

Online consent and the epistemology of big data

Many of our interactions in digital economy are mediated through the so-called notice-and-consent model: websites, platforms, etc. offer us (typically zero-priced) services under certain conditions, to which we may either consent, and use the service, or not consent, and not use it. What we consent to is, typically, the collection and use of our data by the companies.

Many theorists think this model is deeply flawed. They argue that our consent is (typically) at best degenerate, and at worst meaningless. This is because of the numerous epistemic deficits that ordinary users display when they decide to consent to giving up their data for access to online products and services. These deficits have a few different sources: first, people simply don't read what they're agreeing to; second, they frequently don't understand the terms they do read; third, they have information-processing biases that prevent rational evaluation of the terms; fourth, the nature of big data processing is such that predicting the likely outcomes of sharing any particular bit is impossible. In light of these deficits, so the argument goes, we need to change the laws surrounding online consent and private data collection.

This argument proves too much. If it's true that human beings suffer from the aforementioned deficits, then they will be unable to reliably select, or subsequently hold to account, the politicians or experts choosing the new legal regime surrounding private data and consent. On the other hand, if the users can overcome their epistemic deficits, it is still preferable, morally and prudentially, to leave decisions about their data in individuals' own hands, rather than impose new policies. This is for three reasons: normatively, coercive policies are presumptively unjustified; epistemically, people have few incentives to learn about public policies; institutionally, it is close-to-impossible to give feedback to politicians on just one policy out of the bundle they offer. The presumption, then, should be in favor of as little government involvement in data policies as possible.

Relevant literature:

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