DATA DIVIDEND? CALIFORNIA GOVERNOR PROPOSES PLAN TO HAVE COMPANIES PAY CONSUMERS FOR USING THEIR INFO

By: Scott Satkin

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Scott Satkin
Contact
949.271.7204
scott.satkin@ndlf.com

Practice Areas
Privacy & Data Security
Business Litigation
Business Transactions
Insurance Law
Real Estate Litigation
Real Estate Transactions

The adage "if you're not paying for a service, you're not the customer, you're the product" has been around longer than the internet, but it has never been more true than it is today. As technology has increased people's ability to share information about themselves, the number and size of companies whose business models depend on collecting, analyzing, selling, and otherwise exploiting that information have increased proportionally. Generally, consumers give up this information in exchange for access to goods and services rather than financial compensation. But California Governor Gavin Newsom proposed changing that in his recent state of the state address.

Sharing the Wealth Proposition

The idea is to make companies who turn consumer data into cash cut those consumers in on a share of that money. Governor Newsom has pitched the plan partly as an issue of fairness – consumers are giving up something valuable and should be compensated for it – and partly as a way to address growing income and wealth inequality by taking some money from large, profitable tech companies and putting it in the pockets of Californians who may be having difficulty making ends meet. At first blush, the proposal may be appealing to many – who wouldn't like to get paid for doing things they do already, like posting on social media or shopping online? The data dividend idea has, however, drawn sharp criticism from a number of sources.

Criticism of the Plan

Perhaps to be expected, some of the first critics of the plan were the companies that would be forced to pay up. In addition to the general corporate aversion to anything that will shrink profit margins, companies take issue with one of the main rationales for the dividend – that consumers are not being compensated for their data. While it is true that people rarely receive direct financial compensation for their personal information, companies argue that consumers receive other benefits in exchange. A person setting up a Twitter or Facebook profile and making posts doesn't get any money transferred into their bank account, but they do get to keep in contact with friends and family.

From a different perspective, the proposal has also received criticism from privacy advocates. They point out that California recently passed a landmark privacy law that would allow Californians to exercise tighter control over what personal data companies can use and how they can use it, and that this new data dividend would provide a disincentive to make use of those rights. While the plan was introduced in part to combat income inequality, privacy hawks have framed this as pushing poorer Californians, who most need the income from the data dividend, to give up more of their privacy.

Putting it into Practice

Apart from whether or not the concept of a data dividend is a good idea in theory, there are also those who are skeptical of how well it will work out in practice. For one thing, assigning value to a particular piece of data is something of a dubious proposition. Often, information about one particular person will have little to no worth, while the same information about large groups could be immensely valuable. Trying to determine how much money each person gets could be a massive and imprecise task. An alternative approach would be to simply impose a tax on companies that rely heavily on consumer data and distribute an equal share of the revenue to each Californian. This approach, which has been compared to the distributions Alaskans receive from oil revenue, would also have the added benefit of alleviating privacy concerns, since the choices of any particular individual would make little impact on the overall amount of data being shared.

Common Sense Media, the group behind California's Student Online Personal Information Protection Act, is working on a draft of a bill to present to legislators and the governor. Instead of trying to assign value to particular data or taxing companies, economist Glen Weyl, one of the experts working on Common Sense's draft legislation, has indicated that their proposal would establish groups that could act something like consumer unions, collectively bargaining with tech companies to reach a fair rate of compensation for individuals.

None of these ideas, however, address the issue of whether the amount of money that would go to each individual under any of these proposals would even be worth the trouble. Even if massive tech companies like Facebook were to split up their total profits and divide them amongst their users, the size of their user base would mean that each person would only receive a few dollars a year.

These practical difficulties, as well as the opposition to the policy on principle, will have to be addressed once the bill is introduced, if Governor Newsom ever wants to see his proposal become a reality. Businesses operating in California should watch this potential legislation, and be prepared to respond should it become reality.

Scott Satkin is an associate in the firm's Privacy & Data Security practice, and supports the team in advising clients on cyber related matters, including policies and procedures that can protect their day-to-day operations. For more information on how Scott can help, contact him at scott.satkin@ndlf.com.