



Microsoft submission to Consumer Data Right Strategic Assessment

Microsoft welcomes the opportunity to comment on the Treasury's consultation on the implementation of an economy-wide Consumer Data Right (CDR). Microsoft supports initiatives that provide consumers greater choice, as well as frameworks that ensure privacy and security in the movement of consumer data.

In approaching future stages of the CDR rollout in Australia, Microsoft encourages the Treasury and the Australian Consumer and Competition Commission (ACCC) to proceed cautiously in the designation of sectors or consumer data sets under the scheme. The success of future CDR rollouts in new sectors will depend on the ability of industry to resolve technical and operational issues before commencement.

The Treasury's consultation paper sought comment on the specific sectors and data sets that could be subject to the CDR in the future. We believe the designation timeline (a new sector assessed and designated every year) may need to be revisited by the Treasury and the ACCC, to ensure there is adequate time for future rollouts to be designed and implemented in partnership and consultation with the relevant sectors.

This submission is structured around three broad topics relating to the continuing implementation of the CDR: an explanation of the technology 'stack' and types of businesses in the digital economy; the role of Outsourced Service Providers (OSPs) in the Australian CDR scheme; and the efforts within the technology industry to help users of consumer technology (non-enterprise) services to more easily move their data between providers.

1. The technology 'stack'

Unlike the sectors designated to date under the CDR, the digital economy cannot be characterised as a standalone, vertical sector. As the concept suggests, it is a much broader economy and ecosystem that traverses, infuses and enables all sectors of the global economy—it is increasingly the springboard on which vertical sectors grow. Today, Microsoft supports a diverse range of consumer and enterprise customers, who operate across all sectors of the Australian economy. For this reason, we view our business, and the businesses of other digital entities who operate in this way, as being horizontal enablers.

Unlike a vertical sector in which similar products or services are developed and marketed using similar methods, there is often little common ground between the service providers that operate in the digital economy.

The digital economy is made up of a 'stack' of different products and services that range from infrastructure services (such as Internet service providers and domain registrars) to platforms (such as social media, websites and apps). A significant factor that differentiates infrastructure and platforms from one another is their relationship with the end-user.

Microsoft offers products and services at different levels of this 'tech stack'. In the case of Microsoft's **enterprise cloud computing services**, we generally do not have a direct relationship with the end-user of a service that is hosted on our cloud. At the platform end of the 'tech stack', Microsoft also offers a number of **consumer services** where there is a direct relationship with the end-user of the product or service. This includes products such as the consumer version of Microsoft 365, Skype and Xbox. We consider this distinction an important one in conceptualising the types of businesses within the technology industry, and how these businesses interact with government regulation, including the CDR.

Therefore, we do not believe it would make sense for the subscription data from a gaming service to be transferable to an enterprise cloud service provider, for example, or the data of a business-to-business software service being transferable to a search engine provider. It will be necessary to establish product or service compatibility within the digital economy as to where a CDR makes sense.

As digital transformation continues across the economy, we agree with the Australian Government's prediction that ultimately there will be no distinction between the digital economy and the economy as a whole. In considering the rollout of the CDR in new sectors, we would encourage the Treasury and the ACCC to avoid a one-size-fits-all approach. Future designations under the CDR should consider the operations, characteristics and economy-wide proliferation of digital services and products. Microsoft supports the Australian Government's ambition to design regulation for the digital economy which is clear, proportionate and fit-for-purpose.¹ To achieve these aims, future sector designations under the CDR should focus on the specific problem that is trying to be addressed, and should be designed for the underlying technology and the specific customer relationships that exist in a particular sector.

2. CDR and Microsoft's Enterprise Services

Microsoft is the supplier of services, particularly cloud computing services, to many Australian companies subject to the CDR regime. Although we store consumer data on our systems, we do not have a direct relationship with the end-user. For instance, if a customer of a financial institution (that uses our products) approaches Microsoft directly for access to their personal information, we would redirect the customer to that financial institution. We instead provide tools to the financial institution so they can access and implement any requests being made by the end-user under the CDR.

As Microsoft does not have direct visibility into the data held by our customers who are subject to the CDR regime, we are not able to determine if our customer is storing CDR data or non-CDR data in our systems. For this reason, the designation of new sectors annually should be carefully considered by the Treasury and the ACCC, as identifying and standardising consumer data requires significant co-design work between OSPs and their customers who are subject to the CDR regime.

¹ Australian Government, Digital Economy Strategy 2030 – A leading digital economy and society by 2030 (2021), p11 available at: <https://digitaleconomy.pmc.gov.au/sites/default/files/2021-05/digital-economy-strategy.pdf>

The Privacy Act 1988 does not currently distinguish between those entities that control data and those that process it. Microsoft has recommended to the government that this distinction be made, to provide greater clarity for enterprise service providers in complying with schemes such as the CDR.

Accreditation of OSPs

The Treasury has previously sought advice on whether OSPs of accredited persons should themselves be accredited to collect CDR data. We use this submission to again highlight that requiring OSPs to become accredited data providers would create significant structural issues and should not be pursued in the continuing rollout of the CDR. We believe the CDR regime, together with existing privacy and data security laws, provides a strong framework and the necessary mechanisms to protect and secure consumer data, and is flexible enough to provide sufficient protection for future sector designations under the CDR scheme.

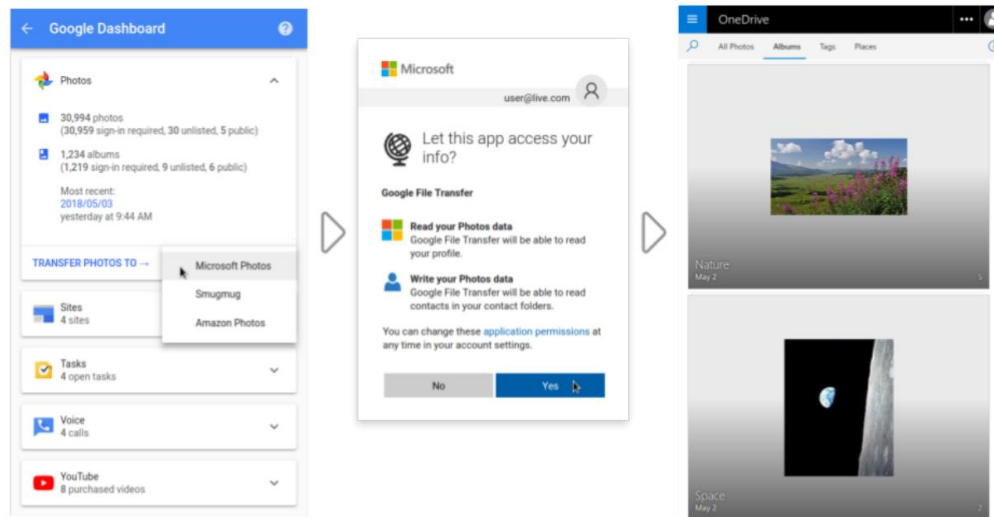
3. Microsoft consumer services and data portability

As mentioned above, unlike our enterprise services Microsoft has a direct relationship with the end-user of our consumer products and services and we are working with other technology companies to improve the portability of user data across similar services. As the Treasury and the ACCC designate new sectors and data sets under the CDR, a key challenge will be interoperability between disparate data sets.

One initiative seeking to address this issue in online consumer technology products is the [Data Transfer Project \(DTP\)](#)². The DTP is a data portability partnership that includes Microsoft, Apple, Facebook, Google and Twitter. The aim of the project is to build an open-source, service-to-service data portability platform that will enable users to easily move their data between similar online services offered by different providers. The project's work to date has highlighted many of the technical challenges in enabling data portability between providers.

In the hypothetical example below, a Google Photos user wants to move their photos from Google to Microsoft OneDrive. They go to Google's file transfer interface, choose the destination, and hit 'send.' They then authorise the transfer and then the selected files are automatically copied and routed to the destination.

² Data Transfer Project Overview, <https://datatransferproject.dev/dtp-overview.pdf>



In the case of the DTP, interoperability is enabled by an ecosystem of 'adapters' that convert a range of proprietary formats into a small number of canonical formats (Data Models) useful for transferring data. This allows data transfer between any two providers using the provider's existing authorisation mechanism and allows each provider to maintain control over the security of their service.

The DTP demonstrates the types of technology collaborations, and interoperability challenges, that the Treasury and the ACCC may need to consider in the designation of new data sets as the scheme evolves in the future.

Next Steps

Designating new sectors or data sets under the CDR should be done cautiously and in consultation with designated sectors to ensure changes are technically and operationally feasible before new phases of the scheme commence. Microsoft appreciates the opportunity to comment on the CDR Strategic Assessment and we look forward to participating in future consultations as the scheme progresses.