

# Caveat Venditor: Should We Sell Our Own Data?

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## ABSTRACT

The monetization of personal data has reached dizzying heights in recent years, driving the business models of many of the major web giants. Some propose that at least some of these revenues ought to accrue to the individuals whom this data relates to. This paper traces the genealogy of this idea, which is relatively old in the history of the web but has recently regained traction, and offers a set of ethical considerations against selling one's own data.

## Categories and Subject Descriptors

K.4.1 [Public Policy Issues]: Regulation, Privacy, Property

## General Terms

Legal Aspects

## Keywords

Data Protection; Privacy; Economics of Personal Data

## 1. INTRODUCTION

Over the last decade, the collection and sale of personal data has grown into several multi-billion dollar industries. Data is used to target advertising, to make offers or deny credit, and many other uses besides. This development has prompted a great deal of concern about consumer privacy and the possibilities of exploitation. Various ideas have been put forward about how to redress the balance. One idea is what we might call economic enfranchisement; the idea that instead of companies profiting from the data we produce as consumers, we ought to be able to sell our own data and earn a profit.

In 2014, a student put his privacy up for sale on the kickstarter in a project called 'A Bite Of Me'. He collected all his data from browsing habits, social media activity, and

phone records.<sup>1</sup>

In a similar project, artist Jennifer Lyn Morone went further, turning herself into a corporation (registered in the State of Delaware), whose main asset is a rich stream of her own personal data to 'sell, lease, rent, exchange or invest' for profit.<sup>2</sup>

An amusing - or perhaps, depressing - observation is that the business world is already way ahead of these apparently cutting-edge and provocative art projects. There are numerous businesses and organisations who have already created platforms whereby individuals can profit from selling their own data.

From the US-based companies DataCoup and Personal, to YesProfile, CitizenMe and Autograph in Europe, this is an emerging development in the marketing industry.<sup>3</sup>

The idea behind these services is that users can control and edit their profiles, deciding what demographic information, interests and activity streams to reveal, and earn a cut of the profits from selling this data to marketers. Consumers become both producers and proprietors of their own data; each individual is their own data broker.

And it's not as cutting edge as you might expect. Perhaps the earliest example was a company called Root Markets, founded nearly a decade ago in 2006. At the time, the CEO Seth Goldstein argued:

"Your attention has literal value. Consumers, based on their attention, are creating more and more of the value on the Internet."

Many of us might feel enthusiastic about the prospect of earning money from selling our data direct to marketers. If someone was earning money from it, perhaps we ought to get at least a cut.

This is a position that has been echoed in various corners over the years. There is a long strand of legal scholarship, since the mid 1990s, which debates the merits of treating personal data as property ([6],[9], [4]). Some scholars even appear to assume, perhaps because privacy and data protection regimes often require that organisations seek individual consent for using data, that there is already such a property right of sorts [2]. While such an inference is sloppy by

<sup>1</sup>'A Bite of me' by Federico Zannier <https://www.kickstarter.com/projects/1461902402/a-bit-e-of-me>

<sup>2</sup>See <http://thecreatorsproject.vice.com/blog/this-artist-turned-herself-into-a-corporation-to-sell-her-data>

<sup>3</sup>[www.datacoup.com](http://www.datacoup.com), [www.personal.com](http://www.personal.com),  
[www.yesprofile.com](http://www.yesprofile.com), [www.yesprofile.com](http://www.yesprofile.com),  
[www.citizenme.com](http://www.citizenme.com), [www.nFluence.com](http://www.nFluence.com)

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academic standards, the idea of personal data as property nevertheless resonates amongst many. The idea has found favour more recently with certain technology critics [3].

## 2. PROVOCATIONS AGAINST PERSONAL DATA AS PROPERTY

Certainly, the benefits of cold, hard cash are easier to argue for than abstract notions like privacy. But should we sell our personal data? Are there any reasons why this might be problematic? The remainder of this paper raises a critical provocation against the paradigm of 'personal data as property'. Unlike some critiques of the equation of privacy and property which focus on the conceptual differences (e.g. [5]), the argument that follows will be couched in ethical terms.

Questions about the ethics of markets are probably as old as capitalism itself. One set of arguments are about the features of capitalist economies in general – whether they are a good way to allocate goods and services, whether they are necessarily exploitative, whether they are necessary for freedom. Those are interesting debates but they cannot account for the intuition that selling one's own data is problematic. In objecting to selling one's data, one need not have anything against markets in principle.

Moral and political philosophers have sought to understand why certain market exchanges raise special and unique ethical challenges ([1], [7], [10]). These 'moral market limitation theorists' point to certain examples to motivate the idea, including the sale of:

1. Human organs for transplants
2. Votes in a democracy
3. Sex and reproductive labour
4. Indentured servitude or slavery
5. Toxic waste disposal
6. Awards or professional positions normally based on merit

The problem with markets for these kinds of goods is not necessarily that their exchange leaves buyers or sellers materially worse off. If that were their only failing, such markets might be 'fixed' and allowed to continue, by introducing new regulatory and contractual mechanisms, or in some cases redistribution of wealth, which ensure no one is left worse off.

But such markets seem morally problematic regardless of any subsequent redistribution, for reasons that are more readily understood through an ethical rather than economic lens. There are ethical and political reasons to impose certain limitations to what kinds of things can be bought and sold. For those whose political outlook lies somewhere between libertarianism and socialism, it is important to understand where these limitations lie and why.

One reason is that there may be something intrinsic to the nature of certain goods that makes their sale morally repugnant. This might be due to the social meaning of the good becoming corrupted [10]. For instance, we might say that friendship becomes meaningless if it is bought; voluntariness may be part of the social meaning of friendship. A slightly different account claims that it is not necessarily the intrinsic nature of goods that makes their market exchange

morally problematic, but the context in which the exchange takes place and the effect it has on the relationships between the buyer and the seller (and perhaps also others who are not part of the transaction) [8].

Markets in these goods inevitably put certain people in worse social standing even if they increase individual material position. A market for votes, for example, is not wrong because it fails to allocate benefits optimally – it's a win-win for the vote seller and buyer - but rather because it undermines a necessary condition for democracy – that each citizen has equal standing.

We might consider personal data, in some respects, to be in this kind category. Selling one's own data is not necessarily as morally problematic as these other practices, only that it is morally problematic in a similar way or for similar reasons.

To understand why we need to look at the context and purpose for which personal data is bought. And in the case of these platforms, we know that personal data is bought by marketers to help them work out how to influence consumers to buy their clients' products.

This practice is based on an asymmetry of knowledge between the consumer, who knows very little, and the seller, who knows everything there is to know about their product (both good and bad), and also the best ways to convince the consumer to buy it. The seduction marketers perform on consumers involves understanding their emotions and cognitive biases; learning how to influence them towards a purchase; undermining their ability to make alternative decisions. In other words, personal data in the hands of marketers represents a subtle, small, but very real encroachment on individual autonomy.

This may sound like an extreme interpretation of the intentions of digital marketers, but it is a prevalent view in at least some circles within the industry. Consider the following quote from an industry report on the future of marketing, published in 2013:

"In the future advertising will be tasked with planting seeds of desire, expectations, aspirations that intrigue and pull the consumer along the path to thinking that it was his or her idea, giving a sense of ownership and full decision-making power."<sup>4</sup>

So selling your own personal data could amount to selling your autonomous decision making power. Note that this isn't an objection to sacrificing one's autonomy in return for money per se; otherwise we'd have to rule out most employment. What is at issue is one's autonomous decision making power. Essentially, you are sacrificing a bit of your ability to make decisions for yourself, in return for money. Allowing personal data to flow in this way feeds a relationship which is unlikely to be conducive to an equal standing between consumers and marketers.

It may also lead to an imbalance between different consumers too. This is because the consequences of selling one's data may not solely effect oneself – they are also likely to impact others, including those who decide not to sell their data at all, possibly in more significant ways. In an environment in which the majority sell their data, the combined impact is likely to be greater segmentation and differentiation between consumers, with some worth more than others.

<sup>4</sup><http://wfoa.wharton.upenn.edu/perspective/lori-billey/>

This argument need not imply that the sale of personal data should necessarily be banned. Regulation comes in many forms, and exactly how it should be implemented in this context is a complex, delicate and urgent question.

Neither does it imply that using these platforms is necessarily a negative development. It may well be an improvement on the status quo. If your data is going to be mined and collected in ways that threaten your autonomy, and the choice is between either earning some money from that, or not earning any money from it, then it may make rational sense for a consumer to use these platforms. And by including various mechanisms to increase autonomy, these platforms might even be a promising intermediate step towards that situation in the long term. But the present market they are selling into remains problematic.

### 3. CONCLUDING REMARKS

In considering the problems of surveillance, algorithms, and big data, there is a temptation to think about these problems in terms of market failure. But in restricting our analysis to the relative harms and benefits affecting individual participants as a result of the market, the problem becomes simply that data brokers can impose harms on individual consumers without adequately compensating them. In this context, enfranchising those individuals to become sellers of their own data seems a sensible and obvious solution.

But this paper argues that the problem goes deeper than distribution. The current primary market for personal data, even if it allows individuals to accrue their own data revenues, is based on a dysfunctional relationship between consumers and marketers. If we become enfranchised producer-consumers in the current market for personal data, we sacrifice a degree of autonomous decision-making power; we further entrench our unequal standing with marketers; and we also potentially create new divides between each other. The answer to our privacy problems is not for consumers to secure their own slice of the big data pie, but to reform these markets so they preserve our autonomy and serve our mutual and collective interests.

### 4. ACKNOWLEDGMENTS

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