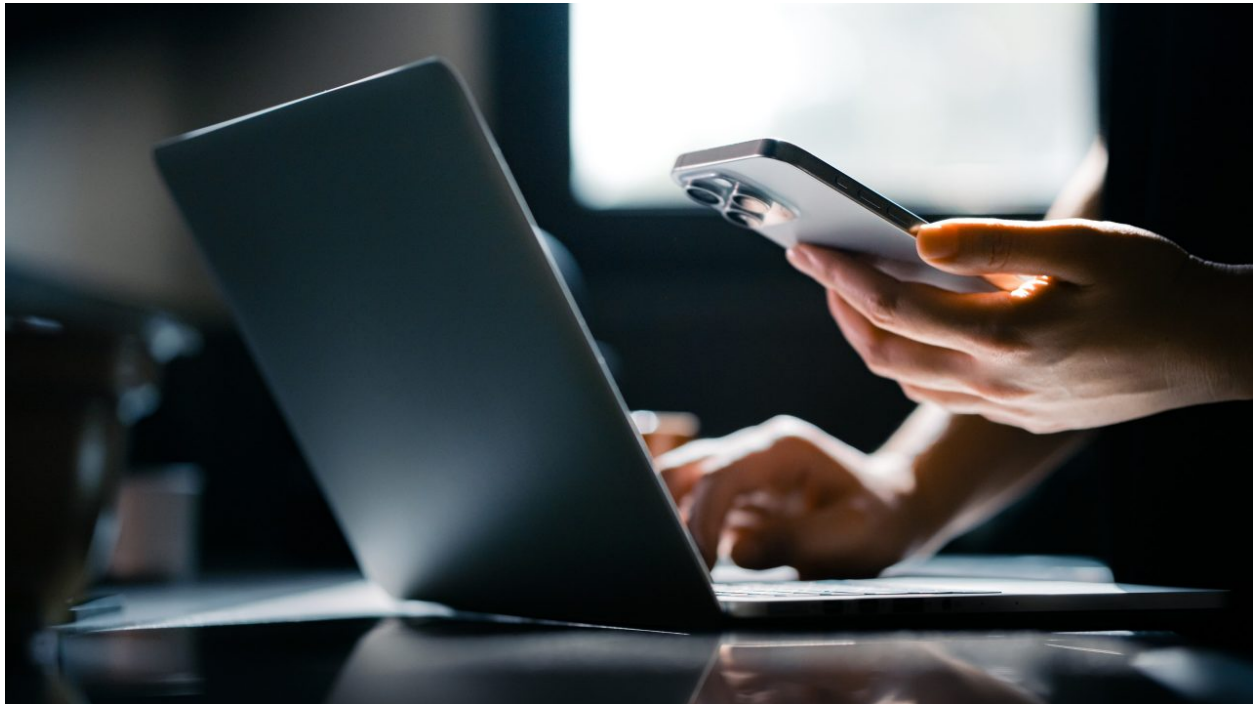


Data Privacy: Recent Research and Litigation Trends

Vildan Altuglu, Ian Lawrence Hoffman, and Silvio Ravaoli

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Recent high-profile trials involving large tech companies highlight new legal challenges for companies that collect, share, and use consumer data. This article reviews the academic literature on the possible pro- and anti-competitive effects of online data collection and sharing as well as alleged “dark patterns” in how consumers interact with user interfaces. This review is based on an October 2025 panel presentation hosted by the ABA Antitrust Section’s Committee on Privacy and Information Security; Silvio Ravaoli of Cornerstone Research moderated a discussion with Professor Natalie Mizik of the Foster School of Business at University of Washington and with Professor Andrey Simonov of the Columbia Business School. ¹

I. Personalization and Privacy: A Trade-off

Tech companies and online platforms can use the data that consumers generate when navigating online to personalize the content and ads that users receive. According to the economics and marketing literature, consumers trade off the benefits of personalization with the potential cost of sharing their data with third parties.

Consumers can experience benefits from an enhanced experience that personalization and targeted advertising may offer. Personalized content, for example, can be more relevant to consumers and help filter the vast amount of available digital content. However, this personalization typically entails sharing potentially private data with companies and other third parties. ²

Academic literature finds that consumers vary in how they value services such as personalized or location-based advertising and personalized content, relative to their potential costs, based on several factors including age and norms. ³ For example, adolescent consumers display a more favorable attitude toward a highly personalized advertisement than they do toward a less personalized advertisement. ⁴ Similarly, when an advertisement is more personalized, adolescent consumers become more engaged with the advertised brand and are more likely to share an advertisement with others. ⁵ How a consumer responds to targeted advertising also varies with their perception of that advertising. When they view targeted advertising as “intrusive” or “creepy,” for example, consumers can react negatively. ⁶ Furthermore, academic literature suggests that the mode of user consent collection can mediate how consumers feel about the net value of personalization (i.e., the tradeoff between the benefits of personalization and privacy costs of sharing their data). ⁷

Due to the complexity of consumer preferences, firms face challenges in identifying the optimal levels of personalization and information collection. ⁸ Consider the case of targeted advertising. Some consumers may prefer to receive targeted ads only if these ads align with their tastes and interests, some consumers may always prefer to receive targeted over non-targeted (or random) ads, while others may strictly prefer not receiving any targeted ads. Assessing these consumer

preferences is further complicated by the context-dependent nature of these preferences. ⁹

Economists have used natural experiments to evaluate this tradeoff and consequences. For example, following the passage of the Children’s Online Privacy Protection Act (COPPA), YouTube stopped serving personalized advertisements and turned off comments and notifications on children’s content. This change to the platform provided researchers the opportunity to analyze the effect of such a change in data collection and advertising policies on firm behavior and product offerings. After the change was implemented in 2019, several YouTube creators found that it was unprofitable to serve children and stopped doing so. Researchers found that the quantity and quality (as measured by originality of content, manual captioning, and viewer ratings) of children’s content on YouTube—and subsequent demand for such content—declined. This effect was most acute among smaller channels, which were harmed the most by the forgone personalization. ¹⁰

II. Personal Data and the Value of Privacy

Research that has attempted to quantify the value of privacy often finds that it is context-specific, malleable, ¹¹ and heterogeneous—some consumers really value privacy and take extreme measures to protect their privacy, while others trade personal information such as email addresses for small rewards. ¹² Consumers’ own valuations for privacy can also be hard to reconcile with their privacy choices, a phenomenon that academics have written about as the “privacy paradox.” Specifically, researchers have identified that while consumers often claim that they are concerned about their privacy and the collection of their personal information by third parties, they tend to be willing to exchange their personal information for small rewards or even freely. ¹³

Estimating a “market value” for personal data is also challenging because, unlike traditional goods or services, there are no legal markets for data where willing buyers and sellers can interact. Even if such a market were to exist, it would be difficult to assess the fair market value of a single consumer’s data. There are databases of consumer data that businesses can buy and sell—i.e., aggregate data on segments or groups of consumers such as recent homebuyers, expectant

parents, or country music fans—and for which prices can be observed. ¹⁴ However, prices for such data do not serve as good proxies for the value of a single consumer's data because it is hard to infer individual values from the database price. According to some researchers, the transformation of personal data into user metrics in “measurable and legible” formats is the key driver of value for these databases (e.g., value of compiling, cleaning, and verifying the data) as opposed to the summation of value of the individual records in the database. ¹⁵

III. Digital Interfaces and “Dark Patterns”

Best practices for obtaining consumer consent for the collection and sharing of their data have also been a subject of debate. By necessity, firms must choose interfaces, language, and defaults, which can affect how users interact with a webpage or mobile interface when they choose whether to provide consent for data collection and sharing.

Some researchers find that these interface designs can negatively affect consumers' decision-making. Recently, interface designs that produce such effects have been labeled as “dark patterns.” Although there is no single definition, “dark patterns” has been used to refer to “tricks used in websites and apps that make users do things that benefit a firm, but users didn't mean to,” such as giving consent for data sharing, buying, or signing up for a product. ¹⁶ For example, according to a recent study, “deliberate obstruction” of data collection and sharing options on a website, such as hiding rejection options behind additional clicks, can reduce how often consumers select these choices, compared to other website design choices. ¹⁷ The designs of interfaces however must take into account consumer navigation behavior and preferences. For example, academic and industry literature suggests that well-designed interfaces typically streamline complex information, reduce cognitive load, and allow users to navigate as they want and make decisions that align with their preferences. ¹⁸ Testing the potential role of interface designs in influencing consumers' decisions continues to be an active area of research.

IV. Market Power and Data Sharing

An additional area of academic research assesses whether “too much” consumer data in one firm’s hands can generate market power for that firm and harm a firm’s competitors. Recent regulations and legal judgments mandate that, in some circumstances, large tech companies share data with competing firms. For example, under the Digital Markets Act (DMA), adopted by the European Parliament in 2022 and effective since March 2024, large platforms are required to allow their business users to access the data generated by their activities on the platform. ¹⁹ In addition, the 2025 judgment in *United States v. Google* decision mandated that Google share certain search-related data with competitors. ²⁰

In light of these developments, academic researchers have begun to assess how such company-to-company data sharing practices affect product quality and firm outcomes. A recent study finds that sharing of consumer data among competitors increases the quality of competing products, but has only a modest effect on competitors’ market shares. According to the authors, this suggests that the demand side—and not the supply side—drives a firm’s market share and market power. ²¹ Because this paper focused only on the competition between two large search engines, only on desktop browsers, and only among users in the U.S., it is unclear whether the study’s results would generalize across competitors (e.g., based on size), device types (e.g., smartphones), or geographies. Indeed, a separate study with an experiment focused on use of smartphones finds that the effects of such data sharing on market share can vary across geographies, and suggests that brand awareness and popularity of mobile browsers contribute to differences in these effects. ²²

Endnotes

1. A video of this panel presentation is available at https://www.americanbar.org/groups/antitrust_law/resources/on-demand/data-privacy-latest-research-litigation-trends/.
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Authors



Vildan Altuglu
Cornerstone Research



Ian Lawrence Hoffman
Cornerstone Research



Silvio Ravaoli
Cornerstone Research

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