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INTERAGENCY PUBLIC WORKSHOP:

GET NOTICED:
EFFECTIVE FINANCIAL PRIVACY NOTICES

MATTER NO. P014814

DECEMBER 4, 2001

THE REAGAN INTERNATIONAL BUILDING
13TH and PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C.

For The Record, Inc.
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OPENING REMARKS:

CHAIRMAN MURIS: Good morning, and welcome to Get Noticed. Today's workshop is cosponsored by the eight federal agencies responsible for implementing and enforcing the Gramm-Leach-Bliley Act. In addition to the Federal Trade Commission, the agencies are, here we go, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Commodity Futures Trading Commission, and the Securities and Exchange Commission.

On behalf of all of these agencies, I want to express my appreciation for your interest and participation in today's program. More than 600 people registered, a record number for this type of workshop. Many who were unable to attend today have requested the transcript and materials, as well as the CD-ROM being prepared from today's proceedings.

Your presence today, and the interest demonstrated as we developed this program, reflects the widespread desire to improve the effectiveness of the privacy notices mandated under GLB.

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1 By effective notice, I mean by providing
2 policies that are easy to find, easy to read, and easy
3 to comprehend. As you all probably know too well, the
4 regulations implementing GLB require that financial
5 institutions provide clear, conspicuous, and accurate
6 notice of their privacy policies and practices to their
7 customers.

8 The regulations specify the general content, but
9 don't mandate any particular language. This flexibility
10 was actually intended to allow different financial
11 institutions to draft notices particular to their
12 practices.

13 This past year, consumers were flooded with
14 financial privacy notices. Most people would agree that
15 the experience has been mixed. The good news is that we
16 have seen many clear, understandable notices, some of
17 which will be showcased today. The bad news is that we
18 have seen some that are dreadful. Notices that are
19 written in language unintelligible to consumers.

20 Indeed, I once remarked that in some respects,
21 this is a statute that only lawyers could love, of
22 course until they found out that it applied to them.

23 (Laughter.)

24 CHAIRMAN MURIS: What we've learned in this
25 process is that providing effective financial notice is

1 a challenging task. Information sharing processes can
2 be complex and difficult to describe in simple language.
3 Also, the act itself creates complex distinctions
4 regarding what information should be included in the
5 notice, when choice is required, and when information
6 sharing is permitted.

7 It is not surprising that describing these
8 complex practices has led some financial institutions to
9 seek more guidance about the content and form of these
10 notices from the agencies and from industry leaders.

11 We, therefore, thought it would be helpful to
12 have this workshop, to discuss how to provide effective
13 financial privacy notices. We also hope to learn about
14 the cost of providing notices, and the effect of the
15 notices on consumer behavior.

16 The FTC has found that public workshops, like
17 this one, can be extremely useful to educate and inform
18 the public and the private sector about important
19 issues. We can encourage creative and innovative
20 thinking to address those issues.

21 Today's program gives us an opportunity to hear
22 from a number of experts and leaders in financial
23 privacy and consumer education. Following each of our
24 four panel discussions, members of the audience will be
25 invited to ask questions.

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1 Our first panel features financial institutions
2 that have spent considerable time and resources
3 developing privacy notices designed to communicate
4 effectively with their customers.

5 In our second panel, several new surveys
6 regarding consumers' attitudes and experiences with
7 notices will be discussed. A number of interesting
8 questions are addressed in the surveys, such as whether
9 consumers read privacy notices, and why and how privacy
10 concerns have affected consumers' online behavior.
11 Representatives of consumer and privacy groups will also
12 discuss what they believe consumers want and need to
13 know about their financial institutions' information
14 practices.

15 Our morning session will conclude with some
16 remarks on the challenges of providing effective notice
17 by my colleague, FTC Commissioner Mozelle Thomson. I
18 also note that another colleague, Commissioner Orson
19 Swindle, is here, I'm sure Orson, like the rest of us,
20 is hoping to learn from today's workshop.

21 After lunch, we will bring together
22 communication experts to help us learn more about
23 effective communication with consumers.

24 Our fourth and final panel will include
25 representatives of industry, consumer groups and state

1 agencies. They will describe several current
2 initiatives to help achieve more effective notice and
3 increase consumer education about privacy. Today's
4 program will be filled with new ideas for developing
5 privacy agendas that are easy to find, read and
6 understand.

7 I also hope we will examine related issues, such
8 as the cost of providing the notices, and whether the
9 presentation of the notice affects consumer opt-out
10 rates. We also will ask whether financial institutions
11 benefited from developing notices that are more
12 effective or change their information sharing practices
13 in response to GLB.

14 We hope that you will use what you hear today to
15 review your notices and consider how they might be made
16 more effective. I know that many of you have spent
17 considerable resources to meet the requirements of the
18 new law. However, each year presents an opportunity to
19 make your annual notices more consumer friendly. We
20 hope you will take that opportunity.

21 Finally, I want to thank the interagency
22 workshop team for their hard work in planning this
23 workshop. Coordinating the project among eight separate
24 agencies was no small feat. I commend the team members
25 for their diligence and creativity in putting this

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1 ambitious agenda together.

2 Thank you, again, for your participation today.
3 I trust it will be a productive and beneficial workshop
4 for us all.

5 (Applause.)

6 MS. BROF: I'm back, and I just want to fill in
7 some details after that very helpful overview from the
8 Chairman. As he said, to make this day as informative
9 as possible, we want to hear from you in the audience as
10 well as those people here on stage, and we have reserved
11 about 15 minutes at the end of each panel for a question
12 and answer period. And you'll see preprinted question
13 cards in your folders, they look like this. There's
14 four of them, and if you need more, there's some in a
15 box outside where you picked up your folders.

16 At set intervals during each panel, prior to the
17 question and answer period, agency staff will be
18 cruising the aisles, picking up question cards, starting
19 about a half hour into each panel. So, if you have
20 questions at that point, start passing them down to the
21 end of the row closest to you and I will ask the lucky
22 people sitting at the ends of each row to just hold onto
23 those cards until a staff person picks them up.

24 Along with the question cards, in your folder,
25 you'll also find a CD-ROM, which contains the Power

1 Point presentations that will be delivered today, along
2 with other public comments that we have received about
3 the workshop so far. You will also find hard copies of
4 some materials for the panel presentations in your
5 folders. And we didn't include entire Power Points in
6 there, saving some trees, but that's all in the CDs, and
7 the only thing in terms of hard copies in your folders
8 are some excerpts of presentations that involve a lot of
9 text, to help you follow along.

10 As far as the CDs go, we will be releasing a new
11 one after the workshop, and that version will include
12 all the presentations and public comments that we have
13 received, as well as the transcript. And since the
14 comment deadline isn't until January 4th, the new CD
15 won't be available until some time after that date. So,
16 remember that date, too, for your purposes, January 4th,
17 if you want to comment on the workshop.

18 Information on how to order a CD is available at
19 the website, where you registered. I'm sure you're all
20 familiar with www.ftc.gov/glbworkshop. And most
21 importantly, we will send you the CD for free. You will
22 also be able to download the documents on the CD
23 separately via the website. All the presentations you
24 see today should be posted by the end of the week,
25 thanks to our fantastic staff here.

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1 And now for the really important information,
2 the bathrooms are located right across from the
3 amphitheater as you exit, and there's also some around
4 the corner to the left as you exit. The food court is
5 on this level, on the other side of the building,
6 towards 14th Street, and when you break for lunch, there
7 will be signs directing you in the building and staff
8 people around to help you find it.

9 And speaking of food, there's none allowed in
10 the amphitheater, and neither are drinks. And, finally,
11 there are phones right by the amphitheater as well,
12 where you check your coats, if you did, just to the
13 right where you exit.

14 And last, but certainly not least, please note
15 that though this workshop is, of course, sponsored by
16 federal agencies, nothing said today, even including by
17 the agency moderators, reflects the official position of
18 any of the cosponsoring agencies, except, of course,
19 that we hope you enjoy the workshop and are able to stay
20 until the end of the day, since each panel offers
21 important information about developing financial privacy
22 notices.

23 And, now, it's time to begin with our first
24 panel, "The Challenges of Providing Effective Financial
25 Privacy Notices: The Industry Experience."

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MS. FRIEND: Good morning, everyone. Welcome to the financial privacy workshop, and a particular welcome and thank you to the panelists and members of the audience who came from out of town to join us today in Washington. My name is Amy Friend, and I'm an Assistant Chief Counsel at the Office of the Comptroller of the Currency, and I am joined by my co-moderator, Stephanie Martin, who is in the middle of the panel, who is an Assistant General Counsel of the Federal Reserve Board.

I think it's clear from the level of interest in this workshop that complying with the new privacy provisions has proved very challenging, probably more challenging than either the regulators or the regulated could have anticipated. The first panel will begin what the agencies hope will be a constructive dialogue today, and into the future, about how financial institutions can clearly and simply describe consumer privacy rights, and yet still satisfy complex legal requirements for providing these notices.

Our first panel of representatives from the financial services industry will discuss the challenges that they faced in devising their privacy notices. Each one of these panelists has worked extensively on

1 crafting privacy notices, and on leading his or her
2 company's efforts to comply with the privacy
3 regulations. Collectively, the institutions these
4 panelists represent have delivered privacy notices to
5 tens of millions of consumers -- probably over 100
6 million consumers, I would think. You will hear about
7 the different strategies these companies use to make
8 their privacy notices more effective for their
9 consumers, from using focus groups to gauged consumer
10 reaction to their notices, to involving representatives
11 from diverse businesses and divisions within their
12 company, to looking beyond the sample language in the
13 regulations.

14 And, now, I would like to briefly introduce
15 these panelists. For more details about their
16 biographical information, you can consult your folders.
17 On my far left is Robin Warren, who is the Privacy
18 Executive for Bank of America.

19 Next to Robin is Stacy Suggs, she's an Assistant
20 Vice President and Compliance Officer for Bank
21 Independent in Sheffield, Alabama.

22 Pauline Scalvino is an Assistant Vice President
23 and Compliance Officer for The Vanguard Group.

24 Next to Pauline is Paul Metrey, he is the
25 Director of Regulatory Affairs for the National

1 Automobile Dealers Association.

2 Then we have Stephanie Martin with the Federal
3 Reserve Board.

4 Next to Stephanie -- well, I'm next to
5 Stephanie, and then there's Ellen Koplow, who is Senior
6 Vice President and General Counsel of Ameritrade Holding
7 Corporation.

8 And we have Julie Johnson, who is the Chief
9 Privacy Officer for Bank One.

10 Next to Julie is Richard Harvey, who is Vice
11 President and the Chief Compliance and Privacy Officer
12 for Chevy Chase Bank.

13 And last but not least, we have sitting next
14 to me now is Steve Durkee, who is the Privacy
15 Implementation Officer for Citigroup.

16 I've asked each of the panelists to preface
17 their remarks with a very brief description of their
18 financial institutions and the number of initial privacy
19 notices that they were required to deliver by July 1,
20 which was the mandatory compliance date for the
21 regulations.

22 I think this information should give you some
23 sense of the companies represented before you, and the
24 extent of their obligations under the privacy
25 regulations.

1 I'm going to begin by posing a question to Steve
2 and then sit down while he's answering and join the
3 other panelists. So, Steve Durkee, Citigroup has
4 offered some form of a privacy notice to its customers
5 since the 1970s, and has also allowed its customers to
6 opt out of marketing solicitations since the eighties.
7 I'm wondering if you can talk about how this experience
8 with self regulation affected Citi's approach to
9 complying with the new legal requirements for notice and
10 opt-out.

11 MR. DURKEE: Okay, thank you, Amy.

12 Can everybody hear? I guess so.

13 Citigroup offers banking, insurance and security
14 products through Citibank, SolomonSmithBarney,
15 Traveler's Insurance, Primerica, CitiFinancial, Diners
16 Club and other companies. In 2001, we sent out over 125
17 million notices to existing customers and changed
18 hundreds of processes to enable us to deliver the
19 notices to new customers. How many of you remember
20 before GLB? Seems like a long time ago.

21 Before GLB, our privacy notices were somewhat
22 different. They were geared toward building trust,
23 answering questions that customers really wanted us to
24 talk to. For example, in the eighties, we, like many
25 others, faced a challenge. While many customers

1 appreciated the special offers we could give them, some
2 didn't want them.

3 Our challenge was how to continue to offer those
4 items and give people a way out. This resulted in
5 offering privacy choices in our annual mailings to our
6 card members. These allowed customers to opt out, not
7 only from third party marketing, but also from our own
8 marketing.

9 So, this was quite different, but it fit with
10 what we wanted to do at that time. Another important
11 question came up when Citicorp and Travelers Group
12 merged in 1998. One of the things that our customers
13 really wanted us to say was whether or not we shared
14 medical information. Our answer was clearly no, we
15 don't, we don't intend to. Period.

16 We sent out that message with other important
17 information in our privacy promise for consumers, which
18 we deliver globally, actually to almost 100 million
19 customers around the world. We have done that now for
20 three years.

21 Those experiences were very important to how we
22 approached GLB. But, as Chairman Muris said, GLB is a
23 little bit different than most other regulations and
24 notices. It combines self regulation, and by that I
25 mean it gives companies a choice, it doesn't tell us

1 what to do, it tells us what decisions we have to make.
2 And then we have to tell our customers what our
3 decisions were. And hopefully the marketplace will
4 shake out and we will find out, number one, how to
5 communicate, and number two, what our customers really
6 want.

7 The first thing we had to do was make a
8 decision, were we going to share or were we not going to
9 share. The only credible thing that our customers said
10 we could say was that we share. We have a reputation
11 for cross marketing, that's what they came to us for.
12 We had quite a few things that we could offer that we
13 didn't want to give up and our customers didn't want us
14 to give up. So, we had a clear decision made, and we
15 thought we could communicate it. We could tell our
16 customers that we would share their information unless
17 they opted out.

18 Why did we think we had that trust from our
19 customers? We depend upon long-term, stable
20 relationships. These customers were not there for the
21 short-term, and neither were we. We, like you, have
22 very limited sharing and tightly control that sharing.
23 We do it for very specific purposes. We, like most of
24 you, are intensely concerned with the security of our
25 customers.

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1 When we talked to our customers, they appeared
2 to know and accept that we would protect them. Our
3 prior experience also made us comfortable giving very
4 clear privacy choices to our customers. Even our many
5 companies who do not share customer information -- we
6 have quite a few of those -- agreed that they would give
7 those choices to their customers, just so they would be
8 able to preserve options that may be very important in
9 the future.

10 We did send those notices out and we got a
11 pretty good reaction. As an aside, in earlier
12 discussions with Amy, I said I would talk about our
13 experience with opt-outs. We've, again, been getting
14 opt-outs for more than ten years, and while an initial
15 reaction might be low, these accumulate over time.

16 So, for our companies that have fairly
17 aggressive marketing, over some period of time, it
18 stabilizes around a third of the customers opting out
19 from telemarketing. So, you don't talk about what
20 happens at one time, you talk about over time. That
21 figure of about one third is pretty much what Alan
22 Westin and other surveys would say would be the size of
23 the group that really weighs privacy values over almost
24 anything else. So, we think that number may be a good
25 stable area.

1 In companies where we don't share, where we
2 offered an opt-out, even after three years opt outs were
3 in the low single digits. And holding at that level.
4 There's, I think, more a fear by customers of losing
5 something, than cutting out an already limited amount of
6 marketing in those areas.

7 So, we thought we would get a rational reaction
8 from our customers based upon what was important to
9 them, and again, that's what we saw.

10 Third, we thought that what we had said before
11 in our privacy promise was still going to be important,
12 so we included our Citigroup privacy promise in our new
13 notice for consumers. That worked well.

14 Fourth, our experience made us appreciate the
15 very, very hard work of our agencies, both at the
16 federal and the state level, in having consistent
17 regulations, doing their best to come up with succinct
18 disclosures that consumers could understand, and we
19 really have not gotten negative feedback from our
20 customers. In fact, customers saw that the new notice
21 as a regulatory requirements and accepted it as such, as
22 long as we also clearly said what we would do with their
23 information.

24 One of the questions I get asked most is, why
25 did they pick on the banking industry, and insurance,

1 and securities? Don't we have good practices? One of
2 the things we've also learned from our early
3 experiences, this stuff takes time. In general, people
4 look at the best to come up with good examples, and our
5 industry, I think, is extremely good at both sharing,
6 controlling sharing, and explaining complex things to
7 our customers. So, therefore, it's not unusual in that
8 context to think that we are going first.

9 There are a lot of experiments that are going
10 on, you'll hear about today -- short notices, addressing
11 what's important to your customers, listening to
12 customers. Again, this takes time. As I said, that was
13 our main lesson. Before GLB we had years to work this
14 stuff out, in controlled environments, now we're under a
15 very condensed time table.

16 Even so, you have to make a decision after
17 testing notices with your customers, changing processes
18 and operations, then going back and auditing, whether
19 what you thought you put in place was actually what you
20 did put in place. So, as we go forward, we're looking
21 at the feasibility of providing short notices in
22 particular. We're trying to get an early start on this
23 so that we have time to get something meaningful in
24 place within a relatively decent time frame.

25 Thank you.

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1 MS. FRIEND: Thank you, Steve.

2 This is on behalf of the GLB agencies, I'll
3 thank you for the plug for our consistent regulations.
4 Now I'm going to turn to Robin Warren of Bank of
5 America, and I wanted to talk to Robin about the
6 consumer focus groups that they used to test their
7 privacy notice. Specifically, Robin, I'm wondering if
8 you can talk about the impact of these focus groups on
9 your notice and whether you thought involving consumers
10 in the process while you were drafting ultimately ended
11 up in a more effective notice.

12 MS. WARREN: Thanks, Amy.

13 Let me give you a little bit of background.
14 Bank of America had a privacy policy in place for
15 several years prior to Gramm-Leach-Bliley and we felt
16 like we had a good story to tell, but this was an
17 unprecedented communication that was going to be with
18 all of our consumer customers. We sent out about 45
19 million notices to our existing customers during 2001,
20 and that doesn't count the new customers that received
21 notices this year.

22 So, it touched every customer. We have about 20
23 subsidiaries that have consumer customer relationships,
24 and the kinds of products and services they have range
25 from, of course, banking services, credit card,

1 insurance, securities brokerage relationships, real
2 estate and mortgage, auto and other specialized
3 financing subsidiaries. And we were going to have this
4 apply to every customer in every location of every
5 subsidiary of Bank of America. So, it was important for
6 us to make this a positive point of contact with all of
7 our customers.

8 The complexity of Gramm-Leach-Bliley, the law
9 and the regulations, was a challenge. Even though we
10 were not changing the substance of our policy in any way
11 as a result of Gramm-Leach-Bliley, we had to figure out
12 how we were going to fit our Cinderella's foot into an
13 unforgiving GLB glass slipper.

14 This was a learning process for us, we knew it
15 would be for our customers, for the entire industry, and
16 we didn't know how our customers were going to respond,
17 not only to our policy, but we knew they would be
18 receiving notices from a lot of other institutions.
19 They would be reading about it in the media, and hearing
20 about it in the media, and we knew that they would be
21 getting our notice in that context.

22 We didn't want our key messages to get lost in
23 the detail. These were that we don't share or sell
24 information, customer information, with outside third
25 party marketers, that we do give our customers choices

1 when it comes to receiving direct marketing from us,
2 that we honor those choices across our entire company,
3 and that we do share information among our affiliates in
4 order to deliver the kinds of services our customers
5 expect, in the way they expect to deal with us.

6 We knew early on that we wanted to solicit
7 feedback from our customers, so we began by preparing
8 our notices and trying to get them into a near final
9 draft that we would then show to groups of customers to
10 get their feedback. And we decided it would be a
11 marketing style brochure, that it would look very much
12 glossy, full color, with cover art on it, regular
13 marketing size type, lots of headings to break up the
14 messages into digestible pieces, and an introductory
15 paragraph that highlights our key points that we wanted
16 to make sure, again, would not get buried in the
17 messages.

18 We also, wherever possible, avoided the use of
19 jargon, and that was a big risk, as our lawyers told us,
20 because it meant that we didn't use a lot of the sample
21 language from the regulation, because we didn't want to
22 use jargon that we thought would be offputting to our
23 customers.

24 Once we had it, as I said, nearly final, we took
25 it to focus groups of customers, and we did it in a

1 number of geographic locations across the country to
2 make sure that if there were geographic differences, we
3 would understand that as well. What we found out was
4 that they really did like the section headings, that
5 they found that very helpful. They also liked the
6 introductory remarks, they found once they read through
7 the policy that the introductory paragraphs that we had
8 really did focus them on what were the key points to
9 them.

10 They felt that the sequencing of information in
11 our policy was logical and easy to follow. But they did
12 tell us that some of the terms we use, even though we
13 thought we had taken all of the jargon out of it, some
14 of the terms were still confusing to them, and they
15 identified those to us and helped us figure out better
16 ways to say them that would be more understandable by
17 consumers.

18 We also found, much to our surprise, that they
19 tended to read between the lines, and they tended to get
20 things out of the policy and out of the notice that
21 weren't there. And, so, it was very helpful to
22 understand what those were. And while we had a lot of
23 examples in our notice to begin with, after the focus
24 groups with the customers, we learned that we needed to
25 add even more examples of what we meant, because without

1 those examples, they drew very surprising conclusions
2 about what they thought we meant.

3 So, we added more examples after the focus
4 groups with our customers. We learned to be very
5 straightforward. They said they wanted the cover to say
6 that this is our privacy policy for consumers, and they
7 told us where they thought some concepts were confusing.
8 They liked the nonrequired information best in our
9 policy. We gave them information about how to opt out
10 of direct marketing with us, which was not required by
11 GLB, and we also gave them information about how to
12 contact the credit bureaus and The Direct Marketing
13 Association, if they wanted to get their names off other
14 lists. And they thought that was probably the most
15 important information we gave them.

16 We followed this up, this past summer, with
17 conducting another round of focus groups with our
18 customers to look at the policies and the notices that
19 we're going to be sending out in 2002, and again, we
20 haven't changed the policy, but both we and our
21 customers, have been better educated over the last year,
22 and we have learned some ways to tweak the notices,
23 which we've incorporated, again, based on customer
24 feedback, into the notices that even as we speak are on
25 their way to our 6,000 distribution points to begin

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1 distribution in January of 2002.

2 MS. FRIEND: Thank you, Robin.

3 I'm glad to hear you call the regulations a
4 glass slipper rather than the ugly duckling. I'm going
5 to turn now to Stacy Suggs with Bank Independent. In
6 contrast to the two panelists we have just heard from,
7 who it sounds like have delivered over 160 million
8 notices, you represent a small institution. Your bank,
9 therefore, may have had a different approach to
10 complying with the privacy regulations. I'm wondering
11 if you can talk about what were the particular
12 challenges you faced as a community bank in
13 communicating to your consumers through these notices.

14 MS. SUGGS: Thank you, Amy.

15 First of all, to give you an overview of our
16 bank, Bank Independent is located in Sheffield, Alabama,
17 it's approximately 120 miles northwest of Birmingham,
18 and it's been a family owned and operated commercial
19 bank for over 50 years.

20 We have 11 branch locations within the Colbert
21 and Lauderdale MSA and our total asset size is
22 approximately 350 million. And this year we mailed
23 approximately 34,000 privacy notices to all our existing
24 customers.

25 So, to answer Amy's question and to talk about

1 today what we're here for, the challenges that we faced
2 in developing our privacy notice, my initial concern was
3 that our customers in the general public might not be
4 able to easily understand some of the content of the
5 privacy notice. And some of the challenges we faced
6 included making sure that our notice would be accurate,
7 that it would be easy to understand for our customers,
8 and how to emphasize our opt-out, because we did choose
9 to share information. And also training our employees
10 and other factors that we considered during the process.

11 So, the process we went through, in order to
12 meet these challenges when we began working on privacy,
13 included first of all a committee, similar to the way we
14 handled Y2K. And we found that the work we had done on
15 Y2K was very helpful and useful with privacy, because we
16 had done a lot of studies and research on our
17 information systems. So, it sort of laid the
18 groundwork, if you will, for privacy. It was very
19 helpful. We formed a privacy committee and it
20 represented each senior officer at our bank, including
21 marketing, data processing, branch and credit
22 administration, accounting, auditing operations, our
23 legal counsel, and compliance.

24 We had every area of the bank involved with our
25 privacy program. I was then appointed as the bank's

1 privacy officer, and I chaired the committee. We
2 studied the regulation and we utilized various
3 resources, including the American Bankers Association's
4 privacy tool kit to begin developing our notice, and
5 that was very helpful. It took the model language, but
6 I think, made it into a more easy-to-read and understand
7 notice that would be beneficial to our customers.

8 We then formulated a time line to develop our
9 privacy policy, our procedures, our notice and other
10 related tasks that were involved in our privacy program.

11 To talk about the challenges, the first
12 challenge was ensuring that our notice was accurate, of
13 course. Our privacy committee was very helpful in this
14 area, since all of the banks were involved. Also,
15 conducting a thorough information self assessment was
16 very productive in making sure we knew the flow of our
17 information, and in making the decisions that we needed
18 to develop our notice.

19 Another factor that was a challenge was
20 developing a notice that would be easy to understand.
21 As with any new regulation, our goal is always to try
22 and simplify as much as possible, especially when it's
23 going out to the customer. And with the requirements of
24 the new privacy notice, we wanted to make sure that our
25 customers and the general public would easily understand

1 the contents.

2 So, in developing our notice, length was a
3 factor. Our goal was to make it as short as possible,
4 but to include all the required and pertinent
5 information in the regulation. Uniformity was another
6 factor. We decided to develop one privacy notice that
7 would not only include our general information, but also
8 Internet banking information.

9 We just began offering Internet banking to our
10 customers this year, so we thought that it would be a
11 good idea and less confusing to our customers for them
12 to see one privacy notice on our website and one privacy
13 notice in the mail. All the information that they would
14 need would be right there.

15 The layout was another consideration that we
16 took into account, as far as paragraph format, using a
17 normal font size, bold facing where appropriate,
18 especially for the opt-out.

19 And once we had a rough draft completed, I
20 submitted our privacy notice to various acquaintances
21 and coworkers to get their feedback on the content. I
22 think this was very helpful in testing the readability
23 of our notice and making any changes where appropriate.

24 Another challenge was structure of the opt-out.
25 Once we decided we wanted to share information in the

1 future, for example, name, address and telephone number,
2 we had to determine how we wanted to structure the
3 opt-out. We looked at it from a customer's perspective
4 in regards to how the opt-out would be applied. For
5 example, opt out on all accounts now and in the future,
6 rather than per account.

7 We also took other factors into consideration.
8 We decided to include information about our do-not-call
9 list for telemarketing purposes in our notice, as well
10 as the Children's Online Privacy Protection Act.

11 Another challenge was training our employees.
12 Extensive training was conducted for all our employees
13 on our privacy policy procedures in our notice. This
14 was an important aspect so that they would understand
15 the privacy requirements and be able to easily explain
16 the information in our notice to our customers and
17 answer anticipated questions.

18 Although many challenges were associated with
19 developing our privacy notice, I believe we took the
20 necessary steps in order to deliver an accurate notice
21 that our customers would understand. We understand that
22 privacy is important and we continually strive for ways
23 to improve the content of our notice and all other areas
24 of our privacy program.

25 Thank you.

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1 MS. FRIEND: Thank you, Stacy.

2 I'm going to turn now to Paul Metrey, who
3 represents another small business perspective. Paul is
4 in a different position from the other panelists because
5 he is not with a financial institution, but he is with a
6 trade group that represents a number of small businesses
7 who I think were surprised to find that they would be
8 considered a financial institution under the regulation,
9 and that's automobile dealers.

10 Can you talk about what your association did to
11 advise your members that they were covered by the new
12 privacy provisions and what their obligations were?
13 Also, if you could discuss the template that your
14 association provided members to use for their own
15 notices.

16 MR. METREY: Certainly. Just to describe our
17 membership, we represent over 19,000 new automobile and
18 truck dealers, about 18,000 are new automobile dealers
19 and about a thousand are new truck dealers, roughly.
20 And it was quite a learning curve for everyone.
21 Typically these are small retail businesses. They
22 typically have much smaller assets than many of the
23 financial institutions that are governed by the
24 regulation, and they're not used to requirements that
25 apply to financial institutions.

1 When many in the community first heard that
2 there would be a financial privacy regulation, they were
3 thinking that it would apply to banks and others, but
4 not to themselves. So, as Amy was mentioning, that
5 certainly was a big effort to try to convince people
6 that, look, there are some types of business
7 transactions you are engaging in that this will apply
8 to, and you need to be prepared to provide privacy
9 notices and adhere to the other requirements of, in our
10 case, the FTC final rule.

11 Now, of course, it was also a challenge, because
12 as I indicated, they are all retailers. Much of what
13 they do is nonfinancial in nature. If you take, for
14 example, an automobile dealership, the work that they do
15 to service an automobile or to sell parts, or certainly
16 transactions with other businesses in a wholesale
17 context, really do not give rise to the requirements.

18 So, when someone talks about a customer, it does
19 not automatically jump out that it's going to be
20 something that gives rise to these requirements. They
21 certainly have financial customers where they are
22 arranging for credit and extending credit; however, many
23 of their customers do not fall into that category.

24 So, consequently, a lot of it was sifting
25 through with them when this applies and when it does

1 not. And that was a rather large effort.

2 The membership is very diverse. We do have some
3 that are rather large. Most of them, however, are very
4 small. In many cases, we could be talking about
5 entities with as few as ten, 20, 30, 40 people. Many of
6 whom are nontechnical in nature. It could be
7 salespersons, it could be mechanics or others.

8 Oftentimes, the onus of implementing any
9 regulation, whether it's in this case one from the
10 Federal Trade Commission that pertains to privacy, or
11 any other FTC regulation, or regulation from any other
12 department such as Treasury or Transportation or EPA,
13 will fall on a single individual within the dealership.
14 They just do not have the resources to try to fashion a
15 privacy notice that reflects many of the efforts that
16 you've heard about.

17 So, oftentimes, they will look outside to try to
18 get assistance, and that's really where the role of a
19 trade association comes in -- whether it's on the state
20 or federal level.

21 What we try to do to assist them, of course,
22 other than just generally trying to explain to them what
23 the requirements were, both with the privacy notice and
24 otherwise, we also try to provide them with some
25 standard templates. But again, when you're talking

1 about 19,000 members and they are as diverse as they
2 are, it's very difficult to get into any level of
3 specificity with that.

4 So, we were really largely wed to the sample
5 clauses that were provided in this case, again, by the
6 FTC, the clauses that were authorized to be used if they
7 were applicable, and that really assisted us in trying
8 to put together a standard notice. So, that really is
9 what we were able to provide them. There were a couple
10 of different templates, depending on whether or not they
11 owed a customer the right to opt out or not, but that
12 generally was the approach.

13 Even with that, there were certainly a lot of
14 questions that came up, such as, to whom do we have to
15 give the notice, when do we have to give it, and some of
16 the other particulars that you would expect with this
17 type of requirement. We tried to work closely with the
18 FTC staff in trying to address those concerns and
19 queries, and that's still an ongoing process, of course,
20 as people continually try to improve the process.

21 Thank you.

22 MS. FRIEND: Thank you, Paul.

23 I'm going to turn next to Ellen Koplow for the
24 perspective from a securities firm. I'm wondering if
25 you could talk about the process that your company used

1 to develop its notice, and then particularly focus on
2 the Internet notice that you have and whether you think
3 that delivering a notice over the Internet may offer
4 some opportunities for more effective communication than
5 a paper notice.

6 MS. KOPLOW: Thank you.

7 Ameritrade Holding Corporation is a pioneer in
8 the online trading brokerage industry, with a 26-year
9 history of providing clients a self-directed approach to
10 investment services. Through its private client and
11 institutional client divisions, Ameritrade provides tier
12 levels of brokerage products and services tailored to
13 meet the varying investing, trading and execution needs
14 of self-directed individual investors, financial
15 institutions and corporations.

16 As currently structured, there are eight
17 separate broker dealers that fall under the holding
18 company umbrella, seven of which we owned at the time
19 when we were first complying with Reg SP and through
20 which the delivery of privacy notices were at issue. By
21 June of 2001, Ameritrade had delivered over a million
22 and a half notices to its clients.

23 Amy asked me to address how having a business
24 that operates primarily through the Internet affected
25 compliance with the delivery requirements of Reg S -P-

1 my understanding is that we were contacted regarding
2 participation in this panel, in part, because of the
3 manner in which our privacy policy is structured.

4 When you access the policy online, the first
5 page has an introduction, and then we list all the
6 different informative provisions as topics from which
7 the client can choose, and link directly to view the
8 relevant provision.

9 For example, we're required to disclose what
10 information we collect, when we collect the information,
11 et cetera. Each of these topics is phrased in question
12 form for ease of use and access by the client. So,
13 included is the question, what information do we
14 collect, from which you can link directly to the answer.

15 Another example is that we have a question, can
16 I opt out of sharing my personal information with non-
17 affiliated third parties, which then links the client
18 directly to the opt-out provisions.

19 So, if a client doesn't care about how we use,
20 collect or share information, and only wants to opt out
21 of the sharing, the client can effectively skip over the
22 terms of the policy that he or she deems to be
23 irrelevant, and go directly and easily to the opt-out
24 provisions.

25 Now, I can't take credit for this idea.

1 Ameritrade had a privacy policy on the website prior to
2 Gramm-Leach-Bliley as a matter of good Internet and
3 financial service practice, which I would periodically
4 update as the law developed, or as our use changed.

5 When Reg S-P was promulgated, the project was
6 elevated on the priority lists, and I was able to enlist
7 the help of our business executives. It was the
8 business that had the forethought to treat this not as a
9 legal document, as was my inclination as general
10 counsel, but as another means to reach out to our
11 clients in a style that fits with our business and our
12 brand, direct and easy to follow.

13 After I was satisfied that the policy met all
14 the legal and regulatory standards, we sent it over to
15 the marketing department, who ultimately came back with
16 this structure. We had the typical tug and pull of what
17 needed to be said and how. As Robin referred to, the
18 jargon was something I was comfortable using, but made
19 their hair stand on end.

20 But what resulted, I believe, is a compliant
21 document that provides the information the client wants
22 in a manner that is pleasing and easy to read. Once we
23 had a final document to work from, in January of 2001,
24 we put together a cross functional team of legal, audit,
25 marketing and technology, to devise the methods by which

1 we would implement the delivery requirements. The
2 initial notice is required to go to all current
3 customers, and under section 248.9 of Reg S -P- in a
4 manner that each customer can reasonably be expected to
5 receive actual notice in writing, or if the consumer
6 agrees, electronically.

7 The regulation goes on to explain that a
8 reasonable expectation of actual notice for the consumer
9 who conducts transactions electronically can be to post
10 the notice on the electronic site and require the
11 consumer to acknowledge receipt of the notice.

12 Although our policy was on the website, we could
13 not guarantee that current customers would access the
14 policy, nor did the system have a vehicle at that time
15 by which we could monitor who received the policy or
16 require acknowledgment of receipt. Therefore, we felt
17 in order to reasonably expect that the privacy notice
18 would be received by our existing customers, we sent the
19 written policies to all existing customers in our
20 quarterly statements.

21 However, we were able to implement the
22 electronic delivery of initial notices for new clients
23 through our online application process. With the
24 passage of the Electronic Signature Law in the summer of
25 2000, we incorporated the application process into an

1 online form. Additionally, since we are a regulated
2 company, we were already required to maintain certain
3 books and records of important information and
4 documentation, and keep records of certain client
5 communications.

6 So, between the E-sign verification process, and
7 the SEC books and records requirements, we already had
8 the systems and technology in place to create a line
9 item in the application for the privacy policy, create a
10 direct link from that line item in the application to
11 the privacy policy, create a vehicle that indicated the
12 person read the policy -- received and read the policy
13 in terms that they understood -- and record the client's
14 response, along with a version of the privacy policy
15 that was in effect when they accepted it.

16 We were able to incorporate a similar procedure
17 for our opt-out provisions. We do have one subsidiary,
18 Freetrade.com, that only interacts with clients online,
19 and had the system to deliver and record receipt of the
20 privacy policy to its clients by sending it via email.
21 The terms and conditions of Freetrade require the client
22 to communicate only through electronic means.

23 We expected the requirements to deliver annual
24 notices to be easier to implement, as all clients accept
25 posting a revised policy statement electronically as

1 actual notice, and Reg S-P allows us a reasonable
2 expectation that a customer will receive actual notice
3 of the annual privacy notice if the customer uses the
4 website to access financial products and services
5 electronically, and agrees to receive the notices at the
6 website, and we post them continuously in a clear and
7 conspicuous manner.

8 Thank you, and I look forward to participating
9 in our question and answers.

10 MS. FRIEND: Thank you, Ellen.

11 I have a question. Do you allow your consumers
12 to opt out online?

13 MS. KOPLOW: Yes.

14 MS. FRIEND: And it may be too early, but have
15 you noticed any difference in the rates between Internet
16 opt-outs versus opt-out through your written notices?

17 MS. KOPLOW: No.

18 MS. FRIEND: Not yet. Thank you.

19 I'm going to turn to Richard Harvey next, with
20 Chevy Chase Bank, and, Richard, I'd like you to talk
21 about the particular techniques or strategies that Chevy
22 Chase Bank used to make its notice effective. I know
23 that you have a question and answer format, and that in
24 some ways you've gone beyond the strict legal
25 requirements for your notice and opt-out. So, please

1 discuss these items .

2 MR. HARVEY: Certainly.

3 Well, Chevy Chase Bank is a locally owned and
4 operated financial institution with an asset size of
5 roughly \$18 billion. With respect to our notice
6 process, many of the things that you've already heard in
7 terms of some of the good practices are the same things
8 that we decided upon.

9 One of the things that we decided early on is
10 that we really wanted our notices to be a communication
11 piece. We saw the issuance of notices as an opportunity
12 to talk to our customers. And, so, we wanted to make
13 sure that as we developed that piece, it would be
14 something that would be readable, and not only readable,
15 but it would be something that would catch our the
16 attention of our customers.

17 We regularly send out a newsletter, and we've
18 had good communication back from our customers that they
19 tend to read those newsletters. So, we saw this as an
20 opportunity to dedicate an entire newsletter to just
21 privacy.

22 We looked at privacy as a trust issue, and so
23 what we first did, in terms of determining what we were
24 going to say to our customers, is to make sure that they
25 understood that their reason for selecting Chevy Chase

1 was certainly partly because of the trust that they had
2 in us. And what we wanted to say to them is that you
3 can continue to trust us as it relates to your privacy.

4 Our notice -- this is a copy of what we sent
5 out -- we sent out 1.8 million notices. But we wanted
6 to make it short, just like you've heard others say. We
7 figured that customers did not want to spend a whole lot
8 of time, and they didn't have a whole lot of time to
9 dedicate to reading complex notices. We wanted to make
10 it as short as possible, but we were in that same
11 quandary that we had to make sure that it complied with
12 all the regulator requirements for the notices.

13 And, so, as we decided to develop the notices,
14 we drew in those individuals throughout our organization
15 that would provide us with assistance. They knew their
16 customers. We have representatives from every business
17 line of the organization, we developed a task force, and
18 that privacy task force actually met at least once a
19 week in the development process.

20 We talked about what kind of sharing we did
21 throughout the company, and that was an extensive
22 process, just the inventory of what kind of sharing we
23 were going to do. And we took a position that we were
24 going to have a notice that said to our customers, that
25 as it relates to your privacy, if you took a look at our

1 notice and you compared it to other financial
2 institutions' notices, that you should see a difference.
3 We really wanted them to be able to do that.

4 And the difference was that we were staking out
5 a position on privacy. We were saying to our customers
6 that we will not share your information with an outside
7 third party that would seek to solicit you for any
8 products or services that were nonfinancial-related.

9 As it related to our relationships with other
10 financial institutions, we made our customers keenly
11 aware of those relationships, and we went beyond, as Amy
12 was saying, the requirements of the law. We said in our
13 notice that if you don't want us to share your
14 information, or even to solicit you ourselves, to let us
15 know, and we would put you on our do-not-solicit list.

16 We did not provide opt-out because we didn't
17 have to as a result of the stake that we had sort of put
18 in the ground in terms of our sharing, but we would
19 allow our customers to, in essence, opt out of any
20 solicitations that we might otherwise send out to them.
21 And we thought that was helpful.

22 One of the ways that we went about making sure
23 that our notice was easily readable, is we just sat down
24 with our employees. Our employees make up part of our
25 customer base. And we let them see the language that we

1 came up with, and we took questions and answers from
2 them. We then developed a Q&A, and we made that Q&A
3 part of our privacy notice. We called our privacy
4 notice a privacy pledge, because we wanted to say to our
5 customers, this is something that we've always been
6 keenly aware of and we know that you're concerned with
7 this and you can understand that we're concerned with
8 what you're concerned with.

9 So, we made a pledge to our customers, and it
10 tended to work really well. If you go through our
11 pledge, we also thought it was important to tell our
12 customers how we use their information, and how
13 financial institutions responsibly use customer
14 information. We talked to them about protecting their
15 privacy. We knew that they were keenly concerned about
16 their personal information being stolen. We told them
17 things that they should do to protect their information.

18 We also provided them with a listing of ways
19 that they could opt out of other direct mailings, and
20 ways that they can contact the credit bureaus. And we
21 think that in the end, that we came up with a very good
22 piece with the help and support of a lot of good people,
23 and we relied on the ABA tool kit, and we relied on
24 outside consultants, to an extent, to really help us.
25 And we think we came up with something that was really

1 well done and well received by our customers.

2 MS. FRIEND: Thank you, Richard.

3 Just a quick question, when you and I were
4 talking, you said that even though you don't have a
5 third party opt-out, that some consumers try to opt out
6 of third party sharing anyway. What was your response
7 when that happened?

8 MR. HARVEY: When that happened, what we did,
9 frankly, was we allowed them to go on our suppression
10 list, so that they wouldn't receive any kind of
11 solicitations from us or any of our joint marketing
12 partners.

13 MS. FRIEND: Thank you.

14 I'm going to turn now to Pauline Scalvino with
15 The Vanguard Group. Your privacy notice makes clear and
16 emphasizes the fact that you do not sell customer
17 information to third parties. I'm wondering if you can
18 talk about why this particular disclosure was important
19 to Vanguard, whether it represents any change in your
20 information sharing practices as a result of
21 Gramm-Leach-Bliley and how have your customers reacted
22 to your notice?

23 MS. SCALVINO: Sure. The Vanguard Group is an
24 investment management company, primarily we're a mutual
25 fund company, we're the second largest mutual fund

1 company in the world. We offer over 100 mutual funds
2 and have approximately \$540 billion in assets under
3 management. We also have a number of affiliated
4 investment management businesses as well. We have a
5 broker dealer, registered investment adviser, as well as
6 two trust companies, one a national trust company, and
7 one a state chartered trust company.

8 So, we do offer a wide variety of investment
9 management services to our clients. To comply with the
10 law by July 1st, we sent out over five million privacy
11 notices, and since that date, have sent out privacy
12 notices in response to every request for information and
13 have made the privacy notice available on our website.

14 As Amy mentioned, what we wanted to start out
15 the privacy notice with was the disclosure that we don't
16 sell customer information, but we went even beyond that.
17 Vanguard's position has always been that the reason that
18 we have been successful is because we've earned the
19 trust of our clients.

20 As other people have mentioned, trust is really
21 the foundation of our business. Trust that we'll stick
22 to the investment philosophy that we disclose in our
23 prospectuses, trust that you can believe in the
24 integrity of our investment management, trust that we'll
25 provide you with the best service and the lowest cost

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1 possible.

2 So, we viewed privacy as just one other aspect
3 of our customers' trust in us. And we had always had a
4 privacy policy, and had always made it available,
5 although it was not provided to everyone, you had to ask
6 for it. And it really wasn't very specific.

7 At a very general level, it indicated that we
8 didn't sell information, but it didn't go into a lot of
9 detail or provide examples as to what we did with
10 customer information.

11 When Gramm-Leach-Bliley came along, and then Reg
12 S -P- as well as the other regulations that applied to
13 some of our affiliates, we obviously had to make a
14 decision as to what the new disclosure would look like.
15 And as has been mentioned by other panelists, we really
16 wanted to provide a notice that was clear and
17 understandable to our clients.

18 We had been one of the first companies in the
19 mutual fund industry to adopt the plain English
20 prospectus. We had for years a series of materials
21 called the plain talks series, which discussed bear
22 markets and various sorts of mutual funds, and we
23 thought that the privacy policy should be consistent and
24 our notice should be consistent with all of our other
25 forms of communication to our client base.

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1 We formed a team, as has been mentioned before,
2 and got all of the relevant people in a room
3 to assess our use of customer information, just to
4 make sure that we weren't missing anything, and also
5 to put the notice together. And when we put the
6 notice together, initially, you know, the legal
7 department provided to the marketing folks the guidance
8 on what had to be included, and we provided the sample
9 language, and we left it to the marketing people to come
10 up with a brochure that they thought would be acceptable
11 to our clients and very consistent with the Vanguard
12 message.

13 And we also came up with a trifold brochure,
14 using regular sized print, bullet points, headings. And
15 when it was initially prepared, it really had a fair
16 amount of flexibility in it. Recognizing that the
17 regulations allowed you to disclose to clients that some
18 time in the future you might do certain things with
19 their information.

20 Our policies have never been such that we would
21 be required to give an opt-out, and there is no opt-out
22 provided to clients. Our use of information does
23 include providing clients with information about other
24 Vanguard products and services. Our clients have never
25 objected to that. In fact, if anything, we're usually

1 criticized because we don't let them know that we offer
2 certain services. A lot of our clients don't know we
3 have a brokerage operation.

4 We did not believe that providing an opt-out was
5 necessary, that we needed to go that extra step, because
6 it was not legally required. But we did try to build in
7 some flexibility initially in the notice to allow for
8 things such as joint marketing, which is permissible
9 under one of the exceptions.

10 We then presented our notice to our senior
11 management team, and they may have been more difficult
12 than a lot of the focus groups. Because they really
13 looked at the notice as a customer would, and they came
14 back to us and, in fact, said that they weren't
15 comfortable with taking such an approach that would give
16 us a lot of flexibility. They wanted to be very clear
17 about what we do with customer information -- we don't
18 use it for joint marketing, and they don't intend to use
19 it for joint marketing.

20 We certainly provide it to third parties, in
21 order to provide services to our clients. We provide it
22 to third parties who are going to perform services for
23 us. In dealing with clients, but we don't even allow
24 partners in the brokerage business, for example, to
25 market directly to our customers. They're limited in

1 what they can do, and the limit is to provide whatever
2 service we've contracted with them to provide, and
3 that's always been our policy.

4 And, so, senior management came back and
5 actually required us to take a much less flexible
6 approach in our notice. And the result was that we
7 really laid out exactly what we do with customer
8 information by providing examples.

9 Amy asked about what the reaction of our clients
10 have been, and we really have not heard very much at
11 all. We did receive a handful of opt-outs, and from
12 reading the letters that we've gotten, it appears that
13 they are form letters, a lot of them were pretty
14 identical, opting out of information sharing practices
15 that we don't do, and referencing services and products
16 we don't provide.

17 But we've taken each of those and we've
18 responded explaining why we don't have an opt-out, and
19 we've also, actually, done something which is similar to
20 what was already mentioned, and that is we have a
21 do-not-market list. We made this option available to
22 those people who had opted out, and we will not even
23 send them information about our own products and
24 services. The only thing they will get in the mail from
25 Vanguard are their statements, prospectuses and annual

1 reports.

2 We have heard very little back from the people
3 who initially tried to opt out asking to be on the
4 do-not-solicit list. There's been a minimal reaction.

5 Thank you.

6 MS. FRIEND: Thank you, Pauline.

7 Last, but certainly not least, is Julie Johnson
8 from Bank One. Bank One is a large integrated financial
9 company that chose to send a single privacy notice on
10 behalf of all of its subsidiary companies to customers.
11 I know that the bank also sent these notices in a
12 separate mailing with an explanatory cover letter.

13 Please talk about these various decisions to
14 develop a single notice, to send a separate mailing, and
15 what you were trying to convey in this cover letter.

16 MS. JOHNSON: Thank you.

17 After Gramm-Leach-Bliley was enacted and the
18 regulations came out, which seems like years ago, but
19 that's because I think it took us every day, every hour
20 we had, to pull this all together in order to implement
21 it in a way that we hoped would work for our customer,
22 but also work for us.

23 There was a mutual self interest perspective
24 that we pursue this. The first thing was that we are a
25 large company, we're located in 14 states, but we have a

1 national credit card business. Not only that, we issue
2 credit cards for 500 other institutions. My friend
3 Richard here is an example. If you have a Chevy Chase
4 card, it says Chevy Chase on the front, but it's a
5 FirstUSA card, and I own that customer relationship.

6 We thought it would be difficult, given the
7 complexity of our company, and a very disaggregated
8 systems environment, to effectively manage whatever
9 policy we adopted. It had too many moving parts, and as
10 everybody on this panel has said today, privacy is all
11 about trust, it's about meeting customer expectations,
12 it's about acting in the customer's best interest.

13 With that, we felt it was unfair to ask
14 customers to manage their privacy on a product or
15 affiliate basis at Bank One because we are horribly
16 complicated, and we probably would get it wrong.

17 So, we did it, we took a customer centric
18 approach, and that was a huge issue for us. We have
19 never done anything in a customer centric way before.
20 At the time that we started this initiative, we didn't
21 even know how many customers we had. We didn't know
22 whether we had one customer with five relationships or
23 five different customers. And it was a huge, huge
24 effort to pull that all together.

25 We started out by building a matching engine

1 that queried every system we had in the company, and
2 brought all the different customers' relationships
3 together, which was difficult. You could be Bob Smith,
4 you could be Robert Smith, you could be Robert L. Smith,
5 you could be Robert Leonard Smith, and all be the same
6 Robert Smith. We had to bring all of those
7 relationships together to one. I am proud to announce
8 that we do know now how many customers we have.

9 After that, then, we developed one mailing. We
10 did have a policy -- well, we adopted a policy of
11 sharing, with third parties, although that was a subject
12 of a lot of debate within our company, because while
13 some of our affiliates do engage in sharing, others do
14 not. They feel very strongly about it. So, we had our
15 own internal debate, and again, we came up with the
16 thinking that no matter what we did, we had to get it
17 right. And it had to be simple.

18 And in order for it to be simple, we said that
19 we would do one mailing, even if it was a mailing that
20 may have made somebody in private banking uncomfortable,
21 but their insistence was that it had to be perfectly
22 clear. So, a customer knew exactly what their choices
23 were, they could easily implement their choices, and
24 that, again, we would get it right.

25 With that, we developed a mailing that went out

1 to each customer, each customer got only one mailing.
2 It included the privacy policy, but also a letter. A
3 letter saying why you're getting this mailing so that
4 Richard's customers, credit card customers, my credit
5 card customers, would know, why are they getting this
6 thing from Bank One, and also telling them that my
7 policies might be different than his. It's important to
8 read what I have to say. We thought that was crucial.

9 The letter was very brief, it said, in bold,
10 boom, boom, boom, this is why you're getting it, you've
11 got two choices to make, these are what those choices
12 are, this is the number you have to call. I think it
13 was, in fact, a form of a short notice.

14 We did a lot of customer research. The
15 customers that read the letter said, well, you know, I
16 don't think I really have to read this whole thing,
17 because I mean it kind of says it right here. And
18 essentially it did. But the other thing the letter
19 provided to the customers was consumer information, just
20 like Robin and Steve, I think, both did. We provided
21 people the opportunity to understand about opting out of
22 marketing, how to contact their credit bureaus. We also
23 gave a lot of information for customers on identity
24 theft, including how to get in touch with the Federal
25 Trade Commission and their programs, and their

1 resources.

2 People told us that they would keep this with
3 their important papers, because it offered information
4 that was of value to them. And I don't think that they
5 were talking about our disclosures.

6 So, we thought it was a success. We had never
7 done anything like this before. We didn't have a system
8 like Citi did. We had about two million people who
9 figured it out -- and who expressed their preferences
10 and called in. We would take opt-outs from anyplace,
11 but we did encourage people to use a toll-free number.
12 It took an enormous amount of training, it took an
13 enormous amount of systems modification. It took us
14 every moment that we had. It took us three months to
15 actually mail all of these out, and I think we consider
16 it a win-win, and I think our customers do, too.

17 MS. FRIEND: Thanks, Julie. Sounds like you
18 need a vacation.

19 MS. JOHNSON: I do.

20 MS. FRIEND: I'm going to turn this over to
21 Stephanie now to continue the discussion with our
22 panelists.

23 MS. MARTIN: Okay, for the next 15 minutes or
24 so, it's our general discussion time, and I'm just going
25 to throw out some questions, and any panelist can feel

1 free to jump right in, and we hope we'll generate a lot
2 of back and forth discussion.

3 The first question we have is: How can you
4 determine whether your privacy notices are effective?
5 What kinds of indicators should you look at to see
6 whether or not you've done a good job in making your
7 notice clear? Do you look at opt-out rates, do you look
8 at the numbers of questions or complaints that you've
9 gotten? How do you do that?

10 Anyone can jump right in.

11 MR. DURKEE: I'll jump in.

12 MS. MARTIN: Steve?

13 MR. DURKEE: I think we do not concentrate on
14 opt-outs. Again, we've got quite a diverse range, and I
15 think it reflected customers' particular association
16 with those businesses. I think what we would use is the
17 surprise factor. If after we send out our notices, if
18 customers are surprised at what they get, either that we
19 don't send them something because they opted out and
20 really shouldn't have, or because we send them something
21 and they really wanted to opt out but didn't get around
22 to it, that would be our measure.

23 So far, the feedback we're getting is almost --
24 it's very quiet. There's no negative remarks. So, we
25 think that that's a first good indicator.

1 MS. MARTIN: Yes?

2 MS. WARREN: Stephanie.

3 I think for us, our focus groups did convince us
4 that our policies and that our notices would be clearly
5 understood after going through that process. They also
6 showed us and informed us how to -- some steps that we
7 could take to make sure or to increase the chances that
8 our customers would read them.

9 But we learned from the focus groups, and our
10 experience after sending out the policies is similar to
11 what several of the panelists have said, and that is
12 that our customers are generally dealing with us because
13 they already trust us. And they said that they didn't
14 feel like they would need to read the whole thing, that
15 they could read the introductory remarks. And after
16 having read the whole thing, they said, you know, the
17 stuff we need to know is in the introductory remarks.
18 They did say that they would keep the notices in their
19 file for future reference, if they needed them.

20 Besides the focus groups, we had a dedicated
21 toll-free number that people could call that we had
22 listed in our notice, and the numbers of calls we got
23 into that number were dramatically lower than what we
24 anticipated, indicating that customers didn't have a lot
25 of questions. And even the calls that did come in to

1 that number, when we talked to our associates in our
2 call centers, they said they got very, very few privacy
3 questions.

4 So, we gathered from that that even the people
5 who were calling in to that number, weren't calling in
6 about privacy, it was just a convenient number and they
7 were using that number to call in with other questions.

8 The challenge about that was that it made it
9 very difficult for us to keep our own associates
10 trained, because we had given them a whole series of
11 questions and answers and what to anticipate from
12 customers. And because customers -- they tell us over
13 and over again -- haven't been asking about this, it's
14 been hard to keep them on their toes about what to do on
15 those rare occasions when they do get a question.

16 MS. MARTIN: Does anyone else want to jump in on
17 this one?

18 MS. SCALVINO: I will.

19 We had a similar experience in terms of
20 questions. We had done a tremendous amount of training,
21 as we were preparing to mail out the initial notice, in
22 anticipation of the fact that people would have
23 questions, and we sent the initial notice with our first
24 quarter statements. And typically, after any statement
25 distribution, there are a bunch of calls. People are

1 calling about what's happened in a particular fund,
2 they're calling to make changes to their investments,
3 and we anticipated that there might be some questions,
4 and there really weren't any.

5 You know, frankly, I wonder to what extent
6 people read them, despite the fact that it was short,
7 despite the fact that it was simple, the fact that the
8 only reaction we got were the handful of opt-outs, which
9 didn't indicate that anyone had really read the policy,
10 leads me to think that people may have filed it, but I
11 don't know how much attention people paid to it.

12 You know, I think fundamentally, they trust us,
13 and the trust is there to lose if we do something wrong,
14 but I don't know that people were paying much attention
15 to it.

16 MS. MARTIN: Well, let me ask another question.
17 Based on your experience with the initial notices, do
18 you plan to revise your notice before you deliver your
19 annual notice, and if so, how? Is anyone working on
20 revisions?

21 MS. JOHNSON: We've just completed ours, we'll
22 be ready to launch that in January. The only thing that
23 we did was put in an extra paragraph on web linking to
24 follow up and emphasize online issues. I think it's
25 important to understand that our policy is our online

1 and offline policy, there aren't two separate ones.

2 Also, we put a reminder in to customers that if
3 they have expressed a choice previously, we'll continue
4 to honor that until they tell us otherwise so that
5 people don't have to feel they have to call in again.
6 So, I would just say again, too, that any substantive
7 change to the policy would have required us to go back
8 and change probably all the things that support that
9 policy, all the list management processes, the quality
10 assurance processes for compliance, the audit processes,
11 and the systems. So, changing language is a significant
12 event.

13 MS. MARTIN: Well, let me ask a sort of a
14 related question, and that's also related to changes in
15 the revisions to policies. If today's workshop, or
16 subsequent efforts, result in the development of a
17 standardized template or other ways to make more clear
18 notices, what are the legal and operational issues that
19 your company would face in revising a privacy notice?
20 Paul?

21 MR. METREY: Well, operationally, for small
22 businesses, I think there would be some appeal to that,
23 and that's the same reason that we provided templates
24 ourselves. They are trying to find a keep it simple,
25 easy solution for how you convey the required

1 information. And, so, the use of a standardized
2 template, again, to the extent that it's something that
3 is simple, easy to use, does not require extensive
4 tweaking and would allow a small business to be able to
5 make it ready to deliver to the customer, there would be
6 some appeal to that to the extent that there were
7 further regulation.

8 MS. MARTIN: Steve, did you have something?

9 MR. DURKEE: Yeah, just to echo what Julie said.
10 We're continuing to test, we've probably tested some of
11 our businesses, but until we think we've gotten it right
12 from testing, with consumers and so on, we wouldn't want
13 to go through the huge expense. We think that there is
14 a lot of room, but we think it's going to take some time
15 to get there.

16 MR. HARVEY: Let me just also state, I do have
17 some concern about standardization. If, in fact, the
18 standardization takes away the flexibility for us to
19 develop our own policies and procedures. I mean, what
20 you've heard today is a lot of folks determined that
21 this was really going to be an opportunity, a marketing
22 opportunity, and with standardization, you're going to
23 take that away.

24 I would be concerned that we still have the
25 flexibility to sort of craft things that we would feel

1 comfortable with as a communication piece with our own
2 customers.

3 MS. JOHNSON: And I would be concerned if a
4 standardized format caused our customers to think that
5 we had somehow changed our practices, because the notice
6 looked different.

7 MS. FRIEND: While the regulators were crafting
8 the regulations, we deliberately wanted to build in
9 flexibility, because these regulations apply to so many
10 different types of financial institutions and so many
11 different sizes. But do you think that the flexibility
12 is then, therefore, inherently confusing to consumers?

13 MS. WARREN: I wouldn't say that the flexibility
14 is confusing. I do think that the disclosures tend to
15 be so extensive and so detailed, and I feel like that is
16 driven by the law and the regulations, that consumers do
17 find them more tedious than useful. And it would be
18 helpful to find some ways to convey some of the messages
19 in an abbreviated way. And if we found some ways to do
20 that, and I think it's going to take some iterations and
21 some time for us to learn from this, but I think if we
22 did find some ways to simplify some of those messages,
23 it would be a win-win for the industry and for
24 consumers, and for financial institutions on how we
25 communicate with one another about these issues.

1 MS. JOHNSON: I'm not sure that at the end of
2 the day, consumers shop for financial services based on
3 their privacy, their information practices. I mean,
4 they all can opt out and have the same ultimate
5 protections, but I'm probably going to Vanguard for a
6 whole different reason because they're a low-cost
7 provider, they keep their expenses low, and I think that
8 a lot of the talk about standardization is intended to
9 assist someone who may be shopping for financial
10 services based on their information practices, and I
11 don't know how many people do that.

12 MS. MARTIN: Let me ask another question. What
13 effect have the GLBA privacy provisions had on your
14 company? For example, has the law changed the way you
15 handle and share customer information?

16 MS. SCALVINO: As I indicated before, it hasn't
17 changed the way that we handled customer information.
18 It did force some decision making, knowing that if we
19 set out a policy and then decided three, six months down
20 the line to change it, we would have to send out notices
21 again. It really put the issue on the table, and
22 allowed management to address it.

23 But I would say one of the biggest benefits that
24 we got from it was really just raising employee
25 awareness and consciousness. It's something we've

1 always tried to beat into everybody's heads from the
2 first day of orientation as to the importance of the
3 information that they handle and that they have access
4 to, but having the force of law behind it, and having
5 the ability to reinforce it and to have training and to
6 emphasize it to them, and for them to get the privacy
7 notice themselves, I think helped considerably.

8 MS. KOPLOW: I would echo that as well. We
9 always protected privacy, but having the law behind it
10 helped my job a lot by saying, now it's not just good
11 policy in the financial industry, from the Internet
12 industry, which always had a system of putting privacy
13 policies on the Internet, but now it's the law.

14 MS. MARTIN: We have time for I think one more
15 question. Some of you had mentioned this in your
16 presentations, but by a show of hands, and I know this
17 doesn't apply to Paul, because he doesn't actually work
18 for a financial institution, but how many of you had
19 provided privacy notices to your customers before you
20 were required to do so by GLBA?

21 MR. DURKEE: We would also ask the audience if
22 they would.

23 MS. MARTIN: How about the audience? Yeah, a
24 lot of people had already done it.

25 Let me ask, then, have you found that privacy

1 notices are beneficial to your institution such as by
2 creating customer good will or allowing you to
3 distinguish yourselves from other financial
4 institutions? And some of you have kind of touched on
5 this, but if you want to expand.

6 MR. DURKEE: I would like to point out, too, I
7 think our privacy notices certainly helped our
8 relationships with vendors. Once we have something
9 published that makes the negotiations about why we want
10 to monitor their processes much cleaner. So, that's
11 been very important to have something public. I think
12 the other is there's just so much misinformation,
13 despite the fact that for three years we've said we
14 would never share medical information, we still see it
15 in the paper.

16 So, we would like to keep going out there and
17 reassuring our customers that we really have their best
18 interest at heart and our management thinks the same way
19 they do.

20 MS. MARTIN: Anyone else want to jump in?

21 (No response.)

22 MS. MARTIN: Okay, why don't we use the rest of
23 our time, then, to go through some of the Q&A's we've
24 gotten from the audience.

25 MS. FRIEND: I will start. This is for any of

1 the panelists. Examples from the panel all followed
2 sound approaches to developing notices, including
3 consumer testing, so why did notices turn out to be
4 judged as too complex? What should be different in the
5 future about any notices?

6 MS. WARREN: I'm sorry, go ahead.

7 MS. KOPLOW: The primary reason they were too
8 complex, I believe, is because the regulations require
9 that we go into a certain amount of detail in explaining
10 how we use information, and I think what we've heard
11 from the panel discussions is that consumers don't
12 necessarily want that much detail. They may want some
13 information as to who to call, but they really didn't
14 want a ten-page privacy policy.

15 Trust is a basic premise for all of our
16 industries, and businesses, and we wouldn't have those
17 clients to begin with if they didn't initially trust us.
18 So, when we had to comply with the regulations, I think
19 that put a lot of consumers off. They didn't want that
20 much information.

21 MS. FRIEND: I would just follow up, then, by
22 asking what then do the panelists think would be the
23 critical pieces of information that consumers would
24 need? Or want?

25 MR. DURKEE: Well, I think, again, we're also

1 looking at this expanding to the rest of the economy.
2 And, so, within that framework, the short notice, plus
3 some place where consumers could find this level of
4 detail. I think there are some customers who do want
5 this level of detail, but I think as Robin and others
6 have mentioned, they really focused in on the short
7 notice, and as long as we can say things very clearly,
8 and tell them where to go to get the more detail, we
9 might be in a good place.

10 MS. FRIEND: So, when you talk about short
11 notice, what elements are you talking about?

12 MR. DURKEE: Believe it or not, one of the
13 things is just who we are. And that becomes very
14 complicated in financial institutions. Julie mentioned
15 her relationship with Chevy Chase Bank. The whole thing
16 is getting complicated. I think the other is, the
17 questions for Citi might be very different than the
18 questions for a smaller institution that might not have
19 medical information, that might not have marketing. So,
20 it might be very institution-specific.

21 MS. FRIEND: So, can I call on a smaller
22 institution here to talk about what you think might be
23 important? Stacy?

24 MS. SUGGS: I think that as far as the content
25 of the notice and so forth, I think that all banks

1 should do their due diligence, and I think a lot of the
2 banks here have done that. I know we need to make it as
3 easy as possible for the customer to understand, and
4 length should be a factor.

5 For our institution, because we don't have any
6 affiliates at this time, it was not as big of a
7 challenge probably as some of the other bigger
8 institutions faced. I think that the model language
9 that was set out in the regulation was not that
10 complicated. I mean, what information we collect,
11 what information we share. I think that it's taking
12 your institution and boiling down its practices and
13 putting it into an effective notice, and that's not
14 an easy thing, and that's what we've all talked about
15 today, that it was very challenging for all of us to
16 do that.

17 But I think that there's different issues that
18 each institution faced based on their structure, and
19 because of Gramm-Leach-Bliley, that structure is going
20 to be more complex in the years to come. But I don't,
21 as far as the overall content, it's going to be tough to
22 try and condense that, I believe. I think we should all
23 try to do that as much as possible, but we also have to
24 remember that we need to include all of the information
25 that's legally necessary.

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1 Because we have a website now, that information
2 needs to be a part of our privacy notice, and there's
3 other issues that are involved. So, it's not an easy
4 thing, but I think that a template and making it nice
5 and simple and easy is a good idea. I don't know how we
6 would accomplish that, but I think that we do need to
7 consider the length in our notices, and make it as easy
8 as possible for the customer to read and understand.

9 MS. SCALVINO: I think there's also an inherent
10 tension between what you're trying to accomplish. I
11 mean, are you trying to tell the client what we do with
12 their information, which was really the mandate under
13 Gramm-Leach-Bliley, or are you focusing on what clients
14 are most concerned about? I don't think that many
15 consumers or customers are going to be concerned because
16 you share information in order to get a transaction
17 processed.

18 That's something that would be understandable
19 and unobjectionable, but, things like do you sell my
20 information, and therefore are you gaining revenue from
21 my personal data, and how do you use it to market to me,
22 provide it to others to market to me? I would think
23 that those are the key pieces of information, but
24 they're only part of what we were required to disclose
25 under Gramm-Leach-Bliley.

1 I think, frankly, that another problem was just
2 volume. Given the compliance date, everyone got hit
3 with a multitude, potentially, of notices in a very
4 short period of time. And I just think people lost
5 interest.

6 MR. HARVEY: I agree. As a matter of fact, when
7 we came in this morning, we all received the Harris
8 Interactive Study, and as part of that study, what they
9 found here, and I'm just reading, it says, "Far and away
10 the two most important pieces of information that
11 consumers said that they would like to see in our
12 notices are how consumers can remove their information
13 from a company's database, and how information is shared
14 or sold to outside companies."

15 So, if we're talking about what consumers really
16 want, those are the things that they appear to be very
17 concerned with. A lot of the other language that we're
18 required to throw in isn't as important to them.

19 MS. MARTIN: There's another question. People
20 say that consumers do not use the Internet as much as
21 they would like to, because of privacy concerns. Do you
22 think it's because of privacy or because of security
23 concerns?

24 MR. HARVEY: I actually think it's --

25 MS. WARREN: I think it's both.

1 MR. HARVEY: I do, too. But I don't think that
2 they differentiate between privacy and security as we
3 might, because we deal with this all the time. They
4 probably see them as really linked together. When I
5 think about interacting over the Internet and what kind
6 of information I'm willing to transmit, I'm really
7 thinking about it from the standpoint of security,
8 whether or not my information is going to be secure.
9 Whether or not it's going to end up in the hands of
10 someone that's unauthorized by me to receive it.

11 But I'm not sure that consumers make those kind
12 of distinctions. I mean, one of the reasons, for
13 example, that in our privacy policy, we said to our
14 customers that if you don't want any kind of
15 solicitations at all from us, just let us know, and we
16 won't give you solicitations from us. We won't share
17 your information with our joint marketing partners to
18 solicit, because we really believe that they may not
19 understand the subtle differences in all of these
20 exceptions, and the like, that we're relying upon.

21 So, just so we can make it clean to them, we
22 said, just tell us what your preference is. If you
23 don't want to be solicited at all, let us know and we
24 won't do it.

25 MS. KOPLOW: If I might, I also think that when

1 you're doing business on the Internet, privacy and
2 security are interrelated. And you really cannot
3 separate them completely. Because if I deem my customer
4 information to be very important, in making sure that
5 that information is kept private, part of that process,
6 in fact, we have a whole team developed for this, is to
7 make sure that our systems are in place to protect that
8 information so that it doesn't get into the wrong hands,
9 so that only a limited number of people can use it. So
10 we are making sure that there cannot be any security
11 breaches, and therefore, the privacy of the customers
12 won't be breached. So, I think they are interrelated.

13 MS. JOHNSON: I think that we might have some
14 confusion coming in the next weeks and months if the
15 article from yesterday's papers on customer confusion
16 around privacy and the P3P standard is any indication of
17 this, the privacy on the Internet may be an emerging
18 issue of concern if there are two different policies
19 that are presented to consumers.

20 MS. FRIEND: I don't know if everybody here
21 knows what P3P is. Does somebody here want to just
22 briefly describe it, in two sentences? It's a test.

23 MS. JOHNSON: Well, it's a utility that's a part
24 of Internet Explorer 6, and maybe it will be in some
25 other applications later, but it basically gives

1 consumers the opportunity to manage an aspect of their
2 privacy, which it would be the placement of cookies, and
3 it requires you to articulate some of your practices in
4 a particular language that may not translate to
5 Gramm-Leach-Bliley in any kind of useful way.

6 MS. FRIEND: I have another question from the
7 audience, and some of you have already addressed this.
8 What have your response rates been for your privacy
9 notices in terms of opt-out? If you've offered multiple
10 forms of opt-out, please discuss whether there's one
11 form that has proven to be more popular. And I think,
12 Steve, maybe you want to reiterate what some of your
13 experience has been over time.

14 MR. DURKEE: We've, again, had this program in
15 place for many years. Most customers who have a choice
16 among different things to opt out of, would opt out
17 mostly from telemarketing, and that's generally when we
18 happen to call them at an inappropriate time, and they
19 say, please remove me from your telemarketing list.

20 So, over time, you start building up to a
21 certain level. In terms of Gramm-Leach-Bliley, I think,
22 actually, our customers read the notice, saw it, saw
23 that they had choices, but again, probably opted out at
24 the two percent level that has been mentioned by the
25 industry.

1 MS. FRIEND: What about Chevy Chase's response
2 in terms of opt-out of solicitations?

3 MR. HARVEY: Actually, it's been very low. I
4 think that our communication to our customers is pretty
5 effective. What we hear from customers is that -- we've
6 actually got some positive feedback as opposed to
7 negative feedback -- saying that they were appreciative
8 of the kind of information that we included, not just
9 that privacy pledge, but the additional information we
10 included.

11 You asked the question earlier about
12 effectiveness of these notices. In terms of trying to
13 determine effectiveness, we don't provide opt-out, so
14 it's kind of difficult. But one of the things that I
15 was able to do is, sit around with a number of
16 regulators, maybe a couple of weeks ago, and just posed
17 the question to them. I think we had representatives
18 from all of the regulatory agencies, the financial
19 agencies, and I posed the question to them, what are you
20 hearing, across the board, from customers, in terms of
21 whether or not they have any concerns with notices.

22 And to a person, they really didn't have any
23 concerns that they could relate to us concerning the
24 readability of the notices. You know, I think the FDIC
25 has examined some 500 or 700 institutions, looked at

1 their privacy notices, and may have had one institution
2 that they had some concern with, and asked them to
3 revise that notice. So, I think that speaks to the
4 effectiveness of the notices.

5 MS. FRIEND: Does anybody else want to talk
6 about the opt-out rate?

7 MS. SUGGS: We also offered the opt-out this
8 year, and of course we have not offered a privacy notice
9 in the past. So, we were also a little concerned as to
10 how our customers would react to us sharing information
11 by disclosing that. And overall, our response, our
12 opt-out rate was right at two percent. So, we really
13 did not have as many as we had anticipated.

14 I do think that part of it has to do with how
15 you measure effectiveness. I don't think you can just
16 look at the opt-out rate alone. We did a lot of
17 planning on the front end in structuring our privacy
18 notice, and I don't think that you can just look at the
19 opt-out rate.

20 Overall, we had no negative feedback, as far as
21 our privacy notice was concerned. We had very little
22 questions and comments, as many have already spoken
23 about, from their customers. We had really anticipated
24 a big response to this, and we virtually did not have
25 much response to it.

1 So, I think that part of it may be that
2 customers just did not read the notice, they were not
3 interested. That could do with the job we've done on
4 structuring our notice, the length of it, or it could
5 just have to do with they just don't care, and they just
6 trashed it. But I don't think that you can only look at
7 the opt-out rate, I think that you have to look at other
8 things as far as your feedback from customers.

9 MS. MARTIN: Okay, I think we have time for one
10 more Q&A, and let me ask this one. This is addressed to
11 the financial institutions that operate nationwide. How
12 do you incorporate information in your policy about more
13 protective state laws? And the example given here is
14 Vermont State Fair Credit Reporting Act, which requires
15 affirmative consent prior to sharing information with
16 affiliates, but there are other state laws. Have you
17 addressed all of those in your privacy policy?

18 MS. WARREN: I will say that it's been important
19 to us to have one policy that applies to all of our
20 customers. We have customers that live in some states
21 part of the year and other states part of the year, and
22 they move around. So, having one policy that says when
23 you're living in Vermont, this is what applies to you,
24 but when you move to Florida for the winter, this is
25 what applies to you, doesn't work very well.

1 Because of our policy relative to third parties,
2 and sharing information with third parties, we don't
3 have to deal with the opt-in. On affiliate sharing,
4 while we have not said anything specifically special for
5 Vermont, we are taking steps to make sure that for
6 Vermont customers' information, we're assuming, for
7 example, that they've just all opted out, by virtue of
8 what their legislature has done about affiliate sharing,
9 and we are treating them that way.

10 MS. JOHNSON: And that's what we would do, too,
11 we would go in and from a systems perspective, just
12 suppress all of Vermont customers from information
13 sharing. To the extent, though, that they may feel that
14 the receipt of a Gramm-Leach-Bliley notice that is
15 supplemented by additional Vermont language, may not
16 meet then their standard for clear and conspicuous
17 notice, we have to start over with an entirely new
18 notice. We're going to have to weigh the costs of that,
19 the systems issues associated with it, and figure out
20 where to go from there.

21 MR. HARVEY: You know, with respect to Vermont,
22 and affiliate sharing, we have the FCRA, and, unlike
23 GLB, I'm not sure that we looked to state law as opposed
24 to federal law. I would sort of defer that to some of
25 the privacy experts, folks like Rick Fischer here, I

1 would call on Rick and say, Rick, do we have to comply
2 with Vermont's law as it relates to sharing with
3 affiliates?

4 I mean, Gramm-Leach-Bliley made it clear that
5 state law, to the extent that it was more onerous than
6 the federal law, we had to comply with that, but I'm not
7 sure that that's what applies to affiliate sharing.

8 MS. FRIEND: Well, that is an issue for another
9 day. I'll leave that alone. And on behalf of myself
10 and Stephanie Martin, I want to thank our panelists for
11 their thoughtful remarks.

12 (Applause.)

13 (Whereupon, there was a recess in the
14 proceedings.)

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1 PANEL 2

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MS. LEVIN: Good morning. My name is Toby Levin, I'm a senior attorney with the Federal Trade Commission, and I will be co-moderating the second panel with Professor Mary Culnan of Bentley College in Waltham, Massachusetts.

The first panel described a number of very helpful strategies to help provide effective notice. This panel will focus on the recipients of those notices, consumers. So, I want you to take off your GLB professional hats to reveal what lies beneath, a consumer, who interacts with financial institutions daily, through credit cards, ATM cards, check cashing, financial trades, online and offline.

Yet despite all of these interactions, what do consumers really know about how financial institutions use their personal information? And what do those notices mean to the consumers that received them this past summer?

Mary will kick off our panel with a brief overview about notices from a consumer perspective, and then tell us about some very interesting research that she has conducted along with Professor George Milne of UMass Amherst.

1 Following Mary, David Krane of Harris
2 Interactive will present survey research about notices
3 which was sponsored by the Privacy Leadership
4 Initiative. Materials about those surveys are either in
5 your folder or on the table in the back if you haven't
6 picked it up.

7 After we have set the stage with this empirical
8 data, we will launch our discussion with the rest of our
9 panel about the consumer perspective.

10 Mary, would you begin?

11 MS. CULNAN: Thanks, Toby, and I want to thank
12 the interagency team for inviting me to participate in
13 the workshop. It's always a pleasure to be part of
14 these events.

15 What I want to do, as Toby said, is two things
16 fairly quickly. One is to provide some context for our
17 discussion and talk about why privacy notices are like
18 other types of consumer notices, and in general why
19 they're important to consumers. And then, provide an
20 overview of the results of a new survey on consumer
21 attitudes toward online privacy notices. I think when
22 you hear the message from that survey and also from the
23 PLI survey, there's a lot of convergence. So, there are
24 things that everyone can take home, even if you're not a
25 financial institution.

1 So, why are privacy notices important? They
2 really drive the market. They promote choice by
3 informed consumers. If the notices are good, consumers
4 can choose among competing alternatives, based on which
5 satisfies their preferences. They're also a way for
6 consumers to manage risk. In the privacy side, there
7 are sometimes risks associated with disclosing personal
8 information. So, if the privacy notice is very good and
9 it minimizes the risk of disclosure, because people feel
10 they have control, then they're more likely to disclose
11 their information.

12 So, I'm hoping that you will think about these
13 privacy notices as food labels.

14 Consumer transactions typically consist today of
15 two transactions. The first exchange is where people
16 exchange money for something that provides them some
17 value, and in this case, we'll talk about food. The
18 food label helps consumers decide what to buy, because
19 they can look at the food label and see if it has the
20 right ingredients, if they are concerned about their
21 sodium or their fat or whatever, or even if it's late in
22 the afternoon and I've gone to the vending machine, is
23 there any nutritionally redeeming value in the bag of
24 M&M's I just got.

25 On the second exchange, that's the personal

1 information that flows with most consumer transactions
2 today, particularly online. It's the same idea. People
3 exchange their personal information for some kind of
4 benefit, or value, which the firm has communicated to
5 them. So, privacy notices serve the same function; they
6 help people decide if they should disclose their
7 personal information, or, in some cases, if they should
8 even do business with a firm at all. They may love the
9 product offering, but they aren't so happy about the
10 information practices.

11 So, think about your own experiences with food
12 labels as we go through the survey data and talk about
13 this. I think one of the issues that has come up for
14 the GLB notices, and for privacy notices in general
15 versus food labels is, food labels are pretty
16 straightforward -- they're numbers. So, the same
17 information can be used by consumers to make decisions
18 as regulators because they can take the product off to
19 the lab, they can test it and see if, in fact, the
20 numbers come out to be what the firm has disclosed in
21 its notice.

22 For many privacy notices, I think people feel
23 they've been designed for compliance, they've been
24 written by lawyers, and they don't effectively inform
25 consumers. So, one of the challenges, I think, is to

1 develop a form of a notice that informs consumers better
2 and communicates better with consumers what's going on.

3 Now I want to talk about the survey that my
4 colleague, George Milne, and I have just completed.
5 This is part of a larger research project that we are
6 doing on readability and usability of online privacy
7 notices. It began last spring, but with the workshop
8 coming up, as an opportunity, we added some extra
9 questions hopefully to help the people in the audience.

10 We asked about three things. We asked how often
11 do people read online and offline notices and then we
12 started thinking about online notices. We asked why do
13 people read these notices or not, and asked them what
14 they thought of these notices. The study was conducted
15 by Harris Interactive. We got a sample of the U.S.
16 online adult population -- we had almost 2,500 people
17 complete our survey.

18 For those who are wondering who paid for the
19 survey, we got a grant from the Metro Mail Cyprus Fund.
20 It was a competitive grant process and we sent in a
21 proposal for the privacy survey.

22 So, how often do people read privacy notices?
23 Again, we didn't ask how long they read the notices,
24 just do you read them or not. That was our main
25 interest. So I guess from this data, you can assume in

1 the online world, people had clicked on the link to the
2 notice. For online notices, from rarely to always, 83
3 percent of the people in our survey said they do read
4 privacy notices, and 17 percent said they never read
5 privacy notices.

6 For offline notices, a slightly higher
7 percentage said they do read privacy notices, 88 percent
8 versus 12 percent who said they never read notices.

9 Why do people say they read privacy notices?
10 The top answers were, they were using their credit card
11 at the site, and they wanted to know simply can I trust
12 you with this sensitive information. Then the rest of
13 these responses are driven largely by the site
14 requesting personal information. They want to know
15 particularly if it's going to be shared, and how it's
16 going to be used. If they don't have experience with
17 the website, they're more likely to look at the privacy
18 notice.

19 To me what was really interesting is the low
20 number for cookies. We did not ask people if they knew
21 what cookies were -- if they understood them. But a
22 very small number of people relative to the other
23 answers said they go to look at the privacy policy to
24 see what the site is going to do with cookies.

25 Other reasons from the open-ended responses --

1 where people typed in whatever they wanted -- why they
2 read a privacy notice. Again, it was usually triggered
3 by the website asking for something that the consumer is
4 not sure they need: "I've had bad experiences" or
5 "other people have told me about bad experiences they
6 had." If the consumer is not sure of the site's
7 reputation, this turns out to be very important.

8 A few people said they were looking for hidden
9 charges. I have no idea what that means, but several
10 people said that. And there was one person that said,
11 "they make me read it."

12 (Laughter.)

13 MS. CULNAN: Then in the same questions, (and
14 again, we only asked this of people who said they did
15 read privacy notices) we asked the consumer to describe
16 some circumstances where they might not read the privacy
17 notice. And those websites have got a real strong brand
18 -- reputation dimension. If people had a lot of
19 experience, there was no need to read the privacy
20 notice, because they pretty much knew what the site was
21 doing. Interestingly, more than a third said if the
22 site had a privacy seal, they did not need to read the
23 privacy policy. So, we felt that was good news for the
24 people trying to get some tracks with privacy seals.

25 As for the open-ended responses, (again, these

1 are not how often people said it) -- we just got the
2 categories; there are some examples of actual comments
3 at the end of the hand-out you may find interesting) we
4 heard that the notices themselves were not useful, too
5 long, too boring, too legalistic, the branding issue
6 that they don't need to read notices because they only
7 visit sites they trust, and then there were a lot of
8 consumer characteristics.

9 A lot of people said they were just too busy, it
10 interfered with their surfing, they were lazy, it just
11 wasn't a big deal for them.

12 Then we asked about the notices themselves.
13 These are people who agree or strongly agree, that the
14 notices are too long, they're too confusing, they use
15 too much legal language, they did trust people to follow
16 their policies. Interestingly, less than half of the
17 people agree that they thought notices were truthful and
18 that they were accurate. Whether this is because
19 they're confusing or legalistic and then if they're so
20 legalistic you must be hiding something, I don't know.
21 I thought that was an interesting find and a motivation
22 to make things clearer.

23 The final point I want to make is that people do
24 read privacy notices. We cross tabulated the online and
25 the offline folks who said that they did or didn't read.

1 Almost 80 percent say they read both kinds of notices at
2 least occasionally. Only eight percent said they never
3 read either type. So, clearly there's a good reason to
4 have these notices, but they definitely need
5 improvement. They need to be shorter and simpler,
6 easier to understand.

7 We looked for differences between people who
8 read and don't read, because we thought that would be
9 interesting. Some obvious choices based on some of the
10 other work that's been done on readability, we think
11 education would have a factor on this. Some of them
12 were written at too high a level.

13 Education did not distinguish readers from
14 nonreaders, and concern for privacy did not distinguish
15 readers from nonreaders. So the people that were very
16 active that did a lot of shopping on the web also did
17 not distinguish readers from nonreaders.

18 So, I think one message here is that all
19 consumers will benefit from improved notices. Finally,
20 I think good notices are good for business. They really
21 can help promote disclosure. If you looked at all of
22 our data and put it together, people do use it as a tool
23 to manage risk. They use it when they're unfamiliar
24 with a site and when they are not sure what the site is
25 going to do. It's a way of creating trust.

1 So, particularly for new sites or small sites or
2 sites without a strong brand that are trying to build
3 their brand and build trust, better privacy notices may
4 promote growth of e-commerce at their websites.

5 MS. LEVIN: Thank you, Mary.

6 David?

7 MR. KRANE: Thank you very much, Toby. Thank
8 you, Mary, and thank you very much for asking me to
9 present the findings from this new survey. Most
10 importantly, thank you to the Privacy Leadership
11 Initiative for helping to make this possible.

12 This survey was conducted very recently. Only
13 in the last couple of weeks. So, we haven't necessarily
14 had a lot of time to digest it fully. Here are the
15 highlights from the survey. It's important to mention
16 that this is third in a series of surveys that we've
17 conducted for the PLI regarding consumers' attitudes and
18 behaviors, towards privacy, both online and offline.
19 This latest research expands on some of the previous
20 research that we had done specifically about privacy
21 notices.

22 Briefly, the methodology involved interviewing
23 2,053 adults 18 and over. The interviews were done
24 online, and as I said, they were done a couple of weeks
25 ago in mid-November.

1 The purpose of the research was to understand
2 the consumers' attitudes toward privacy notices.
3 Specifically, focusing in on what the public thinks are
4 the important components of privacy notices, the
5 preferred format, time spent, any barriers to reading
6 notices, and actions taken after reading notices.

7 First of all, by way of background or setting
8 the framework, the public thinks privacy notices are
9 important. For example, we find that 56 percent say
10 that privacy notices are very important, and another 30
11 percent say they are somewhat important. Just under 50
12 percent, 47 percent, say that the presence of privacy
13 notices alone seems to increase their willingness to
14 provide information.

15 When it comes to the components of the privacy
16 notices, the most important elements from the public's
17 standpoint are whether the information is shared or sold
18 to outside companies, how the consumers can remove their
19 information from a company's database. Two-thirds of
20 the public think both of these items are very important.

21 However, despite realizing the importance of
22 notices, the notices themselves miss the mark. About
23 two-thirds of consumers are spending little, if any,
24 time reading the notices, whether online or offline.
25 Our question is slightly different than what Mary asked

1 on her survey. Our question wasn't in terms of how
2 many minutes people were spending, but we tried to
3 characterize it in a scale of how much time were they
4 spending and reading the policies.

5 The consumers do not find the notices
6 accessible. The main reasons they gave us why they
7 don't read them, are lack of time and interest, and
8 difficult to understand and read. There are obviously a
9 lot of other reasons that people gave. You can look at
10 the answers that are in the packet of material that I
11 believe you all have.

12 This question, by the way, was asked not only
13 about online notices, but also the notices that people
14 have received from financial institutions, and these are
15 open-ended responses.

16 Given the importance that the public places on
17 notices, coupled with admittedly not spending much time
18 reading them, it is not surprising that we find a large
19 majority -- 77 percent -- prefer a short notice, and 70
20 percent of the public feel that companies should use the
21 same summary or checklist.

22 Related to this last point, almost a third of
23 consumers feel it is important to be able to compare
24 privacy policies from one company to another. That
25 number may not be higher yet, because as with surveys,

1 you're often asking about a question that the public may
2 not necessarily have thought about yet. This may be
3 something that is going to be important in the future,
4 but at the moment, about a third of the people feel that
5 it is important or extremely important that they be able
6 to compare.

7 As I indicated earlier, the survey looked at two
8 kinds of notices -- those that are online, and those
9 that are sent offline by financial institutions. For
10 the most part, consumers respond similarly to online and
11 offline notices. However, consumers are more likely to
12 take action after reading online notices than offline.

13 As stated before, consumers spend about equal
14 amount of time reading the notices, regardless of
15 whether the notice is offline. However, if you look at
16 this data, slightly more people say they need the
17 notices from financial institutions more. Perhaps this
18 is due to their recent prominence, as described by the
19 last panel, and undoubtedly the sensitive nature of
20 financial information.

21 As for the reasons for not reading the notices,
22 again, lack of time and interest is a greater barrier
23 for reading online notices as opposed to the offline.

24 Finally, the survey not only asks about their
25 attitudes, but also about behaviors, and what actions

1 people took as a result of reading the privacy notices.
2 Just to focus on a couple of them, privacy notices are
3 most likely to prompt consumers to ask companies not to
4 share or sell their personal information. The second
5 one that I picked out was to ask to remove their name
6 from marketing lists.

7 But, there were a number of other actions that
8 have also been taken. In total, 65 percent took some
9 action as a result of the online notices and 47 percent
10 took some action as a result of the offline notices.

11 In summary, the research we've done with the PLI
12 not only confirms the importance of notices, but also
13 the need to keep them simple, to facilitate comparing
14 the notice from one institution to another.

15 Thank you very much.

16 MS. LEVIN: Thank you, David.

17 I think these surveys will be very useful in
18 helping us better understand what consumers think about
19 notices, and information practices. Now I would like
20 to open up our discussion by asking each of our other
21 panelists to introduce yourself and then identify what
22 you see as the number one challenge facing consumers
23 that receive financial privacy notices. Let's start
24 with Frank.

25 MR. TORRES: My name is Frank Torres. I'm

1 legislative counsel with Consumers Union, and we are
2 very active in the debate on the Gramm-Leach-Bliley Act
3 -- in particular the privacy provisions. I promised
4 Toby that I would try to be as constructive as I can in
5 helping the industry and others understand where
6 consumers are and how to improve on the privacy notices.
7 When I was asked to participate, this sounded like a
8 good idea, as the fight over Gramm-Leach-Bliley has kind
9 of worn off over time. But after having some time to
10 mull things over, before I can be constructive, I need
11 to be a little bit critical, so that the position of
12 Consumers Union is not misconstrued.

13 In trying to be helpful on the privacy notices,
14 we still have some misgivings about the overall impact
15 of the law itself, the underlying law that requires the
16 notices. I think what we're being asked to do here
17 today is to help the financial services industry improve
18 a product that will always fall short. The notices
19 themselves are not privacy protections. As we can see,
20 even insofar as they are supposed to notify consumers
21 about how information was being shared and being used
22 and provide some sort of choice for consumers, the
23 notices have, for the most part, failed on those counts,
24 too.

25 Now, I'm assuming that this event is being held

1 because most reasonable people who had gotten their
2 privacy notices see that there's a problem. I think
3 that's pretty evident from the survey work as well.
4 Some, including members of Congress, were pretty much
5 outraged about how the notices turned out, including
6 some supporters of the legislation and the privacy
7 provisions the way they were written.

8 We think financial institutions actually got
9 away with a lot in getting these notices out. I mean,
10 they've given a completely new meaning to junk mail.
11 People aren't paying attention to a lot of these
12 notices, and it's not because consumers don't care about
13 their privacy. If you look at surveys about privacy and
14 the online setting and other settings, your medical
15 information and financial information are considered to
16 be very sensitive. Consumers are still very much
17 concerned about information in general.

18 Here's my take on why there might be such a low
19 response rate to the privacy notices, and why a lot more
20 people didn't opt out. Some people didn't find their
21 notices, so they probably got tossed. If they found the
22 notices and tried to read them, they couldn't understand
23 what they said. If they understood what they said, and
24 if you really understood what they said, you probably
25 realized that the opt-out didn't really mean anything.

1 I especially liked the line that said, "we will abide by
2 your wishes not to share your information, and if you
3 decide to opt out, we won't share your information,
4 unless we're allowed to under the law." Well, the law
5 still allows information sharing to affiliated
6 companies, and information sharing to third parties
7 where there's a joint marketing or other agreement with
8 them. To me, that could cover basically anybody that
9 the financial institution would ever possibly want to
10 share your information with.

11 Even Chairman Muris has said that there's a
12 problem here. His quote was, "Acres of trees died to
13 produce a blizzard of very incomprehensible privacy
14 notices," and this is a far cry from what was intended
15 when the Gramm-Leach-Bliley Act was passed. When asked
16 about the privacy provisions, people in the industry and
17 up on the Hill referred to them as historic privacy
18 protections. Well, that's simply not the case.

19 So, having been extremely critical, let me just
20 say a few things very briefly about maybe some
21 constructive approaches besides passing a new law (like
22 the California proposed law that was recently looked at,
23 not signed into law, but made it through the
24 legislature) on how to improve the notices. There needs
25 to be a more standardized format.

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1 I don't care how much legalese your attorneys
2 say that you need to put on the back end. There can be
3 an easy to read short form, up front, that basically
4 says, we share your information, here's who we share it
5 with, and if you want to opt out, here are the ways to
6 do that. The first point is a more standardized format.

7 The second thing is the ease of exercising an
8 opt-out. A toll-free number would be helpful, and many
9 institutions have been using a toll-free number. A
10 one-stop-shop, maybe, where somebody could just call in
11 and say I want to opt out of everything and have that
12 carried out. And a way to compare policies. Comparison
13 shopping would be very important and might help to drive
14 the marketplace in this area.

15 Nothing really prevented financial institutions
16 from taking these steps before. There was nothing in
17 the law that would have prevented an easier way to do
18 this. I often say to groups that I speak to: What a
19 different world this would be if this was an opt-in
20 approach. First of all, if consumers didn't really care
21 about their privacy, you presume that they would all
22 opt-in. But suppose there was an opt-in approach. How
23 drastically different these notices would be and how
24 easy to read would they be.

25 So, having probably used up more time than I

1 deserved . . .

2 MS. LEVIN: Originally I thought we might
3 separate out the challenges from solutions, but Frank is
4 doing a good job of putting them together, so let's just
5 proceed that way, I think that will give us more time
6 for questions from the audience as well. So, Chris, if
7 you would do the same, challenges and solutions
8 together, that would be great.

9 MR. HOOFNAGLE: Thank you, Toby.

10 My name is Chris Hoofnagle, I am Legislative
11 Counsel with the Electronic Privacy Information Center.
12 The greatest challenge that consumers face is operating
13 in a market where they have no legal protection.
14 Gramm-Leach-Bliley is not a privacy law, and that's
15 going to be my thesis today. I'll say it again:
16 Gramm-Leach-Bliley is not a privacy law. It is an
17 attempt of industry and other people to redefine privacy
18 as simply being notice and choice. It fails on both
19 accounts.

20 Gramm-Leach-Bliley is also being held out as an
21 example of why online privacy law should not be adopted
22 in the United States. I would say that is, at a
23 minimum, inaccurate, and could, in fact, be an
24 intellectually dishonest position to hold.

25 If you want to look at a better privacy law, you

1 want to think about fair information practices. Look at
2 a statute such as the Fair Credit Reporting Act. We're
3 talking about a statute that has notice, choice, access,
4 and accountability measures. As far as solutions go,
5 the key is to follow fair information practices, similar
6 to Fair Credit Reporting Act.

7 Notice needs to be a lot more comprehensive. We
8 can't just say we're going to share your information
9 with responsible parties, or with our circle of family,
10 whatever that means. There really needs to be a notice
11 that says, what is being collected, to whom specifically
12 it's going to be disclosed, and under what
13 circumstances.

14 We have sample language along these lines in our
15 Gramm-Leach-Bliley petition that is in your materials on
16 the CD. What I would also say about notice is that Ed
17 Markey (who, in fact, wrote the language of
18 Gramm-Leach-Bliley, the privacy component) remarked in a
19 recent hearing that a group of six-year-olds could write
20 better a privacy policy than the \$400 per hour attorneys
21 who were hired to do so. I would argue that as you
22 follow more fair information practices, as you follow
23 issues such as minimization, your privacy policies will
24 become easier and easier to write. This is so because
25 you will have less information sharing going on, and you

1 will have less reason to communicate.

2 Another effective solution would be to change
3 the whole outlook of your company to an opt-in; allowing
4 consent and writing clear policies so that people can
5 say yes. Since you've demonstrated some benefit of
6 information sharing, I will opt in.

7 It might help to note that the consumers don't
8 really see the benefits, if there are any, of
9 information sharing. I just went to my ATM a minute
10 ago. It's a major bank, and every day it asks me
11 whether or not I want the English or Spanish interface.
12 You would think the information sharing in the market
13 would figure out that I would want English. But most of
14 this is not transparent to the user. As a result,
15 consumers are upset.

16 Banks should also be following policies of
17 access. The report done by David Krane shows that
18 individuals really are interested in use limitations and
19 access, but neither are provided for in
20 Gramm-Leach-Bliley. When I think about putting in
21 limitations, the idea is that you should only use
22 information you collect for completing the transactions,
23 rather than for marketing.

24 It's also important to have real accountability.
25 Right now, we're operating in a market where if an

1 individual's information is shared, they really have no
2 idea how it was shared. They don't have a right to
3 access, and they really don't have a right to take the
4 institution to court.

5 And with that, I'll turn it back to you.

6 MS. LEVIN: Fran?

7 MS. SMITH: Thank you.

8 I'm Fran Smith, Executive Director of Consumer
9 Alert, and I'm going to kind of back off a little from
10 what I consider to be some of the legalese discussion.
11 I will go into a somewhat broader context and refer back
12 to some of the previous speakers in the previous panel,
13 and to some of the surveys.

14 I think one basic thing that people allude to is
15 consumers don't understand what privacy is. I say that
16 because we don't define privacy for them.

17 I got something from the FTC recently that put
18 identity theft into the privacy box. I sent a little
19 note back saying, identity theft is a crime, it's not
20 privacy. If somebody steals my car and commits all
21 sorts of illegal actions with my car, then that is
22 identity theft, but it has nothing to do with privacy.

23 So, I think we're responsible for this great
24 confusion in peoples' minds. Identity theft is not
25 privacy, identity theft is a crime. It's theft. You go

1 after those people with as much fervor as you can.

2 Another aspect of privacy is security. We had a
3 bit of that this morning. Security is what a lot of
4 people think privacy is. They want to be sure when they
5 go to a website and give their information to a
6 financial institution, it's not going to be disseminated
7 to the world. They want to know that there are
8 firewalls. Security is a critical value to consumers.

9 Privacy, in the sense that a lot of people are
10 using it today, is a value. It's a value, as we've seen
11 from surveys, and as we've heard from some of the
12 previous speakers, that means different things to
13 different people. Some people think it's anonymity,
14 some people think that it means my information is not
15 shared with other people. To some people, they think
16 it's just this concept that really doesn't relate to me
17 at all. When I go to a financial institution that I
18 trust, the trust relationship is most important. If I
19 go to a financial institution, or deal with an
20 institution with which I don't have that trust
21 relationship, then how am I going to trust them to keep
22 my money secure, or fulfill terms of our contracts?

23 So, I think that's essential. It's something we
24 all have to relate to and understand. You can't
25 separate privacy and put it in a box by itself, in terms

1 of financial institutions, or anything. Privacy is part
2 of the whole relationship. And I'll take issue with
3 what Mary said earlier. A privacy disclosure is not
4 similar to a food label.

5 A food label describes what you're purchasing.
6 You're purchasing food and you have the ingredients
7 list. When you go to a financial institution, you are
8 not purchasing privacy. That's part of it; that's one
9 of the ingredients that you are purchasing. You're
10 purchasing a product or a service that relates to your
11 finances.

12 Again, sometimes terminology is overused. But
13 in this case all of us are throwing around the term
14 privacy, when all of us may have a completely different
15 meaning. I'll get back to the surveys, too. Consumers
16 value privacy, enormously. Surveys show 80 percent of
17 consumers state they value privacy. We don't ask them
18 what they mean by that, sometimes. Also, that 80
19 percent says they value privacy. How come? According
20 to David's comments, how come they say they don't have
21 time to read privacy disclosures, if they value it so
22 much?

23 So, I say there's a tremendous disconnect. What
24 people say is not necessarily what they do. Again, I
25 think that part of the confusion is about what privacy

1 is. A colleague of mine once used the example of an
2 executive answering the questionnaire, I want to spend
3 more quality time with my child, and he would then
4 continue working until 9:00 every night. There's a
5 disconnect between what people say and what they do. I
6 think we have to recognize that as we look at these
7 surveys.

8 These are just some of the issues, but I strayed
9 from my challenges. I will just mention quickly what I
10 thought the two major challenges for consumer
11 disclosures were. One, the challenge of meeting diverse
12 privacy values. And I think I did touch on that. And I
13 think the second one is the challenge of viewing privacy
14 as part of a relationship with a company. And I think
15 the privacy disclosures that we've heard about this
16 morning, where companies and institutions are using them
17 as marketing tools to develop, to increase that trust
18 relationship, takes privacy where it really belongs.

19 Thank you.

20 MS. LEVIN: Thank you, Fran.

21 Ari?

22 MR. SCHWARTZ: I'm Ari Schwartz, Associate
23 Director for the Center for Democracy and Technology.

24 We've developed a study back in August on the
25 financial service privacy online. We really focused

1 that study on online notice and highlighting best
2 practices. In particular, we really focused on the
3 location and type of consumer choice mechanisms.

4 I don't have time to go into too much detail
5 about that study. However, it's on the CD-ROM and in
6 the packet. I am happy to speak to anyone individually
7 who has questions about it, since we did identify
8 individual financial institutions in the study.

9 But simply put, we found that there are some
10 financial institutions out there who had very good
11 online notice. In fact, they had many resources for
12 individuals who bank online and offline, or just online,
13 to express their choices and their privacy concerns
14 directly online.

15 The idea was to get at the point that
16 individuals who bank online should be able to express
17 those choices online as well. I think Ms. Suggs from
18 the last panel put this very well by saying that people
19 who give notice online and offline need to have the same
20 experience in some ways, with notice that works and with
21 choices as well.

22 One point I found very interesting in this study
23 is that I got a lot of calls from compliance officers
24 who called me to thank me. They told me that they had
25 been trying to push the people internally to move

1 forward the practices and try to move toward some of the
2 best practices that their competitors were doing, but
3 they weren't able to get the attention of people
4 internally to do that. The lawyers were keeping them
5 back and other people inside the company were keeping
6 them back.

7 So, I think there is this internal challenge to
8 bring privacy up to the kind of issue that a lot of the
9 consumers feel that it is, that we see that it is, that
10 a lot of policy makers think that it is. And how does
11 that work internally? We do have to keep pushing. I
12 appreciate this forum to help do that.

13 I wanted to get on to my challenges. I do agree
14 with a lot of what has been said already in this panel
15 and the last panel. Standardization really amounts to a
16 great challenge. One reason is because of the legalese
17 question. Consumers don't really understand what's
18 going on, and they need to in order to do this kind of
19 comparison, to build a marketplace for privacy, and to
20 build an understanding for privacy. So, that is an
21 important point.

22 Also, there needs to be less confusion for
23 consumers individually as they're going from one place
24 within the corporate structure to another place in the
25 corporate structure. They need to understand that they

1 have the same privacy policy. That is easier to do with
2 a standardized notice than it is with corporate notices
3 that all link back to one place. Simply because if you
4 see this structure using different ways of interacting
5 with banks and financial institutions -- as many
6 companies are now moving towards -- it's going to become
7 even more important.

8 That's the reason that we focused a lot of our
9 standardization efforts on the platform for privacy
10 preferences, or P3P. This was addressed in the last
11 panel. I wish that I could have come up at that point
12 and explained what P3P is.

13 P3P was designed by the Worldwide Web
14 Consortium, which is the leading web standard setting
15 bond. It is put together by Tim Berners-Lee who created
16 the Worldwide Web, the standardization setting body.
17 This is an open standard. It's been under creation for
18 five years.

19 Many of the people in this room have
20 participated in that effort. The idea has been to
21 create a language that expresses privacy preferences,
22 both from a consumer side and from the business side,
23 and be able to match those. On the web you can create a
24 seamless experience so where an individual doesn't have
25 to go through and read every privacy policy, but can

1 read a single standardized privacy policy and compare
2 that to other standardized policies, at least to get a
3 rough sense as to what they want to do.

4 Now, that's not to say that they should be
5 blocked from seeing every site that they go to. But
6 they should get some sense of when information that is
7 important to them is being transferred. They should get
8 some kind of notice that they can act on. We have been
9 able to design systems that work similarly and with
10 security.

11 So, we felt that you could do something similar
12 in this regard with privacy. For example, you think of
13 a lock in the bottom left-hand corner of the screen. We
14 know that information is securely transferred, because
15 it's locked. You can do the same thing with privacy
16 tools. That was the thought behind P3P.

17 And, obviously, it is more complex, because
18 there are more components in privacy. We have been
19 working on this language for quite a while. The first
20 series of tools are now out there. I really recommend
21 that you as a consumer, or looking at this from a
22 consumer perspective, take a look at some of these tools
23 and try them out for yourself. I think you'll find that
24 really they do not paint as broad a picture as American
25 Banker and some of the other publications that have

1 talked about P3P have painted.

2 Try out AT&T's new WorldNet privacy tool, which
3 uses P3P. Also try the new Microsoft IE-6 browser.
4 Just try it out and see what your experience is. If you
5 have concerns, please feel free to address them to the
6 Worldwide Web Consortium group on P3P. We would be
7 happy to discuss that with you.

8 But the one point that I really wanted to get
9 across about P3P is that P3P not only ties into the web,
10 it also will work with other kinds of data flows. It's
11 a vocabulary that can be extended. Perhaps right now it
12 does not address every facet of financial information,
13 but it does get at the basics of web surfing and can be
14 extended to include language that fits better with
15 financial institutions.

16 We would like to work with financial
17 institutions to help achieve that goal. I encourage you
18 to come and work with the Worldwide Web Consortium in
19 order to do that. In fact, some banks have already
20 created extendible languages to do that, and you should
21 be taking a look at those as well and seeing how those
22 will work in the future.

23 P3P is going to exist and it is going to move
24 on. It's already in some of the settings, and it's also
25 going to fit nicely with a lot of the standardization

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1 efforts that are already out there.

2 I really recommend that as you get involved in
3 these standardization efforts in terms of short notices,
4 symbols and labels. You should also look into becoming
5 P3P compliant beforehand, so you know how it's going to
6 affect you down the road. Because what you do in P3P
7 today will make it easier for you down the road when P3P
8 is tied into all of these different pieces. It is
9 really supported by both people that support regulation
10 privacy, as well as those who support self regulation on
11 privacy.

12 So, no matter where we move forward, P3P is
13 probably going to be a strong piece of that. I will be
14 happy to answer any questions on P3P or our study as
15 well.

16 MS. LEVIN: Thank you, Ari.

17 Jim?

18 MR. HARPER: Thank you, Toby. I want to
19 congratulate you and all the folks on all the agencies
20 who worked so hard to put this day together. I know
21 it's going to be useful for everyone.

22 Before I start, I usually make the disclaimer
23 that when I speak publicly about privacy, I am wearing a
24 different hat. I also represent private clients in
25 front of Congress. None of them have privacy issues. I

1 don't lobby directly on privacy for them, but it's
2 something that I want everybody to know about, so you
3 can consider my potential for bias as you would any
4 privacy advocate.

5 I am the editor of Privacilla.org, which is an
6 online think tank devoted exclusively to privacy as a
7 public policy issue. On the website, (Privacilla.org --
8 it's privacy, drop the Y and add Godzilla's tail) you
9 will find privacy broken out into privacy from
10 government, privacy in the private sector, online,
11 financial, medical privacy, and privacy fundamentals --
12 which is an important question that I think people have
13 talked about quite a bit.

14 The fundamental question is -- "what is privacy
15 anyway?" I think the answer will help you all
16 communicate with consumers about privacy.

17 As Fran mentioned, the number one problem with
18 privacy today is its lack of definition in public
19 discussion. You can call something a privacy notice,
20 and someone picking it up might think that you are going
21 to talk to them about spam. They might think that you
22 are going to talk to them about identity fraud. They
23 might think that you are going to talk to them about
24 security.

25 I think the thing that will benefit folks

1 working on their Gramm-Leach-Bliley notices is to drill
2 down and be accurate with consumers about what the
3 notices are really about. Answer the question, "what's
4 this got to do with me?"

5 I think this might, just might, keep some of the
6 notices from hitting the trash quite so quickly. Our
7 read of the GLB notice requirements at Privacilla is
8 that they mostly had to do with a version of privacy.
9 Some of the discussion on the first panel reflected
10 this -- a version of privacy known as freedom from
11 marketing.

12 You might have a better or more effective notice
13 if you drop the word privacy, and say this is a notice
14 about whether you'll be marketed to or not. The GLB
15 notice and opt-out does, if someone opts out, prevent
16 other uses of information that are not listed in the
17 exceptions to notice, et cetera, et cetera. The main
18 one we know about today is marketing.

19 I think it's important to note that it's not
20 complete freedom from marketing. It's freedom from
21 active marketing. So, you can opt out, and if you're
22 young, like Ari, you might get offers to buy an annuity.
23 If you're poor, like me, you might start to get
24 advertisements about tax shelters or private banking
25 services in Antigua.

1 I think it should be obvious that the number of
2 opt-outs is the wrong measure of success. I do think,
3 though, that the agencies should measure their success
4 and make privacy a part of their planning documents
5 under the results act. We need to get an idea, as
6 citizens and consumers ourselves, of what we're getting
7 for all the spending of billions of dollars in
8 regulatory costs placed on industry and passed on to us
9 as consumers.

10 As we've heard, people are thinking about
11 standardizing privacy policies and looking to nutrition
12 labels as a sort of guide. Let me urge you all to visit
13 the website, because I have an annotated version of
14 these remarks on there with a lot of interesting links
15 that I think you will find educational and entertaining.

16 I put a link on Privacilla to a set of CDC
17 charts that show what has happened to obesity levels in
18 the United States since around the time that nutrition
19 labeling began, and I will caution you that looking at
20 these statistics might be fattening.

21 (Laughter.)

22 MR. HARPER: So, we should ask ourselves how
23 we've done in the past as social engineers, before we
24 head down that road again. I think if privacy under
25 Gramm-Leach-Bliley is going the direction of healthy

1 eating, we ought to opt out. I don't think that all the
2 news on privacy is bad. There's another link on the
3 site to an example of communications along these same
4 lines; that is, doing what the Gramm-Leach-Bliley Act
5 intended for the financial services industry to do.

6 EarthLink, the ISP, is running a television ad
7 that illustrates in a hard-hitting visceral way why they
8 are a better ISP -- because they don't share
9 information. There is a link to AdCritic.com on the
10 website. Right now they are changing servers, so you
11 can't find it today. Be persistent, visit it tomorrow
12 or next week and you'll get to see this ad.

13 Essentially, a man and woman are in a bar. The
14 bartender is standing there and there's another guy down
15 at the end of the bar. She hands over her phone number
16 to the man. The two other guys say, "uhh, could I get
17 that?" He pauses a moment and says, "five bucks?" They
18 go, "yeah." And that's the end of the ad. Tells it
19 straight away. You don't want that from your ISP, use
20 EarthLink. That's the kind of thing that I think will
21 deliver privacy -- competition.

22 Gramm-Leach-Bliley moved us away from a system
23 like that, where it pits today's ISPs against each other
24 to deliver privacy on the terms consumers want.
25 Financial services companies, as we saw on the first

1 panel, are spending their resources on compliance,
2 rather than competition, and consumers are worse off for
3 it.

4 The model to follow is the unregulated model
5 that allows industries and companies to compete against
6 each other on privacy, in whatever way they can get to
7 consumers. So, putting companies in competition will
8 deliver privacy. Regulation, and deadening uniformity,
9 will not.

10 Thank you.

11 MS. LEVIN: Thanks, Jim.

12 Last but not least, Joy.

13 MS. GOULD: I'm Joy Gould. I'm the health care
14 project director for Citizen Action of New York, which
15 is a grass roots consumer organization. That is based
16 state wide. We are an affiliate of U.S. Action, which
17 is a national organization.

18 Based on looking at the financial privacy
19 notices, I think the biggest challenge consumers face is
20 the whole concept of doing an opt-out. Any time you're
21 trying to do an opt-out, it places all of the burden on
22 the consumer to first understand that they have the
23 opportunity or the right to opt out, and then find out
24 how to do it. How do they make it happen. Does that
25 allow them to know that their information is being

1 shared in other ways, if they don't exercise that
2 particular right.

3 If we had a clear and useful opt-in system, then
4 I think companies could, indeed, compete the way Jim was
5 just talking about. An opt-in system would enable
6 consumers to know what the benefits of information
7 sharing are, if, in fact, the consumer chose to do that.

8 What we have seen is that the notices are very
9 confusing, misleading, and difficult to read. And that
10 the whole process happens very much at the upfront,
11 heart of the notice, because you can't even find it, you
12 don't know what it's about, and because of the way the
13 title and those kinds of things are put together.
14 That's one of the things that people need to look at.

15 Another thing is how people can use the opt-out
16 or opt-in, if they are going to do that. In other
17 words, making that system easy. Different people
18 operate in different manners. So, some of us are very
19 comfortable using a computer. Some of us would prefer
20 to make an 800 call in the middle of the night (I'm one
21 of those). But different people need different things.
22 We need to give people as many choices as possible so
23 that people don't find that the method for protecting
24 their privacy becomes a barrier in and of its own
25 accord, because they don't know how to use it, or it's

1 not comfortable or not easy for them to do.

2 The kind of language that is highlighted in some
3 notices encourages people to understand and to read
4 them. You'll see some that say, "you don't have to do
5 anything to prevent disclosure," and that is saying to
6 the consumer, "okay, we're worrying about you, you don't
7 have to worry about it."

8 We need to be clear so that consumers know that
9 they have a right. That's what we're trying to
10 communicate to them, not that they just should be
11 comfortable with whatever is the relationship that the
12 bank or the other financial institution has determined
13 they are comfortable in taking care of protecting
14 privacy information.

15 MS. LEVIN: Thank you, Joy.

16 As you can see, there is a range of views as to
17 what the consumer's perspective consists of. I would
18 like to start our questions, before we go to the Q&A's
19 from the audience, with "how do you measure the
20 effectiveness of privacy notices?" Is it the number of
21 opt-outs, or is it something else? Is it consumer
22 confidence, and if so, how do you really measure that?

23 Mary, can you start us off with that?

24 MS. CULNAN: Yes. I think just counting
25 opt-outs is probably not the best way to measure the

1 effectiveness. Although clearly if people want to opt
2 out and the notice doesn't help explain to them how to
3 do that, there's a problem. Generally, people exchange
4 their personal information for some value that's being
5 passed back to them, if the risk level is acceptable.

6 If there's no value, they are going to opt out.
7 If I were sitting in the position of one of the
8 financial service institutions and I got a huge opt-out
9 rate, I would rethink my information practices. I would
10 think that I was doing something that either provided no
11 value to people or that they found so offensive that I
12 probably shouldn't be doing it.

13 Another issue, though, is even when people don't
14 opt out, they want to know they can, because it makes
15 the use of information fair to them. They want to know
16 they have that option, and that if they don't choose to
17 do it now, they can exercise it at some point in the
18 future.

19 I think, also, the survey data shows that
20 there's probably some differences between I think online
21 and offline. In the comments I got, people clearly are
22 concerned about getting unwanted email, and that's a
23 different proposition than getting stuff in the paper
24 mail that you may not want.

25 I think there may be differences. We heard this

1 from Steve Durkee this morning in terms of internal
2 marketing with an organization you trust versus your
3 name being pedaled out to other companies that you may
4 have no interest in doing business with at all. I think
5 Joy's organization has developed a tool that they have
6 used to do some evaluation of the notices, and I think
7 that she might like to talk about that.

8 MS. GOULD: We, as a consumer organization,
9 have looked at a lot of different complex issues over
10 the years, and tried to look at providing information
11 in a way that's usable to consumers. One of those ways
12 is to do report cards, and we've done that a number of
13 times with a variety of topics. When a number of us
14 started receiving our financial privacy notices earlier
15 this year, and we started saying: What does that mean?
16 Can we read it? Can we understand it? Can we use it?
17 We decided that we would begin to look at developing a
18 report card system to look at financial privacy notices.

19 Particularly, we looked at banks that issue
20 credit cards, and I wanted to ask two major questions.
21 Did the notices comply with the law? And then the
22 second question (which is in some ways, maybe, more
23 important, since we are a consumer group) is even if the
24 notices are in strict compliance with the law, are they,
25 in fact, useful? Can consumers actually figure out how

1 to use these to make an informed decision about
2 protecting their financial privacy?

3 I think, in fact, that those kinds of questions
4 are very consistent with what Chairman Muris said this
5 morning. This is about trying to find notices. Are
6 they easy to read, and can they be used?

7 We developed 16 different topics, and we divided
8 them into three categories. I've got them listed there.
9 The first one you will recognize as obviously a
10 reflection of what's in the law and the regulations in
11 terms of whether the notice is clear and understandable.
12 The second one is, can consumers figure out how to
13 exercise their privacy rights? And the third one is,
14 how comprehensive is the information?

15 We also looked at an introductory category
16 before we got into those three. We looked at: Was the
17 information available to the consumer before they made
18 any kind of a transaction? We made that an overall
19 super category, pass or fail. If you passed that one,
20 then you could go on to the scoring in the other
21 categories.

22 There is much more detail on this in your
23 CD-ROM, so I am not going to read each one of them. In
24 category one, these are the six characteristics that we
25 looked at in defining a clear and understandable notice.

1 The scoring tool is on your CD-ROM, in terms of a grade
2 from A to F (and points to go with them that are very
3 similar to what's used in college courses).

4 The second category also had six components in
5 it, where we were looking at exercising the right to opt
6 out. Many of these go beyond the law and the
7 regulations. We were looking at how many times and how
8 many places the words "opt-out" were used. Were they
9 presented in a way that you could find easily, or were
10 they buried some place, or were they not mentioned at
11 all? We actually found that in some cases.

12 And then what did the introduction look like?
13 Obviously most people who don't have a lot of time, the
14 surveys show that, they want to read it in a hurry. So
15 if the beginning paragraph sort of says this isn't
16 important, then they aren't very likely to read the rest
17 of it. We looked very much at that introductory
18 paragraph, and then we looked at the ways that people
19 could opt out.

20 The third category was the comprehensiveness of
21 the information provided -- not that it was
22 overwhelming, but that it was informative. Many of
23 these are required under the law, but there are options
24 that people have in terms of how they explain, and how
25 they give examples that make sense to consumers. The

1 idea is not just to meet the requirements in the law,
2 but do the examples make sense to consumers so that they
3 understand what the actual information means.

4 Those are the three categories. Then we
5 developed a scoring tool that looked at each category
6 and gave everybody overall an A to an F based on that.
7 We averaged all the grades together to come out with a
8 final overall category.

9 MS. LEVIN: Thanks, Joy. I think we'll move now
10 to the questions that you've posed. I'll throw this
11 first one out, which is: "Why is there such a
12 discrepancy between one, what consumers say they've done
13 in surveys, and two, the two percent opt-out rate
14 reported by industry?"

15 Mary, can you start off?

16 MS. CULNAN: I'll take a crack at it, maybe
17 David can talk about this, too. One of the questions
18 that I didn't report was that in our survey, we did ask
19 people the "have you ever" question, yes or no. They
20 could give multiple responses to this. Eighty-two
21 percent have refused to give information to a website
22 because they felt it was too personal or unnecessary.
23 Eighty percent have asked a website to remove their name
24 and address from any list used for marketing purposes.
25 Seventy-six percent have asked a website not to share

1 their name or other personal information with other
2 companies. Sixty-four percent said they had decided not
3 to use a website or not to purchase something from that
4 website because they were not sure how their personal
5 information would be used.

6 One of my colleagues at Bentley sent me
7 something via email yesterday, where someone had done a
8 study on lost business because of privacy concerns by
9 surfers. These numbers are pretty squishy, and I don't
10 think this is a good way to do this. But it was a giant
11 number -- \$340 million, I think.

12 So, everybody doesn't opt out of everything
13 (that would be my hunch), but if you added up all the
14 two percents, you might get to a much larger number,
15 because everybody is not opting out of one thing and
16 everybody is choosing to opt out of something else. I
17 think it's sort of pretty individualized.

18 MS. LEVIN: Any other comments?

19 MR. KRANE: Yes. I would just like to emphasize
20 that, the figures that Mary was talking about, the
21 actions that people have taken, are obviously very
22 substantial numbers, and those mirror what other surveys
23 have shown as well. I think people do take steps, they
24 do take actions. I think that the surveys are not that
25 inconsistent with what, perhaps, is going on out there.

1 MS. LEVIN: Jim, you wanted to comment?

2 MR. HARPER: Yes, as sort of a follow-up
3 question to that question: I'm wondering, Dave and
4 Mary, if you've ever gone to online companies to compare
5 people's reported behavior to what people visiting
6 websites actually do? I know almost every website would
7 have information on how many privacy policy hits they
8 got.

9 MS. CULNAN: No.

10 MR. KRANE: No, I haven't done that.

11 MR. TORRES: Can I just add something to that?
12 As an increasingly avid surfer (it took me a while to
13 get online and actually surf around), to the extent that
14 there are sites that ask you for your information or you
15 get on some sort of list serve, some sites make it
16 extremely easy for you to either not provide
17 information, or to opt out once you've signed on and you
18 don't want to get something anymore.

19 Do you think it might be that in the online
20 world people have an easier time stating their
21 preferences? Things are a little bit more transparent,
22 do you think that makes a difference?

23 MS. CULNAN: Probably, yes.

24 MR. KRANE: Yes.

25 MS. SMITH: Just one further comment on that.

1 In looking at these responses, and comparing them to
2 what opt-out rates are for financial institutions'
3 Gramm-Leach-Bliley notices. It looks like many of those
4 questions are about web surfing and going to websites
5 and such. These are people who are surfing. These are
6 people who aren't necessarily customers of those
7 websites. So they go -- they set their computer or
8 browser to reject cookies, ask the website not to share
9 name, things of that sort.

10 So, we're comparing customers of financial
11 institutions who, as I think many people have said, have
12 a trust relationship, possibly, with that institution,
13 versus going to a website that is unknown to you, may
14 not have a trustee mark, may not have any other
15 identification, and yet they're asking you for
16 information. I think people would feel very concerned
17 about that.

18 MS. CULNAN: The next question concerns the
19 methodology of doing surveys. This is always an issue
20 of, "are you really just getting the people who want to
21 participate in surveys, and so are results of these
22 surveys conservatively biased?" Does the Harris
23 methodology find a way to tap the views of people who
24 are more privacy sensitive versus those in their panel
25 who don't care?

1 MR. KRANE: We try. For those of you who are
2 not familiar with our approach, hopefully my following
3 explanation will be clear. We have spent a lot of time
4 over the last few years worrying about that very issue:
5 Whether doing online surveys can accurately reflect both
6 an online population or even more broadly the total
7 population.

8 We actually run a lot of parallel telephone
9 surveys, and online surveys, to make sure the data that
10 we collect is consistent. And we've acknowledged that
11 there are certainly biases associated with online
12 surveys, but there are biases associated with all
13 surveys -- telephone, in person, mail.

14 One of the important things is to figure out
15 what those biases are, and learn how to correct for
16 them. We can weight the data by demographic information
17 -- age, sex, gender, race, education. But we've
18 actually gone one step further and we weight the data
19 based on somebody's propensity to be online. That's a
20 series of measures that we have developed that take into
21 account both attitudes and behaviors. One of the things
22 that we try to do is to compensate for the fact that
23 perhaps an online sample of people online may be a bit
24 more active.

25 We think our approach works. It was extremely

1 effective during the election last year, where our
2 online surveys were as accurate or, some have said,
3 actually more accurate than comparable telephone
4 surveys. But another reassuring thing is (and what
5 we've done with other PLI research) -- we've run both
6 parallel telephone and online surveys. Just to ensure
7 that the data is properly represented and that we're
8 getting consistent answers from the online sample, and
9 I'm happy to report that we do.

10 MS. LEVIN: Chris?

11 MR. HOOFNAGLE: Thank you.

12 I think it's important to note that how one sets
13 up an architecture of a survey can, of course, influence
14 its results. Members of the Privacy Leadership
15 Initiative have set up surveys before that have yielded
16 suspect results, most notably a financial services
17 roundtable Ernst & Young report which had about a
18 paragraph of methods to justify very broad claims.

19 I think it's important to note that the other
20 surveys that have been done out there by independent
21 groups, for instance, the First Amendment Center, have
22 shown tremendous support for issues such as opt-in.
23 We're talking 80 to 90 percent of people saying we want
24 opt-in. If you want to give your customers a good
25 choice, notice and opt-in would be a great first step.

1 MS. LEVIN: Jim?

2 MR. HARPER: Solvay Singleton at the Competitive
3 Enterprise Institute and I put out a paper not too long
4 ago going through some of the difficulties with surveys
5 on privacy, largely because of the definitional problems
6 that they deal with. That can be found on CDI.org and
7 also on Privacilla.org in the privacy fundamentals
8 section. If everyone just wanted to throw out privacy
9 surveys entirely, it might do us all some good.

10 MR. TORRES: Can I make just a general comment
11 on this debate over surveys? I think that there seems
12 to be a lot of data almost on both sides of the fence on
13 this. Assume, for a minute, that I agree that an
14 opt-out approach is the right approach to use for
15 financial services, which I don't, but assume that.

16 Then at least to me, no matter what your data
17 shows consumers want, I would assume that most people
18 would agree that at least consumers want some sort of
19 choice. So, at least make the opt-out meaningful, so
20 that I'm able to tell a financial institution, because I
21 might be afraid that they are going to share my
22 information in such a way that causes identity theft or
23 might get hacked into. If I want to stop a financial
24 institution from sharing my data with anyone, give me
25 the ability to do that. Right now the problem is, a

1 consumer can't.

2 No matter what is said on these privacy notices,
3 I cannot call up my financial institution and say, stop
4 sharing my information. They might say, okay, well,
5 we'll stop sharing it with these people, but we can
6 still share it with all these other people under the
7 law.

8 MR. HARPER: We can stop doing business with our
9 financial institutions.

10 MR. TORRES: Well, no, but then say I do want to
11 do business with the financial institution. Say I still
12 want to do business with the financial institution, at
13 least show me some value. Give me a list of ten
14 products that are cheaper, better, faster, better
15 quality, because you're using my information and
16 you're --

17 MR. HARPER: Financial institutions are not a
18 public utility.

19 MS. LEVIN: Jim, wait, let's get Chris.

20 MR. HOOFNAGLE: I think Frank makes a valid
21 point here, and that is that consumers don't see the
22 benefit, and there isn't a list of benefits to us. I
23 mean, my ATM still can't figure out that I want English.
24 There is a real problem here, saying that consumers just
25 have choice, that they can pick up from one bank and go

1 to another based on their privacy policies. That idea
2 of choice is an illusion, and it's important
3 to recognize -- when arguing or listening to the
4 arguments of the free market ideology, that the issue of
5 choice is an illusion.

6 MS. LEVIN: Okay, Jim, we'll wrap up the answers
7 on this one and we have several others. If you want to
8 go ahead.

9 MR. HARPER: I don't have anything.

10 MS. LEVIN: Okay. The question has come up with
11 consumer education, about what the various consumer
12 groups are doing with regard to educating consumers
13 since the passage of GLB. Is there anyone here who
14 would like to respond?

15 MS. SMITH: We provide as a consumer
16 organization a lot of consumer education materials. I
17 would say Consumers Union, with Consumer Reports, the
18 premier one. But again, I think in consumer information
19 it's vitally important to make the distinction in terms
20 of what privacy is and what it is not. In terms of some
21 of the trade-offs, people aren't giving up information
22 to get nothing in return. If they decide to opt-in,
23 they expect to get an offer for something that they
24 want, a targeted offer.

25 So, I think the education can't just look at the

1 negative side, or else it doesn't make any sense, as
2 we've said before. Education also needs to possibly let
3 people know what opt-out is, and what it does. If
4 they want to opt out from all marketing opportunities of
5 their institution, what that means. They need to know
6 that they might not get an offer for a zero interest car
7 loan in the future, as some people have in the past.
8 They may not be able to go purchase a car and drive off
9 the lot with a \$25,000 vehicle, because the information
10 couldn't be shared. They need to know they were getting
11 that.

12 So, by focusing on only the negative, I think we
13 can really, really harm consumers. Look what happened
14 in Vermont, the example earlier. People in Vermont are
15 not going to get any offers for any services other than
16 the ones they have, it sounds like. The marketing lists
17 are suppressed for all those Vermont consumers -- for
18 affiliates and for all marketing, that's the way it
19 sounded to me, in some of the very large institutions.
20 Is that good for consumers?

21 So, I think in consumer education, some of my
22 colleagues on this panel want to just emphasize the
23 negative. But they have to let people know what they're
24 giving up as well.

25 (Applause.)

1 MR. TORRES: As the comptroller of the currency
2 said during hearings on the Gramm-Leach-Bliley Act, and
3 the privacy provisions: Why isn't the burden on the
4 business to convince the consumer to opt-in to receive
5 all those offers? If the thesis is that consumers
6 really don't care about the privacy, as some of our data
7 shows, then why don't you trust consumers to opt in? For
8 a showing by the industry that they'll get a better
9 product at a cheaper price, you'll have consumers opting
10 in all over the place, which may be the right approach.

11 Just to go back to the comment that Jim made. I
12 would like to see the officer at an institution that
13 would stand up and say, "if you care about your privacy,
14 don't bank with us." I think the banks and financial
15 institutions that I've talked to are very much concerned
16 about the information privacy of their customers. What
17 we're debating is how to go about doing that. But I
18 don't think that banks want to send out a message that
19 if you care about your privacy, don't bank with us.

20 MS. LEVIN: I think this morning's panel talked
21 a great deal about the positive ways in which privacy
22 can be used as a business proposition. We want to just
23 get at a couple of questions.

24 MR. HARPER: I would like to respond. It's not
25 the job of banks to say "don't bank with us." It's the

1 job of consumer groups to advise consumers not to bank
2 with banks that don't do things that consumers want.
3 Rather than running to Congress, consumer groups should
4 be running to consumers.

5 MR. SCHWARTZ: I agree with Jim's statement
6 there, but I also agree with Frank. Consumers Union
7 has done probably the best job in terms of educating
8 people about the law along with Privacy Rights
9 Clearinghouse, which has the best fact sheet on how to
10 opt out and how to read a privacy notice. It's really
11 the only comprehensive piece that's written for
12 consumers about how to read a Gramm-Leach-Bliley notice
13 that's out there. We've put together at Privacy Center
14 for Technology two websites to help people read online
15 privacy notices, one is our operation opt-out site,
16 opt-out.cdt.org, as well as Privacy Watchdog, which
17 helps people read those different notices.

18 That said, notice alone, as many people on this
19 panel have been saying, is not enough to help consumers
20 really make those kind of decisions, even if it's a
21 clear notice, if you have a whole industry that says,
22 "we do whatever we want with your information." We
23 can't expect that privacy is going to be the only
24 concern that consumers are going to have, when making a
25 decision, but it can be a piece of those concerns, and

1 it's got to come into play to some degree.

2 So, getting back to the measurements question
3 that you asked earlier, which I think ties quite a bit
4 into consumer education, the only way to go about
5 measuring effective notice, and figuring out whether we
6 have done our job well, is that the marketplace improves
7 for privacy out there. Consumers have made more
8 decisions based on privacy. And that could even mean
9 that consumers are more upset about privacy down the
10 road. They want to see access to their own information.
11 They want to know what's being held by the banks that's
12 out there. That could come from more effective notice
13 as well, if access is not provided as well.

14 MS. LEVIN: We're going to take just one more
15 question. Mary?

16 MS. CULNAN: This one was asked to be directed
17 to Joyce, but I'm certain anyone else on the panel can
18 jump in. The challenge of reconciling clear and
19 understandable notices with the need to be
20 comprehensive: How do you do this?

21 MS. GOULD: A lot of that has to do with the
22 kind of language that you choose, and the way it's laid
23 out. In looking at the particular banks that we looked
24 at, for instance, there was a wide range in terms of how
25 easy it was to read the notices. They all met the

1 requirements in terms of what was the required language
2 around the comprehensiveness to be included. But the
3 way they presented the information, the language they
4 used, the examples they used, as well as other issues
5 that we didn't directly measure, (in terms of layout and
6 graphics, and bolding, italics and those kind of things,
7 and the size print) have a lot to do with helping to
8 make it understandable to people.

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1 Morning Session Closing Remarks

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3 MS. LEVIN: It's my pleasure now to introduce
4 Commissioner Mozelle Thomson, who will close our morning
5 session.

6 Commissioner?

7 COMMISSIONER THOMPSON: Was that the case for
8 the under the mattress investment policy here?

9 Well, first of all, I wanted to thank all the
10 staff people for doing such a great job at putting this
11 morning's panels together, and for the participants we
12 see here today.

13 (Applause.)

14 COMMISSIONER THOMPSON: I wanted to thank you
15 all for coming to this morning's session of the D.C.
16 Bar's continuing education program -- no, sorry. Wrong
17 speech.

18 All kidding aside, I know that I'm the only
19 thing standing between you and lunch, so I'll try to
20 keep my remarks brief.

21 I'm actually pleased to be here and join our
22 sister agencies in welcoming you to this important
23 workshop, and I believe we've already learned a lot from
24 the distinguished panelists we've heard this morning.

25 Now, privacy is an issue that we at the FTC have

1 been working on for quite some time now, and I'm happy
2 to be here today, because I believe that protecting the
3 privacy of consumer financial information is an
4 important goal. And providing effective privacy notices
5 is a critical element to achieving that goal.

6 When the privacy provisions of
7 Gramm-Leach-Bliley were passed, they were intended to
8 provide customers and consumers, (I'm not going to make
9 that distinction here) with notice about what financial
10 institutions were doing with personal financial data,
11 and to give consumers choices about who that information
12 was shared with.

13 Since that time, we have all received a panoply
14 of notices from various entities that provide us with
15 financial, in the broadest terms, services. As Chairman
16 Muris said earlier, the quality of those notices have
17 been mixed. I think that most businesses have
18 approached their obligations in good faith, but the end
19 products in many cases are documents that are confusing,
20 unclear, and to some consumers, frightening.

21 I'm happy that we have such a large turn-out
22 today so that businesses, consumer groups and other
23 experts can express their views, but also, because it
24 gives us all an opportunity to listen to each other.
25 And I place specific emphasis on the obligation to

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1 listen. Because what I think we all want is to see
2 notices provided in ways that are clear, effective, and
3 simple.

4 In short, I believe that we all can and must do
5 better. And this morning we've heard a variety of
6 perspectives on how financial privacy notices can be
7 improved. First, we heard from the financial services
8 industry, who struggled to comply with GLB, and at the
9 same time, to deliver to their customers a privacy
10 notice that's clear and understandable.

11 They've provided us with a behind-the-scenes
12 look at how a privacy notice should be more than just a
13 piece of paper. But instead, should be a part of their
14 corporate strategy. It means understanding your
15 customers and getting a handle on your own information
16 practices.

17 In the process of developing effective notices,
18 some have also experienced collateral benefits. They've
19 seen how protecting consumer privacy makes good business
20 sense. An informed consumer, especially at this point
21 in our economy, is a confident one. And will help to
22 drive our economy.

23 And, I would suggest, that one result of opt-out
24 responses is that some companies have been able to use
25 those to improve the quality of their marketing, because

1 they've been better able to target their efforts to
2 customers who are interested in receiving that
3 information. We've also heard consumer and academic
4 perspectives on how those notices can be improved.

5 Now, research data tells us that people process
6 information differently, based on how that information
7 is presented. That principle is all the more important,
8 when, as here, we're talking about information directly
9 related to a company's data sharing practices, and their
10 financial products and services.

11 We've heard, very clearly in the survey results
12 presented this morning, that financial privacy is
13 important to consumers, and how privacy concerns in the
14 online context have changed consumer behavior. Because
15 there is something that has resulted from the Internet
16 age, it not only means that businesses know about
17 consumers, but consumers also know a lot more about who
18 they're doing business with. These are considerations
19 that industry will have to take into account as they
20 develop their own privacy policies and notices.

21 If there is one thing that's clear from this
22 workshop so far, it is that there are still numerous
23 challenges ahead in developing effective privacy
24 notices. But never fear, this afternoon promises to
25 reveal answers to some of those questions that were

1 raised this morning, and we don't even bill for that
2 advice.

3 You can think of that as free consulting. We've
4 arranged for all of you to hear from some of the most
5 accomplished communications experts. Now, some have
6 been involved in the plain English movement, and have
7 applied that experience the formidable challenges like
8 revising company prospectuses for investors. I think
9 there are still investors out there.

10 And they're still alive to tell the tale, so
11 this should be an especially interesting session. So,
12 what does all of this mean? I think this workshop
13 constitutes just the first step in doing a better job
14 for consumers in formulating effective privacy notices
15 and understanding how best to gauge effectiveness of
16 those notices.

17 The second, and perhaps most important step, is
18 for the people in this room to begin to work together to
19 provide each other with self guidance and consumers with
20 better information. At the end of the day, we'll learn
21 what concrete initiatives are under way to develop
22 effective financial privacy notices -- efforts by
23 industry members, consumer groups, and government
24 agencies to improve those notices and educate consumers.

25 But before lunch, I want to leave you with this:

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1 The people in this room represent the true leaders on
2 this issue, and I hope that you will all use this
3 workshop as a starting point to assert leadership in a
4 way that's constructive for everyone. I know that I'm
5 looking forward to hearing about these future efforts,
6 and I'm sure that you are, too.

7 Once again, thank you for coming, and I hope you
8 enjoy the rest of the workshop.

9 (Applause.)

10 COMMISSIONER THOMPSON: Before you go, a few
11 housekeeping details. I wanted to remind you that there
12 are restrooms across the hall, and, this is important,
13 the food court: Go out the door, you make a right, go
14 down to the second hallway, and where you see the sign
15 that says DC bar, make a right. Go down to the end and
16 that's the food court. We'll reconvene at 1:30, thank
17 you for coming.

18 (Whereupon, at 12:37 p.m., a lunch recess was
19 taken.)

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1 AFTERNOON SESSION

2 Panel 3

3 (1:42 p.m.)

4 MS. SALTZMAN: Good afternoon and welcome to our
5 third panel. My name is Penelope Saltzman, I am a
6 Senior Counsel at the Securities and Exchange
7 Commission. In case you weren't here earlier this
8 morning and missed Julie's earlier comment, I must say
9 that any views expressed this afternoon are mine and
10 don't necessarily reflect the views of the Securities
11 and Exchange Commission, or my colleagues on the staff
12 at the SEC.

13 After this morning's panels, I'm sure everyone
14 is looking forward to hearing from the communications
15 experts on this panel, who have a broad range of
16 experience in helping institutions make complex legal,
17 financial, and other technical information
18 understandable to a wide audience. This panel will give
19 you ideas for thinking about what you want to say in
20 privacy notices and how to communicate the message
21 effectively. The panelists also will give you tools
22 that institutions can use as a starting point in
23 creating privacy notices that are easier for consumers
24 to understand.

25 You should note that the panelists are giving

1 you their own suggestions, and that the agencies
2 cosponsoring this workshop have not reviewed the
3 examples to see whether or not they comply with the
4 Gramm-Leach-Bliley Act or the agencies' privacy rules.
5 I know the panel is very interested in hearing from you,
6 particularly issues or problems that came up in drafting
7 privacy notices, so please ask questions during the
8 question and answer period. There are additional note
9 cards on the materials tables outside, if you need them.

10 In the interests of time, I am going to
11 introduce all the panelists now. There is more
12 biographical information on them in your printed
13 materials.

14 To my immediate left is William Lutz. Bill is
15 my co-moderator on the panel, he is an author and
16 Professor of English at Rutgers University.

17 To Bill's left is Mark Hochhauser, a
18 psychologist who researches, writes, and consults on the
19 readability of financial information.

20 Next to Mark is Deborah Bosley, Director of
21 University Writing Programs and Associate Professor of
22 English at the University of North Carolina at
23 Charlotte.

24 On Deborah's left are Lynn Riddle and Josiah
25 Fisk, both principals of Firehouse Financial

1 Communications.

2 On Si's left is Irene Etzkorn, Managing Director
3 of Corporate Administration at Siegelgale.

4 Next to Irene at the end of the table is Alan
5 Levy, Senior Scientist in the Consumer Studies Team at
6 the Center for Food Safety and Applied Nutrition at the
7 U.S. Food and Drug Administration.

8 And Mark is going to start us off.

9 MR. HOCHHAUSER: Thank you, Penelope.

10 As a psychologist, I am interested in human
11 behavior and in particular how people think and
12 understand. In terms of Gramm-Leach-Bliley, one of the
13 issues, and this may address why people feel that the
14 notices were confusing and complicated and hard to
15 understand, one of the problems is simply information
16 overload. The human brain is capable of processing a
17 certain amount of information. Once you get beyond
18 that, and I think this is probably mandated by the law,
19 you begin to present people with more information than
20 they can actually handle.

21 There have been a variety of ways of describing
22 what happens when people feel, or what they refer to,
23 when they talk about information overload. I've
24 provided a few of these, just to give you some ideas of
25 the terms out there. They're all in some ways dealing

1 with the same thing, whether you call it information
2 overload, or information smog, data asphyxiation, which
3 has to do more with numbers, you get to a point where
4 there is more information than your brain can
5 comfortably handle.

6 So, what happens when you're confronted with all
7 of that information? The research suggests that when
8 you are overloaded, in terms of information, you feel
9 stressed out, helpless, confused, you may engage in
10 paralysis through analysis, which means you spend so
11 much time analyzing every possibility, you cannot make a
12 decision, because you're focusing on, well, this
13 decision might be right, no, that one might be better.

14 So, you wind up actually doing nothing, and you
15 also will find yourself, or you will find consumers,
16 who, despite the fact that you give them your best
17 information, they may actually make the wrong decision
18 because they can't sort through it because there's too
19 much.

20 So, I'll suggest that one of the problems with
21 privacy notices is that there is too much information
22 leading to information overload, leading to poor
23 decision making.

24 What can you do about it? Well, knowing your
25 customers and writing in a way that they can understand

1 will help. Be clear and be brief. And I think one of
2 the problems that you will find is this: On the one
3 hand, you try to be comprehensive and include all of the
4 information that the law requires you to communicate.
5 On the other hand, you want to be understood.

6 Psychologically, less information may lead to
7 more understanding. On the other hand, there's this
8 trade-off between providing less information, which
9 consumers will understand, versus providing more
10 information because you feel that you have to comply
11 with the law, which they won't understand.

12 So, it's a delicate balance, I think, between
13 finding the right amount of information to match up with
14 the right amount of understanding.

15 The four steps. Two of them I'll talk about
16 now, two of them in the second part of my presentation.
17 It helps if you know what you're trying to change.
18 Psychologically, it's relatively easy to change
19 knowledge. You can do this with information, you can do
20 it with a brochure. It's much harder to change people's
21 attitudes. Here, experience plays a role, expectations
22 of other people.

23 It is very hard to change behavior, and it's
24 important for you in working with privacy notices to
25 have some idea of what is it you're trying to change in

1 consumers. For example, if you want to attract new
2 customers, because your privacy policy is better than
3 the competition, you have to go way beyond just sending
4 out a privacy notice and assume that that will attract
5 new customers. There's a whole behavioral agenda that
6 needs to be developed.

7 Much of this has been described earlier today in
8 terms of the role that trust and loyalty play in
9 customer relationships and business. So, I won't go
10 into this, other than to make a comment. Does your
11 privacy notice keep customers or lose customers? In my
12 own case, both online and offline, there have been some
13 organizations I don't do business with anymore because I
14 didn't like their privacy policy. I might be unique in
15 that way, but as the privacy issue unfolds, more and
16 more people may be looking at privacy issues and their
17 business affiliations.

18 Step number two: Don't let perfection be the
19 enemy of the good. Don't expect your privacy notices to
20 be perfect on the first time. If there's anything we've
21 learned about the learning process, it takes time, that
22 there's a learning curve. Learn to imitate the good
23 notices, it may take several years for a company to get
24 the kind of notice that they really want.

25 Secondly, advertising is repetitive. If you

1 just look at how many ads you see in the mass media for
2 particular products or services, you realize that,
3 products you know, Coca-Cola and Pepsi are still
4 advertising on a daily basis. One brochure tucked into
5 an envelope once a year may not be the best way to
6 communicate new privacy issues with your customers.

7 Make the right comparisons. The best we can do
8 in terms of mass marketing through redemption of
9 newspaper coupons and direct mail is about a one or two
10 percent response rate. I've seen some mixed figures
11 about the opt-out rate for GLB, one survey reported
12 about five percent, and I will just ask you, based on
13 these comparisons to other information techniques, is a
14 five percent opt-out rate good or bad? I'm not going to
15 answer that, I'll leave that to you to think about.

16 As a psychologist, I'm interested in outcomes.
17 And the kinds of questions you can ask yourself to try
18 to determine whether or not your privacy notice actually
19 works. Do you want a high opt-out rate or a low opt-out
20 rate? Do you know if consumers saw your privacy notice?
21 Did they read it? Did they read part of it? Did they
22 read all of it? More importantly, did they understand
23 it? Reading and understanding are not the same. Did
24 they read to the end to find out about what choices they
25 had? And what happens, for example, if you take the

1 information about choices and opt out and you put it at
2 the beginning instead of the end?

3 It's always nice to have something to measure.
4 A couple of examples, behavior change takes time. From
5 1964 to 1998, we reduced the percentage of people who
6 smoke cigarettes by about half. If you consider all of
7 the information that's been publicized on the risks of
8 tobacco smoking, you can feel either optimistic or
9 pessimistic about that, but it might be a lot worse if
10 those efforts had not taken place. And this is one of
11 the things you need to keep in mind, you don't know what
12 happens if you don't do it.

13 Similarly, in terms of seat belt usage in
14 Department of Transportation projections, in 1996, about
15 two-thirds of adults used a seat belt, then the DOT came
16 out with some predictions, by 2005, it's supposed to be
17 90 percent of the population. I don't think they're
18 going to make it. The point is not that they're doing a
19 bad job, the point is it is really hard to get people to
20 change their behaviors.

21 How can you measure the impact of what you are
22 doing? There are a variety of techniques that you can
23 use from tracking the number of people who opt out, ask
24 customers who close accounts if they close their account
25 because of privacy issues. Ask new customers who open

1 accounts if privacy was a factor. Survey your customers
2 through focus groups, telephone surveys, there are a
3 variety of interesting and important pieces of
4 information you can collect.

5 I will stop at that point.

6 MS. SALTZMAN: Bill?

7 MR. LUTZ: I'm the set-up man. By that I mean
8 that I am just going to give you a brief outline to
9 leave you with all kinds of questions that will be
10 answered by the rest of the panelists in great detail.
11 But first on information overload, there are two
12 definitions of information overload. The first is the
13 food court.

14 (Laughter.)

15 MR. LUTZ: The second is that pile of magazines
16 and newspapers that you have at home that you haven't
17 read, but you don't throw away because one of these days
18 you really are going to read that issue of The New
19 Yorker that's six years old.

20 If that's your situation, do what I did, move.

21 (Laughter.)

22 MR. LUTZ: So, let us begin. Just to give you a
23 note, my background is somewhat in plain English, plain
24 language. I worked for four and a half years on the
25 Securities and Exchange Commission's Plain English

1 Project, and after writing a few mutual fund
2 prospectuses that specialize in derivatives, privacy
3 notices are not very intimidating.

4 (Laughter.)

5 MR. LUTZ: But my background started on the
6 opposite side of the coin in language that is
7 deliberately designed to obscure and obfuscate, the
8 first book I did on that was called -Double Speak: From
9 Revenue Enhancement to Terminal Living.

10 (Laughter.)

11 MR. LUTZ: Followed by The New Double Speak:
12 Why No One Knows What Anyone Is Saying Anymore, and the
13 third one was Double Speak Defined: Cut Through the BS
14 and Get to the Point. I hasten to add that all of those
15 titles are chosen by a publisher, authors do not control
16 the titles of their books, by contract.

17 So, I was well versed in all of the language
18 that was used to obfuscate, evade, avoid, hide, confuse,
19 mislead, do everything but communicate, so it seems
20 logical to go to the other side and figure out how to
21 cut through the fog.

22 And I found out that we are very far behind in
23 the United States. Britain is way ahead of us,
24 Australia and New Zealand are much further down the
25 road. The Scandinavian countries have left us in their

1 dust. I mean, there are movements, by the way, and laws
2 requiring, if you're ready for this, plain Swedish,
3 plain Norwegian, plain Danish -- with coffee.

4 (Laughter.)

5 MR. LUTZ: But the one that shattered
6 everybody's illusions about how obscure language will
7 persist is just within the last couple of months, the
8 French government announced a multiyear program, to
9 rewrite all of their documents and instructions into
10 plain French. The French bureaucracy will never, ever
11 be the same after that one. And if you struggled in
12 high school with "The pen of my aunt is on the table,"
13 you haven't lived until you've tried to read one of
14 those French documents to fill it out.

15 So, what we're talking about here is kind of a
16 worldwide awareness of people that there is no need for
17 official documents that control and rule and run their
18 lives, to be in language that they don't understand.

19 Some myths of plain language, that is people who
20 say, well, we really can't do it. They say things such
21 as, legalese is required by statute, by law, by
22 regulation. Joe Kimble at the University of Michigan
23 law school did an extensive computer search, found that
24 none of that is true. It is true, as one of the
25 panelists mentioned earlier this morning, that if you

1 copy the language of the regulation or the statute,
2 you're pretty safe, after all, right? And law is a
3 conservative profession, so that's why you'd want to do
4 it.

5 I'm also a lawyer, by the way, I have to
6 confess, in the interest of full disclosure. But then
7 there's the argument that I love so much: "It can't be
8 written any other way," said by people who have never
9 been introduced to the concept of the synonym.

10 (Laughter.)

11 MR. LUTZ: Such people are normally called
12 lawyers, or accountants. And the one that I love best
13 of all: "But the legal language is more precise, it's
14 more accurate." And I said, "well, of course, we don't
15 have any lawsuits over any of those legal documents,
16 because they're all so clear."

17 (Laughter.)

18 MR. LUTZ: For the first depressing fact, let me
19 point out that Einstein's general theory of relatively
20 comes in at about a fifth grade reading level. That's a
21 fact. I mean, you can get a copy of Einstein's general
22 theory of relativity, and you will run it over any
23 readability formula, and it comes in at about that
24 range. Do you understand it? I still haven't figured
25 that one out.

1 The point is, as Mark will point out later,
2 readability doesn't necessarily mean that you're
3 communicating. Communicating means a lot more than
4 that. So, when we talk about plain language, we're not
5 talking about dumbing down, we're not talking about Dick
6 and Jane prose, we're not talking about leaving
7 important or complex ideas out. We're not talking about
8 any of that.

9 What we are talking about is language that is
10 visually inviting, an important point I'll get back to
11 in a second, it is logically organized, and it should be
12 understandable on the first reading. You shouldn't have
13 to study it, ponder it, analyze it, or do anything else.

14 So, how do you go about writing this magical
15 document? Here are some of the rules. By the way, I
16 did some research once, I found out that there are only
17 58 rules for writing plain English. Memorize those,
18 and, you know, you won't have time to do anything else,
19 let alone write a plain English document. No, what it
20 means is that we're talking about an art. We're not
21 talking about a technical skill. It is really an art.
22 Yes, there is a lot of knowledge behind it, but you have
23 to have an intuitive feel, a sense, a skill, that comes
24 with practice, as with any other kind of art. It is,
25 after all, writing.

1 So, in the SEC handbook, which you can get free,
2 by the way, down load online from the SEC website, we
3 say, first you start by knowing your audiences. You
4 would be amazed at how many people don't know their
5 audience. You don't know how many corporations write
6 annual reports without having the faintest idea who is
7 reading them, without having any profile of their
8 investor at all, and knowing to whom they are speaking
9 when they write an annual report.

10 Secondly, know what you need to say. That may
11 sound obvious, but you would be amazed if you sat down
12 and said, well, this is what we really have to say. We
13 don't need to say this. And in a complicated issue such
14 as what you're dealing with, the more thought you give
15 to that up front, the easier it will be down the line as
16 you try to develop your document.

17 Organize your materials logically. Ah, that
18 word logically. You see, what is logical to you, to the
19 accounting department, to the counsel, to the outside
20 counsel, to the marketing department, and to everybody
21 else who's got their finger in this pie, logic is quite
22 different from group to group to group.

23 So, the logic that rules, has to be the logic of
24 the audience, the reader, who may not see things and
25 probably doesn't see things the way that you see them.

1 You have to put yourself in your reader's place. That's
2 called the PYIRP rule, by the way, P - Y - I - R - P,
3 PYIRP. I steal it from a colleague of mine, who teaches
4 journalism. His office is right next to mine, he's a
5 retired editor, and his paper weights are his Pulitzer
6 Prizes. I tend to listen to what he has to say about
7 writing, and he says that's the first and most important
8 rule that he taught every reporter that he ever worked
9 with.

10 Okay, so you've got it all organized. Next,
11 write clearly. General rules, use the active voice, use
12 the passive only when absolutely necessary, somebody has
13 a gun to your head and you are going to die in three
14 seconds unless you use a passive.

15 Use short sentences. That doesn't mean that you
16 should ban forever coordinating conjunctions, but it
17 does mean that you have to think long and hard before
18 you write really long sentences, and if you send me an
19 email, I will be glad to send you free a copy of the
20 400-plus word sentence that I have from a prospectus.

21 (Laughter.)

22 MR. LUTZ: Hey, that's the one that introduced
23 the 637-word sentence that came right after it. So,
24 control the urge, write short and clear sentences. And
25 that involves using personal pronouns, using familiar

1 words. Concrete, familiar words. Familiar to your
2 audience.

3 Avoiding legal jargon, accounting jargon, any
4 kind of jargon, banking jargon, terms that are so
5 familiar to you, how could anybody not possibly
6 understand them. Well, probably most of the world
7 doesn't.

8 Okay, here's a quick footnote. If the workman
9 turns to you and says, hey, do you want soldiers on
10 that? What do you say? Do you want soldiers on that,
11 he asked me. I said, yes, and had to add a couple of
12 zeros to the check. It was the bricklayer working on my
13 front porch, and soldiers are bricks that stand on end
14 instead of flat. I just paid for a whole lot more
15 bricks, because I didn't know bricklayer jargon.

16 So, everybody's got their jargon. You're so
17 familiar with it, you couldn't imagine that everybody
18 wouldn't understand it. Well, they probably don't. So,
19 use familiar words, words familiar to your audience.

20 Cut, cut, cut, cut, and when you're finished
21 cutting, cut some more. Because every writer hates to
22 part with that wonderful word, phrase, sentence,
23 paragraph or page, chapter, or edition. You can always
24 cut. It's the secret to clear writing.

25 And, of course, the most important element here,

1 you want to visually design it. That is typeface, type
2 style, bullets, lay-out, white space, all of these
3 issues will be covered, but communication is not simply
4 verbal, more than ever it is visual. In fact, if it is
5 not visually attractive, they're not going to start
6 reading. So, you need good visual design.

7 So, all of that comes together, and as the panel
8 this morning pointed out, very importantly, this is a
9 process that is engaged in by a group of people. It is
10 not one writer going into a room and producing a
11 document. It is a process that brings everybody
12 together in making meaning.

13 You will find, I gave a very brief ten item
14 annotated bibliography in the materials, it's on the CD.
15 It's an introductory bibliography to resources. There
16 are dozens and dozens of other resources and websites.
17 The information is there, the help is there, the
18 technical expertise is there for you to take advantage
19 of it.

20 I'll stop now and let my colleagues fill you in
21 on all the details, all the points that I've just made.

22 MS. BOSLEY: If you will look inside of your
23 folder, there are written hand-outs of this
24 presentation, because I'm going to be doing what Bill
25 suggested, I'm going to have you look at several

1 examples that illustrated a number of the points that
2 he's made, and then others that I will also make.

3 You'll notice that this is called a five-step
4 program. I was going to call it a 12-step program, but
5 I thought AA might have some problems with that
6 trademark. So, we're down to five.

7 Also, again, given Bill's comment, perhaps in
8 the grand spirit that nothing is ever perfect, I would
9 want to revise this to say privacy notices for greater
10 usability, because after all, it is not enough for a
11 consumer to simply read it, we actually want them to
12 take action and to use the material.

13 So, let's get started. This morning, several
14 people mentioned the importance of having shorter,
15 easier-to-read material in your privacy notices, and I'm
16 going to give you some concrete examples. In fact,
17 everything that Bill has said that I will say, and I'm
18 sure that others on this panel will mention, are
19 appropriate for almost all financial documents. Not
20 merely the privacy notices. This need to have shorter,
21 easier material is not new.

22 In fact, Mark Twain said, "If I had had more
23 time, I would have written a shorter letter." And I
24 think this issue of time is one of the things that,
25 frankly, makes these privacy notices more complex than

1 they need to be.

2 The writing strategies I'm going to talk about
3 are based on document design principles, primarily
4 developed in the tension between -- and I'm going to
5 borrow here from Internet terms, or web terms -- the
6 difference between pushing information out, that is
7 telling everybody everything you think they need to
8 know, because in some ways it's easier to tell them
9 everything than it is to make decisions, and the tension
10 between that and pulling your readers in, that is
11 focusing on what readers need to know. And again, what
12 we talked about this morning, several of the panelists
13 mentioned that the two key things readers want to know
14 are: How do I opt out, and what is shared or sold?

15 So, focusing from that point of view, let's look
16 at these five steps. One of the purposes of any well
17 written document is, I believe, to decrease chaos. Our
18 lives are already full of information overload, as Mark
19 mentioned, confusion, unpredictability, disorganization.
20 Any document that crosses my desk, if it appears to be
21 chaotic in any way, I don't usually read it. I mean,
22 the first gatekeeping is, does it appeal to me visually,
23 does it look like it's going to be simple and easy to
24 read?

25 So, the first step would be to plan, to plan, to

1 test, and to revise. And in addition to establishing a
2 kind of iterative process, using usability testing, and
3 revising according to the results. I would also give
4 you two points to keep in mind. No piece of writing is
5 ever perfect. Ernest Hemingway rewrote the last line of
6 A Farewell to Arms 128 times, the poor man probably just
7 stopped from exhaustion.

8 Nothing is ever perfect, but it will always be
9 better through an iterative process. And one element
10 that's not up here is the need to collaborate, and I
11 think the collaboration needs to be not merely legal
12 writing it, passing it to communications, who passes it
13 back to legal, but a collaborative team effort that
14 includes consumers. And again, that was mentioned this
15 morning, I believe from the person from Bank of America.

16 Step two: Consider the needs and questions of
17 your audience. This is particularly crucial with these
18 privacy notices, because these often come to your
19 consumers unexpected; that is, there hasn't been a huge
20 amount of information that I think the public has
21 absorbed, even about the fact that there are now these
22 privacy notices, and to many it's just one more piece of
23 paper coming across their desk. So, these are the
24 questions that readers would have when they pick up that
25 privacy notice. Why am I receiving it, what is it

1 about, how does it apply to me, et cetera.

2 Readers tend to use what we call expedient
3 reading techniques and decisions. That is they scan
4 information to quickly find out what appears important
5 or beneficial, what appears to be simple. Readers take
6 fewer than 20 seconds to decide whether they're going to
7 continue to read anything. Online they take less time,
8 and, in fact, online material is read 30 percent slower
9 than hard copy. So, that's something to consider as you
10 write these notices.

11 Readers take action only when the action is
12 easy, and/or critical. Establish a big picture.
13 Increasing readability is critical by making clear that
14 readers know what the big picture is. That is, again,
15 why am I receiving it.

16 Someone this morning mentioned that when they
17 sent out the privacy notices, they included a letter
18 that tended to give the privacy notice more importance,
19 and the letter was used as a way to establish a big
20 picture.

21 Research indicates these big pictures or this
22 context or these introductory statements help the
23 readers become oriented to the purpose of the material
24 itself. And secondly, I would suggest that you offer a
25 verbal or a visual map to allow readers to understand

1 all of what is going to come up in the information. For
2 example, you might have an opening statement that says,
3 the following information is divided into three
4 sections, or the following information answers these
5 questions. That then allows the readers to have a
6 preview of what is coming.

7 The primary principle -- thanks to Mies van der
8 Rohe, we have seen this phrase used with a little bit of
9 editing from me, and as suggested by Mark -- less text
10 is more readable, or perhaps better, more usable. And,
11 in fact, it is very easy to be complex. Simplicity is
12 much harder.

13 Step four: Focus on the visual appeal. And
14 there are several ways that we can do this. This is
15 what I call the feng shui of document design, that is
16 placement, harmony, and balance are all critical in the
17 visual appeal of the materials that you send out.

18 Although I didn't list it here today, there are
19 issues of color choice. For example, I saw a series of
20 brochures put out by one of the major banks in which
21 much of the financial information was printed in red
22 type. I don't know about you, but red is not the color
23 I would like associated with my money.

24 (Laughter.)

25 MS. BOSLEY: So, even issues of what color is

1 the background; what color is the typeface. White
2 space, left appropriately blank. White space gives us
3 time to process information. It literally allows the
4 eye to rest between pieces of information. It gives a
5 sense of unification, it literally sets boundaries.
6 Those margins are blank for a reason. They set
7 boundaries around the information to help readers feel
8 contained so that they don't just sort of exit off from
9 the information.

10 And margins, indentations, white space,
11 establish a hierarchy. I know if something is an
12 indented left margin, it's subordinate to whatever
13 information came ahead of it.

14 Using readable typefaces. A minimum of ten
15 point type, and there are all kinds of research in terms
16 of the age or the visual acuity of your readers that
17 would indicate the larger the type, in many cases, the
18 better. Issues of sans serif font, that is for text, we
19 like to have those little ligatures, those little end
20 marks at the bottom of those types. Headings in a sans
21 serif font, are cleaner. However the reverse is true.
22 On the web, almost every slide you've seen today has
23 been in a sans serif font, because reading on the screen
24 is a different process than reading from a hard copy.

25 Using all capital letters decreases readability

1 by 15 to 20 percent. And in fact, even in terms of how
2 you emphasize information, using bold tends to be the
3 best form of emphasis.

4 Using informative headings. Notice the before
5 and after examples. In the before, the heading is
6 really just a label -- "Security." After it actually
7 gives you information -- "Security Practices Protect
8 Your Information." Headings should be informative.
9 They preview for the reader, and allow easier access.
10 Much financial information is read as a just in time.
11 When do I need to know this? I'll read it when I need
12 it.

13 And much of my financial information is sitting
14 in that stack of the New Yorkers that Bill mentioned
15 earlier, that I'll get to later.

16 It's often used as a reference. That is I might
17 read through it once, but until I'm going to actually
18 take the action, it becomes a reference point. I go
19 back and look for the piece of information that is
20 critical for my need at that time.

21 Headings, if you're using verbs, can reinforce
22 the idea of taking action, and both headings and lists
23 encourage scanning, locating, and categorizing, and
24 these are the mental activities that people use when
25 they read.

1 For example, if I were to receive a privacy
2 notice that was full of this -- this is, by the way, one
3 complete sentence, and probably has far fewer than 400
4 words, but that's a lot of information in one sentence.
5 Lists a findability. So, look at how we have now
6 decreased the text here, we have used white space, we
7 have opened it up for much easier reading.

8 Short sentences and short paragraphs. Why is
9 this visually unappealing to read? Because the text is
10 just too densely packed. Grouping information together
11 in chunks, on the other hand, as this is, makes the
12 reading much easier.

13 Also notice down at the bottom, in the original,
14 we had a lot of technical information that maybe was
15 critical to technical knowledge, but had very little to
16 do with the actual activity of making a decision about
17 how I was going to use this Internet privacy. So, that
18 information has been subordinated down to a note.

19 And finally, using a plain language style.
20 There are, of course, many other possibilities, but
21 these are the four that I picked out that I think are
22 most important. First, using a "you" attitude, that is,
23 as Bill mentioned earlier, gets those pronouns in there.
24 This is you. You are talking to the consumer.
25 Inserting the consumer through the pronoun "you" helps

1 integrate readers into the information by placing the
2 emphasis on the consumer rather than on the company. It
3 also makes it appear more like a conversation.

4 Use common words and define. I did notice
5 several privacy notices did include a glossary of
6 technical jargon, but the glossary often came at the
7 back of the brochure, which required me to go back and
8 forth as I was reading. I don't know about you, but I
9 would have done that maybe once, and I would be through.

10 So, what we want to do is define a term, if you
11 feel you have to use it, and of course I would argue, as
12 the others would, that perhaps you don't need to use the
13 term at all. But if you do, at least give a definition
14 at the point of context. This also is a way of
15 educating readers to the kind of language that will help
16 them, actually, if they understand it.

17 Using the active voice, that has already been
18 discussed. There is an inverse relationship with the
19 active voice, that is, the more complex the information,
20 the more these writing styles are necessary.

21 And my last point is using positive language.
22 That is, if I say to you now, do not remain seated, how
23 long would it take you to figure out I had just told you
24 to stand up? Phrasing things in the positive will make
25 it much easier for your consumers to understand the

1 information that you have given them. All of which
2 leads to success, both for you and the consumers.

3 Thank you.

4 MS. SALTZMAN: Lynn and Si, I think, are next.

5 MR. FISK: We called this presentation "How
6 Simple Can You Get?" Basically because to us, being in
7 the communications field, this was really the key
8 question to ask when looking at privacy notices. When
9 we sit down and we look at these notices, we look at the
10 situation here. What we see most of all is an enormous
11 gap. It's the gap between the legal and regulatory job
12 that has to be done, and the level of attention and
13 interest that you can safely assume that any reader is
14 going to give you.

15 And it's a very big gap. I think that's
16 something that we all agreed on here today.

17 And I think that as also it's been noted, it has
18 nothing to do with the fact that people care quite a bit
19 about privacy. There may be many reasons for that --
20 but you are not going to change that. That gap is going
21 to be there, you're just going to have to deal with it.

22 The only way that we, and we look at this as
23 communications people again, that we can see that you
24 are going to close this gap, is to throw everything at
25 it that you possibly can, to use every tool you possibly

1 can to communicate. And try to make it just as simple
2 as you can possibly get it.

3 I want to start off with an example of how not
4 to do this. And don't worry, it's not a privacy notice.
5 In fact, it's a cartoon. A salesman comes up to a
6 house, dog comes out, dog doesn't run out, dog doesn't
7 bark, dog doesn't chase the guy off, the dog starts
8 talking. The dog says, "You are trespassing on private
9 property, and I would like you to leave. I don't know
10 how I can make it any clearer than that."

11 Well, to answer the obvious question, how is an
12 unsimplified privacy notice like a talking dog? In both
13 cases, you've got a situation where you're using only
14 text, and you're ignoring other ways to communicate that
15 might be able to get that job done a lot better. And as
16 a matter of fact, also, there's a lot of words going on
17 here, where a few would do the job. The conclusion from
18 this really is that just reworking the text isn't going
19 to produce the best solution. It's going to solve your
20 problem.

21 I would agree with what's been said here, by the
22 way, about using bullets, and about using legible
23 typefaces and so forth. I think that is very important,
24 but I think that I would say, you've got to go even
25 further than that.

1 What you need to do is you need to tell
2 customers, excuse me, you don't need to tell customers
3 that you respect their privacy, you need to show them
4 that. Don't start a three-page or four-page or
5 five-page long statement about privacy with how much you
6 love their business and you value their privacy, because
7 that five pages is denying every word of that.

8 Give someone a privacy notice they can
9 understand. Give them a notice that they want to
10 understand. And don't hide the opt-out, if there is
11 one.

12 The big picture -- basically, there's going to
13 be two kinds of information policies here, either you
14 share information with other people or you don't. And
15 in the eyes of the consumer, that's what it boils down
16 to. And by the way, sharing information, and you can
17 say technically that you don't share if you don't share
18 information, but you do supply -- you do send
19 solicitations from your "business partners," whatever
20 you want to call them. In the minds of the consumer,
21 there's no distinction, you're sharing at that point. I
22 would just say that. Maybe technically you can say we
23 don't share. Just a bit of advice on that.

24 If you don't share information, that's the main
25 thing somebody needs to know about you. For one thing,

1 there's no opt-out. And for the other thing, that's
2 just a very clear message, it's good policy, they might
3 like to know that. No reason not to be up front about
4 it.

5 If you do share information, well then you need
6 to briefly describe how, and you need to show the
7 opt-out choices. What we would suggest might be one way
8 to do this, is industry-wide to use two different kinds
9 of message. And we're going to show you some examples,
10 and you'll see that even from across the room, you could
11 tell which kind you were looking at.

12 Use one type of message if you don't share
13 information, use the other type if you do. And have
14 each type begin with a summary message, and then follow
15 with the details.

16 MS. RIDDLE: I am going to walk you through a
17 few examples that we prepared for this presentation to
18 just give you an idea of some of the issues that we've
19 seen with both sharing and nonsharing policies.

20 This is an example of a generic hybrid that we
21 created that is representative of a company that does
22 not share information. You can't tell that at a glance.

23 MR. FISK: You can't tell if you read it three
24 times, but that's another story.

25 MS. RIDDLE: There are a few obstacles to

1 communication with this piece. First of all, there's a
2 lot of text. It's probably more text than is necessary
3 to communicate a nonsharing policy. There are small
4 things, like a great distance between the bulleted
5 information and the text that is associated with the
6 bullets, that makes it difficult to read.

7 At the end of the document, you'll see a large
8 volume of all-caps text, which we have heard other
9 speakers mention makes something difficult to read, it
10 also makes it somewhat foreboding.

11 And in addition to that, I think that just the
12 general impression of this piece is that it is not
13 inviting. This next example is a piece where we've
14 tried to apply some of our theories, or our proposal, to
15 this exact same nonsharing situation. We've tried to
16 make it bark.

17 We've put some emphasis on design and hopefully
18 give this piece a shot at being read. We've simplified
19 the text and organized the information in two tiers.
20 You will see first that we have a summary statement that
21 makes the main point -- we don't share. And this also
22 indicates right up front that no response is necessary
23 to this piece. You need to let people know if they need
24 to do something or not. That they're going to be
25 inundated with these privacy policies, and that's one of

1 the things that really needs to become clear to them,
2 whether or not they need to take action on a particular
3 piece.

4 We give some clarity to that first statement
5 with this sentence here. We say, "access to your
6 personal information is strictly limited to those who
7 have a legitimate need for it." Then we move into a
8 brief description of the details, which has been
9 aggressively simplified, where we get into the details
10 we organize them clearly, we say what we're not going to
11 do, we say what we are going to do, we say who and what
12 is affected by this policy.

13 By taking this approach, we've been not only
14 able to present the information effectively, but we've
15 also been able to greatly reduce the amount of space
16 that it takes up. This particular piece can fit into a
17 number 10 envelope unfolded.

18 Here's a second example, that was the easy one,
19 actually, because it's not sharing, so it's an easy
20 place to start. This next example is a generic hybrid
21 that we generated, which represents a privacy policy
22 from a company that does share. We're starting with
23 three pages here, again, a lot of text, very similar
24 problems to what we showed in the first unsimplified
25 example.

1 Again, in this next example, what we have done
2 is tried to apply the same theories to this slightly
3 more complicated situation. We've restricted our use to
4 just black and white, to illustrate the fact that you
5 don't need -- though it's helpful -- you don't need to
6 use color in order to make these things clear or easy to
7 read. It's really a matter of organization and
8 thoughtful structure to the document, more than
9 anything.

10 Right up front, we mention how this document is
11 going to tell you how this policy affects you and what
12 your choices are. Then we move into a brief description
13 of how your information is going to be used, and follow
14 that with a clearly organized, more detailed look at the
15 policy.

16 If you wanted to be more aggressive, and even
17 more user friendly, you could take that brief
18 description of the top line information, and turn it
19 into a tear-off, mail-in, opt-out form, so that someone
20 could see that if they agree with the policies as
21 they're presented here in brief, that no response is
22 required. But that if they would like to, they can opt
23 out of any or all of the policies that are in place
24 right here.

25 MR. FISK: Basically what we're looking at when

1 we look at the summary message is a number of benefits.
2 The first thing is it's going to tell readers what
3 ballpark they're in, whether they're in the sharing
4 ballpark or the nonsharing ballpark. And right away,
5 that's going to help them, particularly as people come
6 to know more about, they're going to be better educated
7 about privacy notices, this is going to be a big thing
8 for them to know right off.

9 Let's say it's the first time that they're
10 looking at one of these, let's say they're a novice
11 reader of one of these. Well, that introduction is
12 going to give them a framework for the details that they
13 may go on and look at. And I think it will also help
14 them go on and look at it, because it gives them an easy
15 way in, it gives them something that engages them. You
16 have that little thing up there that says, we don't
17 share. Well, maybe you don't know what that means. But
18 maybe you're engaged and you want to go find out what
19 that's about.

20 Let's say you are someone who has read a million
21 of these things. Well then, this gives you the points
22 you want, right up front, you are not going to have to
23 look at the whole thing, because you probably have an
24 idea of what it says. Obviously, the main focus of this
25 summary component of each message is quick

1 communication.

2 As far as the details go, we still think it's
3 important to try to beat up on this, as much as
4 possible, for a logical organization. You want to be as
5 brief as possible about expected matters. I mean, of
6 course you get information, of course you use it in
7 doing business with people, everybody knows it,
8 everybody expects it, it doesn't need to be dwelled on.

9 Make the fullest use you can of simplified
10 language and any other communication tools that you can
11 get to work for you. Obviously the focus of this part
12 is compliance protection, but you want to beat up on it
13 as best as you can because it's educational.

14 As far as the process, that's been covered
15 pretty well, but I want to go over it just briefly. You
16 want to start off by getting everyone who is involved to
17 do a kick-off meeting. Find out what their goals and
18 concerns are, get them on board. It will come back to
19 haunt you if you don't.

20 Assemble a small working group of key players,
21 don't get everybody in the room, but get everybody that
22 needs to be there. Probably legal, customer
23 communications, operations, and anybody who knows what's
24 really happening with information. Get people to be
25 working face to face, get them collaboratively working,

1 it really will help solve problems.

2 Consider using an outside consultant, somebody
3 with a neutral status who is not involved in the
4 politics of all the departments that are internal to the
5 project. They can coordinate it, they can build
6 consensus, and they may have the time and expertise to
7 do the actual writing and design work, which is going to
8 take more time than you think it would, but believe me,
9 it does.

10 And develop the text and design in tandem, if
11 you possibly can. Start by organizing and prioritizing
12 the information. Use that to establish an overall
13 architecture, and then when you're doing the writing,
14 you can make the writing and the design reflect your
15 corporate standards.

16 I just want to point out, like you probably have
17 noticed, any materials that you have gotten here from us
18 are not specifically related to this presentation. The
19 stuff that's on the CD-ROM, for instance, there's more
20 on simplification in general, there's some information
21 about the business reasons for simplification, there's
22 some stuff about plain English prospectuses where
23 business interests and simplification led up to a lot
24 happening there.

25 I think that has a lot of application in this

1 arena also, and then for this presentation, itself, you
2 can go to the website, and the website URL is given on
3 the CD-ROM.

4 MS. RIDDLE: Also complete text from the
5 examples that I showed are out front, if you would like
6 to be able to read from beginning to end both the
7 unsimplified and simplified versions of the examples
8 that we showed.

9 MR. FISK: Thanks very much.

10 MS. RIDDLE: Thank you.

11 MS. SALTZMAN: Thank you.

12 Irene?

13 MS. ETZKORN: We've actually just heard quite a
14 bit about the improvements that can be made in the
15 writing and the design, and I wholeheartedly endorse all
16 of the recommendations that have been made. But I am
17 going to focus on a different area, because I think that
18 actually what people have thought about is the end of
19 the process, which to me is the writing and design, and,
20 in fact, we need to bake the cake before we frost it.

21 In particular, what I am saying is that process
22 and content issues have been neglected. And it's
23 evident in a number of ways. Production methods of how
24 the documents are actually printed, produced and
25 distributed, as well as content and practice decisions,

1 need to be determined before any of the writing and
2 the design can actually begin. If not, the result is
3 an unfortunate visually uninviting and cumbersome
4 document.

5 A classic example of this is one of the notices
6 I received; it is dominated by this very intrusive bar
7 code. This hairy caterpillar is really what you see
8 when you open the document. Bar codes are almost
9 synonymous with bureaucracy and impersonal institutions,
10 and it seems to me that it's immediately negating the
11 notion of the kind of personal trust that you're trying
12 to create in this document.

13 To me it's also an example of a process problem,
14 in that the production and printing areas of the company
15 were probably brought into the development process too
16 late in the game, so it was placed as an afterthought on
17 the document.

18 In a similar way, this particular privacy notice
19 is a self mailer, which is a model of efficiency in
20 terms of distribution. However, it leads to the problem
21 of a document that has two different page orientations
22 within it, and the effect there is, of course, that
23 you're not sure how to engage with the document at all,
24 even in terms of which way to turn it in the beginning,
25 and the "Dear Customer" section is beginning on an

1 angle, which is rather offputting, to say the least.

2 The way that that type of problem can be avoided
3 is actually by employing multiple forms of analysis.
4 We've talked in some depth as a panel about audience
5 analysis: The real world attention spans being probably
6 measured best in nanoseconds, rather than the 20 and 30
7 seconds that we heard; the variety of audience segments;
8 and the fact that they have varying concerns.

9 But we also need to do a business requirements
10 analysis, in conjunction with that. In terms of what
11 the budget is for the production of these documents,
12 what the timing is, in terms of whether they will all be
13 going on en masse, whether it will be a staggered
14 schedule, and the volumes involved.

15 And then the goals for measuring success, which
16 seems to be from all the presentations, the area where
17 there is certainly some disagreement, but often it's
18 just been lacking completely in terms of anticipating
19 what those measurements would be.

20 And production analysis, production methods
21 should be selected to meet the audience needs. And I'll
22 talk in more depth about how customized production
23 techniques really could make these much more
24 personalized, more meaningful documents.

25 In terms of audience analysis, the diversity of

1 the audience, at a minimum, should be looked at in terms
2 of the need for multiple languages, the fact that people
3 will be receiving multiple notices for multiple
4 accounts, and the issue of joint account holders and how
5 the decision of one party affects the other.

6 And basically the question is does one message
7 fit all, and I would certainly say that I doubt it.

8 In terms of multiple languages, I would suggest
9 that you reach all populations by sending the notices in
10 whatever language the customer has selected for other
11 regular communication. Now, I must say for all of my
12 personal documents I have selected English, so therefore
13 I did not personally receive notices in other languages.
14 I did canvas friends, family and colleagues, and I was
15 able to find one example where I felt that they made an
16 attempt here by having a section in Spanish notifying
17 recipients that there were versions available in
18 Spanish. However, out of a sampling of about 25, I only
19 came up with this one.

20 In terms of business requirements, it was just
21 mentioned that there is a need for representation from
22 several internal areas to ensure quality communication.
23 The key here is that I believe many of these notices
24 have been dominated by the legal and regulatory aspects
25 of the business, without proper balance in terms of

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1 these other areas.

2 It's also critical that these areas work
3 simultaneously, or from the outset of the project, so
4 that there won't be these unfortunate unveilings of
5 systems problems at the end of the project.

6 I would like to go into a little bit of what I
7 see as the appropriate role for these various groups
8 because their complementary expertise is very important
9 to the final quality of the end product. Regulatory
10 affairs, I think, is most obvious in terms of ensuring
11 compliance with the law. Corporate communications,
12 though, appears to be sadly lacking, in that many of
13 these documents are essentially unbranded. They
14 certainly do not have a tone that's in keeping with a
15 consistent voice for the company in other
16 communications.

17 Communications should also be the area that's in
18 charge of ensuring the plain English writing style, and
19 the good information design techniques that were
20 demonstrated. But I think the area that I have not seen
21 any substantial use of is the area of database systems.
22 Facilitating customization, meaning personalized
23 content, specific information about your account, would
24 be tremendously helpful.

25 I think one of the failings of these documents

1 is that people have no way of knowing whether they're
2 authorizing the sharing or the selling of accurate
3 information. If you don't tell the person what, in
4 fact, you know about them, how can I willingly say,
5 sure, share it. So, the ability to use the database of
6 what you already know about a customer could be a
7 potentially dramatic change in the utility of these
8 notices.

9 And then the printing and distribution area. To
10 ensure the feasibility of production, are you going to
11 use laser printing techniques, are you going to use
12 traditional printing techniques, each of them will have
13 certain limitations and opportunities. There may even
14 be the opportunity to use something like color laser
15 print for greater highlight and customization.

16 So, the question of what method of production
17 and distribution will be used, what quantities will be
18 needed, these answers will greatly affect the ability to
19 customize the content, to use color, and it will also
20 probably determine size and shape in terms of standard
21 mailing envelopes and standard postal discounts.

22 This is a sampling of the wide variety of sizes
23 and shapes. This is the letter format, which has been
24 fairly typical from the samples I've reviewed, but
25 unfortunately, this is a case where the content

1 undermines the format, because it begins in the letter
2 with "Dear Valued Customer." If they don't know my
3 name, I'm somewhat concerned that I'm truly of value to
4 them.

5 This is a format which is somewhat the polar
6 opposite, in that it's a very traditionally printed
7 piece using more than one color. However, what's
8 interesting about this, it's certainly evident that more
9 dollars were spent on the printing of it, but it has
10 somewhat the feel of a promotional brochure. And I
11 would suspect that many people looked at this and
12 thought it was a promotional piece, as opposed to an
13 informational one.

14 And this is yet another range on the spectrum, a
15 very simple folded, two-sided page that's basically done
16 in a duo tone.

17 If the production affects the format, the
18 format, as we've heard, affects the readability. A
19 multipage brochure with fold-out pages, doesn't look
20 simple, won't be read, and probably will be tossed. As
21 we've heard also before, brevity ensures the longevity
22 of the attention span. You will actually have someone
23 engage in the document for a longer period and with more
24 interest if, in fact, the document itself is shorter.

25 Keep all of the pages oriented in the same

1 direction so that people know where to begin and end in
2 the document. In terms of using your databases to
3 customize the content, I'm talking about things as
4 simple as which accounts you're referring to -- to
5 anticipate their questions, and to head off unnecessary
6 inquiries. In some of the documents I've received, I
7 don't know that I have a relationship with the
8 institution that's named in the document.

9 If they referred to an account or even gave me a
10 clue as to what the reason was that they thought they
11 had a relationship with me, it might trigger the fact
12 that I remember yes they were, in fact, acquired by
13 another institution, or something that would give me
14 some telltale sign.

15 In terms of customizing content, you need the
16 content to instill, rather than undermine, confidence.
17 This is an example from a notice: "If you are also a
18 customer of one of our affiliates and you receive a
19 notice that it may share information about you with its
20 affiliates, you will need to separately notify that
21 affiliate if you do not want such information shared."

22 How confident will the reader be if it sounds as
23 though the company can't keep track of its customers?
24 That, in addition to the practical aspect of the
25 logistics of the separate notifications, if I do receive

1 these multiple notices, puts a burden on me that I
2 believe many consumers would think should be a burden
3 for the company.

4 In terms of personalizing the content, address
5 the person by name, and indicate the reason you're
6 contacting them. Have a corporate executive sign the
7 letter. After all, computers don't understand or value
8 the concept of privacy, only people do. A third of the
9 sampling of notices I reviewed included a signature, and
10 I don't know this person, but I like the fact that his
11 signature was there, because it gave me at least the
12 illusion that a person knew this notice was going out,
13 and had communicated with me.

14 Anticipate readers' questions. What personal
15 information does the company know about me? Embedded in
16 many of these notices is the mention of medical
17 information, particularly among insurance companies. I
18 believe that many consumers would find that surprising,
19 and are thinking more of this, if they're at all aware
20 of the topic, of financial information.

21 Be forthright about what kinds of information
22 are in question here. Is it accurate, and how did they
23 get this information? After all, if you've had an
24 account with someone for 20 years, you may no longer
25 know whether this information is information that you

1 provided on an original application, or if it has, in
2 fact, been updated over time.

3 In terms of the process that you're asking
4 people to go through and the actions that they should
5 take, you need to be clear about whether the opt-out
6 requests apply to everyone on a joint account. This
7 particular example was very forthright in addressing
8 that. "An opt-out request by any party on a joint
9 account will apply to all parties on the account." It
10 addressed it specifically so that there wasn't a
11 lingering question in the reader's mind.

12 Also in terms of process, many of the documents
13 that we're looking at are really Band-aids that have
14 been put on a bleeding artery. A simplified process is
15 easier to describe. It's a little like tying your
16 shoelaces. I mean, describing that in prose can be a
17 very cumbersome process, whereas an illustration of it
18 is immediately evident. Think about what the actual
19 process is, then think about how to describe the
20 process.

21 Let people call rather than write. Make it easy
22 for people to find out how to contact you. Put phone
23 numbers and website information right up front. You're
24 certainly undermining your message if you are allowing
25 that type of access and then not allowing people to find

1 that information.

2 And the issue of consolidating your mailings.
3 I'm well aware, having worked on dozens of statements
4 and other financial documents with our clients, the
5 database issues in terms of knowing your customer as a
6 single entity. Even if you cannot do it in terms of a
7 single unified notice, you could do something toward a
8 consolidated mailing, perhaps with a summary sheet, so
9 that the people understand that you are recognizing them
10 as one entity.

11 And anticipate the future. Consider how the
12 first notice will differ from subsequent annual notices.
13 Will the second or third that someone receives over time
14 appear to be a replica of the first, or is it a
15 continuing update on the conversation?

16 In terms of content, set the context. Remember
17 the notice was not requested from the reader's point of
18 view, it just appeared in their mailbox, and that
19 privacy is an emotional concept. Respect the reader's
20 feelings. The whole word will immediately engender some
21 fear or concern, possibly.

22 And consider providing extra helpful content
23 that isn't necessarily required. One example included
24 marketing list opt-out, and identity theft information,
25 which I thought was a nice additional piece of

1 information for someone who had any concerns about this
2 area. It's a likely next thought on their part, and
3 they've provided the information in a very
4 easy-to-understand format.

5 Also, remove introductory barriers. This is
6 only changing the names of the guilty, but an actual
7 series of identifications of the entity that has sent
8 this notice. It's also the first sentence on the
9 notice. A better approach is to list the companies that
10 are included at the end of the notice, as this company
11 has done. It's much clearer, it also has a little bit
12 of a branding benefit in terms of reiterating the
13 breadth of the corporate entities, but it's also much
14 clearer and gets away from the introductory barrier.

15 In summary, what I'm saying is, don't
16 concentrate on simplifying the description of a process,
17 simplify the process itself as the first step. Explore
18 production methods early on so you're not caught in a
19 bind. Use database knowledge to personalize. And also
20 consider the economies and the customization of laser
21 printing, including possibly laser color printing.

22 Thank you.

23 MS. SALTZMAN: Thank you.

24 Mark, other comments?

25 MR. HOCHHAUSER: Part two, briefly, how could

1 you design more usable privacy notices, and I will go
2 through this more quickly because this has been
3 discussed. Collaborate with a variety of people in
4 writing the privacy notice.

5 Use plain language. I have nothing to add to
6 what's already been said. What I will add is this: If
7 your privacy notice is posted on the web, print it out
8 on several different printers and see what it looks
9 like. My experience is if you get something from a
10 commercial printer where the colors look great, it does
11 not show up very well when you actually print it out on
12 your own printer. And so your web version may not be
13 very usable.

14 Speaking of usability, this is not terribly
15 usable, but it's my first cut at a guide to how we
16 collect and share information. This is a two-page,
17 hopefully one-page, check-off list that could be
18 included with your privacy notice, simply to give people
19 a very brief summary of what you do and what you don't
20 do.

21 Step four, how do people think about privacy
22 notices? Privacy and finance are complicated abstract
23 issues, most people tend to be concrete thinkers, so
24 concrete examples will help them understand. Keep in
25 mind, too, that literacy skills change with age, and

1 older consumers like your parents or grandparents may
2 have a very hard time understanding privacy notices. I
3 always recommend, ask family members to read your
4 privacy notice and see what they have to say.

5 No matter what you do, some consumers won't
6 understand it. Giving your best effort, some segment of
7 the population still won't get it. My review of 60
8 privacy notices found that they were written at about a
9 third to fourth year college level. The latest census
10 data is that about 85 percent of the population has a
11 high school diploma, 25 percent has a college degree,
12 but keep in mind that when you go to college, you can
13 major in anything from art history to zoology. A Ph.D.
14 in psychology didn't help me wade through some of these.

15 The general recommendations are that writing for
16 the public should be at around a junior high reading
17 level, but the point has been amply made that writing in
18 a more simple style does not guarantee that people will
19 actually understand it.

20 Finally, and these are in the hand-outs, I
21 included some before and after examples of translating
22 information in a privacy notice from sort of convoluted
23 English to what I hope is plainer English, just to show
24 you that it can be done.

25 And last, there is a list of some articles and

1 books you may be interested in.

2 Thank you.

3 MS. SALTZMAN: Thank you.

4 And Alan?

5 MR. LEVY: We're going to change gears a little
6 bit. My role today is to provide an overview of the
7 nutrition labeling experience that the food industry and
8 the government and consumers and public health community
9 went through about ten years ago to develop an effective
10 nutrition label.

11 This is the label that's used on virtually all
12 food products that are sold at retail today to
13 consumers. Hopefully, there may be some lessons from
14 this experience that may be useful to the process that
15 you're going through today.

16 First of all, where did the content come from?
17 The place it came mostly was from the marketplace.
18 Certainly the biggest difference between the nutrition
19 labeling experience and yours, is that the state of
20 consumer interest and understanding of the information
21 that's included in the privacy notices that exists
22 before people have ever seen these notices is quite
23 different.

24 In the case of the nutrition label, there was
25 really a very extensive consumer education activity,

1 where consumers' awareness of dietary risk factors was
2 raised enormously, all through the eighties. Usually by
3 consumer education efforts that were conducted by the
4 government, the public health, and the industry
5 collaborations.

6 There were new product introductions in the
7 marketplace. The food companies innovated and
8 introduced products that took advantage of this rising
9 consumer awareness of dietary risk factors, so there was
10 variation in the marketplace, relative to the content
11 that the nutrition label addressed itself to.

12 And finally, particularly toward the last half
13 of the eighties, there was a widespread perception,
14 particularly among the consumer community, that there
15 was a lot of misleading and inappropriate promotion and
16 marketing going on around the dietary risk factors and
17 the promotion of some of these new products. And at the
18 time, people talked about the Tower of Babel. There was
19 confusion that people were not using standardized
20 definitions, and this recognition of a communication
21 problem in the marketplace, was one of the bases for the
22 nutrition label in the first place.

23 The other place that content came from, it came
24 from the experts. And the experts are what prioritized
25 the public health importance of the various nutrients.

1 The nutrition label embodies a prioritization of
2 importance relative to the dietary risk factors. Fat
3 was recognized by experts as the key nutrient of
4 relevance.

5 They also established standardized nomenclature.
6 They determined what was seen as high and what was seen
7 as low. They gave people a metric to evaluate the
8 information that was being provided in the label. And
9 they determined the level of detail that was to be
10 disclosed in the information. So, people were not
11 inundated with all the intricacies of fatty acid
12 chemistry, it was a public health decision to focus
13 fundamentally on dietary fat and secondarily on
14 saturated fat.

15 And, again, a bunch of the nutrients which had
16 previously been disclosed on food products were no
17 longer considered mandatory. And there was an attempt
18 to streamline the information that was being provided in
19 the nutrition label so that it met what were the health
20 priorities determined by the experts. And these expert
21 decisions, these were public health decisions, really
22 not communications decisions.

23 And the third place that the content came from
24 was from the law. Toward the end of the decade, 1990,
25 Congress actually passed a law that required the

1 nutrition label. It's called the Nutrition Labeling
2 Education Act. And the law had a lot of interesting
3 consequences. It clearly defined the purpose of the
4 nutrition label, which was to inform consumers about the
5 relevant nutrition characteristics of the products,
6 relative to their health, and the context of the total
7 diet.

8 So, it defined the scope of application that all
9 packaged foods were covered by this, and it required a
10 uniform presentation.

11 So, finally, the content really came from all of
12 these things, combined and in a coordinated way, and the
13 practical effect was that consumers were educated by the
14 public health experts to want the information that the
15 law required to be on product labels. The consumers saw
16 nutrition labeling from the very beginning, even before
17 they saw nutrition labeling, as a need they already had.
18 They wanted this information, and they didn't learn
19 about that need the first time they read the label.

20 Now, where did the format come from? What we
21 did with respect to the format is we followed a lot of
22 the recommendations that you've heard about today. We
23 did a lot of testing, and we started from the place that
24 we were essentially required to look at it as a format,
25 as a standardized display. It wasn't that every company

1 was allowed to create it's own customized information,
2 there had to be a standardized format. And what we did
3 is we tested the alternative formats that were suggested
4 by the interested parties, by industry, by public health
5 experts, consumer groups, and the regulators. They
6 basically proposed these formats, and we tested them.

7 And very early in our testing, what we
8 recognized was that people's preference for formats is
9 not exactly the right measuring stick for effective
10 labeling. People tended to like labels that had a lot
11 of information, and that had characteristics that made
12 them look good, but they didn't necessarily work. And,
13 so, very early in our process, we decided that you had
14 to measure formats in terms of performance, not
15 preference. And performance was defined in terms of
16 ease of use and accuracy, for specific label uses.

17 The performance depends on purpose. It's a
18 major truth in the design of the nutrition label. You
19 have to know what people use the label for, before you
20 can measure how well it works. You have to ask people
21 what they're going to do with the label, then you have
22 to define tasks that capture these uses, and only then
23 can you really measure your performance.

24 In the case of the nutrition label, it's fairly
25 clear what people were going to use the label for. They

1 were going to use it to evaluate the nutritional quality
2 of a given product, and they were going to use it to
3 compare products, they were going to use it to help
4 people place a product in their diet. And these were
5 the specific purposes that people were going to use the
6 information for, and we defined tasks which measured how
7 well people could do these things in terms of how
8 quickly, how accurately, how easily, and these became
9 the metrics by which we evaluated the nutrition label.

10 Now, when we evaluate a task, we quickly
11 realized that there are one-product tasks and
12 two-product tasks. There are product selection tasks,
13 where people are making choices between products and use
14 information to inform those choices, and there are other
15 kinds of tasks where it's a simple one-product task
16 where you read the information and you essentially rate
17 the characteristics of the product.

18 We looked at how well the nutrition label could
19 perform in helping people evaluate front panel claims,
20 whether the product was high and low in specific
21 nutrients, what they considered to be the likely dietary
22 effect of eating this kind of food, and what kinds of
23 food and products would they buy, but we evaluated it in
24 terms of these realistic tasks.

25 Now, in the case of privacy disclosure, you have

1 a similar kind of possibility, you could have product
2 rating kinds of tasks, where people look at the privacy
3 disclosure and are asked to describe the attributes of
4 the particular product or service, or you can have
5 product selection kinds of tasks, where people are asked
6 to choose which of two kinds of services they would buy.

7 You have the additional issue of the
8 opt-in/opt-out purpose, which is actually the only clear
9 purpose that is really defined for privacy disclosures.
10 You can measure how the different kinds of presentations
11 affect people's opt-in and opt-out choices. You can
12 certainly look at what kinds of products people will
13 buy, and I think in the case of privacy disclosures, one
14 thing you probably want to examine with some care is
15 what kind of information search is triggered by these
16 kinds of disclosures.

17 When you measure the performance characteristics
18 of your disclosures, you really need to have control,
19 you have to compare how the disclosure works relative to
20 products that don't have those kind of disclosures. And
21 you need to test how well different kinds of privacy
22 disclosures, formats, work in multiple choice
23 situations.

24 Now, in terms of evaluation, the main thing that
25 we looked at when we evaluated the impact of the

1 nutrition facts panel and the nutrition label
2 disclosures was the market impact, and this was, in
3 fact, the major effect of nutrition label format. It
4 triggered a lot of new production introductions. It
5 changed the market share of different types of products.
6 It changed the type of advertising that we saw
7 associated with a group of products. We started to see
8 much more quantitative kinds of claims being made in
9 advertising about products.

10 In terms of evaluating label usage by consumers,
11 we measured things like frequency of use, which
12 interestingly did not change very much, because people
13 had always said that they read food labels, and even
14 after the nutrition facts panel came in, they still said
15 that they read food labels. But they used it for
16 different things. They found the label useful for
17 different things. And one of the things we found was
18 that an increase in the use of the food label for
19 quantitative evaluation of products, and in particular,
20 whether products were high and low in specific
21 nutrients.

22 We also looked at what they saw as the perceived
23 credibility of the information, and the food label has
24 an interesting character, which privacy disclosures do
25 as well, I would think. It is that there's a

1 distinction in the consumer mind between what we call
2 the front panel, which is used for promotional purposes
3 and marketing, and the back panel, which is the
4 disclosure of regulated information required by the
5 government.

6 And the nutrition facts panel has great
7 credibility. It's seen as the gold standard relative to
8 the promotional messages that are seen on the front.
9 And what we looked at was the effect of the nutrition
10 facts panel on the perceived credibility of the front
11 panel statements. And one of the things we found is
12 that that increased.

13 Finally, we looked at the consumer acceptance of
14 the nutrition facts panel, and what we found is
15 something that has actually been found in many cases,
16 that what people really like is they like value-added
17 information. It tells them something they don't know,
18 that they want to know. That is the key to the consumer
19 acceptance for nutrition disclosure.

20 What we've also found is that people saw
21 this information as having a purpose. And in the case
22 of the nutrition label, they like the purpose. They
23 thought that the purpose was to tell them about the
24 relative nutrition characteristics of the product that
25 were relevant to their health, and that was its purpose,

1 and what they really liked is that it achieved that
2 purpose. It was seen as well designed and appropriate
3 to the purpose that it was intended for.

4 In general, people liked the fact that the
5 information was seen as in their interest, and not in
6 the interest of the manufacturer. The other thing we
7 found is that consumers basically don't know why that
8 information was there. They have no idea what the
9 regulations are, and you can't ever assume that they
10 know that.

11 We also looked at that in terms of label design.
12 Consumers are critics. They like labels that are
13 legible, comprehensible, easy to use, and serve the
14 intended purpose.

15 I should say that just in response to the
16 comment made this morning about how the nutrition label
17 has failed to stem the tide of obesity in the country,
18 it's actually the case that nutrition label is not
19 really intended, and it's really not seen by consumers
20 as telling them what they should do. It's meant to
21 inform their choices, and that's why they like it, they
22 see it as serving an appropriate purpose.

23 There are many, many reasons why people are
24 overeating, and the nutrition label is really not
25 probably a major contributor one way or another of that.

1 But the fact is, and this is the truly important thing,
2 is that there's actually a whole body of literature,
3 very well documented, that the nutrition label has
4 serious effects on market behavior, consumer behavior,
5 and product choices, and it's really on those grounds
6 that you have to evaluate the impact of the nutrition
7 label.

8 MS. SALTZMAN: Thank you.

9 We have some questions from the audience. The
10 first is: As experts in writing readable, useful
11 documents, do you really believe a single notice can be
12 prepared that gives consumers enough information to make
13 informed choices about financial institution privacy, or
14 does a notice have to be part of a broader consumer
15 education program to succeed?

16 Anyone want to respond?

17 MS. ETZKORN: Well, I would respond by saying
18 that I think it probably would be more effective if it
19 were in the context of a broader campaign. Someone in
20 an earlier presentation brought up the repetitive drip
21 effect of advertising, and its effectiveness, and I
22 think there is applicability in that concept, that it
23 isn't a single mailing and a single format that will
24 probably really educate people.

25 MR. HOCHHAUSER: I agree. It depends, in large

1 part, on what do you want the privacy notice to
2 accomplish? If you just want to provide information
3 about your privacy policy and the sharing of
4 information, that's one thing. If you want to make it
5 more of your corporate strategy, and customer relations,
6 then it's something else. And you may want to really
7 incorporate it into a broader communications approach.

8 MR. LUTZ: Well, this is actually sort of
9 building on the last one. Would you recommend that
10 institutions pursue and regulators encourage a privacy
11 communication strategy that goes beyond the formal
12 mandated notices?

13 Come on, that's the biggest softball I could
14 throw you.

15 MR. FISK: I would say absolutely. I mean, I
16 think from drawing on our experience with mutual fund
17 prospectuses, a lot of what happened there was because
18 some mutual fund companies decided to go way, way beyond
19 what was required, and that was where the biggest
20 efforts at simplification and communication took place.
21 So, I don't see that this would be any different. I
22 think the opportunity is out there for somebody to take
23 the ball and run with it.

24 MS. SALTZMAN: And this follows, somewhat: The
25 sample clauses contained in the GLB regs seem to meet

1 some, if not all, of the panelists' recommendations,
2 active voice, positive phrases, short sentences, use of
3 pronouns, et cetera. Nonetheless, institutions using
4 those clauses have been criticized in a number of
5 instances for being unclear and/or confusing. To what
6 do the panelists attribute the criticism? Is it merely
7 the visual impact?

8 MR. LEVY: I mean, it seems to me that the
9 biggest problem with the privacy disclosures is that
10 consumers don't have a good sense of what they're for.
11 They are not familiar with the regulation. They don't
12 understand the motivation for the privacy notices that
13 is stated in the regulation, and it is not immediately
14 obvious to them what they're for.

15 And if that's the case, it's very difficult for
16 them to understand it. And applying, you know,
17 techniques of plain English and a good presentation are
18 not going to overcome the fact that there is uncertainty
19 because there hasn't been preparation among consumers
20 for what these privacy notices are for.

21 MS. BOSLEY: I think this goes back to the
22 importance of making this part of a total communication
23 strategy. I know a few months ago, when the FTC decided
24 to invite me to this panel on privacy notices, my first
25 reaction was what privacy notices? I don't remember

1 seeing them, and yet, I, like most of you, get
2 statements from financial institutions all the time.

3 So, of course, I quickly went back and gathered
4 them all up. But there hasn't been the kind of press on
5 these notices, even the criticisms against them have not
6 been particularly public in the ways that most people
7 now eschew smoking because of the public campaign that
8 that contributed to.

9 So, I think part of the problem is people get
10 them, they don't know what they're for, therefore, if
11 they don't know what they're for, they automatically
12 become difficult to read, because they're not reading
13 them.

14 So, I think that your institution would do well
15 to see these notices only as one part of, as someone
16 mentioned earlier, kind of a branding communication, one
17 part of a larger communication strategy that engenders
18 trust between you and the customers that you serve.

19 MR. HOCHHAUSER: With all due respect to the
20 sponsors of this workshop, when I went through the GLB
21 guidelines, on the one hand, there was a section on
22 writing in plain English that covered all of the things
23 that Bill and the other panelists have talked about,
24 pretty well. On the other hand, there were these sample
25 clauses, which I found virtually incomprehensible.

1 I did not find them to be written in plain
2 English. And for me, the contradiction was on the one
3 hand, the instructions were to write in plain English,
4 but on the other hand, the examples were in anything but
5 plain English. My feeling was, didn't the people who
6 wrote part A talk to the people who wrote part B. It
7 would have been nice if the regulations had followed
8 their own guidelines.

9 MS. BOSLEY: Let me add one more comment to
10 that, and that is that often the experts are the worst
11 people to write anything, whether they're legal experts
12 or financial experts. You all know too much, and
13 because you know too much, you make too many false
14 assumptions about the readability, about the level of
15 usability of your documents.

16 And that's why, as someone said earlier, using
17 outside consultants, trainers who can come in and help
18 your staff work on these privacy notices is a better way
19 to advocate for the consumers, because writers -- as
20 writers -- are often in a much better position to
21 advocate for the consumer use, because they themselves
22 are not the experts, necessarily, in the content.

23 MR. LUTZ: This goes back to know your audience.
24 How many of you know about the literacy study that was
25 conducted by the Federal Government approximately ten

1 years ago? That's about right. It's a magnificent
2 study, extremely detailed, but let me give you just one
3 or two little factoids from it that I found fascinating.

4 That 24 percent of the people, all the people
5 now, here, from up to age 60 could answer simple
6 questions based on a bar chart. This is why you don't
7 see bar charts in newspapers anymore. Two, only 36
8 percent of the people could figure out the correct
9 dosage of aspirin to give a child based on an age and
10 weight table. Find the age, go over to the weight, it
11 tells you the dosage. Thirty-six percent.

12 In other words, you don't know enough about your
13 audience yet to be writing these documents, which was
14 one of my points about know your audience, which leads
15 to this question. Do you think the phrase, "opt-out,"
16 is consumer friendly language or jargon? Yes. Well, it
17 is jargon, and we've all been using it all day as if
18 everybody knows what it is, walk out the door onto the
19 street, ask the first ten people you meet if they want
20 to opt out of something, and see how many correct
21 answers you will get. Ask ten people, you will get 13
22 answers.

23 This is how insidious the jargon gets. It's the
24 way you think and speak. It's the way you see the
25 world. You need someone who can help you see the world

1 differently from the other person's point of view, and
2 in their words.

3 MS. SALTZMAN: I think you've talked about this
4 a little bit, but would you recommend that institutions
5 pursue, and regulators encourage, a privacy
6 communications strategy that goes beyond the formal
7 mandated notices.

8 MR. LUTZ: Yeah, we did that one.

9 MS. SALTZMAN: What are the communication risks
10 of having independent and perhaps irreconcilable state
11 notice requirements?

12 MR. LEVY: One of the advantages of having
13 standardized formats is that over time, consumers learn
14 how to understand and interpret them. To the extent
15 that you have a Tower of Babel of privacy disclosure
16 statements, you're going to really negate consumers'
17 ability to have that learning.

18 MR. LUTZ: Oh, stop now. (Pointing to the
19 timer.)

20 MS. BOSLEY: That's clear.

21 MR. LUTZ: Is that a cease and desist order?

22 (Applause.)

23 (Whereupon, there was a brief recess in the
24 proceedings.)

25

1 PANEL 4

2 - - - - -

3 MS. YANOFSKY: Good afternoon. Welcome to our
4 final panel of the day, and thank you very much for
5 staying. As a special treat to those of you who have
6 stayed throughout the day, we're going to have a video
7 incorporated into one of the presentations. I won't
8 tell you which panelist will be presenting the video --
9 you will have to wait and see.

10 My name is Nancy Yanofsky. I am Assistant Chief
11 Counsel of the Division of Economic Analysis of the
12 Commodity Futures Trading Commission.

13 My co-moderator is John Fielding, and he is
14 Senior Counsel for the National Association of Insurance
15 Commissioners.

16 This final panel will discuss industry
17 initiatives to develop more effective privacy notices
18 and related efforts to better educate consumers about
19 privacy. As the purpose of this panel is twofold, we
20 have divided the panelists accordingly. The first group
21 -- consisting of four panelists -- will discuss industry
22 initiatives. These panelists represent organizations or
23 associations that are working to develop better privacy
24 notices. They also represent some of the best efforts
25 in this area to date. While they have adopted varying

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1 approaches, they each share a common goal -- to develop
2 a more effective privacy notice.

3 The second group, consisting of three other
4 panelists, will discuss the related issue of educating
5 consumers. A good deal of information, as we have
6 learned today, can be provided through privacy notices.
7 Many believe, however, that broader consumer education
8 campaigns are needed. These final panelists will give
9 us some suggestions about how that can be done.

10 Before getting started, I need to make two
11 disclaimers. First, the GLB agencies have not reviewed
12 or examined any of the proposed or actual privacy
13 notices that will be discussed on this panel for
14 compliance with Title 5 of Gramm-Leach-Bliley, or the
15 regulations thereunder.

16 Second, any views that I may express here today
17 do not necessarily reflect the views of my agency, the
18 Commodity Futures Trading Commission, or any of its
19 commissioners, offices or divisions.

20 With that, I would like to introduce our
21 panelists. The first panelist will be John Dugan. John
22 is outside counsel to the Financial Services
23 Coordinating Council. He is also, as indicated on the
24 overhead, with the law firm of Covington & Burling.

25 Our second panelist is Marty Abrams. Marty is

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1 Senior Policy Advisor of Hunton & Williams' Policy and
2 Information Management Practice.

3 The next panelist is Fran Maier, who is
4 Executive Director of TRUSTe.

5 The final panelist on industry initiatives is
6 Patricia Faley who is Vice President, Ethics and
7 Consumer Affairs, at The Direct Marketing Association.

8 Starting us on consumer education efforts is
9 David Klaus, Executive Director of the Privacy
10 Leadership Initiative.

11 Following him will be Susan Henrichsen, Deputy
12 Attorney General, Consumer Law Section, Office of the
13 California Attorney General.

14 And, finally, Tena Friery, who is Research
15 Director at Privacy Rights Clearinghouse.

16 John?

17 MR. DUGAN: Thank you very much.

18 I do not have the video, but I do have a
19 presentation. I am speaking today on behalf of the
20 Financial Services Coordinating Council, as was
21 mentioned. This may not be a household word to many of
22 you, but it is a trade association that represents other
23 financial trade associations, which are the largest
24 financial institution trade associations in the
25 financial services industry, and it includes the

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1 American Bankers Association, the American Council of
2 Life Insurers, the American Insurance Association, the
3 Investment Company Institute, and the Securities
4 Industry Association.

5 Together, these entities represent large and
6 small banks, insurance companies, securities firms, and
7 investment companies. And their customers are customers
8 that are in virtually every household in the United
9 States. So, when we talk about Gramm-Leach-Bliley
10 financial privacy notices, these are the core
11 institutions that are covered by these privacy notices.

12 What I want to talk about today, first, is the
13 industry's commitment to improving the privacy notices,
14 and I think you've already heard a demonstration of some
15 of that this morning. A little bit about the industry's
16 experience with GLB notices. Even though you've heard
17 that this morning, I think it sets up what it is we're
18 planning on doing. I'll talk a little bit about the
19 impediments to simplicity. Again, some of these things
20 have already been touched on, but I will speak about
21 them in a little more detail.

22 The FSCC has formed a notices working group,
23 which I will also talk about, which is designed to
24 improve the privacy notices over time. I want to
25 mention some very significant caveats, however, about

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1 standardization, and other ideas that people have put
2 forward on privacy notices. And finally, I'll talk a
3 little bit about what the initial focus of this working
4 group will be.

5 This industry is committed to improving notices,
6 and the usefulness of the notices to consumers. And I
7 think the process, the very process that went with the
8 Gramm-Leach-Bliley, forced the institutions through this
9 year, where going through the training and the education
10 is the beginning of that, but it happens on a yearly
11 basis. And it has involved focus group testing, and
12 that will continue, as will the continued interaction
13 with the regulators, which has been an iterative process
14 throughout, and that will continue.

15 There are, roughly, and this is -- there is no
16 hard count of this, 40,000 financial institutions in
17 this country, and we have been what I call the guinea
18 pigs for mandated notices. This is really the first
19 time that regulators have written detailed regulations
20 about privacy notices that are applicable to an entire
21 industry.

22 It's also the first time that an industry, an
23 entire American industry, has had to comply with such a
24 detailed set of rules regarding financial privacy. This
25 has been, as people talked about earlier, a massive

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1 compliance effort. This is something I can't emphasize
2 enough, because I think it gets lost in some of the
3 criticism that people have talked about. It has
4 involved billions of dollars of expenditures, and
5 billions of notices going out.

6 Just the panel this morning of financial
7 institutions, by my count, sent out more than 200
8 million notices by last July.

9 The fact is, throughout all of that, there have
10 been very, very few consumer complaints about the
11 notices that have been sent. And that means complaints
12 provided to financial institutions on the one hand, or,
13 as I understand it, to the financial institution
14 regulators on the other.

15 I think I would characterize this, the industry
16 would characterize what they've gone through as having
17 been a difficult process, especially the first time,
18 because of the need to shape the notices and the process
19 to go through that, because of the training, because of
20 the systems configurations. But having said that, given
21 the particular regulatory constraints that were
22 involved, we have been generally pleased with the
23 results.

24 We think that most notices have been clear and
25 conspicuous, given what the regulations required

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1 financial institutions to disclose. And although there
2 have been a handful that have been held up and
3 criticized, that does not represent the majority of the
4 notices provided throughout the country.

5 Having said that, this was a first time, and we
6 recognize that. A number of issues were raised. These
7 were recognized throughout the process, and that's what
8 I would like to talk about next. What I really mean
9 here are the impediments to simplicity, some of which
10 we've already touched on.

11 The fact of the matter is, there is a
12 fundamental tension between simplicity and shortness and
13 the kind of details and complete disclosure that is
14 required by Gramm-Leach-Bliley, and that some would like
15 more of. As a matter of fact, this morning, some of the
16 criticism was that the notices were too short, and
17 others complained that it did not provide enough
18 comprehensive information. And it is exactly that
19 fundamental tension that always striking that balance
20 remains an issue.

21 The fact is the Gramm-Leach-Bliley privacy
22 regulations require, on their face, that nine separate
23 elements, at a minimum, be included in each privacy
24 notice, and that does not include the separate elements
25 that have to be provided if there is significant amounts

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1 of sharing with nonaffiliated third parties.

2 The result is that the notices, by definition,
3 because of the legal rules, have to be longer than they
4 otherwise would be. The second point is that there is a
5 lot of required legalese that are in these notices, and
6 that were put in these notices the first time around.
7 People talked about the sample clauses, and they include
8 words like nonpublic personal information, nonaffiliated
9 third party, affiliate, personally identifiable
10 financial information. All of these are legal terms
11 that have significant and useful legal meanings, but
12 they are not easy to understand.

13 In terms of the sample clauses, they've been
14 talked a little bit about already. This was the first
15 time for the regulators to go through this process, and
16 I think that the consensus was that they did a very good
17 job of trying to lay out these regulations, in this very
18 complex area, in a way that made sense, and I think the
19 industry welcomed the sample clauses when they came out.
20 But I do think that there are some problems with the
21 sample clauses that have been something of an impediment
22 to simplicity. And let me give you a simple example.

23 Again, one of the panelists complained about
24 this this morning. One of the significant exceptions to
25 Gramm-Leach-Bliley opt-outs, and the opt-out right of

1 consumers, is for disclosures to third parties that are
2 necessary to carry on business, or to do other kinds of
3 things that no one would suggest that there ought to be
4 an opt-out provided for.

5 For example, to disclose information to
6 regulators, or to credit bureaus. And the phrase that's
7 used in the sample clause is that an institution can
8 describe these as disclosures otherwise permitted by
9 law. The problem is that when you lay this out as one
10 of your disclosures, it sounds as if you're trying to
11 exploit every loophole known to man to do what most
12 people would regard as very sensible kinds of
13 disclosures. But they created a very strong reaction by
14 critics, and this exact language was taken from the
15 sample clauses.

16 Finally, and this was highlighted by one of the
17 speakers on the first panel this morning, there is
18 always the concern of legal liability. There is very
19 much a need to comply with the letter of the law and the
20 spirit of the law, and people do have to take risks to
21 move away from some of these sample disclosures, even if
22 they include jargon, and even if that jargon can be
23 somewhat confusing. The conservative way to proceed
24 from a legal perspective is to comply.

25 And, so, that kind of fear of legal liability is

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1 something that causes the notices to be a little less
2 clear than they otherwise would be. And as a result of
3 all of these impediments, we recognize these, and as a
4 result, the FSCC has convened a notices working group,
5 which will involve experts from all of our members from
6 the banking, insurance and securities industry. The
7 notion is that this group will interact and cooperate
8 with regulators, as they examine different kinds of
9 things to improve the quality of the notices, with the
10 first meeting to begin in January.

11 This is not something that we envision as a
12 committee that will work for six months and produce a
13 huge study, a one-time event, and this is the notice
14 that will be produced. Instead, it will be an ongoing
15 process that will take up various issues with regular
16 meetings, and make recommendations as they make sense,
17 and if they make sense, and only if they make sense.

18 Having said that, and having acknowledged that
19 this is something that would be useful as we go forward,
20 I do want to mention some caveats about this process.
21 We do not believe, the industry does not believe, that
22 there can be one standardized notice that fits all of
23 the different information collection practices, sharing
24 practices, and frankly the very different
25 characteristics of the institutions that are covered

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1 under this umbrella of financial institutions.

2 It is very much the case that one standard could
3 stifle competition, particularly one that's adopted too
4 quickly, that there is over time a great deal of
5 innovation in the way notices are produced that make
6 them clearer, and that kind of competition in innovation
7 produces better notices, and it's not something we would
8 like to see cut off by a single standardized notice.
9 Particularly as history has shown in other disclosure
10 areas, that improvements take time, that there is a
11 process, a sanding process, and the fact that this
12 particular process has to be repeated every year is
13 something that inherently will involve improvements.

14 I also want to make the point that this is not
15 something that the industry can do by itself. It cannot
16 make significant changes to the way it provides notices
17 without some kind of regulator acceptance. And by that,
18 I do not mean that there is any desire to re-open the
19 Gramm-Leach-Bliley regulations, there is not. Nor is
20 there any desire to re-open the substantive requirements
21 of Gramm-Leach-Bliley. But the fact is for the very
22 reasons about the fear of legal liability that I talked
23 about earlier, there has to be some kind of informal
24 guidance from the regulators that if there is a
25 significant deviation from what has come before, that

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1 there is some acceptance of that deviation.

2 I think there will also be a significant problem
3 with doing anything, if there is significant action at
4 the state level that goes in a completely different
5 direction. So, all of those are really quite
6 significant concerns.

7 I also want to just take a minute, I can't
8 resist, because I saw some of the proposals earlier.
9 This is talking about the standardization issue, on the
10 last panel, that clearly did simplify some of the
11 notices that would be provided under Gramm-Leach-Bliley.
12 Unfortunately, I could also just as easily say that some
13 of those notices would not have complied with the law,
14 because they indicated that certain kinds of sharing
15 would not occur, and, in fact, some sharing might occur
16 that wasn't covered by the statement.

17 And it's precisely those kinds of difficulties.
18 It's easy in some senses to make something simple if you
19 don't have to worry about complying with the details of
20 the law, and there will always be this tension, there
21 will always be this tension. And so let me just strike
22 one for the lawyers in the room.

23 (Laughter.)

24 MR. DUGAN: The initial focus of our working
25 group will be on simplified terminology to limit the use

1 of legalese. If we can get away from using terms like
2 nonpublic personal information, and personally
3 identifiable financial information, that's a good thing.
4 I think that's something that most people agree on.
5 These are things that are included in the sample
6 clauses, because that's what the law, as written, said.
7 But if there is a way to address those, I think that's
8 something that people could agree on over time makes a
9 lot of sense.

10 We heard about consumer focus group testing,
11 about various aspects of what we decide to do as we go
12 forward. We think that makes a lot of sense. We could
13 also envision, as part of consumer education materials,
14 that people are going to talk about later, to have some
15 kinds of notions of common reference materials and
16 definitions. And we would like to explore the
17 possibility of a simplified, more standardized short
18 form notice that's been talked about. This is by no
19 means saying that this is being embraced by the industry
20 at this time, but it is something worth exploring, to
21 see what the costs and what the benefits are, and
22 whether it makes sense to move forward with something
23 like that -- or not.

24 So, with that, I will stop. I would just leave
25 you with the notion, again, that this will take some

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1 time. There is always room for improvement, the
2 industry is committed to doing that, but it's a process
3 that must be done with care, because of the competing
4 tensions involved.

5 Thank you very much.

6 MR. ABRAMS: While we're waiting for my slides
7 to get queued, I would like to introduce myself, I'm
8 Marty Abrams, I'm the Executive Director of the Center
9 for Information Policy Leadership, which is a policy
10 center within the law firm of Hunton & Williams. I've
11 been doing privacy for 12 years.

12 Jules Polinetsky from DoubleClick once described
13 me as the oldest chief privacy officer. I hope that he
14 meant that in terms of years of service, not purely a
15 sense of age. And during those 12 years of wrestling
16 with privacy, one of the first things that became
17 crystal clear to me is privacy is about the appropriate
18 use of information, and appropriate is a very subjective
19 concept in term. And in describing how you use
20 information, since information is so integrated in all
21 of our business processes, notices have always been a
22 challenge, and a challenge that in my 12 years have been
23 especially interesting to me.

24 When we think about the digital age and the fact
25 that information is becoming more integrated, and as we

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1 begin to pass laws that deal with privacy, we are asking
2 -- the new laws are asking an awful lot from notices.
3 When Jim Brown with the University of Wisconsin,
4 Milwaukee first took a look at the final language in
5 Gramm-Leach-Bliley, he said, no institution can truly be
6 in compliance with this law. If the notices are in
7 plain English, they won't be complete; if they're
8 complete, they won't be in plain English.

9 So, we had a challenge that was facing us with
10 this law that was not really achievable. You can't
11 accomplish both in the same document.

12 The Center for Information Policy Leadership
13 believes that notices should be layered. In other
14 words, there should be a short informing notice that
15 gives the consumer a sense of what the organization does
16 with information. It should be approachable, easy to
17 understand, easy to read, easy to compare from
18 institution to institution, so the market begins to
19 define for us this whole question of what is the
20 appropriate use of information.

21 Those short notices should be simple and easy to
22 understand, and they should have a common look so
23 they're approachable by every consumer. They should be
24 educational in the sense that they help consumers
25 understand how information is used in the market.

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1 Research, as we heard earlier today, backs that point of
2 view. Consumers cannot absorb more than seven different
3 concepts in a notice. Some people say it's five, some
4 people say it's six, but we all know it's not more than
5 seven.

6 The language should not require the consumer to
7 translate. It should have a meaning that is apparent to
8 the consumer without them running around trying to find
9 the definitions or trying to translate in their own mind
10 what that language means, and we also understand
11 repetition, seeing the same type of notices day in and
12 day out, from multiple industries, help the consumer
13 approach how we use information and begin to drive
14 behavior in the marketplace with the choices they make
15 about who they do business with.

16 The Center for Information Policy Leadership
17 organization organized the notices project to explore
18 this concept of teaching notices. It was supported by
19 the Privacy Leadership Initiative, and the participating
20 companies. The participating parties included financial
21 services companies, consumer products organizations,
22 data management organizations and technology companies.
23 It included a seal program and an academic advisor. The
24 academic advisor was Mary Culnan, the seal program is
25 the Better Business Bureau's Online Privacy Group.

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1 The companies that participated included Acxiom,
2 Citigroup, Capital One, DoubleClick, IBM, J. P. Morgan
3 Chase & Company, Kodak, Procter & Gamble, and U.S.
4 Bancorp. This is a diverse group of businesses that
5 includes consumer products, financial services products,
6 technology, information aggregators.

7 We had to go through a process where these
8 parties discovered where their commonality of interest
9 lied. The project objectives were simple, create short
10 informing notices that are first easy to understand,
11 describe how information is used in a template-like
12 format, and then create a template format that might
13 work for multiple types of industries, that improves
14 understanding by consumers and allows comparisons
15 between companies, and can be used by multiple
16 industries -- consumer products, financial services and
17 others.

18 In the first phase, we needed to agree on issues
19 that needed to be conveyed in a short notice, we needed
20 to agree on the common elements and lead the easily to
21 be understood common vocabulary. But more important, we
22 had to determine if the situational nature of privacy
23 makes short notices possible, and if multiple industries
24 could use the same template.

25 The stipulations were simple, short notices

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1 should first be short. We heard that 30 seconds is a
2 long time for someone to read a notice. So, these
3 notices have to be short and approachable. They can't
4 include the obvious, because the obvious takes space
5 away from other things.

6 For example, somebody orders a piece of
7 furniture and needs that furniture delivered, we don't
8 have to define the information that we shared with the
9 delivery service so that that furniture can be
10 delivered. The words should be as simple as possible,
11 and the detail should be reserved for the longer
12 accountability notice. Think of it as a short notice
13 that helps you understand and a longer notice with more
14 detail, if you want it, that helps those who have to
15 keep an institution accountable.

16 So, where are we in the process? First, we've
17 agreed on six elements that should be conveyed by every
18 short notice. I have not listed those on the screen,
19 but after much -- many suggestions from the regulators,
20 I will share those with you. The first is the who,
21 which covers the scope of who the notice covers, and
22 whether the notice is an online notice or an offline
23 notice, or covers the entire institution's use of
24 information.

25 The second is the data that is collected by the

1 organization. And that's data that's collected directly
2 from the consumer, as part of the relationship with the
3 consumer, and from other companies, like credit bureaus.
4 The third is the data flows that are truly important,
5 and there are four types of data flows, and data flows
6 include the uses of the information. The first is by
7 the company defined by the scope. The second is the
8 family of companies that includes the company that is
9 defined by the scope. The third is by the company and
10 its partners where there's truly a dual relationship
11 with the consumer. And the fourth is by other folks
12 that that company might share the data with.

13 The fourth is the preferences that the consumer
14 might exercise, the choices, the choices the consumer
15 might have, the ability to opt in, opt out, other
16 choices as well. The fifth are other things that are
17 important to that relationship with the consumer. For
18 example, Kodak only keeps digital images long enough to
19 print the picture, they don't retain that digital
20 information. It's important for them to convey that
21 information to the consumer. That's the section where
22 they might do that.

23 Seal programs are also contained in that
24 section. And last is contact information. How you
25 contact the organization in order to exercise your

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1 preferences, how to contact the organization for more
2 information, how to contact the organization to get a
3 longer notice.

4 We are also working on the common vocabulary and
5 very close to coming up with the words that begin to
6 convey what's important to the consumer.

7 So, what are the next steps? The first is to
8 develop worksheets that assure consistency across
9 industries as organizations use what we see as an open
10 system. So, you need to have something that helps
11 educate the user of these templates to what they put in
12 them and what the limitations are.

13 Next we have to test the elements and common
14 words with consumers. We're going to begin to do that
15 early in the new year. That is going to be led by
16 Procter & Gamble that has more than 100 years of
17 experience in consumer testing, and other organizations
18 as well are going to be involved in that testing, such
19 as Citigroup, which has an extensive research experience
20 with consumers.

21 We need to discuss the elements and language
22 with consumer leaders. That we will do once we have
23 feedback from consumers. And last, we need to design a
24 format that works for all consumers. This is an open
25 network, this is not something that's coming out of a

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1 trade association, this is something that we're helping
2 to develop for information leaders to help the
3 marketplace move forward on notices, and begin to see if
4 we can separate the informing function of notices from
5 the accountability function of notices.

6 Thank you very much.

7 MS. YANOFSKY: Thank you, Marty.

8 Fran?

9 MS. MAIER: Good afternoon. I'm here to talk
10 about TRUSTe, and our privacy symbols and labels
11 initiative, which we announced in June of this past
12 year. First I want to talk a little bit about TRUSTe's
13 mission. We're dedicated to enabling individuals and
14 organizations to establish trust, based on respect for
15 personal identifying information in the evolving
16 networked world.

17 And what I want to emphasize is we're an
18 industry association, but also we want to represent
19 consumers and the greater good of protecting their
20 privacy and personal identity information, and that
21 we're going beyond just web privacy, but privacy that
22 you might find in identity information that you might
23 find in a PDA or a GPS device, or your cell phone, or in
24 other parts where privacy is important to the
25 organization.

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1 We all know the issues with privacy statements.
2 I think we spent the whole day on them. We certainly
3 understand that as TRUSTe, a certification program, we
4 hear a lot from industry and consumers about what the
5 issues are, and I won't belabor them any longer.

6 Okay, so what's our initiative? Basically, it's
7 a consumer oriented program. We need something that
8 really speaks to consumers that they can understand.
9 So, we're looking to develop a simple consistent privacy
10 label that empowers the consumer with more immediate
11 information, more actionable information.

12 We're also looking at expanding from not just a
13 short notice or a privacy label, but into some symbols
14 and icons that can be placed in PDAs and wireless, and
15 other different kinds of devices. I think I've seen so
16 many Blackberries and Palms and different kinds of
17 phones, I think you know exactly what I'm talking about,
18 but also we want to have symbols and icons that can be
19 part of websites to tell people what's going on with
20 their information, potentially working with the whole
21 effort that P3P is doing.

22 I also want to emphasize that this is also an
23 open initiative, this is not something that is just a
24 TRUSTe initiative, and we are working with quite a lot
25 of stakeholders and are looking for more to participate

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1 with us. So, we really think it's important, that it is
2 something that's adaptable and ownable by a whole bunch
3 of different organizations.

4 Our approach is really a five-phase approach,
5 but I want to emphasize that this approach is very
6 iterative, and also involves the stakeholders at every
7 step of the process. And really we're looking at phase
8 one and phase two right now, where we are continuing to
9 add in the stakeholders, and we're looking for
10 participation from industry, consumer advocates, and, of
11 course, the government.

12 You'll see today an initial prototype and
13 design, and we see this as a way of focusing some of the
14 attention on what a short notice or privacy label might
15 look like. And this will have many steps. We need to
16 continue to define the lexicon, to work with industry to
17 make sure we understand the requirements, to make sure
18 that the government can accept it. And, again, it will
19 be iterative, and bring in quite a lot of stakeholders.

20 We also want to put a lot of emphasis on phase
21 three, which is about consumer testing. Because
22 ultimately what is acceptable is what is acceptable to
23 the consumer. And so we think that there's a lot of
24 different testing, I'll talk about that in a little bit.
25 Then, of course, because it's iterative, we've got to go

1 back and do some more design and probably do some more
2 testing.

3 And implementation, the last step, will be very
4 critical, because I think we've heard with the
5 nutritional label and anything that the industry does,
6 it really needs to be -- the consumer needs to be
7 educated. I think we'll hear more from others on this
8 panel about the education.

9 And then, of course, it needs to be launched.
10 And that will be a big effort.

11 Okay. So, what we decided to do, and you'll see
12 in a second, is develop a prototype. And TRUSTe is
13 located in San Jose in the heart of Silicon Valley and
14 we take very much a product management approach. So, we
15 really try to define the business requirements,
16 understand both information design and creative design.
17 We want to show here a vision of what it could be, but
18 this is a very much a draft, has not been widely vetted
19 with all the stakeholders, and is just one way of
20 showing what a prototype for a short label can be like.

21 Now, in terms of design considerations, and we
22 think of this mostly as creative design, we want people
23 to be able to quickly digest and scan the information so
24 that they can find what they deem to be most important.
25 We want to use some symbols so that it can help

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1 facilitate understanding, especially as people go from
2 site to site, or if they use a device like a PDA or a
3 cell phone. We want it to be action oriented. We don't
4 want something static on the web, the web is not a
5 static medium, and so we want something that people can
6 use to maybe find and change their choices, change their
7 opt-in, access their information and so on.

8 We want it to be flexible to work with multiple
9 website designs and we want it to be comparable so that
10 people can look from different sites, one site to
11 another, and see where the differences are. Those are
12 the design considerations. In terms of information
13 considerations, and this is really critical, because as
14 we've all talked about today, privacy information is
15 very complicated, and can be interpreted in a lot of
16 different ways.

17 So, first, we want to make sure that there's
18 appropriate focus on the top consumer concerns. Those
19 things that people really do care about and want to have
20 access to and more information about. We want the
21 company to be able to make a statement about what their
22 philosophy is, to provide a context. And again, I think
23 earlier today we heard from people that providing a
24 context is extremely important to facilitate
25 understanding.

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1 We want to make sure we -- and everybody has
2 talked about this, that we need simple, accessible
3 language. Again, we want it to be action oriented. We
4 think it's important to provide a place for third party
5 endorsements, and other endorsements, security
6 endorsements, for example. And finally, like
7 comparable, we want to be differential, so that
8 different sites can show how they approach their privacy
9 and identity issues in different ways, and people can
10 therefore compare.

11 Okay, so here's a prototype. This is the
12 generic prototype. I will start from the top right.
13 First of all, company logo, important thing to say who
14 you are and where it's coming from. The next section
15 addresses the top three concerns, and I have some sample
16 symbols here. And what you'll see here, is that for
17 each one of these, there might be some choices with
18 hyperlinks that can bring the consumer, the consumer can
19 take themselves to get more information.

20 The third thing, the company's statement is
21 where the company can state it's philosophy. The
22 fourth, on the bottom right, is a place for privacy
23 endorsements, such as TRUSTe or BBB, or both. And on
24 the left-hand side, right over here, is a place for
25 maybe not the top three concerns, but a place for

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1 contact information or enforcement information to be
2 presented to the consumer.

3 This is very much of a thumbnail, and it's just
4 one idea. Let me show you what it might look like in a
5 different web design, or a different kind of format.
6 So, we're trying to have something that's flexible, much
7 like the nutritional label, sometimes it's vertical,
8 sometimes it's horizontal.

9 Here's I think an exciting implementation. This
10 shows what it might be like for a specific website. So,
11 in this example, we show that the top three concerns,
12 and I think it's pretty consistent, at least the top
13 two, or with what we heard earlier in the day, where
14 sharing and access are the top concerns. Under sharing,
15 reviews personal information and accesses information to
16 learn more about sharing practices. Under access, learn
17 more about how to get access to your personal
18 information. So, therefore, we're really emphasizing
19 the ability of the consumer to go ahead and make the
20 changes, learn more, find out what they want to do.

21 On the bottom left, we have a little information
22 here about tracking and cookies. A lot of our
23 information suggests that people are really concerned
24 about that. And then, a little bit on the enforcement.
25 And then on the right-hand side, we have the

1 endorsements, in this case, of TRUSTe and BBB Online.
2 Many sites carry both, some carry one or the other, and
3 there's other endorsements, of course, that could be
4 included here.

5 Here's what it might look like, I know it
6 doesn't look real good from this, on a website. So,
7 just to re-emphasize, this does not take the place of a
8 privacy statement or the full privacy statement, nor is
9 it necessarily GLB compliant at all, but basically it's
10 a short notice that sits on top of the privacy statement
11 and works with it and works with the website. And here
12 we have it working with WellMed, who has provided some
13 input into this process.

14 Okay, so we have the label, we know it's just a
15 draft, we know it needs to be vetted. It certainly
16 needs to go through some consumer testing. And I think
17 the three elements of consumer testing, or the three
18 questions that you want to ask is, does it work? What
19 is the performance? Does it work in different kinds of
20 elements? Will it be adoptable? And, so, what you want
21 to do here is a string of usability and completion tests
22 to see if people are really reading it.

23 Then the second one is comprehension. Are
24 people understanding it? Are they taking something
25 away? Are they using it? And there's a number of

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1 different kinds of testing and analysis that we can do,
2 both qualitative and quantitative, to get to this,
3 because it's not just enough to put it out there, you
4 really have to make sure that people are understanding
5 it.

6 And then, finally, I think we want to test
7 attitude. Do they like it? Are they using it? Are
8 they comparing different sites on these different
9 elements that ultimately show up on the short notice?
10 And I think that will be very exciting. And again,
11 there's a lot of different ways of testing, both
12 quantitative and qualitative.

13 So, TRUSTe's role here has been to start up our
14 initiative. We're working with a number of privacy
15 organizations and standards. We're talking to a lot of
16 industries. We definitely have the benefit of having
17 2,000 stakeholders to participate and give us input into
18 this process. We want to build a coalition, this is an
19 open standard. We think that we are in a good role to
20 help organize a lead for success by bringing the staff
21 and other resources internally and externally to bear to
22 drive it forward.

23 So, call to action for this group and others is
24 that we would like the government to continue to have
25 these kinds of workshops and support this effort. I

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1 fear that if the government doesn't, industry may not
2 take the action unless brought in. For the industry, we
3 would very much like your intellectual and, of course,
4 your financial resources. This is not cheap, and, of
5 course, we think that it provides an opportunity for you
6 to provide some input into what might be an adoptable
7 standard. And for consumer advocates, please come
8 forward with your thoughts and suggestions. We
9 definitely want to include everybody.

10 Thank you.

11 MS. YANOFSKY: Thank you, Fran.

12 Now we'll hear from Pat.

13 MS. FALEY: I'm going to talk to you about a
14 process which The Direct Marketing Association has
15 undertaken to develop a tool for businesses, a template,
16 to make the longer Gramm-Leach-Bliley notice
17 comprehensive in terms of the GLB requirements, and also
18 comprehensible to consumers.

19 We do this because we have a firm belief that
20 helping companies do the right thing will help build
21 trust with consumers, and it's something that DMA takes
22 very seriously. My department helps to develop, not
23 only develop guidelines for fair information practices
24 and for other business practices, but to help direct
25 marketers comply with those guidelines, and to comply

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1 with the existing laws as well. We try to make it easy
2 for them to comply.

3 And we have a number of items on our website
4 which you can see on the-dma.org, if you would like to
5 go to our website. But what I want to talk about today
6 is the privacy policy generator. What we have is
7 essentially a wizard. It is a group of questions that a
8 company would answer, multiple choice questions, and
9 after you're finished with the questionnaire, you have,
10 in fact, created your privacy policy.

11 We ask a group of questions. We have
12 automatically computer coded two of our generators,
13 which I'll talk about in a moment. This one has not
14 been computerized yet, but the text is available online
15 today, if you just check our website under press
16 release, it has been issued today.

17 Our goal has been to simply provide suggestive
18 language, and to suggest a layout, a template that would
19 be consumer friendly. And ultimately, all of this
20 should be reviewed by the company's legal counsel.

21 We, at this point, have three privacy policy
22 generators, the first is to develop online privacy
23 policies, and we've had that for four years now. We
24 developed one to meet the requirements of COPPA, and
25 that's for notice to parents about the Children's Online

1 Privacy Protection Act, and today we're releasing the
2 one to meet the requirements of Gramm-Leach-Bliley.

3 We've decided that our template should include
4 six different areas, and these are the areas that it
5 would include. The first is what we're calling the
6 consumer pledge, it's really the introduction, and we're
7 talking about the fact that we do value our relationship
8 with consumers, and we point out to them in the
9 introduction why it is we should pay attention to this
10 notice, and it's essentially that at the end of this
11 notice, they'll be asked to make some choices about
12 their information preferences. So, it's important for
13 them to pay attention.

14 The second area, it talks about the information
15 we collect. And this, we think, can be done fairly
16 easily, in no more than one, maybe two paragraphs. I am
17 going to show you examples of this next. The third area
18 is about information that we share, and this is really
19 the most complicated section of the notice. When
20 someone said earlier, it's not possible to say that you
21 don't share information at all, because everybody shares
22 information with somebody at some point for some reason,
23 so we do have a do not share option, but it includes
24 also we do share information in response to subpoenas or
25 for other legal reasons.

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1 But also it talks separately about the
2 information we share with our corporate family, which is
3 what we call an affiliate. Information that we share
4 with marketers, the joint marketers, information that we
5 share with companies outside of our organization, which
6 is what we call a nonaffiliate, and then we go into the
7 types of information that we share with financial
8 services companies, first, and secondly with
9 nonfinancial service companies.

10 The next section talks about how we protect
11 information, we think we can do that in one sentence,
12 and I will show you that. And we also talk about
13 information that we share about former customers,
14 because there are some specific requirements in this
15 area and we thought it was important to pull those out
16 and to focus on them. So, we give information in that
17 area as well.

18 And lastly is the opt-out preference for
19 consumers. This is the first example of the information
20 that we collect, and companies would just check all of
21 those that apply. We collect information you give us,
22 for a couple of different reasons, or we collect
23 information that others give us. And we also have an
24 open-ended selection, because we know that we haven't
25 thought of every possibility, and this is just a

1 template, just a tool for companies, not mandated
2 language. We like to say that if companies can make it
3 easier and more clear, we certainly would encourage that
4 so we're not tied to this language, but this is helpful,
5 we believe.

6 This is the first part of how we share
7 information. And it talks about members of our
8 corporate family, and gives several different options.
9 We share data provided by customers, we share data that
10 is purchase data or your account data. We share credit
11 history data. We try to use terms that consumers would
12 understand.

13 And lastly are preferences. Pretty easy, do not
14 share information about me, or do not share my credit
15 history with members of your corporate family.

16 In order to achieve this, I think it's important
17 to note the process. First of all, it was started by a
18 nonlawyer, the newest person on our privacy staff, Lisa
19 Schastic, who is in the office, and in the audience
20 here. And she drafted the first take on this. Then
21 what we did was scored it on the Flesch-Kincaid
22 readability software, and then we worked rewriting it
23 against the software, against the readability scale, to
24 make it even more readable until we were satisfied with
25 the result.

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1 Finally, it was reviewed for legal compliance by
2 our privacy counsel. I understand you've talked a
3 little bit today about the Flesch-Kincaid, but for many
4 people, it's a really well-kept secret from Microsoft,
5 and so I have included some information here on how you
6 can access it, and this just shows how you click on
7 tools and options and spelling and grammar, and what you
8 have to do to actually run this test on any document or
9 letter that you might write.

10 Our goal was to hit a target level around 50 or
11 60, which is a high school level, and we have varying
12 results. Some of the typical notices that were found by
13 Mr. Hochhauser and others, they have read their works,
14 say a typical notice may be about a 34. Ours, when you
15 average them, you get somewhere between a 44 to a 51. I
16 understand Maine is the only state that requires a
17 higher than 50 rating. So, we thought that we did
18 fairly well there, and it could be improved.

19 The notice, it really depends on the complexity
20 of the policy. You could make this very, very simple,
21 or you can make it very complex, depending on how
22 complex your policy is. And we're ranking right now at
23 about a tenth or eleventh grade level. And this is
24 essentially what their read-out looks like. It shows
25 you the sentences per paragraph, words per sentences,

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1 characters per word, number of passive sentences in
2 percentage terms, and so forth.

3 And when you look at some of the individual
4 paragraphs that we have, they're really pretty easy. A
5 typical policy, which I think you've used before today,
6 might be an eleventh grade level, but we've tried to
7 simplify that to what Flesch tells us -- Flesch-Kincaid
8 tells us is a sixth grade reading level, and you can see
9 how we've done that.

10 In another example, I like this one, a twelfth
11 grade level, we maintain physical, electronic and
12 procedural safeguards that comply with federal standards
13 to guard nonpublic personal information about you. We
14 have changed that to we have strived to protect your
15 data and safeguard it from those not authorized to see
16 it. It's the kind of thing that is a challenge, but I
17 think it communicates so much better to consumers when
18 we talk about security issues.

19 In terms of the status of the generator, as I
20 said, it's been approved by DMA's counsel and selected
21 DMA members so that we know it's usable, and we're
22 announcing it today. As I said, the text of it is on
23 our website today. The automated computer coded version
24 of it will be available in about three weeks, I'm told,
25 and it will be on our website. This tool is free to any

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1 industry, any company, any organization, in fact, that
2 wishes to use it.

3 The first line, the first URL is where you can
4 find the text version of the generator.

5 So, I want to thank you very much for your
6 attention, and I will be happy to take your questions
7 later.

8 MS. YANOFSKY: Thank you.

9 And now David Klaus will start the consumer
10 education subpanel.

11 MR. KLAUS: Thank you.

12 With my presentation, I would like to -- I think
13 I'm supposed to begin a process of shifting the focus
14 away from notices and begin to look at the broader
15 picture of the context in which notices and privacy need
16 to be seen. And in this regard, with my presentation, I
17 really have three objectives. First, I would like to
18 begin to start thinking about how even the best notice,
19 in order to be effective, must be seen in the context of
20 a broader consumer education initiative.

21 Second, I would like to begin talking about what
22 consumer education is with regard to privacy. And
23 third, in the broader context of a consumer education
24 effort, what does this mean for notices?

25 First, I'm the Executive Director of the Privacy

1 Leadership Initiative. What is the PLI and what does it
2 try and do? It is an organization that works on
3 consumer education, on privacy, it seeks to do business
4 to business education on privacy, and research and
5 public surveys that will help inform the debate about
6 privacy. Examples would include the Harris Survey that
7 David Krane presented to you today, which was sponsored
8 by the PLI.

9 Who is the PLI? Its membership is listed there.
10 It's a number of about 15 companies and eight
11 associations. What I would note, for purposes of this
12 group, is that it includes U.S. Bancorp, Visa, Ford
13 Motor Company, which is in the credit business, and the
14 Financial Services Roundtable, but it also includes a
15 host of other companies in consumer products industries,
16 in the information business, in the advertising
17 business, et cetera.

18 And there's a message there, and that is we've
19 been talking about financial institution privacy
20 notices, but you've heard already, from Marty Abrams,
21 and from Fran Maier, who were talking about how
22 financial institution privacy notices need to be seen
23 from the perspective of the consumer. Consumers are
24 going to see a lot of privacy notices, not just
25 financial institution privacy notices.

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1 And what the PLI tries to do, and it includes
2 financial institutions, is to bring a broader
3 perspective so that we're able to look at the question
4 of how do we inform consumers, not just with regard to
5 financial institution privacy, but with regard to all
6 the types of privacy notices that they see and will
7 receive.

8 And just think what HIPPA is going to bring as
9 it comes around the corner, and suddenly every doctor,
10 insurance company, anybody who deals with medical
11 information is suddenly going to be providing notices.
12 I have a feeling that they'll need RFK Stadium. This
13 auditorium will probably not be sufficient when they
14 decide to hold a conference on the workshops that follow
15 that notice.

16 Notices and the educated consumer. What's our
17 objective? We want educated consumers making informed
18 decisions about privacy. The food labels in Alan Levy's
19 comments today were very good, the gold standard, or has
20 been seen as the gold standard for a consumer label.
21 What kind of information does it have? Calories, fat,
22 cholesterol, sodium, carbohydrates, go look at the
23 notice. What's on it? Numbers. Nothing but numbers.

24 Why are those numbers relevant to people? Those
25 numbers are relevant because consumer education allows

1 consumers to know why that information is important.
2 Where does it come from? You've had health education,
3 your kid's in elementary school, high school, et cetera,
4 you see education all the time. I, for one, had some
5 consumer education from my physician the other week
6 about calories and cholesterol. You see it in press
7 reports, you see it in advertisements. The consumer
8 labels on food ingredients, the consumer food labels,
9 make sense only because the consumer knows about that
10 information and why it is relevant and important from
11 another context.

12 I don't think privacy and financial institutions
13 or privacy and any other type of context is necessarily
14 going to be any different.

15 What do we know about what consumers think about
16 privacy? What you see there is a slide from a Harris
17 Survey that was done in PLI wave two, and the question
18 is, what is the potential risk that someone might
19 inappropriately use or share information, given online,
20 what would it deter you from doing? Well, only 26
21 percent of online users would be deterred by -- if they
22 had to provide personal information -- from buying
23 something from a catalog or brochure, 18 percent from
24 paying a restaurant bill, 58 percent from purchasing
25 anything online, and 56 percent from conducting personal

1 banking transactions online.

2 Let's think about that for a minute. Is this an
3 accurate assessment of the relative risk that the
4 personal information that they disclose in those
5 contexts will either be taken from a security standpoint
6 and wind up in someone else's hands inappropriately, or
7 used in a way different from that which they anticipate?
8 I would suggest to you that the entire -- that while I
9 think the overall risk is overassessed, it may be
10 backwards.

11 Which is safer, handing your credit card at the
12 end of a meal to an 18-year-old waiter who takes two
13 impressions, gives you one and takes one back with him,
14 puts it in a cash register to which every other waiter
15 and member or employee in a restaurant may have access.
16 Is that more of a risk as compared to getting on a
17 secure transaction line, typing your credit card
18 information into the computer, goes by secure line to
19 the retailer or the vendor, it then goes to another data
20 line to your credit card company and comes to you in the
21 form of a bill. But that's not what consumers think.

22 I don't know that a privacy notice, by and of
23 itself, can help educate consumers about the relative
24 risk of disclosing that sort of information in that
25 context. That's the big picture of what we need to do.

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1 Now, what are the limits of privacy notices? I
2 think we've already talked about how they're limited to
3 the perspective of the organization that provides them,
4 they're written to assure compliance, they're often too
5 long, they do not cover the information practices of the
6 organizations to which the personal data may be
7 disclosed.

8 I would suggest that even the best two-tier
9 notices, and I will say that PLI strongly supports what
10 Marty Abrams is going forward, and the ideas and efforts
11 that the TRUSTe is doing to create two-tiered notice
12 structures where there's a very simple notice with a
13 more detailed notice. I would suggest that even the
14 best notice doesn't get you all the way there.

15 Consumer education is necessary to address the
16 big picture. What are the information practices of the
17 industry as a whole? Where will the information go and
18 how will it be used? What is the benefit to the
19 consumer when the information is used? How does the
20 organization sending me a notice fit into the broader
21 picture of this whole information system that we're
22 looking at?

23 PLI has tried to do, and has embarked on an
24 effort to provide consumers information about the big
25 picture. And to provide them information not

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1 necessarily specifically about the industries such as
2 the financial institution industry and how information
3 flows within that industry, but much more in broader
4 information about privacy. What it means, how you can
5 protect your privacy, what can you do about it?

6 One of the things that we've embarked on is a
7 banner ad campaign. On October 1st, PLI, along with the
8 interactive advertising bureau, launched a voluntary --
9 launched a banner ad campaign on the net that will
10 deliver in excess of 500 million impressions to American
11 households over the next year. In the first month, we
12 had 400,000 unique visitors respond to those
13 advertisements, and they looked at eight million pages.

14 If we are able to continue to get 400,000
15 visitors a month, and that's something that's a
16 challenge, I think it's ultimately going to go down, as
17 it will with any campaign, that is six percent of the
18 wired American households who will look at 20 pages of
19 information on privacy.

20 What this tells us is that privacy information
21 is an interest to consumers, they want to know what it
22 is, and they want to know what they can do to protect
23 their own privacy. PLI, in addition to doing and
24 continuing the banner ad campaign throughout next year,
25 we anticipate that in early next year, you will start

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1 hearing radio ads about privacy, alerting consumers to
2 what they can do, and sending them to a place that they
3 can get tips and information about what privacy is, and
4 how they can accomplish that.

5 We're doing print ad campaigns. We have
6 established a website, understandingprivacy.org. We are
7 working with the Internet Education Foundation and other
8 groups to try and develop consumer tool boxes, and other
9 pieces -- and other resources that will provide
10 information for consumers in the broadest sense of what
11 privacy is.

12 I would also point out that there are consumer
13 aid pamphlets and publications, and I have just two
14 examples of things. Here Experian, one of our members,
15 has 12 common questions about consumer credit and direct
16 marketing. Dell has a consumer guide to Internet
17 safety, privacy and security. These are not privacy
18 notices, and they don't substitute for privacy notices,
19 but we need to start getting into the hands of consumers
20 simple materials like this, more sophisticated booklets,
21 video presentations, any other way that we can educate
22 consumers about information and information privacy will
23 begin to provide a context in which the notices that
24 we're talking about become helpful.

25 What, then, what's next? Privacy notices have a

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1 role in educating the consumers, but they will only be
2 effective in the context of a broader consumer education
3 effort. I will confess, I'm the person who asked the
4 question to the previous panel, do you think a notice
5 alone will do it, and I think all of them -- and my real
6 question was, do you think anyone can write one notice
7 that's going to do the trick? And I think the answer
8 that they said was really, and it's sort of a set-up, I
9 think the answer is probably no.

10 Privacy notices need to be shorter and more
11 concise. That's what we were told by the Harris Survey
12 today, that's what every survey has told us. Yet,
13 consumers don't have enough information to make the
14 right decisions. If we need to give them broader
15 consumer information, yet notices need to be shorter and
16 more concise, the place to give the broader consumer
17 education is not in the notice.

18 Dual privacy notices, I think, can solve the
19 problem with notices. If the regulators will agree.
20 And I know that John Dugan here said that when we're
21 trying to solve these problems, we need regulator
22 buy-in. I think it's important. When companies come to
23 you, if either the effort by TRUSTe, the effort by Marty
24 Abrams, the efforts by John Dugan, if companies come to
25 you and say, we want to give them a shorter notice.

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1 Okay, regulators in the room, give them an answer. You
2 need to figure out a way to allow companies that are
3 legitimately trying to solve the problem and be
4 effective in terms of communicating with their
5 consumers, you need to be able to give them a signal
6 that their concerns about whether they will be in
7 compliance with the law, are, in fact, justified.

8 Businesses must continue to expand their efforts
9 to educate consumers, broadly speaking. Consumer group
10 websites and education efforts are, I think, a critical
11 part of the process. I think information needs to come
12 from all sources, and I think to the extent that
13 consumer groups are out there, speaking from their voice
14 and with their perspective, providing consumer
15 information, I think it's absolutely valuable.

16 Government has a role. I think the FTC's effort
17 to build consumer confidence through the enforcement of
18 privacy notice claims is critical. Every one says that
19 trust is an issue. I think that we need to see
20 consistency in how notice is provided, and I think the
21 government needs to recognize the role of consumer
22 education in providing a broader context for privacy
23 notices.

24 Don't expect the privacy notice to do
25 everything. Understand what the privacy notice is there

1 for, it's there to tell you what this institution is
2 doing, but it can't accomplish the broader objectives
3 that I think, for all the people who came here and said
4 to you today, you know, I'm not sure that consumers
5 care.

6 I think the only way that consumers will care
7 and understand what's going on is if you continue things
8 like the banner ad campaign, you continue to educate
9 them about what privacy is, and where it fits, what
10 information practices are, and what the notice is and
11 the information that they are going to get from
12 financial institutions and elsewhere really mean.

13 Thank you.

14 MS. YANOFSKY: Thank you, David.

15 Susan?

16 MS. HENRICHSEN: I am the one with the video,
17 but I have to tell you it contains no jokes, no car
18 chases, and not a hint of romance, so I'm not sure that
19 it's adequate compensation for those of you who sat
20 there so long and so patiently.

21 I chose the title to my presentation in order to
22 convey one of the aspects of the challenge that I think
23 we face in trying to make GLB notices work. Certainly
24 one of the goals of GLB is to enable consumers to make
25 informed choices. That is not just whether or not to

1 opt out, but also where to do business, and what to
2 expect and look for in the financial institutions
3 consumers do business with.

4 Obviously a first step in this process is
5 creating understandable notices, but that's probably not
6 enough. We need to increase consumer awareness to make
7 consumers aware of what information is available and
8 what other resources can help them, and educate them in
9 how to use that information.

10 We also, I think, need to overcome distrust,
11 suspicion and confusion. Some earlier panelists
12 referred to this, made some illusion to this, and I am
13 going to give some examples in a minute. We've heard a
14 lot of survey information, and I know, you know, you can
15 quarrel with any survey results, but when survey after
16 survey seems to indicate that there is a lack of
17 awareness, or a lack of comprehension, I think we need
18 to begin to pay some attention.

19 American Bankers Association survey, which was
20 done fairly early in the process, it was in May of 2000,
21 found that 41 percent of those who responded did not
22 even recall receiving their notice, 20 percent had
23 received but not read it, and 36 percent said that they
24 had read the notice. These survey results and what
25 other people have talked about today I think are

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1 reinforced by the experience many of us have had when
2 speaking to consumer audiences about privacy issues.

3 This is not something that I am going to ask
4 this audience, since it's certainly not the typical
5 audience when it comes to financial privacy, but I often
6 ask, as do colleagues, sometimes ask consumers in an
7 audience, how many of them recall receiving a privacy
8 notice, how many of them have read the notices, and how
9 many think that they have understood the notices?

10 Judging by the responses, we clearly have work
11 to do to make consumers aware of the information choices
12 available. Even the first question here, unfortunately,
13 still gets relatively low responses, certainly lower
14 than we would like, given the tremendous amount of time
15 and money that is going into creating and mailing out
16 these notices.

17 Even where consumers are aware of and have read
18 their privacy notices, they sometimes fail to realize
19 what that notice is or how it works or can work for
20 them. And this keeps them from effectively utilizing
21 the information that's provided in the notice. This is
22 illustrated by some of the most frequently asked
23 questions that consumer organizations and law
24 enforcement agencies have encountered from consumers.
25 They want to know, why do you need that? They're

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1 suspicious. Is it safe to provide the information that
2 it's necessary to provide in order to use an opt-out
3 from any companies? And why is this being done?

4 Consumers unfortunately sometimes, especially
5 older consumers, sometimes view the opt-out notice as
6 simply a way to extract personal information from them.
7 So, they need to be made more aware of how this notice
8 can actually work for their benefit. So that they can
9 make their choice.

10 Consumers also sometimes, several people have
11 mentioned today context, and the idea of educating
12 consumers as to why they're getting these notices. Some
13 consumers receive them and just think, oh, this must be
14 something mandated by a class action settlement or
15 something and toss it.

16 So, making consumers aware of why this is
17 happening is an important step. As an illustration of
18 the kind of confusion that's around, I would like to
19 show you an email warning that was issued -- that was
20 not issued, that was circulated very, very widely this
21 summer. This was circulated extremely widely.
22 Consumers would get it, they would look at it and they
23 would say, oh, I should pass this on to my friends and
24 give them this good information.

25 The opt-out number that's given here, you will

1 notice that this says, "Starting July 1st, credit
2 bureaus can share your information with anybody who asks
3 for it." Obviously not true. It appears to -- and it
4 also appears to allude to GLB with the July 1st date.
5 The opt-out number that's given has nothing to do with
6 GLB, it's the op-out number for prescreening lists.

7 So, this email, which as I said, got very wide
8 circulation, the FTC responded to it with an alert on
9 their website, my office did and a number of AG offices
10 put out an awareness to try and correct the
11 misconceptions in this.

12 But I'm afraid that it generally illustrates how
13 far we have to go in trying to make consumers aware of
14 their rights and give them the information they need to
15 use those rights.

16 The response to some of this confusion, and in
17 the proactive initiatives that have been undertaken by
18 state attorney general offices to educate consumers on
19 these issues, have taken a number of forms. And really,
20 there are a large number of states who have undertaken
21 any or all of these kinds of initiatives. Press
22 releases, fact sheets, workshops, at which all this
23 information is provided, and webpages are probably the
24 most common. I am going to, this is the video now. I
25 am going to show you a video from the Idaho Attorney

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1 General's Office. The first half of the video that is
2 just 15 seconds is on identity theft. The second half
3 is on the financial privacy aspect.

4 (Whereupon, the aforementioned video was played
5 for the record.)

6 MS. HENRICHSEN: What I would like to show you
7 now are just some excerpts and examples from various
8 attorney general webpages. I want to emphasize that
9 these are excerpts, that this is not a comprehensive
10 sampling by any means. I just would like to give you a
11 little bit of the flavor of some of the kinds of efforts
12 that are being made and some of what the message is.

13 These can be easily found on the websites.
14 Often there is a link from the home page or from a
15 consumer page, or a search for "financial privacy rule"
16 will uncover them. Again, the Idaho Attorney General's
17 Office, there is, among other things, a fairly thorough
18 description of the law, and noting that consumers must
19 take action if they wish to protect the confidentiality
20 of the information. There are also separate sections on
21 how to opt out. A GLB glossary, which I didn't
22 encounter anywhere else, and a section on other laws and
23 regulations related to privacy.

24 This is from the Michigan Attorney General's
25 website, this alerts consumers to examine their mail,

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1 not throw away their GLB notices, and again, notes that
2 it's up to consumers to exercise their rights.

3 This is from the Arizona Attorney General's
4 website, this assures consumers that even if they find
5 the notices somewhat daunting, there's a way to
6 simplify, and it highlights the action aspect of the
7 notices by suggesting that consumers look for a toll
8 free number, some sort of form, or an online address.

9 This is the webpage of California's newly
10 created, just went into operation, this year, Office of
11 Privacy Protection. This office has several mandates.
12 The two principal ones being help for identity theft
13 victims and prevention, and the other one being privacy
14 in general, including financial privacy. It's intended
15 to be a resource for consumer information on these
16 issues, to assist and coordinate law enforcement
17 efforts, to work with businesses to encourage sound
18 privacy practices, and to report on privacy trends and
19 issues to the legislature and other government offices.

20 It contains several links with further
21 information, including a financial privacy link. This
22 is from that webpage, and again, like the attorney
23 general webpages, it provides information, including a
24 description of GLB, and among other things, assures
25 consumers that even if they have already thrown away or

1 discarded or didn't notice their privacy notices, there
2 is still the opportunity to exercise the right to opt
3 out, if they wish to do so.

4 Looking over these efforts, there are some
5 common themes or messages that attorneys general offices
6 and others have been trying to get out to consumers.
7 The first and most obvious is to watch for the GLB
8 notices. And the second is to read them and consider
9 your options, and finally, remember that under GLB, the
10 burden is on you to exercise your opt-out right.

11 With respect to financial privacy, certainly
12 among the goals and guiding principles, taken both from
13 general consumer education principles and from the
14 experience with GLB thus far, I think that there are
15 several principles that we can glean, and the first of
16 these is, getting consumers' attention focused. It's
17 important to make them aware of the issues and the
18 information that's available to help them make choices.

19 The second is investment. It's important to
20 convince consumers that focusing and spending their time
21 and effort is worth while. People are busy, I mean,
22 you're all consumers, you know how busy you are, and
23 it's very hard at the end of a long day to come home and
24 have to deal with something that takes too much of your
25 time, and that you fear may not be well worth your

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1 effort.

2 And finally, we need a pay-off. If we are going
3 to convince consumers to invest their time, and put
4 their effort into this, we need to give them a pay-off
5 by providing information and choices that actually have
6 value for them.

7 This means, I think, that consumer education
8 alone is not enough. The information provided to
9 consumers has to be valued and it has to be useful to
10 them. It's important not only to enable consumers to
11 make the limited choices that they are provided under
12 GLB, it's also essential to the real choice issue, that
13 is to allow consumers to compare the information
14 practices of different financial institutions and make
15 their decisions about where they want to do business.
16 Clearly, consumers cannot make this kind of choice,
17 unless they have clear and understandable notices that
18 are comparable to each other.

19 Thank you.

20 MS. YANOFSKY: Thank you, Susan.

21 And last but not least, Tena?

22 MS. FRIERY: Thank you, sorry for the late
23 start. My techno skills need some updating, I guess.

24 I want to thank the FTC and the agencies for
25 inviting us here today, and for all of you for staying

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1 around for the last presentation.

2 I'm with the Privacy Rights Clearinghouse, we
3 are a non-profit organization, consumer education and
4 advocacy group headquartered in San Diego. We started a
5 financial privacy project earlier in the year. It was
6 funded by a private grant. We in this project developed
7 some fact sheets that are on our website. We sponsored
8 a readability study which is also on our website. We
9 conducted a media campaign, put out several press
10 releases and conducted a number of media interviews
11 trying to get consumer attention for these -- for the
12 privacy notices, warning consumers that these were
13 coming in the mail, and to watch out for them.

14 And as a final thing, we did conduct consumer
15 outreach throughout the entire period of our project,
16 that was generally community centers, other nonprofits
17 asked us to speak and so on.

18 We had quite a response to our project, the
19 information that we put out. Actually, more than we
20 expected. We received about a thousand letters, we
21 received about a thousand emails, we received numerous
22 telephone calls, which unfortunately we were not able to
23 put in a category or catalog very successfully, just
24 because of our limited staff.

25 We did, again, do the community outreach. And

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1 we had about 500 persons that participated in that. So,
2 we think we have at least about 2,500 people that we
3 received responses to from our materials that we put out
4 in our outreach programs.

5 We actually started this program with the idea
6 that we would be filling in the gaps for consumers who
7 saw the notices and had some specific questions that
8 they wanted to ask. As it turned out, the level of
9 knowledge of consumers who were responding to our
10 materials were much less than we expected, and as a
11 matter of fact, most consumers, and we say about 60, 65
12 percent, contacted us as a result of a media story they
13 saw. Their reaction was either one of two things.

14 First of all, I didn't -- I just heard about
15 this new law for banks on the radio, read about it, in
16 the newspaper, what's it all about, send me information.
17 The second category in this low level were those
18 consumers who said they vaguely remembered seeing the
19 notices, but they failed to understand the significance,
20 and they tossed the notices. The quotes we most often
21 got from people, and incidentally, we do have some
22 materials on the CD-ROM that quote consumers and that is
23 the basis for our report here today. So, we encourage
24 all of you to take a look at that when you have time,
25 and these are actual things that we heard from

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1 consumers. So, if you're thinking about your programs
2 in the future, it might help you to take a look at
3 those.

4 So, that was the low category, and it was by far
5 the most people that we heard from. The moderate level
6 was the target group from our program in the first
7 place. These people have numerous questions, most of
8 which should have been answered by the initial notices,
9 but unfortunately weren't. Some of these questions now
10 have resolved themselves, such as the deadline. So,
11 that should not be a problem, again. There are still
12 questions about the financial institutions that are
13 covered, why people got the notices, and the joint
14 marketing question that's still looming large with
15 consumers.

16 The highest level of knowledge came from those
17 people who said that generally they were complaining
18 about how long it took to opt out. There's one of the
19 quotes in the narrative report that we have online, that
20 says, I think I'm an average consumer, I spent two days
21 finding my notices, this lady had kept them in the file,
22 I made five phone calls, I wrote ten letters, and I'm
23 still not sure what it's all about, but I followed the
24 procedure, and I looked at every notice.

25 So, we had those kind of comments. But I think

1 that was one of the better ones that we received. And
2 we received other questions here from consumers.

3 One of the big problems that we have from
4 consumers is the information that is sometimes required
5 to opt out, and in particular, social security number.
6 So, in reviewing the notices and what you might ask for
7 in the future, unless there are some problems seen with
8 people impersonating other people, to opt out, or try to
9 opt out, then maybe you want to think about the
10 information that you're asking for, and see if it's
11 really necessary for the consumer to provide that.

12 And I'm not going to spend really any more time
13 on the notices, I think people have gone over that over
14 and over again about the notices need to be shorter. We
15 certainly would advocate a shorter notice, a layered
16 form of notice, perhaps, and a large postcard with some
17 of the information, and we think that a lot of that
18 information could be included on even a postcard
19 material, if much of the marketing information is taken
20 out. Consumers really don't need to hear over and over
21 again or see that a financial institution respects their
22 privacy or wants to offer them better marketing or
23 better products and services. Enough of that. Some of
24 it is fine, but the points that are required by the law
25 and regulation should be the focus of the notices.

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1 Just another point I want to make about
2 recommendations for industry, is education for staff.
3 We've received a number of complaints and inquiries from
4 consumers, especially those who have thrown their
5 notices away, what do I do now that my notices are gone.
6 And my suggestion always is to go back to the financial
7 institution, find out what the privacy policy is. And
8 people who have contacted us have run into stumbling
9 blocks numerous times, and I think from what I've heard
10 here today that financial institutions are working on
11 educating their staffs, and I have heard from some
12 companies that it's very expensive to keep training and
13 retraining staff, and I would always only say just
14 provide some minimal amount of information to everybody
15 that comes in contact with your consumers.

16 And there are other messages here, one of the
17 things -- and I'm going to make this point, and I have
18 been told to wrap up, so being obedient, I will do that.
19 One of the things that I didn't hear discussed here
20 today, and that I think it's very important and
21 important to consumers, is what happens when companies
22 do share, and that's the term used, information with
23 third party nonaffiliates. The choices in the
24 regulations, and I reviewed 200 notices and I've seen
25 this, are financial, nonfinancial and other. And there

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1 really doesn't leave very much to the imagination.

2 And when a consumer sees this, they immediately
3 think, sell my information. If that's the case, first
4 of all, it should be told to consumers. Consumers may
5 have a worse impression of the practice than it actually
6 is. And secondly, this is something that consumers are
7 entitled to know, not just from financial institutions,
8 but how does information flow from government, credit
9 reporting agencies, all businesses that might contribute
10 to identity theft, fraudulent telemarketing, fraudulent
11 investments, that the government and financial
12 institutions and other businesses spend a lot of money
13 trying to curtail.

14 So, with that, I will stop, and thank you again.

15 MS. YANOFSKY: Thank you, Tena.

16 (Applause.)

17 MR. FIELDING: Thanks very much to our
18 panelists. In the interest of full disclosure, I just
19 want to let you know that the NAIC, the National
20 Association of Insurance Commissioners, whom I work for,
21 has put together a group of regulators and industry and
22 consumer representatives to take a look at this issue
23 and see what we can come up with in terms of simplified
24 disclosure, notice language that's more understandable
25 to consumers. And, so, this panel has been extremely

1 helpful to me, personally, as have the previous panels.

2 I wanted to get at the issue of standardization
3 a little bit. I know John expressed some concerns about
4 standardization of notices. Issues were raised in
5 earlier panels about standardization. I'm wondering if
6 the rest of you think that standardization is possible
7 or impossible, and if not, do you think consumers will
8 be seeing similar notices going forward to enable them,
9 I guess, to sort of compare one company to another in
10 terms of privacy policies?

11 MR. ABRAMS: Well, the first question is what is
12 the purpose of notices, and I think we've heard from all
13 of the experts today, that if you don't know what the
14 purpose of notices are, it's hard to design an effective
15 notice system, it's hard to come up with metrics to
16 measure the effectiveness of notices.

17 I think that since privacy is indeed very
18 contextural, it relates to what you do with information,
19 it relates to the appropriate use of information, there
20 always has to be a flexibility in the process. But we
21 can do a better job of coming up with a design of how
22 you lay out the notices and what you put into the
23 notices, so people can begin to understand the flows of
24 data without it being too detailed, so that they can
25 begin to drive market behavior with the choices that

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1 they make.

2 If there is not some level of standardization,
3 there isn't some form that begins to help consumers feel
4 comfortable with the flows of data, then we can't have
5 the behavior driven by the information that the
6 consumers have.

7 And I also think that goes to consumer
8 education. I agree, absolutely, that if you don't have
9 a context to read those notices within, it's very hard,
10 even with a simplified short notice, to make sense of
11 just how the market works.

12 MR. FIELDING: So, are you talking about
13 standardization, maybe not at the specific language
14 level, but in a broader sort of contextual level for
15 both the notice and the consumer education?

16 MR. ABRAMS: The group that I have been working
17 with has had three meetings in person, and a meeting via
18 telephone. We have yet to begin to meet to do the
19 consumer testing and meet with consumer organizations.
20 We are going to begin to do that in January.

21 I think that getting to something as simplified
22 as a food label with numbers is going to be very
23 difficult. But I believe that you can get to a format
24 that is regularized enough that consumers can begin to
25 look at that summarized notice and begin to say, yeah,

1 I have a sense of how that organization uses
2 information, and how that might be different from
3 another organization.

4 There's always going to be some consumers who
5 want to go to that long notice, who want to use that
6 long notice as a reference. And there needs to be a
7 strong tie between that shorter notice and the longer
8 notice, but I think that even if you can't get to a food
9 label, you can get to a process that is regularized
10 enough so that consumers can begin to drive the market.

11 MR. FIELDING: Fran?

12 MS. MAIER: I was just going to add that what I
13 think is key in developing a label or some sort of
14 standard is that it has a certain amount of flexibility
15 to adjust to different business models, different kinds
16 of consumer issues. For example, we foresee with the
17 privacy label that there might be some different
18 concerns or requirements for financial organizations and
19 for health organizations, because of some of the
20 regulatory. And there's probably a way of including
21 that in the standardized format.

22 So, I think the question is, standardization,
23 does it mean 100 percent is the same? Perhaps it could
24 mean that some parts of the layout and some part of the
25 language are the same, but there's still some built-in

1 flexibility. And I think that's critical to
2 adoptability. If it's too, too stringent, you can just
3 forget it.

4 MR. DUGAN: I think what -- I just wanted to
5 clarify a point. I think what I was saying was that it
6 would be impossible to standardize the entire
7 Gramm-Leach-Bliley notice, number one. Number two, that
8 there has to be flexibility, even if you start looking
9 at something that is separated into a short form, to
10 have some variations in it. The most important thing to
11 focus on, at least initially, is terminology, and the
12 kind of legalese that is part and parcel of
13 Gramm-Leach-Bliley now, I think is the thing that would
14 bear the most fruit.

15 MR. ABRAMS: But, and part of this process where
16 the regulators can begin to jump into it, for example,
17 it's required that a financial institution keep the
18 information secure. A short notice shouldn't have to
19 repeat what is a requirement that the information be
20 secure. That, indeed, the regulators, as part of the
21 consumer education they have done on consumer regs for
22 the last 30 years, could do on their own part to say, it
23 is required that institutions keep information secure,
24 so that you take that piece of the burden off of the
25 short notice or the longer notice, because it's a

1 requirement.

2 MR. FIELDING: That was one of the things that I
3 was actually going to ask, and that is what suggestions
4 do you have in terms of the regulators assisting in this
5 process? I guess that's one concrete example.

6 MR. ABRAMS: I think they need to allow for some
7 level of experimentation so that we can begin to see
8 what we need to do to come up with notices that are
9 approachable by consumers, and begin to allow consumers
10 to drive the market. So, that doesn't mean that you
11 need to re-open the regulations, it means that you need
12 to allow for some flexibility for testing, if it be the
13 combination of a summarized notice with the longer
14 notice, or something else, but I think there needs to be
15 more flexibility to allow us to understand what truly
16 consumers can relate to.

17 MS. FALEY: I would agree with that, and I think
18 that what government's role could most appropriately be
19 would be to give examples of best practices, give
20 examples of good notices, provide the tools for
21 companies to use to make their notices more readable. I
22 think that that's the kind of education that industry
23 needs right now, not a standardization, but an
24 assistance in doing what they want to do, which is to
25 provide a good privacy notice to consumers that will

1 build that trust that they want with that consumer.

2 MS. YANOFSKY: Yes, David?

3 MR. KLAUS: I just want to briefly reiterate a
4 point I made. I think, and I know you -- I don't know
5 why you said what you said when you started, Nancy, but
6 you started by saying this is not -- no one should take
7 my comments as representing an approval of any privacy
8 notice, nor do I speak on behalf of the agency. I think
9 we need to have meetings that don't start that way, when
10 companies come in and say, we would like to show you a
11 notice.

12 (Applause.)

13 MR. KLAUS: And whether it becomes, you know,
14 HHS has an advisory opinion form, in which companies can
15 come in and say, you know, does this meet the
16 requirements, HHS is using an advisory opinion letter,
17 that becomes part of a public record, and it says we're
18 not going to enforce against you if you do this. And I
19 think perhaps the regulators need to create some way in
20 which people who are seeking to meet the regulatory
21 requirements in ways that they believe better serve
22 consumers and are consistent, get an answer, and that
23 that information, in turn, comes back in a helpful way
24 to people who are -- to other people who are trying to
25 do a similar task.

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1 MR. DUGAN: If I could just add, I mean I think
2 the regulators have been very approachable on the
3 Gramm-Leach-Bliley privacy issues all along. I think
4 that has to continue, but I do think that if new
5 approaches come up, departures from what's been provided
6 before in the past, there has to be some kind of
7 informal guidance that suggests that that can work, that
8 regulators think that that's okay on some level.

9 MS. YANOFSKY: With regard to the consumer
10 education folks, I was wondering if you could speak a
11 little bit to any possibility for partnering between
12 nonprofits, commercial enterprises, financial
13 institutions, and the government, whether you think
14 there are any opportunities there that should be
15 explored to build consumer education campaigns.

16 MS. FRIERY: Well, there have been, in
17 California, state-sponsored consumer education programs,
18 and the Privacy Rights Clearinghouse was actually
19 started from such a program, funded by the California
20 Public Utility Commission. That funding ran out. Then
21 there was later funding, a grant program that was
22 administered by the California Consumer Protection
23 Foundation. The funding there was contracted out, and
24 it was done by bids, I understand, competitive biddings
25 for the grants.

1 We do think that the work of nonprofits is very
2 important for one reason, we do get down to the very
3 levels of the consumer that I think all of you would
4 like to have as your customers. We can talk to people
5 directly. We do promote notices, educational materials
6 in other languages. The information I have is that Los
7 Angeles has 80 to 100 languages spoken. So, that's an
8 important thing, too. I don't know whether the industry
9 or government is willing to take on that responsibility,
10 but that certainly is a gap that nonprofits can fill,
11 and also that close consumer contact.

12 MS. HENRICHSEN: In terms of partnership, I
13 think obviously sometimes consumer protection law
14 enforcement officials and industry have very different
15 viewpoints about what constitutes good consumer
16 protection, and to the extent that we can talk to each
17 other, I think consumers can only benefit from that.

18 With respect to the partnering with
19 nongovernmental organizations, nonprofits or other NGOs,
20 there are, believe it or not, still a fair number of
21 people who come to government for information, who trust
22 government to provide good information, but obviously
23 that's not enough, and there are a number of people who
24 don't trust government to provide that kind of
25 information. And I think there will always be a very,

1 very strong and important role for NGOs not just in
2 filling that gap, but in promoting consumer education in
3 general.

4 MR. ABRAMS: Privacy differs from other consumer
5 policy issues, especially the issues that the financial
6 regulators have dealt with. In terms of the regs that
7 you gentlemen and ladies deal with, it's much closer to
8 the Community Reinvestment Act than it is to Truth in
9 Lending or to Equal Credit Opportunity. Those are very
10 objective type acts. We don't have societal agreement
11 on whether personalization is more important than
12 limiting data flows. We haven't reached a point where
13 there is societal agreement. And I don't think we're
14 going to reach that point for a long, long time.

15 We have to encourage consumer education that
16 begins to discuss both the benefits of the data flows,
17 as well as the concerns and the risks that go along with
18 that. And I think that will be a great objective, but
19 we need to approach it from that perspective, rather
20 than just the mechanical education of this is a privacy
21 policy, here's how to read the privacy policy.

22 We're in the very early stages of an
23 information-driven economy and we need to understand,
24 you know, what makes us feel comfortable.

25 MS. YANOFSKY: Thank you.

1 On behalf of John and myself and all the GLB
2 agencies, I would like to thank all of our panelists and
3 all of you in the audience. It's now my pleasure to
4 introduce the director of the Bureau of Consumer
5 Protection of the Federal Trade Commission, Howard
6 Beales, for our concluding remarks.

7 (Applause.)

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CONCLUDING REMARKS

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MR. BEALES: Thank you, Nancy.

On behalf of all the agencies involved in organizing this conference, I would like to thank you for coming today, and contributing your knowledge and your insights. I would particularly like to thank you for staying until the end. My staff warned me that they had scheduled me for the last speaker because the audience wouldn't be as large, and they wouldn't dare do that to the chairman, but such is the life of a bureau director.

I wanted to summarize several key messages that I think came out of today. It's important to leave with these, because I think we really did learn a lot. First, and maybe most important -- is privacy notices need to be clear to consumers. That's their intended audience. Lawyers are good for lots of things. I have a lot of them that work for me, but one of the things that they're not necessarily very good for is figuring out what's clear and understandable to the consumer. But that's the question about privacy notices -- what is clear to the consumer, the intended audience.

Second, and perhaps as a corollary, effective

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1 privacy notices are really more of a marketing problem
2 than a legal problem. And the companies that have been
3 most successful approached them that way. They did
4 consumer testing, to find out what worked and what
5 didn't. That is a lesson that all of us can learn.

6 Third, there are lots of ways to solve this
7 problem, at least at the moment, but they involve some
8 common elements. They involve plain language, instead
9 of legalese, whenever possible. They involve a
10 statement of purpose that tells people why it is they
11 should be interested in reading this document, or
12 whether it's something that they're not interested in
13 and don't need to read.

14 They involve elements of visual design that make
15 it easy to find information and divide it up into
16 pieces, rather than looking at one big long document.
17 And they involve short forms that summarize what
18 consumers are really most interested in learning.

19 A lot of those elements, and more, is available
20 on the CD that you've gotten from the conference. If
21 you need more copies or lost your copy, there are
22 folders available on the way out that you can pick up to
23 take back to the office.

24 Fourth, there's a number of initiatives under
25 way to improve notices, and that should help. We intend

1 to support those initiatives as much as possible, and
2 hopefully you will as well, to help make privacy notices
3 better.

4 Finally, there are certain inherent complexities
5 in the process. From the consumer perspective,
6 consumers are busy. They may not want to read lots of
7 notices from lots of financial institutions about lots
8 of accounts, telling them about lots of very detailed
9 information sharing practices. And that's an inherent
10 limit on how successful this process can be.

11 From the industry perspective, there's enormous
12 complexity in the flows of information that occur, and
13 in the requirements of the regulation. More than one
14 company has told me, the hardest part about compliance
15 was figuring out what it was they actually did, let
16 alone trying to describe that process to consumers.

17 What kinds of responses are possible? Well, I
18 think there's three. First we have to recognize that
19 responses need to be dynamic. Privacy notices are an
20 annual event. If we didn't get it perfect the first
21 time, well, practice makes perfect, and we'll have more
22 opportunities for that practice.

23 Second, we really do need to educate consumers,
24 both about privacy and financial privacy in particular,
25 and about the notice process. This will work better if

1 consumers know what's coming and why it matters, and
2 that will happen over time, as well.

3 Third, we need to research the results. What
4 does make a more effective privacy notice, and most
5 crucially, does that more effective notice actually make
6 a difference in the choices consumers make? Does it
7 affect behavior? We don't really know the answer to
8 that yet. And hopefully ongoing research will let us
9 find out.

10 Finally, and perhaps most important, we need to
11 continue to cooperate. Agencies need to work together,
12 agencies need to work with the regulating community,
13 with consumer groups, with the states, and with
14 everybody else that's got a stake in this issue. That
15 kind of cooperation is what's essential to make further
16 improvement.

17 I want to close by thanking the interagency team
18 that put this workshop together. They worked very hard.
19 It's enormously difficult for even two agencies to
20 agree, let alone the hydra that organized this workshop.

21 I also want to thank the panelists who gave us
22 an enormous amount of time and effort to share their
23 insights, and to help us all make better privacy
24 notices. And finally, I wanted to thank those of you
25 who attended, and especially those of you who stayed

1 until the end.

2 Thank you very much.

3 (Applause.)

4 (Whereupon, at 5:20 p.m., the workshop was
5 concluded.)

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3 DOCKET/FILE NUMBER: P014814

4 CASE TITLE: GET NOTICED WORKSHOP

5 WORKSHOP DATE: DECEMBER 4, 2001

6

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16 Sally Jo Bowling

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