

Who Owns Your Data? Abstract

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Data protection regulations, including the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA), all presume that the individual “owns” her or his individual personally identifiable information (PII). However, the law of data ownership is far from settled. Is it the individual subject, or the data collector who actually “owns” the data? Google, Amazon, facial recognition technologies such as FaceApp, Automated License Plate Readers (ALPRs), loyalty programs, social media platforms, ex-significant others, and governments all want to know where you are, what you’re doing, and who you’re doing it with. These entities collect petabytes of data, mostly without consent or compensation to the subjects.

If a woman walks a dog in the park, and is photographed by a social media fan, her steps are counted by her fitness watch, and her general description is noted by a student doing a research project, including the brand of clothing she was wearing, does she own all that data? If not, who does? Does it matter if data is being collected for art, news, profit or revenge?

This article examines the nature of data, whether it is property (or property-like), and what it means to “own” data. The article will discuss whether all data about a subject should automatically be treated as owned by that subject, and what that means for the future of data regulation.

Other articles have examined data as speech and data collection as a privacy concern, while recent legislative developments around the world have assumed that PII should be owned by the data subject, and courts dealing with data breach lawsuits have struggled with the concept of data theft (property that can be stolen). This article considers the policy of treating data as property and how that will impact legislatures, courts, and society.