DTI response to UK Government call for evidence on data intermediaries

Section A: Exercise of data subject rights

***Q1.* Can you provide examples of where data subject rights are currently exercised by third parties on the instruction of, or in the interest of, the data subject?**

Promoting the availability and uptake of data portability between services is core to the Data Transfer Initiative's mission. As part of our efforts to empower individuals, we have developed a Data Portability Map, which offers a centralized library of articles and information on portability solutions between a range of services. Though the Portability Map remains a work in progress, it may be a useful starting point in aiding the UK government's understanding of the existing (somewhat limited) options for taking up the right to data portability in practice.

Referenced within the Portability Map are several portability tools that are powered by the open-source Data Transfer Project technology maintained by DTI. These include, for example, tools that enable users to transfer their photos from Facebook to Google Drive, or to transfer music playlists between Apple Music and YouTube. More information on the Data Transfer Project can be found here. If helpful, DTI could connect you with technical experts that have been involved in these projects.

***Q2.* What barriers do individuals, businesses, or other organisations face in the uptake of the right to data portability or other data subject rights?**

Article 20 of the GDPR requires data controllers to offer data subjects two different forms of data portability:

- The ability to download a copy of their data, for the purpose of later uploading it to another service. We refer to this as an "indirect transfer".
- The ability of a user to have their data transferred directly from one service to another (i.e., a "direct transfer").

With respect to indirect transfers, we do not observe any major barriers preventing users from downloading a copy of their personal data held by data controllers, provided the users have devices, connectivity, and sophistication suitable for receiving the data. Service providers are generally responsive to requests by users to access a copy of their data and, in response to data portability requests, many will make clear that this data can be transmitted to other services. This form of data portability is mostly reactive from the perspective of a data controller, with organisations typically responding to user requests (whether made by email or through a purpose-built portal) by providing them with a zip file that the individual must download to their device. However, such an approach to data portability can be of little value in practice to a user that does not have the technical knowhow or software to interrogate or make use of the data

once downloaded, nor the understanding of how to transmit or modify the data so that it can be used by another service.

There is far greater value to be gained where data is transferred directly between services, but facilitating such direct transfers faces much more significant barriers. This form of data portability requires organisations to be proactive, preparing the infrastructure for data transfers behind the scenes in advance of requests from users. It's the reason DTI's Data Transfer Project tools exist, reflecting proactive investment by our member companies in building shared infrastructure to make end-to-end data transfers simple and secure for users. Unless such collaboration has taken place, possibly in the absence of any visible demand, requests by users to transfer their data directly between services are highly likely to be rejected, or at the least impossible to facilitate in practice.

Building the infrastructure for direct data transfers can be technically challenging in some contexts, but in others it can be relatively straightforward through development of an Application Programming Interface (API). In practice, the main barriers to this kind of direct transfer portability are around investment and trust.

- **Investment:** Building data portability tools can be resource intensive, can introduce privacy and security risks if not done properly, and can in principle make it easier for users of a service to switch to a rival. Particularly without clear expectations of portability being offered universally, it can thus be challenging for an individual business to make the necessary investments, even for those organisations that recognise the wider value of empowering their users and supporting complementary innovation. We believe that market forces can address this particular challenge in time, as user expectations of effective portability will create market demand to justify the necessary investments. In the GDPR context, of course, regulatory intervention served as an initial catalyst for simultaneous sector-wide action in offering data download tools.
- **Trust:** Proactive coordination and collaboration between transfer parties as needed for direct transfers requires some degree of trust. Trust that each party can be relied upon to meet agreed standards and protocols, and trust that each other will act responsibly in the interests of their shared users. DTI has been working on a suite of products - including our Trust Model and Trust Registry - to provide a framework to support organisations in establishing trust with one another. We provide further detail on this DTI trust work under questions 9 and 11.

In summary, for data portability involving direct transfers between services to work, both the sending and receiving organisations must proactively develop the required infrastructure in advance of potential user requests. The main barriers to the development of this infrastructure tend to be non-technical, with a combination of a lack of clear incentives and challenges for coordination due to lack of trust. While regulation can provide a clear path to aligning incentives and driving action, we believe trust is better earned than forced, and encourage the government to support industry-led initiatives for trust-building and verification.

Q3. **Aside from personal data protection laws, how do other areas of law interact with the operation of data intermediaries?**

< No response >

Section B: Data intermediaries

Q4. **Does the taxonomy above fully reflect the range of models of data intermediaries in the UK or elsewhere?**

Although we do not have any comment on the individual types or models for data intermediation, we note with appreciation the important and helpful differentiation that DSIT has made between data intermediaries and data brokers.

The idea that transfers of personal data should be user-led is a critical part of our mission. As we push for and build new data portability solutions that empower technology users to transfer their data between services, we are seeking to create an ecosystem where organisations act on behalf of, and in the interests of, consumers. We want technology users to be empowered, not shut out or exploited. We anticipate that such an environment would better support the business models of data intermediaries, as defined by your consultation, potentially at the expense of or in competition with data brokers.

We consider it important for governments to support organisations and initiatives that are focused on empowering individuals.

Q5. **Is the current law around the operations of data intermediaries sufficiently clear? What changes and/or additional guidance would be required to provide clarity to data intermediaries? Does this differ based on operating model?**

< No response >

Section C: Barriers to data intermediary sector

Q6. **What are the main barriers to performing data intermediation services in the UK, and how do they differ across sectors and models?**

< No response >

Q7. **What role should the government have in addressing these barriers? Are there examples of effective or ineffective government interventions in other countries or markets?**

DTI welcomes the opportunity to serve as an expert resource to regulators around the globe as they consider how to implement effective data portability, helping translate principle to practice.

In particular, we look forward to sharing more of our own expertise and perspectives from where governments have intervened elsewhere to lower the barriers to more effective data portability. The government will have learned valuable lessons of its own from the rollout of Open Banking, to which we can add extensive insights from the implementation of the Digital Markets Act by the largest online platforms, several of which are partners of DTI. There have been many positives to take from DMA implementation, as well as several lessons learned that we could share.

In contrast, the data portability provisions within the GDPR have evidently had little impact with respect to direct transfers of data. Implementation of Article 20 – with a small number of exceptions such as those referenced in our Portability Map – has been limited mostly to downloads that could enable "indirect transfers." We are working to evolve that outdated model to one where a user can directly require a service to transfer data to another.

As the UK government considers the design of new Smart Data Schemes, it will grapple with many difficult policy questions such as how prescriptive to be in the regulation, how to build trust and manage risks, and how to provide certainty and clarity in advance of implementation. We would be happy to support the government in its thinking in these areas, with reference to our expertise and experience in other contexts, and to our 2024 UK vision paper for digital economy growth through data portability. As set out in that document, we consider the promotion of data portability to be a key priority for the UK government as it pursues economic growth.

Q8. **Can you provide examples of successful data intermediaries and the technological and non-technological factors that contributed to their success?**

< No response >

Section D: Risks associated with exercise of data subject rights by third parties

Q9. **Can you provide any evidence on potential risks for the wider exercise of data subject rights by third parties (such as data stewards) on behalf of a data subject? Can you identify any risks associated with the activities of data intermediaries?**

Data portability tools or products will be most effective and impactful when they offer a low friction mechanism for users to switch to new services or to unlock new functionality or value. But this ambition for low-friction transfers of user data must also intuitively introduce additional risks, as it also creates low-friction opportunities for bad actors to engage in harmful practices and increases the attack surface for cybersecurity threats.

In recognition of this fact, DTI undertook an extensive examination of threats to privacy and the risk of harm that can take place in server-to-server transfers of user data as requested by the user. This assessment is set out in our User Data Portability Threat Model.

Whether involving data intermediaries or any other service providers seeking to facilitate data portability requests, we consider many of these threats to be manageable through a process of establishing trust. Our Trust Model sets out a recommended framework that transfer parties can draw from when engaging with each other to build data transfer connections with one another.

In addition to developing the Model as a reference tool for organisations considering engaging in data transfers, we are also going one step further to implement the Model and facilitate the establishment of trust between transfer parties in practice, with the launch of our Trust Registry. The Trust Registry is now in an initial pilot phase involving one of our Partners and will launch officially in the near future. We intend for the Registry to simultaneously reduce friction and barriers to data portability, and reduce the risk from bad actors gaining access to and exploiting data portability tools. Our aim is that very many organisations, including data intermediaries, will apply to join our Trust Registry as a way to signal to other transfer parties (and users) that they can be trusted.

We would be happy to discuss our trust work with you in more detail, and explore how our Trust Registry might align with the government's ambitions and objectives regarding a trusted and thriving sector for data intermediaries.

Q10. **Are there potential implications for digital inclusion of delegation of data subject rights and the activity of data intermediaries? Are there any disproportionate effects on those with protected characteristics under the Equality Act 2010?**

< No response >

Q11. Can you provide any evidence of a best practice approach to managing those risks? What should the roles of Government, regulators, and the market be?

Some form of verification is necessary and expected when building a data transfer ecosystem. It would be naive to introduce new, low-friction opportunities for accessing personal data and then simply assume all interested parties are fully committed to GDPR compliance.

Users will expect there to be some guardrails in place to protect them from threats. It is our understanding that the Open Banking Directory has been successful in building a secure and trusted ecosystem for the sharing of banking data. We intend for our Trust Registry to be a similar single source of truth for participants in digital markets, and we are committed to ensuring it could serve as a useful resource for any relevant Smart Data Schemes in the UK.

Are you willing to be contacted? (if so, please provide contact details)

Yes.

Please feel free to reach out to Tom Fish at tom@dtinit.org.

Would you prefer your responses to remain confidential?

No.

Would you prefer your responses to remain non-attributable?

No.

What kind of respondent you are e.g. individual, corporate?

The Data Transfer Initiative (DTI) is a U.S. 501(c)(4) nonprofit organization dedicated to empowering individuals by enabling simpler, faster, and more secure data transfers through data portability at scale. Born out of the Data Transfer Project (DTP), a collaborative open-source effort initiated in 2018 by a consortium of technology companies, DTI advances its mission through the design and implementation of open source data transfer tools and other innovations and investments to foster a healthy portability ecosystem.

DTI also serves as an expert resource to regulators around the world, helping translate principle to practice and catalyzing greater user agency and empowerment.

Approximately how many people are employed by you/your organisation?

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