The Right to Customization

Conceptualizing the Right to Repair for Informational Privacy

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Limitations of Consent in the Digital Economy

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Technology can enhance online privacy if done the right way!

Engineering-based regulation

Regulation-based engineering

https://www.w3.org/P3P/
https://globalprivacycontrol.org/

This was 9 days ago!
Data Protection by Design and the Right to Customization

- Data protection by design and default as a “hollow norm” requiring the implementation of all fundamental principles of data protection law

- **Operationalizing** data protection by design and default requires:
  - adhering to the **data protection principles** throughout the life cycle of data
  - considering principles fostering **individual participation** and **control**
  - collecting **only** the amount of personal **data necessary** for the functionality of a service or product

- **Right to customization**
  - Ensuring **fine-grained individual participation** and **control**
  - Giving a **right to individuals** to enforce that data controllers provide **privacy-friendly options** (when reasonable)
Right to Repair for Informational Privacy

- Call for enabling users to request modifications of software-based services or modify them by themselves
- Modifications of software-based services for better privacy?
- Data Protection by Design and Default as a stepping stone
How to Implement? “Variants” and “Alternatives”!

**“Variants”**
Catalog of variants is **curated by the data controller** and consumer can select a variant

- Transparency requirements: users need to understand what is being done and select service that fits their needs
- Users select trade-off (e.g., privacy vs. performance)
- Requires data controller to be more active
- Burden on data controllers (e.g., through microservices-based approach or softcoding-based configurations)

**“Alternatives”**
Users **curate their data** so that it remains under their control but is accessible to data controllers

- Duty of user to provide their personal data in an interoperable way (e.g., through SOLID)
- Vocabularies used by users and data controllers need to be compatible
- Data controllers need to be **interoperable → create interoperable/open services**

[https://solid.mit.edu/](https://solid.mit.edu/)
The Right to Customization: Example

A user is using a smart home service together with a voice assistant, both provided by DC X. The voice assistant is listening “at all times” to improve its natural language processing system. The user now demands that the system shall:

• Not record anything between 8pm and 6am (reasonable and simple)
• Not record children voices (reasonable but costly)
• Accurately analyze voice without the use of training data (unreasonable)

With the Right to Customization, X (in response to the demand) has the option to:

• **Variant:** Implement a variant of the voice assistant that implements the user’s request and enable the user to select this variant.

• **Alternative:** Make the smart home service interoperable with voice assistants from other providers or make the voice assistant interoperable with alternative hardware.

Exercising this right requires a deeper understanding of the system. This is analogous to the emergence of Repair Cafés in response to the Right to Repair! We envision “Customization Communities” in response to a Right to Customization.
Balancing Conflicting Interests

• “...factly impossible or would impose costs (...) that would be disproportionate, compared to the other option available” (Directive 2019/771)

• “Where technically feasible, the data subject should have the right to have the personal data transmitted directly from one controller to another” (Rec. 68 GDPR)

• Case law on freedom to conduct business (Art. 16 Charter of Fundamental Rights)

• ...
Thank you very much! Let’s discuss

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