Behavioral Economics and Consumer Policy Conference

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The Decision Framework in Asymmetric Paternalism

- A Cost-benefit tradeoff focusing on the benefits of a government remedy to the cognitively impaired and the cost to the cognitively aware.
- It also considers the implementation costs that include the costs of government error.
- Any profits lost by the firms who can no longer gain from the errors of the cognitively impaired.
- By design, the paper focuses on problems for which the authors think the remedies are non-invasive and have little impact on rational consumers who are not in need of protection.

The FTC approach to consumer issues also focuses on costs and benefits

- We think about the costs and benefits of a remedy with the realization that not all consumers are deceived by a practice and not all consumers believe a deceptive message, but some are and do.

- But saying that both approaches start with costs and benefits does not get you very far.

- What you count as costs or benefits is where all the action is. Do you count what consumers say in surveys or what they appear to prefer from observation of markets? Sometimes those differ pretty radically especially if the implications of a choice are not obvious in a survey question - do you like privacy? (Yes, but at what cost?) And does anyone know what those costs are?

OPT-OUT and OPT-IN in PRIVACY

- Asymmetric Paternalism focuses on a special set of defaults in which the non-chosen option remains cheaply available to those who do not like the chosen default.

- What is "cheap" is an empirical question.

- Choosing the correct default can be important in certain instances because people will then not move (due to a status quo bias simple transactions costs, the fact that they do not care much, or do not know the full range of options they might be missing.

- Because we don't know the market cost of altering many defaults, we try to fix specific, identifiable problems in privacy markets rather than choose a default and perhaps inadvertently and adversely alter markets that could have developed.

There are a large number of obvious and non-obvious defaults built into various privacy policies:

- Credit History use by lenders via the Credit Reporting Agencies (FCRA 1970) - now you can freeze your credit report if you choose, which essentially opts-you-out of the system of "instant credit to strangers."
- Credit Card record use by your card issuer - used for fraud detection and marketing purposes.
- Offers of Credit (opt-in and out) 1-800 number available to opt-out.
- Bank Records GLB - there are several defaults written into the law. Financial institutions are allowed to do certain things with your information whether you like it or not. You are told about it every year in a concise disclosure.
- Telephone Numbers (DNC Alaska 1996). More than 142 million phones have opted-out of many marketing calls through the 2003 National Do Not Call list.
- In April 2007, the FCC chose an opt-in default for consumers. Firms under FCC jurisdiction are now not able to share customer information with affiliated telemarketers, so those cable and telephone firms are apparently going to have to move their telemarketing in-house.
- Internet surfing and click stream information (cookies vs keystroke monitors vs malicious spyware).
- Retention of transactions data by merchants for future marketing. Data security is then important.
- Do-Not-SPAM if the person opted-out of future email (CANSPAM) and you must provide an opt-out process.

Negative Option marketing - an unexpected default

- Negative option transactions alter a typical default in most commerce - with negative options "silence is acceptance".
- Sellers of several frauds and some marketers of clearly legitimate products or services use (poorly disclosed) negative option marketing.
- Such options are cost minimizing when the default is almost always to repurchase (e.g., monopoly utilities, newspapers, ...).
- Where defaults matter, they need to be disclosed well especially if they are not the norm - (e.g., free-to-pay conversions).

- Many defaults affect the entire market and may affect future availability of choices. If we try to choose defaults to save a subset of consumers from falling victim to a decision-making foible, we need to seriously consider whether the choice might adversely affect consumers currently and reduce the number of options available in the future.