

FTC Informational Injury Workshop
December 12, 2017
Segment 6: Closing Remarks
Transcript

SPEAKER: Stick a panel. Electric headset.

[INTERPOSING VOICES]

ANDREW STIVERS: Well, I'm disappointed to discover that they just-- they noticed the flaw in the agenda and actually put an end time to my closing remarks. In the earlier agendas, it was just 4:45. That's when I start, no ending. But somebody discovered that, and they know me. So.

But most of you don't know me. I'm Andrew Stivers. I'm the Deputy Director for Consumer Protection in the Bureau of Economics at the FTC. And what that means is I head up the consumer protection mission for the Bureau of Economics.

And the Bureau of Economics, in terms of our consumer protection mission, we advise the Commission on its actions and its policies, and we do economic research to help increase our understanding of the market practices that help or hurt consumers. So from that perspective, this has been incredibly interesting to me.

And each of the panels has built beautifully on the previous one, and I sort of felt like, wow. They're not going to be able to top that. And the next one comes up, and they review all sorts of great issues that we need to grapple with.

I, unfortunately, don't have time-- because they stuck this limit on me-- to go into all the really interesting and important topics that were discussed today, so I want to pick one issue from each of the panels to highlight to leave you with. And that doesn't mean that these are the only things that you should pay attention to. I'm sure everyone has their own favorites. But these are things that called out to me and hopefully will help continue the conversation and the research that is clearly needed.

So the first thing on the first panel that I thought was incredibly good, especially for the FTC, is we're experts in markets. That's our mission. Our mission is to make sure that markets work for consumers. We have over 100 years of grappling with these issues, both on the consumer protection and the anti-trust side of the house. So we really understand the kinds of injuries that occur contained within the marketplace.

But what's really interesting about data security and privacy is we see that there's this flow between commercial applications and personal and private and social applications that muddy those waters a little bit. And the first panel, they noted a variety of fallouts from the commercial space, the collection of commercial-- excuse me-- the collection of data for commercial purposes into the personal and social space that caused these harms, that are incredibly important, and that we need to grapple with as a society.

The other way is also true. That we see personal and social transactions, conversations between people that because they're mediated through commercial information products, or because those conversations are able to be monetized in some way, really creates some complications for how we think about injury.

So an example of the latter would be in terms of our work in revenge porn. So there are these terrible interactions between former intimate partners, and that transaction, that kind of information being broadcast, or those harms being visited, are sort of amplified by the commercialization, the ability to monetize that information on some of these sites. The upside for us, of course, is that we can actually go after that because it's in a commercial space. So I think that was really incredibly important for that first panel and highlights some of the research and thinking that really needs to continue.

The second panel, in my mind, really highlighted the definitional issues. So there were some hypotheticals put forward. The panelists had, often, very different reactions to the hypotheticals and how they thought about those things. Some of those reactions, to me, seemed to be based on definitional problems.

So Paul, right at the very end, at least tried to articulate a definition of what he was thinking about with injury. The moderators tried to say, you know, this is what we're thinking about. But our interaction in this space, or our place in this space, often really informs what we think of as injury, what we sort of privilege as injury and what we don't. And so I think we need to do some more work in making sure we understand what it is that we're talking about.

And I'll highlight one issue. Is Jeff still here? I hate to call him out. This is the one thing I'm going to kind of harp on a little bit. He said that risk was not injury. If that's true, somebody needs to tell the insurance industry that they've got it all wrong. Because insurance is exactly about offering people the opportunity to mitigate a future potential, unrealized outcome *ex ante* before it actually happens.

So people are willing to take expensive actions to mitigate a future outcome, a potential future outcome. So to give Jeff his due, I think he was really thinking about what's the kind of injury that the FTC should go after. And maybe you agree with that, maybe you don't. But I think it's very important to think about if a consumer, if anybody is willing to take an expensive action *ex ante* to mitigate the risk of a bad outcome, that's potential risk. If a firm takes an action, has a practice that motivates me to go out and spend that money, that's harm to me.

So I think we just need to be a little bit more careful about how we think about those issues. And then when we think of-- when we are clear about that, I think we can really see across the entire panel that was up here that where we choose to fall in terms of what's an injury really becomes a policy question. And that's this whole stew of the questions about are we addressing privacy and data security as citizens, as consumers, as all of the above, or both of the above. So there's definitely an ongoing policy debate that needs to continue.

The third panel brought up a variety of interesting issues, and it was hard for me to pick one, because I think of the panels, they really covered the broadest range. But the one that I will

highlight, which is one that's really interesting to me, is this question of internal misuse versus external misappropriation.

So to use an example that I'm familiar with from some of my past work, when we think about economic adulteration versus disruptive adulteration in the food industry. Right? So economic adulteration is I want to water down some milk. I have a profit motive there, if I'm doing that. And the last thing I want to do is get caught. So there's going to be some limits and different incentives in terms of how I approach that-- if I'm an adulterer-- that is very different from if I'm a disruptive adulterer, right? I want to create some huge disruption in society, I actually want to get caught. The whole point is to let people know that I've done this terrible thing.

So it's not an exact analogy, but it at least highlights that there's very different incentives, risks, and potential remedies when we think about internal misuse of the data, internal privacy-- internal to the company uses of the data that somehow fall afoul of consumer expectations or deception or whatnot, versus these harms that arise, potentially, because the firm has collected this data and not secured it, but is really being mediated through these outside actors, these criminal actors. So we need to think very carefully about what the incentives are here, what possible remedies might be put in place, and the liability associated with these things.

Lastly, the final panel-- and I could just applaud again, because as an economist, this was exciting and really good and points to all sorts of really interesting and important research challenges that we need to grapple with, that I hope that you folks, as you have access to research skills and funding, really try to push the envelope on.

But I'll kind of sum up some of what I heard that highlights the really important research questions and measurement questions that we have here. We need to know the kinds of injuries, the kinds of actions and outcomes and practices that we're dealing with here. And I think we addressed that in some of the earlier panels, and we're getting a better sense all the time of what this looks like. But we need to be able to measure that pretty carefully.

We need to measure the severity and the impact of these outcomes. That has all the complications that the panelists today talked about. We need to know the incidence of outcomes. That was discussed as well.

But we also-- and this was touched on, but the last two points are, I think, of equal importance. We need to know what confidence we have in the causal link between the practices that we're attempting to address and the outcomes to consumers.

So the more confident that we are that there's a link between those practices and the particular outcomes, or even the practices and the risk of a particular outcome, the better off we're going to be. So in the world of say, drunk driving, we have really, really good data on the risks associated with drunk driving. Right? So we're very confident that there is a causal link between an increased risk of death and drunks on the road.

Now, there's a really small probability that you'll actually die in an accident that's caused by a drunk driver, but the causality in terms of the increase in the probability, in terms of the risk, is

really well understood, because we have really good data, and we've been collecting data for a long time. We need to make sure that we have as much confidence as we can get in the causal link between the practices and the outcomes.

And the final thing that I'll mention here is we need to have some sense of what the market incentives are. Do we think that the market is going to take care of a problem? Do we think that there are incentives in the market for actors to mitigate the risks to somehow prevent these harms from occurring, or at least mitigate them to the extent they can be? Or is there some sort of market failure that would really call for a regulatory approach?

So I want to thank the panelists. I want to thank all of the participants for lending your time and your expertise to this endeavor. We continue to improve our understanding and we want to continue to mine your expertise. So to that end, there is a 45 day comment period, and it's going to be ending, I think, January 26th. Is that correct? That the right date? Good. Thank you. So that is January 26, and I encourage your input. You can go to the FTC website to find information about how to submit your comments if you're interested in that.

Remember that our conference highlighting new research in the privacy and data security area, Privacy Con 2018, is coming February 28, so please mark your calendars and show up for that. And the other thing is that privacy Con 2019, which I hope will also happen, is going to be coming up sooner than you think. We start asking for submissions-- assuming we do this-- in the late summer. So if you're inspired to do some research now, think about how you might apply to get that research put in front of us for Privacy Con 2019.

All right. Finally, I want to thank the acting chairman and her staff for pushing us on this issue, for instigating this workshop, because I think it's been fantastic. And one final time, I want to thank the boots on the ground, the team that put this all together. Jacqueline Conner. Is she here someplace still? There she is. Maybe. Cora Han, Doug Smith, and Dan Wood. Thanks very much.

[MUSIC PLAYING]