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Governing the abstract object of data: A semi-commons approach

The entry of data into the circuit of capital sans an effective resource governance framework has produced a digital wild west, characterised by the twin ills of misrecognition (identity-based exclusion and harm) and maldistribution (unfair distribution of access and benefits). The hegemonic 'data must flow' illogic of global policy debates legitimises data enclosures and an unchecked planetary march of data extractivism. The dominant approach to data governance, pioneered by the European Union, is ineffective in addressing the roots of economic unfairness in the data economy. It provides individuals quasi-ownership rights in their personal data while simultaneously carving out a new class of data resources – 'non-personal data' – deemed to be the private property of data processors. The question of the economic claims of citizens and communities in the value generated from *their* data (personal data anonymised or machine-observed data) is completely sidestepped.

Competition law remedies do not go far in dismantling this individualist, neo-liberal market frame. A collectivist approach is the much-needed alternative, but existing attempts in this direction do not make the cut. Mainstream data stewardship models end up entrenching a pro-capitalist commons exacerbating the foundational problem of the unequal ownership of data as a means of production. Governance solutions that see data resources as akin to natural resources, arguing common property resource traditions may be a useful normative compass for the fair and equitable distribution of data value. Yet, these models cannot be replicated in data – an intangible resource that spawns multiple communities. This raises complex issues about the norms for exclusion-inclusion and representative decision-making that have been at the heart of the traditional regimes of community commons governance.

Against this backdrop, we propose a semi-commons approach to data governance attuned to the unique and specific resource governance dilemmas in data. The resource of data requires institutional checks and balances to prevent the possessor of its physical-syntactic layers (the network-data architecture) from claiming exclusive rights over its semantic layer.

The semi-commons approach manages the delicate balance between 'openness as non-exclusive accessibility' of data's syntactic content and 'openness as duty to nurture use' of data's semantic propositions through a differentiated, rights-based resource ownership regime. The 'right to seek data' is conceptualised as an entitlement granted through law. Two classes of economic entitlements are envisioned in this regime: (a) a data holders' right to non-exclusive access in the base layer of data that they have collected and (b) a corollary right to conditional access for different users through an entitlement of accessibility.

The semi-commons framework opens up the possibilities for distributive integrity in the data economy, also unlocking data's social and public value. Further exploration will, however, be needed to grapple conceptually and legally with the downstream value propositions in the data economy in the form of derived data and intelligence. This needs a whole-of-economy approach, including a multilateral framework for a global data constitutionalism that can roll back the tide of digital colonialism.

For more details, see:

Gurumurthy, A. and Chami, N. (forthcoming). Governing the Abstract Object of Data: Towards a Distributive Integrity Framework. Data Governance Network Working Paper. Draft available at: https://itforchange.net/sites/default/files/1741/ITfC-DRAFT-The-Abstract-Object-of-Data.pdf