

Designing research and services for possible use in consumer protection enforcement

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Abstract—Many researchers and technologists are interested in the possibility of their work generating not only a scientific or financial contribution, but also a positive material impact through avenues such as consumer protection action. In many cases, it may be helpful to share their research data directly with regulators. However, there are consent, evidentiary, strategic, and other design concerns for generating data that bridges gaps between academic, product, and regulatory agencies. We propose a brief informational paper that outlines considerations for researchers and developers designing with enforcement in mind, without compromising a project’s primary scientific or consumer protection goals.

Index Terms—consumer protection, enforcement, privacy, law

1. Background

Many researchers and technologists are interested in the possibility of their work inciting legal consumer protection action. In many cases, it may be helpful to share research or product data directly with regulators. However, there are consent, evidentiary, strategic, and other design concerns for generating data that bridges gaps between academic, product, and regulatory agencies.

Norms for academic evidence differ from evidence used in legal and enforcement settings [1]. While computer science research often focuses on the scale and replicability, a single, rich case study may be sufficient for inciting an enforcement action. While a survey question might be designed to elicit a general perspective on privacy, careful wording might enable the response to illustrate the existence of legal harm, often a prerequisite to taking enforcement action [2].

We propose an informational brief that outlines considerations for researchers and developers designing with enforcement in mind. Drawing from empirical legal studies [3] and our own experience at Consumer Reports and Permission Slip¹ working with enforcement agencies, we will discuss how to select topics ripe for enforcement, identify appropriate agencies, and generate useful data without compromising a project’s scientific, ethical, or consumer protection goals.

1. Operated by Consumer Reports, Permission Slip is a service for managing consumer privacy rights. <https://www.permissionslipcr.com/>

2. Topics of Consideration

- **What agency has jurisdiction?** U.S. federal agencies are often focused on a specific topic (health, finance). State attorney generals sometimes advocate for federal laws in addition to their state purview.
- **Is your target strategic?** Enforcement agencies have extremely limited resources. Look for signs as to whether your target topic is a current priority for an agency.
- **Is your data relevant?** Was your data collected from consumers covered by law? Did you retain timestamped copies of source materials such as company screenshots? Before collection, consider whether aggregated, pseudonymized, or identifying data is sufficient to incite a complaint.
- **Are the consumers on board?** If your data involves or was from people, do participants understand that their data might be used for enforcement? For many agencies, you may only need evidence representing one person to file a formal complaint.
- **Where is the harm?** Enforcement and litigation is generally more likely when a wrongdoing is accompanied by a harm. Can your work help articulate a concrete harm? Incorporating a qualitative component in studies might illustrate harm through storytelling.
- **Are you willing to wait?** Many agencies have restrictions on how to initiate informational meetings and what they can say regarding investigations. If you’re not willing to wait, private or class action litigation may be another avenue to consider.
- **Have you invested in relationships?** To ensure your work is relevant to enforcers, consider cultivating relationships by contributing to public comments, networking at conferences, and attending events hosted by the agency.

Acknowledgments

U.C. Berkeley’s Serge Egelman, University of Calgary’s Joel Reardon, and many Consumer Reports colleagues contributed thoughts on this topic. This work was funded by the Omidyar Network, the Sloane Foundation, Craig Newmark Philanthropies, and the Ford Foundation.

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