

## PC.31 Data Ownership

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Currently, there are neither property rights nor rights similar to property rights to data. A variety of regulatory ideas are being discussed among experts, the common core of which is to distribute exclusive rights to data. Some would like to create civil property rights to data analogous to the ownership of property (e.g. *Hoeren*). Others would prefer exploitation rights to data analogous to copyright (e.g. *Wandtke, Schwartmann, Forkel, Jöns*). Still others speak out in favour of a "data producer right" (e.g. *Fezer*). Contractual regulation models ("privacy by contract") are also discussed (e.g. *Reiners*). Following these ideas, new data classifications are also proposed (e.g. *Malgieri*).

One argument against the idea of property rights to personal data is that - because property has an absolute effect - it would exclude anyone from using it. The use of data by third parties or the state would then be an expropriation requiring corresponding justification. From a legal point of view, the idea of property-like rights to data is already opposed by the fact that the right to data protection and the right to informational self-determination are not boundless, but context-related, can be restricted by the common good and find their limits where the rights of third parties begin.

Furthermore, the following points of view speak against the idea of data property:

If everyone can sell "their" data, there is a danger of selling out the private sphere. For then only the wealthy can afford to exercise restraint, while the economically weak are effectively forced to sell "their" data.

Given the willingness of many to divulge personal data for certain services, market-powerful actors could even be strengthened by data ownership. Data protection law could then no longer intervene in favour of those who have sold "their" data.

The concept of data ownership limits the legitimate interests of those who process personal data within the framework of their exercise of fundamental rights (e.g. freedom of expression, freedom of information, freedom of science, freedom of art). Therefore, the introduction of data ownership required comprehensive exceptions to prevent disproportionate interference with the rights of third parties and free competition.

The idea of data ownership also loses sight of the fact that data are also information, ideas, knowledge and opinions. They are the basis of our knowledge society. The free flow of information is part of an

economic and social order based on freedom and competition. The essence of this order is the exchange of ideas and opinions. Property rights contradict this.