

Digital Markets and Data: Competition, Consumer Protection and Privacy Concerns

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a closer look at the broader picture“

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1. Digital Markets, Data, and Privacy Concerns (1)

- Digitalisation, Internet, Big Data is a technological revolution
- + Exponential growth of generated data
- + How are data generated:
 - > voluntary (e.g. using „free“ services as search engine / social networks and paying with data)
 - > observed (cookies, tracking web surfing, sensor data ...)
 - > inferred (from other data ...)
- + Data as valuable resource: data mining / analytics
- + Digitalisation revolutionizes entire economy not only specific sectors (Schumpeterian process of „creative destruction“)

1. Digital Markets, Data, and Privacy Concerns (2)

- Potential huge advantages of using Big Data:
 - + Innovation of new products and services / more econ. efficiency
 - + Improvement of public policies (health, education, safety, security)
 - Privacy concerns about Big Data:
 - + transparent, predictable individuals (loss of autonomy)
 - + excessive data collection, user profiles
 - + harm through discriminatory strategies and behavioral targeting
 - Current discussions:
 - + e.g., privacy policy of Facebook ↔ data protection supervisors
 - + ECJ decision on EU-US data transfer pact
- ⇒ Technological revolution needs an institutional evolution:
What are the proper rules for the digital economy?

2. Economics of Privacy (1)

- Economics of privacy: new field in economics (Acquisti/Taylor/Wagman 2014)
 - What is privacy?
 - + control over /safeguard of personal data, linked also to autonomy (German Constitutional Court: „informationelle Selbstbestimmung“)
 - Privacy from an economic perspective: (information economics)
 - + Privacy: non-disclosure of information / control of the disclosure
 - + Persons have preferences for privacy:
 - > persons want to keep certain information secret for its own sake
 - > revealing of information might have negative consequences
 - + But: non-disclosed information can lead to economic inefficiency
- => Trade offs: balancing benefits and costs of privacy / disclosure !

2. Economics of Privacy (2)

- Effects of Big Data on privacy and consumers:
 - + firms can have much more information about their customers
 - + can lead to better products and services but also to strategies that might harm consumers (old insight: information is power)

- Example: Price discrimination strategies
 - + Online sale allows for real-time personalized pricing
 - + knowledge about willingness-to-pay of individual customers might lead to first-degree price discrimination (consumer rent)
 - + theoretical studies: so far no clear general results
 - > information might harm consumers but it depends on conditions, sometimes it is better for firms if they have less information
 - + empirical studies: so far not much evidence for personalized price discrimination strategies but this might change

2. Economics of Privacy (3)

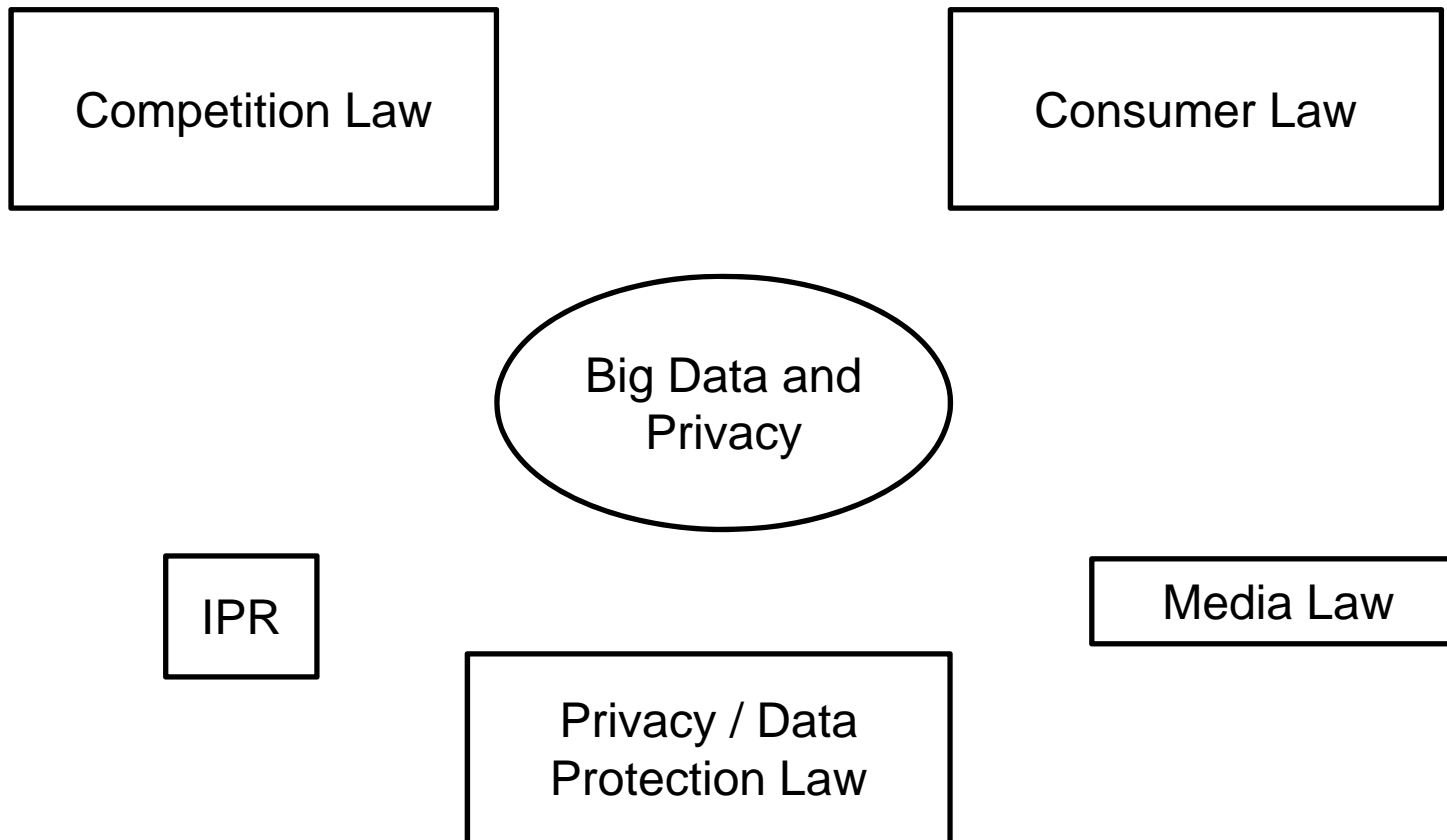
- How important is privacy to consumers / internet users?
 - + in surveys a large majority of users is concerned about privacy
 - + in their behavior many users are often not cautious about disclosing information and do not use privacy-enhancing technologies
 - => privacy paradox !
 - + directly related: how do users value their data / their privacy?
 - + results of many empirical studies:
 - > privacy behavior is context-specific, i.e. it depends much on the specific circumstances, what kinds of data, disclosing it to whom
 - > privacy preferences are very heterogeneous
 - > many users are not aware of extent of collecting data and behavioral targeting (=> intransparency and uncertainty)
 - > behavioral decision-making biases in regard to privacy
- => very differentiated demand for privacy / protection of personal data!

2. Economics of Privacy (4)

- Question: Market failure in regard to offer sufficient privacy options?
 - + efficient markets would offer very differentiated privacy options, including options that allow to limit collection or use of these data
 - + internet firms should offer much more differentiated privacy options,
 - > limiting / specifying to what extent firms collect and use data
 - > options to use the services with a monthly fee w/o collecting and using the data (or w/o advertising)
 - + requires much more clear information about collection/use of data
 - + empirical studies: privacy policies might not fulfill requirements of „informed consent“ (too long / incomprehensible privacy policy terms)
 - + concerns about excessive data collection

Conclusion: problem of lacking transparency / information and not enough choice in regard to privacy options for users !

3. Relevant Fields of Law



4. Competition Policy Perspective (1)

Can privacy problems be solved by competition policy?

- Google, Facebook etc. seem to be "quasi-monopolies" or have at least considerable market power (Apple? Amazon?)
- Competition problems:
 - + platform markets (multi-sided markets): large direct and indirect network effects with tendencies to natural monopolies
 - + largest platform / search engine might have best quality due to most collected data (dynamic economies of scale): => entry barrier !
 - + but: this structure might be efficient (Google etc. are very innovative!)
- => weak competition between platforms/search engines
- => can lead to non-fulfillment of privacy preferences and to excessive collection of valuable data

4. Competition Policy Perspective (2)

Competition policy options: (see also Monopolkommission 2015)

- Increasing competition between platforms / social networks etc.
 - + accumulated data as "essential facility": but access solutions problematic for privacy
 - + data portability (social networks) for users: reducing switching costs and consumer lock-in problems
 - Abuse of dominance (Art. 102 TFEU):
 - + Excessive collection of data as exploitative "price abuse"
 - + Remedies: minimum standards for transparency and privacy (extent and use of collected data)
 - + Are violation of individual rights of users (privacy) and IP owners itself an abuse? (leading to a competitive advantage)
- => Privacy problems cannot be primarily solved by competition policy!

5. Consumer Policy Perspective (1)

- Consumer policy:
 - + protection of consumers against market failure problems through information and rationality problems
 - + instruments: information duties, minimum standards for products / services, controlling standard form contracts
- Large information / intransparency problems about collection/use of data: => huge problem from a consumer policy perspective!
 - + users are not well-informed
 - + (long-term) costs for users are uncertain and unpredictable,
 - + might be behavioral biases and „vulnerable“ users/consumers
- Mutual reinforcement of competition and consumer problems?
 - + weak competition betw. platforms increases information problems, and information problems tend to reduce competition

5. Consumer Policy Perspective (2)

Policy options: (European Data Protection Supervisor 2014, Monopolkommission 2015)

- Lacking transparency about data "price" can be a "misleading" and therefore "unfair" commercial practice
- More information requirements about collected data and their use, and options for limiting data collection
- Regulation of standard form contracts in regard to privacy policies:
 - + minimum standards for privacy (options) in standard form contracts
 - + more privacy-friendly design of default rules
(more opt-in in regard to data collection instead of opt-out solutions)
- Data portability (e.g., between social networks)
- Combination of competition and consumer policies:
 - + Possibility of using consumer policy instruments also in competition cases (Art. 102 TFEU)

6. Data Protection Policy Perspective (1)

Data protection laws in Europe:

- EU General Data Protection Regulation (not enacted yet):
 - + overcoming the fragmentation of national data protection laws in EU (Single Digital Market)
 - + Basic principle: data sovereignty (consent principle)
 - + privacy as a fundamental individual right (ECJ: „right to be forgotten“)
- => will lead to far-reaching regulation of data protection in the EU!
- [- International problems and jurisdictional issues
- + Big difference betw. the basic approach to privacy in EU and US
 - + ECJ- decision about EU-US data transfer pact]

6. Data Protection Policy Perspective (2)

Data protection / Privacy laws from an economic perspective:

- Consumer policy perspective: (information problems => 5.)
- Property rights perspective:
 - + optimally defined bundle of rights in regard to (personal) data?
 - + Who shall have what rights about what kind of data, and to what extent transferable with or w/o consent of persons?
(including default rules in regard to opt-in or opt-out solutions, right to withdraw / correct data, as well as data portability)
 - + Data protection laws define and allocate these bundles of rights
 - + Privacy as fundamental right: => individuals should have strong property rights about his/her personal data (=> consent principle!)
 - + well-functioning digital economy needs clearly specified property rights in regard to data

6. Data Protection Policy Perspective (3)

- Preliminary results from economics of privacy:
 - + broad discussion: self-regulation \Leftrightarrow regulation
 - + privacy protection not only protects individual rights but can also increase welfare
 - + but: advantages / disadvantages of privacy and disclosure of data with a lot of complex trade off problems, which might require different sector-specific solutions (e.g., health, credit, insurance)
- Very interesting: Can there be markets for personal data that respect privacy rights and preferences?
 - + „propertization / licensing“ of personal data
 - + not giving away personal data for „free“ services in an intransparent way but selling them according to their specific preferences (privacy-enhancing technologies)
 - + what kinds of rules are necessary for such markets?

7. Conclusions

- We are at the beginning of a long process of developing the proper set of rules for the digital economy and data
- Strengthening of privacy rights of users/consumers in the digital economy is necessary, because
 - + market failure problems
 - + privacy protection necessary for safeguarding private autonomy
- But: difficult trade off problems with benefits of disclosure / data sharing and innovation in digital markets (need for economic analysis)
 - + different sectors / markets might need different solutions
- Necessary is an integrated approach of different policies:
 - + what is an optimal combination of competition law, consumer law, data protection law (and perhaps also intellectual property)?
 - + cooperation between different regulatory agencies