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Ministry of Business, Innovation & Employment

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Re: Options for establishing a consumer data right in New Zealand

1. We welcome the chance to submit on consumer data portability, and are grateful we have had the chance to discuss the topic with officials.
2. InternetNZ is an independent not-for-profit organisation which operates .nz and helps New Zealanders to harness the power of the Internet for good. As part of that, we do policy work to understand key issues for the Internet, to think about the best options for addressing them, and to share our understanding with people, including people who make important policy decisions.

We agree that trust is the first priority for a right of data portability

3. We welcome the discussion document. We particularly welcome the criteria put forward to assess options in terms of trust, reach, speed, cost, and flexibility.¹
4. We agree that trust is the first priority for consumer data portability, as a framework for gathering, using and sharing information about people. InternetNZ's consumer research suggests around 89% of people have some level of concern about sharing their data online.²
5. Depending on the scope and type of data use enabled, we are concerned that relying on user consent may not be sufficient to uphold people's trust in the framework. We recommend consideration of a governance framework to offer oversight and mitigation of this risk while allowing for the benefits of data portability to be realised.
6. We think the long-term success of consumer data portability will depend on openly identifying potential concerns people have, and taking steps that demonstrate to people that their concerns are being understood and addressed in the design of the framework. Below we offer some suggestions that we think could help with this.

We think it is important to clarify the intended scope of this work

7. We think it is important to be clear about the scope of work on consumer data portability, and to do work that builds and upholds community trust in a way that is appropriate to that scope of work.
8. We think the scope of trust concerns is related to the scope of data use, particularly the potential for use of covered data in ways or by parties that people may formally agree to without a full understanding of their implications. To address this concern, we recommend steps to clarify what data would be covered and how it might be used, which would then help to clarify the desirable scope of any governance arrangements.

¹ Discussion document at [28].

² InternetNZ, "New Zealand's Internet insights 2019", (December 2019), <internetnz.nz>.

9. We think that some of the terminology used may be confusing to people, particularly the idea of a “consumer data right”. Our understanding is that the intended outcome is to enable people to have particular types of data held about them transferred between different service providers. We think that this might make more sense to people under the heading of consumer data portability rather than a consumer data right.
10. We recommend that the next stage of this work clarify the intended scope by:
 - a) **Setting out use-cases that are in scope or out of scope**, and in particular how much subsequent use of data or use by other parties will be possible;
 - b) **Considering adopting terminology of a “right of data portability”** to reduce the risk of confusion.

The best way to uphold trust is to work with the community

11. People in New Zealand are becoming more aware of issues relating to privacy and data use, including risks and concerns that sit alongside the opportunities and benefits from broader uses of data.
12. In that context, we think that the best way to build and uphold trust is to work with a range of people and communities in designing the framework for consumer data portability. We think it is important for future stages of this work to include engagement with diverse people to identify and test issues of social licence, and with the technical community to assess the security properties of any implementation.
13. We recommend consideration of:
 - a) **Testing questions of social licence with the community** by working with experts in the area such as Massey University’s Toi Āria to test community comfort with options, and with expert groups who can speak to specific concerns, such as Te Mana Raraunga on potential Māori data sovereignty concerns;
 - b) **Working openly with the technical community on data security**, offering opportunities for testing and comment by people in New Zealand’s technical community, for example the New Zealand Internet Task Force and other security focused communities;
 - c) **Adopting appropriately scoped measures for governance and oversight**, informed by the clarified scope of data covered and intended uses of it;
 - d) **Beginning with a sector-by-sector approach**, to allow for an initial implementation to be developed and tested in the highest priority areas, perhaps alongside the other governance measures we have suggested.

We agree data portability is best considered alongside digital identity work

14. We are pleased that data portability is being considered alongside related policy work, such as the trust framework for Digital Identity being led by the Department of Internal Affairs.
15. We recommend that these related issues be presented together in briefing Ministers, and that officials continue work to share information and align the different policy areas on these related topics.

Next steps

- 16. We would welcome the chance to discuss this work again at an appropriate stage.
- 17. Please feel free to contact us on policy@internetnz.net.nz.

Ngā mihi nui,



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