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Developing Effective Transparency: A Case Study on Voluntary Disclosure and Social Responsibility at Apple Inc.

By JESSICA GOMEZ*

Abstract: Apple Inc. (“Apple”) is one of many multinational corporations in the electronics industry that uses a voluntary transparency policy to manage disclosure of information pertaining to labor conditions of supply chain factories. This note analyzes the strengths and weaknesses of Apple’s transparency policies over the years, as well as the events that triggered these policies. This note also examines voluntary disclosure schemes generally, and discusses the inherent limitations of a policy that is self-defined and self-enforced. Despite its limitations, Apple’s policy has initiated some positive changes to labor practices and has contributed to a broader discussion on corporate social responsibility in electronic industry supply chains.

I. Introduction

In today’s global economy, multinational corporations are being pushed by consumers, nongovernmental organizations (“NGOs”), and activists to adopt business practices that are socially responsible. Advocacy groups in particular demand transparency with information pertaining to the working conditions of the corporate supply chain. Many companies in the electronics industry, for example, have supply chain factories in China, where labor is cheaper and massive quantities of items can be manufactured.¹ These practices sometimes

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1. James Carbone, *Most Electronics Manufacturing Will Stay in China*, D1G-

deprive workers of their rights.² Workers are forced to work long hours without pay, punished in humiliating ways, and paid unlivable wages.³ Advocacy groups often attempt to intervene by pressuring companies to change practices.⁴

Apple Inc. (“Apple”), an American multinational corporation that designs, develops, and sells a variety of consumer electronics and computer products, has been a prominent target of activist pressure.⁵ The high demand for iPhones, iPads, and other Apple products in recent years is directly linked to problematic working conditions in Chinese factories.⁶ In 2006, news reports revealed that Apple’s supply chain manufacturers were forcing employees to work excessive hours with minimal breaks, paying low wages, and verbally and physically abusing them.⁷

Upon being exposed in 2006 for its connection to unfair labor practices, Apple began taking steps to change its policies in an effort to be more transparent.⁸ Apple publicized its supplier code of conduct and adopted a formal transparency policy.⁹ Its policy was to perform annual audits of its supplier factories and then publicize progress reports explaining results and efforts taken to improve deficiencies. Apple continued this practice of self-auditing from 2006 to 2011 while assuring the public that it was working diligently to alleviate any problems it discovered. It often reported that most of its suppliers were in compliance with core labor issues. However, in 2012, Apple suffered another public disgrace for unfair labor

KEY CORPORATION SUPPLY CHAIN HQ (Nov. 13, 2012), <http://www.digikey.com/supply-chain-hq/us/en/articles/supply-chain/most-electronics-manufacturing-will-stay-inchina/1448>.

2. See China Labor Watch, *Tragedies of Globalization: The Truth Behind Electronics Sweatshops* (July 12, 2012), <http://digitalcommo ns.ilr.cornell.edu/cgi/viewcontent.cgi?article=2104&context=globaldocs>.

3. *Id.*

4. *Id.*

5. Apple, BUSINESS INSIDER, (Oct. 26, 2011) <http://www.businessinsider.com/blackboard/apple> (last visited Mar. 13, 2013).

6. China Labor Watch, *Foxconn’s Factory, Producing iPhone 5’s, Erupts in a Riot* (Sept. 24, 2012), <http://www.chinalaborwatch.org/news/new-425.html>.

7. *Id.*

8. *Final Assembly Supplier Audit Report*, APPLE INC. (Feb. 2007), http://images.apple.com/supplierresponsibility/pdf/Apple_SR_2007_Progress_Report.pdf [hereinafter *2007 Progress Report*] (last visited Mar. 13, 2013).

9. Arik Hesseldahl, *Apple Answers “Sweatshop” Claims*, BLOOMBERG BUSINESSWEEK (Aug. 2006), <http://www.businessweek.com/stories/2006-08-20/apple-answers-sweatshop-claims> (last visited Mar. 13, 2013).

practices in a Chinese factory making the iPhone 5. In response to public pressure, Apple joined the Fair Labor Association (“FLA”) and for the first time released a complete list of its suppliers. Apple also greatly increased the amount of audits it performed and allowed the FLA to perform independent audits. Additionally, Apple is now required under the California Transparency in Supply Chains Act (“SB 657”) to disclose efforts it is taking to address human trafficking in its supply chains.¹⁰

This note will analyze the strengths and weaknesses of Apple’s transparency policy and will draw comparisons between Apple’s first voluntary disclosure scheme used from 2006-2011 and the 2012 transparency policy it adopted in conjunction with the FLA. Part II provides an overview of the major events that triggered both transparency policies. Part III examines Apple’s current policy in more detail and argue that it lacks critical features that might make it more effective at regulating the company’s supply chain practices. Part IV discusses how consumers will respond to Apple’s disclosures and how Apple will respond to any changes in consumers’ purchasing patterns. Finally, the conclusion in Part V examines voluntary disclosure schemes in general, focusing on the inherent limitations of a self-assessed and self-enforced policy. Despite the policy’s inherent limitations and marginal direct effects on supply chain factory conditions, it has nevertheless generated some positive changes to labor practices and has contributed to a broader discussion of corporate social responsibility in electronic industry supply chains.

II. Overview of Major Events at Apple Manufacturers That Triggered Apple’s Voluntary Disclosure Schemes.

In 2006, the British newspaper *Mail on Sunday* released an exposé piece on Apple factories run by its manufacturer Foxconn Technology Group (“Foxconn”).¹¹ Among other claims, the article reported that Chinese workers in Foxconn’s Longhua factory were forced to work fifteen hours a day for approximately \$40.80 a month, sleep in crowded dormitories, and do push-ups as a form of

10. Gap Inc., *California Transparency in Supply Chains Act (SB 657)*, <http://gapinc.com/content/csr/html/company-overview/California-transparencyinsupplychainsact.html>).

11. *The Stark Reality of iPod’s Chinese Factories*, MAIL ONLINE, (Aug. 18, 2006), <http://www.dailymail.co.uk/news/article-401234/The-stark-reality-iPods-Chinese-factories.html> (last visited Mar. 13, 2013).

punishment.¹² The article caused a public uproar by consumers, investors, and activist groups.¹³

In response to the negative publicity, Apple took steps to improve conditions in its supply chain factories and to be more transparent about its practices.¹⁴ Apple publicized the Apple Supplier Code of Conduct (“Code of Conduct”), which it modeled after standards created by the International Labor Organization, the United Nations, and the Electronic Industry Citizenship Coalition (“EICC”).¹⁵ To ensure that suppliers complied with the Code of Conduct, Apple hired Verité, an NGO, to inspect the factories and publish a report.¹⁶ Apple also began sending its own auditors to perform annual inspections.¹⁷ After the audits, Apple released progress reports on the results and explained efforts it took to improve problematic labor conditions.¹⁸ The progress reports include a labor and human rights section, which is divided into the following subcategories: antidiscrimination, fair treatment, prevention of involuntary labor, prevention of underage labor, juvenile worker protections, working hours, wages and benefits, and freedom of association.¹⁹ Apple also performed increasingly frequent audits of its supply chain factories to measure compliance with its code of conduct: 39 in 2007, 83 in 2008, 102 in 2009, 127 in 2010, and 229 in 2011.²⁰ Though instances of misbehavior were reported, Apple reassured the public that conditions were improving and that it was

12. *Id.*

13. Simon Walters, *Apple Still Shamed by China's iPod Sweatshops SIX YEARS after Mail on Sunday exposé*, THE DAILY MAIL (Feb. 4, 2012), <http://www.dailymail.co.uk/news/article-2096551/Apple-shamed-Chinas-iPod-sweatshops-SIX-YEARS-expos.html> (last visited Mar. 13, 2013).

14. *2007 Progress Report*, *supra* note 8.

15. *Supplier Responsibility*, APPLE INC. <http://www.apple.com/supplierresponsibility/accountability.html> (last visited Mar. 13, 2013) [hereinafter *Supplier Responsibility - Accountability*].

16. Craig Simmons, *CHINA: New Labor Movement Afoot in China: Activists Employing Shame in Effort to Bring About Change* (Feb. 4, 2007), <http://www.corpwat.ch.org/article.php?id=14349>.

17. *Apple Supplier Responsibility 2013 Progress Report*, APPLE INC., http://images.apple.com/supplierresponsibility/pdf/Apple_SR_2013_Progress_Report.pdf (last visited Mar. 13, 2013) [hereinafter *2013 Progress Report*].

18. *Id.*

19. *Id.*

20. *Id.* Though the number of audits performed was disclosed, the number of suppliers had not been disclosed during those periods.

working closely with factory management to improve conditions.²¹

On September 24, 2012, China Labor Watch (“CLW”), a New York-based NGO, reported that a riot erupted at a Foxconn factory.²² According to CLW, the riot was triggered by a conflict between guards and a worker, after the guards took the worker into a van and beat him.²³ Approximately two thousand workers became involved, and the incident escalated into a major brawl between workers and guards that left many injured.²⁴ On October 5, 2012, just ten days after CLW’s report, a strike occurred in Foxconn’s Zhengzhou factory manufacturing the iPhone 5. Three thousand to four thousand employees walked out of the factory.²⁵ CLW reported:

In addition to demanding that workers work during the holiday, Foxconn raised overly strict demands on product quality without providing worker training for the corresponding skills. This led to workers turning out products that did not meet standards and ultimately put a tremendous amount of pressure on workers. Additionally, quality control inspectors fell into conflicts with workers and were beat up multiple times by workers. Factory management turned a deaf ear to complaints about these conflicts and took no corrective measures.²⁶

CLW further reported that workers were required to work long hours with little break time, received low wages, and had to comply with strict factory regulations on behavior.²⁷

The CLW exposure triggered a great deal of negative publicity from both the press and the public. For example, the *New York Times* published an article entitled “In China, Human Costs Are Built Into an iPad,” which detailed the inhumane conditions of factories and Apple’s unwillingness to stall production.²⁸ Thousands

21. *2007 Progress Report*, *supra* note 8.

22. China Labor Watch, *Foxconn’s Factory, Producing iPhone 5’s, Erupts in a Riot*, *supra* note 6.

23. *Id.*

24. *Id.*

25. China Labor Watch, *Update: 3000-4000 Workers Strike at Foxconn’s China Factory* (Oct. 5, 2012), <https://www.chinalaborwatch.org/news/new-433.html>.

26. *Id.*

27. *Id.*

28. Charles Duhigg & David Barboza, *In China, Human Costs Are Built Into an iPad*, *N.Y. TIMES* (Jan. 25, 2012), *available at* <http://www.nytimes.com/2012/01/26/business/ieconomy-apples-ipad-and-the-human-costs-forworkers-inchina.html?r=1&>.

of readers responded to the article; one reader commented that “[p]erhaps Apple could use some of its cash to address this atrocious malfeasance.”²⁹ In response to an article that described Foxconn’s use of child labor, another reader commented, “Why anyone would give their money to Apple is beyond me!”³⁰

Apple quickly responded to this “public relations disaster.”³¹ In 2012, Apple became the first technology company to join the FLA.³² That same year, Apple conducted 393 audits of its supply chain, a seventy-two percent increase since 2011.³³ Apple also released a list of its worldwide supply chain for the first time.³⁴ The FLA launched an audit of Foxconn and produced a report revealing “serious and pressing noncompliances with FLA’s Workplace Code of Conduct, as well as Chinese labor law.”³⁵ Disclosures also revealed that sixty-two percent of the facilities Apple was involved with were not in compliance with Apple’s sixty-hour maximum working week policy and nearly a third had problems with hazardous waste disposal.³⁶

In sum, Apple committed to a higher level of transparency in its supply chain. Nevertheless, the question that remains is whether the latest transparency policy will be enough to eradicate poor working conditions existing in supply chain factories, especially given the way Apple has structured its policy. Moreover, if poor working conditions are not eradicated, will consumers act on the disclosed information when making purchases? These issues will be analyzed in parts III and IV of this note.

29. *Id.*

30. RT Question More Live, *Foxconn Fiasco: Apple Supplier Admits Using Child Labor in China* (Oct. 2012), <http://rt.com/news/foxconn-china-use-children-646/>.

31. Jessica Jordan & Rob Sachs, *Apple Suffers Public Relations Disaster*, THE VOICE OF RUSSIA (Jan. 31, 2012), <http://english.ruvr.ru/2012/01/31/65000298.html>.

32. *Supplier Responsibility Progress Report*, APPLE INC. <http://www.apple.com/supplierresponsibility/reports.html> (last visited Mar. 13, 2013) [hereinafter *Supplier Responsibility Progress Report*].

33. *Supplier Responsibility-Accountability*, *supra* note 15.

34. *Supplier List 2013*, APPLE INC. <http://www.apple.com/supplierresponsibility/our-suppliers.html> (last visited Mar. 13, 2013) [hereinafter *Supplier List 2013*].

35. Fair Labor Association, *Independent Investigation of Apple Supplier, Foxconn* (Mar. 2012), http://www.fairlabor.org/sites/default/files/documents/reports/foxconn_investigation_report.pdf.

36. Paul Harris, *Apple Hit by Boycott Call Over Worker Abuses in China: US Writers Attack Conditions at Foxconn Plant and Call for Consumers to Act*, THE GUARDIAN U.K. (Jan. 28, 2012), <http://www.guardian.co.uk/technology/2012/jan/29/apple-faces-boycott-worker-abuses>.

III. Apple's Voluntary Transparency Policy

When information imbalances exist between businesses and the public, consumers are less able to make informed purchasing decisions, resulting in greater social inequities.³⁷ Transparency policies aim to correct information imbalance by equipping the public with adequate information to make informed purchasing decisions.³⁸ Transparency policies may be government-imposed or voluntarily adopted by private actors. Voluntary disclosure occurs when a private company reveals certain information without being legally mandated or otherwise required to do so. However, market pressures can create incentives for private institutions to adopt a transparency system;³⁹ a company might be motivated by a need to respond to publicized crises, shifts in public attitudes, or competitive dynamics.⁴⁰ Unlike mandatory transparency policies, voluntary disclosure regimes afford the corporation with authority to define its policy's structure, method of implementation, and enforcement mechanisms.⁴¹

Research indicates that a successful transparency policy will incorporate the following factors: (1) a specific policy purpose; (2) specified disclosure targets; (3) a defined scope of information; (4) a defined information structure and vehicle; and (5) an enforcement mechanism.⁴² A transparency policy is most effective when the disclosed information becomes embedded in the decision-making processes of disclosers and users.⁴³ This usually occurs when the information is considered *valuable*, *compatible*, and *comprehensible* by both groups.⁴⁴ Though these factors are meant to apply to mandatory transparency regimes where government is involvement, a voluntary disclosure regime that meets these criteria similarly increases its chances of success. Apple's voluntary disclosure regime is unlikely to succeed in eradicating poor working conditions because it fails to sufficiently meet any of the aforementioned factors.

Although the stated purpose of Apple's transparency policy is to

37. ARCHON FUNG, MARY GRAHAM & DAVID WEIL, FULL DISCLOSURE, THE PERILS AND PROMISE OF TRANSPARENCY 40 (2007) [hereinafter FUNG ET AL.].

38. *Id.*

39. FUNG ET AL., *supra* note 37, at 38.

40. *Id.*

41. *Id.*

42. FUNG ET AL., *supra* note 37, at 39.

43. *Id.* at 55.

44. *Id.*

eradicate poor working conditions in its supply chain, in reality its policy purpose is multifaceted. Apple responds to public pressure calling for socially responsible practices not to actually be socially responsible, but rather to preserve its image and reputation. This appeases stakeholders and ultimately maximizes profits for shareholders. This ulterior purpose results in a weak policy design because Apple is attempting to speak to multiple audiences with conflicting interests.

Furthermore, the lack of a uniform disclosure framework in the electronic industry makes it difficult for consumers to compare products and make meaningful choices. Since there are no real enforcement mechanisms to detect misreporting or underreporting of information, holding Apple accountable is a challenge that severely undermines the policy's effectiveness. The FLA, NGOs, journalists, and consumers may serve as important forms of enforcement.

A. Policy Purpose

Having a specified policy purpose is critical to improving information imbalances between disclosers and users.⁴⁵ Hidden supply chain information can have the effect of denying social benefits because unfair practices go undetected.⁴⁶ Until Apple was exposed by journalists and labor activists, it kept the conditions of its supply chain factories confidential.⁴⁷ Apple allowed suppliers slim profits, which resulted in suppliers trying to cut corners by pushing employees to work faster and longer.⁴⁸ A reporter specializing in the technology industry explains, “[f]or hardcore Apple fans, rushing out to buy the next iPhone or iPad is a top priority—even if it means standing in line for hours. But . . . most people would be disturbed if they knew where their iPhone came from.”⁴⁹ By keeping supply chain information hidden, consumers bought Apple products without

45. FUNG ET AL., *supra* note 37, at 40.

46. *Id.*

47. Don Tapscott, *Why a Naked Apple Would Be a Better Company*, CNN (Oct. 7, 2012), <http://www.cnn.com/2012/10/07/opinion/tapscott-openness-apple>.

48. Charles Duhigg & Keith Bradsher, *How the U.S. Lost Out on iPhone Work*, N.Y. TIMES, (Jan. 1, 2012), *available at* <http://www.nytimes.com/2012/01/22/business/apple-america-and-a-squeezed-middle-class.html?pagewanted=all>.

49. Tiffany Kaiser, *Report: Apple's Suppliers Continuously Violate Code of Conduct, Apple Does Nothing to Change It*, THE DAILY TECH (Jan. 27, 2012), <http://www.dailytech.com/Report+Apples+Suppliers+Continuously+Violate+Code+of+Conduct+Apple+Does+Nothing+to+Change+It/article23867.htm>.

knowledge of the social costs born in making them, thereby enabling the problem.

When a company's failure to provide information produces negative social consequences, the government often intervenes.⁵⁰ Though Apple was not obligated by the government to publish information, its transparency policy resulted from serious public concern and pressure. Apple's asserted policy purpose is to be transparent with supply chain information in an effort to eradicate poor working conditions.⁵¹ According to the Supplier Responsibility section of its website, Apple aims "to end excessive work hours, prohibit unethical hiring policies, and prevent the hiring of underage workers."⁵² In addition, Apple maintains that it publishes reports because it "believe[s] in honestly sharing [its] findings."⁵³ Apple's policy purpose is made public and reiterated throughout its website, as well as its audit reports.

Though Apple's policy purpose seems straightforward, there is a hidden ambiguity. Apple executives and/or officers know that having a poor reputation for persistent unfair labor practices can hinder Apple's ability to maximize profits.⁵⁴ As one reporter puts it, "[t]his is an enormous problem for Apple, not just for its reputation, but also the disruptions such working conditions can cause in the supply chain."⁵⁵ As with any modern corporation, maximizing profits and market share for the benefit of shareholders remain the top priority for Apple.⁵⁶ Therefore, its transparency with regard to working conditions along the supply chain exists to the extent necessary to appease stakeholders. At some point, full disclosure of working conditions ceases to be cost-effective for Apple, so it would refrain from making certain disclosures. A former Apple executive admitted, "[w]e've known about labor abuses in some factories for

50. *Id.*

51. *Supplier Responsibility-Labor and Human Rights*, Apple Inc. <https://www.apple.com/hk/en/supplierresponsibility/labor-and-human-rights.html> [hereinafter *Supplier Responsibility-Labor and Human Rights*].

52. *Id.*

53. *Id.*

54. Stan James, *Apple Opens Supplier Doors to Labor Group After Suicides*, BLOOMBERG NEWS (Jan. 16, 2012), <http://bangordailynews.com/2012/01/16/business/apple-opens-supplier-doors-to-labor-group-after-suicides/>.

55. Tapscott, *supra* note 47.

56. *Statement By Apple*, APPLE INC., (Feb. 7, 2013), <http://www.apple.com/pr/library/2013/02/07Statement-by-Apple.html> (last visited Mar. 13, 2013).

four years, and they're still going on . . . Why? Because the system works for us. Suppliers would change everything tomorrow if Apple told them they didn't have another choice."⁵⁷ The problem is that these omissions often pertain to serious labor violations. Fortunately, corporate social responsibility policies have gained worldwide momentum in recent years,⁵⁸ so Apple is practically compelled to respond to those market pressures in an effort to appease investors and stakeholders who care about those issues. Apple purports to adopt its policy with the purpose of ending unfair labor practices of its supply chain, but a closer look reveals that Apple's true purpose is to maximize profits, which only indirectly leads to changes in labor practices.

B. Information Users

An effective transparency policy designates which parties will disclose the information and which parties will use the information. Apple accepted responsibility for enabling unfair labor practices and voluntarily became a discloser. But like many ineffective transparency policies, Apple's policy fails to designate its target information users⁵⁹ and seemingly addresses "the public."⁶⁰ Presumably, Apple's target audience is its many stakeholders: customers, employees, business partners, investors, and shareholders.⁶¹ When transparency policies fail to specify targets for information, "actual users in most cases are self-selected by their own interests."⁶² Thus, when Apple makes supply chain information available on its website, it is likely that the information is primarily received by self-interested parties. For example, a shareholder might be concerned with recent reputational attacks on Apple and will check the website to see whether the company is making efforts to repair the damage. The shareholder might not truly care about whether the transparency policy actually creates social change; rather, the shareholder could be primarily interested in Apple cleaning up

57. Duhigg, *supra* note 28.

58. European Commission, Corporate Social Responsibility National Public Policies in the European Union (Sept. 2007), *available at* ec.europa.eu/social/BlobServlet?docId=1577&langId=en (last visited Mar. 13, 2013).

59. *Supplier Responsibility-Accountability*, *supra* note 15.

60. FUNG ET AL., *supra* note 37, at 42.

61. Tapscott, *supra* note 47.

62. FUNG ET AL., *supra* note 37, at 42.

any public relations disaster that may disrupt profits. On the other hand, a concerned consumer who wants to find out if Apple is taking steps to correct unfair labor practices might visit Apple's Supplier Responsibility page. It is likely that consumers who take the time to read Apple's transparency policy are sensitive to labor issues and already use that information in decision-making. The issue is that most consumers who are not pre-interested in supply chain issues are uninformed and thus unlikely to seek out or use the information when making decisions. This undercuts the purpose of having a transparency policy.

On the other hand, keeping an open policy without specifying users may have some advantages. Not specifying users can make policies more adaptive to change in the makeup of user groups.⁶³ Intermediaries such as community groups, journalists, and activists may act as agents for users.⁶⁴ Despite Apple's failure to actively disperse supply chain information, NGOs and journalists have served as intermediaries for making supply chain information more widely available.⁶⁵ For example, CLW works with a network of unions, labor organizations, and media outlets to spread news of Apple's unfair labor practices in Chinese factories. In 2012, CLW gave a detailed account of the poor labor conditions faced by Chinese workers in Apple's supply chain,⁶⁶ and diverse media conduits have cited CLW's reports on Apple.⁶⁷ Thus, Apple's supply chain information is able to reach a wider audience of consumers who would not otherwise seek out the information.

Importantly, labor groups such as CLW are not merely obtaining information using Apple's disclosures; they conduct their own investigations in conjunction with unions, other labor organizations, and the media.⁶⁸ Together these groups have uncovered supply chain information that Apple does not, and perhaps would not, disclose in its reports. CLW has released statements specifically responding to

63. FUNG ET AL., *supra* note 37, at 42.

64. *Id.*

65. *Id.*

66. *Id.*

67. Tim Worstall, *Have Apple's Foxconn Workers Gone On Strike Or Not?*, FORBES (Oct. 6, 2012), <http://www.forbes.com/sites/timworstall/2012/10/06/haveapples-foxconn-workers-gone-on-strike-or-not/>.

68. China Labor Watch, *Response to FLA's Progress Report on Apple* (Aug. 21, 2012), <http://www.chinalaborwatch.org/news/new-419.html>.

and critiquing Apple's progress reports.⁶⁹ Nonetheless, Apple's disclosures are useful because they allow labor groups to highlight a gap between Apple's representations and reality. This in turn helps to provide consumers with a more informed, accurate picture of supply chain conditions.

C. Scope of Information

Establishing a defined scope of information to be disclosed is a critical feature of a successful transparency policy. The content of disclosure should relate to the character of the information imbalance that the policy seeks to rectify.⁷⁰ A transparency policy needs a defined scope in order to be reliable and predictable to the user. Moreover, it keeps the disclosing company accountable because its reports will be consistent over time, allowing reviewing agencies and consumers to compare and contrast current reports against those of prior years. In deciding what to disclose, "disclosers usually weigh conflicting interests—minimizing use of resources, maximizing competitive advantage, and avoiding reputational damage."⁷¹ The scope of Apple's disclosures broadened significantly after it joined the FLA in 2011.

Prior to 2011, Apple's ability to define the scope of its disclosure regime compromised the quantity and quality of the information it made available to consumers. Apple either glossed over important details regarding working conditions or kept them confidential. It performed minimal audits and presented results in an overly simplistic manner. This kept poor working conditions hidden and impeded the transparency policy from making meaningful changes. When Apple joined the FLA in 2012 after suffering another public scandal, it began to take bigger strides toward full disclosure.⁷² The FLA's involvement has improved the quality of the disclosures and has pushed Apple to disclose more than in previous years.⁷³

Apple was not committed to full disclosure when it adopted its 2006 transparency policy, and as a result, the disclosed information was inadequate for consumers to make informed decisions.⁷⁴ Apple

69. *Id.*

70. FUNG ET AL., *supra* note 37, at 42.

71. *Id.* at 72.

72. *Supplier Responsibility-Accountability*, *supra* note 15.

73. *Id.*

74. FUNG ET AL., *supra* note 37, at 42.

was not mandated by law to provide information regarding its supply chain;⁷⁵ rather, Apple began releasing annual progress reports on its suppliers because it was incentivized by its need to recover from the negative publicity that it received. Apple's main focus was to protect its reputation so that it could maximize profits and it would address social problems so far as they did not make a significant impact on profits.⁷⁶ This affected the amount and type of information it disclosed. For instance, when Apple hired Verité to audit its factories in 2006, the audit results were not fully disclosed to the public because Verité has a policy of keeping specific audit information confidential.⁷⁷ In addition, Apple was unwilling to release a list of its suppliers. The amount of audits it performed from 2006-2011 was minimal, considering it had over 200 suppliers and employs over 700,000 people overseas.⁷⁸ An information user had no way of finding out how many audits Apple would perform and of which suppliers.

Furthermore, Apple's progress reports on unfair labor conditions presented information in a manner that greatly minimized the negative aspects and focused on reassuring information users that it was taking steps to improve those conditions. Simultaneously, Apple did not get into great detail on the steps that it was taking to improve those conditions. Apple's progress reports simply stated that it did not approve of the practice and required the supplier to discontinue the behavior and implement an action plan.⁷⁹ The details of the action plans and their enforcement were not disclosed.⁸⁰ Consider the following excerpt from Apple's 2008 progress report on fair treatment:

In more than 800 interviews of randomly selected employees, we found no evidence of physical abuse, forced labor, or harassment. However, we did find *three* cases in which employees were

75. *Id.* at 38.

76. Raz Godelnik, *People Plant Profit, 5 Reasons Why Apple's CSR Strategy Doesn't Work*, TRIPLE PUNDIT (May 18, 2012), <http://www.triplepundit.com/2012/05/5-reasons-apples-csr-strategy-doesnt-work/>.

77. Deborah Hirt, *Verité: Auditing Labor Standards*, GRADUATE SCHOOL OF INT'L REL. AND PAC. STUDIES U.C.S.D. (2007), <http://irps.ucsd.edu/assets/021/8425.pdf>.

78. Charles Duhigg & Keith Bradsher, *supra* note 48.

79. *Driving Change 2008 Supplier Responsibility Progress Report*, APPLE INC., 8 http://images.apple.com/supplierresponsibility/pdf/Apple_SR_2008_Progress_Report.pdf [hereinafter *2008 Progress Report*] (last visited Mar. 13, 2013).

80. *Id.*

disciplined in unacceptable ways.

In one case, employees were required to clean bathrooms, and in the other two cases, employees had to write the mistake for which they were being disciplined multiple times or read it aloud to coworkers. In each case, we have required that these practices cease.

When we interview employees, we provide our contact information and follow up with them to ensure that they are not subjected to any retaliation or harsh treatment as a result of our audit. No cases of retaliation have been reported.⁸¹

It is hard to believe that only three instances of unfair treatment were discovered by Apple in its supply chain. Apple is likely not disclosing the complete results of its audits, or the audits themselves are more superficial than Apple leads its information users to believe. Apple's inadequate disclosures highlight the importance of having a well-defined scope of information in a transparency policy.

Moreover, in 2009, Apple's progress report included a pie graph illustrating that ninety-seven percent of the core issues assessed by Apple auditors were in compliance, with only three percent noncompliant.⁸² Apple defined core violations as "the most serious class of violation" and offered as examples "instances of abuse, underage labor, involuntary labor, falsification of audited materials, significant threats to employee safety, and any intimidation or retaliation against workers participating in an audit." That Apple was exposed for Foxconn's core violations only two years after issuing such a highly optimistic progress report reveals serious gaps and inefficiencies in its transparency policy. Since Apple had complete control in choosing which information to disclose and how to present that information, it provided incomplete and inaccurate information. This is dissimilar to mandated transparency policies where "policymakers push organizations to reveal more than they otherwise would choose to."⁸³

When Apple joined the FLA, it disclosed more information than it ever had, as well as of a different quality. Apple allowed the FLA to launch an independent audit of Foxconn and even posted the

81. *Id.*

82. *Supplier Responsibility 2009 Progress Report*, 6 APPLE INC., http://images.apple.com/supplierresponsibility/pdf/Apple_SR_2009_Progress_RepRep.pdf [hereinafter *2009 Progress Report*].

83. *Id.*

FLA's findings on its website.⁸⁴ Even Apple refers to the FLA's independent audit as "unprecedented."⁸⁵ Apple also published the names and addresses of its top 200 production suppliers.⁸⁶ Additionally, it agreed to track weekly work hours for one million workers across its supply chain and publish the results on its website *on a monthly basis*.⁸⁷ Apple also conducted 393 audits, a seventy-two percent increase from 2011.⁸⁸ These adjustments demonstrate a higher degree of transparency in Apple's policy when the FLA became involved. The FLA has acted as a policymaker that has pushed Apple to disclose more than it previously chose to.

Yet the FLA may still have its limitations. Critics argue that because the FLA receives much of its funding from the organizations that it monitors, an inherent conflict of interest exists.⁸⁹ In fact, the FLA Watch, an organization that monitors the FLA, referred to the FLA as "a public relations mouthpiece."⁹⁰ In contrast, FLA proponents maintain that the FLA has "inspected more than 1,300 factories . . . uncovering myriad violations."⁹¹ They contend that the FLA has "played a very important role not only in pushing for transparency into members' supply chains but also in leading multi-stakeholder innovation and engagement on core labor standards."⁹² In any case, voluntary disclosure regimes are limited by the very fact that they are voluntary and not government mandated. Apple's disclosure regime has improved since the FLA became involved because the FLA has served as a regulating body that monitors Apple's policy implementation. Though a government-defined scope may further enhance Apple's disclosures and eliminate conflict of interest issues, FLA involvement is preferable to exclusive Apple responsibility.

84. *Supplier Responsibility Progress Report*, *supra* note 32.

85. *Id.*

86. *Id.*

87. *Id.* (emphasis added).

88. *Id.*

89. Steven Greenhouse, *Critics Question Record of Monitor Selected by Apple*, N.Y. TIMES (Feb. 13, 2012), available at <http://www.nytimes.com/2012/02/14/technology/critics-question-record-of-fair-labor-association-apples-monitor.html?r=0>.

90. *About FLA Watch*, FLA WATCH, <http://flawatch.usas.org/about/> (last visited Mar. 13, 2013).

91. Greenhouse, *supra* note 89.

92. *Id.*

D. Structure and Vehicles for Information

An effective transparency policy will include a framework that specifies metrics, reporting frequency, and the communication vehicle.⁹³ When a transparency policy has a standardized content and format, consumers are better able to use the information to compare products.⁹⁴ This is particularly challenging for voluntary disclosure regimes to accomplish because disclosure frameworks of individual organizations often vary. The lack of uniform supply chain disclosure standards in the electronics industry obstructs information users' ability to make informed purchasing decisions.

Since government did not regulate what supply chain information the electronic industry must disclose (prior to SB 657), Apple and its competitors did not follow a specific framework for their voluntary disclosure policies. For example, Apple, LG, and Samsung are all members of the Electronic Industry Citizenship Coalition ("EICC"), a coalition of electronics companies and supporting suppliers that aim to secure social responsibility in global supply chains.⁹⁵ EICC welcomes members to adopt its code of conduct and to engage in discourse regarding supply chain issues.⁹⁶ The EICC's standards are voluntary.⁹⁷ While Apple, LG, and Samsung are all members of the EICC, they report information in dissimilar ways. Samsung has a generic statement: "Samsung is dedicated to being a socially and environmentally responsible corporate citizen in every community where we operate around the globe."⁹⁸ While LG has a supplier code of conduct and a global labor policy, it makes no mention of audits and does not disclose specific information pertaining to violations.⁹⁹ There is no uniformity in what the electronic industry must disclose and this makes it difficult for consumers to compare Apple's products with competitors' products

93. *Id.*

94. FUNG ET AL., *supra* note 37, at 43.

95. *About Us*, ELECTRONIC INDUSTRY CITIZENSHIP COALITION, http://www.eicc.info/about_us.shtml (last visited Mar. 13, 2013).

96. *Id.*

97. *Id.*

98. *The Samsung Philosophy*, SAMSUNG ELECTRONICS CO., LTD., <http://www.samsung.com/us/aboutsamsung/corporateprofile/valuesphilosophy.html> (last visited Mar. 13, 2013).

99. *Policy and Strategy: LG Electronics' Policies*, LG CORPORATION, <http://www.lg.com/global/sustainability/csr-framework/policy-strategy> (last visited Mar. 13, 2013).

when making purchasing decisions.

Voluntary, company-specific transparency policies undermine uniformity and standardization. Consumers must go on each company's website and search for its corporate code of conduct or its social responsibility page. Companies do not report information with the same frequency and certainly do not follow the same format. This is a major inefficiency in Apple's transparency policy that Apple is not necessarily responsible for. Even if consumers look at Apple's website and review the progress reports, they are nonetheless unable to easily compare that information with a competitor's information. This is especially difficult when Apple's competitors do not disclose any audit results or measurable data. As one scholar explains,

People want to act rationally to advance their various, usually self-interested, ends. But because they are willing to invest only so much time and attention . . . they don't seek out all of the information necessary to make optimal decisions. Instead, they try to make decisions that are good enough.¹⁰⁰

Since the additional cost of obtaining comparable information is high and likely incompatible with a consumer's decision-making process, a consumer is hindered from making an optimal decision.¹⁰¹

E. Enforcement Mechanism

An effective transparency will have a method of enforcement.¹⁰² Scholars maintain that “[m]onitoring nonreporting or misreporting and then levying penalties for those who violate disclosure requirements remain essential.”¹⁰³ When policies rely on information that is gathered and circulated by disclosing organizations, the government can play an active role in monitoring compliance. This is perhaps the greatest limitation of voluntary disclosure regimes; corporations are not legally bound to answer to the government or any other public entity. This is not to say that government enforcement will alleviate all problems, only that government intervention is often more effective than self-enforcement. Because of the voluntary nature of disclosure, Apple's transparency program lacks adequate enforcement mechanisms.

100. FUNG ET AL., *supra* note 37, at 55.

101. *Id.* at 56.

102. *Id.* at 45.

103. *Id.*

Recently, Apple has become subject to some mandatory reporting requirements with respect to its supply chain labor practices. SB 657, enacted in 2012, requires all businesses that sell products in California and gross over \$100 million a year globally to disclose efforts taken to ensure that forced labor and human trafficking does not exist in their supply chains.¹⁰⁴ SB 657 did not necessarily solve the problem with supply chain transparency, though it made some improvements. While SB 657 sets out a communication vehicle by requiring companies to post the information on their websites, it fails to stipulate the frequency by which the information should be updated.¹⁰⁵ Furthermore, SB 657 does not adequately detail the metrics of what a company should report. For example, rather than requiring companies to perform audits to obtain the number of instances an employee was required to work overtime without pay, the law instead merely calls for companies to disclose whenever they conduct an audit. The law does not require companies to quantify information or to compile information in a way that consumers can measure and compare.¹⁰⁶ Additionally, many of Apple's unfair labor practices are not within the scope of SB 657, as it only covers human-trafficking violations. One critic explains, "Foxconn's workers have been found to live in unsanitary dormitories ... experiencing humiliating punishments by the management ... Foxconn has also been accused of using forced labor, adding one more worker rights violation to an already sizeable list not covered by SB 657."¹⁰⁷ By focusing only on human trafficking, SB 657 is too narrow to make comprehensive improvements in labor practices of supply chain factories.

SB 657 also fails to provide meaningful enforcement methods. While Apple is required to abide by SB 657 by having information available on its website, the law fails to specify a review process or method of checking the accuracy and sufficiency of the disclosed information. The only remedy at law is for the Attorney General to bring an action for injunctive relief.¹⁰⁸ While this compels some

104. Cal. Civ. Code § 1714.43; Senate Bill No. 657, *available at* <http://www.state.gov/documents/organization/164934.pdf>.

105. *Id.*

106. *Id.*

107. Elizaveta Doubossarskaia, *CA Transparency in Supply Chains Act: Can It Stop Worker Abuses Among Suppliers in the Developing World?*, USF SCHOLARSHIP REPOSITORY: MASTER THESES (2012), *available at* <http://repository.usfca.edu/cgi/viewcontent.cgi?article=1058&context=thes>.

108. *Id.*

parties to disclose information, it does little to prevent misreporting or insufficient reporting by companies that are in compliance. Apple has been following the terms of SB 657 prior to the law's passage and will continue to be in compliance so long as it keeps the information on its website. If Apple failed to update its information, it would likely still comply with SB 657 because the law does not indicate the frequency in which the information should be updated. Even if a mandated disclosure policy helps define scope and uniformity, a lack of enforcement will render the policy ineffectual.

Apple is likely to continue to abide by its policy of conducting audits and annual reporting due to other enforcement mechanisms such as NGOs and activist groups. These groups continue to pressure Apple to disclose supply chain information and work to improve conditions. If Apple were to skip a year or revert back to performing minimal audits, it is unlikely that it would go unnoticed. As Terry Gou, the founder and chairman of Foxconn, said during an investigation, "The world is watching!"¹⁰⁹ The involvement of the FLA will likely keep Apple more accountable because Apple will have to answer to the FLA and negative press if the FLA's independent audits do not match up with Apple's own audits. These organizations will push Apple to achieve its asserted policy purpose of eradicating unfair practices. Suppliers are contractually required by Apple to abide by its Code of Conduct, and it is imperative for Apple to penalize those who fail to comply. Apple's Supplier Responsibility page states:

All core violations must be stopped and corrected immediately. Our preference is to fix problems so they don't happen again rather than just fire the supplier—which would likely let these violations continue for other customers. However, if a violation is particularly egregious, or if we believe a supplier is not fully committed to stopping the behavior, we terminate our relationship with that supplier and, when appropriate, report the behavior to the proper authorities.¹¹⁰

Disclosing labor violations to stakeholders will do little to eliminate poor working conditions without Apple enforcing its supplier Code of

109. Keith Bradsher & Charles Duhigg, *Signs of Changes Taking Hold in Electronics Factories in China*, N.Y. TIMES (Dec. 26, 2012), <http://www.nytimes.com/2012/12/27/business/signs-of-changes-taking-hold-in-electronics-factories-in-china.html?p agewanted=all>.

110. *Supplier Responsibility-Accountability*, *supra* note 15.

Conduct. In January 2013, Apple reported that it terminated its business relationship with Guangdong Real Faith Pingzhou Electronics Co., Ltd. when it discovered that the company employed seventy-four workers under the age of sixteen.¹¹¹ This is an indication of Apple's commitment to enforcing its code and seeking to further its policy purpose.

IV. Will Apple's Transparency Policy Alter the Behavior of the Company or Its Consumers?

An effective transparency policy should follow an "action cycle" of information disclosure, use, and response.¹¹² For the policy to successfully change behavior, consumers must access and comprehend new information, integrate it into decision-making processes, and then alter purchasing patterns.¹¹³ Companies must then perceive consumers' choices and respond by changing behavior in ways that further the specific policy goal.¹¹⁴ This process is more likely to occur when information is considered valuable, compatible with consumers' purchasing practices, and comprehensible by both groups.¹¹⁵ However, as discussed in previous sections, disclosers have many reasons to provide incomplete or unsatisfactory information, and there are insufficient enforcement mechanisms to manage disclosure. This prevents users from making informed decisions and inhibits companies from accurately interpreting and responding to consumer choices. Thus, the effectiveness of Apple's transparency policy will depend on both Apple's behavior with respect to its supply chain, as well as a consumer base that is responsive to Apple's disclosures.

A. Is the Information Valuable to Consumers?

For consumers to take the time to seek out certain information, they must believe that the information is valuable in furthering their goals.¹¹⁶ Most transparency systems do little to influence a consumer's underlying goal.¹¹⁷ For instance, if a consumer's goal in

111. *Supplier Responsibility-Labor and Human Rights*, *supra* note 51.

112. FUNG ET AL., *supra* note 37, at 54.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 55.

117. *Id.*

purchasing a mobile phone is high quality, then a transparency system on supply chain information will have little effect on that consumer's purchasing decision. Similarly, if a consumer aims to purchase a mobile phone at the lowest price possible, a transparency system will likely not alter that goal. However, consumer preferences may be amenable to change.¹¹⁸ For example, a public crisis may jolt consumers and alter their preferences, and an accompanying transparency system can assist those consumers by providing valuable information for them to act.¹¹⁹ But even if the disclosed information is valuable to consumers, a transparency system is severely limited when consumers perceive that the cost of acquiring and using information outweighs expected benefits.¹²⁰ Apple's transparency system is not well designed for consumers to act on any change in preferences that may have occurred as a result of the crisis that occurred in Foxconn factories. The time and energy that a consumer must expend in order to gather supply chain information for Apple and its competitors is likely to outweigh a consumer's perceived benefits of the information.

As discussed in Part III, Section D, consumers who seek to compare supply chain information when purchasing an electronic product must go on each company's website and search for its policy. The information is in each company's own format, and the consumer must spend time interpreting it in order to compare. This additional cost consumers must bear to use the information may outweigh its prospective value.

Furthermore, even to the extent that a consumer is interested in purchasing products from companies with socially responsible supply chains, the information will not alter a consumer's decision if the consumer feels as if he or she lacks a meaningful choice.¹²¹ For instance, a study of industry-wide labor practices purported that the electronic industry employs the worst labor practices of any industry.¹²² One reporter noted that "[t]he same suppliers that Apple uses, many of Apple's major competitions utilize as well. Foxconn

118. *Id.*

119. *Id.*

120. *Id.* at 56.

121. *Id.*

122. Christopher Mims, *Electronics Makers Have Worst Labor Practices of Any Industry, Says Report*, MIT TECHNOLOGY REVIEW (Jan. 9, 2012), <http://www.technologyreview.com/view/426565/electronics-makers-have-worst-labor-practices-of-any-industry-says-report/>.

supplies Hewlett-Packard, Samsung, and Dell.”¹²³ Some consumers may feel that Apple’s practices are the same as its competitors, so it will not make a difference which product they choose.

Moreover, because changes in labor practices of the supply chain factories will not be directly felt by consumers in the short term, consumers may undervalue the information. Consumers are more likely to feel this way when disclosed information is confusing and difficult to compare. The potential value of Apple’s disclosed information is undercut by the cost of acquiring and comparing that information.

B. Is the Information Compatible with the Way In Which Consumers Purchase Apple Products?

The way in which consumers respond to disclosed information “depends on how easily it fits into their routine ways of making decisions.”¹²⁴ Consumers are likely to disregard information if it is not presented in a manner that is compatible with the ways in which they make purchasing choices.¹²⁵ This is difficult to accomplish in the technology industry, where consumers typically go to the store with a product in mind or shop around for a product that fits within their budget or desired quality.¹²⁶ When consumers plan to purchase a phone, they might do some research on price, quality, and aesthetics, but are less inclined to look up supply chain information.¹²⁷ Furthermore, as discussed in the previous section, consumers are inhibited from using supply chain information during purchasing decisions when they are required to spend extra time visiting each company’s website. When consumers purchase Apple products in particular, it is often in a frenzied atmosphere where acquiring the product is the main concern. One article reported that, “[e]ager buyers formed long lines . . . at Apple Inc. stores in Asia, Europe and

123. Reverie, *Ethics of Consumers: Do Consumers Care?*, ABLE2KNOW (Dec. 8, 2012, 9:51 PM), <http://able2know.org/topic/203341-1>.

124. FUNG ET AL., *supra* note 37, at 55.

125. *Id.* at 56.

126. Suzanne Choney, *What Do Consumers Want in a Cell Phone?*, NBC NEWS (Jun. 27, 2007, 11:05 AM ET) <http://www.nbcnews.com/id/19457886/#.UT0qPhysiSo>. This article describes what consumers look for when purchasing cell phones. Price, design, weight, and camera capabilities were factors at the top of the priority list. The article makes no mention of labor conditions in supply chain factories as a consideration for consumers.

127. *Id.*

North America to be the first to get their hands on the latest version of the smartphone.”¹²⁸ This burdensome process of acquiring and comparing supply chain information is presumptively incompatible with a typical consumer’s purchasing process for Apple products.

For Apple’s transparency system to influence consumers’ decisions, many changes must be made. Apple and its competitors should engage in disclosure regimes that provide the same type of information using a uniform format. The information should be located in the same forum and should be easily accessible so that consumers can quickly utilize it to compare products when making choices. One possible venue for posting this information is the EICC website.¹²⁹ Many electronic companies and manufacturers are already members of this coalition,¹³⁰ and it would be helpful for consumers to visit one website that details the number and results of audits performed by companies. Since consumers increasingly purchase products online,¹³¹ having a transparency regime in an online forum would likely be congruous with many consumers’ decision-making processes. Ideally, consumers would react to the supply chain information by choosing products made by companies with better labor practices. This, in turn, would push Apple and its competitors to employ better labor practices in supply chain factories.

C. Is Apple’s Disclosed Information Comprehensible?

Information must be comprehensible for consumers to use it

128. Cameron Spencer, *As Expected, Long Lines for Apple’s iPhone 5*, CBS NEWS (Sept. 21, 2012, 4:25 AM), http://www.cbsnews.com/8301-205_162-57517491/as-expected-long-lines-for-apples-iphone-5/.

129. As discussed in Part III, Section D, the EICC is a “coalition of the world’s leading electronics companies working together to improve efficiency and social, ethical, and environmental responsibility in the global supply chain.” Its vision is to create a “global electronics industry supply chain that consistently operates with social, environmental and economic responsibility.” Its mission is to “enable and encourage [its] members to progress towards the EICC vision through a common code of conduct, collaborative efforts and shared tools and practices.” Its membership is “open to electronic manufacturers, software firms, ICT firms, and manufacturing service providers, including contracted labor, that design, market, manufacture and/or provide electronic goods or other materials or services to ICT firms.” *About us, supra* note 95.

130. *Membership List*, EICC, available at http://www.eicc.info/about_us05.shtml (last visited Mar. 13, 2013).

131. *How Internet and Technology Changed The Way We Shop*, TECHCHUNKS (Nov. 4, 2011) <http://techchunks.com/technology/how-internet-and-technology-changed-the-way-we-shop/>.

when making decisions.¹³² Even if consumers consider information valuable and compatible with their purchasing habits, they will disregard it if they do not comprehend it.¹³³ Over time, Apple's disclosure regime has improved in the way it simplifies and presents supply chain information to users.

Apple's 2007 Progress Report was entirely in paragraph form, lacking illustrations and leaving out important details. For example, consider an excerpt in the "Working Hours" section:

Apple's Code of Conduct sets a maximum of 60 work hours per week and requires at least one day of rest per seven-day week under normal work conditions. We examined hundreds of records from each supplier across multiple shifts of several production lines and found that employees on average had worked more than 60-hours per week 38% of the time, and 29% of employees had worked more than six consecutive days without a day off.¹³⁴

Without illustrations supplementing the statistical disclosure, some consumers may be confused by the percentages. The report also failed to define the terms "supplier" and "production lines," which would help provide clarity for consumers that are unfamiliar with this terminology.

Apple's progress reports improved over time and became more comprehensible. Starting with its 2008 Progress Report, Apple began to include pie graphs, bar graphs, and flow charts.¹³⁵ The 2009 Progress Report includes a helpful bar graph that lists every labor issue that Apple audited in its supply chain factories.¹³⁶ The bar graph uses three different colors to distinguish whether Apple found compliance, limited violations, or frequent violations.¹³⁷ Additionally, Apple's 2013 Progress Report provides a thorough definition of Apple's supply chain.¹³⁸ These extra efforts help simplify and break down confusing supply chain information in a manner that consumers can easily interpret and use. Nevertheless, comprehensible information alone is unlikely to create a responsible and conscious consumer base when the policy is set up in a way that deters

132. FUNG ET AL., *supra* note 37, at 59.

133. *Id.*

134. *2007 Progress Report*, *supra* note 8.

135. *2008 Progress Report*, *supra* note 79.

136. *2009 Progress Report*, *supra* note 82, at 8.

137. *Id.*

138. *2013 Progress Report*, *supra* note 17, at 9.

consumers from accessing the information.

D. How Will Apple Respond to Consumer Choices?

Consumers must alter their purchasing patterns for a company to take notice and appropriately respond.¹³⁹ Companies usually alter practices when it is clear that changes in consumers' purchasing decisions will impact organizational goals.¹⁴⁰ These goals include enhanced profitability, market share, and reputation.¹⁴¹ Consumers must respond to Apple's disclosures by changing purchasing methods. This poses a challenge because of the high global demand for Apple products.¹⁴² Furthermore, for Apple to make significant improvements to the labor practices of its supply chain factories, it would have to attribute changes in profitability to consumers' responses to its disclosures. Since Apple's transparency regime is unlikely to be incorporated into consumers' decision-making processes, this creates disconnect between Apple and consumers. There is an increased risk that Apple will misinterpret consumers' responses to the disclosed information or will not respond to consumer behavior changes at all.

Recently, consumers have changed their purchasing patterns and Apple profits have taken a hit.¹⁴³ Apple reported that it sold fewer iPhones than expected in the fourth quarter of 2012, and its stock fell by eleven percent.¹⁴⁴ However, changes in consumers' behavior "are usually not enough to make transparency policies effective"¹⁴⁵ because the company "must also alter decisions and actions."¹⁴⁶ For Apple to work aggressively to eradicate unfair labor practices in its supply chain factories, Apple must ascertain that consumers bought fewer Apple products because they were unhappy with Apple's labor practices. Since the transparency policy is flawed and it is unclear

139. FUNG ET AL., *supra* note 37, at 66.

140. *Id.*

141. *Id.*

142. J. Glenn Kunzler, *'iPhone 5 Faces Higher Demand Than Any Other Smartphone in History!*, MACTRAST (July, 23, 2012), <http://www.mactrast.com/2012/07/iphone-5-demand-is-off-the-charts-data-says/>.

143. Nick Wingfield, *Business Day Technology, Heady Returns, but Apple Finds Its Stock Falling*, N.Y. TIMES (Jan. 23, 2013), available at http://www.nytimes.com/2013/01/24/technology/apple-earnings.html?_r=0.

144. *Id.*

145. FUNG ET AL., *supra* note 37, at 65.

146. *Id.*

whether consumers are using the new information, consumer behavior changes are difficult to interpret.

Even when consumers act on disclosed information and change purchasing habits, companies do not always attribute these changes to objections over labor standards. In fact, Apple determined that consumers stopped buying some Apple products due to affordability.¹⁴⁷ Some reporters argue that Apple is facing growing competition as many consumers are “opting to buy cheaper smartphones running Google Inc.’s Android software.”¹⁴⁸ Accordingly, Apple responded to these consumer changes by lowering prices of some products by a few hundred dollars.¹⁴⁹ There are multiple market factors at play that guide consumers’ decisions and perhaps Apple was correct in attributing its decreased profitability to affordability rather than discontent by consumers for its labor practices. However, Apple’s ill-designed transparency policy makes it unclear whether it has impacted consumer decision-making at all. Without a well-designed transparency policy, it is unlikely that Apple will be able to grasp if and when consumers use disclosure information to make purchasing decisions. This keeps the transparency from achieving its purpose of improving conditions of supply chain factories. Not only did Apple fail to identify consumer flight with labor standards issues, its reaction will have the effect of further exacerbating labor conditions in factories where profit margins are already slim.¹⁵⁰

V. What Can Voluntary Disclosure Regimes Accomplish?

While this note has mainly addressed the shortcomings of Apple’s policy and voluntary disclosure policies generally, it is important to discuss the positive aspects of these policies. Though Apple’s voluntary disclosure regime is not well-designed to achieve its broader policy purpose of eradicating poor working conditions in

147. *Apple Press Info: Apple Updates Processors & Prices of MacBook Pro with Retina Display*, APPLE INC. (Feb. 13, 2013), <http://www.apple.com/pr/library/2013/02/13Apple-Updates-Processors-Prices-of-MacBook-Pro-with-Retina-Display.html>.

148. Peter Svensson, *Apple Q1 2013: Apple’s Profit Rocket Hits Air Pocket*, HUFFINGTON POST, (Jan. 24, 2013, 1:11 AM ET) available at http://www.huffingtonpost.com/2013/01/23/apple-q1-2013_n_2536769.html.

149. Joanna Stern, *Apple Reduces Price on MacBook Pro With Retina Display*, ABC NEWS: TECH THIS OUT (Feb. 13, 2013), <http://abcnews.go.com/Technology/apple-drops-price-13-inch-macbook-pro-retina/story?id=18490270>.

150. Charles Duhigg & Keith Bradsher, *supra* note 48.

its supply chain, it has initiated some positive changes in Apple's supply chain that move toward achieving that purpose.

Before Apple adopted its policy, unfair labor practices were kept hidden and were only brought to light when an egregious event occurred. Now, Apple's disclosures have initiated a strong response from civil society organizations and have contributed to a larger discussion on corporate social responsibility in supply chains of technology and electronic industries. While the policy lacks a well-defined disclosure scheme and is not subject to government supervision, this has also made the policy flexible and adaptive. It leaves an avenue for political organizing open. Activists can push other corporations to adopt disclosure schemes, and perhaps eventually they will become an industry norm. As one scholar put it, "[a]t their best, transparency policies trigger user actions that cause disclosers to advance some public good . . . while pursuing private goals."¹⁵¹ Companies that choose not to engage in effective disclosure will fail to meet the market's expectations and risk reputational damage. A corporation that chooses to be transparent and works to improve supply chain conditions may then have a competitive advantage over a corporation that does not. A public good is advanced because electronic industry corporations will be required by the market to monitor and improve supply chain conditions. Voluntary disclosure regimes can serve as a means of encouraging socially responsible behavior and can even incorporate it into industry practices. Even if the transparency policy does not directly improve working conditions in supply chain factories, it may facilitate political organizing and activism to achieve this goal.

151. FUNG ET AL., *supra* note 37, at 73.
