

## 4.3 Consent and Control



**Depending on informed consent, as the basis for processing data, is unworkable. Rethinking our view of what it is designed to achieve, drives a new approach.**

### Context

Collecting, sharing, and trading personal data is the bread and butter for many online companies, and constitutes an important source of revenue. The general public is only gradually becoming aware of this, and some are now beginning to question whether they are comfortable with this model, particularly in the light of revelations of the misuse of data which took place during our research period.

Our discussions confirmed that various dilemmas must be acknowledged in addressing informed consent. The first involves the evergreen tension between data collected for use in “marketing,” and the data required for “operations.” Some felt

that only data which would be of benefit to the user should be collected and processed, whilst acknowledging that this would necessarily restrict the operations of the processor, and the ability to create value for themselves. The second dilemma is a recognition of the need to balance the demands for personalised products and services, with the necessity of data privacy. Given this, there was a strong view from our workshops that personal data should be considered to be a personal or corporate asset, and that as such, customers should have access to sufficient information so that they can make informed decisions about the extent to which they are prepared to trade it in return for products and services.



But quite how to do this is complicated. Too much information in the form of small print about terms and conditions may put people off – it's not only difficult for people to digest, but the amount of personal information currently being gathered can be shocking. Service providers therefore fear that revealing the full extent that data is collected and monetised might risk their current business models, as customers become unwilling to continue to share their data. Consequently, some in our workshops argued that, rather than grapple with how to deliver “informed consent,” it would be more sensible to identify new ways in which individuals can maintain control over their data. This could include for example, more rigorous industry regulation, increased government regulation, or the adoption of intermediaries who can better represent consumer needs and control access to personal data, based on pre-agreed principals. Finding the right balance between these solutions was discussed in 11 workshops during the Future Value of Data project.

Many in our workshops argued that, although well intentioned, the current process of achieving consent is unfit for purpose. The European Union's General Data Protection Regulation (GDPR) states that informed consent must be freely given, specific, informed, and unambiguous, but this is very difficult to achieve. The current approach is for customers to tick a box online that confirms they have read and agreed to a contract that allows service providers to collect, share, or trade their personal data, in exchange for various online services. This is impractical, as the majority of customers are disinclined to spend time reading the small print – indeed, they find it irritating to be constantly asked to do so. As a result, most of us only have a hazy appreciation of the potential consequences of disclosing personal information – when, how, and why our data is going to be collected, and with whom this data is going to be traded or shared.<sup>44</sup> In fairness, expecting providers to be able to articulate

the nuances of consent in a digestible form doesn't work either. If companies have short and simple privacy policies, they are criticised for not providing enough detail; if they are too long, no one will read them.

Finally, consent only works when customers have the option to use a different service. Given the size and scale of the main digital platforms, some suggest that providing consent, informed or otherwise, is a pointless exercise, as users feel obliged to use the service, and have to accept the terms and conditions, simply because there is no meaningful alternative. Germany's antitrust watchdog has recently ruled against Facebook to this effect. Facebook is appealing the decision.

“We are not sure if the whole population en-masse will be able to deal with consent, despite improved literacy.”

San Francisco workshop

It's not only service providers who are gathering information. Governments also have to wrestle with what limits should be placed to balance public-interest data collection, with individual rights to privacy. For example, a smart city operated or commissioned by a local council has the ability to collect a great deal of personal data about citizens in the course of their daily lives, with the promise of delivering better public services and more efficient interaction with government and local authorities online. But at what point does this become intrusive? Added to this, managing informed consent will get even more complicated as new technologies, such as facial recognition, Internet of Things, quantum computing, and AI emerge, not to mention the growth in the availability of complex pricing models, such as the bundling of different products and services. All of this suggests the need for alternative ways to ensure that those who provide data can exert better control of where and how it is used. Possible solutions discussed during our workshops include greater digital literacy, increased regulation, the adoption of data managers or personal data stores to represent individuals, and potentially a payment to users by service providers in return for access to data.

## What We Heard

In Bangalore, the conversation began with a discussion around the taxonomy of data. *"Consent needs to be defined differently. Legitimacy and reasonableness need to be clearly articulated."* This was taken up in Singapore, where the view was that *"there are conflicts between what consumers understand as ownership and consent, and what companies see as access. This shows that there is a need for clearer definitions, articulating new terms. We don't have a clear language."* A recent report by the University of Southampton concurs with this need. *"This is non-trivial, given the rate of change in ICT and the very broad set of purposes to which data could be put."*<sup>45</sup>

In San Francisco, it was observed that, although there are short-term incentives against ensuring greater transparency around the use of personal data by service providers, longer term, there are also clear economic, business-model, and regulatory pressures that should encourage organisations to put greater emphasis on ensuring better public understanding around consent. However, *"the tech is ahead of the regulation here – and that is how, why, and where unscrupulous methods can be used."* They also pointed out that, although greater digital literacy may *"deliver greater self-empowerment,"* the availability of information does not necessarily translate into individuals making informed decisions; *"we are not sure if the whole population en-masse will be able to deal with consent, despite improved literacy."* Given this, they argued that more innovation is needed to find ways to both engage users in better ways of managing how data is being used, and ensuring that products and services are designed so that consent is an integral part of their development. Suggestions included adapting existing technology to include bite-sized explanations, and the ability to more easily review the options around consent.<sup>46</sup> Participants also suggested that data should only be shared if it delivers value to the person from whom it is harvested, but acknowledged that, if online companies are obliged to limit data harvesting to that which has specific benefits to its users, significant changes in current business models may ensue.

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Singapore workshop

In Madrid, it was felt that informed consent should be dismissed in preference for establishing agreed standards of behaviour; “... *what we need is a clear set of principles.*” This view was endorsed in Jakarta, where it was stated that companies, rather than individuals, should take on a greater burden of responsibility for the management of personal data; “*we have consent fatigue. Organisations need to take this responsibility away from the individual and place a greater onus on the company to ensure that there is no risk or harm.*” Those in the Hong Kong workshop suggested that regulators and corporates should work in partnership, and that stakeholder engagement and collaboration is the most sensible approach - albeit one that would take time to achieve. However, the worry was that debates about who should take the lead in this process may mean that, “*without consensus and engagement, the private sector will self-regulate, developing a ‘this size fits us’ approach, which will not offer an equal platform.*”<sup>47</sup>

Some believed that government-led regulation is the only effective way to address the problem, and felt that Europe’s GDPR has opened the door to new possibilities for policy makers in other markets and is “*raising the bar for transparency globally.*”<sup>48</sup> In Nigeria, it was stated that “*GDPR will bring in new standards,*” and in Santiago, “*Chile will look to other countries as benchmarks for good and bad references.*” In San Francisco, there was also general support for greater regulation, in particular a new CCPA law, which comes into force in 2020, that makes California-based companies follow stronger data protection rules, including giving the state’s consumers more insight and power over how their data is used, and imposing fines when online companies don’t comply. In Johannesburg, it was suggested that increased regulation is the most likely approach, because it is driven by

*“consumer pressure and a rising demand for data transparency.”* A key driver of this will be the rising digital literacy, which leads consumers to “*wake up and care about the use of their personal data.*”

Alternative models were also discussed. In Toronto, it was suggested that, rather than fight for informed consent, which in their opinion is impossible to deliver, it would be more practical to acknowledge that personal data is a necessary raw material for the service providers, and therefore, individuals should be compensated for its use. They therefore suggested that a ‘*data dividend*’, which could be paid to all citizens by the service providers in return for allowing their data to be collected and monetised by service providers. This would mean citizens could be reimbursed annually for the use of their data by the companies which intend to use it. It follows a similar model to that implemented by the oil companies, which paid a dividend to Alaskan citizens for the extraction of the state’s oil resources.

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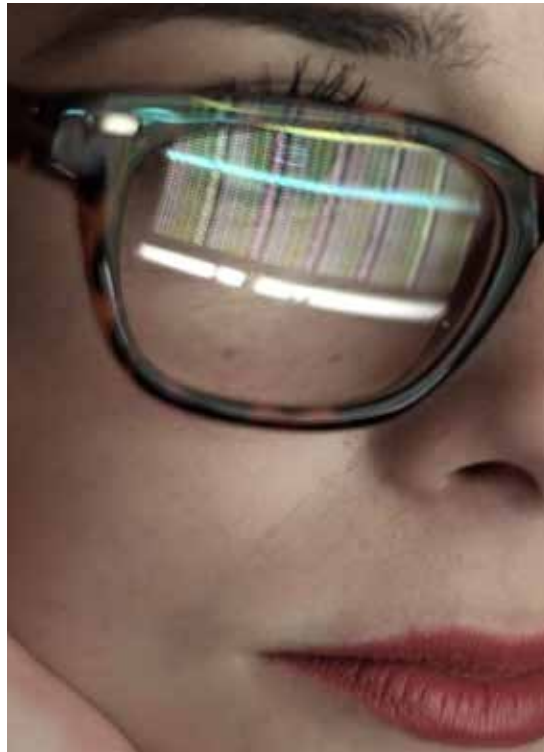
Jakarta workshop

Some, in London, Tokyo, Singapore, and Johannesburg, argued that rather than force consumers to make decisions that they are simply unable to manage, greater focus should be put on the role of data managers who, as trusted third party intermediaries, could better represent consumer rights and enable *“selective and contextual data sharing in context and for the right reasons.”* This would give consumers greater control of the principles around which their data can be used, but spare them the drudgery of having to check this every time they sign up to a new service. Regulation, they argued, would therefore be better placed focusing on responsible sharing rather than increasing transparency.

### Implications for Data Value

The concept of ‘consent’ has revealed a fault line that exposes assumptions that lie at the heart of all policy making and regulation, reaching all the way back to the legal myths that form a foundation of contract law - the assumption that all contracts are made between free and equal parties who are fully informed of the nature and consequences of what they are agreeing to (and behind that, the assumption that human beings are first and foremost ‘rational’ decision makers, always in the business of making ‘rational’ choices).

The big question is what to replace it with, and in the meantime, what reforms to make to its operations. Many suggestions for more practical, realistic, and workable alternatives have been put forward, including the involvement of trusted third-party intermediaries. Progress on this front will be key, if safe, efficient, and trusted relationships between organisations and individuals are to be established and maintained.



“Without consensus and engagement, the private sector will self-regulate, developing a ‘this size fits us’ approach, which will not offer an equal platform.”

Hong Kong workshop

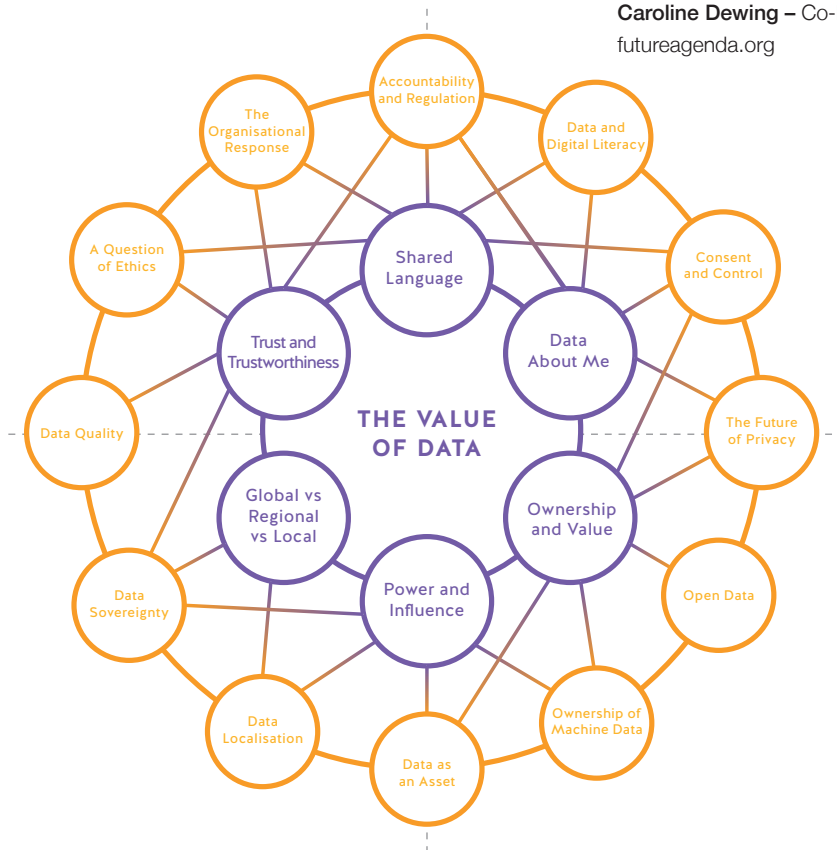
## Context

This is one of 18 key insights to emerge from a major global open foresight project exploring the future value of data.

Throughout 2018, Future Agenda canvassed the views of a wide range of 900 experts with different backgrounds and perspectives from around the world, to provide their insights on the future value of data. Supported by Facebook and many other organisations, we held 30 workshops across 24 countries in Africa, Asia, the Americas, and Europe. In them, we reviewed the data landscape across the globe, as it is now, and how experts think it will evolve over the next five to ten years.

The aim of the project was to gain a better understanding of how perspectives and priorities differ across the world, and to use the diverse voices and viewpoints to help governments, organisations, and individuals to better understand what they need to do to realise data's full potential.

From the multiple discussions 6 over-arching themes were identified alongside 12 additional, related future shifts as summarised in the diagram below.



Details of each of these, a full report and additional supporting information can all be found on the dedicated mini-site: [www.deliveringvaluethroughdata.org](http://www.deliveringvaluethroughdata.org)

## About Future Agenda

Future Agenda is an open source think tank and advisory firm. It runs a global open foresight programme, helping organisations to identify emerging opportunities, and make more informed decisions. Future Agenda also supports leading organisations, large and small, on strategy, growth and innovation.

Founded in 2010, Future Agenda has pioneered an open foresight approach bringing together senior leaders across business, academia, NFP and government to challenge assumptions about the next ten years, build an informed view and establish robust growth strategies focused on major emerging opportunities. We connect the informed and influential to help drive lasting impact.

For more information please see: [www.futureagenda.org](http://www.futureagenda.org)

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