The right to data portability in the draft General Data Protection Regulation: The ‘social networks’ provision?

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What is it?

The right to data portability is the individual’s right to **transfer** data from one electronic processing system **to** and **into** another, without being prevented from doing so by the controller.

As a precondition and in order to further improve access of individuals to their personal data, it provides the right to obtain from the controller those data in a structured and **commonly used electronic format**.

*(Draft Regulation – Detailed Explanation)*
Why is it needed?

An era of digital feudalism?
How can it be done?

A. (Literally):

Or,

B. Electronically: “in a commonly used electronic format”
Data portability, as per the draft Regulation, 1/2

A general right to data portability:

The data subject shall have the right, where data are processed by electronic means and in a structured and commonly used format, to obtain from the controller a copy of data undergoing processing in an electronic and structured format which is commonly used and allows for further use by the data subject (Art. 18.1).

Only applicable for electronic ‘files’

Further specification of a right to access
Data portability, as per the draft Regulation, 2/2

Particular to Social Networks:

Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have the right to transmit those personal data and any other information provided by the data subject and retained by an automated processing system, into another one, in an electronic format which is commonly used, without hindrance from the controller from whom the personal data are withdrawn. (Art. 18.2)

‘Right to transmit’: appears one-off, not dynamic, operation

Social networks named in the Preamble
Fundamental Rights placement

- Right to data protection
  - Right to information
  - Right to access data
  - Right to object
  - Right to data portability
  - (Right to be forgotten)
Data protection issues:

- Ownership of personal data;
- Individuals may move their profiles across platforms, but the contrary is not included;
- Too much work for the Commission; it would have been better to just include a general obligation to interoperability.)
Competition issues
The legal obligation to system interoperability

- Not a general EU law principle;
- The Computer Programs Directive: The authorisation of the rightholder shall not be required where reproduction of the code and translation of its form are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs;
- A consumer right?
The international approach

• The World Economic Forum: “Rethinking Personal Data” project (focus on functional portability/interoperability);

• USA initiatives (notably, the Data Portability Project, since 2008);

**BUT, IS THIS ALL AN ALIBI AGAINST, NEEDED, FORMAL LEGISLATION?**
Thanks.