

RESEARCH SUMMARY

The Role of Institutions and Policy in Balancing Privacy and Information Sharing in the Digital Economy

Online service providers collect personal data to earn revenue from targeted advertising and for other purposes. This has raised concerns about privacy and data security and resulted in several states enacting comprehensive data protection laws and others considering doing so. Stricter privacy legislation, however, could reduce the incentives of digital platform companies to provide the enormous variety of information and online services free of charge.

In “The Role of Institutions and Policy in Balancing Privacy and Information Sharing in the Digital Economy,” Tracy C. Miller states that targeted federal regulation could reduce uncertainty and compliance costs, which would

- better protect the privacy of consumers in online exchanges, and
- maintain competition and incentives for innovation in the market for online services.

EXISTING POLICY ASSIGNS MORE RESPONSIBILITY TO USERS THAN TO COMPANIES

The transaction costs of the current “notice and consent” regime are too high. Users are overwhelmed by the number of privacy policies they are asked to read and respond to.

Consent can help consumers exercise their right to limit the personal information they share in particular contexts, but it cannot protect them from what firms might do with the data they have already collected.

RIGID LIMITS ON HOW DATA CAN BE USED MAY DO MORE HARM THAN GOOD

The growth and application of data analytics has been enormously beneficial for consumers and businesses in many sectors of the US economy. They also offer the potential for continued growth in productivity and innovation in the future. But regulation similar to the EU’s General Data Protection Regulation would impose substantial costs on firms and make it harder for small firms to compete against dominant platforms like Google and Facebook.

Even so, the United States would benefit from coherent national privacy legislation as long as it does not significantly hinder the exchange of data for online services. Such legislation would be better than states creating a costly “thicket of conflicting laws.”¹ Here, the Federal Trade Commission (FTC) plays an important role—it should focus federal regulation on lowering uncertainty.

PRESERVING THE FREEDOM OF FIRMS WHILE PROTECTING THE RIGHTS OF CONSUMERS

To maintain a dynamic and competitive technology sector, privacy regulation should be limited and narrowly focused on preventing harm. Miller argues for a permissive privacy policy that

- does not discourage collection and processing of personal information for online advertising;
- involves continued case-by-case regulation by the FTC combined with expanded legal liability for data controllers engaging in practices that subject users to specific and significant risk or harm; and
- preserves the freedom of firms to employ the data for innovative purposes while also being accountable to the users.

¹ Alan McQuinn and Daniel Castro, *The Costs of an Unnecessarily Stringent Federal Data Privacy Law* (Washington, DC: Information Technology and Innovation Foundation, 2019).