

Customer Information Between Privacy and Intellectual Property: A Multi-Level Management of Data

The conflict between consumers and businesses about control and management of big data about customers should be analyzed under a different light: the conflict between privacy and intellectual property.

In fact, customer data are both part of industrial property of the businesses (trade secrets) and personal data of consumers. It is not probably just a coincidence that two parallel reforms have been proposed in the EU in these two fields.

However, the technological developments make this discussion even more delicate: “Big Data” challenge the traditional “data protection approach”; “data mining” and automated profiling is a controversial operation in terms of privacy and IP rights.

In fact, several interests are in conflict: the right to access and the new proposed right to “data portability” conflict with the “proprietary” interests of trade secret holders. Furthermore, both analyzed legal frameworks are more and more based on a “proprietary” approach to information: they are both a form of abstract “monopoly”.

The solution for this conflict can be, on one side, to develop interests that are common to data subjects and trade secret holders (security measures, accuracy, data updating) by the means of a “cooperation” between customers and businesses: a shared ownership. On the other side, we propose to “de-contextualize” secret data so that customers can access (modify, cancel) only data strictly related to them, while trade secret holders can be free not to disclose the output of their data processing (behavior evaluation, forecast, marketing plans, etc.) if the disclosure can adversely affect their “intellectual” interests.