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Data value and just distribution of benefits and risks

Data is often described as the most important raw material for Big Data, Artificial Intelligence and the transformation of the current economy. However, data as a generic term is a peculiar category which encompasses different “things” in different contexts. Technically, data are machine-readable encoded characters tied to an electronic storage or transmission medium. In their semantic dimension, data are carriers of information content. Data are neither work nor capital, but represent a third thing of their own, which cannot be grasped simply as knowledge either.

The current business model of many large B2C platforms depends on network effects and on two-sided markets. They offer their services to users mostly free of charge, and generate most of their revenues and profits from the sale of advertisements, which are presented to specific target groups by analyzing users’ preferences. Therefore, the saying “If you are not paying for the product, you are the product being sold” means that people are being commoditized for releasing their data ultimately to advertising companies. Consumer data is used to create digital profiles that can be made available to third parties. Huge user numbers help to create market power. The associated new power asymmetries of the data economy are raising concerns. The bargaining power of the platform is much greater than that of individual users. Therefore, the benefits and risk are unevenly distributed.

In the search for models that could open up alternatives in and to the existing business models of the platform-based data economy, I will examine four forms of governance that want to see data managed and administered (1) as a private good, (2) as a public good, (3) as a common good, and (4) by means of a trusteeship. I will scrutinize the corresponding claims to validity and ask how the informational self-determination of those providing data can be preserved and whether a bridge can be built between regulated commercial use and the utilization for the common good.

Special focus will be devoted to fiduciaries or data trusts who could possibly serve as an interface between data protection concerns and the data economy. The establishment of data trustees who can grant data access to companies on behalf of and in accordance with citizens’ preferences. These include Personal Information Management Systems (PIMS), which are services that implement users’ individual preferences largely automatically (“data agents”). They range from single sign-on services, local data vaults and online storage systems to more or less comprehensive third-party management of users’ data through various types of data trusts. The range of functions extends from managing access rights to storage, processing, refinement, sharing aggregated or analyzed data, and negotiating data access rights. Such PIMS are intended to take on behalf of users vis-à-vis third parties their preferences regarding the exercise of their data protection rights of access, rectification, erasure, data portability and objection on behalf of data subjects. I will discuss the pros and cons of such PIMS and data trusts, and whether and to what extent they may support citizens’ rights and a more just distribution of data value.