Portability under the GDPR

Key requirements and open questions
• What is the right to data portability about?
• Why data portability now?
• What do we know about it?
• What do we not know about it?
THE MINI-BILL OF PRIVACY AND DATA PROTECTION RIGHTS

You have a right to privacy. We all have a right to privacy since we were born. ‘All’ includes babies, children and teenagers. Grown-ups have a right to privacy too.

You have the right to the protection of your personal data. Nobody can process other people’s data without respecting some rules, like processing as little data as possible, and always keeping them secure. By processing data, companies and organisations can gain important benefits, but they also get more and more power. The rules help us to protect our data and ourselves, and to keep them in check.

All your personal data deserves protection. It does not matter if the data are already public, maybe because one day you accepted to share them. It does not matter if the data were never ‘top secret’, or do not look particularly intimate. Whenever somebody processes data about you, they have to comply with the rules. Even boring, ordinary data could cause trouble.

You have the right to know who has data about you, what they use them for, and how they do it. You are entitled to have some control on what happens to your data, and this is only possible if you are informed of who is using the data, why, and how. So those who wish to process your data have the obligation to tell you about all this.

You have the right to receive clear information. You should always be able to understand what they are telling you. They are obliged to be transparent, so don’t let them be obscure. If something is not clear, dare to ask!

You have the right to know exactly what data they have. Let’s imagine they explained what they wanted your data for, and how they will use it. Or maybe they forgot. Or maybe it was really, really obscure. In any case, you can ask them what they know about you, and they are obliged to tell you.

You have the right to correct any inaccurate data about you. It could sometimes be a big problem if people have wrong information about you. It could lead them to the wrong conclusions, and they could take wrong decisions about you. If you notice they have the wrong data, you can ask them to correct them, and they are obliged to do it.

You have the right to be heard. Sometimes, organisations or companies are obliged to process some data about you. But often they have no good reason why, so they will just ask if you let them use the data nevertheless. Adults and more aged teenagers have the right to consent to this kind of practices. If you are a younger child or teenager, it is probably not you but your parents who can consent, or not consent. However, before they do anything, they should consult you and see what you think.

You have the right to complain. If somebody is not respecting the rules, let them know you are aware of your rights. If they do not get it, ask somebody to help you, and insist! Data protection authorities have been set up in each country to help people with all issues related to the protection of their personal data, they can also provide guidance and assistance.
WHAT IS (PERSONAL) DATA PORTABILITY ABOUT?

- The right to receive a copy of some of the personal data you gave to a company, in a way that allows you to give it (also) to another company.
- Introduced by the General Data Protection Regulation (GDPR).
- It is about personal data, and the protection of personal data.
WHY DATA PORTABILITY IN THE GENERAL DATA PROTECTION REGULATION?

- Rights of the data subject
- ART. 8 EU CHARTER
- Obligations of the data controllers
- Supervision by independent authorities
SO... WHY DATA PORTABILITY IN THE GDPR?

- To empower the individual as data subject (more control over your data)
  - Recital (68) ‘To further strengthen the control over his or her own data, …’

- But also:
  - to empower the individual as consumer (prevent lock-in), and
  - to foster competition.
WHAT DO WE KNOW ABOUT DATA PORTABILITY?

• Introduced by Art. 20 of the GDPR
• Exact meaning of Art. 20 is being discussed:
  • see notably ‘Guidelines on the right to data portability’, adopted on 13 December 2016 by the Article 29 Working Party (Opinion 242)
• Can be compared to some existing rights:
  • the right of access, and
  • the right to erasure.
ART. 20 GDPR – RIGHT TO DATA PORTABILITY

1. The data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the personal data have been provided, where:

(a) the processing is based on consent pursuant to point (a) of Article 6(1) or point (a) of Article 9(2) or on a contract pursuant to point (b) of Article 6(1); and

(b) the processing is carried out by automated means.

2. In exercising his or her right to data portability pursuant to paragraph 1, the data subject shall have the right to have the personal data transmitted directly from one controller to another, where technically feasible.
3. The exercise of the right referred to in paragraph 1 of this Article shall be without prejudice to Article 17. That right shall not apply to processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

4. The right referred to in paragraph 1 shall not adversely affect the rights and freedoms of others.
WHICH DATA?

• Only personal data: data concerning the data subject (and which can be qualified as relating to an identified or identifiable person).

• The data must have been provided by the data subject to the controller, either:
  • on the basis of the data subject’s consent, or
  • because it was necessary for the performance of a contract.
    • Recital (68): ‘By its very nature, that right should not be exercised against controllers processing personal data in the exercise of their public duties.’

• According to the Art. 29 WP, ‘provided’:
  • includes data actively and knowingly given + data observed by the use of a service or device;
  • would exclude inferred data.

• The data must be processed by automated means.
**WHICH DATA?**

**YES**
- personal data
- provided by the individual
- collected on the basis of consent, or for the performance of a contract
- data processed by automated means

**NO**
- anonymous data
- not provided by the individual but inferred
- data collected on grounds that are not consent or contract
- data not processed by automated means
IS IT A RIGHT TO MOVE DATA?

• No.
• It is about:
  • receiving a machine-readable copy of the data, or
  • having a copy of the data transmitted to another company, if feasible.
• The data are not deleted by the company: you should be able to continue the service as usual.
• You should also be able to still use any other applicable rights, including right to erasure.
WHAT CAN YOU DO WITH THE DATA?

• You can just keep it.
• You should be able to transmit it to another data controller ‘without hindrance’.
• You can ask for the data to be transmitted directly from one controller to another, where technically feasible’.
HOW ARE YOU SUPPOSED TO RECEIVE THE DATA?

• You have the right to receive it ‘in a structured, commonly used and machine readable format’.

  • Art. 29 WP says: ‘For example, a data subject might be interested in retrieving his current playlist from a music streaming service to find out how many times he listened to a specific track in order to check which music he wants to purchase on another platform’.
HOW DO YOU RECEIVE THE DATA... IN PRACTICE?

SUBJECT ACCESS REQUEST for USER ID 165706128
Fri May 5 13:59:20 CEST 2017

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WHAT ABOUT OTHER PEOPLE’S RIGHTS?

• They must be respected.
• Art. 29 WP insists on:
  • a broad conception of data concerning an individual, which might include other people’s data;
  • the fact that the individual receiving the data can keep it under the ‘household exemption’;
  • the responsibility of the recipient company not to use other people’s data in ways they should not.
WHAT IS THE ROLE OF THE RECEIVING COMPANY?

• The receiving company becomes the new data controller.
• The receiving company should not process any personal data that is not necessary for the purposes of their processing.
  • How will they filter data in practice?
HOW WILL INDIVIDUALS KNOW THEY HAVE THIS RIGHT?

• All controllers will be obliged to inform data subjects of the existence of a right to data portability (when applicable):
  • at the time when they collect the data from the data subject, if they collect them directly,
  • if they do not collect the data directly, a reasonable time after reception (and in any case when using the data to contact them, or when disclosing the data).
ALL IN ALL, MANY QUESTIONS

- Will data portability help attaining any of its supposed objectives?
  - Prevent lock-in?
  - Foster competition?
  - Empower the data subject?

- ... in any case only of use if somebody tries to use it.
Thank you!

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