



Data Trust, a Mechanism to Manage the Interests of Data Beneficiaries: Guidelines for the Data System in Iranian Law

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Abstract

Data are one of the most valuable assets of the digital age, which are meaningful, valuable, and strategic, whether they are aggregated or separate. Data has led to a huge transformation in data-oriented industries and businesses such as artificial intelligence, and advertising, and the creation of giant businesses such as data processing and brokerage. In addition to industrial and economic aspects, data is related to privacy since it represents the characteristics and states of individuals. The current model of data governance does not provide the interests of multiple data stakeholder groups; In this structure, the data of individuals is provided to digital platforms after declaring their not-so-certain consent (according to an imposed agreement). The fear of violating people's privacy requires that access to people's data by others, especially platforms as one of the main beneficiaries of the free flow of data, is limited. In addition, the development of strict privacy regulations is an obstacle to the development of data-based technologies. At the same time, the monopoly of data concentration in the hands of technology giants has upset the balance in the technology industry and made the free flow of data difficult. Data trust is a recently proposed model for data governance and management. Trust is a structure in common law in which an asset is entrusted by the settlor to the trustee to maintain it for the benefit of specific beneficiaries. Data trust is a model for data management in which individuals entrust their data to a trustee to monitor the processes of data collection, processing, and use by protecting their rights to the data. In this mechanism, from the collection of personal data to the custodian, a lot of power and authority is created for him to negotiate and bargain with the data beneficiary companies to protect the interests of the data subjects. In addition to the interests of data subjects, each trust may have different goals and beneficiaries based on the intentions of its settlers. In this case, the trustee is obliged to decide the fate of the data according to the will of the founders. In this case, individuals may provide their data to the trustee for research and special research interests or in general for public interests. A trustee is also a person who is not considered a data beneficiary; Rather, it is considered a third party in the relationship between data owners and platform managers,

and due to the fiduciary duty required by the nature of the trust, it can manage the conflict of interests between the data beneficiaries well.

Three approaches have been proposed regarding the formation of data trusts. In the first approach, as a top-down approach, the creation of data trusts is a result of the legislative process and government intervention in such a way that the government itself is the administrator of the created trust and manages the rights of individuals regarding the data. In the second approach, as a bottom-up approach, these are the private individuals who create the trusts and specify the trustees and the goals and beneficiaries. The middle approach shows that the government created the trust through the establishment of regulations and by semi-governmental institutions, but the capacity to create private trusts is provided by the beneficiaries themselves. The trust structure and the use of the capacity of third parties (trustees with fiduciary duties) can result in the consolidation of the rights of different parties to the data. This makes the subject matter individuals, even if not individually; Rather, in communal form, in the form of a trust institution, they will find bargaining power over the fate of data, privacy agreements will be removed from being supplementary and imposed, and freer flow of data, with the end of the concentration of resources. A huge amount of data to be provided at the disposal of technology giants.

In Iran's domestic laws, two different systems of governance and management govern digital data. In the case of data that are considered national according to the National Data and Information Management Law, the policy and regulation of data concerning the confidentiality of individuals is at the disposal of the Supreme Council of Cyber Space and the Interactivity Working Group of the Government. It is electronic. The position of the aforementioned law has similarities with the top-down approach to the trust model; Among them, in both structures, law and governing institutions play a serious role in data management. However, the existence of serious points of difference, including the lack of a fiduciary relationship in the internal model, as well as the limitation of the structure of the National Data and Information Management Law to national data, differentiates these two structures from each other. However, in the case of personal data that are not considered national, the model based on contractual consent has been chosen according to the law of electronic commerce, the law of publication and free access to information, as well as the regulations for the protection of digital economy platforms and businesses. The establishment of impartial private institutions, using the capacity of civil attorney contracts in the form of commercial companies, can be considered a suitable alternative to the contractual consent-based structure of data governance regarding personal data in the hands of digital economy platforms and businesses.

However, the trust institution is facing important challenges for implementation. The most important challenge of the trust is the lack of awareness of more people in the community with this structure and, in parallel, the public's lack of knowledge of their rights in relation to the data. For this reason, the formation of trust institutions is not easily possible. Trust has ended the monopoly of technology giants and disrupts the existing rules; Therefore, it is not supported by these stakeholders. In addition, governments will probably not take the lead in the formation and development of



independent trust institutions, since they often tend to leave data management and decision making to themselves. The implementation of the idea of data trust requires the active role of international organizations in the transnational arena and private NGOs in the domestic arena.

Keywords: Trust, Data management, Fiduciary duty, Conflict of interest, National data and information management Act.

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