FDA’s Privacy Halo

Do consumers trust the words “FDA cleared” more than they should? It’s a timely question: In 2017, the US Food and Drug Administration (FDA) began permitting software makers to market smartphone apps as treatments for a range of mental health disorders, including addiction and attention deficit hyperactivity disorder. Although these novel treatments are safe and sometimes effective, they trade on users’ privacy by liberally sharing medical data with third parties. This Article presents an original survey suggesting that the imprimatur of FDA approval on app advertisements leads consumers to ignore these data privacy risks. Rather than informing consumers, the words “FDA cleared” on mental health app ads stimulate vague and sometimes misplaced feelings of goodwill. After laying out the empirical basis for this conclusion, this Article explores its legal implications and presents a set of potential policy solutions.

Michael Mattioli is a law professor at the Indiana University Maurer School of Law in Bloomington. He specializes in intellectual property law, data law and policy, and contract law. Michael’s writing asks how cooperation can promote the common good. He has written extensively about collective action problems tied to data and patents. This includes works on patent pools, the pooling of health data, and emerging platforms for cooperation such as blockchains.

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