

Dealing with Dynamism: How New Products Challenge Old Institutions



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Overview

- New Product Development: Implications
- Possible Policy Responses
- Caveat: Personal Views



General Phenomenon

- Relatively Rapid Change in Technology and Product Development
- Relatively Slow Change in Public Policy Institutions
 - Caveat: Sudden and sometimes sweeping adjustments in the face of crisis



Threats From Serious Fraud

- Declining Cost of Committing Fraud
- Technological Proficiency
- Global Operations
- No Concern for Reputation
- Vulnerabilities of Enforcement Systems



Impact on Duties of Legitimate Firms

- Illustration: Data Security
- Expanded and accelerated flow of data
 - Within and across firms
 - Within and across jurisdictions
- Standard of Care
 - Duty to encrypt?
 - Due diligence in evaluating transferees?



Consequences of Product Complexity

- Agency Expertise
- Consumer Understanding
 - Advertising representations
 - Role of intermediaries
- Information-Sharing Across Firms and Across Jurisdictions



The Policy Archipelago

- U.S. Federal Bodies
 - Civil
 - Criminal
- States
 - Attorneys general
 - Consumer protection departments
- International



Fragmentation

- Regulatory Anachronisms
 - Example: Common Carriers
- Imperfect Cross-Agency Cooperation
 - Among federal bodies
 - Between federal and state bodies
 - Across borders



Knowledge Requirements

- Tracking New Technology and Product Development
- Policy Research and Development
 - Studies
 - Ex post assessments
- Adjustments in Agency Human Capital
- Need to Respond Quickly in Crisis



Possible Policy Responses

- More Effort to Punish Serious Fraud
- Expanded Cooperation at Home/Abroad
- Investments in Building Knowledge
- Better Statutory Platform: US Safeweb and Common Carrier Exemption
- Changes in Mix of Skills
- Greater Competition/Consumer Protection Integration



Closing Thoughts

- Need for Continuous Institutional Improvements
- Institutional Design Shapes Substantive Policy Outcomes
- Pursuit of Better Practices