Chapter 13

DATA MINING AND ATTENTION CONSUMPTION

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Abstract: This Essay challenges the prevailing hostility towards data mining and direct marketing. The Essay starts by defining data mining and shows that the only important step is how data is used, not its aggregation or sorting. The Essay then discusses one particular type of data use, the sending of direct marketing. The Essay establishes a model for calculating the private utility experienced by a direct marketing recipient. The model posits that utility is a function of the message’s substantive content, the degree of attention consumed, and the recipient’s reaction to receiving the message. The Essay concludes with some policy recommendations intended to help conserve recipients’ attention while preserving space for direct marketing tailored to minority interests.

Key words: data mining, database, data warehouse, privacy, advertising, marketing, email, spam, telemarketing, direct marketing, direct mail, junk mail, customer relationship management (CRM), economics of attention, economics of marketing, externalities, Coase Theorem

1. INTRODUCTION

The term “data mining” has developed a pejorative taint. Commentators frequently assume, without explication, that data mining is wrong or harmful, as if the harms of data mining are so universally acknowledged that no one would question the assumption.

1 See, e.g., Andrew J. McClurg, A Thousand Words Are Worth a Picture: A Privacy Tort Response to Consumer Data Profiling, 98 NW. U. L. REV. 63
This Essay questions that assumption. First, I question how data mining, without more, creates consequential harm. If defined properly, data mining appears to be merely a prerequisite to possibly objectionable activity. Second, I question the prevailing hostility towards direct marketing assisted by data mining. While direct marketing imposes some negative utility on every recipient by consuming some of the recipient’s scarce attention, direct marketing can enhance overall social welfare. Data mining specifically can increase the likelihood that a particular message enhances social welfare.

Direct marketing’s effect on attention leads to three policy observations. First, we should not allow attention consumption concerns to foreclose socially beneficial communications between minority interests. Second, we should not discourage marketers from targeting their marketing communications, including using data mining as appropriate. Finally, we should not discourage the display of summary/preview content that recipients can use to make efficient sorting decisions.

2. DATA MINING AS AN INCHOATE ACTIVITY

Although the term “data mining” is often treated as a term of art, it actually has multiple definitions. To understand the term, we need to understand a bit about database operations as illustrated in the following figure:

![Figure 13-1. Model of Database Operations](image)

To build a database (or “data warehouse”), a data controller first obtains data, either from interactions with data subjects (such as by asking the data subject to volunteer information or by recording interactions between the

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3 See McClurg, supra note 1, at 71 & n.50.