

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

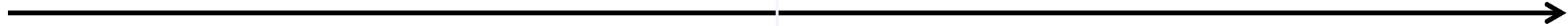
Predictably irrational actor (behavioral advertising)

Who is the actor that is presumed and codified in the governance of online digital platforms?

Platform Terms of Service Agreement

Consumer

User



Notice and Choice

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

Consumer protection

- Information rules
- Behavioural economics
- Human as boundedly rational reasonable person

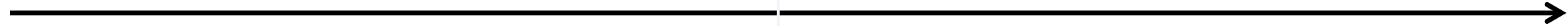
Data privacy

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

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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

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