

*PDPC's Public Consultation on Proposed
Data Portability and Data Innovation
Provisions*

By: Gary Tan

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Contact: garytkq@gmail.com

Q1. What are your views on the impact of data portability, specifically on consumers, market and economy?

In reference to the proposed obligation and phrasing in 2.14 in page 7, it should preferably **not be made mandatory** for one organisation to port data to another organisation. **Rather, the data can be sent to the consumer. It could then be up to the consumer to decide what to do with the data.**

In the public consultation document, point 2.3 gives an example of the benefits of moving a user's historical purchase data, loan and credit payment information, built up over the years with a bank. This is in theory.

Many of the data could be outdated by the time a consumer wants to apply for loan or credit card. Porting such data is unlikely to be much useful in that context and at the point of application for consumers.

The **impact on consumers** which I can envisage is some level of convenience and responsibility.

The rationale of consumer lock-in with one service provider may be misplaced. And if a company is going out of business, the data portability conversation might not be a priority at that point in time.

Take bike sharing for example, whether it was Ofo or Obike, the story ended quite similarly. The concern during that period was primarily financial aspects of what they could leave (or not leave) behind, such as users' deposits, staff unpaid wages and owed suppliers' monies. Data portability was less of a concern.

In the example of 2.4 in page 4, about a consumer and online shopping platform ABC, **if I may add a tweak** to the given scenario; that the consumer can request from ABC her data. ABC would email the data to her and not to XYZ company. The onus and choice would be on the consumer, in possession of the data, to hand it over to XYZ.

For **market impact**, the example in 2.7 in page 5 between a consumer, telco and travel service provider can provide many synergistic values. It is recommended that the porting of data from the telco, again, should land at the consumer. And it is up to the consumer to deliver the data to the travel service provider.

However, in consideration of better services, **I hope the authority can create an option, where organisations that have the means and want to provide data portability as a value-add at the request of consumers**, rather than make it mandatory.

In terms of the **impact to the economy**, as Singapore moves towards a digital economy and with DEPA (Digital Economy Partnership Agreement), it may be

necessary for our country to act ahead and envisage the traversing of data across borders so as not to impinge on the economy.

In essence, where learning best practices is concerned, we can learn from others and adapt those lessons.

In 2.11 and 2.12 of page 6, while we may need to align ourselves with what other regions are doing, we may need to modify some of the principles from overseas frameworks.

The first sentence in 2.12 indicates that; ***“First, the individual has the right to receive the personal data concerning him or her, which he or she has provided to the organisation.”***, in some of the cases in Singapore, consumers gain something for their participation in an exchange. This may mean that consumers could have already “consumed” that benefits long before the data they provided were utilised. In this context, it may be recommended to reword the sentence in order to be less rigid in interpretation.

Instead of *“the individual has the right”* under EDPB (from the footnote in this consultation paper in page 6), Singapore can consider, ***“the individual’s request needs to be considered within the context..”***

In the same paragraph where the last sentence with footnote 5 takes a leaf from GDPR and US California’s Consumer Privacy Act, this protocol may be replicated.

Q2. What are your views on the proposed Data Portability Obligation, specifically

a) scope of organisations covered; and

It is generally alright for pointers in 2.16 and 2.17 in page 7.

b) scope of data covered?

In 2.28, examples of data covered, how about data from the following:

- Healthcare, medical, clinical records
- How about metadata?

Q3. What are your views on the proposed exceptions to the Data Portability Obligation, specifically –

a) the proposed exception relating to commercial confidential information that could harm the competitive position of the organisation, to strike a balance between consumer interests and preserving the incentive for first movers' business innovation; and

In 2.27, 12 months seemed alright.

b) the proposed exception for “derived data”?

I think the exception in 2.27 and, derived data based on the examples in 2.28 is reasonable for a start.

Q4. What are your views on the proposed requirements for handling data portability requests?

In the example 2.34, similar to my suggestion above, please consider not to make it mandatory, and shift the landing of ported data to consumer.

2.37c in page 13 can be procedurally tedious. It is recommended that the process of handling data portability request only consists of 2.37a and 2.37b.

It is recommended for 2.37(d)(i) to be reflected right at the outset. (Fees can also be made much lower if the data portability process lands at the consumers.)

In 2.38 in page 14, it would be better for the receiving organisation or the requester to follow-up, whether the data has been ported, **rather than for the porting organisation to do so.**

Q5. What are your views on the proposed powers for PDPC to review an organisation's refusal to port data, failure to port data within a reasonable time, and fees for porting data?

Assuming there are companies, when requested, refuse to port data, the authority can step in to arbitrate.

As for failure to complete within reasonable time, depending on the scale of the data, initial extension could be granted. An investigation can be conducted in the delay and if warranted, give further extension. (The requester and receiving organisation must factor in sufficient buffer time so as not to create a situation of overcommitment and unintentionally increase burden to all parties)

Fees for porting can be at \$5 to \$10 per request.

Q6. What are your views on the proposed binding codes of practices that set out specific requirements and standards for the porting of data in specific clusters or sectors?

In 2.49a in page 17, **to prevent the scenarios of changing of minds by consumers**, it is recommended that the Data Portability Obligation lands at the consumer. **This also allows consumer unlimited amount of time in "cooling off" period.**

In 2.49b, if the obligation lands at the requester, the responsibility for verification would shift. Alternatively, this can be left open to allow the flexibility for companies who have the means and want to provide the value-add service in the counterparty responsibility of ensuring that the data receiving entity is genuine.

In 2.49d, minimum standards in data protection is already required in existing framework. Having this in the proposed Data Portability Obligation is unlikely to pose difficulties.

Q7. What are your views on the proposed approach for organisations to use personal data for the specified businesses innovation purposes, without the requirement to notify and seek consent to use the personal data for these purpose?

As a society, we have discussed anonymised data for many years now. I am of the view that if the data is anonymised, businesses can be provided with the confidence to use them without the need to notify and seek consent.

However, giving organisations the right to use personal data whether or not for specific purposes without some form of notification or consent, may not be straightforward and prescient, as we have learnt from companies such as Facebook in recent years.

At the moment, Singapore companies are less defiant compared to other countries. We see some of these too-big-to-fail corporations, which their government may even be “afraid” of.

When the US government conducted an inquiry with tech companies last year, Google for instance, defiantly refused to turn up. Government officials rebuked them, and that was it. It was quite a pathetic scene.

Perhaps what we could do is to slice in further into the kind of data of individual which require consent or notification, besides what have been listed as examples in the public consultation document.

For example, can we look into the age demographic, like those under the age of 18 years, and prohibit companies harvesting their data?

Q8. What are your views on the proposed definition of “derived data”?

For public transport service in Table 1 page 10, should travel patterns of commuters be classified as user activity data instead? Unless it can be anonymised, I am of the view that it may not be appropriate to be classified as derived data.

Furthermore, in our current context and into the future, data in users' likes, shares and other emoticons are already able to provide a fairly accurate picture of a consumers' preference, gender, political leanings, sexual preferences and orientation. This is probably inevitable.

Notwithstanding the proposed Data Portability Obligation, some of the examples in derived data may need to be relooked to determine if consent should be sought, especially from social media platforms.

Metadata is another area which can be better spelled out. Where does metadata fall into among the three classifications in Table 1 of 2.28 in page 10?

In a newsletter by TDNA.com¹, according to NSA, metadata can contain security labels and discovery information, as well as users and environmental attributes. Without a clear and sufficient understanding in metadata usage and management, it could lead to confusion and misuse.

As we move forward, we can perhaps glean some learnings and protocols in metadata management from established frameworks like DCMI or Dublin Core Metadata Initiative, which consists of 15 properties of data as a content descriptor.

Q9. What are your views on the proposal for the Access, Correction and proposed Data Portability Obligations not to apply to derived personal data?

This is alright, at least for a start, to observe industry and consumer behaviours, which would evolve before subjecting too much obligatory compliance.

Thoughts, comments and conclusion...

I do not quite follow the statement in point 2.3, 4th sentence of page 4, “***data portability can help ease the burden of backing up and refurnishing personal data when switching to other service providers***”, but would attempt to provide my interpretations.

There are two parts to this statement, first part is about data protection and backing up. It is already a requirement in PDPA for organisations to provide reasonable amount of data protection. Backup of data thus falls into this requirement without the proposed Data Portability Obligation.

So how does data portability help ease the burden of backing up whether or not if switching to other service provider?

The second part is about refurnishing of data. What I suggest is, again, for the data to be sent to the consumer. The requester can then decide what to send and when to send his or her data to a receiving organisation.

The examples in the table of 2.33 and 2.34 of page 11 can be onerous for porting organisations.

In page 5, point 2.5 talks about inter-organisational and cross-sector data flow. I think this may largely be formulated on the back of supply chain and ecommerce sectors and cross-border transactions.

While this may be important, we have seen some of the destruction it can make. Facebook, WhatsApp and Instagram passing data back and forth with each other. How does data sharing fall in line with regulations?

What about areas such as tracking mechanisms by businesses? Or the regulation on 1st party and 3rd party cookies?

A website, www.iknowwhereyourcatlives.com, was launched in 2014. It is an experiment on synthesising and visualising data. According to the book Outside Insight by Jorn Lyseggen, who is also a research scientist in AI, photographers unknowingly provided loads of metadata when uploading cat pictures. And through the metadata, any users can potentially gain insights about these photographers.

In 2012, US retailer Target² conducted a data science project and accurately predicted a pregnancy of a high school girl and sent to her house maternity items along with discount coupons in advance.

Her father received the package and was furious, went down to Target and filed a complaint, saying that Target was trying to encourage his underage daughter of getting pregnant.

He had a chat with his daughter about this incident and to his horror, made some discoveries about her in the pregnancy conversation. He called Target to apologise.

This story illustrated the accuracy from seemingly isolated data put together, and after joining the dots, can extract personal and intimate profiles of consumers, probably within a few clicks.

Manipulation is also another potential scourge where messages we see, read and hear are trying to shape or distort our opinions.

For instance, the 2016 US presidential election is widely known to have fake news and misinformation at play³. While data obligation, data innovation and fake news may be seen as separate subjects and cover a much larger scope than this consultation paper, it was the AI, the algorithms, and the harvesting of data points on Facebook which allowed advertisements to be served to American voters and thus, skewed election results.

To conclude, as a society, we need to move forward.

I would recommend a tweak in the data receiving entity and a phased approach for implementation for Data Portability Obligation, starting by sector in supply chain and ecommerce.

For Data Innovation Provision, I hope PDPC can relook into the perimeter of derived data.

Thank you.

1. <http://tdan.com/toward-a-better-understanding-of-metadata-examples-of-metadata-in-business/19255>
2. <https://www.forbes.com/sites/kashmirhill/2012/02/16/how-target-figured-out-a-teen-girl-was-pregnant-before-her-father-did/#1af4cf176668>
3. <http://theconversation.com/trump-may-owe-his-2016-victory-to-fake-news-new-study-suggests-91538>