

Data Ownership and Governance

FINNISH LAW PERSPECTIVE



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Abstract

As a general rule, information and data cannot be owned. Information and data may belong to various actors, but they cannot be owned in the legislative sense. Information can, however, be managed. The most natural view of information and data management is that the actor is the one who owns the device and the service where the information and data are. The ownership of a device or service is the default situation of data management when no contractual arrangements or the like have been made. In this case, the owner of the device and service usually have a natural ability to prevent others from accessing the data by preventing access to the device or service.

Within the freedom of contract, it can be specified who data belongs to, what kinds of access rights there are to the data, whether they are exclusive, parallel, etc. It is aimed at agreements between parties on the ownership of data and use restrictions even when no one owns the data and only restrictions on any contractual partner. The restriction of contract comes, however, from the fact that the contract cannot be binding on a third party. In the end, the contractual policies between the actors will define the relative strengths of information and data ownership between parties, for example how the ownership of information and data will be established in the autonomous smart device and service entities of the future.

Tiivistelmä

Datan omistajuus sekä hallinta – Suomen lain näkökulma

Lähtökohtaisesti tietoa ja dataa ei voi omistaa. Tieto ja data voivat kuulua eri toimijoille, mutta niitä ei voida omistaa lainsäädännön tarkoittamassa merkityksessä. Tietoa voidaan kuitenkin hallita. Luonnollisin näkökulma siihen kuka tietoa ja dataa hallitsee on se toimija, joka omistaa laitteen ja palvelun, jossa data ja tieto ovat. Laitteen tai palvelun omistajuus on datan hallinnan oletustilanne silloin, kun mitään sopimusjärjestelyitä tai muuta vastaavaa ei ole tehty. Tällöin laitteen sekä palvelun omistajalla on yleensä luonnollinen kyky estää muilta pääsy dataan estämällä pääsy laitteeseen tai palveluun.

Sopimusoikeudellisesta näkökulmasta datan luotettavuus (tai oikeellisuus) tulee tulevaisuudessa olemaan entistä merkittävämpi elementti ja muokkaamaan olennaisesti toimijoiden välisiä sopimuskäytäntöjä, koska tieto ja dataa siirtyy eri rajapintojen kautta eri toimijoiden kesken. Loppujen lopuksi toimijoiden väliset sopimuskäytännöt tulevat määrittelemään tiedon ja datan omistajuuden voimasuhteita eri toimijoiden kesken, esimerkiksi sen, miten tiedon ja datan omistajuus määräytyy tulevaisuuden autonomisissa älykkäissä laite- ja palvelukokonaisuuksissa.

This text has originally been published as part of “Finland – The Silicon Valley of Industrial Internet” in 2015, pages 16–17. The republication of this chapter is being motivated by the fact that information and data ownership including privacy (General Data Protection Rights, GDPR) was highlighted as one of four key interest areas of the future of Platform Economy Research at MIT Platform Strategy Summit in Boston, 2018. Our next publication of the same topic will answer to the following research question “Do contractual policies between the actors continue to define (after GDPR begun applicable in May, 2018) the relative strengths of information and data ownership between parties?”.

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Data ownership and governance

As a general rule, information and data cannot be owned. Information and data may belong to various actors, but they cannot be owned in the legislative sense. Information can, however, be managed. The most natural view of information and data management is that the actor is the one who owns the device and the service where the information and data are. The ownership of a device or service is the default situation of data management when no contractual arrangements or the like have been made. In this case, the owner of the device and service usually have a natural ability to prevent others from accessing the data by preventing access to the device or service.

On the other hand, every actor, such as the device and service owner, device and service providers and the software manufacturer have their own interest in managing the information and data produced in smart devices and services. This can sometimes involve excluding other parties through the life cycle of the product or service. In addition, it can be stated that a party has ownership-like administration of information and data when it has the ability to deny other parties the use of the data even when it does not have actual ownership.

Another aspect of information and data ownership is intellectual property rights. On the one hand, they do not concern the ownership of information and data (Section 1(1)(4) of the Patents Act). In general, intellectual property rights can be administered and agreed upon. On the other hand, there is plenty of (compelling) legislation pertaining to intellectual property rights: for example, the Patents Act, Copyright Act and Trademarks Act and the related Unfair Business Practices Act.

Intellectual property rights are divided into copyright and industrial property rights. Both establish how the rights are utilized in business, but they are also valid for a limited time. From this perspective, intellectual property rights constitute stronger ownership specifically because they contribute to the factual ability to prevent others from using the data indirectly through a court.

It should be taken into account that intellectual property rights emerge at the stage when information and data

are used for specific purposes, for example as part of new products and services. From a future perspective, autonomous smart devices, services and networks and the information and data produced there should be taken into consideration in the same way. Even at present, companies administer the new information and data produced through research and development projects and their intellectual property rights.

When great amounts of information or data are produced (big data), data protection may be involved (Copyright Act section 49: catalogue and database protection). On the other hand, the protection of catalogues or databases is not related to how the information and data ownerships are determined—the database protection does not protect individual information elements or a non-essential part of the database—but the information entity and the data contained in it is protected.

A third view on the ownership of information and data is the data protection related particularly to personal data, i.e., at the stage when the data could lead to the identification of a person, when the data is personal data and involves certain statutory obligations. An actor who administers information and data related to a person, i.e., a register of personal data, must safeguard the data as necessitated by data protection, for example pursuant to the Personal Data Act and Information Society Code.

Legislators then could enact a law providing for the ownership of information and data. Such ownership-related legislation could have various effects on the competitiveness of Finnish industry or on the country's ability to attract foreign investments. There are certain international examples of legislation pertaining to the ownership of data: for example, China and Russia have already begun regulating issues related to the location of data servers, i.e., limiting the regional processibility of data. On the other hand, European data protection legislation, which is being reformed along with the new EU data protection regulation, contains restrictions on the transfer of personal data to other countries.

The fourth view on information ownership and management is agreements. Within the freedom of contract, it can be specified who data belongs to, what kinds of access rights there are to the data, whether they are exclusive, parallel, etc. It is aimed at agreements between par-

ties on the ownership of data and use restrictions even when no one owns the data and only restrictions on any contractual partner. The restriction of contract comes, however, from the fact that the contract cannot be binding on a third party.

From the perspective of contract law, the reliability (or correctness) of data will be an increasingly significant element, one which will fundamentally shape contract policies between parties as information and data are moved through different interfaces between the various actors. However, even in long information and data transmission chains, it must be possible to contractually establish causality of liability. Even if such direct and indirect legal means of prevention could be created, they would prob-

ably not be enforceable everywhere in the world, i.e., it may not be possible to use the local legal system to prevent the users of data from doing so.

The factual management of information, IPR, data protection and agreement policies are the four aspects which information and data management and ownership involve and where the present legislation sets certain marginal conditions. In the end, the contractual policies between the actors will define the relative strengths of information and data ownership between parties, for example how the ownership of information and data will be established in the autonomous smart device and service entities of the future.

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