

FEDERAL TRADE COMMISSION

BEHAVIORAL ADVERTISING  
TRACKING, TARGETING & TECHNOLOGY

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Conference Center

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Reported by: Linda D. Metcalf

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1                                   P R O C E E D I N G S

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3                                   **WELCOME AND INTRODUCTORY REMARKS**

4                                 MS. BRANDENBURG: Good morning. If you all  
5 could take your seats, we'll go ahead and get started. I  
6 would like to welcome you back to day two of the  
7 Behavioral Advertising Town Hall. Just a few reminders  
8 before we begin. When it's time for audience questions,  
9 we have two microphones set up in the aisles, and the  
10 moderators will indicate that it's the time for audience  
11 questions and you can come up, and, again, please be  
12 mindful of time so that everybody has an opportunity to  
13 ask their questions. If you would like to submit  
14 comments for the record, you may do so up until November  
15 16th on the FTC website, [www.ftc.gov](http://www.ftc.gov).

16                                 We have a number of important housekeeping  
17 reminders. Security, if you leave the building at any  
18 time for lunch or to take a break, you'll need to be  
19 rescreened when you come back into the building. Please  
20 wear your name tags at all times, and if you should see  
21 anything suspicious, please, of course, report it to the  
22 guards.

23                                 Please turn off or set to vibrate your cell  
24 phones. You may use your cell phones outside of the  
25 conference center, but please refrain from using them

1 even in the foyer behind us. Fire exits are located  
2 through the main doors at the front of the building on  
3 New Jersey Avenue and through the pantry area to the G  
4 Street corridor and out to G Street, which is directly  
5 behind us. In the event of an emergency or drill,  
6 proceed diagonally -- to the building diagonally across  
7 Massachusetts Avenue.

8 Finally, I would like to thank Microsoft for  
9 providing the coffee and bagels this morning. And now  
10 without further delay, let me introduce Joel Winston, the  
11 Associate Director for the Division of Privacy and  
12 Identity Protection.

13 **(Applause)**

14 MR. WINSTON: Thank you, good morning to  
15 everybody. I guess if the measure of a success of an  
16 event like this is how many people show up the second  
17 day, so this is great, nice crowd. And the real test  
18 will be how many of you stay until the end, so we may be  
19 locking the doors at some point just to make sure we have  
20 a good crowd.

21 What I would like to do just in a few minutes  
22 is kind of lay the groundwork for today's session, and I  
23 think we got off to a great start yesterday. And it  
24 really laid the ground work for what we're going to talk  
25 about today. What we learned yesterday was what

1 behavioral marketing is, and of course we're going to  
2 have our YouTube presentation later that will further  
3 explore that.

4 We learned about who is using behavioral  
5 marketing, how it works, what information companies  
6 collect, how they use that information. So I think we  
7 all have a better idea now what we're talking about.

8 We also heard about the benefits of behavioral  
9 marketing, the fact that it enables consumers to get  
10 content on the Internet for free. And the fact that it  
11 delivers ads that are more relevant to people, less ad  
12 clutter, and of course there's certain business  
13 efficiencies that come from this practice.

14 At the same time we also heard about some of  
15 the concerns that have been raised, the privacy concerns.  
16 We heard about the lack of control that some consumers  
17 may feel over their information. We heard about concerns  
18 about the collection of sensitive information, medical  
19 information and other sensitive information, how that  
20 might be used.

21 We heard about anonymity, the issue of  
22 anonymity. And there was a good discussion of what  
23 anonymous means in this space, for example, is an IP  
24 address anonymous or not, the debate on that. We heard  
25 about some concerns about possible discrimination, that

1 targeted information could be used in some way to  
2 discriminate against a vulnerable group such as children  
3 and others, and also the overreaching of these vulnerable  
4 groups. And, in particular, we heard about the social  
5 networking sites and concerns about how information  
6 collected through those sites could be used to target  
7 teens.

8 We also heard about the possibility of data  
9 breaches, that these compilations of information exist  
10 and if they're not adequately secured there could be  
11 significant harm to consumers. Interestingly, at least  
12 what I heard yesterday was that consumers seem to be less  
13 concerned about the advertising they're getting as a  
14 result of behavioral targeting and more about the fact  
15 that the information is being collected and stored.

16 So that may give us some ideas for how to  
17 approach this problem in the future. So as is so often  
18 the case in the law and in policy, the challenge is to  
19 find the right balance. How do we preserve the benefits  
20 that behavioral targeting brings to consumers and to  
21 industry while protecting consumers from some of the  
22 possible privacy concerns or abuses that might arise.

23 And if you don't mind me giving a shameless  
24 plug for an upcoming workshop that we will be having in  
25 December on the use of Social Security numbers in the

1 private sector, it presents really the same kind of  
2 balancing test. Social Security numbers that are  
3 collected have a lot of beneficial purposes for industry,  
4 for government, for consumers. They allow the matching  
5 of information and fraud prevention and lots of other  
6 good uses.

7 At the same time, there's a potential for  
8 abuse, there's a potential for identity theft. So,  
9 again, the trick is finding the right balance. And  
10 that's what we're going to focus on today. Today we're  
11 going to talk about solutions in the future. We're going  
12 to talk first about disclosures. Can they be made more  
13 effective? Can consumers be empowered to control their  
14 own information or do disclosures simply not work in this  
15 space? Is this information that consumers simply can't  
16 absorb, don't have the time or the will to really look at  
17 and understand. And then of course the YouTube  
18 presentation will be a good example of how to communicate  
19 information, so I think that will be a lot of fun. We're  
20 also going to talk about the regulatory environment and  
21 what exists now, what self-regulation might be  
22 appropriate here, what sort of government actions might  
23 be appropriate.

24 And then finally we're going to close with a  
25 roundtable on the future, where is this going and what

1 can we do to shape the future? And hopefully we won't be  
2 hearing anything more about Larry Ponemon's mother.  
3 That's sort of my goal for today.

4 Anyway, I think it will be a terrific session.  
5 And hope you all stay and participate. Remember, this is  
6 a town hall, we want everybody to get involved. Thanks.

7 **(Applause)**

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1                   **SESSION 6: DISCLOSURES TO CONSUMERS**

2                   MS. ENGLE: Good morning, I'm Mary Engle, the  
3 Associate Director for Advertising Practices at the FTC.  
4 At this morning's session, we're first going to hear  
5 three presentations, and then we'll have a roundtable  
6 along the lines of the last panel yesterday. First this  
7 morning we're going to hear from Lorrie Cranor, who is an  
8 Associate Research Professor at Carnegie Mellon, then  
9 we'll hear from Declan McCullagh with CNET, and finally  
10 Scott Shipman from eBay. Lorrie?

11                  MS. CRANOR: Good morning. I'm going to talk  
12 with you really quickly about some of the research we're  
13 doing at Carnegie Mellon that's related to disclosures to  
14 consumers. We've all seen the studies that show that  
15 people say they care a whole lot about privacy but they  
16 don't always take steps to actually protect their  
17 privacy. And there are all sorts of possible  
18 explanations for this that have been tossed around.

19                  The two that I want to focus on today are that,  
20 A, they don't understand the privacy implications of  
21 their behavior, so they don't realize that what they're  
22 doing might have a privacy implication; and, B, the cost  
23 of privacy protection is too high. And this includes the  
24 cost of figuring out how to protect your privacy.

25                  One of the problems is the privacy policies

1 themselves. They typically require college-level reading  
2 skills to understand, and they also contain a lot of  
3 language that includes legalese and obfuscated language.  
4 There was a study that counted the number of hedging  
5 claims in typical privacy policies. And these include  
6 things like "except as", "on a limited basis", "we  
7 reserve the right to". And a typical policy includes at  
8 least 20 of these claims.

9           The students in my lab did a study this summer  
10 to test a variety of privacy policy formats and find out  
11 how effective they are with consumers. We started with  
12 one real-life privacy policy from a real company, but we  
13 removed the name of the company. And then we came up  
14 with several variations on that format. We formulated a  
15 highlights notice with the standard six boxes in it. We  
16 also used the P3P computer-readable version of that  
17 privacy policy to derive some other formats. These were  
18 experimental formats we tested where basically you're  
19 given some summary of the privacy policy and then you can  
20 click on links to drill down and get more information.  
21 We had 864 participants that came to us on the Internet.  
22 Each were assigned to read just one of these policies.  
23 We then asked them eight questions about how well they  
24 thought they understood and trusted the policy. And then  
25 we asked them to find six specific pieces of information

1 in the policy.

2 We found that when people read the original  
3 natural language version of policy, there was some  
4 information they could find very easily. This was the  
5 information where they could just look for a keyword and  
6 find the information. So, for example, we said "Does  
7 Acme use cookies?" They could look for the word cookie,  
8 and 98 percent of them correctly answered the question."

9 But when we asked a question that required more  
10 comprehension, they had a lot more trouble. So, only 71  
11 percent of people correctly answered the question, "Does  
12 this policy allow Acme to put you on an email marketing  
13 list?" And then an even more complicated question, only  
14 half the people got right: "Does this policy allow Acme  
15 to share your email with a marketing company that might  
16 put you on their email marketing list?"

17 So our preliminary findings, and we're still  
18 actually going through all the data that we have, our  
19 preliminary findings are that even well written policies  
20 are not well liked and they're difficult for consumers to  
21 use. We also found that the layered notice variant in  
22 the current format doesn't appear to help very much,  
23 although we think some changes might be able to be made  
24 to make that a lot better.

25 We also found that people perceived the long

1 policies as slightly more trustworthy but find  
2 information faster in short policies, so we have a bit of  
3 a contradiction there. The experimental formats that we  
4 tested were not immediately intuitive to consumers. They  
5 had trouble figuring out where exactly to find the  
6 information in those policies. But based on these  
7 findings, we plan further refinements and experiments,  
8 and we think we can come up with something a lot better.

9 Another approach to privacy communication is to  
10 provide privacy information in search results. We  
11 developed a search engine called Privacy Finder which is  
12 available to the public at [privacyfinder.org](http://privacyfinder.org). We  
13 conducted a study this summer to determine whether people  
14 actually could use the privacy information provided by  
15 Privacy Finder and whether it influenced their purchases.

16 We did a lab study. We had 72 Pittsburgh  
17 residents come to our lab, and we paid them to make  
18 online purchases using their own credit cards and  
19 exposing their own personal information. We paid them  
20 all a fixed amount and allowed them to keep the change,  
21 thus they had an incentive to try to save money.

22 So, this is what the Privacy Finder search  
23 results looked like. You can see on the left column  
24 there's a privacy meter, those little green boxes, and if  
25 you click on the link underneath, that's a privacy

1 report, which provides a summary of the privacy policy.  
2 On the right you can see the cost of each of the  
3 products. And you can see that the one at the bottom,  
4 which is at the site with the best privacy policy, you  
5 would have to pay 69 cents more to buy that product.

6 We also tested a condition with irrelevant  
7 information. It was exactly the same, except the privacy  
8 meter was labeled "handicapped accessibility." And we  
9 did this to test whether people were attracted to the  
10 pretty green boxes or whether they were attracted to the  
11 fact that it was related to privacy.

12 The third condition had no information down  
13 that column. Our results were that when provided with no  
14 information or irrelevant information most people just  
15 made their purchase at the least expensive site, not a  
16 surprise. The very interesting finding was that when we  
17 provided privacy information a lot of people actually  
18 paid more to make their purchase at the privacy-protected  
19 website. And we think this is really an interesting  
20 result, and it shows that accessible privacy information  
21 can affect consumer behavior. Consumers may be willing  
22 to pay for better privacy and Privacy Finder can help  
23 users make privacy-informed decisions.

24 So, we have a lot of follow-up work planned to  
25 drill down a bit more on this. But the high level bid

1 here is that if you can communicate clearly with  
2 consumers about privacy, it does make a difference.  
3 Thank you.

4 **(Applause)**

5 MS. ENGLE: Next we'll hear from Declan  
6 McCullagh of CNET.

7 MR. MCCULLAGH: Hi, there. Good morning.  
8 Thank you. So, news.com has done a series of privacy  
9 surveys, including of search engines and  
10 telecommunications providers and so on. And two of them  
11 are relevant here, and that's what I wanted to mention.

12 The first we did in February 2006, and my  
13 colleague, Eleanor Mills, helped with both. She's out in  
14 San Francisco and covers the search industry. News  
15 organizations tend to be more event-driven, and so the  
16 first survey responded to privacy questions raised by the  
17 Department of Justice's subpoena of Google. And you can  
18 see the URL at the end of the presentation, if you want  
19 to look at it yourself, but here are some highlights.

20 We asked all of the major search engines,  
21 again, February 2006, this question. And Microsoft's  
22 answer is representative of the rest. It's a little bit  
23 more detailed, but basically all of them came back with a  
24 very similar response and justification for storing of  
25 this. Probably a more interesting question is this one:

1 If you have a list of search terms, can you then -- let's  
2 say if the Department of Justice asked you, and let's  
3 assume that a lawful procedure is followed here, produce  
4 a list of people who search for that term. Al-Qaeda  
5 might be an interesting one or something more detailed.  
6 And, so here is -- the answers were all yes except AOL,  
7 which was the outlier here, saying, no, we can't do it.

8 Here is another question, sort of the opposite  
9 or the inverse of the previous one, which is given  
10 someone's IP address or cookie value, let's say that you  
11 already had that in a similar criminal context, can you  
12 say what this person did?

13 The answers in this case were actually uniform.  
14 All of them -- and of the four companies we surveyed said  
15 that, yes, they could with no exceptions. Now, this is  
16 one we did in August of this year. This came -- the  
17 second survey was a result of some of the recent news  
18 regarding improved privacy protections by search engines,  
19 and so Eleanor and I wanted to sort of put this in a  
20 clearer form to our readers and say, so, what exactly  
21 does this mean. Some of the companies were using  
22 different terms, and we wanted to explain to our readers  
23 what was going on by asking them the same questions and  
24 reproducing their answers verbatim.

25 What do you retain, how long do you retain it

1 for, do you completely delete it, or do you anonymize it?  
2 We can call it sort of pseudo-anonymization. Some  
3 companies don't fully anonymize; they instead just strip  
4 off the last few bits of the IP address, and so the IP  
5 address is narrowed to one in 256 or so addresses. How  
6 do you anonymize? And then the last four dealt more with  
7 behavioral targeting. Do you do it? Is there a way to  
8 opt out? Do you use personally identifiable information?  
9 And do you link other services that you provide like  
10 instant messaging or email when trying to display a  
11 search ads on the main search engine?

12 And, so here are the results. If you're  
13 looking for -- I mean, what some folks, our readers,  
14 wanted is how -- what's the most privacy-protective  
15 search engine? And the answer is it depends. Ask.com  
16 has its product which is not available yet, so let's skip  
17 over that. So then if you look at the other ones, there  
18 is -- do you care more about how long data is kept? Do  
19 you care more anonymization? Do you care more about  
20 behavioral targeting or not?

21 The only company besides Ask that did not  
22 engage in behavioral targeting is Google. Some of them  
23 had fine print in terms of whether or not you can opt out  
24 of it or not. Microsoft said you can on third party  
25 sites but not Microsoft's own site. But on the other



1 hand, Google was not as privacy protective as AOL and  
2 Microsoft in terms of deleting versus anonymizing data.

3 So, the survey results of the August survey are  
4 here at the tinyurl.com link. We're also doing a  
5 follow-up one, but it was not quite ready in time for  
6 this, and so expect it later this month.

7 One last thought, companies were far more  
8 forthcoming this time around, the second survey in  
9 August, compared to the first survey we did in early  
10 2006. Also, if you look at some of the quotes, Google  
11 said, "We keep data for as long as it is useful" in  
12 February 2006, and they've changed their policy  
13 substantially since then.

14 Microsoft gave us a very similar remark early  
15 on, and so they both changed their policies and also it  
16 just is easier to get information out of them. They seem  
17 to know -- they seem to be more willing to talk about  
18 privacy data retention than they were a year and a half  
19 ago. Thank you.

20 **(Applause)**

21 MS. ENGLE: Finally we'll hear from Scott  
22 Shipman with eBay.

23 MR. SHIPMAN: Thank you. Good morning. So I'm  
24 struck a little bit by the first two presentations. The  
25 first was I thought very informative on what consumers

1 are looking for and what they're finding, and certainly  
2 the second on the search industry. What I'm going to  
3 talk about is a little nuance from that in the sense that  
4 on the first presentation we, as eBay, as a online  
5 community, really try to aspire to those notice  
6 principles and keeping it easy to read for customers, so  
7 that component is certainly relevant for us as a company.

8 And on the second part with search and privacy  
9 related to the retention of information, within the  
10 search space, naturally eBay is a community and online  
11 e-commerce platform, so our retention periods are  
12 slightly different for a number of different reasons,  
13 obviously fraud protection and others. But nonetheless  
14 that does mean that we keep a large amount of data on our  
15 customers related to the transactions and certainly have  
16 a responsibility to make sure that we use that  
17 information as the customer would expect.

18 And, so, disclosures to consumers for eBay is  
19 not a new theory or even a new realm of work for us here  
20 or my team. And as I think the environment can be  
21 summarized, it's evolution, right? We've seen even back  
22 in '97 and '98, privacy policies that were these long,  
23 wordy, legal drafted statements. We've then moved to or  
24 at least many communities, many online platforms have  
25 moved to summaries, principles, charts, appendices. We

1 have seen P3P. eBay has rolled out detailed preferences,  
2 and now when you look at the preferences, even at my own  
3 admission, it's a very long page, so it's almost too many  
4 choices. And, so, finding that balance has always been a  
5 challenge. And what I'm here to talk about today is  
6 another choice, another preference that we've worked hard  
7 on and certainly the team has put countless hours into.  
8 And that is a preference where we'll be linking, we are  
9 linking with the team working through the weekend  
10 actually to make sure it was up for the presentation  
11 today.

12 We are linking to a choice from our  
13 advertisements. And here's an example. Now, as it turns  
14 out, what we're doing is we're testing placement and  
15 we're testing labels because what we want to find out is  
16 we want to find out from the customer what graphic, what  
17 word, what option resonates best for them. And, so, over  
18 the next few months and even as early as you can log onto  
19 your computer today, you can go to the eBay website, and  
20 as you travel throughout the Internet as well I'll  
21 describe the differences in some of the ads.

22 You will see ads on eBay that will look similar  
23 to this and they will have an advertisement label. Those  
24 advertisement labels will also be accompanied by either a  
25 parens that says "about." It may say "what's this?" And

1 if you're off eBay, you'll see a different type of banner  
2 ad, an eBay ad, and that ad will say AdChoice, as an  
3 example here. When you click on that link, our idea, our  
4 notion, the concept is we want to provide you more  
5 information about the ads and about the information  
6 that's being used to serve you that ad.

7 Now, you may be an absolute guest, an unknown  
8 to us. You may be in an identified state but not in an  
9 authenticated state. If you're on eBay platform and  
10 signed in, you're in an authenticated state. And so as  
11 you move through those different identities as you relate  
12 to us, we can use different pieces of information and/or  
13 share information with advertisers anonymously so that  
14 they can target an appropriate ad to you.

15 If you feel that that appropriateness, that  
16 targeting, that customization isn't something for you,  
17 you'd prefer to see a generic ad or you have the  
18 creep-out factor, a la Minority Report, you have the  
19 opportunity to learn more and an opportunity to express  
20 your opinion and opt out. And, so, this is clearly a  
21 notice and an opt-out procedure. And as you see here  
22 from this example, this is a rough mock-up of a few weeks  
23 ago of a popup, so when you click on that link it  
24 immediately takes you to this popup that describes a  
25 program and allows you to opt out.

1           If you were to go to your eBay preferences in  
2 My eBay, so you're in an authenticated state, there is a  
3 long list, but once you scroll down to general  
4 preferences, advertising preferences, again you can see  
5 that we provide a clear area for you to learn more and to  
6 express your preferences. As you move into AdChoice,  
7 again, you can see that there's two components. One is  
8 whether or not we use the information on eBay to serve  
9 ads to you; and the other is whether or not we share it  
10 in an anonymized form so that ads off of the site can be  
11 targeted to you.

12           So an example of an ad off the site would be an  
13 eBay ad as I showed with the AdChoice slug. An example  
14 of on eBay would be the large graphical with the  
15 advertisement or the about slug. And I think one of the  
16 great things about this, as even in this conference we've  
17 seen, AOL has announced another technology solution for  
18 this type of opting out and notice with behavioral  
19 targeting. And I think that that's the crux of it right  
20 there, right, we've got different technology solutions  
21 for different types of communities, different types of  
22 providers, search, e-commerce, and I'm excited to see  
23 what the next technology innovation is going to bring.  
24 Thank you.

25           **(Applause)**

1 MS. ENGLE: Thank you, Scott.

2 Okay. I'm just going to briefly go down and  
3 introduce everybody who's sitting at the table, starting  
4 at that end. Hopefully this is right, from the notes I  
5 have, because I can't see down there. We should have  
6 Jane Horvath, Google Senior Privacy Counsel; and George  
7 Pappachen, Director of Privacy SafeCount, which is an  
8 online survey company; then Zulfikar Ramzan, who is  
9 Senior Security Researcher at Symantec; Ken McGraw, who  
10 is Executive Vice President at Zango, an adware company;  
11 Professor Carlos Jensen from Oregon State University. I  
12 guess that's the Badgers, we learned yesterday.

13 PROF. JENSEN: No, the Beavers.

14 MS. ENGLE: Oh, Beaver, sorry. Not much of a  
15 sports fan here. And Scott Shipman from eBay; and Esther  
16 Dyson from EDventure; of course Joel Winston; myself; and  
17 Marty Abrams for the Center for Information Policy  
18 Leadership at Hunton & Williams; Lorrie Cranor, again  
19 from Carnegie Mellon; Declan McCullagh from CNET; Peter  
20 Cullen, who is a General Manager at Microsoft; Srinija  
21 Srinivasan, Editor-in-Chief at Yahoo!; and George Milne,  
22 who is a Professor of Marketing at University of Mass.-  
23 Amherst; then Colin O'Malley, who is Director of  
24 Strategic Business at TRUSTe; and, finally, Michael  
25 Cassidy, who is President of Undertone Networks, an

1 online ad network.

2 MR. WINSTON: Well, I'll get the ball rolling  
3 and I'll ask some questions and Mary will ask questions,  
4 and some of them will be directed at particular  
5 individuals, others we can just open up the floor, too,  
6 but anybody who wants to chime in should feel free to  
7 chime in.

8 First I want to reassure everyone there will be  
9 no homework, no final exams.

10 MS. ENGLE: No grades.

11 MR. WINSTON: No grades. We will have  
12 pass/fail, so you do at least have to pass, but otherwise  
13 we'll make this easy for you. I think the ultimate goal  
14 is for us to try to get a handle on whether disclosures  
15 work when it comes to behavioral targeting. We heard a  
16 lot yesterday about how consumers don't read privacy  
17 policies, they don't understand them when they do read  
18 them, they're bombarded with a lot of information, maybe  
19 more information than they want. You've got sort of a  
20 wear-out factor that you have to be concerned about.

21 So the question is, how do you make disclosures  
22 effective, can you make disclosures effective and what  
23 works and what doesn't work? And I think we want to hear  
24 from everyone about what their businesses use and what  
25 they think works and doesn't work.

1                   But I was wondering if we could start back with  
2 Scott. Could you put your slides back up? Would you  
3 mind?

4                   MR. SHIPMAN: Sure.

5                   MR. WINSTON: Ok, if you'll go to the slide  
6 with the ad for the CRV.

7                   MR. SHIPMAN: Yep.

8                   MR. WINSTON: Do I understand this right that  
9 in order to get that message "Why did I get this ad?" you  
10 have to either click on or put your cursor over the  
11 question mark; is that right?

12                   MR. SHIPMAN: Yeah, that's correct, so in some  
13 implementations as I explained, we have got some  
14 different tests. Some include a mouse-over. In this  
15 particular instance with the question mark we've actually  
16 decided not to go with the question mark logo. It didn't  
17 have enough to it, so the embodiments that we're using  
18 right now are either an advertisement with a paren,  
19 (about), or advertisement with a paren, (what's this), or  
20 advertisement with a paren, (AdChoice). And, naturally,  
21 AdChoice being unique doesn't necessarily have a lot of  
22 meaning, yet we hope events such as this and discussions  
23 with our community members will increase that as an  
24 opportunity.

25                   MR. WINSTON: Yeah, and I guess that does



1 address what I was wondering, and that is how do you  
2 motivate people to search further? How much information  
3 do you have to give consumers about what it is they  
4 should inquire about before they'll inquire? Is a  
5 question mark good enough? Is the word advertisement  
6 good enough? You know, some of these may or may not  
7 motivate consumers to actually take the next step. What  
8 do you think about that?

9 MR. SHIPMAN: Yeah, and I think one of our --  
10 one of our key objectives is to make the program known  
11 and to make the option known. So that's why we're using  
12 different embodiments, because you just don't know yet  
13 what they want.

14 MR. WINSTON: Right. I'm wondering whether  
15 some of the other businesses alert consumers to the  
16 availability of information on their sites about how  
17 advertising may be targeted to them other than through  
18 the link at the bottom of the page to privacy policy.

19 Peter Cullen, do you want to start with that?  
20 How does Microsoft do that?

21 MR. CULLEN: We've explored different ways of  
22 providing advice, providing notice to our customers. And  
23 it really -- it's a balance between how do you provide  
24 relevant advice in situations that might be very  
25 contextual versus, to be really blunt about it,

1 overburdening the consumers.

2 So, let me think about an example of  
3 overburdening the consumer. So, in some parts of the  
4 world, as we heard yesterday, an IP address is considered  
5 personal information, so think about a scenario where you  
6 went to get a weather forecast off of MSN.com and there  
7 was a popup notice that said that here's how we collect,  
8 use your IP address. And I think most consumers would  
9 say, hey, look, all I want is the weather.

10 So that may be an example of kind of  
11 overnotice. The way that we've approached it is in  
12 certain situations, for example, the phishing filter  
13 where there's a sensitivity between providing Microsoft  
14 perhaps with URLs as well as providing the protection we  
15 do, kind of a very just-in-time consent notice. For  
16 other less invasive types of things, for example, use of  
17 behavioral information to provide ads or even contextual  
18 information, that's an example where we would have very  
19 detailed information in a privacy notice and provide the  
20 consumer with the ability to opt out of that tracking,  
21 despite Declan's information, that's not quite accurate,  
22 you can actually opt out of off-network and on network.

23 MR. MCCULLAGH: That's what you told us at the  
24 time.

25 MR. CULLEN: Sure the other -- so there's

1 different notices for different scenarios. And it's a  
2 balance between providing access to the information,  
3 providing relevant information in the context that from  
4 our understanding of our customers that they expect.

5 MR. WINSTON: Yeah, I think that's a good  
6 point, that there has to be a balance between too much  
7 information and not enough. But if you think about  
8 effective communication, the first step is getting the  
9 consumers' attention, letting them know there is  
10 information there that they might be interested in. And  
11 then you move to, all right, once the consumer is  
12 interested how do you explain it in a way that they can  
13 understand and what choices do you give them at that  
14 point.

15 MR. CULLEN: Yeah, so, you know, another  
16 interesting balance point is that for a user that first  
17 comes to Windows Live, applies for a Windows Live ID,  
18 they actually have to affirmatively attest they have read  
19 or received the privacy notice. Now, do we make sure  
20 that they have to scroll through even the short form  
21 notice? No, because in all honesty that's -- our  
22 customers have said that's just kind of an overdoing it.

23 Do we make it accessible on every page?  
24 Absolutely. Do they have the ability to express some  
25 choice around that? Absolutely. So it's a balance

1       between making the information available, doing it in a  
2       way that makes it easily accessible, in fact, invites  
3       accessibility but doesn't make the consumer have to click  
4       through 18 screens just simply to sign up for an ID.

5               MR. WINSTON: Esther, you wanted to say  
6       something?

7               MS. DYSON: Yeah, thanks. I wanted first to  
8       talk about the disclosure of my own information in the  
9       bio here. It's kind of ironic. If you look at my bio,  
10      it's kind of vague. I do emerging stuff. The fact is  
11      I'm very involved with a bunch of companies that do  
12      online advertising. Somebody -- some I'm sure junior  
13      person at the FTC wanted to make my bio sound more  
14      prestigious or something, and they took out all these  
15      dinky little companies, but just for the record, I'm  
16      involved with Boxbe, which lets you manage your own email  
17      inbox and sell access to it to marketers, so it tries to  
18      empower the user.

19              I'm involved with Dotomi, which originally  
20      started with a similar user empowerment kind of business  
21      model where you get personal messages in a banner space  
22      on your website. We found that too confusing to sell to  
23      consumers. So I understand exactly what the issues are  
24      around trying to tell people stuff they don't really want  
25      to take the time to understand.

1           I'm on the board of WPP Group, which owns three  
2 of the world's largest advertising agencies. I'm an  
3 investor of Link Storm and a few more. But just -- I  
4 wanted to get that out there to make the context clear  
5 and also just to illustrate how disclosure itself is  
6 difficult even if you're well meaning.

7           The point I wanted to make here is to try and  
8 move the discussion from what we're doing now towards  
9 what I would call Disclosure 2.0. And you see a little  
10 bit of it with eBay. It's so why are you showing me this  
11 ad? What is it that you know that makes you want to send  
12 me this ad?

13           I think over the next few years, the most  
14 effective disclosures are really going to be tell the  
15 consumer what you know about the consumer. If you know  
16 their IP address, show them their IP address. If you  
17 know their name and email address, show them their name  
18 and email address. Of course it's not as simple as it  
19 sounds, because you may combine all this information to  
20 do segmentation. You may have very clever names like  
21 Baby and Bath, or, you know, who knows. You may have  
22 third party information. But if you're a marketer and  
23 you can figure out how to sell this stuff to advertisers,  
24 you should be able to figure out how to present it to  
25 consumers in a way that they can understand, because most

1 consumers are probably as smart as most advertisers,  
2 generically.

3 So I think you're going to see more and more of  
4 this happening. I don't think the FTC needs to set  
5 standards. Unlike, for example, you can see your credit  
6 report now. It's a very defined process, exactly what is  
7 shown and so forth, and it's free, and part of the issue  
8 is around funding this, but I think the market is  
9 beginning to work. I think you're going to hear more and  
10 more today about examples of this kind of thing.

11 The second thing that gives me hope, and I'm  
12 going to be very brief, is Facebook. People are now  
13 becoming accustomed to developing, designing, looking at,  
14 maintaining, refining, if you like, curating their own  
15 profiles. It's no longer such a weird notion. If I  
16 curate my profile to show to my friends, and if I decide  
17 which of my friends can see which part of my profile, why  
18 can't I simply have a list of marketers for whom I'd do  
19 the same curating? This is what these guys can see; this  
20 is what those guys can see; this is what's visible to  
21 everybody. If you had tried to do this 10 years ago,  
22 people would have said I don't understand, it's too  
23 confusing. But I think the courtesy of Facebook and  
24 other companies, this notion is now going to be  
25 completely comprehensible to consumers so that Lorrie's

1 problem of they don't understand is going to be solved  
2 not by a single standard but by consumers' greater  
3 familiarity with all these tools.

4 MR. WINSTON: Thank you, Esther.

5 Just to pursue a little bit more how companies  
6 are getting over this barrier of getting consumers'  
7 attention and alerting them to this -- the availability  
8 of this information, Srinija, am I pronouncing that  
9 right?

10 MS. SRINIVASAN: Yeah, that was perfect.

11 MR. WINSTON: Wow! How do you do that at  
12 Yahoo!? How do you tell consumers that you're gathering  
13 this information for advertising purposes, and explain  
14 how that works.

15 MS. SRINIVASAN: Sure. So, I'm Srinija, I'm  
16 Editor-in-Chief at Yahoo!, and I've been with Yahoo!  
17 since we were five people, and I can tell you since our  
18 inception that we got into this because we were so and  
19 remain so passionate about the transformative power of  
20 this medium that we can't wait to unleash that positive  
21 power for others and empower others to find out and  
22 discover what can be done, what's possible.

23 And we recognize that in order for that to  
24 happen there has to be a fundamental trust by all  
25 members, all participants in the ecosystem that drives

1       this medium in order to drive participation. So we were  
2       one of the first companies to have a privacy policy, and  
3       I don't want to for a second discount the power of that  
4       level of disclosure.

5               The policy itself, the final document, is an  
6       important outcome. And in it I think you'll find on the  
7       very top page where we try to succinctly boil down the  
8       essence of our information practices, you'll see that we  
9       very clearly say, we use the information we observe in  
10      order to customize the content and ads you see.

11             We further break down -- you know, we have been  
12      talking a lot about layered policies in the last day or  
13      two. Our version of layering has been in place for many  
14      years. And that is that many different Yahoo! customers,  
15      consumers, think of us in different ways because we offer  
16      so many different sorts of products and services. So we  
17      actually detail for each of our products and services  
18      what are the privacy practices that apply to this  
19      particular product? That way you don't have to read  
20      about the tons or more of specific instances that may or  
21      may not pertain to you, but you can see in a central  
22      policy what are the principles that apply. And then the  
23      practice is broken out by product.

24             So that's one way just in our policy statement  
25      that we make sure we have ubiquitous links to this on the



1 footer of every page, not just the home page, and that we  
2 want people to know this is -- we take this seriously.  
3 This is something that we think about.

4 The other thing is that has been quickly  
5 alluded to here, I think, but bears further discussion is  
6 that the policy itself, while it's very important, is the  
7 outcome of the thoughtful process that led to it that  
8 says we're a company that spends time thinking about the  
9 implications and the outcomes. And these are our  
10 guardrails.

11 We want to make that clear in as many ways as  
12 we can. So, if you're traversing across Yahoo!, we have,  
13 for example, a universal header. When you are known to  
14 us, it will say, "Hi, Srinija." If you are not known to  
15 us, because you've never registered with us or you aren't  
16 logged in, then there won't be that identifiable  
17 greeting. And that's just one small example of letting  
18 you know implicitly in the experience something that  
19 pertains to what we know about you.

20 MR. WINSTON: Let me just follow up for a  
21 second. The way consumers get to the privacy -- this is  
22 all in the privacy policy, right?

23 MS. SRINIVASAN: Of course the elements of the  
24 policy are all in the privacy policy.

25 MR. WINSTON: Right.

1 MS. SRINIVASAN: Something like a universal  
2 header is just one example of where we want to give you  
3 cues implicitly in your experience that tell you in that  
4 particular example are you logged in, have you  
5 registered, and are you logged in, are you known to us?

6 MR. WINSTON: Right, but if I'm a consumer and  
7 I'm traversing the site, the way I would find out that  
8 you collect this tracking information and target ads to  
9 me is by clicking on the privacy policy?

10 MS. SRINIVASAN: That's right.

11 MR. WINSTON: Okay.

12 MS. SRINIVASAN: And we think that customers  
13 are aware of this value exchange. You know, we make it  
14 very clear that you know when you're dealing with Yahoo!,  
15 you see the Yahoo! brand, or you're on our brand and  
16 network of sites. And we think people understand this is  
17 the value exchange, and then we spell that out very  
18 clearly to say we use this information to customize the  
19 content in ads that you see.

20 MR. WINSTON: Okay, and do you have any data,  
21 and if anyone else has any data, on how many of your  
22 visitors, you know, what percentage of your visitors  
23 actually click on the privacy policy? Do you have any --

24 MS. SRINIVASAN: I don't know the specifics of  
25 the usage. It's read, but, again, I want to underscore

1 just because I think there's been a lot of varying  
2 opinions expressed about the value, the relative value of  
3 privacy policies. I strongly believe that the presence  
4 of a privacy policy and the pervasiveness of these  
5 policies in the industry is a really powerful  
6 demonstration.

7 You know, the fact that we've got the leading  
8 companies in the industry here in this dialogue and that  
9 we're demonstrating good practices, I think, underscores  
10 that the fabric of this medium, the fabric of this  
11 marketplace, gives us all an incentive to ensure that we  
12 have that kind of trusted relationship with our  
13 consumers. So, the extent to which people are reading  
14 every word is one indicator, but also I think the  
15 presence of the policy can't be underestimated.

16 MR. WINSTON: Okay. Carlos, do you want to  
17 comment?

18 MR. JENSEN: So, we in academia have been  
19 trying to get figures on how many people actually read  
20 privacy policies for a long time in a real world setting.  
21 And it's one of these very closely guarded secrets. And  
22 the best that we've been able to get is kind of off-the-  
23 record statistics showing that when you prompt people for  
24 a credit card, less than 1 percent will read your privacy  
25 policy. And you can only imagine what the acceptance

1 rates are going to be for regular transactions like  
2 search. I mean, Google doesn't even have a link to the  
3 privacy policy off of the main search page. You have to  
4 drill down.

5 The problem with the traditional privacy policy  
6 in this space especially is that I'm not dealing with a  
7 single transaction. I'm dealing with a prolonged  
8 transaction over days, weeks, months, and the information  
9 accumulates. So whether users are really aware of the  
10 implications of their transactions with this company  
11 after reading the policy one time at the beginning of the  
12 relationship is unclear to me.

13 I really liked what we saw here from eBay,  
14 which is a kind of constant reminder that we are aware of  
15 who you are, we are aware of oh, you should be aware that  
16 we're doing something with information that we're  
17 gathering about you. And I think that's a much more  
18 powerful direction to go in.

19 MR. WINSTON: Jane Horvath from Google, do you  
20 collect any statistics on how many people click on the  
21 privacy policy?

22 MS. HORVATH: I don't have those available  
23 right now. But I did want to talk about what we've done  
24 because we do agree that the privacy policy tends to be  
25 very legal oriented and difficult to read and difficult

1 to follow, so we're exploring different means of making  
2 our privacy practices clear. In particular, we first  
3 started with blogs. And we were blogging about different  
4 issues with respect to privacy, and these blogs are  
5 interactive blogs, so users have the ability to write  
6 back and ask questions.

7 And in response to a number of the questions we  
8 realized that there were some issues with respect to  
9 search and what information we were collecting. So we  
10 decided that we would use another vehicle, which is  
11 video, because our YouTube product is very popular and  
12 people like to see things, like to watch TV. So we have  
13 recently launched two videos that explain some of our  
14 privacy practices. And we plan to launch more videos as  
15 well.

16 And just the other day we launched a new  
17 channel on YouTube, which is our privacy channel, where  
18 we're hoping to aggregate as much information about our  
19 privacy practices as possible.

20 We also believe that we have increased notice  
21 where there's more actionable PII, in particular with  
22 respect to the tool bar, the Google tool bar where you  
23 can turn on a feature that we believe is collecting more  
24 personal information. We will actually query you with an  
25 opt-in in plain English that says this is what's

1           happening to you, do you want to proceed? And you can  
2           opt-in from there.

3                         And then finally, similar to eBay, we are  
4           actually testing an advertisement with an ad policy link  
5           on it in connection with our third party ad serving  
6           product for display ads.

7                         MR. WINSTON: And just to clarify, right now  
8           we're talking about how do you get consumers to pay  
9           attention to the fact that there's information here that  
10          they might want and what are the best techniques for  
11          drawing consumers' attention to this issue? I think  
12          later we'll want to talk more about the content of the  
13          disclosure, how do you actually effectively communicate  
14          that information when the consumer reads it. Mary?

15                        MS. ENGLE: Well, I was wondering if anybody  
16          wanted to comment. I mean, we heard yesterday that  
17          consumers don't really read privacy policies very much  
18          and perhaps also that the mere presence of a privacy  
19          policy suggests that the privacy is being protected more  
20          than it actually is. If you actually read the privacy  
21          policy you would see that they're going to be sharing  
22          with affiliates or so forth.

23                        So I don't know if Srinija or somebody else  
24          wants to talk about it, is there some other way or  
25          particularly with respect to the ads that you could

1 present this information to let -- you know, other than  
2 having to rely on consumers to just -- well, they see  
3 privacy policy, so I guess, you know, I'm safe here or  
4 I'm covered.

5 MS. SRINIVASAN: So, as it relates to the ads,  
6 we -- so for Yahoo!, we're very new to the space of  
7 delivering ads off of our branded network. In fact,  
8 while we have announced some acquisitions in this area  
9 and, you know, we'll certainly want to deepen those  
10 relationships over time, the one instance where we employ  
11 behavioral targeting in advertising off of our own  
12 branded network is with eBay. And you've heard from  
13 Scott about the AdChoice model.

14 So in our first instance, this is a model that  
15 we're really happy to participate together with eBay on  
16 because it provides immediate contextual notice within  
17 the context of that activity to say that near that ad  
18 unit or perhaps in the ad unit a user can see there's  
19 something here, there's something I might be interested  
20 in regarding how this ad is delivered.

21 And from there, you can get directly to not  
22 just their opt-out but also our opt-out, even though the  
23 behavioral targeting off our network is anonymous, you  
24 can opt out of that as well. So associated with ads,  
25 that is our first foray, and that's the model that we've

1 chosen to adopt.

2 We, like eBay, are looking forward to  
3 continuing to experiment and explore any models. I mean,  
4 it's absolutely in our interest to promote the greatest  
5 transparency and control for users because, again, it  
6 comes back to just our original purpose. We want to  
7 unleash the amazing power of this medium. That requires  
8 participation; participation requires trust.

9 MS. ENGLE: Marty?

10 MR. ABRAMS: Thank you. I think there's some  
11 assumptions that are inherent in the discussion so far,  
12 and I think we need to at least acknowledge those  
13 assumptions and explore them. The question is, what can  
14 I do -- you know, your framing question is what can I do  
15 to force consumers to read privacy notices? And the  
16 honest answer is that individuals are incredibly busy,  
17 individuals have lots of things in their lives that are  
18 very important to them. Individuals want a market that  
19 they can trust. Individuals go to brands because they  
20 recognize the brands and they recognize that those brands  
21 have reputational risk which makes those organizations  
22 more willing to be innovative and try things.

23 If we're saying that we can come up -- we've  
24 tried many devices on the Internet to force people to  
25 read things. We darken the screen, we put popups, we



1 make people click through things, and the fact is that  
2 we're never going to get rid of the fact that individuals  
3 are incredibly busy, that individuals have lots of things  
4 to do in their lives, that individuals want a great  
5 experience when they go on the Internet, and there are  
6 lots of things that are bundled into that.

7 So when we think about privacy notices, I think  
8 we have to think in terms of the roles of privacy  
9 notices, and it's not -- so it's not just consumers are  
10 aware of what's going on so they can make choices.  
11 Privacy notices establish a sense of what is fair and  
12 what's unfair by the comparison of notices, the  
13 comparison of behavior.

14 Privacy notices create a sense of  
15 accountability that they define how an organization is  
16 going to behave and then organizations can be measured  
17 against that behavior. And that's a very different thing  
18 than just saying we're going to try to force individuals  
19 to read notices so that the consumer can then be in a  
20 position to police the market.

21 And then when we think about this whole concept  
22 of the role of notices, I think we need to think about  
23 the concept of privacy as it relates to the role of the  
24 Federal Trade Commission, because we're at the Federal  
25 Trade Commission. And over time the Federal Trade

1 Commission is really in many ways because of the adoption  
2 of the concepts of harm and protection against harm which  
3 is appropriate for a consumer protection agency, it's  
4 really come down to a discussion of what is the  
5 appropriate uses of information.

6 And the appropriate uses of information,  
7 actually when we talk about communication, goes beyond  
8 just the role of notices as a privacy notice but also the  
9 concepts of the uses of information that are in terms and  
10 conditions, especially as you get away from branded  
11 organizations. So I'm just suggesting that while privacy  
12 notices are incredibly important, my God, I have spent 20  
13 years working on privacy notices, I led the process of  
14 coming up with the multi-layered notice approach, we  
15 don't -- we shouldn't have an expectation that notices  
16 alone are the issue and that we shouldn't spend all of  
17 our time trying to figure out how we force consumers to  
18 read notices. We have to think about the accountability  
19 process that goes into a notice.

20 MR. WINSTON: I think that's right, Marty,  
21 although I think this panel really we want to drill down  
22 on how do we get consumers to look at this information  
23 and understand it and make good choices for them,  
24 recognizing that privacy policies serve a lot of other  
25 purposes.

1 Peter?

2 MR. CULLEN: With respect to that, I do think  
3 we do need to pick a little bit on Marty's points a  
4 little bit. So, for example, the state yesterday, which  
5 I was incredibly surprised about, you had 15 percent of  
6 the whatever it was that Fortune 500 companies don't even  
7 have a privacy statement, so I think it's wonderful that  
8 we're up here discussing about how we can improve privacy  
9 notices. Perhaps the goal is to get people to read them.

10 But Marty's point about that an organization's  
11 privacy statement is also a promise to consumer advocates  
12 who frequently look at those statements to make sure that  
13 they're not deceptive, it's a promise to the FTC, after  
14 all, we have a 20-year love affair with you on that.

15 **(Laughter)**

16 MR. CULLEN: So, I think they serve a very  
17 valuable purpose, but I think we also need to be thinking  
18 about, well, why is it that 15 percent of those top  
19 companies do not even have a privacy statement? What  
20 does it mean for the perhaps less respectful companies in  
21 terms of what their promise is. So, you know, it's a  
22 fascinating debate that we have some very, very large  
23 brands up here and we're talking about whether our  
24 notices are effective when we have a bunch of perhaps  
25 questionable actors out there that aren't perhaps even

1 have the confidence to put a statement up.

2 MR. ABRAMS: When Bonnie Guiton was head of the  
3 Office of Consumer Affairs when we had still had an  
4 Office of Consumer Affairs in the United States, Bonnie  
5 Guiton used to talk about the concept of the teachable  
6 moment. In many ways the reason the privacy notices have  
7 to be approachable is that when you're at that teachable  
8 moment, when there's a motivation for the consumer to  
9 read it or the consumer or the privacy advocate to read  
10 it, that there's the ability to come to grips with that  
11 notice and to drill down in a meaningful way in the parts  
12 of notice that are important.

13 So, this concept of -- we shouldn't lose sight  
14 of the fact that why did she come up with this concept of  
15 the teachable moment? Because she realized that you  
16 can't force someone to do something that they don't have  
17 time to do today, and that notices are incredibly  
18 important and they need to be incredibly useful, but it's  
19 not the fault of consumers if they don't read them and  
20 it's not necessarily the fault of organizations if they  
21 can't get them to read it. That's the point, Joel.

22 MR. WINSTON: Let me just ask this question and  
23 throw it open to anybody. At the risk of being  
24 completely over-simplistic, why is it that a site that is  
25 engaged in behavioral marketing, why can't they put a

1 notice on the home page, wherever, that says we collect  
2 information about your activity on this site and use it  
3 to direct ads to you that may be most relevant to you.  
4 To learn more about this and to understand what your  
5 choices are, click here. And then you go to a statement  
6 that explains all this. Is that -- is anybody doing  
7 that? Is that feasible? Would that be effective?

8 MS. DYSON: I mean, frankly, that's what the  
9 question marks and learn more and all those other things  
10 are for. If you're a guy designing a website or a web  
11 page, every single square inch of this real estate is  
12 very valuable. You want to know how it's used, how it's  
13 monetized, what it's for, and spending a lot of space on  
14 this kind of thing is very hard to do if you're a  
15 marketer, so they use these little things. If you want  
16 to learn more, you can click on the learn more.

17 And I think -- you know, I don't think you can  
18 force consumers to look at this stuff. I don't think  
19 it's somebody's fault. It's just something, if they want  
20 to know you want to be able to help them learn more. I  
21 wanted to point out that Google has something called web  
22 history, which is not positioned as a privacy statement,  
23 but is exactly this kind of thing. Learn more about what  
24 Google has been tracking of your activities online.

25 And, again, I think the level of ambient

1 knowledge is getting to the point where people know what  
2 the question marks and the "learn more" or "find out  
3 more" links mean. And if they're interested, they do  
4 click. The problem is indeed with what they find when  
5 they click, which is mostly incomprehensible.

6 MR. WINSTON: Just one quick response to that.  
7 Several years ago the FTC undertook sort of a review of  
8 how disclosures online work, what works and what doesn't.  
9 Basically what we concluded is that putting in a link  
10 without any explanatory information, whether it's a  
11 question mark or it says privacy policy or whatever it  
12 says, generally is ineffective.

13 Consumers don't know -- consumers are busy,  
14 they're not going to click on every link and they need to  
15 be drawn to it. They need to be told why it's important  
16 for them to click on that link. And as a result what we  
17 suggested is that the links have some basic explanation,  
18 like to learn more about how we collect your information  
19 and use it to send ads to you, click here. And that  
20 otherwise consumers are not going to click. That's what  
21 we basically concluded several years ago. Now, maybe  
22 that's changing over time, but, Mary, do you want to ask  
23 something?

24 MS. ENGLE: Yeah, I wanted to ask Ken McGraw at  
25 Zango, because, you know, you have, I think, a model of

1 labeling your ads. Do you want to discuss that at all?

2 MR. MCGRAW: Sure. For those that don't know  
3 Zango, we're an ad-supported online media company. We  
4 use a software download to the desktop to deliver  
5 contextually targeted, not behaviorally targeted,  
6 advertisements.

7 It was a couple of years ago when Esther Dyson  
8 was at an anti-spyware conference and she challenged the  
9 industry to continue to give consumers notices to what's  
10 on their machine. And it's something that Zango accepted  
11 the challenge and has done ever since.

12 Since we're a download, as opposed to just a  
13 web page, we do have additional notice and consent. We  
14 have a fully easily understandable notice that appears  
15 before any download or installation occurs. And we also  
16 provide the after-the-fact reminders within 72 hours  
17 after the installation, as well as every 90 days  
18 thereafter that the software is on the machine.

19 The software delivers advertisements, and we  
20 identify those advertisements with a bar at the bottom  
21 that states that the advertisement is brought to you by  
22 Zango, together with a hyperlink for the consumer to  
23 learn more about both where they're getting the ad, what  
24 information that's being collected, with a link to the  
25 privacy policy as well as how to uninstall the software.

1           So while we're a slightly different space than  
2 most of the behavioral targeting folks on the panel, we  
3 do look at consumers' privacy as a very important thing,  
4 and we are out there to disclose what we think is  
5 appropriate for the type of activities that we do.

6           MR. WINSTON: Professor Milne, you have studied  
7 consumer behavior, consumer attitudes about these privacy  
8 policies. What do you think about the idea of -- how do  
9 you get consumers to pay attention to this? Or can you?

10          PROF. MILNE: Well, it's very difficult to get  
11 them to pay attention because most don't. But there are  
12 differences between different types of consumers. One of  
13 our goals, I guess, is to try to sell consumers more  
14 goods as marketers. And I have done a study that looked  
15 at the amount of consumption that people buy online  
16 versus the amount of skill that they say they have in  
17 terms of being able to navigate through the web.

18          And those people who are more self-efficacious  
19 in terms of their abilities are the ones who will read  
20 the notices. And it's not the big companies that we're  
21 talking about today, it's when they're going to the new  
22 sites, they have a higher propensity to read notices  
23 there.

24          So I think notices are really important in  
25 terms of a signal. I like the comments about the



1       accountability. I think that's very important. But I  
2       think one of the problems we have here with all these  
3       technical solutions, which I think are very creative, and  
4       I like the eBay one in particular, as well, is the lack  
5       of standardization, because consumers are cognitive  
6       misers. They don't want to go through and learn one  
7       person's system and then another person's system.

8                Along with this study that I have been looking  
9       at in terms of seeing what people do when they buy online  
10      is they also do a lot of risky behaviors online as well.  
11      And those people who are not as skilled tend to do a lot  
12      of risky behaviors, and there's really two segments that  
13      buy online, the people who are not very well educated and  
14      the people who are really educated.

15               What we're missing out on is the middle  
16      segment, the people who really want to buy, you know, who  
17      are our market to expand e-commerce. And, so  
18      standardization would probably bring those people in,  
19      because they right now don't feel they have the skill  
20      level to navigate some of these difficult areas.

21               MR. WINSTON: Question?

22               MR. WHITEHEAD: So, I just had a question for  
23      the panel, and I would actually like to follow up on your  
24      comment and go back to what Joel and Esther were talking  
25      about earlier.

1 MS. ENGLE: Could you identify yourself,  
2 please?

3 MR. WHITEHEAD: Steve Whitehead from Verizon.  
4 I'm wondering if, going back to Joel, your comment about  
5 putting some sort of a notification on the web page, and  
6 obviously the preciousness of that space, but what about  
7 creating, say, a set of standard symbols that could be  
8 placed on web pages that could provide an indication of  
9 the level of privacy or the level of tracking that's  
10 going on associated with that page at that point in time,  
11 so you can envision, you know, one simple model would be  
12 sort of a green, yellow, red type of thing. Or I'm sure  
13 we could come up with a relatively small set of symbols  
14 that could provide an indication of what the publisher is  
15 doing and what information is being gathered associated  
16 with that page. I'd just like to get folks' comments on  
17 that concept.

18 MR. WINSTON: Does anyone want to comment on  
19 that? Scott?

20 MR. SHIPMAN: Having been volunteered for a  
21 comment on this . . .

22 MR. WINSTON: I thought I saw you raise your  
23 hand.

24 MR. SHIPMAN: No, that's fine. That's fine.

25 MR. WINSTON: You're scratching your head?

1                   MR. SHIPMAN: That will teach me. I think one  
2 of the challenges certainly with labels is I think even  
3 in the context of the eBay and Yahoo! relationship with  
4 respect to AdChoice that there are many, many different  
5 permutations. So, for example, in our relationship it's  
6 anonymous aggregate sharing of information between eBay  
7 and an ad network partner. Yet in other instances,  
8 people, it may not be anonymous.

9                   So what is the implications of that type of  
10 sharing? So there's two colors. You know, is the  
11 information sold, or is it just being shared for a one-  
12 time purpose? There's three colors. And you can go on  
13 and on and on. So, I think the challenges you end up,  
14 you know, with some sort of rainbow on the page, and you  
15 may lose all of the meaning that you were trying to get  
16 at.

17                   The other comment that I had with respect to,  
18 you know, can we put a sentence on the page that  
19 describes, you know, we're doing advertisoral or  
20 behavioral targeting, the challenge there and certainly I  
21 know at least one member of my team will probably hear  
22 the chalkboard with nails on it in a minute when I say  
23 that our UI team always says every pixel fights for its  
24 life.

25                   **(Laughter)**

1                   MR. SHIPMAN: And, you know, ultimately,  
2 they're trying to make sure that there is the best  
3 customer experience possible, and what that means is  
4 sometimes white space is what makes the best customer  
5 experience possible because it's clear and clutter-free.

6                   On other occasions it means question marks or  
7 links or mouse-overs as other types of functionality, so  
8 I think while in theory it's a great concept, I know a  
9 number of teams have tried to explore how do we get  
10 labels. I know there have been chirping parrots on  
11 browsers and other types of things I've seen in the past.  
12 I don't see any of them working today in a fashion that  
13 really is getting the consumer on top of the notice.

14                  MR. WINSTON: I guess the downside of the color  
15 scheme would be that people might confuse it with a  
16 terrorist threat level or something.

17                  MR. CULLEN: Yeah, Joel, don't forget, we've  
18 had some experience with standardized privacy notice. I  
19 think it was called GLBA, but . . .

20                  MS. DYSON: We also tried this at TRUSTe. And  
21 the challenge is, as Scott said, it's complicated, it's  
22 not really a question of levels. There's also orthogonal  
23 things like what kind of information is it, what kind of  
24 marketing partners is it that you give it to and so  
25 forth.

1                   So, again, I think the clearest thing is to put  
2 up the question mark. There are companies that sell  
3 browsers that have these kinds of warnings on them.  
4 There hasn't been huge take-up. Putting a question mark  
5 or something like that and letting people see the  
6 examples of what's going on, I think, is the most  
7 effective way.

8                   MR. ABRAMS: I think that there's a -- if you  
9 think about -- I think a lot of time thinking about what  
10 the regulatory structure is going to be three, four, five  
11 years down the road, and I think that you're going to be  
12 seeing the concept of trustworthiness related to a set of  
13 standards within industries. And, so, rather than a  
14 color code or multiple codes related to differing levels  
15 of data use, it's the trustworthiness around the data  
16 use.

17                   In some ways the pickup on seals within the  
18 seal programs are an indication of that future, but I  
19 think the future is going to have multiple standards  
20 based on types of industries with greater regulatory  
21 oversight, so I think that something like that is coming,  
22 but it's not in the near term.

23                   MR. WINSTON: Well, why don't we do this?  
24 Carlos has been wanting to say something.

25                   MR. JENSEN: Let Lorrie answer first.

1 MR. WINSTON: Lorrie, Carlos and then Peter.  
2 And then we have some questions for some of the other  
3 panelists, too.

4 MS. CRANOR: So, I think the notion of symbols  
5 is appealing, but as my colleagues have said, there are  
6 so many different permutations. If we could find out a  
7 small number of permutations that customers actually care  
8 about, then that sort of thing might make sense. And  
9 that's a big if, I don't know if we could do that. I  
10 think it would be worth exploring whether, you know,  
11 there are lots of subtle distinctions that the industry  
12 cares about but maybe consumers don't, and so that's  
13 something that would be worth getting some actual data  
14 on.

15 I also think we should go back to finding ways  
16 that we don't have to bother the consumer about all this.  
17 The notion behind P3P, to bring up now an old technology  
18 here, is that your browser can read the policy and make  
19 decisions for you. And, so, if websites can convey all  
20 their nuances in their P3P policy and the consumer can  
21 once set up their browser and say, well, this is my  
22 threshold and only bother me if they cross the line, that  
23 might be something that could actually work in the space  
24 and we should be thinking about.

25 MR. JENSEN: I mean, Lorrie brings up a very

1 good point here. Putting links to policies and context  
2 is a great first step. The problem is that many of the  
3 policies that are embedded in these privacy policies are  
4 putting an undue burden on users.

5 So last time I looked at a privacy policy  
6 seriously two years ago, 50 percent of policy -- 50  
7 percent of the sites that we visited had a policy that  
8 effectively said if we decide to change our mind about a  
9 privacy policy, we'll let you know here in the privacy  
10 policy. So that means that as a consumer I have to go  
11 and check the policy every time I visit the site or I  
12 have automatically agreed to new terms.

13 MR. WINSTON: Yeah, I think that's something we  
14 definitely need to talk about, and maybe we should move  
15 to that now, but for now we were focusing on the first  
16 step, how do you get the consumer's attention. Then the  
17 problem comes, all right, you got his attention, he  
18 clicks on it, he goes to privacy policy, how does he make  
19 heads or tails out of it.

20 MR. JENSEN: But I think this undue burden is  
21 exactly what's driving users away from reading the  
22 privacy policy. So, if -- I mean, reading a privacy  
23 policy that could change five seconds after you read it  
24 means that I'm not going to bother.

25 MR. WINSTON: Peter?

1                   MR. SWIRE: Yeah, my name is Peter Swire, I'm a  
2 law professor at Ohio State, a fellow at the Center for  
3 American Progress. So, I want to pick up on this link to  
4 context and especially what -- how manageable it is for  
5 the people running the systems, and we have a lot of  
6 people who run systems here, to have a policy that can be  
7 detailed enough that it actually makes sense to readers.

8                   There's a great temptation to be vague in the  
9 policy, namely we collect lots of different things about  
10 you and it changes over time. And part of that is for  
11 really good reasons, which is you won't get sued. That's  
12 a good reason. And another good reason is you do about  
13 500 different things that are coming in from different  
14 perspectives and it changes over time and you have 43  
15 contracts you're managing.

16                   And, so the question is if you had Esther's  
17 idea or Joel's question of a link to in context to what  
18 the sorts of things are we gather about the consumer, is  
19 that manageable, can you actually say things, given your  
20 systems that any person can use? Can you have that data  
21 and have meaningful things, or is it so complicated, so  
22 changeable over time and so scary because you might say  
23 it wrong that you just basically inside your  
24 organizations can't say what it is you're collecting.

25                   MS. ENGLE: I have a question for Colin



1 O'Malley at TRUSTe. Is there a role for --

2 **(Laughter)**

3 MS. ENGLE: I'm sorry.

4 MR. WINSTON: Have we dissed you in some way,  
5 Peter?

6 MR. SWIRE: No, I think the FTC has some  
7 questions, that's all. If he can't answer it now . . .

8 MR. WINSTON: Okay.

9 MS. ENGLE: Okay, well, just turning to the  
10 possible role of a seal program and trying to deal with  
11 some of these issues.

12 MR. O'MALLEY: Sure. And I do think Peter  
13 Cullen from Microsoft made an interesting point before  
14 that there's a bottom-line accountability that has to  
15 exist in looking at these issues, right? Because they  
16 evolve constantly over time. And when we look at the  
17 TRUSTe program and we're going on ten years now, we just  
18 had our 10-year anniversary party, the issues that we've  
19 looked at in the last ten years have evolved constantly.  
20 When we first launched the program we weren't really  
21 studying the impact of cookie use. We weren't looking at  
22 web beacons, we certainly weren't looking at behavioral  
23 targeting.

24 So, any sort of high level alert system that is  
25 color-coded or that really tries to simplify the

1       trustworthiness of a site has to take into account those  
2       sorts of evolving issues. And I think that's what we've  
3       tried to do in the TRUSTe seal program is create a  
4       standards document that evolves over time and continued  
5       to fold in new issues as they begin to emerge.

6               There could potentially be a role for issue  
7       specific seals, and we have seen a certain amount of that  
8       within the TRUSTe program. If you look at the evolution  
9       of our organization from a web seal privacy certification  
10      only organization to an organization that also looks at  
11      email privacy practices. And our most recent program,  
12      the trusted download program, where we're looking at the  
13      quality of notice prior to install of downloadable  
14      applications, the extent to which any advertising or  
15      tracking behavior is robustly noticed prior to install  
16      and the completeness of uninstall we're seeing that as  
17      well.

18              And you can see a potential corollary in  
19      behavioral targeting if we're able to come up with a good  
20      set of industry best practices and a moniker that would  
21      be meaningful to consumers.

22              MR. WINSTON: And before we go on, just to  
23      respond to Peter Sire and some of the comments about --  
24      which get to the issue of the value of disclosures and  
25      whether there's a better way of addressing this issue,

1       you know, I think there's a serious question here about  
2       whether it's simply not feasible for businesses or for  
3       consumers to go -- use this sort of notice and choice  
4       model. Is it more information than consumers can handle?  
5       Is it too difficult for businesses to explain in a way  
6       that gives consumers sort of both sides of the equation?  
7       Is it too much to expect of consumers?

8               And, you know, a lot of people have been  
9       talking over the last months or years about the  
10       weaknesses of the notice and choice model, and it's  
11       something we're going to address, I think, in later  
12       sessions as well. But for now what we're trying to focus  
13       on is if we do go the notice route how do we make it  
14       better or can we make it better?

15               George, there you are, I understand that  
16       SafeCount has a cookie transparency strategy. Can you  
17       talk about what that is and how it works?

18               MR. PAPPACHEN: Sure, sure, I'd be happy to.  
19       SafeCount.net is a company that works with advertisers  
20       and publishers using survey research to get consumer  
21       opinion on marketing programs. And, you know, I do  
22       believe that, you know, publishers value every inch of  
23       their space and they want the consumer experience to be  
24       as optimal as possible. And as somebody said yesterday,  
25       that consumers have choices. And if they're not able to

1 deliver on promises consumers will go elsewhere.

2 So, the first thing we did insofar as we reach  
3 out to consumers when they're on web pages and ask them  
4 and invite them to take a survey, we worked with  
5 publishers to work out rules that we want the consumer  
6 experience to be not overloaded by invitations, so we set  
7 site rules and said, you know, we won't contact the  
8 consumer every -- but once every so often; whatever the  
9 site rules indicate.

10 Then we decided, you know, we want to have a  
11 process where the consumer will be able to see everything  
12 we have about them that we would deliver to a partner of  
13 ours. So we built out SafeCount.net. And, you know,  
14 there might be a question, well, why -- how would a  
15 consumer ever get there? Our presence on the web is such  
16 that over time we believe that with our survey  
17 invitations, an interested consumer would want to click  
18 through to our privacy policy, or at some point there are  
19 times when consumers are busy but there are other times  
20 when they might be surfing a site and a SafeCount  
21 invitation may come and they would choose to find out  
22 more.

23 And if they do land at SafeCount.net, our web  
24 page, our SafeCount.net web page, we turned it into sort  
25 of a consumer education program as much as anything else.

1 I mean, we're not in the business of educating consumers,  
2 but we felt that it was so important to sort of help  
3 consumers understand what we do, that it helps out the  
4 good actors and it helps our partners.

5 On SafeCount.net, we developed a cookie tool, a  
6 cookie viewer tool, as I said, which enables consumers to  
7 see every SafeCount cookie that is on their browser.  
8 Further, we said we want to let the consumer dictate,  
9 have control over the rules of engagement, so they can  
10 set -- a consumer can come to SafeCount.net and set how  
11 frequently they would want interaction with SafeCount, if  
12 at all. They can say, well, I want to deliver my opinion  
13 maybe only once every six months, once a year, never.  
14 And we observe that rule.

15 Of course we worked with NAI and the IAB and  
16 other such organizations and individuals within those  
17 organizations to go further to make sure that, you know,  
18 our brand is identified with safety and trust and the  
19 partners that we work with, all of our contracts, you  
20 know, we talked about how sometimes 15 percent of  
21 publishers don't have privacy policies. Our contracts  
22 require that any partner that we work with has a privacy  
23 policy consistent with our own.

24 And, so, we see it as a space that we're in  
25 together. It's a difficult space to understand, but I

1 believe that every brand here, and we work with most of  
2 the large publishers here, I would say all of the large  
3 publishers and most of the websites that are frequented  
4 by consumers, and I would say that every one values the  
5 consumer and the consumer experience. And we're just but  
6 one company that's identified a way by working within  
7 this space to grow our brand as a trusted brand, and as  
8 consumers use this space more we want SafeCount to be  
9 known as a -- we want SafeCount to be a symbol of trust  
10 and consumers willing to engage with us.

11 MR. WINSTON: What do others think of that?  
12 Does that sound like a sensible thing to do? Anybody  
13 want to comment on that? I guess not.

14 MS. ENGLE: I'm not going to comment on that,  
15 but I'll ask another question of Michael Cassidy. As an  
16 ad network, what approach do you use for disclosing to  
17 consumer what your behavioral targeting policies are?

18 MR. CASSIDY: Sure. I think we have a unique  
19 responsibility in that we don't directly deal with  
20 consumers. Our constituents are the advertisers and the  
21 publishers, and we sit between both those parties, but  
22 obviously we make it our responsibility to try to be as  
23 forthcoming as we can. And our site receives very little  
24 traffic, as you would imagine, consumers have little  
25 interest in going to an ad network's website, but we do

1 have privacy policies and we do have opt-out  
2 opportunities for consumers interested.

3 I think the approach that we've tried to take  
4 is to really advertise the people that control the  
5 budgets, and those are the advertisers and agencies.  
6 There's a lot of marketers interested in behavioral  
7 targeting and these types of programs, and I think a lot  
8 of those organizations have actually done a good job of  
9 being very thorough in their questioning of these types  
10 of programs and how they can be used, how it regards to  
11 privacy.

12 So ultimately the interest in behavioral like  
13 programs are certainly growing, but especially as we're  
14 talking to the Fortune 500 companies, many of them are  
15 asking those tough questions, because I think they have  
16 been kind of a silent partner in this and that they're  
17 very much interested in maintaining a good dialogue with  
18 their consumers because ultimately the consumers if  
19 they're upset at some sort of ad or some sort of  
20 behavioral program, that feeling that they get is  
21 probably going to be taken out either at the publisher  
22 where they're seeing the ad or the ad that they're seeing  
23 themselves.

24 So, we have again some communication with  
25 consumers, where it's appropriate, but, again, most of

1       our efforts have been on the education side with the  
2       advertisers and publishers to a lesser extent.

3               MS. ENGLE: Well, when you say you are making  
4       educational efforts, I mean, do you review their  
5       policies, understand what the policies are, or try to  
6       affect those at all?

7               MR. CASSIDY: With the advertisers?

8               MS. ENGLE: Yes.

9               MR. CASSIDY: Yeah, I mean, I think with the  
10       advertisers, since our business is about working with  
11       advertisers and helping them communicate their ads to  
12       consumers across the web, our responsibility lies more in  
13       how they're communicating that and making sure that if  
14       there are any behavioral tactics used that they're used  
15       in an appropriate way and that we are safeguarding any  
16       sort of information that might be acquired, which at this  
17       point is no PII at all.

18               So, we will certainly work with advertisers and  
19       make sure that they're comfortable with what they're  
20       doing and obviously not do anything that would jeopardize  
21       any sort of consumer. We don't acquire any sort of  
22       information that could jeopardize a consumer. Right now,  
23       most of the behavioral targeting that we engage with and  
24       a lot of the other firms is very much just more on the  
25       surf-based side of things, so there isn't any sort of



1 confidential information that's being acquired.

2 But, again, with where we stand most of our  
3 efforts go more towards the advertisers.

4 MR. WINSTON: Zulfikar Ramzan, from Symantec's  
5 standpoint, how do you think advertisers or websites  
6 should give consumers the information they need to make  
7 good choices? What works, what doesn't work?

8 MR. RAMZAN: So, I think we have seen so far  
9 that what doesn't work is trying to provide consumers  
10 with more information because they barely read the  
11 information that they're given now and it's a big  
12 challenge we're seeing. So part of our goal really has  
13 been to make the task easier for the end customer.

14 One way we do that right now is through a new  
15 set of technologies that are designed around helping  
16 users to manage their identities in a much easier way.  
17 Right now I have identities -- multiple online  
18 identities. For example, I have an identity with eBay,  
19 one with Amazon. I've got one with a social networking  
20 forum I'm part of. I've got one at work and so on and so  
21 forth. Each of these identities right now for most  
22 people tend to have a common set of criteria. Like I  
23 might give the same email address to all different  
24 people. In fact, one email gets disclosed in some way,  
25 basically I am -- I'm more or less hosed, and everybody

1 is going to spam me and so on and so forth.

2 So, one thing we're trying to do right now is  
3 allow people to be able to provide different identities  
4 or different online entities that are consistent with how  
5 they use the entities. For example, the ability to have  
6 different email addresses for different online  
7 identities. If I were to do that now it would be  
8 complicated, but with some of the technology we're trying  
9 to build and that we have been building, we've simplified  
10 that process considerably so that when I do log in to a  
11 particular website I can associate an identity with that  
12 website automatically and then I don't have to worry as  
13 much about what I'm doing.

14 I think part of our goal is really ultimately  
15 to make the process much simpler for people rather than  
16 trying to present them with too much information, let  
17 them manage the information that they have with them in a  
18 much easier fashion.

19 MR. WINSTON: It sounds like most of you feel  
20 that improving notices is like rearranging the deck  
21 chairs on the Titanic, that there may be better ways of  
22 giving consumers the tools they need to protect  
23 themselves. Is that --

24 MR. ABRAMS: Notices have value that does not  
25 relate -- that goes beyond the consumer just

1 understanding. I don't think we can lose sight of the  
2 fact that notices create a framework for accountability,  
3 a framework for defining fairness in the marketplace.  
4 So, we should care about notices being addressable,  
5 notices being accurate, notices being able to drill down  
6 through as many layers as it takes, that there's an  
7 importance to notices that goes beyond just guiding  
8 individual choice. And I think that that's an important  
9 point.

10 I mean, the notices have to be accurate, they  
11 have to be addressable, they need to be actionable, they  
12 need to give guidance, they need to drive competition,  
13 they need to do lots of things. But if we just say it's  
14 a matter of give notice, have choice, it's -- it goes  
15 beyond that.

16 MR. WINSTON: Colin.

17 MR. O'MALLEY: Yes. I don't think it's about  
18 rearranging the chairs on the Titanic at all. I think  
19 notice is incredibly important, and I think that we need  
20 -- as an industry need to work on ways to deliver  
21 proactive notice, to come outside of the privacy  
22 statement and to delivery proactive notice in a fashion  
23 to consumers that's meaningful.

24 The problem is that when we get -- in our  
25 programs, for example, we're really running self-

1 regulatory programs. We're trying to provide guidance on  
2 industry best practices for emerging technologies. And  
3 when we get really prescriptive with the types of notice  
4 that we expect in a proactive fashion, across our network  
5 of websites, we tend to always get behind the curve.

6           Once we come up with standards for how a  
7 proactive notice needs to be delivered, the context  
8 changes across the properties that might be within our  
9 network. And ultimately contextual notice is probably  
10 the most meaningful notice. So, when we're looking at --  
11 I was describing some of the ways in which our program  
12 has evolved, all those different stepping stones within  
13 the privacy landscape, the cookies, the web beacons, the  
14 behavioral tracking and go into further detail on what  
15 software might be available on that website and whether  
16 or not this site engages in email marketing and under  
17 what circumstances and what kind of sharing with third  
18 parties might be done, really anything that might be in  
19 that privacy statement. If we head along the road, come  
20 up with very prescriptive proactive notice standards for  
21 each of those, then we'd probably end up with a home page  
22 at this point that looks like a terrible food warning  
23 label that includes, you know, dozens and dozens of  
24 bullets.

25           So I think from our perspective, yes, proactive

1 notice is incredibly important. And in particular for  
2 the issues that are currently highlighted at this point  
3 in time as being critical to the user, and I think that  
4 one of the functions of a workshop like this is to say,  
5 listen, behavioral targeting is becoming one of those  
6 issues and we need to think about creative ways for  
7 delivering proactive notice, because this issue is  
8 becoming really topical.

9 But we don't want to become really prescriptive  
10 and put a deep stick in the mud on this particular issue  
11 in isolation of all the other issues that are really  
12 important, and we need to recognize that we may very well  
13 have another town hall meeting 12 months from now on an  
14 issue that we didn't contemplate today.

15 MR. WINSTON: Lorrie?

16 MS. CRANOR: Yeah, I agree. We do need to  
17 improve the existing notices, and it is worth putting  
18 effort into that so that when people want to read them  
19 they're there and they can read them and they can be  
20 effective. And the fact that people don't read them  
21 shouldn't be a reason to abandon them. I don't think we  
22 should -- I don't think our metric should be do people  
23 read them. I think our metric should be when people want  
24 to find information, do they find them useful at that  
25 point in time.

1           And I think we should continue to find creative  
2 ways of getting to the meat of what people want without  
3 them having to go read the full notice. So any of these  
4 things that get just what you need, just the facts when  
5 you need them and making them available and especially  
6 some of the technological approaches that let people do  
7 this without having to go read long things I think are  
8 steps in the right direction.

9           MR. WINSTON: Carlos?

10           MR. JENSEN: My previous statements kind of  
11 make me sound like I'm very much against privacy notices,  
12 but that's not true. The privacy notice provides a  
13 framework within which, you know, companies can think  
14 about their commitment to the user and kind of provide  
15 some framework for accountability.

16           There are, however, some very significant  
17 usability problems with the privacy notice in that it  
18 puts too much burden on the user. And, you know, taking  
19 advantage of context, things like -- let's go back to the  
20 issue of when a policy is being updated. Most of the  
21 companies here know when the user was at their site last.  
22 Why not have a policy of providing like a popup or a  
23 prominent notice when something has changed? So, I think  
24 there are a lot of mechanisms like that that can be  
25 exploited to make privacy policies a lot more usable.

1 MR. GIVOTOVSKY: Yes, just a quick comment and  
2 perhaps a question out of it.

3 MR. WINSTON: Would you identify yourself?

4 MR. GIVOTOVSKY: Yes, My name is Nick  
5 Givotovsky. I'm a consultant. My company is called  
6 Datasphere Interactive, and I study rights and policy in  
7 the digital realm, among other things. And I'm very  
8 curious. I mean, what we're hearing is a diversity of  
9 different privacy policies and statements of those  
10 policies across respective environments.

11 And I think if you drill down you can find out  
12 what the effect of those environments are and one's  
13 rights within those environments and the flexibility  
14 offered by those respective environments. And clearly  
15 there are some innovative developments here that suggest  
16 a greater degree of accountability on the part of  
17 presenters of advertising to consumers. And I think  
18 that's very productive.

19 As a consumer, as a user of the web, there's no  
20 way to combine across all of those different environments  
21 an aggregate profile of one's web exposure. There's no  
22 comprehensive location to go and say, well, to what  
23 extent am I exposed across all of my activities on the  
24 web? What's my active profile? And to what extent is it  
25 distributed and redistributed across these environments?

1                   And so the gentleman from Symantec just brought  
2 up a topic that I mentioned yesterday, which was digital  
3 identity. And digital identity is enabling people to  
4 move their credentials and their profiles across multiple  
5 environments. So to what extent will those tools enable  
6 or not enable a unified notion of one's exposure, with  
7 respect to even across diverse digital delivery  
8 environments?

9                   MR. WINSTON: Anybody want to comment on that?

10                  MR. RAMZAN: I heard Symantec mentioned, maybe  
11 I should comment. So first of all, actually, I think  
12 that certainly the idea of having a unified digital  
13 identity that's more of a virtual concept can from a  
14 security position pose a real danger because that one  
15 identity can now be exposed. So, I'm used to thinking  
16 about all the bad things, so excuse me if I'm a bit  
17 pessimistic sometimes.

18                  But in reality I think that we often have  
19 multiple digital identities, it's not just one. In fact,  
20 even in the real world we have multiple identities. We  
21 have an identity at work, we have identity among our  
22 friends, we have identities at different places we do  
23 business with and so on and so forth. So I think that  
24 part of the solution will be to allow people to simplify  
25 how they deal with those different identities. And I



1 think that at least breaks it apart so there's no one  
2 single point of failure, so to speak. That's basically  
3 what I want to say.

4 MR. GIVOTOVSKY: Point taken. And I think the  
5 tools that are out there now for digital identity offer  
6 that promise. But I'm very curious as to whether those  
7 tools will be leveragable or be applicable to the problem  
8 that I mentioned, which is, okay, an association with my  
9 -- be it my work, my play, my private persona, to what  
10 extent have I disclosed and to what extent am I exposed  
11 in the application of that individual sub-persona,  
12 because I think we ultimately do have singular  
13 identities, even if we manifest personas separately  
14 within environments.

15 And, you know, many of the targeting activities  
16 that are undertaken right now are considered are all  
17 about combining the activities within different domains  
18 to one another, so that we can get marketing offers in  
19 one environment, perhaps acting in a private context,  
20 when behaviors were tracked in another environment acting  
21 perhaps in a professional context. I mean, that's the  
22 goal of surrounding people with marketing messages that  
23 are personalized is to create context in which meaningful  
24 communications can be presented.

25 So the purposes that we're describing are

1 actually at cross purposes and there will be an  
2 intersection that I think is a collision coming down the  
3 road between integrated digital identities and targeted  
4 marketing.

5 MR. WINSTON: Jeff?

6 MR. CHESTER: Jeff Chester, and I have a  
7 question about disclosure, and by no means do I endorse  
8 this, but I have been thinking about there has to be a  
9 simple unified way to tell the individual exactly what is  
10 going on. One of my critiques about behavioral targeting  
11 is we need to make the process conscious so that the  
12 user, the individual, the citizen, the consumer  
13 understands what the purpose of the system really is and  
14 then can make meaningful choices.

15 So, I want to ask a question about disclosure.  
16 Why can't you say you're collecting and targeting and  
17 profiling all this information? Why can't you say what  
18 you tell your clients? You know, which we look at and  
19 read with interest, that you're collecting this data to  
20 move people through the, quote, unquote, conversion  
21 funnel, that you'll be mixing information across  
22 platforms, that your system is designed to deepen brand  
23 identity, that your systems are designed to, as many of  
24 you put it, not necessarily you but behavioral targeters  
25 say to up-sell, to retarget. Why can't you say to the

1 consumer what the marketing purposes and designs are of  
2 the system that's been put in place? Thank you.

3 MR. SHIPMAN: I think that's a great question.  
4 In some of my prep material for the panel today I  
5 actually printed out an announcement that we put on our  
6 announcement board. We put it out on October 5th. It  
7 actually has a picture of me when I joined the company in  
8 like 1998.

9 **(Laughter)**

10 MR. WINSTON: Want to pass that around so we  
11 can all see it?

12 MR. SHIPMAN: Feeling quite youthful. It  
13 begins with hello, you've seen a lot of news lately  
14 spotlighting privacy issues for Internet companies like  
15 Google's purchase of Double Click, Facebook's new ad  
16 programs or the improvement of practices among search  
17 engines like Microsoft, Yahoo!, Ask.com, all the things  
18 we've been talking about, right?

19 But to your point, why can't we just tell our  
20 customers what we're doing with the information, this  
21 general announcement, which is still available on the  
22 eBay announcement boards, talked about AdChoice and  
23 talked about what these links around the ads were going  
24 to be so that they could understand exactly how we're  
25 serving ads and why.

1                   And I heard from Jane earlier about the  
2                   blogging and the videos that they're doing. And, so, I  
3                   think that we're seeing some attempts to get to the  
4                   customer and say here is why we're collecting information  
5                   and here is what we're doing with it. I think that the  
6                   challenge is the customer might not be used to it and  
7                   we've got to get them up to speed with what to look for,  
8                   which is why we're testing different types of links and  
9                   different types of UI.

10                   But you're absolutely right. It's a challenge,  
11                   which is, is it a paragraph on the bottom of every page?  
12                   Is it on the top of the page, is it on the left or the  
13                   right? Those types of messaging for a bidder when  
14                   there's five seconds left are going to be completely  
15                   ignored and all they're going to do is try to find the  
16                   bid now button to get that item that they must have.

17                   And, so, in that context, it's completely  
18                   inappropriate. So finding the right context which is  
19                   also what I've heard today on the panel is also equally  
20                   relevant.

21                   MR. WINSTON: Peter?

22                   MR. CULLEN: Jeff, can I pick up on that?  
23                   Because I think you raised such a great point. Last June  
24                   you may recall we made some commitments to attempt to do  
25                   a better job of describing many of the things that you

1 just did. And, so, for example, those went live this  
2 week, so many of the things that you actually talked  
3 about in terms of what information is collected, how it's  
4 used, how it's aggregated, have now been added to our  
5 particular privacy notice, in addition to being very  
6 explicit that we do not use personal information. So  
7 there's a pretty profound statement.

8 And I want to kind of go a little bit sideways  
9 on that, because it's not just the disclosure but it's  
10 also then the practices that an organization has to put  
11 into play. I suspect you've had a chance to look at the  
12 paper that's available here in terms of how we actually  
13 do that decoupling between that. So I'd love your  
14 feedback on that.

15 But I kind of want to then go a little high  
16 level, because, you know, we're having a discussion about  
17 how we perhaps provide some uniform symbol or whatever  
18 that might be more relevant to a consumer, yet we're  
19 still, I think, kind of ignoring one of the fundamental  
20 challenges that today there is no regulatory requirement  
21 in this country for companies to even post a privacy  
22 statement.

23 And, again, not to flog this horse yet once  
24 more, but we're, you know, pretty active in terms of  
25 saying that it is time for some form of uniform privacy

1           legislation. We think that's the right thing for  
2 consumers of which obviously providing notice would be a  
3 core part.

4           MR. WINSTON: Carlos

5           MR. JENSEN: No.

6           MR. WINSTON: No? Okay.

7           MS. ENGLE: Well, just setting aside the issue  
8 of legislation for a moment, absent that, what about -- I  
9 wanted to go back to an issue that Joel raised earlier,  
10 the notion of, you know, is it an oversimplification to  
11 have some sort of statement that would be more than just  
12 the question mark or something like that, that will give  
13 consumers a little bit more of a clue as to why they need  
14 to click here to find out more information.

15                   And people talked about the preciousness of the  
16 real estate. Well, perhaps some sort of uniform label or  
17 logo could be developed along those lines and that people  
18 would come to understand in a way you understand what a  
19 shopping cart means and things like that.

20           MR. CULLEN: Here's the challenge.

21           MS. ENGLE: And that wouldn't -- I'm not  
22 talking about, you know, a red, green system for the  
23 privacy practices themselves, but just something that  
24 consumers would understand here is where I need to go to  
25 find out this information about how this ad or how I'm

1 being tracked.

2 MR. CULLEN: So, let's take just a step, high  
3 level here. So, today, we're talking about behavioral  
4 targeting, we're positing may be perhaps instead of a  
5 link at the bottom of the page that says privacy, we  
6 might have something that hovers over it, learn more  
7 about behavioral targeting.

8 One might speculate that two weeks from now  
9 when you have a town hall on Social Security numbers the  
10 subject will be well, maybe we should have a hover to  
11 learn about how Social Security numbers or, well, perhaps  
12 we should have a hover to learn how we respond to court  
13 orders.

14 So you start to think about pretty soon we're  
15 back to, wow, I guess that link called privacy is still  
16 not a bad place to at least create a start.

17 MS. ENGLE: But then tying back to the notion  
18 of just in time, I mean, that's -- people have -- a lot  
19 of people have mentioned that that seems to be important,  
20 that consumers need to have some sort of trigger to know  
21 to check the privacy policy. I mean, for example, I  
22 recently bought something online and before I bought it I  
23 had read some consumer reviews.

24 And afterwards -- and I purchased the product  
25 and had used it, I thought maybe I'll post a review of my

1 own, because I found the reviews helpful. Well, when I  
2 went to do that and they asked for my email address and  
3 so forth there was a little button right there, it said,  
4 you know, privacy policy. And I thought, okay, well, I  
5 better go check that.

6 And it turned out if I had given my email  
7 address, which I had to in order to enter a comment, they  
8 were going to share that with all sorts of people and I  
9 could be marketed to. And, so, obviously I chose not to  
10 post a comment, but that was an example where I wouldn't  
11 even have thought that posting a comment would have  
12 resulted in, you know, the sharing of my email address.  
13 So I think that kind of just in time, the idea that  
14 people need to know at the point where their information  
15 is being shared, they need to have some reason to click.

16 MR. WINSTON: I have a note here that Jane  
17 Horvath would like to speak. I can't actually see her  
18 from here.

19 **(Laughter)**

20 MS. HORVATH: That was a ways back but . . .

21 **(Laughter)**

22 MR. WINSTON: I just got the note this second,  
23 so it's not my fault.

24 MS. HORVATH: I was just basically going to say  
25 what Peter said. I mean, if we come up with another form



1 of notation that something other than privacy policy in a  
2 month or two it's going to become generic as well and  
3 people will not click on that for the same reason. And  
4 that's why we've chosen to use things like blogs to go  
5 much more into detail about important issues and then  
6 videos as another way to illustrate and to use more space  
7 and to bring the -- to illustrate the privacy policy in a  
8 much more user-friendly way than having just a link down  
9 at the bottom that becomes genericized after a while.

10 MR. ABRAMS: You asked a question about just-  
11 in-time notices, because a number of us in the industry  
12 have been talking about this whole concept of just-in-  
13 time notices for about a year. And I think that there is  
14 an attractiveness when something is going to be  
15 surprising to give a sense of warning to the consumers  
16 that something is surprising.

17 But there's a lot of norming that has to go  
18 behind that to define what is going to be surprising  
19 because today we're talking about surprising in the sense  
20 of something that had nothing -- well, I guess did have  
21 to do with marketing -- but it had to do with what is  
22 surprising when you were going to give a rating or a  
23 review.

24 And I think that you can't say "let's create a  
25 new standard" without saying that there's a lot of

1 norming that goes around that standard and that you have  
2 to think about that standard as it relates to other  
3 standards. So, the point is, all of these are great  
4 ideas, but you can't say, I'm going to do one simple  
5 solution that's going to fix an amorphous problem so I  
6 think there is some attractiveness that is being  
7 discussed in industry around this concept of just-in-time  
8 notices, but there's a lot of background work that needs  
9 to be done before you can get to the place of saying  
10 where should that be.

11 MR. WINSTON: Srinija.

12 MS. SRINIVASAN: I was just going to make the  
13 simple point to Mary's point that it is normal course of  
14 business for us at Yahoo! to put that just-in-time notice  
15 at the point of information collection, so any time  
16 you're traversing our site if there's a survey or a, you  
17 know, sweepstakes or a place where we're specifically  
18 collecting that information, I mean, the initial place  
19 where we would receive personally identifiable  
20 information would be if you choose to register with us.  
21 And at that place there is an abundant opportunity to  
22 read our privacy policy. We ensure that you have an  
23 opportunity to see our privacy policy, where I really do  
24 feel, I'm really proud of the clarity of the language in  
25 that policy that says this is what we collect and we use

1 it to customize the content and advertising that you see.

2 So what you just described is absolutely  
3 routine, normal course of business for us. And I think  
4 that you're seeing continual evolution and innovation in  
5 terms of "where are the -- as Marty, I think, said,  
6 teachable moments?" So in the case of employing  
7 behavioral targeting in anonymous fashion off our  
8 network, you know, you've seen the model that eBay and  
9 Yahoo! have chosen to go out with.

10 In other words, I just -- I think that this  
11 notion of contextual notice is absolutely important.  
12 Every opportunity that we have to let people know we have  
13 a privacy policy, you can consult it, if you have  
14 concerns and questions in that regard we use it. And I  
15 think you're seeing lots of experimentation and  
16 innovation in that area.

17 MR. WINSTON: Colin, is that you down there?

18 MR. O'MALLEY: Yes.

19 MR. WINSTON: Yeah, that's you.

20 MR. O'MALLEY: So, I want to separate two  
21 questions that I think are imbedded in that question of  
22 whether or not there ought to be a standardized  
23 communication vehicle. The first question within that  
24 really is do we need some kind of communication vehicle  
25 to proactively deliver notice to consumers about

1 behavioral targeting. And I think the answer to that is  
2 yes. We need more proactive communication and noticing  
3 to consumers on this issue, absolutely.

4 The second sort of follow-up larger question  
5 there is do we lead with the prescription, right? Do we  
6 lead by saying not only do we need the notice in a  
7 proactive fashion, but do we have a way to universally  
8 across the industry communicate this in a standardized  
9 way?

10 The fact is, with TRUSTe, for example, as a  
11 small organization, we don't feel like we know yet what  
12 that right standardized method is. And the best way for  
13 us to figure out what that method is is to actually allow  
14 people to experiment for a little while. Yahoo! -- I'm  
15 sorry, AOL had an interesting announcement yesterday with  
16 their communication and education campaign through the  
17 Dakota network, the eBay presentation today had a really  
18 interesting set of explorations on this topic.

19 We need to let those explorations go out there  
20 for the experimentation to happen, for us to be able to  
21 have a data set and enough examples to view and assess to  
22 even consider going with the prescription. So, yes,  
23 proactive notice, but we don't want to lead with the  
24 prescription.

25 MR. WINSTON: Is there anyone on the panel who

1 thinks the government should step in right now and  
2 prescribe a notice? Don't all raise your hands at once  
3 here. Question or comment?

4 MS. DYSON: I want to just continue on this  
5 topic. I think in addition to just in time we should  
6 have just for you. It's sort of ironic, marketers are  
7 now figuring out how to tailor advertising and offers and  
8 all this kind of stuff to individuals. They will use  
9 different copy for different kinds of people. Yet why  
10 can't we do the same thing with privacy statements?

11 So when you say the privacy statement may  
12 change a week later, perhaps there's a way to ask the  
13 person if you're relying on this privacy statement and  
14 you'd like to know if we update it, click here. So that  
15 you end up having not just -- not only just in time but  
16 also consumer-specific information about privacy  
17 policies. I do care about medical information, I don't  
18 care about financial or whatever. But apply these same  
19 techniques and the same brilliance of communication you  
20 use advertising chocolate chip cookies to advertise  
21 online cookies.

22 MR. WHITEHEAD: Steve Whitehead. So, I wanted  
23 to comment on the just-in-time thing and the need for  
24 notification. I think that's a great idea. It actually  
25 goes back to that previous comment about having the set

1 of standardized symbols, for example. I think that would  
2 be a great example of a place where you can have  
3 potentially standardized symbols that said what is this  
4 information that you're entering into this field being  
5 used for.

6 It seems to me that you could have a relatively  
7 small set of standard symbols that could potentially be  
8 used to provide course-grain indications to users about  
9 whether this is being used for third party marketing or  
10 whatever.

11 But my comment, and maybe I'm a bit of a  
12 pessimist, but I don't see that ever happening. I think  
13 it would be someone like TRUSTe that would drive such a  
14 thing, but I don't see it happening because I don't  
15 really see that the publishers have any incentive to do  
16 that. I don't think it's there. And, so, it won't  
17 happen without strong incentives. And I don't see how  
18 the publishers have any incentives to do that.

19 Any comment?

20 MS. DYSON: Consumers may ask for it. They're  
21 getting used to it on Facebook. I really think the  
22 consumer expectations are changing. And that's what's  
23 going to change the marketers' behavior.

24 MR. McCULLAGH: Oh, and one other thought. I  
25 mean, this doesn't have to be done by the companies

1 represented up here. If you've got a great idea for a  
2 startup that would be a third party rating service, go  
3 for it. If you're right and people actually want this,  
4 there's lots of money kicking around for startups right  
5 now.

6 MR. WINSTON: Question over here.

7 MR. CULLEN: Esther, you going to invest in  
8 that one?

9 MS. DYSON: I already have.

10 **(Laughter)**

11 MS. DYSON: But it wasn't in my disclosure  
12 statement because they took it out.

13 MR. ZITELMAN: Hi, my name is Jeff Zitelman,  
14 I'm a citizen and stakeholder here. I would urge -- I  
15 think there is a role for the Commission to take to  
16 create something that's very simple. I mean, there have  
17 been some relatively complex problems in other industries  
18 that have been solved by simple solutions.

19 A good example is TV rating. I happen to have  
20 a teenager, there's certain shows I don't wish for them  
21 to watch, okay? As soon as a TV show starts, I see that  
22 TV-MA, TV-14, whatever it is, in the corner. That could  
23 be done in this, with the symbols such as the gentleman  
24 before me had mentioned.

25 I think that requiring people to look through

1 privacy policies is frankly absurd because more often  
2 than not, orders of magnitude more often than not, people  
3 will simply click yes, I have read something, when indeed  
4 they haven't. So I would suggest that the Commission  
5 does have a role but play to create something very simple  
6 and put it in place.

7 MR. WINSTON: Thank you.

8 Lorrie, did you want to . . .

9 MS. CRANOR: So you asked a question as to  
10 whether there should be a regulation with mandated  
11 standardized notices. And while I'm not ready to say  
12 yes, we should definitely do that, I think the answer is  
13 maybe. And, so, I'll go out on a limb here further than  
14 my fellow panelists.

15 But I think, though, that we shouldn't just be  
16 talking about mandated notices for behavioral  
17 advertising. I think that we should be looking at the  
18 privacy issues online more holistically and we shouldn't  
19 look this week at behavioral advertising and next week at  
20 Social Security numbers. We should be looking at the  
21 whole picture and think about do we need a nutrition  
22 label for privacy, privacy in general and, if so, which  
23 are the things that we need to pull out?

24 I mean, there was a whole lengthy process in  
25 designing the nutrition label. There was a lot of



1 research that went into it. A lot of research figuring  
2 out that, you know, calories and fat are really important  
3 or whatever. And I think we need to start doing that  
4 kind of research now to see what are the things that are  
5 really important? Once we know what's important, then  
6 what's the best way to communicate about that. And, so,  
7 I would support the FTC starting that process of research  
8 at this point.

9 MR. WINSTON: As many of you probably know, the  
10 FTC and the bank regulatory agencies have undertaken  
11 exactly that process in an effort to make the financial  
12 privacy notices that we all get and throw away  
13 comprehensible. And it's literally been three years of  
14 consumer testing and learning a lot, trial and error.  
15 So, there is some precedent for that, but an interesting  
16 idea.

17 MR. ABRAMS: You started that process in 2001,  
18 so while you have three years of testing, you have a six-  
19 year process. And I don't think this is the forum for  
20 discussing that, but part of the process issues was the  
21 marketplace changed significantly from 2001 to 2007. And  
22 I think that, you know -- and that's part of the  
23 difficulty government has in the norming process is, this  
24 is a marketplace that changes incredibly rapidly, and it  
25 is very difficult for you to come up with a norming

1 process that takes six years to then have it applied to  
2 the issues that exist when it's done.

3 MR. WINSTON: Just to clarify the record, two  
4 people have now said that next week we're going to  
5 require disclosures about Social Security numbers. And  
6 our workshop is not for another five weeks.

7 **(Laughter)**

8 MR. WINSTON: You've got at least five weeks to  
9 worry about this.

10 Carlos?

11 MR. JENSEN: To follow up Lorrie's point, I  
12 agree that there's very strong need for standardization  
13 of policies, and not just within the financial domain but  
14 across all domains. Right now, policies are confusing  
15 because users don't know what they're going to find in  
16 them and whether they're going to address their  
17 questions.

18 And on the issue of iconic representation, I  
19 think we're approaching this maybe the wrong way.  
20 Representing a complete privacy policy in iconic form is  
21 incredibly complex, and you'd probably end up with a set  
22 of 800 icons, which no one is going to memorize, but if  
23 you look at what users care about when they visit a web  
24 page, that's a very limited amount of information, and  
25 coming up with a small set of iconic representations or a

1 short list of, you know, this is the food content label,  
2 would be feasible.

3 So, let's take an example of what kind of  
4 information that could be. When you go to a web page,  
5 for instance, having a short list of who else is getting  
6 information about my visit here, and is my information  
7 that's being tracked combined with any other source.  
8 That's a very small amount of real estate that's required  
9 and something that is incredibly powerful to users.  
10 Getting notices that say this information may be shared  
11 with trusted third parties, does that mean that I have to  
12 stop talking?

13 **(Laughter)**

14 MR. JENSEN: I mean, big notices such as, you  
15 know, this information may be shared with trusted third  
16 parties is completely meaningless to users. Who are  
17 these third parties? Who trusts them? I certainly  
18 don't.

19 MS. ENGLE: Well, actually, we do just have  
20 about one minute left. If there are -- question?

21 MR. CAPEK: Just a very quick comment. My name  
22 is Peter Capek. There seemed to be very little  
23 information available, at least that people are willing  
24 to share, about how many people read privacy policies.  
25 And what little information there is seems to indicate

1 that almost no one does.

2 I'm curious, I'm curious whether anyone has  
3 looked at whether -- and maybe somebody could, if the  
4 information is available, whether there's more  
5 examination of privacy policies in situations proximate  
6 to things that you might expect people to worry about.  
7 For example, if I go search for cancer at Google, did I  
8 just go look at the privacy policy before that or right  
9 after it? Probably before it is more indicative. Or if  
10 I look at medical sites, is there more use of privacy  
11 policy? I don't really care about eBay's privacy policy,  
12 because there's nothing I do there. I assume they will  
13 take appropriate care of my credit card number, but  
14 beyond that, I don't really care who knows what I buy.

15 MR. WINSTON: Any other last comments?  
16 Anybody?

17 MS. DYSON: Yeah, the way to get people to read  
18 these statements is to say follow this link and earn a  
19 chance to win \$5.

20 **(Laughter)**

21 MS. CRANOR: I just wanted to comment that I  
22 would love to have that sort of data. I'm not in a  
23 position to collect that data, but with our Privacy  
24 Finder search engine, some of the data that we do plan to  
25 collect is when do people click on the privacy report

1 link and is there a correlation between, say, healthcare  
2 searches and clicking on the privacy report link.

3 MR. CULLEN: You know, this -- we seem to be  
4 inferring that this information about few people collect  
5 is some proprietary type thing, It's just, you know, I  
6 think many of us probably look at it. I don't have  
7 current data, but I can tell you when we first launched  
8 service pack 1 -- 2, sorry, for Windows XP, it was the  
9 first operating system that actually had a privacy  
10 statement.

11 In the first three months over 1.5 million  
12 people clicked on it. Now, do I know whether they  
13 actually read it, do I know what page -- but it gives you  
14 some order of magnitude that people actually do look at  
15 these sorts of things.

16 MS. ENGLE: One last comment from Carlos.

17 MR. JENSEN: To answer your question more  
18 directly, I mean, we do have experiments that show that  
19 when you ask people for information -- directly ask  
20 people for information that they consider to be sensitive  
21 such as Social Security numbers or credit cards, they do  
22 check privacy policies a lot more frequently than when  
23 you're at a random search engine, which may or may not be  
24 the right thing to do.

25 I like to joke that no one knows you as well as

1 Google does, because -- simply because of the  
2 accumulation of information over time. So hopefully that  
3 answers your question.

4 MS. ENGLE: Well, I'd like to thank all of the  
5 panelists this morning, and we will reconvene at 11:15.

6 **(Applause)**

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1                   **SESSION 7: YOUTUBE CONTEST PRESENTATION**

2                   MR. MAGEE: Hi, everyone. We're going to start  
3 Session 7. My name is Peder Magee, I'm in the FTC's  
4 Division on Privacy and Identity Protection.

5                   For this session, we're going to do something a  
6 little bit different. So far we have heard a lot about  
7 cookies and their use in online behavioral advertising,  
8 but whenever we see the cookies in the presentations they  
9 show up as a long line of abstract letters and numbers  
10 and I think it's hard to get a real feel for them.

11                  So, to get a somewhat different perspective on  
12 what cookies are and how they operate, we're going to  
13 watch five short videos that were submitted to YouTube in  
14 connection with the Berkman Center's Cookie Crumbles  
15 Contest. A lot of alliteration.

16                  Our group of judges will discuss the videos and  
17 address some of the issues they raise, and then we're  
18 going to take questions from the audience. I hope we'll  
19 have participation there and we're going to have a vote.

20                  So, let me introduce the judges and then I'm  
21 going to turn over the Max Weinstein from the Berkman  
22 Center. Our judges are -- they're sitting in the front  
23 so they can watch the videos. If they could stand up as  
24 I say your name.

25                  Esther Dyson of EDventure and several other

1 companies that we didn't disclose in her bio.

2 **(Laughter)**

3 MR. MAGEE: Jeff Chester of CDD. Alissa Cooper  
4 of Center for Democracy and Technology. Michael Zaneis  
5 of the Interactive Advertising Bureau. Professor Lorrie  
6 Cranor from Carnegie Mellon. Rob Pegoraro from the  
7 Washington Post and Tikva Morowati who is a designer  
8 researcher, artist and community builder.

9 So, Max, if you want to introduce the contest.

10 MR. WEINSTEIN: Sure, thanks, Peder, and good  
11 morning, everyone. When Esther Dyson came to us at the  
12 Berkman Center a couple months ago and said she had an  
13 idea to do something really interesting and fun and  
14 interactive at an FTC event --

15 **(Laughter)**

16 MR. WEINSTEIN: -- we were a little mystified,  
17 but then she explained and it really was a great idea,  
18 which was to have this YouTube contest and ask people to  
19 submit short videos explaining the purpose and use of  
20 Internet cookies and to use it as basis for discussion  
21 about the larger issues around privacy, marketing and  
22 behavioral advertising.

23 So, we're really excited that during the course  
24 of the couple of weeks that the contest was open we  
25 received 24 really interesting entries, some really great



1 stuff, a wide range of creative ideas. And from those,  
2 they were paired down to five by our friends at Consumer  
3 Reports Web Watch. They picked the five that they  
4 thought best represented both a really creative and fun  
5 look at the subject and also the most informative and  
6 interesting and something that would be able to connect  
7 with consumers and convey really useful information.

8 So, those are the ones you're going to see here  
9 today. What I'm going to do is introduce each video,  
10 we'll show the video, and then four of the five finalists  
11 are actually here today. So, we're really excited to  
12 have them here with us. The fifth, before you feel too  
13 bad for her for not getting a trip to D.C., she's  
14 actually in Paris right now. That's why she couldn't  
15 come. So, she has a representative of hers here to stand  
16 in her place. So, I'll have each of them stand up and be  
17 recognized at the end of their respective video clip.

18 I do want to quickly thank the sponsors without  
19 whom we wouldn't have been able to make this thing  
20 happen. Esther's company, EDventure, is one of our  
21 sponsors, Medium, and our sort of jumbo cookie sponsor,  
22 if you will, was Google. So, we certainly thank them for  
23 their support of this program.

24 We also want to express our appreciation for  
25 the FTC for opening up an event like this to a slightly

1 different type of panel discussion.

2 So, on that note, we're going to start with our  
3 first video.

4 MR. MAGEE: Apparently, we may have to run the  
5 videos straight through. If that's the case, then we'll  
6 have the creators get up at the conclusion of the fifth  
7 and we'll do it that way. Sorry.

8 MR. WEINSTEIN: All right, sounds good. So,  
9 let's see the first video and possibly all five.

10 **(Laughter)**

11 **(Videos played)**

12 **(Applause)**

13 MR. WEINSTEIN: So, while someone tries to  
14 figure out how to get the lights back on, we'll introduce  
15 each of the creators and ask them to stand. The first  
16 video, which is the one with the clever graphics, was  
17 called "Cookies" and that was by Clayton Miller from the  
18 Chicago area.

19 **(Applause)**

20 MR. WEINSTEIN: The second one with the young  
21 girl, that actually was a girl, by the way, doing the  
22 Cockney accent was called "What's a Cookie with Mari,"  
23 and that was submitted by Leslie Weiner of Florida and  
24 her daughter Mari.

25 **(Applause)**

1 MR. WEINSTEIN: They're being represented by  
2 Frank Paynter today.

3 **(Applause)**

4 MR. WEINSTEIN: The third one with the real  
5 live Internet server was called "Got Cookies," and that  
6 was by Justin and Kristin Schaack of Minneapolis.

7 **(Applause)**

8 MR. WEINSTEIN: The fourth and sixth video was  
9 "What Is A Cookie," and that was by Aaron Suring who came  
10 down from Juneau, Alaska.

11 **(Applause)**

12 MR. WEINSTEIN: And the fifth one with the  
13 creator starring as the in-your-face guy is "Cookies 101"  
14 by Tim Welsh of Orlando, Florida.

15 **(Applause)**

16 MR. WEINSTEIN: So, we'll ask now the panelists  
17 to come up and join us for some discussion.

18 **(Brief pause)**

19 MR. WEINSTEIN: All right, I would like to just  
20 start very briefly, there was a great line in Aaron's  
21 video, cookies aren't the scariest thing on the Internet,  
22 but I wish they were. So, with that in mind, I'm going  
23 to ask Esther who came up with the idea of this contest,  
24 why the focus on cookies?

25 MS. DYSON: I'll tell the story of how this all

1 started. I was thinking about these issues as, amazingly  
2 enough, I often do, and it seems to me, again, the real  
3 problem is not with the disclosure statements or  
4 typically with the behavior of companies who actually  
5 deliver on their promises, but on consumers'  
6 understanding of what's going on. And I thought, well,  
7 why not do a YouTube video contest? That's the way  
8 everything else happens.

9           The purpose is not really to pick a winner and,  
10 in fact, I have recused myself from voting. So, I'm  
11 going to be part of the discussion, but sort of to prove  
12 the point that voting isn't the real purpose. It's the  
13 discussion that these videos will generate. I thought it  
14 would be really cool to do this. And the product, number  
15 one, could be used as education; number two, it would  
16 inform the discussion here; and number three, with luck,  
17 there will be another contest like this that will be even  
18 better, that will have a longer time for the videos to be  
19 submitted, that will get more visibility, that will cover  
20 other issues, specifically what companies do with the  
21 data collected by cookies.

22           But if people don't understand how cookies  
23 work, it's sort of like that's the first step, it's  
24 certainly not the last step.

25           I took this idea to a board meeting of WPP

1 Group and said, "Wouldn't you like to sponsor this?" And  
2 they said, horrors, no. So, then, I decided, well, I'm  
3 just going to make it happen anyway. We got a little bit  
4 of pushback from Jeff Chester, who's up here, and I  
5 decided it would make a lot of sense to ask the Berkman  
6 Center to take over and that way it was a clever ruse. I  
7 avoided doing any work, and thank you very much, Berkman  
8 Center.

9 MR. WEINSTEIN: Thanks, Esther. And I'd like  
10 to turn it over to Jeff because, Jeff, you did express  
11 some concerns about this contest, particularly in the  
12 scope of the contest in terms of focusing so narrowly on  
13 what I believe you considered a broader issue.

14 MR. CHESTER: Yeah, thank you very much. In  
15 the first place, I want to congratulate all of the media  
16 makers. They're terrific pieces of work. I'm so glad  
17 that you are recognized. I hope that you are and will  
18 continue to do this very important creative work. So,  
19 congratulations and thank you.

20 **(Applause)**

21 MR. CHESTER: So, my criticism is not aimed at  
22 you. I also want to thank Peder and the FTC and I want  
23 to thank Esther and certainly Max. I had concerns about  
24 this from the beginning when it was framed around  
25 cookies. The problem isn't cookies and the industry

1 knows this, and in many ways, this contest fits how the  
2 industry wants to frame the problem, in a very narrow,  
3 technical way.

4 The industry understands in its own words the,  
5 quote, "marketing and media ecosystem" that it has  
6 created. It has fully implemented the one-to-one  
7 marketing paradigm where a vast apparatus is now in place  
8 across applications, across platforms to collect, profile  
9 target and engage. That's the issue, and it's not about  
10 just cookies. And I urge you, if you haven't read our  
11 report, the Digital Food Report that came out in May -- I  
12 cite it because, in many ways, it's the best I think  
13 that's been written -- and I co-wrote it, yes.

14 **(Laughter)**

15 MR. CHESTER: But this is an area that I work  
16 on and care about. It's the best that's been written --  
17 I do this with my wife, Kathryn Montgomery -- that  
18 describes the whole picture. It's blogs. It's the data  
19 collection and the relationship that's been created on  
20 blogs, on broadband, videos, through instant messaging,  
21 through social networks, it's an all-encompassing system  
22 that we have to address because the default is data  
23 collection and targeted marketing without the consent,  
24 awareness of the user to get them to engage in  
25 behaviors. Maybe it's shopping, voting for a candidate

1 now and others without their awareness and consent.

2 So, I have a problem with the narrow framing.  
3 None of the videos really addressed the behavioral  
4 targeting issue. I don't want to take up too much time,  
5 I have other comments, and I'm happy to say that I'm sure  
6 I will as we get on with this.

7 But, first place, if you really want to know  
8 what the industry is doing, look at the research they  
9 fund which we talk about in our report. The industry  
10 can't hide and say we don't know because they have spent  
11 tens of millions of dollars, in particular, looking at  
12 children and teens to know exactly how to target and  
13 collect that data. It's fully conscious, it's there. So  
14 let's be honest about it.

15 And I just also want to conclude by saying one  
16 thing, the industry has set up a kind of false dichotomy  
17 here. It's sort of suggesting we're anti-advertising,  
18 which I'm not, but what it really is saying is, well,  
19 without advertising there can't be editorial content.  
20 But what we're saying is there has to be rules here,  
21 safeguards for everyone to make sure that that content is  
22 given to the public in a way that ensures integrity.

23 And then one final thing, which I hope I can  
24 get to in the next panel, the industry also knows that it  
25 is purposefully creating content, it is purposefully

1 creating landing pages, it is changing the editorial  
2 content for each user in order to give them a different  
3 relationship with the advertising and to facilitate the  
4 data collection. It's the industry, broadly speaking,  
5 that, in fact, is using editorial content to create and  
6 capture all this data, and we need to make these issues  
7 more visible. Thank you.

8 MR. MAGEE: Jeff, I think you made some good  
9 points. Online behavioral advertising is not just about  
10 cookies, but they are a part of it. And I think one of  
11 the messages that came out of the videos, at least for  
12 me, was that consumers have a lot of empowerment in terms  
13 of being able to go on to their computer and delete  
14 cookies and things if they're concerned about them. But  
15 in some ways that puts a big burden on the consumers.

16 I'm not sure that -- whenever I think about  
17 this, I think of my mother who is not the most computer  
18 savvy as opposed to my mother-in-law who really is. But  
19 my mom really just views the computer as a way to send  
20 email back and forth and pictures of her granddaughter,  
21 and I think the idea that she should be expected to  
22 understand cookies and be able to manipulate them is a  
23 little farfetched. I'm wondering if the panelists have  
24 any ideas on how to make the process more transparent or  
25 easier for people that aren't necessarily the most



1           technologically savvy.

2                       MS. DYSON: Does your mother file taxes?

3                       MR. MAGEE: I hope so.

4                       **(Laughter)**

5                       MR. MAGEE: I don't think I'm a dependent any  
6 more either.

7                       **(Laughter)**

8                       MS. DYSON: It's amazing what people can learn.  
9 So, I think part of consumer empowerment is giving people  
10 a little credit for some intelligence. And, again, they  
11 either have to have an incentive, which is if they don't  
12 pay taxes they'll be put in jail, or if they watch a  
13 video about cookies they'll actually be amused and  
14 entertained as well as informed. Maybe this is a  
15 challenge to the advertising industry to get better at  
16 explaining itself or else Jeff Chester will explain them  
17 for them, and they might want to do it for themselves.

18                      MR. ZANEIS: I might just jump in there. I  
19 think from a technical standpoint it is pretty easy. I  
20 think every consumer's three clicks away from blocking  
21 all cookies on their browser. So, technically it  
22 couldn't be much simpler. So, I think the issue is a big  
23 one of education. I can't think of anything better than  
24 the FTC asking consumers to help educate other consumers,  
25 which is what we're doing with this contest and future

1 contests. So, I think everybody should be applauded for  
2 their participation and having that viewpoint and knowing  
3 that it's really about -- consumers are empowered, they  
4 just may not quite know it yet. So, what can we do to  
5 get the word out there I think is key.

6 MS. COOPER: I would respectfully disagree with  
7 Mike. I think that despite how simple it may seem for  
8 all of us sitting in this room, I watched the five  
9 finalists several times, and almost all of the  
10 submissions, and it was not clear to me that any of them  
11 really fully explained all the controls accurately. And  
12 you saw, for example in the last video, Cookies 101, he  
13 holds up his computer and he says, well, how do you  
14 protect your privacy, you delete all your cookies.

15 And with the self-regulatory regime that we  
16 have right now, if a consumer had opted out using the NAI  
17 opt-out, that opt-out cookie that gets set, based on the  
18 mechanism that we have today, would also get deleted.  
19 So, not only would all your third party cookies, all your  
20 first party cookies, that all of these finalists did a  
21 great job of explaining, disappear, but your one choice  
22 to opt out of behavioral targeting that you have right  
23 now would also disappear.

24 So, I think there's certainly room to make the  
25 controls easier for consumers, to make it more

1 straightforward and to not necessarily use the same  
2 mechanism to track consumers to also opt them out or to  
3 also give them choice. So, I think there's definitely  
4 space to grow in how easy we can make the choices for  
5 consumers.

6 MR. ZANEIS: If I might just clarify, I wasn't  
7 talking about NAI's self-regulatory. That's a whole  
8 different issue. I'm talking about a tool that's built  
9 into every single browser, so every single consumer has.

10 MS. COOPER: It may be a separate issue, but I  
11 think it's a big part of why we're all here to discuss  
12 today.

13 MR. ZANEIS: It just shows the options that are  
14 available to consumers.

15 MR. MAGEE: I think Alissa's got a good point,  
16 though, the cookie paradox of going in and deleting your  
17 cookies and then deleting your opt-out cookie which could  
18 be very frustrating, I think, to consumers. What are the  
19 options on that?

20 MS. DYSON: Well, also, it doesn't guarantee  
21 you privacy to delete your cookies if you have entered  
22 your email address. It will guarantee your privacy from  
23 certain kinds of tracking, but it's -- just deleting your  
24 cookies is a false promise if anybody says it will  
25 guarantee you privacy. That was a problem with one or

1 two of the videos, which fortunately I'm not voting on  
2 because I can't remember which one it was.

3 MS. COOPER: Well, I think only given two  
4 minutes, it's probably impossible to -- we didn't only  
5 ask you to talk about how you can delete, how you can  
6 manage your cookies, the questions were, what is a cookie  
7 and -- you know, far too much information to provide in  
8 two minutes. So, it's a challenge.

9 MR. PEGORARO: Yeah, one of the things I often  
10 hear from readers, there's a lot of folks out there who  
11 have this sort of single-mined focus on cookies. On the  
12 one hand they forget that there are many other things  
13 they should be worrying about in the Internet in terms of  
14 their security of their computer, which in turn means  
15 their privacy. If you get hit by spyware, who cares how  
16 many cookies you've accepted, you have far more problems  
17 to worry about.

18 On the other hand, there's this thing called  
19 the rest of your life where you might use a credit card  
20 or use a loyalty card at a supermarket and that will put  
21 out far more data exhaust than any amount of cookies you  
22 could possibly pick up browsing the web for years on end.

23 MR. MAGEE: Lorrie, it looks like you have a  
24 comment on that.

25 MS. CRANOR: Yes, a few comments on a few

1 things. I agree that cookies are actually a relatively  
2 minor part of the problem. They are part of it, but  
3 there's a lot more out there. Also, as far as how do we  
4 get the message out to the public or what do we need to  
5 do, I think these educational videos are good, but I  
6 think we really also need to look to the tools that users  
7 have built into their web browsers. I think those tools  
8 have really come a very, very long way from Version 2 of  
9 the web browsers. However, they're still not completely  
10 where they need to be.

11 I think if you actually look at, for example,  
12 it was shown -- I believe the IE 6 or IE 7 cookie  
13 controls and if you actually read the text next to that  
14 slider bar for high, medium, low, it's nearly impossible  
15 for most people to understand what it means. Now, that  
16 said, the default setting in Internet Explorer arguably  
17 is actually a reasonable choice for a lot of people  
18 because, by default, it's actually blocking a lot of  
19 third party cookies when there's no opt out available to  
20 data sharing. And by making that a default setting  
21 Microsoft actually kind of set a bar.

22 Now, we could argue as to whether they set the  
23 bar in the right place, but there's a lot of power in how  
24 we set the default settings in our browsers.

25 MR. MAGEE: Jeff, do you have a comment? I see

1 your hand up.

2 MR. CHESTER: Yes. I don't think it's fair to  
3 place it on the user. We want to work with industry here  
4 in the United States and we started to work in the EC as  
5 well to try to address these concerns. But it is the  
6 entire system. All you have to do is read the report  
7 that I referred to yesterday, which is just one of dozens  
8 of these things. The first IAB AAAA report, HD  
9 Marketing 2010, most of you probably are members so  
10 you've gotten it already, Sharpening the Conversation, it  
11 just lays out the entire scope of it and how it all  
12 interacts and how marketers -- and I think it's so  
13 interesting, Esther, I want to blog this -- that WPP,  
14 which now owns 24/7, didn't want to fund this.

15 They know what they're doing in terms of the  
16 design. We need to approach this in a holistic way and I  
17 just want to underscore, in particular, that we are  
18 talking about a system that is especially attuned to you  
19 here in the United States and elsewhere. And as trite as  
20 it might sound, these are the emerging citizens. We have  
21 to make sure that this space supports and nurtures them,  
22 provides for the autonomy, helps them grow as active  
23 members of our society. And to have a interactive media  
24 environment designed wherever they go to collect and  
25 target and direct them is incredibly unfair.

1                   MR. MAGEE: Let's maybe talk about some of what  
2 we liked about the various videos. I mean, I thought  
3 they were all fantastic. One of them, I think it might  
4 have been Aaron's video, seemed to say that there's a way  
5 that your cookies could get intercepted and maybe I'm  
6 misreading that, but is that possible? When someone is  
7 online, can their cookies be hijacked?

8                   MS. DYSON: They can, but so can your password  
9 and your financial information which is much more  
10 dangerous than your cookie being hijacked. It all goes  
11 down to, especially if you're using a WiFi connection,  
12 your stuff may be in the clear. So, I think your cookies  
13 are probably the least problem you have, but they  
14 certainly can be hijacked.

15                   He was also a bit glib when he said, it's a bad  
16 implementation to put a Social Security number in a  
17 cookie. It's a disaster.

18                   **(Laughter)**

19                   MR. ZANEIS: I think that's really the key is  
20 what kind of information is in the cookie. By and large,  
21 they're just anonymous random numbers and letters and  
22 such. The scary guy in the corner, the shady guy in the  
23 corner, I think, was what he talked about. But to your  
24 credit, you also talked about they're not really a data  
25 security problem in and of themselves and they don't

1 deliver viruses, which I think was key to that video. I  
2 thought it was well-balanced there.

3 MR. WEINSTEIN: Let's stay on that theme for a  
4 minute and talk more about why cookies are there in the  
5 first place, a little bit about what are the good things  
6 that are coming out of cookies that make users actually  
7 want to have that particular technology and tool  
8 available to them. Certainly, the videos illustrated  
9 several of these.

10 MR. PEGORARO: I really liked the analogy. I  
11 think the first and the fifth used virtual postcards,  
12 Post-It notes, which sort of get across the fact that  
13 cookies -- a lot of websites need them to function. I  
14 remember reading somebody's blog a while back which said,  
15 if the inventor of the cookie format had just called it  
16 website preference or something innocuous, no one would  
17 be wiggled out about it. Instead, you have this cutsie  
18 name and people have gotten to think that cookies are a  
19 form of spyware, which they're not a form of any sort of  
20 ware. They're just an inert file on your hard drive.

21 MR. CHESTER: Look, I mean, it's not too long  
22 ago, even though it goes back to '93, '94 in the history  
23 of it, they were created purposefully to advance the role  
24 that advertising could play -- I mean, Netscape did it --  
25 in the online environment. So, personalization is one



1 thing, but it has, from the very beginning, been a part  
2 of implementing what they call the one-to-one paradigm,  
3 the fact that they can -- the goal of interactive  
4 marketing is to know so much about each and every one of  
5 us that it can then engage us in very deep ways. I don't  
6 have to tell you guys because you're doing it. I don't  
7 know how many non-industry people are here.

8 So, that's really the primary role of cookies  
9 and the associated data collection applications like  
10 pixels and web-bugs that have evolved.

11 MS. CRANOR: Well, that's how cookies are  
12 being used now, but I don't think that's how they were  
13 originally invented. They were originally invented as a  
14 state management mechanism is the computer science term.  
15 And there's actually a really nice paper by the people  
16 who invented them in the IETF that talks about the  
17 history and how basically the first year that they were  
18 out there, they were using them so they could actually  
19 make the web work, and then somebody discovered, this is  
20 great for advertising and they felt like, oh, my gosh,  
21 this thing is out of our control and there's nothing we  
22 can do about it now.

23 MS. DYSON: Yeah, the advertisers had no idea  
24 what cookies were when cookies were being made first.

25 MR. CHESTER: By the way, that's not the total

1 history here. And if you go back to Netscape and the  
2 role of Netscape in helping create the cookie, it was  
3 clearly the advertising was in mind, and I refer people,  
4 I'll plug my book, I'll refer people to my book, Digital  
5 Destiny, which came out earlier this year. I have a  
6 whole chapter on the history of the interactive marketing  
7 system, including the origination of the cookies for  
8 commercial purposes.

9 MR. MAGEE: Tikva.

10 MS. MOROWATI: Hi, guys. I first want to tell  
11 you all who I am. I used to be a film maker and this  
12 whole space is not even two years old to me. I went  
13 through an international telecommunications program at  
14 NYU, which many of you might know about. Anyways, I'm  
15 telling you that because I see myself somewhere between  
16 you and the customers. And we've already gotten to the  
17 discussion about different age groups and places that  
18 people are at, a customer, there's lots of different  
19 kinds of customers.

20 Anyway, because you had asked a question,  
21 Peder, one of your first questions was about your mom,  
22 what can we do about your mom and these kinds of things.  
23 What I see valuable in having this conversation and in  
24 this competition really is about -- especially in the  
25 scope of this conference is that we're really in touch

1 with where the users are coming from. It's really  
2 interesting. Like every single one of the videos,  
3 there's an inaccuracy about the way that cookies work,  
4 and that's interesting, I think.

5 And I think the key is not -- in this panel,  
6 we're not talking about really the regulatory aspects  
7 like we are in the rest of the conference. Rather, we're  
8 just taking a look at the reality of where people are at  
9 and educating people about how they can empower  
10 themselves. I think it's true there's potential, the  
11 potential is there for empowerment, but I just don't  
12 think it is there. I think people are pretty head in the  
13 sand, butt in the air about their privacy.

14 MR. MAGEE: Well, I think the idea of using  
15 videos like this just from consumers and having them sort  
16 of self-educate is a really interesting one. Maybe we  
17 can talk about other contexts in which this could work.  
18 But, also, Max, what sort of response did YouTube get?  
19 Like how many people looked at these and what were the  
20 comments that were posted? Did the public find them  
21 interesting?

22 MR. WEINSTEIN: It's a good question. I'm not  
23 sure we have a great answer for you right now. When we  
24 publicized this contest, it was on fairly short notice.  
25 Esther gave us a little bit of a short time frame and we

1 actually were really pleased with the results in spite of  
2 that.

3 MS. DYSON: And your lawyer spent a little  
4 while --

5 MR. WEINSTEIN: And our lawyer spent a long  
6 time coming up with all the terms and conditions and all  
7 the fun stuff that goes along with having a contest as  
8 well, for sure.

9 But the result of that is I think the word may  
10 have gone out a bit more to the people who were  
11 interested in creating the videos than the people who are  
12 the audience for seeing the videos. What we're hoping is  
13 that now that we have some finalists, after today we'll  
14 have a grand prize winner; YouTube is actually, I  
15 believe, going to be adding these finalist videos to that  
16 privacy channel that the woman from Google mentioned  
17 earlier.

18 So, we're going to get some more exposure out  
19 there to get this information out to consumers.

20 What I would add is that I think the value  
21 probably comes from seeing all five of them, if not all  
22 24 of the ones that were originally submitted. Because  
23 even if there is an inaccuracy here or there, I think  
24 there's a lot of good content, and when you view them  
25 collectively you probably get the best big picture view

1 of what this thing is really all about.

2 MR. CHESTER: But I do think it behooves  
3 Berkman to bring in other partners that are unaffiliated  
4 with the industry. I mean, I know you -- Google is a  
5 funder of your program and Google paid for some of the  
6 expenses here. And I think it's very important that we  
7 have a lot more public participation, which we're going  
8 to encourage in all of this because young people really  
9 do need to make a statement and we will be encouraging  
10 them to do that about this ecosystem.

11 But as we have so-called privacy channels, it  
12 is incumbent upon the people that organized them to  
13 ensure that there is a broad array of perspectives, that  
14 there's an honest discussion on that channel that is  
15 prominently made visible on the home page, so it's not  
16 just a kind of narrow definition of the problem.

17 MR. WEINSTEIN: Sure. Mike, an industry  
18 response?

19 MR. ZANEIS: I'd like to thank Jeff for  
20 pointing out the fact that it actually is a partnership  
21 between the consumers and the businesses. Somebody needs  
22 to provide the platform for the user-generated content.  
23 We're not talking about industry having any sort of  
24 editorial control over this. It just makes the point  
25 that because of the ad-supported Internet, it empowers

1 consumers to go out and do things like this. So, but for  
2 that advertising, you don't have the platform to do it.

3 MS. DYSON: Frankly, I was expecting a lot more  
4 negative videos that -- you know, weird people in the  
5 corner sniffing around and so forth. And I thought that  
6 would have led to a better discussion, somewhat along the  
7 lines of what Jeff was talking about. With luck, those  
8 will show up. People should understand what happens when  
9 things go wrong, and that will enable them to protect  
10 themselves better.

11 This was vis-a-vis Lorrie's comments much  
12 earlier. I think people pay some attention to a privacy  
13 statement, but let's face it, they pay a lot more  
14 attention to who the website is. You probably haven't  
15 bothered to read American Express' privacy statement. If  
16 you go to some little website that offers a great deal on  
17 something, you may be much more likely to be concerned  
18 and you probably shouldn't believe their privacy  
19 statement anyway. So, it's a very large and complicated  
20 thing.

21 MR. MAGEE: It's hard to judge whose tent is  
22 up, but there's one down there.

23 MR. CHESTER: It's me. I want to just respond  
24 for a second to Mike and the ad-supported Internet and I  
25 think Kathryn said this yesterday. I had to leave.

1 Look, the Internet is more than just the ad-supported  
2 system. I agree we have to have the monetization machine  
3 and it is advertising. Right? I think it has to be  
4 responsible advertising which includes good privacy, but  
5 the Internet serves more than just a forum for ads.  
6 Indeed, YouTube, in a way, was kind of envisioned in part  
7 as a kind of public forum and the web really developed in  
8 a way as a public forum and it remains a public forum.  
9 It is, in fact, where our democracy, the digital media  
10 system, rests, and not all of digital democracy should be  
11 advertiser-supported.

12 We have to have spaces and places and practices  
13 and policies where we can have this debate without it  
14 being funded and for industry so as to tout, well,  
15 without the advertisements, there goes democracy. That's  
16 not the way it should work.

17 MS. DYSON: So, will you fund it with the  
18 profits from your book or how will it get funded?

19 **(Laughter)**

20 MR. CHESTER: Well, to be honest with you, we  
21 have funded a tremendous amount of work on this topic,  
22 including a report we released yesterday. Tens of  
23 thousands of dollars we have funded, including the report  
24 last year we filed, including my book. There have to be  
25 policies and rules and, frankly, some greater willingness

1 on the part of industry to make the contributions  
2 necessary so there can be a vital set of spaces in the  
3 digital media that promotes citizenship and civic  
4 expression without it having to be ad-supported.

5 MR. WEINSTEIN: I want to focus a little bit on  
6 the technology piece and ask what is the right way for  
7 consumers to protect their privacy within the narrow  
8 context of cookies? We have seen suggestions in the  
9 videos that range from choosing to accept each cookie  
10 individually to deleting all your cookies after the fact  
11 to refusing to accept cookies in the first place,  
12 refusing to accept third party cookies. That's a lot of  
13 options. Which one is the right one?

14 MR. PEGORARO: I'm a fan of the block third  
15 party cookies approach, which may not be good since our  
16 website, Washingtonpost.com, has quite a few of them.

17 **(Laughter)**

18 MR. PEGORARO: I think that is the simplest way  
19 overall. You don't suffer the real hit to just the  
20 utility of the web by having to look at every single  
21 cookie. If you do that, it's a mind-numbing task. You  
22 might as well not go on the web at all.

23 Trying to track the reputation of individual  
24 advertising networks, do I trust DoubleClick? How about  
25 this other one that, how about this other one, that



1 requires a lot of research that I don't have time to do  
2 and I'm sort of paid to do that. It also has the  
3 advantage -- a lot of web browsers are already set up to  
4 block most or all third party cookies. Apple Safari, for  
5 instance, blocks them by default. Firefox used to let  
6 you click to block third party cookies and for some  
7 reason they took it out in Firefox 2. It's not too hard  
8 to do in Internet Explorer 7 either.

9 MR. MAGEE: Speaking of the alternatives, the  
10 protagonist in the video "Cookies 101" noted some  
11 alternatives to cookies, but he spoke pretty quickly at  
12 the end and I didn't catch them. What are the  
13 alternatives? And what are the pros and cons of those?  
14 Lorrie?

15 MS. CRANOR: I listened to that ending a few  
16 times to try to understand it. I actually played all  
17 these videos in my class on Tuesday. I teach a privacy  
18 class at Carnegie Mellon, and we had a big discussion  
19 about that. Some of the alternatives are actually  
20 alternatives that I'm not sure they're really any better.  
21 They're different than cookies, but I'm not sure, from a  
22 privacy perspective, that we really want to encourage  
23 people to do that, and they may even be worse because  
24 there are fewer control for the consumers to do those.

25 MR. MAGEE: What are they? What are you

1 referring to?

2 MS. CRANOR: By using other mechanisms that  
3 essentially still tag you but not through the cookie  
4 mechanism. I think there was something about watching  
5 your IP address was in there, and there are a number of  
6 mechanisms where you can effectively put a cookie on a  
7 user's computer but it's not in the cookie folder. So,  
8 when you delete your cookies, it won't get deleted.

9 MS. DYSON: And, of course, those are not at  
10 the consumer's option. So, it's kind of like that's what  
11 advertisers can do, but it's not what consumers can do.

12 MS. COOPER: Or if they are at the consumer's  
13 option then the control is just impossible to find or not  
14 very clear.

15 I wanted to respond to your previous question  
16 about what's the best way and, obviously, Rob deals with  
17 everyday consumers all the time, so he has that  
18 perspective. But I think the real answer is it depends.  
19 Right? So, as we talked about this sort of false paradox  
20 of having ad-supported free content or paying for the  
21 content and not having ads, if you're someone who likes  
22 getting relevant ads, then maybe your choice is going to  
23 be different than someone who is more concerned about  
24 their privacy.

25 So, I think the answer is -- and you can see

1 the diversity of answers given across all 24 videos -- is  
2 it really depends on the consumer and what the consumer  
3 wants to be able to do and also probably the level of  
4 tech savviness of the consumer, although it would be nice  
5 if that wasn't such a factor and the controls were easier  
6 so that if you chose that you wanted to be really privacy  
7 protected, it could be one click instead of three or five  
8 or ten or however many it maybe.

9 MR. ZANEIS: I think that's right. I would  
10 characterize it a little bit differently. We're talking  
11 about how you protect yourself. I think that's a little  
12 bit of a false promise than cookies make you more  
13 unprotected. I'm not sure that's right. I think it's an  
14 intimately personal decision, and the wonderful thing is  
15 that you have a number of choices as a consumer on what  
16 that level is and everybody gets to make that decision.  
17 I think that's the right way to do this, right?

18 We're going to have a self-regulatory panel  
19 next. I think the best form of self-regulation is when a  
20 consumer regulates themselves and has the empowerment to  
21 do that. So, I think that's where we're at with cookies.

22 MR. WEINSTEIN: I suspect Jeff would disagree,  
23 but I'm not putting words in your mouth, Jeff.

24 **(Laughter)**

25 MR. CHESTER: No, no, I do think this is, in

1 part, a privacy issue, but it's not a privacy issue. But  
2 I do want to sort of underscore it. The fact that the  
3 ecosystem, as they call it, has been designed to track us  
4 through a variety of ways to determine what content  
5 drives users to engage, relate to the brand product  
6 marketing sell has profound implications for the quality  
7 and diversity of editorial content because, indeed, the  
8 industry wants to fund content that it knows it drives  
9 user behavior.

10 So, to the extent that we are also concerned  
11 about having a healthy online medium that fully funds  
12 news, public affairs, civic content, investigative  
13 reporting, holds institutions such as mine and Esther's  
14 accountable. This issue of the metering is directly tied  
15 to what happens with that content brought to us by  
16 advertisers.

17 MR. MAGEE: Esther, if you've got one more  
18 maybe to finish up and then I think what we're going to  
19 do is do our vote and the judges are going to, with Max,  
20 come up with their winner and then I'm going to, with our  
21 counters, get a public vote.

22 MS. DYSON: I just wanted to respond to Jeff's  
23 comment by bringing in a third party, which is you have  
24 advertisers and funders on the one side and the poor  
25 consumers on the other who are no longer getting what

1       they want. But there's one thing the Internet has  
2       enabled and, to a large extent, it's being funded by  
3       Google's AdWords, is the tremendous rise of personal  
4       publishing. People who aren't trying to maximize their  
5       ad revenues, though some of them can still help fund  
6       their lives through AdWords who are writing about  
7       whatever it is they please. I'm talking primarily about  
8       the blog-o-sphere, the profusion of content that is  
9       created not for money but for self-expression or  
10      sometimes for marketing your carpentry business or  
11      whatever.

12                 But it's exciting and it's exactly what you  
13      wanted. It's not funded by a public interest group,  
14      whatever its goals are, it's not funded by large media,  
15      it's funded by individuals who have something to say.  
16      That's probably the best antidote to all this.

17                 MR. ZANEIS: Twelve million Americans have  
18      blogs. That's 8 percent of the population. That's a  
19      pretty powerful statement. I couldn't agree more.

20                 MR. MAGEE: Does anyone in the audience have  
21      questions about any --

22                 MR. CHESTER: Can I just respond for one second  
23      or are we out of time? But I do want to sort of  
24      underscore that the interactive advertising system put in  
25      place is going to have an impact. Yes, there's a long

1 tail, but it's going to have an impact on the funding and  
2 diversity of content. Already advertisers on blogs,  
3 including the company that Google bought, Feedster, they  
4 can start blacklisting. You can start blacklisting  
5 blogs.

6 I'm just suggesting to you, Esther, we need to  
7 look at these issues very carefully and have a larger  
8 public debate. There's no easy answer here necessarily.

9 MR. MAGEE: There's never any easy answer. Do  
10 we have questions from anyone in the audience?

11 MS. DYSON: For the creators as well as for the  
12 panelists.

13 UNIDENTIFIED FEMALE: I would love to hear from  
14 the creators a little bit. I don't know if you could  
15 describe in a minute or so just the thought process that  
16 went into your work and really -- exactly, how did you  
17 think about this?

18 MR. CHESTER: They should come up here, I  
19 think. Come on up.

20 **(Applause)**

21 MS. DYSON: Did you do it just for the money?

22 **(Laughter)**

23 MR. MAGEE: Just go ahead and jump in.

24 MR. SCHAACK: I did "Got Cookies", along with  
25 Kristin here. Our thought process behind it is we kind

1 of were going off the idea of like grandmas, grandpas,  
2 you know, people that just have no idea what a cookie is.  
3 They watch the nightly news and they hear oh, cookies,  
4 those are bad things. And when you do the research, it's  
5 not necessarily so. And that, you know, they weren't  
6 necessarily created for bad things, but like most things,  
7 things can be exploited and used in a negative way.

8 MS. SCHAACK: So, we just wanted to sort of  
9 break it down and have a simplistic way to explain it  
10 creatively so the masses would be able to understand at  
11 least the basics of what cookies are and how they're used  
12 or misused.

13 MR. WELCH: Mine was pretty much the same  
14 thing, keeping it simple. Of course, the humor was one  
15 part. One of the things I found that was interesting,  
16 Aaron and I talked about this, was through the editorial  
17 process of getting it down to two minutes, we ended up  
18 cutting a lot of things that we've heard are concerns  
19 from you guys.

20 So, it was really funny how as consumers we  
21 were worried about what the content of our videos ended  
22 up showing whereas you guys were concerned about  
23 completely other things.

24 **(Laughter) (Applause)**

25 MR. WELCH: I know that even in my video you

1 talked about the options I had at the very end, the  
2 reason why they're really fast is I needed it under two  
3 minutes.

4 **(Laughter)**

5 MR. WELCH: And then I realized, holy cow, I  
6 just dumped out all these words and now I've got to  
7 explain this and that's a whole seven other minutes of  
8 explanation. The two minutes was enormous difficulty and  
9 the scope of just -- we should have just left it with  
10 what is a cookie and then dealt with all the other stuff  
11 first. But, yeah, it was just mainly to keep it simple.

12 MR. PAYNTER: I'm online here with Madame Levy  
13 in France and she said she was trying to answer the six  
14 questions that they posed on the Berkman site in two  
15 minutes or less. But I can also say that for her and her  
16 daughters, this kind of work is as much about art as it  
17 is about technology. And those kids that she brought in  
18 to play on it are part of that generation to whom this is  
19 all simple and they were born and raised with this  
20 technology.

21 MR. SURING: Yeah, as I have been here for the  
22 past couple of days listening to all this, there was a  
23 lot of stuff I left out that seems more relevant to your  
24 discussion here and I kind of wish I had left it in. But  
25 we started more like a level past like the most basic.



1 We figured people knew what a browser was and it's more  
2 extending past that and trying to get as much information  
3 as we could in there. It was hard to do.

4 MR. MILLER: I think one of the central things  
5 in mine was that I wanted to recognize there's definitely  
6 a diversity, as has been mentioned, a diversity out there  
7 of individual -- I mean, I would say comfort levels,  
8 thresholds, of what individuals feel is how much  
9 information they want to share with different  
10 organizations. And so, yeah, kind of one thing that I  
11 tried to hone in on is that these are not necessarily  
12 bad, they can be bad for some people, good for other  
13 people depending on how they related to the companies  
14 involved.

15 MR. MAGEE: That's great. I think we should --  
16 this really felt like a town hall. I think we should go  
17 ahead and we'll do our audience vote and the judges will  
18 do theirs.

19 **(Brief pause)**

20 MR. MAGEE: All right. If this section could  
21 just on a show of hands what was your favorite video?  
22 Video number 1 was the one with the great animation.  
23 Video 2 was the young girl. Video 3 was the man with the  
24 plate of cookies. Okay, we're going to vote.

25 UNIDENTIFIED FEMALE: I don't think the

1 audience over here is --

2 MR. MAGEE: I'm just going to do it section by  
3 section. We'll go across. All right, I'm sorry. That's  
4 what I'm going to do. I'm going to go through all five.  
5 The man with the plate of cookies is video 3. Video 4  
6 was Aaron's, the one we showed twice, and video 5 was Tim  
7 Welch sitting on the couch with the Post-It notes.

8 So, who votes for video 1? Okay. Who has got  
9 video 2? Video 3? Keep them up for a second, please.  
10 And video 4? Okay. Video 5, Post-It notes?

11 All right. If we could get the middle of the  
12 room to do it. Who votes for video number 1? This is  
13 just this section right here. Video number 2?

14 UNIDENTIFIED FEMALE: Can you repeat the  
15 videos?

16 MR. MAGEE: I'm sorry. Video number 1 was the  
17 animation. Video number 2 was the little girl. Video  
18 number 3 was the man with the plate of cookies. Video 4  
19 is the one we showed twice. Video 5 was the Post-It  
20 note.

21 So video number 1? Video number 2? Video  
22 number 3? Video number 4? And video number 5?

23 Do you need me to repeat them again? Okay.  
24 Who votes for video number 1? All right. Video number  
25 2? Video number 3? How about video number 4? And video

1 number 5?

2 So, we're going to give them a moment to  
3 compile the audience choice here.

4 **(Brief pause)**

5 MR. MAGEE: I'm just going to announce the  
6 public's choice. We wanted the public to weigh in on  
7 which one they liked best. The Berkman Center has got  
8 its own prize and the judges have voted for theirs. So,  
9 this is just for our internal purposes here. Public voted  
10 number 3 was the winner.

11 **(Applause)**

12 MR. MAGEE: Cookies 101. The fifth video was  
13 second.

14 **(Applause)**

15 MR. MAGEE: And the first and Aaron's, the  
16 fourth, were tied for 3rd. And I just wanted to thank  
17 all the creators. They were all fantastic.

18 **(Applause)**

19 MR. MAGEE: So I'm going to ask Erica to bring  
20 up the plaque for our grand prize winner. I did not  
21 mention in the introduction, but it should be made clear  
22 that the panelists, in addition to the great job they did  
23 discussing the videos, actually has a very important role  
24 in choosing the grand prize winner which, thanks to our  
25 sponsors, is actually \$5,000 that they're going to get in

1 addition to the pride and joy of winning. So, we're very  
2 excited about it.

3 It was actually a pretty close vote, but our  
4 winner is Clayton Miller for the first video, Cookies.

5

6 **(Applause)**

7 MR. MAGEE: Congratulations and thanks,  
8 everybody.

9 Just a quick announcement. We're going to take  
10 our lunch break now. There's information about  
11 restaurants in the area out at the front desk where you  
12 checked in. We're going to start again promptly at 2:00,  
13 and please remember that you got to go through security.  
14 So, give yourself a couple of extra minutes. Enjoy your  
15 lunch and we'll see you back at 2:00.

16 **(A lunch recess was taken.)**

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1 **AFTERNOON SESSION**

2 **SESSION 8: THE REGULATORY AND SELF-REGULATORY LANGUAGE**

3 MS. RICH: Welcome to Panel 8. We've still got  
4 a lot of people here, which is great for a Friday  
5 afternoon. I'm very happy to see everybody. I'm Jessica  
6 Rich of the FTC and this is Stacey Brandenburg, and we're  
7 your moderators and we'll be introducing everyone  
8 shortly.

9 Our hope is that this is the panel where many  
10 of the issues we have been discussing over the last  
11 couple of days are going to come together and  
12 everything's going to be crystal clear. As you know,  
13 we've laid out a lot of the issues raised by behavioral  
14 advertising in this whole event, and now, we want to  
15 focus on the question of what standards govern or should  
16 govern the practice.

17 In this panel, we're going to discuss the  
18 existing standards and both self-regulatory and legal  
19 models for managing privacy issues in this area, as well  
20 as I hope new ones that are being developed as we speak,  
21 the limits and merits of the various approaches and any  
22 next steps as these models are being developed.

23 There are, of course, different ways, as we've  
24 discussed, to approach privacy issues in this area and  
25 what standards should govern. We have talked a lot about

1 many models that build on the notice and choice  
2 structure, and we heard earlier today that that has a lot  
3 of challenges and proponents and opponents.

4 Others take a more harm-based approach, for  
5 example, prohibiting certain practices that are viewed as  
6 harmful, or rather certain uses of data that are likely  
7 to lead to harm. And I'm hoping that in this panel we  
8 can explore perhaps some models that might be based on  
9 that.

10 But we're going to begin today with three  
11 panelists that represent different perspectives in this  
12 area. Then we'll move to a roundtable discussion and,  
13 again, not a round table so it's a challenge here. And,  
14 hopefully, we have some audience questions in the end as  
15 we have had throughout the day.

16 First, Trevor Hughes of the Network Advertising  
17 Initiative is here to discuss the NAI principles. Then  
18 we're going to have Pam Dixon of the World Privacy Forum  
19 here to represent the consumer perspective, and I think  
20 she's got a recent study she just did, which I haven't  
21 had a chance to read.

22 Did you release it this morning? Yes? I'm  
23 looking forward to reading it.

24 And, finally, we'll hear from Reijo Aarnio,  
25 Data Protection Ombudsman of Finland on how the EU's

1 legal framework applies to these practices. We had a  
2 little bit of a discussion about it yesterday. We'll  
3 hear more.

4 So take it away, Trevor.

5 MR. HUGHES: I want to thank you all for coming  
6 to this roast of the NAI.

7 **(Laughter)**

8 MR. HUGHES: If only that weren't so true.

9 I actually am here today to talk to you about  
10 the NAI principles, and broader than the NAI principles,  
11 the layers of protections that I described yesterday in  
12 my speech yesterday. Because I think that there are  
13 layers of protections and I think the NAI principles are  
14 a part, small part, big part, a part of those layers of  
15 protections and I think when we talk about self-  
16 regulation, certainly I'm here to represent the Network  
17 Advertising Initiative and I'll share that with you. But  
18 we can't miss the big picture of all of the things that  
19 happen in the online space.

20 So, let's start. I want to make sure that you  
21 all are aware, and as we talked about before, probably  
22 the broadest layer of protection today in the online  
23 space is the layer of privacy policies that we have  
24 worked so hard over the past 10, 12, maybe 15 years to  
25 try and put in place. And while there are always

1 companies, always organizations, always websites that  
2 we'd like to have posting privacy policies, privacy  
3 policies do exist, and we have been telling the  
4 marketplace for a long time to post privacy policies.

5 They are up there, I know that there will  
6 always be issues with regards to readability and consumer  
7 engagement. But I think Marty Abrams' comments were  
8 notable earlier today that privacy policies have not only  
9 been a vehicle for notice, but they are an incredible  
10 vehicle for accountability because organizations take on  
11 significant responsibility by posting those privacy  
12 policies.

13 We also talked extensively about browser  
14 control. The last panel was a great exploration of the  
15 various controls that exist with regards to cookies. And  
16 we certainly have the opportunity to talk about other  
17 state management tools, but I want to make sure that we  
18 don't miss the fact that there are many, many, many  
19 controls available to consumers, most of them within just  
20 two or three clicks and regardless of which browser you  
21 are in, you have the ability to block, delete, in some  
22 cases, manage first versus third party cookies. You have  
23 the ability to do a lot of things.

24 I also want to point out that there is in the  
25 primary browser in the marketplace today, which is IE 6



1 or 7, Internet Explorer 6 or 7, the ability for consumers  
2 to really determine what their own public policy posture  
3 is with regards to many of the issues that we have been  
4 discussing.

5 If I'm a privacy complacent as Larry described  
6 it, I may decide to accept all cookies. If I'm a privacy  
7 pragmatic, I may decide to set an opt-in or opt-out for  
8 cookies on my system. I may decide to segment between  
9 first or third party cookies. If I'm very, very  
10 concerned about privacy, I can block them all or I can  
11 block just third party cookies.

12 I think it's also notable that in the default  
13 setting, which is the setting that generally stays in  
14 place for the majority of consumers, Microsoft blocks  
15 third party cookies that do not have a P3P statement  
16 attached. So, if you don't have a privacy statement  
17 associated with your third party cookie, you're blocked  
18 in 75 percent of the browsers around the world.

19 More than that in Safari, another major  
20 browser, third party cookies are blocked in the default  
21 setting. So, behavioral targeting is essentially not  
22 happening in those browsers because Safari is blocking  
23 those third party cookies basically preventing any  
24 behavioral targeting from occurring.

25 So, consumers have control. Now, certainly,

1       certainly, certainly, industry, the advocacy community,  
2       the FTC, all of us could be doing a better job at  
3       educating consumers about the availability of these  
4       controls. But let's not forget for one second that these  
5       controls are very strong and they're there and they're  
6       available for use.

7               I also want to make sure that I mention some of  
8       the other tools that are available. Anti-spyware  
9       software, anti-malware programs, many of them have  
10      privacy control features. There are also privacy  
11      protecting software. Privacy enabling type technologies  
12      that we have seen many, many iterations of.

13             We have seen web seals and certifications.  
14      TRUSTe is a great example. Colin O'Malley spoke on the  
15      last panel. I think it's notable how many sites TRUSTe  
16      has certified in today's marketplace. These are agents  
17      of trust and they are valuable to all of us in the layers  
18      of controls that we have.

19             But what I want to spend the most of my time on  
20      is the NAI principles. The Network Advertising  
21      Initiative was formed some seven years ago, and it was  
22      formed really in the caldron of concern surrounding what  
23      we called profiling back then, what we call behavioral  
24      targeting today. Formed originally with seven or eight  
25      companies, and soon after the formation of the NAI, the

1 dot-com economy really deflated and membership dropped  
2 pretty precipitously at that time.

3 I want to share with you, though, that the NAI  
4 is built on many of the fundamental principles that we  
5 have talked about over the past two days. Notably, it is  
6 built on the concept that consumers deserve notice and  
7 they need to have the ability to exercise choice with  
8 regards to the practices of NAI members.

9 I do need to mention to you, though, that the  
10 NAI principles are built for a very specific function.  
11 That's something that we call online preference  
12 marketing. So, the NAI is not a silver bullet for the  
13 entire online advertising industry. It is not a one-  
14 size-fits-all solution for every single practice that  
15 exists. But for those companies that are engaged in  
16 online preference marketing, as it's defined in the NAI  
17 principles, which is basically the gathering of data  
18 across a broad network of websites for the purposes of  
19 aggregating a profile so that that profile can be  
20 targeted back. It certainly is and has been working.

21 We also have layers of controls. So, the  
22 amount of notice, the level of choice increases with the  
23 amount of personal data that you're using in the NAI  
24 principles.

25 Further, we have special protections for

1 personal data associated with sensitive consumer  
2 characteristics.

3 I want to show you how it works. The NAI  
4 principles required that notice be provided on websites  
5 that are using the services of NAI members. This occurs  
6 in one of two ways, it occurs where a link is provided  
7 back to that NAI member or back to the NAI gateway site.

8 We've talked about the Washington Post over the  
9 past couple of days, here is their notice. I'm two or  
10 three slides away. So, if I can just sneak through.  
11 Thanks.

12 So, this is notice on the Washington Post with  
13 regards to NAI practices from our member companies. We  
14 also have some companies, weather.com was mentioned  
15 previously as well. Here is a link back to the NAI  
16 Global Gateway site. When a user reviews the privacy  
17 policy in that site and clicks through -- and based on  
18 our understanding, there are over 20,000 references to  
19 the NAI opt-out page out across the web, so over 20,000  
20 places where this link appears.

21 A consumer clicks through, they come to this  
22 page. We tried to make the opt-out very noticeable, it's  
23 a big red button right there. If you click on consumer  
24 opt-out, you're presented a page where you are told  
25 whether you have an active or have no active cookie from

1 the various NAI members. You have the ability to opt out  
2 of one, two, three, all of the NAI members. You click on  
3 submit and you're presented with a page that tells you  
4 whether your opt-out was successful or not.

5 Now, this is technology. The vagaries of  
6 browser settings, of the various types of operating  
7 systems, of connections between all of these different  
8 systems can sometimes result in a failure of the opt-out.  
9 Well, you're told that, too.

10 When an opt-out fails, we have information  
11 right below that tells you what you can do as a next step  
12 to try and ensure that the opt-out is effective. We have  
13 an extensive set of FAQs. And if all of those things  
14 don't work, we have the ability to talk to the NAI as a  
15 self-regulatory organization.

16 Over the past two years, we have averaged  
17 between 600 and 700 in-bound support requests, and of  
18 those, we find that about 70 last year and about 70 so  
19 far this year actually turn into complaints where  
20 functionality doesn't seem to be working. We have been  
21 able to resolve those with the consumer, either it's an  
22 issue of their side, they're blocking cookies, their  
23 spyware is set to block cookies, in some way they're not  
24 set up to accept the opt-out cookie served by our member,  
25 or, alternatively, one of our members has a glitch

1           somehow in their opt-out cookie serving at that point in  
2           time. We have successfully resolved all of those  
3           concerns and we focus heavily on complaints and  
4           functionality for NAI members.

5                        I do want to close, though, by saying that the  
6           NAI was formed at a time when this issue was very hot,  
7           and we have not been complacent nor silent over the past  
8           six years. In fact, as the behavioral targeting world  
9           sort of came apart during the dot-com crash, we turned  
10          our attention to other efforts. We worked  
11          collaboratively with many of the advocacy organizations  
12          here on web beacon guidelines, best practices for the use  
13          of web beacons.

14                       We worked extensively on the trusted download  
15          program in the adware and spyware debate. We worked  
16          extensively in the email industry to try and promote best  
17          practices in that industry and heavily promote it through  
18          the use of email authentication.

19                       Now, with a number of mergers and some  
20          constructive criticism from our advocacy friends, the  
21          time is, again, appropriate for us to review and look at  
22          the NAI principles. And I'm happy to report today -- we  
23          actually weren't intending to release a document today --  
24          but we have been working for the better part of the last  
25          year on essentially a plug-in or a set of best practices

1 for the NAI principles related to the use of sensitive  
2 consumer characteristics in non-personal behavioral  
3 targeting. That has obviously been a hot issue over the  
4 past couple of days, and we look forward to engaging with  
5 many of the stakeholders on that issue in the weeks and  
6 months ahead.

7 I do want to close --

8 MS. BRANDENBURG: That's what we look forward  
9 to doing, Trevor. I don't mean to cut you off, but we  
10 need to allow everybody an opportunity to speak. Thank  
11 you.

12 MR. HUGHES: Thank you.

13 MS. DIXON: First off, thank you for inviting  
14 me and thank you, FTC, for holding this really important  
15 meeting. I think Trevor got it just right. This is the  
16 time for this meeting. We looked at these things a long  
17 time ago and things have changed and I think he set it up  
18 beautifully.

19 So, I'm really focused on the actual NAI body  
20 and agreement. I think we've got to take a look at that.  
21 And I'm very interested in just focusing on that for  
22 approximately five to six minutes and just discussing  
23 what we've really seen about the past history, of what we  
24 know now about the NAI and its current operations.

25 So, the World Privacy Forum is actually a

1 public interest research group. We're a bunch of  
2 researchers. We actually don't lobby or do legislation,  
3 so we're not advocates, we're researchers. So, I just  
4 want to point that out.

5 We released a report today and, basically, the  
6 report is a look, it's an analysis of the NAI today. So,  
7 I want to discuss a few things and just talk about those  
8 and see if we can't learn something and move forward.

9 So, first, some of the things that I have heard  
10 today -- one of the things that I've heard so much is  
11 that the consumer can control what they're doing. I  
12 think in 2000 when the agreement was published, I think  
13 that most web browsing and cookie deposits and whatnot, I  
14 think it was being mediated on the web and I think that  
15 was true. But I don't think it's true any more.

16 What we're really seeing is that the NAI opt-  
17 out cookie has failed in a number of ways. One of the  
18 most principle -- the principle way it's failed is that  
19 consumers aren't really using it. We don't have a lot of  
20 numbers on this. Trevor was talking about a few, but if  
21 you ask people that you know on the street, do you have  
22 an NAI opt-out cookie -- I would dare you to do that  
23 because I think you'll find that the answer is usually no  
24 and people don't really know what they are. And what  
25 tends to happen with the NAI opt-out cookie is it's very



1 fragile and it's very susceptible to deletion.

2 So, for example, if you have a computer  
3 protection program on your computer that's just  
4 automatically deleting third party cookies, it tends to  
5 wipe out the NAI opt-out cookie as well.

6 So, we have a core protection as part of the  
7 NAI agreement that's not really very, very persistent. I  
8 think this is a problem that AOL and Tacoda have  
9 acknowledged with their efforts to do the quote, unquote  
10 "hardened opt-out."

11 But, anyhow, I think we really need to look at  
12 the cookies and how many consumers are actually using  
13 those cookies, how many consumers are actually able to do  
14 the opt-out.

15 We did a test over the past six months on that  
16 opt-out page that you saw and we found that consumers  
17 really have trouble opting out. In our tests we found  
18 that -- and we used every platform. We used PCs, we  
19 used Macs and we used Spark UNIX workstations behind  
20 firewalls. So, if a corporate person was trying to opt  
21 out we wanted to see what happened there. And we  
22 basically found that it is really tough because -- and,  
23 Trevor, you will probably say the same thing.

24 I mean, when you try to study how that opt-page  
25 actually works, it's tough because it doesn't work very

1 often and it's really variable depending on your browser  
2 setting, depending on your firewall settings, so a lot of  
3 variables. So, the simple opt-out is not a simple  
4 opt-out. In comments that have been filed for this  
5 meeting, that has been acknowledged. So, I think we know  
6 we have a problem there.

7 But there's a further problem, and that is  
8 this, there are new tracking -- actually, old tracking  
9 technologies that are being used in new ways that extend  
10 far beyond cookies. So, for example, let's say a user  
11 has downloaded an NAI opt-out cookie successfully, they  
12 somehow manage to hear about it and they downloaded it  
13 and they haven't deleted it. If they go and watch a  
14 video online, they can very well get a flash cookie. A  
15 flash cookie has more tracking capacity than an NAI  
16 opt-out cookie.

17 How do you address that within the NAI  
18 structure? The answer is the NAI structure doesn't  
19 address it at all and it wasn't meant to and it doesn't.  
20 So, we have a tracking technology that's in use of 98  
21 percent of the computers today that's not addressed.  
22 That's an issue.

23 We also have the Tacoda hardened cookie to talk  
24 about. So, we actually did a technical packet sniff  
25 analysis of how the cookie worked. What happens is that

1 it's going in and resetting the NAI opt-out cookie. So,  
2 someone deletes the cookie and then the technology goes  
3 in and says, oops, that cookie is gone, let's reset that  
4 cookie.

5 So, in Tacoda's case, they're doing it to  
6 protect privacy. But the principle is that you have a  
7 member of industry going in and reading a user's mind and  
8 saying, I don't think they wanted to really delete that  
9 cookie, so we'll make it right for them again. So, I  
10 don't think they're causing any harm.

11 However, what happens when a company goes, oh,  
12 you know that tracking cookie we deposited, someone  
13 deleted that. I'm not real happy with that, I think I'll  
14 just go in and reset that. I think that it would be fair  
15 to say if there is an ad company -- and I don't think  
16 they're here today by the way. If there's an ad company  
17 that sets a targeting cookie and then a user deletes it  
18 and they reach into the browse cache and reset it, I  
19 think that does constitute an unfair and deceptive  
20 business practice. I think we can say that very, very  
21 clearly.

22 But the other thing is that this is a whole  
23 realm that the user doesn't know about. If a user wants  
24 to actually delete everything, now they have to delete  
25 cookies and their browser cache. And there's also two

1 other categories of cookies. One is called the silver  
2 light cookie, one is called a super cookie or an XML user  
3 data cookie. We have all this material in our report.

4 But the bottom line is this: There are  
5 multiple ways of tracking users now that extend far  
6 beyond that old fashioned NAI cookie.

7 And then, finally, the membership of the NAI is  
8 very, very problematic. Two years after the NAI was  
9 formed, there were only two members of the NAI. So, we  
10 used webarchive.org. In the report, you'll find a  
11 listing of the history of the NAI membership, and what's  
12 extremely apparent is that the industry itself has not  
13 embraced self-regulation. And I think we have to ask,  
14 why are companies jumping on board a ship that isn't  
15 working? We know the NAI opt-out cookie isn't working.  
16 We know the NAI doesn't cover all the new technologies  
17 and the NAI has a very challenging membership history.

18 And then there's other issues such as the  
19 enforcement. Currently, if you go to, for example,  
20 TRUSTe watchdog reports of NAI, when they first started,  
21 they reported the number of opt-out cookies and number of  
22 OPM problems, and this was good and this was appropriate.  
23 But over the years they just stopped reporting on it.

24 So, now, we don't know what's happening. If  
25 you're a consumer, it's a very opaque process. So, I

1 think from the consumer perspective the real issue here  
2 is, is this a program that's working to protect consumers  
3 and is it a true robust self-regulatory program? I think  
4 you have to answer it, at this point based on the factual  
5 evidence, I think you have to say no. I think it has  
6 failed and I think we need to take a new look at it.

7 Thank you.

8 **(Applause)**

9 MR. AARNIO: Ladies and gentlemen, it's great  
10 to be here again with some European perspectives for you  
11 here.

12 So, gentlemen, Friday afternoon, please raise  
13 your hand if you attempt this. As we know, this  
14 technology is there in your pockets right now. We have  
15 our mobile phones. So, in this picture, the technology  
16 is ansium (phonetic). So, the European perspective in  
17 this case is who makes the decision? Either the wife on  
18 the left side or the husband on the right side.

19 Who are these guys? If they are not a couple,  
20 they might be employer and employee or business unit and  
21 its customer and so on.

22 So, anyway, the European perspective is that we  
23 have a legal dispute. And since there is legal dispute,  
24 mister here in this picture says no, I do not accept to  
25 use this kind of technology, and the wife says that yes,

1 I want you to use, we need to have rule of law to solve  
2 this kind of dispute. So, this is very simple, isn't it,  
3 like this?

4 There is no definition about what privacy means  
5 as such. But since we are talking about data protection,  
6 we can define data protection as a cluster of rights.  
7 And here you have the list. I suppose this is more or  
8 less exhaustive, this list, and as you can see, we start  
9 with the right to control and decide how. So,  
10 self-autonomy or self-determination. This can be  
11 understood as an opt-in or opt-out or consent or  
12 whatever.

13 Then since we want to access these rights we  
14 need to know who is data controller. So, we have the  
15 right to be informed.

16 Then the next point is very, very challenging  
17 since I was telling you about the right of law. This  
18 means, this third point, that the parliaments are key  
19 role players in this game.

20 The next one, the right to be able to evaluate  
21 it on the basis of correct and relevant information as  
22 opposed -- this is something very useful, also, for the  
23 business, and so on.

24 So, this morning at the University of  
25 Georgetown Law School, we spent a lot of time talking and

1 discussing about data security. And it's very simple to  
2 define data security as a right which secures these other  
3 rights.

4 So, why do we need all these rights? Well,  
5 simply, therefore, that our human dignity should be  
6 respected, our autonomy should be respected, our honor  
7 should be respected and nobody shouldn't be discriminated  
8 and our equality as citizens is secured as we all know.

9 Now, can we put a price label on this? Some  
10 people say that they do not have anything to hide, other  
11 people are very, very precise with their privacy, with  
12 their data protection. So, we are talking about quality  
13 of life, which means that this is a very personal  
14 question. If somebody wants to exercise these rights,  
15 then let him do so, or her.

16 Here is the global environment and national  
17 states and how this affects. So, as we can see, we have  
18 a general data protection and, on the other hand, access  
19 to public documents legislation. Then we have a lot of  
20 legislation on different functions like marketing,  
21 communication and so on. We have sectoral legislation,  
22 health care sector, public sector, social welfare sector  
23 and so on. And the latest instrument is codes of  
24 conduct.

25 In Europe, we have this three pillar system

1       which are now getting closer to each other since there is  
2       a brand new framework. This isn't data protection, it's  
3       applied also on police and security matters. But Lisbon  
4       Treat, which is mentioned here, means that the 19th of  
5       October, so two weeks ago the leaders of member states  
6       approved a new treaty where there is a list of these  
7       basic human rights which lists include data protection  
8       and privacy protection as well. So, this means that data  
9       protection is considered as a basic human right, and if  
10      something goes wrong, data subject always can claim or  
11      complain finally even to the European Court of Justice  
12      and European Human Rights Court of Justice, too.

13               This seems to be a mess-up but this is the  
14      diagram of this Data Protection Directive and our  
15      National Data Protection Act, which we use as part of our  
16      privacy impact assessment tool. And, by the way, there  
17      is a statement or attachment from the European Court of  
18      Justice where the Court says, these articles should be  
19      interpreted simultaneously and not alternatively.

20               Thank you for listening.

21               **(Applause)**

22               MS. RICH: Reijo, I'm playing Oprah here in the  
23      audience. Before you run away, as these laws -- did I  
24      hear you say yesterday that this whole framework would  
25      only apply if it was personally identifiable information?



1 So, to the extent we have been talking about information  
2 that's not personally identifiable in the traditional  
3 sense, the data directive would not apply.

4 MR. AARNIO: Well, actually, this legal  
5 framework is about personal data, so identifiable data,  
6 but also traffic data, so communication data. And, now,  
7 this regulation means, in some cases, you are not allowed  
8 to know who is part of a communication.

9 MS. BRANDENBURG: We are going to turn to the  
10 roundtable portion of this session. I'm going to  
11 introduce from the far end the roundtable participants.

12 We have at the end Jerry Cerasale from the  
13 Direct Marketing Association; Peter Swire, Moritz College  
14 of Law at Ohio State University; Jeff Chester, Center for  
15 Digital Democracy; Karen Geduldig, who is from the Office  
16 of the New York Attorney General; Ari Schwartz, Center  
17 for Democracy and Technology; Brad Schuelke, Office of  
18 the Texas Attorney General; Mike Hintze from Microsoft;  
19 Mark Cooper from the Consumer Federation of America; and  
20 Mike Zaneis from the Interactive Advertising Bureau.  
21 Then, of course, our presenters, and you know Jessica  
22 Rich and myself. She's moved over there.

23 So, we have just heard three approaches or  
24 takes on the issues that we have raised dealing with  
25 behavioral advertising. We wanted to get out, at the

1 beginning of this session, any other models for  
2 self-regulation that may be out there. So, I'm going to  
3 direct this question to Mike Zaneis, if you could start  
4 us off.

5 MR. ZANEIS: Sure, I appreciate it. Obviously,  
6 Trevor did a good job of covering NAI and I'll let Jerry  
7 talk about DMA and you've heard from others, such as OPA,  
8 earlier in the program. So, what I might just touch on  
9 is sort of the success story we see on individual company  
10 self-regulation and the number of companies that are now  
11 really competing on privacy. And it's not a new  
12 phenomenon, I just think you hear a lot about it because  
13 of good events like this. But I think it's something  
14 that we've really seen incentivized recently. There  
15 seems to be disconnect today. People seem to say that  
16 consumers don't know what's happening and they don't know  
17 about privacy policies and they don't know about cookies,  
18 and I think that's probably borne out by some of the  
19 consumer survey data that we've seen.

20 But one thing that the private sectors figured  
21 out is that being strong on data security and on privacy  
22 practices is just good business. So, you see some of the  
23 announcements such as what AOL is doing. You heard  
24 earlier from eBay where they're actually embedding  
25 notices and the opt-out right there in the advertisement.

1 And I think it's a great way, what we really have is now  
2 fertile ground for competition and innovation within the  
3 private sector. And what you see is people devoting  
4 real resources and attention to this.

5 And I think what we'll see is sort of this  
6 blooming of a thousand flowers of different models  
7 because the Internet is so diverse and there's a reason  
8 that a one size fits all doesn't necessarily work on here  
9 because there's so many different platforms, there's so  
10 many different business models, whether it is the 12  
11 million bloggers out there in the United States, many of  
12 whom are able to sustain their infrastructure and their  
13 time and resources because of a plug-in from Google or  
14 anybody else, that's a real success story.

15 So, what we want to do is allow the competition  
16 within the private sector. Again, you know, I said it  
17 before, the key here is to provide consumers with options  
18 and with tools. And the more that you try to regulate  
19 and just to have one single solution, I think the more  
20 you're just sort of doomed to fail here.

21 MS. RICH: Mike, do you want to talk just a  
22 little about -- IAB has its own principles, right? Do  
23 you want to just briefly describe what those are?

24 MR. ZANEIS: We do, and they follow the basic  
25 tenets of privacy online that you would think. So, our

1 best practices state that every member should have a  
2 privacy policy, it should be clearly worded, it should be  
3 easily accessible from the first page and subsequent  
4 pages on your site. Those things, consumer choice,  
5 strong data security, I mean, this is -- we had a  
6 conversation about cookies before and there we're not  
7 talking about sensitive information. But on various  
8 platforms you're going to have businesses that collect  
9 different types of information. Right? You can't have  
10 an ecommerce website without collecting certain financial  
11 information, credit card number and such.

12 So, data security has to go hand in hand with  
13 that. That's where IAB's best practices really focus  
14 attention.

15 MS. RICH: And how many members do you have?

16 MR. ZANEIS: We have over 350 members.

17 MS. RICH: And do you do anything to enforce  
18 the standards?

19 MR. ZANEIS: It's just best practice, it's not  
20 regulatory. We don't kick people out necessarily. We  
21 have been looking at the potential for -- we certainly  
22 have partnered with TRUSTe on a number of their programs.  
23 As I said, we support NAI and DMA and OPA, but we've  
24 looked at maybe seeing if it's feasible to roll out some  
25 sort of privacy compliance program, whether it's a

1 privacy seal or something like that working with --  
2 similar to what you see BBB online doing.

3 MS. RICH: Thank you. Jerry, do you want to  
4 talk about how DMA's best practices may touch on these  
5 issues, specifically behavioral advertising?

6 MR. CERASALE: Sure. DMA has some best  
7 practices, but we also have guidelines which are  
8 requirements for members to follow. And we also have a  
9 self-regulatory framework with ethics committees and  
10 adjudication, and self-regulation is viewed more as not  
11 punishment but corrective action to try and stop the  
12 practice, get it stopped and get it going. And we have  
13 sent many a case to perspective Attorneys General and the  
14 Postal Inspectors and the Federal Trade Commission.

15 In online marketing, our whole thing goes on  
16 notice, and if you're using -- I think our thing says  
17 cookies or any other passive means of data collection,  
18 whether the data collected is used internally or whether  
19 it's transferred to third parties, there are things that  
20 have to be noticed in the privacy policy of all DMA  
21 members.

22 We have found in writing this that you had  
23 to -- we started doing these quite a ways back, that you  
24 could not just leave it to cookies and we had to try some  
25 other language because there is going to be successors

1 coming along, even beyond what we know today. Tomorrow,  
2 there may be a new form to try and get it to fit within  
3 the guidelines. So, we have all of that.

4 We also have special guidelines sensitive for  
5 health data, data received from an individual, inferred  
6 from practices and things from the doctor/patient  
7 relationship, and putting in, in a sense, in that area  
8 opt-in, must have express consent in order to use and  
9 move that data forward.

10 So, that's what DMA has in place and we've done  
11 it for a long time and have actually kicked some members  
12 out and publicly kicked them out.

13 MS. RICH: Does anyone know about any other  
14 industry-wide standards that would be worth throwing out  
15 on the table? I sort of want to get the inventory out on  
16 the table before we start debating anything. How about  
17 individual companies? We saw that AOL said that it was  
18 going to be implementing some sort of do not track, maybe  
19 different from your proposal, but what other possible  
20 individual company initiatives have we seen where they're  
21 trying to address some of the behavioral advertising  
22 issues? Mike, do you have anything on that?

23 MR. HINTZE: Sure. Well, in July of this year,  
24 we announced a set of principles that we are going to be  
25 following in the online behavioral advertising space, as

1 well as search, around issues around transparency and  
2 user control and protecting the data and how we anonymize  
3 data, which we followed up on with a white paper that we  
4 released this week in terms of describing in more detail  
5 how we anonymize data and how we protect data while we  
6 have it.

7 And, so, I think that there's a lot of  
8 companies that are doing really interesting things. We  
9 saw from eBay, we saw AOL's initiative. The advocates  
10 have thrown out some great ideas. I think there's  
11 probably no one silver bullet here. There's a lot of  
12 things that go into protecting data, protecting privacy  
13 in this area and that ranges from regulation, the FTC  
14 using their existing authority under Section 5 or in  
15 merger reviews to the extent that consolidation of data  
16 or data collection raises competition as well as privacy  
17 issues, technological solutions that we're seeing,  
18 consumer education is an important part as well.

19 I think all those things need to play together  
20 when we look at overall solutions in the space.

21 MS. RICH: So, we have international standards,  
22 we have FTC unfair, deceptive acts or practices, we have  
23 NAI, we have IAB, we have DMA, we have individual  
24 initiatives. Let's round it out, the states. What are  
25 the tools and the standards that you would use possibly

1 to address these practices? What are the standards  
2 you're measuring them against? Brad and Karen.

3 MR. SCHUELKE: I guess before I start, before I  
4 make any comments, I unfortunately have to make the  
5 disclosure that nothing I say is official opinion of the  
6 Texas Attorney General or the Texas Attorney General's  
7 Office.

8 I think in general right now the states are  
9 looking at a couple of things. I think, first and  
10 foremost, it would be the states' deceptive trade  
11 practices and unfair practices statutes, similar to the  
12 FTC's Section 5. I know California has a specific  
13 statute regarding consumer's ability to opt out of data  
14 collection, but I think that right now as current, those  
15 are the two primary things.

16 MS. RICH: So, it sounds like we have a fair  
17 number of standards in this area, but maybe not that many  
18 that apply specifically to behavioral advertising, is  
19 that right, and address these practices. So, maybe to  
20 come at it from a different angle, and this would draw on  
21 everything we have been talking about yesterday and  
22 today, in the behavioral advertising area, are there  
23 practices we can agree are off-limits or in-bounds? I  
24 think we heard -- which could form the basis for some  
25 sort of consensus or standards.



1           I think we heard a few things over the past  
2 couple of days. There was a lot of talk about sensitive  
3 information. There was talk about merger of offline and  
4 online, merger of PII with non-PII. There were possibly  
5 other avenues. It looks like Ari is itching to talk.

6           MR. SCHWARTZ: The problem that I see just on  
7 that point is there are a number of companies -- I mean,  
8 we've outlined this our way and Pam has numbers on this,  
9 too -- that do not follow the NAI guidelines and they're  
10 perfectly within the law in not following the NAI  
11 standards. What happens to those companies that don't  
12 offer opt-outs? What do we do then? There's nothing  
13 illegal about what they're doing, right? But users have  
14 no controls in that case.

15           In fact, if you look at the studies, a study  
16 that hasn't been mentioned today, the Annenberg-Berkeley  
17 study that just came out that says that consumers don't  
18 know what's going on in behavioral targeting, and when  
19 they find out, they don't like it and they don't know  
20 what to do. So, you have those pieces together and you  
21 have all these standards, but there's also -- I just got  
22 a flash cookie the other day from this company called Ad  
23 Gardener on the Drudge Report site. So, anybody that's  
24 been to Drudge Report, go look at your flash cookies.  
25 They're not easy to find because the controls are not

1 very good, and you'll see that you have a tracking flash  
2 cookie that's set for you.

3 It's being used today. We're not making up  
4 these technologies that are being used besides cookies.  
5 There's a whole range of things that are going on out  
6 there that are outside of the scope of all of those other  
7 -- all of the protections that you mentioned today.

8 MS. RICH: But I'm trying to -- we're putting  
9 on the table various models and that includes a notice  
10 and choice model and we have NAI, which is a notice and  
11 choice model. But I'm trying to just throw out on the  
12 table, is there another model like a harm-based model  
13 that would take certain practices just off the table? And  
14 regardless of what consumer's preferences are, like you  
15 can't use sensitive information in behavioral  
16 advertising, period. That's the clearest example because  
17 everyone seemed to talk about that.

18 But are there others that one would be able to  
19 agree on in sort of a harm-based model?

20 MR. SCHWARTZ: Well, I mean, our point of view  
21 is that it should be under the user's control. If we  
22 could get an NAI practice that was universal, that was  
23 technology neutral, and actually played on a marketplace,  
24 allowed the marketplace to innovate in the space rather  
25 than sticking with something like the way the NAI opt-out

1 works, which is stuck in the cookies world which only  
2 applies to the NAI companies, and in some ways those are  
3 the best -- I mean, the leaders. The only company we  
4 have on the panel here is Microsoft and they have some of  
5 the best practices in the space. You have the best --  
6 you have the --

7 **(Laughter)**

8 MR. RICH: It was worth coming, right?

9 MR. SCHWARTZ: You have the leaders who are  
10 here at this session, but the concerns from consumers are  
11 all those outliers and what do we do about them? Larry  
12 Ponemon said this on the panel yesterday, do we go after  
13 the good guys or the bad guys? I'd hope we'd go after  
14 the bad guys and we do it in a way where we can make sure  
15 that the good guys still want to do what they need to do  
16 without harming the bad guys.

17 MS. RICH: Jeff? And then maybe we'll move  
18 into a discussion of what we think about the various  
19 models. But Jeff first.

20 MR. CHESTER: I don't want to talk too much  
21 because I've had too much -- I've a great opportunity,  
22 which I thank the Commission. But, look, there are  
23 certain practices that should be not allowed at all,  
24 particularly in the children's area, particularly in the  
25 youth area. I don't have to get -- we talk about the

1 health area, we talk about the obesity area. There are a  
2 number of practices that should not be permitted at all,  
3 and we will make sure that these issues get addressed  
4 over the next several years and, hopefully, the industry  
5 will come and agree to work with the privacy community to  
6 make sure that those practices don't further evolve.

7 MS. RICH: What are those practices? I would  
8 love to hear everyone's view on what are those practices.  
9 Does anyone else want to venture forth? What are  
10 practices, Mike, that your companies shouldn't be doing?

11 MR. ZANEIS: Well, let me answer that question  
12 by also answering your last question. I think we  
13 actually do have a harm-based model, don't we? It's  
14 called the FTC Act, and it works well and on a number of  
15 occasions. And what we haven't seen is that real harm,  
16 right?

17 We have heard speculative, this might happen or  
18 I hear that somebody is doing this. Absolutely.  
19 Sometimes there will be outliers. The technology allows  
20 a lot of data collection. That's the way the Internet  
21 works. So, what we need to do is focus on the folks who  
22 are causing harm. And we have had this debate with  
23 spyware, and what the FTC found was that they had all the  
24 authority they needed to go after the people who were  
25 causing harm to consumers. I think that's a positive.

1           So, specific models, we've talked about them.  
2           You're right. We need to not be violative of whether  
3           it's COPPA or the Fair Credit Reporting Act or HIPAA or  
4           something like that. It's not the wild, wild west.  
5           There are laws out there. There are practices and people  
6           are following those. So, let's at least be  
7           intellectually honest about what the landscape is.

8           MS. RICH: Let's move in to sort of what we  
9           think about --

10          MS. BRANDENBURG: Mark?

11          MS. RICH: Oh, Mark?

12          MR. COOPER: Well, I want to challenge the  
13          assertion that the notice and choice model works well.  
14          You've put these the dozen or half a dozen models on the  
15          table. I'm recent to this space. I'm a consumer  
16          advocate of long standing. Let me tell you what I have  
17          heard about the nature of the problem in the last two  
18          days of this conference.

19                 After seven years of self-regulation, what you  
20          have is a situation in which somewhat less than 5 percent  
21          of the population can protect itself. If it's  
22          interested, literate, informed and skilled, why they  
23          might actually be able to weave their way through these  
24          models that out there. Unfortunately, the vast majority  
25          of the population lacks one of those four

1 characteristics.

2 I have heard this in three key factors that we  
3 have heard over the last two days, and this is the model  
4 that is on the table as the main means for protecting  
5 consumer privacy. First, I heard that things are good  
6 because online markets you can go in and opt out with  
7 three clicks. I think the -- no more than three clicks.  
8 I think the actual average is probably five. But I've  
9 sat in many meetings with ecompanies where they swear  
10 that each click costs them 10 percent of the market share  
11 and that's why they have to be the default. They all  
12 want to be the default because each click costs them  
13 market share.

14 Consumer privacy is losing at least 30 percent  
15 market share and probably 50 percent. I have heard that  
16 85 percent of the companies have privacy statements, but  
17 99 percent of those statements are incomprehensible.

18 Now, there's not one advertising company in  
19 this room who would take the language of those privacy  
20 statements in to a client and say, here, use this to sell  
21 your product. They would be kicked out and out of  
22 business in the blink of an eye. That is the status of  
23 this situation.

24 Finally, I heard survey evidence that  
25 demonstrated a remarkable gap between what consumers

1 expect and what marketers think they deserve. There was  
2 a huge gap between what the marketers said consumers  
3 should have for privacy and what consumers wanted. And,  
4 of course, the presenter suggested it was a uninformed  
5 consumer. But what it is is a concerned consumer.

6 So, I've heard the word "accountability" a  
7 hundred times. But accountability without actionability  
8 is meaningless. And we have seen the numbers. There is  
9 no actionability for the vast public and, therefore, the  
10 marketplace cannot possibly effectuate the solution  
11 because consumers cannot act on what the industry claims  
12 these models are providing.

13 So, I think the fundamental from premise here  
14 of wanting to move on from notice and choice to the other  
15 aspects of behavioral marketing missed the point, that  
16 the model we have already does not work, the consumer  
17 does not think it works, and the consumer expectation,  
18 perception, belief, is actually what this is about.

19 MS. RICH: Well, I have been trying to get a  
20 discussion going on a model that wouldn't necessarily put  
21 so many burdens on the consumer, but I'm not hearing a  
22 lot of principles that everyone can agree on that would  
23 just be kind of off the table for the consumer. I'm  
24 hearing a lot of support for the notice and choice model.

25 MS. DIXON: I would like to jump in. I have a

1 question. I mean, I thought we were going to talk about  
2 existing models. The existing model is the NAI. That is  
3 the model that the FTC recommended to address behavioral  
4 marketing. I mean, that's the model.

5 And it hasn't worked. There's documented  
6 failure of that model. I think we've got to be really  
7 careful. I think we need to be very careful before we  
8 just say, okay, that didn't work, let's just try  
9 something completely new. I mean, I think we need to  
10 look at the ways it failed and address that.

11 So, for example, if there are a thousand new  
12 models blooming, should a consumer have to visit a  
13 thousand places to opt out? I mean, what do we want the  
14 end consumer experience to be? Maybe we should start  
15 there.

16 MS. RICH: Okay. I think Trevor has indicated  
17 an openness to hearing feedback about how he can improve  
18 his model.

19 MR. SWIRE: Jessica, if I could have a first  
20 chance to talk.

21 MS. RICH: Peter, okay.

22 MR. SWIRE: Maybe I'll wait until the next hour  
23 when I'm not on the panel. At some point, choice is  
24 going to be involved because if you get a consumer to  
25 swear after he cuts his finger and puts blood on it that



1 he wants something or she wants something, you're going  
2 to let them do it.

3 The questions are what are the choices? I  
4 respect Trevor and I was around when NAI was created. I  
5 worked in the government then. And that was a guess at  
6 2000 about what might work and it was accompanied by a  
7 very clear signal that the merger of online and offline  
8 database wasn't going to happen. Now, we have the world  
9 offline where there's many, many ways in which stuff  
10 that's not readily identifiable at point one is hooked in  
11 through an email or something else and is fully  
12 identifiable to lots and lots of people.

13 So, now, we're in the place online that we  
14 prevented happening in 2000. And the question is, how  
15 well do our guesses in 2000 bind us today? I think for  
16 the last couple of days and everybody getting ready for  
17 this meeting, it's pretty clear that the choices that we  
18 had as of six or eight months ago were lousy for  
19 consumers. No ordinary human being could figure it out.  
20 Sorry, but that's pretty much it.

21 And the public policy goal it seems -- whatever  
22 you call the model, I think the public policy goal goes  
23 something like this: We know from Larry Ponemon and Alan  
24 Westin that there's people with diverse privacy  
25 preferences. There's some people who go on Rivera and

1 Jerry Springer and they're not caring about privacy.  
2 They say amazing things. And there's other people  
3 that -- and depending on the numbers it's 20 or 30 or 40  
4 percent -- have high privacy preferences. And the FTC  
5 ran the do not call list for telephones and what's the  
6 number, a hundred million or something. There's a lot of  
7 people on that one.

8 So, we know that when it's workable, there's a  
9 whole bunch of people, pick your number of tens of  
10 millions of people, who have privacy preferences. The  
11 public policy goal, roughly speaking, is letting the  
12 system work so it matches their privacy preferences. If  
13 they want to be personalized and they want the sign up  
14 and they know what they're getting and all that,  
15 hallelujah, let that happen. It's pretty clear if you  
16 give folks a chance they don't want something it ought to  
17 be workable for them.

18 You can call that notice and choice, you can  
19 call it harm to me, if I don't get what I want, you can  
20 call it whatever model you want, but at a public policy  
21 level somehow it ought to be that normal people more or  
22 less can get what they want. That's a good goal for the  
23 FTC.

24 And then in terms of how to get it -- and I'll  
25 just go for just a couple sentences -- I think that it

1 has to do with the leadership. And I think this workshop  
2 is the FTC stepping in and acting as leaders to bring  
3 folks together that maybe could have talked about a year  
4 or two or three earlier. I was talking to one company  
5 who had their engineers working nights and weekends to  
6 get ready for today because they knew they had an  
7 announcement.

8 And that kind of we need to focus, we need to  
9 get to decisions, and if we don't, then there's going to  
10 be something that comes from it, is something the  
11 government can do, not to be heavy handed on industry,  
12 but to help the best people in industry get to know where  
13 they should go anyways.

14 If the companies that are able to make  
15 announcements because they're able to get their  
16 management to give them their resources to be ready for  
17 today, if the companies who are good, who are able to  
18 come to the meeting and say, look, we're proud of what  
19 we're doing, and I think the government, the FTC has a  
20 role in helping bring out the best of the industry so the  
21 choices are closer to what real people want.

22 MS. RICH: Well, along those lines, why don't  
23 we talk about how the existing model might be improved.  
24 We've talked about some of the problems. How it might be  
25 improved, what might be missing in that existing model or

1       how it might be expanded to be better, and also move to  
2       talking about the do not track proposal and whether the  
3       diverse group here thinks that could be feasible on a  
4       broader basis than just one company, whether it be  
5       voluntary or something else.

6               So, who would like to start mentioning in a  
7       constructive way?

8               MR. COOPER: I'll try. We have six principles.  
9       Let me outline what I think the principles are having  
10      been one of the signatories of the document yesterday.  
11      What I would call six principles for the uninterested,  
12      illiterate, uninformed and unskilled. Those are folks  
13      who need your protection. We don't need to protect the  
14      other guys.

15              So, here are the six principles as I see them  
16      from yesterday's announcement. A simple consumer  
17      friendly interface to declare across all platforms that  
18      you do not want to be tracked.

19              Two, robust notification about how to make that  
20      declaration and contextual notification if that wish is  
21      perhaps to be violated or to remind you what you decided  
22      to do in case you want to change your mind.

23              Three, a consistent set of basic privacy  
24      protections and definitions that consumers can understand  
25      across platforms.

1           Four, teeth to enforce compliance so consumers  
2 can trust the system.

3           Five, an effective right to correct information  
4 about and categorization of consumers that is used in  
5 online marketing.

6           And, six, an organized process for overseeing  
7 and updating the protection of consumer privacy. Seven  
8 years is far too long to wait to keep up in a space as  
9 dynamic as this.

10           I think those six principles were outlined  
11 yesterday in that statement and, frankly, a lot of my  
12 constituents fall into that category of people. Now,  
13 don't tell them I said that about them, but actually  
14 that's why they hired me to protect their interests here  
15 in Washington, and I think those will, in fact, go a long  
16 way.

17           That doesn't mean there aren't people who  
18 choose not to opt-in and, therefore, can do other -- you  
19 know, you can treat them otherwise. But this needs to be  
20 there because the number of people who fall in that  
21 category is very large and, therefore, they need  
22 protection.

23           MS. RICH: Trevor.

24           MR. HUGHES: So, certainly, we are happy to  
25 engage in the dialogue. Let me just make sure that I

1 clarify a few things about the NAI principles. First of  
2 all, the NAI principles are not technology-specific.  
3 They are technology-neutral. They don't say anything  
4 about cookies. So, to the extent that someone is using a  
5 flash cookie, XML silver light, cascading style sheet,  
6 whatever it might be and they are doing behavioral  
7 targeting, they should be a member of the NAI, and if  
8 they're not, shame on them.

9 And when they come to join the NAI, we will  
10 work with them to implement the principles, the  
11 constitutional concepts that we have within the NAI to  
12 provide the availability of an opt-out, to provide  
13 notice, to provide the same protections that we have now.  
14 That would be a case of first instance for us. We have  
15 not had a non-cookie member applicant approach us yet.

16 Second, most definitely our membership did ebb  
17 and flow as did the industry. Soon after the NAI was  
18 formed the dot-com economy deflated, 9/11 occurred, and  
19 we did go down to two or three members. Since then, we  
20 have seen a resurgence in interest and behavioral  
21 targeting, though. Not for nothing, but I think the many  
22 billions of dollars of M&A activity have sort of resulted  
23 in a lot more focus.

24 And I'm happy to say that Yahoo! was approved  
25 for membership this week, AOL is a member twice over with

1 two of their subsidiaries, Tacoda and Advertising.com,  
2 and Microsoft and Google both have pending applications  
3 that we're working through right now, and we look forward  
4 to both of them being members. So, we do have  
5 significant breadth, I think, in terms of behavioral  
6 targeting online within the NAI.

7 And then, finally, just in the sort of  
8 responsive points. We're not hard to find. We're not  
9 hard to talk to. We're pretty well-known and visible  
10 within the privacy community particularly and no one  
11 talked to us. Had anyone talked to us, we would have  
12 been able to say we've got over a million hits on our  
13 website this year. The opt-out page is getting a million  
14 hits a year. We would have been able to say, there are  
15 over 20,000 references to the NAI opt-out page across  
16 privacy policies around the world even.

17 Certainly, we can do better. Certainly, there  
18 are other issues that we can tackle. But to throw the  
19 baby out with the bath water, to label this as a failure,  
20 I think is inappropriate given that the NAI was built to  
21 do a specific thing for a specific set of practices and  
22 it has been doing that for six years.

23 Now, on to what can we do better, because I  
24 think we can do things better. I mentioned sensitive  
25 data. I think that there is room for us to talk as a

1 community about the use of sensitive data in even  
2 non-personal behavioral targeting.

3 So, are there sensitive categories that we can  
4 identify where, as Peter Swire so rightfully suggested,  
5 we should require a cut finger, a seal on paper and a  
6 signature in blood that someone really means that they  
7 want to let us target on those things?

8 We can create a de facto use limitation on  
9 those practices by putting a consent standard in that's  
10 so high as to be unfeasible for the marketplace. So,  
11 sensitive data for non-PII practices, I think we can  
12 certainly put in place.

13 I will mention that PII-based targeting within  
14 the NAI principles is not permitted.

15 MS. RICH: Can I -- Ari?

16 MR. HUGHES: Sure. The last point I just want  
17 to make is that I still think, though, that there is a  
18 distinction between PII and non-PII practices. We should  
19 be recognizing that there are practices that are  
20 connected to personal data that should require higher  
21 standards. We have an architecture for that within the  
22 NAI principles, it has remained unused. But the non-PII  
23 piece of NAI principles certainly has been used for the  
24 past six years.

25 MS. RICH: Thank you. Ari?



1                   MR. SCHWARTZ: Let me first start by saying  
2 there are several things I agree with Trevor about,  
3 including the fact if companies are network advertisers  
4 and they're not NAI members, shame on them. They should  
5 join. And Trevor and his staff do great work and they've  
6 done great stuff on web beacons and emails and have  
7 consulted with us and other groups on that.

8                   However that doesn't make up for the fact that  
9 there have been no changes to the basic implementation of  
10 the guidelines of the principles since they were put into  
11 effect, including the fact that it is cookie-focused.  
12 And there's a basic problem in giving the opt-out to the  
13 individual in the same structure in which they are being  
14 tracked. Individuals want to delete them so they  
15 disappear.

16                   I don't even have to go much further than to  
17 say look at the videos we saw today about cookies. Do  
18 you remember how many of them mentioned the NAI in the  
19 video, in going to the NAI to opt out? None of them did.  
20 In fact, I saw a lot more of them than just the five that  
21 we watched here and none of those mentioned the NAI  
22 either.

23                   The NAI is not the way that people are opting  
24 out today and the other methods are cumbersome as well.  
25 So, the question is, what can we do to make things more

1 universal, more technology neutral, and something that  
2 can build a marketplace for Consumer Protection in this  
3 space? We suggested the opt-out. If I can have just two  
4 minutes to describe the do not track list, I would like  
5 to do that because --

6 MS. RICH: Well, I would like to move to the do  
7 not track list, but I first want to understand whether  
8 people think that that NAI is something that can be fixed  
9 and improved because a lot of complaints we're hearing is  
10 it's not known or not used or it's --

11 MR. SCHWARTZ: Well, there's also a range of  
12 things in the principles that we complained about  
13 originally that we still have concerns with. We could  
14 probably come down to -- and I haven't read Pam's report  
15 fully yet, but I know that it hits on a lot of these  
16 points. You probably come up with about nine different  
17 complaints from CDT about the NAI. I don't know if it's  
18 fixable or not, for that purpose. Like I said, some of  
19 the other work they've done has been very successful.

20 MS. RICH: Pam.

21 MS. DIXON: Look, I think that we really have  
22 to look at all the options here and really look at the  
23 facts. I don't think we can just speculate and say,  
24 okay, well, let's see, let's see how we can possibly  
25 foresee into the future.

1           One of the things that we proposed in our  
2 consensus document is that there be some kind of  
3 oversight committee so this wouldn't happen again. I  
4 think it is very difficult to draw a line in the sand and  
5 say, okay, we're going to ask that technology stay here.  
6 We can't do that. Technology is going to move on no  
7 matter what we do. Since we know that that's going to  
8 happen, we should be able to mitigate for that going  
9 forward because we know all the things that happened this  
10 time around.

11           The NAI was crafted at a period of time after  
12 which there was extraordinary change. So, I think it's  
13 very difficult to then try to put so much weight on it  
14 that it would survive now. But I think Ari is correct, I  
15 think that we need to look at all the options.

16           MS. RICH: Brad?

17           MR. SCHUELKE: Well, I think there are a number  
18 of issues and it certainly may be difficult to fix. I  
19 think the one problem that I don't know is addressable in  
20 the model is the fact that it's sort of not mandatory  
21 membership. And sort of just like the do not call, I  
22 don't know that there's any way that you can fix that  
23 telemarketers don't have to be a member of DMA or direct  
24 marketers or behavioral marketers don't have to be a  
25 member of NAI, and if there's nothing beyond that, you

1 always have those outliers, you always have the bad guys  
2 that we really want to look at anyway. Those are going  
3 be the ones that aren't a member of NAI, and I don't know  
4 how you fix it strictly in the NAI principles.

5 MS. RICH: So, that's an inherent problem with  
6 self-regulation. So, to the extent -- if you were to  
7 conclude there's -- I mean, all self-regulation, right?

8 MR. SCHUELKE: Sure. Well, I mean, you could  
9 have it as a safe harbor and so this will be self-  
10 regulation within a safe harbor and outliers have  
11 different standards. So, I mean, you could still have  
12 self-regulation in a regulatory model.

13 MS. RICH: Jerry?

14 MR. CERASALE: Seven years ago, we heard the  
15 same thing, that gathering information, following where  
16 people are going was going to undermine the Internet,  
17 undermine consumer confidence. If I sat here today and  
18 just came here to listen to this panel, you would think  
19 the Internet was an absolute total commercial bust and  
20 that people were being harmed constantly.

21 You know, people are going there. Three  
22 quarters of Internet users that we found prefer to go to  
23 free sites that don't charge them, that they're paid by  
24 advertising. So, people understand -- and 86 percent are  
25 going to buy more off the Internet than they did before.

1       So, it's not a bust. The self-regulation that has  
2       occurred since in those seven years has been positive.  
3       The Internet has grown and so forth. We have more things  
4       to do.

5               One of the things that I didn't say on DMA's  
6       guidelines, and I think is an important thing to look at  
7       in the future, is a basic requirement for all of DMA is  
8       that marketing data, data obtained from marketing  
9       purposes can be used only for marketing purposes. Lots  
10      of things we've heard about others using it, it can be  
11      used for different types of requests, not to just give  
12      you an offer, those are things I think that we have to  
13      try and pull into this as well.

14             And the other thing is, in support of Trevor,  
15      we didn't have the technology back then that we have  
16      today. As a matter of fact, technology has moved to  
17      actually help consumers and it's going to continue to  
18      move in that direction, as we see with Microsoft's  
19      Internet Explorer changes and so forth going forward.  
20      Those things are actually making things better in that  
21      sense.

22             So, as you look at self-regulation, you also  
23      have to look at what is technology doing. That's a big  
24      part of self-regulation in its own right.

25             MS. RICH: I know we've got some volunteers,

1 but in further support of Trevor maybe I should have Mike  
2 say why Microsoft is joining NAI? What motored that  
3 decision? I guess the acquisition. But what --

4 MR. HINTZE: Because we didn't want Ari to beat  
5 up on us.

6 **(Laughter)**

7 MR. HINTZE: We acquired a company that was a  
8 founding member of NA, and they're actively engaged in  
9 being a third party ad network and behavioral targeting.

10 Separately, we've been looking at expanding our  
11 own activities in this area and we decided early on that  
12 once we did move into that area we would join NAI in our  
13 own right. We think that NAI is a good forum to discuss  
14 these issues. Despite what the membership may have been  
15 in the past, today the major players are there, the  
16 responsible players are there.

17 It's a good self-regulatory framework. It's  
18 not perfect. As we've seen in the latest wave of  
19 consolidation, the environment has changed a lot. NAI  
20 was formed in a time where these third party ad networks  
21 didn't have direct relationships with customers, for  
22 example. Now, most of the big ad networks have been  
23 bought by companies that do have direct relationships  
24 with customers and have an awful lot of PII.

25 So, maybe one of the things that we need to

1 look at in NAI is where is that line between PII and  
2 anonymous data? Do we have to revisit that? Should we  
3 rethink that and think about the protections that need to  
4 be in place to keep some data on the anonymous side of  
5 the ledger as opposed to the PII side of the ledger?

6 So, I think there's a lot of things we need to  
7 think about, but I think NAI is the right forum for that  
8 and it's a good start and we shouldn't be throwing out  
9 the baby with the bath water, as Trevor said.

10 MS. RICH: Are there plans underway to reform  
11 NAI or to expand it or to adjust it?

12 MR. HUGHES: Certainly. Again, we are working  
13 now and have been for the better part of the past year on  
14 sensitive consumer characteristics for behavioral  
15 targeting. And we saw this event as an opportunity to  
16 engage in this discussion. Again, the interest in this  
17 issue has really peaked in the past 12 to 18 months and I  
18 think that's largely been driven by certainly the  
19 complaint from CDD and US PIRG and also from the M&A  
20 activity in this space. It's been front page of the  
21 business section at least for the better part of this  
22 year.

23 So, certainly, we look at this forum as an  
24 opportunity to examine the NAI framework and to consider  
25 future changes and future opportunities for us.

1 MS. RICH: So, everyone send their suggestions  
2 to Trevor.

3 I would like move in to do not track, which I  
4 think is a really interesting idea and I want to make  
5 sure we have time to talk about it.

6 MR. HUGHES: Can I just add one really quick  
7 thing? That is, I think it's incumbent on all of us, and  
8 to the point about the inherent weakness of  
9 self-regulation that is voluntary, it's incumbent on the  
10 entire marketplace to shame those companies that are not  
11 participating into participating. So, if you know of a  
12 company that's doing behavioral targeting that's not a  
13 member, we're trying our best -- my staff's here with me  
14 -- trying to bring them into the organization. Many of  
15 them are small shops, many of them aren't willing to make  
16 the investment because they're not generating revenue  
17 yet. But it should be just a cost of doing business to  
18 join the NAI and participate in these self-regulatory  
19 programs. They only work when we all focus folks into  
20 joining.

21 MR. CHESTER: Just one -- can I have one --

22 MS. RICH: Well, I'm worried because I want to  
23 open it up to the audience. So, let's just move to do  
24 not track and we can come back.

25 Ari, you wanted to just briefly describe the



1 proposal?

2 MR. SCHWARTZ: Yes, because there's been a lot  
3 of misreporting on it and I'd like to try and clarify it  
4 up in people's minds a little bit.

5 The basic idea of the do not track list is  
6 similar to the do not call list in that both the  
7 companies and the consumers engage and there's actually a  
8 list that's kept. The difference being that it is the  
9 companies, in this case, a list of servers from companies  
10 that are engaged in behavioral targeting for advertising  
11 purposes who put their servers on to the list, and then  
12 you have a list that works across different kind of  
13 technologies, so not just cookies, it would be any server  
14 that's doing behavioral targeting, and they would submit  
15 that list for service to the FTC.

16 The FTC keeps the list. The consumer would go  
17 with their browser to the list, be able to pull down the  
18 list. And we foresee a marketplace of tools that would  
19 come out of that. We're not expecting the FTC to build  
20 the tool, as some have reported out there. We expected  
21 the marketplace will build the tools. Today, you could  
22 take that list and paste it into your exceptions folder  
23 to block sites. But we think that there could actually  
24 be more granular tools if you let a marketplace go out  
25 there and build tools to implement the do not track list.

1 MS. RICH: But are you contemplating this is a  
2 legislative idea that would be implemented through the  
3 market or could it be self-regulatory?

4 MR. SCHWARTZ: Well, I think that it could be  
5 self-regulatory. The question is, who is going to run it  
6 in the self-regulatory way that it would actually work?  
7 I mean, you get Brad's question of -- I mean, the people  
8 that we most want on the list are the people like the Ad  
9 Gardeners that are using flash cookies to avoid having  
10 their regular cookies deleted because those are the tools  
11 that we have today, and they're going to move something  
12 else when we come up with better tools for flash cookies.

13 So, how do we go about doing that without  
14 having something that works universally and that's truly  
15 technology-neutral in implementation as well as in the  
16 principles itself?

17 MS. RICH: Since this is a nice concrete  
18 proposal that we can talk about, why doesn't everyone  
19 take a second to say what they think of it, whether as a  
20 self-regulatory or regulatory options. I'm going to  
21 start with Karen because she hasn't had much chance to  
22 talk, and then we'll go down the line.

23 MS. GEDULDIG: I have to also make the same  
24 qualifying remarks as Brad. My statements are my  
25 statements, they're not a reflection of the Office of the

1 Attorney General or the Attorney General himself.

2 That said, I think that the do not track  
3 proposal is an important one because it focuses on more  
4 what we are learning today especially is really the  
5 problem. We have learned over the past couple of days  
6 that consumers seem to like targeted content but they  
7 also want to have control over their privacy. And what  
8 the problem with the opt-out of behavioral marketing is  
9 that it doesn't really take into account the fact that  
10 they've already lost control of their privacy if they're  
11 opting out of the marketing but not the actual collection  
12 of their data.

13 What do not track focuses on is it's not that I  
14 have a problem with the targeted content, I have a  
15 problem with you running around after me while I'm online  
16 and I have a problem with you following me when I'm  
17 online, which is really a step before the marketing.  
18 It's the collection. I think that that's an important  
19 focus because it allows a consumer to say -- it might not  
20 be they don't want to be tracked, it might be that they  
21 just want to know that they're being tracked or if you  
22 have a different preference, it might be that you don't  
23 want to be tracked at all, and I think that that's an  
24 important way to look at this issue.

25 MS. RICH: Great, thanks. How about Trevor?

1 Everyone should be very brief so we can open it up to the  
2 audience.

3 MR. HUGHES: Am I going to get graded?

4 MS. RICH: No.

5 **(Laughter)**

6 MR. HUGHES: So, I think the do not track  
7 concept is intriguing, but when I think about it from an  
8 implementation standpoint and when I have talked to our  
9 members about it from an implementation standpoint, it is  
10 a daunting idea to conceive of how it could actually  
11 work. When we think of all the versions of browsers, all  
12 of the different technologies that may be used for  
13 various types of behavioral targeting -- and I'm not  
14 talking about the difference between cookies and flash  
15 cookies, I'm talking about mobile devices and all the  
16 different channels that we have -- the implementation of  
17 a single opt-out mechanism sounds challenging.

18 I also have real concerns about consumers  
19 needing to download on to their system an application  
20 provided by the Federal Trade Commission, that by the  
21 nature of the report would have to call back and get a  
22 new list of IP addresses that needed to be blocked on a  
23 fairly regular basis. That would be an unprecedented  
24 type of technology and I think it has some real  
25 challenges.

1 I think we have better controls today in our  
2 browsers and I think we should be focusing on consumer  
3 education on those controls.

4 MS. RICH: Pam, I think you were a signatory on  
5 this proposal.

6 MR. SCHWARTZ: Can I just respond to that one  
7 very last point, which is that there are anti-virus and  
8 anti-spyware tools that do that today.

9 MS. RICH: Pam?

10 MS. DIXON: There's a couple of things. First,  
11 you know, can the industry police itself? That's a  
12 question I have and I think that's a very real question  
13 we need to grapple with. We've had seven years and it  
14 hasn't policed itself well and I think that's an issue.

15 Where is the consumer input into the business  
16 practices? Trevor was talking about the NAI, and this is  
17 great and I'm glad you're going to look at it again. But  
18 where are the real consumers' input? The NAI was built  
19 by industry for industry and it's managed by industry.

20 So, this proposal really puts a balance back  
21 into the conversation. That's what it's about. It's  
22 about, yes, we really think it's quite important not to  
23 change the model of the Internet. We think ads need to  
24 remain. But consumers need something easy, simple, one  
25 place so that they're not confused, so that they don't

1 have to go to the thousand flowers blooming. Innovation  
2 is fabulous, but simplicity for consumers is also  
3 fabulous.

4 I think the do not track list is about finding  
5 a balance.

6 MS. RICH: Reijo, quickly.

7 MR. AARNIO: Thanks. Article 29 working party  
8 and the Federation of European Direct Marketing  
9 Association's dialogue went on for ten years for creating  
10 a code of conduct for direct marketing business and  
11 sector. This system of code of conduct is made of  
12 abidingness (phonetic) aspect, supervised by business  
13 branch itself aspect, and it's like moving from general  
14 directive to more precise regulation.

15 So, my understanding is that in Europe we have  
16 a regulatory minimum level and then this code of conduct  
17 which can be technology-neutral or can include something  
18 about technology. This code of conduct always should  
19 bring some added value to the business and to customers.

20 MS. RICH: Mike, do you think your companies  
21 would be willing to do this?

22 MR. HINTZE: Well, Trevor might be a little  
23 ahead of me. I haven't had, in the last 36 hours, a  
24 chance to go back to my 350 plus members. I think if  
25 they were serious about moving this to implementation,

1       they would recognize the partnership that industry has  
2       with consumers and they would have brought us into the  
3       process. But it makes very good headline. Everybody has  
4       been looking since do not call, they have been looking  
5       for the next flash in the pan.

6                So, I'm not going to get too detailed about how  
7       it will work. I think I share Trevor's -- you know, at a  
8       top level implementation on the technology side, I think  
9       it would be challenging and I would say that we've  
10      probably got a pretty darn good consumer mechanism in  
11      your browser filters that -- thanks to Microsoft,  
12      whatever their market share is, 85 percent -- everybody  
13      has available, and we're not talking about blocking  
14      cookies, we're talking filtering them out before they  
15      ever get put on somebody's computer. So, I think that's  
16      a pretty good mechanism right now.

17               I would just say this: If we're talking about  
18      blacking out large swaths of the Internet, ecommerce  
19      sites, free news sites, blogs, social networking sites, I  
20      think we've failed consumers if that's the solution.

21               MR. SCHWARTZ: That's no suggestion to block  
22      any content. Not even the ads.

23               MR. COOPER: The sites that engage in the  
24      unacceptable behavior will be blocked.

25               MR. SCHWARTZ: It would be the choice of the

1 content server to do the tracking from the same place  
2 that they provide their content.

3 MR. COOPER: I find it incredibly ironic that  
4 this industry, which is represented to me as being  
5 incredibly innovative in its ability to surveil and  
6 target, suddenly couldn't possibly figure out how to  
7 register.

8 Let's be clear. The browser is a great  
9 example. Microsoft's new browser is a great example. All  
10 we're doing is giving people an easy access to a list  
11 that will populate that browser. That's all we're  
12 talking about. And I guarantee you that if we do the  
13 other platforms, if they know -- and here's where you  
14 have to give them incentive to cooperate -- if they know  
15 that if they fail to register and they engage in the  
16 behavior, they're in trouble, they will have the  
17 incentive to populate the list and participate in the  
18 register and we will have solved the problem.

19 I don't think it's a hard technical problem to  
20 create that list, especially when I know people can  
21 invent easy ways to download it.

22 MS. RICH: Jerry and Mike, do you think this is  
23 something that's feasible?

24 MR. HINTZE: Well, I think we certainly share  
25 the goals that are being articulated here of workable



1 user controls that put the user in control of their  
2 experience, and we think it's absolutely wonderful that  
3 the consumer groups are throwing out these proposals to  
4 get this conversation jumpstarted. We have to go back  
5 and look at sort of the specifics of the proposal to  
6 determine whether or not it's workable.

7 It's not a hard technical problem, but whether  
8 economics, et cetera, support this to create dual  
9 infrastructures, dual servers, where one may be used  
10 today for delivering content and advertising. But,  
11 absolutely, we're anxious to work with groups on this to  
12 help come up with the best possible solution and  
13 implementation.

14 MS. RICH: Jerry?

15 MR. CERASALE: I know enough technically to get  
16 in trouble here. So, I'm going to stay out of the  
17 technical side, although the fact I think technology has  
18 come along and given choices and, so, I have faith in  
19 technology. But I think we have to take a look at all  
20 the downward consequences of the double kinds of servers,  
21 two choices on the ads. I don't know how it works.

22 I do know the one thing that I can see that  
23 bothers me is Europe is larger than the United States,  
24 Europe has greater broadband than the United States,  
25 Europe has greater penetration of mobile Internet than

1 the United States, and yet Europe's spending on  
2 advertising is one-half of what's happening in the United  
3 States. That spending, that money that comes in to  
4 Google's, others -- to the Washington Post allows them to  
5 have free content. And I'm very worried about that.

6 I'm worried about it in the following sense.  
7 In an FTC -- I think it was FTC workshop or whatever, who  
8 knows what it is they call them all the time, way back on  
9 public information on the Internet, and it was talking  
10 about property records and how people said having it on  
11 the Internet changes the nature of the data because  
12 anybody can receive it. So, rather than going to each  
13 town hall looking it up, I could go on the Internet and  
14 that made it a major problem. That was a privacy problem  
15 issue.

16 And someone, I think it was the head of the  
17 NAACP of Baltimore, came in and said, look, I can now  
18 look and find out who owns that piece of property, but if  
19 you don't allow it on the Internet, only the rich guy can  
20 pay for someone to go to each town to try and find it.  
21 So, I disagree with Jeff on his view of democratization  
22 and I think free --

23 MR. CHESTER: It's a red herring.

24 MR. CERASALE: I think free -- please, Jeff, I  
25 never interrupted you, Jeff.

1           And I think that free content is something we  
2           have to watch out for when you look at any type of forced  
3           regulation on the net and to try and keep it open because  
4           I think that free content is democratization.

5           MS. RICH: Peter hasn't had much of a chance.  
6           Let's take Peter, and then open it to a question or two.  
7           We've run late.

8           MR. SWIRE: I had prepared various things to  
9           talk about, none of which I talked about yet, which is  
10          fine. We have a big panel with many different people.  
11          But the free content point was something I wanted to talk  
12          about, so maybe I'll just do a minute on that.

13          Content has to do with what newspapers you  
14          read, what political sites you go to, things of that  
15          sort. It includes that. We actually have a history in  
16          the United States of laws about what is considered very  
17          sensitive information, which is when you go and exercise  
18          your First Amendment right to go see things and read  
19          things, we have a whole set of laws in the United States  
20          about that.

21          So, one of them is the Cable Television  
22          Protection Act that was passed in the 1980s when cable  
23          got big, and the instinct there was that we didn't all  
24          want what we were watching on cable told to everybody. I  
25          don't know why, I'll tell you what I'm watching, but

1           there might be somebody else who didn't want that. Then  
2           next thing that happened was in 1988 when Judge Bork was  
3           nominated for Supreme Court Justice is some enterprising  
4           reporter went to see what movies he had rented at  
5           Blockbuster, and some of you might remember the report  
6           was extremely boring. He watched John Wayne movies  
7           apparently. But, apparently, some members of the United  
8           States Senate had watched some other stuff.

9                           **(Laughter)**

10                   MR. SWIRE: And within a couple of weeks  
11           Congress passed the Video Privacy Protection Act that  
12           said -- a hundred to nothing. They usually can't find a  
13           hundred senators for anything, but they found a hundred  
14           senators for this one. And that was sort of an  
15           interesting thing.

16                   There's similar rules to certain respects about  
17           -- in phone companies under some of the CPNI rules, et  
18           cetera, and there's similar rules where courts, such as  
19           in the Tattered Cover Bookstore case, that put heightened  
20           rules about seeing what a bookstore content has had.

21                   So, I just sort of point this out if we're  
22           talking about the Washington Post as our poster child for  
23           the two days, is that when it comes to what you're doing  
24           politically which is related to First Amendment, that's  
25           actually been considered sensitive content under privacy

1 laws in the United States of America in the sense that  
2 this has to do with your democratic, your political  
3 views, is your boss going to see your political views, a  
4 whole series of concerns like this.

5 So, part of the context that I don't think  
6 we've heard in the last two days is that this editorial  
7 content that's been used as we need wide open profiling  
8 so that we can give you the Washington Post, is really a  
9 funny thing to put around news and political debate, to  
10 have widespread profiling on that. So, that's just a  
11 different take on free editorial content.

12 There might be a lot of differences between  
13 Europe and the United States. One thing I notice is that  
14 languages are different, so the market for advertising in  
15 Finnish is different from the American advertising in  
16 English. And there's a lot of different reasons why  
17 markets get big or get small and we have some advantages  
18 in the United States. But I think this point that  
19 profiling around people's what they're reading and what  
20 they're saying and their political expression, there's a  
21 history in the United States that that's been considered  
22 something to be careful about. And I don't think that  
23 theme has come out much in the last two days.

24 MS. RICH: But now it has. Do we have any  
25 questions from the audience? Yes? No? Somebody is

1 adjusting the microphone.

2 MS. BRANDENBURG: Jessica, there's one over  
3 here.

4 MS. RICH: Oh, excellent.

5 MR. BOHANAN: Mark Bohanan with the Software  
6 and Information Industry Association. I apologize, I  
7 missed some of this discussion. So, if this was  
8 answered, forgive me.

9 I had a chance to study, I guess I got it from  
10 Ari on Wednesday, the proposal. I think I'm still trying  
11 to digest the diagram, but I look forward to  
12 understanding it better. I just want to make sure I  
13 understand the scope of the proposal because I think what  
14 I've learned over the last two days is, in fact, we're  
15 labeling as behavioral advertising, in fact, many  
16 different things that are occurring.

17 And one thing I just want to be clear about, is  
18 the proposal meant to address not only the kind of  
19 advertising that we've described that is site specific as  
20 well as network specific? Are we talking about requiring  
21 people who do any kind of behavioral engagement with  
22 their customers that is site specific? Is the  
23 expectation they will need to register for this, too, if  
24 technologically this is going to work?

25 MR. SCHWARTZ: I mean, you're right. I think

1 the proposal is somewhat vague on that point. And it's  
2 not meant to be words that can be taken and put into  
3 legislation. We meant it as a discussion document, and I  
4 mean that more to address Mike's point that he wasn't  
5 brought in. This is meant to start a dialogue, not to be  
6 the end of a dialogue.

7 MR. BOHANAN: And my question is more just one  
8 of information.

9 MR. SCHWARTZ: Right, no, I completely  
10 understand that, Mark. And I think the response to you  
11 is, I think, at least from my perspective, it was meant  
12 to be a network-specific piece, not for specific sites.

13 So the question is, does that apply to sites --  
14 to a company that has a network within itself? I think  
15 that that's an open question. But in terms of a single  
16 site that's doing behavioral targeting within that site,  
17 I don't think anyone -- and I might be wrong and other  
18 people here that worked on it with us can say whether  
19 they meant it for a single site -- but I don't think that  
20 that's what was intended. But it was intended mostly for  
21 networks.

22 MR. BOHANAN: Just so I'm clear, for networks  
23 as we traditionally understand the term as opposed to say  
24 two related companies that may, in fact, engage in what  
25 is very legitimate and appropriate consumer advertising

1 information. Again, we look forward to understanding  
2 more, but that was one of the first questions I got which  
3 was just what's the scope of this because, inevitably,  
4 the good actors are the ones that are penalized. It's  
5 the bad actors who are ultimately going to --

6 MR. SCHWARTZ: Exactly, that's true.

7 MS. BRANDENBURG: Let me suggest, because we're  
8 running over and we have one more question from the  
9 audience, that I encourage all of you to continue this  
10 discussion both offline and later. This is a new  
11 proposal and a very interesting one. So, let's hear from  
12 our final question from the audience.

13 MS. GRANT: Hi, Susan Grant, National Consumers  
14 League. Not a question so much as food for thought.

15 I'm a little troubled by some of the things  
16 that I have been hearing today and yesterday. One is  
17 that if consumers were that bothered by behavioral  
18 marketing, they wouldn't be using the Internet so much.  
19 But people want to use the Internet because of the great  
20 benefits that it offers. Probably many of them don't  
21 even know that behavioral marketing is happening. But  
22 those who might, we've heard it's difficult for them to  
23 do anything about it anyway. So, I think it's a fallacy  
24 to say that this isn't a consumer issue.

25 The second thing that troubles me is what I'm



1 hearing from the Federal Trade Commission that let's try  
2 to carve out some solution here that focuses on harm as  
3 we would define it, that is sensitive information like  
4 health information, and not taking into account the good  
5 point that Peter made about civil discourse and not  
6 taking into account the fact that as is enshrined in  
7 Finland, people just have a basic human right to dignity,  
8 to autonomy, and to be left alone.

9 So, if, as Mark greatly pointed out and as some  
10 of the marketers have said over the last couple of days,  
11 the aim is to give consumers what they want, let's find a  
12 way to truly give consumers what they want, whether it's  
13 this no tracking proposal or some other proposal which  
14 I'm sure the smart people here can come up with. I'm not  
15 going to be satisfied if we're not able to solve this.

16 MS. RICH: Susan, I just want to respond. When  
17 I was asking about whether we could identify certain  
18 practices that would be off the table, I was really  
19 reflecting what I thought were some of the statements  
20 that have been made in the last few days and just talking  
21 about another alternative way to approach this as I was  
22 trying to get out on the table many approaches.

23 The FTC is not pushing it. I was seeing if  
24 there was movement there and there really wasn't.

25 MS. GRANT: But I heard yesterday harm, harm,

1 harm, harm, harm, and how harm is defined depends on the  
2 consumer.

3 MR. CHESTER: We need enforceable rights here.  
4 We need to implement our version of the OECD guidelines.  
5 We need enforceable rights and we need to structure the  
6 business practices based on privacy not just -- we worked  
7 with Pam on that, but we don't think technical solutions  
8 work. You have to structure the market so that privacy  
9 is protected from the get-go.

10 MS. BRANDENBURG: Great. Thank you so much and  
11 for everybody's patience. I know this is a very dynamic  
12 area and I am confident that we'll continue to discuss it  
13 afterwards. We are going to take a break and be back  
14 here at 3:45 for our final panel.

15 **(Applause)**

16 **(A brief recess was taken)**

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1                   **SESSION 9: ROUNDTABLE ON THE FUTURE OF**  
2                   **BEHAVIORAL ADVERTISING**

3                   MR. QUARESIMA: We'd like to welcome everyone  
4 to the final panel, Session 9 on the future of behavioral  
5 advertising. Format, we'll begin with three brief  
6 presentations, then we'll move to a moderated discussion.

7                   MR. HINE: I'd like to first introduce  
8 everybody who is on the panel. Starting from my far  
9 right, we have Katherine Albrecht from CASPIAN. To her  
10 left, we have Zulfikar Ramzan from Symantec. To his  
11 left, we have former Commissioner Mozelle Thompson from  
12 Thompson Strategic Consulting. To his left, we have  
13 Jules Polonetsky from American Online. To my right, I  
14 have Alissa Cooper from the Center for Democracy and  
15 Technology.

16                   My name is Jamie Hine. I'm an attorney with  
17 the Division of Privacy and Identity Protection here at  
18 the FTC. To my left, I have Rick Quaresima who's with  
19 the Division of Advertising Practices here at the Federal  
20 Trade Commission. To his left, we have Robert Gratchner  
21 from aQuantive. To Robert's left, Scott Shipman from  
22 eBay. To Scott's left, John Thorne from Verizon. To  
23 John's left, Joseph DeMarco from DeVore and DeMarco. To  
24 Joseph's left, Brad Schuelke from the Office of Texas  
25 Attorney General. And last, but not least, on the far

1 left, we have Tim Lordan from the Internet Education  
2 Foundation.

3 I'm going to turn it over now to Katherine  
4 Albrecht.

5 MS. ALBRECHT: Great. Well, I'm going to kick  
6 this off with a bang. I have very limited time, so I'm  
7 going to go quickly through these slides.

8 What we're doing here in talking about online  
9 marketing and tracking consumers online, I think is going  
10 to be setting a precedent for what's going to be coming  
11 down the road in the future involving people and real-  
12 world cookies. There's a couple of examples of how  
13 people tried to do this in the past.

14 IBM, at one point, actually took out a patent  
15 and considered a way to spray tracking ink on people's  
16 shoes so they could actually mark them in a way similar  
17 to an online cookie and then track them around the store.  
18 And the idea was that they would actually step on a  
19 little hidden unit in the floor that would be an  
20 applicator that would spray some electromagnetic ink on  
21 their shoe and program an individual code to them and  
22 then put a little puff of air and then dry it quickly so  
23 that it would be unobtrusive, the consumer wouldn't  
24 notice it. And then they would have little devices  
25 around the store in the floor that would actually see

1 where they browsed, how long they stood and what they  
2 looked at, so that they could be tracked. Of course,  
3 this ink would be invisible and consumers would not know  
4 about it.

5 Well, they're not going to have to go to all  
6 that bother if things continue along this present path  
7 because with RFID tags now being planned to replace the  
8 barcode to be sandwiched into shoes and clothing, you can  
9 do the same with less muss and a lot less bother.

10 An RFID tag, I'm sure most people in the room  
11 are familiar with RFID, the idea is to, at some point,  
12 place one of these on to every consumer product  
13 manufactured on planet Earth. So, there would literally  
14 be one in every pair of shoes, every belt, every  
15 lightbulb, every Bic pen, you name it, would all be  
16 equipped with their own remotely readable miniature  
17 tracking devices containing information very similar to  
18 what is in a cookie file.

19 Already they're appearing in passports. All  
20 new passports issued by the State Department contain an  
21 RFID tag. Over 20 million contactless credit cards that  
22 have been issued in the United States contain this  
23 technology. And, of course, loyalty cards already sort  
24 of span that consumer marketing tool. It's a consumer  
25 marketing tool that many people carry in their wallets.

1 In fact, it's the topic of my doctoral dissertation at  
2 Harvard University.

3 I discovered by the way -- I'll just throw this  
4 out apropos of some other topics that have been discussed  
5 -- that 75 percent of American consumers do not recognize  
6 that their loyalty card is used to collect their personal  
7 information or to make a record of what they buy, and I  
8 would be happy to provide that data to anyone who would  
9 like to follow up on that.

10 One of the plans by NCR, the National Cash  
11 Register Corporation, which is the technology partner for  
12 Wal-Mart, is actually to use RFID on consumers in order  
13 to track them around the store and charge them different  
14 prices for different items depending on individual  
15 characteristics of those consumers as gleaned from these  
16 tags.

17 The idea is that if you have one of these in  
18 your wallet or your purse or your backpack or your  
19 pocket, because radio waves travel right through fabric,  
20 leather and plastic, they would be able to read these  
21 tags on your person without your knowledge, and  
22 presumably without your permission, so that as you walk  
23 through doorway portals -- and here you see one, the  
24 normal one that we're used to seeing for anti-theft  
25 purposes, those can be upgraded to become RFID readers

1 and read these tags.

2 They are also now creating ones that can go  
3 horizontally so that they can scan you in a nice wide  
4 open space and you would never even know it was there.

5 I'm going to skip this one because we're low on  
6 time. IBM probably does the best job in one of their  
7 patents in describing how this would be used to track  
8 consumers, and they've patented something they call the  
9 person tracking unit. What this person tracking unit is,  
10 it's an RFID reader that picks up these signals from  
11 people's belongings and they can place them in walls,  
12 floor, ceiling tiles, shelving, doorways, literally  
13 anywhere, and they discuss a desire to place these into  
14 public spaces like museums, theaters, libraries, even  
15 elevators and public restrooms. So, literally everywhere  
16 you go, you could be scanned.

17 Now, the best way to understand how this works,  
18 they spell out in their patent, is because each RFID tag  
19 has a unique ID number, it's kind of like a unique cookie  
20 number, and it can be linked to your identity. So, for  
21 example, if you sell me a pair of shoes that has unique  
22 ID number 308247 in a cookie embedded into the soul, then  
23 any time in the future you see unique ID number 308247,  
24 because that's the only object on Earth that will  
25 transmit that number presumably, then you can look that

1 up in your database and you can say, well, that number  
2 corresponds to a pair of size eight Nike running shoes  
3 that Katherine Albrecht bought here last month.  
4 Therefore, there's a pretty good chance she was standing  
5 in it. So, you can use it to track people.

6 You can also use it, as IBM describes I think  
7 very well here, to look inside of people's purses. Their  
8 example was to look inside of a woman's sealed purse, and  
9 because all of the objects in her purse would carry one  
10 of these remotely readable tags on it, you could do an  
11 inventory of everything she was wearing and carrying.  
12 And their example if she's carrying a baby bottle then  
13 you can presume she's a new mother and then you could  
14 target her for other types of products. So, presumably  
15 when she'd walk by a billboard, the billboard might run  
16 an ad for diapers.

17 Japan has actually been testing this now with a  
18 slight twist, and this is actually more like the video  
19 that we saw in one of the earlier presentations, where  
20 the guy had the Post-It notes stuck all over him. What  
21 Japan has done, funded by the Japanese government in  
22 conjunction with NTT DoCoMo, is they issued shoppers in  
23 the Ginza shopping district in Tokyo RFID reader cell  
24 phones and then they placed the cookie, the little RFID  
25 cookies in the doorways of stores, and as people walked



1       into the stores their cell phones, unbeknownst to them,  
2       would grab information from the cookie and keep a record  
3       of everywhere they had been. Then when they walked into  
4       other stores, all of that information could be  
5       downloaded. So, a complete record of their travels,  
6       their interests, what they had browsed and where they had  
7       been would be available to other stores that were part of  
8       the system.

9                 Bank of America has a similar plan, this is  
10       also a patent. And this particular device, you walk up  
11       to a billboard and it would identify, collect, gather,  
12       and use personal information about you, again, using  
13       these real world cookies in your belongings.

14                There are plans to scan the tags in people's  
15       garbage developed by BellSouth. This is an idea when you  
16       throw these things away -- because the industry says,  
17       well, we'll just put them on the packaging, don't worry.  
18       Well, when you throw them away, they came up with a plan  
19       to actually scan your garbage at the dump and figure how  
20       long it had taken you to use up that bottle of shampoo or  
21       whether you traveled with that bag of dog food. Those  
22       are literally examples that they provide, and making that  
23       information, of course, available to retailers,  
24       manufacturers, distributors, and the like for marketing  
25       purposes.

1                   This was one of my favorites. Phillips  
2 Electronics actually looks forward to the day when in  
3 consumer's homes they will have appliances hooked up to  
4 the Internet so that they can use the RFID reader  
5 capability. So, their idea here on a saw is that you  
6 could put some blueprints on there, download information.  
7 Well, they say, well, wouldn't it be great, though,  
8 because you could be able to capture hidden information  
9 about other things people do in their homes.

10                   So, if someone's eating cereal as a snack and  
11 they set down the Cap'n Crunch -- they literally say this  
12 -- on their table saw, that at that point you can capture  
13 that, you can download it and you can make it available  
14 to marketers who could then direct market to this person  
15 who likes to eat cereal as a snack.

16                   It is my belief that this is extraordinarily  
17 harmful to consumers. The customer segmentation model  
18 that says we want to know what people are doing all the  
19 time so that we can scrape them off the hull of the ship,  
20 this is from the Harvard Business Review referring to not  
21 profitable customers as problematic and like barnacles on  
22 the hull of a cargo ship that only create additional  
23 drag. These, of course, are people who are not pulling  
24 their weight by being profitable enough to the companies.

25                   Then, finally, it appears to me that the

1 marketing industry, rather than opposing these practices,  
2 has actually condoned them, referring to them as a  
3 practice called digital redlining, meaning marginal  
4 services and high prices designed to drive the  
5 unattractive customer somewhere else.

6 So, I think if we allow this to happen in the  
7 online world, if we do not take steps at this point to at  
8 least say that these practices are objectionable and to  
9 look more closely at them, then down the road we could  
10 actually be creating an infrastructure in which  
11 everything we do would be tracked all the time.

12 If you have any further questions on this, we  
13 have two websites, spychips.com about product tagging,  
14 and we have a new website up at antichips.com, which  
15 deals with the actual injection of these devices into  
16 human beings in the form of RFID implants.

17 We'll talk more when we get to the Q&A section.  
18 Thank you.

19 UNIDENTIFIED MALE: What was the second one?

20 MS. ALBRECHT: Spychips.com and antichips.com.  
21 Thank you.

22 **(Applause)**

23 MR. HINE: We'll have time for questions  
24 afterwards.

25 We're going to move to the second presentation

1 from Zulfikar Ramzan from Symantec.

2 MR. RAMZAN: Thank you for making it this long  
3 in the day. I was kind of worried about giving a  
4 presentation at 3:30 on a Friday, but you've lasted.

5 So, I'll talk a bit about some of the new  
6 consumer technologies. I'm only going to spend about  
7 five minutes or so describing them. There are two  
8 particular technologies I wanted to mention which I  
9 thought were relevant to this particular discussion. One  
10 is something called Browser Defender and another is  
11 called Identity Safe, and I'll explain what these are  
12 shortly.

13 So, let me start with Browser Defender. As we  
14 all know, the web browser has now become the conduit for  
15 most people's online computing experience. They don't  
16 really talk about using the operating system or Windows,  
17 or anything like that. It's all about what do I do on  
18 IE, what do I do on Firefox, and so on and so forth.

19 Attackers have realized the same thing. They  
20 know that if people are spending most of their time  
21 online using the web browser, that is the most viable  
22 place for attackers to try to target individuals.

23 What's interesting is -- I'm not sure if most  
24 people know this, but the most commonly targeted person  
25 on the Internet is the individual consumer. Ninety-five

1 percent of targeted attacks go after consumers. They  
2 don't go after businesses or banks and that sort of  
3 thing. It's all about the end person, which is something  
4 most people don't realize.

5 So, oftentimes, these attackers are just trying  
6 to leverage flaws in your browser. These are software  
7 products out there, they often have technical  
8 vulnerabilities. Those vulnerabilities can be exploited  
9 by another piece of software. And, as I highlighted,  
10 some of this software is available through toolkits.  
11 So, in fact, you don't need to have technical  
12 sophistication to compromise someone's website or  
13 someone's browser. All you need is the ability to buy a  
14 toolkit online or through an underground market.

15 The going rate for one of the most recent  
16 toolkits, something called Impact, was about a thousand  
17 dollars for the toolkit, and that actually included a  
18 one-year support contract. So, if you had any problems,  
19 you could contact customer support of the toolkit seller.  
20 I'm serious actually. It did include a one-year support  
21 contract.

22 So, the reality is that it's taken a lot of the  
23 difficulty out of the equation. The whole market has  
24 become, in some sense, commoditized. Attackers also are  
25 not just going after free sites. It's not like I can

1 tell you don't go to some known site. The reality is a  
2 lot of these attackers are going after well-known sites.

3 So, in fact, here are a few examples I've put  
4 on the slide. The most famous one, I think, in the last  
5 year or so was the Dolphin Stadium website being targeted  
6 just around the time of the Superbowl. So, they were  
7 compromised. The attacker was able to insert a piece of  
8 code on the website so that if you visited the site and  
9 your browser was not fully patched, your computer would  
10 effectively become compromised and your attacker could  
11 essentially control that computer remotely and make it do  
12 whatever it wanted, which is a scary thought. You'd have  
13 to do nothing more than just look at the site at the  
14 wrong time.

15 The other thing that attackers are doing, this  
16 really ties into this particular panel, is use of  
17 advertising networks to make some of this happen. So,  
18 the realities that advertising is not just about a text  
19 image or it's not just about sound, the reality is  
20 advertising has gotten so complex and so rich in terms of  
21 content that there are effectively pieces of software now  
22 running inside of an advertisement. So, that piece of  
23 software can be malicious and an attacker can potentially  
24 get that software on to a website, and this actually  
25 happened with MySpace.

1                   So, MySpace accidentally hosted an  
2 advertisement that happened to contain malicious code.  
3 That code could take advantage of a browser vulnerability  
4 and could exploit that machine and essentially allow an  
5 attacker to take control of it. It turns out when  
6 MySpace had this happen to them, a million people  
7 actually saw the advertisement. Now, those people --  
8 maybe some of them had their computer security software  
9 up to date and their browser up to date, but I think that  
10 the odds are that most people didn't. So, it's a scary  
11 thought.

12                   With that said, the good news is that we have  
13 technologies in place to try to deal with those kinds of  
14 issues. We designed a new technology called Web Browser  
15 Defender. It actually does proactive detection, so it  
16 can detect any attempt by a piece of malicious software  
17 to take control over your machine through your browser  
18 and block that attempt. Actually, because it's proactive  
19 and because it's behavior-based, it can not only detect  
20 all the known threats, it can also detect many of the  
21 unknown threats out there. I thought that was an  
22 important type of detection mechanism especially since  
23 most people are using the browser these days.

24                   It's included in the Norton Anti-Virus line of  
25 products and in the Norton Internet Security line of

1 products that are coming out in 2008.

2 Finally, I want to talk briefly about something  
3 called Identity Safe. The reality is, as I mentioned  
4 earlier this morning, most people have multiple online  
5 identities. I have an identity with my email provider,  
6 I've got an identity that's associated with, let's say, a  
7 merchant I do banking with. I've got an identity  
8 associated with any kind of social networking forum I'm  
9 part of, so on and so forth. Each of those identities  
10 contains with it a set of information about me, like an  
11 email address, passwords and so on and so forth.

12 One of the challenges we're seeing is that  
13 because people have so many identities, it's hard to  
14 manage all of them. How many people here have multiple  
15 passwords they use online and multiple accounts? I think  
16 most of us do. How many people have more than five? I  
17 would say some people have even more than that. So,  
18 that's quite a few accounts you have to manage.

19 We've realized that's something that is very  
20 difficult for consumers to do, so we're building a  
21 technology now that has the ability to manage these  
22 online identities, and that can include things like  
23 taking care of your passwords, being able to detect if  
24 you're about to enter your password into a fraudulent  
25 website, automatically being able to switch between



1 different identities for different sites. So, you don't  
2 need to manage that stuff any more.

3 The idea is that we're trying to use technology  
4 to simplify a lot of the problems that users are facing  
5 because the reality is most people, when they do transact  
6 online, their interests are not in their own safety and  
7 security and privacy. Their interest is in doing what  
8 they want to do online, like buy a product, so on and so  
9 forth. We want to take all the guesswork out and make  
10 the decision much easier for typical end users.

11 So, that's actually all I wanted to say, and  
12 thank you for your time.

13 **(Applause)**

14 MR. HINE: Thank you. Our final presentation  
15 is Commissioner Mozelle Thompson from Thompson Strategic  
16 Consulting.

17 MR. THOMPSON: Good afternoon, everyone. The  
18 first thing I wanted to do is I wanted to thank the FTC  
19 for holding these two days of sessions. It's been a very  
20 interesting opportunity to have a good conversation about  
21 where things are going in the world of advertising,  
22 especially in targeted advertising.

23 I see Commissioner Harbour here, and it's nice  
24 to know, at least for me, that I still have the ability  
25 to clear the room.

1                   **(Laughter)**

2                   MR. THOMPSON: I thought a good place to start  
3 was just a few observations, that it wasn't very long  
4 ago, in fact November 1999, when the FTC did a workshop  
5 in online profiling. Stemming from that workshop, in  
6 July 2000, the majority of the Commission, including  
7 myself, sent a report and recommendations to Congress on  
8 online profiling outlining some of the NAI principles.  
9 But, also, I took the step of saying that we should have  
10 some legislation in this area to establish the baseline  
11 of privacy protections.

12                   Let's fast forward. I'm not a big one to say I  
13 told you so, but I do think that this was an area where  
14 we had an opportunity. The opportunity is different now.  
15 Let's talk a little bit about what's happened since then,  
16 and I'll tell you why.

17                   The online industry has changed quite a bit.  
18 We have a lot more privacy policies and privacy tools.  
19 We have seen an array of free services that are available  
20 to the public. We've seen interesting new ways that  
21 users are generating their own material and finding ways  
22 to distribute that among themselves. The technological  
23 changes also means that there's greater ability to  
24 transmit and gather information, and greater ability for  
25 a lot of people to search for that information. But

1       there are also a greater array of tools to manage  
2       information.

3                 We also see that users have changed. You know,  
4       we have a generation of people out there right now who  
5       have always known the Internet, who have never known what  
6       it was like not to be online, and they have a mixture of  
7       impressions. On one hand, they may not be as  
8       sophisticated in understanding some of their risks, but  
9       they are much more savvy in how they use information and,  
10      in a strategic way, to decide for themselves what value  
11      they expect to get from their participation.

12                Now, we may have some differences about whether  
13      it's a long-term value or a short-term value. But it's  
14      clear to me that we have a lot more people out there who  
15      are making those decisions every day. So, I thought it  
16      was interesting also to sit through the past couple of  
17      days, and I was struck by also a few things that remain  
18      as myths, that remain unspoken. But I would like to talk  
19      a little bit about them.

20                The first is the idea that profiling or  
21      tracking users or consumers is new. It's not. It  
22      happens offline, it happens online. Now, we may have  
23      more tools available to do it, but ever since there's  
24      been commerce and ever since there's been advertising,  
25      people are trying to figure out a better way to reach

1 their target market and figure out the better way to  
2 spend their money more efficiently to do so. That has  
3 not changed.

4 How it manifests itself in an online world and  
5 the tools available to do that, that may be a little  
6 different and evolves over time.

7 Second, there's this lingering impression among  
8 some people that the public is dumb, and they're not.  
9 They are perfectly willing to exercise choices. Now,  
10 some of them may be misinformed or uninformed, but they  
11 make rational choices based on what they know and what  
12 they assess is their own value at the time they exercise  
13 their choices.

14 Another myth is that the FTC's role is somehow  
15 to take legal action without clearly articulated harms,  
16 and I don't think that's true either. What that means is  
17 there may not be consensus on what those harms and risks  
18 are, but the FTC has a broad number of mandates,  
19 including the ability to shine the spotlight on the  
20 issues that we hear of today. But in order to take  
21 enforcement action, there has to be some clear  
22 articulation.

23 And, finally, and this is the thing that  
24 concerned me then and concerns me now, is that the  
25 primary risk to consumers are not posed by the people who

1 are here in this room. They are people who are engaged  
2 in unscrupulous practices, who have technologies that are  
3 there to surreptitiously spy and take information from  
4 people, and that they don't feel like they have any  
5 obligation to comply with any of the self-regulatory or  
6 regulatory codes that are out there.

7 So, what that means for us, I think, in the  
8 future is a couple of things. There's still a large gap  
9 between what consumers and users know and what they need  
10 to know. And while there are various sites who are doing  
11 an admirable job to try to better inform consumers and  
12 also public interest groups who are trying to do the same  
13 and governments, there's still a great opportunity, in a  
14 coordinated fashion, to provide more sophisticated  
15 information to users.

16 Second, there's still an opportunity for  
17 government, consumer groups and businesses to innovate  
18 this area because you guys are the experts in what's  
19 going on and what are the things that people are  
20 interested in. I think the opportunity is to spend  
21 one-tenth of 1 percent of your creative talent trying to  
22 figure out what are the new tools that you can come up  
23 with that will make it better for everyone.

24 And, finally, this is a challenge that I see  
25 advising especially technology companies, how do you

1 create a market that actually rewards or raises to the  
2 top instead of the bottom? How do you create a  
3 marketplace that rewards companies who give strong  
4 privacy tools, that gives choices, that tell consumers  
5 and users what they're doing with information?

6 I see that there are some companies who are out  
7 there that are doing that, and I think what I am seeing  
8 is more and more consumers are flocking to those  
9 companies because they represent something that always is  
10 important in any marketplace, the trust between the  
11 consumer and the vendor. Thanks.

12 **(Applause)**

13 MR. QUARESIMA: Thank you. Well, thank you  
14 again to all our presenters. I want to start with some  
15 things that have been referenced earlier, but we haven't  
16 had a chance to dig deep. Some of that right off the top  
17 is are there alternatives to cookies likely to emerge as  
18 identifiers of consumers' Internet behavior? So, I  
19 thought we could make that a general question, but I  
20 think I would like to begin with you, Jules.

21 MR. POLONETSKY: So, let me share some other  
22 secrets about cookies because you heard about how the  
23 opt-outs are imperfect and you heard of all sorts of  
24 interesting challenges that cookies face. So, let me put  
25 on the business hat as well.

1           The interesting thing about cookies is that  
2 they're not perfect. They're not perfect for ad delivery  
3 or targeting. In fact, there was some comment that only  
4 5 percent of the people managed to understand how to  
5 control cookies. The reality is, if you sit in a room of  
6 advertisers and marketers, they'll tell you that, hey,  
7 where are the cookies going? Twenty percent, 30 percent,  
8 40 percent, the industry is sort of constantly debating  
9 studies that wonder where are the cookies going.

10           Well, some are removed by Symantec and Macfee  
11 and anti-spyware programs that automatically remove  
12 cookies. A lot of them, apparently, are being removed by  
13 people who somehow have figured out how to use the  
14 browser controls. Lots of them are being blocked by P3P.  
15 So, the disadvantage of cookies is, in some ways, a real  
16 advantage.

17           Years ago, the fact that you had to send  
18 lawyers to courthouses to get data gave us privacy.  
19 Today, the limitations of cookies, which are reflected in  
20 the imperfect manner to deal with them, is that there are  
21 all these tools built around them and they're not  
22 actually -- they're good enough, right? People have  
23 built entire business models, all the big companies in  
24 this room and all the networks have business models, and  
25 the vast majority of ad delivery and content analytics is

1 completely built around this kind of shaky, good enough  
2 because, frankly, it works, but it's quite imperfect.

3 So, I think it's a remarkable thing that seven  
4 years later, from the conversations that we had years  
5 ago, you still see people using cookies. One of the  
6 reasons why I think some of the privacy compliance people  
7 like me at many of the companies look at these flash  
8 cookies and other novel tracking uses and we say, well,  
9 wait a second, the cookie has some controls, it isn't  
10 perfect. But until you come up with some really good way  
11 to make an effective way for users to control that,  
12 that's not something that's fair to use in an  
13 extraordinarily robust way.

14 So, I think that looking into the future,  
15 you're going to see technologies -- cookies or very  
16 similar to cookies that actually have user controls.  
17 People are looking at mobile today obviously, and there  
18 are not yet ubiquitous mobile cookies. One of the  
19 problems that's sort of being scratched and thought about  
20 is, well, okay, probably mobile is an example where  
21 people really will want my address remembered or the  
22 things that I don't want to have to punch in so that I  
23 can instantly get my directions or whatever the case is.  
24 What are the ways that you're really going to put  
25 somebody in control so as not to have them running in a



1 different direction?

2 So, my prediction is that both the -- we really  
3 should spend a good deal of time focusing on how to  
4 ensure that the cookie-handling model, which is going to  
5 be with us for quite a while, the business models are  
6 built around it and a huge amount of preferences and  
7 control and browsers are built around it. So, we really  
8 should engage more with getting the cookie structure  
9 right.

10 MR. QUARESIMA: Tim, are new mobile  
11 technologies using something else?

12 MR. LORDAN: Are they using something else?  
13 Well, I think since 2000 -- we did our first  
14 congressional briefing on location advertising back in  
15 2000. It's remarkable to think back then that we  
16 actually were doing congressional briefing as a  
17 legislative issue on this issue seven years ago. I don't  
18 think we kind of understood the issue, but we knew that  
19 being built into phones were different triangulation and  
20 GPS chips and, ultimately, after 9/11 we had the act that  
21 allowed every one of these devices to be located for  
22 E-911 purposes.

23 And every year since then I swear I have been  
24 like, this is the year this thing is really going to open  
25 up. And it just is this pregnant pause where this

1 marketplace of all this -- this becoming a new cookie  
2 just doesn't happen. The marketplace is glacial in its  
3 implementation. Probably for consumers that might be a  
4 good thing.

5 The other thing is that for the past week I  
6 have been carrying around a phone, it's one of the only  
7 like location services, it's called Looped, Sprint uses  
8 it, there's very few, some are for child protection, but  
9 this one is like a social networking type thing. It's  
10 pretty cool. I have a map on the phone, I can see where  
11 all my friends are, and I was really excited about it.  
12 And then after a few days, I realized that not only did I  
13 and my friends live really boring lives, it didn't give  
14 me the granularity that I want, that I thought would be  
15 interesting. Basically I go from home, I go to work, I  
16 go from home, I go to work. Then I go to the Federal  
17 Trade Commission. Really exciting stuff.

18 **(Laughter)**

19 MR. LORDAN: So we have some 20 somethings in  
20 the office and they were going on a trip to Los Angeles.  
21 We have two of these phones. And they go, can we take  
22 them to LA and we'll play around with it. I said, yeah,  
23 sure, take it with you. We're going to a USC football  
24 game. Can I see her on the other side of the stadium?  
25 I'm like, no, no, it's not that granular.

1                   Well, if we're in a different part of the bar  
2                   and I'm talking to some guy and she's talking to another,  
3                   can I see where she is? No, it's not that granular. And  
4                   I think the thing is that these things aren't that  
5                   granular, first of all, when it comes to mobile phones.

6                   And, secondly, I've learned a lot here. If you  
7                   are going to track people, where they literally go in the  
8                   physical space as you do on Myspace or on the Internet,  
9                   you have to have some kind of delivery mechanism, right?  
10                  You have to deliver the ad somehow. And how do you do  
11                  that? Supermarket aisles have those coupon feeders,  
12                  you're walking down the aisle and they're shooting  
13                  coupons at you and you're like -- or you get a text  
14                  message. That's the really trite hackneyed example is  
15                  that I'm walking by a Starbucks and they're going to send  
16                  me a dollar off latte example. I think the professor  
17                  from Amherst had a chart that said the advertisements  
18                  that consumers find most annoying and I think the top one  
19                  was getting a text message, it's like getting a phone  
20                  call at dinner.

21                  And how you present the advertisement -- and I  
22                  think there's a pretty compressed short window where you  
23                  could do that and actually convert a sale. Somebody said  
24                  data is good online for like three hours. If you're  
25                  walking by the Starbucks, you have like ten seconds where

1 they're on another block. How do you present the ad in a  
2 way that doesn't annoy them?

3 So, I think that's a combination of factors  
4 that's really making this process really glacial. I see  
5 the most dynamic aspect of location, locating people, and  
6 self-reporting. Online people are twittering, people are  
7 disclosing their information on their blogs, on their  
8 social network sites. And that is, by far, the fastest-  
9 growing location technology there is, and that's  
10 basically just pure social networking.

11 What I would say is if you don't want people to  
12 know your location on a social networking site, don't  
13 disclose it. One thing I find interesting in this new  
14 paradigm of social networking is people are like just  
15 vomiting their personal information, every aspect of  
16 their lives online. It's like digital data diarrhea.  
17 But even that is like diarrhea of the mouth, put it's  
18 like diarrhea of texting and the keyboard. People have  
19 to take responsibility for that. I think that's -- I'm  
20 going to stop there on digital diarrhea.

21 **(Laughter)**

22 MR. QUARESIMA: Thanks, Tim. I'm glad we  
23 didn't do this right after lunch. I'm actually going to  
24 come back to mobile in a bit, but I would like to turn it  
25 to Alissa. And, Alissa, if you see other alternatives to

1 cookies as far as tracking and monitoring Internet  
2 behavior.

3 MS. COOPER: I think this came up yesterday and  
4 it's a model that we, at CDT, have taken a great interest  
5 in in recent months, and it involves ISPs.

6 So, a lot of what we have been talking about  
7 the last two days at this workshop is all about  
8 advertising on the web and how the big ad networks are --  
9 they're big because they're on a lot of sites. So, if an  
10 ad network can track you across the top thousand sites on  
11 the web, the top 10,000 sites, whatever it may be, the  
12 more sites where they can gather information about you  
13 the theory is the better they can target advertisements  
14 to you, the more they can collect about you.

15 If you think about your ISP, no one knows more  
16 or is in a position to know more about what you do online  
17 than your ISP because your ISP can see everything that  
18 you do. So, if we're talking about competing with an ad  
19 network that has visibility on a thousand sites, well,  
20 your ISP has visibility on every site. And this is a  
21 model that we started hearing about recently where, not  
22 that I know of it actually happening on any of the major  
23 ISPs in the U.S., but an ISP partnering with an ad  
24 network company to serve the information that the ISPs  
25 gather to the ad network and then the ad network can use

1 that information to target ads just like they do on the  
2 web, except now they can see everything that you do.

3 So, some of the companies that are doing this,  
4 there's one called Nabu Ad, which thanks to Jules I  
5 learned about recently. Just got a second round of  
6 funding, \$30 million venture funding for Nabu Ad.  
7 Adzilla is an American company, \$10 million in venture  
8 funding. There's a UK company called form PHORM, P-H-O-  
9 R-M, which has a market cap of half a billion dollars.

10 So, it does seem as though this ISP model where  
11 not just a few websites that you visit or your search  
12 history, but everything that you do online could be  
13 involved in the creation of the profile about you and  
14 that certainly goes beyond cookies, it goes beyond flash  
15 cookies, it goes beyond any of these other web-based  
16 technologies.

17 MR. QUARESIMA: Just a point, if anybody in the  
18 audience has any questions, the mics are open and please  
19 step up. I'm actually going to come back to the  
20 ISP-based technology shortly, but I just wanted to throw  
21 this open to anybody else on the panel who is aware of  
22 other technologies besides cookies that they believe is  
23 going to become prevalent in the near future.

24 MR. THOMPSON: I wonder if the question is  
25 really the cookie question, and I'll explain why. If

1       it's not a cookie, it will be something else because  
2       there's still a demand, and it's ever increasing, for  
3       what I call mass customization, that you have 10,000  
4       users and each expect a different experience. And they  
5       expect you to deliver to them on a real-time basis, and  
6       what that means is that you're going to need to know  
7       something about each one of those people.

8               So, if it's not a cookie, technology changes  
9       every day, but as long as there's a demand for customized  
10      services, especially in the online environment, that's  
11      always going to be a challenge.

12             MR. QUARESIMA: Okay, I just want to revisit  
13      the ISP model that Alissa had spoken about. This type of  
14      model probably raises both legal and business questions.

15             So, first, I want to turn to the legal  
16      questions. I'll throw this for Joe DeMarco. Joe, do you  
17      see any different legal framework for this at the ISP  
18      level?

19             MR. DeMARCO: I do, Rick, and just by way of  
20      background, I was a federal prosecutor for ten years and  
21      I headed the computer hacking unit in the U.S. Attorney's  
22      Office in New York where I routinely prosecuted  
23      wiretappers and computer hackers. And over the last few  
24      days, I've sort of been listening to and listening for  
25      the raising of the wiretapping and computer hacking

1 issues, as well as the associated intellectual property  
2 rights issues. I think this really does hit the nail  
3 right on the head.

4 That's because as complex and as difficult as  
5 the issues are of consent and notice when you're dealing  
6 with a consumer and another party like a website, and  
7 those issues are very, very difficult, the difficulty in  
8 terms of the legal analysis and the permissibility  
9 becomes yet even more complex when you're talking about  
10 the monitoring of content by a provider of pipe, whether  
11 that pipe is an Internet service provider or a  
12 telecommunications company.

13 And when you start talking about things like  
14 deep packet inspection or any type of analysis of data  
15 flows, as that is traversing the network by the network  
16 provider, by an ISP or by the phone company, you  
17 immediately raise the issue of the Wiretap Act. Now, the  
18 Wiretap Act makes it a crime as well as a tort, a federal  
19 tort, to listen in on people's conversations, whether  
20 those conversations are on the phone or over the  
21 Internet. It applies to content, and that raises a whole  
22 host of tricky questions.

23 At one end of the spectrum you could say, well,  
24 an IP address is not content so you're not really looking  
25 at the contents of a communication if you're just looking



1 at people's IP addresses. At the other end of the  
2 spectrum, if you're a provider, if you're an ISP looking  
3 at the content of someone's emails and you're not a party  
4 to that email, you probably are getting into some content  
5 issues. But I think it raises very, very important  
6 questions under the Wiretap Act.

7 My recommendation to everyone is as you think  
8 about the deployment of these new technologies, which I  
9 personally believe are going to involve things like deep  
10 packet inspection, which of course is just carnivore  
11 renamed. I mean, it's the same sort of technology which  
12 looks at contents as they traverse a network. As you're  
13 talking about that and thinking about that, from the  
14 point of view of a provider, you really need to start  
15 thinking about are you violating the Federal Wiretap Act.

16  
17 Similarly, I heard in the last panel mention of  
18 the ability of various companies to turn on cookies that  
19 had previously been disabled. I think that raises issues  
20 under the computer hacking statutes.

21 So, I'm not saying this technology is bad, I'm  
22 not saying it's good. I think that as you do the  
23 analysis about whether or not different legal regimes  
24 apply, you have to consider whether you're monitoring  
25 content, how you're monitoring it, who is consenting. And

1 interestingly, in the wiretap cases you have a very  
2 robust and well-developed juris prudence of consent which  
3 usually requires implied consent or actual consent. You  
4 really need to be thinking about these things very, very  
5 carefully and making sure that you get the legal analysis  
6 right. Because if you get the legal analysis wrong you  
7 not only have a business disaster, you've not only  
8 committed a federal tort and are liable for damages, but  
9 you could wind up in jail. And I think that is going to  
10 be part of the future analysis of behavioral advertising.

11 MR. QUARESIMA: Just in the audience, Jeff?

12 **(Individual not at amplifying microphone)**

13 MR. CHESTER: I'm glad you brought that up,  
14 because that (inaudible) -- I'm sorry.

15 Let's talk about rich media. Can someone talk  
16 about the role of data collection via current practices  
17 and future practices and the rich media, multi-media  
18 units that are now deployed and will further evolve, and  
19 also the role of virtual agents in terms of data  
20 collection? Thank you.

21 MR QUARESIMA: Anybody want to take a crack at  
22 that? No?

23 MR. THOMPSON: Don't all jump up at once.

24 MR. QUARESIMA: Okay. Then I'm going to  
25 actually sort of circle back and just let me talk about

1       some of the maybe business ramifications. Assuming all  
2       the legalities are there, what are the business  
3       ramifications if this ISP model catches on? And maybe  
4       I'll turn that over to Rob first since it's directly in  
5       competition with yours.

6               MR. GRATCHNER: I just want to preface this by  
7       saying at aQuantive we've just recently been acquired by  
8       Microsoft, so the Microsoft ISP model is new to me and  
9       I'm learning on a daily basis the new Microsoft model.  
10      But I would like to go back to one thing about the new  
11      technology and the law is is Jules is absolutely correct.  
12      Cookies right now for online advertising and marketing is  
13      the key technology. I don't foresee that changing any  
14      time in the near future.

15             Now, that doesn't preclude other technologies  
16      or other things happening in the future. So, every  
17      business model may have different technology as we look  
18      into video-on-demand or mobile marketing or other types  
19      of technologies, as we evolve in the space, may require a  
20      different type of technology besides the cookie.

21             So, one of the things that we need to make sure  
22      as we go into this is that we understand what are the  
23      consumer expectations. And the part of this that I think  
24      has been left out is advertisers. What are the  
25      advertisers' expectations and where do they play a role

1 in this? They've actually played a very big role in  
2 this. As I've seen over the last two years I have been  
3 at aQuantive, advertisers really want companies who are  
4 doing the right thing. They want to make sure that  
5 they're handling data appropriately. Not only do we see  
6 it as a business value add to advertisers that we do  
7 things right with privacy, but these companies are coming  
8 to the companies that are doing things right like  
9 aQuantive, like the other members of the NAI.

10 And, so, as we go and expand into these new  
11 realms and these future technologies, we need to make  
12 sure that we have things baked into our technology  
13 similar to the Microsoft principles, as I'm learning, on  
14 product development and understanding how privacy plays a  
15 role around notice and choice. We have the same  
16 principles at aQuantive and we want to make sure that as  
17 we develop new technologies and go in new areas for our  
18 advertisers, that we understand and we provide the notice  
19 and choice to folks and that we're transparent.

20 MR. POLONETSKY: The big thing that has changed  
21 when it comes to ad technology, because most of these  
22 issues in the data collection and so forth again have not  
23 substantially changed. What you couldn't do easily years  
24 ago was actually the smoothness of the implementation.

25 So, let me give you an example. Banner ads,

1 years ago, were indeed a banner ad. We acquired a mobile  
2 company maybe a year ago called Third Screen Media, and I  
3 remember having conversations years ago when I was at  
4 DoubleClick about, well, how could our mobile ad server  
5 make sure that nobody accidentally sent us personal data  
6 and kind of have like a screen that would catch stuff if  
7 someone sent it that we didn't want and sort of going  
8 through the issues.

9 And here we were years later and I said, okay,  
10 I'm expecting all kinds of interesting, intricate, new  
11 challenges, and it turns out their greatest advantage and  
12 the reason they're considered sort of a leader is there's  
13 lots of phones and browsers and this and all kind of  
14 formats, and it is a bear to actually get a couple of  
15 different creatives for one advertiser on to lots of  
16 different phones in different structures. That's new,  
17 and the leaders are first figuring that out on the mobile  
18 side. That's what actually has happened in a substantial  
19 way on the ad side.

20 So, whether it's rich media, whether it's the  
21 ability to deliver video, the ability to create ads on  
22 the fly, the implementation and the ability to actually  
23 get the ad where you wanted it. So, perhaps years ago an  
24 ad server could deliver one of 200 ads that it has for  
25 the right advertiser. But if you were an advertiser and

1       you were going to deliver an ad with an ad server, you  
2       didn't have 200 ads for 200 potential types of customers.

3               And if you somehow spent a lot of money with  
4       all kinds of creative shops and you created 200 ads and  
5       you had them sitting there, the ability to sort and get  
6       the right one just wasn't possible. Today, sophisticated  
7       advertisers indeed can morph together and create the ad.  
8       So, the technology has smoothed out and so a lot of what  
9       was envisioned years ago is actually finally happening in  
10      a smooth way.

11             There used to be a career. It was called dart  
12      trafficker, and it was people who went to sort of a  
13      special training course to learn how to get their ads and  
14      use the interface to get their ads, if you were an  
15      advertiser, on a publisher site. That career is gone  
16      because most of us in the room today, technical or not,  
17      could sort of sit down and puzzle out and probably  
18      accomplish running -- and, indeed, there are millions of  
19      people around the world who run ads on Google and are on  
20      Ad.com just by using some of the tools that are out  
21      there. So, that's really what's happened with the  
22      richness of media.

23             MR. DeMARCO: Could I add a point though on the  
24      richness of media? And I don't know if this is where  
25      you're going, Jules. But you're right, banner ads used

1 to be crude and they just used to be across the top of  
2 your screen. But if what you're talking about is ad  
3 delivery in a form which substantially modifies or alters  
4 the website being viewed, for example, a blogger's  
5 website which inserts ads into the blog spool, which may  
6 or may not be clear to the extent that they're ads or  
7 not, I think you've got a copyright issue out there.

8 And I know that copyright issue is not on the  
9 radar screen of most lawyers concerned about things like  
10 the Wiretap Act and computer law, but bloggers have  
11 content rights in copyright and in their blog, and one of  
12 those rights -- and it applies to corporations as well --  
13 involves the right to control and the right to create  
14 derivative works. So, if you're now talking about  
15 advertising which is substantially modifying and possibly  
16 creating a derivative work of the site being viewed,  
17 whether it's the website of a big company or the website  
18 of a blogger, I think you have to do a copyright  
19 analysis, too.

20 MR. POLONETSKY: I fear something nowhere as  
21 sophisticated, but rather I have a little blog that I  
22 barely use and I was able to put a little piece of code  
23 on it by grabbing it, just following some basic  
24 instructions and putting it at the top, and all of a  
25 sudden, sophisticated video ads from American Express and

1 all kinds of interesting stuff is running on my website,  
2 and I don't know how it's happening. I didn't do  
3 anything special.

4 And all of a sudden, click, click, and I'm  
5 suddenly hosting some of these very creative ads that  
6 seem to be delivered in an instant.

7 MR. HINE: So, let's actually take this legal  
8 issue somewhere else.

9 **(Laughter)**

10 MR. HINE: No, no, no, very related.  
11 Unfortunately, Declan McCullagh was supposed to be on the  
12 panel, but could not, and recently Declan and CNET have  
13 addressed the issue of ad blockers and, certainly, as  
14 we're moving into an area where we can deliver multiple  
15 versions of rich media and hopefully consumers get the  
16 right version that the advertisers want to deliver,  
17 consumers still have tools at their disposal to help  
18 mediate the experience. Zully talked about those.  
19 Five years ago, it was an anti-virus program. Today you  
20 don't buy an anti-virus program. You have an all-in-one  
21 solution.

22 Declan's article specifically talked about  
23 Firefox and talked about this issue of ad blocking and  
24 surmised that some people in industry are very concerned  
25 about these tools, that in essence if consumers are



1 blocking the advertisements that maybe there are some  
2 legal challenges that should be made to look into the  
3 legality of some of these tools.

4 And I'm wondering, maybe Scott, if you have  
5 some thoughts about this, particularly in light of your  
6 AdChoice efforts to help reach out to consumers?

7 MR. SHIPMAN: Yeah, I don't know if I have a  
8 comment as the privacy lawyer from eBay, but certainly as  
9 an attorney trained in high-tech law, I think that one of  
10 the challenges you've got, certainly as was already  
11 raised, is copyright. You also have some claims  
12 certainly against anybody that's altering the content of  
13 your site without your permission, something that we run  
14 into quite often and we defend vigorously against.

15 I think the challenge that you'd face with  
16 respect to the ad choice model that we have rolled out is  
17 in that in the ad context we are actually the ones that  
18 are voluntarily creating a system where users would  
19 continue to see the ads, but it's the data behind the ads  
20 that would be altered based on the user's preference.  
21 So, it's a slight nuance from what you're asking, I  
22 guess, so it may not be a direct answer.

23 MR. HINE: Maybe, Rob, you can follow up on  
24 that. I guess we would like to touch on some of the  
25 ramifications. I mean, this changes the whole ecosystem.

1 And what happens if something like ad block catches on  
2 much more than it does today?

3 MR. GRATCHNER: So I won't speak from a legal  
4 perspective probably because I only play a lawyer on TV  
5 and not in real life. But from an ad blocker perspective  
6 from a business model, obviously, we want to make sure  
7 that users are getting the content that they want to see,  
8 and from user experience, is this going to affect the  
9 content that they're going to see? So, if we're blocking  
10 ads and not getting the advertising model out there, is  
11 this going to affect what content is out there?

12 If that's the case that's not a good thing for  
13 consumers. I think one of the things that I think I have  
14 not seen -- actually seen it or seen the article or read  
15 it, but one of the things is how do we reach consumers?  
16 What other mechanisms are out there? And while there may  
17 be some good players out there who do that, maybe there's  
18 other mechanisms out there that I know at aQuantive we  
19 wouldn't do, but others may do to go out there to provide  
20 those ads, to get those ads out there. So, it might  
21 provide some other model we don't know about today if  
22 we're blocking banner ads on websites.

23 MR. HINE: Well, let's actually shift that.  
24 Maybe, Zully, you would like to comment from Symantec's  
25 perspective because you are developing tools that, in

1       some sense, empower consumers to control their online  
2       experience.

3               MR. RAMZAN: Sure, I think it's an interesting  
4       question. I was just thinking about ad blockers recently  
5       because it turns out that you don't even need to install  
6       any kind of special software on your machine if you want  
7       to block ads. It's pretty trivial. You just have to  
8       change one text file and add some information to it and  
9       you can block a whole bunch of ads.

10              So, I think the core issues is that we're  
11       trying to maybe attack with technology or attach a  
12       specific instance rather than looking at the core  
13       underlying principle, which I think Mozelle was alluding  
14       to earlier.

15              A couple of other things I wanted to mention  
16       that kind of came up that are related is that certainly  
17       we've talked a lot about cookies and it's been pretty  
18       clear that cookies are one part of the online privacy  
19       issue, but they're certainly not synonymous with online  
20       privacy. There are so many other ways to achieve the  
21       same kinds of effects.

22              So, for example, it turns out that -- I'm  
23       getting an echo here. So, it turns out, for example,  
24       that if I wanted to implement a cookie instead of using a  
25       traditional cookie, there are other mechanisms by which I

1 can do the exact same thing without resorting to  
2 traditional cookies.

3 Maybe that's what it is. My voice sounds  
4 really funny. I don't know why that is. Let's try that  
5 again. That maybe is a little less annoying. Sorry  
6 about that.

7 So, the point I want to make is that from a  
8 technology perspective it's important not to just look at  
9 a specific instance or a sensor-specific technology but  
10 to look at the overall principle because some of these  
11 technologies are inherent in the way the web is designed.  
12 I don't think we'll be able to get rid of these concepts,  
13 per se. So, I think that's important to keep in mind.

14 MR. LORDAN: Jamie, following up on that, this  
15 isn't something new, the ad blockers. Back seven or  
16 eight years ago when we were just kind of reaching the  
17 threshold of dial-up and things like that, people were  
18 using -- I think the largest penetration of ad blockers  
19 at that time was really because people wanted to conserve  
20 as much bandwidth as possible. So, the ad blockers at  
21 the time weren't as much a privacy issue. I mean, it was  
22 also served as stop annoying banner ads and tower ads.

23 But it was because people, they were bandwidth  
24 intensive and people were on dial-up and the motivation  
25 for them to download and use an ad blocker was that they

1 wanted a faster surfing experience. And, so, I think the  
2 motivation for using those tools, I think what's the  
3 difference between you're concerned about privacy so you  
4 buy an ad blocker. Why wouldn't you just go in and  
5 manage your cookies?

6 So, I think it's really the same equation now  
7 in the absence of a bandwidth constraint.

8 MR. HINE: Well, I want to actually circle back  
9 and come to you Commissioner Thompson. We've heard, for  
10 example, some information about research, but  
11 particularly Larry Ponemon's research that touches on  
12 consumers and their desire to control their online  
13 experience and to have more control over their privacy,  
14 and this implicitly suggests that trust is an issue and  
15 you've touched on some of these issues. But I think that  
16 there has been an amazing explosion in the growth of  
17 social networking sites. And as Tim eloquently put it,  
18 people can't get enough about willing to share the  
19 details of their lives. And, so, I know that you have  
20 done some work with social networking sites, and if you  
21 could talk a little bit about is there something unique  
22 about social networking sites? Do they engender some  
23 different or unique form of trust?

24 MR. THOMPSON: Well, it's no secret that I've  
25 been advising Facebook and not all of social networking

1 sites are the same. They don't track the same audience  
2 and the behaviors are different. But what I do think is  
3 a myth is that people like to go to social networking  
4 sites and just like throw up on a page. I don't think  
5 that's accurate.

6 I think that the social networking sites  
7 actually provide more granularity that allow you to  
8 decide who is going to get what information and under  
9 what circumstances. Is in some ways represents what the  
10 new privacy model is. Because there are instances -- and  
11 Joe kind of alluded to this when he was talking about  
12 blogs and copyright. People want information about  
13 themselves out to people, but they want to control who it  
14 gets to and under what circumstances. And, so, when you  
15 talk about copyright and blog, in some ways, a blogger  
16 may have a copyright right that he has, but he may not  
17 want to assert it because he wants people to pass it  
18 along. Now, whether that's attached to advertising or  
19 not may be a different question.

20 So, what we're seeing here -- what I don't want  
21 this conversation to go too far in, it's not necessarily  
22 a binary equation is to add yes or no or information yes  
23 or information no. It's really a much more sophisticated  
24 question than that. It's the circumstances and to whom  
25 and from. And it's not going to come from the top down.

1 You're going to get information from your neighbor across  
2 the street or your college roommate and that may include  
3 advertisements or it may not. So, that's a different  
4 kind of model than whether you're visiting a website and  
5 they give you a cookie or not.

6 MR. QUARESIMA: Scott?

7 MR. SHIPMAN: So, it's not often that I  
8 actually purposefully agree with Mozelle, but I think I'm  
9 going to here, but also highlight that a lot of what  
10 we're talking about is not new. Let's take eBay 1998, a  
11 completely open marketplace for people to buy and sell  
12 any --

13 MR. THOMPSON: Boy, do I wish I would have  
14 bought into eBay.

15 **(Laughter)**

16 MR. SHIPMAN: Hey, you're early at Facebook,  
17 Mozelle.

18 Any user at eBay that bought or sold or anybody  
19 that registered for the community meant that when they  
20 registered, they were willing to give their contact  
21 details to any other member. It was a completely open  
22 transparent marketplace. So that meant that any  
23 registered member with the simple request via email would  
24 receive the other and vice versa. The contact details.

25 Now, we fast forward, you know, in certain

1 aspects, parts of eBay's original social networking  
2 capabilities to today and we've actually dialed those  
3 protections up and removed some of that functionality  
4 because, in fact, as we listened to the customer, they  
5 didn't want -- and certainly as the site grew from  
6 thousands of members to 250 million members, they didn't  
7 want that information available to everyone. They wanted  
8 that information available to people that they did  
9 business with, people that bid on an item or that won an  
10 item successfully and vice versa with the seller.

11 So, we look at the history, we look at the  
12 transformation of how information has been provided on  
13 the Internet. In many ways, it's no different than the  
14 DDD acronym that we heard a minute ago, digital data  
15 diarrhea.

16 **(Laughter)**

17 MR. SHIPMAN: But as Mozelle said it's context  
18 based and people are providing information to other  
19 people based on the context of the transaction whether  
20 that's the social networking website, whether it's an  
21 address so that an item can be shipped, payment  
22 information, whatever it might be.

23 I think one of the challenges, and certainly to  
24 jump back to the cookies question originally, is cookies  
25 is the one way, and in many ways a very poor way, of



1 collecting information on the Internet. The most  
2 efficient way is to collect the information directly from  
3 the customer, and that's a server. That's not a cookie.  
4 It's not being stored on the customer's computer, it's  
5 being stored back in San Jose or back in whichever  
6 location your servers are at. And that's the real way  
7 that companies can collect and enrich a database is by  
8 collecting the information directly.

9 So, this fear about a cookie, it's a technology  
10 that is working adequately for advertising, it's not a  
11 very good technology for collecting information or for  
12 storing information. So, really what we're looking at is  
13 the use practices and what we're talking about is how are  
14 people using information for advertising? Are companies  
15 providing choices with that information and how it's  
16 used? And, certainly, that's what we're trying to do  
17 with the AdChoice program is to provide customers with  
18 that opportunity to reflect how the information is being  
19 used with respect to ads.

20 MR. QUARESIMA: Katherine, you had something?

21 MS. ALBRECHT: In the last couple of minutes we  
22 have left, I would kind of like to bring this back around  
23 to consumers, if we could, because if we're talking about  
24 the future there's more to this than just the technology.

25 I think we all agree that the technology will

1        evolve, it's going to evolve into the more online space  
2        onto the real world. But I think the bigger question  
3        that I have as a consumer educator and someone who deals  
4        with consumers every day is, how do we help them  
5        understand what it is that's being done?

6                I think one of the reasons why cookies and all  
7        of these other technologies are so worrisome to people is  
8        because they're invisible. They occur in the course of  
9        doing something else, someone is sort of almost attaching  
10       on to you like a parasite when all you're trying to do is  
11       order a set of sheets for your bed or when all you're  
12       trying to do is walk down the street, and other people  
13       are taking advantage of your presence and your activities  
14       for their own reasons. I think that's where we need to  
15       do -- there needs to be an educational component here.

16               I was stunned that in something like a  
17       supermarket frequent shopper card, that now 90 percent of  
18       American households have these things and people use them  
19       all the time, and yet here we are almost 20 years into  
20       having this technology, this simple technology of a  
21       shopper card and 75 percent of households don't realize  
22       that their data is being collected.

23               So, we can sit here and talk all day long and  
24       come up with terrific ways in technological run-arounds  
25       to help people protect their privacy, but until they

1 understand that these invisible things are happening to  
2 them, we're not going to get anywhere.

3 MR. HINE: Katherine, I know that you've done a  
4 lot of work with shopping loyalty cards. Do you see any  
5 analogies here in what consumers understand about the  
6 value proposition, the trade-off?

7 MS. ALBRECHT: I think, in a way, what's  
8 happening in the online world and why RFID is interesting  
9 to me is because they're even more invisible. I wrote a  
10 paper a while back for the Denver Law Review called  
11 Supermarket Cards, Tip of the Retail Surveillance  
12 Iceberg, because the supermarket card, that visible  
13 plastic card people have hanging off their key chains,  
14 for many consumers is their only tangible connection to  
15 the fact that there is this entire universe of data  
16 collection occurring that the average consumer has no  
17 idea is even going on.

18 So, the tangibility there, you would think,  
19 would translate into a greater degree of awareness, and  
20 that's why I focused on that. I was stunned -- if you  
21 actually ask consumers, why do you think supermarkets  
22 offer frequent shopper cards, which I did in my  
23 dissertation research -- I said, can you tell me why you  
24 think they offer you that, and they said, because, first,  
25 they want to reward me; second, they want to offer me

1 deals and get me into the store and, third, they just  
2 love me.

3 **(Laughter)**

4 MR. ALBRECHT: And at each opportunity I said,  
5 can you think of any other reasons, can you think of any  
6 others. I prompted them three times and only 14 percent  
7 of consumers said because they want to know what my  
8 shopping history looks like. And even when I came out  
9 then after that and we did something called prompted  
10 knowledge on -- spontaneous knowledge was that, do you  
11 know it, and then prompted knowledge was if I tell you,  
12 do you know it.

13 So, I said to people, does the supermarket make  
14 a record of your purchases every time you scan the card?  
15 And 75 percent of people said no. And, in fact, many of  
16 them said, oh, come on, I'm not a conspiracy theorist,  
17 I'm not paranoid, it's not like they're the CIA, blah,  
18 blah, blah. And people were really adamant in absolutely  
19 insisting that their supermarket would never do something  
20 so despicable to them.

21 Now, this is a tangible thing that -- you know,  
22 they sign a little form and you would think that they  
23 would understand that, but they don't. And the reason, I  
24 think, is because when I looked into how the supermarket  
25 frequent shopper card was introduced throughout the mid-

1 1990s and the late '90s, it was not introduced as a data  
2 collection card, big surprise, it was introduced as a  
3 join the club we want to reward you, we love you. And  
4 most people, for good or for bad, they believe what you  
5 tell them.

6 So, if you say, come on our website because we  
7 love you and we want to have you shoot the little bonobo  
8 and be part of our contest or whatever, they will believe  
9 you. So, I think there needs to be a greater degree of  
10 openness of saying, here is the trade-off that we're  
11 making very openly. We want your data.

12 MR. QUARESIMA: Okay. Jules, you had something  
13 you want to say?

14 MR. POLONETSKY: Yeah, to carry on that point  
15 in terms of consumer education, I want to take you back  
16 to something that happened a couple of years ago. The  
17 FTC helped put an end to a practice of sort of a spammer  
18 who was using a flaw that allowed him to trigger pop-ups  
19 on people's computers that looked like they were coming  
20 from the operating system. They were and sometimes the  
21 offers were, help make this pop-up stop happening, and it  
22 used a security exploit.

23 So, when we became aware of it, we started  
24 getting lots of calls from our members saying, hey, stop  
25 these pop-ups, what are you doing to me? And we said,

1       what's going on? We're not doing it, we're not  
2       responsible for this. And we came up with a little  
3       script and people were really annoyed. We started  
4       marketing this script, we ran banner ads, hey, are you  
5       getting these? And we showed them pictures, are you  
6       getting these ugly pop-ups? You want to not get them,  
7       click here so that we can run this script. And a lot of  
8       people did.

9               And guess what? A huge majority of the people  
10       kept calling us, which was expensive, saying turn off  
11       those pop-ups, and we kept running these ads and,  
12       finally, we said, you know what, let's just roll out a  
13       script and turn it off to everybody. And one or two of  
14       the security people said, ew, why did you do that? Don't  
15       do that to somebody's computer. I'm like, wait a second  
16       we just stopped this terrible thing happening to so many  
17       people. But just think about the education. People  
18       really didn't like it and in the same context here we  
19       were saying to them, hey, stop the pain, click here and  
20       we'll fix it.

21               So, we need to do so much more and I think  
22       we're all sort of guilty in industry and coming a little  
23       too late in really putting a little bit more energy into  
24       this.

25               I urge people to look at a site called

1 Carabella which I've become enamored with lately. It's a  
2 virtual avatar. It's created by Privacy Activism. And  
3 it's a college student, she's sort of a Goth, and she  
4 goes to college and has to make privacy decisions about  
5 whether she gives her data and her Social Security, and  
6 it does a pretty good job at sensitizing kind of a jaded  
7 audience about what they should and what they shouldn't  
8 do.

9 So, whether the banner ads that we're going to  
10 run work or the videos, clearly the Web 2.0 notice that  
11 Esther was talking about is the lead challenge that I  
12 hope everybody across the spectrum agrees with.

13 MR. QUARESIMA: Okay. We only have about five  
14 minutes left. So, I'm just going to try to move quickly  
15 to a final topic. That is, we've heard a lot of talk  
16 about trust. Consumers will do business with trusted  
17 websites and companies are going to compete on trust.

18 So, I wanted to throw that out generally. How  
19 can we encourage companies to compete on trust? But also  
20 I'd like people to sort of think about how consumers can  
21 verify that their trust is well placed. Some famous  
22 person said, trust but verify. So, I think we want to  
23 throw that out. I think I'll start with John.

24 MR. THORNE: Well, first of all, thanks for  
25 including Verizon in the conversation. The town hall has

1       been terrifically valuable, I can tell you, from my being  
2       here two days.

3               Something that Mozelle said earlier deserves  
4       echoing that answers your question, and that's that  
5       consumers actually respond to different levels of  
6       privacy. We follow very closely the third party  
7       reputation surveys, like the Ponemon survey. Verizon has  
8       been on the most trusted list every year since it's been  
9       done. We've been the number one in our category of  
10      telephone company/cable company for the last couple of  
11      years running. We used to get measured on whether we're  
12      at the top of that list.

13              But two small anecdotes. One is our wireless  
14      business was invited to put all the cell phone numbers  
15      for our wireless subscribers into a central database  
16      where you can have a directory then, and I think we were  
17      going to get a little bit of money. Somebody offered  
18      some money for this. You could call up all the wireless  
19      subscribers in a white pages or a 411 kind of service.  
20      Debbie Streegle (phonetic), the head of our wireless  
21      business, said, no, our customers aren't going to like  
22      that. We got a bunch of people switching from I think it  
23      was AT&T and Sprint and T-Mobile to come over to our  
24      service when they heard that we were not going to  
25      participate in something that turned their telephone



1 numbers over to a central agency.

2 Sara Deutsche, who's in the back of the room,  
3 and I had a fairly public fight a couple years ago on  
4 behalf of our Internet service provider with the  
5 recording industry. I'm not going to re-fight copyright  
6 issues although they -- some people think that what the  
7 recording industry was doing with automatic robots  
8 searching the web and then issuing subpoenas was a  
9 privacy concern. We thought it was just illegal, and we  
10 fought the IRA. Again, the experience was users wanted  
11 to switch from -- I'm not going to name names down the  
12 table there, other ISPs who were less confrontational  
13 with some of the copyright holders about turning over  
14 names.

15 So, we have found in our experience, you get  
16 more customers if you protect privacy. It's in our  
17 interest to be good with this. It's a way to grow the  
18 investment we're making.

19 MR. QUARESIMA: Commissioner Thompson?

20 MR. THOMPSON: Well, that trust comes at  
21 various levels. It begins with how you talk to your  
22 user, your customer, about what your obligations are.  
23 Then for every piece of technology, every piece of  
24 functionality that you do something that's consistent  
25 with what that promises. And I really like your

1        comments, Katherine, because it really is true that it's  
2        not -- it's a series of things that consumers test on a  
3        regular basis.

4                The FTC knows more than it wants to about  
5        supermarkets. And, so, that's one example. But I can  
6        tell you, for example, in the social networking space  
7        that there's robust privacy protections on Facebook and  
8        people actually use it.

9                Now, is there a gap between some people who  
10       should be using it more and they don't? Yes. So, one of  
11       the things that could happen that would really be  
12       fruitful is for the FTC to shine its light on good  
13       practices, because there are companies out there who are  
14       doing good things so that consumers know that they have  
15       choices and that where things look like practices that  
16       are helpful to them and tools that are available to them,  
17       that the FTC can actually talk about it. I think that  
18       that's valuable.

19               And I also think it's valuable for the online  
20       industry generally to talk to itself about what those  
21       array of tools are that might be useful. Because it  
22       really is hard to get after the bad actors. But if you  
23       can begin to isolate what some of the good practices are,  
24       that's fruitful. And I think it's a real challenge to  
25       create a race to the top because a lot of business would

1 find it easier to deal with mediocrity.

2 MR. QUARESIMA: Anybody have a response to the  
3 second portion of that question, which was sort of  
4 verify? I mean, we've heard issues about that there are  
5 possible harms associated with and about discriminatory  
6 pricing. So, let's say you have a consumer who has now  
7 opted in to everything that they wanted to opt in. How  
8 can this consumer make sure that some of the bad  
9 practices that we've identified earlier may not be  
10 happening to them? Anybody want to take a crack  
11 at that?

12 MR. POLONETSKY: Mozelle and I are Facebook  
13 friends and I implicitly trust him with my data.

14 MR. QUARESIMA: Well, since we're out of time,  
15 we began with homework.

16 MR. THOMPSON: I won't comment on that.

17 MR. QUARESIMA: Well, we began with homework  
18 and we're going to -- oh, we do. Brad?

19 MR. SCHUELKE: I mean, I would just sort of go  
20 back to -- and, again, my disclosure from the last panel  
21 carries over to this one as well. But I think that is  
22 one of the biggest difficulties in this area is the lack  
23 of transparency, the fact that consumers don't understand  
24 cookies and the fact they can't see it and they can't  
25 verify it.

1           I think that's one of the things that in this  
2           area makes self-regulation a little bit more difficult  
3           than maybe even other areas is that if consumers don't  
4           have the technological ability to verify on their own an  
5           opt-out or some other procedure, then they're going to  
6           look for a third party to be able to do that verification  
7           for them and to give them some form of trust.

8           I think transparency is really the key and the  
9           issue.

10           MR. THOMPSON: Can I just add one other thing,  
11           though? One thing that has changed that's really  
12           important is there are more people out there with easier  
13           access to --

14           MR. QUARESIMA: We're running over, so we've  
15           got to take one minute. One minute.

16           MR. THOMPSON: They speak up now. If consumers  
17           don't like something, if you're doing something that  
18           people get wind of it will be on a blog and there will be  
19           100,000 users in two days complaining about it. That's  
20           got to be encouraged and not discouraged.

21           MR. GRATCHNER: Everyone is absolutely correct.  
22           Transparency and choice is very important, but I think  
23           there's also a combination of other good work that  
24           organizations are doing and others are doing. But people  
25           are going to vote with their wallet, and if they feel

1 they're being misused or misguided on a website, they  
2 won't go back and visit it.

3 MR. QUARESIMA: It is now three minutes past  
4 5:00, so we're going to have closing remarks. Eileen?  
5 If everyone could stay, we're going to have closing  
6 remarks. Just stay here.

7 MS. HARRINGTON: This will take a nanosecond.  
8 Thank you all for staying until the end here. This has  
9 been, I think, a wonderful effort. And, again, we want  
10 to thank the people on our staff who worked so hard on  
11 this.

12 **(Applause)**

13 MR. HARRINGTON: And I'm going to name them one  
14 more time, in no particular order. Peder Magee, Jamie  
15 Hine, Lori Garrison, Rick Quaresima, Jessica Rich, Mary  
16 Engle, Joel Winston, Stacey Brandenburg, Mamie Kresses  
17 and Tracy Shapiro, and numerous of our wonderful honors  
18 parallels.

19 MR. THOMPSON: Will they have cookies waiting  
20 for them?

21 **(Laughter)**

22 MS. HARRINGTON: Well, no, I have a suggestion  
23 for everyone in that regard. We're very pleased, I  
24 think, with the good start that we've made over the last  
25 two days. We have learned a lot more about behavioral

1 advertising including some about how it works and the  
2 consumer protection issues that it raises.

3 We have had some debate on the issues  
4 including whether disclosures work at all in this area  
5 and whether existing models for managing privacy are  
6 adequate.

7 We enjoyed the YouTube videos and greatly  
8 benefitted from the participation from all who attended  
9 and hope that you found that the town hall nomenclature  
10 really carried with it a difference in your ability to  
11 participate, ask questions and interact with other  
12 participants.

13 We heard some general agreement, I think, about  
14 certain issues which should help our efforts as we go  
15 forward. First of all, behavioral advertising is clearly  
16 a growing practice and it is largely invisible to  
17 consumers. Although reasonable minds can differ as to  
18 whether the practice itself raises concerns, there  
19 appears to be a fair amount of agreement that greater  
20 transparency and consumer control would be a good thing,  
21 recognizing, of course, the limitations on notice and its  
22 value.

23 There are also legitimate concerns about what  
24 happens to consumer data, very legitimate concerns, that  
25 is collected for advertising. Is it limited to use in

1 advertising or could it be used for some secondary  
2 purpose? What if it falls into the wrong hands,  
3 especially if the data are sensitive or personally  
4 identifiable?

5 Now, everyone who was here at this town hall is  
6 obviously thinking very seriously about the challenges  
7 here and what the best approach might be for managing  
8 privacy in this area, and so are we. Based on what we  
9 have heard, we would like to see a reasonable approach to  
10 this issue that is flexible, that doesn't stifle  
11 innovation, that gives consumers information and control  
12 without placing unrealistic demands on their time and  
13 their willingness to study and analyze long disclosures,  
14 that prevents any harms from arising from the collection  
15 and storage of the personal data collected, and that  
16 creates accountability among businesses that are  
17 collecting and using the information. We think these are  
18 not unattainable objectives.

19 Some of the ideas that we have heard over the  
20 last two days are promising. They include a do not track  
21 program, reforms to existing NAI requirements, and better  
22 consumer education as illustrated by the YouTube contest,  
23 and we need to examine these and other ideas more  
24 closely, and we will and we encourage you, all of you, to  
25 do so as well and to continue to engage with us and

1 suggest new ideas.

2 Now, at the same time that we think this has  
3 been enormously productive, I think that we also have a  
4 sense that we haven't yet seen or heard enough of the  
5 concrete and specific facts about information collection  
6 in connection with behavioral advertising and its actual  
7 and planned uses nor have we seen or heard concrete  
8 suggestions for improving consumer protection and privacy  
9 in these areas. So, we are going to keep coming back  
10 asking for the concrete.

11 I think that there has been a certain  
12 guardedness on the part of many of the companies that are  
13 involved in behavioral advertising in describing, in this  
14 forum, exactly what it is that they're doing and maybe  
15 this is not a forum for, as our old boss Jodie Bernstein  
16 liked to say, open kimono, but we want the kimono opened.  
17 So, we're going to keep coming back and we're going to  
18 keep asking questions here.

19 Finally, you all should go out and have a  
20 drink. **(Laughter)**

21 MS. HARRINGTON: Or whatever it is that you do.  
22 I, myself, I would go for ice cream. But this has been a  
23 long haul, intense information packed, and everybody here  
24 has worked hard. So, it's 5:00 on Friday afternoon and  
25 now you should all go off and do something far less



1 wholesome than sitting in this room. So, thank you,  
2 everyone, for your participation.

3 **(Applause)**

4 **(At 5:11 p.m., the town hall was concluded.)**

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25MATTER NUMBER: PO75401CASE TITLE: EHAVIORAL ADVERTISING TOWN HALLDATE: NOVEMBER 2, 2007

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: NOVEMBER 16, 2007

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LINDA D. METCALF**C E R T I F I C A T I O N   O F   P R O O F R E A D E R**

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

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ELIZABETH M. FARRELL