

Robert W. Hahn and Anne Layne-Farrar

*The Benefits and Costs of Online Privacy Legislation*

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Abstract by Carl Tugberk

In this age of rapid technological advancement and increasing reliance on the Internet for communication, information, and business, Robert W. Hahn and Anne Layne-Farrar tackle the fresh and growing debate over regulating online privacy. Before analyzing the vast array of issues arising from this debate, Hahn and Layne-Farrar provide the basic framework by defining privacy and privacy protection (notice, consumer choice, access, security, and enforcement). They further establish this foundation by identifying the four major “camps” of the debate and their respective approaches to the problem: the anti-surveillance camp, the tradable rights camp, the free-flow of information camp, and the utilitarian camp. In general, the anti-surveillance camp favors policy that requires websites to obtain explicit consumer consent through an opt-in mechanism before using any information collected from visitors. The tradable rights camp supports granting individuals the right to openly trade certain information with commercial data collectors. Contrary to the anti-surveillance camp, the free-flow of information camp argues that it is inefficient to use an opt-in mechanism and that consumers will benefit in a market in which individual information is used to target advertising. Lastly, the utilitarian camp, of which Hahn and Layne-Farrar are a part, suggests that online privacy issues and proposals should be analyzed on a case-by-case basis using cost-benefit analysis.

After discussing the diverse viewpoints on regulating online privacy, Hahn and Layne-Farrar analyze existing and proposed regulation. From this analysis, they developed several conclusions about policy development. First, they conclude that the government should carefully evaluate the economic effects of a policy in order to avoid creating inefficient results and unintended consequences. Naturally, Hahn and Layne-Farrar’s aversion to hastily creating new policy supports their belief that the government should fund the examination of existing privacy legislation to understand the actual costs and benefits of such regulation to individuals. However, if the government does implement new privacy regulation, it should tailor that regulation to specific issues to avoid unnecessary costs, unconstitutional policy, and unintended consequences. In general, they suggest that the government can avoid these concerns by regulating online privacy in the same manner as offline privacy. In addition to these more general conclusions, Hahn and Layne-Farrar give the government advice on the individual elements of privacy protection. Specifically, they suggest that the government should not regulate notice, that it should carefully consider prescribing consumer choice mechanisms, that it should not impose access requirements, and that it should cautiously establish enforcement policies. In general, Hahn and Farrar believe that the government can best serve individuals by creating greater access to information regarding online privacy and avoiding the potential negative consequences of ill-conceived regulation.