

FTC Informational Injury Workshop  
December 12, 2017  
Segment 1: Opening Remarks  
Transcript

SPEAKER 1: For informational injury now. I've chosen to focus on consumer informational injury for two key reasons. First, in making policy determination injury matters. Although the free market is a powerful institution for improving human welfare, consumers can and do suffer injury from some business practices.

Government does the most good with the fewest unintended side effects when it focuses on addressing actual or likely substantial consumer injury instead of expending resources to prevent trivial or purely hypothetical injuries. We need to understand consumer injury to weigh effectively the benefits of intervention against its inevitable costs. Tom Leonard in his comment for the Technology Policy Institute argued this point quite nicely noting that privacy benefits us because it reduces harms from information misuse. But if there are no harms, then data use restrictions impose only costs and no benefits.

Policy makers and enforcers, therefore, need to understand how and how much consumers are injured by various practices involving the collection, use, and disclosure of consumers' information. More precisely, we need a framework for principled and consistent analysis of consumer injury in the context of specific privacy and data security incidents. The FTC's

We also brought a case against the operator of a revenge porn website whose posting of highly sensitive intimate photos and personal information generated threats to and harassment of victims. And consider also the news reports of at least one suicide associated with the data breach at infidelity promoting website Ashley Madison. A strong framework for assessing consumer injury in such cases will serve two purposes.

First, it will help us think critically as we monitor new technologies and data uses for potential consumer injury. Second, it will help establish criteria by which we can judge if privacy and data security enforcement is the proper tool to address a practice. Or if other mechanisms-- perhaps either other agencies, institutions, or laws would be better equipped to address any particular negative outcome. I believe our discussion today will help ensure we have such a framework.

First, we need to examine more thoroughly the range of injuries that can occur from privacy and data security incidents. We're generally familiar with the direct financial injuries from identity theft for example. We've also seen examples of unwarranted health and safety risk and intrusion into seclusion.

In our first panel today, we'll talk about the different kinds of injuries suffered by consumers because of privacy incidents and data security breaches. Second, we need to understand the key factors that matter in assessing injury from privacy and data security violations. Some obvious ones are the type of data involved, the magnitude of harm and the distribution of the injury, but what else?