

The Brattle Wire

Telecommunications

Media

Entertainment

In this edition of The Brattle Wire, we feature a recent article, published in *Law360*, in which practice team members discuss quantifying the impact of ‘dark patterns.’ Additionally, we cover four papers that Brattle consultants will present at an upcoming conference, where one of our Principals will also be moderating a panel discussion on international and US privacy laws and regulations.

We hope you enjoy this read and have a relaxing end to your summer.

The Case for Quantifying the Impact of ‘Dark Patterns’

‘Dark patterns’ is a term to describe the various forms of design practices used by platforms – especially shopping websites – that induce users into making decisions that they would not otherwise have made.

In an article recently published by *Law360*, three Brattle consultants – Principal Dr. Steven Herscovici, Senior Associate Dr. Animesh Giri, and Associate Dr. Anita Walsh – explore two potential empirical approaches for quantifying the impact of dark patterns on purchase decisions: (i) a direct measure based on proprietary sales data and (ii) an experimental approach using survey evidence. A summary of the article is below.

In the constantly evolving digital landscape, discussions surrounding the use of dark patterns in user interfaces have garnered considerable attention from regulatory agencies, courts, and the public.

Within the last year, policy briefs from the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB) have recognized dark patterns for their potential to impact consumer behavior. In addition, regulatory agencies and consumers have brought legal actions against well-known companies such as Apple, Google, and Amazon.

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Amid the mounting interest and legal consequences involving alleged dark patterns, it is imperative to recognize – as detailed by the FTC’s 2022 report “Bringing Dark Patterns to Light” – the wide array of practices that may qualify as dark patterns. It is equally important to recognize that these practices may vary substantially in the extent to which they affect consumer behavior. These insights underscore the need to adopt a systematic approach to quantify the impacts of specific practices under investigation in order to determine the appropriate level of deterrence.

In the article, we aim to contribute to the ongoing discourse surrounding dark patterns and consumer protection by delving into methods for quantifying the impacts of specific dark patterns.

What Are Dark Patterns?

The term “dark patterns” describes “design practices that trick or manipulate users into making choices they would not otherwise have made and that may cause harm.” They are estimated to be present in more than 10% of online shopping websites. Dark patterns leverage consumers’ cognitive biases to influence their conduct and/or delay access to information needed to make fully informed decisions. They can range from “irritat[ing]” to unlawful deception.

For instance, repeatedly requesting a customer to do something the company prefers could be seen as nagging (e.g., repeatedly showing a pop-up asking users to sign up for paid service), while putting additional items into a customer’s cart without their knowledge is generally thought to be a more overt form of

deception. More recently, observers have identified practices powered by machine learning algorithms that go a step further by changing consumers’ behavior over time to take actions that are misaligned with their interests. In many contexts, the term itself either presupposes or is based on a determination that a business practice at issue deceives consumers.

The FTC, regulatory agencies, and the Better Business Bureau have challenged numerous forms of conduct that companies have employed as being dark patterns. The CFPB has recently characterized dark patterns as a deceptive tactic that “materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service.”

Enforcement agencies are addressing complaints of financial harms caused by deceptive tactics, including unauthorized charges, illegal subscription practices, imposing “unreasonable delays” on consumers’ cancellation efforts, ongoing billing that is difficult to cancel, and violations of free trial terms.

Quantifying the Impact of Dark Patterns

Given the prevalence of these business practices by new and established companies, it is reasonable to infer that they influence consumers’ purchasing behaviors. Quantifying that impact, however, is ultimately an empirical matter. In this article, we discuss how actual data and surveys can be used to quantify the impact that these practices have on consumer behavior.

See the full article [here](#) on Law360.

TPRC Papers: Abstracts

At the 51st Research Conference on Communications, Information, and Internet Policy (TPRC) in September, Brattle consultants will be presenting four papers. Additionally, Principal Dr. Paroma Sanyal will moderate a panel, "The Economics of Privacy." See below for more information on the paper abstracts.

FORECASTING WIRELESS BROADBAND CAPACITY SHORTFALLS

Paroma Sanyal, Coleman Bazelon, Ryan Taylor, Megan Sullivan, Shea Peretz, and Peter Christensen

Mobile data demand is exploding, with aggregate data downloaded quadrupling in the last seven years. In this paper, Brattle's consultants present a framework using demand forecasts and controlling for supply-side factors to forecast net demands on mobile wireless broadband infrastructure. They focus on forecasts of wireless data needs in the coming years and estimates of the supply of future network capacity, finding that shortfalls in network capacity are likely.



PRINCIPLES OF SPECTRUM SHARING

Coleman Bazelon, Paroma Sanyal, and Yong Paek

Today, the ubiquity of mobile devices and the ever-growing demand for mobile data make radio spectrum an increasingly important public resource. As spectrum is repurposed for new, higher-valued uses, policymakers face choices about how to get the most value from a given band of spectrum. In this paper, Brattle consultants develop a "Principle of Spectrum Sharing" to help guide policymakers through this decision-making process.



PRODUCT BUNDLING AND EXPLOITATIVE PRICING IN PRISON TELECOMMUNICATIONS CONTRACTS

Coleman Bazelon, Paroma Sanyal, Preetul Sen, Natalie Selfe, and Ece Yegane

The Federal Communications Commission (FCC) regulates the interstate rates for inmate calling services, and over the years, has made some progress in pushing the rates down from egregiously high historic levels. While it has taken action towards regulating the voice services provided by the prison phone industry, other services that are often provided by the same companies remain mostly unregulated. This paper builds a comprehensive picture of all the telecommunications services provided by the prison phone industry, and examines the hypothesis that regulating a subset of them will lead to higher rates for the other parts of the bundle.

INMATE CALLING SERVICES COST MODEL

Coleman Bazelon, Paroma Sanyal, Preetul Sen, Natalie Selfe, Shea Peretz, and Sarah Matheson

For decades, the FCC has been trying to regulate prison phone rates with only marginal success. Recent data collections suggest, on their face, that the cost of providing a minute of interstate phone service to an inmate costs significantly more than what a non-incarcerated person would pay. This paper develops a facility-specific cost model – based on characteristics such as location, average daily population, type of facility, and services provided – to calculate total expected costs per facility.

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For additional information about our work and expertise in this practice, please visit brattle.com/practice/telecommunications-internet-and-media.



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ABOUT BRATTLE

The Brattle Group answers complex economic, regulatory, and financial questions for corporations, law firms, and governments around the world. We aim for the highest level of client service and quality in our industry. Brattle has 500 talented professionals across four continents. For additional information about our experts and services, please visit brattle.com.

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