, Juha V. & Siikamäki, ‘Nudging Energy Efficiency Behaviour: The Role of Information Labels’, (2014) 1 J. Association Environmental & Resource Economists 555, 593; Cristiano Codagnone, Francesco Bogliacino and Giuseppe Veltri, *Testing CO2/Car labelling options and consumer information*, Final Report (2013), available at http://ec.europa.eu/clima/policies/transport/vehicles/labelling/studies_en.htm at 9.

¹⁰ Gianclaudio Malgieri, ‘Ownership’ of Customer (Big) Data in the European Union: Quasi-Property as Comparative Solution?, (2016) Journal of Internet Law, Vol. 20, n.5, 2 ff.

¹¹ See Nadya Purtova, *Property Rights in Personal Data. A European Perspective* (2011) Kluwer International.

¹² See, e.g., Arslan Aziz and Rahul Telang, ‘What Is a Digital Cookie Worth?’ (2016). Available at SSRN: <https://ssrn.com/abstract=2757325> (accessed 12 June 2017).

¹³ Richard G. Newell, Juha V. & Siikamäki, ‘Nudging Energy Efficiency Behaviour: The Role of Information Labels’, (2014) 1 J. Association Environmental & Resource Economists 555, 593; Cristiano Codagnone, Francesco Bogliacino and Giuseppe Veltri, *Testing CO2/Car labelling options and consumer information*, Final Report (2013), available at http://ec.europa.eu/clima/policies/transport/vehicles/labelling/studies_en.htm (accessed 12 June 2017), at 9.

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