CALL FOR PAPERS

PROGRAM ON ECONOMICS & PRIVACY
GEORGE MASON UNIVERSITY ANTONIN SCALIA LAW SCHOOL with the FUTURE OF PRIVACY FORUM

DEVELOPING A BENEFIT-COST FRAMEWORK FOR DATA POLICY

Data flows are central to an increasingly large share of the economy. A wide array of products and business models—from the sharing economy and artificial intelligence to autonomous vehicles and embedded medical devices—rely on personal data. Consequently, privacy regulation leaves a large economic footprint. As with any regulatory enterprise, the key to sound data policy is striking a balance between competing interests and norms that leaves consumers better off.

Addressing "privacy" increasingly involves discussions of ethics, philosophy, and psychology along with law, economics, and technology. Finding an approach to future privacy concerns that supports the benefits of technology without compromising individual rights is an increasingly complex challenge. Not only is technology continuously advancing, but individual attitudes, expectations, and participation vary greatly. New ideas and approaches to privacy must be identified and developed at the same pace and with the same focus as the technologies they address.

Benefit-cost analysis ostensibly should play a central role in the legal frameworks on both sides of the Atlantic. In the U.S., Section 5 of the Federal Trade Commission Act defines as "unfair" a practice that "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." Similarly, the European General Data Protection Regulation authorizes the processing of personal data based upon a "legitimate interest" of an organization, requiring companies to perform a balancing test between individual risks and organizational rewards.

Yet, despite all this, surprisingly little academic attention has focused on establishing a firm foundation for the type of benefit-cost analysis that seems baked into privacy's regulatory framework. There is a sophisticated and rich literature on the economics of information, and a growing body of empirical work that attempts to measure consumers' willingness to trade privacy for other things of value. But these highly germane research endeavors often seem divorced from privacy regulation on the ground. Indeed, Acting FTC Chairman Maureen Ohlhausen recently emphasized the need "to deepen the FTC's understanding of the economics of privacy."

There are many open questions. For example, what metrics should be used to evaluate the success of data controls like privacy by design, notice and consent requirements, or data minimization? When is ex ante regulation superior to ex post enforcement? How should the FTC consider subjective privacy harms when assessing injury in Section 5 unfairness cases? When does a heightened risk of harm count as a substantial consumer injury? Does it matter who is watching—should automated monitoring be treated differently than observation by people? On the benefit side, how should a small likelihood

of a significant benefit, such as discovery of a cure for a lethal disease, measure against the certainty of small harm to a large group of individuals? How should the identity of the beneficiary – individual, company, state or society at large – weigh in the benefit-cost formula? What are the privacy benefits from being able to share or search for sensitive information online versus in person? How should we measure the benefits from tailored content and advertisements?

The Program on Economics & Privacy at George Mason University's Antonin Scalia Law School and the Future of Privacy Forum are seeking papers to explore the development of a benefit-cost framework in privacy policy. Scholars from an interdisciplinary background, including economics, law, public policy, business and marketing, are encouraged to submit abstracts for consideration.

Selected submissions will be presented at the Fifth Annual Public Policy Symposium on the Law & Economics of Privacy and Data Security Policy, on June 8, 2017, at the Antonin Scalia Law School, and published in a special symposium issue of the Journal of Law, Economics & Policy.

To be considered, please send an abstract outlining your proposed paper to papersubmissions@fpf.org by April 15, 2017. Selections will be announced by May 1, 2017. Selected authors will be expected to have completed a discussion draft by June 1, 2017, to circulate to conference participants. Final papers will be due on September 1, 2017.

Topics of special interest include:

- Developing metrics to measure the costs and impacts of privacy controls.

- Unpacking the economics of privacy using microeconomic tools.

- Calculating the value of privacy for consumers through analysis of competitive offerings.

- Benefit-cost analysis of innovative data uses.

- Understanding the concept of cognizable privacy harm constituting substantial injury under Section 5 of the FTC Act.

- Measuring consumer reactions to changes in tracking.

- Understanding the value of anonymity and pseudonymity in online interactions.

- Weighing the benefits of data use to individuals, organizations, communities and society at large.

- Assessing the possibility of market failures in privacy—to what extent will the market fail to produce the "correct" amount of privacy?

- What are the roles of neoclassical and behavioral economics in explaining consumers' relative unresponsiveness to privacy policies or the limited role for privacy as a dimension of competition?

- Are there impediments to the development of privacy offerings that play a larger role in competition among firms and platforms?

- What are the economic implications of privacy issues raised by artificial intelligence and machine learning?

Requirements:

Optimally, papers will contain between 5,000—8,000 words but must not exceed 10,000 words. Abstracts must be submitted to (papersubmissions@fpf.org) by April 15, 2017.