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**MEMORANDUM**

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**TO:**

**FROM:** EMILIE SCHULZ

**SUBJECT:** THE USE OF CBA IN ANALYZING PRIVACY POLICY ISSUES

**DATE:** 10/15/2010

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Information privacy is a growing concern for many as technology makes it easier to store, access, and share sensitive personal information, such as the information that is essential to medical and financial records and can be revealed during a person's time online. As policy makers and analysts review the growing number of proposed privacy laws and regulations, it is important to recognize that there are limitations and risks involved in using cost-benefit analysis (CBA) to study privacy issues and their potential solutions. First, privacy is a *right* enshrined in U.S. code, Articles IV and V of the Constitution, and volumes of case law, and CBA risks not properly respecting the obligations inherent in such a right. Second, CBA cannot treat equally the various costs and benefits of privacy issues, especially because many of these costs and benefits are not driven by traditional market forces. While analysts should be cautious when applying CBA to privacy issues, it should still be considered useful when employed critically and as part of a larger analysis.

#### **PROBLEMS OF USING COST-BENEFIT ANALYSIS IN STUDYING PRIVACY ISSUES**

##### **Privacy as a Right**

Privacy is a right that belongs to every citizen, not a privilege that can be ignored or taken away when the benefits of doing so suits one group's needs or desires. A company cannot sell their customers' credit card data simply because the revenue will be good for the company for

the reason that consumers have the right to confidence in the security and confidentiality of their information. The right to privacy is well established in U.S. common law and legal theory, as a “reasonable expectation of privacy.” While privacy is considered a right, it has been legislated from the bottom up, resulting in piecemeal regulation of privacy issues and plenty of room for disagreement on the extent and applicability of the right. If these future debates are carried out using a straight utilitarian thought, such as cost-benefit analyses, policy makers risk deciding that something is morally right and acceptable even if it breaches a person’s right to privacy.

#### **Equal Treatment under Cost-Benefit Analysis**

If an analyst chooses to apply CBA to a privacy issue, she must proceed cautiously, as privacy regulation does not always lend itself well to this type of analysis. A well done cost-benefit analyses measures all costs and benefits using a common unit of measurement, often money. Some aspects of privacy are easily assessed using dollar value, whether it is the loss of money due to a drug fraud targeted at the elderly, or the expected revenue of using personal information to develop targeted behavioral advertising. However, privacy issues also involve costs and benefits that are not driven by the market and, as a consequence, are difficult to assign a dollar value. These types of costs and benefits could include loss of trust in the privacy violator and in the general concept of privacy or feeling unsafe physically and mentally. With such a disparity, it becomes difficult to accurately compare different costs and benefits and one risks favoring those issues that are easily calculated while under-evaluating other issues.

The inability to determine on a perfect common unit of measurement for all of the costs and benefits for a privacy issue also means that different groups affected by privacy policy risk being treated unequally. The costs and benefits accrued by companies that maintain personally

identifiable information are often very easily calculated using dollar values. While similar calculations are limited for individuals affected by privacy regulation, so their needs and utility could be undervalued compared to the companies'. Equality, like privacy, is an innate right that all people have. Doing a straight cost-benefit analysis of a privacy issue could take that right to equal consideration from those whose costs or benefits are not easily translated to a dollar value. In many cases, this will result in a calculation of strong benefits for large companies who can save money by not implementing privacy protection norms or who can earn money by not respecting the privacy of people's information.

#### **THE PLACE OF COST-BENEFIT ANALYSIS IN PRIVACY POLICY**

The right to privacy is well established in U.S. common law and legal theory, but the appropriate application of the "reasonable expectation of privacy" legal standard can be very controversial. It is due to this controversy that privacy policies and regulations are in constant flux and must be analyzed often. Cost-benefit analysis is useful in studying privacy policy issues and recommendations, but must be used with care. It should not be used as the sole, or even the primary, tool in an analysis, but in conjunction with additional tools and methods that take into account the concept of rights and the moral obligations associated with privacy. When CBA is applied care should be used to ensure that all costs and benefits are being valued fairly and accurately.