

Payments 101

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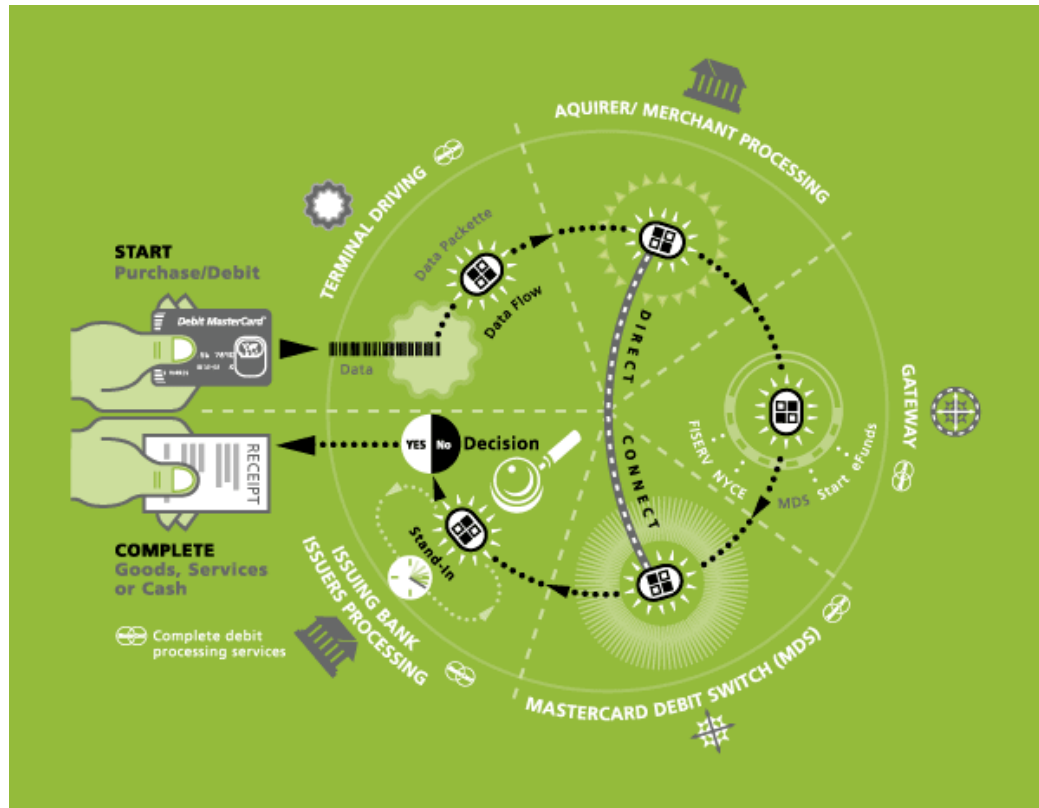


What is a Payments Practice?

- Credit/Debit/Prepaid Cards
- eCommerce
- Money transmission
- Mobile (payments/commerce)
- Billpay
- Lending
- Crowdfunding
- Virtual/Crypto currencies
- Consumer Financial Planning

Credit/Debit/Prepaid Cards

- It takes 2 seconds to buy your latte. . .
- Many players
 - Merchant bank
 - Processor
 - Network
 - Issuing Bank
- Many, many rules
 - Card rules
 - Laws
 - Regs
 - Contracts



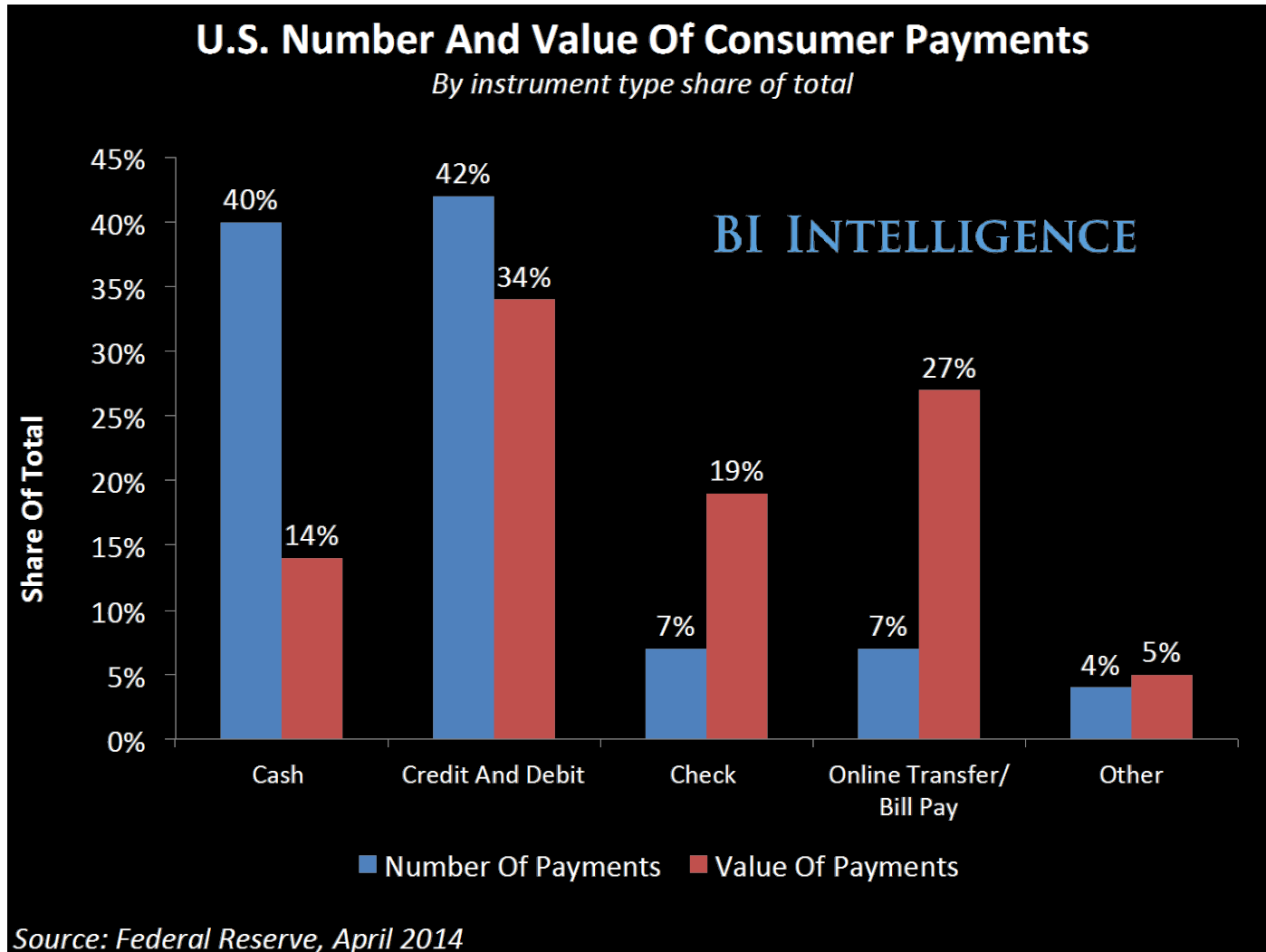
What is Mobile?

- Using a device for:
 - Person to Person money transfer
 - mCommerce
 - Bill Pay
 - Financial Management
 - Mobile Point of Sale

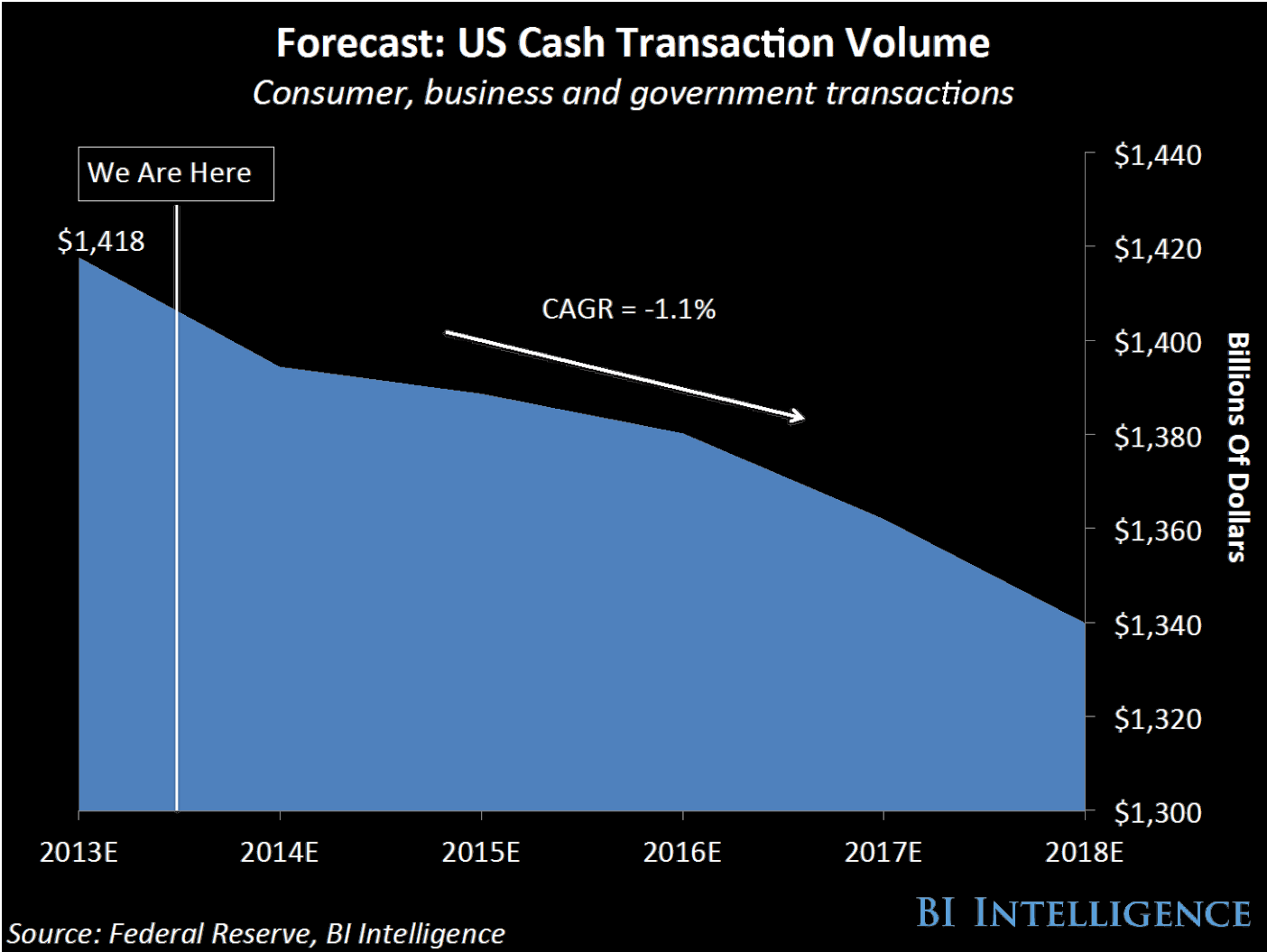
Why is Mobile Relevant?

- Trend is toward mobile
 - Cash/checks on the way out
 - Phones are everywhere
- Give the retailers what they want
 - Convenience
 - Lower cost
 - Higher security
- Give the people what they want
 - Personal
 - Portable
 - Ubiquitous

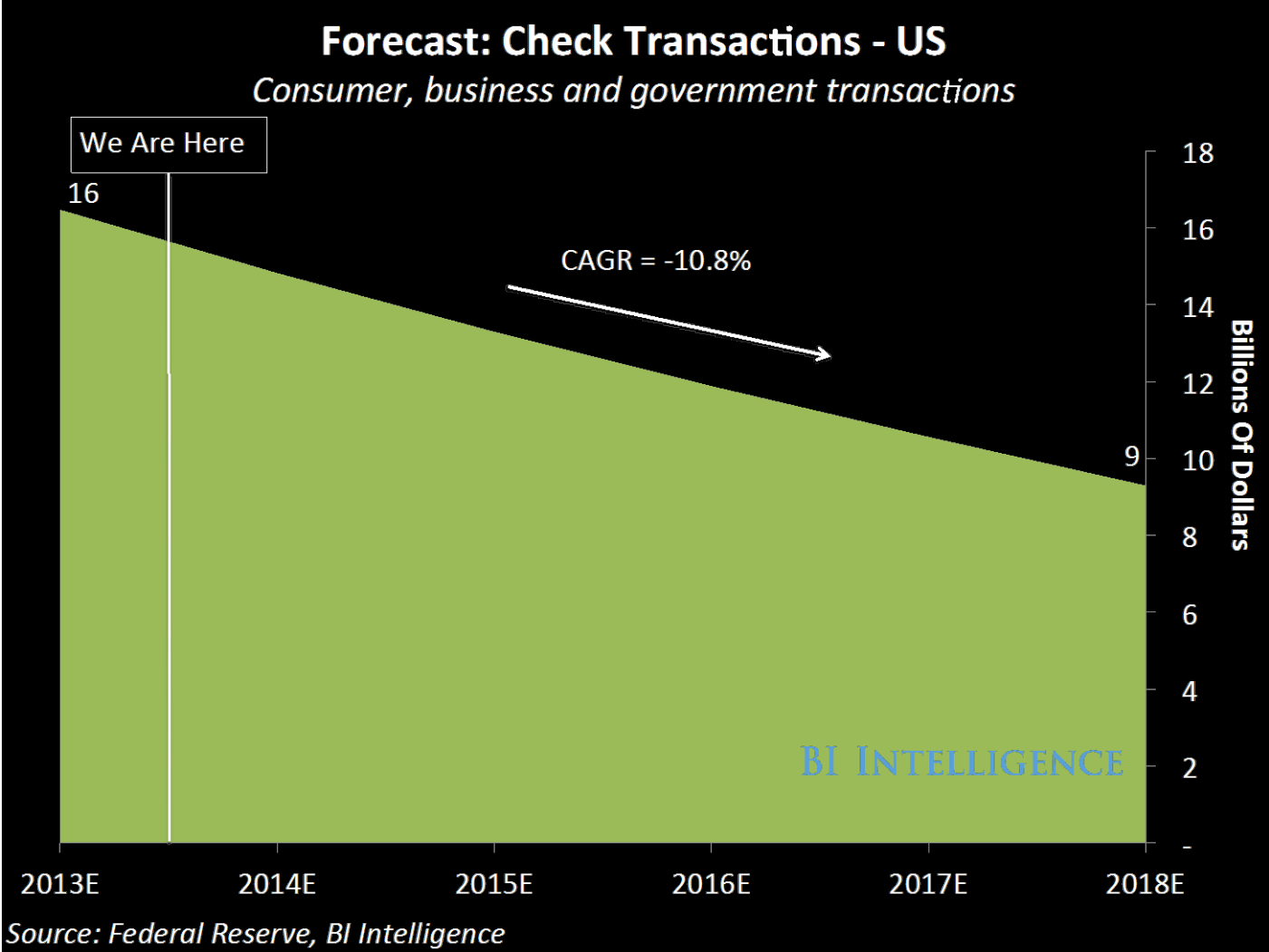
For first time, cards outpace cash



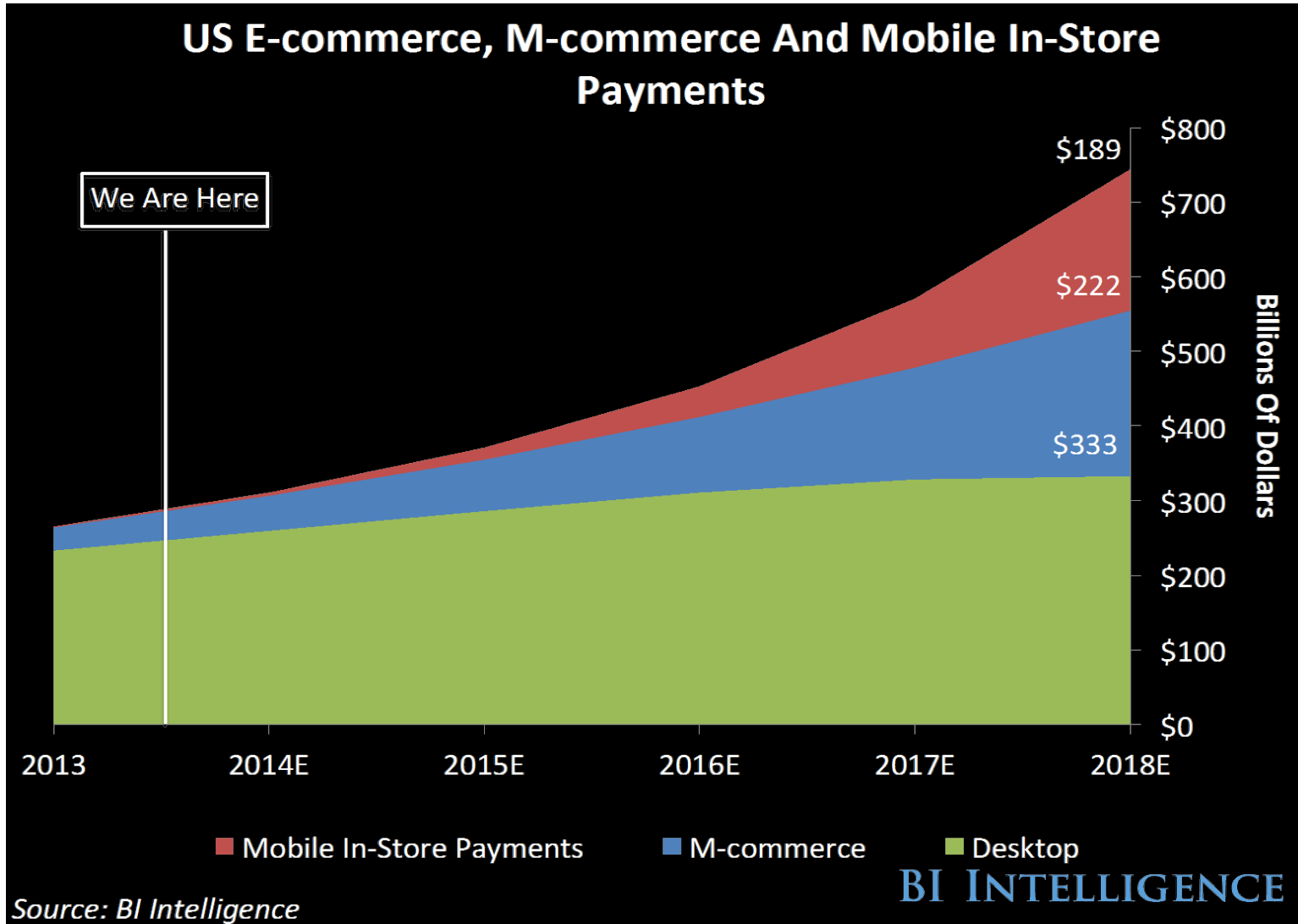
So long cash. . .



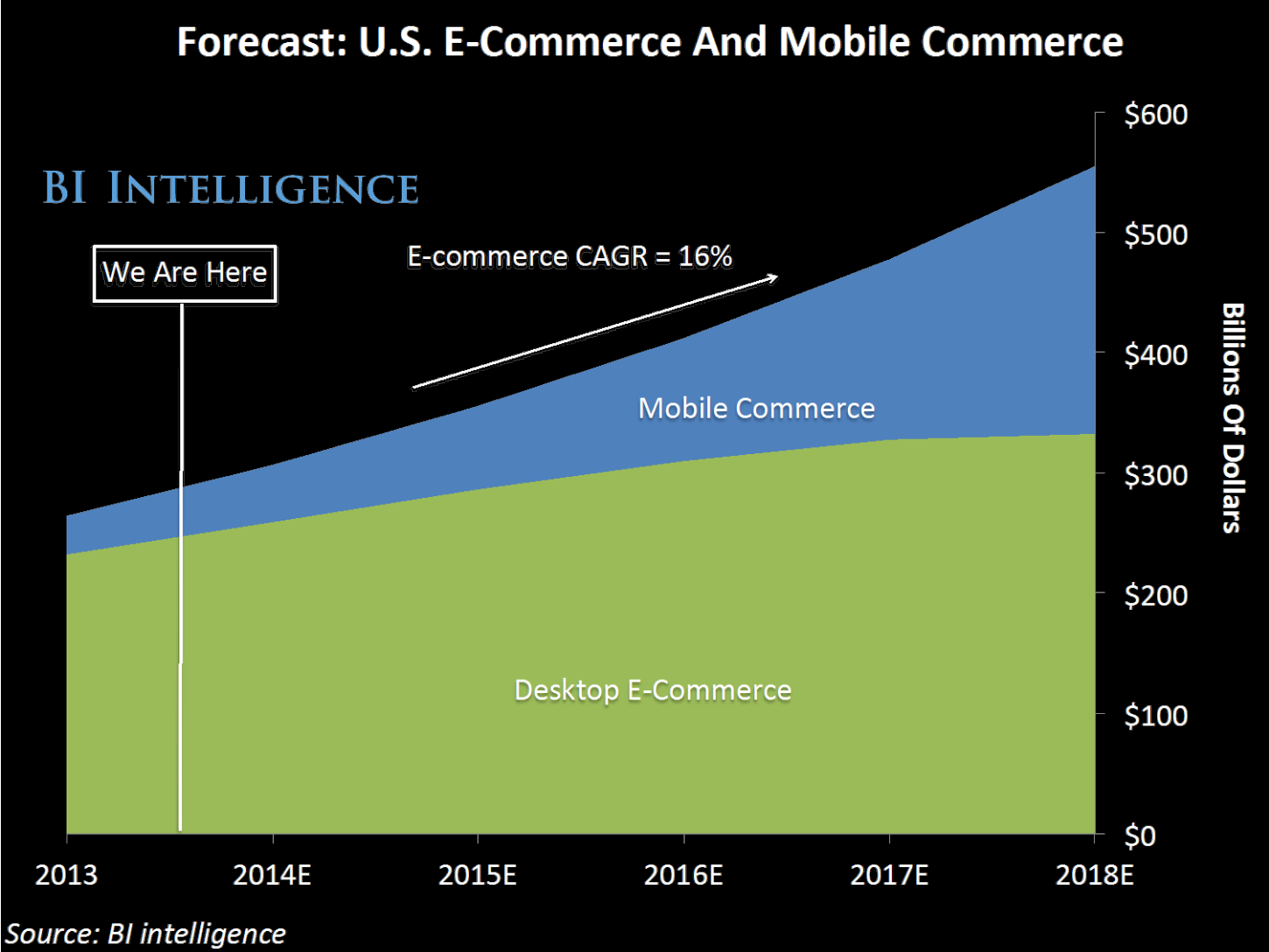
Bye Bye checks. . .



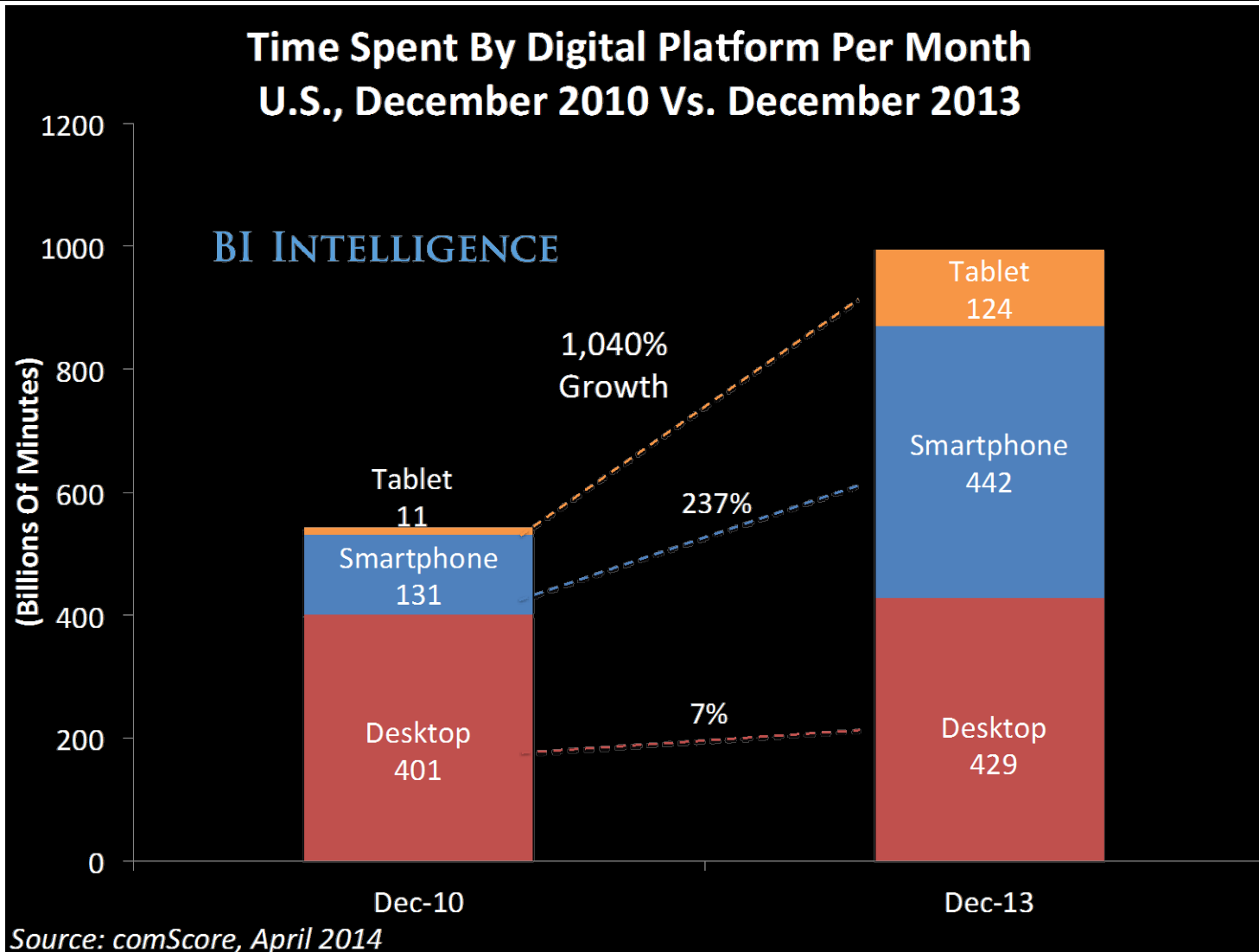
Hello mobile



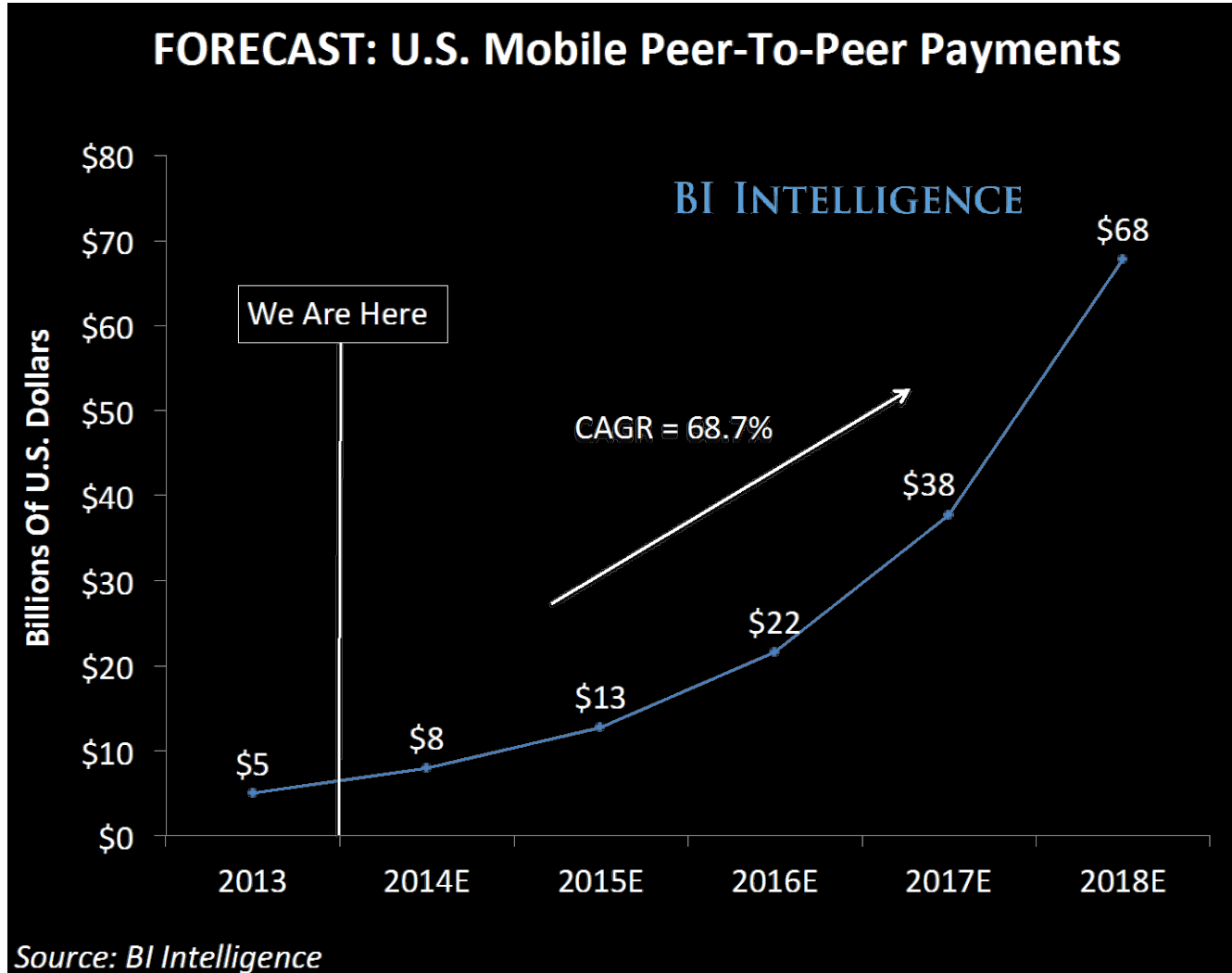
Mobile And E-Commerce Boom



And People Spend More Time On Mobile Devices



P2P predicted to grow 8.5X in next 4 years



Merchants want to make it easier for consumers to buy

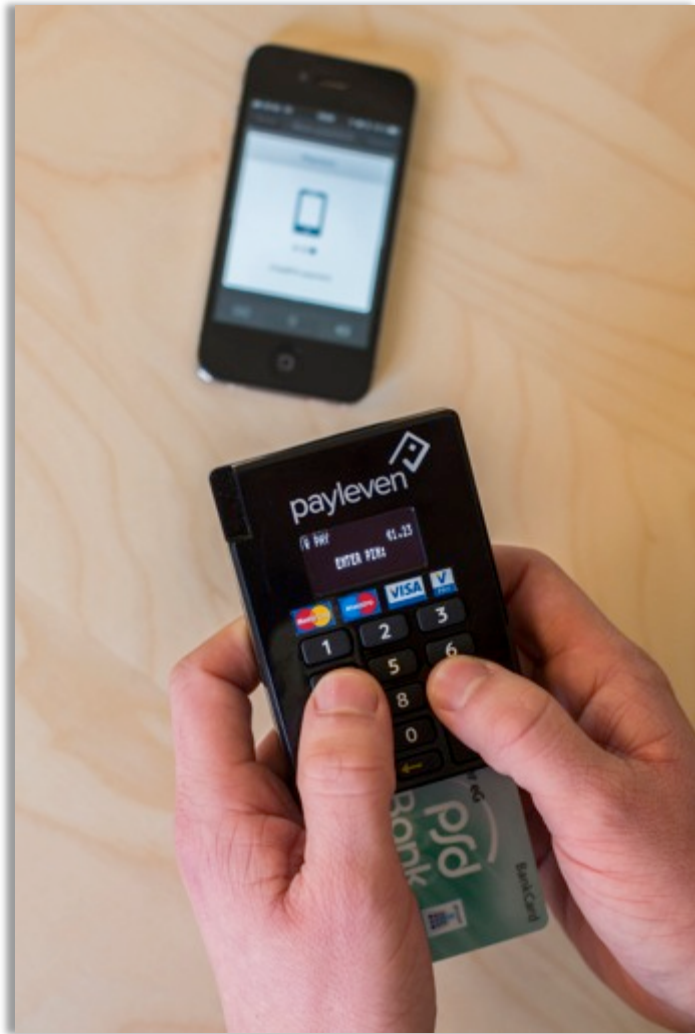


Mobile Technologies and models

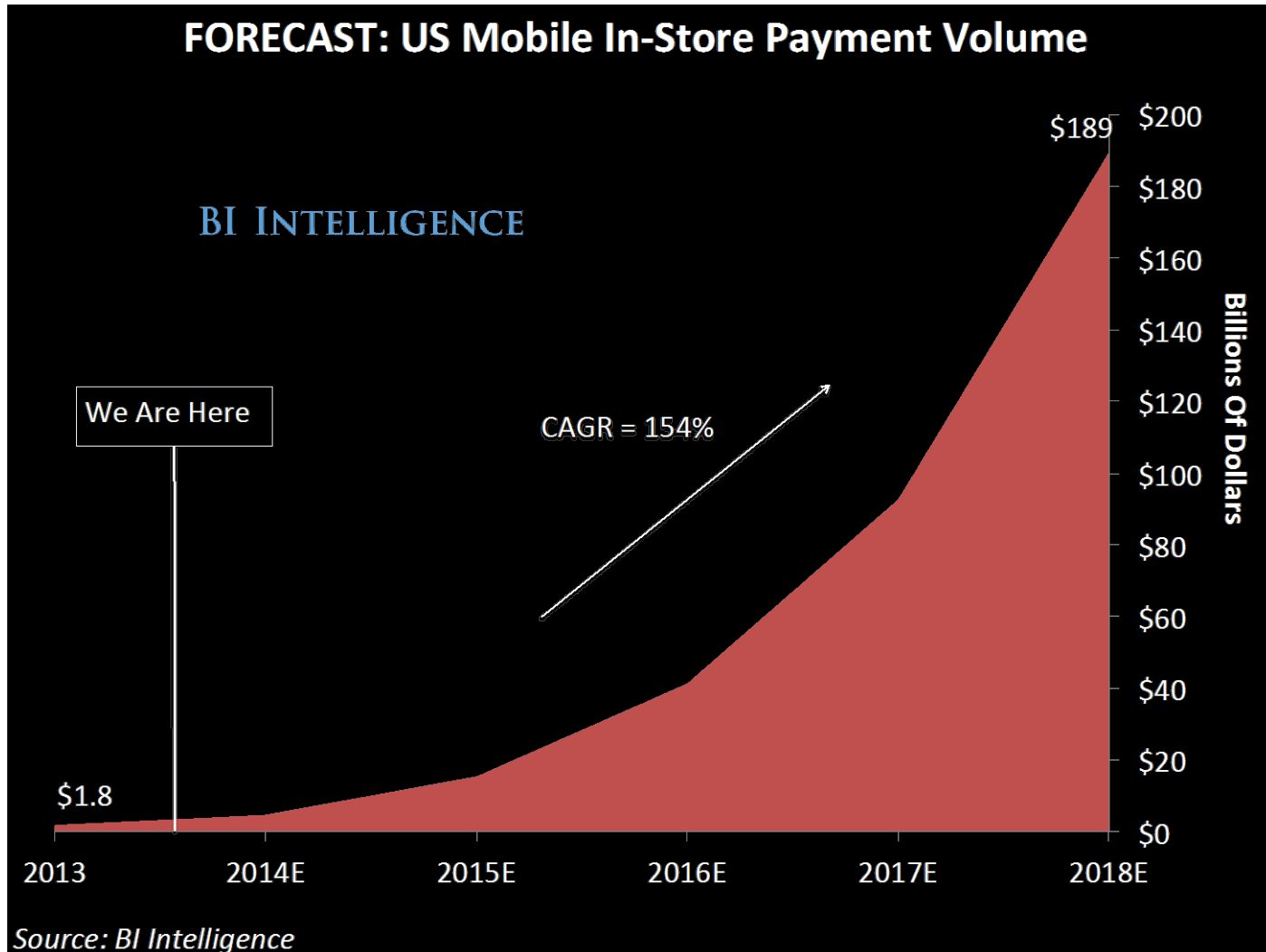
- Apps
 - Beacons
 - LBS
 - Barcodes
 - QR
- Mobile Point of Sale
- Near Field Communication (NFC)
- Wearables (i.e. Google Glass, Apple Watch)
- Chip & PIN (a/k/a EMV)
- Biometrics
- Virtual and Cryptocurrencies (Bitcoin)



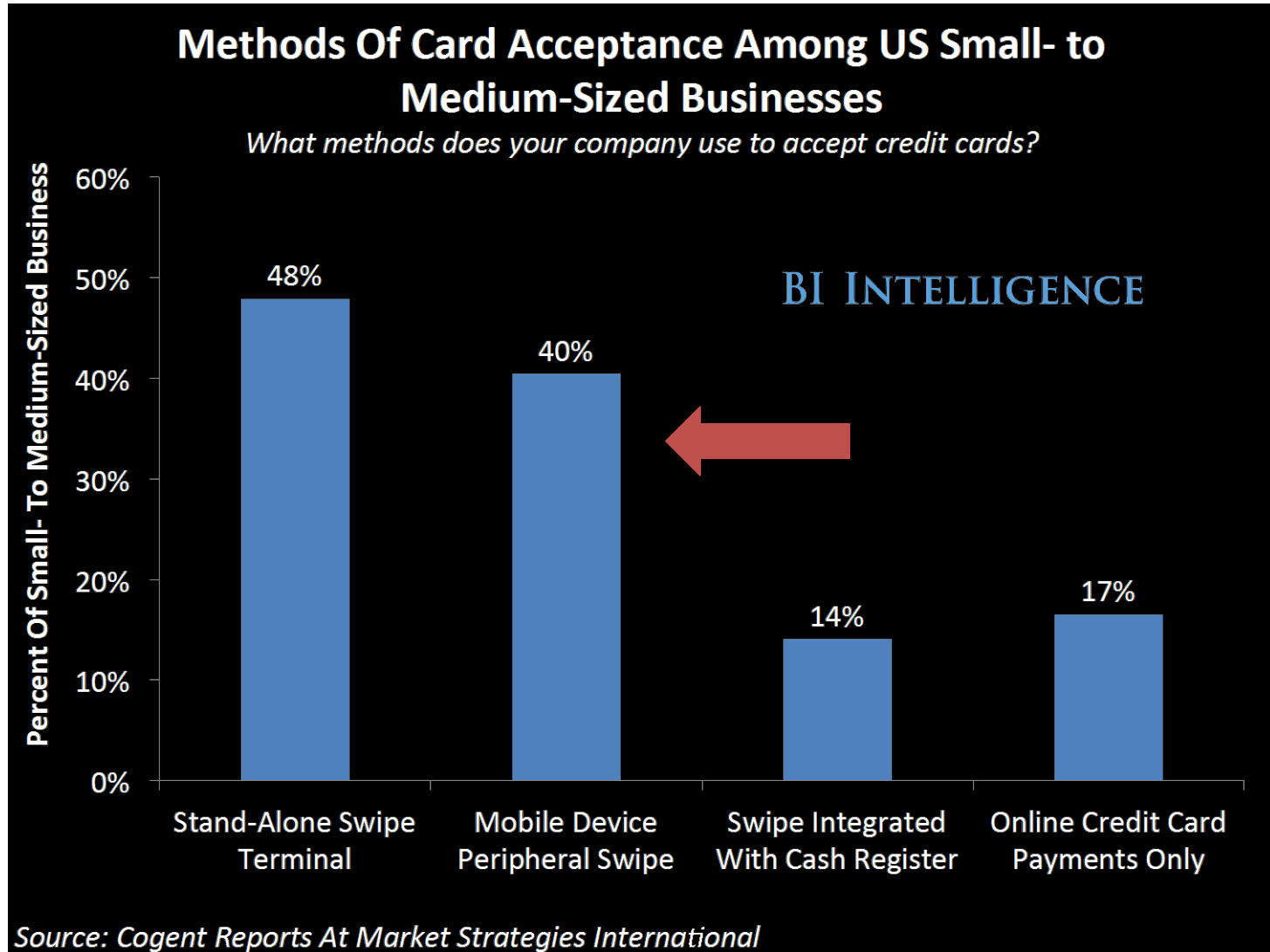
MOBILE CARD READERS



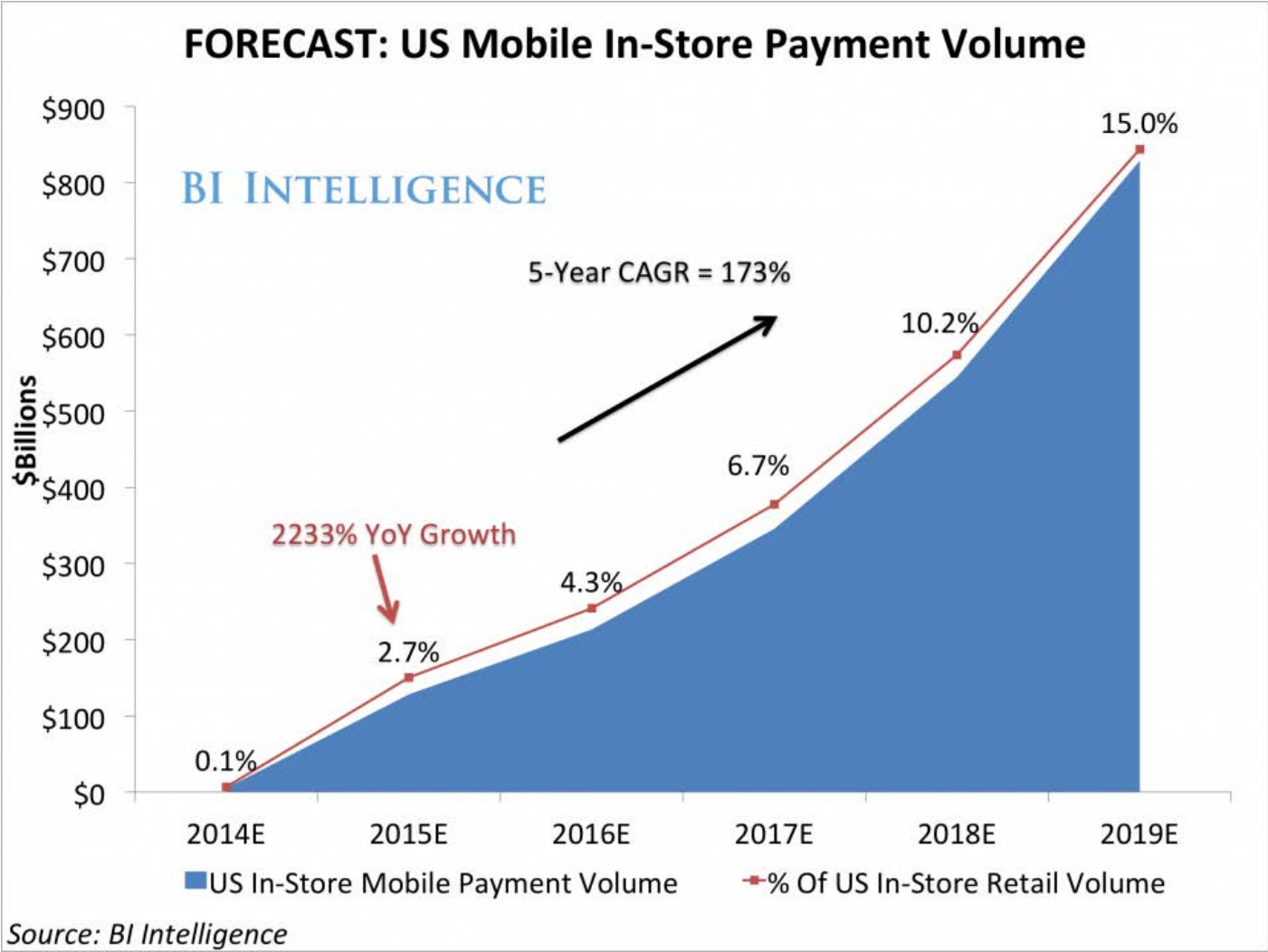
In-store mobile POS predicted to grow 42x in next 4 years.



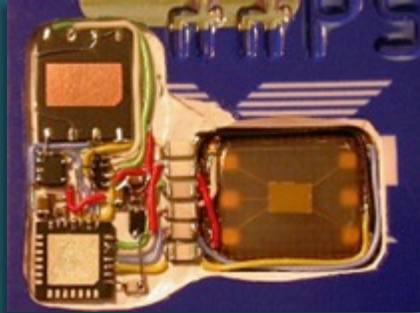
40% Of Small Merchants In U.S. Already have mobile POS



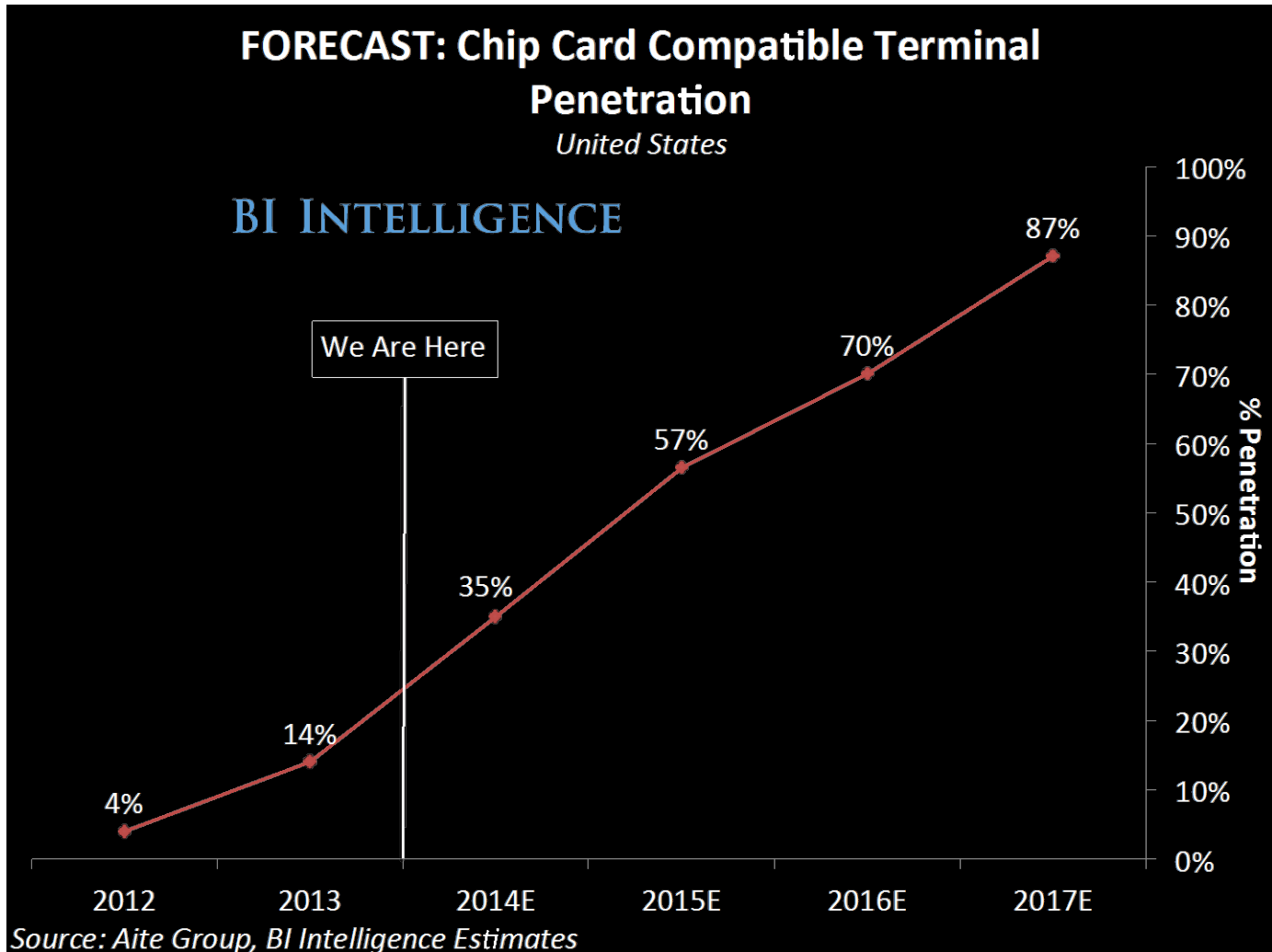
Mobile POS predicted to surge



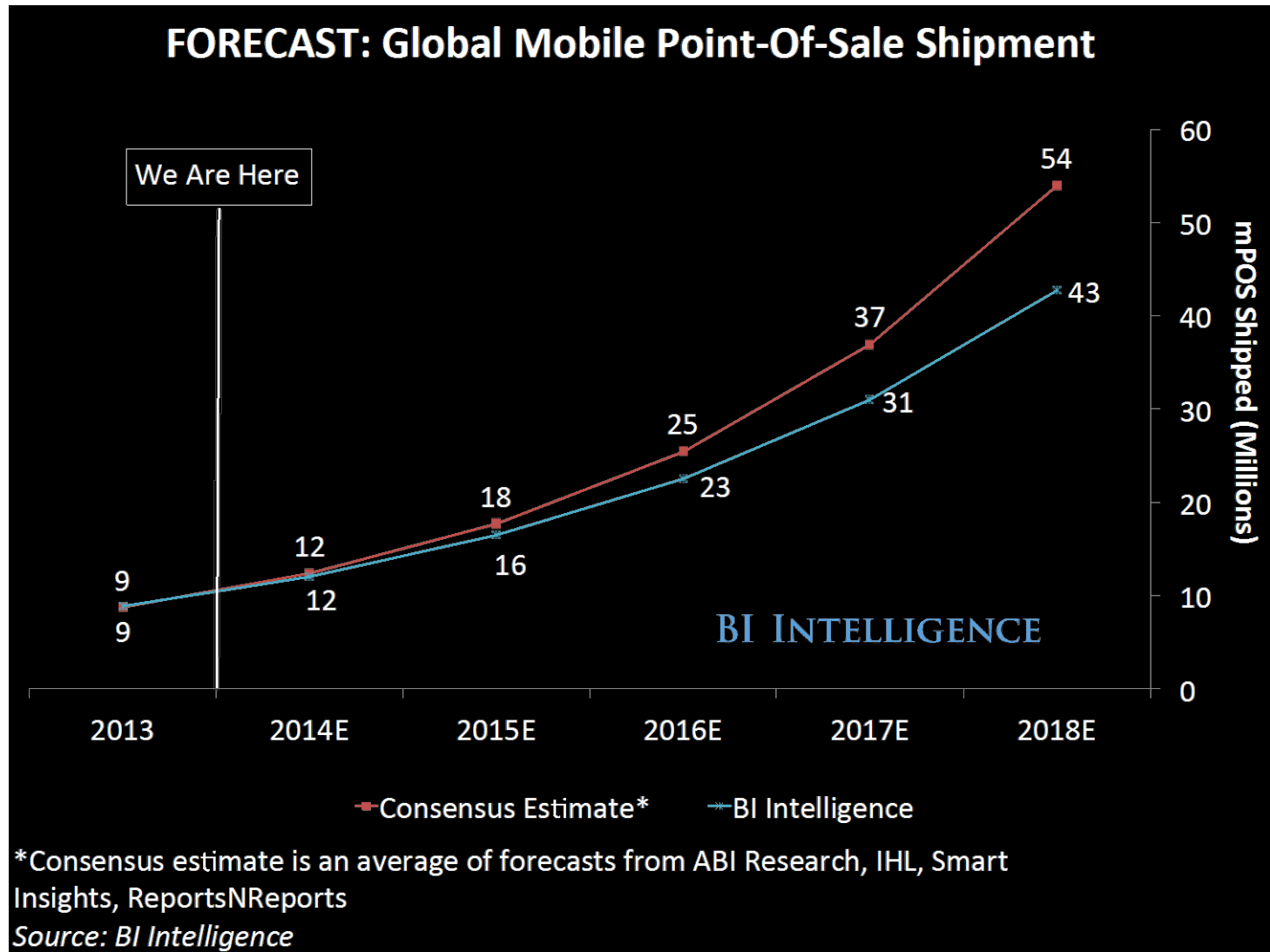
The U.S. Is Switching To More Secure Cards With Embedded Chips



Terminal upgrades for merchants



Sales of Mobile POS with EMV will rise





- NFC
- Tokenization
- Biometrics
- Massive rollout
 - All major issuers
 - All major networks
 - Many major retailers



Tokenization

- What is it? Tokens create a “virtual” card number that relates back to an actual card number
- Benefit: increased security/reduced fraud
- How implemented?
- Secure element (e.g., iPhone 6)
- Host Card Emulation (“HCE”)
- EMV
- March 2014: EMVCO announces new tokenization specification
- October 2014: Apple Pay launches, and is powered by this EMVCO specification
- The future of tokenization: who will issue tokens? The networks? Issuers? Others? All of the above?

Who Regulates whom?

- FinCEN – Division of Treasury
 - In charge of combatting money laundering and terrorism financing
- CFPB – New independent agency as of 2011
 - In charge of protecting consumers from unfair and deceptive acts in regards to financial products/services
- FTC – Independent agency since 1914
 - In charge of protecting consumers from unfair and deceptive acts & practices. Was relieved of financial products/services oversight when CFPB formed.
- Federal Reserve – Bank Holding Companies
- FDIC-State chartered banks
- OCC-Primary regulator for National Banks (e.g., Capital One, N.A.)
- States
 - State chartered banks
 - Money transmitters
 - Attorneys General
 - In charge of enforcing UDAAP laws (aka “Little FTC” acts)

Regulatory Environment

Federal

- Post-Crisis CFPB/FinCEN/FTC Scrutiny on *all* Consumer Financial Services
- Mobile offerings & disclosures(CFPB & FTC guidance)
- Virtual currency
 - FinCEN issues rule
 - CFPB & FTC issue warnings
- Privacy/Data Security

Regulatory Environment

Federal

- CFPB increasingly interested in FinTech businesses
 - Project Catalyst
 - Launched in 2012
 - Analogous to FCA's Project Innovate in UK
 - New Approach to regulation

Recent Mobile Regulatory Developments

- CFPB issues RFI on mobile financial services
 - Focus on unbanked and underbanked
 - Are mobile services useful and cheaper?
 - Customer service
 - Privacy/data security concerns
- FTC responds to CFPB RFI
 - Fraud liability
 - Carrier billing – cramming
 - Data use/brokering
- CFPB issues ANPR on Reg E and Reg Z for Prepaid Cards

Bitcoin - Focus of US Regulators

- Virtual Currencies
 - FinCEN Rule
 - Focused on AML
 - NY License Proposal
 - Focused on consumer protection
 - Numerous Federal and State warnings to consumers
 - Volatile
 - Risky
 - Untested
 - Unregulated

Bitcoin

U.S. Regulation

- Classification of virtual currencies is central issue.
 - Commodity
 - Security
 - Currency
- Very Little Actual Regulation to Date
 - FinCEN Rule (actually an amendment to existing rule)
 - CFTC Just issued ruling
 - SEC issued warning, but no regs
 - New York's proposed licensing scheme
 - Various other state laws

FinCEN Bitcoin Rule

- Guidance issued on 18 March, 2013 and clarified on 30 January, 2014.
 - 2013 Guidance stated that exchanges for “convertible virtual currency” will be required to register as “Money Services Businesses” and expected to comply with the same anti-money laundering rules.
 - 2014 Guidance clarified that exempted
 - Individual “miners” of virtual currency for personal use.
 - Businesses buying/selling virtual currencies as investment for itself.

What does it mean to be treated as an MSB?

- Registration with U.S. Treasury (FinCEN)
 - Not a huge burden
- Licensing with 40+ states as money transmitter
 - Costly
 - Time Consuming
 - Intrusive
- Anti-Money Laundering Program
 - Customer Information Program
 - Suspicious Activity Reporting
- Difficulty getting a bank account.

U.S. State Law Development

- New York's BitLicense proposal is designed to protect the public.
 - Requires a license for the following activities:
 - transmitting virtual currency for consumers
 - Securing, storing or controlling virtual currency for consumers
 - Converting virtual currency for other currency/value
 - Buying/selling as a consumer business
 - Controlling, administering or issuing virtual currency (not mining)
- Licensees must abide by regulations regarding such things as disclosures, receipts, data security and anti-money laundering.
- New York is still accepting input before finalizing the rule.

Privacy/Data Security Considerations of the New Mobile Developments

What makes Mobile APPLICATIONS Different?

- Personal
- Persistent
- Ubiquitous
- Casual
- Instant
- Rich Data

Privacy and Data Security Issues

- Who is a “Service Provider” under GLBA?
- How should financial institutions think about NPI on mobile devices?
- Should FIs think solely about their app when analyzing NPI?
- What about info in other apps/settings?
- Touch ID
- Accessing accounts
- Purchases/money movement

Legal Exposure and Risk

- Federal Trade Commission
- State Legislative and Enforcement Actions
- Class Action Lawsuits

Governing US Law

- FTC Act – Section 5 “Unfair and Deceptive”
- Fair Credit Reporting Act (FCRA)
- Health Insurance Portability and Accountability Act (HIPAA)
- Children’s Online Privacy Protection Act (COPPA)
- California Online Privacy Protection Act (CalOPPA)
- TCPA for SMS messaging to smartphones
- State Data Security and Breach Notification Acts
- CAN-SPAM Act of 2003

Unexpected Uses (aka don't be creepy)

- Behavioral advertising
- Tracking across multiple sites and apps
- Accessing location information
- Using app data
- Sharing data across apps
- Accessing other sensors (camera, microphone, accelerometer, biometrics)
- Accessing emails, posts calls, call records and text messages

Using App Data

- Obvious use is not the problem.
- Unexpected uses need to be clearly disclosed.
- What app data is being accessed and for what purpose?
 - Are you sharing across multiple apps?
 - Would any of these uses be unexpected?
 - Have they been disclosed
 - Do you have permission?
- Combining and Deriving data
 - Are you combining multiple data sets in order to derive information in an unexpected manner?
 - Big Data is becoming a powerful tool for analyzing mobile application data.

Unexpected Uses Presents Legal Risks

- It takes many forms – but at bottom this is one of the biggest concerns of regulators
 - FTC deceptive practices
 - Requirements for transparency and notice
 - Opt out
- Explaining data practices in advance is easier than explaining them during an enforcement action.
- Be reasonable and respectful.

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