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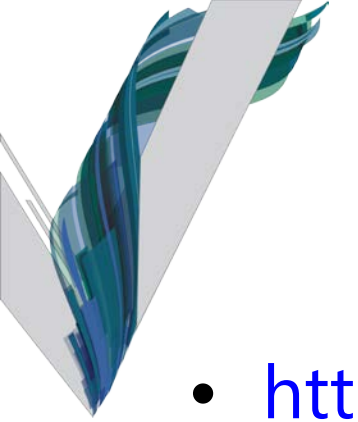
FTC's Putting Disclosures to the Test Workshop

Presented for the Electronic Retailing Association

October 19, 2016

Amy Ralph Mudge
AllAboutAdvertisingLaw.com



.com Disclosures

- https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf
- Originally published in 2000 and Updated in March 2013, provide guidance on what constitutes a clear and conspicuous disclosure online

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Endorsement & Testimonial Guides

The Commission's Endorsement & Testimonial Guides, as revised on December 1, 2009, apply to endorsements made in social media.

www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/guides-concerning-use-endorsements

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Native Advertising

- December 22, 2015 the Commission issued an enforcement policy statement addressing the issue of native advertising.
- https://www.ftc.gov/system/files/documents/public_statements/896923/151222deceptiveenforcement.pdf
- Native advertising is advertising that is intended to mimic non-advertising content in style and form.
- Native Advertising: A Guide for Businesses
- https://www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses

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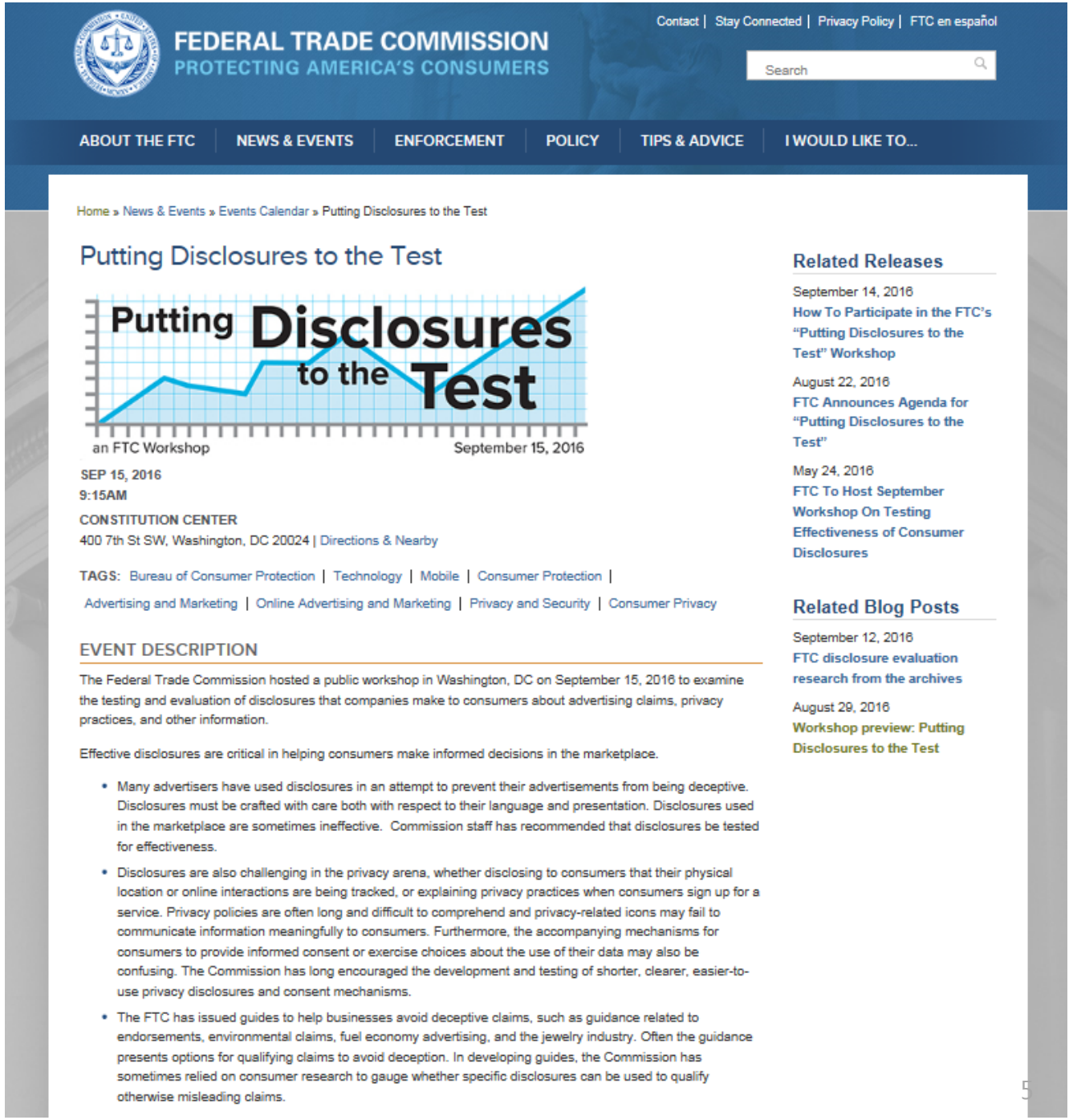
https://www.ftc.gov/news-events/events-calendar/2016/09/putting-disclosures-test



FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

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Home » News & Events » Events Calendar » Putting Disclosures to the Test

Putting Disclosures to the Test

Putting Disclosures to the Test
an FTC Workshop
September 15, 2016

SEP 15, 2016
9:15AM

CONSTITUTION CENTER
400 7th St SW, Washington, DC 20024 | Directions & Nearby

TAGS: Bureau of Consumer Protection | Technology | Mobile | Consumer Protection | Advertising and Marketing | Online Advertising and Marketing | Privacy and Security | Consumer Privacy

EVENT DESCRIPTION

The Federal Trade Commission hosted a public workshop in Washington, DC on September 15, 2016 to examine the testing and evaluation of disclosures that companies make to consumers about advertising claims, privacy practices, and other information.

Effective disclosures are critical in helping consumers make informed decisions in the marketplace.

- Many advertisers have used disclosures in an attempt to prevent their advertisements from being deceptive. Disclosures must be crafted with care both with respect to their language and presentation. Disclosures used in the marketplace are sometimes ineffective. Commission staff has recommended that disclosures be tested for effectiveness.
- Disclosures are also challenging in the privacy arena, whether disclosing to consumers that their physical location or online interactions are being tracked, or explaining privacy practices when consumers sign up for a service. Privacy policies are often long and difficult to comprehend and privacy-related icons may fail to communicate information meaningfully to consumers. Furthermore, the accompanying mechanisms for consumers to provide informed consent or exercise choices about the use of their data may also be confusing. The Commission has long encouraged the development and testing of shorter, clearer, easier-to-use privacy disclosures and consent mechanisms.
- The FTC has issued guides to help businesses avoid deceptive claims, such as guidance related to endorsements, environmental claims, fuel economy advertising, and the jewelry industry. Often the guidance presents options for qualifying claims to avoid deception. In developing guides, the Commission has sometimes relied on consumer research to gauge whether specific disclosures can be used to qualify otherwise misleading claims.

Related Releases

September 14, 2016
How To Participate in the FTC's "Putting Disclosures to the Test" Workshop

August 22, 2016
FTC Announces Agenda for "Putting Disclosures to the Test"

May 24, 2016
FTC To Host September Workshop On Testing Effectiveness of Consumer Disclosures

Related Blog Posts

September 12, 2016
FTC disclosure evaluation research from the archives

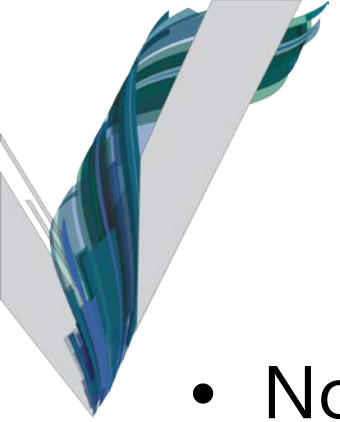
August 29, 2016
Workshop preview: Putting Disclosures to the Test

The FTC has a long commitment to understanding and testing the effectiveness of consumer disclosure, and is especially interested in learning about the costs and benefits of disclosure testing methods in the digital age. A number of factors impact the effectiveness of disclosures, including whether they contain the most essential information and consumers notice them, direct their attention towards them, comprehend them, and are able to use that information in their decision making. Some testing methods are more appropriate than others for evaluating these factors.

The workshop is aimed at encouraging and improving the evaluation and testing of disclosures by industry, academics, and the FTC. The FTC's workshop will explore how to test the effectiveness of these disclosures to ensure consumers notice them, understand them and can use them in their decision-making. It is intended to further the understanding of testing and evaluation of both offline and online consumer disclosures, including those delivered through icons, product labels, short text, long text, audio or video messages, interactive tools, and other media. Topics may include evaluation criteria, testing methodologies and best practices, case studies, and lessons learned from such testing.

The FTC live-tweeted the conference from @TechFTC using the hashtag #FTCDisclosures.

See photos from the event on FTC's Facebook page.



Takeaways

- No need to panic: No immediate plans to ban or significantly alter disclosure requirements
- Companies encouraged to invest in research to understand how consumers understand their disclosures
- Industry encouraged to work to develop icons or other graphic means of sharing disclosure information
- In the future, privacy disclosures may be able to be customized to specific users ??!!

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Chief Technologist Lorrie Cranor Introduction

- Part of her study is of understanding of privacy disclosures
- Cited to the benefits of studying research in other areas to better understand the benefits of privacy disclosures
- Organized a workshop to bring together a wide range of speakers from different industries and different backgrounds to discuss consumer cognition, recognition and comprehension of disclosures, as well as methodologies for measuring disclosure effectiveness and the impact of disclosures on consumer decision-making

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Chairwoman Ramirez Introduction

- Set the table for the event: noting the day is not about what has to be disclosed or what is most effective, but how to evaluate the effectiveness of disclosures
- In her view disclosures should grab consumers and be difficult to miss
- Disagreed with critics who said no disclosures are effective and instead said they can provide important information, particularly in the privacy area
- Encouraged businesses to test their own disclosures and follow expert studies

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General Panels on Testing

- Michael Wogalter, North Carolina State University: Discussed general research with how people process information the Communication-Human Information Processing (C-HIP) model – looking at basic communication theory and human information processing theory
  - a feedback loop considering the source, channel, and receiver
  - Whether disclosure reached receiver based on attention, comprehension, attitudes/beliefs, and motivation
- Ilana Waterman and Craig Andrews discussed different testing methods and some limitations of both
  - "Incorrect or unreliable research findings can be more damaging than not conducting research"

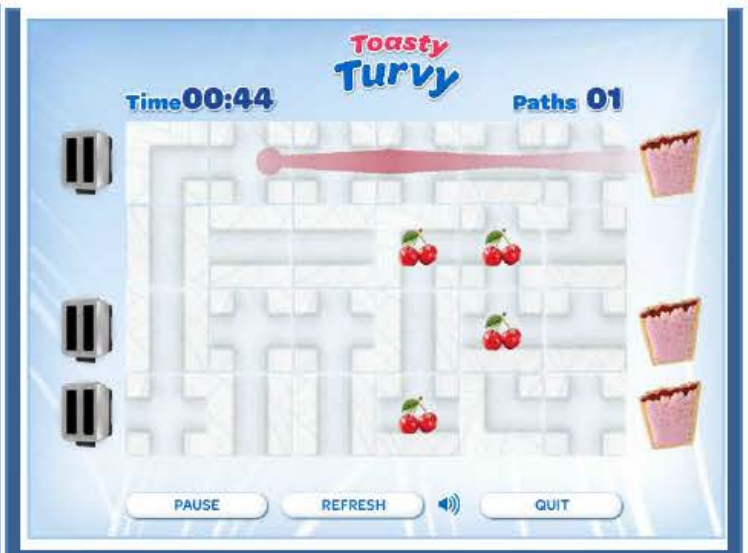
Panel on Whether People Pay Attention to Disclosures

- Nathaniel Evans, U. Georgia. Studied disclosures on kids advergaming. Found one written disclosure more effective than none or two (written and oral). Advised to avoid "competing modality"??
- Mariea Grubbs Hoy, U Tennessee. Eye tracking study of pharma disclosures. Many report reading warnings but few do.
- David Hyman, U Illinois. Studied sponsored search terms, native ads. Many terms not understood. Paid and ad best.
- Rebecca Balebako, RAND Corporation. Studied timing with smartphone app privacy notices. Disclosure must be salient. Best presented before or during app use

Nathaniel Evans, U. Georgia

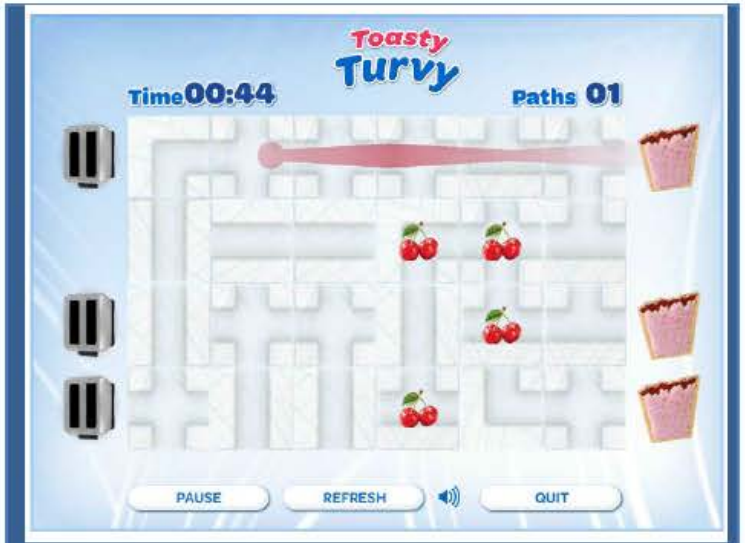
No Disclosure

Single Modality Disclosure



Hey Kids! This Game is an Advertisement.

Dual Modality Disclosure



Hey Kids! This Game is an Advertisement.

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Voice Over (repeat 10s)

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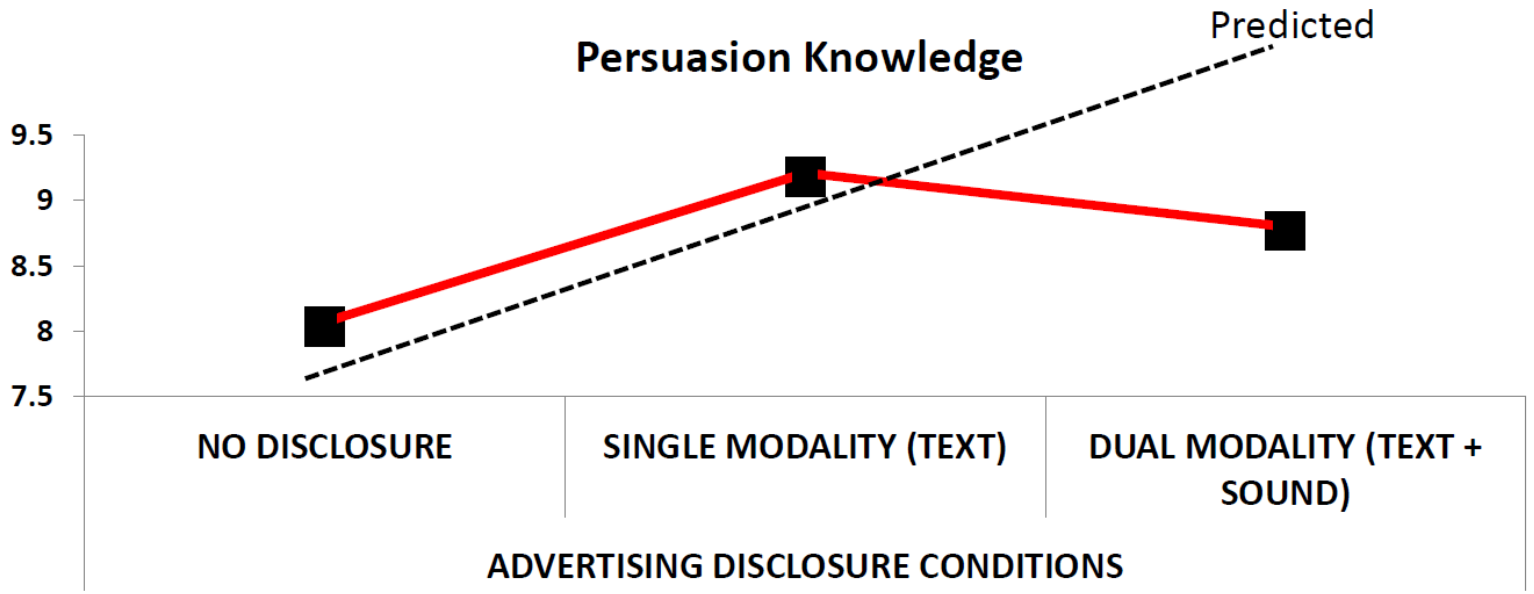
Nathaniel Evans, U. Georgia

What Did We Find?



adpr@UGA

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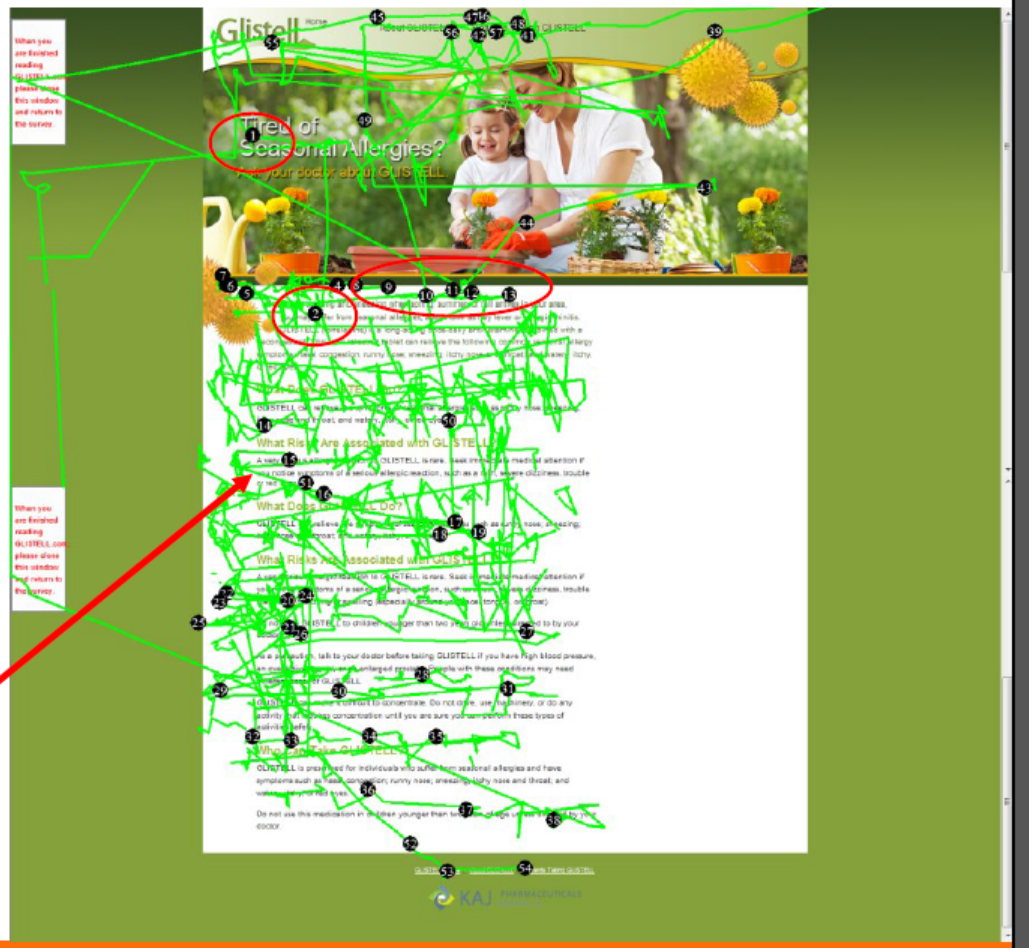
Mariea Grubbs Hoy, U Tennessee

Eye-Tracking Measures

Fixation: where the person looked

Duration: how long the person looked

Fixation Sequence: order in which they looked



Numbers = fixations of .2 seconds or longer

"Reading"

Mariea Grubbs Hoy, U Tennessee

What we found

- Self-Report: 80% of participants claimed to have read half or more of the drug risk disclosure
- Reality: Eye-tracking data revealed limited to no reading of drug risk disclosure

David Hyman, U Illinois

What do Labels Signify to Consumers?

Label	Ad/paid content	Unpaid content	Don't know
Paid Ad	89%	4%	6%
Paid Content	87%	5%	8%
This content was paid for by	86%	6%	8%
Paid Post	83%	7%	10%
Ad	81%	7%	12%
Sponsored	79%	11%	10%
Sponsored Content	76%	12%	12%
Sponsored Post	76%	13%	11%
Brand Voice	64%	16%	20%
Brand Publisher	61%	19%	20%
Presented By	60%	20%	20%
Partnered Content	57%	19%	24%
Partner	57%	17%	26%
Written By	23%	52%	25%

Rebecca Balebako, RAND Corporation

Timing does matter

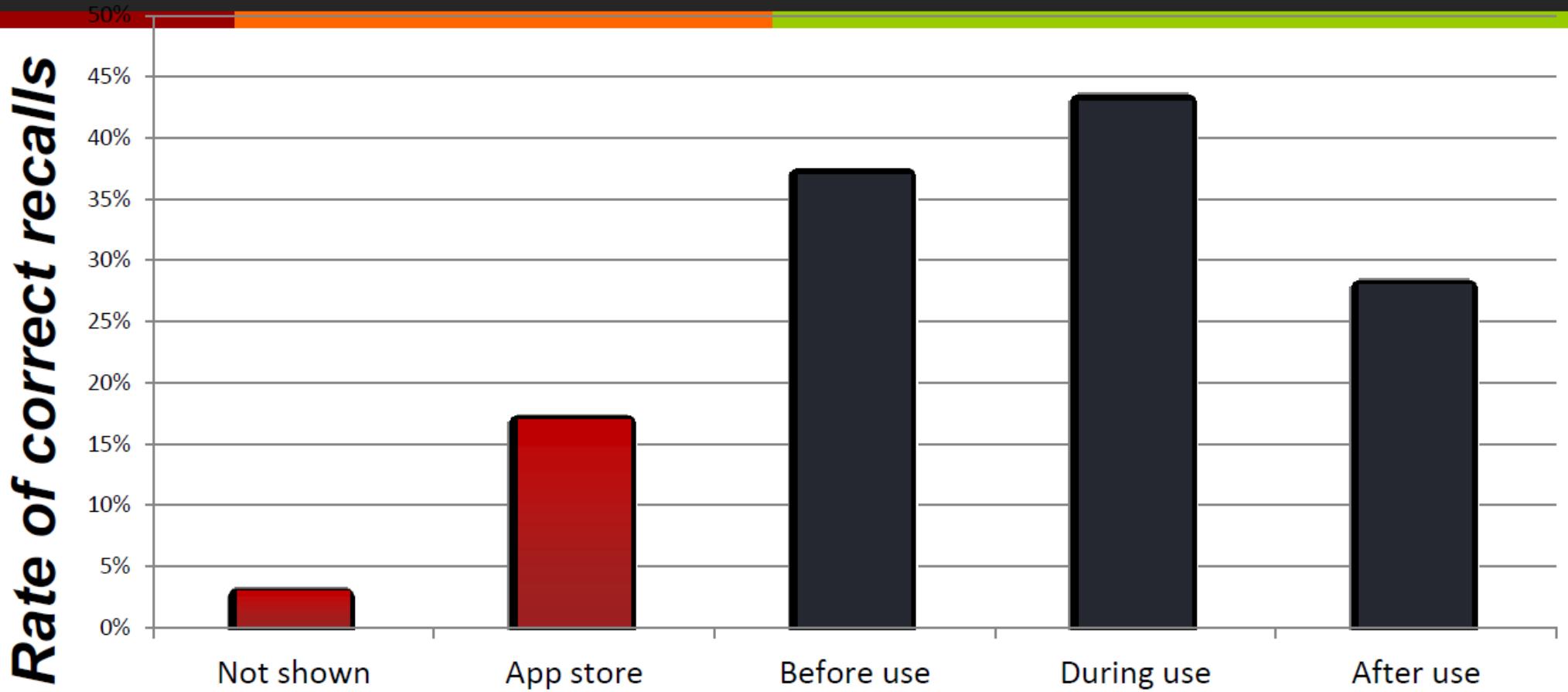
- Smartphone apps can display privacy notices at many points

THE WORST

- In the app store
- ~~During install (not tested)~~
- Before app use
- During app use
- After app use

Rebecca Balebako, RAND Corporation

Rate of Recall for Notice – Web Survey



Comprehension Panel

- Daniel Goldstein, Microsoft. Presenting unfamiliar numbers more readily uinderstood when put into perspective
- Elizabeth Howlett, U. Arkansas, front of package nutrition label study, comparing objective v evaluative seals
- Susan Kleimann, Kleinmann Communication Group, for the CFPB looked at consumer comprehension of financial disclosures
- Joel Reidenberg, Fordham U., studied ambiguous terms in privacy policies

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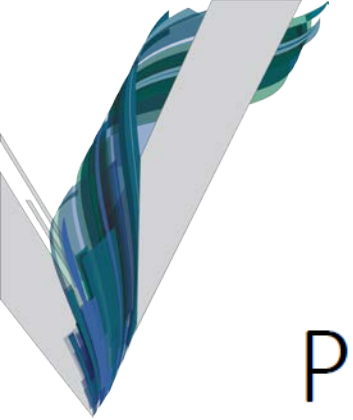


Daniel Goldstein, Microsoft

Perspectives improve comprehension in empirical tests

- Recall ✓
- Estimation ✓
- Error Detection ✓
- Long-term recall ✓

- See Barrio, Goldstein, & Hofman, 2016

Daniel Goldstein, Microsoft

Possibilities for disclosures

To put 250 calories into perspective

- 11% of daily calories
- 1/3 of a meal
- 50 minutes of walking
- 31 cups shredded lettuce

Bleich, S. N., Herring, B. J., Flagg, D. D., & Gary-Webb, T. L. (2012).

Daniel Goldstein, Microsoft

Possibilities for disclosures

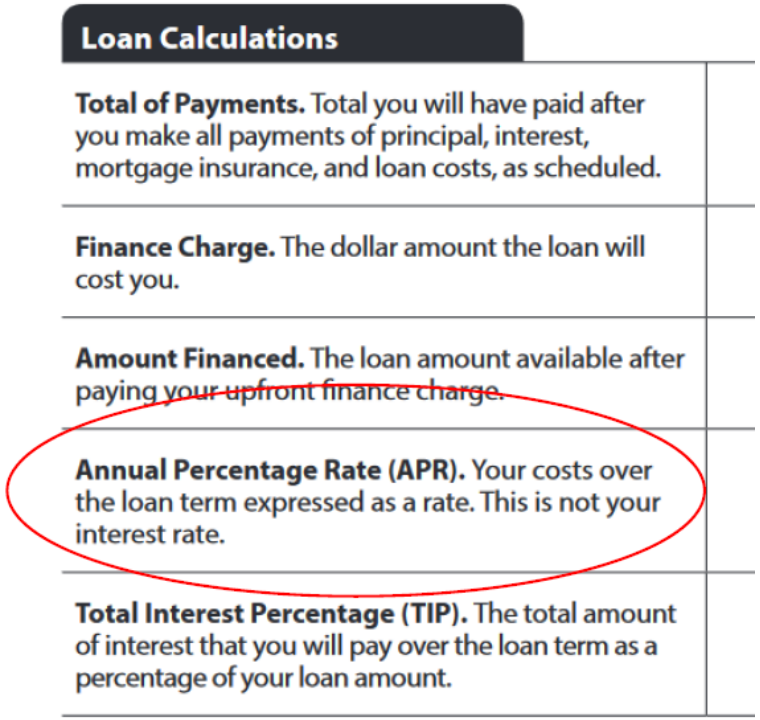
Front-end load of 5.25%

- "If you invested $50,000 in this fund, you would pay $2,625 of that as a fee."

APR

- Open question

Empirical testing needed



Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.

Finance Charge. The dollar amount the loan will cost you.

Amount Financed. The loan amount available after paying your upfront finance charge.

Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.

Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

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Elizabeth Howlett, U. Arkansas

Fop Labeling System Dichotomy

OBJECTIVE

EVALUATIVE

Guiding Stars®
Nutritious choices made simple®

UNIVERSITY OF ARKANSAS

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Elizabeth Howlett, U. Arkansas

FOP Labeling System

TYPE OF ICON	PROCESSING MODE	
	Non-comparative	Comparative
OBJECTIVE *precise*	More diagnostic, More helpful with comprehension	Less diagnostic, Less helpful with comprehension
EVALUATIVE *interpretative*	Less diagnostic, Less helpful with comprehension	More diagnostic, More helpful with comprehension

Susan Kleimann, Kleinmann Communication Group

The Project – Funded by the Consumer Financial Protection Bureau

Mandate

The Bureau shall propose…model disclosures that combine the disclosures required under [TILA] and [RESPA] into a single, integrated disclosure for mortgage loan transactions covered by those laws.

- Dodd Frank Act § 1032(f)

Result

- A Loan Estimate disclosure replaces the Good Faith Estimate and the TILA disclosure
- A Closing Disclosure replaces the HUD-1 and the TILA disclosure

Susan Kleimann, Ph.D./Putting Disclosures to the Test/FTC/9.15.16

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Susan Kleimann, Kleinmann Communication Group

Final Takeaways

- Comprehension is more than understanding words, but rather understanding the implication and impact
- Comparison requires the ability to see the salient information and mark differences and similarities
- Choice requires integrating information and keying in on what makes most sense for you
- For complex information with major consequences, you need to be able to show that consumers can comprehend the implications, not merely the words

Susan Kleimann, Ph.D./Putting Disclosures to the Test/FTC/9.15.16

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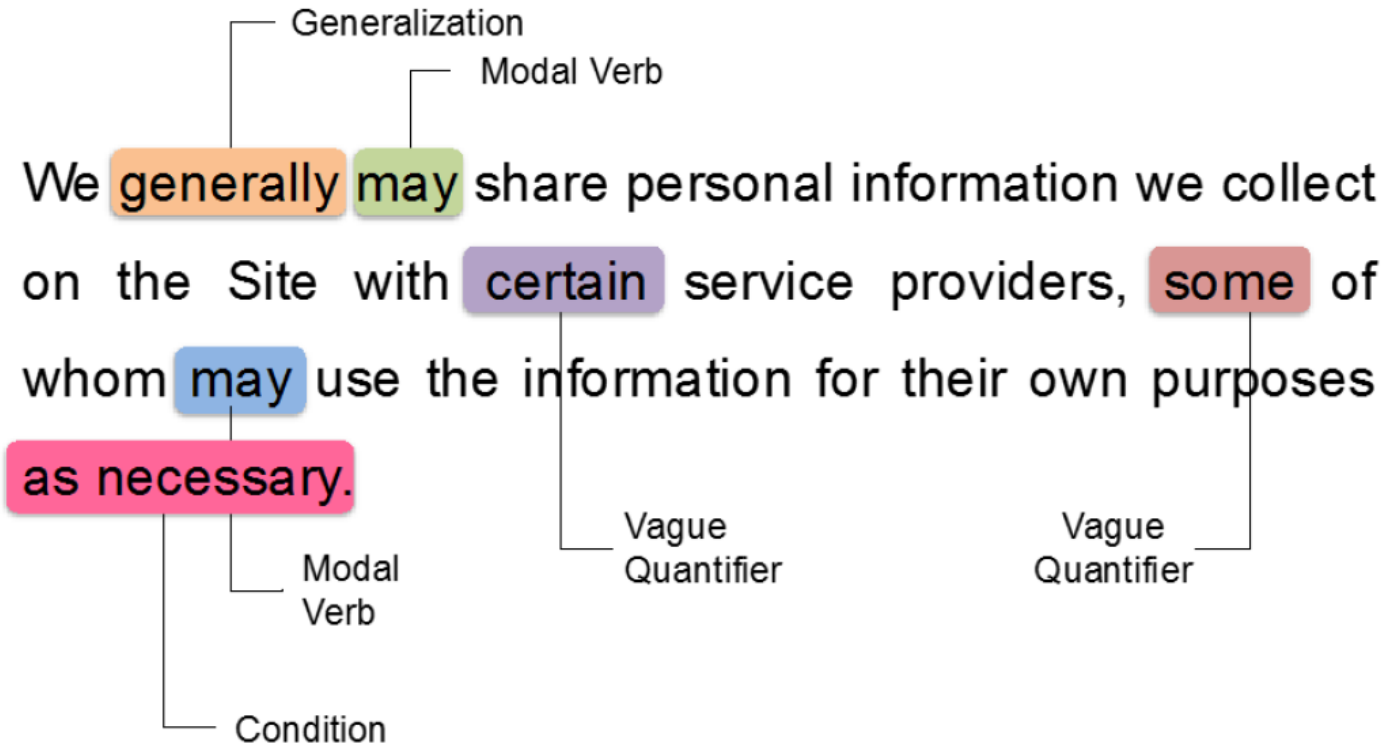
Joel Reidenberg, Fordham University

Research Goals

- **Develop a theory for the measurement and comparison of vague and ambiguous terms in a privacy policy**
- **Test whether regulation improves the clarity of privacy policies**
- **Test how vagueness affects users' perceptions of risk and willingness to share personal information**

Joel Reidenberg, Fordham University

Annotated Example



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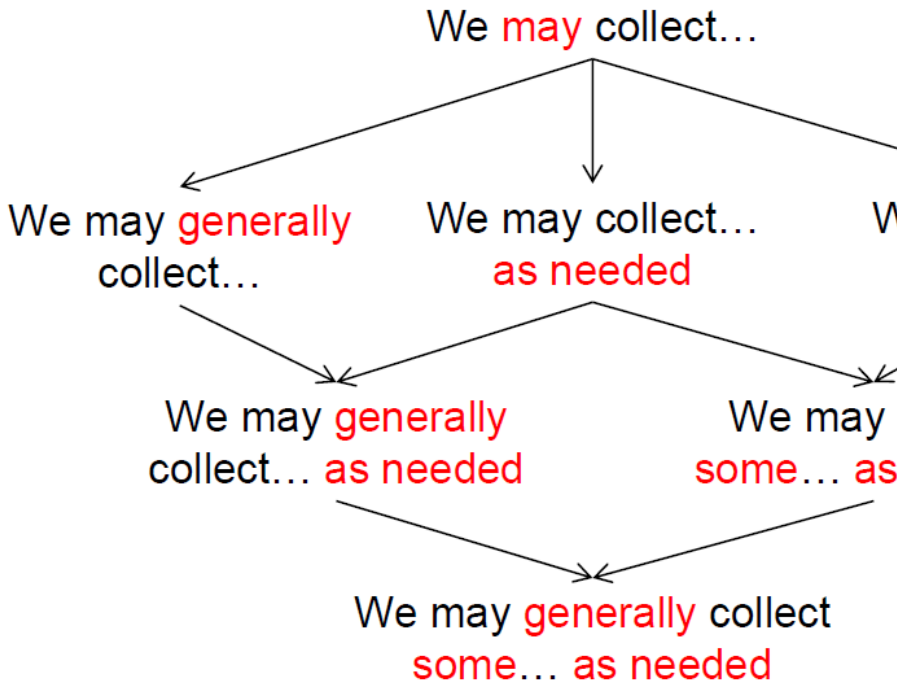
Joel Reidenberg, Fordham University

Vagueness Lattice



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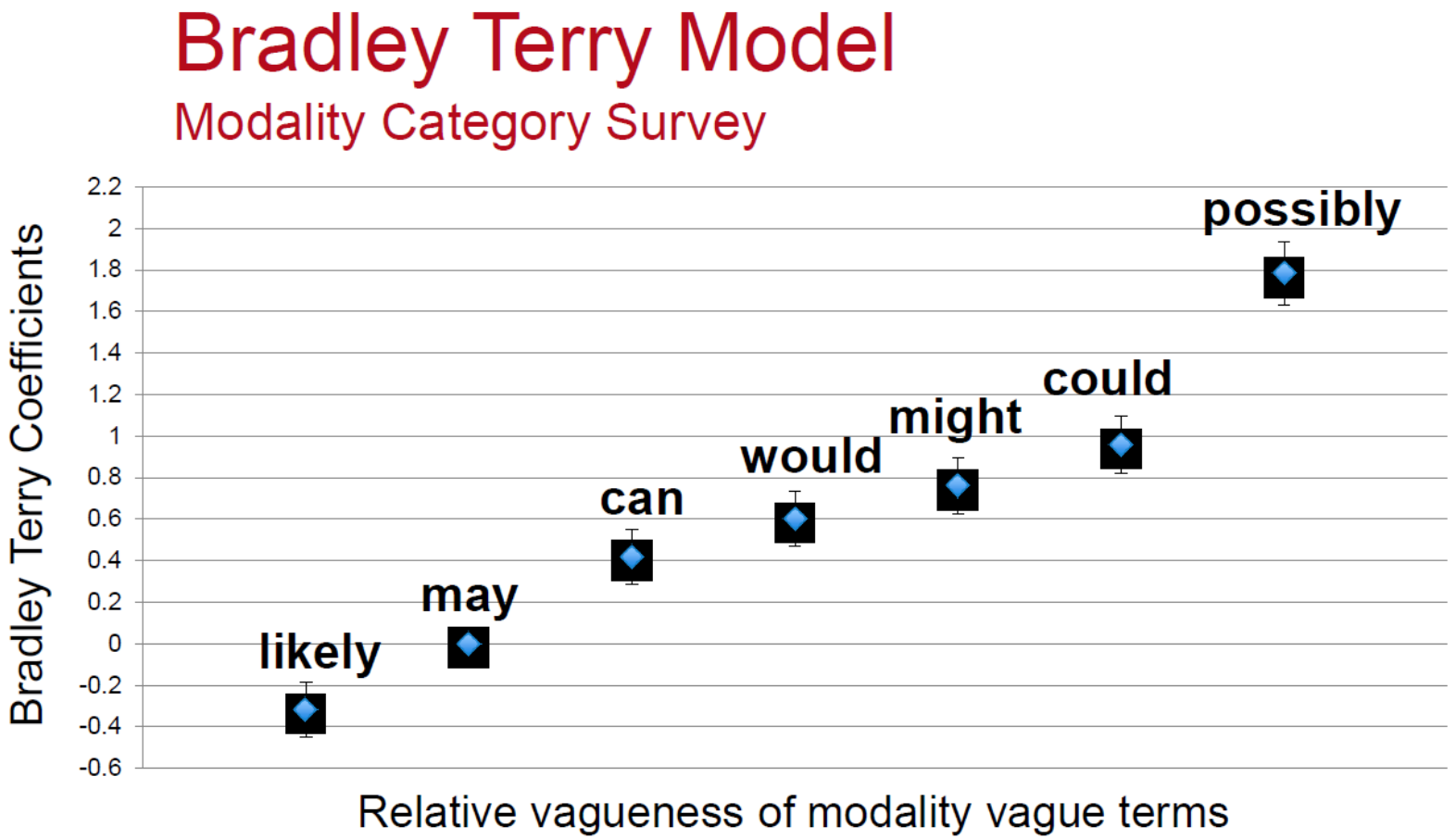
Joel Reidenberg, Fordham University



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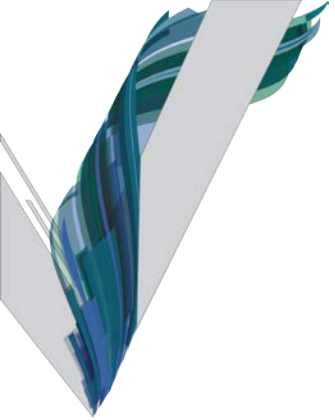

Joel Reidenberg, Fordham University

Applications to Improve Clarity

- *Linguistic guidelines*: minimize/avoid combinations with generalization terms and, if using terms, favor those with lower BT coefficients
- *Reporting framework:* public reporting of scores to encourage ratchet effect

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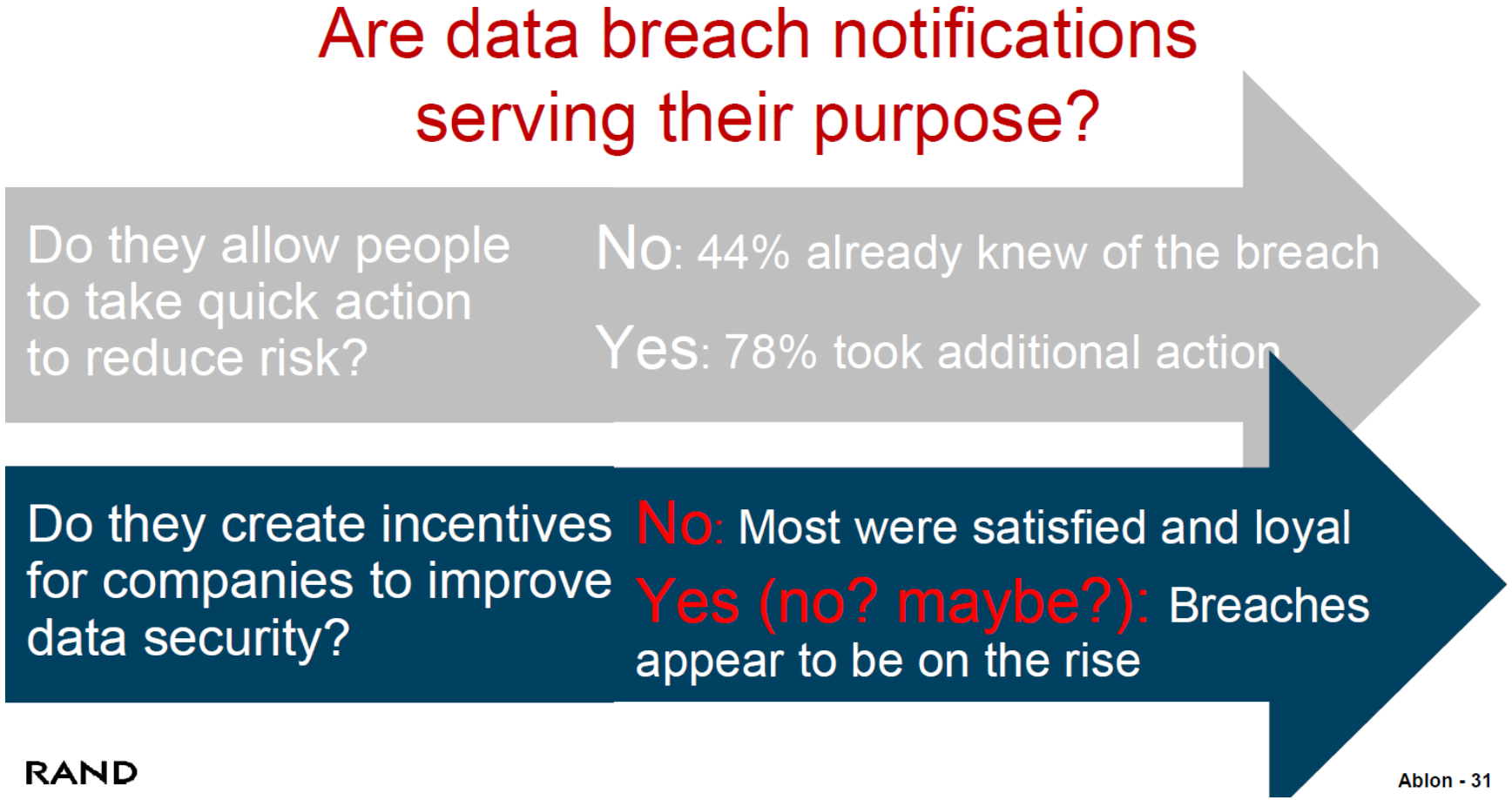
Impact on Decision Making Panel

- Lillian Ablon, RAND Corporation, studied consumer satisfaction with data breach notifications
- Idris Adjerid, U of Notre Dame, looked at effect of sharing information with different privacy policies
- Ginger Zhe Jin, Director, Bureau of Economics, FTC, looked at whether consumers altered behaviour based on disclosures
- Adair Morse, UC Berkley, looked at “debiasing” discloaures in payday loans

Lillian Ablon, RAND Corporation



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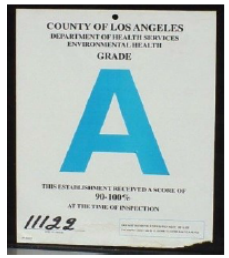
Idris Adjerid, U of Notre Dame

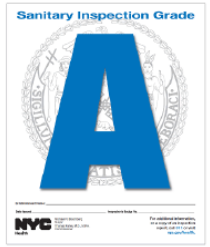
Conclusions

- Framing of privacy disclosures can have a significant impact on sharing of sensitive information
- Online experiments and crowdsourcing platforms can provide a replicable and reliable methodology for evaluating the impact of privacy disclosures
- This approach may not be a great fit if real-world behavior is highly desirable or longitudinal studies are useful.

Ginger Zhe Jin, Director, Bureau of Economics, FTC

Does disclosure improve consumer choice? A positive example





- Public perception in NYC (18m after):
  - 90% consumer approval
  - 81% have seen cards
  - Among those that have seen the cards, 88% consider it in dining decisions
- Revenue in LA county (1y after):
  - A grade: + 5.7%
  - B grade: + 0.7%
  - C grade: – 1.0%
  - Industry revenue increases by 3.3% ($250 million / year)

Citations:

- Wong et al. (2015) "Impact of a Letter-Grade Program on Restaurant Sanitary Conditions and Diner Behavior in New York City", American Journal of Public Health.
- Jin and Leslie (2003) "The Effects of Information on Product Quality: Evidence from Restaurant Hygiene Grade Cards" Quarterly Journal of Economics.

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Ginger Zhe Jin, Director, Bureau of Economics, FTC

Does disclosure improve consumer choice? A counter example

Bruce Schneier: "they don't tell people what they can do — they just make people afraid."

Homeland Security Department on replacement:

"The goal is to replace a system that communicates nothing … with a partnership approach …"

(NY Times 11/24/2010)

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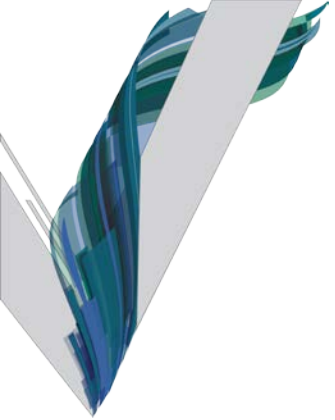

Ginger Zhe Jin, Director, Bureau of Economics, FTC

Truthful quality disclosure is a double-edged sword

- **Consumer behavior after disclosure**
  - May make more informed decision
  - May sort and match
  - May take wrong or no action due to unclear, incomprehensible, duplicative disclosure
- **Seller behavior after disclosure**
  - May or may not disclose
  - May adjust price according to disclosed quality
  - May or may not improve quality
  - May game the system
  - May enter, stay or exit

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Adair Morse, UC Berkley

"Information Disclosure, Cognitive Biases and Payday Borrowers" Bertrand & Morse 2011 *Journal of Finance*

Topic: Even if payday loans are priced fairly and non-predatory, one has to wonder whether cognitive limitations or biases by some borrowers explain the use of payday loans

Idea (not just for this setting) : Mandate disclosure that is

- Better informed as to what mistakes are being made
- Better targeted to de-bias potential cognitive biases causing these mistakes

Field experiment at national chain of payday stores

- Can we impact future borrowing with debiasing disclosure.

Adair Morse, UC Berkley

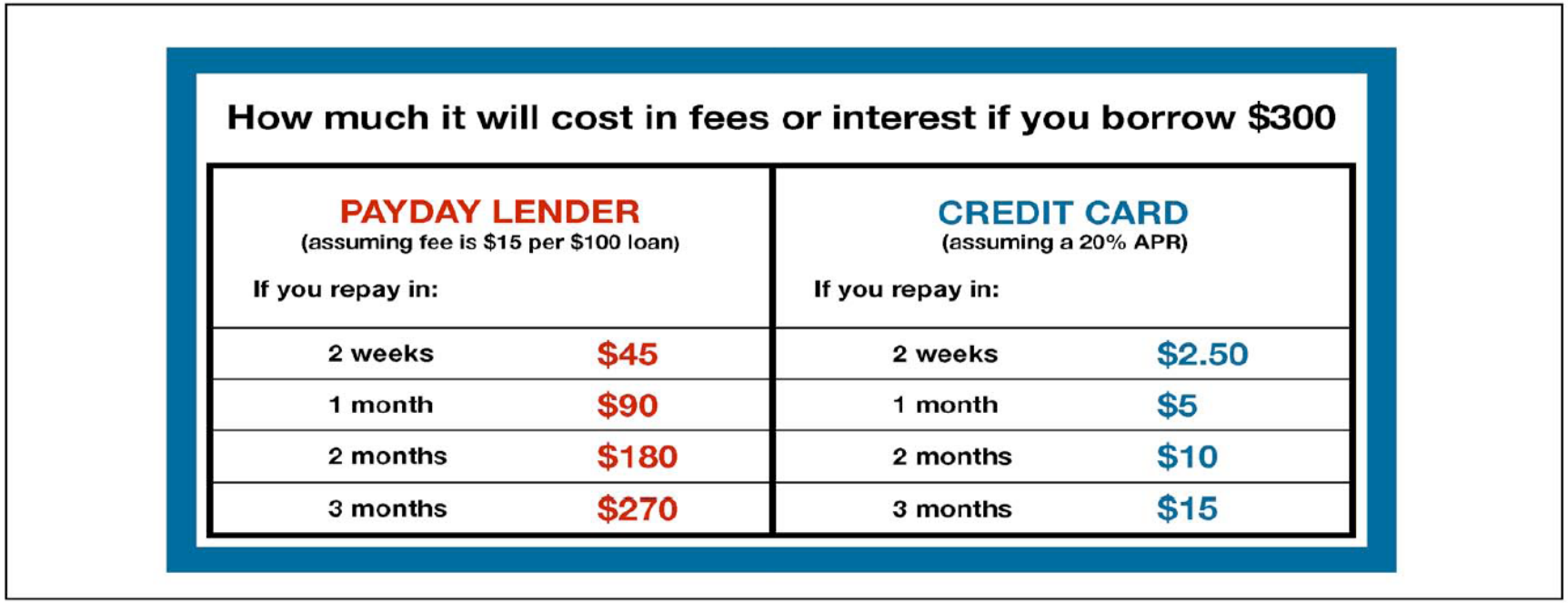
Treatment: Reinforce understanding of APR by presenting it next to other (smaller) APRs.

Annual interest rates on different types of loans

	Median Annual Interest % (from government surveys)
Payday Loan	443%
Installment Car Loans	18%
Credit Card	16%
Subprime Mortgages	10%

Adair Morse, UC Berkley

Treatment 2: Present additive dollar costs of payday loan fees into future



How much it will cost in fees or interest if you borrow $300

PAYDAY LENDER (assuming fee is $15 per $100 loan)		CREDIT CARD (assuming a 20% APR)	
If you repay in:		If you repay in:	
2 weeks	$45	2 weeks	$2.50
1 month	$90	1 month	$5
2 months	$180	2 months	$10
3 months	$270	3 months	$15

Adair Morse, UC Berkley

Results

- De-biasing failure to add up DOLLARS over time reduces future borrowing by 10%. Not APR treatment
  - How: People saved more in the interim
    - Why I like that result: Economists forget that people are very constrained and can't make decisions in rates, but rather live month-to-month in dollar terms
    - But people do not go through exercise of thinking about the adding-up
- Paper advocates for
  - Understanding the specific cognitive biases that may lead to suboptimal decision-making
  - And subsequently designing some correcting or "de-biasing" information disclosure

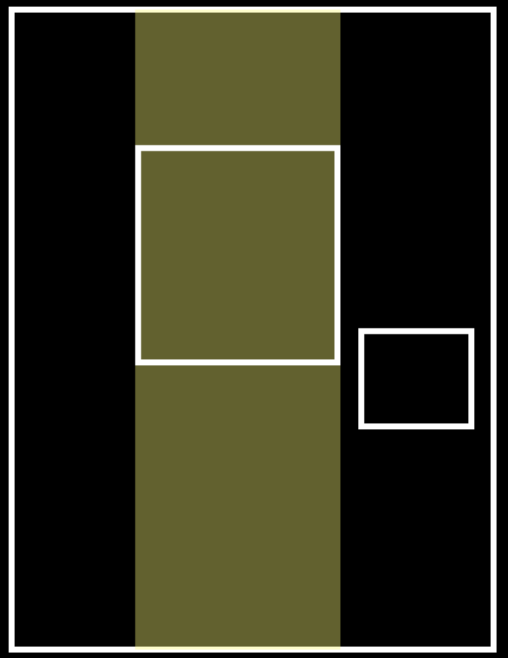
Case Studies Panel

- Colin Campbell, Kent State University, studied social media native advertising and understanding of disclosures
- Sarah Farnsworth, PEGUS Research, explained label comprehension studies conducted by FDA for OTC drug label approval
- Manoj Hastak, American University, revisited “up to” studies done in windows FTC case
- Heidi Johnson, CFPB

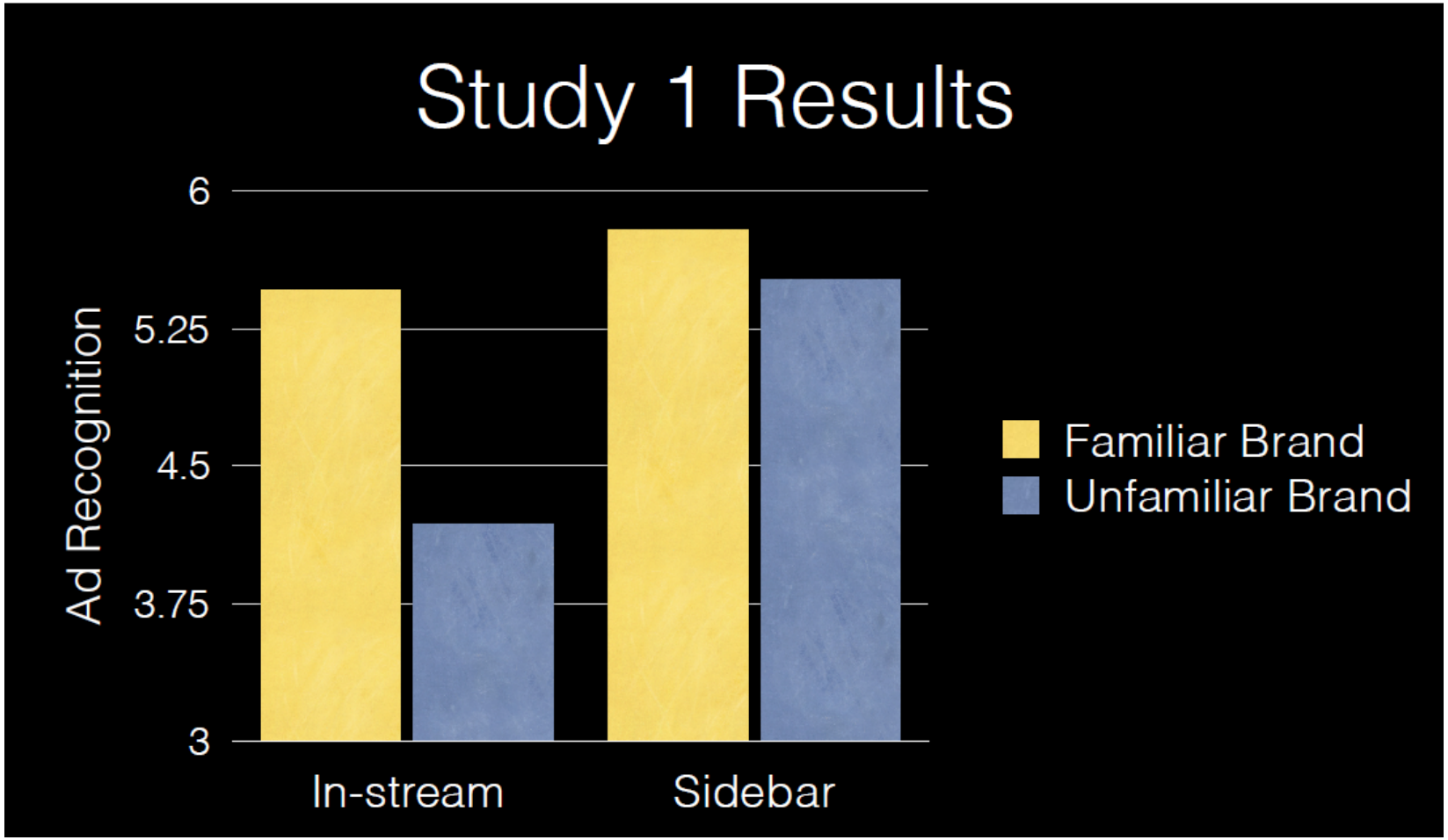
Colin Campbell, Kent State University

Multiple Recognition Cues

- Ad position (van Reijmersdal, Neijens, and Smit, 2009)
  - Central region gets more attention (Leonhardt, Catlin, and Pirouz 2015; Tatler 2007)
- Brand familiarity (Keller 1993; Kent and Allen 1994)



Colin Campbell, Kent State University



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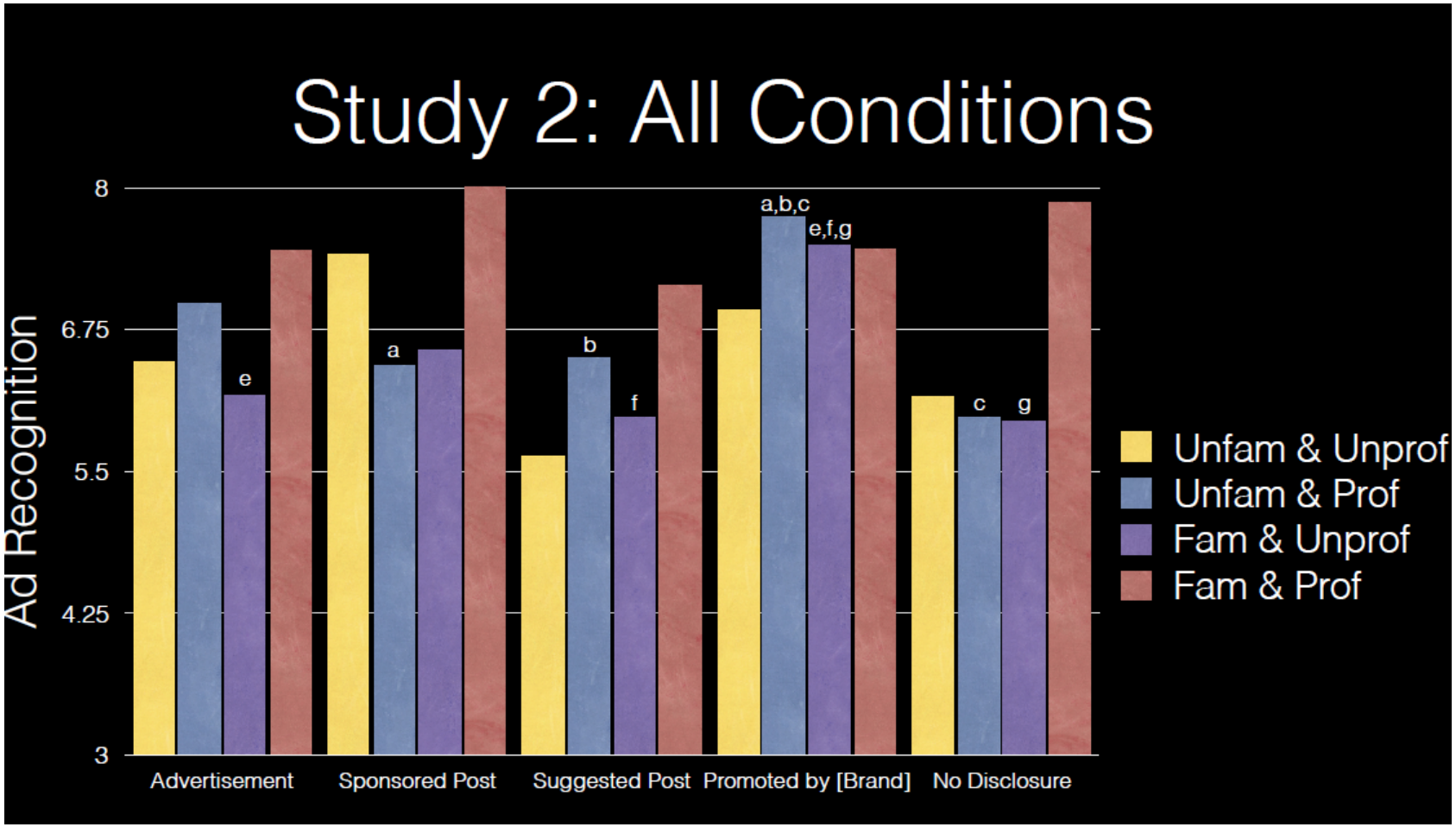

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Colin Campbell, Kent State University

Threshold Effects

- Disclosure *will not* have an effect when:
  - no other ad recognition cues are present, or
  - multiple ad recognition cues are present
- Disclosure *will* have an effect when a single ad recognition cue is present

Colin Campbell, Kent State University

Results

- Multiple ad recognition cues are needed to affect ad recognition
  - Only "Promoted by [Brand]" was effective
- Consumers *can* identify native advertising in a social media setting

Colin Campbell, Kent State University

Discussion

- Consumers do not seem to be processing social media content deeply
- Current disclosures may need strengthening
- Supports FTC perspective that disclosure isn't the only ad recognition factor
- Disclosure finding contradicts enforcement guide language recommendations

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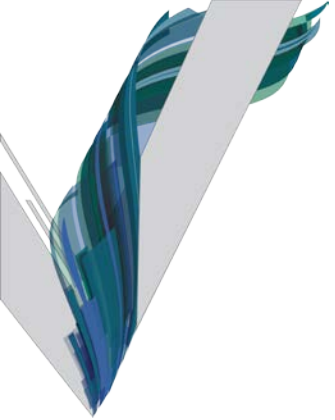

Sarah Farnsworth, PEGUS Research

LABEL COMPREHENSION STUDIES (LCS)

- Content and structure of drug product labeling is governed by regulations
- Wording (and other package elements) should be developed and optimized through a series of **iterative** qualitative and quantitative comprehension studies
- Testing is prioritized to focus on messages with the greatest **clinical consequence** associated with a consumer failing to understand each label direction or warning.
- Messages with the greatest clinical consequences are deemed primary endpoints for the study, and assigned a target performance threshold.

www.pegus.com

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Sarah Farnsworth, PEGUS Research

CONCLUSIONS

- Label comprehension studies provide evidence of consumer comprehension of OTC product labeling of package information
- Similar studies could be conducted to provide FTC with information about comprehension of product disclosures.
- These studies would need to be adapted to differences between OTC products and product disclosure statements, as product disclosures come in various methods (e.g., television, radio, websites, print).
- Other consumer behavioral research could also be relevant in this arena, such as adapting self-selection study designs to evaluating the effect disclosure statements may have on impacting consumer decision-making behavior.

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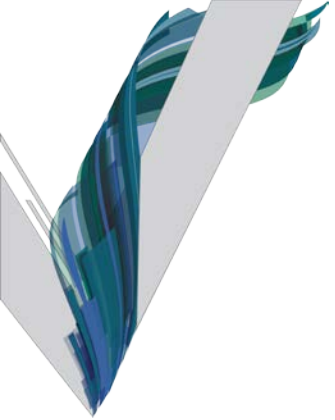

Manoj Hastak, American University

Final Thoughts

- Value of multiple measures
- Probing for disclosure comprehension as well as intent
- Value of replication

Heidi Johnson, CFPB

Disclosure research approach

Sources of research

- Rulemaking-related
- Consumer-facing tools
- Collaborations with industry
  - Project Catalyst
  - 1032(e) disclosure waiver authority
- Foundational research

Methodologies

- Qualitative testing
- Quantitative testing
- Field trials
- Administrative data analysis
- Laboratory studies
  - Through contracts with several universities and other institutions

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157

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Lab experiment on disclosure

- Studying in the lab enables us to:
  - Isolate effects in a controlled environment
  - Apply findings to future disclosures
- What affects attention to disclosures?
- Examine two factors
  - Design: Two versions of the disclosure
  - Context: Reading in isolation or in the presence of a researcher

Future of Disclosures Panel

- Serge Egelman, UC Berkley, using user behavior to apply custom privacy permission prompts
- Tamar Krishnamurti, Carnegie Mellon, patient centered consent forms for clinical research
- Florian Schaub, University of Michigan, researching how to effectively simplify disclosures but also make them individually relevant

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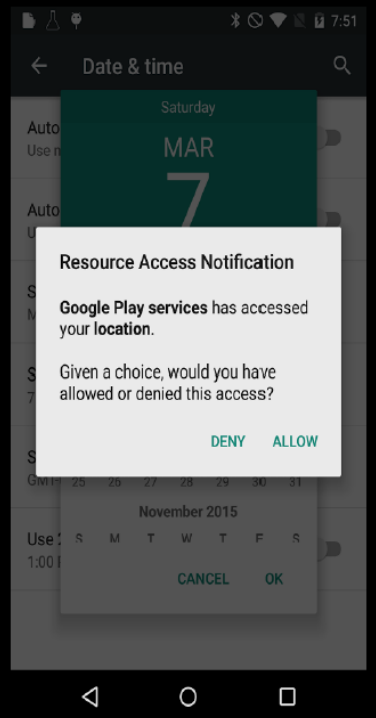
Serge Egelman, UC Berkley

can we predict
privacy decisions?



field study to collect behavioral data

probabilistic prompts to measure user expectations

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Tamar Krishnamurti, Carnegie Mellon

Take-aways and next steps

- **Greater engagement** in patient-centered consent with large effect sizes
- No differences found in critical decision factors
- Open questions include:
  - Mturk reliability
  - How does affect, type of risk, chronicity of disease etc. play a role

Florian Schaub, University of Michigan

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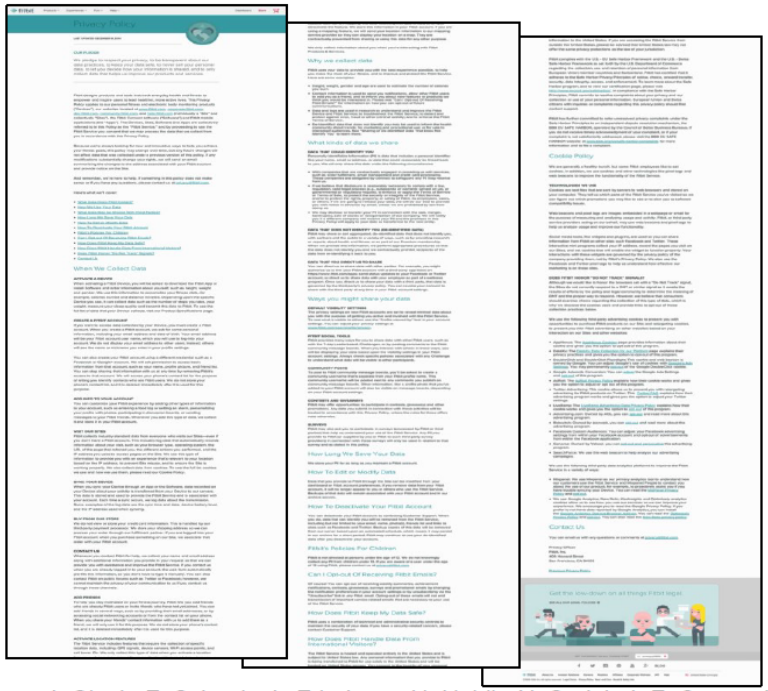
simplifying disclosures based on expectations



privacy policy
www.fitbit.com/legal/privacy-policy
3,500 words

layered notice
www.fitbit.com/privacy
1,300 words

J. Gluck, F. Schaub, A. Friedman, H. Habib, N. Sadeh, L.F. Cranor, Y. Agarwal. How Short is Too Short? Implications of Length and Framing on the Effectiveness of Privacy Notices. Symposium on Usable Privacy and Security 2016.

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55

simplifying privacy notices and controls

1. emphasize likely **unexpected or surprising information**
2. **contextualize information** based on type of service, user activity and user goals
3. **personalize information** based on user characteristics and individual information needs

F. Schaub, R. Balebako, A.L. Durity, L.F. Cranor. A Design Space for Effective Privacy Notices. Symposium on Usable Privacy and Security 2015.
F. Schaub. B. Könings, M. Weber. Context-adaptive Privacy: Leveraging Context Awareness to Support Privacy Decision Making, IEEE Pervasive Computing, vol. 14(1), 2015.

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6

summary

- emphasize unexpected / surprising practices in disclosures
- adapt disclosures to specific contexts
- personalize disclosures and controls
- need for machine-readable disclosures and controls

- online studies effective for eliciting expectations and testing disclosure variants
- additionally lab and field studies under real conditions

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