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