Chapter 6

PRIVACY INALIENABILITY AND PERSONAL DATA CHIPS

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Abstract: Even as new possibilities for trade in personal information promise new avenues for the creation of wealth, this controversial market raises significant concerns for individual privacy—consumers and citizens are often unaware of, or unable to evaluate, the increasingly sophisticated methods devised to collect information about them. This Essay develops a model of propertized personal information that responds to concerns about privacy and evaluates it in the context of tracking chips. It sets out the five critical elements of such a model, which is intended to fashion a market for data trade that respects individual privacy and helps maintain a democratic order. These five elements are: limitations on an individual's right to alienate personal information; default rules that force disclosure of the terms of trade; a right of exit for participants in the market; the establishment of damages to deter market abuses; and institutions to police the personal information market and punish privacy violations.

Key words: tracking chips, property, inalienability, hybrid inalienability, secondary use, downstream use of personal information, data trade, right to exit, Gramm-Leach-Bliley Act, damages, privacy protecting institutions

1. INTRODUCTION

A privacy-sensitive model for personal data trade should respond to five areas: inalienabilities, defaults, a right of exit, damages, and institutions. A key element of this privacy promoting model is the employment of use-transferability restrictions in conjunction with an opt-in default. This Essay calls this model "hybrid inalienability" because it allows individuals to share, as well as to place limitations on, the future use of their personal
information. The proposed hybrid inalienability follows personal information through downstream transfers and limits the negative effects that result from "one-shot" permission to all personal data trade.

In this Essay, I first develop this privacy sensitive model for personal data trade and then apply it to the use of electronic data chips. I then analyze the model in the context of two devices: the VeriChip, an implantable chip, and the wOzNet, a wearable chip. The VeriChip stores six lines of text, which function as a personal ID number, and emits a 125-kilohertz radio signal to a special receiver that can read the text.\(^1\) A physician implants the VeriChip by injecting it under the skin in an outpatient procedure that requires only local anesthesia. A similar device has already been implanted in millions of pets and livestock to help their owners keep track of them. Applied Digital Solutions, the maker of the VeriChip, plans an implantation cost of $200 and an annual service fee of forty dollars for maintaining the user's database.

Whereas the VeriChip involves an implantable identification device, the wOzNet involves a plan to commercialize a wearable identification device.\(^2\) Stephen Wozniak, the famous cofounder of Apple Computer, is the creator of the wOzNet. A product of Wheels of Zeus, the wOzNet tracks a cluster of inexpensive electronic tags from a base station by using Global Positioning Satellite (GPS) information. The broadcast of location information from the chip to the base station is done along the same 900-megahertz radio spectrum used by portable phones. This portion of the spectrum is largely unregulated; the wOzNet will not be obligated to purchase spectrum rights like a cell phone company. A wOzNet product package, including the chip and the base station, is expected to sell for $200

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