

## ECONOMIC / PROPERTY RIGHT APPROACH TO PRIVACY

Ram Avrahami, March 2001

From an economic perspective, the conflict over privacy originates from unaccounted costs to consumers. While businesses desire to efficiently utilize economic resources available to them (i.e. personal information), consumers, who are excluded from participating in the market for personal information, bear negative consequences from that use that businesses over-look, undervalue or ignore. Economics suggests that to reach the socially optimal use of resources, all costs and benefits should be incorporated into a market mechanism, preferably through product prices.

The traditional approach to privacy attempted to set rules that eliminate or reduce the negative consequences from the use of personal information. Even when not fully eliminating all costs, regulations can be economically viewed as externalities that attempt to reach the equilibrium point by encumbering businesses with costs that substitute for the unaccounted consumer costs. This approach is generally inefficient, since much of the harm to consumers is subjective and individual, while the rules are objective and uniform. Further, following their economic incentives, organizations will resist regulations and be slow to adopt guidelines that increase their costs and reduce the value of the information in their hands.

The Economic / Property Rights approach, attempts to resolve the privacy conflict by bringing consumers as players into the market and giving them property rights (or exclusive commercial rights) over their information. By forcing other players to bid for that resource, consumers can easily recover their costs or even decide if and how to participate in the market. Infomediaries, as consumer agents, would enable the market to perform efficiently and reach the socially optimal point. In this approach, economic incentives make businesses quick in adopting privacy measures (or they won't be able to satisfy consumers to let them use the information), and social equilibrium would be reached faster.

The Economic / Property Rights approach is similar to the opt-in approach, as both claim that all socially beneficial uses of personal information can happen with consumer consent. The Property Rights approach is more market-efficient of the two, as privacy issues are internalized into the market and not left out as external regulations. Similar market and property rights rationale has also been used with other valuable information, resulting in various intellectual property laws (the "If Value - Then Right" principle of Prof. Dreyfuss).

Giving individuals property rights over personal information is also consistent with law, logic and ethics. All laws, explicitly or implicitly, allow or even require consumer input into uses of personal information. Logically, ownership of information is better given to the information subject rather than the information compiler, since it is much easier to prove that information is *about* someone than it was *compiled by* someone. Ethically,

and as the public overwhelmingly supports, it is only fair that people and not others control their personal information.

Privacy includes other considerations besides money. Only one of Prosser's four torts of privacy is about commercial use of information. But the commercial considerations are paramount today, and solving them will make it easier to handle the others as well. As Varian says, "It is worth observing that the Fair Information Practices principles would automatically be implemented if the property rights in individual information resides solely with those individuals". The Economic / Property Rights approach can be the most effective approach to tackle the privacy conflict today.

References:

- \* William L. Prosser; Privacy, A legal Analysis; California Law Review 48: 338-423, 1960
- \* Hal R. Varian; Economic Aspects of Personal Privacy; UC Berkeley, December 6, 1996; <http://www.sims.berkeley.edu/~hal/people/hal/papers.html>
- \* Kenneth C. Laudon; Extensions to the Theory of Markets and Privacy: Mechanics of Pricing Information; New York University 1997; <http://www.ntia.doc.gov/reports/privacy/selfreg1.htm#1D>
- \* Rochelle Cooper Dreyfuss; Warren and Brandeis Redux: Finding (More) Privacy Protection in Intellectual Property Lore; 1999 Stanford Technology Law Review 8;
- \* Pamela Samuelson; Privacy As Intellectual Property?; 52 Stanford Law Review 1125, May 2000;