**Constructing the Right to Data Portability: A Property Approach**

In a world-leading reform of data protection, the EU has created a new right to data portability (RDP) potentially disruptive to the current regulatory landscape. This unprecedented right is established upon the idea that an individual is entitled to benefit from portable data. However, it is difficult to trace the source of that entitlement in the legislative instruments and on what basis can it be justified remains debatable. Arguably, the notion of data portability comes from the area of competition law where a similar portability scheme is at play, yet the right’s competition-related implications cannot justify its introduction into the data protection law.

It has been made explicit in the EU’s new legislation that the RDP is devised to strengthen individual control over personal data, but what forms of control the right entails is open to discussion. The mainstream approach is established upon the basis of ‘informational self-determination’. This approach makes a particular reference to the protection of informational privacy – the most prominent objective of human-right based data protection law – and is inclined to conclude with a positive contribution to the privacy protection. However, an individual’s control in this context refers merely to limiting information disclosure, and has its limit on underpinning other forms control that RDP entails. It is observed that RDP is by nature of more relevance to a constructive control enabling an individual to make most of portable data for his or her own benefits. This sense of control falls outside of the ambit of privacy, but can be well captured by a property-based context.

This paper primarily examines an alternative approach to construct the RDP on the basis of ‘data as property’. In simplest terms, if personal data is considered an asset of individuals, they are entitled to require portable data for whatever use they desire. However, critics have raised the concern that personal data is more of a product created by joint efforts of both individuals and companies. It is therefore unfair to construct the RDP as an exclusive right of either side. It is observed that the RDP has the potential to create a scheme of data co-sharing from which both individuals and companies benefit. To provide ample justification for this right, the paper explores the boundaries of theoretical assumptions in relation to property with a view to having the legitimate interests of all stakeholders into contemplation.