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’s 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.