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Alternative data governance models: Moving beyond one-size-fits-all solutions

In the past few years, many political and societal issues have arisen around data. The Cambridge Analytical scandal has illustrated the problems posed to both privacy and democracy by having a for-profit private firm controlling the use of detailed personal data of millions of people. Antitrust scholars and regulators such as the European Commission warn and have started taking action against anti-competitive uses of data. In many cities, transportation authorities lack access to data on ride-hailing trips or real-time traffic that is vital to their mission. As a result, companies like Uber and Waze have started selling their data to public actors. In this context, one of the main challenges the data economy faces today is the insufficient level of data sharing between public and private actors.

Although these issues are heterogeneous and demand diverse policy answers, they have one common root: they all originate in what we will hereafter call the 'hegemonic data governance model'. This data governance model relies on a data collector (e.g., a platform) retaining exclusive control over the data it collects, typically through draconian clickwrap general conditions of use (GCU), particularly when the data collection involves individuals. After the data is collected, given that there is no such thing as de jure data ownership, the data collector 'owns' it de facto, although there are legal ways to protect third parties from accessing the data (yet not the data itself) through copyright over the database and/or the software that allows access to it. Parallel to specific policy solutions that have been put forward to tackle each of these issues separately (the General Data Protection Regulation (GDPR), antitrust investigations, sector-specific regulations, etc.), some authors and politicians have proposed dismantling hegemonic data governance and replacing it with an alternative one. Among the most popular alternatives, two polar options have gained in popularity: either the state would make data a public good, or it could create property rights over personal and non-personal data so that a frictionless data market in which each natural or legal person can sell 'its' data can emerge.

However, no one-size-fits-all alternative data governance model can respond at once to the many issues the data economy poses. This is evidenced by both existing and envisaged alternative data governance models, for which I will provide some guidelines on the scenarios and the conditions under which they might represent an alternative to the hegemonic model. Thereby I focus on the purpose of the model (what issue it tackles), the type of data it fits and its legal, technical and economic conditions of success. In particular, I will briefly examine four models: (1) crowdsourced data commons, (2) data requisition, (3) collective bargaining on rights over personal data and (4) data pooling between organisations. Data as a public good managed by the state, as we will see, is one possibility comprised in the data requisition model. I conclude by pointing out how these models can be combined to build the data economy into a variety of data governance models.