

FEDERAL TRADE COMMISSION

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

PUBLIC WORKSHOP ON CONSUMER INFORMATION PRIVACY

SESSION ONE: DATABASE STUDY

Tuesday, June 10, 1997

Volume 1

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1 APPEARANCES:

2

3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

4 David Medine, Associate Director for Credit Practices,

5 Chairman

6

7 Chairman Pitofsky

8 Commissioner Azcuenaga

9 Commissioner Steiger

10 Commissioner Starek

11 Commissioner Varney

12

13 Steven Silverman, Attorney

14 Lisa Rosenthal, Attorney

15

16 Jodie Bernstein, Consumer Protection Bureau

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P R O C E E D I N G S

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3 MS. BERNSTEIN: Good morning, everybody,
4 Commissioner Varney. Can we please be seated quickly. Good
5 morning and welcome to all of you. I'm Jodie Bernstein of
6 the Consumer Protection Bureau.

7 It's my pleasure to welcome all of you and thank you
8 for participating in our proceedings today. And we have a
9 very full agenda so without more, please join me in saying
10 good morning also to our first speaker, the Chairman of the
11 Federal Trade Commission, Bob Pitofsky.

12 (Applause)

13 CHAIRMAN PITOFSKY: Good morning, everyone, and
14 welcome to Privacy Week at the Federal Trade Commission.
15 I'm delighted to see the high level of interest and
16 enthusiasm shown by industry and consumer leaders who have
17 submitted comments and who have joined us today.

18 And also let me at the outset thank the Commission
19 staff for all their enormously hard work in making these
20 hearings possible. Over the next four days we will address
21 critical questions that often implicate the most fundamental
22 American values.

23 Never before today has so much information about
24 individuals been available to so many so easily. Access to
25 this wealth of information, possibilities also raises

1 difficult questions about the collection and use of
2 information personal to each of us.

3 A central issue we will examine this week is how to
4 ensure that adequate privacy protections for consumers can
5 keep pace with rapid technological advances.

6 Last year many of you participated in the hearings
7 the Commission held to define issues surrounding online
8 privacy. Since then public interest and concern over these
9 issues has only grown.

10 There was some consensus at last year's hearings
11 that industry should take the lead in solving problems we
12 identified by developing self-regulatory schemes as well as
13 new technology.

14 Now we are here to listen to what progress industry
15 has made and to consider whether any government action may
16 be appropriate.

17 Let me start these proceedings with an overview of
18 the areas that we will cover. Today in session one we will
19 consider for the first time computerized databases
20 containing identifying information about consumers. These
21 databases are often referred to as look-up services,
22 locators, and individual reference services.

23 These databases are perhaps best understood by their
24 content. Sitting at my computer using only a person's name
25 and address I can develop a detailed profile of that person.

1 I can, for example, discover the person's prior addresses,
2 date of birth, and telephone number, often even if the number is
3 unlisted.

4 With slightly more effort and perhaps more money I
5 can learn the person's Social Security number, occupation,
6 the name and ages of the person's spouse and children, names
7 of the person's neighbors, the value of the person's home
8 and property taxes paid on that home.

9 We have seen indications that even more information
10 about individuals will become available online as this
11 market segment continues to develop. Views on these
12 databases vary greatly. The databases offer a range of
13 benefits to the private sector and law enforcement and often
14 contain information that is already public.

15 To name just a few benefits, databases have been
16 critical in locating witnesses, tracking down criminals, and
17 even reuniting lost family members. At the same time these
18 databases raise legitimate concerns about their potential
19 for misuse and about their effect on personal privacy.

20 Today we will learn more about these databases,
21 their operations, the benefits they offer, and the concerns
22 that they raise. We will also examine a range of responses
23 to such concerns including self-regulatory efforts being
24 developed by industry.

25 In session two, which begins tomorrow, we revisit

1 the privacy issues posed by the online marketplace. As I
2 mentioned, we have refrained from acting on the concerns we
3 uncovered in last year's workshop because we believe that the
4 preferred initial approach in this area is to give industry
5 a chance to develop self-regulatory schemes and technology
6 that would address those concerns.

7 We hope to learn about progress in this area since
8 last summer and about how effectively current efforts
9 address privacy concerns. We will also explore the
10 burgeoning practice of marketing by means of unsolicited
11 commercial E-Mail, and we will review a variety of responses
12 to the concerns that it raises.

13 Session three begins on Thursday afternoon. Last
14 year's workshop identified the special privacy concerns
15 raised by the online collection of information from and
16 about children. Now it's time to learn about current
17 practices and the progress made by industry through
18 self-regulation and technology to address those concerns.

19 We believe there is a special obligation to protect
20 children in all commercial media. Traditional Federal Trade
21 Commission enforcement supports that view.

22 The developing online marketplace with its unique
23 interactive capabilities presents novel challenges to both
24 industry and the Commission to meet this obligation.
25 Commission staff will analyze the week's testimony and

1 comments filed and will prepare recommendations to the
2 Commission.

3 I expect that we will address at least some of the
4 issues discussed this week in the report to Congress. I
5 have a high regard for all the participants in this
6 important undertaking.

7 Your contributions have been extremely valuable. It
8 will be our task to digest all that we learn from you this
9 week, and I look forward to a lively and informative
10 discussion.

11 Welcome and thank you.

12 (Applause)

13 MR. MEDINE: Good morning. I'm David Medine,
14 Associate Director for Credit Practices at the Federal Trade
15 Commission. I'd also like to introduce a number of
16 commissioners who are here today: Commissioner Azcuenaga,
17 Commissioner Steiger, Commissioner Starek, and Commissioner
18 Varney. We are pleased to have the Commissioners here to
19 join in today's discussion.

20 I am going to provide an overview of the workshops
21 and discuss some of the conceptual issues we are going to be
22 focusing on in terms of how data flows from consumers to
23 information gatherers to information users.

24 First I'm going to discharge everyone's
25 responsibility this week by giving a disclaimer for any FTC

1 commissioner or staff member who speaks during the week that
2 their views do not necessarily represent those of the
3 Commission or any of the Commissioners.

4 As Chairman Pitofsky indicated, we will have three
5 sessions this week. Today, the first session is the
6 database study. Tomorrow we will be looking at consumer
7 online privacy as well as through Thursday morning, and
8 picking up Thursday afternoon through Friday we will be
9 focusing on children's online privacy issues.

10 Today's session arose from the so-called LEXIS
11 P-Trak flap which raised a lot of concerns about the
12 availability of information about consumers in databases.
13 There is a lot of misinformation as well as some accurate
14 information that was transmitted.

15 But it did highlight that consumers are oftentimes
16 not aware of these databases, what kinds of information are
17 contained in them, and their ability, if any, to control
18 that information.

19 The Senate Commerce Committee and some other
20 Senators have asked us to take a look at this issue and
21 report back to Congress. Our focus today is on look-up
22 services; that is, databases that are used primarily to
23 locate individuals.

24 Next, tomorrow and Thursday morning we will be
25 focusing on consumer online privacy. This will be a

1 continuation of our two-year effort to try to foster
2 self-regulation and technological developments to address
3 consumers' privacy concerns.

4 We learned two years ago that privacy was a critical
5 issue for consumers on the Internet. And we also heard from
6 industry that the best solution was self-regulation. We
7 tried to foster that and facilitate that over the last two
8 years. This week will be a chance for industry to report
9 back on its accomplishments.

10 We're also going to be focusing on children's online
11 privacy issues, which are a very important part of the
12 Bureau's privacy initiative.

13 We are going to be assessing the special risks posed
14 by collecting information directly from children and the
15 developments to date to protect children on the Internet.
16 We're also going to focus on the role of parents, notice and
17 choice in terms of information collection from children.

18 I just want to go over the format of the sessions
19 this week. We received comments from many participants. We
20 have had a chance to review those comments. We're going to
21 spend relatively little time on demonstrations and almost no
22 time on prepared remarks.

23 And instead we look to this week as an exchange of
24 views and opportunity for staff and Commissioners to
25 question the participants and to develop the record to get a

1 better sense of the state of affairs regarding consumer
2 privacy.

3 A couple of housekeeping matters. Coffee and snacks
4 are available upstairs on the top floor, the seventh floor
5 at the newly reopened Top of the Trade. I encourage all of
6 you to make ample use of that facility during the week.
7 There are also bathrooms and phones outside of each of the
8 meeting rooms.

9 There will be staff with pink badges around
10 rooms 332, 432, and 532. Please go up to them if you have
11 any questions about any matter no matter how trivial. There
12 are also a list of restaurants on the table outside during
13 breaks.

14 And if you want to be on our privacy mailing list,
15 there are pink cards outside. Feel free to pick those up.
16 And likewise there are phones available for local calls.

17 Just to put you on notice in terms of privacy
18 concerns, this session is being taped and transcribed. We
19 believe it's open notice and choice. And so if you don't
20 wish to be taped and transcribed, don't say anything.

21 This session is also being cybercast on the
22 Internet. And so people around the world have a chance to
23 listen in on us as well as an opportunity to review the
24 record afterwards. As you can tell, these sessions are also
25 being videotaped.

1 The record will be kept open for most matters until
2 July 14th so if there are issues that are raised today that
3 are novel that were not addressed in previous comments, we
4 are going to encourage participants and others to submit
5 comments to us through July 14.

6 The database study, which is really just starting
7 today, may have a longer comment period depending on, quite
8 honestly, what we learn today and how full a record we
9 create.

10 I want to focus conceptually on how information
11 flows to get a sense of what is the appropriate role of the
12 marketplace and governing information flow and where does
13 government fit in protecting consumers' privacy.

14 Information of course in the first instance flows
15 from a consumer to a data manager. And that data manager
16 could be a Web site, it could be a merchant, it could be a
17 credit card issuer who gathers information directly from a
18 consumer.

19 In theory the marketplace can operate, and that is a
20 consumer can shop around and choose which firms offer the
21 best privacy policies. Those firms again in theory can
22 provide notice to the consumer about how they're going to
23 use the consumer's information and the consumer
24 can be provided choice as far as how that information is
25 going to be used.

1 Of course, the information can be used in a number
2 of different ways. It can be used to fill orders for
3 merchandise or services the consumer is purchasing. It
4 could be used to target subsequent advertisements to the
5 consumer, or it could be sold to third-parties for their use
6 in marketing to the consumer as well.

7 Again, if there is a marketplace that's operating
8 effectively, consumers can shop around for firms that have
9 the best privacy policies. And firms will in fact compete
10 to offer the best privacy policies. And in that way
11 consumers' privacy will be protected through marketplace
12 forces.

13 And what we also find and our experience is that if
14 business has failed to respond to consumer privacy concerns,
15 it will hinder development of the marketplace. And one of
16 the things we will be examining this week is the extent to
17 which electronic commerce may be hindered by firms failing
18 to offer consumers privacy protection as they do business on
19 the Internet.

20 But data flow may not always take place directly
21 between the consumer and the information gatherer. It may
22 oftentimes be a collection of information about a consumer
23 without that consumer's knowledge or consent.

24 This can occur in a number of ways that we will be
25 exploring during the week. There are ways to track the

1 consumer in a hidden fashion as they proceed through the
2 Internet.

3 There's also a chance online or offline to merge
4 databases so that they may gather a lit bit of information from
5 the consumer and add demographic information or information
6 from other databases to create a more complete profile about
7 the consumer when the consumer did not authorize that full
8 collection of information.

9 We will also hear about cookies which have been
10 commonly talked about in the press, which is a way of
11 tracking some information about consumers as they proceed
12 from Web page to Web page.

13 This gathering of information can take place, as I
14 said, as you travel through the Web. There are ways of
15 finding out who you are, what you bought, what Web sites you
16 visited even if you don't want to voluntarily provide that
17 information to others.

18 We are also again through the week going to focus on
19 the special relationship between consumer gatherers and
20 children because of concerns of children's ability to
21 consent to information gathering and not necessarily understand
22 the consequences of providing personal identifying
23 information to outsiders.

24 We are going to focus on the role of parents
25 intervening between children and information gatherers in

1 terms of providing consent or supervision as information is
2 collected from children, particularly on the Internet.

3 We will also consider whether children at certain
4 ages should not, and this is really the subject of parental
5 involvement, but should still have their data protected by
6 those who gather it from them.

7 But information flows not only directly from the
8 consumer to a data manager, but there is also a subsequent
9 flow past the data manager to third-parties. And these
10 include databases such as credit bureaus, look-up services,
11 and direct marketing lists.

12 The question is what is the relationship between the
13 consumer and those third-parties, and the answer is the
14 consumer does not have a privity or direct relationship to
15 those subsequent information gatherers.

16 The question then is how does the marketplace
17 operate if the consumer doesn't have that relationship? And
18 the answer is that for the most part it's not an effective
19 marketplace because the consumer can't choose to shop around
20 for which credit bureaus, look-up services, direct marketing
21 lists they end up on.

22 Thus, there is the need in that marketplace for
23 self-regulation, technology, or failing both of those
24 governmental regulation. We'll also learn today that
25 information flows in a lot of different ways and every day

1 there are new ways that information moves around. So our
2 job becomes all the more complicated in trying to protect
3 consumers' privacy as they move around.

4 Less than a month ago President Clinton himself
5 spoke about the concerns that we are raising today. He
6 said, "Technology should not be used to break down the wall
7 of privacy and autonomy. Free citizens are guaranteed and
8 free society. The right of privacy is one of our most
9 cherished freedoms. The society has grown more complex and
10 people have become more interconnected in every way.

11 "We have had to work even harder to respect the
12 privacy, the dignity, and the autonomy of each individual.
13 Today when marketers can follow every aspect of our lives
14 from the first phone call we make in the morning to the time
15 our security system says we have left the house, to the
16 video camera at the toll booth and the charge slip we had
17 for lunch, we cannot afford to forget this most basic
18 lesson.

19 "As the Internet reaches to touch every business and
20 every household and we face the frightening prospect of
21 private information could be made instantly available to the
22 world, we must develop new protections for privacy in the
23 face of new technological reality."

24 The kinds of protections that President Clinton was
25 talking about are the kinds of things we are going to be

1 focusing on this week. As we said and Chairman Pitofsky has
2 said, our real emphasis over the past two years has been to
3 focus on self-regulation.

4 Of course we'll hear a lot about self-regulation
5 today as well in the context of databases. Self-regulation
6 can take a number of forms. It can include fair information
7 practices or company values.

8 It can take into account changing technology but
9 apply those values to new information sources and uses. It
10 can also be very specific rules about how information is
11 used by a particular company. And again these practices can
12 take place and restrictions of principles on an industry
13 level or on a firm level, as well.

14 As we evaluate self-regulatory efforts this week, we
15 are going to be looking at the scope of practices that are
16 covered by those self-regulatory schemes, the number of
17 firms in that industry that are subject to those principles,
18 and whatever enforcement mechanisms that are available to
19 make sure that firms abide by those self-regulatory
20 principles.

21 We are also going to look at technological
22 developments which offer the opportunity to power consumers
23 themselves to exercise choice or parents to exercise control
24 on behalf of their children.

25 Now, these technology schemes don't operate in

1 isolation and they sometimes may require a self-regulatory
2 commitment on the part of the information gatherer to abide
3 by the use of the technology and honor consumers'
4 preferences expressed through their technology.

5 There are also technologies available that allow
6 consumers to surf the net anonymously, which provides the
7 ultimate form of privacy. And lastly, we'll focus on the
8 role of government to see if the marketplaces that I
9 discussed earlier are working or if there are failures in
10 the marketplace and a need for government intervention.

11 We will work on the role of the government and
12 industry who can together work to educate consumers
13 and businesses about information practices. We will also
14 look at how we protect children both online and offline.

15 I want to now turn to a number of demonstrations.
16 We thought it would be useful to start off the day with the
17 opportunity to give folks a chance to see how some of these
18 look-up services operate and then go on to a discussion of
19 first where does information come from, how is it used, and
20 what controls might be in place to govern access to that
21 information.

22 So I will turn now to Karen Welch who is with
23 LEXIS-NEXIS. She is a Strategic Account Consultant in the
24 National Information Services division of LEXIS-NEXIS.
25 She's been with LEXIS for more than a dozen years.

1 MS. WELCH: Yes, and I started when I was 16. Not
2 true.

3 We just need a minute to set up. And I would like
4 to point out that my presentation is part of, is all
5 included in the handout that you have. The title is the FTC
6 Workshop with the date on it. So if you don't have one,
7 they are outside the room. Everything that I'm going
8 through is included in that handout.

9 Good morning. On behalf of LEXIS-NEXIS I want to
10 thank you for giving us the opportunity to explain our two
11 people locator services; P-Trak and P-Find. I'd like to
12 begin by telling you a little bit about our company.

13 LEXIS-NEXIS pioneered the field of computer-assisted
14 legal research back in the '70s. We are the largest
15 commercial database service. What do I mean by large?
16 LEXIS-NEXIS has over one billion documents. We have over
17 7,000 databases. Fortunately for you I'm only going to talk
18 about two today, P-Trak and P-Find.

19 LEXIS-NEXIS, to distinguish our services from others
20 that you will hear about during the course of this week, is
21 a deep research service. And what that means is that we
22 have massive amounts of information.

23 The user can then drill down and refine their search
24 to get a manageable or reasonable set of documents on a
25 particular issue that will help them in their research or to

1 actually find the one document that they need. I will
2 illustrate that shortly.

3 I also want to point out that our customer base, of
4 course we started, we grew up in the legal community so it
5 includes the legal community, but also besides legal
6 community we also have customers that are business
7 professionals and government professionals.

8 The services that I will talk about, P-Trak and
9 P-Find during the demonstration, I will talk first about
10 data elements in each service. I will give then three
11 specific applications on how these services can benefit a
12 legal, business, or government professional and enhance
13 their research. I will also talk along the way about how a
14 new customer subscribes to LEXIS-NEXIS.

15 Let me begin with the P-Trak database. If a user
16 were to sign on to LEXIS-NEXIS and go into the P-Trak
17 database, a sample record would look like this. And I want
18 to emphasize in the interest of privacy that all the sample
19 documents that I am covering today and that are included in
20 your handout are mock-ups. These do not represent any real
21 people or real records.

22 I'm going to zoom in on the data elements contained
23 in the P-Trak service. In order for a record to exist, two
24 data elements need to be included, a name and current
25 address. In addition, other possible data elements include

1 other names.

2 In this case the name at the top of the screen is
3 Jamie Easter; other names, Jamie Smith. What does other
4 names mean? It could be a variation of a name, for example,
5 Jonathan or John. It could be a married name or the maiden
6 name of the individual. Not the maiden name, the maiden
7 name of the mother of that individual.

8 Also, if available, up to two previous addresses
9 will also be included. The month and year of birth is
10 included, and telephone number if available. The last data
11 element, on file since, represents the date that this
12 document or this record was created.

13 A couple of things I want to point out about the
14 P-Trak database, we launched this database on June 1st of
15 1996. At that time we displayed Social Security numbers.
16 Ten days later, actually on June 11th we discontinued the
17 display of the Social Security numbers.

18 And I want to emphasize that. Because nowhere in
19 any document in this demonstration or if you were to go
20 online, nowhere is the Social Security number displayed.
21 However, there is a lot of value if an Social Security
22 number is known to a professional doing research, I will
23 demonstrate some applications for that shortly. Nowhere is
24 it displayed.

25 The second database I'll cover today that's a people

1 locator service is called P-Find. And I also want to
2 mention that both P-Trak and P-Find are white page type
3 directories.

4 P-Find contains information compiled from nationwide
5 white pages along with aggregate U.S. census data. I'll
6 zoom in on the data elements of a P-Find sample record.
7 Once again, this is a mock-up. It's not a real person or a
8 real record that exists.

9 Much like P-Trak, with P-Find two data elements must
10 exist; a name and a current address, or I should say a name
11 and an address. As you see in P-Find, a list of residents
12 at this address are listed, along with a month and year of
13 approximate birth, birth date.

14 I also want to mention that in P-Find and in P-Trak
15 that no one that is identified as being under the age of 18
16 is included in either database. The address is listed which
17 is believed to be the current address for this individual.

18 If available, a telephone number. And then other
19 possible data elements include homeowner probability, the
20 year that the residence was first listed in the phonebook,
21 and a month and year for the date of birth or the birth date
22 for the approximate head of the household. And also a
23 possible data element could be from the U.S. Census Bureau
24 data, media and home value information.

25 This is P-Find. I'll show some applications of

1 using these two services in a moment. I'd like to talk
2 about how a new customer subscribes to LEXIS-NEXIS. A new
3 customer goes through an extensive screening process.

4 As part of that process, the customer has to fill
5 out a subscription agreement. It contains background
6 information on that professional or that organization. Also
7 included on page two of the subscription agreement, the
8 customer would have to list the names of the professionals
9 who will be given authorized access for LEXIS-NEXIS.

10 We will then at LEXIS-NEXIS issue confidential I.D.
11 numbers for each individual who is authorized to access the
12 service. Also as part of the subscription agreement, there
13 is a reference which is highlighted in the box on the screen
14 noting the Fair Credit Reporting Act reference including
15 limitations imposed on use.

16 Once a user has an I.D., a confidential I.D. for
17 LEXIS-NEXIS the professional would then actually sign on to
18 the service using our proprietary software, and you can see
19 the icons at the top. They would see this screen, which
20 represents our main LEXIS-NEXIS menu.

21 It's from this menu that they would make their
22 database selection. In this case the people locator
23 services are contained in the finder library. The user will
24 select finder. And contained in this library under the
25 category of people locator you would see P-Trak and P-Find.

1 P-Trak contains over 324 million records. And you
2 may be asking why are there that many records? And that is
3 because more than one record may exist for an individual.

4 P-Find, on the other hand, covers over 111 million
5 names or records, I should say. The user would select
6 P-Trak. When the user selects P-Trak, they will see what we
7 call an automatic display file. This screen appears, and
8 note that there is another reference to the Fair Credit
9 Reporting Act on this screen.

10 Along with the update schedule for P-Trak, for
11 P-Trak this database is updated on a quarterly basis. And I
12 also may have failed to mention that both P-Trak and P-Find
13 we get from a third-party source, another source.

14 I will now move on to three specific applications
15 for using P-Trak and P-Find and the benefits to the legal,
16 business, or government professional in doing their
17 research.

18 In the first application, let's say that we are
19 trying to locate a beneficiary to a will that's being
20 probated in Virginia and all we have is a name and an
21 address that we figure is about five years old.

22 I mentioned earlier that LEXIS-NEXIS is a deep
23 research service. And in this first example, as well as
24 others, I will actually demonstrate what that means. In the
25 first example, the beneficiary's name is Paula Sparks. So

1 the user would type in a search on Paula Sparks.

2 In doing so, we have retrieved 137 records; not a
3 real manageable number of records. So the other information
4 known to us is the previous address. By also including that
5 in the search we will now be able to refine the search and
6 drill down and get one record.

7 In this record Paula Sparks shows up in the category
8 of others names. She also goes by Paula Adamly. Once again
9 I'd like to point out that other names include a variation
10 of a name, like Jonathan or John, a married name, or the
11 maiden name of the individual, not the mother's maiden name.
12 So it wouldn't be Paula Sparks' mother's maiden name, it
13 would be her maiden name if that's what it was.

14 Now that we have located Paula Sparks and we have
15 that one record, we have her address and telephone number
16 and now she can be contacted with the good news about being
17 the beneficiary to this will.

18 In the second example, let's say we're trying to
19 locate a child support obligor who is in arrears from a
20 court order issued in Michigan using P-Trak. And this is a
21 very important application.

22 In the area of, for example, a custodial parent who
23 is trying to, has sole responsibility now for child support,
24 would need to locate the noncustodial parent. And in this
25 case the noncustodial parent's name is Robert Jones, a very

1 common name. And he has moved out of the state.

2 So the lawyer or government organization charged
3 with enforcement could use our P-Trak service to try to
4 locate this individual. In this example I mentioned Robert
5 Jones. If you actually ran a search using a common name
6 like that in P-Trak, remember there are over 324 million
7 records, you would retrieve over 31,000 records.

8 I point that out because once again LEXIS-NEXIS
9 being a deep research service contains massive amounts of
10 information. The power of LEXIS-NEXIS with the flexibility
11 in search logic allows us to refine this search.

12 In this particular example, the month and year of
13 birth is known to the custodial parent. And so therefore
14 the lawyer or government organization, the professional in
15 one of those places can actually add the month and year of
16 birth to the search. By doing so the search has now been
17 narrowed to 26 documents.

18 The other information that is known is the previous
19 address. By adding the previous address, which is in
20 Maryland, we have now narrowed the search down to two
21 records. But the problem that the government organization
22 or the lawyer charged with enforcement has is that there is
23 no way to be sure which one of these records is the Robert
24 Jones that we are trying to locate.

25 In this first example or first document that we have

1 retrieved in this answer set, the person, Robert Jones goes
2 by Bobby Jones and is in Kentucky, or we believe he is in
3 Kentucky currently.

4 In the second document he also goes by Robert Dokes.
5 Now it's conceivable unfortunately in this kind of
6 application trying to find the child support obligor that
7 the person may have gone to great lengths to not be found
8 and may have changed their name.

9 So in this example I'll start from scratch. If the
10 Social Security number is known to the professional user,
11 that can be used in the initial search or as part of the
12 search. When we actually put in that Social Security
13 number, and I also want to just remind you that this is not
14 an actual Social Security number, by doing that we have
15 retrieved one record and it is the record that also included
16 the name Robert Dokes.

17 So in this example the lawyer or government
18 organization charged with enforcement now has a place to
19 begin to try to locate Robert Jones and he will then be made
20 to fulfill his family obligation.

21 I've talked in the first two applications about the
22 P-Trak service. I will move on now to the P-Find service.
23 It's also contained in the finder library under the category
24 of people locator.

25 Once again it contains nationwide white pages

1 information. It's a white page type directory along with
2 aggregate U.S. census data. The user would select P-Find.
3 Much like we experience with P-Trak, the user would see an
4 automatic display file which tells a little bit about the
5 database, including the update schedule. And for P-Find the
6 information is updated monthly.

7 In the last example using P-Find, we are trying to
8 locate a witness to an auto accident that occurred in late
9 1994 in Maryland. And this is actually a case where we have
10 an eye witness. And given that this is a personal injury
11 case which has taken a very long time to go to trial, you
12 can imagine the difficulty in trying to track down a
13 witness.

14 Given how mobile people are today, this particular
15 witness we know has moved, could have moved several times.
16 In this example, the user's name is Alan Crane. By typing
17 in Alan Crane, just like we did in P-Trak with a name
18 search, we have retrieved 29 records.

19 After reviewing these records, we determined that
20 document number seven is most likely the Alan Crane that is
21 our eye witness to the auto accident that occurred in late
22 1994.

23 The professional user now has a current, what we
24 believe to be a current address and telephone number and can
25 begin to contact Alan Crane about being a witness for this

1 trial.

2 That concludes the technology demonstration for
3 P-Trak and P-Find. And once again I want to thank you for
4 giving us the time to demonstrate and explain these two
5 databases.

6 And I know that 15 minutes was very brief in trying
7 to explain these two services. And any questions that you
8 have about these services can be directed during the
9 upcoming panel discussion.

10 There is one thing and it's very important that I
11 failed to mention. And it is that when we actually did the
12 search using a Social Security number that the record that
13 we saw never displayed. And I would go back a few slides
14 but in the interest of time I won't do that.

15 But if you look at your handout for that example on
16 Robert Jones, while we used the Social Security number as
17 part of the search, it never will appear or be displayed in
18 the record.

19 Thank you again.

20 (Applause)

21 MR. MEDINE: Okay. Thank you, Karen. It's very
22 helpful to get a concrete sense of how these look-up
23 services operate. We appreciate you coming here and giving
24 us them.

25 Now we're going to hear from Timothy Dick of

1 WorldPages. He's the president and CEO. And WorldPages is
2 an online white pages directory service. Mr. Dick
3 co-founded the company in November of 1995 and
4 has also helped to launch Privacy Assured, the Internet's
5 first privacy coalition.

6 Thank you.

7 MR. DICK: Thanks, David.

8 As David mentioned, I am President and CEO of
9 WorldPages. WorldPages is the nation's most comprehensive
10 white and yellow pages service. We are a consumer service.
11 Unlike LEXIS-NEXIS which is a professional service, we are a
12 consumer service.

13 We are freely available to anyone on the Web at
14 www.worldpages.com. I'm going to talk to you this morning
15 not only about WorldPages but more importantly about the way
16 this industry looks and perhaps to try to call some
17 distinctions between this type of service, a consumer white
18 pages service, and some of the other services that are
19 available on the Internet.

20 First of all I'd like to ask a question of the
21 group. How many people in this room have unlisted phone
22 numbers? Raise your hands.

23 Two people. Let's try again. How many people in
24 this room have unlisted phone numbers? The answer ought to
25 be about 33 percent; 50 percent in Washington, D.C. and 50

1 percent in California. So you're holding out on me.

2 That's an important fact. Because one of the things
3 that we believe in the white pages industry should be a
4 common denominator is that information published and freely
5 available on the Internet should mirror that which has been
6 publicly disclosed in some fashion.

7 So if you have not disclosed your name and address
8 or some portion of that in a public arena, then we don't
9 think that the industry has a right to go ahead and publish
10 that generally. We think this industry is a substitute for
11 other commonly available media; telephone books, CD ROMs,
12 maps and the like.

13 The second question: How many people in this room
14 know what reverse search or reverse look up is?

15 How many people like the fact that their names might
16 be findable from things like addresses and telephone
17 numbers?

18 Well, there's my volunteer because before this
19 session I was looking for a volunteer since we are running
20 live on the Internet and these aren't fake searches.

21 I thought so. That gives you a sense of the second
22 distinction here. We believe that publicly disclosed
23 information is very different from public records, despite
24 the fact that legally those are available.

25 And we think that publicly disclosed information can

1 be used in ways that are not necessarily entirely
2 productive. And I do want to make a distinction here for
3 the LEXIS-NEXIS and other folks that we are a consumer
4 service, we are not a professional service.

5 So there are instances as obviously demonstrated
6 with those kinds of searches when other types of information
7 are valuable. But this is a consumer service that's
8 available to millions. We have received millions of
9 searches every month.

10 Many of them are very gratifying. We get
11 testimonials all the time from people who have found lost
12 family members, people who have been reunited with their
13 families prior to weddings and a whole variety of other
14 things, which is very gratifying. But at the same time we
15 are not a professional service.

16 In a world, as President Clinton said, which is
17 increasingly connected, there are two bad outcomes. One is
18 a world with no directories where you can't find people, you
19 can't find inquires, and you can't find businesses. Because
20 without them it would obviously harm commerce and it would
21 harm our increasingly mobile lifestyle.

22 The second bad outcome is that every scrap of public
23 record be immediately made available and published in a
24 fashion such as the Internet and made available broadly. We
25 think there needs to be a happy medium struck within that,

1 and particularly on the consumer side look to a combination
2 of self-regulatory efforts as well as possibly in some cases
3 government regulation to help bound those new situations
4 governed by new economics.

5 So let's go live on the Web and actually do a couple
6 of demonstrations. What you see here is--the world's
7 smallest mouse pad, great--is actually a screen of
8 WorldPages. And you can see a search form, which I can go
9 ahead and put a name in. I can put a last name in or a
10 first name and a city and a state. And I could come up with
11 a phone number just as it's come out of the phone book, no
12 more, no less.

13 If it's just an initial and no address, that's the
14 way you'd see it on this screen. So let's put in a very
15 generic, put in, J. Smith from Washington, D.C. And we
16 should get a list of the John Smiths here. So this is a
17 classic example of a name search just like you can do in
18 your local telephone directory or distantly in another
19 town's telephone directory.

20 Don't try this live at home. I should get a result
21 back momentarily. There's 38 John Smiths in Washington,
22 D.C., some of which have addresses, also which have
23 addresses, some don't. So this is an example of a
24 WorldPages type name search.

25 Now the principles that you have seen here are not

1 unique to WorldPages. There are other services ranging from
2 WhoWhere to Yahoo and Excite! which are governed by similar
3 types of internal policies.

4 There are a couple of searches, however, such as
5 PC411 which allow you to do reverse searches based on
6 telephone number. Again just looking at some of the people
7 from the agenda in this room, it's pretty interesting what
8 you can do with this.

9 For example, you can find out people who live at the
10 same address as somebody by a phone number. By looking up a
11 name, dragging that phone number, plugging the phone number
12 back into a service such as PC411, you will find out who else
13 lives at that address.

14 That's an interesting kind of a search. You find
15 out types of information that's not commonly available to
16 you with normal resources. So again, I think this is an
17 example of a service that may not have thought carefully
18 through some of the implications and the consumers' fear for
19 this type of thing, again very different from the
20 professional media.

21 And finally there is one other remaining service
22 that allows a reverse search by address. But within the ten
23 major consumer search services, white pages type search
24 services, there are only two today which allow any type of a
25 reverse search.

1 This time last year all but one allowed reverse
2 search. And none were so careful as they are today about
3 using pure telephone records and other publicly disclosed
4 information as sources of listings. So we now have a ratio
5 of two to eight acting within the set of guidelines
6 developed within the industry by each individual actor.

7 We see this as a model for an industry which is
8 well on its way to effective self-regulation and we believe
9 that that trend will continue. For those who would like
10 copies of slides and other positions, they are available on
11 the front table.

12 (Applause)

13 MR. MEDINE: Thank you, Tim, for giving us an idea
14 of what the online world is looking like. Next I'd like to
15 introduce Mark Hanna, who is the President of WDIA
16 Corporation. Mark has been affiliated with the credit
17 reporting industry and the online information industry since
18 1981.

19 In 1988 he co-founded the National Credit
20 Information Network which expanded to provide online data to
21 clients on a nationwide basis. Mark.

22 MR. HANNA: Thank you. On behalf of WDIA
23 Corporation, I'd like to thank you for allowing us to
24 present ourselves here today. And in keeping with the
25 scheme of things, WDIA Corporation is a company that

1 services mostly professionals but has expanded to allow some
2 searches to the general public or the people on the Internet
3 who would wish to purchase some of our searches in a trial
4 basis.

5 It's a service that allows the general consumer to
6 have access to certain types of information, a couple of
7 which I will demonstrate here in a couple of minutes. On
8 the screen you will notice this is our home page at
9 www.wdia.com.

10 And it's a rather simple home page. But one of the
11 things I'd like to point out right at the bottom of the
12 page, which even though it's a short page, it doesn't show
13 as well on this screen, we have a place called privacy
14 concerns. And we actually have a published policy on the
15 types of information that we gather from our Web visitors,
16 visitors who come to our site if they like to see our policy
17 can merely click on it and rather quickly they will get our
18 Worldwide Web policy.

19 This states how we would use any information we
20 might gather from them with or without their knowledge and
21 what types of information that we could gather from them,
22 which really is only the IP address and the manufacturer of
23 their Web browser.

24 It also states that we don't use cookies, which will be
25 later on in these demonstrations. And we believe it's

1 important for a company to tell the individuals exactly what
2 type of information they will be gathering on people who
3 come by their Web site.

4 Now, our business is, I would say, the majority
5 are professionals such as P-Trak. But the few searches that
6 you can do, for example, tracing a Social Security number to
7 find addresses similar to the P-Trak, but in this case in
8 this search it would be merely a Social Security number for
9 an entry criteria.

10 Now the entry form I'm showing you here is the entry
11 form that a general consumer could use. And it should come
12 up here any time. Now, the general consumer would be able
13 to use this form to look for a Social Security number and,
14 here we go, and it takes about one to three minutes. And
15 the cost is \$13.40; it's clearly displayed.

16 A member, one of our professionals, could get the
17 same search for less money. It pays to be an actual member
18 or to be a professional. And everything about our form
19 indicates major membership advantages and so forth. This is
20 a marketing tool for us, plain and simple. But then again
21 some people need this information.

22 You put a Social Security number in here and then
23 you would pay for it as an individual by credit card. You
24 put your name, your address, city, state, zip. We do keep
25 log files, audit trails.

1 The credit card is verified online instantly with
2 Visa/MasterCard clearing. One of the points that was
3 brought up here today which I find interesting is the
4 ability to surf the net anonymously. There are services out
5 there like Anonymizer.com which allow people to search the
6 net and absolutely 100 percent hide where they're coming
7 from.

8 Their IP address, which is their Internet address,
9 would be masked. Our system is a little smarter than that.
10 We won't accept from the general public searches ran through
11 Anonymizer type services. If you were to try to submit with
12 the Anonymizer we would reject the request and not even
13 check the credit card and perform some other security issues
14 on it.

15 This is to protect the fact that we do have an audit
16 trail. We don't want somebody coming in and having
17 absolutely no audit trail on any of these searches. Now,
18 when you submit these, even though they're being submitted
19 over the Web you will notice that this form actually is a
20 form on our nonsecure server.

21 However, it submits the data to a secured
22 transaction server using secured encrypted technology. So
23 all the data sent back, the credit card and so forth, is all
24 encrypted. If you were to submit this form, it actually
25 goes to an encrypted server. So the information that you

1 put in, your credit card, your name and so forth is all
2 encrypted.

3 Now, the form that a member would use is different.
4 This has the name, address, credit card, E-Mail address and
5 so forth. If you were to go to a member and the member
6 searches, you would back up and you could go to the list of
7 services -- well, that's good. Let's reload this one.

8 All right. As it's reading the file, the member
9 searches are different. Our members go through again quite
10 an elaborate screening process. We are a credit reporting
11 agency and we do have two different levels of membership.
12 We have members who do not have access to information which
13 is federally protected under the Fair Credit Reporting Act.

14 We have members who can get that access. But those
15 members, they go through quite an elaborate screening
16 process. We send representatives to their offices and
17 actually do on-site inspections and so forth.

18 The list of services for members would be different.
19 And the members' form looks different for a Social Security
20 number search. And here is the member form. If you will
21 notice, on a member form there would be a user name and
22 password. There is no MasterCard/Visa name such as this
23 because they've actually been prequalified as members.

24 In addition, there are three different sources of
25 Social Security numbers, searches where a consumer on the

1 Web would only have access to one source. And if you notice
2 the price is a lot different, 8.40 instead of 13.40.

3 Now, some Social Security tracing products actually
4 fall under the Fair Credit Reporting Act and would require a
5 member to have FCRA access granted by us in order to get
6 that data. And that specifically is our source number two.

7 That's because the report that would be returned
8 would include a place of employment, having that date of
9 birth and employment data, the employment data would fall
10 under the FCRA.

11 So therefore we require that individual permissible
12 purpose be selected and then again confirmed by our members
13 to grant access if they desire that type of search for
14 source number two.

15 Now, on a social search, the Social Security number
16 isn't actually a problem as far as presenting it. When they
17 would submit the search, they would get this screen back in
18 about a minute. They would say the search has been
19 completed and they would click here and it would go on a
20 secure server and show them a copy of what they would get
21 back.

22 Now this is a sample search; it's not a real one.
23 And it shows the date requested and when it was processed, a
24 session I.D. There is the social they were looking for.
25 Now, the top social where it says scanning source one for a

1 social, that's the social they input.

2 We did implement a Social Security fraud prevention
3 program where all of the data given back is the last four
4 digits of the social are truncated to Xs on our searches.
5 Now, even though this is two Xs, obviously the person that
6 ran this search knows that since it's a social search that
7 was the only criteria they entered is the entry criteria,
8 that is the social that they got back.

9 We give them then new names, addresses, former
10 addresses and so forth, very similar to the way P-Trak, and
11 the date. The date is the date that it was last reported at
12 that address, giving them some sense of currency as to that
13 location.

14 Now, our Social Security fraud prevention program
15 comes more into effect on the second type of search.
16 The second type of search we call the address identifier
17 identifier update search. And the address identifier update
18 search allows you, capital letters, the address
19 identifier update search allows you to enter different
20 criteria.

21 Instead of a Social Security number on a search like
22 this, and this is our, as soon as it's done here, it was
23 lightening fast this morning and it got a little slower for
24 us, it allows you to enter information such as a name,
25 first, middle, last, a street address, city, state, zip, and

1 a Social Security number as far as entry criteria.

2 The fields which are listed in red are required
3 fields. The fields listed in black are optional fields.
4 That's based on our color legend. Now, again one of our
5 members who's gone through the screening processes, if they were
6 able to have access to FCRA information they could get employment
7 data back as far as a place of employment.

8 If they do not have access to FCRA protected data,
9 they could not get access even if they asked for it. Our
10 system automatically keeps track of their level of privilege
11 and would not give them that data under the FCRA.

12 In addition to this, the data they would get back,
13 in about a minute they'd get a screen like this after
14 submitting a search. And when clicking it, here's a sample,
15 and the sample is up. And you notice that this has also the
16 Social Security number X'd out.

17 If they did not give us a Social Security number,
18 they're not going to get back the full Social Security
19 number. They'll only get the first five out of nine digits,
20 which lets them know that they probably got the right person
21 but it won't give them the full thing.

22 We have recently introduced on other types of data
23 that we would provide to the consumers over the Web a date
24 of birth protection program. On any piece of data coming
25 back we X out the day of the birth and only give the month

1 and the year.

2 There was a time when we gave back the entire date
3 of birth but we no longer give back the entire date of
4 birth. We only now give months and year under our date of
5 birth fraud prevention program.

6 Now, if we go back to our Web site, to our home page
7 which was right here, you will notice that we have in our
8 topics press releases, privacy, and policy statements. We use
9 this Web site and this information age to educate our
10 professional users, our professionals that are members and
11 use this. They can go to the Fair Credit Reporting Act.

12 By clicking on the Fair Credit Reporting Act, they
13 can go to a brand new version of the recently amended Fair
14 Credit Reporting Act and see that as it compares to the
15 original Fair Credit Reporting Act.

16 The original Fair Credit Reporting Act would be in
17 black. The original that no longer applies would have lines
18 drawn through in black and the new FCRA would be in red.
19 These are all ways that you can use policies and procedures
20 to help educate both your professional and the consumer who
21 could obtain this data as to its legitimate and permissible
22 uses.

23 And I think that those are the two searches I was
24 here to implement today and thank you very much for giving
25 us your time.

1 (Applause)

2 MR. MEDINE: Thank you, Mark. Again a very helpful
3 insight into the ability to look up individuals on the
4 Internet. Our last speaker is Carol Lane. And I want to
5 apologize that she is not on the agenda but she is here
6 today and we appreciate that.

7 She spent a decade designing databases and systems
8 in medical and consumer credit fields. She opened her
9 research firm TechnoSearch in 1993. And she served on the
10 advisory board of the Special Library Association and on the
11 Board of Directors of the Association of Independent
12 Information Professionals. She just recently published a
13 book called "Naked in Cyberspace."

14 (Applause)

15 MS. LANE: Hi there. While the Bookmarks are
16 getting loaded I will just point out I'm not a vendor of any
17 of the products that I am going to show you. So I don't
18 represent their products or any of the services or anything
19 like that.

20 I am an information professional. I do research for
21 a living. And so I have been asked to demo some of the
22 systems that professionals such as myself use as well as
23 the public and in this arena, particularly looking
24 at systems that are available just on the Internet, not on
25 any of the proprietary systems. Okay?

1 So anything I show you up here is from more the
2 consumer perspective or the researcher's perspective and not
3 from the vendor. Okay.

4 The first service up there, this is Know X. This is
5 a service of Information America, which is a public records
6 vendor. Many of the public records vendors previously were
7 available through proprietary systems, you know, by
8 subscription. This is one of the services that now is
9 available to the public through a credit card access. So
10 you don't need to subscribe to the system to do many of the
11 searches.

12 It's skipping a little too fast. Just a moment.
13 Okay. I'll go back into Know X. If you look at some of the
14 services that are free searches on here, you've got the
15 adverse filings. And that's pulling up. Along the edge
16 here you can see some of the services that are available as
17 free searches on this system currently and some of the other
18 searches that they have available on the Internet.

19 The Information America has other additional
20 searches that are available through the subscription
21 service, but these are the ones that are available to the
22 public. You can look down the edge here to see what the
23 different searches are, what's available, lawsuits,
24 judgments, UCC filings and so on.

25 So these are typical offerings of a public records

1 vendor. The only difference is that these are now available
2 on the Internet without subscription. As opposed to, this
3 is another public records vendor which is CDB Infotek. CDB
4 Infotek it using the Internet currently more as a marketing
5 tool.

6 They're listing information as to what they have
7 available but they're not offering the searches via the
8 Internet without a subscription. You still need a
9 subscription, however you can access, at the subscription
10 base you can access their service using the Internet as an
11 access tool. But you do still subscribe to the system
12 before you get actual searches.

13 One of the things that CDB Infotek also has put up
14 is a missing and exploited children's resources site. We
15 see those sites coming out of police departments and out of
16 parent organizations and so on as well. This is just one of
17 the Internet sites that has pictures of children and
18 information about them.

19 Some of them also include age progressions. Some of
20 them also include a picture of the suspected abductor,
21 especially when it's something like a family member or
22 family friend. So that information is also showing up on
23 the Internet.

24 We've had some demos of some of the people finder
25 type of services that were showing up on the Internet. Some

1 of them have access just by name so that you're only going
2 to find the people who are listed or the people in the phone
3 book.

4 Other ones use other resources. They buy databases
5 from mailing list vendors and so on. So that sometimes you
6 can find unlisted people, the unlisted phone numbers because
7 they came from a source on which the person may have
8 volunteered the information; they may have filled it out on a
9 warranty card or something else, but they may not be listed
10 in the phone book and they may be listed on the Internet
11 phone book.

12 Usually most of them that you look at on the
13 Internet give you options for other phone books to look in
14 also. And here is a whole list from Netscape and Yahoo, a
15 whole list of different telephone books that you can use to
16 find people.

17 Some of them you can use a date of birth to find
18 them so that you can narrow down your list when you're
19 trying to find a family member or old friend or whoever. If
20 you know their date of birth, some of them have an age
21 range. Some of them allow you to broaden or expand your
22 search by a city or a state or search nationally. And some
23 of them are international in scope.

24 Again, these are all services though that are
25 nonsubscription based, that anybody in the Internet can

1 access. And here's another, the Populus Intelligent People
2 Locator. It doesn't mean the people are intelligent. Okay.

3 Some of these also have directories that they'll
4 point you to such as college or university directories or
5 other searches such as using a date of birth. And here's
6 Alumni Net. This is another variety of directory, another
7 people locator that's used when you're trying to find people
8 who attended an institution.

9 And if you go into any of these states, then you can
10 go down, you know, from there to university by university
11 and so on, get lower and lower levels until you can locate
12 the people that either are part of the alumni association.
13 Sometimes that's who's put it up. Sometimes the school
14 itself or sometimes individuals have done it on their own
15 through trying to locate old friends.

16 There's also other personal information that's
17 coming up from government resources. And this is an example
18 of one of them; the State of Nebraska. There are many other
19 state directories showing up. Just a moment.

20 Some of the other, if you're trying to locate
21 anybody who is in a city, state, county, any level of
22 government, any federal government employee or anything like
23 that, there is a good chance that you could find them through
24 one of the directories that is put out by the agency.

25 This site in particular, this site has some of the

1 public records that the state is making available. Here's
2 private detective licensing, corporate and UCC searches, and
3 collection agency licensing.

4 So if I look at that I can check the licensing of an
5 individual. So that's a public record that is not fee
6 based; I can search it, private detective agencies, but I
7 could do it by individual name as well. So I can look them
8 up and it will list the name of the agency or the name of
9 the person. Okay.

10 Some of the other things that you can find on the
11 Internet about individuals, there are a number of recruiting
12 sites, another number of job employment opportunity kind of
13 sites that have resumes in them.

14 And so what a person may have put on their resume
15 sometimes is what they would also mimic putting on the
16 resume they'd send in. So sometimes you'll find things like
17 their date of birth, their employment history, their salary
18 history, their home address, things like that.

19 So you can find a lot of information that people
20 have volunteered. Now a lot of these sites are only giving
21 that information to people who sign up with that site. And
22 oftentimes those are not fee based; it's just a matter of
23 being an employer and saying yes, you know, I want to be
24 able to use your site.

25 Other times there is a fee base there. So that

1 varies from site to site. Okay. There's also expert
2 directories. Many universities you can find these
3 where if you're looking for an expert in a field, you can
4 use these sites to find, you know, a biologist or somebody
5 with experience in a certain field.

6 Well, the universities themselves are making those
7 searchable on the Internet so that if you're looking for a
8 person with a certain expertise, many, many places to find
9 those on the Internet. Also there's directories such as the
10 Martindale-Hubbell, which is an attorneys directory.

11 And when I look at that site, this is the site that
12 West also puts on the Internet. I used their
13 locator. And it says locate lawyer or other legal
14 professional by name. So when I did that I looked up
15 Johnnie Cochran and pulled up, you know, all of the awards
16 he's won and things like that. It's very easy to use.

17 So if you are looking for somebody, they don't have
18 to be in the public arena but just be in a professional
19 directory. Those professional directories oftentimes can be
20 used as locator services as well. Even if you don't know
21 where the person is but you know what profession they're in,
22 it's worth checking to see if there is a professional
23 directory that's being put up on the Internet.

24 Also mailing lists. As I said, mailing lists are a
25 good source for cross-matching information, creating larger

1 directories, enhancing telephone directories, that kind of
2 thing. And you can use the mailing list firms that market
3 on the Internet and that they have all the way down to, this is
4 one I picked for health that says people with particular
5 ailments.

6 So that this is just their marketing tool to
7 basically allow you to order a database of people that have
8 gastritis or have migraines or whatever. And you can, you
9 know, use that as a marketing tool. And that's what these
10 are typically for, but now they're also being merged in
11 other ways in other databases.

12 Skipping through some of these, just in the interest
13 of time since there are really so many different things when
14 it comes to people records. One of the new ones on here,
15 I'm pointing to sex offenders, that's going up in July,
16 going up next month where they're going to have pictures of
17 people who are sex offenders and their locations so you'll
18 know where they are in your community.

19 Even the FBI does it. Here's their ten most wanted
20 so that they're putting up information about ongoing cases
21 so that they can get the assistance of the public. The
22 Soundex reunion registry, which is a genealogical site. But
23 this one, I'm sorry, not genealogical, an adoption site
24 which is originally for birth parents and for children who
25 were adopted where they voluntarily register because they

1 want that contact.

2 Now people use it for other reunions as well, for
3 family members they can't find, friends, whatever. So that
4 there are many other sites for this type of thing, but the
5 ISRR is one of the largest.

6 Okay. Also for genealogical purposes there is the
7 surname list. The surname list allows people with a surname
8 to locate other people who are related who have that lineage
9 that they're researching so they can share their records.

10 And what it will give them is usually a list of all
11 the people who are researching that line and their
12 addresses. Sometimes their E-Mail address, oftentimes their
13 home address, phone number and so on so they can contact
14 each other and share records.

15 Again, it's for genealogical purposes. However,
16 genealogists are very good at finding live people too so
17 that sometimes they are good resources in that they do share
18 information about the living relatives.

19 If you're looking for information on anybody who is
20 in public office, there are many, many sites where you can get
21 their biography. Here is Sonny Bono's. And I just pulled him
22 up by the, I just went down the government, you know, what
23 branch of the government and so on. Just picked and went into
24 his site which is here. Then it has his biographical
25 information I could choose and so on.

1 So anybody who is in any kind of public office, great
2 source to get information on their voting history. Also
3 there's people who aren't even in the public office. If you
4 want to know -- oops, let me go back one.

5 If you want to know what somebody has contributed
6 to, which elections they have -- because I know Barbara
7 Streisand has contributed to a whole lot, she's a good
8 example in here.

9 But this could be anybody who had contributed to
10 different political causes and it tells you what they've
11 contributed so that you can search this by the candidate or
12 you can search it by the individual. So if you're
13 contributing funds to different causes or to different
14 campaigns that would be up there.

15 And I think that pretty much concludes the major
16 sites. There's many, many, many more and many examples.
17 And none of those have, none of these are examples of the
18 only such search. There's other companies that, you know,
19 or other examples I could have pulled up here.

20 (Applause)

21 MR. MEDINE: Thank you for that very educating tour
22 of the Internet. We are going to take a ten-minute break
23 right now and come back to talk in a little bit more detail
24 about where the information comes from for these databases.
25 Just to let some of you know if you don't know already is

1 that individual reference services have gotten together to
2 propose a self-regulatory set of principles, which is
3 available outside.

4 For those of you who are in room 432, I would
5 encourage you to pick up stickers on the way out. We are
6 limiting access for fire code purposes for this room. So to
7 indicate you can come back in, please pick up a sticker on
8 your way out. I'll see you back in about ten minutes.

9 Thanks.

10 (A short break was taken.)

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1 PANEL I: DATABASES--SOURCES AND ACCESSIBILITY

2 What information do databases contain? Where does it come
3 from? How are the databases accessed?

4
5 Martin Abrams, Vice President, Information Policy & Privacy,
6 Experian

7 Jerry Berman, Executive Director, Center for Democracy and
8 Technology

9 Gerald Cerasale, Senior Vice President, The Direct Marketing
10 Association

11 Tim Dick, President, WorldPages, Inc.

12 John Ford, Vice President, Privacy & External Affairs,
13 Equifax, Inc.

14 Robert Glass, Vice President, National Information Services,
15 LEXIS-NEXIS

16 Mark Hanna, President, WDIA Corp., National Credit
17 Information Network

18 Evan Hendricks, Editor/Publisher, Privacy Times

19 Blake Hogan, Founder, Hogan Information Services

20 Carole Lane, TechnoSearch

21 Oscar Marquis, Vice President and General Counsel,
22 TransUnion Corp.

23 Jack Reed, Chairman, Information Resource Service Company

24 Marc Rotenberg, Director, Electronic Privacy Information
25 Center

Eric Wenger, Assistant Attorney General, New York Department
of Law, National Association of Attorneys General

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1 MR. MEDINE: The next panel will discuss the
2 question of where do look-up services get the information
3 and who has access to that information once it finds its way
4 into a look-up service.

5 First I'd like to introduce to my right Steve
6 Silverman and Lisa Rosenthal from the Division of Credit
7 Practices who have been instrumental in putting today's
8 discussion together. I'd also like to thank Cynthia Lamb,
9 Randy Clark, Bruce Jennings, Nicole Branch, and many, many
10 other folks at the Bureau of Consumer Protection who have
11 arranged for our wonderful technical developments which so
12 far have gone very, very smoothly.

13 Questions will be posed this morning by
14 commissioners and staff of panel members. And again we will
15 be focusing on access to information unless anyone wants to
16 start with questioning, more general questions. Please.

17 COMMISSIONER VARNEY: Are all the last panelists
18 here at the table, David?

19 MR. MEDINE: I don't know.

20 COMMISSIONER VARNEY: You don't know. Okay.

21 MR. MEDINE: If not we can find them.

22 COMMISSIONER VARNEY: Yes, thanks. Because I have a
23 question for Tim. Where is Tim? Oh, okay.

24 MR. MEDINE: We'll wait until somebody closes the
25 door.

1 COMMISSIONER VARNEY: Right, right. Okay. First of
2 all, I think it's absolutely terrific that you guys have
3 taken such serious efforts to enhance and protect privacy.
4 You mentioned, I have two questions, two general questions.
5 You mentioned that there were approximately ten consumer
6 white page look-up kind of services that you had.

7 But yet when Carol put the list up from the outfit
8 Netscape there appeared to be dozens and dozens and dozens.
9 Can you talk a little bit about the difference between what
10 you called the ten and what Carol was putting up?

11 And then secondly can you talk about, you said
12 there's ten majors, and if I got it right you said eight now
13 do not do reverse search and two do. Can you talk about the
14 competitive advantages that you see flowing to either the
15 eight or the two from the differentiation in privacy
16 practices?

17 MR. DICK: Great questions. Thanks for the
18 clarification. There are approximately ten major white
19 pages type directories. And I want to make a distinction
20 here between a white pages type directory, a worldpages.com,
21 if you will, or whowhere.com and some of the other searches
22 such as a Know X or what have you.

23 The major white pages circuit services today focus
24 on what we call publicly disclosed information. That's
25 information such as might be gathered when you sign up for

1 phone service and the telephone company says how would you
2 like your listing to appear?

3 At that point you've got what's called opt-in
4 choice. You can opt about how your listing is provided or
5 made available or not. And during the course of time you
6 can make changes to that as well. It's a distinction again
7 that's important among the major white pages services is
8 they all allow delisting of the information even if you have
9 previously disclosed it.

10 The Know Xs of the world and the whole variety of
11 other services are combining publicly disclosed information
12 with public record. And there we see a very solid
13 distinction between the types of things you can do and the
14 types of searches you can do with public record information
15 rather than publicly disclosed information.

16 And historically public records have been searchable
17 through professional and very valuable services such as
18 LEXIS-NEXIS but not made generally available to consumers.
19 With some of the services that you saw listed on Netscape
20 and the Know Xs of the world and so forth, that boundary is
21 breaking down.

22 There are certainly certain situations where
23 consumers might like to find the sorts of information if
24 they are looking for lost family members and so on and so
25 forth where they may have previously gone through private

1 investigators.

2 But the barriers to entry are so low on the Internet
3 that you get sites such as stalker.com that are popping up.
4 And these sites use public records, publicly disclose the
5 information, even nonpublic record for instances that don't
6 even pretend to have, to me, legitimate usages.

7 And this I think is a real, the real challenge of
8 what role can the government play to help the three distinct
9 categories. One is publicly disclosed information services
10 like WorldPages, two is public records and professional
11 services like LEXIS-NEXIS, and finally what we call the
12 bad actors group, which are these astonishingly low barriers
13 to entry; as long as you're paying your 19.95 a month to
14 your local ISP you can maintain a Web page with whatever
15 information you see fit to put up there.

16 And if you happen to be a legal clerk that has
17 access to all sorts of public records, maybe you'd like to
18 build a record on some particular individual and put that on
19 the Web page. There isn't much stopping you from doing that
20 today. This is an enormous challenge that is before this
21 group, and in fact before the country today.

22 COMMISSIONER STEIGER: Tim, I was particularly
23 interested in one of the search tools. It said medical
24 mailing list. And it literally had the chronology as I
25 understood it of various afflictions; asthma, take one for

1 example.

2 I think most of us are under the impression that
3 medical records are a highly private piece of personal
4 information. Where would a mailing list be constructed,
5 from where would a mailing list be constructed that might
6 give you a mailing list for someone who potentially would be
7 interested in the subject asthma?

8 MR. DICK: I would like to defer this question.
9 This is so far outside my bounds of expertise that -- I can
10 certainly agree, a hundred percent agree with where you're
11 headed with this, but it's very, very far outside of my
12 bounds.

13 Obviously those types of information might be useful
14 for drug companies and other folks who might be interested
15 in promoting new cures and so forth. But again the
16 information can be obviously abused. I would invite
17 somebody else to make a comment.

18 COMMISSIONER STEIGER: Maybe Carol. Could you tell
19 us what type of information that mailing list might have
20 come from or do you know?

21 MS. LANE: Yeah. The best resource I know to find
22 that out is through the SRDS direct mailing directory. It's
23 a directory that's about yea thick (indicating) and it's
24 available in libraries and it tells you basically what
25 mailing lists are out there, that are available.

1 Some of the sources you will find for medical
2 information are sometimes people who send in a card saying I
3 want some free information on asthma cures, that kind of
4 thing. So sometimes they can be compiled from that kind of
5 source. Sometimes from people who subscribe to a certain
6 magazine or sufferers of something or for new equipment for
7 an ailment.

8 Or, you know, lots of time the information is
9 compiled from those kind of resources. Now it can also be
10 compiled from if they call an 800 number because of caller
11 I.D.

12 You know, when you call a number and, you know, they
13 can pull up the address and the name of the person who
14 called from the telephone book, and then it could also
15 compile a list from that. It can come from many, many, many
16 sources.

17 COMMISSIONER VARNEY: Well, Carol, do you or any of
18 the panelists know, for example, I've recently read that one
19 of the most expensive advertising sites on the Internet is
20 an asthma site because lots of asthmatics are going there or
21 an allergy site.

22 And lots of people are going there and then that
23 becomes a very valuable piece of real estate for
24 advertisers. Are there lists being constructed off of
25 Internet medical information?

1 MS. LANE: Yes, absolutely.

2 COMMISSIONER VARNEY: So an AIDS site or an asthma
3 site can be constructing.

4 MS. LANE: Yes, it could be on anything. Any site
5 that you visit, you know, they can be pulling off the
6 information that's attached to basically your profile, your
7 user I.D. And typically then they would E-Mail to you.
8 They would market to you, spam you at your E-Mail address.

9 But if you have information attached to your
10 E-Mail address, depending on which vendor you went through
11 to get your E-Mail account, it may have an actual address
12 attached to it and so on where they can mail to you from
13 there.

14 There was an announcement about a week ago from
15 Netscape and 60 like-minded companies who are proposing a
16 standard as to what information will be attached to a
17 person's E-Mail address. And if you look at it from the
18 perspective of the PR that was put out on that announcement,
19 it said that this gives you the ability to get off of
20 mailing lists, to not give the information; it gives you the
21 opportunity to opt out.

22 On the other hand, it had a lot more information that
23 typically would be attached. And so it also would be a good
24 marketing opportunity for those companies to standardize
25 where the name and address and so on, all those things would

1 be found, you know, attached so that they could pull that
2 information more in mass.

3 MR. MEDINE: Plus you'll be hearing from Netscape
4 about that during tomorrow's session. I was wondering if
5 Jerry Cerasale from the Direct Marketing Association might
6 add to Commissioner Steiger's question about how information
7 of that type might be gathered.

8 MR. CERASALE: Well, first of all, information that's
9 doctor/patient is absolutely, the DMA guidelines, it's
10 actually against our guidelines. That should never ever be
11 released. Sometimes you can gather information from
12 questionnaires or people wanting information on a certain
13 illness and so forth and you obtain information from them.

14 Our guidelines are specific that when you ask for
15 medical information, at the time you obtain the information
16 it's voluntarily given to you from the patient or from an
17 individual, you must tell them what might happen to that
18 information. And we're very specific in our statements that
19 you must, let's see, what does it say here, it says that you
20 should be informed at the point of providing the information
21 of the potential for rental, sale, transfer, and exchange of
22 such data and marketers should offer an opportunity to have
23 the consumer's name deleted or suppressed upon request.

24 And that's a specifically, that's a specific
25 prohibition in our guidelines so that we don't know the

1 source of the information that Carol showed whether or not,
2 as you go back, whether they followed our guidelines at this
3 point and time.

4 But clearly our ethics process will look into those
5 things. But doctor/patient information is strictly
6 prohibited in our, to be transferred at all in our
7 guidelines.

8 And then the marketing information, if you get it,
9 the information on a disease you're supposed to at the time
10 you receive it let people know that it might be used and
11 give them the opportunity to say no, you can't do that.

12 MR. MEDINE: Chairman Pitofsky.

13 CHAIRMAN PITOFSKY: I'm interested in the question
14 of what the average person does about misinformation in
15 these forms. Even something as innocuous as your last known
16 address could be misentered as a prison or it could be Iraq
17 or Iran and all you know is you keep getting turned down for
18 jobs as a security guard or a bank teller.

19 What does a person do about that? For example, with
20 P-Trak, how do you find out -- well, how do you get the
21 listing corrected? Or any of the other panelists I'd invite
22 an answer to that.

23 MR. GLASS: Well, let me respond to that. With
24 respect to P-Trak, if there was an incorrect entry we, as
25 Karen mentioned earlier during the demo we actually receive

1 our information from another source. LEXIS-NEXIS does not
2 create the product. In the case of P-Trak we get the
3 information from TransUnion, one of the three major credit
4 reporting bureaus.

5 And if there was an instance where some information
6 was incorrect in the record, they, the person could have the
7 ability to go back to the source, in this case TransUnion,
8 and identify the incorrect information and work with
9 TransUnion to get that record corrected.

10 COMMISSIONER VARNEY: How do I know what the
11 information is? If I'm the consumer, how do I even know
12 that there's a P-Trak record about me and that it's being
13 transmitted? And how do I -- yeah, if there's a mistake and
14 TransUnion has transmitted the mistake. But how do I even
15 find all that out?

16 MR. GLASS: Well --

17 COMMISSIONER VARNEY: When do I know, how do I know
18 when you're transmitting information about these people?

19 MR. GLASS: As a consumer, again, we get the
20 information, again using the example of P-Trak, which
21 represents the credit header information, in most cases I
22 would say the consumer is aware that a credit record in fact
23 exists on him if they've had some type of credit transaction
24 in the past.

25 What LEXIS-NEXIS provides in the case of P-Trak is

1 merely that top line identifying information, name and
2 address and so forth that Karen talked about and really is
3 just a representation of what --

4 COMMISSIONER VARNEY: I understand that. But my
5 question is, I know when a credit report is sought on me
6 because I generally have applied for credit or employment.
7 And if it's an adverse report I'm informed that there was an
8 adverse report or that there was a credit report. How do I
9 know when I have been accessed on the LEXIS-NEXIS P-Trak
10 system?

11 MR. GLASS: You're not going to know as a consumer
12 when in fact you are accessed with respect to P-Trak.

13 COMMISSIONER VARNEY: Okay.

14 MR. GLASS: Having said that we have, there's been a
15 lot of, obviously a lot of publicity about P-Trak and we
16 have certainly got the word out. And we do provide
17 consumers the ability to opt out of our database.

18 And in fact many, many have taken advantage of that
19 opt out provision. And in addition to allowing people to
20 opt out of our database, we also send a confirmation letter
21 notifying them once that's taken place.

22 MR. MEDINE: May I just ask a follow-up. As a
23 consumer, if you have a credit report on you, you have a
24 right to get a copy of that credit report. You may have to
25 pay for it, you may get it for free depending on the

1 circumstances, but you have a right to see what the credit
2 bureau has on file. Can a consumer get access to their
3 P-Trak record to know whether it needs correcting or not?

4 MR. GLASS: At the present time, the way a consumer
5 would have to get that information today would be through
6 one of our professional users. So generally I would have to
7 respond that they would not have that ability today.

8 Having said that, one of the things that will be
9 talked about later on in some of the panel discussions is
10 that we are going to be working to provide the general
11 consuming public a way to see what is in this type of record
12 under some type of reasonable arrangement where we can work
13 with them and make sure that they are in fact the actual
14 person they claim to be.

15 So we're not there yet as a company. But clearly
16 working with some of the other people in the industry we're
17 certainly moving in that direction and we're committed to
18 making that a reality.

19 MR. MEDINE: Carol.

20 MS. LANE: If I could add a comment though, we are
21 putting a lot of focus here on LEXIS-NEXIS and P-Trak,
22 whereas the credit header is actually available through
23 hundreds of credit bureaus.

24 Even though there's only three national credit
25 agencies, you can get it from many, many other companies.

1 So even if LEXIS-NEXIS decided to do something to put a
2 tracking on it or anything like that, it doesn't mean that
3 that record wouldn't have been accessed through hundreds of
4 other places.

5 COMMISSIONER VARNEY: Yeah. I think that's an
6 excellent point. And we certainly want to commend, at least
7 I want to commend LEXIS-NEXIS for -- I mean, you have worked
8 with us. And since you stepped up to the plate to answer
9 the question you get the grilling.

10 MR. GLASS: Well, I do appreciate it. And if I
11 could just make a follow-on statement, we are very proud of
12 the leadership role that we have taken along with some very
13 other important members of our industry. And we certainly
14 would hope that many, many, many other companies would
15 follow our example as we go forward together too.

16 COMMISSIONER VARNEY: Well, I think we are going to
17 talk this afternoon about the self-regulatory effort.

18 MR. GLASS: Yes.

19 COMMISSIONER VARNEY: I guess one of the questions
20 that I can hold in reserve until then is exactly what Carol
21 has pointed out. There are hundreds of sources of this
22 information. And it looks as though six or seven or so of
23 the big companies have signed on to this, you know, proposed
24 best practices or self-regulatory effort. And what are we
25 going to do about the vast numbers of others?

1 MR. MEDINE: If we don't have questions, I'd
2 like to return to basics, which is where does the
3 information come from. And the starting point is what types
4 of information can be found in these databases?

5 Maybe Jack Reed, since he can get some attention
6 here as well as P-Trak, and should be also commended highly
7 for agreeing to appear here and discuss his company's
8 operations, to talk a little bit about the kinds of
9 information that appears in your database from a look-up
10 service point of view just so we can get a, we've got some
11 sense this morning but a little more concrete sense of what
12 kind of information about that.

13 MR. REED: Well, our company -- First I'd like to
14 thank the Commission for inviting me and this opportunity to
15 present this to the public and to the press and all of our
16 peers in the industry.

17 I think it's very important that in the case of
18 IRSC, or Information Resource Service Company, we've
19 developed our database around one motto, and that is fraud
20 is the best business in town. And our job is to try and
21 help business and prevent fraud.

22 So we've developed a public records database. We
23 have collected information from various sources to verify
24 and identify potential risk factors. We've developed some
25 products that identify the risk factors and determine

1 whether or not the information submitted has some validity
2 or some error in it and then notify the customer how to
3 access that information to verify.

4 And an important part of our structure is
5 verifying the data. And I think it's very important that
6 everybody recognize human beings put this data in. Whether
7 it be public record, whether it be lists, wherever it comes
8 from this information must be verified. It's just raw data.
9 And we try not to allow anyone to believe that this is the
10 all of all alls.

11 The other information, of course we use the credit
12 header as well as part of our process and the verification
13 process that goes with that. We use Metromail databases.
14 We use several other databases that are -- Hogan Databases
15 Information Services, for example. We have that information
16 on our system. We have Dun & Bradstreet's information on
17 our system.

18 So we have compiled the necessary data to lead us in
19 developing the tools to help business prevent fraud. And we
20 deal with many sectors of the, I should say primarily niche
21 markets in the business world.

22 MR. MEDINE: You have a database I think called Last
23 Name Search or New Address Search; is that right?

24 MR. REED: Yes, we do.

25 MR. MEDINE: And your materials I think indicate

1 that that information comes from a number of sources
2 including phone directories and direct mail and magazine
3 subscription lists; is that right?

4 MR. REED: That is correct. And those are compiled
5 by other resources such as Metromail and delivered to us.
6 We do not compile them.

7 MR. MEDINE: And then you would purchase these lists
8 from Metromail and then they would be available to who for
9 use in looking somebody up?

10 MR. REED: No, we gateway to Metromail and use their
11 system.

12 MR. MEDINE: Okay.

13 MR. REED: So it's protected in that way from any
14 possible violation of the DMA rules.

15 MR. MEDINE: Could you clarify that?

16 MR. REED: I'm sorry.

17 MR. MEDINE: How might it violate the DMA rules and
18 how are you preventing it from violating the DMA rules?

19 MR. REED: Well, because they are complying,
20 Metromail is complying with those rules in the way that they
21 gather it and the way that they deliver it. Whatever their
22 lists are to our understanding is in compliance. So we do
23 not have a problem with that.

24 MR. MEDINE: Their list, just to clarify I think
25 from some comments earlier, if it's a, the list is obtained

1 because of someone, direct marketing list or a magazine
2 subscription list, isn't that according to DMA rules off
3 limits for look-up services purposes?

4 MR. REED: That you've got me on. I can't honestly
5 answer that.

6 MR. CERASALE: David, you're absolutely correct.
7 Marketing purposes, the data that's collected from marketing
8 may only be used for marketing purposes. That means that it
9 can't be used for individual reference service.

10 That doesn't mean that the information cannot be found
11 elsewhere so that the same information on the marketing list
12 is also an individual reference service. For example,
13 purchasing a good to send it to me, they need my name and
14 address. They may get my name and address, my name and
15 address can be obtained from the white pages.

16 And so that may be, an individual reference service
17 may have, will have my name and address because I do not
18 have an unlisted phone number. But a marketing list also
19 has my name and address.

20 But the source of the information on the individual
21 reference service may not be, it's against DMA guidelines
22 and rules, and our ethics committee will work with it, will
23 handle that if you think of those cases if the source is
24 from a marketing purpose taken from a transaction.

25 That may not be the source of the individual

1 reference service. So that is clearly, it's a clear stated
2 guideline for the DMA.

3 MR. MEDINE: So without asking you to rule on the
4 facts, assuming the facts are that the information
5 comes from a magazine subscription list or direct marketing
6 list, what you heard just now should not be happening; that
7 is, that information should not be crossing the line to be
8 used for look-up service purposes?

9 MR. CERASALE: That's correct.

10 COMMISSIONER STEIGER: David, may I ask, what can
11 you tell us about the risk profile you are developing? Can
12 you expand on that a little bit? I'm not asking for
13 proprietary information, but in general can you describe
14 this profile?

15 MR. REED: Yes. For example, if an application is
16 submitted to a mortgage company, for example, they will
17 submit that data to our file and then our products signal
18 will verify whether that data matches or not.

19 For example, if you take the Social Security number,
20 for instance, that will be on the mortgage application, that
21 will be verified against the matrix that we have set up to
22 determine when that Social Security number was issued and
23 where it was issued to determine if that fits with the
24 profile that was delivered to us on the application. And if
25 there seems to be a variation then we will notify the

1 company that there is a variation and they should verify
2 this information.

3 COMMISSIONER STEIGER: And can you describe in
4 general your customer base?

5 MR. REED: Our customer base is comprised of
6 insurance companies, banks, mortgage companies, private
7 investigators, attorneys, and that's our primary base of
8 business. Oh, and casinos. Sorry.

9 MR. MEDINE: Do either LEXIS or WDIA or WorldPages
10 want to add to, on the sources of information are you, any
11 of you getting information from other sources than was just
12 described by Jack Reed?

13 MR. GLASS: Well, no. I'd just like to say for, on
14 behalf of LEXIS-NEXIS we do not display marketing
15 transaction information on an online look look up way. And
16 obviously that's not the business we're in and we have no
17 plans to do that.

18 MR. REED: And, David, I'd like to mention that we
19 give out that type of information on our Web site as to
20 where the information comes from because we're not always
21 clear on where the data may come from when we are buying it
22 from another source. They may not describe it in specific
23 areas.

24 We believe that's where it comes from and we want to
25 make sure that we don't mislead someone to think that we're

1 gathering it from other places which we're not. So it's,
2 and when I said that earlier I didn't realize where you were
3 going. Now I see where you're going and I think it is
4 important. Because we have, we buy that data from Metromail
5 when we deliver that search that you're talking about.

6 MR. MEDINE: Right. Does WDIA get its information
7 from basically the same types of sources?

8 MR. HANNA: Yes. We also use Metromail as well as
9 First Data Corporation for those type of services. And we
10 gateway to both of them using actually their databases in
11 realtime.

12 MR. MEDINE: Could you describe the kinds of
13 information you're getting through those gateways?

14 MR. HANNA: Basically the same type you've been
15 talking about. It's basically all the same. They are two
16 of the major sources.

17 MR. MEDINE: By "the same" do you mean subscription
18 lists or marketing lists or credit bureau header
19 information? Could you --

20 MR. HANNA: Well, it wouldn't be credit bureau
21 header information from those two sources. Basically what
22 it is is a lot of what WorldPages does plus sources that
23 they don't always tell us about. I mean, they don't tell us
24 exactly where they put it all together from. But it's
25 mostly white pages and yellow page type data.

1 Now, if they use some other lists to augment it,
2 which years ago in the past they claimed to, that's where
3 all this comes from. You have got to understand a lot of
4 this comes from a chronology of the late '70s and early '80s
5 when -- if you think it's confusing now and hocus-pocus, go
6 back 15 years when we started and all the information was
7 hocus-pocus.

8 It was all a big smoke screen because everybody
9 guarded where they were getting it and how they were
10 compiling it. And they had it so we bought it and made it
11 convenient to our clients, which is in the same league of
12 type of clients that Jack just described and general
13 businesses as well.

14 So we made it convenient. But it was, 15 years ago
15 they were claiming magazine lists. And some of that
16 terminology stuck which may not be true anymore.

17 MR. MEDINE: The first item that Jack Reed clicked
18 off was public records. And we have Blake Hogan from --

19 MR. DICK: I'd like to respond.

20 MR. MEDINE: Oh, sorry. Sorry.

21 MR. DICK: Probably just as third in line, but also
22 because Mark is making representations about my company
23 which are abjectly not true. WorldPages uses primary keyed
24 information and scanned information purely from telephone
25 books. We have never used anything else.

1 I think Mark makes a very good point, one that I
2 think is crucial to this set of workshops as they progress,
3 about slicing and dicing and multiple sourcing and
4 combinations of data. One of the distinctions that we make
5 is once you have let information out to a third-party, they
6 can combine it with other information from other
7 third-parties, and using computer and database technology
8 turn that list into something that it was not originally
9 intended for.

10 The Internet is unbelievably different economics of
11 distribution than had ever been realized for essentially
12 zero variable cost. So you have now got the combination of
13 computing and database power, multiple database sources, and
14 a very low cost distribution and the ability to distribute
15 information and use it in ways which weren't fully intended.

16 We take great pains to ensure that that's not true
17 and I think the white pages industry on the Internet by and
18 large follows similar guidelines.

19 But it does make the important distinction that as
20 we think about data sources, it's probably in the future
21 going to be important to clarify and communicate more
22 clearly opt in or opt out choices at the time of data
23 collection, be it a sweepstakes, a warranty card, a bingo
24 card, an 800 number, these are all ways that information is
25 collected and compiled into lists. Those lists can be and

1 are combined in ways that are not easily predicted. And
2 we're beginning to see some of the outcomes of those here
3 today.

4 MR. MEDINE: Commissioner Varney.

5 COMMISSIONER VARNEY: Yes. If we --

6 MR. HANNA: Let me extend my apologies right off the
7 bat. I didn't mean that. But again to his point, he is
8 absolutely right. One of the things in my demonstration I
9 pointed out first was the fact that we strongly support
10 telling the Web site visitor up front what information you
11 intend to collect and what you intend to do with it.

12 That's right on our front page. It's really
13 prominent, easily clickable. And it tells them direct that,
14 you know, we will collect E-Mail addresses of those who
15 communicate with us via E-Mail and what we will do with them
16 and what we won't.

17 And I think that consumers are going to start
18 looking for businesses that deal with them in a straight and
19 forward manner and start saying, well, these are people I
20 want to do business with.

21 And if they're not telling me, maybe these are
22 people I don't want to do business with. And I think the
23 marketplace will do a lot to decide these issues on their
24 own.

25 COMMISSIONER VARNEY: Well, that's actually what

1 we're going to be looking at tomorrow is when a consumer
2 goes to a Web site what kind of information is collected
3 about them and whether or not there is a marketplace for
4 privacy.

5 I want to go back to this morning's topic which is
6 look-up services. And maybe what's emerging is to mind is a
7 continuum where if you start at one end with white pages
8 that have been put online, very convenient for a consumer
9 now rather than having to go to the public library and get
10 the Manhattan phone book to look up somebody in Manhattan
11 you can go on the Internet, you can go to one of the maybe
12 ten sites that has public directory information.

13 What I'm concerned about is where do we start
14 parsing it? Looking up the phone number is great if it's
15 already in a phone book and the address if it's there. What
16 happens when you add a map as many of the services now do
17 for how to get there? Is that okay?

18 What happens when you start to do the reverse
19 directory; okay? Is that okay? At what point when we're
20 looking at the basic consumer tool that is a reflection of
21 information that is more or less available already, not more
22 or less, that is available already and you begin to add the
23 bells and whistles to it, at what point do we trigger some
24 concern?

25 And I want to go back to Tim. I know I asked you

1 before a longer question. But you said that there are ten
2 companies and that two of them now are still doing reverse
3 directories. What is the effect on competition between the
4 eight companies that aren't doing it and the two that are?

5 How much business have you got? How much business
6 are they getting? Is it a constraint on your ability
7 because you've decided not to do that kind of, provide that
8 kind of information? Is it a constraint on your ability to
9 compete? And then maybe we can move further along as we,
10 you know, get to the professional services and then what
11 someone has called the bad actors.

12 MR. DICK: Well, let me talk specifically to a
13 couple of services that are mentioned. One is a company
14 called Four11 which does allow address-based reverse
15 searches. They are among the most popular white pages on
16 the Internet. But I don't believe that they are the most
17 popular white pages on the Internet.

18 And there are services that are more popular than
19 Four11 that do not allow that. The big white pages services
20 such as WorldPages who are, the majority of us don't, we
21 don't believe that runs our business. We believe that
22 reverse look up is a niche business.

23 And then there are entities like PC411, which I
24 showed a home page screen of this morning, which I believe has
25 significantly less traffic in this business than we do. So

1 I don't believe, no, I don't believe it harms us.

2 COMMISSIONER VARNEY: What are your thoughts, and
3 then I'd like to hear from some of the other people around
4 the table. At what point do we begin to trigger concerns?
5 When you've got white pages that are online, fine; they
6 already exist. Now you add a map. Is that a problem?

7 Where do you add the next level of information, the
8 previous two addresses or the next level of information, the
9 other adults living in the household? At what point do we
10 begin to get concerned that this has crossed traditional
11 lines of privacy?

12 MR. DICK: Well, let me make just one more comment
13 and I think it would be useful to get reaction perhaps from
14 panelists and perhaps the audience as well. We have a lot
15 of consumers here today; not a typical audience by any means
16 but an interesting audience and an interested audience.

17 There is a freshness factor here. And that is in
18 white pages directory types of information we do our best to
19 keep it up to date and fresh. We also let consumers opt
20 out. Even if you are listed elsewhere, you are more than
21 welcome to delist yourself from WorldPages.

22 We don't attempt to list old addresses because
23 people may have changed them and delisted them and moved
24 from them and not want that information let out. So let's
25 be current. Let's be fresh and current with the information

1 that has been disclosed.

2 We do do mapping, again for those individuals who
3 freshly and currently have published addresses. We do not
4 do reverse searching. That's our position; freshness factor
5 to us.

6 MR. MEDINE: Maybe Marc or Evan or Jerry would like
7 to comment on Commissioner Varney's broader question about
8 where we're going from here.

9 MR. HENDRICKS: Want me to go? Okay. Well, I think
10 that just from the brief demonstration we had this morning
11 we see that there is a huge problem developing in terms of
12 the availability of personal information over the Internet
13 because there is a qualitative difference between having
14 this information the way it was traditionally and now
15 putting it in the situation where anybody can access it from
16 anyplace in the world for any purpose.

17 I think that in terms of asking where do we start
18 drawing lines we have to start talking about purpose tests.
19 And I think when you talk about the white pages it is very
20 difficult to argue that information from white pages, the
21 phone directory, can't be put up on the Internet site.

22 I do feel though that the more people learn about
23 this, it might be more of an incentive to have more unlisted
24 phone numbers because I think there is a qualitative
25 difference again, but I can't find a policy reason to oppose

1 that purpose.

2 But again, remember what happened with the Social
3 Security Administration. Everyone knows they have earnings
4 data and everyone knows you can get it from SSA. But once
5 they tried putting it on a Web site and people could get
6 access to it, but the security wasn't good enough and people
7 are afraid that someone could get your earnings data, the
8 SSA was flooded with 10,000 complaints and they had to pull
9 the plug on that service in three days.

10 So I still fear given, if people were aware of what
11 Carol showed us this morning there could be quite a revolt
12 against that. And I think that one of the things is a
13 purpose test. Now the other thing, this is about the
14 sources of information.

15 One of the sources of information is credit headers.
16 And credit information was collected for the purpose of
17 facilitating the credit industry. And the FTC made a
18 decision, which if I was in the FTC at that time I might
19 have made the same decision; it's just name and address
20 information, that's not considered a credit report.

21 But you've opened up a loophole and now you've seen
22 the consequences of what you've done. That information is
23 being used by hundreds and hundreds and hundreds of these
24 services out there. As Carol said you can get that header
25 information. That information was not collected to be used

1 by all these services for any purpose with no restriction.

2 So that's something that could be immediately
3 revisited in terms of your source of information. The other
4 thing that's been mentioned here is warranty cards.
5 Americans don't know when they fill out warranty cards
6 they're plugging into junk mail heaven. There is clearly
7 not adequate notice to people there.

8 When you're looking at the sources of databases,
9 that's a primary example of where you should start a very
10 stern investigation and a crack-down of that sort of
11 information because that information is not, people are not
12 notified in any way and that that information is going to be
13 used for all these other purposes that then go into all
14 these other databases.

15 So I think that to the extent that, you know, the
16 source of information is one of the problems where the FTC
17 can start and take some immediate action.

18 MR. MEDINE: Eric Wenger has asked to speak and then
19 Marc.

20 MR. WENGER: I want to thank the Commission for
21 inviting us here today to address these important issues. I
22 think that one of the important distinctions that needs
23 to be drawn here has to do with the difference between
24 privacy concerns and security concerns.

25 And some of the information that we have discussed

1 so far has to do with privacy concerns; and the problem with
2 drawings lines here is that it's very subjective. What
3 information is private or people who have concerns about it
4 will differ depending on who the person is that you're
5 talking about and in what situations the information was
6 given up.

7 And to address those concerns is going to be a
8 difficult undertaking. But it's important that consumers be
9 given more information about what information is being
10 collected from them and how it can be used. And, you know,
11 that they have opportunities to check that information and
12 correct it.

13 There is another type of information that represents
14 a possible security threat to consumers. And that is the
15 type of information that we have all talked about here
16 today, including Social Security numbers and mothers' maiden
17 names. And the problem here is that this information, while
18 it has been available from public sources in the past, is
19 easier to gather than ever before.

20 We have seen today that there are services where you
21 can buy this information even without any service
22 subscription. You can just put down a credit card and
23 purchase that sort of information.

24 And that is combined with the fact that we don't really
25 have a great standard for digital signatures. So when we do

1 have transactions that are not face-to-face now, this sort
2 of information has become a proxy for a digital signature
3 and therefore it represents a key that could be used to
4 access financial information, bank accounts.

5 So that level of information probably needs a
6 greater level of protection. Where the line is drawn is
7 unclear and it's something that we are going to have to
8 discuss. But there is clearly a distinction between
9 information that people would like more control over because
10 of privacy concerns and certain information that is so
11 sensitive that it represents a security problem.

12 MR. MEDINE: Thanks. And this afternoon we want to
13 follow up on just the question you posed, which is how great
14 a security threat is the release of this information.

15 Marc.

16 MR. ROTENBERG: I wanted to pick up on a point that
17 Evan made. And I think it's important to clarify this at
18 the outset. There's been several references this morning to
19 white page directories. White pages are the most familiar
20 type of look-up service that people know about, that people
21 who are listed in the whites pages exercise control over
22 their listing; the white pages are publicly available to
23 anyone who wants to get someone's telephone number or an
24 address if it's listed.

25 The person this morning who spoke from LEXIS-NEXIS

1 described P-Trak and P-Find in her words as white page type
2 directory services. These services, P-Trak and P-Find,
3 share none of the relationships, none of the characteristics
4 of traditional white page services.

5 They're not based on the consent of the person who's
6 listed. They are not publicly available. They are fee base
7 services. They include enhancements, including the social
8 security number which is in fact used as a key to locate
9 information about individuals.

10 And I make these points partly in answer to
11 Commissioner Varney's question. The reason that we may have
12 less difficulty with the WorldPage type service that Tim
13 Dick described is because that data is based essentially on
14 consent. It is based on the willingness of people to list
15 their names in public phone directories and to make that
16 information available to the public.

17 Now I think Evan is right. It is a big hurdle
18 nonetheless when you put that data on the Internet. And I
19 think the experience with the SSA database should caution
20 all of us that even the consent that people give to the use
21 of their personal information in their physical world may
22 not be easily transferred to the Internet.

23 Nonetheless, you know, I would commend WorldPages
24 for the work that they've done to try to mirror the level of
25 control that people who have exercised over the information

1 that's reflected in those data services.

2 The answer then to Commissioner Varney's question is
3 where do you draw the line? You draw the line at the point
4 that there is no longer consent, where there's no longer
5 active participation, where there is no longer the
6 permission of the individual to make that information
7 publicly available. And that of course is where the
8 discussion about the use of look-up services begins.

9 COMMISSIONER VARNEY: Let me ask you a follow-up
10 then, Marc. Because the technology makes it I think easily
11 available to reverse engineer publicly available
12 information, where does that fall on the continuum? You
13 know, my name, my phone number, my address are all in the
14 phone book, easily publicly available if you know my name.

15 Since it's technologically probably easy to type in
16 my phone number or my address and get the other two pieces
17 of information, my question is, that's publicly available
18 information. Because we have the technology to do that,
19 should we draw a limit on it?

20 I agree with you that it's an easier line if we say
21 anything that's not publicly available moves into a
22 different realm; the number of people in the household, the
23 names of the adults in the household because that's not in
24 the white pages then. It's technologically and currently
25 available. So will you just give me your comments on the

1 reverse engineering.

2 MR. ROTENBERG: I'm not sure exactly where you draw
3 that line. But Evan's reference to the SSA example, I think,
4 underscores the point that there is a big hurdle there.
5 There is a hurdle there because what people thought they
6 were doing when they put their listing in the phone book may
7 not necessarily be reflected in the fact that the
8 information is widely available around the world. And I
9 think we need to be aware of that.

10 Now I guess what they've attempted to do with the
11 WorldPages service is give an opt out option which begins to
12 address the problem.

13 COMMISSIONER VARNEY: So maybe it's an informed
14 consent in the sense that when you put your information in
15 the white pages what you're consenting to is not a reverse,
16 reverse capability. It's only the name capability.

17 MR. ROTENBERG: I think that's right.

18 MR. MEDINE: But are you going to be able to
19 fine-tune your consent that much to the extent of saying I
20 want it so it's searchable by name but not searchable by
21 phone number when I have put that information out publicly?

22 Jerry.

23 MR. BERMAN: I think the main point of the source
24 issue is that 90 percent of this information is from
25 publicly available and public source information. So I

1 think that to approach the issue, I think there is a need
2 for self-regulation, I even think there is a need for
3 government regulation because there is no customer
4 relationship with many of these companies.

5 So LEXIS-NEXIS, P-Trak, they've taken some step
6 forward. But that step forward doesn't apply to a lot of
7 that industry. But the source of the information, there is
8 other competing values. It's been historically public. We
9 have, civil libertarians have fought a very long fight to
10 get public information, an electronic version of public
11 information, into the public realm.

12 And the idea that it's more sensitive because it's
13 in a database, if that becomes a deciding factor in the name
14 of privacy, I think we erode the public right to know. So I
15 think the source issue, I think the afternoon panel where
16 you talk about the behavior of these companies and how they
17 deal with fair information practices and maybe that they're
18 coming closer and closer to being like the credit industry
19 where they are performing similar functions and therefore
20 similar types of regulatory regimes might be suggested, in
21 fact I think the companies that signed up for these rules
22 are essentially getting on that track.

23 So I just think that we've got to, I worry about
24 taking the problem on from the source side. I also worry
25 about because it's on the Internet. Because it's on the

1 Internet we have got some new problem. Yes, there is going
2 to be, everyone is a publisher. We have to take that into
3 account.

4 Whether it's content or privacy, the problem is
5 bigger. But we should also take notice of the fact that
6 this industry has existed for a long time. And the Internet
7 fought back.

8 Interactive technology also gives consumers new
9 tools, and the Social Security number and the misinformation
10 about LEXIS was dealt with very fast for the first time
11 because it's on the Internet. So I don't want the Internet
12 carved out for special rules.

13 COMMISSIONER STEIGER: David, may I follow up with a
14 question?

15 MR. MEDINE: Sure.

16 COMMISSIONER STEIGER: I think that does lead me to
17 ask if anyone can define what is new. I think most of us
18 are aware that a compilation of information has long been
19 available with basic marketing data lists, some of it sliced
20 and diced indeed right down to being able to target, if you
21 will, specific consumer interests.

22 Certainly we have been able for a long time, I
23 think, to ask those assisting marketers to tell us what's in
24 a specific zip code, for example. You can go to the postal
25 service museum and enter a zip code and learn an enormous

1 amount through a computer program about your own zip code,
2 what's its education level, what's its basic demographics,
3 what would be the average age, the average educational level
4 and so forth.

5 All of that information has been compiled through
6 census data, car registration data, certificates and the
7 like for a long time from public records. What are we
8 dealing with here that is new goes beyond.

9 And I think Jerry Cerasale might help us here. I do
10 know, Jerry, earlier you made it very plain that you didn't
11 believe that same sort of market compilation or that the
12 ethics code of DMA did not foresee it used for a search.
13 But help us with what is really new here.

14 MR. CERASALE: I think from our perspective, in
15 applying our guidelines from the DMA the same principles
16 apply to this new media, medium as did the old media. I
17 would think that the rapidity and most likely the reduction
18 in expense of gathering that information is what's new.

19 The information itself and the ability of myself to
20 get it, the rules of, a bar between, using marketing data
21 for only marketing purposes still apply and it's the same.
22 But from the public records standpoint you can get a
23 significant amount of information relatively quickly at a
24 cheaper expense.

25 That's not always a negative to someone.

1 Purchasing, I can tell you purchasing a home, a house out of
2 state, far away, the expense I had because we didn't have a
3 net to look at things and to go forward back there was very
4 expensive and now it can be much cheaper.

5 So I think the only new thing is the reduction of
6 expense to gather that information. And of course you can
7 get it more rapidly.

8 MR. MEDINE: Marty, did you want to add to that?

9 MR. ABRAMS: I think that one of the things that has
10 changed over time is pace. But the basic concepts, the
11 basic nature of our information culture is the same; it's
12 pace. And pace isn't just how quickly you get information
13 but pace is how quickly consumers want things done.

14 We want to be able to, when we're searching for a
15 home to get data very quickly. We want to when we're at the
16 the point of sale to complete a transaction very quickly.
17 So what technology has done is accelerated the pace.

18 But the basic information culture is the same. And
19 our information culture has been very rich and it's been
20 very rewarding for us. It's created economic opportunities
21 that are very important to us. It's created opportunities
22 for rectifying situations that weren't possible.

23 Jack Reed's system is used to prevent fraud. We all
24 have an interest in fraud being prevented. Other systems
25 are used to find deadbeat dads. We have an interest in

1 deadbeat dads being located. We also have a tradition in
2 our information culture where there is a misuse of
3 information of society pushing back on that misuse.

4 So that we do have equilibrium mechanisms that work
5 in our society. So I think that over time self-regulation
6 comes about because people recognize the misuse or perceive
7 misuse. We either correct the sense of the misuse because
8 of, you know, communication through dialogue or mechanisms
9 are created to correct that, either self-regulation or
10 specific regulation.

11 COMMISSIONER VARNEY: I have to say I very much
12 disagree with the description of what's new. Although the
13 information about individuals and their birth records, their
14 driver's license, their tax rolls has always been publicly
15 available information, I think what is new is the degree to
16 which highly personal information can be accessed by
17 virtually anyone and married with what was previously
18 probably proprietary transactional data.

19 So not only is what's new, you know, I saw a
20 database demonstration where you could see who I was, who I
21 was married to, who my parents were, what property I owned,
22 what rental property I owned, who rented it. Now that kind
23 of information may technically have been previously
24 available through going to five, six, ten different
25 government sources. But it was not easily available by

1 typing in my name or my name and an additional piece of
2 information.

3 Nor I think has it ever been previously available
4 that you can take that information and you can marry it with
5 transactional data and create extremely detailed personal
6 profiles about individual histories, health histories,
7 financial histories, all kinds of things.

8 MR. MEDINE: Carol and then --

9 MS. LANE: Now, I do agree with you in what you're
10 saying as to the information being much more point and shoot
11 and you can get a whole lot of information. However, when
12 we're talking about what keeps coming through and things like
13 the credit headers or almost any record we're talking about,
14 you know, we have to recognize that some of those things are
15 a demand of the market because there was litigation before
16 that.

17 Employers were being called to account for not
18 screening when they brought in employees. They have been
19 held negligent. They have had to pay millions of dollars
20 when somebody was injured as a result. Some of these
21 records discuss two things. Like the credit headers uncover
22 where else you should look for a criminal record or where
23 else you should be looking for records the person is not
24 disclosing.

25 So when you draw the line at consent and you say

1 that there's a reason why we should say that this is okay
2 and that's not okay, the people who are trying to hide, the
3 people who have a criminal past and the people who have
4 committed fraud before, been sued multiple times, anything
5 that you do to make those records less accessible gives them
6 free reign.

7 COMMISSIONER VARNEY: Well, no, wait.

8 MS. LANE: So you have to balance that.

9 COMMISSIONER VARNEY: I think you're drawing a very
10 important distinction. Law enforcement most people would
11 believe has a legitimate permissible purpose to a various
12 amount of information under a varying degree, varying
13 circumstances, okay. Let's put aside law enforcement for
14 the moment.

15 MS. LANE: This is not law enforcement. These are
16 employers. This is the typical company that's going to
17 hire somebody or you're going to hire somebody into your
18 home to take care of your child.

19 COMMISSIONER VARNEY: Okay. Let's put aside law
20 enforcement for a moment. Then let's say all right, we can
21 all agree that there are some circumstances under which some
22 individuals, some employers, some group of citizens should
23 have access to some information. But what are those
24 parameters? Are there none?

25 Because I'm going to hire a nanny should I be able

1 to take the six people that come to my house who want to
2 work for me and should I be able to find out every bit of
3 information about them that exists? Is that okay?

4 MS. LANE: But the public records certainly are
5 public. And the only difference is that before it was more
6 difficult to uncover the bad ones. It was more difficult to
7 track the people. And now it's a lot easier when you can
8 access the information from the home computer. Before they
9 might have had to hire a private investigator just to
10 screen. Whereas now --

11 COMMISSIONER VARNEY: The question, what question
12 I'm asking, is there any circumstance under which access to
13 the information which now exists should be limited, should be
14 circumscribed?

15 MR. CERASALE: Yes.

16 MS. LANE: I would like to think that, I would like
17 to think that there could be some reasonable protections,
18 especially in cases of stalking or people who have had their
19 credit stolen or people, you know, who have suffered
20 identify theft, things like that.

21 I would like to think that there was reasonable
22 precautions that could be taken. But every record we're
23 talking about here I could get from other sources perfectly
24 legally. We're talking about doing reverse directory
25 searches. I can buy a CD ROM to do the same thing if you

1 take it off the Internet.

2 I can go to the library and there's reverse
3 directories there too. So, you know, any information we're
4 talking about, yes you make it more accessible on the
5 Internet. But anybody who is going to use it for bad intent
6 has other sources.

7 For good intent, sometimes this information wasn't
8 accessible to them and now they can do reasonable tests. If
9 somebody puts up a site on the Internet and they look like
10 they're a Microsoft or an IBM or some other fabulous company
11 and are taking people's money, now you can check them out too
12 before you invest. Because, you know, companies spring up
13 all over the Internet.

14 COMMISSIONER VARNEY: I don't think you're going to
15 get any disagreement that there are legitimate purposes to
16 accessing information wherever you do it.

17 MS. LANE: I would just like to see a balanced view
18 when we're talking about each of these records. It's not
19 all --

20 COMMISSIONER VARNEY: But I think the question
21 really is if there should be lines?
22 Where is the individual company's responsibility? Where is
23 the consumer's responsibility and rights, and where is the
24 government responsibility if it exists?

25 MR. MEDINE: Okay. Jerry and then Oscar.

1 MR. CERASALE: Well, I think that, Commissioner
2 Varney in your statement you were talking about an
3 individual reference service, this information that's known
4 on you. And then you jumped over to combining it with
5 transactional information and therefore becoming, adding
6 some additional information for you.

7 From the point of view of individual reference
8 services, there should be a fire wall. You should not be
9 able to use marketing information and combine it with any
10 other information for an individual reference service
11 purpose.

12 That's clearly a boundary, a boundary that the DMA
13 has said it's in our guidelines, it's been in the guidelines
14 before the Internet ever showed up. Whatever is the next
15 generation of things after the Internet, I would assume that
16 would still be still be there. So that's clearly a
17 guideline that should be there.

18 That is the restriction, that marketing data
19 information should only be for marketing purposes. Because
20 a marketing list is not looking up Christine Varney; it's
21 looking up thousands of people that are interested in X
22 product or are interested in X kind of, if you're a
23 nonprofit X kind of philanthropic event.

24 COMMISSIONER VARNEY: Okay. So transactional data
25 and personal records data should be separate.

1 MR. CERASALE: That's right. Now --

2 COMMISSIONER VARNEY: Okay. Is that currently the
3 state? Is there no company out there that has married that
4 data and is selling it?

5 MR. CERASALE: Well, we will do --

6 COMMISSIONER VARNEY: I know it's not in DMA.

7 MR. CERASALE: Well, we'll do ethics cases on any of
8 those, whether they're DMA or --

9 COMMISSIONER VARNEY: Well, I know but, you know,
10 not every company in the world belongs to DMA.

11 MR. MEDINE: Eric.

12 MR. WENGER: There is an article in yesterday's
13 Washington Post about a company that's doing something that
14 we all said was not being done last year. We looked at
15 DoubleClick last year, which was a company that was using
16 cookies to track individual Web users' browsing habits
17 but they were not tying that to individual identities.

18 And at the time they were saying, you know, making
19 claims that they were never going to do that. But
20 my concern at the time was that somebody was going to. And
21 there is a company in this area called, with a service
22 called Adfinity. I forgot the name of the company but there
23 was an article about it in yesterday's WashTech section of
24 the Washington Post.

25 And what they do is they encourage you to register

1 with them, giving them a name and a zip code. And then they
2 go and marry that information with transactional information
3 from other marketing sources.

4 And I think, so the answer to Commissioner Steiger's
5 question I think it was about what is new is that all of the
6 things that we talked about, the fact that the P in public
7 records is a capital P now, that you can look at this
8 information from remote sources, combine information, sort
9 that information, marry it with other sorts of databases,
10 and all that has come to create a feeling of uncertainty
11 for many consumers about using the Internet for commercial
12 purposes.

13 And that's why it's important for us to have forums
14 like this today to examine technological responses and
15 self-regulatory responses and the adequacy of them. But
16 just to echo the point that I made before that there is in
17 addition to this feeling of invasion of privacy the threat
18 with some of the information that's available to the
19 personal security, with the financial security of consumers.

20 And we saw that again with Evan's example of the
21 Social Security database. The very information that the
22 Social Security Administration was requiring to pull up a
23 PEEBS record was the Social Security number and the address
24 of the person, and there were a couple of other sources.

25 But not much of that information you could get just

1 by knowing somebody. And the remaining information could be
2 easily purchased from many of the online databases that we
3 were discussing here today.

4 MR. MEDINE: I want to give Oscar a chance to talk.
5 Then I'd like to save most of the discussion for the last
6 panel this afternoon and get back to a better understanding
7 of how these databases work in terms of where the
8 information comes from and how it goes through the system.

9 But, Oscar, you have been patiently waiting.

10 MR. MARQUIS: I just wanted to answer Commissioner
11 Varney's question about where is the line. I don't think
12 there is a line. I think there are a variety of lines. If
13 you go along with Marc, the line is at consumer consent.
14 But what that does is posit privacy as the ultimate value.

15 And I think it's a question of balance. There is a
16 breach of privacy in return for a benefit, preventing fraud,
17 finding deadbeat dads. And in each situation there is a
18 level of information that's disclosed for the benefit for
19 the loss of privacy.

20 So you have a benefit and you have a loss of
21 privacy. And there are different lines for different types
22 of benefits unless privacy is the ultimate value. But if
23 there are other values you draw the line at different places
24 for different situations.

25 Industry is working on voluntary initiatives to get

1 to those lines in different situations as the DMA has that
2 line for marketing information, as the new industry group
3 has a line that we'll discuss later. And I think basically
4 in terms of public policy that's what you need to look for
5 is where is the line for which service and what benefit.

6 MR. ROTENBERG: David?

7 MR. MEDINE: We're going to run out of time. And
8 we're going to have lots of time this afternoon to talk
9 about these things.

10 MR. ROTENBERG: Could I just answer the question
11 that Commissioner Steiger asked.

12 MR. MEDINE: Sure.

13 MR. ROTENBERG: Because I think it is the critical
14 question. I mean, she asked what's changed. And we all
15 typically say computers are faster, you know, data is
16 cheaper, on and on the list goes about how, you know,
17 computers have advanced and made information more available.

18 But I actually think the question should be answered
19 more precisely. We are selling information today that ten
20 years ago would not be bought or sold. You go to a hospital
21 seminar today and peel out a registration form, and your name
22 and address is going to show up on a mailing list. That's
23 the answer to your earlier question regarding your medical
24 conditions.

25 We are selling information today on our children

1 that ten years would not have been bought or sold. And the
2 other thing that has changed is that the law has not kept up
3 with these developments. Because in past years when there
4 was an introduction of a new technology that raised a
5 privacy issue, whether it was the computer databases of the
6 '60s or E-Mail of the '80s or cable services or whatever it
7 was, video rental records, the law responded. The law
8 responded.

9 MR. MEDINE: Can I, I've been trying for half an
10 hour. Can I call on Blake Hogan to talk just a little bit
11 about where does this information come from? I mean, Jack
12 Reed started off the discussion about talking about public
13 records. But my understanding is that Hogan is one of the
14 largest if not the largest provider of public record
15 information.

16 So could you tell us a little bit so we can have a
17 concrete feel maybe about some of the information that
18 wasn't available years ago that is now available rather
19 easily?

20 MR. HOGAN: David, all of our information that we
21 compile was available years and years ago. We simply, our
22 database contains public record information which is
23 compiled from federal, county, and municipal courthouses
24 across the United States.

25 MR. MEDINE: And could you just give us a little

1 more feel about what kinds of information is in there;
2 judgments, bankruptcies, address, identifying information
3 and how you go about collecting it and who you sell that
4 information to?

5 MR. HOGAN: The data is primarily in the categories
6 that vary greatly. But bankruptcies, tax liens,
7 judgments, the data that is contained in those records would
8 be the data that would be commonly found on the documents
9 themselves.

10 In fact we transcribe it just exactly as it is
11 identified on the documents and have a quality assurance
12 department which we spend a great deal of money to validate
13 that the information that's in our database has a 99 percent
14 accuracy error, I mean accuracy rating or greater based on
15 what's actually reflected at the courthouse. We do not add
16 information in addition to what's at the courthouse.

17 MR. MEDINE: Would that include identifying
18 information like address, Social Security number, dates of
19 birth if those are in the particular filings in court?

20 MR. HOGAN: We would, name and address are on all
21 the documents in the courthouses. However, the social
22 security number is only on a fraction of the documents.

23 MR. MEDINE: Do you pick that up into your database
24 when it is available?

25 MR. HOGAN: If it is available we do.

1 MR. MEDINE: And who do you sell the information to?

2 MR. HOGAN: We supply those on a wholesale basis to
3 business to business information firms. Their primary
4 markets they serve are the financial markets and the legal
5 markets.

6 MR. MEDINE: And do you also sell them to look-up
7 services as well, make these database a public record for
8 information available to look-up services?

9 MR. HOGAN: Dave, I might need a better definition
10 of look-up services. Maybe that's being a little bit --

11 MR. MEDINE: Well, LEXIS P-Trak, IRSC, WorldPages,
12 the folks who are here and others who are party to the
13 agreement we're going to hear about later today.

14 MR. HOGAN: Five of the eight companies that are
15 represented here we do supply information to.

16 COMMISSIONER VARNEY: And do you have criteria upon
17 which you decide who you will sell to or is it anybody who
18 comes to you can buy your information?

19 MR. HOGAN: No, we have criteria which we --

20 COMMISSIONER VARNEY: What kind of criteria do you
21 have?

22 MR. HOGAN: We choose if they have legitimate
23 business practices. We have people that have detailed
24 on-site visits to identify what they're using the
25 information for. We have a set of written privacy

1 principles I suppose as well as our internal opinions on how
2 we would disseminate the information.

3 COMMISSIONER VARNEY: So one of the things you said
4 was that one of your criteria was, if I heard right, a
5 permissible business purpose?

6 MR. HOGAN: What we look to is how they're selling
7 their information. The guidelines have been primarily
8 targeted towards organizations. We target business to
9 business firms.

10 COMMISSIONER VARNEY: Can you give us a sense of
11 their, are there any kinds of impermissible business
12 services? Are there entities or circumstances under which
13 you will not sell your information?

14 MR. HOGAN: We choose to do business with people who
15 are credible, honorable, have not been involved in fraud.

16 MR. MEDINE: So could you give an example of, who
17 would you turn down? What profile, what information would
18 you gather on a potential subscriber or user that would lead
19 you to deny them access to your database?

20 MR. HOGAN: David, we've chosen not to supply
21 information to individuals who operate on a consumer level,
22 going to the consumer.

23 MR. MEDINE: So direct consumer access to public
24 record information would not --

25 MR. HOGAN: If World Net wanted to, which obviously

1 they would not, would want to put our information on as
2 attachments on their database, which obviously they would
3 not, we would also not want to do that.

4 MR. MEDINE: Eric, New York's, you're here in
5 another hat too which is that New York State, while it has a
6 lot of concerns about consumers' privacy, also sells public
7 record information. Could you talk about the role of states
8 in providing access to public record information?

9 MR. WENGER: Reluctantly. The current status is
10 that by law in New York driver's license information is
11 publicly available. Those records are sold for
12 approximately five dollars apiece. And there is, you know,
13 a wide range of information that's included in those
14 driver's license abstracts which includes things such as
15 vehicle and ownership information, license records, accident
16 reports, conviction certificates, police reports, complaints
17 satisfied judgment records, hearing records, closed
18 suspension revocation orders. And these are all readily
19 purchasable from the state at this time as I said by law.

20 COMMISSIONER VARNEY: How about height and weight?
21 Do you tell that?

22 MR. WENGER: You know, I don't know. That's a good
23 question. I could check that for you. In addition, the
24 state also sells, is permitted to sell registration lists
25 and title information. And the extreme example of this had

1 to do with an instance in Oregon where somebody purchased
2 the entire driver's license record for the state.

3 You know, every individual driver for the state and
4 then posted it on a Web site. And that person was convinced
5 that that was not a great idea and the Web site was taken
6 down.

7 In 1994, as part of the Violent Crime Control and
8 Law Enforcement Act there was a new requirement, a new law
9 that was passed called the Driver's Protection -- sorry,
10 Driver's Privacy Protection Act which goes into effect on
11 September 13th, 1997. And this law puts new requirements on
12 states about the information that they can sell and under
13 what circumstances they can sell it.

14 The states are required to maintain, to check for a
15 permissible business purpose before selling this information
16 unless they have provided some sort of opt out, clear and
17 conspicuous notice to consumers, an opportunity for them to
18 get out of the database.

19 And then if that is satisfied then there doesn't
20 need to be any sort of search for permissible permissible
21 business use. There are a wide list of exceptions, you
22 know, that fall in those categories of permissible business
23 uses. And I'd have to say that I have been provided some
24 information from the DMV in New York about a proposed range
25 of responses.

1 None of these have been finalized yet, so I have to
2 be careful that I'm not stating that this is the final
3 position from the DMV from the State of New York but these
4 are things that are under consideration.

5 My understanding is that there will be some sort of
6 combination of opt out for certain types of records, and
7 that for other types of records there will be procedural
8 protections that are put in place to check for permissible
9 uses of the information.

10 Other states have taken other approaches to deal
11 with this new law that's going into effect. My
12 understanding is that South Carolina has elected to
13 challenge the statute and that they have brought suit to try
14 to overturn it.

15 In Illinois they have decided that it was more cost
16 effective for them to close the records entirely rather than
17 to ascertain the privacy preference of individual consumers
18 and then maintain a database that would keep certain
19 information in and certain information out based on those
20 preferences.

21 And it's also my understanding that the State of
22 Illinois was sued for its position in closing the records.
23 And that in addition that there has been some legislation
24 that was introduced in Illinois to try to mandate that the
25 state make the information available to the extent that it's

1 permissible under the DPPM.

2 MR. MEDINE: Thank you. That's a very helpful
3 overview of the state of affairs of motor vehicle records.
4 We've also heard this morning that credit bureaus are a
5 major source of information for look-up services. And we're
6 fortunate to have representatives of all three credit
7 bureaus here. And I'd appreciate your views on what kinds
8 of information you provide to look-up services, what
9 controls you have in place in terms of determining which
10 look-up services to sell information to and so forth.

11 John Ford.

12 MR. FORD: I'm John Ford with Equifax. And on
13 behalf of Equifax I'd like to thank the Commission for
14 inviting me here to participate in what is obviously a major
15 public policy issue.

16 I'd like to refocus, I was asked to participate here
17 to discuss sources of information. I want to make, I feel
18 it's incumbent upon me to do that and to express the fact
19 that Equifax is highly committed to maintaining the
20 confidentiality of the personal information to which we have
21 been entrusted.

22 Our sources of data include consumers, credit
23 grantors, and courthouses, the three Cs to make it simple.
24 The information in the credit file is sold only to those
25 businesses with legitimate business needs and for credit

1 line of data to only those with a permissible purpose under
2 the Fair Credit Reporting Act.

3 Equifax does have several products that we call
4 identification or locate products. As you might imagine, I
5 object a little bit to the loose terminology of credit
6 header data. But as you've all heard, there are a lot of
7 other companies out there who maintain the same kind of
8 data.

9 But the focus always seems to come back to the
10 credit reporting industry, which I might add is highly
11 regulated by the FCRA and which also has implemented a
12 number of voluntary privacy practices.

13 Even within Equifax we've placed some restrictions
14 on how we use this identification data that's different from
15 our competitors. This was not designed to be competitor
16 bashing at all. It's just simply a matter of our company
17 policy.

18 For example, in 1974 we made the decision not to
19 sell information to private investigators. That's a policy
20 decision not a legal requirement. On our I.D. product we
21 have two types. One is the full identification report which
22 comes under, we consider it a consumer report, comes under
23 the Fair Credit Reporting Act.

24 We have another product that's a limited product.
25 We provide name, address, and on occasion telephone number.

1 It does not include Social Security number. That's a
2 decision by Equifax.

3 As I said, these products are not sold to
4 individuals but are sold to businesses or other legitimate
5 organizations. The Social Security number is sold as an
6 output report only to those customers having a permissible
7 purpose for the full credit report.

8 In all other cases Equifax will verify a social
9 security number provided in a request for information from one
10 of these legitimate businesses, but we do not return a
11 social upon request that is not furnished by the requester.
12 So you understand now our sources and you understand to whom
13 we sell.

14 MR. MEDINE: Marty and Oscar, do you have any
15 additional comments about that?

16 MR. ABRAMS: Each of the companies is slightly
17 different. We all have our own policies. At Experian we do
18 provide information pertaining to current and past address
19 and Social Security number. And it's limited to that, to
20 organizations that use that information to locate or
21 authenticate individuals.

22 We do that with rules that have been highly
23 restrictive because we wanted to assure that the end-user
24 had an appropriate purpose. And we had wanted to make sure
25 that they were qualified, and we wanted to make sure that

1 there was knowledge of who that end-user was.

2 We required there to be a nexus between the
3 end-user and the party that was being located. And one of
4 the reasons that we had those rules is that the information
5 is current, it does help the end-user locate the individual
6 based on current address.

7 We wanted to make sure it was used appropriately.
8 We did, now that we have a set of principles, we will use
9 those principles to help qualify the parties that will then
10 provide that information to the marketplace.

11 MR. MEDINE: Can you just elaborate what your
12 thought process would be if a look-up service asked for
13 access to your information, how you would decide whether to
14 provide them that access?

15 MR. ABRAMS: In the past, as I've said, we based
16 that based on them knowing who the end-user was, knowing
17 what the use would be by the end-user, assuring that there
18 was a nexus between the end-user and the party that was
19 being located.

20 MR. MEDINE: What would be an example of an
21 impermissible nexus or impermissible use?

22 MR. ABRAMS: An impermissible -- if it was going to
23 be provided to a consumer as the end-user.

24 MR. MEDINE: But what if it were not? Is there any
25 type of situation where someone would be trying to locate an

1 individual that you would view as not a permissible basis on
2 which to get information?

3 MR. ABRAMS: Yes. As I said there had to be a
4 nexus, an existing business relationship between the
5 individual and the end-user. For example, if an individual
6 was an uninsured motorist who caused an accident in
7 California, under California law the insurance company that
8 insured the other party has a right to locate that
9 individual and try to collect from them. That is an example
10 of where there would be a nexus.

11 MR. MEDINE: Oscar, do you have, what are your views
12 on that?

13 MR. MARQUIS: We have essentially the same policies
14 as Equifax and Experian. There are some differences but
15 they're not material. But we do provide some indicative
16 information to look-up services, recognizing the Fair Credit
17 Reporting Act and the balance that that statute sets up
18 between privacy and the benefit of the information.

19 We don't exploit a loophole but rather recognize
20 that balance, the Fair Credit Reporting Act permits
21 disclosure of very confidential, private financial
22 information about consumers for very serious, important
23 transactions dealing with credit, and not only credit but
24 credit, insurance, employment, collections, but some
25 information that isn't as sensitive is permitted to be

1 disclosed for the benefit that's recognized by the statute.

2 MR. SILVERMAN: Marty, I'd like to ask as a
3 follow-up to your hypothetical about the automobile accident
4 whether or not Experian's policies would permit someone to
5 search for a witness to the accident, not someone who was
6 directly involved. Is that a sufficient nexus?

7 MR. ABRAMS: If there was a lawsuit and we knew, and
8 the organization that was providing the information to that
9 law firm for the purpose of locating that witness, the
10 witness had been identified at the scene, yes. Since we
11 know who the end-user is, we know the purpose, we would say
12 that that's a permissible, that it would be an appropriate
13 use.

14 MR. HENDRICKS: In terms of sources and activities
15 and getting back to the question of what's new, when you
16 talk about public records that's very new. There is a
17 qualitative difference between having to go to these
18 courthouses and getting it yourself and having to be able to
19 buy it from a centralized electronics source.

20 Now, half of the states have laws that restrict the
21 use of voting records for voting purposes. I think those
22 are good laws because you don't want to discourage people
23 from voting by allowing that information to be used for
24 unrelated purposes.

25 And that's what I mean about the purpose test.

1 That's one of the standards that should be incorporated into
2 the use of public records when it involves our personal
3 information.

4 You know, another thing that's new is the Internet
5 can flip things sometimes. I mean I very much felt for
6 LEXIS-NEXIS during that big brew-ha-ha over your service
7 when misinformation was being passed about you through
8 electronic means.

9 In turn I want you to feel for consumers because
10 that's what's happening to them so much in this age. There
11 is a lot of bad information being passed about people and
12 that's really hurting them in employment, insurance, and all
13 those sorts of things.

14 The credit header information though is something
15 I'd like to come back to because this is a major source of
16 information. And, Carol, your example about employment
17 wasn't a good one because employment is one of the purposes
18 you can use credit report information under the Fair Credit
19 Reporting Act. So that's already covered.

20 I think credit header information should not be
21 available for these purposes outside the Fair Credit
22 Reporting Act. I think that was an important loophole that
23 should be closed.

24 MR. FORD: For everybody, or just for credit
25 reporting agencies?

1 MR. HENDRICKS: Oh, yeah. For everybody. And you
2 start where you can. I mean, I don't buy the argument that,
3 well, this information is out there anyway so we can't do
4 anything about it. I think you have to start where you can.
5 And I prefer baby steps to bomb therapy. But I agree with
6 you that it shouldn't single out the credit reporting
7 industry. There's got to be -- well, let me, just one more
8 thing.

9 MR. MEDINE: And then you can respond to that.

10 MR. HENDRICKS: I think what's really new here, and
11 we have to sort of step back and we nitpick about all the
12 different little services, is that we're in a transition as
13 I think fundamentally important as from land and feudalism
14 to capitalism, now from industrialism to information age.

15 And we have to decide what are human beings going to
16 be in this new information age, or are we just going to be,
17 the database is going to be chattel for commerce? Or are we
18 going to maintain our rights as human beings to have
19 controls over our information, our destiny?

20 So I think that's why we have to sit back and say,
21 legal rights are a very important part of this matter. This
22 is a human right and can only be addressed by a
23 comprehensive framework.

24 And the FTC is going to have to do what it can
25 administratively but also make the legislative

1 recommendations so we can be human beings in the information
2 age.

3 MR. MEDINE: John.

4 MR. FORD: There are so many subissues to this topic
5 of how do you control the information that's being used.
6 What's personal? What's sensitive? I mean, even the
7 European Union has made some effort to decide what data is
8 sensitive. And many of us in this room would disagree with
9 their category.

10 I would go back to an earlier theme that we ought to
11 give self-regulation a chance to work. And if we're not
12 going to do that, we ought not to penalize one particular
13 industry for data that's out there. We need a level playing
14 field if legislation or regulation is going to pertain.

15 I liken it to the notion that we should not use a
16 vice grip when a pair of tweezers will do. And I don't
17 think we're beyond the tweezer stage yet and we're looking
18 at ways to put a vice grip around a number of issues that
19 are involved.

20 Ownership of data. There's some question about
21 people saying this is information that belongs to me and
22 therefore you shouldn't be using it. Others would argue
23 that it's not information, it's not your information, it is
24 information about you.

25 So ownership becomes kind of a red herring issue for

1 control of the data, maybe even remuneration for deciding to
2 let your data be used. So I would just propose that in a
3 public policy debate that we look at both sides and not
4 apply a vice grip when a pair of tweezers might be an
5 appropriate thing.

6 MR. REED: I'd like to make the comment that since I
7 have been using the credit header information, 1982 when the
8 FTC approved it for that use on a formal request from me,
9 our company has always taken the position of protecting the
10 interest of the individuals.

11 And our customers use the information for very
12 legitimate and appropriate purposes in protecting society
13 and benefiting society. And I think we're going to talk
14 about that later.

15 But I'd like to point out a comment that was just
16 made about the voters' registration. Yes, some states have
17 closed voter registration, but some of them have been
18 overturned for First Amendment violations as well. And I
19 think that's something that should be taken into account.

20 Furthermore, I think that when we talk about the
21 uses of the credit header information, when you're trying to
22 prevent fraud in the insurance industry you have a major
23 problem because you have sometimes as many as twenty or
24 thirty people making claims who give false names and false
25 Social Security numbers.

1 Without an ability to verify that information and
2 make sure that you're dealing with the right people and
3 preventing that fraud from taking place, your insurance
4 rates would skyrocket.

5 We can take the same thing in the mortgage industry.
6 By using that search, and even though that's a Fair Credit
7 Reporting permissible purpose, but by using that search in
8 the way that we use it, we prevent one company from losing
9 four dollars on every loan that they approve and every
10 search that they approve.

11 So for every dollar they spend they save four. I
12 think that's very important to your cost in getting
13 mortgages. So we're dealing with economic conditions as
14 well. And you can't just take and set arbitrary guidelines
15 down for this type of information.

16 And our company has been a voluntary complier with
17 our own regulations internally. And when we put that
18 information out that we talked about earlier about where the
19 data was coming from, we did that as an educational so that
20 our clients and everyone else would understand where it was
21 coming from.

22 And I think you're going to hear later on today more
23 about that, and I think it's very important. And we also
24 force certification, electronic certification when there's
25 access. So we do have controls and we don't sell it on the

1 Internet. That's another factor.

2 So I think that there is a lot more to consider and
3 I think we should take a good long look at this. And
4 voluntary regulation can work, and we'll talk more about
5 that today. Thanks.

6 MR. MEDINE: Just to follow up on your
7 certification. One issue is audit trails in terms of
8 detecting improper use of this data. Do you maintain audit
9 trails so you can identify who has had access to what
10 particular kinds of information from your database?

11 MR. REED: I could tell you since 1982 who accessed
12 what.

13 MR. MEDINE: Okay. And what about, flipping around
14 to the Chairman's question earlier about consumer access, do
15 you provide consumer access to your noncredit reporting
16 information so consumers may have a chance to learn what's
17 in your database about them and possibly seek to correct
18 that information?

19 MR. REED: We have not generally approached that
20 from that direction at this time. However, under the new
21 guidelines we are already in the process of putting those
22 guidelines into place so that they will work for the
23 consumer.

24 We're trying, now we are looking at how that can be
25 done and how enforcement can be imagined not only internally

1 but externally on our customers and subscribers. So there
2 are a lot of issues there yet to be dealt with. And I think
3 we need some time to work our way through them.

4 But now that we're looking at them, we see
5 opportunities to change the way that that can be done. And
6 I don't think it's as difficult as some people would like it
7 to be.

8 MR. MEDINE: But just to clarify, and we'll hear
9 more about this this afternoon, you're still not proposing
10 consumer access to the precise information on file so much
11 as the nature of the information on file.

12 MR. REED: The nature of the information on file;
13 correct.

14 COMMISSIONER VARNEY: David, I still know we're
15 going to run out of time shortly and I'm still sort of
16 struggling with the whole pot here.

17 If I can try for a minute, it seems as though we've
18 got these consumer search vehicles or consumer search
19 enterprises that maybe are the ten companies and maybe
20 they're more into white pages but there are some practices
21 that we want to look at.

22 Then we've got at least the eight companies that are
23 professional, and I think they've identified themselves as
24 individual reference services. On one end they seem to get
25 their information from published white pages, maybe some

1 other sources.

2 At the other end, they seem to get their information
3 from the information that is permitted to be disclosed from
4 credit bureaus as well as public record sources that they can
5 buy either from the creator of the public record or through
6 an intermediary.

7 And then we seem to have the vast middle, which is
8 what Carol put up, all of the specialty reference services
9 that get their information from a variety of sources and
10 make it available to a variety of people.

11 And I guess my question is, is that really, am I
12 thinking of this right? Have I got the universe right and
13 have I got the sources? Is there any other place that you
14 guys are getting information?

15 You're getting it from the credit bureaus and you're
16 getting it from the public records or the intermediaries who
17 make a business of selling you that information in a format
18 that's accessible to you.

19 MR. HENDRICKS: Commissioner, warrant cards and
20 magazine lists.

21 COMMISSIONER VARNEY: Okay.

22 MR. DICK: I'd like to, what I'm hearing is comfort
23 in, it's hard to talk about the sources of information
24 without considering the uses. And what I'm hearing is
25 generally similar principles and the established way of

1 doing business and commerce for many, many years.

2 We trade information all the time we are generally
3 comfortable with. I'm willing to fill in this loan
4 application because I know it's going to be used to approve
5 my mortgage or a credit card. That's a useful thing; I'm
6 willing to do that.

7 I don't know that that information might be used to
8 build a list that might be sliced and diced and commingled
9 with other lists to be used elsewhere. I'm willing to put
10 my name and address in the phone book because I've gotten
11 control of that. I know what it's being used for.

12 And likewise the DMA has guidelines that say this is
13 marketing information. It's not supposed to be commingled
14 with other information and used elsewhere. So it seems to
15 me that where you've got sources in line with uses and where
16 there are adequate controls around those we have been
17 historically comfortable with those.

18 The challenge that I think the new distribution
19 media brings along with the computational ability to
20 commingle data is to use information gathered in one sphere
21 in a different sphere in a different way and to do that very
22 cheaply.

23 There is now, think about it, there are 40 million
24 information terminals on computers on consumers' desks
25 around the country now. So you have got this extraordinary

1 distribution mechanism. You have got an extraordinary
2 ability to commingle information and use it in ways in which
3 it wasn't originally intended.

4 That's the challenge, I think, is the context of
5 information usage in alignment with the source of the
6 information. Where it is we don't see a problem. But there
7 may need to be mechanisms around informed consent. It's a
8 I'm consenting to my information being used in this fashion
9 and not in others.

10 MR. MEDINE: Jerry.

11 MR. CERASALE: One thing, to correct a statement, at
12 least an understanding for Commissioner Varney, I don't
13 believe that the eight companies, at least in the DMA
14 guidelines to you is warranty cards and magazine
15 subscriptions for an individual reference service that I
16 believe, and you should take this up this afternoon, that
17 their agreement meets the DMA guidelines so they would not
18 use that information either. So I don't believe that last
19 statement is correct.

20 MR. MEDINE: Marty.

21 MR. ABRAMS: As we've talked about over the years,
22 David, we believe at Experian that, as I said, that as the
23 marketplace changes, as the environment changes that the
24 uses of information should be visible to the public and
25 should be increasingly visible with the public.

1 We talk about that a lot in our Experian
2 publications, on our Experian Web site. As we get this
3 afternoon to the principles that the eight companies have
4 come up with, one of the most important principles is an
5 education principle that goes to the fact the public should
6 have a right to understand how information is being used.

7 One of the gaps we do have is an educational gap.
8 And one of the roles that we all can play including the FTC
9 is to fill that educational gap. One of the things that I
10 wanted to make really clear is, as Jack would attest, when
11 it comes, you know, we have always been very restrictive on
12 how we provide that identifying information in the
13 marketplace to assure that it is being used in a reasonable,
14 responsible fashion.

15 We've always been very reluctant to provide that
16 information and have to see that there's a good purpose for
17 doing that. And we've always assured ourselves that it is
18 indeed being used for that good purpose.

19 As Jack Reed would attest, we do audit those
20 organizations that we provide information to to make sure
21 that it's serving those purposes. And it's those purposes
22 that have really led us to provide that information.

23 MR. MEDINE: We're almost out of time. We have time
24 for three brief comments. Mark Hanna, do you still want to
25 say something, Eric Wenger, and Marc Rotenberg and then

1 we're going to take a break.

2 MR. HANNA: The thing that's changed most,
3 Commissioner Varney, in my opinion is the fact that some
4 people seem to be missing. I think that more information is
5 coming off the Internet through the published word than even
6 through the information services.

7 You've got search engines now that index every
8 single word. You can put my name in the Internet. Just
9 put my name in a search engine. You will find all kinds of
10 things and from all kinds of places. They write an article
11 in the New York Times, it's indexed the next day in
12 Altavista.

13 My name. I mean, they want to put my address in the
14 New York Times? My address is going to be available to
15 anybody on the Internet. In 1983 I coined a term called the
16 TAG factor. And TAG stood for total aggravation and grief.
17 We've taken a quantum leap in reducing the TAG factor of
18 information.

19 Our technology has taken us to the point where the
20 average American law-abiding citizen now with a very low TAG
21 factor, very low total aggravation and grief can find out
22 what they need to know, whether it's about the seven wonders
23 of the world or whether it's about Mark Hanna. It's the TAG
24 factor.

25 You're not going to be able to put the genie back in

1 the bottle when you have hundreds of search engines that
2 index every single page, every single news group, every
3 single word in every news group is all searchable. And the
4 commingling of data isn't so much by the companies as it's
5 by the world.

6 In the old days you used to say go west, young man.
7 If you had some problems in New York go west. Nowadays the
8 information about you was there before you even thought
9 about it. So it's not so much where you draw the line but
10 in the 1950s our economy boomed because of improvements in
11 the way we manage data. From the '50s, the '60s, the '70s
12 it's gotten better. In the '80s and the '90s.

13 This genie is out of the bottle. I mean every
14 index, every word, the New York Times, the Washington Post,
15 hundreds of papers across the country, every publisher.
16 Nowadays you buy a book on the shelf of Barnes and Noble, I
17 can search on the words in the book and fine the entire text
18 of the book through search engines available on the
19 Internet.

20 MR. MEDINE: I'd like to just keep things brief
21 because we're already past our time. So I appreciate that
22 as the comforting thought to think about over lunch.

23 Eric.

24 MR. WENGER: The challenge here today is to
25 strike the balance between privacy and security against the

1 concerns that we all have about the importance of this
2 information, the necessary and convenient uses for this
3 information, and to try to find a way to strike that balance
4 in a way, you know, that is fair to everybody.

5 What's new that we're seeing today which just sort
6 of occurred to me from the conversation that happened
7 between John and Evan is that the number of actors in this
8 industry has grown tremendously.

9 So even as we discuss John's point about what tool
10 we should be using, whether we should be using a tweezer or
11 a vice, we also have to be thinking about where you would
12 apply that tool even if you figure out what the right tool
13 was because there are so many more companies that are
14 involved in selling information than ever existed before.

15 Another interesting development that we have seen
16 here is that just as we're discussing where to strike this
17 balance, there is more information that's been given to
18 consumers within the last year which allows them to strike
19 the balance in certain places.

20 And I hope that we will have an opportunity to
21 discuss some of this stuff this afternoon. But there are
22 services now that explicitly make the exchange of
23 information for services part of the relationship that they
24 have with consumers, a service that will provide you free
25 E-Mail in exchange for information that you give them.

1 Services that will provide you money for evaluating
2 ads and giving them your opinion on the ads that you look
3 at. And so it's interesting to see, and I'm sure we will
4 discuss this afternoon how there is a developing market for
5 privacy for companies such as Tim's that assign, you know,
6 that have decided to adopt certain privacy policies and
7 advertise them, which is a big change over a year or so ago,
8 and then the ability of consumers to choose which companies
9 they want to deal with how much information they want to
10 give away and for what purposes and what they expect in
11 return.

12 MR. MEDINE: We will focus on those. Again, one of
13 the challenges of this day is the discussion that consumers
14 don't have the relationship with companies that are using
15 the information and how do we address that concern.

16 The last words from Marc.

17 MR. ROTENBERG: Thank you, David. I just wanted to
18 say, to put the privacy issue in context, that privacy is
19 not an absolute right but it is a fundamental right. And
20 the education that needs to go on is not about consumers
21 being educated; it's about business and industry being
22 educated in the role that privacy should play.

23 This panel discussion, which has been about look-up
24 services is fundamentally about how does industry use
25 privacy, use private information about consumers.

1 And I have a concrete suggestion for the industry to
2 address the concern that has been raised, and that is to
3 disclose the source of the information that's provided in a
4 record at the time the record is disclosed so that anyone
5 who purchases a record can see on the record was that public
6 record information? Did you take it from a credit header?
7 Is it from a survey? Is it from a commercial transaction?
8 Let's put it in writing, put it on paper and let people act
9 on that information.

10 MR. MEDINE: Thank you all for coming here and for a
11 very lively discussion. We are going to take an hour's
12 lunch break and resume at 1:20. Thank you.

13 (A lunch break was taken.)

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1 PANEL II: WHO USES DATABASES?

2 WHAT ARE THE BENEFITS AND RISKS?

3 Who uses these databases and how are they used? What
4 benefits and risks are associated with using databases?

5
6 William F. Baity, Deputy Director, Financial Crimes
7 Enforcement Network, U.S. Department of the Treasury

8 Karla S. Belcher, Deputy Director, White Collar Crime Center

9 John Byrne, Senior Federal Counsel and Compliance Manager,
10 American Bankers Association

11 Leslie L. Byrne, Special Assistant to the President,
12 Director, U.S. Office of Consumer Affairs

13 Jason Catlett, Chief Executive Officer, Junkbusters Corp.

14 Tim Dick, President, WorldPages, Inc.

15 Mallory B. Duncan, Vice President and General Counsel,
16 National Retail Federation

17 Robert Edington, Manager, New Business Development, National
18 Information Services, LEXIS-NEXIS

19 Beth Givens, Project Director, Privacy Rights Clearinghouse

20 Susan Grant, Vice President for Public Policy, National
21 Consumers League

22 Mark Hanna, President, WDIA Corp., National Credit
23 Information Network

24 Bruce Hulme, President, Special Investigations, Inc.,
25 Legislative Committee Member, National Council of

1 Investigation and Security Services
2 Geraldine Jensen, President, Association for Children for
3 Enforcement of Support
4 Jane Kirtley, Executive Director, Reporters Committee for
5 Freedom of the Press
6 Carole Lane, TechnoServe
7 Christopher Panzera, Special Agent, Financial Crimes
8 Section, U.S. Secret Service
9 Jack Reed, Chairman, Information Resource Service Company,
10 President, National Council of Investigation and Security
11 Services
12 David Sobel, Legal Counsel, Electronic Privacy Information
13 Center
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A F T E R N O O N S E S S I O N

(1:25 p.m.)

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3 MR. MEDINE: Thank you very much for coming back for
4 the continuation on our session of computer databases and
5 look-up services. Our first session this afternoon will
6 focus on the beneficial uses of these services as well as
7 some of the risks these services pose to consumers in terms
8 of fraud and invasions of privacy.

9 We are going to be talking about law enforcement
10 uses of these. And I do want to in the interest of full
11 disclosure reveal that the FTC does use these services in
12 our law enforcement efforts as well, but we're anxious to
13 hear how others use them and what risks they pose in their
14 use.

15 I want to start off with focusing on the law
16 enforcement uses of these services. And we have a number of
17 law enforcement agencies represented this afternoon. And I
18 want to start off with the Secret Service. And Christopher
19 Panzera, who is a special agent with the Secret Service,
20 will talk a bit about how they use these databases.

21 MR. PANZERA: Good afternoon. The Secret Service
22 uses these databases in a variety of ways. We obviously
23 have a protecting mission which is protecting the president
24 and the vice-president and also our investigative missions.

25 And our current investigative missions are

1 counterfeit currency, financial crimes including credit card
2 fraud. Last year we ran over 64,000 inquiries in support of
3 our field agents.

4 These range in efforts to locate and identify
5 individuals, identify businesses that are used by the
6 suspects, possible suspects in a possible crime, also to
7 disqualify suspects based on various identifiers and where
8 they have been and where they have used these things before.

9 In addition, we can identify addresses that have
10 been used in the past by suspects as well as just, excuse
11 me, to identify addresses that have been used in the past
12 either for fraudulent purposes or others.

13 And finally we can even use it for safety reasons.
14 If we are going to do a raid on a particular address, it
15 behooves us to know not only who's in that house as far as
16 the suspect goes but what other people have had contact
17 with this address. In addition, who lives next door,
18 who lives across the street. Because if going in
19 one way and you have people that have come into
20 our attention criminally in the past behind us, we'd like
21 to know that for obvious reasons.

22 In addition, in the protective mission we get
23 threats from phone calls as well as letters as well as
24 personal face-to-face tips. We need to find somebody. We
25 might have just a name; we might have just an address; we

1 might have a combination of the two. The database searches
2 allow us to try and identify these individuals and reach out
3 and try and talk to them as soon as we can.

4 MR. MEDINE: And what would you do if access were
5 restricted to those databases, if they were not as readily
6 available as they are to the Secret Service?

7 MR. PANZERA: Well, obviously there was a time we
8 did all this before there was a database, Internet and the
9 like. But we'd have to actually have spent many more man
10 hours, agent hours, trying to track these items down.

11 And then as far as items like safety and the like,
12 things can be impaired. When we do do our searches,
13 obviously there is a trail for us. People, every time that
14 we request a search from the field, our division that
15 handles these, they ask what office are we with, our badge
16 number and stuff like this. And these are all monitored and
17 maintained by our, what we call our investigative support
18 division.

19 COMMISSIONER VARNEY: Do you use more than one
20 database?

21 MR. PANZERA: Yes, we use several.

22 COMMISSIONER VARNEY: And have you found them to be
23 equally accurate?

24 MR. PANZERA: Some are more accurate than the
25 others. It just depends. I think there was a time in the

1 '80s when, for instance, if you were to use credit bureau
2 information, just through human error, data entry error
3 there were problems. I think they're getting better as time
4 goes on. But, you know, our division that handles this has
5 its personal favorites and uses those.

6 COMMISSIONER VARNEY: Do you know approximately how
7 many different database services you use?

8 MR. PANZERA: Somewhere around thirteen.

9 COMMISSIONER VARNEY: Thirteen.

10 MR. PANZERA: At any given time. We don't stay with
11 the same one. As new ones come on we tend to use them.

12 COMMISSIONER VARNEY: Okay. And do you use
13 different database services for the same event, or is it
14 that you're just using different services for different
15 things?

16 MR. PANZERA: There are some overlaps. I mean,
17 obviously if you're wanting to get to a, some databases only
18 cover certain areas of the country.

19 COMMISSIONER VARNEY: Right, right, right.

20 MR. PANZERA: Others may cover another area of the
21 country. And then they might have an overlap within between
22 them. So depending on the focus of the investigation or the
23 suspect, if you will, it just depends. It's fluid.

24 COMMISSIONER VARNEY: Without naming names, are
25 there any services that you guys absolutely don't use?

1 MR. PANZERA: Not that I'm aware of.

2 COMMISSIONER VARNEY: Thank you.

3 MR. MEDINE: One of the issues that has come up is
4 whether consumers should be able to opt out of being in
5 these databases; that is, contact the database operators and
6 say I just don't want my name included in these databases.
7 What kind of impact would that have on the U.S. Secret
8 Service's mission?

9 MR. PANZERA: Well, if that was to happen, if they
10 would have the ability to do that, obviously I would assume
11 a lot of the people we are looking for would immediately try
12 to opt out. And it would have obvious consequences in the
13 fact that when we call up to try to, as a field agent trying
14 to find some information about a particular person, a
15 particular place that we're looking to go, it's not going to
16 be there; hence we have to go through other avenues, going
17 down to the courthouse to get the local county records that
18 would have normally been available in this database for
19 instance.

20 MR. MEDINE: One other issue that's been raised is
21 whether credit bureau header information should be publicly
22 available. If it's not then made part of the credit report
23 then you would need a permissible purpose to get access to
24 the credit report which I assume the Secret Service does not
25 typically have. How much of an impact would that have on

1 your operations?

2 MR. PANZERA: Well, it's interesting as far as
3 credit bureaus go. But we can't run a credit bureau on
4 anybody without a subpoena, whereas I guess other entities
5 can. We only can get, I believe you're referring to the
6 header information. That's the only thing we can get.

7 We do get, just to amplify your point, the one time
8 we do get full credit bureaus are obviously on applicants
9 and people who have signed waivers for us. If we were not
10 able to get the header information and other types of just
11 generalistic information, obviously if we're trying to find
12 out if a person has been victimized by a certain fraud it
13 makes it very difficult for us.

14 MR. MEDINE: Actually I should clarify the FCRA
15 specifically does provide access for government agencies to
16 header information. So, and that would not be impacted by
17 any at least proposed changes in the law. So I don't think
18 that would impact Secret Service's access to that
19 information.

20 COMMISSIONER VARNEY: Do you know, do you have any
21 restrictions on the ability of the services you use to keep
22 track of and relay the fact that you're using them and that
23 you're using them --

24 MR. PANZERA: No.

25 COMMISSIONER VARNEY: So if you go to three agencies

1 and have them run a search on me, can they keep track of
2 that and do they, do you know?

3 MR. PANZERA: Various services can have various
4 internal requirements. I asked that specific question to
5 our people. And I was seeing with whom, if there was for
6 oversight purposes if they wanted to know that we ran it.

7 And this service, and without naming a name, just
8 this particular service said yes, they have run it or no,
9 they haven't. That's one safeguard.

10 The other problem is that some, through the use of
11 anonymous mailers some people will, you just can't know.
12 They have buried themselves in various electronic fields to
13 prevent people from knowing who's actually accessing this
14 information.

15 COMMISSIONER VARNEY: Okay. So but as far as you
16 know then there is no restriction on a company's ability to
17 keep track of how many times you have come to the service
18 then, who you looked at and for what reason?

19 MR. PANZERA: As far as Secret Service there is none
20 that I'm aware of.

21 COMMISSIONER VARNEY: And to go back to David's
22 question, if the use of these databases were limited but law
23 enforcement were exempted from any limitation, that wouldn't
24 pose a hindrance for you?

25 MR. PANZERA: No.

1 MR. MEDINE: Just to clarify as to Commissioner
2 Varney's question (we're tag-teaming here) some of these
3 services have indicated they do have an audit trail which
4 indicates who has access to particular information. And
5 that audit trail would presumably apply to the Secret
6 Service. Does that pose a risk that somehow the bad guys
7 would know that you were looking at them by getting access
8 to that audit trail?

9 MR. PANZERA: It could. I mean, I won't lie to you.
10 It could because if they just decide that they're getting
11 involved in some type of activity and they sense that
12 something is coming, they could obviously go to any number
13 of databases and say who's been looking at my file?

14 MR. MEDINE: You would have concern to, if consumers
15 were to have not only access to the information but access
16 to who's had access to their file, as well?

17 MR. PANZERA: Yeah. It would impact our
18 investigations, but I don't believe it's a complete, we
19 would be completely against it. I mean for obvious reasons
20 you need, people should have the right to know who's looking
21 at them. And we don't want to get in the way of that.

22 MR. MEDINE: Now I want to turn to Karla Belcher,
23 who is with the White Collar Crime Center, and get a sense
24 about what is the White Collar Crime Center and what is your
25 relationship to these look-up services?

1 MS. BELCHER: Thank you for the opportunity to be
2 here. I do represent the National White Collar Crime
3 Center. We are a nonprofit corporation in the State of
4 Virginia. We are federally funded through the U.S.
5 Department of Justice.

6 And we exist to provide a nationwide support system
7 for agencies and organizations that are involved in the
8 prevention, investigation, and prosecution of economic
9 crime. So we have about 255 agencies represented from 49 of
10 the states that we do support services for.

11 And those services take a variety of types. But the
12 one that we're interested in by virtue of our presence here
13 today is one of them that we offer to our agencies with
14 criminal investigative authority, and that is that we
15 subscribe to several of the commercial databases and we make
16 those searches available to our agencies for investigative
17 purposes.

18 So that's by virtue of why we are here today. I can
19 tell you that I speak generally as a representative of our
20 member agencies. I can't say that I speak for every one of
21 our agencies because I haven't polled each and every one of
22 them on this issue.

23 But in the feedback that we've gotten from our
24 agencies, they certainly consider our conducting the
25 searches that we do a very viable benefit. And the three

1 uses that we typically see in the demand from our agencies
2 are locating persons and witnesses, locating assets for
3 people, and then just generating leads in general.

4 And that can take a variety of instances. One of the
5 ways in which our agencies develop leads is certainly
6 through, a lot of times through the credit header
7 information of prior address is looking at other
8 jurisdictions that they can go to the law enforcement
9 agencies in that region and canvass them for either
10 outstanding warrants or possible case information that can
11 be released. That's one way.

12 And there are other ways, too. Another example of
13 just developing general leads would be developing possible
14 links to criminal activity or other types of violations,
15 civil or administrative violations through some of the
16 information in the databases.

17 For instance, uniform commercial reporting or liens
18 and judgments and those sorts of things. There are a
19 variety of different types of searches that can be done on
20 these databases that can possibly link to associates in the
21 criminal realm.

22 So those are some of the ways that the information
23 is used. By and large talking about the benefits connected
24 with those uses, the key one also piggybacks on the comments
25 from the Secret Service in that it expedites the

1 investigation.

2 The information that we're getting out of the
3 commercial database is information that by and large
4 investigators have relied on through going to the
5 courthouses and those sorts of sources from forever.

6 But the real benefit now is that it can really
7 expedite the investigations. And even beyond that there are
8 some instances in which the investigators would probably
9 have virtually no idea of where to go about locating a
10 subject because people are so mobile these days that it
11 would be very laborious to try to find them, if not
12 virtually impossible to do so by having the information on
13 the commercial databases.

14 It makes it much easier, not to say that there's not
15 still some legwork involved and a lot of investigative work
16 to be done. But it does make it much easier to try and get
17 a handle on where a subject might be to serve papers or to
18 interview them if it's somebody that's not at the point of
19 being arrested yet, just to interview them to see if in fact
20 an arrest is due and that sort of thing. So that's really
21 the key benefit.

22 MR. MEDINE: Do you have any way of quantifying how
23 successful it's been to use these services, what have the
24 results been given your access to the services?

25 MS. BELCHER: To help try and quantify, I can tell

1 you that shortly before or while preparing for the hearing I
2 did look at how many agencies had accessed those types
3 of services from us.

4 We have a general membership of 255. That includes
5 a lot of different types of agencies and organizations. The
6 level of membership that we make these searches available to
7 is a subset of that. But from those about 75 agencies have
8 accessed our services with regard to doing the searches.

9 Now I don't have a count on the number of searches.
10 It is quite a bit less than the Secret Service numbers just
11 by virtue of our manpower. We have a small staff. We are
12 staff driven and that sort of thing. So the numbers of
13 searches may not seem terribly dramatic.

14 But the real benefit both for our members
15 specifically to the way that they relate to us and then
16 through the databases, too, is that in many cases we are
17 providing these services where they have no other viable
18 recourse.

19 In other words, it's that the services are either too
20 costly for their particular department or that sort of
21 thing. So my point in mentioning that is simply that even
22 if the numbers are fewer than some agencies, the impact is
23 still very great to these agencies because they come to us
24 for a service that they consider very beneficial and very
25 crucial to their investigations. And so we feel very

1 strongly about it from that point of view.

2 COMMISSIONER VARNEY: How many databases do you
3 subscribe to?

4 MS. BELCHER: We subscribe to four.

5 COMMISSIONER VARNEY: Okay. And are there any --
6 now obviously none of the four are -- I mean, are there
7 databases that you don't subscribe to because you don't
8 believe they're accurate or you found them untrustworthy or
9 you have problems with them?

10 MS. BELCHER: I can't say that that's the case. The
11 four that we subscribe to we're quite happy with. And there
12 is some overlap in the types of information and services
13 that they provide. But we still feel there is enough
14 complementing that they do of each other to make it
15 worthwhile.

16 COMMISSIONER VARNEY: And again, without naming
17 names that the four you subscribe to, when you subscribed,
18 when you signed up did you go through any kind of interview
19 process? Were there site visits? What was your experience
20 in subscribing to them?

21 MS. BELCHER: Sure. Sure. There was generally
22 quite a bit of dialogue both telephonically and then on-site
23 before we signed up with these folks. Generally speaking,
24 the four that we have dealt, three in particular, but I'd say
25 the four that we have dealt with have been very willing and

1 wanting to come down and see us in person and see the
2 operation before we signed up and started using the service.

3 COMMISSIONER VARNEY: Do they audit you? Do they
4 know who you're providing information to and for what
5 purposes?

6 MS. BELCHER: There has been no formal audit. But
7 certainly they're aware of our membership both directly and
8 indirectly. And they keep, we keep, a good running rapport
9 and dialogue going. So they're aware of what we do with the
10 information and how we access them, why we access them, and
11 who our membership is.

12 MR. MEDINE: Could you tell me a little bit more
13 about your membership? And also you indicated that only 75
14 of your members have access to these services. Is that
15 because you've decided to screen others out or is it others
16 have elected to not seek access to those services?

17 MS. BELCHER: No, I should clarify that. I
18 appreciate that. Actually, when I mentioned the 75, that
19 happens to be that 75 agencies have elected to come to us
20 for this service.

21 There is a slight subset of the 255 member agencies
22 that I mentioned that would have access. And the reason for
23 that is that we have jumped various tiers of membership.
24 For instance, we have an affiliate membership that's open to
25 private entities for -- and the focus there in terms of the

1 membership with the center is focused on prevention and
2 education in terms of economic crime.

3 Those agencies, or really those organizations
4 because none of them really fall into the realm of agency,
5 those organizations wouldn't have access to this kind of
6 service; only those with criminal investigative authority.

7 But the 75 is a number that has elected to come to
8 us for that service. The only restriction that we put on
9 who has access is simply the criminal investigative
10 authority. And by and large for us that overlaps two of the
11 primary tiers of membership that we have, what we call our
12 voting membership, which has as its most important criterion
13 in the criminal investigative authority.

14 And typically, just to give you a sense of who I'm
15 talking about when I mentioned these types of membership,
16 typically the voting member for us is going to be a
17 traditional law enforcement agency at the state and local
18 level.

19 The state level, attorneys general offices and local
20 prosecutors offices, who, particularly those who deal with a
21 lot of economic or white collar crime. Those are primarily
22 the folks that are coming to us for these services.

23 The other type of membership that would have access
24 are what we call associate members, which would include
25 federal agencies that have signed a confidentiality

1 agreement with us. And those agencies would also have
2 access to the public records database searches that we do.

3 MR. MEDINE: And what would that confidentiality
4 agreement cover? What would be kept confidential?

5 MS. BELCHER: That's, really the confidentiality
6 agreement is more specifically geared to the code of federal
7 regulations. It's Title 28, Part 23 that deals with
8 federally operated intelligence systems.

9 We have another database that is not for public
10 record, and that's what that is really geared to. But we
11 also use that distinction to enable them to access the
12 public records data, too.

13 MR. MEDINE: And can you give us a clear sense of
14 what, when you say white collar crime, can you give us some
15 concrete examples of white collar crimes that might be
16 investigated using some of these databases?

17 MS. BELCHER: Sure. A lot of our agencies I
18 mentioned, actually one category of membership that I didn't
19 mention, it falls under the voting members and I didn't mean
20 to slight them, but state regulatory agencies are also
21 eligible for membership under this, those with criminal
22 investigative authority.

23 For us most of the membership that falls under that
24 category are state securities regulators. And because, this
25 is my theory for why they come to us for a lot of our

1 services, unlike some of the other more traditional law
2 enforcement agencies the securities industry historically
3 has not had as many outlets for support services as
4 traditional law enforcement agencies.

5 So we have become a primary source of support
6 services for them. And so we get a lot of requests for
7 searching in some of the investment related frauds and those
8 sorts of things that they get involved in.

9 And I should point out by virtue of the fact that
10 they are regulatory that not everything that they come to is
11 to search on the public records data is criminal
12 necessarily. A lot of it could have administrative or civil
13 sanctions assigned to it or connected with it. So that
14 would be one example.

15 Some of the other agencies would come to us for more
16 traditional embezzlement types of cases, some consumer
17 related fraud. We try to make, by virtue of the fact that
18 our mission is economic crime, it's a symbol also that we're
19 trying to be as inclusive as we can rather than exclusive.

20 And we have evolved into being more of an inclusive
21 agency in that regard. So we try to, there is a lot of
22 criminal activity going on out there that can be construed
23 as economic crime. We try to be as inclusive with our
24 agencies as we can and what constitutes that.

25 MR. MEDINE: Do you put any restrictions on your

1 agencies' use of these look-up services once you give them
2 access to the services?

3 MS. BELCHER: It is, it's made clear that we expect
4 that they will use it for investigative purposes, either in
5 the development of an investigation or actual case related.
6 Certainly we make it clear that they can't come to us and
7 look up their neighbor for some neighbor squabble that
8 they're having.

9 But for investigative, legitimate investigative
10 purposes are what we make it available for. And this is
11 related and yet not, but I will point it out since it just
12 popped into mind.

13 We do make a point of letting our agencies know that
14 the information is considered raw data and is not to be used
15 with any action connected with it unless it is verified. So
16 that is a caveat that we put on the agencies. And in fact
17 many of the, any of the hard copy printouts that we may
18 supply to our agencies would have this disclaimer which is
19 provided by the services that we subscribe to right up front
20 so they do have a sense of that.

21 MR. MEDINE: Do you audit the agencies' use of these
22 services at all to see if they are using them consistent
23 with the way you think they should be used?

24 MS. BELCHER: We do; we audit member agencies. We
25 have a random mechanism in place. But we do have a policy

1 of auditing member agencies for, not just for that. Really
2 in fact it's been more geared to other sorts of internal
3 policy with regard to the intelligence database guidelines.
4 But certainly that could be construed as part of the audits
5 that we would do.

6 MS. ROSENTHAL: I'm wondering what types of
7 information you get from the databases and if you get more
8 information than you need or use in the investigations.

9 MS. BELCHER: The types range very, very widely. We
10 allow our membership to tell us what kind of information
11 they're really looking for. And the answer that we get from
12 them can be anything from I want a last known address, I'm
13 trying to locate this person, I have outstanding papers to
14 serve to, you know, we're developing the investigation on
15 this fellow. We don't have much to begin with. Give us
16 everything you can get.

17 That's literally the range that we get. So the
18 information that we go searching for can vary just as
19 widely. If we're given very specific parameters, then we'll
20 try and heed those parameters. But if we're given a wide
21 open question, typically there are a couple of different
22 groupings for information that we will go after.

23 We'll look for a lot of times prior address
24 information. We'll look for assets, because a lot of times
25 that will be helpful to the particular investigation.

1 And anything else that we think may give -- another
2 example would be, particularly in the case of some
3 securities investigations, a lot of times prior court
4 record, for instance, liens, prior liens or outstanding
5 liens and judgments are going to be very helpful with regard
6 to that investigation, can especially go toward establishing
7 a lack of disclosure to investors that have been scanned and
8 that sort of thing.

9 So there is really a wide range of information that
10 we can go after depending on what it is that the
11 investigator or the prosecutor is focusing on.

12 COMMISSIONER VARNEY: So your agencies don't access
13 the databases that you subscribe to directly; they tell you
14 what they want and then you go to the database.

15 MS. BELCHER: That's correct. The request is done
16 usually either by fax or phone. More typically by phone I
17 would say. And we do the searching. We have Intel
18 technicians that do the searching and then report the
19 results of the searching back to the requester.

20 COMMISSIONER VARNEY: And how do you, do you fax
21 them back or do you phone them back or what do you do?

22 MS. BELCHER: Typically we will phone with an
23 immediate kind of response to give them a sense of whether
24 we came up with anything or not. And typically, depending
25 on the request of the person wanting the information, we

1 will either fax the information which is a hard copy
2 printout of what came from the service, or we will mail or
3 overnight those results directly to the requester. We have
4 done all three.

5 COMMISSIONER VARNEY: And have you ever had any
6 problems with the information getting into the wrong hands?

7 MS. BELCHER: Not that we have been made aware of

8 MR. MEDINE: Thank you. Now I'd like to turn to
9 William Baity, who is the Deputy Director of the Financial
10 Crimes Enforcement Network at the U.S. Department of
11 Treasury to talk again about what your office does and how
12 you make use of these look-up services.

13 MR. BAITY: Thank you, David. I too am very glad to
14 be here this afternoon with you. Let me begin, I would echo
15 the comments pretty much of the two previous presenters.
16 Let me just, if I could, digress a little and tell you a
17 little bit.

18 FINCEN is a little unique in the aspect of how we
19 use databases. And while I know the interest today is
20 primarily focused on use of commercial databases, we house
21 approximately, or at least try to, about, fifteen commercial
22 databases at any given time.

23 We also have access to most all of law enforcement
24 databases. And under our authority to oversee the Secrecy
25 Act, we also house a financial database. We use the

1 commercial databases as a component and complement to law
2 enforcement support.

3 And how that works in short is basically that any
4 federal or state law enforcement agency, any federal law
5 enforcement agency and any state, because we've allowed all
6 our 50 states to have access to our financial database, can
7 come into FINCEN with a lead and ask us to look through our
8 various databases for information, oftentimes for assets and
9 other types of property records.

10 And what we do using those commercial databases as
11 well as our other databases, when we find some connect
12 between a requester, for instance, if the customs service
13 requests some information, a customs agent in El Paso, Texas
14 and we're able to determine that the same person of interest
15 is of interest to an ATF agent in Albany, New York, we're
16 able to put the two together with the data we provide.

17 Let me just sort of maybe go ahead a little bit to
18 some of the questions I heard. What I thought was
19 interesting and I think one of the things to keep in mind is
20 that what we're talking about in the world of commercial
21 database or information that we buy commercially is not
22 really a new phenomenon; it has been there forever.

23 What we have now because of new technology is an
24 ability to collate, package it, and disseminate it much
25 quicker. And that's really I think what I think unnerves

1 people sometimes.

2 And I know even we look at some of the ability to
3 retrieve information so quickly, a lot of information that
4 you couldn't have done before, I mean, you could go to the
5 courthouse but you would have been there quite a long time
6 to do it. But the information is not new; it's just really
7 the packaging.

8 We are basically an anti-money-laundering law
9 enforcement support entity. And in that regard what we try
10 to do is place connects between different law enforcement
11 agencies and use the commercial databases to supplement our
12 others.

13 I will say that the information that is commercially
14 available is oftentimes, I won't say more meaningful but as
15 meaningful to the law enforcement investigators and those
16 especially involved in financial crimes investigation,
17 specifically anti-money laundering. Because obviously the
18 object here is to follow the money.

19 MR. MEDINE: Could you elaborate on that, in how
20 meaningful they are and what are the benefits that you
21 derive from these commercial databases without giving away
22 too many trade secrets?

23 MR. BAITY: Well, basically I think, again echoing
24 on other previous comments, the ability to retrieve
25 information about known addresses, both present and prior,

1 information about assets, the ability to make the connect to
2 other people that may be under an investigation. Oftentimes
3 what you will have an investigator come in with, for
4 instance, Bill Baity and one piece of property and that's
5 all they know.

6 By searching often through the databases, especially
7 commercial databases, you are able to make the linkage. And
8 we like to say oftentimes that the investigator finds that
9 they are basically, they think they have something.

10 And what do they have is basically a leg of a whole
11 elephant. Someone else has another piece of the elephant.
12 And by getting that information we're able to bring the two
13 together.

14 MR. MEDINE: Can you give us a sense of what your
15 annual budget is for these commercial look-up services?

16 MR. BAITY: About three million.

17 MR. MEDINE: Three million?

18 COMMISSIONER VARNEY: You said when you're in the
19 business you're in the name of the game is called money. So
20 when you're finding the asset records, you're finding those
21 records that are, the assets that are publicly recorded;
22 right?

23 It would certainly be helpful I would think to you
24 in your business to do precisely what we heard this morning
25 shouldn't be done, which is marry the reference data to the

1 transactional data so you can truly follow the money.

2 MR. BAITY: Well, I think if we had our druthers I
3 think you're absolutely right. We'd like to. But given
4 practical limitations and both privacy and otherwise, I
5 think the public data that we are able to retrieve, the
6 ability to connect to sometimes unknown entities is I think
7 quite beneficial to law enforcement in that regard.

8 MR. MEDINE: I'll ask the same question I asked
9 earlier about opt out. Do you have a view about consumers'
10 ability to opt out of these databases?

11 MR. BAITY: Well, I think that, there's one example
12 I think of an opt out. We buy a commercial product which is
13 basically phone numbers, but it's only those people who are
14 in the phone book. So people who opt out of using that
15 don't get that database.

16 They may be able to be located through some other
17 mechanism, but they have opted out. I think in terms from
18 the standpoint of law enforcement support, obviously the
19 more complete the data systems are the better utilization
20 that the law enforcement agent is going to have.

21 MR. MEDINE: Okay. I'd like to shift the focus now
22 from law enforcement to the private uses of some of these
23 databases and look to the Association for Children
24 Enforcement and Support.

25 And we have Geraldine Jensen with us today. Could

1 you talk a little bit about your organization and how you
2 make use of these databases?

3 MS. JENSEN: All right. Good afternoon. It's good
4 to be here. ACES is a national nonprofit organization made
5 up of families whose children are owed child support
6 payments. We have 350 chapters in 47 states, about 35,000
7 members.

8 The average ACES member is a low-income, single
9 mother. She earns about ten thousand dollars a year. She
10 has two children. They haven't received support in about
11 two years. She's gone to the government child support
12 agency for help on her case and she's been waiting for at
13 least 18 months.

14 The largest problem that our members report is the
15 inability to locate the absent parent. We use the database
16 to help these families identify a current address so that
17 legal papers can be served to establish support orders.
18 That occurs when maybe you were decertified by a parent who
19 leaves the family and you need to track the person down to
20 serve them papers to get the child support order.

21 We have members who were not married to the father
22 of the child and they need to locate them to establish
23 paternity. And we have members who are divorced and have
24 court orders for support and are trying to locate the
25 noncustodial parent in order to collect payments.

1 The service has been very valuable. Our members
2 report that when you go into the government agency and you
3 ask for help, they tell you, we have a thousand cases a
4 worker and if you don't have an address or information, you
5 know, we'll get around to helping you.

6 Many of them lose their homes, end up on welfare.
7 Nine out of every ten families on welfare in America are
8 owed child support payments and don't receive them. It's
9 the leading cause of child poverty. So they have real
10 consequences when they're unable to locate the absent parent
11 and get these payments collected.

12 When we can provide our membership a new address and
13 they can take that into the agency, 75 percent begin to get
14 action on their case and begin to get payments. The
15 difference is that about 88 percent of those who were on
16 welfare get off of welfare because they can combine the
17 support payments with an income from their job.

18 This is a very important issue to us because of the
19 new welfare reform law. Benefits now are going to be
20 eliminated to families after a certain number of years. And
21 the only way that many of these families are going to be
22 able to survive is by adjoining the support payments with
23 their earned income.

24 MR. MEDINE: What's the fee structure for your
25 organization and do your members pay you on a

1 search-by-search basis? How does that work?

2 MS. JENSEN: Our membership dues are based on their
3 income. If you earn under ten thousand dollars it's ten
4 dollars a year; ten thousand to fifteen thousand is fifteen
5 dollars a year. Fifteen thousand and over is twenty dollars
6 a year. We ask for a five dollar fee to do the locate
7 service for our membership.

8 We provide them information in, two different types
9 of information. One is based on just if you have a previous
10 address. Because if you were not married to the father you
11 may not have a Social Security number in order to use for a
12 search.

13 Or we can do the search using the Social Security
14 number, which now is on your divorce decrees and on the
15 child's birth certificates so that you can actually use that
16 to initiate your search.

17 MR. MEDINE: Do you have any sense of how beneficial
18 it is to have a Social Security number as a search tool in
19 terms of your ability to tracking them down? Is there a
20 noticeable increase in accuracy of ability to track someone
21 down if you can add that Social Security number to the
22 search process?

23 MS. JENSEN: Right. We are able to find a new
24 address 57 percent of the time based on just the previous
25 address. We're able to find it 90 percent of the time if we

1 have a Social Security number to enter into the database.

2 MS. ROSENTHAL: The database that you're using now,
3 does it provide you with Social Security numbers?

4 MS. JENSEN: No, it doesn't. But in the past the
5 service that we used did. And, you know, that was better
6 for most of our membership. When you think about America
7 today you have to realize that 25 percent of the children
8 are born to never married parents.

9 That means that in any given day, let's see 29
10 million kids in this country who are owed support, half of
11 them come from a family that they weren't married and they
12 don't have the Social Security number.

13 So if we could take a person's name, their last
14 known address, and then be able to provide that parent the
15 Social Security number, they then can take that to the
16 government agency and say this is the information I now have
17 and could you please do a federal parent locator.

18 Where the government actually looks at social
19 security IRS records, and they can then say, yes, indeed,
20 this is this person's Social Security number, and then they
21 can do several other searches. Often that's the only way
22 that families are able to get the legal documents served so
23 that they can get a court order so the child can receive
24 payments. If you can't get that done you can't even get an
25 order for a payment.

1 CHAIRMAN PITOFSKY: Is your service limited to
2 locating people? For example, would you get into the
3 question of whether someone is telling the truth about how
4 little assets they have?

5 MS. JENSEN: We have just begun doing some accessing
6 of public records for assets. But so far our only
7 experience with that is to verify if there is a property
8 listed in someone's name or not so that one could put a lien
9 on the property for, if you have a judgment for back support
10 owed to you. So I have limited experience in that.

11 CHAIRMAN PITOFSKY: You would ask the person who is
12 seeking that information to show you some evidence that they
13 have a judgment or some other right to get it?

14 MS. JENSEN: Right. We have them give us a copy of
15 their judgment. And for people who don't have a judgment we
16 have them give us a copy of their application with the
17 government for child support enforcement services.

18 CHAIRMAN PITOFSKY: Commissioner Starek.

19 COMMISSIONER STAREK: Yeah, I wanted to ask you
20 about child enforcement support services by the, I think
21 it's the Department of Health and Human Services. Don't
22 they have a major program to locate deadbeat dads? Is it
23 not working or there's just too many people that need the
24 services?

25 MS. JENSEN: The biggest problem is the backlog of

1 the cases. They do have an ability to search IRS, Social
2 Security, Department of Defense, Department of Labor. They
3 have requirements in the new law that Social Security
4 numbers have to be on the birth certificates, divorce
5 decrees, marriage licenses in order to facilitate the
6 ability to locate the parents.

7 But what happens is that you fill out the
8 application, you go in there. And maybe if you're lucky in
9 six months you might get a search done. If you come through
10 us, we can get the information within a week to someone.
11 People can't wait for six months to feed their children or
12 to be able to make a house payment or rent payment.

13 COMMISSIONER VARNEY: Geri, we were speaking a
14 little bit before the session started. And could you talk a
15 little bit about your concerns on how the market, the
16 economics of this industry and what would happen to groups
17 like you if the database services were restricted?

18 MS. JENSEN: Right. Our concern would be if only
19 groups, you know, law enforcement agencies and nonprofit
20 agencies had access to these databases is that they'd just
21 go away. They would dry up. Because how the companies that
22 have to compile the data and data enter it, I mean, they
23 can't make a living from nonprofit agencies and from law
24 enforcement agencies. And none of us have the kind of
25 budgets that could support that.

1 MR. MEDINE: Can you maybe walk us through an
2 anecdote from your files in just how the process works, and
3 obviously not revealing any identities but give us a more
4 concrete sense of how the process works in terms of locating
5 somebody?

6 MS. JENSEN: Sure. We have a form that we ask the
7 parent to fill out giving us the information that they have,
8 the last known address, the Social Security number, how to
9 contact them, to send us a copy of their paperwork showing
10 that they are a child support case.

11 That comes into our office. We have four people who
12 have pass codes and an ability to use the database in our
13 office. Because it's a direct time when you dial the phone
14 number up and go directly into the service and you enter
15 your password so that it can't just be used by anybody.

16 The information then is retrieved, printed off. We
17 mail the information by regular mail back to the parent. We
18 include with that a little survey that we ask them to
19 complete to let us know if it's new information, if it was
20 helpful to them.

21 We encourage them to contact us again. We have an
22 800 hotline that we operate. So we really encourage people
23 to let us know what happened or if they need more help.

24 COMMISSIONER VARNEY: And, Geri, you only use one
25 service; right?

1 MS. JENSEN: Right. That's all. We have had
2 experience with three different ones over the years but we
3 use one at a time.

4 COMMISSIONER VARNEY: And you have used three over
5 the years. Is there a reason that you switched?

6 MS. JENSEN: Because of the cost.

7 COMMISSIONER VARNEY: And the one you're using now,
8 do you think they're charging you at a different rate than
9 they would charge commercial services? Is there some sort
10 of pro bono aspect?

11 MS. JENSEN: Yes, there is. And we're very thankful
12 for that.

13 MR. MEDINE: All right. Turning to another user of
14 these databases, I want to ask Jane Kirtley from the, who is
15 the Executive Director for Reporters Committee for Freedom
16 of the Press to talk about the use of these databases by the
17 press.

18 MS. KIRTLEY: Thank you very much. And I'm here not
19 only on my own behalf or the behalf of my organization but
20 also the American Society of Newspaper Editors and the
21 Newspaper Association of America. But I have to qualify by
22 saying I'm only here to talk about news gathering and
23 dissemination, not the advertising side of the news
24 business.

25 It's not new for journalists to use a variety of

1 resources to find people and to put a human face on stories
2 that are often very difficult to tell. Journalists have
3 been relying upon phone books, on assessors' records, on
4 real estate databases, on even their own electronic morgues
5 that tell them about past news stories about a variety of
6 subjects.

7 And they have led to a lot of important stories that
8 I think that have made a difference for the people in this
9 country and indeed the world. I think one of the most
10 important uses of locator services for journalist is to
11 enhance their accuracy in the stories that they write.

12 We had one example from a reporter in Utah who said
13 that they had found out that someone who had the same name
14 as the spokesperson for the local transit district had been
15 charged with voter fraud in a court record. He had been
16 accused of voting twice in the election. By using one of
17 these locator services they were able to verify that it was
18 indeed one and the same.

19 Now you may be thinking, well, you know, what was
20 the rush, what was the hurry, couldn't they wait to research
21 this in conventional ways? But of course for journalists
22 speed and accuracy are both very important components. And
23 one of the very important things that journalists gained
24 from services such as these is both speed and accuracy.

25 Another example is to provide background information

1 on news subjects, particularly in times of national or
2 natural disaster. Or one example in California, in the wake
3 of the Heavens Gate mass suicide the L.A. Times used one of
4 these locator services to do background pieces on a number
5 of the victims of that particular event identifying many
6 people who, as I think most of us know, were estranged from
7 their families and friends for many years prior to the
8 occurrence.

9 I think the other important journalistic use of
10 these locator systems is to help journalists do the stories
11 that have made journalism such an important part of our
12 democratic system. And that is to tell the stories when the
13 system isn't working properly, when public records fail to
14 reveal problems that exist in the system and when the public
15 needs to know about that.

16 Again it becomes a form of independent verification
17 of information where you don't just rely upon a government
18 compiled database or a set of government records but you
19 look at other sources as well, maybe to confirm, maybe to
20 refute the information that's part of the official story.

21 And also I think, as W.S. Driper said, to add
22 verisimilitude to what is often an unconvincing narrative;
23 that is, to give you the people who are behind the story,
24 who were behind the statistics that otherwise you wouldn't
25 know about.

1 There's some examples, we have many, but of the
2 story that was done about a San Jose, California police
3 officer who was robbing houses in the course of his duties.
4 The paper used these look-up services to find the people who
5 had been the victims of this crime and to get a sense of
6 what was behind it.

7 An award winning story by the Los Angeles Times
8 called "Injustice for Some" recounted how only one in three
9 killings was being prosecuted in the Los Angeles area. And
10 they found that external factors such as race, class, and
11 the amount of publicity were a factor in whether cases were
12 getting prosecuted or not.

13 They also found that police work that was sometimes
14 faulty led to the arrest of innocent people. And they went
15 back and they built this record over a period of five years
16 and they simply couldn't have interviewed the people they
17 needed to talk to without being able to use a locator
18 service to find the people who had moved on from the time
19 when they were involved in the criminal justice system.

20 Another current issue that is very important for
21 journalists just as it is for everybody who votes in this
22 country is campaign finance reform and corruption in our
23 whole political system.

24 There have been a number of examples including from
25 the last election involving various officers in election

1 campaigns who have been accused and in some cases convicted
2 or have plea bargained to various kinds of illegal acts.

3 Journalists have used these systems to identify
4 individual contributors who appear in the FEC reports that
5 are filed by candidates. They can then determine whether
6 these contributors really exist, because they don't always
7 really exist.

8 And they can also use it to find out who are the
9 associates of political figures. What are the industry
10 associations, and are these industries legitimate businesses
11 or are they dominated by foreign interest, for example, or
12 organized crime?

13 Another example. We were talking earlier this
14 morning about the use of telephone records. And I'd like to
15 give you just a couple of quick examples of journalistic use
16 of that and to also underscore that this is not just the
17 prerogative of big news organizations.

18 The newspaper in Greensburg, Pennsylvania did a
19 terrific story in my opinion about a Pittsburgh city council
20 member who had a city issued cellular phone. And it turned
21 out he was billing something like 2,000 calls to the city
22 between the hours of midnight and six a.m.

23 They acquired a CD ROM that had phone numbers at the
24 northeast and were able to find out who he was calling
25 during those hours. And it turned out that not surprisingly

1 they had nothing to do with city business, and yet the
2 taxpayers were paying for the cost of those calls.

3 Another example, the Asbury Park Press in New Jersey
4 did a story on people who were not paying their property
5 taxes. This was a classic example of taking public records,
6 and as Commissioner Varney refers to, marrying them to
7 nonpublic records.

8 They got the paper printouts of delinquents from the
9 county, and then they went to a private vendor to get
10 property ownership information. Now this may not be a
11 perfect example because of course property ownership
12 information is usually public record as well.

13 But in this case they actually did get it from a
14 private vendor. They compared it and they found out, for
15 example, if the delinquents who were delinquent on some
16 property taxes were paying other property taxes, and indeed
17 in many cases they were, usually on their own house but not
18 on other property that they might own as well.

19 And since it turned out that the county had a very
20 high delinquency rate it's a very important story that
21 ultimately made a big difference for that community.

22 MR. MEDINE: If I could just ask a question. You
23 are obviously making a very compelling case for the
24 beneficial use of these services. But there are obviously
25 also some privacy concerns that consumers have who are the

1 subject of these services.

2 MS. KIRTLEY: True.

3 MR. MEDINE: Do you see, is there a balance to be
4 struck? Do you think the press should have an unrestricted
5 right of access to these services? How do you reconcile
6 those two concerns?

7 MS. KIRTLEY: Well, let me make two comments in
8 response to that. It's always been the position of the
9 reporters committee and most journalistic organizations that
10 journalists should not get special rights of access to
11 information, that their rights are coextensive to those of
12 the general public and they neither seek nor do they demand
13 special treatment in this context.

14 But there is another point that I'd like to make
15 about the journalistic business, and that is that unlike
16 some of the other private enterprises we have been hearing
17 about today, what journalists do is very much, it's very
18 accountable to public oversight because it appears in the
19 newspaper, it appears on television. You see it. You see
20 the product of what journalists do.

21 When the public, and it often is, is offended by
22 what journalists do, the reaction is generally very swift
23 and sometimes amounts to legal action, as well. Journalists
24 are under tremendous pressure to be accurate, for example.
25 And that's part of the reason they use these services so

1 often because they don't want to get sued for libel.

2 They don't want to make an omission that could lead to
3 liability under traditional kind of torts that have covered
4 news gathering for years and years. So I think that, number
5 one, journalists don't look for different treatment. But
6 number two, I think it's important to remember that
7 journalistic enterprise is, if anything, it's not
8 clandestine. The product of what journalists do is there
9 for all to scrutinize.

10 MR. MEDINE: If we were to limit access to these
11 databases not especially for journalists but to permissible
12 purposes, would you make a strong case that journalism
13 should be one such permissible purpose?

14 MS. KIRTLEY: Well, I mean, I very much hope that it
15 will not be coming to that. But I think that just as the
16 news business is not generally considered a commercial
17 purpose for freedom of information purposes, I think that
18 the news business should clearly be a permissible use of any
19 kind of data that is in the public domain.

20 COMMISSIONER STAREK: Tell me a little bit about
21 your First Amendment concerns here, because it sounds to me
22 like you're making a First Amendment argument.

23 MS. KIRTLEY: Very much so. And it's really very
24 traditional. I mean, again we've talked a lot in the last
25 day and we will be talking in the future about everything

1 that's new about this great new world that we're in.

2 But we're simple folk and we go back to the first
3 principles here which are that under the First Amendment.
4 The notion is that the government really has very little
5 interest in controlling the dissemination by private
6 entities of accurate, truthful information.

7 To the extent that it is not false information, as a
8 matter of public policy this is not something that we have
9 routinely allowed people to bring legal actions or allowed
10 the government to control.

11 Now there is such a thing as a tort for invasion of
12 privacy. And as you probably know, one of the requirements
13 to bring a successful invasion of privacy suit for
14 publication of private facts is that the facts, one, need to
15 truly be private. But number two, that their disclosure
16 would have to be highly offensive to a reasonable person.

17 So the terminology that we often hear these days is
18 stigmatizing information and the difference between, quote,
19 unquote, directory information and however we define that
20 and the kind of information that could cause you harm either
21 in terms of your reputation or have someone take an action
22 against you that would adversely affect you.

23 But I don't think that the First Amendment was
24 designed to create a continuum that struck a balance when
25 we're talking about truthful, accurate information. Now,

1 erroneous information is a whole other matter, of course.
2 But, assuming for the sake of argument, that we are talking
3 about an accurate, a database that accurately reports my
4 name, my address, my phone number, even the number of
5 children I have or who's living in my home, I think that not
6 only has that information traditionally been public, but
7 it's frankly information that neighbors and others could
8 readily observe.

9 You don't depend upon the computerized database to
10 get that information. And I'm very loath to suggest that it
11 should be possible for government to exert control over the
12 collection or dissemination of that information.

13 COMMISSIONER VARNEY: Does the government have an
14 obligation to put parameters on the companies collecting the
15 information to provide access to the individual consumers to
16 ensure that the information is accurate and truthful?

17 MS. KIRTLEY: Well, of course the European community
18 certainly thinks that the governments do. And this is
19 something that, speaking again from a journalistic
20 perspective, I think most journalists would be very nervous
21 about regulations of computerized databases since many of
22 them have computerized databases that don't routinely make
23 those available for sale.

24 So perhaps journalistic enterprises would be exempt.
25 But they would be very loath to have, one, the government

1 coming in and asking them what they have. And then, two,
2 frankly, to open them up to demands of people to direct or
3 change what's, the information that's there.

4 One thing that journalists learn is that
5 journalists, number one, do make mistakes. There are errors
6 in their databases. And they like to correct them; they
7 don't like to perpetuate errors.

8 Number two, many times those who complain about
9 errors are not really complaining about an error but about
10 the way they were portrayed sometimes all too accurately in
11 the press. And to try to draw the distinction between that
12 is one of the continuing problems for journalists. I'm
13 reluctant to have the government step in to try to police
14 that.

15 COMMISSIONER VARNEY: Outside of the newspaper's own
16 database, you do not think it's necessary at this point for
17 government action to ensure that individuals have access to
18 and ability to correct inaccurate information in commercial
19 databases that are sold?

20 MS. KIRTLEY: Well, I'm not convinced that the
21 opportunity for self-regulation has completely been
22 exhausted. I mean, I would like to give that industry an
23 opportunity to fully present its case in that regard.

24 COMMISSIONER VARNEY: As a journalist, Jane, is
25 there any information that you can get about individuals

1 from these commercial databases that you think we ought to
2 be more careful about, previous marriages, ages of children,
3 I mean, anything that strikes you as something that, medical
4 conditions perhaps?

5 MS. KIRTLEY: Well, I think any -- if we had a room
6 full of journalists here, which we certainly don't, we could
7 have a--

8 COMMISSIONER VARNEY: Well, we do but they're not
9 allowed to talk.

10 MS. KIRTLEY: --we could have a very lively ethical
11 discussion about what is the proper use of a whole variety
12 of information. One of the things I would emphasize is that
13 while I suppose journalists are a lot more immune from sort
14 of idle interest in people's personal lives than anybody
15 else, most news organizations do have ethical standards
16 about what they want to report.

17 Number two, a practical matter, a lot of that
18 information is not news and so it's not of any particular
19 interest to them. Journalists have really discovered
20 database reporting in a big way in the last five or ten
21 years, and you probably know that there is something called
22 the National Institute for Computer Assisted Reporting which
23 trains journalists in using a variety of databases, both
24 public and private, to enhance their reporting.

25 But what I'd like to underscore is the second to the

1 last word. It's computer-assisted reporting. Any
2 journalist knows that a computerized database is only one
3 piece of the puzzle. It can't be relied upon exclusively
4 for a news story ever.

5 And no journalist worth his or her salt would base a
6 story purely on a computer database, whether it came from
7 the government or the private sector.

8 COMMISSIONER VARNEY: Just let me focus on one
9 point. Is there any piece of information or realm of
10 information that would in your mind trigger the necessity
11 for the database company, whether by regulation,
12 self-obligation to be more careful or more circumspect about
13 how and to whom it gives access or sells access to the
14 information?

15 MS. KIRTLEY: I would be very reluctant to single
16 out any single piece of information or type of information
17 as being the one that would trigger, you know, excluding it
18 from a database or purging it from the database because I've
19 heard too many stories of journalists being able to have
20 that one additional piece that finished up the story.

21 Even a Social Security number, especially the first
22 five digits version of the Social Security number can be
23 very helpful in narrowing down who it is you're talking
24 about or writing a better story. So I'm not prepared today
25 to say I've got a zone of information that I would want to

1 see excluded from these databases.

2 MR. MEDINE: Thanks. I'd like to shift the focus
3 now. We've heard a lot about the benefits of look-up
4 services. There also has been questions raised about the
5 potential for fraudulent use and invasions of privacy.

6 Beth Givens from the Privacy Rights Clearinghouse,
7 what can you tell us about the potential risk of using these
8 databases to commit identify theft, for instance, where
9 people take over others credit card accounts or engage in
10 other types of fraudulent activity?

11 MS. GIVENS: Actually, I brought a couple of
12 different risks to the table. Identity theft, well, let me
13 preface my remarks. For the record, the Privacy Rights
14 Clearinghouse is a nonprofit consumer education service in
15 California. And we run a hotline where people call in to
16 ask questions and make complaints. And we've talked with
17 thousands upon thousands of consumers in the last five
18 years.

19 I do want to preface my discussion of risks with
20 some observations about the database industry very briefly.
21 This is an industry that's virtually unregulated and there
22 is little oversight of these companies and little
23 accountability for the practices.

24 And in addition, the industry is virtually
25 invisible, not necessarily to us here today but to most

1 Americans who know nothing about these companies. But
2 nonetheless these companies hold a great deal of very
3 sensitive information about people.

4 What I mean by unregulated is they are not governed
5 by any code of fair information practices. The data
6 subjects don't have a right of disclosure, access,
7 correction, the ability to learn who has accessed their
8 files. There is no time limit put on the files, for
9 example, nor are there any penalties.

10 So what kinds of risks come up because of this lack
11 of regulation? And I wanted to bring two from our files.
12 We receive numerous calls from people who are wondering if
13 information in databases somewhere might be preventing them
14 from getting work. They get to the first interview, the
15 second interview, I've heard even getting to the third and
16 all of a sudden they're dropped like a hot potato. And this
17 happens over and over.

18 One individual whose name is Bronte Kelly was out of
19 work for several years, and his area of work was in the
20 retail industry, being a clerk in department stores. He all
21 of a sudden was unable to find work, and it stretched on for
22 a couple of years. And he went from interview to interview
23 to interview and he realized something was wrong.

24 And he finally got so upset about not being told why
25 he wasn't being hired that he banged on the door of one of

1 the human resources professionals and said, please tell me
2 what is going on? And he said, well, the database that we
3 use has you down as being a shoplifter.

4 And then he recalled, oh, yes, my wallet has been
5 stolen, had been stolen, and it looks as though the thief who
6 stole the wallet then went on to commit a crime in one of
7 the department stores that then got put into the database.
8 He was not told. He had to plead. And finally after
9 several years of hardship he was told that it was a certain
10 database.

11 The second case concerns a man who for many years
12 was also, he was successfully employed in the construction
13 industry. His name was Ron Dean. He was seriously injured,
14 had to leave construction where he had a very good income
15 and he was retained to work with computers.

16 He's been trying for seven years to get work. He
17 gets the first interview, the second, the third even and
18 then he's dropped like a hot potato. He is absolutely
19 certain that information has been merged with that of a
20 brother of his who is a criminal.

21 They have exactly the same initials; their social
22 security numbers are one apart. And he is not able to
23 find -- he pleads again, please tell me where are you
24 getting this information? And they say I'm sorry, we will
25 not tell you. One company, Home Depot, said I will tell you

1 it comes from an outside source.

2 What we suggest to people I think is a travesty, but
3 we say in situations like this if you're going up for a job
4 where you're certain to have a background check, security
5 clearance, spend the money, spend a hundred, two hundred
6 dollars, run a background check on yourself.

7 We don't think that people should have to do this.
8 Information is obtained from these people, from all of us,
9 basically in nonconsensual ways. Even the credit header is
10 a nonconsensual database. You have a credit header because
11 you have a credit report because you participate in the
12 credit economy. That is nonconsensual.

13 I think the situation is really reminiscent of Franz
14 Kafka's work of fiction which is called The Trial, which
15 many of us know about, many of you know about. I think
16 there could be a very good nonfiction book based on a
17 similar theme called The Job.

18 Anyway, what are several of the risks of the
19 information vendor industry being unregulated? I think one
20 is inaccurate or misleading information which is being used
21 to make these important decisions about us.

22 Second is the absence of an audit trail, having no
23 ability to know who has obtained information about us from
24 these databases.

25 And the third is the end to I think the notion of

1 social forgiveness. Should one's shoplifting conviction at
2 age 19, say, prevent one from getting a job at age 29 if
3 they have had a clear record ever since then?

4 We have built the notion of social forgiveness into
5 a lot of our institutions, credit reporting, credit
6 reporting, for example, certain crimes that drop off after a
7 certain number of years.

8 But with the cradle to grave databases that have no
9 time limits on them, I think what's happening is we're
10 ending up with a society where there is no such thing as
11 social forgiveness.

12 Anyway, I think we're going to be seeing a lot more
13 cases like this as the databases become more robust. And
14 we're definitely going to be seeing more cases like this if
15 the individual does not have a right of easy access to all
16 of the data that is available about them. And I think we
17 need to make the system transparent to the data subjects.

18 CHAIRMAN PITOFSKY: How would you do it?

19 MS. GIVENS: Well, I would treat it like a credit
20 reporting industry where have a code of fair information
21 practices. You have a right to know what's in your credit
22 report. You have a right to know who has accessed it.
23 There are, is a time limit caps on the amount of time that
24 that information could be put in it, right of correction,
25 there are penalties for misuse. A code of fair information

1 practices

2 CHAIRMAN PITOFSKY: What would you do about the
3 person who is losing out in the job market and doesn't know
4 why?

5 MS. GIVENS: Well, as I said, maybe I don't
6 understand the question, but we tell them if you can afford
7 it run a background check on yourself.

8 CHAIRMAN PITOFSKY: Would you make those available
9 as a right from the commercial segment?

10 MS. GIVENS: I think you should have a right once a
11 year to get information that is held in a database system or
12 system databases about you, yes, I do.

13 Again, this is not consensual data. You are not in
14 these databases by choice. Money is being made from the
15 information that is in these databases. Important decisions
16 are being made that affect our lives, that yes, I do think
17 that we should have free access. I also think we should
18 have free access to our credit report and in some states
19 that's happening.

20 MR. MEDINE: Well, following up on the Chairman's
21 question the Fair Credit Reporting Act, at least in some
22 cases requires an adverse action notice where you're told
23 that you've suffered because of information in a database.
24 And that triggers a right to a free copy of the data and a
25 right to a free investigation.

1 MS. GIVENS: Yes.

2 MR. MEDINE: Would you apply the similar right, that
3 is, if you were treated adversely because of a database in
4 terms of getting a job would you require that notice be
5 given of that fact and of the database that provided the
6 information?

7 MS. GIVENS: See, you could get around that all too
8 easily. I think that basically when information is acquired
9 in the process of a background check, whether or not an
10 adverse decision is made you should know what information
11 was used for you.

12 I must say I personally have talked with thousands
13 of consumers over the last few years. And many, many have
14 said, well, I've got my credit report here and I'm looking
15 at it and I'm confused about it. Not a one over the years
16 that I have talked to has said, you know, I've got my
17 background check here and I'm wondering, you know, there is
18 some kind of puzzling information about it.

19 It's simply not being done. And I think just saying
20 that if there is an adverse decision made based on this
21 information that you then would get the information. No, I
22 don't think that would go far enough.

23 COMMISSIONER VARNEY: Beth, I don't think you're on
24 the next panel where--

25 MS. GIVENS: No, I'm not.

1 COMMISSIONER VARNEY: --where I think we are going
2 to talk about whether or not, one of the things I hope we'll
3 cover in the next panel is whether or not a self-regulatory
4 scheme can work, or if there should be a government-imposed
5 regulatory scheme. Could we have your views on that?

6 MS. GIVENS: Well, I guess I will be really blunt.
7 I think self-regulatory schemes are the emperor's new
8 clothes. I don't think they work. I don't think the
9 incentives are there for a full and meaningful system of
10 fair credit, I'm sorry, fair information principles to be
11 applied.

12 For example, let's look at the principle of
13 secondary usage. That is one of the tried and true fair
14 information practices but it's probably the one that is most
15 ignored, you know, when information which has been collected
16 for one purpose is used for another purpose, you should get
17 the consent of the data subject.

18 I think credit headers are a very good example of
19 the fact that that is being ignored. Anyway, I just don't
20 think that a self-regulatory approach to having a set of
21 fair information practices put into effect will work.

22 COMMISSIONER VARNEY: Have you had a chance to
23 review the white paper from the individual reference
24 services?

25 MS. GIVENS: No, I'm sorry, I have not.

1 COMMISSIONER VARNEY: Could we prevail upon you to
2 give us your views after today sometime?

3 MS. GIVENS: Certainly. Absolutely.

4 COMMISSIONER VARNEY: And we'll put them on the
5 record as you go through them.

6 MS. GIVENS: I'll submit some comments, yes.

7 COMMISSIONER VARNEY: Okay. My last question for
8 you about this, we've heard from FINCEN that they, I think
9 you said, you use about fifteen different databases and we've
10 heard from the Secret Service, I think they used about
11 thirty different databases. How many, as you call them,
12 information vendors, are out there?

13 MS. GIVENS: Well, I haven't done an exhaustive
14 survey. But I spend quite a bit of time on the Internet and
15 just over the years compiling information about them. To be
16 honest with you I don't know. I find a new one every day.

17 COMMISSIONER VARNEY: Could you give us a range, a
18 guess?

19 MS. GIVENS: I think the problem is in the
20 definition of them. I think there are probably a half a
21 dozen major compilers of public records and commercial data.
22 And then spinning off from them are all kinds of others that
23 take it and repackage it. And that may be anywhere from
24 twenty to a hundred.

25 MR. MEDINE: Carol Lane, do you have a sense of how

1 many --

2 MS. LANE: A whole lot more than that. Yes.
3 Actually there's thousands. And you could bring it down to
4 hundreds, you know, when you start qualifying down. But
5 you're talking about, when you're talking about all of the
6 different sources of this information, you know, you have
7 got to talk about the vendors of news, you know.

8 You have got to talk about all of the databases that
9 are put together to profile businesses, companies. You
10 know, there is just every kind of bound and all of it,
11 almost anywhere you look, contains records about people,
12 contains information, you know, that's indexed in various
13 ways and used by different industries for different
14 purposes. So I would say it takes it into thousands.

15 MR. REED: David, Jack Reed.

16 MR. MEDINE: I'd like to take Commissioner Steiger
17 and then we'll call on you.

18 MR. REED: Oh, I'm sorry. Go right ahead.

19 COMMISSIONER STEIGER: Just one question. You
20 mentioned your advice should you be counseling an individual
21 who has an inexplicable pattern of job failure, if you
22 would, not being able to get in past the door after two or
23 three interviews, you said go ahead and do your own
24 background check for a hundred or two hundred dollars and
25 could afford it.

1 Number one, that seems to me very low as a figure,
2 cost figure. But two, how would an individual go about
3 doing their own background check? I'm comparing this
4 against paying somewhere between eight and thirteen dollars
5 if you do need to pay for a credit record.

6 MS. GIVENS: Well, yeah. I should probably have
7 described it differently than doing your own. We suggest
8 take a look in the yellow pages under the word
9 investigators. And by the way, I would recommend that for
10 anyone. Whenever you go to a new big city, look in the
11 yellow pages under the word investigators, you will see
12 several pages of services, private investigators, employment
13 background checkers, tenant screening services, finding lost
14 family members, et cetera.

15 We tell people to call around, make sure that you
16 find somebody who does employment background checks as a
17 specialty. Ask them what they charge. Ask them what
18 databases they use. If they want to do a pretty thorough
19 search they should spend I think at least a hundred dollars.
20 And that would be, it would be very easy to spend that
21 amount of time.

22 The unfortunate thing is, and this is what we tell
23 people also, you still do not know for sure that you are
24 getting the exact same information that the decision, that
25 the decision was based on.

1 MR. MEDINE: Well, we just happen to have the
2 President of the National Council of Investigation and
3 Security Services sitting with us. And maybe you can shed
4 some further light on Commissioner Steiger's question.

5 MR. REED: Okay, I'll switch hats. One of the
6 points I'd like to make is that the number of databases is
7 really based upon sectorial requirements and needs because
8 there's thousands of them. And if you -- Cook County,
9 Philadelphia, they are all over the country with little
10 segments of information.

11 Some have real property. Some have certain county
12 records. Some have some court records that they feel are
13 vital. Some have some federal records that they feel are
14 vital. So you have this mix of all across the country
15 wherever they find a niche market that they can service.

16 And so they bring the revenue from that. But I
17 don't think most of those apply to the employment area
18 because that is a fair credit reporting area. And Beth has
19 referred some of her people to me from time to time to talk
20 to.

21 And I found in two cases, at least in one case the
22 individual was being turned down by the State of California
23 for a job that she had applied, she had previously. She
24 went back after a couple of years of leaving it. And every
25 time they interviewed her they threw her out.

1 Finally after digging for about 45 minutes I learned
2 that in that particular case the lady was, had done
3 something at that job. And she admitted that she had done
4 something but she thought that they should get rid of her
5 record after a couple of years.

6 That was one. And the other one, the fellow wanted
7 to know what database his file would be in. And I told him
8 the same thing Beth just said a moment ago about the number
9 of employment, private investigators who do employment
10 checks in the United States; thousands of them. But they
11 don't generally develop databases.

12 Once they do something they send a report to their
13 client. Furthermore, by the law in most states they're
14 required not to disclose any information without the
15 client's consent. And then they have to deal with the Fair
16 Credit Reporting Act on top of that. And the employer would
17 be the responsible person, the end-user so to speak.

18 So the end-user would be the person to go to. And
19 if you were turned down for a job and go back to the
20 end-user, and I've told people that Beth has referred to me
21 and others, if you can't get it from the end-user you know
22 where you last applied at, you know who turned you down.

23 If you go to them and tell them you want a copy of
24 that report, you want to see why you were turned down and
25 they don't give it to you, you go to the FTC and I'd give

1 them the address in Los Angeles. So it's a very simple
2 process.

3 When it comes to employment it's very defined. And
4 I don't think that you can just walk away from it. And
5 employers can't walk away from it because I'm quite sure
6 that the FTC will jump in. They send letters out. They
7 make the necessary responses. I've seen it happen in many
8 cases.

9 So I don't find that to be a real good issue when it
10 comes to the databases that we use. In my database, for
11 example, I will switch hats again for moment, in our
12 database we don't store those reports. We keep them for
13 fifteen days and then we dump them. But we have all the
14 information. We know where it went to. We know who the
15 end-user is.

16 Because if they're doing an employment report we
17 keep track of who did that employment report and then who
18 it, who is the employer. And then on top of that we send a
19 letter out to the consumer and tell the consumer, hey,
20 somebody just checked you out. Here it is and these are the
21 people that did it. So now the consumer has every place in
22 the world to go, including us, because we notified them that
23 we did it.

24 MS. GIVENS: I think, I've heard your testimony
25 before in California. And you're the only information

1 vendor I've heard of that sends the letter out to the
2 applicant, which I think is laudable.

3 MR. MEDINE: Can you go back to Commissioner
4 Steiger's question. How much --switch hats back again. How
5 much will it cost the consumer following Beth's advise to
6 check out themselves?

7 MR. REED: I think Beth was right on her point that
8 it's the depth of the report. if you're hiring a high level
9 individual, you could spend five hundred to a thousand
10 dollars on it to do the investigation; sometimes more.

11 If you're doing an in-depth on a person who's going
12 to take over a corporation, for example, you might spend
13 four or five thousand dollars to make sure that that
14 individual hasn't got something in his background or hers
15 that it is going to affect that company, because you've got
16 to protect the assets of the corporation.

17 On the second side, on the normal side, most --
18 Motorola, we have most of their clients in the nation. And
19 they do a very simple search. They do a credit header
20 search; that's the first thing they do. And the second thing
21 they do is they check to see if there's any criminal record
22 in the counties where that credit header search shows that
23 the individual might live.

24 And that's really what it's used for. Because it
25 gives ten years of addresses. It also tells them if there is

1 any lapses in the address. So it makes a very good tool.
2 Just a quick review to make a determination whether the
3 employee is telling the truth or not on their application.
4 Because about 35 percent of them do not tell the truth on
5 their application.

6 So when you get to that point, the second issue is
7 go to the counties where those cities are at, where the
8 individuals live and look up the criminal record in the
9 county. And you can go directly to the court and they're
10 hand-pulled information.

11 It's hand pulled by a human being not by a computer
12 and brought back to the store and then delivered to the
13 client. So then they review the data and verify other data
14 with it. So I think that -- and the report like that by the
15 way costs twenty bucks.

16 MR. MEDINE: I'd like to try to return to the issue
17 of fraudulent use of these databases. And Beth or maybe
18 Susan Grant can maybe tell us if we have any indication that
19 these databases are being used for fraudulent purposes.

20 I realize it's a challenge to try to link any fraud
21 that's committed to these databases, but that's really one
22 of the sensitivities is that this information that I believe
23 Eric Wenger talked about earlier that when the key to some
24 of your credit accounts is easily available there's
25 certainly the potential for fraud there.

1 MS. GRANT: I represent the National Consumers
2 League. And among other things, we operate a program called
3 the National Fraud Information Center where consumers can
4 report to us about possible telemarketing and Internet fraud
5 that they have been victimized by or that they have been
6 targeted by.

7 I think it's very difficult to quantify how much in
8 the way of consumer fraud is due to abuse of the kinds of
9 databases that we are talking about today because consumers
10 have no idea where the information about them is being
11 gleaned to which they're, or as a result of which, they're
12 being targeted for various kinds of scams.

13 And I really don't think ultimately that that's how
14 we should frame the question. Commissioner Steiger, you
15 asked the question what is new. Well, I think what is new
16 is that consumers have discovered belatedly that the horse
17 is out of the barn, that information about them is widely
18 commercially available.

19 That seems to upset them. We don't get complaints
20 from consumers about law enforcement being able to track
21 them down. But it's when they've been targeted for
22 solicitations both legitimate and not that consumers are
23 upset.

24 I really feel that it's unfair to pit the consumers'
25 privacy interest against such laudatory programs as finding

1 deadbeat dads or tracking down criminals. And I really
2 don't think that the argument should be framed that way. I
3 think that consumers' basic right to privacy should be the
4 base line from which the discussions stem.

5 And that consumers if they are informed of the use
6 or potential reuse even of their information should have
7 enough information about that to make an informed decision
8 about whether or not they wish their information to be used.

9 I don't think that we can quantify either the
10 benefits or the risks for consumers. What some consumers
11 may feel is sensitive information other consumers may not.
12 What one consumer may feel is sensitive information in one
13 particular circumstance he or she may not feel is sensitive
14 in another circumstance.

15 And also the harm is difficult to quantify. Someone
16 whose illness from AIDS is publicly released may not lose
17 his or her job or have any other negative effects that we
18 can quantify but may still feel as though he or she has been
19 harmed.

20 And I don't think that it's up to us or to the
21 Federal Trade Commission to arrive at some line and say,
22 well, this is over the line or this isn't. I think that the
23 decision ultimately should be up to the consumers who are
24 the ultimate source of and I believe the owners of the
25 information, that they should have more control than they do

1 over what information of theirs is out there and thus be
2 able to reduce the potential harm as they see it.

3 There may be compelling reasons why law enforcement
4 needs certain kinds of information. And having worked in a
5 district attorneys office for almost twenty years and
6 availing myself of all that kind of information at the time,
7 I can understand the need for it.

8 I think that ways of providing the information that
9 law enforcement needs would still be available, as would the
10 information that the economy needs in order for the engines
11 of commerce to keep on turning. But I really think that
12 it's a false dichotomy to talk about the consumer versus all
13 the benefits that we have heard about this afternoon.

14 COMMISSIONER VARNEY: Let's go there. Let's say
15 that we can imagine a scenario whether it's legislative or
16 regulatory where we say look, this is not okay. Consumers
17 need to have the choice and the control about what
18 information is available about them out there except for law
19 enforcement purposes.

20 Let's just put law enforcement off the table.
21 Database companies collect information. They have the
22 information. They have whatever safeguards and protections
23 they have to work with law enforcement to give law
24 enforcement, and maybe even let's say law enforcement and
25 related services so we'll get the child support people.

1 Now, who is going to, what groups in the economy
2 other than the journalists and the First Amendment concerns
3 which are real, what businesses, what sectors of the
4 economy, who is going to object to that kind of scenario?
5 Who's hurt?

6 MS. GRANT: I think that there is a great economic
7 interest among the marketers and others in this country to
8 have the use of this information freely in order to promote
9 their products and services. And that's understandable.
10 But I think consumers should have some choice --

11 COMMISSIONER VARNEY: Wait, wait, wait. I thought
12 this morning we said that marketing information is separate
13 from reference information.

14 MS. GRANT: Yes.

15 COMMISSIONER VARNEY: Now I'm positing what if
16 reference information were only available to law enforcement
17 and law enforcement related purposes that you could --
18 without a consumer's consent, okay, that you can have
19 database companies that can gather and collect all the
20 information but the consumers have to have, what's he been
21 saying, opt out; there has to be consumer opt out from the
22 system except for law enforcement purposes.

23 Which would mean you would keep all the information
24 on everybody any time law enforcement wanted to access it.
25 But when you went to sell it commercially for other

1 purposes, anybody who had wanted to opt out of it could
2 have.

3 MS. GRANT: I think if you had very strict overall
4 privacy principles that were enforceable, you would get to
5 the root of that without having to decide who should be able
6 to access these databases and who shouldn't. If you were
7 looking at it in terms of who should be able to access it,
8 I'm sure that you could carve out categories of people like
9 law enforcement.

10 It starts to get a little fuzzy when you're talking
11 about the child support people and other people who may have
12 a legitimate interest but maybe they don't. Maybe it's a
13 bogus recovery service that is trying to track consumers
14 down to offer them some sort of misrepresented assistance
15 with something.

16 So I think it becomes very difficult for any of us
17 to draw those bright lines. I think it's more to the point
18 to give the consumer the power over his or her information
19 to begin with.

20 CHAIRMAN PITOFSKY: The power consists of opting out
21 or even more than that?

22 MS. GRANT: I don't think it matters whether it's
23 opt out or opt in, as long as it's something that the
24 consumer can easily exercise, as long as the consumer knows
25 who will ultimately have their information and what it will

1 be used for, as long as he or she can easily access it to
2 check on its accuracy.

3 And I echo what Beth said about drawing the analogy
4 to the credit reporting system that we already have in place
5 because I think that it's very similar and that similar
6 guidelines could apply.

7 CHAIRMAN PITOFISKY: Holding and checking the
8 accuracy. I mean, you used the phrase that the information
9 is the consumer's property. Would you object to white pages
10 which has your name, your address, and your phone number
11 being online?

12 MS. GRANT: Well, the consumer is giving the
13 information to the phone company when he or she is getting a
14 telephone. And as one of the previous speakers alluded to
15 this morning, you can be unlisted if you wish.

16 CHAIRMAN PITOFISKY: So you say having listed
17 numbers is opting in, is the equivalent of opting in.

18 MS. GRANT: Yes, it is. I think that the heart of
19 the problem is that there is not a fair trade. And it makes
20 it very difficult to weigh the benefits and the harm because
21 the benefits for whom?

22 The consumer is not the one, in the case of these
23 kinds of services that we are talking about today, who is
24 directly providing that information in exchange for a
25 benefit. And because you have really unfair trade, you have

1 a real imbalance of interests there. The consumer is not
2 able to make a bargain that he or she feels recognizes the
3 value of that information, recognizes whatever the
4 consumer's privacy concerns might be.

5 MS. JENSEN: Could I, can I respond to that? Geri
6 Jensen.

7 MR. MEDINE: Sure.

8 MS. JENSEN: I guess my question or concern is that,
9 you know, people who don't pay their child support are
10 consumers. And people who commit white collar crime are
11 consumers. You know, the bad guys are consumers too.

12 And then if they can opt out and in fact they take
13 away the ability for us to be able to track them down, you
14 know, in the case of child support to make sure that the
15 kids have needed payments along with the other law
16 enforcement. I don't know how you would set something up
17 because everybody is a consumer.

18 MR. MEDINE: Could I ask Mallory Duncan from
19 National Retail Federation and John Byrne from the American
20 Bankers Association to talk about their concerns about fraud
21 detection again perpetrated by consumers?

22 COMMISSIONER VARNEY: While they're getting ready,
23 David, couldn't you, though, Geri, I mean, if it were
24 technologically feasible and all of the database companies
25 could do it without a huge cost, I mean it might impact

1 their ultimate economies of scale and other things, but
2 presumably you can run a database that's tagged, you know,
3 when somebody says I want to opt out of your database,
4 that's fine, they opt out of the database except for law
5 enforcement and law enforcement related purposes.

6 You can still maintain all the data; you simply
7 wouldn't sell it in a commercial setting that data of those
8 individuals who have, quote, opted out of the system. I
9 mean, I think it's theoretically possible and you and law
10 enforcement could still have access to it.

11 MS. JENSEN: See, I have never thought of that
12 concept so I don't, I mean, I don't really know how that
13 would work. And the question I would have: would the
14 database companies be interested and continue to gather that
15 data and would it be feasible for them to do it, putting all
16 those kind of limitations on it, or would we be kind of
17 cutting off our own nose to spite our face because they
18 would no longer, you know, provide the service.

19 COMMISSIONER VARNEY: Right, does the whole service
20 fall apart when we try and use that.

21 MS. JENSEN: Exactly.

22 MR. MEDINE: Maybe NRF and ABA could address
23 Commissioner Varney's question, which is do we want to
24 exclude all but law enforcement and some support services
25 from accessing these databases?

1 MR. DUNCAN: Well, on behalf of the National Retail
2 Federation I guess the answer is I would hope not. A number
3 of our members do of course issue credit cards. And we are
4 concerned about identity theft. It's a issue for consumers.
5 This is an issue for credit grantors and for law
6 enforcement.

7 We have been trying to reduce identity theft within
8 the bounds of being able to work with our customers who
9 extend credit. The question of the day that Commissioner
10 Steiger asked is really what's new. And I'd like to try a
11 slightly different spin on that, and the answer is really an
12 old song, everything old is new again.

13 And what's happened here is that at one time all
14 Americans lived in villages. And the people in the village
15 knew your identity. They knew your history. They knew your
16 habits, the good and bad habits. They knew everything about
17 you and probably knew your mother's maiden name as well.

18 And as a practical matter, what's happened over the
19 last century is there has been a great dispersal of
20 individuals. And yet Americans still want the same kind of
21 treatment that they received back in the village.

22 So when the question is what's new, what we're
23 trying to do is to essentially electronically recreate that
24 village. And we are trying to make certain that there is
25 information there so that consumers can carry out

1 transactions as if people knew who they are.

2 I mean, the real question to ask is how does anyone
3 know who you are and how do you prove that? So when you
4 apply for a credit card, one of the things we're trying to
5 do is to use information that only you would know, or in the
6 old days that would only have been known in your village
7 about you as a way of verifying your identify to reduce the
8 amount of fraud.

9 So when you apply for a credit card, for example,
10 we'll pull the credit report. And there might be some
11 discrepancy. Perhaps the address is wrong. Well, and it's
12 possible. The consumer could have moved more recently than
13 that's picked up in the credit report information.

14 And we might go to a source like the national change
15 of address put out by the Postal Service as a database to
16 see in fact if there's been an updating or a change in their
17 address.

18 We might look at your phone number and ask for your
19 business phone number, something that might be available in
20 the database but that typically if a casual thief is going
21 to try to steal your identity they're also not going to go
22 out and try to establish a phone number in your name.

23 These are bits of information that we use to try to
24 confirm who you are to make sure we're granting credit to
25 the right person. Each of these discrepancies might be

1 scored. If they're minor we'll let them go by. If the
2 scores get to a certain level, then it sends up a flag on
3 the account. And when you have a flag on the account you
4 either deny the account outright or you may set it for
5 additional information and questions by the consumer or
6 grant conditional credit or a number of other options that I
7 really don't want to go into in a public forum.

8 So I guess in a nutshell that's what we're trying to
9 accomplish. And I'm afraid that any attempt to draw simple
10 easy categories like law enforcement only will seriously
11 restrict the ability to continue in the kind of commerce
12 that consumers expect.

13 MR. MEDINE: John, do you --

14 MR. BYRNE: David, let me just add a little something
15 more pedestrian than talking about villages. We do have some
16 of the same concerns that Mallory's members do. But we also
17 have obligations that go beyond that. Given banks being
18 heavily regulated in safety and soundness of financial
19 institutions being something we have to deal with, we
20 frequently have to do our own investigations.

21 Dealing with Chris' agents there at Secret Service,
22 they're great at investigating credit card fraud but they
23 can't do everything. And so frequently banks will do their
24 own internal investigations. And so if you limited database
25 access to law enforcement only or related law enforcement,

1 whatever that might mean, I'm afraid that we might be
2 excluded from the table there.

3 We have to deal with new accounts, fraud, same
4 identity theft, all those types of issues. But we have an
5 affirmative obligation before possible violations of law to
6 the federal government so Bill Baity's database can capture
7 all that data.

8 And so to do that we have to have access to various
9 tools. If you take them away, we simply won't be able to do
10 it. And obviously we'll still continue to be bankers. And
11 maybe if we see a fraud walk right in the bank we can
12 address that.

13 But other than that we won't be able to deal with
14 the sophistication that criminals have come to use beyond
15 the past ten years. So we really can't have any limitations
16 there. If you do it, you won't be able to pee, as it were.
17 But the bottom line is law enforcement and law enforcement
18 related would be good enough for us.

19 MR. MEDINE: Well, we have Leslie Byrne here from
20 the U.S. Office of Consumer Affairs. What's your
21 perspective on the information in these databases and
22 access, correction, and so forth?

23 MS. BYRNE: First, I'd like to say that our role in
24 this, in 1989 our office developed what we call the Privacy
25 Principles which we encouraged both government and private

1 industry to start to adopt. So we've been at this a little
2 while.

3 And the question keeps coming up what's new. What's
4 new is the kind of economy we're living in. We're living in
5 an information economy. That makes information a commodity.
6 When information is kept in a base, it's kept as we all know
7 in a bank. It's not by accident that those words are
8 chosen.

9 Information has value. And the new value that is
10 being placed on it, while there may have been a decision
11 this morning about the difference between marketing
12 information and resource information, because of storage
13 capacity in computers there is no essential difference.
14 Resource and marketing information are one and the same.

15 What used to be kept in a roomful of computers this
16 size are now kept on a little, mini computer. And so the
17 ability to drop information, sectorial information was
18 referred to, that sectorial information is valid but is also
19 being used in grand databases.

20 And the harm that comes from that, we talked about
21 the medical record issues with HIV, now we have breast
22 cancer, gene propensity that might show up somewhere, which
23 is a whole different thing, your propensity to be sick. We
24 have the impact on jobs, on insurance, on credit, on loans;
25 the well documented cases of databases being used for

1 stalking and abuse and identity theft.

2 The direct mail and telemarketing fraud that has
3 developed through the use of what is commonly called mooch
4 lists. I think we're fast approaching the era of universal
5 mooch lists that we are all on.

6 And while law enforcement certainly has its right
7 and its duty to protect us all through the use of these, I
8 shouldn't say that they should have unlimited, unfettered
9 access because of the use of profiling.

10 Profiling is a different issue where this
11 information is used where there is no direct link between a
12 suspect for a particular action and yet the information is
13 downloaded to create a profile of somebody who might fit
14 what they're looking for.

15 Marketers of course are using the same profiling
16 techniques of crossing different kinds of databases,
17 cross-fertilization, if you will, of databases to come up
18 with profiles of potential customers.

19 So if I tell you that I want to find a Swedish
20 Norwegian extraction male who is 56 years old and has an
21 income over a hundred thousand dollars and shops on Saturday
22 at the grocery store and has to buy medicine for toe fungus,
23 they can find him. That's how acute these databases have
24 become. They are very sophisticated in their ability to
25 find what needs to be found for whatever purpose.

1 The other issue that we have touched upon this
2 afternoon is the inaccuracy of some of these databases.
3 Most citizens can't correct them because they don't know
4 what's in them. If you don't know what's in them you can't
5 question them.

6 Our office receives scores of calls every year,
7 people who have identified faulty information, particularly
8 in credit bureau reports, tried to get it fixed, and then
9 find out after 18 months or two years or whatever their
10 information keeps coming back. So we can even attempt to
11 fix it once we know it's in there and it doesn't necessarily
12 stay fixed.

13 The last issue I'd like to just touch on is the use
14 of public information in state and local governments. This
15 is information that is compelled by government. We don't
16 have any single choice whether we give them our personal
17 property tax records or the information needed for a dog
18 license or a cat license or a cosmetology license or
19 American Medical Association license or a bar association
20 license.

21 All of this information is on file and is compelled
22 by the state that we give it to them. What is then done in
23 too many cases in my belief is that it is then sold without
24 notice, without say-so of the person who gave the
25 information under the compelling of the state.

1 The real issue here, and I think Susan Grant touched
2 on it, is who owns the information. And this false
3 dichotomy of saying that if the consumers' needs are met,
4 somehow that it's going to interfere with commerce or with
5 law enforcement I think needs to be reexamined.

6 I think Susan is entirely right. Because we can do
7 anything with information nowadays, the real question is
8 should we and who controls what we should do? And those are
9 my comments.

10 MR. MEDINE: Thanks. One question I had is we have
11 heard a lot today about the access to public record
12 information. And you just alluded to that, that we
13 oftentimes have to provide information to the government for
14 licenses or other benefits. Would you advocate restricting
15 government's dissemination of that information?

16 MS. BYRNE: No, I'd advocate restricting the sale of
17 it. If there is no profit in it, governments won't do it.
18 If an individual reporter wants to come and look at the
19 information or if a business wants to come and look at the
20 information as they used to do in the old days, they'd go to
21 the courthouse and they'd go to the file and they'd sign in
22 so you know who was looking at it, and they'd thumb through
23 the file and they'd write down what they needed to know.

24 Now on a CD ROM I can buy 10,000 names from the
25 courthouse and start matching those up with other data sets.

1 It's an entirely different situation than it used to be. So
2 it's not dissemination; it's sale.

3 MR. MEDINE: Would you extend the opt out
4 requirements that are now in place for motor vehicle
5 information to other types of public record information?

6 MS. BYRNE: You know, I again agree with Susan that
7 the whole issue of opt in and opt out is becoming
8 immaterial. It's information so that I can make an
9 intelligent choice as a member of the public what's
10 happening to my information.

11 Some opt ins I have seen are fairly ephemeral in the
12 information you are disclosing where you make a choice. And
13 at lot of opt outs I have seen recently are becoming more
14 acute in the information they are disclosing before you make
15 the decision. So, you know, I think we're beyond opt in opt
16 out as operative language.

17 MR. MEDINE: I would turn it to David Sobel who has
18 waited patiently from Electronic Privacy Information Center
19 and get your sense of the analysis of how you see risks and
20 benefits here, and do you agree with Susan's point of view
21 that that's not the right, and as Leslie Byrne pointed out,
22 it's not the right approach? How do you tackle the benefits
23 versus the risks of these types of databases?

24 MR. SOBEL: Well, I think the first point that I
25 would start with is that the uses that we have been

1 discussing, well, I mean sort of weighing it between
2 benefits and risks assumes that all uses are good and that
3 there is nothing bad on the use side as opposed to the risk
4 side. And I don't really think that's true.

5 I'm not so sure that the uses that have been
6 represented today are necessarily representative of the
7 universe of what's being done with this information. I
8 don't think that the uses that are driving this industry are
9 the location of deadbeat dads or law enforcement or
10 journalism.

11 I don't see the guy who calls me three nights a week
12 at dinnertime sitting here, and I suspect that that's what's
13 driving this industry. So I think that it's a false balance
14 to a certain extent to talk about uses on the one hand as if
15 they're all good as opposed to the risks.

16 And I think the risks are very substantial, and they
17 have been touched upon; identity, theft, the fact that
18 decisions about people's lives are being made with this
19 information, whether it's employment, whether it's insurance
20 which we haven't really talked about, whether it's credit
21 decisions.

22 The fact of the matter is that a lot of the kinds of
23 important decisions in people's lives that were once made by
24 the government which led to statutes like the Privacy Act,
25 which does regulate uses of information and gives people

1 rights to access and correct information, a lot of the
2 decision making aspects in people's lives have been moved to
3 the private sector.

4 And the kind of information that we're talking about
5 here is the information that's used to make those decisions.
6 So I think that if we look at the Privacy Act as a model in
7 terms of the kinds of rights that can be established, that's
8 a good starting point.

9 On that point I just want to mention something about
10 law enforcement use of private databases which I think
11 raises some interesting Privacy Act questions. I think what
12 happened twenty-some years ago after Watergate was that
13 decisions were made about the kinds of information about
14 people that law enforcement should be having access to and
15 maintaining.

16 And steps were taken in the enactment of the Privacy
17 Act to address those issues. I think what's now starting to
18 happen is that process is becoming privatized. And I think
19 the fact that we have heard that fifteen, thirty, however
20 many commercial databases it is, are now routinely being used
21 by law enforcement warrants some, at least the asking of
22 some questions about whether or not those Privacy Act
23 principles are still very meaningful.

24 The last point I want to talk about, we've talked
25 about a lot of different categories of information. And

1 there have been references made to Social Security numbers
2 but we haven't really talked specifically about that.

3 I think that almost everybody who's looked at this
4 issue would agree that the highest risk that we're probably
5 talking about is associated with the use of Social Security
6 numbers. And I think on a risk benefit analysis, social
7 security numbers probably come out far and away on the risk
8 side of the balance.

9 And I think if nothing else, we do need to look at
10 the relative risks and benefits of particular pieces of
11 information. It I think is pretty clear that what drove the
12 controversy last year about LEXIS-NEXIS P-Trak was the fact
13 that there was Social Security numbers included in that
14 system.

15 And it's also notable that that was the piece of
16 information that LEXIS-NEXIS at least partially saw fit to
17 remove from that system. So I think that Social Security
18 numbers might be a special case in terms of looking at this.

19 I think, you know, to raise another recent incident
20 of the misuse of Social Security numbers, the Social
21 Security Administration's experience with making PEEBS
22 information available online I think is a very ironic story
23 that shows that the very agency that issues this number and
24 has a legitimate right to use it as an identifier has lost
25 control of it to such an extent that they can't rely on that

1 means of identification anymore.

2 So I think as we look at this, we need to separate
3 out some of the categories. I mean, obviously there is a
4 Social Security number on the one hand as opposed to
5 information that consumers do voluntarily place into white
6 pages, and I think some distinctions need to be made.

7 MR. MEDINE: Commissioner Starek.

8 COMMISSIONER STAREK: Oh, thank you. Yeah. I
9 wanted to just, let me see if I understand this correctly.
10 What we are talking about this morning was a group of
11 look-up services and companies that collate information
12 that's on the public record about people.

13 They said basically it comes from three places; it
14 comes from the courts, it comes from government, and it's
15 publicly available information. So what I hear some folks
16 saying here is that this publicly available information
17 shouldn't be cheap to get, shouldn't be efficient to obtain,
18 and instead only the wealthy, only the wealthy ought to be
19 able to have access to this. Only the wealthy lawyer who
20 can send his paralegal down to the court and get the
21 documents himself or only the person who wants to find out
22 about a nanny who can pay \$2,000 to hire a private
23 investigator to check out the candidates for the nanny
24 should have access to this information but the people who
25 can punch into a computer, use one of these services and

1 find publicly available information.

2 I mean, is that what you're saying, that because
3 it's easily, all compiled in one place, easily accessible
4 and relatively inexpensive that it shouldn't, companies
5 shouldn't do that?

6 MR. SOBEL: Well, I'm not sure how inexpensive it
7 really is. If we're talking about something like the
8 LEXIS-NEXIS service, that is a premium subscriber service.
9 This is not something that is available to everybody.

10 I think that the usage that you would find falls
11 into the category of the wealthy individuals that you cited;
12 big law firms, big companies. I think it would be
13 interesting to look at who has access to the LEXIS-NEXIS
14 P-Trak database.

15 And I think it would fall into the category that I
16 think you're citing when you talk about the wealthy or more
17 powerful interests. But, you know, that's why, and I say
18 you need to look at the categories of information.

19 I don't think it's the case that anyone can easily
20 and freely find Social Security numbers. I think that is
21 something that has become a commodity that is for sale and
22 it is not freely available, it is not easy to get that, and
23 it is valuable. As Leslie said they call these things data
24 banks for a good reason. This is a huge underground economy
25 that's developed.

1 MR. MEDINE: Miss Varney?

2 COMMISSIONER VARNEY: Yeah. I'm interested in a
3 couple of the other points you had, David. I think it's an
4 interesting question whether or not law enforcement's use of
5 the database is permissible under the Privacy Act, and it's
6 one I think we ought to take a look at.

7 But putting that aside for a moment, I think you
8 said that, look, even, you know, for a moment if that is a
9 laudable purpose that's not what's driving this industry.

10 Now, what I thought I heard this morning was, hey,
11 wait a second, there is a separation between direct
12 marketers and reference services. Do you think that's not
13 true? Do you think, is what -- Who is using these database
14 services? What is driving them?

15 MR. SOBEL: I think, I'd have to admit to not
16 entirely understanding that distinction. That has not
17 become clear to me. I think that while we are
18 distinguishing between these two kinds of categories they
19 are in fact in practice being intermingled so that the
20 direct marketer who might have access to warranty card
21 information and whatever else it is then goes into the
22 look-up service if those are not actually linked in a
23 database; I suspect they probably are.

24 So it might be a false distinction that we're
25 talking about. But, I mean, as I said I wasn't being

1 facetious. I assume that all of the unsolicited phone calls
2 that I and everybody else get I'm willing to bet can be
3 linked back to a lot of these databases.

4 COMMISSIONER VARNEY: As opposed to the marketing
5 lists.

6 MR. SOBEL: In conjunction with the marketing list.

7 COMMISSIONER VARNEY: Because I thought part of what
8 we were talking about this morning is that, look, you've got
9 these reference services which collate publicly available
10 information and sell it for a number of purposes ranging
11 from law enforcement through insurance through journalism,
12 and they are currently selling this for a number of, quote,
13 business purposes.

14 But I had the distinct impression that it was not
15 being sold to direct marketers so that you weren't, my
16 words, marrying transactional profiles of individuals with
17 public record information from individuals.

18 And I had the sense that most people thought it was
19 a good thing that there was not that level of information
20 easily available. Now what I'm hearing you say is slightly
21 different. What I think you're saying is wait a second,
22 that may not be the case. I don't know the answer to that.

23 MR. SOBEL: Yeah, and I think that's right. And I
24 would encourage you to seek definitive answers to that
25 question. Because not being a part of the industry, I am

1 not in a position to answer it. But I have not heard that
2 question get nailed down today to my satisfaction.

3 MR. MEDINE: Maybe Robert Edington from LEXIS-NEXIS
4 can shed some light on this.

5 MR. EDINGTON: I would be happy to. On behalf of an
6 individual reference service I would like to respond to a
7 couple of points, one just made earlier and the one made by
8 David.

9 In particular there was a question as to whether
10 some of the uses that we've heard here this afternoon really
11 is what's driving this industry. And I can tell you on
12 behalf of LEXIS-NEXIS that is exactly what is driving our
13 business.

14 COMMISSIONER VARNEY: What?

15 MR. EDINGTON: They are professionals performing
16 important social and governmental functions, tasks. Whether
17 it ranges from welfare reform to campaign reform to law
18 enforcement, that is our customer base.

19 COMMISSIONER VARNEY: What does that mean, campaign
20 reform?

21 MR. EDINGTON: Campaign reform. For instance, I
22 think we heard today from the reporters committee that they
23 use these locator services to check both the central
24 committees of both major parties. I believe Common Cause
25 are a subscriber to our look-up services to look into this

1 idea of what do we need to do to reform campaign.

2 COMMISSIONER VARNEY: But wait a second. I thought
3 that the service that LEXIS-NEXIS provided through its
4 P-Trak and P-Find, I thought that was that a reporter whose
5 organization subscribes can type in a name and can get
6 public record information.

7 MR. EDINGTON: That is correct.

8 COMMISSIONER VARNEY: And part of that public record
9 information, you're obviously then picking up the federal
10 election commission's records of what people are
11 contributing.

12 MR. EDINGTON: That, we do have federal elections
13 commission records on file. That is correct.

14 COMMISSIONER VARNEY: Okay. And what other kinds of
15 records come up?

16 MR. EDINGTON: Other public record information like
17 assets, judgments, liens, partnerships, that would fall
18 within the public records spectrum.

19 COMMISSIONER VARNEY: Do you have any transactional
20 data in your database?

21 MR. EDINGTON: Transactional? Marketing transaction
22 information? No, we do not. And we have no intention of
23 including such information.

24 COMMISSIONER VARNEY: Do you have subscribers who
25 are direct marketers?

1 MR. EDINGTON: That, I'm not aware of any. I'm not
2 aware of any. I can tell you from within the business
3 community we have a number of manufacturers. We have
4 insurance and banking customers. Again, and that brings
5 me --

6 COMMISSIONER VARNEY: Do you have anybody who
7 subscribes to your service who you believe uses your
8 information for target marketing?

9 MR. EDINGTON: Absolutely not. We have no evidence
10 of that. And that goes to another point that I want to go
11 back to and that was the issue of identity fraud.

12 I think it's important to note that earlier this
13 year the Federal Reserve Board looked at that issue. They
14 had comments from over a hundred entities, some of whom are
15 here today and participating. They found no evidence that
16 online locator services promote identity fraud.

17 In fact, some of the commentators, representatives
18 of the financial services community representing a group
19 with the most to lose found that in fact they helped prevent
20 identity fraud. So --

21 COMMISSIONER VARNEY: Moving away from identity
22 fraud for a second, how would your business be impacted if
23 you allowed consumers to opt out of your system?

24 MR. EDINGTON: In terms, we have that opt out today.
25 I'm not sure I follow your question.

1 COMMISSIONER VARNEY: So I can write to you or call
2 you and say take me out of your database?

3 MR. EDINGTON: Absolutely. Absolutely. We have
4 that available --

5 MS. LANE: Excuse me. You have an opt out on P-Trak
6 but not on the public records that you carry on your system.

7 MR. EDINGTON: I'm sorry. Were you talking about
8 public records or P-Trak?

9 COMMISSIONER VARNEY: Why don't you answer both.

10 MR. EDINGTON: The policy would be, not be to opt
11 out on public records. We do have an opt out on P-Trak.
12 And you can do that through our Web site, through fax, and
13 by mail.

14 COMMISSIONER VARNEY: Then what's in P-Trak that's
15 not public record that I'm opting out from?

16 MR. EDINGTON: P-Trak consists of credit header
17 information.

18 COMMISSIONER VARNEY: Okay.

19 MR. EDINGTON: And I think we saw that this morning
20 containing the two prior addresses. And that's the other
21 thing in terms of the risk of what that sort of file
22 represents. We believe it's very limited, sensitive data.

23 There is no date of birth information so that one
24 could assume one's identity because they don't know the
25 birth date. There is no display of Social Security numbers.

1 MR. DICK: I just have a clarification. If I opt
2 out of P-Trak and P-Trak is based on a credit header
3 information, do you actually remove the credit header
4 information from your database or do you just take it out of
5 a list space that you call P-Trak?

6 MR. EDINGTON: We take that completely out.

7 MR. DICK: Out of all seven thousand of your
8 databases; that's no longer in there.

9 MR. EDINGTON: There's only one database called
10 P-Trak.

11 MR. DICK: There's only one database.

12 MR. EDINGTON: It is not commingled with any other
13 file, any other of the seven thousand databases.

14 MR. DICK: So that credit header record is not in
15 any of the other seven thousand database records; it's only
16 in P-Trak.

17 MR. EDINGTON: That's correct.

18 COMMISSIONER VARNEY: Well, except for that same
19 information would be available in a public record database,
20 my name and my address.

21 MR. EDINGTON: You could get it from another source,
22 that's correct. I mean, we are not going to take that
23 information if it's not displayed in P-Trak. If I had a
24 federal tax lien, which is a public record, and it showed up
25 there it would stay there.

1 We are not going to take -- we would remove if you
2 asked us to opt out of P-Trak, we would take it out of
3 P-Trak. But if my record or my Social Security number shows
4 up in that federal tax lien, it would remain there then.

5 MR. DICK: It would remain in your other databases.
6 It's just removed from one out of seven thousand.

7 MR. EDINGTON: That is correct.

8 MS. LANE: Point of clarification here when it comes
9 to public record. You know, when we're talking about the
10 P-Trak and public records stuff, these are completely
11 different things. They're, you know, a different beast.

12 The public record, if somebody had the option of
13 opting out of the public record you couldn't tell who owned
14 a property. Which would mean that a government official who
15 owned all the houses on that street could vote that you
16 can't get a variance, all kinds of things that allow us to
17 check on our government would be in the hands of only
18 reporters or law enforcement to check on the government to
19 make sure that they don't have misdeeds or anything that's
20 affecting us.

21 It would also be, you know, when you wanted to
22 invest with your neighbor into something, you wouldn't be
23 able to check and find out that they had had six other
24 investment frauds in the past where they were sued, because
25 if you go to the police department they're not going to run

1 a background check for you when you're going to do an
2 investment or something. So the public records are very
3 separate from a lot of these look-up services where you can
4 talk about an opt out.

5 COMMISSIONER VARNEY: And, David, I know you're
6 wrapping up. But I do want to point out that every time we
7 have an exchange with LEXIS-NEXIS, you guys have been very
8 helpful to us and I don't want people to have the impression
9 of anything else because you have been in here for I think
10 almost a year working with us on these issues. So we really
11 turn to you to kind of get to the nitty gritty here and we
12 appreciate it.

13 MR. EDINGTON: Right, right. And I hope it's clear
14 that, you know, we do have that opt out. We have tried to
15 widely publicize that and continue to work to balance the
16 concerns of the public's privacy concerns without destroying
17 the utility that we hope has been demonstrated by this
18 afternoon's discussion.

19 MR. MEDINE: I just have a few minutes. Bruce Hulme
20 has been waiting very patiently to talk, and he's on also
21 the National Council of Investigation and Security Services,
22 and then I want to conclude, ask Jason Catlett a question
23 about the security of these databases which we haven't had a
24 chance to talk about yet.

25 MR. HULME: I will try and clean this up very fast.

1 I don't think we have any argument by most of the people
2 here first of all that public records are public records no
3 matter where they end up. And I don't think we have to
4 really concern too much there in the end.

5 The, first Tests NCISS, I just want to also mention
6 represents over a thousand companies in the United States,
7 they are private investigators or professional security
8 companies, and includes 30, over the top 40 security firms.

9 There's been a lot of talk this afternoon regarding
10 law enforcement having access. At the present time the
11 private security sector is twice the size of the public
12 security sector, number one.

13 Number two, budget constraints and everything else,
14 a lot of cases fall through the cracks and they're put over
15 for companies or for private investigators or private
16 security companies to handle. That's another thing.

17 We heard a lot earlier today about the public
18 wanting to opt out on this and that. I appeared at the
19 motor, federal driver privacy protection hearings back in
20 1994. And at that time there was a survey floating around,
21 a Harris-Equifax survey.

22 But at any rate, at that time over 70 percent of the
23 American public at least felt that it was generally all
24 right to check records involving bankruptcy, financial
25 problems, employees checking for criminal convictions when a

1 person applies for a job, and auto insurance companies
2 checking on accidents, driving records, and what have you.

3 Private investigators handle all of those
4 investigations as do security companies. Most
5 investigations that are handled by the private sector are
6 often attorney work product record. They're not floating
7 around, they're not being turned over, they only get turned
8 over under subpoena or discovery.

9 Regarding the aspect of horror stories now and then
10 on preemployment checks, the preemployment check enables the
11 person to access the whole credit, the whole credit record
12 of which there already are provisions of which that employee
13 can seek redress.

14 And if they're not there now, I understand they will
15 be there in effect come the fall. That now pulls us down to
16 just the credit header record. The credit header record is
17 400 letters that outline private investigators' reasons for
18 accessing credit header records. I'd like put in the
19 record.

20 MR. MEDINE: They will be.

21 MR. HULME: Some minor ones here that I'll also put
22 in but I thought I would mention are Child Quest
23 International; we recovered over 2,000 abducted children.
24 It happens to also be run, it's a private outfit but they
25 have private investigators that are doing the access of

1 records.

2 MR. MEDINE: I might have to ask of you, we're
3 really, we're past time so if you could just wrap up your
4 point.

5 MR. HULME: Here's a few more.

6 MR. MEDINE: Those will all go in the record; I
7 promise.

8 MR. HULME: I heard something earlier on the nanny
9 checking and everything else. For whatever it's worth, when
10 the last hearings were going on on the drivers', protection
11 act there was a nanny nabbed for a murder wrap up in Bedford
12 at the same time the hearings were taking place. And a nice
13 little story to read.

14 MR. MEDINE: Okay. We appreciate that.

15 MR. HULME: That's it. Thank you for allowing us
16 here.

17 MR. MEDINE: Thank you. One more comment. Mr.
18 Catlett will be here thankfully tomorrow as well. One issue
19 we haven't touched on, if you could just address briefly, is
20 we talked about people who have legitimate access to these
21 databases. But should we also be concerned about improper
22 access to the databases as well and security issues?

23 MR. CATLETT: We should definitely be concerned
24 about security. A prominent security expert said that you
25 should never trust any computer connected to a network, not

1 even a power network.

2 And I think that the recent example in September,
3 '96 of the Web site of the Central Intelligence Agency which
4 one would hope would be better patrolled than most
5 commercial agencies was penetrated by a group of Swedish
6 hackers who changed its name to the Central Stupidity
7 Agency.

8 And I think it's also widely agreed among computer
9 security experts that the level of security is really not
10 adequate to protect consumers from the great, strong risks
11 that they face by having their names in so many different
12 databases whose companies they're not even aware of names
13 of.

14 MR. MEDINE: Thank you.

15 MR. HANNA: David, I have got to get one comment in.

16 MR. MEDINE: It's got to be very quick.

17 MR. HANNA: Three things. One.

18 MR. MEDINE: Just one.

19 MR. HANNA: Okay. WDIA does not sell to any direct
20 marketers. Also, our product is not only for the rich; it's
21 only thirteen dollars. So the gentleman who said it because
22 we are making it inexpensive and easy to access public
23 record information was right on target.

24 MR. MEDINE: Okay. Thank you very much all for a
25 very, again a lively discussion. We'll take a ten-minute

1 break and hear back from individual reference services.

2 (A short break was taken.)

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PANEL III: A RANGE OF RESPONSES

From consumer education and technological controls to government intervention and self-regulation, what responses are under consideration? What can existing self-regulatory programs in other sectors teach us?

PANEL IIIA: SELF-REGULATORY EFFORTS OF
INDIVIDUAL REFERENCE SERVICES

Martin Abrams, Vice President, Information Policy & Privacy,
Experian
Timothy Davies, Chief Operating Officer, National
Information Services, LEXIS-NEXIS
Thomas Quarles, Senior Vice President & General Counsel,
Metromail
Jack Reed, Chairman, Information Resource Service Company
Paul Tobin, Vice President & General Counsel, CDB Infotek
Ron Plessner, Advisor

1 MR. MEDINE: Okay. Thanks very much. We'd like to
2 resume now. The first panel in this session will be the
3 panel on self-regulatory efforts, individual reference
4 services. When we started this study we understood as time
5 went on that these individual reference services decided to
6 see if they could address some of the concerns that we've
7 raised through self-regulatory efforts, which we applaud
8 that they are engaged in.

9 We will now have a chance to see what they have done
10 and a chance to probe, question, and get a better sense of
11 what they've done. So I'd introduce Marty Abrams, who will
12 speak on behalf of the group, who was previously on panels
13 here and has been helpful to the FTC for matters on privacy
14 and he's with Experian.

15 MR. ABRAMS: Good afternoon. My name is Marty
16 Abrams. It is my pleasure to introduce a set of principles
17 that were developed by eight companies that make up the
18 individual reference services group.

19 I am with Experian. I am joined at the table today
20 by Tom Quarles from Metromail, Tim Davies from LEXIS-NEXIS,
21 Paul Tobin from CDB Infotek, and Jack Reed from IRSC.

22 The other companies involved in developing
23 principles are Information America, Database Technologies,
24 and First Data Info Source, Donley Marketing. We are also
25 joined at the table today by Ron Plessner who was an advisor

1 to the group.

2 The individual reference service group are eight
3 companies engaged in the business of providing information
4 that helps our customers find people or verify individuals'
5 identities. Some of the companies on this panel provide
6 services directly to users while others like Experian
7 provide data to other companies.

8 As we explained earlier today, these companies
9 provide an important service in our highly mobile society
10 where 20 percent of the population change address on an
11 annual basis. Our industry is first committed to helping
12 the public learn who we are and how we add value.

13 These are not secret businesses but rather are
14 organizations that are proud about what they do. They
15 prevent fraud, locate pensioners, restore child support to
16 folks who are due child support. This industry is also
17 committed to self-regulation to ensure the public that we
18 are and will minimize any risks associated with our
19 services.

20 The individual companies have for years taken steps
21 that restrict access to information that raises concerns.
22 As technology has made the use of information to locate
23 individuals more visible, public concerns have been raised.

24 We want the public to know who we are and how we do
25 business. To make that possible, the industry began working

1 on two projects in February of this year. First is a set of
2 self-regulatory principles. The second is a white paper
3 that explains our industry. Both products are being
4 introduced today. I hope everybody avails themselves of the
5 opportunity to take those documents, read them, study them
6 carefully; we think they're important documents.

7 Industry adherence to these principles combined with
8 an understanding of the benefits this industry brings the
9 American people will help address public concerns.

10 Furthermore, the self-regulatory nature of these principles
11 made it possible for us to develop them in a timely fashion.

12 We developed them much more quickly than would have
13 been possible with law and regulation. And they give the
14 industry the flexibility to adapt to technology change,
15 consumer concerns, and markets forces.

16 The companies that have developed these principles
17 have put their names on them. They are there for
18 accountability for following. Furthermore, they were developed
19 with the cooperation of both the DMA and the IIA, so there
20 is a broad industry history behind them as well.

21 The fact that we have all put our corporate names
22 behind these principles means we are committed to developing
23 the self-regulatory apparatus for ensuring compliance with
24 them. The principles recognize that information used by the
25 industry may be divided into three basic types: Public

1 record, publicly available information, and nonpublic
2 information.

3 The principles focus on nonpublic information; that
4 is, information that is not generally available from a
5 public source or part of a public record. The identifying
6 information from the top of a credit report, called here
7 today the credit header information, is an example of
8 nonpublic information.

9 The principles require that nonpublic information be
10 provided only to subscribing customers even though its
11 information like name, address, year and date of birth and
12 other information are often found in more public sources
13 like directories.

14 The depth of nonpublic information supplied to an
15 end-user is based on how selective the end-user is. While
16 the principles require that all customers be subscriber,
17 full Social Security number as an example coming from
18 nonpublic information may be supplied only to customers who
19 are highly qualified as a result of selective distribution.

20 Only truncated Social Security numbers may be
21 supplied to more general or nonselective distribution users.
22 Therefore, highly qualified customers like federal law
23 enforcement agencies receive the data they need to protect
24 us when the general users receive more limited data.

25 There are 12 principles contained in this document.

1 I will briefly review those principles, and I do mean
2 briefly. There is a lot of depth in those principles; I do
3 urge people to read them carefully.

4 The first principle requires us to educate the
5 public and our users about the appropriate uses of our
6 services.

7 The second goes to sources. This principle
8 prohibits the use of marketing transaction information for
9 individual reference services. I'm going to ask Tom Quarles
10 to talk about that issue just briefly because that issue
11 came up this morning.

12 MR. QUARLES: Commissioner Varney, you asked about
13 the distinction between reference and marketing information.
14 And specifically Metromail unlike LEXIS-NEXIS does provide
15 its data for both purposes. And I just want to assure you
16 that in fact we have drawn a line between our data with
17 marketing information being on one side and reference
18 information being on the other side.

19 And the principles that we have adopted here as well
20 as DMA guidelines provide that marketing information may not
21 be used for reference purposes. An example of marketing
22 information would be a postal change of address list that we
23 might get from a magazine subscription company, like Time
24 Warner or some magazine publisher.

25 That is marketing information, and that information

1 may not be used on our reference services and is not used in
2 our reference services. However, it is conceivable that a
3 direct marketer may use a reference service for a direct
4 marketing application.

5 As an example, L. L. Bean, in mailing out a parcel
6 to an individual, may use the service to verify a delivery
7 address. So there are direct marketing applications that
8 are made from the reference data.

9 But the two sets of data are truly different. They
10 are not accessible. The marketing information is not
11 available to the reference services. So it was important I
12 think to at least point that out in terms of some of the
13 discussion that's occurred so far today.

14 MR. ABRAMS: Thank you very much, Tom. The third
15 principle concerns accuracy. The fourth principle specifies
16 that public record and directory information is available
17 without restrictions.

18 The fifth value describes, or excuse me, the fifth
19 principle describes the procedures that we must follow when
20 a service is based on selective distribution of nonpublic
21 information. The sixth then refers to nonselective
22 distribution of nonpublic information and is, as we said
23 earlier, only truncated Social Security numbers and birth
24 dates are available to users of services that are
25 nonselective distribution.

1 The seventh principle describes the security
2 responsibilities of the signatories. Principle eight
3 requires us to be open and honest with the public about our
4 privacy practices.

5 The ninth principle requires us to explain to the
6 consumers the choices they have or rate activities for the
7 information use. The tenth makes it clear that our
8 obligation is to have an accurate reflection of the public
9 record, that we should direct consumers to the source to
10 correct the information.

11 The eleventh is the access principle. The
12 signatories are responsible for giving the consumer the
13 nature of public record and public information they have and
14 let the consumer know that they have nonpublic information
15 on the consumer and the source and type of that information.

16 The last principle concerns children. Nonselective
17 consumer distribution should not include, and I emphasize
18 not, data on children without the parent's consent.

19 Thank you very much. If you have any questions, I'm
20 joined here on the panel. We will just be happy to answer
21 your questions.

22 MR. MEDINE: And again I want to thank you.
23 Regardless of whether we agree or disagree with what you've
24 just discussed, I think it's tremendous that you have
25 responded to public concerns and the Commission's study by

1 coming together and imposing a self-regulatory scheme.

2 I have some questions.

3 COMMISSIONER VARNEY: I do, too.

4 MR. MEDINE: Sure.

5 COMMISSIONER VARNEY: I would add my actual
6 astonishment that you eight companies have been able to come
7 together and sit down and work out some principles that for
8 some of you are probably not past practices. We're glad to
9 see they're going to be future practices.

10 But before we get into the substance of what the
11 principles are, you're eight companies. What percentage of
12 the industry are you?

13 MR. ABRAMS: I would say, Commissioner Varney, that
14 we're the vast majority of the industry that supplies this
15 type of information to commercial users. And I believe that
16 the principles that we have established will become the
17 standard for the industry.

18 MR. MEDINE: I can add to that. During the break
19 Oscar Marquis from TransUnion said that while they were not
20 participants in this group, they are prepared to subscribe
21 to these principles as well.

22 COMMISSIONER VARNEY: Is there anyone other than
23 TransUnion that's not signed up?

24 MR. MEDINE: Has Equifax as a whole?

25 MR. TOBIN: Choice Point. It's been a signatory to

1 CDB. It's another Choice Point company. I don't believe
2 that the Equifax side considers themselves to be included.

3 COMMISSIONER VARNEY: Okay.

4 MR. FORD: David, Equifax has unofficially ascribed,
5 but I don't have a special --

6 MR. MEDINE: I couldn't find you during the break.
7 I'm sorry. Thank you.

8 COMMISSIONER VARNEY: So, is this the universe of
9 fire? I mean, has everybody signed on?

10 MR. PLESSER: I don't know. It's not my industry.

11 COMMISSIONER VARNEY: Well, let me ask you a couple
12 of questions then if this were. If we go through the
13 substance and the Commission finds itself in much agreement
14 with you, do you think under our Section Five authority that
15 we should prosecute practices that are not consistent with
16 these principles as unfair practices?

17 MR. ABRAMS: Commissioner Varney, I can only speak
18 for Experian. Our name is on the principles. If we don't
19 live by these principles we expect you to hold our feet to
20 the fire.

21 COMMISSIONER VARNEY: Or other companies, that may
22 or may not be. I mean, is this all --

23 MR. QUARLES: Speaking only for Metromail, I would
24 agree with what Marty just said.

25 COMMISSIONER VARNEY: Okay. You'd probably all

1 agree.

2 MR. TOBIN: I would make an additional point. We
3 talk about in the principles themselves that we are, our
4 next step is going to be looking at a self-regulatory
5 enforcement mechanism so that probably you wouldn't have to
6 do that.

7 COMMISSIONER VARNEY: But presumably we may have to
8 do that if there are outliers, if there are people engaged
9 in this business who don't adhere to these principles.

10 MR. REED: And, Commissioner Varney, we subscribe to
11 the principles and we expect to be held to them.

12 COMMISSIONER VARNEY: Okay. Would you all be
13 comfortable if we went through these point by point and you
14 found that you had three commissioners in total agreement
15 with the principles? Would you all be comfortable with us
16 adopting them as regulatory guidelines?

17 MR. DAVIES: The answer to that is yes. A great
18 deal of thought has gone into these over many months. And
19 we're very thankful to your surprise that they've actually
20 been brought together, possibly to our slight surprise.

21 But the group has worked very well. And we expect,
22 it's just been said, our feet to be held for the fire and
23 for them to be discussed robustly.

24 COMMISSIONER VARNEY: Okay. David, I'm ready to
25 start going through them if you are.

1 MR. MEDINE: Okay. Maybe we'll just jump to the
2 marketing issue just to clear the air on that. I just have
3 two questions about that. One is the discussion about
4 information going into the look-up services.

5 And maybe you could just clarify, I don't know
6 whether Jack Reed had indicated that IRSC offers a last name
7 search and a new address search database that is compiled
8 from phone directories and direct mail and magazine
9 subscription lists.

10 MR. QUARLES: Well, to the extent that he's getting
11 that information from Metromail, he would only give that
12 information on the reference side and it would only include
13 publicly available, public record information. It would not
14 include any information such as postal change of address or
15 any marketing information; you would not find it located
16 there.

17 MR. MEDINE: Just so to clarify, would you view
18 direct market, direct mail, magazine subscription lists to
19 be marketing information or not marketing information?

20 MR. QUARLES: Yes, I would.

21 MR. MEDINE: Yes, what?

22 MR. QUARLES: Yes, I would conclude that those are,
23 that's marketing information.

24 MR. MEDINE: So if the information does come from
25 those sources, it should not be used for reference services.

1 MR. QUARLES: That's the way we interpret the
2 guidelines and that's the way we would enforce these rules.

3 MR. REED: Just a short statement. I just learned a
4 few moments ago that in 1994 they changed their policies and
5 we have not updated our files.

6 MR. MEDINE: Yeah. Thank you.

7 COMMISSIONER VARNEY: If I understood, I mean I
8 might not have understood it, the L. L. Bean example. Let's
9 talk about this for a minute. L. L. Bean can come to you or
10 any one of you presumably and purchase reference service
11 information because you said they can use it to verify
12 address; right?

13 MR. QUARLES: When you say reference information,
14 they could subscribe to a reference service whereby they
15 could make, you know, look-ups of individuals as opposed to
16 on the marketing side where we are producing for them a list
17 of names and addresses.

18 COMMISSIONER VARNEY: Okay. So they, they can't use
19 the reference service in the same way that they would use a
20 marketing service. They can't go into a reference service
21 and say give me everybody in these zip codes who owns their
22 own home whose value of the home is over X dollars.

23 MR. QUARLES: I mean potentially they could
24 subscribe to the last characteristic that you added to the
25 extent that that was derived from your public record data or

1 census data, that kind of data, then they could go in and
2 presumably do a search of a particular zip code with those
3 characteristics and name by name begin to build a file.

4 But from a cost standpoint it just doesn't make
5 sense for them because what they'll do is they'll come to us
6 on the marketing side and they'll say would you give me all
7 the names and addresses of individuals that meet this
8 profile.

9 And then we will go into our direct marking database
10 which is much more comprehensive because it includes a lot
11 of nonpublic information derived from marketing transactions
12 and provide them with that information and address.

13 COMMISSIONER VARNEY: Okay. So does the direct
14 marketing information also provide the public record side
15 information so that I can get anybody in zip codes who meet
16 certain transaction criteria whose value of the home is
17 over X dollars?

18 MR. QUARLES: I mean, you could go into the
19 reference services and use it as you'd, you know, for
20 marketing --

21 COMMISSIONER VARNEY: Can you go into the marketing
22 services and do that, though?

23 MR. QUARLES: Well, you can go on the marketing
24 services because it's explicitly for that purpose.

25 COMMISSIONER VARNEY: So marketing services do have

1 the public record information and can use it.

2 MR. QUARLES: Marketing services have names and
3 addresses, et cetera, of individuals. And, you know, the
4 information is derived from marketing transactions.

5 COMMISSIONER VARNEY: Is it also derived from public
6 record transaction, public records?

7 MR. QUARLES: As an example, census data, you know,
8 it can become --

9 COMMISSIONER VARNEY: Tax rolls, property tax rolls.

10 MR. QUARLES: Property tax rolls, it could be used
11 over there, you know, on the direct marketing side.

12 COMMISSIONER VARNEY: Okay. So it sounds like, and
13 maybe this is a distinction that is meaningless, but it does
14 sound like that what we're getting is the flow of public
15 record information into direct marketing databases, but what
16 we're not getting is a flow of transactional data into the
17 public record bases. Is that --

18 MR. QUARLES: Under the DMA guidelines, direct
19 marketing information cannot be used for reference purposes.
20 However, reference data --

21 COMMISSIONER VARNEY: Can be used. So it's a
22 one-way street.

23 MR. QUARLES: It can be used for all purposes.

24 COMMISSIONER VARNEY: Okay.

25 MR. MEDINE: One thing that's absent from your

1 proposal, and I fully understand that given the very limited
2 time you had to even put this together is any type of
3 self-enforcement mechanism.

4 Have you given some thought to that and how would
5 you proceed to address issues of individual firms not
6 complying with these principles?

7 MR. ABRAMS: We've just finished, we've just
8 finished putting the principles together. And it was a
9 long, involved process in putting the principles together.
10 As we said in the lay paper, we have committed to work on
11 the enforcement concepts.

12 Most of us are members of other trade associations.
13 And these principles are consistent with the guidelines in
14 those trade associations. At this point and time we need
15 the opportunity to get them in place in our own businesses
16 and talk about what enforcement might be. At this point we
17 don't know what enforcement might be.

18 MR. MEDINE: But is this something that you plan on
19 addressing in the future?

20 MR. ABRAMS: Yes.

21 MR. DAVIES: Yes.

22 MR. QUARLES: Yes.

23 MR. REED: Yes.

24 MR. TOBIN: Yes.

25 MR. REED: I'd like to make a comment. I'll put on

1 my investigator's hat here just for a second. We have, the
2 National Council of Investigation and Security Services, which
3 is an umbrella organization, over some 27 state
4 associations, another fifteen or twenty other national,
5 international associations, we are currently, as soon as we
6 have some type of affirmance here, we will move this out to
7 each one of those associations through NCISS first as
8 approved.

9 Once that's approved it will become the practice of
10 the association as far as investigators are concerned with
11 some limited exceptions about the concerns of opt out,
12 wherein an individual in that case is obligated by law to do
13 certain things and not disclose certain things. So that
14 would have to be an exception.

15 But as to that, it would go from there to the other
16 associations that we are the umbrella for and they would be
17 asked to affirm. And then as soon as we have received that
18 information, then we would come back to you with that
19 information and then we could make some decisions on how
20 possibly that might be worked into some legal enforcement
21 means.

22 MR. MEDINE: I wanted, I want to revisit marketing
23 one more time. And that is, in defining nonpublic
24 information on page six of your white paper, in the second
25 sentence under nonpublic information, you say in some

1 instances this may consist, but if not public information
2 may consist of survey responses and self-reported data.

3 What do you see, does that include warranty cards
4 for instance? And if so, how do you view that as falling
5 within the divide between marketing and nonmarketing data?

6 MR. QUARLES: As it relates to warranty cards, and I
7 can only speak on behalf of Metromail, we consider that to
8 be a matter that arises from a marketing transaction and
9 therefore will not use that data on the reference side.

10 MR. MEDINE: So what is the, when you refer, when
11 the white paper refers to survey responses and self-reported
12 data, what is that referring to if not marketing data?

13 MR. QUARLES: For example, there could be a survey
14 that is collected from individuals that specifically says we
15 intend to collect this information and use it for a
16 reference service; in other words, to help individuals find
17 you and this information.

18 In that situation, assuming that kind of disclosure,
19 then it was not collected in a marketing transaction. The
20 reason for the collection was made clear to the respondent,
21 and that data collected with that scenario would in fact be
22 usable in the reference service. So it's just an example of
23 something that --

24 MR. PLESSER: There is a history of city directories
25 which have been collected by door-to-door surveys and other

1 things of that nature. And I think it's really questioned
2 in that case, over the notification if the notification says
3 it's being collected for marketing data then it would be
4 marketing.

5 If it said this is being collected for directory
6 purposes, then that or I guess it could be joint. But there
7 are rules that would have to be clear notice as to what the
8 purpose of the collection is.

9 MR. MEDINE: And again, we would exclude consumers'
10 expression of preferences on warranty cards or other types
11 of products service information

12 MR. PLESSER: Right. I think it was our active
13 assumption throughout that warranty cards, customer
14 satisfaction, feedback mechanisms, stuff like that would
15 clearly be seen on the marketing side.

16 COMMISSIONER VARNEY: Do you think that it's
17 worthwhile to talk about if there are ways to get consent
18 for public record information migrates to the marketing
19 side?

20 MR. ABRAMS: Commissioner Varney, I think before we
21 work on consent I think that we need to work on consumer
22 education, education of state officials so that the states
23 are educating the public to their dissemination procedures
24 and processes.

25 And I think that's the first step. I believe that

1 the public record is collected. And this is an Experian
2 view, it's my view; I believe the public record, the pure
3 public record, we have talked in the past about different
4 types of government-sourced information. Readily pure
5 public record information is collected without the ability for
6 the consumer to have a choice, that we have data integrity
7 issues with that part of the public record if consumers can
8 opt out.

9 COMMISSIONER VARNEY: Well, they're not, not opt
10 out. I mean, I'm asking a slightly different question.
11 Okay. You got my public record I know. There's nothing I
12 can do about it. It's accurate. It's out there. It
13 exists.

14 You have got marketing information on me. At least
15 I feel like I have some control over that because there is a
16 mail preference service or a telephone preference service.
17 There's a lot I can do about that. I can also shop in cash.
18 You know, I can do some other things. If I have a high
19 privacy value on my life, there's things I can do about
20 that.

21 What I'm asking is, I know I can't opt out of public
22 records. But can I say to you, look, don't give my public
23 record information to marketers?

24 MR. ABRAMS: Commissioner Varney, we have at
25 Experian, as you know, besides our credit reporting business

1 we also have a direct marketing information business and a
2 real estate information business.

3 Consumers can opt out of that real estate
4 information being used for direct marketing. That
5 information is licensed to Metromail, and part of the
6 license agreement is that they have to honor the mail
7 preference service.

8 So you can't opt out of that information being used
9 for purposes of underwriting property or assuring the title
10 is clean. But, yes, we give the consumer the ability to opt
11 out of the marketing of that information. In fact, the DMA
12 guidelines require that we do that.

13 MR. QUARLES: When you subscribe to the telephone
14 preference service or the mail preference service, that
15 would ensure that at least on the marketing side of the
16 business that your name and address is not going to be part
17 of a list given to direct marketers.

18 What is almost impossible is on the reference side,
19 using the L. L. Bean example, delivery of your address for
20 delivering a shipment that you ordered, is that a marketing
21 application and could we know that every time someone calls
22 the service that they couldn't use it for that marketing
23 application?

24 COMMISSIONER VARNEY: That's exactly what I'm
25 asking. Should there be a public reference or public

1 records service in the same way there's a telephone
2 preference service and a mail preference service should
3 there be a public records preference service? Not that you
4 can't collect my information from publicly available sources
5 because it's there, but should consumers have some ability
6 to influence what's done with that information?

7 MR. PLESSER: Well, I think Marty gave the answer
8 before, that if you're on MPS with the market mail
9 preference service marketing uses won't be made of the data
10 wherever it came from, including public records.

11 The same would be on an individual opt out given to
12 an individual company. Certainly under the PPPA, those
13 would all be at the use end rather than at the collection
14 end. And I think those were the, where the impact would be.

15 Public records information themselves can be used
16 for any purpose. But I think certainly the limitations on
17 marketing and telephone calls under enforceable rules, you
18 can tell somebody don't call me again during David Sobel's
19 dinner time. That will already exist.

20 I think that there is, you know, that's the way I
21 think that the problem solves. But again, this is not
22 really a group of marketers. This is a group of look-up
23 service companies. And the marketers will be here tomorrow.

24 MR. DAVIES: Could I just add one point? It is the
25 actual use of public records. And public records are not

1 actually in the files which really give much use to some of
2 the applications we have just been talking about. So that's
3 interesting to talk it through.

4 The very nature of getting hold of all these
5 records, putting the last of the -- most of them are there
6 and they get very old. So they have to have a currentness
7 of that information for the person who is delivering a
8 parcel for L. L. Bean, which would be remote in my book.

9 COMMISSIONER VARNEY: David, I would like to, if I
10 could for a minute, digress off the specifics and go through
11 each company in asking you, we've had a lot of discussion
12 here today about the drivers in your business, in your
13 public records business, in your reference look-up service
14 business.

15 Who are you guys selling to? Who are your clients?
16 Who are your subscribers? And I'd really like to go right
17 down the table, unless it's the same answer, and hear from
18 each of you.

19 MR. ABRAMS: Our answer is simple. We supply
20 nonpublic information on a very selective basis. We will be
21 using these principles to qualify the users of this
22 information.

23 We don't provide the information typically to
24 end-users except as part of the ongoing relationship with
25 subscribers. For example, if a retailer has a credit

1 relationship with a consumer and the consumer runs out on
2 the debt, then we do provide this information to help them
3 locate. But as you know they have a permissible purpose
4 under the FCRA.

5 COMMISSIONER VARNEY: Okay. So you're selling to
6 law enforcement. You're selling to retailers. You're
7 selling to insurance. You're selling to law enforcement
8 related. Who else?

9 MR. ABRAMS: No. We supply to our ongoing credit
10 subscribers and to a very selected group of referencing
11 services.

12 COMMISSIONER VARNEY: Okay, that's who you sell to.

13 MR. QUARLES: A lot of the individuals here have
14 already indicated that they use Metromail data for their
15 services. But financial services use our reference
16 services, insurance companies use our services, credit and
17 collection agency use our reference services. Law
18 enforcement uses our reference services.

19 We also advertise to consumers a number that a lot
20 of alumni clubs and student reunion groups use our service
21 to help plan reunions and things of that nature. So
22 consumers use our service to try to locate and find
23 individuals.

24 We supply our data to the National Center for
25 Missing and Exploited Children so they use our data as well.

1 I'm probably missing some applications, but that's pretty
2 much the groups that use them.

3 MR. REED: I'm sorry. The groups, I thought we
4 talked about that earlier. The insurance companies, banks,
5 commercial banks for, primarily for business. The -- I just
6 went blank. Insurance companies, banks, the mortgage
7 business, casinos, and various corporations throughout the
8 company, Fortune 500 and some Fortune 1,000 companies, and
9 the private investigators and lawyers. Those are our
10 primary mixed markets.

11 MR. TOBIN: That's really the same markets that we
12 serve. And what we're selling to these people are business
13 risk management, fraud prevention, fraud control, fraud
14 detection. Our point of view on selling these things and
15 why it could be inappropriate to tell us that we couldn't
16 sell to these people and only sell to law enforcement
17 because by allowing businesses to do these things and
18 minimize their losses, that benefits consumers that do play
19 by the rules, pay their bills, et cetera, to the tune of
20 billions of dollars.

21 MR. DAVIES: At LEXIS-NEXIS, our primary business or
22 why we came into business was to set up the legal market
23 until initially many of our files building up from the
24 public records was to serve that community.

25 Since then of course it's expanded. And the law

1 enforcement side is another very large user of our records
2 for the reasons that have actually been stated here, and
3 together with all the benefits that came through,
4 particularly for the child support.

5 And many of the examples that have been given on the
6 benefits arise from the legal industry, finding witnesses
7 and so forth; all those come through from us. To go back to
8 an earlier point in the previous session when it was
9 refuted, and I don't know on what basis, as to the good
10 grounds that our public records are put to, I would say from
11 the experience of LEXIS-NEXIS and from many of my colleagues
12 on the committee who serve distinct niches and segments of
13 it, it is entirely or pretty well entirely used for those
14 purposes.

15 MR. HENDRICKS: Yeah, Evan Hendricks of Privacy
16 Times. Now, when things, records are in the public record,
17 individuals universally almost have rights of access to that
18 information, as they have a legal right of access to their
19 information in credit bureaus, their credit reports.

20 Are you saying here that now individuals will have a
21 right of access, like if LEXIS-NEXIS has a record on me,
22 CDB, IRSC, Metromail, that I will be able to exercise a
23 right of access at least to my public record information
24 that you hold?

25 MR. DAVIES: We're jumping to the end, and I'll be

1 delighted to answer that point specifically. From the
2 LEXIS-NEXIS side, just to go through, after we launched P-Trak
3 and it was a concern when this information was given out, we
4 immediately allowed people to be able to opt out that
5 service.

6 And we responded to people when we had actually
7 found their records and taken them down. What we have in
8 these guidelines goes beyond that. What we need to set up
9 in place for the information, for the specific information
10 from P-Trak and P-Find is to be able to tell people who
11 contact us what information they actually have is to be able
12 to pull that information off to give it to them.

13 If it's from public record sources, then people know
14 if they've got a house and they've got the other side what
15 records are there. What we'll tell them is we have got
16 their property information or whatever else it is from the
17 county or the state it actually comes from.

18 MR. HENDRICKS: Is that true for everybody here?

19 MR. MEDINE: Can I just follow up on that? I guess
20 the concern that's been raised through the session to this
21 point is, and we've heard from Beth Givens and others, is
22 there are a lot of situations where there has been
23 misinformation in the file that it may be hard to determine
24 which piece of information is misinformation.

25 How can consumers know where to go, which public

1 record source to go to to correct a problem unless they had
2 access to their file so they know maybe my land record was
3 okay but my DMV record wasn't okay?

4 MR. PLESSER: I think the, first of all this is
5 really for the look-up services or reference services. And
6 the principle says both if you're on public record then they
7 will describe the record.

8 But further in response to the question, there is
9 also nonpublic record information in here, the credit header
10 information. And there is an affirmative obligation to
11 notify, to respond to people that yes, we do identify you or
12 we don't identify you in the system. And that is something
13 new in these principles.

14 A lot of the companies have not implemented it yet.
15 But that is a requirement that I think is a new one that has
16 not been seen before. And that will require essentially in
17 the type of products that you heard today to identify for
18 nonpublic information whether or not you're in fact
19 identified in the product.

20 Now, in Jack's world, in the selective kind of law
21 enforcement world there may have to be some rules and
22 adjustments. We don't want people who are subject to
23 investigation to be kind of doubly investigation. And I
24 think there is some room in there to protect them.

25 But the basic rule for a LEXIS kind of database or

1 for Metromail is that somebody could request to know whether
2 or not there's information about them in the base and they
3 would then tell them.

4 MR. HENDRICKS: But why not just, why not just --

5 COMMISSIONER VARNEY: Everybody is getting to the
6 same point.

7 MR. MEDINE: We're going to expand the panel in a
8 minute, okay. You're really sort of jumping the gun on the
9 next panel. So let me just, we'll open this up to further
10 discussion. But while we have this panel I want to follow
11 up with that question, which is on look-up service, we heard
12 from the National Retail Federation, for instance, that they
13 use look-up services to see if someone's address information
14 perhaps consists under Social Security information is
15 consistent.

16 If I get turned down for an account at a store or if
17 a bank says I don't get a checking account because the
18 information in the look-up services doesn't match my
19 application, how do I know if the information that caused me
20 the problem, the inconsistency was my address that came from
21 DMV, was my address that came from Social Security, from a
22 credit report.

23 Won't I really need access to the file to know
24 precisely what information is incorrect so then, and where
25 it came from so I can follow up?

1 MR. PLESSER: As Karen indicated this morning, and I
2 think the other companies, many of them will have to respond
3 themselves, but for LEXIS-NEXIS there is a clear indication
4 in the application, in the screen, both at the application
5 point and in the screen it used about the Fair Credit
6 Reporting Act.

7 If somebody is denied credit or is using it for
8 credit purposes, they're not supposed to use the system. It
9 is not made available because of the subscription, and I
10 know many of the sales force gets very angry at the general
11 counsels office, there are many sales that are not made of
12 LEXIS because it's being used for a permissible purpose.

13 We've discussed this over the years with the Federal
14 Trade Commission. This is not something new. This is a
15 split that we have, that LEXIS-NEXIS has maintained. The
16 question is there is, credit header information is available
17 on request from the credit reporting agency. So this is not
18 information that's not available to the individual.

19 MR. MEDINE: If you know to ask for it.

20 COMMISSIONER VARNEY: Well, yeah. Look. As I
21 understand it today, if I want a copy of my credit report I
22 can write to the companies, in some cases call the
23 companies. Depending on my circumstance I either pay for it
24 or get it for free. And I get what is alleged to be an
25 actual copy of my credit report, or a close facsimile.

1 You all have, at least in this language right here,
2 on the access language, principle eleven, make available
3 information that's made available in products and services.
4 Okay. That tells me if I'm somebody who is a subscriber,
5 somebody who uses your service, I can go to you with a name
6 or with a name and address or with a name and a social
7 security number and you'll run me a report, okay, and you'll
8 give me a piece of paper or you'll transmit to me
9 electronically a report.

10 My question is, under your principles, maybe you
11 haven't gotten here yet, will you provide a copy of that
12 report to any consumer who requests it and under what
13 circumstances will you make that available, the actual copy
14 of the product?

15 MR. DAVIES: If I can answer on behalf of
16 LEXIS-NEXIS, whether it's P-Trak or P-Find information which
17 was all demonstrated this morning, we will supply a copy of
18 that. It is public records. We will just tell people that
19 the information is held available.

20 Also, I think you are hinting at, if I can assume
21 that earlier on, is how do we tell the public in how they
22 can come to us to know that that information is available?

23 Well, they do that. We go to a great deal of
24 trouble to make certain it's available on the Web site. If
25 they know this, if it's a concern they can go to the Web

1 site, they can write in, they can E-Mail in, any basic way
2 of actually communicating to us as well as by placing, try
3 to be bilingual advertisements and advertisements and so
4 forth when we're through. So we do try to a reasonable lot
5 of trouble to make certain people know how to contact us and
6 make it easy for them.

7 COMMISSIONER VARNEY: But the question is, though,
8 are you all, the eight of you willing to say, and I think I
9 would personally take great comfort if you were, that any
10 consumer can contact you and you will provide them a copy of
11 either the product or the information, the public record
12 information that you have on them? Then we can get to the
13 question of if it's erroneous how does it get corrected.
14 But will you give them the copy?

15 MR. REED: For what reason?

16 COMMISSIONER VARNEY: For any reason they wish.

17 MR. DAVIES: Getting back to it, to the public
18 record, we can only say that we're holding that record.
19 It's just the complexity of the databases to pull it out.
20 We can let people know that their public records are there.
21 They know it's filed and they know what's actually contained
22 in those. They signed the document that was actually being
23 made to publish it.

24 COMMISSIONER VARNEY: Well, but suppose there is a
25 public record that shows a lien and for whatever reason the

1 lien has been satisfied and that doesn't show up on your
2 copy of the --

3 MR. DAVIES: The fact that we're holding it for them
4 means they can get, they know where it's filed to go there.
5 I'm afraid, there are many ways to be able to say to pull it
6 up from an online database such as ours to pull out all the
7 public record information on that is just not practical.

8 To get through to them, to make certain that people
9 know where the information is, what is being held, why is
10 the lien still there, to go back to correct it then doesn't
11 really mean the information that we find is true. And there
12 are many other ways and safeguards of other sorts that they
13 could actually contact that.

14 If they thought something was out of line on a
15 public record, then most people would go not for us but go
16 directly to the source to correct it. And we'll do
17 everything we can to facilitate them knowing where that
18 source is and the address and how to get at it.

19 MR. MEDINE: Again to clarify, will they have access
20 to the precise information that they, only they will know is
21 correct or incorrect, the consumer?

22 MR. DAVIES: P-Trak, P-Find, yes; the public
23 records, no.

24 MR. MEDINE: So the consumer goes to you and says I
25 want to see my P-Trak file, you will give it to them?

1 MR. DAVIES: Yes.

2 MR. MEDINE: Even if they're not a subscriber
3 otherwise.

4 MR. DAVIES: If we don't, we take the names down.
5 We go to great lengths to try and meet that already.

6 MR. MEDINE: And what about the other participants?

7 MR. TOBIN: I just wanted to clarify. The other
8 part of your question, the example you used, I can tell you
9 something we have done for a long time. If someone comes to
10 us and says, okay, I have a judgment and that judgment was
11 satisfied, I understand that in your database you're not
12 showing that.

13 We say fine, can you show us that record? Say they
14 send us something, a public record. We fix that. That
15 doesn't solve their problem. Until such time as we
16 monopolize 100 percent of the market, that doesn't fix their
17 problem.

18 What we tell them they have to do is to get, go back
19 to the public record source, which is the, in that case the
20 court records in the jurisdiction, and impose upon the
21 public records source to fix the record.

22 COMMISSIONER VARNEY: I'm not even there yet, I'm
23 not on how do you fix an error. I'm at how do I know what's
24 in your version of my public record?

25 MR. TOBIN: The best way for you to know what's in

1 public records is to go to the source.

2 MR. MEDINE: No, but your version of it may be
3 different because it may not be as current as the public
4 record. The public record may be updated with a
5 satisfaction of a judgment that is not reflected in yours.

6 COMMISSIONER VARNEY: There may be things in your
7 public record that I as the consumer may never occur to me
8 that birth records were public.

9 MR. MEDINE: So I guess the question is if the
10 consumer has access to your file and you tell them where the
11 information came from, then they are armed with the two bits
12 of information they need, which is what's the erroneous
13 information and where do I go to fix it, even if you're not
14 the entity who can fix it.

15 MR. REED: David, one of the problems that's here is
16 that, for example, in California on DMV we are a commercial
17 provider of DMV information in California. Our customer is
18 a subscriber. We never see the information. We don't know
19 what it looks like. It goes directly through us right into
20 the subscriber's hand.

21 We don't have any information on them. It goes to
22 the subscriber that made the access on that piece of
23 information. So they'd have to go to DMV to find out what
24 that record was that was delivered. And if I remember the
25 rules correctly, and the DMV makes it very difficult for the

1 consumer to even get their report in California. So it's a
2 difficult situation.

3 COMMISSIONER VARNEY: Okay. Well, then let's --

4 MR. REED: Real property records --

5 COMMISSIONER VARNEY: Well, let's take it a step
6 further then.

7 MR. REED: Okay. All right.

8 COMMISSIONER VARNEY: Let's say that technologically
9 it's just not feasible to give consumers copies of their,
10 quote, report. Can you give them a list of everything
11 that's in it and where it came from?

12 MR. REED: Everything that's in it.

13 COMMISSIONER VARNEY: Your public record, whatever
14 product it is.

15 MR. REED: I can tell them what information that we
16 actually have in their file, yes.

17 COMMISSIONER VARNEY: In writing you can transmit
18 that.

19 MR. REED: And I will be happy to do that.

20 COMMISSIONER VARNEY: That's what they're saying.

21 MR. REED: But I'm not going to allow every consumer
22 in the United States to come in and say give me a copy of my
23 report.

24 MR. MEDINE: Just to clarify. Did the principles
25 say --

1 MR. REED: Unless they want to pay for it.

2 MR. MEDINE: Did the principles say that you can
3 inform an individual by the nature of the information? Are
4 you prepared to modify that to say that a copy of the
5 information or the nature of the substance of the
6 information or this is from the Fair Credit Reporting Act?

7 MR. PLESSER: Well, I think to say the response is,
8 we'd like to know what all the concerns and responses with
9 the Commission is. I think the industry has done kind of as
10 far as it has gone I think to a certain extent.

11 All of the responses I think the committee now would
12 make X change or Y change, I think, you know, without
13 sounding like an old contract negotiator we'd like to hear
14 all the changes and look at it in totality.

15 This has been a very good, difficult one. I think
16 there is a commitment here to let people know if they are in
17 the databases. That may not be satisfactory but it's a
18 start. And also the sources of the information. And I
19 think this has been a very controversial issue.

20 Certainly it is publicly. It's been within the
21 group. And I think the input we get from the Commission and
22 from other people who will contact us as a response to this
23 and the other principles would be very helpful. It's hard
24 to pick one out. I think that it has to be looked at in
25 totality. And when we can see your reaction in totality

1 then I think we will be able to respond.

2 MR. MEDINE: We'd certainly be anxious to hear back
3 from you about your views on consumer disclosure because I
4 think that's been our theme throughout the day; that is an
5 important issue.

6 COMMISSIONER VARNEY: And in particular I think,
7 Jack, what you just said, you know, I think got ground up by
8 the din, but you would not be willing to make it available
9 to every consumer in America for free. Let's think about
10 and maybe, you know, have a discussion now or more later
11 under what circumstances should individuals have free access
12 and under what circumstances should they be paid. And if
13 they do pay for it, should it be universal access to
14 everybody who wants it for whatever reason if they pay a fee
15 and, you know, those kind of issues.

16 MR. MEDINE: And credit bureaus also charge a fee;
17 correct?

18 COMMISSIONER VARNEY: Right.

19 MR. TOBIN: So do the states, incidentally.

20 MR. MEDINE: That's right. So I don't think anyone
21 is necessarily suggesting this be free.

22 MR. REED: You know, if we were talking about a
23 specific record, you came to me and a moment ago you
24 mentioned something about a lien and you said there's no
25 satisfaction on my lien. And I believe it's in your file; I

1 don't know that but I think it's in your file where that
2 information came from. I would be happy right then and
3 there to check that lien and be sure.

4 Because I don't want any delays for you to get
5 whatever benefit you're asking for. And if that's
6 preventing you from getting a benefit, I want to move that
7 along as quickly as possible. But I still have to go back
8 to my resource, Mr. Hogan, and ask him and he will do that
9 immediately, you know, within a few days check the
10 information and then get me back corrected information if
11 there is a problem.

12 And we have done that many, many times. So whenever
13 those kind of events have occurred, we have met the
14 consumer's demand and satisfied him and their concerns. And
15 I think that's very important when we are dealing with this.
16 There is a quid pro quo here.

17 There is some information that is very difficult.
18 For example, if they want to know who made an inquiry on
19 their file, I probably won't give that out no matter what.
20 Because if they know who made that inquiry, they might know
21 it's an attorney looking for a particular asset. And once
22 that asset is being looked for, they're going to get rid of
23 it, hide it, move it, use the bank from another place.
24 Whatever the case may be, it's going to happen.

25 So you have a lot of issues that are underlying

1 issues that make a difference on how you manage this. And
2 it's not a simple thing. I wish it were. If it were nice
3 and clean where we could say, yeah, that's fine, I think all
4 of us would have said it.

5 But we recognize that we have a great diversity of
6 clients. They were using it for a great number of uses and
7 that broad base of uses is unbelievable.

8 We checked out an attorney who had defrauded his
9 wife. And it was an ugly case. The man had built up
10 several corporations. He had transferred all the real
11 property into it. In fact, he brought all the real property
12 in it. All the bank accounts were in it, all the money.

13 And there was some eight million dollars from their
14 estate. He claimed to the court he didn't have any money,
15 he didn't have anything. We were able to go through all
16 these databases and find out how he did it by tracking
17 various details that we understood to track.

18 And we were able to help that lady and she got 90
19 percent of that estate once we proved it all. We used
20 credit headers. We used everything that was available to
21 get, to match the people up and the players. So I think
22 it's very important --

23 COMMISSIONER VARNEY: This was a wife going after
24 her husband; right?

25 MR. REED: Hmm?

1 COMMISSIONER VARNEY: This was a wife going after
2 her husband; right?

3 MR. REED: Yes, ma'am.

4 COMMISSIONER VARNEY: One might argue that that
5 sheet, that was her information as well.

6 MR. REED: Well --

7 COMMISSIONER VARNEY: Wait a minute.

8 MR. REED: In this case -- you're right, you're
9 right, you're right.

10 COMMISSIONER VARNEY: What about a standard that
11 says we will disclose that you have accessed this
12 information unless you go through, that you have requested
13 this information unless you go through some internal process
14 to convince us why we shouldn't disclose to the consumer
15 that you have accessed the information? Is that too
16 onerous? Is that too burdensome?

17 MR. TOBIN: Everybody will say no thank you. This
18 is business risk management, fraud detection, things like
19 that. Everybody will say no thank you. If I could make
20 another point on something else, you --

21 COMMISSIONER VARNEY: Because we used to be able to
22 get that. I haven't done it in a long time but we used to
23 be able to get that on the credit report. You could see
24 exactly who had accessed your credit report.

25 MR. ABRAMS: You still can get that on the credit

1 report.

2 MR. TOBIN: You made a lot of points about old data,
3 inaccurate date, et cetera. And in addition to, you know,
4 we're nice people, we want to do the right thing, there is
5 tremendous competitive pressure. Because believe me, the
6 customers notice if my data is less accurate than Jack's or
7 someone else's.

8 And for that reason just for competitive pressure we
9 apply updates within 24 hours of receiving them. We go to
10 tremendous lengths and spend a ton of money trying to make
11 this stuff as accurate as can be, and we do it on an ongoing
12 basis. So, I mean, just competitive pressure alone will
13 take care of that concern.

14 MR. MEDINE: I want to turn to children's issues and
15 how you handle children's information.

16 MR. SILVERMAN: Specifically with respect to your
17 principle number twelve, you state that you, in situations
18 where an individual is identified as being under the age of
19 18 that nonpublic information about that individual should
20 not be provided for nonselective distribution
21 without parental consent.

22 And as I understand the principles then, what you're
23 suggesting is that public record and publicly available
24 information about children under the age of 18 can be
25 provided both on a selective and nonselective basis.

1 So as I understand it, it would be appropriate, for
2 example, to make available an eight-year-old's phone number
3 and address simply because it's available either publicly or
4 through public records. And I'm wondering what rationale
5 would support that decision?

6 MR. PLESSER: What circumstance would an
7 eight-year-old's telephone number be in the public record?

8 MR. SILVERMAN: Well, I mean, are there any
9 circumstances where information about children should be
10 available on a nonselective basis?

11 MR. PLESSER: I think we have driver's licenses and
12 kids driving motor vehicles at 16 and being publicly, having
13 motor vehicles.

14 MR. SILVERMAN: What about someone under the age of
15 12?

16 MR. PLESSER: In some cases kids -- What?

17 MR. SILVERMAN: What about 12 and under? Not
18 driver's license, just address information? Phone numbers
19 on children.

20 MR. PLESSER: Well, the question really was, the
21 question was, the question in drafting this was, was, A,
22 being sensitive to kids under P-Trak and P-Find. Many of
23 these look-up type of services don't have information on
24 kids.

25 And you can ask a question like that, but there is

1 no hiding here. The question is and, Jack, you may want to
2 respond to it, on some of the investigative and selective
3 things there was, there is children information in some of
4 that.

5 Indeed some of the records about missing children.
6 And Ernie Allen will be here later. To have said that we
7 would eliminate it in all circumstances seem not to be
8 prudent. I don't think that that means it was any trick,
9 that people are going to go out and market information on
10 children or do that at all. I think that it was a way to
11 protect some of the investigative abuses.

12 And, Jack, do you want to follow up on that?

13 MR. SILVERMAN: Well, let me ask if it would be
14 appropriate then to limit uses of children's information for
15 law enforcement or for purpose specifically like finding
16 lost children to make sure that there are no risks of
17 inappropriate uses of even information like address and
18 phone number?

19 MR. PLESSER: Well, that would only come from public
20 record information. I don't know where address and phone
21 number from a child would come from public record
22 information.

23 But, Jack, other than a public driver's license.
24 Jack?

25 COMMISSIONER VARNEY: Well, no, but it would because

1 birth records are public; right?

2 MR. PLESSER: But not address and telephone number.

3 COMMISSIONER VARNEY: Yeah, but it's easy, if you've
4 got the child's birth name and the parents birth name when
5 the parent gives birth and then you go to the tax rolls and
6 the property tax records. I mean, you've got a pretty
7 complete family picture.

8 I think the question Steve was getting to is, look,
9 it's not, it's very easy to see how you can easily put
10 together children's birth dates, names, addresses, parents'
11 names, and is there any circumstance other than law
12 enforcement or related purposes which any of you can foresee
13 which that information should be made available to others?

14 MR. REED: Yes.

15 COMMISSIONER VARNEY: Okay. What is it?

16 MR. REED: There's hundreds of cases a year, maybe
17 thousands of them. We certainly only do hundreds probably a
18 year. But the case is when a child is stolen or missing.
19 And in those cases, private investigators get hired in many
20 of those cases to find them.

21 Just one case, I got a postcard on it right before I
22 left the office the other day and it was quite interesting.
23 An individual, a child was missing. He used our database to
24 locate some information to track down other people who might
25 have information about the child and began the process. He

1 traveled over two continents. He ended up in Little Rock,
2 Arkansas. The man was arrested; the child has been returned
3 to his mother.

4 COMMISSIONER VARNEY: Okay. Well, other than those
5 circumstances. I think that's precisely what we're asking.

6 MR. REED: Those are the things I'm concerned about.
7 Other than that, I don't frankly care about children's
8 information.

9 COMMISSIONER VARNEY: There is no other
10 circumstance.

11 MR. REED: But I certainly don't want to be limited
12 for that purpose.

13 COMMISSIONER VARNEY: Right, but that's what we're
14 asking. Is there any circumstance other than law
15 enforcement and law enforcement assistance --

16 MR. REED: Well, that wouldn't be law enforcement.
17 That was private sector management.

18 COMMISSIONER VARNEY: That would be law enforcement
19 assistance if it's an abducted child.

20 MR. REED: As long as that's included in the
21 definition, that's fine.

22 MR. DAVIES: In answer to your question directly, I
23 mean, just for the record we've taken all children's records
24 that we could identify off records like P-Trak and P-Find
25 well before the last six months; so from the beginning.

1 The question is really the First Amendment rules.
2 Well, if a public record is a public record, then I'm not
3 saying that's a justification, but many of our sources go to
4 accuracy of those. And this is an issue, which all I can
5 say is we need to turn back and may need further
6 consideration beyond which I don't think any of us on this
7 platform can really add to that particular debate.

8 MR. SILVERMAN: The First Amendment clearly doesn't
9 force database operators to provide information about
10 children. Database operators, as LEXIS-NEXIS has done,
11 certainly have the ability to make a determination on their
12 own.

13 MR. DAVIES: In the consideration of it, if you're
14 containing records which have got public records, people
15 need to know that they're going to believe in the database
16 and that the substance and the completeness of the
17 information that's there.

18 You fully accept all the sensitivities and one that
19 needs to be actually thought through to a huge degree and
20 how these are actually identified. But one has got to be
21 very careful in which Jack and others were pointing out, how
22 that information today will be beneficial to use or whether
23 that's in law enforcement. But it is an area I think that
24 needs a great deal of faith possibly outside this
25 discussion.

1 MR. MEDINE: I'd like to take a brief break and
2 invite the rest of the panel members to join the discussion.
3 Let's take about three minutes or so. People can make their
4 way up to the room. I thank all of you for presenting your
5 proposal.

6 (A short break was taken.)
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1 PANEL IIIB: OTHER APPROACHES

2

3 Ernie Allen, President & Chief Executive Officer, National
4 Center for Missing and Exploited Children

5 Ram Avrahami

6 Robert Biggerstaff

7 Andrew Boer, Product Manger, eTRUST

8 Leslie L. Byrne, Special Assistant to the President,
9 Director, U.S. Office of Consumer Affairs

10 Jason Catlett, Chief Executive Officer, Junkbusters Corp.

11 Scott Charney, Chief, Computer Crime and Intellectual
12 Property Section, U.S. Department of Justice

13 Allan Davies, Vice President, Data Acquisition, Dun &
14 Bradstreet Corp.

15 Timothy Davies, Chief Operating Officer, National
16 Information Services, LEXIS-NEXIS

17 Tim Dick, President, WorldPages, Inc.

18 Susan Grant, Vice President for Public Policy,
19 National Consumers League

20 Mark Hanna, President, WDIA Corp., National Credit
21 Information Network

22 Evan Hendricks, Editor/Publisher, Privacy Times

23 Jane Kirtley, Executive Director, Reporters Committee for
24 Freedom of the Press

25 Deirdre Mulligan, Staff Counsel, Center for Democracy and

1 Technology

2 Marc Rotenberg, Director, Electronic Privacy Information
3 Center

4 Shirley Sarna, Assistant Attorney General, New York
5 Department of Law, National Association of Attorneys
6 General

7 Alden Schacher, Government Relations Manager, Information
8 Industry Association

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1 MR. MEDINE: Thank you very much. We've numbered a
2 post-self-regulatory scheme and staff here has a chance to
3 comment on it. We want to open up the discussion to other
4 self-regulatory efforts and a chance to critique to some
5 extent the proposal that has been placed before us and
6 suggest where we ought to go from here.

7 I know Marc has to leave somewhat early, so why
8 don't we get Marc's views up front.

9 MR. ROTENBERG: Thank you, David. I'm actually
10 going to hold off for a moment any comments on the proposal.
11 But I did want to make a point and ask a question since it
12 is the purpose of this panel to be discussing
13 self-regulatory measures. I wanted to tell a little story.

14 About seven years ago at this time I was preparing
15 for a hearing that was being held in Congress on privacy
16 issues. And at the time the person who I was working with
17 on the testimony, a Mary Culnan, who is now a professor at
18 Georgetown Business School and School of Business
19 Administration, we were reading through the trade
20 publications.

21 And we came across a product, this is May, 1990,
22 called Lotus Marketplace. And it was a product that Lotus
23 and Equifax had decided to make available to the public by
24 combining data in the Equifax credit record database with
25 demographic data, public record information that Lotus was

1 putting together and going to market as one product on a
2 series of CD ROMS.

3 And I went to the council for the Direct Marketing
4 Association, Ron Plesser, and I said to Ron, you know, I'm
5 looking through the Direct Marketing Association's code of
6 conduct. And one of your principles here says that
7 consumers should have an effective means to opt out of a
8 marketing list.

9 Now, I felt since that opt out really wasn't
10 sufficient, we needed opt in and so forth. But the rule in
11 place at the time was opt out. Consumers should have an
12 effective means for opt out.

13 And I said, you know, Ron, I'm reading about this
14 new product. It's supposed to be released later this year.
15 I don't understand how consumers are going to opt out of a
16 CD ROM. It would be a little bit like publishing a phone
17 book with everyone's unlisted numbers in the phone book and
18 then saying to people who are upset after the fact come back
19 to us if you want your numbers out of the next edition.

20 And he said to me, well, it's a problem and we are
21 looking into it. And I said, well, you've got a guideline
22 on this. Don't you have to, don't you have to stop it? I
23 mean, I have to explain also that at this point and time I
24 really had very little dealings with the Direct Marketing
25 Association.

1 It seemed to me to be a fairly straightforward
2 issue. You have an industry guideline, an issue arises, you
3 enforce it and you move on. Of course what happened in 1990
4 was that the Direct Marketing Association did not enforce
5 its guidelines.

6 It did not stand up to Lotus. It did not stand up
7 to Equifax. It did not tell them do not go forward with
8 this product; it fails to meet the basic privacy standards
9 that we within this industry have agreed to.

10 And it took 30,000 people sending E-Mail messages,
11 you know, talking to reporters, discussing these issues; and
12 some of the discussion I have to tell some of the friends
13 who have been recently critical of the Internet, some of
14 those discussions were at a very high level.

15 There was a lot of good technical discussion, how
16 secure was the data, what techniques were being used with
17 the CD ROM, could it be reverse engineered, could it be used
18 for a look-up service? All of that discussion was happening
19 on the Internet.

20 And a lot of people who thought carefully about this
21 issue said that product should not be released. And after a
22 six-month consumer protest, Lotus and Equifax dropped their
23 plans to release that product.

24 So if I begin my comment on this proposal by saying
25 this is like deja vous all over again I have to explain what

1 I mean by that. And it is simply this. That we have not
2 yet seen voluntary self-regulation work in the privacy
3 arena. It hasn't happened.

4 And so when people are skeptical about this
5 proposal, and I'm skeptical for other reasons as well, there
6 are some provisions in here, you know, you don't get access
7 to the data; you get access to a policy. You don't have a
8 choice of exercising control, you get informed if you
9 request if you have a choice.

10 And they also say in provision number four public
11 record information and publicly available information shall
12 be usable without restriction, which I have to assume was an
13 extended typographical error. Because of course they meant
14 that such information could be used subject to legal
15 restrictions.

16 So when I say that there is some skepticism about
17 the proposal, I have to explain that history. And I hope
18 that in this discussion as we talk about whether or not
19 self-regulatory means will work we don't lose track of that
20 marketplace history.

21 If these safeguards are good, if they're right, if
22 they're going to work, let's back them up with law. Let's
23 get people some remedies. Let's create an enforcement
24 mechanism. Let's create a level playing field; everyone
25 who's in the industry plays by the same rules.

1 MR. MEDINE: Allan Davies, maybe you could talk
2 about your self-regulatory efforts and the degree to which
3 you have been effective this council provided Dun &
4 Bradstreet.

5 MR. A. DAVIES: Sure. Dun & Bradstreet has the
6 world's largest commercial credit database. It contains
7 almost 44 million records from around the world. Here in
8 the U.S. which is probably what you're most interested in,
9 we maintain that database.

10 Some of the sources of information for that database
11 is that we go in. When we write a report on a business we
12 ask that business principal, we tell him that we are going
13 to be writing a report. We gather information and let them
14 become part of it.

15 After that report is completed, they can review a
16 copy of it. In fact, anyone can come to us, any business
17 can come to us at any time and ask to see a copy of that
18 report, which we provide to them free of charge. And we are
19 happy to do that because we consider them to be partners in
20 the preparation of that report.

21 We gather information from lots of sources, but
22 primarily from the business owner. And we put that
23 information up and available to our customers.

24 MR. MEDINE: Other thoughts? Yes.

25 MR. BIGGERSTAFF: Yeah. I'd like to echo Mr.

1 Rotenberg's remarks about the DMA. It's been my experience
2 in talking to people on the Internet and talking to people
3 who have had complaints with the DMA that they turn a deaf
4 ear, they pay lip service.

5 The DMA's TPS and MPS, they do not require their
6 members to use it. Many members do not use it. And it's
7 been my experience that all the complaints, they'll tell you
8 they're going to do something about it. But I know people
9 personally who have followed up with complaints and
10 complained time and time again and are basically told
11 eventually that DMA doesn't take any action against their
12 people, they have no ability to take any action against
13 their members, and they don't do it. And I don't think they
14 can be trusted in this instance without the force of law
15 behind it.

16 MR. MEDINE: And your name is Robert Biggerstaff,
17 for the record.

18 MR. BIGGERSTAFF: That's correct.

19 MR. MEDINE: And you're appearing on your own
20 behalf.

21 MR. BIGGERSTAFF: Yeah, I feel a little naked.
22 Everybody else has things after their name except me and
23 Ram. But the other thing I'd like to say is I have been in
24 the database field for almost thirty years. And I remember
25 something that was said by Barry Goldwater back when the

1 Privacy Act was being discussed and debated.

2 And he said we have to reprogram the programmers
3 while we still have some civil liberties yet left. And I
4 took that to heart. In my professional career I have had to
5 turn down projects from clients that I thought were immoral.

6 I see databases that scare me to death. Twenty-five
7 years ago this year the first checkout scanner was installed
8 at a Kroger store in Cincinnati. And now 25 years later
9 the technology is in place for every single thing that you
10 buy at the grocery store to be traced back and stored in a
11 database with your name.

12 The technology is there for your employer to find
13 out if you buy birth control or alcohol or tobacco or
14 pregnancy tests or what drugs you buy that you have
15 prescriptions for.

16 It's possible for them to get this and compare a
17 list of women who have bought pregnancy tests to a list from
18 their human resources department of single women who work
19 for them and decide that maybe they don't want women who
20 have that moral lifestyle working for them.

21 They're able to, an employer is not allowed to ask
22 you questions of a certain type in an employment interview,
23 if you're married, if you have kids, if you're divorced, if
24 you're living with someone, all kinds of questions. But all
25 of those questions can be answered with these databases.

1 And there's not just a few hundred; there are thousands of
2 them.

3 In my comments I list a whole bunch of them. On my
4 Web site I have over a hundred. I have personal experience
5 with these databases. And regardless of what people tell
6 you like LEXIS-NEXIS, LEXIS-NEXIS says you have to be a
7 subscriber.

8 Well, no, you don't. I contacted them anonymously
9 and they provided me information on how I could do a look-up
10 as a nonsubscriber and pay a one-time fee. The other
11 databases, it has been my experience that the vast majority,
12 they will give you any information you want if your money is
13 green.

14 In the book I carry with me I have plenty of
15 examples of systems that will allow you to anonymously get
16 Social Security numbers, even certain medical records such
17 as workman's compensation filings anonymously. I have,
18 finally, I have even called on the telephone and used a
19 simple telephone pretext with one of the big three credit
20 agencies and obtained a credit report on someone and had it,
21 I pretended at work, I had it sent to a blind PO box not in
22 the name of the person who's on the report and in a
23 different city than that person lived and they mailed that
24 report.

25 MR. DAVIES: Could I just also point out on behalf

1 of LEXIS-NEXIS --

2 MR. MEDINE: Sure. Use the microphone.

3 MR. DAVIES: Just to be clear what I was saying on
4 LEXIS-NEXIS and the consistency of the point, P-Trak has
5 never been, we have a facility known as NEXIS Express which
6 people can dial in for parts of information, like a small
7 lawyer.

8 P-Trak is not on that and hasn't been on it. And it
9 was on it I think for the first week and we actually took it
10 off. P-Find is on that. And P-Find is when Karen Welch
11 when through the demonstration this morning, and if you look
12 out in the brochures we actually left behind contains
13 information from white pages which are available everywhere.

14 So we didn't think there was any point in actually
15 restricting that. But that is the position with LEXIS-NEXIS
16 to make it absolutely clear.

17 MR. BIGGERSTAFF: Well, you also say that
18 LEXIS-NEXIS does not contain mother's maiden name
19 information; is that correct?

20 MR. DAVIES: We do not have mother's maiden name
21 information on P-Trak or P-Find. One other point while
22 we're going through these points. Not only the, the P-Trak
23 information wasn't up there. The P, sorry, P-Trak
24 information has never been up. The P-Find information is
25 there. To go back to mother's maiden name information, and

1 I think Karen went, I remember her repeating it three times
2 this morning what maiden name information was there. And
3 she emphasized on each occasion that mother's maiden name
4 information was not available.

5 MR. BIGGERSTAFF: Well, let me use your examples
6 from this morning. If you look on the page where it has the
7 name of a person, Jamie M. Easter, it shows other name,
8 Jamie Smith. And it was indicated that Smith was more than
9 likely Jamie's maiden name.

10 If you turn to the next page in the example, you
11 have got the listing for three members of the Cline family,
12 Robert, his spouse Ann and probably their son, Robert W.
13 Well, if you see that Ann is Robert's mother and you were to
14 look up Ann Cline on an individual page like this, you are
15 more likely than not going to have other name, and that
16 would be Ann Cline's maiden name. So you have just found
17 Robert W. Cline's mother's maiden name with very little
18 effort through P-Trak. This kind of data mining, it's
19 called, is done quite frequently.

20 MR. DAVIES: All for three hundred dollars.

21 MR. BIGGERSTAFF: They gave me a price of ten
22 dollars.

23 MR. DAVIES: The information actually going through
24 to create that, there may be ways if you wanted to go
25 through to find out that actual information. The point that

1 was being made clear this morning, we have gone to a great
2 deal of trouble, the mother's maiden name is not given to us
3 and we don't display that.

4 If there are ways round in routing because
5 relationships in a family can't be that remote, maybe not
6 only through that service but many other services the
7 information could also be available.

8 MR. MEDINE: Jason. Okay. Jason Catlett.

9 MR. CATLETT: Thank you. I wanted to quote a report
10 from Direct Marketing News, which is the direct marketing
11 industry's newspaper of record. It reported on April 18 of
12 this year that in an informal poll among the more than 150
13 attendees at a trade show, quote, 17 percent of direct
14 marketers were not aware of the DMA's mail preference and
15 telephone service. Even more alarmingly, 38 percent said
16 they were aware of fellow marketers that are renting house
17 files without providing consumer notice or opt out options.
18 That's from Direct Marketing News.

19 MR. MEDINE: Okay. I'd like to maybe focus the
20 discussion on the issue at hand, which are look-up services
21 and where do we go from here. I think I'm beginning to get
22 a flavor of people's concerns about self-regulatory efforts.
23 And the question is what is the answer to the problem we are
24 facing today in the study that Congress has asked us to do,
25 which is are look-up services a problem?

1 If they are a problem, is the self-regulatory scheme
2 that we have seen introduced today adequate to address that
3 problem? And if not, should there be other remedies
4 available?

5 Deirdre Mulligan from the Center for Democracy and
6 Technology.

7 MS. MULLIGAN: I wanted to start, just to open it by
8 saying that I think we heard a question earlier about what
9 was new. And for a very long time we have been talking
10 about kind of the violation of the secondary use principle,
11 meaning if I give information for one purpose it shouldn't
12 be used for another purpose so that my consent is being a
13 violation of individual privacy.

14 And I think probably the most alarming thing that we
15 have seen over the past six months is that it turns out that
16 it's bad for business. And I think that is something new.
17 And if we think about it, we have the National Retail
18 Federation talking about because the information in a credit
19 report is no longer enough to prove who you are we now need
20 to get more information because that information has been
21 disclosed for so many other purposes that it can't perform
22 its underlying function.

23 The Social Security Administration had to take down
24 their database because the Social Security number ended up
25 being disclosed for so many other unrelated purposes that

1 it's now useless to the Social Security Administration.

2 And we see the Direct Marketing Association saying
3 that marketing data should only be used for marketing
4 purposes. And so that I think this is very interesting.
5 All of a sudden people are saying that permissible purposes,
6 secondary use, that this concept does need to get inserted
7 in some way back into the private sector.

8 And I think that is something new. I think that in
9 looking at the guidelines that were put forward in other
10 proposals, I think Beth Givens and Marc have both made very
11 strong criticisms of the guidelines. I think as far as
12 individual access goes it really is a poor component.

13 I think in looking at these databases under a Fair
14 Credit Reporting Act type model it's not necessarily a
15 direct map but I think it's probably the best road map we
16 have. I think in looking at it we would probably have to
17 start thinking about taking a step further back though,
18 which Leslie Byrne's office has been doing in looking at
19 public records information.

20 Right now the idea that you could have any kind of
21 consent mechanism built into these databases is not looking
22 at consent in the right place. And that I really think that
23 a review of the public record databases and how we decide
24 what personal information is contained in public records has
25 to be available and for what purposes has to be addressed at

1 the same time we are looking at these look-up services.

2 MR. MEDINE: Assuming that issue gets addressed, do
3 you think the secondary use principle even applies to public
4 records? What we've heard today is a lot of these databases
5 contains public records. And isn't the notion of public
6 records that they're public and that the expectation is not
7 that they will be used to fill my order with this merchant
8 and not passed on for marketing purposes by some third-party
9 but that they will be available to anybody who wants them on
10 the public record?

11 MS. MULLIGAN: Absolutely. And I think that's why
12 we have to look at the public records too. I think that
13 once the information has been declared public that there are
14 serious, serious First Amendment concerns in limiting its
15 use.

16 And so stepping back and looking at the public
17 record itself and the nature of what information is being
18 made available is really an important step. But I think in
19 looking at these look-up services we can look at permissible
20 purposes.

21 I think that there is a general consensus among
22 people from an industry that they think they know what the
23 permissible purposes are. I'm not so sure I do. To, you
24 know, kind of build on David Sobel's comments earlier, I
25 think there are very, very serious issues about these

1 treasured flows of information in the private sector being
2 available to law enforcement.

3 And I would like to know, you know, is it a mere
4 subpoena under which we get access to that? Yeah. And is
5 that enough and what is this data used for? And I think
6 there are a lot of areas to look at. I think this is a step
7 in the right direction, but I think there's probably room
8 for some more looking at this.

9 MR. MEDINE: Alden Schacher from the Information
10 Industry Association.

11 MS. SCHACHER: Actually, David, I'd like to respond
12 to two things; first the self-regulation issue and then also
13 the opt out for public records. So if you'll bear with me.
14 I think this may be the only time I get the mike so I'm
15 going to go on with this.

16 First I'd like to say that the individual reference
17 services who are here today, and remember this is a group of
18 eight companies, we're not talking about an entire industry
19 such as the direct marketing industry. In addition to the
20 fact that they have come together to draft these responsible
21 industry guidelines in response to market indicated privacy
22 concerns, they've already taken measures to address concerns
23 such as truncating Social Security numbers or taking them
24 off their services altogether.

25 So it does show that self-regulation can work. The

1 self-regulatory guidelines have allowed this group of
2 companies to respond quickly in a very serious manner to
3 concerns voiced by individuals and policy makers while
4 allowing flexibility to meet the legitimate needs of
5 customers.

6 Inflexible and slow moving law or regulation would
7 not have allowed this quick response. It also would not
8 allow the industry to react to changes in technology, which
9 is going to be an important part of tomorrow's discussion.
10 So I think that's really important.

11 And then the last point that I want to make as far
12 as self-regulation is concerned is that if the FTC or
13 Congress decided to move forward with law or with
14 regulation, there would be a serious need to look at the
15 substantial injury and the harm that is caused or is
16 possibly caused by these services.

17 This is a point that hasn't really been raised. We
18 spent a lot of time today looking at beneficial uses of
19 these. We need to point directly to those beneficial uses.
20 You can't point directly to harm. And the Federal Reserve
21 Board made that pretty clear in their report.

22 The second issue that I wanted to speak to --

23 MR. MEDINE: Can I just ask a question before you go
24 onto the second issue on that point which is, was Commission
25 Varney's question to you that she posed to the group earlier

1 which is, would you be comfortable enacting this group's
2 self-regulatory self-designed proposal into law?

3 MS. SCHACHER: I think that that's a question that's
4 more appropriate for those specific companies. But I would
5 say that for the broader information industry association I
6 think there would be, we would need to take a very close
7 look at how a regulation like this might affect other
8 businesses.

9 And because these guidelines were just released
10 publicly, the entire association has not had an opportunity
11 to comment on those. That's something that I would have to
12 get back to you on.

13 The second point that I wanted to make, David, was
14 on the opt out for public records. I think that saying
15 providing consumers with choice as far as public records is
16 concerned is, it seems on its face to be a really reasonable
17 and rational answer.

18 But there are really two major hurdles that you face
19 when you talk about an opt out for public records. The
20 first hurdle is a policy hurdle. And that hurdle has to do
21 with reaching consensus. We saw it with the Driver's
22 Privacy Protection Act. It was very difficult to decide
23 what the consensus would be for permissible uses.

24 If you talk about the gamut of public records you
25 are looking at a very big task in trying to come to

1 consensus on what's a permissible purpose and what is not.

2 The second hurdle is an operational hurdle. And
3 there is experience in this area also with Driver's Privacy
4 Protection Act. The state and local governments that you're
5 asking to put these opt out systems, which are complicated
6 and expensive into place are already tapped.

7 So what's happening is many of them like, Illinois
8 was mentioned this morning, are just closing off access to
9 the records altogether. The consequence of that obviously
10 is that the many beneficial purposes of public records are
11 being squeezed.

12 And the second piece of that is that South Carolina
13 obviously has filed a Tenth Amendment suit, and so it's
14 something that you really have to bear in mind.

15 MR. MEDINE: Okay. Thank you very much for those
16 comments. Tim Dick, about self-regulation as well, a
17 slide.

18 MR. DICK: A slide, an old-fashioned slide. This is
19 in relation to the white pages industry, and not pertaining
20 right now to eTRUST or TRUSTe. Earlier today I alluded to
21 the fact that most of the major white pages services, and
22 this does not include what Christine Varney explained, all
23 the great unknown or the great middle act accordingly or
24 have developed an internal set of guidelines that are pretty
25 consistent.

1 And today you can see, and I've listed eight of
2 them, there are a couple of more which I will name, behavior
3 that is remarkably uniform. These services are displaying
4 today publicly disclosed sources. That is not public
5 records. It's publicly disclosed lists used for
6 directories.

7 There are not reverse searches, with a couple of
8 notable exceptions, PC411, reverse telephone number search,
9 and Four11 Corporation with reverse address search. And
10 finally, the ability to opt out versus delist. The two
11 other major services are Bigfoot, which unfortunately when I
12 did the snapshot on June 8th was not put, and InfoSeat which
13 utilizes InfoSpace's white pages and is consistent with
14 their practice also.

15 So our contention is that this segment to the
16 industry, the majority segment of this industry is acting
17 pretty well and evolving very effectively towards a
18 self-regulatory mechanism.

19 What we will work to do right now and we have some
20 signatures already is to put this into an adjunct TRUSTe,
21 which is launching tonight, another set of database
22 guidelines. TRUSTe itself does have T. It does have
23 mechanisms by which members will be audited, fined and
24 actually removed if they are in violations of that.

25 This is a little bit in advance of where the

1 industry is today. And again, this is not meant to cover
2 the so-called bad actors, the great middle, or sites that
3 are very distinctly outside of the bounds of the white pages
4 industry. And it's also not meant to be specific to many of
5 the professional database services like LEXIS-NEXIS and
6 Equifax which typically serve very different markets.

7 MR. SILVERMAN: Tim, if I could, I'd like to ask a
8 couple of questions. As you point out, a majority of the
9 companies that are identified on your overhead follow nearly
10 uniform practices, but there are a couple clearly who don't.
11 PC411 and Four11, for example, provide reverse searches.

12 MR. DICK: Yes.

13 MR. SILVERMAN: I'm wondering how do we encourage
14 those companies to adopt guidelines similar to the ones
15 adopted by WorldPages, WhoWhere, Yahoo, compare that with
16 reverse searches. You talk about TRUSTe and branding sites.

17 But I'm curious. It seems that one problem
18 associated with that process is that the individuals using
19 the sites have interests that are directly at variance with
20 the consumer subjects of those sites.

21 Those individuals want as much information as
22 possible, and PC411 and Four11 arguably make themselves more
23 marketable by providing greater depth of information.

24 MR. DICK: It's certainly possible. None of these
25 sites are notable for depth of information. These are white

1 pages services. And to the extent that we can make
2 observables, I believe based upon the traffic counts that I
3 know about, that Switchboard is the largest traffic count of
4 all of these services.

5 And PC411 is far from the largest. I don't think
6 it's even in the top five. So there is certain arguments
7 about what the traffic counts might be. I think what Four11
8 might argue is that --

9 MS. LAMB: Mr. Dick, excuse me. Your voice is not
10 being picked up by the mike. Could you possibly pick up the
11 mike?

12 (Off the record.)

13 MR. DICK: Let me just sit down and do it from here.

14 MS. LAMB: Thank you.

15 MR. DICK: Let's see. It's up to Four11 to comment
16 for themselves from PC411. I'm going to be curious to see
17 their reaction to the press that I expect to come out about
18 this, this particular set of proceedings today and find out
19 whether they will modify their policies.

20 But the two things that we hear from some of the
21 services in direct discussions, particularly with any of the
22 ones that are named are that reverse searches are available
23 on commercially available CD ROMS. So some companies don't
24 see some of the problems that we do with reverse searches.

25 They look at it as an issue of Internet media versus

1 CD ROM or other kinds of media. So that's one set of logic.
2 And I'm not trying to make a case whether it's right or
3 wrong, it's just one set of logic.

4 The ability to opt out I think is nearly uniform at
5 this point. And it's not clear to me; again, I cannot speak
6 for PC411 nor Four11 Corporation which does have the
7 opportunity to opt out why that service is not allowed.

8 Thank you.

9 MR. MEDINE: Ram Avrahami, I'd like to get your
10 views on self-regulation and consumer control, regulation
11 about themselves.

12 MR. AVRAHAMI: Thank you for letting me be here. I
13 represent myself as well as thousands of other citizens who
14 signed an online petition that I conduct and subscribe to
15 the opinions that are presented.

16 I am going to talk about self-regulation in the
17 sense as most consumers. The way I see it, and this is a
18 fundamental economic issue, my personal information has
19 value. Your personal information has value as well. No one
20 as yet was willing to put a number on this so I will do it.

21 U.S.A. Today estimates that about \$3 billion of
22 personal information is sold every year. So when I'm
23 looking at self-regulation, it's like seeing an industry
24 holding a big check of \$3 billion. And someone tells it,
25 well, you know, why won't you just not cash it?

1 And it's a bit of money. And you can hope that they
2 will do it. But, and again, putting a little more legal
3 technicality, as far as I know the industry cannot legally
4 enforce their guidelines because of antitrust law.

5 So basically what you have here is not
6 self-regulations because the industry cannot regulate
7 itself, but self-restraint; that is, please don't use the
8 \$3 billion. And we have not seen that happening so far.

9 So when I am as a consumer saying, okay, I
10 understand my personal information is worth money and I
11 understand there are lots of good things that can be done
12 with that information that I would like to get it, I would
13 like to get credit. I definitely want to make sure that law
14 enforcement authorities will do their jobs and if something
15 happens and I want to pursue that that I will have an
16 option.

17 But can I let a company that its interest is a
18 little different than mine make the difference of what my
19 personal information should be used or not, I am not so
20 certain this is the case. And here is where I come to my
21 concerns.

22 The regulations, the proposed self-regulation
23 principles that were shown here are lacking one very big
24 important guideline, and that is accountability to the
25 consumer. I was looking for all of that. And it says

1 disclosure, it says a lot of things, but where is the
2 accountability to me?

3 What happens if, you know, all of the middlemen
4 in the process that buy that information, sell it from one
5 to another until it gets to the stalker who kills Rebecca
6 Schaffer. Now, who is responsible for that information
7 being leaked?

8 And I see no attempt from the industry to take
9 responsibility for what it sells. And, therefore, I say if
10 they are not willing to take that responsibility it is up to
11 me to do so. And therefore either the industry will take
12 full accountability on what it sells, tell me exactly who it
13 sells it to, where it got it from, I definitely want full
14 disclosure, or I want the option to opt out completely from
15 all ourself, my personal information and move to an opt in
16 system in which I will be able to say what's good and what's
17 not.

18 And if you think about it, for a lot of issues that
19 were discussed here, those are issues that are good for
20 consumers. Let's say marketing. I want to get information.
21 Obviously I would like to, I'd be willing to share some
22 information so that I'd get the goods that I want.

23 I can definitely, I'm willing to compromise on the
24 issue of law enforcement. I want to have effective law
25 enforcement here. I want to get credit and I will sign, and

1 I do sign today, that I allow the credit bureau to exchange
2 financial information about me.

3 I will agree maybe for a lower insurance rate to
4 agree for them to check all kinds of information about me if
5 I'm not interested in. But, and this comes to the question
6 that Commissioner Varney asked at the beginning of the
7 question; where do you draw the line? And I say in the
8 information age, in the age of the Internet where all the
9 costs of transactions are becoming so small, why not let
10 every consumer draw the line for himself?

11 So if I'm interested in getting a lot of junk mail,
12 I will subscribe to it. And if I'm not not interested, then
13 I will subscribe to the MPS and I want the MPS to be
14 enforceable and accountable to me, not like it's now done
15 today. If you look at all those services and uses of
16 information, there is almost no reason why consumers cannot
17 have an informed consent on all of them and use it.

18 MR. MEDINE: Is your first question public record
19 information as well as information that's gathered through
20 private firms?

21 MR. AVRAHAMI: I'm glad you asked. I think there is
22 a very important distinction, and Rob and I just talked
23 about it a couple of days ago between public domain and
24 public knowledge.

25 I am for freedom of information. I definitely want

1 to make sure that officials that I elect will be able to
2 check if there are any corruptions and everything else. And
3 I don't have anything to hide with my court records.

4 That means that there is some information about me
5 that is publicly known. But that does not mean that
6 companies can make money out of it. There is a very
7 distinct difference between having something known,
8 newsworthy wise, or just public information than ability to
9 commercially exploit it.

10 And I do not believe that any company, including the
11 government, has a right to sell my personal information
12 without my permission.

13 MR. MEDINE: Just to clarify one point made about
14 antitrust laws. It's not clear that they necessarily
15 prohibit self-regulatory efforts. I think the Commission
16 may be trying to get some further guidance on that in the
17 future.

18 Shirley Sarna from the New York Attorney Generals
19 Office.

20 MS. SARNA: Thank you. I've just had a couple of
21 observations of what we've done today. First of all, again,
22 great thanks to the Commission. But I think that the
23 difference between the conversation that's happening this
24 year and the conversation that happened last year at this
25 time when we discussed these issues is nothing short of

1 stunning.

2 I think that they are incredibly more nuanced. I
3 see really an astonishing response by industry to think
4 about these issues, to grapple with them, to recognize that
5 they have independent merit. And for that participation I
6 certainly as a law enforcer in New York State am very
7 grateful.

8 This morning when Commissioner Steiger asked what's
9 new, I think that the answer is an awful lot. We heard many
10 responses to that question. An additional element of what
11 is new is I think a need to revisit some of our assumptions
12 on what is public and what is nonpublic from the get-go.

13 Because while as a going end point of view public
14 really is public, I almost feel like we're in a real estate
15 transaction, location, location, location. You know, when
16 it's, when my Social Security number is on a document in a
17 courthouse that somebody has to get to, maybe sign in to
18 look at, while I know that I gave it, my expectation of how
19 that was going to be used was very limited.

20 And I gave it under the circumstances that it was
21 necessary in order for me to receive something in return.
22 If I understood for one moment that getting a license and
23 doing these other things was going to enable some of the
24 search organizations similar to the ones that Carol Lane
25 showed us this morning that are not part of the professional

1 usage which is kind of, in a particular sense the high-end
2 more easily reachable end of the market, but the other
3 folks, I have a discomfort level.

4 And so I think that it is important to go back to
5 the idea that maybe public requires some additional thought.
6 Certainly maybe some disclosure at the point that these
7 disclosures are, that the disclosures are made that this
8 information might be made available in a more general way,
9 and maybe a specific disclosure that these might be
10 available on online databases. Because I don't think that
11 this is something that consumers begin to visualize or
12 understand.

13 We in New York have tried to massage this issue
14 which we find incredibly, incredibly challenging. As Eric
15 spoke about this morning, one of the entrees that we've
16 considered is to try and separate different categories of
17 information on the theory that not all information is
18 qualitatively equal.

19 So one of the things that we have determined so far
20 as we're concerned Social Security information, mother's
21 maiden name, perhaps even specific date of birth with month,
22 day and year, is highly sensitive information because of the
23 security risk it poses.

24 Jerry Berman I think this morning was concerned that
25 the law enforcers not look from the point of view of the

1 Internet. We have in fact made comments just last week to
2 our Public Service Commission urging that regulations be
3 clarified to prohibit any utility now and in a deregulated
4 market from ever requiring a Social Security number as a
5 form of identification for electric services.

6 So we are consistently looking at the quality of
7 information irrespective of the delivery service. But I
8 think that that is one approach. The models we even heard
9 today, a consumer opt in and opt out at the collector level,
10 I think that it's useful to think about that but I think
11 that ultimately because it's so easy to marry what is
12 publicly available with everything else, I think it has
13 limitations.

14 I think the idea of having a permissible purpose at
15 the user level is very important to explore when you
16 suggest, I'm sorry I didn't catch your name, when you
17 suggest that in thinking these things through we need to
18 really quantify harm, one of the shortcomings, and I am a
19 major advocate of self-regulation, but one of the
20 shortcomings of self-regulation is perhaps in quantifying
21 the concept of harm.

22 Harm certainly can be economic harm, and I assume
23 that that's what you're talking about. But if you give
24 value to the concept of privacy, then there needs to be a
25 factoring in of that harm as well. And I'm not sure that

1 self-regulation is the best place for that equation to be
2 massaged.

3 It seems to me that those kinds of issues are
4 perhaps more appropriately legislative issues or at least
5 open for legislative concern. I wonder whether there really
6 isn't at some legislative level an appropriate area for
7 government to at least open the dialogue, open the
8 conversation to say from a public interest point of view is
9 there a normative level at which we ought to make privacy
10 more accountable with enforceable rights, and are we as a
11 society mindful of where we are today? Do we need to have
12 this conversation? I applaud the FTC for making that
13 available here.

14 I finally just on the legislative side want to make
15 two observations. Number one, in New York we have been very
16 careful to stay away from a regulatory model, although, and
17 Eric is going to talk about this tomorrow, we have proposed
18 legislation dealing with junk E-Mail and have recognized
19 that that might be in a somewhat different, in a somewhat
20 different category.

21 We have often worried about big brother government
22 having these immense databases available to all of us. Is
23 anyone concerned that it's now available only in a private
24 forum? I can complain to the government about releasing
25 information about me or considering how that information is

1 used.

2 But decisions are being made about what level of
3 consolidated and now possibly disaggregated information is
4 available for all of us but is being made by commercial
5 entities that don't have a legislative accountability.

6 I throw these out just in case we don't have enough
7 complicated things to think about.

8 MR. MEDINE: Thank you very much for your comments.

9 Scott Charney, Computer Crime Section of the Justice
10 Department, what is your take on where the government, what
11 the government's role should be in this area?

12 MR. CHARNEY: Well, my role is somewhat more
13 circumspect. Because most of the debate that I have been
14 listening to is about what constitutes an appropriate use of
15 information. And of course in the crime arena it's a little
16 bit different; we go after the fringes.

17 And I guess there are two aspects to my role in
18 this. First, of course, is that law enforcement has a need
19 to access information. And in one respect we're
20 self-regulatory. We have our own guidelines about when we
21 can access information in the first instance.

22 And, for example, we can't build dossiers on people
23 without some predication, even if it's public record
24 material; we don't look at it. And the second thing is
25 we're a heavily regulated industry. Very often when we go

1 to get information we need to do it with subpoenas, search
2 warrants, court orders, and other kind of process that
3 hopefully protects privacy and balances the needs of public
4 safety and privacy.

5 On the flip side though I can tell you one of my
6 biggest concerns is that as more and more of this data is
7 stored and made available electronically, computer security
8 is woefully inadequate. And we have many, many cases where
9 people have accessed credit reporting bureaus, tapped into
10 hotel reservation systems and gotten all sorts of personal
11 data.

12 And the other aspect of this is the absence of what
13 we call practical obscurity. Forever a lot of records were
14 public but nobody went to look. Those days are over. When
15 you put all that information online it can rapidly be
16 collected. And as you network all of these systems, even
17 though some of them, a lot of them are password protected or
18 otherwise, we see more and more sophisticated hackers.

19 I would also point out that in 1996 on October 11th
20 the President signed into law the National Information
21 Infrastructure Protection Act which had broad-reaching new
22 provisions to protect the confidentiality of data.

23 And on top of that, the sentencing commission, there
24 is now proposed for adoption new sentencing guidelines for
25 computer crimes which allow the courts to consider invasions

1 of privacy and determining appropriate sentence.

2 So from the Justice Department's view on one hand
3 are an information consumer and need to preserve access, on
4 the other hand we're very aggressively going after those who
5 access computers without a nexus or authorities and breach
6 the confidentiality of data.

7 MR. MEDINE: Thank you.

8 Leslie Byrne is a former legislator and now a
9 consumer advisor and advocate. What's your take on the need
10 for active government involvement in this area as opposed to
11 giving self-regulation a chance to work?

12 MS. BYRNE: I really wish I could see
13 self-regulation working. I think it would be the way of
14 least resistance for all of us. I have deep concerns that
15 when the public, and I alluded to our 800 number where we
16 take a lot of calls from the public, when the public calls
17 us and said we know that certain groups have these codes of
18 ethics, where is their membership? How do I know who
19 belongs? That's a basic question.

20 You know, we can have lots of codes of ethics. But
21 if we don't know that a particular company we're dealing
22 with belongs to the association that has that code, we can't
23 do anything about it.

24 The other thing is that I would hope in the next
25 year that the eight companies that have come forward with

1 this self-regulation proposal would get others to join them.
2 I would be willing for my part to watch what happens in the
3 next year as we see these self-regulatory schemes develop
4 and see how well they do handle enforcement.

5 It's the biggest puzzle to me how we can have these
6 independent companies who belong to associations be brought
7 to task, I guess is the term that my mother would use, for
8 doing something against a code of ethics. And whether they
9 would drum them out of the core, I don't know. Tear off
10 their epaulets? I don't know.

11 It's going to be interesting to see how that is
12 enforced. Because without enforcement I don't think you
13 have any great self-regulatory scheme.

14 MR. MEDINE: Ernie Allen, what are your views on the
15 government's role here and what benefits there are to
16 government regulation or should be?

17 MR. ALLEN: Well, a couple of thoughts. One is I
18 think Congressman Byrne made a really compelling point is
19 that the best way to determine whether any mode of
20 regulation works is to monitor it and watch it and see
21 whether it works. And I think the notion of assessing their
22 opportunity to do that makes a lot of sense.

23 I guess what I'd like to contribute is, it seems to
24 me that the most important thing in this whole debate is to
25 approach it with balance and approach it with reason.

1 Recently we had a European journalist who said to us the
2 reason you have so many missing children in the United
3 States is that it's so easy to be anonymous.

4 And as one who is a lawyer, as one who firmly
5 believes in individual privacy rights, I would hope that we
6 could draw the line that Mr. Avrahami talked about as close
7 to pure individual privacy as we can. But I think there is
8 a reality. And that reality is that there are some fairly
9 compelling purposes for which these sorts of data are really
10 important.

11 We have worked very closely with the industry, with
12 private companies because we find missing children through
13 the use of images and information. And through the access
14 to databases companies like Metromail and American Student
15 Lists, we are finding children who have been abducted who
16 have been enrolled in schools in other states under their
17 own names.

18 And because of the inadequacy of public databases
19 and the lack of uniform national public databases, these
20 kids fall through the cracks. So the power of these private
21 company databases is really important.

22 Secondly, even beyond public data, we work very
23 closely with CDB Infotek who provides for us, and all we get
24 from that credit header data is name, address, social
25 security number. And just using those data we are able to

1 find children all the time who in many cases have been
2 abducted by noncustodial parents.

3 Mr. Charney talked about the predicates. We have a
4 host of Congressionally mandated predicates, including the
5 fact that this has to be a criminal case, it has to be in
6 the FBI's national crime computer, there has to be a warrant
7 for the abductor.

8 But these sources are absolutely vital because of
9 partly the inadequacy of public sources and partly because
10 we are a nation where people do have the opportunity to be
11 anonymous. I think it's short of big brother.

12 But whether it's that runaway who changes her name
13 but takes a job somewhere and the Social Security number
14 shows up, or whether it's an abducting, a noncustodial
15 abducting dad who shows up or whether it's a nonfamily
16 abductor, tracking, being able to identify that abductor is
17 a vital source.

18 I guess the last point I want to make is that while
19 I believe fervently in the concept of the opt out, I'm
20 concerned about making the opt out too universal and too
21 easy. I don't think it's a stretch of logic to realize that
22 those who would most be interested in opting out are those
23 who we most want to find.

24 So I commend the Commission for what I think is a
25 very reasoned approach to this, and I hope that the solution

1 that you adopt is one of balance and giving things a chance
2 to work.

3 MR. MEDINE: Thank you. It will be a challenge for
4 coming up with a solution in this area.

5 MR. HENDRICKS: Evan Hendricks, Privacy Times. Can
6 self-regulation work in this area?

7 MR. HENDRICKS: Generally no, it can't. There has
8 been a long history of failure of self-regulation meeting
9 privacy concerns in this country going back to 19, late
10 1970s. Marc Rotenberg has alluded to that. I will echo his
11 response.

12 Robert Biggerstaff has given you specific examples,
13 and we will be able to provide more examples of that
14 tomorrow because we're going to revisit the area of
15 self-regulation so I'm not going to launch into a history of
16 that.

17 I actually will start by saying I'm somewhat
18 satisfied with seeing the progress of the white pages. I
19 think that they have done some good things. Here's public
20 information may transfer to a new medium. They're all
21 trying to offer opt out services.

22 I walked through some of them myself. I'd be
23 happier if they just had a privacy box on the front page.
24 There is some fine tuning they could use, but it seems like
25 there's some important progress there. But for the big eight

1 that came here today, you know, this is not, they had a
2 whole year. We started talking about it in hearings last
3 year. The FTC was supposed to be monitoring voluntary
4 self-compliance starting a year ago.

5 MR. MEDINE: Well, just for the record, the
6 Congressional study of look-up services was really only
7 announced this, early spring, late winter. We admittedly,
8 tomorrow's subject, we've been looking at the subject two
9 years.

10 MR. HENDRICKS: Right.

11 MR. MEDINE: But in fairness, just for the record,
12 we really only publicly embarked on this effort I think in
13 March.

14 MR. HENDRICKS: Okay. The letter from Congress went
15 there last September. The letter from Congress went to the
16 FTC last September.

17 MR. MEDINE: In October.

18 MR. HENDRICKS: October, made public.

19 MR. MEDINE: But then we had to clarify some issues.

20 MR. HENDRICKS: Okay. Here they are on the date of
21 the hearings and they've made an effort to define some
22 principles. But I think the fundamental issue here I'll
23 talk about now is sunshine. Here is an industry that we
24 don't have a great deal of information on what all their
25 practices are.

1 We're learning more through this hearing. But
2 people have an access to information held about them by
3 state and local government agencies. These organizations
4 have the good fortune or the privilege to be trafficking in
5 people's personal information that they get from these
6 agencies.

7 I think it's clear that once that information goes
8 from a state agency where people have access to it to these
9 private organizations where they lose their rights and
10 relation to that information, that now is the time to extend
11 the rights that people have to their personal information,
12 at least on the fundamental issue of access to their own
13 record that came from public source database so they don't
14 forfeit their rights simply from being transferred to a
15 private organization.

16 Now, obviously they can work out a situation to
17 charge reasonable fees. Credit bureaus can charge
18 reasonable fees. State agencies charge fees. Federal
19 agencies charge fees under the Freedom of Information Act.
20 B is really not the issue.

21 The issue is being able to get access. How are you
22 supposed to know if there's harm if you can't get access to
23 your own records? People had trouble getting access to
24 their credit reports for many years. Once they started
25 getting access to it, it became the leading cause of

1 complaints in the Federal Trade Commission.

2 You know, we need to have some sunshine on this
3 issue. And I think one thing the Federal Trade Commission
4 can do, if it can do it, you know, in a regulatory fashion
5 and extend the rights of access to personal information held
6 by these databases and then hopefully the rights of
7 correction.

8 You work out a deal with the medical information
9 bureau. That pretty much solved a lot of issues with the
10 medical information bureau. I think these organizations
11 will have to step up to the line and do it too. The
12 problem, I don't think it will work as a voluntary matter is
13 that they're asked, what percentage of the industry do you
14 represent?

15 Well, the answer was vast majority. Okay. A lot is
16 my favorite number and free is my favorite price, but that's
17 not very specific. There are lots of databases out there
18 that are not going to be included in this. We're never
19 going to reach them with this program.

20 If the attention dies down it's going to wither
21 away. I've seen so many voluntary programs wither away.
22 And so there's no replacement for the FTC stepping in here
23 where it can do something and recommending legislation where
24 it can't.

25 MR. MEDINE: Marc.

1 MR. ROTENBERG: David, I wanted to return to the
2 original question about whether self-regulation can work and
3 say something to the people who have put the principles
4 together which may sound a little bit like an apology.

5 But I realize, you know, it is certainly the case
6 that the people within the industry who try to get out in
7 front and respond to public concerns are also the ones most
8 likely to get public criticism because they're visible.

9 And there are a lot of companies here, you know,
10 hearing us out and trying to respond to concerns. And I
11 just want to go on record as saying I do recognize that and
12 I appreciate that. There are a lot of other folks who
13 choose not to be in this room and not to take some of the
14 heat.

15 And I'll even go a step further and say that, you
16 know, I think LEXIS-NEXIS is a great company; you've got
17 great services and I use them quite a bit. But I think
18 P-Trak and P-Find are problematic products that you offer.

19 And maybe if I were running the company I'd say
20 we've got the greatest database company in the world, but
21 frankly for what we have to go through over P-Trak and
22 P-Find, it's not worth it and I'd just as soon drop those
23 products rather than to try to defend them.

24 But these are your decisions; it's not my decision.
25 But the real question I think is not whether self-regulation

1 can work. I mean, that's the question that you posed today.
2 I think the real question is will privacy be protected? I
3 mean as nebulous and as difficult to define as it is, that
4 really is the question this week.

5 Will privacy be protected? Now, if we start there,
6 you know, we come back and say, well, how far does
7 self-regulation take us toward this goal? I mean, it does
8 some things well. Maybe it brings people to the table.
9 Maybe it clarifies some issues. Maybe it begins a dialogue.

10 Some other things it doesn't do so well. It leaves
11 open the question of enforcement, and as Ram said very
12 directly the question of consumer accountability. How do we
13 know when there are problems? And when there are problems,
14 what will be done?

15 And I just have this sense, and I'm saying it as I
16 am because I don't really want to send the wrong message
17 here, it's not so much that the principles come up short,
18 although I think in some critical ways they do. I don't
19 think the principles end up protecting privacy.

20 You see, now if the principles don't end up
21 protecting privacy then we've still got a problem. And I
22 think that's, you know, I think that's where we need to
23 focus.

24 MR. MEDINE: We may not have time for this, but can
25 you give us some guidance as to where you think the

1 principles fall short in terms of not protecting privacy?

2 MR. ROTENBERG: Well, it's a little paradoxical, you
3 know. But one of the most important privacy principles
4 there is is the right to see information about yourself held
5 by others. I mean, most people think about privacy in terms
6 of limiting disclosure. That's obviously a key part
7 reflected in a lot of our laws.

8 But reflective of a lot of our laws as well is the
9 principle that you get to see the information that others
10 have on you. It's in the Fair Credit Reporting Act . It's
11 in every bit of privacy legislation that we have.

12 And there are two reasons for doing this. I mean,
13 one reason is to give some accountability so that people can
14 see is that information accurate and complete. The other
15 reason is actually to make the organization that's
16 collecting information to sort of stop and think for a
17 moment; you know, would I collect the information if the
18 person, the data subject knew I had this.

19 Now, we have some special cases. Law enforcement is
20 the obvious one. I mean, there are some things that law
21 enforcement collects on people that they don't have to
22 disclose to others.

23 But as a general matter, particularly in the
24 commercial realm, I see nothing wrong with saying that as a
25 matter of privacy, people should have the right to see the

1 information that's held by others. We can argue about
2 whether that should be for a fee or for free. That debate
3 goes on. That principle, that key part of privacy policy
4 which we've always had is not here.

5 MR. MEDINE: Yes, Tim.

6 MR. DAVIES: And thank you for your comments.
7 Obviously for a company like LEXIS-NEXIS we take a huge
8 amount of interest in what should be displayed and the
9 purposes it's for.

10 MR. MEDINE: Excuse me. Just use the microphone
11 just to help the folks out there to hear.

12 MR. DAVIES: Sorry. And we feel the reasons that
13 have been well publicized today are the ones we're very
14 happy to associate those products with. But moving beyond
15 that, there are several deep concerns. Those of you who are
16 extremely worried about privacy are very worried what those
17 other concerns and threats are, particularly from the
18 debates that will be going on for the next couple of days.

19 I'm now talking about the online industry which I
20 actually represent. Let me be, we need to be clear about
21 what they are and are they actually being substantiated.
22 And certainly the white paper that's actually been produced
23 with the industry sets out in great detail a huge amount of
24 fact in here that I do recommend to all of you.

25 In going through that, you should also take into

1 account the Federal Reserve Board. That was a full blooded
2 hearing, if I can put it that way. It was looking into
3 credit card fraud and couldn't find evidence.

4 It pointed to one of the other areas it may have had
5 general concern but couldn't find any. Now to my mind that
6 is substantial. We then need to move on to the other areas.
7 It was very interesting hearing the point from the abducted
8 children. I too was in California the other week when Mark
9 Klaas was speaking at the dinner. And through the day the
10 services actually found that abductor that copied through
11 our services before they discovered it to a child.

12 Now, you have got to weigh all these points out.
13 These to my mind are very powerful reasons for the existence
14 of these products. Geri Jensen went through many others,
15 heart-wrenching cases. And they're there; they exist in the
16 day-to-day basis.

17 But where are these threats? The IIA said we need
18 to look at more; where are they? Because we are very
19 interested in looking at them and trying to substantiate
20 them. So the interest that is coming back to our clients
21 and the Federal Reserve Board is they may lurk in the
22 Internet somewhere; we're not the Internet.

23 If they are there, we need to address them. In
24 going through the paper that's actually been put together,
25 one of the things which I personally found to be associated

1 in P-Trak from the beginning was the scare that came up
2 earlier on the air was a huge public misconceptions of
3 what was going on. On one side they want all the benefits;
4 on the other side, particularly if they're alarmist views
5 not based on fact, they are deeply concerned.

6 So they should be. So we all are. But what we need
7 to do as the commitment in here is to educate people so they
8 can see the reliability of the information, the sources they
9 come from, the accuracy, the uses to which they're put.
10 They should have a clear idea which we set out in there
11 which is very clearly about how we truncate information. If
12 somebody is worried about the threat, there isn't the
13 information there to actually apply that threat.

14 Then lastly, how they can get ahold of the
15 information and whether there have been some criticisms to
16 date. They'll say it's a very large step to let them know
17 what information is available and the sources where they can
18 go to to correct. The last things are the other issues here
19 on children.

20 So I would say that this is a very bold attempt done
21 within a relatively short space of time which can react very
22 quickly, and it has been seen to react that quickly, as in
23 the case of SSNs, to respond to consumer concern. And it's
24 been able to be put into effect quickly.

25 Legislation at this moment and time, and I stress at

1 this moment and time could possibly take a year, two years
2 to produce something like this. And that's not the fault of
3 the legislation, it's a situation which existed over time.

4 Thank you.

5 MR. BIGGERSTAFF: I also want to say, I didn't mean
6 to single LEXIS-NEXIS out earlier. LEXIS-NEXIS in my
7 opinion as a professional is at the head of the class in
8 taking steps for privacy. And I know the FTC sometimes
9 gives out report cards for different industries.

10 But as a professional I have to say the information
11 industry gets a big round F. Now LEXIS-NEXIS may get a D-,
12 but they are in the field.

13 One of your competitors though, just so they get a
14 little bit more press, West Publishing offers a product, and
15 am I correct, they are one of your major competitors?

16 MR. DAVIES: Yes.

17 MR. BIGGERSTAFF: West Publishing offers a product
18 called People Finder which they advertise is an
19 indispensable tool for locating witnesses, defendants, blah,
20 blah, blah. Besides basic name, address, telephone number
21 data they have age, gender, Social Security number, names
22 and ages of other household members, which may include
23 children, and the names and address and telephone numbers of
24 up to ten neighbors. And that's from West Publishing.
25 They're one of the big folks out there.

1 MR. MEDINE: Did they subscribe to this
2 agreement? Is that right or not?

3 MR. BIGGERSTAFF: I haven't heard them mentioned at
4 all.

5 MR. DAVIES: Well, Peggy is in this room; they have
6 signed on. Well, they definitely have signed on.

7 MR. BIGGERSTAFF: Well, we'll see. I'm not in the
8 marketing business; I'm in the database business. I don't
9 know who should or should not have access to this. I don't
10 want to throw the baby out with the bath water.

11 We have drugs that can absolutely, positively, one
12 hundred percent kill cancer cells. The problem is they also
13 kill the body. And that's why doctors are always looking
14 for magic bullets that can kill cancer without killing the
15 body. I want to keep these databases for their good uses.
16 What I want to do is stop their bad uses.

17 I've also heard a lot of misquoting of the Federal
18 Reserve Board. The Federal Reserve Board did not say there
19 were no risks. What they said was that there was no risk to
20 insured deposits in insured depositories at FDIC deposits.

21 They did say, and I quote, nevertheless, fraud
22 related to identity theft appears to be a growing risk for
23 consumers and financial institutions and the relative easy
24 access to personal information may expand the risk.

25 We've all seen Dateline. We've all seen other T.V.

1 shows where they went undercover and they had used car
2 dealers and other people getting credit reports and then
3 using those to turn around and commit credit fraud.

4 I think it's naive to think that criminals have not
5 discovered some of these other databases that many, maybe
6 not LEXIS-NEXIS, but I have hundreds of them that for five,
7 ten, fifteen dollars you can get Social Security numbers and
8 everything else you want.

9 Mr. Allen said it's easy to be anonymous. And
10 that's where, I worked on the Federal Trade Commission
11 discussion group last fall. And we came out with our own
12 points that will clear up some of this. And this comes from
13 applying standard industry security practices.

14 What Mr. Charney said is absolutely right. Security
15 gets an F. The first thing you have to have, if you ever
16 have controlled access is a challenge and response system.
17 You have to make it, all these database vendors, and I
18 believe it should be a condition of law, if you are going to
19 commercially or make commercially available personal
20 identifying information, you have to make positive I.D. Of
21 the recipient.

22 Now whether that means somebody has to go in their
23 local home town and find a notary public and get a Xerox of
24 a driver's license or what, I don't know about the methods,
25 but you have to make positive I.D. of the recipient. I

1 personally have gotten all kinds of stuff under fake names
2 with a simple telephone pretext and had the information
3 faxed to me by sending them a check or a credit card.

4 Number two, the end-user, they have to keep
5 permanent logs or long-term logs of the access. And the
6 end-user has to have access to those logs and the data. Now
7 that was mentioned earlier and they said nobody would use
8 the databases if that was true.

9 But I checked with over 20 professionals, several
10 people who submitted comments, including, let's see, the
11 American Bankers Association Task Force. And all of these
12 people said that their use of these databases would not be
13 hampered or impeded one bit. They all believe they have the
14 right to this information and are making legitimate use of
15 it. They have no problem putting their name on the dotted
16 line and having it go into the log.

17 This would also help I believe, Mr. Charney, in
18 tracking down some of the credit fraud because you'd have
19 better audit trails. There would be no more anonymous
20 access. Caller I.D. has cut harassing and obscene phone
21 calls by 98 percent in some places because there is no
22 longer any anonymous phone calling.

23 If we can cut out anonymous data access, we will
24 eliminate one of the holes in the boat that we're all
25 sinking in.

1 MR. MEDINE: Just as a matter of time, we have just
2 a few more minutes. And I'd ask Susan Grant and Jane
3 Kirtley to give some brief comments and then we will have to
4 wrap up.

5 MS. GRANT: A lot of what I was going to say has
6 been said by most people here. I do want to respond again,
7 making that point about the Federal Reserve Study. They not
8 only said that there was a problem with credit theft and
9 identity theft but they noted how difficult it is to find
10 out for sure how it occurred, how difficult it is to trace
11 it back to its origins.

12 And this is one of the problems with look-up
13 services or any kind of mutation of the kinds of look-up
14 services that are represented here is that I don't think
15 that anyone sitting around the table here could really say
16 genuinely that there is not the potential for the misuse of
17 information apart from it.

18 So given that potential and given the difficulty
19 that we have in quantifying it, I still think that we can
20 get to the root of the problem by all agreeing that there
21 will be basic privacy principles that everyone will follow.

22 I think those have to be codified in the law because
23 otherwise we will have who knows how many companies, we
24 can't even say, who are not playing by the same rules as the
25 people here who are trying to construct good rules.

1 And we will have other kinds of services. Many of
2 you have pointed out that you take great care not to mix
3 marketing information with other kinds of public record
4 information that you give out for your reference services,
5 and yet there is nothing to prevent any number of folks out
6 there who can put this information together in various ways
7 that we have heard are real easy to do from making this
8 information available and because they don't come under the
9 very narrow definition that you have carved for yourself and
10 because you don't have any way of enforcing your
11 self-regulatory mechanism, these people are actually able to
12 be up there just not only, not identifiable by consumers but
13 not able to have action taken against them by anybody
14 representing consumers because we can't prove who they are
15 and what they're doing.

16 MR. DAVIES: I'm very sympathetic to what you're
17 saying. What I was trying to do was blow the fog and mist
18 away from the cockpit of particular issues. I also know
19 from the Federal Reserve Board report which did express
20 concerns generally over the area which is in there, but what
21 was done there couldn't link it and saw no evidence in
22 linking it to online services, online services.

23 And it was also going on to say that the evidence
24 given from the other side of where credit card fraud occurs
25 from is theft and the interception of mail. And those who

1 were using that said they used the online services to help
2 defeat that and to bring it through.

3 So all I'm saying, there have been loads of concern.
4 There are many issues on the face that can actually be
5 linked. But we need the evidence of the cases that is
6 coming through, those that are concerned with it should
7 produce that. Once it's been produced, we can see how to
8 react to it.

9 But at the moment all I'm saying is that at this
10 moment and time, and as it was said just here a few moments
11 ago that a year is an awfully long time for what we're
12 doing, progress has been made in the last year. We as a
13 company, I know the industry group which I represent is very
14 anxious to make that progress. So those are nonissues.

15 But we do need to be clear about precisely how we
16 make that progress in the new future. That's why I was
17 making those remarks. I think we are in sympathy with each
18 other.

19 MR. MEDINE: Thanks. Final words from Jane.

20 MS. KIRTLEY: Thank you. It's at the eleventh hour,
21 quite literally that I'd like to bring us back if I could to
22 a couple of principles. One, that I am not clear still in
23 my mind, although this group seems to have accepted it as a
24 given, that the government has a role in regulating the
25 dissemination of truthful, accurate information that has

1 been legally obtained.

2 It seems to me that there is a basic premise in our
3 law that says no prior restraint. And this seems to me to
4 be a derogation of that. But putting that to one side, I'm
5 very disturbed by what I think has been the use of a lot of
6 terms that I'm not sure even the people at this table who
7 are allied would agree with. And one of them is privacy.

8 Marc Rotenberg talked about these proposed
9 principles don't even protect privacy. What is the
10 definition of privacy? I've heard Marc's definition. I've
11 heard Evan Hendrick's definition. I know it's not the same
12 as mine. I know it's not the same in many of the legal
13 cases and in many statutes.

14 So to try to parse this through without even
15 defining our terms I think puts us in an uncomfortable
16 position. Because how can we begin to define appropriate
17 uses for truthful, accurate information if we don't even
18 know what the interest is precisely that we want to defend.

19 Finally, one last comment. We've talked a little
20 bit about this issue of the information haves and have-nots;
21 those who have the money to access information will always
22 be able to get it, those who do not will not. As we
23 redefine the issue of access to public records, which seems
24 to be the direction this group is moving, I'd like to
25 mention something that came up before the Maryland

1 legislature a few years ago.

2 There was a movement to close off access to the
3 names of crime victims because there had been a lot of
4 protests by people in the suburban areas of Baltimore about
5 their names being made public when their houses were
6 burglarized. They said this made them vulnerable to future
7 attacks.

8 It was widely debated, went through several
9 committees. In the final hearings a reporter from the
10 Baltimore Sun went in and he said, with all respect I think
11 this is a rich, white person's bill. If you are poor, if
12 you are a member of the minority you want these records to
13 be open because it is your only assurance that someone will
14 be watching the police, someone will be watching the
15 authorities to make sure that the crime that's committed
16 against you is investigated and prosecuted.

17 And I would just like to underscore that as we elite
18 sit around this table parsing out these privacy interests it
19 might be useful to bear in mind that there are public policy
20 interests that are also implicated here.

21 MR. MEDINE: I want to thank all the panelists from
22 all day for engaging in a very lively exchange. It's been
23 very useful to the Commission and staff, and further
24 comments will be accepted for at least another month.

25 (The hearing concluded at 6:07 p.m.)

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C E R T I F I C A T I O N O F R E P O R T E R

DOCKET/FILE NUMBER: Privacy Workshop

CASE TITLE:

HEARING DATE: June 10, 1996

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: June 16, 1996

Jayne M. Toering

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.

Diane Quade