

FTC's "Measuring Consumer Injuries and Benefits" Workshop: Key Takeaways

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On February 26, 2026, the FTC convened a full-day workshop titled "Measuring Consumer Injuries and Benefits" featuring opening remarks from Chairman Ferguson and five academic panels. The workshop reflected the FTC's embrace of empirically driven quantitative assessments of consumer harms and benefits in its privacy and data security enforcement program. At the same time, recent security cases reaffirm that the Commission continues to view unfairness as an appropriate basis for enforcement, even where consumer injury cannot be precisely quantified. Here's what we learned.

Chairman Ferguson Signals Evidence-Based Enforcement

Chairman Andrew Ferguson opened with two central questions: "How do we value data?" and "How do we make enforcement decisions that will survive judicial review?" These framing questions, coupled with panel discussions throughout the day, suggest the Commission will continue to prioritize enforcement actions supported by demonstrable and quantifiable consumer injury.

Chairman Ferguson made clear that the FTC aims to "promote consumer choice and a vibrant economy" and cautioned against assuming any inherent conflict exists between consumer privacy and technological innovation.

Panel Themes: Privacy Economics and Consumer Welfare

Across multiple panels, experts grappled with a familiar question: How can policymakers quantify and measure privacy harms? MIT's Alessandro Acquisti framed the fundamental tension succinctly, emphasizing that the core challenge for policymakers lies in weighing largely intangible, hard-to-quantify privacy harms against technological benefits that are tangible and easily measured.

The roster of panelists skewed heavily toward academic economists, including several voices known for skepticism toward aggressive privacy regulation. For example, Howard Beales (professor emeritus at George Washington University and former FTC Bureau Director) and Omri Ben-Shahar (professor at the University of Chicago) presented research making the case for the benefits of data sharing and the potential harms of privacy restrictions.

The workshop also devoted significant attention to behavioral advertising, with panelists presenting research on the economic benefits of behavioral advertising, including lower customer acquisition costs, revenue support for free online services, and increased consumer satisfaction with products implementing personalized ads. A panel titled "The Costs and Benefits of Behavioral & Contextual Advertising" was dedicated almost entirely to the benefits of interest-based and contextual advertising, with little discussion devoted to potential negative consequences. In particular, panelists

detailed research documenting broad negative economic effects of GDPR and Apple's implementation of App Tracking Transparency (ATT). Taken together, the conversations reflected a view that the Commission is receptive to industry positions that the social utility of responsible, interest-based advertising practices outweigh individualized risk or harms.

Closing Signals

Bureau of Consumer Protection Director Chris Mufarrige closed the workshop by emphasizing that “the goal of consumer protection is to respect consumer preferences and focus . . . enforcement resources on preserving consumers' ability to make informed choices.” He cautioned that “past Commissions have strayed from th[is] core function by attempting to remake markets in a central planner's vision,” and stressed the need for “empirical evidence about the injuries and benefits in the data driven-economy.”

We will continue to monitor FTC developments and report on how these themes translate into agency action.