

FTC Informational Injury Workshop
December 12, 2017
Segment 6: Closing Remarks
Transcript

SPEAKER: Stick a panel. Electric headset.

[INTERPOSING VOICES]

ANDREW STIVERS: Well, I'm disappointed to discover that they just-- they noticed the flaw in the agenda and actually put an end time to my closing remarks. In the earlier agendas, it was just 4:45. That's when I start, no ending. But somebody discovered that, and they know me. So.

But most of you don't know me. I'm Andrew Stivers. I'm the Deputy Director for Consumer Protection in the Bureau of Economics at the FTC. And what that means is I head up the consumer protection mission for the Bureau of Economics.

And the Bureau of Economics, in terms of our consumer protection mission, we advise the Commission on its actions and its policies, and we do economic research to help increase our understanding of the market practices that help or hurt consumers. So f

The other way is also true. That we see personal and social transactions, conversations between people that because they're mediated through commercial information products, or because those conversations are able to be monetized in some way, really creates some complications for how we think about injury.

So an example of the latter would be in terms of our work in revenge porn. So there are these terrible interactions between former intimate partners, and that transaction, that kind of information being broadcast, or those harms being visited, are sort of amplified by the commercialization, the ability to monetize that information on some of these sites. The upside for us, of course, is that we can actually go after that because it's in a commercial space. So I think that was really incredibly important for that first panel and highlights some of the research and thinking that really needs to continue.

The second panel, in my mind, really highlighted the definitional issues. So there were some hypotheticals put forward. The panelists had, often, very different reactions to the hypotheticals and how they thought about those things. Some of those reactions, to me, seemed to be based on definitional problems.

So Paul, right at the very end, at least tried to articulate a definition of what he was thinking about with injury. The moderators tried to say, you know, this is what we're thinking about. But our interaction in this space, or our place in this space, often really informs what we think of as injury, what we sort of privilege as injury and what we don't. And so I think we need to do some more work in making sure we understand what it is that we're talking about.

And I'll highlight one issue. Is Jeff still here? I hate to call him out. This is the one thing I'm going to kind of harp on a little bit. He said that risk was not injury. If that's true, somebody needs to tell the insurance industry that they've got it all wrong. Because insurance is exactly about offering people the opportunity to mitigate a future potential, unrealized outcome ex ante before it actually happens.

So people are willing to take expensive actions to mitigate a future outcome, a potential future outcome. So to give Jeff his due, I think he was really thinking about what's the kind of injury that the FTC should go after. And maybe you agree with that, maybe you don't. But I think it's very important to think about if a consumer, if anybody is willing to take an expensive action ex ante to mitigate the risk of a bad outcome, that's potential risk. If a firm takes an action, has a practice that motivates me to go out and spend that money, that's harm to me.

So I think we just need to be a little bit more careful about how we think about those issues. And then when we think of-- when we are clear about that, I think we can really see across the entire panel that was up here that where we choose to fall in terms of what's an injury really becomes a policy question. And that's this whole stew of the questions about are we addressing privacy and data security as citizens, as consumers, as all of the above, or both of the above. So there's definitely an ongoing policy debate that needs to continue.

The third panel brought up a variety of interesting issues, and it was hard for me to pick one, because I think of the panels, they really covered the broadest range. But the one that I will

