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Thank you for the opportunity to provide feedback on the Treasury's strategic assessment of how to best implement an economy wide Consumer Data Right (CDR).

Google's mission is to organise the world's information and make it universally accessible and useful. User trust is paramount to our mission, and we strive to earn and maintain it. Consumers have competing online services that they can and do use, so we take special care to ensure that our users have control over their data and can trust Google to provide their data to them upon request. Google keeps users' information private and secure, is clear with users on how their data is collected and used, and provides best in class tools so users can view, delete, download, and transfer the content they store in their Google Account.

This submission explains Google's approach to data portability, highlights the consumer and competition benefits resulting from data portability and makes some suggestions for Treasury to consider as in embarking upon its strategic assessment.

1. Google's approach to data portability

Google's approach to data portability is simple: the user comes first. Google has been working on data portability since 2007, when a group of engineers started the "Data Liberation Front." Their goal was to "make it easy for our users to transfer their personal data out of Google's services."¹ They were inspired by then CEO Eric Schmidt who had wrapped up a talk to employees by clearly stating that Google didn't lock its users in. He stressed that we didn't want people to use our products solely because they can't get their data out to switch to a competing service.

The team took this to heart and began building this functionality across Google products. Their goal was fueled by the desire to promote user choice and the belief that data portability helps us make our services better for users by encouraging us to build great products and constantly

¹ Google Data Liberation Blog (Sept. 14, 2009), <http://dataliberation.blogspot.com/2009/09/welcome-to-data-liberation-front.html>.

improve them². While the Data Liberation Front's goal may sound simple, an enormous amount of technical thought and consideration went into making it a reality. Early iterations of our data portability tools focused on adding export features to individual products, like Gmail, with the goal of making it convenient for users to download and transfer their data by prioritising industry-standard formats, low cost, and fast transfers.

Takeout

Building on many years of work by the Data Liberation Front, in 2011, Google launched a portability product called "Google Takeout,"³ which provides a central site for users to export and download a copy of the data they create and store in Google. Takeout makes clear to users that it does not delete data from the Google product (unless requested by the user), but rather creates a copy that can be used for a competing service. Takeout currently facilitates the export of data from more than 70 Google products, including Chrome, Gmail, Drive, Search, and YouTube⁴. Users are able to export their data in a variety of industry-standard formats that they can select based on product, type of data, and intended use. For example, a user can export their Google Docs from Drive as a .docx to easily use with Microsoft Office⁵. Allowing users to download data in multiple formats maximises flexibility, creating many options for how users can utilise their downloaded data.

Since launching Takeout, users have exported more than one exabyte of data from Google products. There are currently an average of 2.25 million exports per month, and more than 200 billion files were exported in 2019. While users often download their data to create a copy as a backup, Google also enables exports directly to certain competing services, including Dropbox, Box, Microsoft OneDrive, and Flickr. We expect to add additional services for direct portability in the near future.

Portability provides a significant benefit to users, and we believe users should be able to move their data safely while maintaining strong privacy and security assurances. Providers on each side of the portability transaction should have strong privacy and security measures in place to guard against unauthorised access, diversion of data, and other types of fraud. To that end, Google has implemented the following privacy and security protections for Takeout⁶:

- Account Authentication: Users have to re-authenticate their account to execute a download, even if they are already signed in. This also includes two-factor authentication and other security prompts when an account is particularly vulnerable or the download is done from a new computer.
- Encryption: The data is encrypted in transit to the user's device or to a third-party

² *Id.*

³ Google Takeout, available here: <https://takeout.google.com/settings/takeout>

⁴ Please see the Appendix for a full list of supported products.

⁵ Please see the Appendix for more examples of industry-standard formats.

⁶ Additional information about these protections can be found in Google's Help Center here: https://support.google.com/accounts/answer/3024190?hl=en&ref_topic=7188671.

destination (like Dropbox).

- User Notification: Users are notified when exports start and finish. Pre-export notifications are delivered to users across a number of methods to ensure that they are notified that someone is exporting their data even if their primary account is hijacked.
- Delay Takeout Delivery: For users opting into Google's Advanced Protection Program⁷, the delivery of the exported data is delayed to help mitigate a situation where an unauthorised individual has accessed a user's account and attempted to access or save a copy of their data.
- Archive Expiration: The archive data is only available for a limited amount of time, after which the account must be reverified and the data re-exported.

We believe that data portability tools should be easy to find, intuitive, and readily available to consumers. We have seen consistent growth in the use of our Takeout tool, and have worked to make it more visible in our interfaces over the years. For example, we recently added functionality that allows users to immediately access the option to download data when they access the Google Dashboard⁸. Google Dashboard is located within Google Account⁹, a central hub that gives users an overview of their data, information about Google products, and access to controls that allow them to make decisions about their data and determine how they interact with our products. Now, when users access the Google Dashboard, one of the first things they see is a link to the Takeout tool that says "Need a copy? Download your data"¹⁰.

Data Transfer Project

Google is expanding on these efforts through its work on the Data Transfer Project (DTP)¹¹, which seeks to make it easier for users to transfer their data directly between online services. To help make this possible for users around the world, we brought our expertise and experience to DTP, an initiative we launched in 2018 with industry partners to expand user access to data portability tools by making it possible for any company to build secure and scalable direct data portability solutions. Direct portability enables a user to move their data directly from one service provider to another, without first downloading it onto a personal device first and then re-uploading the data to a new service.

The engineering work we've done through DTP has highlighted the importance of working with many diverse stakeholders to develop guidelines around portability. Several companies, developers, and individuals have made significant contributions and implementations of DTP since it launched. Specifically:

⁷ Google Advanced Protection Program, <https://landing.google.com/advancedprotection/>.

⁸ Google Dashboard, <https://myaccount.google.com/dashboard>.

⁹ Google Account, <https://myaccount.google.com>.

¹⁰ Google Dashboard, *supra* note 9.

¹¹ Data Transfer Project, <https://datatransferproject.dev/>.

- More than two dozen contributors from a combination of partners and the open source community have inserted more than 186,000 lines of code and changed more than 8,500 files.
- Twenty-five releases of new versions or updates to of the basic protocols in the past year,¹² including adding new verticals, and making existing use cases more efficient.
- DTP Maintainers (a group of engineers and product managers from the respective companies) have added framework features such as Cloud logging and monitoring to enable production use of DTP at companies developing new features.
- DTP Maintainers have updated integrations for new APIs from Google Photos and Smugmug that will enable users to move their photos between these services.
- DTP Maintainers have added new integrations for Deezer, Mastodon, and Solid.

Since the 2018 launch, in addition to significant additional investment in DTP's open source protocols, several partners have launched product features powered by DTP. Specifically, Facebook¹³ and Google¹⁴ have each built implementations that enable users to directly transfer photos and videos to other services. Twitter has been testing a similar implementation. Apple will also begin rolling out a similar feature in the near future. Microsoft has released an open source log viewing tool built on top of the core DTP components that allows Office 365 enterprise customers to view and edit personal data for their users. All partners develop or maintain adapters to enable data transfers within DTP.

In addition to the public channels described in the final section of this comment, partner organisations have undertaken considerable direct efforts to expand participation in DTP. In many cases, these conversations are centered around an upcoming launch of a particular data type (e.g., reaching out to photo service providers before we launched a photos implementation). Additionally, DTP partners have proactively started conversations with companies of various sizes, independent developers across the globe, leaders of related projects (i.e., Solid), and civil society thought leaders to seek their feedback and encourage them to participate in DTP in a variety of ways.

In addition to one-to-one outreach, representatives from DTP have presented the Project around the world to help build understanding and drive interest in participating. Through these efforts, DTP partners proactively help build understanding of the Project for other companies

¹² GitHub Repository, <https://github.com/google/data-transfer-project/releases>.

¹³ Facebook, *Data Transfer Project: Enabling portability of photos and videos between services* (Dec. 2, 2019), <https://engineering.fb.com/security/data-transfer-project/>.

¹⁴ Google Takeout Tool, https://takeout.google.com/takeout/transfer/custom/plus_photos; Google Account Help, <https://support.google.com/accounts/answer/9666875>.

and encourage them to participate. However, we have confronted a few consistent challenges throughout these conversations. Specifically:

- **Technical Challenges:** Despite the work that DTP has done to make direct - data - portability a lightweight engineering challenge, some organisations are concerned that the technical burden may be significant. We continue to work to make the integration as simple as possible including by building adapters to some services that enable import directly.
- **Product Uncertainty:** Some companies, particularly those that don't already offer portability for their users, are concerned about the impact of export of data on their platforms. To help address this concern, DTP partners have prioritised building export functions in our own implementations. It is also worth noting that DTP does not delete data from the source service provider, but rather creates a copy for a new service. In this way, the service creates an opportunity for individual users to try new services without necessarily leaving current ones.
- **Unclear Prioritisation:** The relative urgency that regulators attach to different service categories is not entirely clear. In light of this, some companies that offer just one service might be hesitant to start working on direct data transfer until they see that regulators attach urgency to that category.
- **Some Regulatory Risk:** Some companies see regulatory risk in importing personal data from other services as they would assume data protection responsibilities for this data.

I mention this to underscore that industry coming together to develop direct data portability infrastructure, even in clearly defined and discrete areas such as photo and video sharing, is complex and takes time.

Consumers across the globe also face infrastructure constraints like personal devices with limited storage and expensive bandwidth that can make this challenging. Data portability needs to be more inclusive, flexible, and open in order to maximise its impact on user control and choice. We believe that all consumers should be able to seamlessly and securely transfer their data directly from one provider to another and will continue to invest significantly in efforts to achieve this.

Data Portability and the Cloud

As with our consumer products, data portability is also a consideration in our Cloud offering. Open source plays a critical role in an open cloud. We are seeing more Australian companies moving to the Cloud as a result of a strong digital transformation agenda, and to enable their workforce to continue to work and collaborate during the pandemic.

Many companies have mission-critical workloads or sensitive data that have “[survivability requirements](#)” in the event that a provider is forced to suspend or terminate cloud services due to country or region policy changes. To move workloads to other clouds, it’s important to develop them using open source and open standards.

At Google Cloud, we don’t think it’s possible to fully address survivability requirements with a proprietary solution. Instead, solutions based on open source tools and open standards are the route to addressing customer and policymaker concerns. More importantly, open source gives customers the flexibility to deploy—and, if necessary, migrate—critical workloads across or off public cloud platforms.

Google has a long history of [sharing technology through open source](#)—from projects like [Kubernetes](#), which is now the industry standard in container portability and interoperability in the cloud, to [TensorFlow](#), a platform to help everyone develop and train machine learning models. As Google’s [Chief Economist Hal Varian said](#), “Open data and open source are good not only for us and our industry, but also benefit the world at large.”

Our belief in customer choice is fundamental to how we develop our technology and rooted in leveraging open source APIs and interoperable solutions. In addition, we [partner with the leading organisations](#) in the fields of data management and analytics to build products that combine the benefits of open source with managed cloud solutions.

2. Consumer and competition benefits

Data portability gives users more control over their data by allowing them to backup or archive important information, organise between accounts, and recover from account hijacking and deprecated services. Data portability tools like Takeout give users options for what they can do with exported data. Users can keep a copy of their data for their records, for backup purposes, or even just for peace of mind. They can also easily take a copy of their data to another service because their data is exported using industry-standard formats. Takeout makes it possible for users to directly transfer their data to Dropbox, Box, Microsoft OneDrive, and Flickr today, and our users transfer subsets of their data to these other services¹⁵. Industry efforts like DTP will further enable user control over their data by expanding on the existing ability to transfer data directly to other online services.

It is important to note that Takeout empowers users by reducing the friction of experimenting with other services without impacting their ability to use Google’s services. This can be helpful for situations where an individual wants to try a new product before fully switching services. Users can choose to export a copy of their data and take it to another service to see whether it better suits their individual needs. Additionally, this supports users moving subsets of data specifically to access a feature or service that is offered by another provider, which can be a way to start using that provider more generally. If the user ultimately decides that they prefer Google’s service, they can seamlessly resume using it without interruption. If they decide that they prefer the other service and want to stop using our service altogether, we make it easy

¹⁵ The functionality for users to directly transfer their photos to Flickr was developed using DTP code.

for them to safely remove their data from their Google Account.

Data portability ensures that the digital marketplace remains competitive by allowing users to choose where they take their business. Google has always believed that consumers should use our products because they provide unique value and features — and, if a user wants to switch to another product or service because they think it is better — they should be able to do so as easily as possible. This concept of allowing users to choose products and services based on choice, rather than being locked in, helps drive innovation and facilitates competition.

3. Feedback on strategic assessment work

Grouping all of the products and services offered by technology companies into one homogenous category of “digital platforms” is perhaps a little too reductionist and runs the risk of implementation challenges should a broad designation be made. For example, the DTP has based its rollout on data type. The current set of implementations of the DTP are focused on photo and video data among participants. This approach was chosen because these are very well specified data types, and all of the participating organisations have at least one product involving photos and/or videos. Has the Treasury Department considered breaking “digital platforms” down into more specific product / service categories? Has the Treasury Department also considered how services that are provided to consumers at no cost are treated under the regulations? Is the Treasury undertaking any research to measure consumer demand for certain types of data? Will consumer demand influence Treasury’s assessment of which industries might be added to the CDR regime? In determining additional sectors to add, will the Treasury Department be considering the current availability or absence of data portability tools as a criteria for selection?

In terms of the types of data that could be included within a CDR that applies to “digital platforms”, we suggest that the scope of data is limited to provided and observed data, and should not capture ‘inferred’ data. This is consistent with Part IVD of the Competition and Consumer Act 2010 (which does not require the disclosure of directly or indirectly derived data for which there is a CDR consumer) and the guidance issued under the European General Data Protection Regulations (GDPR). Provided and observed data would include emails, documents and a consumer’s Search History. The GDPR guidelines do not require portability for inferred data, such as ads interest categories (which are transparent and editable to consumers). We also note that this appears to be aligned with Treasury’s view as expressed in the consultation paper for the Sectoral Assessment of the Telecommunications industry, which states: “In the energy and banking sectors, information whose value has been largely generated by the actions of the data holder is excluded from the CDR regime by the ‘materially enhanced’ test. The concept of materially enhanced information refers to data which is the result of the application of insight, analysis or transformation of data to significantly enhance its usability and value in comparison to its source material.”¹⁶

In our view, decision making models that incorporate machine learning algorithms are outside

¹⁶ Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper, August 2021, p. 30.

of the scope of the CDR regime. These systems are very complex and challenging even for experts to fully navigate. We think a better goal is to enhance transparency such that a layperson can understand the most important aspects of the technology they are using. Google is committed to ensuring that users have a good understanding of how its products work and we have invested in the development of tools to control their relationship with those products¹⁷.

Finally, the Treasury Department will be aware that there is an economy wide review of Australia's Privacy Act underway. Would there be benefits in consolidating the CDR regime within the Privacy Act framework? There is international precedent in subsuming data portability rights within broader data protection legislation and this arguably creates efficiencies for businesses.

Google believes that data portability is an important tool that benefits both consumers and competition. We have been at the forefront of data portability for more than a decade, and continue to prioritise the development of data portability tools that make it easier for users to transfer their data between different online services on our platforms and across the industry. We are fully supportive of Government efforts of reform to this end where they both protect and promote consumer interests and enable innovation by industry to serve the interests of Australians.

Yours sincerely,



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¹⁷ For instance through [How Search Works](#) and the [Google Account](#) website.