

September 12, 2015

VIA THE WEB

Federal Trade Commission
600 Penn. Ave. NW
Washington, DC 20580

Re: Request to Participate in PrivacyCon, January 14, 2016

Dear PrivacyCon Organizers,

I would be delighted to present my work on consumer knowledge and attitudes toward privacy at the PrivacyCon. My research team has been performing telephonic survey research in privacy since 2007. A summation of this work is attached to this proposal, published in the Wake Forest Law Review as *Alan Westin's Privacy Homo Economicus*.

Your request for participation asks for several elements, all of which are included below:

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- Abstract:

Alan Westin's Privacy Homo Economicus, by Chris Jay Hoofnagle and Jennifer M. Urban

Homo economicus reliably makes an appearance in regulatory debates concerning information privacy. Under the still-dominant U.S. “notice and choice” approach to consumer information privacy, the rational consumer is expected to negotiate for privacy protection by reading privacy policies and selecting services consistent with her preferences. A longstanding model for predicting these preferences is Professor Alan Westin's well-known segmentation of consumers into “privacy pragmatists,” “privacy fundamentalists,” and “privacy unconcerned.”

To be tenable as a protection for consumer interest, “notice and choice” requires homo economicus to be broadly reliable as a model. Consumers behaving according to the model will know what they want and how to get it in the marketplace, limiting regulatory approaches to information privacy. While notice and choice is undergoing strong theoretical, empirical, and political critique, U.S. Internet privacy law largely reflects these assumptions.

This Article contributes to the ongoing debate about notice and choice in two main ways. First, we consider the legacy Westin's privacy segmentation model itself, which as



greatly influenced the development of the notice-and-choice regime. Second, we report on original survey research, collected over four years, exploring Americans' knowledge, preferences, and attitudes about a wide variety of data practices in online and mobile markets. Using these methods, we engage in considered textual analysis, empirical testing, and critique of Westin's segmentation model.

Our work both calls into question longstanding assumptions used by Westin and lends new insight into consumers' privacy knowledge and preferences. A close textual look at factual and theoretical assumptions embedded in the segmentation model shows foundational flaws. With testing, we find that the segmentation model lacks validity in important dimensions. In analyzing data from nationwide, telephonic surveys of Internet and mobile phone users, we find an apparent knowledge gap among consumers concerning business practices and legal protections for privacy, calling into question Westin's conclusion that a majority of consumers act pragmatically. We further find that those categorized as "privacy pragmatists" act differently from Westin's model when directly presented with the value exchange — and thus the privacy tradeoff — offered with these services.

These findings reframe the privacy pragmatist and call her influential status in U.S. research, industry practice, and policy into serious question. Under the new view, she cannot be seen as "pragmatic" at all, but rather as a consumer making choices in the marketplace with substantial deficits in her understanding of business practices. This likewise calls into question policy decisions based on the segmentation model and its assumptions. We conclude that updated research and a policy approach that addresses both rationality and knowledge gaps are key.

- Findings to present:
 - Alan Westin's privacy segmentation, which is widely used to understand privacy attitudes, stood on weak assumptions. For instance, Westin widely defined Americans as "pragmatists" who bargain for privacy without establishing whether his respondents actually engaged in the kind of deliberations that define pragmatism.
 - Americans fit more accurately into two buckets: the privacy vulnerable and the privacy resilient.
 - American consumers have a knowledge gap on privacy practices, and mistakenly believe that the mere presence of a privacy policy imposes strict privacy protections.
 - Americans believe, falsely, the companies have fiduciary-like responsibilities with data, and consumers do not understand that they must take action to limit information transfers and uses.
 - Contrary to libertarian narratives, American consumers are just as concerned about private-sector collection and use of data as government information practices. This has been the case since the issue was examined, across multiple researchers, going back to the 1980s.
- Methods: Survey research of representative samples of American internet users by telephone. These are more fully detailed in the attached paper.
- How my research differs from prior work: The survey research we have done at Berkeley is overseen by academics with PhDs in statistics and is performed on random samples of

Americans using telephonic research. Our survey was a labor-intensive, random-digit-dial (RDD), wireline/wireless investigation that was nationally representative. Moreover, it was carried out not by us, but by a highly reputable national polling firm.

We worked to phrase our survey language as neutrally as possible while providing both an accurate and easily comprehensible description of how privacy problems present themselves. We included “tradeoffs,” so that consumers understood that information collection subsidized free content online.

Virtually all other survey research is done using web samples, which are fundamentally flawed for purposes of privacy research. Many web samples are drawn from consumers who have signed up online to take surveys regularly. Respondents are often compensated through coupons and airline award miles and the like. Such web-based studies thus select from a population that is not representative, suffer from self-selection bias, and in fact may feature respondents with abnormally low privacy concerns, because after all they sign up to do surveys for what amounts to marketing prizes.

Thank you for considering my submission.

Regards,

Chris Jay Hoofnagle