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Data Is Personal: We Should Treat It As Such

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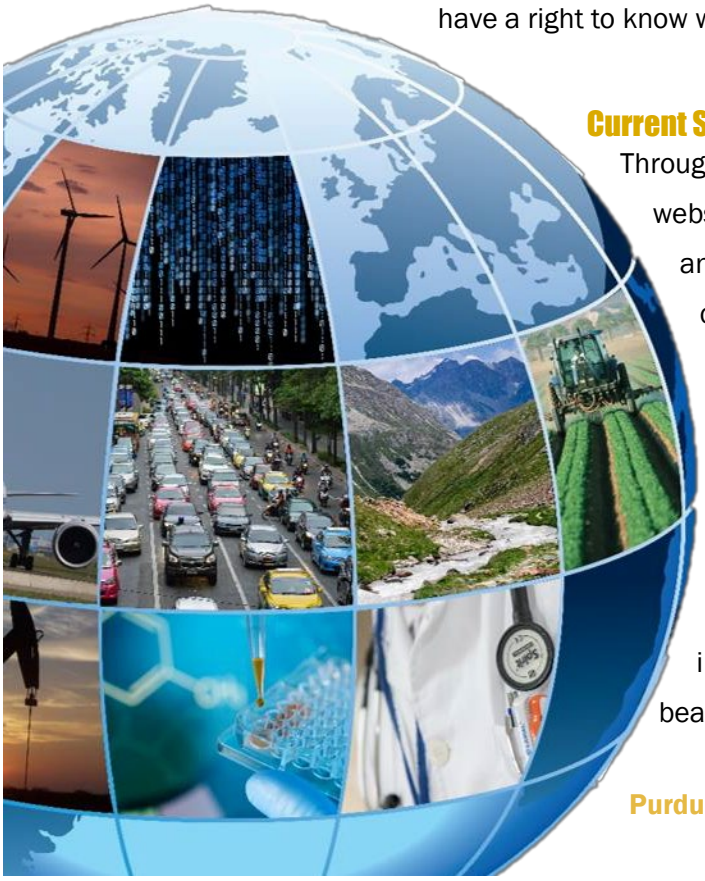
INTRODUCTION

The rise of the internet as a fact of daily life is the defining element of the modern age. Widespread use of the internet has fundamentally altered entire industries, and much of American life has migrated online. Dating is augmented by online dating; shopping by online shopping; television by internet streaming.

The digitization of American life has brought with it considerable benefits, including great convenience and innumerable efficiencies, but it has not come without a cost. Although there are many business models used by internet companies, many of the now-largest companies in the world have converged on one entity upon which to stake their profits: data. Personal data, or information tied to a person and their actions on and offline, is being collected, stored, analyzed, and leveraged by large technology companies, often without people's knowledge. This use of consumer data without proper, informed consent is a massive breach of privacy and must be rectified. Consumers have a right to know when their data is being collected and to refuse that collection.



Current State of Data and Consent

Through careful review of "terms of service" agreements for many popular websites and internet service providers, lawyers specializing in privacy and data issues have uncovered the systems in place for data collection and identified the legal background and protections that makes the sale and commercial use of this data possible. Data collection takes many forms, including the direct collection of data such as email address and phone number. More recently, companies are collecting more sensitive data such as location information or content engagement. With the dawn of the "Internet of Things," even more physical data is gathered on individuals through the use of smart assistants and public Wi-Fi beacons to track customers in store

This data is collected by large companies such as Google and Facebook as well as companies providing internet access like Verizon. This data is then used or sold for use in highly targeted behavioral advertising or similar ventures such as personalized recommendations on amazon.com.

The companies collecting this data grant themselves this power through their terms of service. Terms of service are typically long, broad contracts one must either actively or passively accept before using an online service. These contracts are often referred to as "click-through agreements" in reference to the response of most consumers to them. They are very rarely read by consumers, allowing much of this data collection and sale to be done without the knowledge of consumers. Furthermore, the terms of service agreements put together by large internet corporations often have arbitration agreements attached, requiring users who feel they have been injured by these agreements to go through arbitration sessions with the companies rather than using the courts. Together, these facets of typical internet terms of service agreements leave consumers woefully unprotected from the potentially predatory practices of large internet corporations.

Internet companies and internet service providers use their terms of service and arbitration agreements to take advantage of customers by manufacturing naivety about their data collection and aggregation practices, then exploiting it. These practices allow companies to masquerade as free services, hiding the real transaction cost of trading privacy for use of services behind large walls of text and legalese.

Redefining Data

Left unregulated, this degradation of privacy will continue. If recent consumer product trends continue, computers and data capture devices will only become more common in the physical world. Already, tools like voice activation are being implemented into everyday objects like faucets. Cars, headphones, and refrigerators are starting to have personal voice assistants integrated into their systems. The increase in use and scope of these technologies without a fundamental shift in the policy surrounding personal data will lead to the continued degradation and eventual collapse of the concept of privacy as it is currently conceived.

Although many policy solutions could and should be explored, one particularly apt solution to consider should be the redefinition of personal data as an extension of one's body. Bodily consent is already a well-defined concept in legal circles, and the 21st century definition of consent as being informed, freely given, and freely withdrawn at any time would be an easy roadmap towards simple, comprehensive regulation of this sector. As life is increasingly lived in digital space, the centrality of one's body to their life is being replaced by their data in many ways, especially as granting data access replaces money as a primary way of paying for these services. The definition of data as part of one's body and subsequent application of affirmative consent principles to data-based transactions would lead to fairer transactions by ensuring all parties understand the transaction taking place, instead of the more deceitful status quo.

Good, fair trades require each party understand and consent to the trade before it happens. Anything less than this informed consent opens the door to consumer exploitation. Policy must be enacted to protect consumers, especially when fundamental privacy issues are at stake.