

# Regulating Marketing Delivery

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## 1. Introduction.

- Today's talk is about the regulation of marketing. I'm going to address:
  - How we regulate marketing delivery
  - The limits of those regulations
  - How technology can overcome those limits
  - Policy implications of the emerging technology
- Marketing is an interesting topic for 3 reasons
  - 1) Massive industry—depending on definitions, maybe a trillion dollar/year spent on marketing?
  - 2) Consumers get a lot of marketing—one estimate: 3000 ads/day
  - 3) People generally hate marketing—hate spam, pop-up ads and especially telemarketing
- I'll focus a lot on spam and telemarketing, but my talk applies to all forms of marketing delivery—pop-up ads, junk faxes, junk mail, broadcast/print ads, billboards, etc.
  - Assume marketing is truthful

## 2. Current Regulatory Structure

- We can group regulatory restrictions on marketing delivery into 4 categories
  - 1) Opt-in system—marketers cannot use medium to contact consumer without advance consent
    - Ex: junk faxes
  - 2) Opt-out system—default rule allows marketers to deliver marketing in a medium, but consumers can change the default
    - Type 1: opt-out by medium. Ex: do-not-call registry
    - Type 2: opt-out by marketer. Ex: telemarketing “do not call me again” right and spam unsubscribe function
  - 3) Mandatory metadata
    - Metadata = data about data
    - Regulations require marketers to disclose some information about their content to facilitate consumer decision-making
    - Ex: accurate email subject lines; mandatory “adv” labels on spam
  - 4) Consumers can't restrict marketing delivery in medium
    - Ex: billboards, broadcasting/print ads
- The current structure (and distinctions between media) has some logic to it (I'll do the best I can to represent this logic given that there are a lot of illogical exceptions/inconsistencies)
  - With junk faxes, marketers impose direct out-of-pocket costs on consumers (printer ink and paper). Therefore, we should prevent marketers from imposing unwanted costs

- Spam and telemarketing don't impose out-of-pocket costs on consumers, so we don't need to prospectively block them. However, consumers should have the choice if they want marketing in that medium or not
- In media where marketing is easily sorted, mandatory metadata can facilitate efficient sorting or even automated blocking
- Can't restrict delivery in media that cannot technologically customize content to individual consumers (Ex: broadcast/print ads; billboards)

### 3. Problems with Current Structure

- Marketing may conjure up negative sentiments, but it plays an essential role in our information economy
  - Marketing tries to match interested consumers and interested marketers
  - By definition, successful matches increase consumer and social welfare
  - Also, marketing can improve competition system-wide
- Marketing restrictions can prevent socially-beneficial matchmaking for two reasons
  - 1) Regulations give consumers imprecise ways to characterize their preferences
    - For example, do-not-call list
      - gives only 2 options (yes/no)
      - exceptions where the consumer can't opt-out (political and charitable calls)
      - consumers can't affirmatively communicate what types of telemarketing they might welcome
    - Improving preference disclosure is costly
      - Takes time to constantly update preferences
  - 2) Consumers have latent preferences they can't articulate prospectively
    - If the marketing never reaches them, these latent preferences may simply go unfulfilled

### 4. Solutions and Regulatory Implications

- What consumers really want is something that costlessly reads their minds and gets them helpful content and screens out unhelpful content
- Technology is developing such a mechanism—let's call it a personal companion. The companion will:
  - collect consumer's data inflows/outflows into a digital dossier
  - use the dossier to infer consumer preferences (even latent preferences)
  - sort/filter incoming content based on inferred preferences
  - affirmatively seek out content that satisfies consumer preferences
- Ex: MIT experiment—based on the user's location and past behavior, an AI-equipped cellphone predicted the user's next action 85% of the time
  - If device thinks user is about to get a Starbucks coffee, the device might
    - Display route and weather conditions
    - Tell the user about a Peet's coffee special
    - Tell the user that the new pearl tea place is now open
- Advantages of the personal companion over regulation

- Companion accurately infers preferences without consumer incurring disclosure costs
- Using the inferred preferences, the companion can accurately filter/sort
- Companion can automatically seek out relevant content that satisfies latent preferences
- Five policy implications of personal companions—one descriptive, four normative
  - Descriptive: because of accuracy-cost tradeoff, regulatory systems do a poor job of mediating content flows for consumers
    - Regulation of marketing deliveries will never produce optimal (or even very good) results for consumers
  - Normative:
  - 1) Companion acts like adware/spyware. Need to avoid overexpansive anti-adware/spyware laws that inhibit development of companion
    - Ex: Utah/Alaska anti-adware laws prohibiting pop-up ads triggered by user behavior
  - 2) To prevent marketers from redirecting marketing to unfilterable media, we may need regulations to encourage marketers to use filterable media
    - Ex: tax junk mail to encourage marketers to send filterable spam
  - Companion will have a really good and intensely personal database about its owner
    - 3) Need restrictions on unauthorized expropriation of dossier (i.e. malicious hackers)
    - 4) Need very strict limits on government access to dossier

With that, I welcome your comments and questions.