Data Externalities:
Collective Bargaining over Data

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Data Externality and Collective Bargaining

- "internalizing the externality"
- by creating a firm, community, cooperative

Data Externality and Data Fiduciary

- individuals transfer data to data fiduciary
- a data fiduciary is an intermediary between individuals and data collectors
- range from 'information fiduciaries' that focus on use of fiduciary law to require a 'duty of care' towards data subjects, to various intermediary technologies or storage solutions that act as a buffer between people's personal data and any commercial entities or online interactions
- doctors and lawyers are examples of professionals that are bound by fiduciary obligations to serve patients or clients
- in the digital realm, a data fiduciary could be an entity that protects a client's interests above all and facilitates security and control over personal data.

Data Fiduciary

- "Doctors and lawyers are prohibited from using clients' information for their own interests, so why aren't Google and Facebook?" Jack Balkin and Jonathan Zittrain (Atlantic, 2016)
- proposed New York Privacy Act (NYPA), similar to the California's Consumer Privacy Act (CCPA), New York's proposed law, however, goes substantially further

Proposed New York Privacy Act

- Under §1102 of the NYPA, these obligations would include "the duty of care, loyalty and confidentiality," as well as the requirement to "act in the best interests of the consumer, without regard to the interests of the entity, controller or data broker, in a manner expected by a reasonable consumer under the circumstances."
- these provisions would establish standards of care that would shift the burden of protecting consumer information to business entities and other data collectors.

Examples of Data Fiduciary

- 'trustmediaries' like personal AIs, identity layers, or personal data pods and cloudlets.
- recognize the significant power asymmetries that occur online between consumers and those who have access and control over personal data
- personal data stores typically focus on storing the data of a single individual and negotiating access to it by others.
- digi.me, a "private sharing app" that allows users to upload and store their data, and decide who it will be shared with
- Solid (by Tim Berners Lee) is developing a platform for linked-data applications that aspires to offer full control of personal data via peer-to-peer storage

Key Notions of Data Governance

- Data Stewardship, Data Trusts, Data Commons, Data Cooperatives, Data Sharing Platform

Collective Bargaining in Disguise

- Apple receives large transfer payment for Google to place search engine on ios devices
- Google provides software at below cost margin to device maker (Samsung, HTC) to gather data subsequently

Limits to Collective Bargaining

- heterogeneity among consumers may limit sharing of data gains
- segmentation of the consumer may lead to loss of bargaining power
- intermediaries may in turn become digital monopolists
- "Asymmetric Information Bargaining Problems with Many Agents", Mailath and Postlewaite RES, 1990
- "Pollution Claim Settlements under Private Inofrmation, Rob, JET 1989

Analogy to Financial Markets

- separation between broker and market maker

Data Mobility

- data portability is one-off. This is already required under GDPR in the EU. It is pretty useless. The data is not provided in a form that is usable by third parties, nor is it anything like real time (it takes about 24 hours for FB to prepare their personal data downloads).

- data mobility which is ongoing and real-time, it would allow me to ask FB to share all my posts and potentially also data it observes about me, with another third party platform.

- Interoperability. this is required for effective data mobility. only half the online services I want to use on my Macbook no longer work properly with Safari, forcing me to use Chrome or an App, has nothing to do with data portability. It is all about interoperability.