The Economics of Privacy: Major Economic Policy Issues

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Fifth Annual FTC Microeconomics Conference
Washington, D.C.
November 15, 2012
Agenda

- Policymaking Context
- Economics and Consent
- Economics and Institutions
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Modern FTC Experience

- Greater Systematic Use of All FTC Policy Tools to Inform Use of Authority
- Building Institutional Capacity
  - E.g., Cases, Research, Consultations
- More Investment to Link the Public Policy Archipelago: Home and Abroad
- Fuller Recognition of Competition and Consumer Complementarities
Institutional Context

- International Diversity (Rivalry) in Norms
  - European Union and Member States
    - Continuing wariness about US system
  - APEC

- US Domestic Policy Archipelago
  - Federal multiplicity: e.g., Commerce and FTC
  - States
US and Foreign Privacy Policy: Absorption of Economics Today

- Keen Interest in Behavioral Economics
  - Literature on limitations of choice models
- Doubts about Value of Competition and Intermediation
- General Recognition of Potential Hazards of Faulty Intervention (“Paternalism”)
  - Amazon, Apple, Facebook, Google
- Limited Integration within Agencies
  - Example: FTC Privacy Reports
Policy Change Models

- Incremental Elaboration
  - Privacy and the Exxon Valdez scenario
- Exogenous Shock Followed by Major Legislative Reforms
Economics of Consent

- Disclosure and Choice Models
  - Meaningful disclosure
  - Consumer cognition

- Choice of Default Rules

- Adjustable vs. Immutable Defaults
  - Consumer preferences
  - Consumer learning
  - Intermediaries
Economics and Institutions

- FTC Policy Integration: Theory vs. Practice
  - Competition, consumer protection, privacy
- Statutory and Regulatory Framework
  - Section 5 as “overarching” privacy law?
  - Rationalize/unify mosaic of commands?
  - Flexibility and adaptation: state/federal?
  - Remedies
- Exemptions: Common Carriers and Not-for-Profit Institutions
- Cooperation Across Agencies and Jurisdictions
Choice of Policy Instruments

• Litigation
• Rules
• Legislation
• Studies
• Consumer and Business Education
Concluding Thoughts

- Institutional Design Shapes Substantive Outcomes
- FTC Capacity to Execute Own Duties and Contribute to Policy Discussions
- Importance of Long-Term Capital Investments
  - Co-producers and the research agenda