



# Advanced Media and Technology Law

Advertising and Promotions Law



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## “Putting Disclosures to the Test” – Lessons Learned From the FTC’s Disclosure Workshop

The Federal Trade Commission recently hosted a public workshop where academics, researchers and regulators took a hard look at how companies can test, evaluate and measure the effectiveness of their disclosures to consumers. The FTC’s ongoing focus on disclosures includes those that inform consumers of the particular dangers of a product; disclosures that make consumers aware of choices impacting purchase decisions; mobile privacy disclosures; and disclosures of an advertiser’s material connections with endorsers and “native” advertisements.

The effectiveness of a disclosure to prevent deception in advertising is critical and, as FTC Chair Edith Ramirez mentioned in her opening remarks, the FTC has long benefited from the empirical testing of disclosures and often uses that information to inform its enforcement and policy efforts.

Although the FTC did not announce any new rules or policies, Ramirez noted that she hoped the workshop and related findings will encourage marketers, businesses and other organizations to test their own disclosures and learn from the research presented.

The workshop featured academic research presented on a variety of different topics:

- **Cognitive Models** – Panelists provided an introduction to the cognitive models that help explain how people process disclosures when they encounter them.
- **Evaluation Procedures and Methods** – Panelists gave an overview of the procedures and methods used to evaluate the effectiveness of disclosures, as well as the costs and benefits of using various evaluation procedures and methods.
- **Your Attention Please!** – Panelists discussed studies that evaluated whether and when people are noticing, reading or paying attention to disclosures.
- **Comprehension** – Panelists discussed studies that evaluated whether people understand the information conveyed to them in a disclosure.
- **Impact on Decision-making and Behavior** – Panelists discussed studies that evaluated the impact disclosures may have on consumer decision-making, choice and behavior.
- **Case Studies** – Panelists presented a series of disclosure studies and discussed various research methods, including eye-tracking and field studies. The case studies involved social media/native advertising, over-the-counter drug product labeling and privacy disclosures associated with research studies.
- **The Future of Disclosures?** – Panelists discussed studies that evaluated new approaches or new applications of existing approaches to disclosure design and presentation, aimed at making disclosures more efficient and effective.

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Researchers also explained how their methodologies helped them arrive at their conclusions. Although the FTC did not indicate a strong preference for any specific methodology presented, we believe the commission sees significant value in the empirical testing of disclosures.

A few key findings from the various studies presented include:

## Disclosures

- To ensure consumers pay attention to important information, companies should consider including signal words like “danger” or “caution” that alert the consumer to important information.
- In the context of drug disclosures, consumers tend to spend the most time reading about a drug’s benefits but ignore information about the risks. In these types of disclosures it may be helpful to list the risks before the benefits and to draw more attention to dangerous or novel information.
- In drafting disclosures, it’s important to communicate complex information and major consequences in such a way that consumers are able to comprehend the implications or impact of what they’re reading so they can incorporate this information into their decision-making process.

## Privacy

- The language and framing of privacy disclosures can have a significant impact on whether a consumer is willing to share sensitive information. Consumers were more likely to share personal information if they perceived a relative increase in the privacy protections provided.

- Consumers were least likely to read a privacy policy that was included within an app at the time of purchase or download.
- To simplify privacy notices and controls, companies should consider emphasizing unexpected or surprising information; contextualize information based on the type of service, user activity or user goals; and personalize information based on user characteristics and individual information needs.

## Advertising

- Consumers have difficulty recognizing native advertisements but are more likely to recognize a native advertisement if they are familiar with the brand doing the advertising.
- In testing for native advertising recognition, the most effective label identifying an ad was “Promoted by [Brand].”

The FTC workshop may be a signal to industry that additional enforcement action may be expected, and a reminder to companies of their responsibility for ensuring that disclosures necessary to prevent deception are presented effectively.

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