

Reviewer 1

Thank you for the opportunity to read this paper on IP law and Policy for the data economy in the EU-- which is a subject of great topical interest. The paper traces out the ways in which current law has tried to grapple with the implications of the data driven economy, and I learnt much from reading it, but the paper is in the main descriptive.

It could be of greater interest to an academic audience if the author could trace the effects of changes in Law on market structures empirically or theoretically. For example, an important insight provided by the author is that horizontal data sharing is governed by contracts which are non-standard and impose transactions costs. It would be very illuminating to see this in the evolution of any particular industrial sector empirically or even with the help of a transactions cost model of industry organisation.

In another example, the author also argues that without adequate protection by well defined contracts for data base protection, database producers may be forced to take recourse to trade secrets which may " have the potential to aggravate access problems and hamper efficient access and portability regimes". there are so many ideas in this one sentence each of which a reader needs to be persuaded about.

I hope these broad comments about the current paper will help the authors develop and define their contributions better.

Reviewer 2

This is an interesting paper, discussing the details of an important recent change in the law protecting data in the EU. It is a short summary of the main points of a longer report available on the Europa website and helpfully noted early in the paper.

While a descriptive piece is important for readers to understand the nature of the proposed change in the law, the main issue is how the piece communicates to the audience of this journal. Most will not be lawyers, but instead will be economists, and many will not be resident in the EU and so will be less familiar with its institutions. That means that some concepts that draw on economics but are treated quite briefly in the paper could be of interest to illustrate more fully. Similarly, there needs to be a bit more discussion around some of the institutional concepts, on which the paper relies quite heavily (such as the framework for competition law and contract law).

As examples of where the economics concepts arise but are not really explained, when hold-up is mentioned as a potential problem, illustrating this in the context of the concerns behind the authors' view in this paper would be helpful so that readers can see a case where the concern creates a problem for business – in a relevant situation for this law. Switching cost problems and access to aftermarket services could also be illustrated with a relevant example to show where the law gets into problems – in the type of case that this law will cover. Illustrating with an example where competition law could potentially remedy a data problem for a larger firm (p. 6), but where a smaller firm's behaviour could not and would create a problem for the market and would not be caught would also help. This would make the conclusions at the end of the section appear more natural to a non-lawyer audience.

Later in the paper, where you critique the Data Act, you mention a non-mandatory framework of default rules as a contrast. In practice, what would this mean for a firm – again, in a brief and simple example of a problem that could arise? The type of data that is voluntary or inferred to illustrate the concerns on page 8 could also be useful – the terminology is not necessarily familiar to the audience. Indeed, all three concerns on page 8 could well be illustrated so that people see in a more concrete (but briefly presented example) what the sort of problem would be that is behind your concern.

Reiterating the problems with the *sui generis* protection regime in the conclusions to give people a sense of research directions could be useful. Outlining a few (limited) types of provisions in a model default contract could also be useful. This could make the conclusions only slightly longer and perhaps more thought-provoking for those interested in pursuing research in this area.

This is not a matter of adding a great deal of volume to the paper: it is a matter of communicating to the likely audience in a way that they will understand.