Law’s Consumers and Platform Users

How competing constructions of humans legitimise online advertising

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An apparent inconsistency...

Rational actor (privacy self-management)

vs

Predictably irrational actor (behavioral advertising)
Who is the actor that is presumed and codified in the governance of online digital platforms?
<table>
<thead>
<tr>
<th>Consumer</th>
<th>Platform Terms of Service Agreement</th>
<th>User</th>
</tr>
</thead>
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<td><strong>Data privacy</strong></td>
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Consumer Protection

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- Behavioural economics
- Human as boundedly rational reasonable person

Data Privacy

- Notice and choice + Data subject rights
- Informational self-determination
- Human as narrator of own identity

Advertising’s two-faced consumer

- Simultaneously rational and a malleable pattern of behaviour
- Decisions as probabilistic optimization outputs amenable to continued prediction and management
- Identity inscrutable to human intelligence

Notice and Choice

- RTC Theory
- Stable, transitive preferences
- Utility seeker
- Human as rational chooser

Consumer User

- Data privacy
- Notice and choice + Data subject rights
- Informational self-determination
- Human as narrator of own identity
What does this contradiction achieve?

- Orients policy concerns around enhancing individual control

- Sustains a social relation to “user” that treats humans as a resource to be mined for data and attention

- Embeds subjects in market institutions through calibrations of human rationality / enables a legal market calculation
  - Sustains the two-faced consumer