Data Mining, Unwanted Marketing & Attention Consumption

Eric Goldman

Marquette University Law School

eric.goldman@marquette.edu

http://eric_goldman.tripod.com

Data Mining Harms

- Predicates to data mining
  - Collection
  - Aggregation
  - Sorting/Profiling
  - Exchanges between aggregators
- Inchoate steps do not inherently create harm
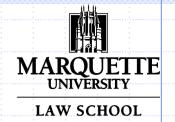 - Data subjects don't know
  - No "ripple effects"

Data Mining Harms

◆ Harm may occur after the predicate steps
  - Identity theft
  - Adverse inferences or judgments
  - Unwanted marketing

◆ We should focus on results, not predicate steps
  - Ex: "Data as property" controls data flows as a proxy for inhibiting an objectionable outcome

Economics of Marketing

- ◆ Marketing creates negative utility by consuming the recipient's attention
  - ▪ Also, "annoyance" and "objectionable content"
- ◆ But marketing also produces positive private and social utility
  - ▪ Producer and consumer surplus from transactions
  - ▪ Information can generate positive utility
  - ▪ Positive externalities from better informed buyers and more competition
- ◆ How can marketers optimally communicate with recipients with undisclosed heterogeneous interests?

Policy Implications

- Don't overweight attention consumption/"irrelevancy"
- Facilitate marketer targeting
- Facilitate recipient's predictive judgments
- Be careful mandating disclosures that consume attention