

**The Strengths and Weaknesses for Granting Property Rights
in Personal Information to Data Subjects: Focusing on the U.S.
Laws**

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Abstract

A large amount of personal information is easily collected, processed, used, shared, and even transacted as a result of technological progress. However, it leads to a threat to consumer privacy. Therefore, some American scholars proposed that property rights in personal information should be granted to individuals to bargain over which personal information to disclose to whom for what purposes.

However, since such a proposal to grant property rights in personal information to individuals face many challenges, it is doubtful about its feasibility. In particular, a crucial disparity takes place between the traditional property law supporting free alienability and personal information protection requiring inalienability to protect human dignity and personhood.

It is likely a myth that a data subject owns personal information about himself/herself. Although there are very few state statutes in the United States defining genetic information as a unique property or exclusive property owned by a data subject, its applicable scope is limited to be used only for the insurance purpose. However, the U.S. courts ruled that property rights in personal information are not owned by data subjects and, instead, that databases, including customer lists and personal information, are trade secrets and properties owned by data collectors.

As the feasibility to grant property rights in personal information to individuals is doubtful, there is an advocate that the U.S. should adopt European

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Union legislation model to comprehensively grant control to individuals to lessen the misuse of personal information. In contrast, Taiwan has passed the Personal Information Protection Act so that data subjects can have comprehensive control over the use of their personal information. Therefore, although it is not necessary to grant property rights in personal information to individuals, Taiwan can still learn from the theories and adjudications relating to the propertization of personal information to avoid the invasion of privacy.

Keywords: personal information, privacy, customer list, big data, property right, trade secret, right of publicity, free alienability, human dignity