

WHITE HOUSE OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information Regarding Data Portability

Comments of the Computer & Communications Industry Association

The Computer & Communications Industry Association commends the White House's Office of Science and Technology policy for its interest in the issues surrounding data portability. As the request for information (RFI) notes, data portability can offer significant benefits for users, service providers, and the broader public.

Ensuring that these benefits inure to a broad group of stakeholders depends on the scope of the data accessed and the way data portability practices are implemented. Importantly, the RFI limits its focus to data portability as it relates to users of data-enabled services, which is often referred to as "data access." Consumers, service providers, and the wider digital ecosystem stand to see improved competition, innovation, and convenience from users' improved ability to access their own information to download and use as they deem appropriate.

1. Potential benefits and drawbacks of increased data portability

Benefits

First and foremost, users of data-enabled services stand to benefit most from increased data portability—specifically, customer data access as formulated above. A recent study by Oxera, a leading consulting firm, found that both consumers and businesses "multi-home" in their use of multiple online services for similar purposes, regularly and easily switching from one service to another.ⁱ

Well-designed data portability or user access systems enable consumers switching between services by lowering the transaction costs a user might face when doing so. The task of reentering and re-uploading personal information, images, and content for each shopping, image sharing, or news site a consumer might choose to use for a time or purpose can be a daunting one. It could prevent users from using the application best suited to their needs. However, an ecosystem of services that provide users with well-implemented data access tools can ensure consumers have the service most appropriate for their needs. For example, users of a photo storage site with a data porting tool can simply download their data and images previously provided to that service and share it with another that might have the specific editing tools they might require. Not only does this facilitate multi-homing and service switching, but it allows users to locally back up their own data through a method of their choosing.

Certain online services that are used more often than other online applications, can also serve as safe, convenient data conduits for use of data on third-party sites. For example, Facebook Loginⁱⁱ and the Google Identity Platformⁱⁱⁱ allow users to sign on to other websites and online

apps using secure authentication, reducing both the number of accounts users must recall and the number of times they must enter the same profile information to access online services.

Studies have shown that facilitating users' access to their own data online also benefits consumers and the wider digital ecosystem through increased competition and innovation.^{iv} With appropriate data portability tools, users are not locked into one online service for life, and can instead move horizontally between competitors. Importantly, the competition benefits of user data portability depend on reciprocity—if a provider benefits from user data shared from another service, it too should deploy data porting tools. Reciprocal conduct helps to avoid perverse incentives in the data-enabled services marketplace.

The ease with which users can move between services also encourages new, disruptive market entrants for various kinds of online activities. Without user data portability, these new market entrants might otherwise determine that data lock-in would prevent them from attracting the users of incumbent services. Instead, user data portability promotes competition based on the quality of service provided and the availability of new or differentiating features. Since users do not feel bound to an incumbent site simply because of the switching costs of moving their data, they are more likely to consider and use new applications that might better suit their needs, thereby encouraging innovative new services and uses of data.

Drawbacks

Implementing user data portability for online services is not without its potential drawbacks. Any transfer of personal user data, either between online services at the direction of users or via users' utilization of a downloading tool built into a service, poses privacy and security risks. For example, if a data porting tool does not properly authenticate a third-party application, users' personal data could be stolen by scammers spoofing a legitimate service. The risk to users becomes greater as more data is made available to a data access or portability mechanism. These risks to users' privacy can be mitigated through best practices that limit the scope of data shared and ensure the use of reasonable security measures to protect information transfers.

Overbroad data portability requirements can also harm competition and increase costs for businesses. Many online services rely on user or public data to develop additional technologies or analytical methods that are proprietary or serve as a competitive differentiator in the marketplace. If data portability rules were to require access to and sharing of the methodologies or fruits of data analysis or the proprietary technologies that result, in addition to the underlying user or public data, companies would have reduced incentive to pursue or develop those innovative technologies and services.

Data portability implementations that are not properly tailored to the needs of users of different kinds of services can increase costs for service providers without any corresponding benefit for consumers. One example would be a requirement that cloud storage providers transfer all data associated with a user's account, including logs of data location and a history of

access attempts, in addition to a user's remotely held files. The user likely only wishes to have his or her files available on a new service, and this additional information would not provide any meaningful benefit to the user at that new service. However, it would unnecessarily increase the cost of developing a user data portability tool for the original provider.

3. Specific steps the Federal Government, private companies, associations, or others might take to encourage or require greater data portability (and the important benefits or drawbacks of each approach)

The federal government can ensure that increased user data portability is implemented in a way that promotes its benefits to innovation and competition while avoiding the potential drawbacks. The government can begin encouraging data portability by educating the public and leading by example. Providing open data sets in accessible formats will not only spur innovation and research on those data sets in the private sector, but will also provide a template for data portability that the private sector can adapt in developing its own tools.

The government can also employ its power to convene stakeholders to aid the development of industry-wide best practices in user data access and portability. However, the government should not require data portability or impose specific regulations on service providers. As mentioned, inflexible obligations increase costs and fail to respond to the varying needs of individual consumers and companies.

Flexibility in user data portability implementations is key to their adoption and success. Companies deal in a variety of types of user data, from sensitive health and financial information to digital communications and images, and differ in how much data they maintain and how it is managed. The government should not insist on fixed solutions or requirements that do not reflect the positions or peculiarities of different sectors or individual companies. Instead, the government should encourage industry, experts, and consumer advocates to come together to develop principles to guide the implementation of user data portability mechanisms that support innovation and fair competition while minimizing unnecessary costs and risks.

While avoiding imposed rules or requirements, the government should promote the industry-led development of interoperable and open standards for user data portability, which would reflect the characteristics that have made the Internet fertile ground for commerce and communication. Open frameworks for transferring user data between services would encourage a consistent user experience without leading service providers to focus on strict compliance to the detriment of innovation in portability tools.

Many providers have implemented mechanisms for their users to extract their data from their services, either for back-up or in case they leave the service. However, it is important to remember that the data is only truly portable if it can be easily transferred and then received or used in a different context. The government should promote data interoperability across services, and can lead by example by ensuring that the data sets released by agencies are in open, interoperable, and standard formats.

Industry should be encouraged to use existing open and documented data porting standards, or develop new standards that are open and documented. These standards should allow data consumers to build reliable services around the consumption of the ported user data.

4. Best practices in implementing data portability

Appropriate Scope

A key determinant of the success and widespread adoption of data portability mechanisms is the scope of the data to which they provide access. Data portability mechanisms should be limited to the data users have provided directly to companies or service providers. Prescriptive data portability requirements that cover “all” data that might pertain to a user’s relationship with a company are unnecessary and costly. Providers should be encouraged to concentrate on building tools that easily and securely provide users access to the data they want to preserve or use elsewhere.

As discussed, providers regularly enrich existing data sets through complex analysis or the development of technological tools that rely on that data. If additional information results from analysis of user or public data, that information and any associated tools or analytic methods should not be subject to data access or portability requirements.

Privacy and Security

Service providers should be encouraged to provide users with access to data securely. Data transferred to another service at the request of the user should be treated in accordance with existing best practices for data management and security. Existing open standards for user data portability should be considered. For example, open standards such as OAuth can be used to allow users to enable secure data flows directly from one service to another, without the need for manual steps in data handling, making data more portable—and thus more useful.

If a service provider determines that facilitating access to some data could harm users, or if data is sensitive and a destination is not employing appropriate security practices, service provider should be permitted to limit the scope of accessible or portable data to mitigate possible risks. In addition, to protect user privacy, in most cases user data access should not extend to data obtained from a source that is not the data subject. That includes information that another user may have supplied, even if relates to the user seeking access.

Avoid Strict Requirements

Data portability is meant to improve accessibility for users and increase innovation and competition in the marketplace for data-enabled services. Strict requirements for data access and sharing, including those related to format or security requirements, would be counterproductive to those goals. Industry and consumers should be permitted to develop the

data portability solutions that best work for the circumstances and needs of all stakeholders in the evolving digital ecosystem, without the imposition of costly and ineffective rules.

ⁱ [http://www.oxera.com/getmedia/84df70f3-8fe0-4ad1-b4ba-d235ee50cb30/The-benefits-of-online-platforms-main-findings-\(October-2015\).pdf.aspx?ext=.pdf](http://www.oxera.com/getmedia/84df70f3-8fe0-4ad1-b4ba-d235ee50cb30/The-benefits-of-online-platforms-main-findings-(October-2015).pdf.aspx?ext=.pdf)

ⁱⁱ <https://developers.facebook.com/docs/facebook-login/>

ⁱⁱⁱ <https://developers.google.com/identity/>

^{iv} <https://policyreview.info/articles/analysis/data-portability-among-online-platforms>