

FEDERAL TRADE COMMISSION

DEBT COLLECTION 2.0 - DRAFT
PROTECTING CONSUMERS AS TECHNOLOGIES CHANGES

Thursday, April 28, 2011

8:30 a.m.

Federal Trade Commission
FTC Conference Center
601 New Jersey Avenue, N.W.
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I N D E X

| | <u>PAGE:</u> |
|--|--------------|
| Opening Remarks by Tom Pahl | 4 |
| Welcome: | |
| By David Vladeck | 9 |
| Panel 1: Obtaining Information About Persons: Skip Tracing and Beyond | 15 |
| Panel 2: Telephone Technologies: Dialing, Talking, and Texting In An Age Of Enhanced Mobility | 71 |
| Panel 3: Managing the Flow of Information: The Intersection of Collector Software, Information Systems, and Compliance | 142 |
| Panel 4: Communication By Email: Boon or Bane to Collector-Consumer Relations? | 203 |

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I N D E X

PAGE:

| | |
|--|-----|
| Panel 5: Using Social Media For Debt Collection: 259 | |
| Consumer Information, Collector | |
| Communications, and Privacy Issues | |
| Panel 6: Future Directions: Looming Issues | 314 |
| and the Regulatory Landscape | |

PROCEEDINGS

(8:28 a.m.)

MR. PAHL: Well, good morning, everyone. I'm Tom Pahl. I'm an Assistant Director here in the FTC's Division of Financial Practices, and I want to welcome you to our Debt Collection 2.0 Technology Workshop to look at changes in debt collection technologies and our policy responses to them.

I also wanted to welcome both the folks who are in the room here, as well as many people who are joining us on the Internet. This event is being webcast, and so, our proceedings today will be seen by many people beyond those folks who are here in the room today.

Before we get started, I need to go through a few administrative things. First is that we are going to try mightily to stay on schedule today. We've got a lot of material to cover, and so, we are going to be very exacting when it comes to starting panels on time and ending them on time. So, after breaks, after lunch, et cetera, we would appreciate it very much if you would

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be back in your seats at the time indicated on the agenda.

If you leave the building for any reason during the day, you're going to have to go back through security. So, bear that in mind and plan ahead, plan a few more minutes that you might otherwise have planned for to get back into your seat.

If you do come back once one of our sessions has already started, I would ask that people come in through the doors on the two ends of the room. It's less distracting to the panelists, in the midst of the discussions, to have people come in from the wings, rather than from the center of the room.

The other thing is that during our breaks and while panel sessions are going on, I'd ask people to try to avoid having conversations in the hallway directly in front of me here. Two reasons: One is that the background noise carries over into this room and sometimes disrupts the discussions we're having. The other is that there are pretty sensitive microphones that we are using to webcast this and, so, some of the conversations that are had in the hallway sometimes are picked up by the court reporters or the webcasting. And I'm sure, particularly those of you who are private attorneys, would prefer that your legal advice not be broadcast to all the world. So, I'd ask you be very careful about your conversations and not have them directly in back.

To avoid interruptions, I would ask everybody to turn off the

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ringers on your cell phones at this point.

Each of our panels today is a moderated discussion. For each of the panels, as time permits, we're going to ask questions that people in the audience here and people online have that they would like posed to the members of the panel. We are on very strict time constraints, so we may well not be able to get to all of the questions that people have, but we'll do our best to pose the ones that we can. Even if we don't get to your questions, we certainly will consider them as part of our record of this proceeding. So, definitely, even if you think we may not get a chance to pose your question, definitely ask it, because they are valuable to us in thinking through the issues.

For those of you who are viewing this event on the webcast, you can submit questions for panelists to DCtech@ftc.gov. For those of you who are in the audience here, just write the questions you have on the cards that are included in your folder and hold them up and we will have folks that will come around and collect them from you and pass them along to the moderator to be asked of the panels.

Public comments. We are accepting public comments until May 27th, 2011. We appreciate the comments we have received already from people and we would appreciate receiving any additional comments. That's something that -- the discussions that we have here are very valuable, but we are very, very interested in any sort of underlying empirical

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information, data or other kind of views that can be conveyed, and a lot of times those are best conveyed in written comments. So, I would ask that you submit public comments if you can.

Security issues. In the event of a fire or an evacuation of the building, please leave the building in an orderly fashion. Once you're outside the building, you're supposed to go across the street. Look carefully both ways before crossing the street. Go over to the sidewalk in front of the front steps of Georgetown's Law School, and at that point, the security people will let us know when it's safe to return back to the building.

Bathrooms, which is a very important piece of information on this list, are located out in the center lobby behind the elevator banks. And, so, if you go out to the guard's desk, it's hard to your left.

Finally, if you have questions that come up during the day about proceedings, the events, how things are done, feel free to ask any of the people you see with FTC staff badges or ask out at the registration desk and we'll be glad to help you.

So, let us begin our event in earnest. We're fortunate to have here today David Vladeck, who's the Director of the FTC's Bureau of Consumer Protection. And David's going to provide us with some opening remarks about debt collection technology. So, please join me in giving a warm welcome to David Vladeck.

(Applause.)

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WELCOMING REMARKS BY DAVID VLADECK

MR. VLADECK: So, good morning, everyone. For all of you

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here in our conference room in DC, as well as those tuning into our webcast, welcome to Debt Collection 2.0: Protecting Consumers as Technologies Change.

I'm David Vladeck 1.0 -- according to my staff, I'm still in beta -- and I'm the Director of the FTC's Bureau of Consumer Protection.

So, today, we're hosting this workshop to discuss how technological developments are affecting the business of debt collection. How do technological advances influence how debt collectors communicate with consumers and how do debt collectors obtain and process information about consumers and debts? The particular technologies we will discuss range from the relatively new, such as smartphones, to the not so new, such as landline telephones, and include everything in between, such as social media, mobile phones, email, voicemail, various information gathering tools, software platforms, auto dialers, databases, and payment portals. These technologies are constantly evolving, some quite rapidly.

In the area of debt collection, as in other areas, advances in technology have the potential to increase efficiency, accuracy, and convenience. However, they also may raise consumer protection concerns. Press reports now suggest that debt collectors are sending consumers texts, emails, and social networking friend requests. Debt collectors may also post messages on the social networking sites of consumers' friends and families.

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While using these communication media to collect debts isn't, by itself, necessarily illegal, the potential for harassment or other abusive practices is apparent.

Modern technology enables collectors to send messages easily, inexpensively, and immediately, at any time, day or night. With mobile phones, consumers could receive collection messages constantly, at home, while driving, at work, in the middle of meetings, or even at their kids' soccer games.

With social media, a consumer could find a post on his social media site saying, "hey, deadbeat, pay us the money you owe," a post that could be broadcast on a newsfeed to his friends, family, and co-workers. A collector could be viewing pictures of the consumer's family, finding contact information for friends and determining where the consumer works and where his children go to school. The consumer's colleagues may start complaining that debt collectors are sending them texts and emails about the consumer's debts.

These kind of practices were unimaginable back in 1977, when the Fair Debt Collections Practices Act was enacted. However, the FDCPA's prohibitions against harassment, abuse and false and misleading representations do not only apply to a collector with an old rotary phone -- and I suspect I'm one of the people in the room who actually used a rotary phone -- rather, the Act applies to all forms of technology, including, as we'll

discuss, emails, instant messages, texts, tweets, friend requests, and wall posts on social media sites.

The FTC is committed to ensuring consumers in the debt collection process are protected no matter what forms of technology, new, old, currently in existence, or yet to be developed, are used.

At today's roundtable, we will focus on a number of important questions. How can collectors use advances in technologies in ways that comply with the law? What consumer protection concerns are raised by the use of these technologies? What can industry, government and consumer advocates do to ensure that consumers' rights are safeguarded? I tried to find an answer to these questions on my smartphone, but, apparently, they don't yet make an app for that.

So, instead, we will rely on the considerable knowledge and expertise of our panelists today to answer these questions. And we are fortunate to have here today distinguished experts from the collection industry, the consumer advocacy community, the technology field, and academia. Thank you to all of you for sharing your expertise.

We will have five panels, each focusing on a particular type of technology used in debt collection, and then a final wrap-up panel. Our first panel will look at technologies used to find information about consumers, such as their location, their identity, and their contact information. How can the underlying information about consumer debt be made more accurate

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while, at the same time, safeguarding data security and protecting privacy rights?

Next, we will examine the numerous issues presented by telephone technologies, such as the use of predictive dialers, voicemail, and contacting consumers on their mobile phones.

Our third panel will address the various platforms and data systems involved in the flow of information about consumers and debts. How much of this is automated? How can these systems be used to improve compliance with consumer protection laws?

Fourth, we will address collectors using email to contact consumers. Here, we will explore the prevalence of this practice, consumers' attitudes, privacy issues and how the Fair Debt Collection Practices Act applies to this practice.

Our fifth panel will deal with social media. We will discuss how collectors use social media sites to research consumers and their debts, as well as collectors' communications via social media to consumers and their friends and their families.

We will conclude the day, and it's going to be a long day, with a panel focusing on future directions in this area. Panelists will consider emerging technological trends and whether any changes in law or policy may be necessary.

We're looking forward to a lively and informative discussion.

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The knowledge and expertise shared through this workshop will be useful to us in our law enforcement decisions and to policymakers in developing sound, informed, public policies.

And, I've been asked to say this by our press office, if you are on Twitter, please consider using the hashtag, "FTCDebt," in your tweets when talking about the workshop online. The FTC will actually tweet some of the key points throughout the day, as well from our Twitter account, www.Twitter.com/FTC.gov.

Thanks again to our panelists, as well as to the audience attending here and those of you watching on our webcast. And I want to give special thanks to the staff of our Division of Financial Practices for the hard work that they engaged in in putting this terrific panel and roundtable together. So, thanks so much. And we look forward to a really informative day.

(Applause.)

**PANEL 1: OBTAINING INFORMATION ABOUT PERSONS:
SKIP TRACING AND BEYOND**

MR. PAHL: Thank you, David. And with that, we will move on to our first panel which is a panel that's going to look at skip-tracing and other technologies that are used to locate and identify consumers. And the moderator of this panel will be Tony Rodriguez who is from the FTC's Division of Privacy and Identity Protection.

MR. RODRIGUEZ: Thank you, Tom. Welcome, everyone. Glad to see everyone is here and we look forward to having an informative discussion on skip-tracing and information that's used to locate, identify, and contact debtors.

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On our panel today, we have a number of distinguished panelists, including, on my far left, Denise Norgle, Vice President and General Counsel at TransUnion.

Next to her is Conor Kennedy, an appellate advocacy fellow at the Electronic Privacy Information Center, EPIC, who focuses on a variety of consumer privacy issues.

To my immediate left is Angela Horn, who is Vice President and General Counsel at Forte LLC, where she specializes in probate law and debt collection.

To my immediate right is Len Bennett, who is an attorney in Virginia. He is a founding partner of Consumer Litigation Associates and he's a board member of the National Association of Consumer Advocates.

And on my far right is Joseph Beekman, who is an associate partner in Sales and Client Development at the Intelitech Group.

I'd add that each of them has a more detailed bio in your materials. Rather than to go through all of their bios, I think it's more efficient to just refer you to those if you'd like to know more about them. They all have quite distinguished careers and all of that information is available there.

What we would like to do now is focus on the substance of the discussion in this panel. And with that, I would like to begin with asking Joseph, if you will, could you tell us a little bit about -- well, let me backtrack a little bit.

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In terms of this panel, the discussion is going to focus on information used to locate, identify, and contact debtors. There's traditional skip-tracing involving landlines, white pages, and so forth, but all of that is giving way to new sources of information that are being used to contact and locate debtors. Larger amounts of data are available. There are trigger lists that provide information in real time about when it might be a good time to contact a debtor. There's also batch-based products that involve voluminous amounts of information that's layered and updated and compared to provide information about debtors, all of which is being used by debt collectors and others to locate consumers, locate debtors.

Also, the data sources are just more and more voluminous. We have data from the Internet, data from credit reporting agencies, data from public records, all of which has been used to identify, locate debtors. And there are numerous consumer protection issues that relate to this information and how it's used and who it's used by and how consumers are protected when this information is used to track them down and try and have a debt collected.

We hope our discussion today will address how the availability and the use of this information and new technologies, including the layering and analysis of such data, affects accuracy, privacy, data security, and compliance with the FDCPA and other laws including the Fair Credit Reporting Act.

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Finally, we hope to conclude with some recommendations that the panelists want to suggest to protect consumers, to ensure that accuracy and efficiency is maintained in this system, and that debt collection is done both effectively and in compliance with federal laws.

Also, at the end of this panel, ten minutes before we conclude, we hope to have a ten-minute question period. So, if you have any questions, I think there are cards that you can write them down on and there will be FTC staff who will be collecting the cards and bringing those questions up to me.

Now, back to Joseph. If you could sort of talk to us a little bit about the skip-tracing technologies that have been used in the past, those that are being used now, what information and technologies are you relying upon in your business to do analytics of information, in terms of tracking consumers down, being able to identify those consumers that are more likely to pay? Could you give us a little bit of detail about that?

MR. BEEKMAN: Sure, Tony, thank you.

I think we all might agree that we could speak for 45 minutes just on that question. So, I've been asked to maybe refine that down a little bit. But to jump right in there, certainly, new and old technologies is a big deal. We're ever aware of what the newest trend might be and what is available to the collection entity or the hospital or the body that's charged with collecting debt, and that's really what I'd like to focus on is where that

direction is headed, specific to, especially, the arena of analytics and scoring.

So, to get in there, I guess the basic premise here is that we need to make contact with the consumer in order to collect. And that's just inherent to our business, right? At the most simple case. So, how best are we to determine the course of action or the treatment for any individual account, when considering the voluminous aspects of a portfolio? And that's what I would like to get into here.

Certainly, there are trends moving toward addresses and phones, and how to find those addresses and phones, and we heard a little bit of that in the preamble here as far as social media or the discovery of that information through the Internet or through other services. We still have to find that information and it's always been that way, the addresses and phones. However, it's the way that we go about that and how it's presented that's changing.

So, to get in there, some of the things that we're finding that are new in technology is that when data is received, as far as addresses and phone numbers, specifically, or that contact information, it's not just raw data anymore. And that's one of the new trends we're seeing. It comes with information, various message detail that suggests, hey, this is an address, but it's not just an address, it's a P.O. Box, or it's not just an address, but it's a rural address, or the rate of mail return from this address is higher. And, so,

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that promotes the efficiency of the collection agency to be more accurate in its pursuit as far as lettering. It might also say this is a prison address or this is a hospital address or something to that end that makes -- that legitimizes or perhaps denotes that information as less or more valuable.

Where phones are concerned, one of the new trends that we're seeing is the identification of the type of phone, even the presence of how long that phone number has been established. So, is this a landline? The length and term for this landline being associated with the name that's categorized to it. Or is this a mobile phone? Of course, with the TCPA, that's an ever-present discussion that I'm sure will go on today.

So, we have better information about the information we're receiving. Now, all of those sorts of things then can be pushed to us or batched away for. Some of the technologies that we're seeing are trigger-type technologies that suggest if I subscribe to a service and there's something that happens on this consumer's file or the warehousing aspect where this data is collected, then send that to me. And, so, that way, I don't have to be as vigilant in terms of going out and rebroadcasting a search over and over and over again on this consumer, which limits, to some degree, the amount of exposure that I'm making toward investigating this person, if you will.

All of that then plays into the analytics and, really, analytics is all about how we handle that data, how we process that data and roll it in to,

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considering the volume, what are the best steps or the best treatments for any individual account? So, that's where predictive modeling comes in. And as Tony alluded to, modeling and scoring, if you will, is a big part of the industry today. And to what end that becomes invasive, I suppose starts with the type of data that is being utilized within that scoring algorithm.

So, you should know that in most cases, the trend of scoring hasn't changed in a large space, as far as new and old technology, over the last five or six years. It's really mostly public record data that's utilized. To some end, then, we get into a consumer file or a credit bureau file and weigh in those attributes.

But some of the new technology that we're looking at today considers social media. It considers the presence of social media sites and information that could be potentially scraped from a social media site. Still beyond that, does a consumer subscribe to certain magazines? Really interesting linear correlating information that is present. Or does the consumer service their vehicle at a maintenance shop that registers that information as public record? Still, beyond that, what type of affiliations or organizations does a person make part of?

Those types of things may not always promote a linear relationship between the debt and the likelihood of collecting on that debt. However, in some cases, they might. It's the modeling engine that's necessary to refine that data, to understand what those corollaries are.

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And, so, as we consider the modeling and the pursuit of data, certainly, we're aware of the privacy of the consumer that's required to be in focus, which the FDCPA largely governs over. But as these new technologies come about, it's interesting for us as we consider, as an entity, what data to consider, what data not to consider, what might be invasive and what may not be invasive.

And, so, just as a large scale, we see that we certainly are moving in the direction of becoming a little bit more online savvy, as far as figuring out what people are doing out there, still while considering the corollary nature of whether it would be to the benefit of the agency while still not being against the consumer to use that data.

MR. RODRIGUEZ: And, Denise, at TransUnion, what new products or resources are you relying upon to provide to debt collectors or others who are trying to track down consumers, including trigger lists?

MS. NORGLER: Of course, trigger lists. At TransUnion, most of the data that we leverage in support of the collection industry is consumer report data that is regulated under the Fair Credit Reporting Act. Our customers will be vetted and certify that they have a permissible purpose to use the data in collection with the debt. So, within that framework, we have to operate. And, you know, as Joe mentioned, we do have trigger solutions which is one of the results of technology. Historically, a collection agency who wanted to check a consumer report had to request it, and they

would either request it, you know, when they were working a collection file or as technology advanced. More years ago than I probably would like to remember, we started having more batch type account monitoring where a collection agency could send us a whole portfolio and have us monitor that portfolio and deliver updates to them on some periodic frequency, quarterly or every six months, or something like that.

Triggers has enabled us to turn that around and push the data to the collection agency at the time when it's most relevant. So, for example, if one of the trigger criterias on the portfolio that's being monitored is a new address hits a consumer's credit file, that would trigger us to push the consumer's report to the collection agency. Other types of triggers are an indication that the consumer has been reported as deceased by one of his creditors. That's obviously useful information. Angela can talk a whole lot more about why that's important.

Or even the fact that a consumer is out seeking new credit could be the type of trigger that a collector would find useful and interesting, because it might suggest that the consumer is in a frame of mind where he might be willing to pay his obligation. And that plays into some of the analytics that Joe talked about.

You know, our industry works very hard with the collection industries to try to understand what type of behavior is indicative of a consumer who is able and willing to pay his collection accounts because

those are the consumers that are most important to contact. A consumer who has no intention of ever paying or no ability to pay, it's not a good use for anyone's resources for the collection agency to keep pounding those consumers.

So, I think those are examples of some of the technologies that we're involved in that have made the collection markets operate better today.

MS. HORN: So, I'll pick up on Denise's point about the deceased context. My expertise comes from the probate context, and to contrast traditional, or what we might refer to as old-fashioned debt collection techniques with newer technologies, currently, folks that are working in deceased debt collection may be using traditional techniques, which include sending a letter to the courthouse, making a phone call to the courthouse. And these techniques are very costly for one thing, but also largely very ineffective. And the reason is that there are more than 3,450 probate courts in the U.S. and that an estate can take up to three years to open after the consumer passes away.

In addition to that, we find that more than 15 percent of the estates that we locate are actually in a location other than the one the debt collector or the estate creditor has of record. And, so, Forte's Probate Finder on Demand is one instance or one example of a technology that can actually create a win-win for both the consumer and the debt collector. What it does

is it collects and aggregates that probate case information, that public information from all those 3,450-plus probate courts into a single location which the debt collector or estate creditor can use to identify an estate that matches their debt.

What it does is put them immediately in touch with the right party, the person they should be communicating with, and it tracks very closely to the Commission's proposed policy statement on deceased collections, which is that we all want to make sure that the debt collector is, first and foremost, locating an estate and finding that right party who has petitioned the court to be appointed to administer the estate and who is taking on the responsibility of dealing with debt collectors.

And what it does for the consumer then, also, is it avoids unnecessary contact with the surviving family members who are going through the grieving process and who may not have gone to the court and asked to be appointed.

MR. RODRIGUEZ: Len, as an attorney who represents consumers, what new products or technologies do you see being used with the consumers that you engage in?

MR. BENNETT: Thank you, Tony. I think that -- stepping back, just as an overview, you would need to understand -- and the folks in this room certainly do -- the developments in the data industry. And to break it down into three categories, you have had, over the last five years, ten

years, the development or the move of what I'll call conventional consumer reporting agencies, the big three, Denise's company, Experian, Equifax, into -- or out of simply their traditional credit reporting function and into information sale, not simply for debt collection but for purchasing or for -- a company called TALX, it's an Equifax affiliate that gathers -- does work verification. When an individual applies for a job, TALX will help verify their previous employment history, but then resells that data for debt collectors that want current work information on potential debtor targets. So, you have the development of conventional consumer reporting agencies entering into this industry in that direction.

You have the previous powerhouses within the data industry, for example, LexisNexis and Acxiom, have moved wholesale into the consumer reporting agency, as they now sell background checks and rental reports, and the various other products.

And then you have a third category which are entities that have not been regulated, or don't acknowledge any regulation, under the Fair Credit Reporting Act, that are developing different products in their own way, focused most heavily on skip-tracing or exclusively on skip-tracing. Some of those include companies that gather information from payday lenders, who submit all of their records, or subprime car lenders, that don't report to TransUnion or the conventional consumer reporting agencies, and that information is gathered not for later credit reporting purposes, but for

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collecting from that otherwise challenged segment.

You have entities that track UPS information. You have merchants, when you provide your check information, that resell the checking account information that is used at a merchant level to verify that you have a bank account, and then is resold and used as a specialty product to find debtors that have a targetable bank account. Companies, of course, debt collectors that will sell portfolios where judgments have already occurred, and their sole purpose or the marketing pitch is that all you have to do is garnish, and they will sell with that suggested bank account information.

Those are really the industry developments, the boutiques, separately birthed, but also, the larger entities, either directly entering the field, the larger companies, or spinning off, and restructuring. LexisNexis uses the Accurint product, which it pitches as not Fair Credit Reporting Act regulated -- through structural changes in its corporation -- to sell the same data that it also successfully is selling as background check information for employment verification.

MR. RODRIGUEZ: Does the use of this information -- and this is to the whole panel -- does the use of this information vary by the size of the debt collection agency or the size of the company that's trying to -- you know, that holds the debt? Is this new technology being used across the board or is it being used in specific areas by specific actors? Anybody?

MR. BEEKMAN: I'll touch on that one. I think without an

empirical study sitting here just with reference to doing consulting and working with hundreds of agencies over the last decade or so, if there is a trend, it would likely be the case that the smaller entities, in most cases, would take advantage of information that perhaps would not be regulated or that, in some cases, would perhaps fall under the radar, you know, as Leonard has expressed.

Whereas the larger entities or even the mid-size, are -- perhaps have in-house counsel or have a compliance officer and, so, adhere more largely to what we know as practices that are acceptable. That's not to say that all small agencies do that, however. In some cases, where you've got a particular collector that could be in the large or the small agency, it's just that the large agency has monitoring in place a little better, but the smaller agency, who is charged from a commission-based perspective, to do what he or she can to find information on a consumer. So, that's why we hear tell of going on someone's Facebook page and posting something and being a little bit more invasive.

So, if there were to be a trend that I've seen -- and the panel certainly should comment as well -- it would be that the size of the agency does have something to do with the practices used.

MR. RODRIGUEZ: Leonard, did you want to say something?

MR. BENNETT: Yes. When we consider the impact of skip-tracing technologies on consumers, which is my specialty, we can't really

consider the technologies in a vacuum. That is, we need to consider them in light of the other emerging technologies that they are interoperable with or commingled with.

To illustrate, I'll use a recent criminal case that just wrapped up this February out of Buffalo, New York. The DOJ went after two directors of a 2,600-employee skip-tracing firm that had transferred the personally identifiable information of a number of consumers to bad actors who were operating a full-scale, fraudulent debt collection scheme. And they were approached specifically with requests for profiles of individuals who already paid off their debts: names, addresses, telephone numbers, account information, Social Security number, credit card information.

And the way that this information was taken out of the building was the directors accessed the profiles, they copied the information into a spreadsheet, loaded that up to an iPod, took the iPod out of the building, and this happened at least 20 times, and then synced it to an offsite third-party computer. It happened for three years. And while the directors were busy at work during the day, their "colleagues" were contacting these individuals and fraudulently claiming to be deputy sheriffs, executing bench warrants related to the underlying debt, which these consumers had rightfully believed that they had paid off. At the end of this three-year scheme, they had arrested more than 1,000 individuals and netted \$6.8 million.

When the DOJ brought charges, the only charge they brought

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was selling the stolen property of a bank. At the end of the day, these two directors got parole -- or probation, rather. Two years and three years. The three years had six months of house detention. And the court itself noted that there are no criminal penalties under the FDICPA.

Now, I think that that's something that Congress should address. I'm more focused on FTC enforcement because, under existing FTC rules, the firm should have deleted those profiles ahead of time and they should have been logging access to that information from the get-go. And that doesn't matter whether we're talking about a small firm, a medium-sized firm or a large firm. The FTC does have rather flexible standards. You incorporate the size of the firm. You incorporate how complex the operations are. You incorporate whether you're mitigating identifiable risks and, also, giving firms the opportunity to control costs.

Two points on that. When it comes to costs, one of the costs that needs to be injected into that calculus is the cost to consumers who have to deal with identity theft and heightened risk of identity theft. And then, secondly, data leaks from inside sources, at the highest level of authorized access, now clearly represent concrete, identifiable risks that every skip-tracing firm should be legally required to directly address.

MR. RODRIGUEZ: Well, I think that's an important point. Data security certainly is a big factor in all of this, given the amount of information that's available, the ease with which it's distributed. But in

addition to that, there's also a question of accuracy with all of this information and does the use of all of this information and all of these new technologies result in better tracking or locating of debtors? Does it allow you to better identify who the debtor is and where they live and how they can be contacted? And, also, does this new information and technology allow you to better track the debt itself?

I mean, what's your experience, both, I guess, Denise with TransUnion, and Joseph, with your experience, and I guess also from the consumer advocate's perspective? Does all of this information and does all of this new technology result in better -- or more accuracy?

MS. NORGLÉ: That's a challenging question. I think that the technology certainly presents the opportunity to improve accuracy of the data. You know, as Joe alluded to, either there's data from more sources that can be triangulated, if you will, to verify its accuracy. If you get data from more than one source, there's at least an argument that it's probably more reliable than data that's only sourced for one place. So, I think that, you know, that technology is there as well.

I mean, in terms of the security, I agree with Conor that, you know, the technologies enable the bad actors as well as good actors to do more than they ever could before. So, that is a challenge as well. But I think that the technology exists that allows better control over the quality of the data, more rigorous scrubbing for accuracy, looking for inconsistencies in

data that would suggest it's not accurate as opposed to more accurate, and technologies exist today that enable companies, who choose to invest in it, to better track what is getting downloaded from their systems, what is going out the door, to whom it goes. And any reputable company, in my experience, does make those investments because the exposure is very significant. Certainly, there are civil penalties, as well as criminal penalties, the types of examples that Conor gave.

So, you know, again, any technology can be abused or misused, but it can also be used in a positive way to improve accuracy, do better data hygiene, and ensure the security more effectively.

MR. BEEKMAN: Perhaps just to echo two points from Denise, the triangulation of data is key. And part of that comes with the scrubbing versus skipping philosophy. To skip is to, you know, find the need for data after an original attempt, perhaps or because of the absence of data, where scrubbing is an up-front, sort of cleansing process of the data to triangulate, to understand best that this is the most accurate information. So, that comes with some of the new technology out there where we triangulate data by saying, hey, this matches what you've got on file or what you've got on file matches with multiple sources and, so, go ahead and pursue on this.

So, just from a protection perspective and making sure that we're being concise in our efforts, certainly, the scrubbing effect, while perhaps seen as less cost effective on the front end, is being adopted by

more agencies just to make sure the data is as clean as possible on the front end.

MR. BENNETT: Two points. And I think that -- I think Denise presents the theoretical possibility that, with the developing information technology, debt collectors, theoretically, could use it as a surgical scalpel, as a way to hone in on and target the absolutely correct debtor and avoid wasting resources on similarly named individuals, neighbors, or others that aren't the subject of their collection effort. In theory.

But if you look at the way that technology has developed, at the same time that it's become easier and less expensive to get information, it's become easier and less expensive to contact consumers. Now, you have robo-signing, significant outsourcing, and the movement -- if it's a movement, it's almost accomplished -- of means of debt collection is almost all debt buying, where the actual cost of the debt, the risk that the debt collector has at stake is pennies.

And, so, you add to that -- the major entities, those that do large volume, can purchase these products from TransUnion, from all of these other companies on a batch basis, where they pay at a volume level and they don't have to pay more if they use it or overuse it. So, the real question is whether or not these technologies, which theoretically could be used as a surgical scalpel, are instead being used to widen the net. As that net widens, you now have the names of cousins, when you previously only had the name

of the spouse to contact. You have the work histories, you have their social organizations and various other places to try to reach the consumer.

But you bring in, not simply, the debtor consumer in that process, you bring in other individuals who can easily be confused with that person, that consumer. You bring in neighbors and family members and others.

I also think the second point, maybe Conor's point to pitch, I guess, is we have to consider what the value is. The core part of your question is, is this a good thing because it does a good thing? That is, it improves our ability to find and target debtors. The Fair Debt Collection Practices Act doesn't assume that as the end-all value. But there are certain restrictions that we've placed on a consumer's privacy that a consumer is not to be contacted at work, is not going to be subject to certain forms of contact, and even has the right to stop that contact.

And I think that if you accept the premise that, even if a consumer may owe a legitimate debt, that there should be a limit to how far into that consumer's life you can encroach, then we need to certainly factor that -- instead of overvaluing the possibility, you can find when this person sleeps, what bed they sleep in, and the brand of their pillows.

(Laughter.)

MR. BEEKMAN: Tony, if I may, just to comment, two points

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there. I think it's important to note that the collection agencies are not interested in contacting the cousins or the neighbors. It's the interest of the collection agency to contact the consumer, the person responsible for the debt. So, certainly, while some technologies have trended in the direction of nearbys and associates, as we often refer to them, we need to keep in mind the spirit of their intent. And that is to, in fact, collect the debt. And they know that they can only do that through means of contacting the right party.

That said, still -- and to counter my argument would be to suggest that that's always going to happen in a vacuum, and we know that doesn't, just based on what's out there in the news and what we hear about. But still, it's important to note the intent. And, so, technologies are trying to adapt, in a more concise manner, to make sure that it's a shorter approach to making right party contact.

And the second point is, from a cost perspective, in the 400 agencies that I work with on a routine basis, they would argue that the cost of collections has gone up, even despite the purchasing of debt. As I look around the room and see former executives of Arrow Financial or people who have purchased large, large portfolios, I'm sure they would argue that the cost is not so slight that they can be flippant or arrogant with their attempt to make those approaches as far as collections are concerned. They would all agree that cost of collections has, indeed, gone up because of regulatory conditions

that are now imposed on the agencies.

MR. RODRIGUEZ: Could you talk a little bit about what, if any, controls are there that limit the use of such information in terms of contacting family members or others whose names might appear as being associated or affiliated with the actual debtor? What, if any, controls exist on the use of that information to contact someone other than the debtor? Are the debt collectors just making mistakes or is it a sort of conscious practice to try and locate them through friends, relatives, and using that information to do that?

MR. BEEKMAN: Well, I think that's an operational question and a training issue mainly. But even -- I'll answer in its most simple time. The core collection platform that the information is stored in, in most cases, lines up with making sure that you're making the right party calls. For instance, you've got a primary guarantor or responsible party, and then noted differently would be subsequent relatives or nearbys or associates still denoted as not the primary.

So, then if calls are to be made because there's interests or permissible purpose to do so, then it's noted, and it should be known prior to a phone call, if loaded correctly that, hey, this is not the consumer or the right party that I'm attempting to contact, instead I'm attempting to contact this person in order to make contact secondarily with someone else. So, I think that goes directly to the software technology as a base platform as much as anything.

MR. RODRIGUEZ: Denise?

MR. NORGLER: Tony, I'd just like to add onto that. I think one of the things that we've seen -- this goes to a point Len made -- you know, that contacting a debtor at work, obviously, Fair Debt Collections Practices Act addresses that, the technologies are better now at identifying whether it is a work address or a commercial address as opposed to a residential address. And that's a challenge because I'm sure there are people in this room who have, for example, certain bills mailed to their work address, particularly those of us in the corporate world who have, you know, corporate expenses. And there is definitely a risk that that business address can end up in a collector's file as contact information for a consumer.

So, it's very important to use the technologies, if a collection agency is intending to comply with the FDCPA, to, as Joe said, scrub their data and identify, all right, we have to be careful, this is a work address or this is a work phone number as opposed to a home number when we're going to be contacting a consumer. So, I think that's a challenge, but the technology makes it available for the collection agencies to meet it, if they are indeed going to comply.

MR. RODRIGUEZ: Conor?

MR. KENNEDY: So, from a privacy advocacy standpoint, I would say that the silver lining of hearing about all of these technologies is that, with an increased accuracy, the industry can stop using Social Security

numbers as primary identifiers, because the Social Security Administration has specifically said that SSNs should only be used for tax collection purposes and social service provision. Every other systematic use of an SSN, the Agency has specifically said, constitutes a misuse.

With increases in accuracy, it would seem to me that that would be the natural next step in terms of, from a regulator's perspective, how to make sure that we balance accuracy with mitigating the risk of identity theft.

MR. RODRIGUEZ: And do you see any downsides to not using the SSN?

MS. NORGLÉ: I absolutely do, and I'll bet Mr. Bennett could comment on that as well.

MR. BENNETT: Well...

(Laughter.)

MR. BENNETT: Is this recorded? Yeah, I think that -- again, going back to the dichotomy or the categories I tried to set up, in all fairness, I think that TransUnion and the other big three or what we'll call the established data sources, have long histories of attempting to comply. Attempting sometimes, but often complying. And I think that that isn't really the risk you're talking about.

The availability of Social Security numbers is a problem when these established companies, compliant companies, are engaged in the resale business, in which the data is then sold downstream to other entities or

made available to other entities that manipulate or use the data, credit header data or other information that is then muddled within a system over which nobody does have any tracking or control.

So, again, theoretically -- and I do think that TransUnion, Experian, Equifax records are better because they can match the Social Security numbers to credit accounts. That's true. But the use of Social Security numbers past those narrow and limited purposes, I do agree with Conor, is very problematic.

There was -- my high-level research. I think Joel Stein had a Time Magazine article on data mining a month ago in which he was able to buy a Social Security number from a data mining company and was able to track it in an hour. That's true for almost all of us. The Social Security number is now -- it's almost, unfortunately, too late because all of our Social Security numbers are readily available to both the good and the bad.

MR. KENNEDY: If I can just -- just one little comment there. I would say that my preference, as a privacy advocate, would be to have regulators make sure that the industry's informational practices are tighter, because when you use the Social Security number to make up for a lack of quality control over information as it gets passed from individual to individual, you're essentially using a shortcut that is imposing costs on the consumer, as I said earlier, when it comes to costs of identity theft. That cost is something that needs to be included in the calculus when we consider how much money

the industry needs to spend on making sure that its information is accurate.

MS. HORN: I just wanted to chime in from the probate context again. In terms of protecting consumers, and to follow up on something that Joe said earlier, he contrasted the idea of skip-tracing with the idea of scrubbing. And in the probate context that includes both deceased identification and probate identification so that debt collectors and estate creditors are proactively identifying individuals who have passed away and also have estates. Of course, there's the obvious fraud prevention aspect of identifying, proactively, consumers that have passed away. But then there's also the consumer protection aspect of identifying the right party at the earliest possible opportunity and timely presenting your probate claim.

MR. RODRIGUEZ: It sounds like you have a niche area that you're dealing with. I guess my question would be, to what extent can that be expanded to other areas beyond probate and estate?

MS. HORN: I think the closest analogy is probably -- we're talking about future and the future of technology. I would actually have to look backward in terms of a comparison to the bankruptcy context, another area where you have public data that are in dispersed locations and debt collectors are able to access that information and present claims and identify right parties. I think bankruptcy would be the closest analogy.

MR. RODRIGUEZ: I would like to move on to the issue of analytics and scoring and to what extent that is being used in the debt

collection context. What information sources are you relying upon to do those analytics or scoring, and what the effect of such scoring is on consumers, and then, finally, to what extent consumers have any ability to question whatever scoring or analytics is done by any of your companies? Joe?

MR. BEEKMAN: Sure. Analytics, I think, is probably a key topic in most discussions anymore in any collection agencies just to figure out, now that they've got their dialer or their IVR or their best phone system and IT infrastructure in place, what next will leverage their efficiencies? And that's typically analytics. Analytics most commonly points to data mining of some sort and then, ultimately, relying upon a score that's created. And the score could be nearly anything, not just the FICO score as it once was. You know, that's really all that was available. Instead, the new technology trend is pointed more towards a behavioral presence.

Really, just to give a slight definition as far as scores would be concerned -- and, of course, Denise would be able to go into this in detail as well -- you've got scores that are created from data that are public record. You've still got other geo-demographic or socioeconomic databases or warehousing of information, and then still you've got historical behavioral aspects. And that's where scoring has moved toward. It's the complement of taking the consumer information that's available through various aspects of data collection, putting that into an algorithm or a model, and then comparing

that to previous instances.

And what I mean by that, in the most simple terms without reducing it to something so simple, is to suggest that if I'm a collection agency and I've got hundreds of thousands of accounts or even millions of records or even a smaller number, but relative to my sample moving forward, I should be able to look at the linear relationship between context of data or presence of certain types of data or even previous accounts for the same consumer and how those cured, the length of time it took, the types of payment histories that came in, were they payment plans or payment in full or settlement more apt. How is it that I can look at that data, put it into a modeling solution, and then work forward with that?

So, in simple terms, when the new account comes in, I could lend from the historic information that's been available, coupled with new data that I scrub or skip for, and combine that into a score that, single use, is to determine the least intrusive and the quickest way to collect. And then the strategies to go about that would be use of other technologies, like IVR, mailings of certain types, various methods of making contact, even to the extent that we've touched on in previous discussions about matching the type of account or the intended or expected behavior of that account with a particular collector or a skill set within an organization.

If the account -- you know, whether it's market vertical, medical versus utility, and I've got a collector that performs one way versus another

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way successfully in those market verticals, then I should match them up with the most successful environment.

So, certainly, analytics -- the use of data to then compile into an analytics model has been growing and becoming more impressive in terms of its ability to predict the capacity of payment.

MR. RODRIGUEZ: Denise, TransUnion, do they have scoring products that are used for debt collection purposes?

MS. NORGLER: We do, and I think all the large consumer reporting agencies do as well. The purpose of the scoring is really to rank order a collector's debt portfolio to identify the consumers who are most likely to pay and/or are able to pay.

So, when you're scoring a consumer's credit file, for example, you're going to look at things such as, you know, the currency of the address.

Is the address we have for the consumer being currently reported as the consumer's active address? You're going to look at the deceased indicator. Obviously, those consumers are not going to be at the top of your collection efforts or they're going to be treated differently. They're going to be using the tools that Angela's company offers.

And then you start looking at the credit accounts, and I think Joe alluded to some of the things that you look at. You look at, does this consumer have a history of becoming delinquent, but then ultimately paying

his debts or does he become delinquent and never pay them? Those are the types of attributes that go into the scoring algorithms that enable the collectors to focus their collection efforts on the consumers who are able to pay and most likely to be willing to pay.

In terms of benefit to the consumer, you know, the consumer who has no income, no assets, the things that you can deduce, to some degree, from the data on the credit file, there's no point in calling those consumers, and, you know, it just makes it much more difficult for them.

I think the other technology aspect of the analytics is the interplay with the realtime access. So, for example, technologies exist today where a collector may, through the phone or through the mail, invite a consumer to visit a website, and that allows some realtime interactive communication with the consumer where the consumer logs on to the website, authenticates himself.

The collector's technology is able to look at the information they have on the debt, as well as information from the credit file or whatever other data sources they're using, go through their analytics and offer the consumer an appropriate payment plan or appropriate settlement offer. And these things are able to happen while the consumer is online and has expressed an interest in being willing to settle his account. So, I think that's another example where analytics benefit the consumer because they help the collector and the consumer arrive at an appropriate settlement of a debt.

MR. RODRIGUEZ: And what about consumer rights with respect to such products and services, a right -- if they, for some reason, find out what their score is or how they're being pursued because of information that TransUnion has provided, what rights are associated with those products, if any?

MR. KENNEDY: I think the real concern here is safeguarding these very sensitive profiles once they are actually completely constituted. The FTC has previously clarified the Safeguards Rule under the Gramm-Leach-Bliley Act, and came out with 50 or so rudimentary privacy measures that firms should undertake to safeguard data of this kind of personal nature. And I think what the FTC should do is clarify that these measures are absolutely obligatory for all skip-tracing firms, especially in the context of kind of behavioral and analytic products that they're now coming out with.

MR. RODRIGUEZ: Denise?

MS. NORGLER: Certainly, we also support safeguarding of consumer information. I think to your question, Tony, about consumer access to the information, certainly, under the Fair Credit Reporting Act, consumers have access to the underlying data that goes into the analytics. If there's something inaccurate, they have a dispute and correction right under FCRA.

In terms of access to the analytics themselves, there is no

single collection score out there. We certainly don't offer a single collection score. I think sometimes the term "score" is a bit of a misnomer because it often is more attribute driven. So, when you're looking at a portfolio, you're ranking consumers based on the number of attributes as opposed to a specific numeric indicator. So, there is no "collection score" that's made available, at least by my company, to consumers. We, of course, make credit scores available to them. But in terms of a specific collection score, that's not something that's available at this point.

MR. RODRIGUEZ: Len, do you have any comment on that?

MR. BENNETT: If you limit me to discussing scores, not much.

The offense I would take, for consumers, is to the collection of the data. Once the data is in hand, manipulating the score, it's sort of the inverse motivation I would have to help the consumer from a credit score, because in a credit score, if your score is inaccurate, such that it says you're unlikely to pay your bills, you don't get credit.

In a collection context, certainly, if I were to represent a downtrodden debtor, if the score inaccurately said that my client is unlikely to pay their bills and, thus, the debt collection industry left that person alone, there wouldn't be any impetus or motivation to try to correct that.

But the larger picture -- and this is not true, again, not to compliment TransUnion all morning, but this isn't true for TransUnion. If you have an inaccurate credit item, TransUnion will provide a mechanism. The

consumer can find out what's in the report and correct it. With respect to other products, and the Axiom or LexisNexis or the large data information brokers, that's not true. If you have an Accurint report, you have no means to dispute it, to try to say, "I'm not that Joe Smith."

Particularly, once you leave the conventional credit bureaus, you do not have Social Security number matches. So, you have huge pockets of inaccuracy around individuals who have common names or family members that have similar names, and there isn't any mechanism at all. Once you leave the conventional big three credit bureaus, there is no mechanism to either find out what's in your files or to correct it and do anything about it.

And, again, in this instance, we would be largely talking about consumers who do not owe any debt, who are being accused of owing a debt, or just as often, now, the collection mills that litigate these will use these for current service information. And, so, you will have the wrong Joe Smith sued, subject to litigation, not merely harassing phone calls. And there's no mechanism for that.

In our case, a gentleman named Willie Graham, had his phone number scored as a high score letter, as a possible target. He has no connection with the three different people that the -- I'll say a rogue's gallery of established debt collection companies have assigned obligation for the debt. But he has received calls from, I'd say, at least half of the top ten debt

buyers, all because there's an inaccurate Accurint file on him. And he has, for a long period of time now, tried to find out who they are selling it to, which isn't provided, unlike TransUnion, providing a mechanism to dispute it, which, again, unlike the conventional credit bureaus, is not provided, outside of those three, and to put a block or a limitation on its use. And none of those rights have been provided or established outside of the conventional big three.

MR. RODRIGUEZ: And, Joe, in terms of the analytics that you do and the information you rely upon, is it all FCRA-governed information that you're relying upon or are you relying upon other sources as well? And if so, what consumer protections are in place to make sure that the information you're relying upon is accurate?

MR. BEEKMAN: Sure. The information that we use is largely from consumer files, so from one of the big three, from at least that portion of the score, so regulated therein.

Additionally, we use public record information, like census information that's published. And still beyond that, we will use internal information. By internal, I mean from the collection agency itself, having previously worked with this consumer and their experience with that consumer. So, those are combined, in that regard, to ultimately determine a score.

Now, interestingly, on the score, the score isn't, say -- just as Len had expressed here, the score isn't a work versus don't work philosophy.

So, in the case of analytics, there are certainly anomalies. We concede those anomalies and everyone that uses scores has to understand, that in rank ordering or in propensity scoring, there would be so much anomalies. But scoring is really left to the agency, as far as a work everything out of due diligence, minimum work frequency requirement first. So, even if we had someone scored off their true complexion, they'd have the opportunity to still get, you know, an opportunity to pay that debt instead of being left alone.

So, really, the use of the types of data is still under regulation. And per our previous conversation, we've been approached by a company about -- you know, saying, "hey, we'd like you to add in or would you find it valuable to add in our social networking scraping as a part of our scoring," and that's been in the last year. We opted not to, and that's not a concession to say that that data would be inappropriate as far as its use. But, at that point, we decided, at least, that we weren't ready to be on the leading edge of the utilization of that data as far as its incorporation into scrubbing, skipping, or utilization in scoring.

MR. RODRIGUEZ: Just in terms of terminology, by social network scraping, you're talking about companies that go out and have web crawlers or some other technological capability of going to social network websites and other websites on the Internet and sort of gathering information, scooping up information?

MR. BEEKMAN: Sure. So, the example would be Facebook.

On Facebook, you've got the ability to publish your information and make it known to anyone, perhaps. In some cases, you've got the ability to refine it to friends only, if you will, and I'd leave those definitions for you to investigate on Facebook. But some of the data that can be available to the public is phone and email address, even employer name. So, there are technologies that businesses provide that scrape that information off of the site and then pull that information into a warehouse, aggregate it, and then make it available for sale.

And I believe, Tony, there's an entire panel about just that topic later today.

MR. RODRIGUEZ: Yes, there's a social network panel that will talk about that in quite detail later on in this program.

All right, I'd like to move on to sort of any other consumer protection issues that any of the panelists see with respect to the use of these new technologies for debt collection purposes, and then, also, if you could, provide whatever recommendations you would suggest in terms of addressing some of those consumer protection concerns, both of privacy, data security, accuracy, access, and transparency, with respect to the information that's being used.

If anyone has any additional comments and recommendations, I would certainly be interested in hearing your thoughts and I think the audience would be interested as well.

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MR. KENNEDY: Great. So, I would say that when we consider how we're treating this information, we need to realize that criminal networks are targeting skip-tracing. And the example that I used in the beginning of the panel isn't the first time the FTC has encountered this. In 2008, it entered into a consent decree with Reed Elsevier, the parent company of LexisNexis, for providing unauthorized access to the sensitive information of a number of consumers without authorizing any -- the individuals who were trying to access it. There was an identity theft ring in Europe that was exploiting a security failure. And, now, with this recent case that I discussed, we know that they are not just trying to enter in as customers, but they are also trying to access any kind of links to internal employers.

So, when we think about how the FTC needs to handle it, from Epic's perspective, we really like the model that the FTC adapted in its Google Buzz consent decree. By enforcing the rules proactively, the FTC is going to be able to prevent this kind of access across the board.

So, with Google, Google was found to have violated Section 5 of the FTC Act with its Google Buzz product. Rather than just focus on Google Buzz, though, the FTC expanded the scope of its enforcement, and in the consent decree, Google had to submit to biennial independent privacy audits across the board.

Moving forward in this space, it would seem to me that, given

the risk of identity theft and how serious data leaks can be, when you find that firms are not complying with the guidelines that are set out and, as I mentioned before, the guidelines that the FTC set out for the Safeguards Rule under the Gramm-Leach-Bliley, skip-tracing firms should have to abide by those. When you find firms that are not abiding by the law, there should be, across the board, preventative measures to ensure that they don't become liabilities for thousands of consumers. And if the Consumer Financial Protection Board ends up taking jurisdiction over this area, I think Elizabeth Warren should do the same thing.

(Laughter.)

MR. RODRIGUEZ: Denise, do you care to comment on that?

MS. NORGLER: Of course, of course. No, I actually agree with much of what Conor said. I think that the consumer privacy and identity theft prevention is an important goal. As I said earlier, technology can be used to the advantage of the bad actors as well as to the reputable company. So, it is important to understand both sides of that equation. With respect to identity theft, you know, consumer identification information is a very valuable tool to authenticate a consumer at the front end, make sure you're dealing with the person -- that the person you're dealing with is who he says he is. But misuse of that information can be used to commit identity theft.

So, there are always two sides to this coin, in terms of the data. It can be used to prevent as well as commit the crimes.

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I think in terms of recommendations, our view is that the existing framework of FCRA, Gramm-Leach-Bliley and the Safeguards Rules, as well as the FDCPA, provide a framework for both regulatory enforcement as well as private rights of action to enforce the Act and punish the bad actors. You know, we've also got myriad state laws that protect consumer identification information and privacy. So, I'm not sure that new legislation is in order rather than maybe a comprehensive look at enforcing the existing law. And the fact that there are private rights of action, under FDCPA, can go after a lot of the abusive actions that seem to always make the headlines.

MR. RODRIGUEZ: What about the reliance on data that's not subject to the FCRA? It seems like there's more and more sources of data out there that are being relied upon.

MS. NORGLER: Tony, it's interesting, because I think if you look at a lot of these data sets that are collected and the way they're used, I am not sure that they're not subject to the FCRA. I see Mr. Bennett nodding his head. It's a bit frustrating because, being one of the big three, we're always in the spotlight and we're required to play by the rules and follow the FCRA. Some of these smaller niche companies that play on the fringes, I don't know enough about their businesses to opine one way or the other, but, you know, those might be some of the companies that, before we decide we need new legislation, maybe we ought to be looking at it and determining whether, in fact, they should be covered under the existing laws.

MR. BENNETT: And to follow up. I agree absolutely. Again, to use TransUnion as the theme, the Federal Trade Commission took, in the In Re: TransUnion privacy cases, it took a very aggressive, and correct from our perspective, view of what a consumer report is. In that instance, it was pre-screened data sale. Contrast that with the In Re: Elsevier prosecution, where up front the Federal Trade Commission concedes that LexisNexis is not a consumer reporting agency. And it's wrong. It's patently false. The Courts have held otherwise.

And from a -- maybe just not even consumer protection -- we'll get the competition side of your Commission in here -- it disincentivizes compliance by TransUnion, by Equifax, Experian. It puts them in a position where they are having to comply with the Fair Credit Reporting Act, which is a very expansive remedial statute that governs significant chunks of the data that industry believes, or is pretending at least, is unregulated. And it should be incumbent upon the Federal Trade Commission to push a much more expansive view of what the Fair Credit Reporting Act -- what a consumer report is or what a consumer reporting agency has done. I think that would resolve a significant number of the problems that we would have discussed.

MR. RODRIGUEZ: Angela, go ahead.

MS. HORN: If I can comment, again, briefly from the probate perspective, the legal and policy concerns. In the specific context of decedent collection, the Commission, as I mentioned earlier, has published

proposed guidelines, and it recommends, first and foremost, that every entity that is going to collect on deceased debt, first and foremost, search for an estate and find that right party contact.

Secondly, if a debt collector is able to find the estate and find the right party contact, they are also able to identify the 70 percent of cases in the estate context where that debtor is represented by counsel, which is another concern under the FDCPA.

And, finally, the privacy concerns for the consumer and the survivors, that by finding that right party contact who is administering the estate at the earliest possible point, you're also avoiding unnecessary contact with the surviving family members.

MR. RODRIGUEZ: I'd just like to add that we have a few more minutes before we wrap up the discussion and then we're going to have some questions. If you have questions, please provide them to the FTC staff that are in the room and they will collect them and we'll try and answer as many as possible.

Conor, you wanted to comment?

MR. KENNEDY: Yeah, I just wanted to follow up on something that Denise mentioned. It is important to note that there is a private right of action under the FDCPA to allow individuals to pursue their rights with respect to preventing harassment. But the Eighth Circuit has held that there is no private right of action with respect to the Gramm-Leach-Bliley Safeguards

Rule, and that should change.

MR. RODRIGUEZ: Joe, do you have any comment on the consumer protection issues and issues relating to accuracy and any other consumer rights with respect to the data that's being used?

MR. BEEKMAN: I suppose just as a reminder and an overview statement would be to say that, inasmuch as we hear about the one-offs and the bad actors, we should be reminded that most agencies out there in the 6,000-some collection agencies in the U.S. of any size are taking due process and due action to make sure they conform to the regulations out there. So, it's certainly of consequence to consider the bad actors to make sure that we've got statute in place and legislation in place.

But as Denise has commented, under current FDCPA and FCRA statutes, even the TCPA, we've got, certainly, a lot of legislation out there to protect the consumer, at this point, to make sure the collection entity itself is working within those guidelines.

MR. RODRIGUEZ: Len, any other comments on consumer protection and --

MR. BENNETT: Well, I would say one benefit -- and the suggestions I offer assume a reality that any consumer protections will have to come from the Federal Trade Commission or from the Consumer Financial Protection Bureau.

The second real and reasonably possible task the Federal

Trade Commission and other regulatory agencies could start with is to, at least, begin an inventory of the products that are gathered and compiled and sold about all of us and about the consumers that we would represent. So that it's not a surprise that if you don't attend the ACA International Conference that there are these hosts of products that are sold, everything from your UPS mailing history to your work verifications and debt collection database.

I mean, the Federal Trade Commission can start by eliciting, voluntarily, from the very skip-tracing product sellers, the ranges of products that they actually sell, and that will begin to start a process of, at least, helping consumers who want to be empowered, empower themselves. They can learn this information. They can take action to worry about or correct problems that they may see.

MR. RODRIGUEZ: Okay, any other comments before we move on to questions?

(No response.)

MR. RODRIGUEZ: All right. So far we only have two questions. If anyone else has questions, please give them to the FTC staff.

I'll begin with the first question, and the question is, would prohibiting the assignment or sale of debt from the original creditor to a third-party debt collector reduce the risk to the consumer? Then they also add, would the original creditor be damaged by this prohibition?

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Joe, do you have a response to that?

MR. BEEKMAN: Sure. I think that goes to some of the basis for why we have collection entities today and it's just that it's a separate set of business with its entire governing bodies. So, the original creditor, whether it's a hospital or a utility company or, you know, a video store, is certainly not versed well with the knowledge or the infrastructure to govern the process of collection. So, that's why the collection agency is there.

So, inasmuch as anything, I think it would probably promote violation of current statute versus protect the consumer, only because you would have people [collecting from consumers] that aren't certified, aren't capable, and aren't well read in terms of the processes in accord with appropriate collection activity.

MR. RODRIGUEZ: Anyone else? Denise?

MS. NORGLER: I would agree with Joe's comments, I think it would tend to promote more problems and more abuse as you decentralize. I mean, a lot of examples that Conor has given us have -- well, not all of them. Some of them have come from these smaller players who just don't have the in-house legal or compliance teams that understand the process. They don't have technology investments to make the communications with the consumer in an appropriate fashion.

So, I think we would see more abuses and I also think we would see more costs to the consumer public and it would have an adverse impact

on those companies. You know, hospitals aren't in the business of collecting; they're in the business of providing medical care. They have enough challenges in that space without having to add a whole other space around collecting bad debt.

MR. RODRIGUEZ: Okay. The next question I think is probably more appropriate for the social networking panel. I'll ask the question, but I think it might be better addressed there. And, so, if we don't answer it now, I think it will be answered eventually.

The question is, how accurate is the use of social networking sites to locate consumers? The comment is, it seems very imprecise with the partial of matching for many people who have the same name or may be the same age. And the question was, is there a threshold for determining a good match?

I think the answer is that use of such information is difficult. It is a challenge. I think the experts who are on the panel for the social networking site could probably answer that better than I. If anyone else would like to comment, please feel free.

MR. KENNEDY: I'll give it a shot. I think, just more like on social networking sites, that it would probably be almost impractical for skip-tracing companies to actually comply with the FDCPA if they were to start actively seeking individuals on social networking sites because the FDCPA specifically prohibits using any logos or symbols when you're

communicating to a consumer social network.

It's a privacy issue. You don't want the people that you know, your friends, your family, your co-workers to have information about the fact that a debt collector is pursuing you.

At the same time, Facebook has a policy that specifically prohibits making fake profiles. So, that tension actually, to me, makes it seem as though it's pretty much prohibited under the FDCPA for skip-tracers to be using social networking sites. And there is one way to alleviate that tension, but that only raises further questions, which is to commandeer a skip-tracing firm's employees' Facebook profiles while also mandating that they not put any employer information on their profiles. So, that tension just seems to really complicate social networking sites in this context.

MR. RODRIGUEZ: Okay. One last question, what is the instance of inaccurate telephone numbers for consumers found in background reports such that a stranger gets calls from debt collectors for debts they do not owe? Do we have any data or information on the instance of inaccurate contacts with consumers who don't owe the debt?

MR. BEEKMAN: I don't have empirical information to that end.

MS. NORGLER: I get calls all the time at home for somebody else. So, I don't know.

(Laughter.)

MS. NORGGLE: I've asked them many times where they got my number and they usually hang up. So, that's one of those practices that...

UNIDENTIFIED MALE: How about a show of hands in the room, how many people have received calls intended for another party?

MR. RODRIGUEZ: The question was, how many people receive calls for another --

UNIDENTIFIED MALE: Specifically from debt collectors.

MR. RODRIGUEZ: For unintended parties, yeah.

MR. BENNETT: And the rest are probably the debtor ourselves calling you.

(Laughter.)

MR. BEEKMAN: All of the people that call me are Foti-compliant. So, they make sure they have the right-party contact first. I wouldn't know if they were a debt collection agency.

MR. BENNETT: It's very frequent. We see it all of the time that we have -- in fact, the FDCPA provides a remedy for the wrong party who's subject to the collection. So, we've litigated on behalf of those individuals. But it's common.

In fact, there are products that are sold, like LexisNexis has the large, very heavily utilized Accurant product that scores the likelihood of a particular phone number using a letter grade system, and you can work your way down, depending upon how committed your collector is, to locate that

person. But it's very common.

In fact, if the creditor had sold the account with a confirmed valid telephone number, confirmed valid address, confirmed valid employment, then they probably wouldn't be buying skip-trace products. So, you're talking about the purchasing of numbers, and phone number products is, itself, an indication of an uncertainty as to the accuracy and correctness of those phone numbers.

MR. RODRIGUEZ: Okay, good point. Well, that concludes this panel. I would like to thank all of the panelists and remind everyone that immediately following will be the next panel. So, there is no break between the two panels. Thank you, everyone, for your questions as well.

(Applause.)

**PANEL 2: TELEPHONE TECHNOLOGIES: DIALING, TALKING, AND
TEXTING IN AN AGE OF ENHANCED MOBILITY**

MR. PAHL: Let's begin with our next panel. This is really a panel that we divided up into three subparts to deal with telephone communications. Telephones, as we all know, are not a new technology, but they are technology which is very, very prevalent in the debt collection area. So, therefore, we wanted to give a lot of focus today on some specific issues related to telephonic communications.

Three particular issues we're going to be taking a look at, the

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first is looking at dialer technologies, and Julie Bush from the Division of Financial Practices will be moderating that portion of this panel. And then we're going to turn to looking at messages that collectors leave on answering machines, and I will be moderating that portion of the panel. And, finally, we're going to have a short presentation by Aaron Smith of Pew about data related to mobile phone use, and then follow that up with the panelists talking about collectors communicating to consumers on their cell phones or by text message.

So, without further ado, I'll turn it over to Julie Bush who will be moderating this panel.

MS. BUSH: Thank you. I'd like to say that, since we're having three subpanels, we're going to have questions at the end of each sub-panel.

So, keep your questions flowing to the outside aisles if you have them.

I am delighted to welcome a very experienced and distinguished set of panelists. To my extreme left is Don Yarbrough of his own firm in Fort Lauderdale, Florida. Also with us is John Watson, who handles operations for ARS National Services, which is a nationwide collection firm. Then we have Aaron Smith, who is with Pew Internet and American Life Project.

To my right is David Schultz, who's with Hinshaw & Culbertson in Chicago. Then Cary Flitter, who is of Lundy, Flitter, Beldecos and Burger, who is a self-proclaimed consumer rights attorney.

MR. FLITTER: Well recognized consumer rights attorney.

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(Laughter.)

MS. BUSH: Yes. And, finally, Brian Cutler, who is with Ontario Systems, a major software platform for collectors.

So, we're going to be talking about telephone dialers. And, first, I'd like to ask Brian to briefly describe what a dialer is.

MR. CUTLER: Well, for the sake of this conversation, we'll be discussing predictive dialers, auto dialers, power dialers, pretty much all the same, different functionality, and, basically, where a collection agency is using these technologies where a dialer is out making phone calls, looking for an available collector to send the phone call to.

MS. BUSH: Okay. I'm wondering how commonly predictive dialers are used in collection calls by collectors.

MR. YARBROUGH: I can answer that. They're used very widely. Unbelievably widely. If you look on the Internet now, you'll see dialers are advertised for sale that will make 250,000 calls a month and they're \$500 and \$600, the purchase price. And with Internet voiceover IP dialing, they can get long distance calling that basically costs a fraction of a cent per contact. Compare that to the postage cost and the handling cost for letters and you can see why the dialer volumes are exploding.

I regularly depose debt collectors on the frequency of their calling and the largest debt collectors in America will routinely admit that they dial in excess of 500,000, or in some instances, in excess of one million calls

per day.

So, the dialers are very widely used and I believe most of the debt collectors are now using them.

MS. BUSH: Does anyone have anything to add to that?

MR. CUTLER: Well, the dialing technology, as we've discussed, it's like any technology out there. The cost of the dialers have come down dramatically and, actually, in the future, probably as far as dialers goes, there will be no dialers in collection agencies. So, a lot of companies are currently out there hosting dialers, et cetera. So, you know, that whole industry is really changing. The dialer industry is changing.

Hardware will probably become a thing of the past. So, you'll basically be using a lot of hosted dialing, like Mr. Yarbrough said about the VOIP technology. So, you use VOIP over those systems. So, a lot of the functionality capabilities in that will be kind of off-sourced to a company that will be hosting dialer technology. So, it's going to become even more and more prevalent as time goes on.

MS. BUSH: Okay. So, the numbers that are fed into the system can be fed into a hardware system or a software system, is that correct?

MR. CUTLER: Yes. I mean, basically you're looking at your collection accounts, what accounts need to be called that day, how many contacts need to be made that day, and that list of accounts would be

uploaded into a dialer system.

MS. BUSH: Okay. Perhaps John can tell us a bit about variations in dialer types that might depend on the type of debt or the size of the collector.

MR. WATSON: Sure. I think there are various technologies available. I think the differentiators range from -- the biggest ones that we've seen are sort of the predictive algorithms, so how fast does a dialer make outbound calls in an attempt to locate somebody to talk to? There are also differentiations as it regards sort of answering machine detection, what ability do they have to detect an answering machine versus a live person versus a disconnected phone number.

So, really this technology has really exploded, I'd say, over the last five years. It's evolved mostly to a software environment, whether it's hosted or owned by a collection agency. And, so, the fact that it is software, there's tremendous opportunity to -- through code, enable various protections to ensure that the right number of calls are made and, you know, we can maximize the protection of the consumer.

MS. BUSH: Okay. And we'll be talking about features of dialer systems that are important in that regard in just a moment. But I'm wondering, David, did you have anything to add to that?

MR. SCHULTZ: Maybe it goes on to the next issue, but what I am seeing, more because of the TCPA, is some of the larger agencies

developing a component of their predictive dialer that has a human intervention element. So, some of these are homemade varieties. I think some of these are things you can purchase. They're referred to in different ways, click and dial, preview dialing, other terms that have been used. But, again, I'm seeing that at the larger agency level, not the smaller agencies.

MS. BUSH: So, you're referring to a device whereby the caller has to intervene before the number will be dialed?

MR. SCHULTZ: Right. They'll click a button and the number's going to be dialed as opposed to just numbers going out there. Whenever a collector is available, the call will pop through to the collector. So, they're setting up systems like that. Maybe they'll keyboard them in and it will still go through the same phone system, but there's a level of human intervention being put into play there. Again, more because I think of the TCPA and issues of calling cell phones with predictive dialers, auto dialers.

MS. BUSH: Okay. I'm wondering about the -- there are a whole variety of features that are associated with dialer systems and some of them can be used -- are designed to improve compliance with laws, various laws. And I'm wondering if Brian would like to start detailing some of the features he's familiar with that can be used as a part of or in conjunction with dialers.

MR. CUTLER: Well, yeah, most software vendors have coded in the basics. You've got state regulations you've got to look at. You've got

the federal regulations. So, you've got FDCPA where no call can be placed before 8:00 a.m. or after 9:00 p.m. And then certain states have even reduced that calling time. So, the dialer needs to know what state it's calling in, et cetera.

Then, transportability of phone numbers makes that even more complicated because you're calling a specific area code, but that person's in a different state. But, again, a lot of that software has been developed to be able to keep the agency compliant with state regulations.

Certain states have a requirement that you need to call the home number before attempting a work number. So, again, systems are built for that purpose.

You may be able to make a million phone calls a day, but that's not really necessarily the goal of a collection agency. It's really, you know, contacting the right individual at the right time. So, therefore, you're looking at when to have those accounts specifically called. So, you're really trying to gauge the best time to call that specific party.

So, a lot of the software that's built in when -- you know, again, if I'm making a million calls a day, but I can only call my debtors once a week or once, you know, every two weeks or whatever my contract may require from a client, you know, all that capability, functionality, you know, is built within the system.

The same thing with TCPA. Now, you've got the cell phone

scenario where you're really not supposed to call an account on a dialer with -- you know, that's a cell phone that you've identified. So, again, our software and other softwares have the capability of screening out cell phones and putting those into a different work environment where there is manual intervention. So, just like Dave was talking about, it's a "preview mode", for instance.

So, if it's not -- I explained earlier when I said we were talking about power dialers, auto dialers, I was explaining the collector is sitting there waiting for a phone call, et cetera, so the dialer is really out there making the phone call, doing all the work, and the collector gets a screen pop, sees the information and starts to talk.

When you're dealing with a cell phone, you need the manual intervention to comply with the TCPA. So, for instance, on our system, we would build what we call a work queue where a collector would bring up the account and then manually dial that. So, you know, they've actually got to put the phone number in on the system or indicate what number they want to call. So, you've got that manual intervention with these cell phones.

So, that's really the compliance issues. That's one of the main functions. And one of our goals as a software provider for our clients is to give them the tools and capabilities to be compliant.

MS. BUSH: Can I ask what you meant by the term "power dialer?" And can I remind people to please speak into the microphone so our

webcast audience can hear?

MR. CUTLER: Okay. Power dialer, you know, you've got different modes of dialers. So, it's all the same dialer, but you can work predictively, you can work what we call power dialing, or manual dialing. So, the difference, predictive is there's an algorithm within the dialer that's looking and saying, okay, I've got X number of collectors, a collector spends X number of time on a call, you know, I have no available collectors at this point, but I should have available collectors within the next 30 seconds. So, it knows how long it's taking to get a contact. It predicts, basically, when a collector would be available for that phone call and then makes the dial. So, that's predictive. So, it's predicting, basically, when the next attendant will be free and it produces the next call for that collector without him waiting. So, he's pretty much sitting there speaking all the time.

Predictive mode, especially in the collection environment -- I think it's very good in the sales environment. So, the sales environment, you know, you know basically you've got a speech, your speech takes, you know, a minute. The computer knows it takes a minute and it's very easy to predict.

In our environment, in the collection environment, it's a lot more difficult because your collector is working an account differently. So, he may be looking at a credit bureau, he may be reviewing notes. So, you know, you can't say a collector is going to be on an account for 30 seconds, a collector's

going to be on an account for a minute. He could be on it for five minutes, you know. He can have a talk-off that can last, you know, ten minutes. So, predictive, necessarily in the collection environment, may not be the best tool.

So, a lot of times, again, in the collection environment is, you know, the system basically looks for when collectors are available and then begins dialing.

So, that's the difference. It's not predicting; it's really just going off dialing the numbers, but it knows it's got available attendants.

MS. BUSH: Okay. And I believe someone on this side, yes, John, did you want to contribute?

MR. WATSON: Just a couple more things to add as it relates to sort of emerging technologies that are available, not necessarily from a predictive dialer sense, but they're part of the phone systems, are some pretty neat stuff as it relates to voice analytics.

So, once a call is connected, sensing, you know, voice inflection, tone inflections, key words to help collection agencies monitor the quality of the interactions that are happening with customers, so that if, for instance, you hear somebody say "garnish" on a non-garnishment eligible account, there's a technology available to take over that call by a supervisor or a manager, things like that. So, there are, not necessarily related to the predictive algorithms and the dialing functionality, but part of the phone systems, some great new emerging technologies that will help, you know, the

industry further protect consumers and ensure quality interactions with customers.

MS. BUSH: I understand that omissions can be detected as well.

MR. WATSON: Omissions --

MS. BUSH: For --

MR. WATSON: Oh, so if a mini Miranda isn't said or something like that?

MS. BUSH: Something like that, if the mini Miranda is not spoken.

MR. WATSON: I would imagine so. I haven't heard that specifically.

MR. CUTLER: Yeah, there are --

MR. WATSON: I would imagine that would exist.

MR. CUTLER: Yeah, we do have voice analytics that can look for omissions and, you know, just like John was talking about, you know, different language, you know, threat of legal action, or if you're looking for something to be said, whether it be the mini Miranda or if you're looking for balance in full versus settlement, et cetera. So, you can program -- these systems are very flexible to be able to do the analytics and help in the compliance issue area.

So, we're seeing a big trend towards this now, actually. So, we

just started selling it ourselves probably within the last 60 days. But it's a very hot topic in the industry. And, you know, the agencies that are looking for compliance because, again, when you have a compliance officer looking at recordings, et cetera, it's very time consuming, it takes a lot of time, and whether it's a large, small agency to find good quality conversation, because a collector may talk to 20 people all day out of an eight-hour day. So, to find those quality calls that you can really look at and make sure that there is compliance there, it's very time consuming.

So, with the new analytics, it really helps allow the agency to become much more compliant, to really look and make sure, and even from a training aspect, help collectors that may be not using the right terminology, not handling accounts correctly, et cetera. And, again, when you're looking at the analytics, you get to the point where actually a call can wind up, you know, set up where it can actually get transferred to a supervisor realtime if you had, you know, a situation that got agitated.

MS. BUSH: Okay.

MR. YARBROUGH: Julie, I wanted to point out something about omissions. We get a --

MS. BUSH: Please speak into the mic.

MR. YARBROUGH: Pardon me. We get -- about 10 percent of our cases in the consumer law practice are persons who do not owe the debt at all. They have nothing to do with the consumer that purportedly owes

the debt. And one of the problems they have are what we call “truncated messages,” and that is where the person gets messages on their voicemail that omit part of the intended message. For example, they’ll omit the name of the debt collector. It’s not recorded. Or it will omit the phone number. So, the person can’t find out who is calling them, for example.

And this is a big problem with people who don’t owe the debt because they want to contact the debt collector and say, hey, stop, you’ve got the wrong number or whatever. And sometimes they can’t, unless they’re picking up the phone directly. And, you know, maybe they’re at work during the day and these calls are coming into their home during the day.

So, it’s a problem that we see in about 10 percent of our cases, which seems statistically kind of high because I would think if you went to a doctor and 10 percent of the time he came up with the wrong diagnosis, or you got your car fixed and 10 percent of the time it was wrong, that would be a problem. But I believe it’s related to what the earlier panel said about background information and, that is, debt collectors get this background that’s of questionable integrity and they use that to call persons. And unless they hear back that, hey, this is not the right person, the calls may continue.

We had trial testimony in two separate cases where 183 calls to a consumer was -- the debt collector testified that’s their normal calling volume and another where they testified that 178 calls was their normal calling volume to a particular person to collect a \$200 debt.

MS. BUSH: Okay, thank you. I'm going to mention a couple of other things and I'm just going to ask whether the panelists are familiar with them. Call recording, recording all calls.

MR. CUTLER: Yes.

MS. BUSH: Yes?

MR. CUTLER: Yes.

MS. BUSH: Okay. Interactive voice recording or using artificial voices? Yes?

MR. WATSON: Sure, yeah, that's all available.

MS. BUSH: Okay. And what about frequency controls?

MR. WATSON: From my experience, that's emerging, but, yes. I mean, given the fact that, you know, to a large part dialers are mostly software based now, it's just writing code, that you can code in those volume controls, absolutely.

MS. BUSH: Okay.

MR. CUTLER: Yes. I mean, most softwares have that capability. We call it workflow. So, you know, where you say, you know, you're going to call a consumer 178 times on a \$200 debt, not really one of the smartest things in the world for any agency to do. They're not making any money. So, I mean, that's not really a way to be profitable.

So, in our system, again, a standard workflow would be to set up an account, determine whether it's contractual liability or your workflow

procedures, how many times you want to call that account. So, that account will wind up on the dialer once a week, once every two weeks, once a month.

Again, you know, it gets very complicated because you can then bring in scoring and analytics and all different types of things. So, that capability is out there, though.

MS. BUSH: Okay. If people have questions, please pass them to the aisles. I'd like to ask the panelists, starting with Cary, about any consumer protection issues that are raised by these technologies.

MR. FLITTER: Specifically the predictive dialers or --

MS. BUSH: Mm-hmm.

MR. FLITTER: Well, of course, the Telephone Consumer Protection Act problems are well-known, but, to some extent, beyond what we're here to talk about today.

Calling the wrong debtor is a pretty widespread problem. I mean, there are many that we can talk about. But I find calling the wrong debtor, that is, someone who has no contractual relationship with the underlying creditor, is a pretty pervasive problem. And I think that what we've heard about the volume of calls that can be made very economically is -- so, that's attractive on the one hand because it's very efficient. But there's -- of course, the price of that is that a lot of calls come in to people that just don't -- you know, they have someone else's phone number, that is to say the real debtor moved and the phone company's recycled the phone number or,

for a variety of reasons, in one of the databases, they have this person, this non-debtor in there.

So, it seems to me that there's got to be some counterbalance here. Maybe the first contact has to be by a human being to make sure that's the right person. But once they know it's the right person and there's a proper disclosure made, then knock yourself out. If you're going to make predictive dialer calls within the bounds of the law, then you're free to do that.

And that's still very cost efficient. But I think where you get a lot of attention is the interest in obviously -- whether the debt is \$200 or \$2,000, making 200 calls on that is a very expensive proposition.

So, the predictive dialer technology, coupled with the data that underlies it, that gives you the phone numbers, is a real challenge.

MS. BUSH: Okay. Actually, I have a question here which dovetails with the next panel, but it deals with call frequency. And it asks what the panelist views are on Caller ID and customer harassment complaints. So, if a lot of -- if the Caller ID shows that many calls came from the same number, is that a legitimate reason for the customer to complain of excessive calls under the FDCPA?

MR. SCHULTZ: Well, call volume cases are -- I wouldn't say are the trend, but there's been a heck of a lot more of them in the last few years and it's probably because of these technologies. And you'll see many complaints and they'll have a similar allegation, I was called by the agency

daily for many months, I was called -- next paragraph, I was called more than once many days during that period of time, and I was called up to four times a day by that agency. Now, there are complaints, probably a couple thousand like that, that you see.

In my experience in defending them, oftentimes, those allegations aren't correct. They have many calls perhaps, but it turns out they're not from this agency. But the technology, though, allowing multiple calls, you are now seeing, certainly, a lot of call volume cases. So, that's one of the issues we talked about.

I know Don also talked about truncation a minute ago, and I think that's an offshoot of the technology. But my experience has been a little different. What I've had, as far as a few different lawsuits, you know, a dozen or more, are the technology is meant to say one thing if it gets an answering machine, and if it gets a live person picking up, it's designed to say a different thing. And, so, what sometimes happens is the technology isn't accurate. I'm not quite sure why. Most of the time they are in my experience. I've investigated this and they say, we're accurate 98 percent of the time.

But the problem then, for a Fair Debt case, what develops is they got the live person -- they think they have the live person and they don't leave -- they start talking until they get the person to click a number to go to a collector. They don't say who we are or that we're a debt collector. They're

expecting a live person to push number seven and talk to somebody. If they got the right person, push number nine. If they got the wrong person, they can eliminate the call.

The consequence, they think they got a live person, they don't, the message then is left on a machine, as opposed to with a live person, and that doesn't have the Fofi-compliant, ACA-compliant message, so then you have a lawsuit. It's a small percentage, but you're seeing that as a consequence probably of the technology.

MS. BUSH: Unfortunately, we have a very short time for each topic, but I'd like to ask each panelist to say, very succinctly, what is the most important change, if any, that should be made in law or policy with respect to dialer technologies? Don?

MR. YARBROUGH: I think Cary's suggestion is correct, that there needs to be an absolute verbal or verifiable contact on the first call before the barrage of automated calls is unleashed on a person that possibly doesn't even owe the debt or may not want to get them or may have some other reason that they can't or don't want those calls.

MS. BUSH: Thank you. John?

MR. WATSON: I'd say some sort of guidance on what constitutes harassment under the FDCPA in terms of call volume. Certainly, I don't think any reputable collection agency's intent is to harass people. It's to contact them and engage them in conversation to help them resolve the

situation they're in.

Unfortunately, it's left up to various courts to legislate what is or what is not harassment. And, so, some clear guidelines on specifically the number of calls per day to either an account or a particular phone number, I think, would help.

MS. BUSH: Okay. Aaron, I understand you're not able to opine on policy today. You are here to give us information.

David?

MR. SCHULTZ: As far as this subject is concerned and because of the, I'd call it, "rash" of call volume cases, I'd probably echo what John said. I know the FTC had a letter, gosh, probably a couple decades ago now about how a certain number of calls a day is not harassment. It could be harassment, though, if the call is made after the person hangs up. So, that's helped. That's been used as guidance to some extent.

But, right now, with the number of lawsuits being filed, trying to find the parameters of what is an appropriate number of calls a month, a day, a six-month period, there's a lot of ambiguity out there. The courts are kind of developing these parameters with case law, but it would be nice -- and I've had clients say, if the FTC, if somebody would just tell us -- if they would pass a law and just tell us how many times we can call, that would be great, we'd do it. So, I think that's one of the clarifications that would be helpful.

MS. BUSH: Cary?

MR. FLITTER: Yeah, what they said.

(Laughter.)

MR. FLITTER: I mean, the problem with a -- of course, with a bright line rule on the calls, it's attractive on one hand and the business community always wants that, but it's so dependent on the party being called.

If you have someone who's disabled and they're in bed or they're in a wheelchair or something, well, they have to get out or manage their way over, three times a day might well be excessive, you know. And if there's an institutional knowledge of that fact, then that has to be taken into account.

MR. SCHULTZ: It's not an easy solution, I understand. It's something that people ask for.

MS. BUSH: Okay, thank you. Brian?

MR. CUTLER: This is just a bad day when I've got defense attorneys agreeing with plaintiff's attorneys.

(Laughter.)

UNIDENTIFIED MALE: It doesn't happen often.

MR. CUTLER: I wish it never happened. But anyways, me, being a collector at heart, I would just say we really can't afford for there to be a law passed where we have to make contact before we can start auto dialing. Probably 80 percent of the accounts in an agency would never get a contact. So, I mean, it would be extremely cumbersome for an agency to have to manually call every single account, and almost impossible to do,

before we made an actual contact on an account. So, that would be -- that would be a step in the wrong direction for the agency to make that kind of change.

MR. FLITTER: Julie, may I ask, well, what did you all do 15 years ago?

MR. CUTLER: I used a rotary phone.

(Laughter.)

MR. FLITTER: I mean, it was all human contact with all the calls. I used to be a collector in a past life. Every call was dialed up and you called and you talked to the person.

MR. CUTLER: That's correct. You didn't -- no, you didn't talk to the person. You made calls and you continually made calls, et cetera. So, the volumes have changed, the technology has changed. Just because I did something 15, 20 years ago doesn't mean I should be doing it today.

MS. BUSH: Okay. And, now, I'd like to welcome Tom Pahl who's going to moderate the next portion of the panel.

MR. PAHL: Thank you, Julie.

First, I would like to ask all of the panelists to move their mics closer to themselves. We continue to have problems with people on the webcast hearing people. So, I'd ask if all the panelists could move the mics closer and speak directly into the mic, it would be very helpful. Thank you very much.

We'll turn to now to an issue that I know is very controversial in the debt collection area, and this is an issue that involves collectors leaving messages on answering machines. A lot of this has been the byproduct of case law that's developed interpreting the FDCPA over the last half dozen years or so. To get us started, I'm going to try to summarize what I think the case law has been and then ask the panelists if I've correctly stated the issue and sort of the state of the law and see what people's views are on that.

Essentially, the basic fact pattern is you have a debt collector who thinks they know who the debtor is, they call that debtor's telephone number, no one answers, and then the debt collector decides to leave a message on the answering machine. My understanding, historically, there was simply a message saying, please call me back at some number. About a half dozen years ago, there started to be a development of case law, particularly under a case named Foti, and many people refer to this as the Foti issue, which indicated debt collectors would be liable under the FDCPA if, in these kind of telephone messages that they were leaving, they did not identify themselves, they didn't say the communication was from a debt collector, and if it's the first time that a consumer was being contacted, the mini Miranda warning would have to be given, that is, the consumer would have to be told this is a debt collection call and information they provide may be used in connection with collection of that debt.

So, essentially, after the Foti decision and similar decisions, it

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appears that collectors who did not leave this kind of information on voicemail messages could be liable for violating Sections 806 and 807 of the FDCPA.

The next challenge that arose, however, is that there are other cases where that information, when left on an answering machine, if it's overheard by a third party -- for example, a consumer's roommate, maybe a child living in the household -- that that would be considered a third party disclosure of information which would violate Section 805(b) of the Fair Debt Collection Practices Act. And, so, the way this has been posited is that there is a purported dilemma that debt collectors face. If they include this information in messages, they may be liable for disclosing it to third parties. If they don't include it, they may be liable for not providing the information that 806 and 807 require.

First of all, I know there have been a lot of cases decided on this issue over the last half dozen years and I just wanted to check with the panelists before we start our discussion in earnest to see whether that is an accurate characterization of what the fact pattern is and where folks understand the law right now to be.

MR. YARBROUGH: I think it is. I think it is, your characterization.

MR. WATSON: Yeah, I agree.

MR SCHULTZ: I would disagree slightly. I think it's still a little undecided. The question of Foti is whether or not the message was a

communication. So, they're talking about the definition, and denied a motion to dismiss. Most of the cases out there have been denials of motions to dismiss. They have, certainly, the summary judgment rulings in favor of debtors on this, but there are no Court of Appeals opinions on it. So, I still think the issue is still up in the air.

I believe there's a case that's on its way to the Ninth Circuit on the issue of whether a particularly benign message was considered a communication. So, I still think there's some gray area in the law on that, and hopefully, for the defense, someone to fight it and get the Foti -- I don't know what you want to call it -- rock and a hard place case overturned.

(Laughter.)

MR. PAHL: Okay. Well, let's assume for the sake of this discussion that the description I gave is generally accurate. One question that I have is that a lot of courts, in looking at the FDCPA and explaining why this purported dilemma is not something that should be problematic, have pointed out that collectors have other options of reaching consumers. They don't have to call or they don't have to leave a message.

Interestingly enough, ACA has done empirical work, done some surveys of its members, and I believe it's something like 85 percent of debt collectors say that calling people is the most effective way of collecting and 85 percent of collectors who call say they leave messages.

So, one question that I have at the outset is why is calling and

leaving messages apparently such an effective way of engaging in debt collection? And is the suggestion that many of these courts have made that there are alternatives out there that collectors can use, is that really a viable alternative for debt collectors?

MR. YARBROUGH: Well, I think the alternatives are, of course, mail collections which are historically the basis of collections. Also, there's credit reporting and there's lawsuits. The debt connector can arrange to have a lawsuit filed against a consumer.

I think the reason that the telephonic communications are so successful is the consumers want the calls to stop and they pay to get them to stop.

MR. WATSON: You know, from my perspective, I think there are certainly a number of various contact channels that either exist or are emerging, like text and Internet, things like that, all of which I think we're talking about a lot today, a lot of which, almost all of which were not contemplated when the FDCPA was written. And, so, it's unclear sort of how to engage in those interactions in the context of the FDCPA, which, again, I know is why we're here.

It could be the reason that telephonic communication is so valuable is that it's the most effective in that, you know, what a collector is trying to do is create a relationship with somebody, engage in a transaction, or get them to feel comfortable engaging in a very sensitive matter which has

to do with their personal finances and sometimes many folks feel much more comfortable interacting with somebody on a realtime basis versus through the mail if they are talking about something as private as their financial situation and wanting to make sure that if they do pay this amount, that their account will be resolved and reported back on their bureau and so forth.

MR. YARBROUGH: Another reason these telephonic communications may be so effective, and we don't really know, is because in many states, like Florida where I'm from, it's illegal to record a phone conversation, one party to know of the conversation and record it. But we don't necessarily know what takes place in the conversation between the consumer and the debt collector. We know that there's a huge amount of lawsuits that come out of the telephonic messages that are left on consumers' voicemails and answering machines, which the courts have consistently, on many of those issues, have consistently held that those are violations.

But in the context of the interpersonal communication between the consumer and the debt collector, we don't necessarily know what's taking place, what's being said, what threats may be made, what implications may be made, what vulnerabilities may be being exploited in that conversation. So, it's hard to say, without that empirical data, what is the reason for the success of telephonic communications.

MR. WATSON: I would just add that the majority of reputable large collection agencies that I know of in this space use 100 percent call

recording. So, it's very easy to figure out what's being said in those conversations.

MR. FLITTER: I don't think it's a great mystery why interpersonal contact is more effective in trying to accomplish anything than an email or a letter or something like that. That's just the nature of human affairs. If someone owes a debt or a portion of it, the collector is trying to persuade them it's in their best interest to pay it or work out a payment plan. If they don't owe the debt, well, there's still a lot of persuasion going on to try and get the cash register to ring and make a payment.

I do think that there's been some talk about allowing recording of these calls by the consumer. I'm in Pennsylvania, for example, which is a two-party state. You need both parties to consent to a recording. That's a minority, but it's a large minority. It's something, I think, in terms of the state.

I think that would be a useful amendment when that comes up because, right now, someone just said there's 100 percent call recording, that's only by the collector and then I'm sure there's a purging of those calls after a certain period of time.

And, I don't know, maybe it's just my bad luck. Frequently, they're not available for a variety of reasons. So, I think that would be a useful amendment to kind of supersede state law with regard to debt collection calls to permit the recording by the consumer. MR.

PAHL: Let me go back to one of the concerns that apparently underlies the

FDCPA here and find out if any of you have thoughts as to how often do third parties overhear these kind of messages left on answering machines?

MR. YARBROUGH: We found that it's relatively frequent. You have, for example, babysitters or other people working in the home that will hear the answering machine go off because the volume is on the answering machine and it goes off during the day when the homeowners aren't there. We've had cases where -- the Berg case where Mr. Berg would come in, he'd be with his friends or something, and he'd hit the answering machine, and all of a sudden they're talking about, you know, you owe a debt.

So, I don't think it's a huge percentage of these calls that are overheard by others, but there is some of that.

MR. PAHL: Anybody else have any information or thoughts on how prevalent third parties overhear these messages?

MR. SCHULTZ: I'm not aware of any statistical analysis. Obviously, just from looking at the lawsuits that you see out there, there's a heck of a lot more Foti lawsuits for not saying they're debt collectors than there are third party lawsuits for having said you're a debt collector.

MR. CUTLER: But that's pretty simple because the Foti suits would be class action versus the third party disclosure is going to be a single case. That's really a business decision we had to make. You know, when I was with Arrow, we had to make a business decision, Foti being -- which we

knew would be a class action or do I go and pay \$5,000, \$10,000 for all these individual cases at some third party disclosure. So, there's no real true statistical data because, again, somebody's going to hear it, not even know about the third party rule and just go on. So, there are suits out there, but, you know, it's a business decision.

MR. PAHL: Sure. Let me try to see if folks have thoughts about one proposed solution that has been suggested as to how to deal with this dilemma, and that's the American -- actually, the ACA has suggested to its members a particular disclosure to leave on answering machines to try to comply with the FDCPA. And let me read this quickly and then I'd like to ask the panelists whether they think this kind of a message is something that allows effective collection, but, at the same time, adequately protects against improper disclosure to third parties.

And here's what ACA recommends that its members disclose. "This is a message for Mary Smith. If we have reached the wrong number for this person, please call us at -- telephone number -- to remove your telephone number. If you are not Mary Smith, please hang up. If you are Mary Smith, please continue to listen to this message." And then there's a pause.

"Ms. Smith, you should not listen to this message so that other people can hear it as it contains personal and private information." Again, there's a pause.

The message finishes with, "this is Bob Jones from ABC collection agency. This is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose. Please contact me about an important business matter at" -- and a phone number is given, which is different than the phone number given above for the wrong -- if the caller has reached the wrong person.

Is that a viable alternative for complying with the law and for allowing for collection, but, at the same time, trying to avoid third party disclosures?

MR. YARBROUGH: It would be if the technology was such that you could guarantee that the person would hear this entire message, but you can't because the dialer technology is such that it doesn't necessarily sense when to leave the recording. What I mean is the person has an outgoing message that says, hi, you've reached the Smith residence. Okay? If the message starts playing as soon as that phone is engaged and it doesn't wait for the beep, then the person that hears the message misses the first part.

Another problem with this is it's a nice theory, but, in practice, it doesn't work, because we have cases all the time where the person says, "listen, I'm not Mary Smith, don't call here again," and they keep calling and calling and calling. And then when we sue them, we get their notes and it says, "she says she's not Mary Smith, stop calling." "He says if you call us again, he'll sue us." And it's right in their notes. They know it's happening

and they don't do it.

So, the theory of the message is good, but I don't think, in practice, it's working. But I do credit the debt collection industry that we do see some cases where -- we have lawsuits and we see that they have called other third parties that didn't owe the debt and that person will say, "I'm not Mary Smith, don't call here again," and they'll stop. But we do see variations where there will be continued calling even though the person says, "this is not the right number."

MR. PAHL: Thank you. Any other panelists have thoughts about what ACA has suggested?

MR. SCHULTZ: I think what Don has talked about is not necessarily a condemnation of this message, though, for what it's trying to do. What it's trying to do is comply with [15 U.S.C. Section] 1692e(11). And for that purpose, you know, it's probably about as good as we're going to get. Unfortunately, it's a long message. I'm guessing, more often than not, people hang up before they get all the way through, which is bad. It costs money to leave that kind of message as opposed to a much shorter message.

MR. PAHL: Yeah, fortunately, people here are a captive audience. They had to listen to the whole thing.

(Laughter.)

MR. SCHULTZ: That's right. Well, it was entertaining, too. I

think Don's point, there certainly are some aberrations in connection with -- not maybe aberrations. It happens where the message isn't left perfectly or picked up right away. That happens. That's a technology issue. But I think for what it's meant to do and what it's -- the industry's basically forced into having to come up with something to do -- it's a pretty good fix.

MR. CUTLER: Yeah, and I would say the technology is much better than 90 percent answering machine detection and being able to leave the full message. So, again, when systems first came out, we did have that problem where as soon as answering machines picked up, the recording would start. So, now, the technology is there where it can detect that it's an answering machine, wait for the beep, leave the entire message. So, that's all there.

And, again, going back into the previous conversation, when we were talking about voice analytics, you've got that capability, and some of the things you can look at is if a debtor says, this is not my bill, I don't owe it, I'm the wrong person, you take those recordings and you analyze them and then you take a look and you see what the collector does with those calls. You know, because, again, a collector is trying to get to the next account so he doesn't want to deal with a dispute a lot of times, so he may just put that in for a call back again and then another collector may have to deal with it. So, by having a voice analytics and looking at those types of issues where somebody says, "it's not my account," you can really look and see and make

sure your collectors are doing what your company policy should be, which would be, you know, put that account into a dispute resolution to you.

MR. FLITTER: If I may, I think it's probably a reasonable antidote to Foti, but I don't like it until after that first live call to see if you have the right person.

MR. YARBROUGH: Also, we don't see 90 percent compliance in the sense of full messages being left 90 percent of the time. It's much lower than that in reality. And when we depose these defendants, we ask them, did you test your system to see if it left the full message that you intended, we've had many of them that have said, no, we never tested it at all, or, yeah, we tested it one time, but, by the way, we make 500,000 calls a day. But they tested it one time, a single time with a single phone. And the equipment is not that reliable. From the consumer side, the failure rate on these messages is a lot higher than 90 percent.

MR. PAHL: Okay, let me try to turn to, in the remaining time we have, to a couple of questions from the audience. This one is, with the high number of robo-calls to wrong persons today, what are the problems with limiting to a number of three robo-calls to a specific number and no response for a period of one year? Apparently, someone is proposing this as a limit on the overall number of questions -- excuse me, number of calls. And this may relate more to the prior discussion, but if anyone would like to speak to that, please do.

MR. SCHULTZ: What was that? You could dial a number three times and if the person didn't respond, then you can't dial it anymore? Is that it?

MR. PAHL: For one year.

(Laughter.)

UNIDENTIFIED MALE: No response. If you didn't get a response.

MR. SCHULTZ: They didn't get a response.

UNIDENTIFIED MALE: That was my question. If there was no response, then you'd stop the call.

MR. SCHULTZ: I think that's way too restrictive.

UNIDENTIFIED MALE: (Off microphone) But why? What are the problems? That's what I (inaudible). Do you believe pounding away is going to get the guy to respond?

MR. YARBROUGH: You know, I would add one point to your question, and that is, suppose -- most of these debt collectors that we sue, their Caller ID information does not come on the person's telephones. And from what I understand, that's somewhat within the control of the debt collector. So, for example, if they're calling repeatedly and it says information unknown, call number unknown or zero, zero, zero, zero, zero, the consumer can't even tell who they are. A lot of consumers don't answer calls unless they know who it is.

So, the idea is that there should be a limitation. Debt collectors shouldn't be allowed to call an unlimited number of times to a person's phone simply because that person exercised their right to not answer. You don't have to answer a telephone. You're not obligated to.

UNIDENTIFIED MALE: (Off microphone) Correct. But my problem is with, say, Mr. Cutler if you took that approach, what -- do you really believe if I pound him 173 times, he's finally going to call me back? Is that correct?

MR. CUTLER: No, no, no. I mean, you're basically -- the goal is not to leave a message. As you know, I mean, in our business, the goal is to reach the consumer and talk to them. So, as we were talking earlier, you know, the personal contact is the key. So, if somebody's calling 170 times, they're assuming --

UNIDENTIFIED MALE: And asking for Mark Twain and I'm not Mark Twain.

MR. CUTLER: Well, if they're --

UNIDENTIFIED MALE: (Off microphone) (Inaudible).

MR. CUTLER: But that wasn't -- the question was whether or not after three calls we stop. So, I think that's pretty restrictive.

UNIDENTIFIED MALE: He's asking for Mark Twain; I'm not Mark Twain. And instead of making all these calls, all this effort, you stop and now go try to find Mark Twain by some other method.

MR. CUTLER: Well, most agencies would do that. I mean, I'm not going to keep calling the same phone number.

UNIDENTIFIED MALE: No, they wouldn't. They'll keep calling.

MR. CUTLER: I'm going to eventually go to skip-tracing if I'm not getting a response.

MR. PAHL: Very interesting discussion we're having here and I've got about a dozen questions and, unfortunately, we're not going to get to them. I guess I would just like to give each panelist an opportunity to offer any thoughts as to what they think would be good public policy and where we should proceed with regard to collectors leaving messaging on answering machines. Why don't we start down at this end this time. Any final thoughts as to what would be a good policy development in this area?

MR. CUTLER: I think the policy again, you know, when we used to just leave the generic message and get the phone call, I mean, we really need to have a final decision, whether it's an ACA recommendation, which I do think is a little wordy, but you need to have the ability to be able to leave a message and be compliant. So, at the end of the day, we just really need to know is it Foti, is it not Foti. I mean, we should not have to be between -- make a decision between a class action suit and an individual suit. There just needs to be clear direction whether it goes back to leaving the generic message or Foti compliant. But we just do need direction one way or

the other.

MR. PAHL: Cary?

MR. FLITTER: Well, the two suggestions I raised I would stick with because I don't think they're -- I think they're valuable, but not really onerous. And that is permitting the consumer to record a call and a live person first contact to see if you have the right individual. That's going to cut down on a ton of the Foti issues and the calls to the wrong party.

MR. PAHL: David?

MR. SCHULTZ: I'd amend the -- at the end of [15 U.S.C. Section] 1692e(11) and just say, and telephone messages, to exempt those from the 1692e(11) disclosure requirement. So, address Foti by saying do what was done for 30 years, which is just leave a benign message.

MR. PAHL: Okay.

MR. WATSON: I think consistency in what the requirements are would be paramount, whether it's to leave a non-Foti message, to leave a Foti message, and guidance on whether we're required to leave a message because, in addition to the Foti versus non-Foti issue that you outlined, there is also peril for agencies in not leaving a message at all because that's considered a communication with no meaningful disclosure of the intent or of the conversation or who the caller is.

So, when it comes down to Foti or a non-Foti message, the Foti

message is wordy and, certainly, you know, in a consumer protection environment, you know, costs are not -- should not be the paramount thing, but they are a realistic thing that you have to consider. So, that message takes 50 seconds, as I was listening to you read it, as opposed to about 5 to 10 seconds for a non-Foti message.

And it's part of human nature, too, that when you tell somebody not to do something, they do it. And, so, in the interest of protecting consumers from third party disclosure of a debt that's owed, once you leave that information on a message machine, it's out there regardless of what you've told somebody to do or not do.

MR. PAHL: Thank you. And, Don, you get the final word.

MR. YARBROUGH: Yes, sir. The robo-calling technology can be oppressive and it is oppressively used in this country by debt collectors and there should be limitations on it. Limitations on the number of such calls. A requirement, as Cary mentioned, that there be a verification that the debt collector even has the right number.

MR. PAHL: Okay, thank you, everyone. Julie Bush and I are going to switch yet again and she's going to be moderating the rest of the panel which is going to deal with calls to cell phones and text messages. But before we get started, Aaron Smith is going to give a brief presentation of some statistics that relate to the demographics of cell phone use.

MR. SMITH: I'll try to keep this going fast here. My name is

Aaron Smith. I work for an organization called the Pew Internet and American Life Project. And everything I know about debt collection, I've learned in the last hour and a half.

(Laughter.)

MR. SMITH: So, I'm not necessarily going to talk about debt collection here. But what I am going to talk about is some of our research on mobile phone adoption. So, my organization is a survey research firm located here in D.C. Our goal is to collect data on technology usage. We do that using nationally representative telephone surveys. So, while I don't know much about debt collection, we deal with some of the same issues in terms of how to reach people on cell phones. And as we'll see in a little bit, we face some of the same challenges, I think, although we sort of operate under different rules, that some of the folks in this room are facing. So, all of our surveys include both landline and cell phone respondents. And if people have questions for how we, in our world, deal with cell phones, I can talk about that.

But what I'm going to do is I'm just going to spend about ten minutes here talking about some of our findings for cell phone adoption and usage and, hopefully, that can inform some of the discussion that we will be having for the rest of the half hour here.

So, just to kind of go through things fairly briefly, basically, the upshot when you look at the last sort of five to ten years in technology trends

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is that cell phones have sort of become, and I don't think this will surprise anyone, the ubiquitous consumer communications device more than probably anything other than televisions, if you want to consider televisions to be communications devices. But over eight in ten American adults own a cell phone. When you stack that up against any other sort of communications device, the desktop computers, laptop computers, even landline phones, cell phones are really sort of the ubiquitous kind of communications technology.

And it's not only ubiquitous when you look at the overall population, the real sort of interesting thing happens when you sort of break out the demographics. One of the things that we can do by conducting sort of large nationally representative surveys is we can sort of separate out different subgroups and look at men versus women, low income versus high income, young versus old, and see how people break out. More than any other technology that we look at, probably again with the exception of televisions, cell phone ownership is quite widespread within a very broad range of demographic groups.

So, it probably will not surprise anyone in this room when I tell you that when we look at people between the ages of 18 and 29, almost 100 percent, 96 percent of those folks, say that they have a cell phone of some kind. But what's interesting is when you look at groups that historically have not adopted digital technologies in great numbers, so when we look at people like seniors over the age of 65, rural residents, low income consumers,

communities of color, a lot of those groups have, for instance, Internet adoption rates of 50 percent or lower. Every one of those groups has cell phone adoption rates of 60, 70, 75 percent or more.

So, when you look at, just to use a good example, which I always like to use, seniors, people 65 and up, when you look at their Internet adoption rates, about 40, 35 percent of them say they use the Internet. Six in ten say that they have a cell phone. Actually, a surprisingly large number of those folks, they're not downloading apps, they're not like checking in on Foursquare or anything, but a lot of those older cell phone users are text messaging, for instance. So, a surprisingly large number of those folks are doing things, in addition to using their cell phones for voice calling.

So, this is the part where I think my part of the world and your part of the world tend to intersect is in the growth of mobile-only households. So, about two or three years ago, my organization sort of realized that we could no longer just call people on landline telephones and expect to have an accurate representation of what's going on in the world, and that's true. We couldn't do accurate election predictions in our political shop. We didn't get good findings for technology ownership in the organization that I work for.

And, basically, what I've got here is a chart. This is from the CDC. They are sort of the gold standard for identifying the incidence of what they call wireless substitution, basically people who have a cell phone and no landline telephone. Within the population as a whole, they do a big survey

called the National Health Interview Survey, and they look at people who have -- live in wireless-only households. Basically, as you can see from sort of the -- the blue line here is the important one. In early 2003, about 2 to 3 percent of all adults were wireless-only. By their most recent work that they did in 2010, that number had basically risen to a quarter of all adults in the country have no landline telephone, are wireless-only.

UNIDENTIFIED MALE: Why do they care?

MR. SMITH: Basically, they are an organization trying to get out public health information and reach people with health messages, you know, information about there's a flu breakout in your neighborhood, there's an anthrax attack, whatever it is. Yeah, the CDC obviously needs to know how to reach people and get those sort of high impact, high urgency messages out to folks. So, we love that they do this. We rely very heavily on their findings in this field.

So, the first point here is that a quarter of the people you guys are going to be trying to reach do not have a landline telephone. And what's really interesting is when you look at the breakouts of who those wireless-only people are, and I think, in our world, there was an initial assumption that people who have sort of gotten rid of their landline telephones are sort of very tech savvy, higher income, well-educated, kind of executive level folks who have -- you know, just sort of rely on their BlackBerry to do everything. And what you find is actually very much the opposite.

The folks that I mentioned just there tend to be dual landline and cell phone. The people who are cell-phone-only primarily are young. Not surprisingly, for people in the 24 to 29 age group, more than half of those folks, so double the overall population level, do not have a landline telephone.

So, they're young, they tend to be fairly low income, they tend to be Latino or Hispanic, they tend to be renters. We see a lot of, like, single mothers, for example. So, the profile, the demographic profile of the wireless-only population is, I think, very different from what the popular conception of the totally untethered person is. And, so, when you look at, in our world, people's technology habits, people's voting habits, not including those people in our surveys, really changes the flavor of our findings. So, that's why we do it.

And for the folks in this room who are doing debt collection stuff, you know, I suspect that the profile of this group is probably a lot of the folks that you guys are trying to contact in your work.

You can see sort of the same -- those demographic breakdowns when you look at the geographic breakdowns. So, the states in red are states for which wireless-only substitution or wireless-only households represent more than 30 percent of the overall population. And, so, you can see that they tend to be clustered in the South and the sort of lower Midwest, whereas what you would think of as very sort of affluent, tech savvy populations in the Northeast and West Coast actually have fairly low levels of

wireless substitution.

So, it's an interesting comparison and I think runs a little bit counter to what folks might naturally expect from the popular conception. So, that's sort of the story of wireless substitution.

One of the other things that, again, we see in our work and I think everyone in -- a lot of people in this room have something like this and are well aware that phones don't just make phone calls anymore. You can use them for text messaging, you can use them for Internet access, you use them for email, you use them to look up maps and send pictures and do all of this different stuff. And I'm not going to get too deep into our findings on that because I know it's a little bit tangential, but I just wanted to point out that much like the wireless substitution numbers we discussed earlier, you see groups using wireless non-voice features that I think you might not expect to use those features at such a high rate given sort of popular conceptions.

And the group that I always point to are people of color. So, African-American and Latino cell phone owners are much more likely to use their cell phones or their mobile devices to do things like text message, like access the Internet. And for many of these folks, their cell phone is, if not their only source of Internet access, it's certainly a major or a primary source of access. So, this is something that we've seen very consistently over a lot of our work is that this particular demographic group has very high levels of reliance on the non-voice features of their cell phones.

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We've only got one sort of point in time measure for how often people use their phones for calling and texting purposes, but I wanted to highlight a couple of things here just to give you a sense of how sort of consistently and ubiquitously and constantly people are using their phones to interact with the world around them. So, we asked people how often they make voice calls and text messages on their cell phones. So, kind of ignore the part at the top. I'm going to not necessarily focus on that. But the numbers at the bottom are the ones that are really interesting.

So, the typical cell phone number, which is the median number down at the bottom, makes five voice calls and ten text messages each day, which kind of sounds about right. When you look at the average, that rises to 13 calls and 39 text messages a day. Basically, what that means is, you know, sort of the middle user is pretty modest, but there's this whole group out here that's sending just an enormous quantity of voice calls and hundreds and hundreds of text messages each day. And that group has, again, a very interesting demographic flavor that I can talk about here a little bit during the Q and A once I've wrapped things up.

Just a couple other things to hit before I sit down and let us move on with the next set of discussions. We had talked earlier about sort of calling people on the cell phone -- or calling people while they're driving. Obviously that's an issue for us, as well. Issues of spam, of, sort of, when you can call people. And, so, I think this is an interesting chart in terms of

flushing out some of the issues. So, I'll read these since I don't know if everybody in the middle can see them. But we asked people who had cell phones some of the things that they had done with those cell phones or some of the experiences they had had. So, three-quarters said that they had talked on their cell phone while they were driving. Two-thirds said that they slept with their cell phone next to their bed.

(Laughter.)

MR. SMITH: So, again, you know, thinking about when you're calling people, you may be waking them up with a cell phone buzzing in their ear while they're trying to get some sleep. Almost six in ten said that they had received unwanted or spam text messages on their phone and half had said that they sent or received text messages while driving, which, obviously, there's safety issues there. In our world, we always have to put in information for our end viewers. If someone is on the cell phone while they're driving, we get a number, we call them back.

And I threw in the last one, about one in five cell phone owners has run into somebody or an object while they were using their phone.

(Laughter.)

MR. SMITH: So not only are they sleeping with it next to them, they're so focused on it that they will -- not only will they run into something, but they will admit to running into something to an anonymous interviewer or in a telephone survey, which was awesome.

(Laughter.)

MR. SMITH: So just to wrap up here, this is just a sort of quick set of cell phone attitudes. Basically, safety and convenience are the two primary reasons that people use their cell phone. And I always like to kind of wrap up on this one which is, basically, we ask people a question, how hard would it be to give up the devices in your life? And people are willing to say, you know, they're willing to chuck their email, they were willing to chuck their landline phone, they were a little bit less likely to chuck their television, a little bit less likely to chuck their Internet, but over half of them said it would be very hard for them to give up their cell phone.

So, when you stack it up against all the other sort of consumer information devices out there, the cell phone is the one that you will be sort of prying from people's cold dead hands.

So, that is a very quick summary of some of our cell phone findings. I'm happy to discuss any of this during the Q&A or after in the milling about portion of the day. If you would like to see this, I'll have this presentation posted on our site either today or tomorrow. So, if you'd like to visit our site and get any of these data points, please feel free to do so. And I thank you for your time.

(Applause.)

MS. BUSH: Okay, I think we're going to move forward, but if people have questions specifically for Aaron, they can submit them as well.

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We are now talking about mobile phones which, as Aaron so astutely showed us, can be used for voice and for text. We've already talked about how collectors love to use the telephone to try to contact people. And I was wondering if anyone on the panel can speak to the rough proportion of collector contacts that are made by phone, and of the phone contacts, the rough proportion that go to mobile phones today.

MR. YARBROUGH: We had a statistical study in a case where we did what's called a cell scrub on 1.6 million telephone calls that a certain debt collector had made, and the results were, if I recall correctly, something like 34 or 37 percent of the calls that the debt collector placed had been placed to cellular numbers. And this was for a one year period and it occurred in 2008.

MS. BUSH: Actually, I should just add something, which is that we are not focusing on the TCPA. I've received a couple questions about the TCPA and that's under the auspices of the Federal Communication Commission. And because we don't have any jurisdiction over it, we are basically focusing on FDCPA and other consumer protection issues that have to do with phones.

MR. WATSON: I don't have sort of hard numbers about what percentage are cell phone calls. What I do think is that, obviously, telephone conversations are the predominant communication medium between collection agencies and customers. I would say the proportion of calls to cell

phones is relatively low primarily due to the prohibition of calling them in a predictive dialer environment. And the cost of, you know, the significantly or relatively higher cost of calling them manually, I would say, it's lower than one may expect.

MS. BUSH: So, would you say that -- does your company endeavor to find out whether a number is a cell phone number or a non-cell phone number?

MR. WATSON: Given the prohibitions of the TCPA, and I know we're not discussing that, but of not putting cell phone numbers on a dialer, I think most agencies, including ours, have multiple scrubs that happen before a dialer list gets placed because of the prohibition.

UNIDENTIFIED MALE: (Off microphone) I'm sorry, can we just clarify? I know we're not talking about TCPA and I know we're submitting comments. But there's been a couple of comments made about the prohibition under the TCPA. There is a consent, you know, kind of exception to the ability to use an auto dialer to send a -- to call a cell phone. So, it seems like I've heard a couple of references to almost a stark prohibition. Let's just clear it up that that's not the case.

MR. CUTLER: That is true. I mean, for instance, we've got a software program built into our system that we use with our dialer where we scrub for cell phone numbers. Any cell phone numbers that get indicated are marked so that they don't get loaded to the auto dialer. But then once a

collector gets consent that they can call and communicate with that debtor on the cell phone, it then gets updated and then that account can actually go to the auto dialer.

MR. PAHL: Excuse me, I just want to remind folks, if you could try to write your questions on the cards, it's not because we want to make you produce written work. But what happens is that the people who are listening to the webcast, they can't hear the questions posed by the audience. So, all they hear is the answer. But if you can give your questions to us on cards, the moderators can read it and, therefore, there will be a Q&A that will make sense to the people who are listening to the webcast. Thank you.

MS. BUSH: So, again, there's the issue of previous consent, prior consent that's been given under the TCPA, and there's also an issue of a potential rule change under the TCPA. But those are not the focus of our discussion today.

In terms of charges incurred by consumers on mobile phones, I'm wondering how frequently that happens, how much money and whether it depends on whether the person has a monthly plan or one of those pay-as-you-go phone plans. Can anyone speak to that?

MR. SCHULTZ: Well, I can -- I don't have any data on it to say that. From defending Fair Debt cases for a long time and a lot of them, I can't think of a case that I've ever had where anybody has complained that they were called on their cell phone and as an item of damage they're

claiming the charge they incurred due to the call. I just don't think it's ever happened. I'm not aware of it if anybody has.

MR. CUTLER: Yeah, I think the costs are very minimal. And, again, we're dealing with FDCPA which is 30 years ago, which 30 years ago, we didn't have 800 numbers really that prevalent and collectors would then -- back then make collect calls. So, that was really where the cost -- and that was expensive actually when you did a collect call because I think you were paying for an operator to connect the call and then you were paying probably a very large per minute cost. So, that's really where those costs came in.

Today, a cell phone bill is a cell phone bill. It's like any other bill. And I don't think the consumer is really looking and going, you know, that collector called me and it cost me five cents, ten cents, 20 cents for a call. That's not really an area they're looking at.

MR. FLITTER: Well, I'll just add that, of course, most of the plans are flat.

MR. CUTLER: Right.

MR. FLITTER: But especially with some of the lower income consumers, they're flat and they're very inexpensive plans and there is a -- if not a per call charge, a per text charge. Yet, I don't know any competent consumer lawyers that would dream of injecting a \$10 charge into an individual case. So, the fact that you don't see pled as an item of damage

\$10 in text or roaming charges that were assessed to the consumer isn't necessarily, I don't think, a good barometer of the fact that the charges aren't being levied.

And believe it or not, with some of the population, \$10 is a lot of money in a particular month. I'm surprised it's easier -- it may be a little difficult for us to spot, but a lot of populations, \$10 or \$15 out of a month is not insubstantial

MR. CUTLER: No, but to run up \$10 a month would be a lot of phone calls to that cell phone. So, it's not been an area that's been really addressed as far as the cost at that point.

MS. BUSH: When the FTC suggested, in its 2009 report, that charges might be a reason to be cautious about contacting consumers on cell phones, we were told about something called "free to end user" technology. I'm wondering if anyone can describe that here, if anyone here uses it.

MR. CUTLER: Well, the capability to do free to end user, from a text standpoint, is definitely out there. But, again, texting is another arena in itself because now you've got Foti and trying to get the Foti disclosure in a text message is just not going to happen. But, I mean, if you want to send several text messages, et cetera, but there are data plans out there where the person sending the text can send that as a cost-free scenario for the consumer.

MS. BUSH: Okay, thank you. Right now, we're going to

assume, hypothetically, that the TCPA does not require consumer consent for placing a call or a text to a mobile phone. I'm wondering what we can say, sort of bottom-up, about whether consent should be required before a collector contacts someone on their mobile phone and how commonly -- what kind of consent should be required, if any, and how common it is today for collectors to seek consent?

MR. YARBROUGH: We don't see collectors seeking consent at all. I've never seen a case where a collector has sought consent, not one.

Hearing the presentation by Aaron here about the proliferation of the cell phones and then thinking back to the way telephones were in an earlier age where there was one phone for a family and everyone used that phone. And, now, it's sort of like there's subsets. Everyone has their own phone. So, calls for really any purpose that are to a person's phone are more intrusive. They're a little bit more intrusive than a call might have been in an earlier time to a home phone which might have been more like a switchboard at a hotel or something. So, it does seem like it's a little more intrusive.

Also, you have the idea that when you're traveling, you have the cell phone with you, you might be in an office setting or in a work setting or something where you have the cell phone and you don't really want to get calls. You leave it on in case your child calls or something, in case there's an emergency, but you don't want to hear about debt collection calls at that time.

MS. BUSH: Thank you. John, did you have anything to add?

MR. WATSON: Yeah. Certainly, those are challenges. A lot of people are moving to cell phones for convenience's sake. I don't think the trends that Aaron shared are going to reverse themselves in the near future. So, I do think cell phone only households specifically are going to grow. Certainly, it can be inconvenient to receive a cell phone call at any point sort of in your day. There are ways to avoid that like we've all got our ringers turned off right now. So, I do think that if -- you know, people are going to have more cell phones and the ability to use them as a way to contact people to resolve their accounts is going to be valuable.

Predictive dialers provide a very efficient way to do that. And if the only ability outside, without having consent, is to have to manually dial a cell phone, it does drive costs up pretty dramatically. It could inhibit communication with a customer and ultimately prevent them, to some extent, from getting an opportunity to resolve their account.

MR. SCHULTZ: I think a lot of agencies are trying to get consent to call cell phones, though. It's part of their talk-off now. The collectors are being trained. If you do get the contact, ask the person, is this a good number to call? Do you have another number which we could call? Is that your cell phone?

MR. FLITTER: That's not quite consent, is it?

MR. SCHULTZ: We're trying to get the consent. Is there

another number? If that's your cell phone, is it acceptable for us to call it? And they're trying to notate that, typing it into notes, but also recording it as consent. They're obviously concerned with calling cell phones about consent and the exposure they face is a consequence of that. So, that's something -- I think it's a learning curve, they're learning to do it now. It wasn't done a number of years back, but I think you're going to see it done much more in the future, like getting consent in other ways.

Certain clients that you have as an agency, you know you have the numbers from them with consent. Medical field is probably the best example. Most of the time, those are numbers -- you know, the agencies I've been involved with are doing the first round of collection on the medical bill so it's not that old. They're not skipping it. They've got good information. They're not getting updated information. So, there's probably consent in that area. So, believe me, the agencies are concerned about it. To the extent they can get numbers and they're cell phone numbers, they want to make sure there's consent.

MR. CUTLER: Yeah, and I would also say I just disagree with Mr. Yarbrough. I think a cell phone call is -- I mean, it's less intrusive because that's the number I want to be reached at. That's the number that the consumer would have given, in most cases, and that's the number I want to talk -- and I can manage that. So, to say, like, you know, you're in a business meeting, et cetera, again, technology, you've got Caller ID. If an

agency is using an unknown number, you don't take the call. Actually, my home office when I get calls in, it's not a collection agency, it's a software company, I get -- it shows up on mine as unknown. So, if I don't want to speak to that somebody in my office, I know I'm not going to answer that call. It's that simple.

So, if my kids are calling, their number pops up, their picture pops up. So, you can manage that phone better than any home phone anybody's ever had. And I think, again, that call is coming to you versus the switchboard scenario of my daughter having to answer a phone that's a collection call for me, my wife having to answer a call that might be a collection call for me, or anybody in the house answering my phone. So, again, I think it's actually less intrusive. I think, again, it's the manner most of us prefer to be contacted in.

MS. BUSH: Cary, maybe you can speak to what consumer protection issues, if any, come up.

MR. FLITTER: I was thinking, is there a technology that, you know, answer -- the cell phone call comes in, and if it's a debt collector and the consumer doesn't want to hear from them, you know, obviously, if there was a cease and desist statement made then that should be the end of that if it was a live individual. But is there a technology available for kind of, A, I'm busy right now, call me later, or B, don't ever call me again, or C, other?

MR. CUTLER: From just an agency, to identify a collection agency?

MR. FLITTER: You know, I'm just saying that there's a -- there's got to be something in between. We can call as often as we want and whenever we want. If the person doesn't want to hear from you just because it's a cell phone and you, in theory, can just press the ignore button versus calls that somebody wants to be engaged in. I mean, the intrusiveness of the cell phone call can't be ignored.

MR. CUTLER: Again, it's easy, it's no different than a landline, though. I mean, that's what we're talking about. So, I mean, a landline, if the agency's going to call, they can call. You either answer the phone or you don't answer the phone. So, it doesn't matter if it's a landline, cell phone, et cetera. That's a decision you've got to make. You're either going to handle the phone call or not handle the phone call. And the easiest way is to actually handle the phone call because then if you're talking to somebody and you resolve the debt, don't resolve the debt or tell the agency not to call, you know, that just seems to be the easier way to deal with the situation.

MR. FLITTER: I just think there's an intrusiveness to the -- they both are, obviously. So, if the consumer doesn't want to take the call and doesn't want to negotiate it, assuming it's even the right consumer, there's got to be a means to deal with that. The answer isn't just keep calling because there's been no answer previously. I think that's really what the

question raises. What are the technologies that are available to kind of hit that sweet spot where you can make the calls if the person wants to be reached? If they didn't want to be reached, then they stop.

MR. WATSON: I think we've talked about whether it's call volume limitations and things like that that we can implement and a lot of folks have implemented. But I agree with the previous point that was made, which is a lot of what agencies are trying to do is to engage a customer in a conversation, right? And if the customer would contact the person or respond to the contact attempts that are being made, a lot of the third party contact, third party disclosure, all those things go away because now you have engaged in an interaction, a transaction where you don't have to make all those calls to try to engage somebody.

And, so, I do agree the best way to eliminate a lot of the things that we're talking about today in terms of sort of harassment or consumer protection is just to engage with your creditor or their agent.

MR. YARBROUGH: But the consumer has no obligation to talk to a debt collector at all. They don't ever have to say a word, and they may not want to. And they shouldn't have to have their friends and neighbors contacted because they just don't want to talk.

MR. SCHULTZ: But they have a right to exercise their cease in that --

MR. YARBROUGH: Maybe they can't pay the bill.

MR. WATSON: They can engage and say please do not ever call this number again and put it in writing.

MR. SCHULTZ: They exercise their cease rights then.

MR. WATSON: We're required to stop.

MS. BUSH: Okay. I have a question from the audience and it says, on cell phone calls, why aren't FDCPA rules that allow consumers to prohibit calls at inconvenient places sufficient to deter calls to the cell phone?

MR. SCHULTZ: Places or times? Places?

MS. BUSH: It says inconvenient places. But you can interpret --

MR. SCHULTZ: It's tough to know where that person is. I mean, it's going to be tough to know where the person is on their cell phone. I don't know if they're in the car or not. It's hard to track that. But that's a difficulty in passing that kind of legislation it seems like.

MS. BUSH: Does anyone think that the rule that has to do with inconvenient times and places would work in this instance?

MR. SCHULTZ: I suppose the debtor could tell them, you know, all I got is a cell phone and from the hours of 8:00 a.m. to 3:00 p.m. or something, it's really inconvenient, don't call me on my cell phone. And if they continue to do so, I suppose you could have a harassment claim. You know, the Act, perhaps, addresses it that way.

MS. BUSH: Okay. I'd like to have each member of the panel,

starting with Brian, say what you think is the most important change, if any, that should be made in law or policy regarding mobile contacts? And I'd ask you to be succinct, please.

MR. CUTLER: Well, I think one of the important things is, you know, landlines are going to be gone soon and most consumers are going to have the cell phone and it will be the only way to contact. And when they open up applications, et cetera, for credit, that's the number you're going to have and that's going to be the one contact number you have. So, I would look at cell phones, going into the future, as being no different than a landline.

And even if we can't take it to that level, at least let that consent, once they put that number as their contact number on the credit application, then that consent should automatically pass down to, you know, third party collectors.

MS. BUSH: Okay.

MR. FLITTER: I'd like to see a disclosure that the consumer has the right to cease the further contact. An affirmative disclosure rather than just requiring the consumer to know that the right to cease contact exists. I think that would stop -- I really think that would stop a lot of these issues.

MR. SCHULTZ: Probably as Brian said, treat landlines and cells the same. It's a distinction that's going to be gone pretty soon.

Landlines aren't going to be around probably and even cell phones are going to be replaced soon. So, if we continue to try to change the laws and try to keep up with those changes in the laws, in the technologies, it's going to be very difficult to do. I think soon people are just going to be using texts or email or Facebook or something.

MS. BUSH: Okay. John?

MR. WATSON: I would agree. I mean, I think specific to cell phones and predictive dialers, you know, removing the prior consent provision.

And just to clarify my earlier point about the prohibition, right now you have to have consent, prior consent, to put the cell phone on a dialer. Once you have the consent, which you've gotten theoretically through a verbal conversation, the need to put a cell phone on a predictive dialer dramatically goes down. It usually gets worked in a manual environment at that point, because now you have engaged in that conversation and you can have a collector manually pick up the phone and dial that cell phone because they've given you the consent and you don't have to use the predictive algorithms that allow you to gain more efficiency when you're trying to locate the connect number for somebody. You know what it is, so you can dial it manually.

MR. YARBROUGH: I agree with Cary, that most of the problems we've talked about here today could be completely eliminated if the

messages were required to disclose -- for example, if you no longer wish to receive calls at this number, press six or whatever. You know, that they tell the consumer that they have the right to stop the calls, which they do, they have the right to stop them, and let them stop them right there, and then you don't get all of these problems.

MS. BUSH: And I think, Cary, you were talking about the right to send a letter, right? The right as it is in the act. And it sounds like you're talking, Don, about an oral communication.

MR. FLITTER: In telephonic communications, it should be disclosed.

MR. YARBROUGH: Right, right.

MS. BUSH: Okay, thank you very much. This has been a long panel and we really appreciate our panelists for all their contributions.

(Applause.)

MR. PAHL: We'll break for lunch and reconvene at 12:30 sharp. So, please plan ahead for the time you have to spend in security and we'll start at 12:30. **(A luncheon recess was taken.)**

**PANEL 3: MANAGING THE FLOW OF INFORMATION: THE
INTERSECTION OF COLLECTOR SOFTWARE, INFORMATION
SYSTEMS,
AND COMPLIANCE**

MR. PAHL: Thank you all for arriving back promptly after lunch, and I think we'll get started. I know a number of people will be filtering in as we go. I think to keep on schedule, we need to get started. Our first panel here after lunch is about the flow of information in the debt collection system and the two co-moderators of this are Leah Frazier, who's in the Division of Financial Practices, and Dan Becker, who's in our Bureau of Economics.

MS. FRAZIER: Thank you, Tom. We have a great slate of panelists today, very diverse. They draw from numerous sectors including the technology sector, law enforcement, collection agencies and consumer advocates. I will briefly introduce them.

All the way over here to my right is Jim Adamson of Columbia Ultimate; Chad Benson of CBE Group, which is a collection agency out of Iowa; Stevan Goldman, from Automated Collection Control and Commercial Legal Software; Michael Kinkley, who is a practitioner out in Spokane and

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also a member of the Board of the National Association of Consumer Advocates. We have Gary Portney of Convoke Systems, and last, but not least, Laura Udis from the Colorado Attorney General's Office.

So, if you want more information on these folks, all of their biographical -- well, not all of their biographical information, but the important stuff is in the biographical materials.

And I would also like to mention that we're very lucky to have Dan Becker as co-moderator because he was a software developer in a former life. So, you can direct all of your technical questions to Dan.

But during this session, it's going to be our goal to shed light on the software systems that enable collectors to go about their business. So, we'll be exploring the range of software that collectors of all types are using, the capabilities of that software, and most importantly, their potential to assist collectors in complying with the law.

We'll also examine how various debt collection functions have become automated and we'll also address the consumer protection concerns that may arise, where technology isn't being adequately utilized or where it fails to function properly. We'll also be looking at what's next on the horizon including what the up-and-coming trends in collector software are and the idea of a centralized data repository to house information on consumers and debts.

So, with that, I will turn it over to Dan.

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MR. BECKER: Thank you. Just to lay the groundwork for our conversation, there appear to be quite a few different sources of information and types of information that debt collectors use during their debt collection. So, I was hoping that we could have the panelists comment just about what types of information our debt collectors are using and collecting and how they're using it. So, just to lend some sort of system of organization, why don't we start with Jim and we'll move across the table.

MR. ADAMSON: Well, debt collectors, from our experience, they use -- most of them that we deal with receive their information from original credit grantors and that information consists of all the contact information, of course, the debt information, and what they hope will be the contact information that will give them a right party contact from the start. And then that information starts into the system and then they start assigning strategies and workflows to it and determining how best to collect those debts from the consumers.

MR. BENSON: Yeah, I would echo Jim. As a third party collection agency, we receive information from our clients. We also, obviously, aggregate third-party information and use that as a function of the collection process.

MR. GOLDMAN: Well, I can't add much to what information is gathered. We are a business-to-business data conduit and we help people in the collections industry move information from the debt owner to whoever

they wish to do the collecting work, whether it's an agency or an attorney. We accommodate whatever data they want to send. So, if one of our customers is looking to expand the amount of data that they want to send to their collectors, then we simply enhance our data standard so that we can accommodate whatever data they wish to send.

MR. KINKLEY: The information that's flowing answers a number of questions. Unfortunately, it doesn't answer it very well most of the time. The first is whether the debt's owed, whether the amount of the debt is a sum certain, whether the data that flows through the electronic system properly identifies the proper person who owes the debt, and then whether the data can properly identify who owns the right to collect the debt in terms of assignments.

And in tracing the assignments, there are problems. There are problems in determining the sum certain. Less often, but still frequent are the -- identifying the proper person, and then still, less often, if some debt is owed to someone, it's probably the least -- the problem we have is the accuracy of information is not accurate as it starts and it gets less so as it moves through the technology. There's a difference between the legal requirements and the technological abilities, and that disconnect is the big problem that we're having in the state court systems in collection at this time. It's the flow of information is not adequate for legal purposes.

MR. PORTNEY: I specifically, or my company specifically

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addresses the management of the documentation or media associated with the debt and we assist in tracking the ownership of debt specifically.

MS. UDIS: And I don't think I really have a comment on this part of the topic yet. My issues are more about problems between some of the communication between systems. So, I'll hold off for now.

MR. BECKER: I just want to follow up. Chad said that you aggregate third-party debt. What types of debt is that or what types of third-party information? What sorts of information is that?

MR. BENSON: So, we would go out with -- and receive additional scoring, as an example, through TransUnion, skip-trace processes and data sites for data, batch level data.

MR. BECKER: Okay. And then, how is this information -- we've talked about information from original credit grantors, contact information, debt information, what can you tell us about how this information is used and what software is available to use it?

MR. BENSON: So, I would break it down into probably three kind of chunks. If you think about, you know, we deal with hundreds of clients, and so, I think what you have is of varying degree. I think this is an interesting discussion topic in terms of the information that comes over, the standards, whether it's a shell or an SFTP or how information gets, from a security standpoint, kind of in that second bucket. That's evolved so the quality in which information is delivered to us in exchange, from an

input/output standpoint has evolved. I think the next part of that then is how that information is fundamentally used as a process within -- we have an internal collection system to most effectively collect on the debt, but also comply with the law, federal or state regulation.

MR. PORTNEY: I think it's important to distinguish what kind of data we're talking about here and I think someone alluded to it earlier. We're talking about two types of data in my mind, which is row level data, and that's specifically, if you will, a row in an Excel spreadsheet or some kind of database which is the fields in the database identifying certain characteristics about a debt, the name of the debtor, phone number, charge-off amount, balances, et cetera.

And then you have another type of data which is much less structured data, which is the documentation associated with the debt which allows you to -- is this on -- which allows you to evidence the debt much more effectively.

One of the premises that we make that the documentation, which is a seminal issue within the industry, is paramount to the collection and recovery efforts. That's where a lot of the underlying information lives without question versus within row level databases or Excel spreadsheets.

MR. KINKLEY: I agree that the biggest problem is the documentation and the problem with the collections are the legal requirements of getting past the hearsay rule with the business records

exception. And, unfortunately, most automated collectors see that as merely a speed bump on their way to a judgment and they do all sorts of things which are not correct in applying the documentation. They attach documentation media -- the industry, I believe, calls it media, normally. They attach it to -- one person will attach the media to a documentation of another pretending that it's being authenticated by the first person when it's not, pretending that first person is a business records custodian for those records when they're not. And that's the biggest problem.

And what this has resulted in is what one New York court called squirting cider in the ears of the court system. I have no idea what that means, but I'm sure it's bad.

(Laughter.)

MR. KINKLEY: And that was in American Express Bank vs. Dalbis, and these cites and so forth, as I go along with the various cases, will be in the materials that we provided the FTC.

The other problem that was alluded to is that the debt buyers, themselves, what's fruitful to find out in this area what's going on is to find out what the corporations do when they sue each other or they sue for other reasons than debt collection. For instance, the debt buyers organization, which is 550 debt buyer entities in the United States that have banded together, sued the IRS over attempting to get an injunction against enforcement of the 1099 rules. And the debt buyers argued to the court that

all they normally receive is the aggregate amount of the charge-off from the originating lender for a particular debtor, and, consequently, do not know the component amounts of stated debt, principal, unpaid interest, late fees and other charges. And, of course, if you know the FDCPA, you know you're required to know those things. Most state laws have even greater specific requirements.

And, so, you start with garbage in. And I think our software experts here would say when you start with garbage in, you get garbage out. I think they call it "GEICO" or "GIGO." And that's the problem. The debt buyers were quite insistent to the federal court that they generally often, usually, typically or customarily don't receive component information. And the problem is then magnified as it moves through the system because you've got variable interest rates tied to LIBOR, the software currently in effect. It's too expensive to write an algorithm and use the labor costs to develop what interest rates should be on a month-to-month basis. So, they just pick an interest rate, usually a high one, and apply it across the board. Well, it's the wrong interest rate, and nobody is taking that into account. And there's another one of those problems (inaudible).

MS. FRAZIER: If I could remind everyone to speak into the microphone, please.

MR. BECKER: Any other comments about that question on this side of the table?

MR. BENSON: No, I'd just -- I'd reiterate what I think I heard, which is that there are multiple stakeholders in the process probably all the way from origination through the collection process and standards and technologically proficient abilities to deliver that, I think, are a necessity.

MR. PORTNEY: Let me, if I could -- one thing. I think some of the things that have happened --

MR. BENSON: Good thing we sat next to each other, huh?

MR. PORTNEY: It's fantastic.

(Laughter.)

MR. PORTNEY: I think the -- historically, the way companies have managed -- the real issue is getting the information or the underlying documentation from the issuers. That's -- you know, if you look at the topic of this conversation or white papers or studies that the FTC has put out and other regulatory bodies and the GAO, the flow of information is systemically broken within the industry and what is broken about that.

I think we're trying to get to the heart of that right now and I think it is important to distinguish about how media or documents flow throughout the industry. Both from a media perspective and from an actual account level perspective, there is no standards or best practices in this industry. I think that is changing. I think best practices and standards are starting to evolve. I think that's -- several things are happening in both the regulatory environment, but modern technology is driving that in large part. Things you

couldn't do ten years ago, you can actually do today using modern technologies. So, I think some of the issues that Michael raised is a result of not being able to get the original documentation in an effective and efficient way.

UNIDENTIFIED MALE: Gary, speak up a little.

MR. PORTNEY: So, if everyone heard me, that's my comment.

MS. UDIS: Dan, Dan?

MR. BECKER: Yes, please, Laura, go ahead.

MS. UDIS: I think Mike raised a good point about issues in court and certainly the implication with falsified affidavits or robo-signing. But on the other hand, the advances in technology and in the ability -- it seems that the technology has the ability to allow the flow of information. Automation has increased the ability to allow the flow of information from creditor to collection agency or debt buyer to be much quicker and more efficient, should help some consumers. Because a number of consumers that complain to us just want to know or want to see verification to try to figure out do they owe the debt.

Now, some will then determine, no, they don't, but a lot of the complaints that we get are simply I don't know, I want verification of the debt. And they want it in a quick way, they want it in an efficient way. It shouldn't have to take 30 days, 60 days or more for the debt collector to go back to the

creditor and to wait while the creditor is searching their files.

So, to the extent that technology can make that process much quicker so that that information can flow to the consumer who disputes the debt, this should be a vast improvement so that the consumer can then decide whether to pay or whether to exercise their rights and say, it's not me, wrong consumer, or for whatever reason, cease communication. This should be a big help, technology in this area.

MR. KINKLEY: The problem, though, is one of economics. Look, the debt buyers are buying these debts for pennies on the dollar. It has to be expedient, it has to be cheap. Technology has outrun the legal requirements that are involved. And the thing is, the portfolio buyers recognize this. They put into their sales agreements -- and this is another problem that I see that the FTC could look at -- is they put in the first sheet of a sale -- bill of sale, but they don't put the entire sale agreement. Why? Because in the sale agreement it says the seller does not warrant, represent or ensure the accuracy or completeness of information.

A fruitful source of information in this area is, as again, business-to-business lawsuits. When a buyer of a portfolio sues the seller of a portfolio because the buyer has now gotten caught in a situation where they can't collect honestly the debt that they purchased, they sue the seller. And when they sue the seller, they always lose.

The reason they always lose is because in that portfolio sale

agreement, it says, "we don't warrant it; it's as is." There are a number of cases -- again, these will be on the web page, but a couple of good ones, there's Summit Recovery, LLC vs. Credit Card Reseller out of Minnesota; RAS Group vs. RentaCenter out of Texas. There's a couple out of Georgia. Anyway, we'll put all of these on the web page.

But what you'll find is that the buyer and the seller both agree that the data they're getting isn't accurate, it may not represent actual debt, it may not actually represent the amount of the debt, and they even put in there, oftentimes, we don't warrant that we own the debt we're selling you. Now, why would anybody buy such a thing? Why would you buy that? Honestly.

(Laughter.)

MR. KINKLEY: Because you buy it cheap and you collect it dear, to paraphrase Adam Smith. You are able to go to the court and you have a hole in your case, of course, when you get to court. That hole is the hearsay hole that's filled with a false affidavit. That's why you buy debt that is being represented to you as not even being accurate because it doesn't matter.

MS. FRAZIER: I'm sorry to interrupt, Mike, but in order to get back to the issue of the data transfer and how technology operates in that sense, I think it might be interesting to hear from Stevan.

MR. GOLDMAN: Thank you. With all due respect to my friend, Michael, I want to disagree about one thing that he said, and that is

that as data is moved by technology and moved from one place to the next, that it deteriorates or the quality of the data actually deteriorates. That's exactly the issue that we address in our service, and that is we actually can apply business rules to the data that's being passed through our portal.

For example, if an attorney attempts to send a judgment record through where he has a judgment amount but not a judgment date, we reject it, which prevents the originator's system from being populated with incomplete information. Or, for example, if he sends through a judgment where the elements of the judgment don't add up to the judgment amount. They're saying there's a judgment for \$1,200, where the principal was \$900 and there was \$200 of allowable interest and \$30 of court costs. If they don't add up to what the judgment amount is, again, we bounce that back, as well.

So, we have the ability to validate data before it populates another system. So, we prevent -- not only do we prevent data drift, but we actually improve data because we let both sides know that the data they're sending appears to be either incorrect or incomplete.

MR. KINKLEY: You calculate interest rates as it passes through?

MR. GOLDMAN: Well, the interest rates are a very interesting issue. It's not a matter of whether an algorithm can be written to properly assign the interest rates. The real issue is the number of data points that are needed to correctly reconstruct what the debtor might owe. In other words,

you need to know what the prevailing interests were every time a payment was made, every time a credit was given, if they returned something to the store. In other words, they have an ongoing account and the amount goes up and down until it becomes delinquent. But all during that period of time, there's interest that's accrued based on the cardholder agreement, if we're talking about a credit card.

So, if you're going to reconstruct the interest, the algorithm is actually -- it's simple mathematics and any computer can do it. But what you'll need is every single data point and what the prevailing interest rate was at the time that the balance changed. If you had all that information, including statutory when the interest rates changed in some states every January 1st, if it's post-judgment, you'll need to know that as well. And when the debtor made payments, all -- if you had all those data points, reconstructing the actual interest owed is simple mathematics. And like I said, there's not a computer out there -- everyone has one in their pocket that can do that math. You just need to know all the data points.

UNIDENTIFIED MALE: (Off microphone) (Inaudible) required to do it, though.

MR. GOLDMAN: Well, getting back to what Gary said and that is the quality of the original data. And that, in many cases, may be lacking. But I think it's not an accurate statement to say that just because technology is helping data pass from one entity to the next that it's contributing to the

deterioration of the quality of the data. That is not the case.

MR. BECKER: I'd like to back up real quick to a point that Laura made and also that Gary made which is about the documentation. So, why is it that right now there is this long delay for consumers to be able to receive this documentation? Why isn't it transferred immediately at the time of sale from the debt holder or the creditor to the debt buyer? And if it were to be transferred immediately so it is more quickly available, are there any consumer protection concerns that would be associated with that?

MR. PORTNEY: There's probably several answers to that question. I think the issuer's ability to do that today is challenged. I don't think that they have the resources or really, up until very recently, the reason to actually do it in a very systemic way. I think that's changing as we speak because of all the things that are happening.

I would argue that attaching all of the information is probably not economically feasible. In most cases, you don't need all the information. You need certain pieces of media or documentation. All the information that Michael raised and that Stevan was talking about lives in the original documentation. If you have that, if you have the original card member agreement, statement, statements of charge-offs, statements of payment, you can deduct that information or those algorithms and get to the right numbers by looking at the original documentation.

So, I think there's a -- that's probably -- we could probably

spend two hours on that, on why it hasn't happened. But we are seeing issuers take this much more seriously, we are seeing standards evolve, best practices evolve. We certainly think that third party repositories can go a long way in improving the flow of that information instead of passing all of that information from one entity to the next, to the next, to the next. And we think that's probably the best way to do it for a number of reasons, especially from a consumer protection standpoint, which I think we get about -- we get further in the conversation.

MR. BECKER: Jim, please go ahead.

MR. ADAMSON: I'd like to add, too, that all of this data originates generally with an original credit grantor as mentioned. In many cases, you're dealing with a store that doesn't have a lot of technology or an outlet that when they export their data, they might be exporting it to a spreadsheet, they may not have the imaging capabilities to pass all this information down the line. But once the information makes it into the flow of the collection process, it really doesn't degrade going from there on because, as Steven mentioned, there are rules that you can apply to the data as you transform it and load it into a new system whereby it will maintain the data integrity.

Really, I think most of it stems at the original credit grantor, at the origination of that data, whether it is all contained at that point in time.

MS. FRAZIER: I think this might be an interesting time to move

on to a discussion of what the range of software platforms out there are. Once the data has been obtained by a collection agency, what systems are used to manipulate that data in order to go about the business of collection?

MR. BECKER: Did you have -- I saw you had one last comment.

MS. UDIS: Yeah, I was just going to say that, I think, obviously on the issue of the quality of data coming from credit grantors, some of it, from my guess, my perspective, is that it's expensive for creditors to maintain it and creditors have charged off this debt and don't have a lot of incentive in maintaining the records. And we've actually heard collection agencies say please pass a law or pass a requirement that creditors have to maintain and provide this data so that all collection agencies are on equal footing and have to obtain this information from credit grantors. So, they're sort of asking that this has to be maintained and has to be provided so that everyone has to have that information.

MR. BECKER: To go back to the point that Leah was bringing up, would everyone on this panel agree that the limitation is more due to the creditor side and that there are bigger differences in the software capabilities on the creditors' side than on debt collectors' or debt buyers' side?

MR. KINKLEY: I don't agree. I don't agree because the creditors are required, under Federal law, I believe it's the Equal Opportunity and Credit Act, to keep data for two years and -- to some extent. And the

problem is one of costs. And all we've been talking about, the technology can do -- I mean, we've got a lot of the white hats here that manage the technology. I'd like to make them a lot of money. I'd like them to have customers that pay for the services that are available rather than the services they're paying for now.

And I'm not talking about degradation of data when I'm talking about the problem with the ongoing database. It's that, on a continuing base, interest is being added, but it's being added wrong. Other charges are being added. But it's not up to the software problem. It's up to the fact that nobody wants to pay to have multiple data points, to have interest calculated on a monthly basis based on the LIBOR variable rate. It's just too expensive and nobody wants to pay for it right now and they don't have to because they're getting away with doing it the way they've been doing and business as usual. And some of these people are looking forward to the day when they can charge more money to do more to get it right.

MR. PORTNEY: I'll just say one thing to Mike. I think economics will vet out over time with class actions. However you get there, you get there. So, I think the fact is that in terms of economics and who pays for what, that's just normal. You know, markets will figure these things out if it's needed within the market.

MR. GOLDMAN: There's one other issue and it gets back to the same quality of data coming from the credit grantor. When Citizens First

gets bought by Nat West which gets bought by Fleet which gets bought by Bank of America, they don't replace all those existing systems, in most cases.

They keep the existing systems going until they either die by attrition or they're able to move all of their customers over to a more centralized system as banks consolidate.

That is an example of why this goes bad sometimes or why the data that comes from the banks is not as accurate as it will be going forward. It's a legacy issue as much as anything else. And I guess Michael's correct to a certain point. I guess they could spend the money, but when you buy another bank, I guess the first priority is not to then put in a whole new computer system and get everybody onto one system as fast as possible. They just don't do that.

MR. KINKLEY: The other problem is the banks are using robo-signers, too. I mean, we all know about the Kunkle affidavit where it wasn't really her signing it. You saw the 60 Minutes robo-signers. The banks themselves are trying to sell this. Their legal departments are sales department. They're trying to sell their sales process to keep it as cheap as they can. So, they don't apply the technology they have, either.

MS. FRAZIER: Okay. We could talk forever about the issues of where the data comes from and how available it is, but I think we should really talk about the technology that collectors use and the software platforms they employ. So maybe, Jim, it would be good to start with you to give a

description of what your knowledge is of the range of platforms out there and who is using what.

MR. ADAMSON: Yes. Most of the platforms out there are -- they're all similar in functionality, at least as far as the commercial platforms. There will be differentiations between them, but I think most of them have the capability to calculate interest correctly. They have the ability to, as you import the data from where it's coming from, the original creditor grantor, and all of that occurs by extracting, transforming and then loading the data into the system. And that's all pretty standard for all of the systems that take collection information.

Once you have that information into the system, then rules are applied to determine if you have the complete data. And there can be alerts generated that indicate we're missing certain pieces of data and you won't accept it, as has been mentioned earlier, until that data is obtained. And then, also, if the data can't be obtained, then that's where there can be automated services to start skip-tracing to see if you can locate that information or to just put the account into a state of, "I need some information about this," and you call and a collector or someone in the collection management process will call back the original credit grantor or the debt buyer, or whoever they got the information from, and see if they can obtain additional information.

And then, from there, it starts through the collection process.

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And then there are forwarding capabilities that these systems will have where, when it needs to go to a legal process, the information, everything that the collection agency has can be forwarded to a company -- like YGC or some other repository for helping with the legal process or any other aspects of the collection process that needs to happen.

MR. BECKER: How widespread are these systems that you're discussing and are sort of proprietary systems that are built by the collector generally as capable?

MR. ADAMSON: I think the proprietary systems are -- and I can't speak entirely from that coming from a different aspect. But our experience has been that most of them have gotten started or have been done to address needs that might be more at a local level or it might be that they got started just because as -- and Chad can talk to that, that they've been in business for 75 years and they just migrated into developing their own system. But I think as far as commercial off-the-shelf systems, there are, our experience is, probably about half the ACA members are probably on a commercial system.

MS. FRAZIER: And, Chad, why did CBE decide to develop a proprietary software instead of using an off-the-shelf product?

MR. BENSON: We've been on our own system now for, I guess, 20 plus years. I think there's a number of ways you look at the architecture of the system and we're kind of strategy driven and I think that's,

you know, kind of an interesting decision versus, you know, an action-based process where human intervention is driving the next step. You're bringing the system architecture into driving the process. And, so, what that essentially does, especially when you look at FDCPA and how that may be relevant, is in areas where there's a lot of gray area, you begin to confine that.

Instead of having 800 people making a decision in somewhat of a gray area, you now confine that decision in a step process with the system doing most of the work.

I think the other thing is speed. So, we want to be able to respond to issues that come up very quickly, innovation and ideas that we believe are fundamentally going to serve all the different markets. We cut across pretty much every market from government to health care, financial services. And, so, all of those needs are fundamentally different. So, being able to customize and build the right strategies to drive that business effectively, from a compliance and a performance standpoint, makes a lot of sense.

But it's a big investment. That's the flip side. We want to believe that emerging technologies, when you talk about voice analytics -- 15 months ago, we made the decision to go down the path of voice analytics and the database levels where we can begin to aggregate information with, not only capturing every phone call, but now analyzing every phone call and using that information to improve our entire process. You just can't do that when

you're trying to pull all the pieces together.

MS. FRAZIER: How does the level of sophistication amongst -- and this is more directed to Jim. How widely does sophistication vary? Especially if you're thinking in terms of like a very small collection agency versus a large collection agency, what is your sense for whether there are any differences in how complicated and complex the systems are?

MR. ADAMSON: We found that very small agencies can be as complex as very large. We found it really doesn't have anything to do with the number -- how large the agency is and how many collectors they have. It has to do with the type of debt that they collect. And that generally dictates the complexity that they will have as they go through the collection process.

So, we have some very small agencies with just a few collectors that are more complicated, and what they have the software do and the rules that they have -- and it's all because of the type of debts they have -- than much larger agencies that maybe aren't dealing with the same type of local conditions or the type of debt that a small agency is dealing with.

MS. FRAZIER: What type of debt would require a higher level of sophistication in terms of software?

MR. ADAMSON: Well, one thing is when you get into the legal process, there's much more that needs to be done in that regard. Some of them, if you get into some of the medical collection areas, there are restrictions that HIPAA requires that agencies have. And debt buying, itself,

has -- when you get into the collection of that, there are reporting requirements that they have, going back to the original debt buyer or all the way back to the original credit grantor on that there.

MR. BECKER: Can anyone comment about -- we heard some conversations this morning about collectors' notes, about the interaction between collectors' notes and data that is created or put in the database after the purchase of the debts and how that interacts with what you learn from the original creditor.

MR. ADAMSON: Yes. As the data comes in from the original credit grantor, data to be used in the collection process, meaning where you can apply a rule where you can make a binary decision, such as "I need to do this or not do that," it needs to be defined very specifically such that you can build rules or connect on it. So, data that -- like documents, original paperwork that a loan may have originated from, that needs to be put into specific fields and comments that are on those documents or paperwork need to be turned into something that can be translated as binary. It means it's a rule.

So, one of the critical parts of having data that you can do something with needs to go through this transformer or translation process. And the more that you can get into a binary form, this is a date, this is an interest rate, this is -- you shouldn't call this number, don't call this person, debt is in dispute, you get all of that information into specific data elements,

then you can then have rules that act upon that.

And as Chad mentioned, they found it much better to have the system manage 800 collectors by making the rules and deciding how to work the debt than to have 800 decisions on how to collect a debt.

During the collection process, collectors then can also add what we call free form notes and those can be a synopsis of a discussion that they had with a consumer. But in order to get that into a usable form where the system can make decisions on it, they then need to have the ability, which all the commercial systems out there have, is the ability to record "this is a dispute." During the conversation, I record dispute. So, hence they can do a check box, designating "this is a dispute" or they can say "this number shouldn't be called" or "the promised amount is X." That's generally how they work through the process.

MR. BENSON: We don't do any work for debt buyers, but I can respond to I think the best practice as it relates to document import/export and management, I think that's a feature as a function of the history of the debt, being able to import PDF files and store those as a function of the account at the account level.

MR. GOLDMAN: This is an example of how technology can help improve efficiency, which is in everyone's interest because we don't think that efficiency is opposed to accuracy. They actually work hand-in-hand. And as Jim was saying, once you can get a piece of data and reduce it to

knowing that the data is there or not there, for example, once you have correctly flagged a matter as being in dispute, any computer can instantly give you a list of all of the cases that are in dispute and not miss a single one, regardless of how many are in the database. And you can treat them differently. If the debtor is represented by an attorney, most of the systems I'm aware of will actually prevent the collector from doing something that's illegal. For example, corresponding directly with the debtor when the system knows that there's an attorney involved. So, this is an example where, in the old days where everything was on 3 by 5 file cards and you could make erasures, when it was all paper based, the opportunity for error was much, much, much, greater than it is now and the opportunity to overlook something is much greater than it is now. Technology goes a long way toward improving accuracy.

MR. BECKER: We have a related question to what you were just saying from the audience. Is information forwarded about disputes that the consumer made with the original creditor?

MR. GOLDMAN: We have places for that information. It's a question of whether it comes -- remember, we're just a conduit. So, if the information comes to us, the answer is yes.

MR. BECKER: Anyone else on the panel, generally is this information forwarded?

MR. PORTNEY: When it's placed or when it's sold or what

was --

MR. BECKER: Well, how about both?

MR. PORTNEY: I don't think they're selling disputed debt and I'm not sure that they're placing it. I think all creditors or debt buyers have processes to bring it back in and investigate it and go through the process of resolving it.

MR. KINKLEY: I disagree. Well, a bigger and related problem is when debt collectors have a dispute. Some of them just fold the tent and sell the debt and they pass that on without marking it as disputed. Of course, there's credit reporting requirements that they don't comply with and so forth. Those are violations of the law already.

I wanted to comment on the technology. You have to really, when you're talking about the technology in the software, my experience is the off-the-shelf stuff is better than the proprietary. I haven't dealt with Jim or his proprietary, so I don't know. It might be that I just get better information about the capabilities when it's off-the-shelf because I have people that will tell us what it will actually do when we're suing them.

But you have to distinguish really three different types, although it's often the same software. The local collection software and how that's used versus the litigation software, whether national or local, and then the national software. And one of the problems with the national and litigation combined is that you have one software platform doing the local collection,

producing the documentation for litigation, collector's notes, action codes and so forth, but then you have an interface with a different national software program and the problem is the people on the national level are able to interface and actually add to the local collectors. It's one interface and you'll see collector's notes or actions being taken by somebody somewhere who we don't know who it is and a local collector.

So, you don't have a clear responsibility of who is making that note or creating that action code from somebody from Minneapolis or Virginia or Georgia versus the guy in Spokane, Washington, that's doing the litigation collection. So, there's an accountability problem there that often leads to errors.

MS. UDIS: I was just going to say, to answer the audience question about disputes, I think we are seeing quite a trend of, particularly in the debt buying industry, of as soon as the consumer disputes a debt, it's immediately pulled back from the debt collector back to the debt buyer and assigned to another debt collector. I think we see that quite a bit. That's very problematic.

And if we see a passive debt buyer, passive in big quotes, who keeps assigning a debt to another debt collector, pulling it back on dispute, then reassigning it to another debt collector, pulling it back as soon as the consumer disputes it, again and again and again, to the consumer's great frustration, we say that that's an unfair practice and we go after the passive,

in big quotes again, debt buyer for that practice because the consumer is validly trying to exercise their right to dispute the debt, and as soon as they do exercise that right, it just gets passed along down the road. That's a big problem from our point of view.

MR. KINKLEY: And on a national level, that hasn't been held necessarily to be an FDCPA violation is the problem.

MS. FRAZIER: Laura, just to bring the discussion back to some consumer protection issues. First of all, it would be interesting to see what you've observed in the law enforcement context about the software systems that your defendants have been using and then, also, what consumer protection problems you've seen when software fails to function the way it should.

MS. UDIS: I had mentioned this in our pre-panel discussion. We've seen some big problems where parallel software seems to work fine in isolation but not when it's coordinated. And the big concern, from our point of view, is the intersection between skip-tracing software and dialer software where the skip-tracing software finds what might be contact information for the consumer and then that is automatically populated into the debt collector's database for the dialer, which calls the consumer and the consumer says, wrong person, not me, and then it's removed from the database for the dialer.

Then the account is assigned back to the skip-tracer to try to

find a good number for the consumer, which then finds the same number, which then is repopulated back into the dialer that calls the same consumer who again says, it's not me. And then it's removed from the system, which is correct. But then there's nothing that blocks it permanently from going back to the skip-tracing software and repopulating it.

Literally, in one case, we saw it ten times. Because of this problem -- and, now, I know there has to, from the people on this panel, there has to be software out there or expensive enough or sophisticated enough software out there that permanently blocks the skip-tracing software from repopulating the same skip-trace number back into the dialer. And, so, part of the problem, I'm sure, is that some of the collection agencies we're seeing aren't using the software correctly or paying up for the added capability that connects the two systems so this doesn't happen.

But, curiously, we've seen this in not just, you know, a ten-collector shop, but, in addition, in collection agencies that have thousand-employee operations. And this has been the biggest problem that my office has faced in the last year. We've taken at least 15 disciplinary actions for this very violation. It's so pernicious that it's just the same action, the same disciplinary action that we're seeing over and over again.

To make it even more problematic for some of the consumers is the less sophisticated type of voicemail message that might be left on consumers' phones from the dialer that says, if you're not the correct

consumer, hang up, as opposed to saying if you're not the correct consumer, press option whatever. So that your only option, if you're not the correct consumer, is to hang up and presumably receive these calls over and over again which is, of course, not a good solution.

So, this problem of too much automation, in a way, is a problem that we've seen and we've had to take disciplinary against. There is, obviously, a solution where the two systems have to be able to communicate, but it's something that apparently some of our even quite large and sophisticated licensed collection agencies were not aware of.

Another problem is -- and it seems very simple, but the consumer calls and says, it's not me, you've got the wrong person, but somehow when that number is removed from the debt collector's database, the search only removes it from one account and, yet, the consumer's phone number was mistakenly skip-traced in or associated with more than one account. So, there have to be, and obviously there are, broader search mechanisms to make sure that this is done to remove that wrong phone number from the entire system.

MS. FRAZIER: For more industry-oriented folks, have you seen this problem, and if so, what has been your response to prevent something like that from happening?

MR. BENSON: I mean, I would characterize best practices in some of the things that we do as far as integration. I mean, I think there's

actually three components. There's the dialer, there's the system and then there's database, and I think those two things merging and being able to manage, from an integration standpoint, your do not call list and the process by which you -- and policy by which you manage the do not call list or wrong number list, those two things definitely have to be aligned. When they do, it's a fairly straightforward process.

I'd also say that the process internally, from a policy standpoint, obviously, who has the right to take that number out of any one of those buckets, I think, is a pretty important best practice. And then, finally, the de-dupe process in any automated batch level process would be important. In other words, the idea that you're going out to multiple skip-trace vendors for phones or addresses or what have you, having a process in place that essentially de-dupes those and doesn't create the repetitive process are all a function of database structure, not necessarily the dialer. That's the export and tool for delivering the action, not necessarily the internal functions of getting it right.

MR. FRAZIER: And to follow up on something you said, you said it depends on who has the authority to go in and remove the bad number. What should be the best practice there?

MR. BENSON: Our general counsel does that, so he has that authority.

MS. FRAZIER: Mike, in your experience as a consumer

advocate, what problems have you seen when software fails to function as it should?

MR. KINKLEY: Well, the function of the software is really quite good. I mean, the technology is there to do things right. It's just that it's economically more feasible to not use all the functionality. What we're talking about is trying to automate and streamline processes, which sometimes, with litigation, particularly don't lend themselves well to automation. If everything that was done that Mr. Goldman was talking about a moment ago with interest rates, it could be done, it should be done. And that's where I see what contributes to compliance problems with the software is that it's more about money and not using the capabilities that are there because it's expensive to do it the absolute best practices way. That differs over platforms, of course.

But in the litigation software, it really has not been necessary, to this point, to do it right because the default judgments, regular on their face, are being presented to courts. So, if you're producing it badly, it hasn't had any economic impact until now that the FTC is looking at it, that there's class actions. Those changes will inform what the software platforms -- how they should be used more than what they're capable of because my understanding, from these gentlemen and others, is the software is really quite, quite capable. It's just that nobody wants to pay the money to do it in that really, really correct way.

MR. GOLDMAN: It's not always a matter of money. It's also a matter of the availability of the data.

MR. KINKLEY: I agree.

MR. GOLDMAN: If a consumer takes out a credit card in 1986 and there's interest being charged all the way along the way, but it only becomes delinquent in 2009, if you're going to recreate all that interest, you're going to need to know every purchase he made and every time the interest rate changed and that -- because the law does not require the banks to keep that information for all those years, it's simply not available. So, it's not a matter of the cost of whether they want to undertake it, it's a question of whether the information is actually available to reconstruct the actual interest rates. So, it's not just cost. It's availability of real data.

MR. KINKLEY: That, too, is a cost. Keeping track of that and then, historically, in the past, there were storage problems. Storage was expensive. Now it's not. So, we're getting better and better data all the time, I agree. But my point is really a simple one that I think the software, from what I've seen, could do most of what's necessary. It's more a matter of choice or, again, garbage in that's limiting the system. Would you agree with that, Stevan?

MR. GOLDMAN: Certainly, garbage in would be a problem, but I think what we're really talking about here is that's a very distinct difference between legal obligations, in terms of best practices, and technology and

automation. And technology and automation should be an aid, should make it easier to identify the legal responsibilities. It would be a mistake to assume that just because you're super efficient and can produce a lot of paperwork in a short period of time that that alleviates a lawyer or a collection agency from doing the right thing.

MR. KINKLEY: And Leah keeps trying to steer us back to technology, but, for me, that legal tail, the legal requirement is the tail that wags the dog here. Because once you understand what the legal requirements really are -- and I don't mean false affidavits in front of a court or getting by with default judgment. I mean doing it right. Once you have those legal requirements, then the software would be required to perform in that way.

I understand that it can perform that way if it were required. If there were a rule that said you must have the original contractor, some proof that the terms and conditions were mailed before the credit card was used, you must have interest rate calculations going back, or the New York City Rule, through the life of the loan, but at least back to a reasonable point. You must state the way that you're calculating interest and what terms and conditions allow you to do that. I mean, if those were all of the requirements that the software -- I think the software can step up and do that or is already ready to do that, don't you?

MR. GOLDMAN: I don't think it can be done without the

software, frankly.

MR. KINKLEY: Well, of course not.

MR. GOLDMAN: But, yeah, I think we're saying the same thing.

MR. ADAMSON: And I second that, that the software can do that. I think, as we talk about best practices, I would imagine that there are -- if we did a survey in this room here on just one particular topic, I bet you there would be quite a few opinions on what the best practice is.

MR. KINKLEY: At least two.

MR. ADAMSON: So, that may not be clearly understood in all cases.

MS. FRAZIER: One thing that was touched on earlier, and it was also touched on during the telephone panel, is how technology can actually ensure that the law isn't violated and consumers are protected. So, it would be interesting to hear about some of the safeguards and software platforms that prevent abuse and law violations.

MR. BENSON: Yeah, I mean, I'll take that. I have a tendency to think about contact as a set of risk events. So, if you think about state, you know, if you think about it at the legislative state or federal level, you have a -- let's just call it 8 or 10, 12 different events within a communication that could effectively end up in some kind of violation. So, what is the best way to

maneuver and mitigate that process?

So, I think, you know, as you look into the future, you're definitely going to see the migration of voice analytics and, I think, business intelligence and the analytical capabilities to best manage information and provide screen-driven requirements prior to next step, as an example, verification of debt, insurance and mini Miranda. Those functions, when you start to integrate a push-type environment with being able to capture voice and then use voice analytics, to acknowledge that that all happened is one side. And I think the other side of it is how negotiation with a vast majority of the consumers who want to settle the debt.

And, so, essentially, you've got to find the best outcome and that creates a lot of challenge. So how you go about thinking about pushing information and negotiating most effectively to solve without creating any kind of harassment related issues.

MS. FRAZIER: So, what functions are programmed into software to make sure that compliance occurs? You said something about screen-driven solutions.

MR. BENSON: Yes. So, as an example, a function before, as a verification, the process of contact takes place, verifying that you are speaking to the right person, as an example, would be the first step before you can move on to any other function within the conversation. So, those steps, including verification of the debt and then how do you go about

negotiating the debt and balance in full all the way down to any kind of settlements and parameters that would be a function of what your clients are allowing you to do or not.

MS. FRAZIER: And how does a software ensure that there is verification and that the process doesn't move forward if there isn't adequate verification?

MR. BENSON: Well, that's a function of the software now being able to tell you where you're compliant or not and then action being taken from that process. So, you're going to see reporting that says, hey, this or that isn't necessarily -- you're not necessarily compliant on a call and now you can address it.

MS. FRAZIER: I think what I'm trying to get at are functions programmed into the software that prevent collectors from taking certain action or things of that nature.

MR. BENSON: Yes.

MS. FRAZIER: So, if anyone on the panel could speak to that, I would be interested in hearing about it.

MR. ADAMSON: I'll take that. Yes, there are functions built into the software where you can have the security or user security that they can do certain things or can't do certain things in the software. The software also has the ability to, instead of requiring a collector to do many steps, they can do one thing like the verification of a do not call, for example, and there

may be several steps that you need to do to properly record that within the database. So, the software can automatically do all of those steps just by requiring the collector to enter in one item there.

Another thing, though, that the software I don't think is really good at is controlling behavior. A lot of what a collector does can be done just by what they say on the telephone. Software, basically, can control the data behind the scenes that it presents to the collector and it can control what happens with that data, but when it comes to the collector interacting with a consumer, at that point, all the computer system can do and the software is just to display the data.

But there are some things that can and are done to help control behavior. As Chad mentioned, when you have a voice recording and you apply analytics to it, that can allow you to determine the quality of that conversation that a collector had with a consumer. The computer will also keep track of audits and logs and time and date stamps of other things they did on the system and keep track of URLs or any other information that is pertinent to that call, which can then be used, in an indirect fashion, to control behavior or to prevent them from doing things that they shouldn't do if they were malicious about wanting to do it. So, there's lots of things that I can do directly and indirectly.

MS. FRAZIER: I think now is a good time to move the discussion to a more forward-looking proposition. Gary, you had earlier

mentioned that using third party data repositories would be a good idea to ensure that there is access to accurate information. So, what information should be contained in such a repository and what do you think the chances of adoption of such a technology are?

MR. PORTNEY: Well, I think they're high. I think it's happening now in repositories in companies that have been established and are getting customers and market adoption. My perspective is that the information on a third party repository should actually start with the original issuer. It should be the baseline data associated with the debtor, whether that's in the form of some kind of flat file or an Excel spreadsheet, and the underlying documentation or the important documentation or media needed to evidence or validate or verify debt.

I personally think, in terms of just listening to this panel, the advantages or the potential of cloud-based computing, our software, as a service, offers, I think, a tremendous amount of advantages to consumers, to establishing best practices and standards within this domain. I think it offers a level of transparency that doesn't exist. I think this industry is operated with a level of opaqueness that is changing as we speak. I think technology can actually force that. I think it can force best practice and standards.

There's other information, but from a pure repository standpoint, I think centralizing this information, potentially opening it up to the consumer directly so that when consumers are speaking with collectors having the same

conversation, they're seeing the same information, I think to a certain extent, levels the playing field. I think it instills consumer confidence. I don't think you can do that with shippable software or more proprietary systems. I think you can only do that with modern technologies.

I think we'll hear a lot about, in the years to come, about cloud computing. It's already happening, obviously, in a lot of industries. I know there's vendors in this industry that are adopting those models or that are starting out. The cost to do those are much less. The openness of those systems are much greater than proprietary or older legacy systems. The movement of information becomes more seamless and more transparent.

But to answer your question specifically, I think the underlying documentation belongs in one central place and then whoever has permissible purpose, you're actually just changing access rights. And that really reduces the cost and improves transparency, I believe.

MS. FRAZIER: Stevan, your company offers a conduit for information to pass from the issuer to the collection agency. So, I was wondering, do you think that using a conduit is the best solution or do you think that there is a benefit to having a centralized repository?

MR. GOLDMAN: Well, both. We are a central repository. That's exactly what we do. We build a new database with all the information that's passed back and forth in both directions and then we allow both sides to access that database. So, it allows the credit owner to check the progress

of the collection agency because every time someone in the agency touches a file, puts a note in, talks to a debtor, strikes a payment arrangement, finds out it's the wrong guy, puts that information into the system, it automatically updates both our database, and then we pass it along to the original sender.

So, that's exactly what we're doing. We are -- but we're doing it, you know, with row level data, as Gary described, as opposed to the actual documentation itself.

And then, if the owner of the debt sends it to one particular agency for collection -- and this was discussed, of course -- and they return it or can't collect it, we don't have to send that back to the original sender, we can then, at the sender's instructions, send it to the next collection agency because we maintain that data and maintain the integrity of it. So, the answer is yes.

MS. FRAZIER: And I think, Gary, what you were talking about is having one repository that the entire industry uses. Is that what you're getting at?

MR. PORTNEY: Or multiple repositories. But the implementation of a repository is to manage certain information, not all information, but certain information. I think it has great potential.

MS. FRAZIER: So, do you think that a conduit could be a solution instead of having a centralized repository because there is a system where an issuer could choose to buy your services to pass information on to

the collectors it's doing business with, but what about the idea of kind of a global or even multiple central repositories?

MR. GOLDMAN: Well, I think it's a great idea. That's exactly what we're doing. And by giving all the participants access to our central database, number one, neither one of them has to expose their own system of record to the outside world. There are no security issues involved because they are only passing us data, but they're not exposing their systems of record to the outside world. They can come to our system, which we maintain in terms of security. But we think that is an advantage in terms of the quality of the data.

The conduit idea is just nothing more than a delivery aid. We kind of like have an electronic mailman. So, if a debt owner has 30,000 accounts that they want to place in a given day and that's going to go out to a combination of 400 lawyers and 300 collection agencies, they can send us a single data file, and we break it apart and then securely deliver it to all the different recipients. And, conversely, when all those people work those files and the information comes back to us, we conglomerate it and send that information off to the debt owner as a single data file.

So, we facilitate their moving of the data. That's the conduit idea. But the centralized database idea, I mean -- and, frankly, as Gary said, there's no reason we couldn't give the consumers access just like we give collectors and the debt owners access to our data. Look, they do it for their

own purposes. They think it's a great business advantage to be able to track progress. But there's no reason that that ability couldn't be given to the consumers as well.

MS. FRAZIER: So, is the software capable of that yet, of providing consumers with access to the information?

MR. GOLDMAN: Ours is. The only thing that's lacking is we would need a way to assign consumers like a PIN number so that everyone got only to their own information. That happens, obviously, now with all of our players because we know who they are and they have individual passwords. But if the consumer were given a PIN number to go to the website, he could then have access to seeing what's going on in terms of all the matters against him that are in our repository.

MR. PORTNEY: Functionally, it's possible. I think looking at things like security and, actually, how you implement that needs to be looked at heavily. I do think there's a cross intersection between repositories and credit reporting agencies and helping to improve the accuracy and integrity of information. And, again, it goes back to my earlier point where if you have this information centralized and you're actually tracking it, the ability to start to clean up some of the issues that the credit reporting agencies have becomes an actual possibility. And we're extremely interested in caring for some of those -- some of those problems.

MS. FRAZIER: What consumer protection concerns may arise

from centralizing this information or establishing a repository?

MR. KINKLEY: Well, the first problem is that -- I agree with Gary that there is a problem with transparency. One of the problems is if there were the actual purchase and sale of the portfolio agreement, the 20 or 50-page agreement, if that were in this repository and it were -- or if it were ever shown to state court judges, they would never sign a default or they would never sign a summary judgment because the sale agreement itself says you can't rely on this very data they're now claiming is supposed to come in under an exception to hearsay. And that's what we're talking about when you're talking about the media, the documentation, the records.

The problem comes in -- it's not that the software probably can't do it. In fact, there are a number of depositories. There's been depositories in the mortgage field. It didn't work out so well with mortgages necessarily. There's depositories now. The problem you have is you have robo-signers who are trying to perform the legal function of authenticating the documentation and providing the business records affidavit. And both of those are necessary.

The problem that's been happening with the repositories as they exist now and the conduits is they find a terms and conditions that might have existed at some time. It may not necessarily be the right one. Oftentimes, the data is stored as bytes, zeroes and ones, and then it's recreated and

printed out to look like a credit card statement when that was never kept. They have data they can reproduce. And that comes up with some really interesting anomalies where you have ads being forced onto the documentation that are copyrighted in 2009 for a supposed credit card statement from 2007. And that's an interesting thing that happens with the conduits even now today.

And the other problem with the conduit is you're still going to have the quality of information. Again, the problem with having this data storage is that the people selling it have very little interest in the quality of the data that they're providing because they're getting rid of it. It's data that they -- you know, that doesn't have much value, so they're selling it for very little.

The problem with the person storing it is -- in the repository and turning it out is they have to do it cheaply. It's very competitive. So, you're only able to do it most cheaply if you can do it in some sort of economies of scale, and the problem with economies of scale is there's too many variances across state lines, across different creditor providers and so forth.

So, again, having the right kind of repository that would meet the legal standards is impossible in our current environment. I think it is doable. It would be great for consumers if it were doable with accurate, complete information. Look, debt buyers now can go back to a lot of the original creditors, for a fee, have them research their files, find the original records, scan them and get them. But they don't do it because it's too

expensive and, frankly, it's not necessary because a judge is going to sign a default anyway without it. Just anything in front of them. That's where we've got to get past.

We've got to get past the point where the state judges are just signing anything because it looks regular. And that's my concern about the database. It's one more place where it's going to look regular, the computer said so. It looks like you're giving a stamp of approval or authority to support this documentation when it doesn't really meet the requirements. Other than that, I think it's a great idea.

MR. PORTNEY: Can I just say a couple things? Sorry. So, first of all, I think it's -- to solve some of these problems that we're talking about you need to innovate and bring new technologies to bear or else they're never going to get solved. I would argue that certainly from a robo-signing, I don't know how prevalent that is today given all the happenings.

I think if you solve the media problem or the documentation problem, the need for affidavits goes down precipitously, first of all. And I think, secondly, the fact of the matter is that this information lives electronically within lot of these originators, and how they get it out -- and the problem has been extracting it out of those systems and getting it into the hands of the people that actually have permissible purpose and need it.

So, when I showed up in the industry, they are -- and this still happens, you've got creditors printing this stuff out, putting it on pallets and

sending it out the back door to a debt buyer. That's changing as we speak. If that first line debt buyer sells that debt, he re-scans all that information, puts it into an imaging system and then he does the exact same thing. He prints it out and sends it out to the next thing. That is a completely inefficient, unsecure model.

And I think if you solve the problem of delivering information or media, the documentation to the appropriate party, a lot of the problems that you just mentioned go away. I think this is completely doable. It's happening. I don't think it's happening fast enough, but it is happening. Some of these problems are being cared for.

MS. FRAZIER: Laura, it would be interesting if you could address some of the consumer protection issues that you see. And, also, we've had conversations about the costs associated with adopting technology that would help collectors be more compliant with the law and, so, it would be good to hear any recommendations that you have for encouraging adoption of these types of technologies.

MS. UDIS: Well, I mean, certainly, to use the extreme example of the robo-signed affidavits, those litigation costs are going to drive changes in the industry, as well. So, talking about costs of obtaining media or verification of debt, it's going to happen through the court-imposed costs. So, it's going to be there either way. It would probably be cheaper just to have that media from the start instead of having court-imposed costs.

But I do think that, again, there's sort of this dichotomy between having verification to address questions that consumers have about disputing debts that might be able to resolve quickly and efficiently questions about, is this my debt, I just need a little bit of clarification to make that determination of either to pay it or to refuse to pay and say, cease communication on the one hand that could perhaps be resolved through some kind of centralized repository versus what kind of proof is required in court in litigation, which, I think, is a different animal and requires a different level of proof and is the kind of thing where we should not assume that something from a repository necessarily meets the level of proof required in court. And that's the inherent potential risk there. That that then becomes hard and fast proof in a lawsuit.

And I think those are two different kinds of proof of a debt, one proof that satisfies a judge; another kind of proof that might satisfy a consumer into saying, oh yes, I remember that or, no, that's definitely not me. So, the repository could satisfy one need, but not necessarily the other. So, I think a repository is, perhaps, an intriguing idea for one, but definitely has some concerns with the other.

MR. KINKLEY: I agree with you. And as you articulated, the problem was the semblance of reliability that is what's trying to be accomplished because the real money is in the litigation collection. The debt buyer and the litigation model is the most effective model. The company's making hundreds of millions or billions a year doing that model. And that's

why they want it or something because they've been getting by with less than reliable data. Now, we're finding out more and more about it and they want some other way to say, oh, but this is reliable. And that's my huge concern.

As far as, oh, let's share this information and talk about it, that's supposed to be reliable, too, under the FDCPA, but I understand what you're saying.

MS. UDIS: And including the overlay of the prevalence of default judgments in litigation. So, yes, that is a concern.

MS. FRAZIER: Just before we wrap up, Gary, it would be interesting to hear from you what steps are taken to ensure that the information housed in such a repository is accurate.

MR. PORTNEY: Well, my company, specifically, we interface with the back-end systems of the banks that we work with. So, from an integration standpoint, it's a single interface. You're not interfacing to multiple parties. So, we directly access that information and those are whole -- that's their document system or their -- it's where their whole documents live. We're not assembling documents as we get them, we're actually delivering whole documents.

From a security standpoint, there's all kinds of standards that any company doing this should certainly adhere to, starting with things like SAS-70 or the new SAS regulations, SAS-16(E), I think it is, PCI compliance --

MS. FRAZIER: Don't look at me.

MR. PORTNEY: What did you say?

MS. FRAZIER: I said, don't look at me.

MR. PORTNEY: Oh. So, PCI, DSS, there's evolving standards. Doing anything within this kind of information, obviously, you have to build that into your plan. My company, specifically, is (inaudible) redundant. We have multiple data sites. Everything is encrypted. We would argue that we're as secure as any -- as you can possibly get with handling this information. As any company doing this should be.

That also is an important point, that you can enforce this. You know, single repositories allow you to have much better enforcement from a security -- you know, you know who's accessing, you know when they're accessing it, all of those things. That doesn't happen when you have different ways of doing it.

MS. FRAZIER: And we have just like two minutes left, so I would like to ask the folks on this side of the table, what do you think that the biggest challenges are for the development of collector software in the future and what can be done to encourage adoption of technology that aids in compliance?

MR. ADAMSON: I think one of the biggest problems for software developers is when new technology arrives on the scene, how can it be used? There's many collection companies that would like to utilize it and

they ask us to start implementing it and we ask how or what should it do and there's not enough case history or enough guidelines to know what should be done or how it should be implemented. So, that's always an issue.

Anything that can be done to help from a regulatory board or others looking forward with regulations, because, often, when you can't apply the new technology, it's not that we don't know how, it's not knowing how it will impact you from a legal or a regulatory standpoint. And, often, it's years before some of those issues are known. So, that's probably our biggest challenge.

MR. BENSON: I would say that there are many, as we discussed not only on this panel but the last two panels, there are many stakeholders in the process. And I think what I've heard is that a stewardship of the consumer and trying to find the right balance as it relates to the standardization of certain areas that are gray clean up, hopefully, a lot of these challenges. It still has to be executed well, but if we can get some of these standards fundamentally laid out, it's then about executing.

MR. GOLDMAN: One of your questions, Leah, was how to encourage adoption of technology that is deemed to be worthwhile. I would suggest that it would be in everyone's interests to have some sort of a reward of a legitimate defense in the event of bona fide human errors. There will always be human errors. I mean, that's just the nature of things. But it seems to me that it's in the consumer's interests to do everything they can to

separate the good players from the bad players.

The good players that we're all aware of here certainly use technology because they want to improve their practices. There is no profit in chasing down the wrong debtor or abusing somebody. They do it for their own selfish purposes. They're in the business to make money and there's no money in litigation, you know, if you get tied up in lawsuits or get sued or violate the FDCPA. But if the law had a way built into it where there was -- in the event of legitimate mistakes, the penalty was not so onerous, that would encourage the adoption of technology.

MS. FRAZIER: I think that's all of our time and, so, I would like to thank all of our panelists for their insightful comments.

(Applause.)

**PANEL 4: COMMUNICATION BY EMAIL: BOON OR BANE TO
COLLECTOR-CONSUMER RELATIONS?**

MR. PAHL: If everyone could please take their seats, we'll begin with the next panel. The moderator of this panel is Ron Isaac, who works in the Division of Financial Practices here at the FTC.

MR. ISAAC: Good afternoon. This panel will explore email,

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whether it's a boon or bane to collectors and consumers in the collection area. It will explore the use of email, how widespread it's being used by collectors, consumers' receptivity to having collectors contact them by email. And we will, of course, talk about the implications for the FDCPA compliance. How can collectors use email and still meet their compliance obligations under the Fair Debt Collections Practices Act?

With that, I will introduce our distinguished panelists. To my far right is Zafar Khan, the Chairman and CEO of RPost U.S., Incorporated. RPOST is a company that provides a variety of specialized services with respect to the delivery, content and security of electronic communications.

To my immediate right is Robert Murphy, Secretary of the National Association of Consumer Advocates. Mr. Murphy is a private attorney who specializes in consumer class litigation.

To my immediate left is Barbara Sinsley, General counsel for DBA International, which is the trade association for debt buyers.

And to my far left is Rich Turner, Vice President of Sales and Marketing for DANTOM Systems, Incorporated. DANTOM Systems provides credit and collection data processing, high speed printing and mailing services for the accounts receivable industry.

You may have noticed that in the agenda David Rainey, President and CFO of Debt Resolve, Incorporated was scheduled to appear on the panel today. But he had to deal with the sudden hospitalization of a

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family member and he won't be able to join us. So, we wish him well in having to deal with that unfortunate circumstance.

So, how widespread is the use of emails in the collection industry with respect to communications with consumers? The ACA, in its comments submitted in connection with this workshop, has reported that fewer than 2 percent of hundreds of millions of annual collection communications use email or text messages. So, if that's accurate, why, in fact, is that the case?

Does that signal that this is a fledgling industry that's just finding its legs and is destined to grow or does it signal that this is an industry -- whose epitaph will be that it failed to meet its potential? I would ask our panelists to answer that question. Let's start with Zafar Khan.

MR. KHAN: Thank you. So, from our perspective, one of the reasons why email is not used en masse in the collections industry is because most of the collections companies are looking for some clarification as to what type of email -- special email services should be used for what type of notices and pieces of correspondence.

So, what happens today is standard email, there are a lot of challenges with standard email and common misconceptions and they're looking for some direction from the regulators. Now, I can go into more detail on that now or wait for a later point.

MR. ISAAC: Does anyone else want to comment on the initial

question?

MS. SINSLEY: Sure. I think one of the problems is what Mr. Khan says, there's no clarity to email. So you have people that routinely will email the military overseas because that's really the only way you can communicate with them, and then you have a handful of collectors that are doing it more frequently, but they still don't know the clarification on are they going to get sued, is it possibly a third party communication.

If you look at the FDCPA, it talks about the definition of communication as a conveyance of information through any medium, but it doesn't say what the medium means. Then you have the rest of the FDCPA that doesn't define the word "send" and it doesn't really talk about the word "mail" that much. It talks about mail with a response to verification, it talks about mailing when you have a post-dated check. But other than that, there's no real clarification in the case law out there, either.

The FTC, in its 2009 workshop report said that debt collectors should be able to use all emerging technologies. The GAO said the same thing. So, I think people would use it more if they had clarification from the FTC or really they'd rather not have it through the case law.

MR. ISAAC: Well, I don't think there's anything in the FDCPA that says that you can't use email, is that correct? And I would assume that if there is nothing that prohibits its use, that it's permissible under the FDCPA.

So, are you suggesting that there is some uncertainty in the industry as to

whether or not they can actually use email?

MR. KHAN: I think it comes back to a lot of the common misconceptions out there and it might be helpful to review those common misconceptions.

The Legal Technology Journal of London, in 2009, January, published a list of the most common misconceptions when it comes to email and we find that this is prevalent across even email experts, both consumer and on the business side. And I brought a paper here that was published by Jeffer, Mangels, Butler and Mitchell, a law firm, that outlines these in more detail.

But just to highlight, a record of what you claim to have sent is not a record that's going to show that, in fact, the message was received on the other side. So, what you have is you have a lot of people relying or incorrectly believing that what you have in your sent item folder is, in fact, what was received. So, first class mail, the presumption is of legal delivery if you have a record of sending that will stand up to scrutiny.

For email, that's not the case, as defined by the Uniform Electronic Transaction Act. So, it's really -- a record of sending is not a record of delivery. A lot of requirements under FDCPA require a record of delivery or providing certain types of notice. You also have people that incorrectly believe that if you print out an email, that printout is going to be a record that will stand up to scrutiny. It's easy for the recipient to simply claim they didn't get it. And, so, you have some challenges there.

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MR. MURPHY: The FDCPA has no requirement for proof of delivery of anything, that you send it out, not delivery. So, that issue is not important. I think that the issue is whether or not -- what is the reluctance of debt collectors to use email is because they get sued. And every single time I've seen a debt collector use email, I have sued them because of 11 noncompliance. Just the content of the email, it tends to be more informal.

And Barbara and I were talking about some of the issues that come up with this and that's why. Congress has already stated, when they enacted CAN-SPAM that -- CAN-SPAM Act, that unwanted emails can be considered to be harassment. Now, the final rule that the FTC had kind of tried to clarify some of the issues of debt collection, but I think the FTC has to probably step in and do some rule-making with respect to using email.

The reason why email is not used is because I think a lot of collection houses -- and I'm looking around the room -- there are some very -- you know, I know a lot of faces in here and, candidly, everyone has an interest in trying to comply with the law. I think what it is, that you cannot trust your own employees to use email without abusing consumers. And that's one of the problems. It tends to gravitate towards informal communications. Unless you go automated email and automation is a job killer.

MR. ISAAC: Well, we'll get into compliance issues a little later. But, first of all, let's talk -- Rich?

MR. TURNER: Yeah, Ron, I just want to mention, you know, when you're talking about emailing, we have a lot of agencies that are actually emailing. So, it really starts with being very conservative. So, the way they're doing that is they're actually getting concurrence from the debtor, on the front end, that they communicate electronically. So, getting consent on the front end, recording that in their systems, then being able to agree in terms of templates that are very generic in terms of that, and then the actual letters are then encrypted in a PDF and able to be opened by the consumer with their own keys. So, not necessarily a debt collector that's communicating with a debtor, but more in an automated fashion that's compliant with FDCPA.

MR. KHAN: In a manner where there's a record. So, if there's a claim from sender/receiver that certain things have not transpired, there is a record that will stand up to scrutiny that this is, in fact, what was said at that point in time and this is, in fact, what has transpired.

But, you know, keep in mind this is about use of email. It's about not just benefitting the collector, but, importantly, providing a very low cost, simple means for the correspondence back and forth that's going to protect the consumer, as well, let the consumer respond and also let the consumer, if they claim not to have received something or claim something has not happened, provide a mechanism to easily solve that type of dispute.

MR. ISAAC: Let's talk about how consumers feel about having

collectors contact them by email. What's your understanding of consumer receptiveness to those types of communications? Is it something that they favor or is it something that they shy away from?

MR. MURPHY: If I could answer that since I'm the guy who represents consumers. I think your comment, Rich, about consumers initiating the email communications, that is more common in terms of communications than when the email communications start.

The concern I have, as a consumer advocate, is not when the consumer initiates it, but, rather, when there's a collection of information concerning the email of that consumer. And I think a lot of the reasons why debt collectors haven't been using email to communicate is, up until recently, over the last, I think, 24 months, there hasn't been an effective way to collect the email addresses for people, and now that has come about.

The concern I have, as an advocate for consumers, is that we're going to have a lot of [15 U.S.C. Section] 1692c violations in attempts to locate a consumer. And in the initial collection phase, we all know that the most effective way to collect a debt, initially, is to communicate with all of the surrounding people, the neighbors, the friends, the people that work with your client. Nothing better than to have Mom calling you on the phone saying, son, I got an email from somebody looking for you at Joe Blow Collection in Buffalo.

And I can see abuses occurring in the very near future of epic

proportions where we're going to have group emails. It's very cheap and very effective to send ten emails to anyone with an email address at LawOfficeof RobertWMurphy.com. I'm looking for Bob Murphy. Can you verify his address? You track C in PDF form as somebody said, but what you're really doing is you're trying to put pressure on that consumer to pay. That's the first issue, the C violation.

And, Barbara, go ahead.

MS. SINSLEY: You knew I was going to respond to that. I agree that there can be C violations, there can be third party issues. But let's talk about consumer convenience. If you talk to most consumers nowadays, people don't like phone calls, right? Nobody likes to be called on the phone. That's the most inconvenient thing, to get called at home at dinner. But what do people like? What do us attorneys like? We like emails. If I want to talk to the FTC, I send them an email. They send a response. I can wait to respond until I'm home in my pajamas, eating my Cheetos when it's a time that's convenient for me.

So, if you talk to consumers, consumers want the same sort of ability to decide when to open their mail. So, how is that really any different than the mail that goes in your mailbox and you decide when you're going to open it?

MR. MURPHY: I'm glad you asked that question because about half of consumers right now have two emails, one at work, one at

home. If the debt collector decides to communicate with the consumer at his place or her place of work, you're going to have a C violation and you're going to have -- why? Well, they're being contacted at work. Let's say I didn't give permission to contact me at work, right?

And some companies have very strong firewalls. My brother's company, I would test it to see if they would catch things. And my client's communications end up being caught by a firewall from a debt collector.

Secondly, if you work for, let's say, the State of Florida, all communications using a government email address are subject to public disclosure. That's the problem. And we don't know where all the information is going.

If the consumer says you can email me at my home address at BobMurphy.gmail whatever, okay, fine. But let's say you go a step further, and this goes back to the TCPA issues, let's say that Chase or Capital One says, in the fine print, we can email you at any email address we find. Is it fair to have that consumer, two or three years later, to get a debt collector calling from Buffalo -- an email from Buffalo at her place of work? No.

MS. SINSLEY: How is that any different than a piece of mail that goes to a mailbox that you're trying to -- you're sending it to that consumer's home address? People keep their email addresses for years. I've had the same AOL address since 1993 when I first figured out there was AOL. So, you can move around, but your email address stays the same.

MR. ISAAC: Let's take a step back and ask, how are collectors obtaining consumers' email addresses in the first instance?

MR. TURNER: Sure. In our instance, there's two ways. Either the debt collector is getting debtor concurrence on the front end and entering the email address and then opting in -- basically, he's opting in to communicate electronically and, therefore, that email -- that record gets marked as being able to communicate electronically or in the letters they're driving them to the web and allowing them to opt in via the web. So, either way, they then have permission to communicate electronically.

MR. ISAAC: So, is there a way for collectors to ensure that the email address they have is, in fact, the accurate email for the debtor they're trying to collect from?

MR. TURNER: Well, from what we see, you know, getting that opting in on the front end isn't 100 percent, but like over 90 percent accuracy in terms of that. So if, in fact, in our world, if that gets a hard bounce or a soft bounce, then they can go by mail after that. But, basically, they're confirming that email.

MR. ISAAC: So, if a consumer has consented, let's say, to the use of email, is that, in fact, a convenience that the industry should be embracing for consumers?

MR. TURNER: I think so. Like Barbara had mentioned, it gives them the ability to look at it. It's, obviously, very convenient. It's not

confrontational, it's not abusive, it's not anything. I mean, it's basically a good mechanism, just another option in terms of communicating.

MR. MURPHY: Rich, how many emails do you think a consumer should be able to get in one day from a debt collector? What would be harassment, though? See, Congress already determined that electronic communications can be harassment when it enacted the CAN-SPAM law.

And I get emails to me that fill up my box, spam and everything else. Let's say a debt collector decides to email that consumer 100 or 200 times a day because there's no cost involved in emailing. And, once again, starting to automate things, it's a job killer. We're depriving people of employment.

MR. TURNER: Again, the way it's being used today is the debtor is asking to communicate electronically. So, we're not -- they're not abusing it. They're basically communicating electronically.

MR. KHAN: Let's start with the assumption that the consumer has provided prior consent to proceed with the collections process electronically. They're confirming consent that they want to be contacted at that particular email address. There's a record of that confirmation of consent, and then there's a record of all the correspondence back and forth. So, if there's a question that someone's acted out of line, there's a record of that. There's a way for the receiver, the consumer, to also have some

accountability around that correspondence by email.

There's arguably much more accountability around electronic correspondence than a telephone call and a telephone message. And it provides the consumer much greater access and ability to respond with accountability if they're doing it electronically with some special email services so that they -- it's a lot easier than having the consumer try to find a fax machine or go to the post office and send a certified letter or something.

Email is easier, it's more convenient, and if the right measures and special services are implemented in the email system, then it can have far greater accountability at lower cost for the consumer as well as for the collections agency.

MR. MURPHY: I have one comment. Mr. Khan, I've heard this now from Ms. Sinsley and you, talking about the convenience to the consumer. And this is a lot of word usage that's very purposeful on your part because you represent the industry. The thing that you don't mention, which I think everyone in this room knows, is it also saves money for the debt collectors, right?

MR. KHAN: Well, it saves money for the debt collectors and the consumers. We have a lot of users of our services that are consumers that are using our services to respond, and they want to respond in ways where they have a record, they have a registered email record that, in fact, their correspondence to eliminate or stop being contacted at that particular

address, to respond to whatever the letter is. They can do that at no cost to them in a manner that has far greater accountability and more convenience than trying to send a paper letter, a fax or call the person up.

MR. MURPHY: But the bottom line is the bottom line, isn't it?

MR. KHAN: The bottom line is protecting both the consumer and the organization with a record -- from our perspective, with a record of who said what to whom and when. Most disputes, most lawsuits are around who said what to whom, at what point in time.

Certainly, if you're using standard email, I agree with you. You shouldn't use standard email services without any special features for this type of correspondence because it is a highly litigious area. You want to use email services that provide the right additional features that give the sender the protection, accountability and proof. And, also, better yet, if the receiver, the consumer can respond using the same type of mechanism.

So, certainly, it does save the consumer cost, it does save the debt collector cost. But it is about efficiency and convenience and accountability.

MR. ISAAC: Let me ask this, if we assume that there are some consumers who would be receptive to receiving email communication from collectors, and there may be some others that are not, are there any collectors who are, in the first instance, for example, with the initial written communication they send to a debtor, listing an email where the consumer

can contact that debt collector? Is that being done in any cases?

MR. KHAN: So, we have a service that's being used, we call it our register reply service, where the outbound email goes as a registered email to a known address and the receiver can simply reply and confirm their consent in writing, and both the outbound and the reply back by email is recorded in a court admissible record that can prove the times of the whole transaction, the forensic audit trail and the content associated with it.

So, this is a way for both parties to be able to have a record of consent to conduct the rest of the collections process at that email address having been originally supplied by the consumer to the debt collector.

MR. MURPHY: Mr. Isaac, I think your question was, is anyone sending out a [15 U.S.C. Section] 1692g notice using email? Was that it?

MR. ISAAC: What do you mean by G notice?

MR. MURPHY: The initial communication.

MR. ISAAC: Yeah.

MR. MURPHY: The initial written communication, I've not seen any what I consider to be -- I've not seen any legitimate debt collectors using email to send out initial written communication, which we refer to as a G notice.

MR. ISAAC: Okay. I wasn't talking about sending out an initial email. I was talking about sending out an initial written communication, a letter, in the first instance.

MR. MURPHY: That's what I meant.

MR. ISAAC: Okay. If that happened, would that alleviate your concerns, Bob, if the consumer then responded to that letter by contacting that debt collector through the email address that he provided?

MR. MURPHY: No, not particularly. But what comes next is what concerns me. What comes next -- if the consumer -- let's say she requests validation by email, letter, whatever. Let's say she requests validation, right, by email, by letter, by mail, whatever. Let's say she properly requested validation and the debt collector decides to use email to respond. Is that permitted under the FDCPA at the present time?

MR. ISAAC: What's your view about that?

MR. MURPHY: No.

MR. ISAAC: Why not?

MR. MURPHY: It says mail.

MS. SINSLEY: Why isn't email mail?

MR. MURPHY: Congress used the word "mail."

MR. KHAN: But there's also the --

MR. MURPHY: At the time this was created, that was considered the U.S. Mail. And I'll tell you why I view having it sent by electronic means not to fulfill the intent of Congress. I've actually filed a lawsuit on this issue because the removal of the word "mail" from the initial -- from the G notice.

A consumer gets it by email, okay? And they open -- they see it and they go, wow, should I open this?

MR. KHAN: Let's start back to your point there. Congress did enact electronic signatures laws that were specifically -- so that each other piece of legislation out there didn't have to change the word "mail" to email. In fact, we have a legal opinion that will talk more specifically about that and we've left a copy out front.

So, because it says mail, it does not mean that email cannot take the place of hard-copy mail -- the concept of functional equivalence here should prevail.

MR. MURPHY: I disagree. I'll tell you why. If a consumer gets an email back from a debt collector which has an attachment, let's say it's a finance agreement or a credit card statement, that consumer may be disinclined to open up the email because they may believe there's malware contained inside of it.

MS. SINSLEY: There's ways to deal with that, though, Bob. One is what Mr. Khan said, which is that Congress has said these documents -- the Electronic Signature Act says a document is an electronic document. So, why is a piece of written mail any more of a document than a PDF?

Secondly, you can send a PDF encrypted where the consumer has to know something, the consumer has to provide their own passport, such as their last four digits of their Social Security number. Then if you're

going to convey validation, you can do it through the types of FTP portals where the PHI gets stripped out, the consumer has to go in, it goes into -- different servers have these features. I have clients that any time I email them, I have to go into this special server because, for some reason, I forgot and I put an account number in my email. If I put an account number in my email, I have to go to this special server. I have to load up my own account and have a certain amount of information before it lets me look at the document.

The same thing can be true with consumers, where a consumer asks for validation to the debt collector, the debt collector wants to send it back to them. In order for that consumer to get it, they're going to have to have something, they're going to have to know something to go onto that portal.

MR. TURNER: Yeah, I agree. I think that both the legislature and the courts have basically recognized the effectiveness of emails and have afforded the same legal effect in privacy as the postal mail in a lot of different businesses. So, I think it's definitely treated a lot like the mail.

MR. ISAAC: (Off microphone) So, moving aside from whether or not the FDCPA considers email to be mail -- if we assume, for purposes of discussion, that it is permissible as a form of communication under the FDCPA that's permitted, should consumers be required to give their consent before a debt collector can contact them through this technology?

MR. MURPHY: Can I respond real quick?

MR. ISAAC: Sure.

MR. MURPHY: With all due respect, I read the white paper, but in the context of this, this was under G, it's a verification or judgment will be mailed. Okay? It's not anything to do with a communication, but rather a physical document. And that's not encompassed within what you were saying.

MR. KHAN: The concept of functional equivalence is -- this is precisely why Congress passed the Electronic Signatures Act. The concept of functional equivalence prevails here absolutely.

MR. MURPHY: The concept --

MR. KHAN: And, look, I'm not a lawyer, but I have a document here, a very detailed legal opinion, that does map these things and I think most people here that are in the legal profession understand that concept. If it says mail, then it can be done by email or mail. The point here is that, in the collections industry, you would want to use some special services so that you have the protections that are going to protect the consumer and have a record for the debt collector so that there is not a problem if there's a dispute, if someone claims not to have received something or claims to have been sent 100 messages in a day.

The debt collector wants a record of precisely what they've sent out, what was received, to protect them, and the consumer needs a way to

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respond electronically in a way that protects them. It simplifies the process and reduces costs for both parties.

MR. ISAAC: If, as Bob states, there is some uncertainty as to whether or not email is permissible under the FDCPA, is that something that should be raised in terms of a possible amendment to the law? If consumers are receptive to using this technology, is that sufficient to justify possible recommendations to making changes in the law?

MS. SINSLEY: Can I answer that?

MR. ISAAC: Yes.

MS. SINSLEY: The FTC could issue a formal opinion letter on it right now and then we would have clarification. We could have that next week. But the answer is yes, but getting Congress to amend the FDCPA -- what, it's 33 years old and hasn't been substantively amended. But I want to go back to your last question, should consumers have to give consent? And the answer is -- my answer is no, because it's mail. I don't have to -- if I incur a debt and you want to mail me a G notice or a valid -- a collection letter, I don't have to give consent for you to mail me that letter. In the same way, I have a right to cease communications as a consumer.

So, consumers have no lesser rights for emails than other mail. So, if I want to cease communication, I use the same provision under the FDCPA.

MR. MURPHY: Except many people share email addresses.

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And sometimes you've got older people, seniors, sharing email addresses with younger people like, for example, my mom. So, you send an email without that person's permission to an address that may be shared by a family or a mom and dad or a minor child and her mother and father.

MS. SINSLEY: But if you use my example, your mother would have to open the PDF with her Social Security number, and then if her son's opening her mail using her Social Security number, that's something he shouldn't be doing.

MR. KHAN: This is precisely why you would not use standard email as it's offered today in the market by standard email systems. You want special features that are going to give you the protections that, again, both parties are going to want.

MR. MURPHY: As I represent flesh and blood people, I don't know too many of my clients that are going to go ahead and agree to put their Social Security number and any identifying information in an email from anyone in the world, unless it's from Nigeria and they're looking to give them money.

(Laughter.)

MS. SINSLEY: But shouldn't they have that option, though?

MR. KHAN: It's not for everyone, right? We're not saying that you can't use mail and you can't use traditional techniques. What we're saying is that there are a lot of people out there that prefer to communicate by

email and they should certainly be able to do that. We're not going to solve it for everyone, but what we're doing is we have -- there are ways to do this electronically that do, again, provide those protections. And if people want to opt out, fine. Better yet, if you can record that they opted out.

MR. MURPHY: You just said opt out. So, you're going to impose a requirement on consumers to opt out. Usually the fair way is to opt in.

MR. KHAN: Or they don't have to respond. They cannot respond --

MR. MURPHY: Then they don't get anything or they get it in the mail?

MR. KHAN: It's whatever the action is that the collectors decide is the action. If there's no response after a week or two weeks, then there's an action. And that action could be different for different types of debt, different for different types of recipients, depending on what information -- the source of information they have. So, we're not going to define all the potential actions that can happen. But the point here is that standard email doesn't have the right protections in this type of industry for collections for potentially contentious communications between sender and consumer. Special email services do provide that capability and are being used today and should be able to be used in the future.

What I think Barbara was asking from FTC is just further clarity

so that it helps people continue to adopt electronic processes that, again, are going to be more convenient and cost beneficial and provide the consumer greater accountability in the back and forth correspondence.

MR. ISAAC: Following up, Barbara, on your position that consumers should not have to consent to having email communication sent to them, would you -- do you feel that debt collectors should adopt some type of procedures that would at least make it more palatable to consumers to receive this type of communication?

MS. SINSLEY: Well, I think it necessarily is more palatable because it's more convenient. People can open it when they want to open it. That's really how -- most people pay their bills online. Most people do most of their personal transactions online now. I don't have one bill that I don't pay online.

But I think if they want to have the options of following the rest of the provisions of the FDCPA, to cease communication, to say that there's a violation, then they have the same rights. But if a consumer gets the initial validation letter and they want regular mail and they want the phone calls, sure, they should have the right to say that.

MR. MURPHY: They have to opt in or opt out?

MS. SINSLEY: What's different than cease communication?

MR. MURPHY: Well, the industry has been pretty bad about ceasing communications. So, let's just -- we're putting another requirement

on these people, right?

MS. SINSLEY: But they're not losing their right there. They're not losing the right to ask for something else, right? By sending an email, you're not telling them you have no other rights. So, you're giving them an option to have something at their convenience.

MR. KHAN: And you can also provide very good records for the consumer's benefit that they, in fact, notified them electronically in that reply that they don't want to be communicated with. That gives the consumer potentially a very good record if the debtor keeps sending out notices and ignoring that type of response. It gives them the evidence that they would need to take to court if that was the action that they wanted to take.

MS. SINSLEY: That's great evidence for plaintiff lawyers. Bob, I'm really surprised you don't like this because this is like this great paper trail back and forth that you can get and file lawsuits on versus, well, a he said/she said, which are very hard to prove.

MR. MURPHY: Actually, I'm not looking to file lawsuits. I'm actually looking to -- in truth. My history has been one where I used to represent debt collection companies and consumer finance companies. But the issue is -- I look at this thing as being a Pandora's box. And I don't purport to be a guy that can write a \$50- or \$60,000 white paper. I can, however, say that I represent people, and a lot of my clients, about 40 or 50

percent of my clients are seniors or people who are poor. And you know what? That's germane to the debt collection industry. Poor people, people who've got financial problems, financially distressed.

Seniors, I think the usage of computers is probably -- I don't know, you experts can tell me. I don't know, 30, 40 percent of people over 70. And, right now, the penetration rate for computers -- this is from the Sun Sentinel, Miami Herald from last week -- in Broward and Dade counties, it's only about 50 percent in my community. So, my concern is that if they don't have a computer, don't have access to the Internet, what do they have to do, go to the public library and do this?

MS. SINSLEY: Well, we couldn't find them then. We can't send them an email if they don't have an email address.

MR. MURPHY: Well, let's say you think you had an email address and you say you sent it to an email address that's not attached to them. I mean, this is what I'm talking about.

MS. SINSLEY: We could go all day, but Ron has another question.

MR. ISAAC: I want to talk about a couple of possibilities for technologies that would make this possibly more convenient for consumers and also for debt collectors here. For example, if there was a portal, a way for consumers to log on to a site where they can view the details of the debt, is that something that would be attractive to consumers and make them more

receptive to using this technology? Is that something that collectors could provide in a fairly cost efficient way?

MR. TURNER: Yeah, I think so. I think today, you know, we have web portals so they can opt in for sure and basically sign in and log in to communicate electronically. There's also ones where they can actually get pulled back to a website to view an account or a bill or a late statement. So, I would say, yes, that's very doable.

MR. KHAN: The other side of that is if you're pushing that information to the consumer after they've requested it, this allows the consumer to have that information much sooner than if you have to provide it through other means. So, it allows them to see the information, decide what they're going to do, and they can take action or not take action based on receipt of that information. It gives them more power and more information faster.

MR. MURPHY: Well, no, I think, what this does is it tends to alleviate the obligation of the debt collector to provide and to furnish the validation information to the consumer. Most collection agencies have got places on their websites where the consumer can go and make payments. The concern I've got is that the debt collector is going to say, well, if you want validation information, here's our [www.BuffaloDebt Collectors.com](http://www.BuffaloDebtCollectors.com) -- I'm banging on Buffalo debt collectors today -- and you can go, put your information in and get it from the website.

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Barbara, do you think that would comply in response to a G obligation to provide validation verification?

MS. SINSLEY: Well, I think it might be easier if they requested it and the debt collector provided it through the portal -- the portal I described so that the personal information is encrypted. The consumer goes to it. They've provided their own password to access the information instead of -- you're saying log on to a website and then access their own information somewhere on the website?

MR. MURPHY: Yeah.

MS. SINSLEY: I haven't seen that.

MR. KHAN: Robert, I agree with you on this point. I believe that the consumer should not be required to go through -- jump through hoops and hurdles and visit websites to retrieve information that the debt collector said they were providing to them. We believe that -- and, again, I'm going to reference the legal opinion that you don't -- you certainly don't have to agree with and certainly is just for clarity for people if they will want an opinion. But the point that we see is that that information should be delivered to the receiver and should be provided to the receiver in a means, in a format that they can open without any extra downloads or software that they might need on their end.

So, delivery to the receiver providing them information is not providing a link back to a website to come and jump through hoops and

hurdles to retrieve it.

MR. MURPHY: We have a partial commonalty of thought.

MR. ISAAC: Let's talk about some of the consumer protection concerns that email may pose for collectors and consumers. Anyone have any thoughts on that? Are there any consumer protection concerns that consumers should be aware of and that collectors should take heed in using this technology?

MR. MURPHY: In the first panel there was a discussion by the gentleman that was seated on the far left concerning the theft of information. And most of the persons in this room probably are aware that there's been a growing problem with payday lender information having been leaked to Indian debt collectors. And the concern I've got is that consumers may get spoofed and have emails sent to them from basically a malevolent source, not a debt collector. And there are issues with respect to safeguarding information once you start promoting electronic communications.

MR. KHAN: I agree again that standard email, and there should be awareness and there should be ways for the consumer to verify the sender, the authenticity of the sender of that particular correspondence. Standard email can be very easily spoofed. I mean, in less than a minute, anyone could send an email appearing to be from anyone. So, again, standard email should not be used in the debt collection practice, in our opinion, but there are special email services that do solve most of the points

and, again, won't solve all of them, but certainly there will be scenarios where there is the ability to do more with special email services.

MR. ISAAC: Is email any more susceptible to spoofing or hacking than traditional forms of communication? Like, for example, letters being sent to consumers that may come from false sources.

MR. KHAN: It may be easier by email and people tend -- but it's probably comparable. It's just as easy by mail and email. But, Rich, you might have some more experience with the mail side.

MR. TURNER: What I was going to say, just in terms of automating that process and controlling it and driving it, it's set up very much like a letter process, right, where they're communicating electronically. But it's tied into having that secure environment, having that PDF, encrypted PDF.

So, it's really built into the whole collection process. And, so, it's very controlled in terms of that environment.

And then, obviously, in terms of the PDFs being encrypted and the passwords being used by either a date of birth or Social Security number, in terms of that, just accessed by the debtor. But standard email --

MR. KHAN: But standard mail, are they equally as easy to spoof? I think that was the question, Rich.

MR. TURNER: I'm not sure. I'm not sure there in terms of spoofing.

MR. ISAAC: Does anyone else have any thoughts on that?

(No response.)

MR. ISAAC: Well, since this isn't a one way street, let's ask if debt collectors can contact consumers by email, how receptive would collectors be to having consumers serve them with legal notice through email if they had a problem with their possible failing to comply with FDCPA requirements?

MR. SINSLEY: I think, first of all, if you're getting lawsuits through email, you're going to have to look at state by state rules on service of process. I don't think there's any state currently that has service of process through email.

Now, there is something, though, that I think should be afforded to debt collectors under the FDCPA that's not afforded that is afforded to consumers, which is, there's a 30-day notice given to a consumer, but there's no 30-day notice given to a debt collector when that consumer is going to sue them. So, maybe they should have -- they could email a 30-day notice, I'm going to sue you, a good faith notice, back to the debt collector, but service of process, you have to follow the state court rules on that.

MR. KHAN: One of the things that we -- well, there are two sides of this. From a personal perspective, I think for a lot of people there's nothing more maddening than being connected by a debt collector or another organization and them telling you that you can't contact me by email because we don't have the mechanism for you to email me back. So, we believe that

it should be a two-way street. But, again, there should be awareness of special email services that are going to provide the consumer the record that they did, in fact, file a complaint or issue a complaint or do whatever -- or send whatever correspondence back to the debt collector.

Now, on RPost, we do provide a free registered email service that gives consumers, at no cost and with no software downloads needed, the capability of sending registered email to the debt collector. We would think that it would be beneficial for the consumers, for the debt collectors to set up a workflow email address to accept these types of correspondence back. It also would provide the debt collector corporation greater insight into whether or not a particular individual debt collector was doing something that wasn't within the guidelines of what the corporation wanted to have happen.

MR. ISAAC: Let me ask you about this particular type of technology. Let's talk about instant messaging. One of the things that I find fascinating is the possibility, for example, of having consumers be able to contact collectors online and interact with them in real time. For example, a debt collector may provide an email address where a consumer can go online and respond to a written communication or initial email communication, explaining why the debt is theirs or is not theirs, why they feel they don't owe it. And the collector can then respond while the consumer is still sitting there

at his computer and they can have an ongoing dialogue electronically.

Are any companies taking advantage of this type of technology right now?

MR. KHAN: I don't know if there are any companies doing it, but I think it's a terrible idea because the whole point of the electronic correspondence by email is to make sure that -- well, if you're using a special email service, you have a record and the consumer is going to want a record just as much as the debt collector. And instant messaging lends to more ad hoc and casual correspondence. In this type of written correspondence, you want to have -- it's better for the consumer to have a mechanism to communicate electronically where they're thinking about what they're writing before they quickly just type in a few words and hit send or submit.

MR. ISAAC: But is that any different from a communication by telephone where you don't have a written record of telephone communication?

MR. KHAN: That's why I think that the email is better than telephone because if you have a telephone conversation, again, most disputes are about who said what to whom at what point in time. By telephone, you don't have that. Instant messaging is too ad hoc and email is more deliberate. But you would want to have mechanisms like registered email where the consumer does have a valid record of exactly what is transacted.

MS. SINSLEY: I saw one of these the other day with instant messaging where the consumer logged on to the portal and they said, do you want to talk to a collector right now, and the collector, it populated the mini Miranda and they had a designated team that would talk to people and it would save to their notes. And the consumer could also print their page so that there was a record of it. So, if the consumer wanted -- they were up and they wanted to pay the bill, work out something right then, I think IM'ing at least gives them that -- affords them that opportunity to talk to somebody when they want to talk to someone. And there are ways, I think, that you can print and store all of the same information just like you would an email and a PDF.

MR. KHAN: But most of that you can edit with a couple clicks of a mouse. So, if someone claims that that's not what is transacted -- and we see this with our customers that people do, with two clicks of a mouse, edit correspondence, edit text files to their benefit and then print it out and it looks authentic, but there's no way to verify the content. So, it's very easy for -- and people are very enterprising. It's very easy for people to change text content.

So, we think that electronic is good, but for this type of correspondence, you'd want a mechanism to be able to authenticate the content, maybe the time it happened, and maybe that it was, in fact, transacted and received back and forth.

MR. ISAAC: Barbara, you mentioned the mini Miranda. Is there a way that collectors can use email communications and still comply with their FDCPA obligations?

MS. SINSLEY: Sure. I mean, it's like any other letter control that a company would implement. If you're going to have a PDF sent and you're not having it sent randomly by the collectors, it's a controlled environment where the letters are approved by the legal department, they're written in compliance with the FDCPA, then if they're controlled, who they go to, they have the mini Miranda on them or they have the validation notice on it, and it's not just collectors randomly emailing statements back and forth, you can have the same protections as the companies have already put on their regular mail.

MR. ISAAC: So, should collectors be required to provide the exact same information that's currently required under the FDCPA by email?

MS. SINSLEY: Yes. I think I'm being redundant, but my position is email is mail. Therefore, same protections, same prohibitions.

MR. TURNER: And just to take one step on that, that's exactly right. In terms of the letters, they look exactly the same. So, wherever the debtor is, the address, it's looking exactly the same, it has the same state, it has the same federal information that it should have on the letter, but just delivered electronically.

MS. SINSLEY: And if you're in Colorado, you have to do

Laura's notice.

MR. TURNER: Yeah, that's right. And it's even more secure than regular mail because it's encrypted whereas regular mail can be opened at a mailbox level.

MR. KHAN: Just a point on the encryption side. I believe that for some types of correspondence, you would want to send encrypted. For others, you might not need to or want to send encrypted because that also creates complexity for the -- as little as it might be -- for the consumer to open the message. So, certainly there are requirements to send messages encrypted in the context of this discussion, but there certainly should not be any requirement to send, for example, a mini Miranda notice attached encrypted.

UNIDENTIFIED MALE: You can repeat the question, but the previous discussion around the Foti type of third party disclosure versus didn't provide the required notices would apply to email if you believe an email can be read by a third party.

MR. KHAN: So, certainly, if there's a specific type or piece of information that you're delivering by email and there's either a requirement, a regulatory requirement or a best practice requirement to put that in a manner or send it in a manner that cannot be read by a party other than the intended recipient, then you can send it by a means of sending it encrypted where it's delivered right to the recipient's desktop, not a click back to a website to

retrieve the information. Certainly, there are other types of correspondence that don't have that requirement based on the content. And if they don't have that requirement, based on the content, then I think that we believe that there are other ways to send it by email that don't need to go encrypted for privacy.

UNIDENTIFIED MALE: Which is exactly where all these Foti lawsuits come from. The phone calls in question are simply, "please call me back." That doesn't seem too much requiring encryption, but it's essentially at the same level you're saying these casual emails can go back and forth unencrypted and not incur a risk of a Foti --

MR. KHAN: Well, that's not what I said, because just the act of -- potentially the act of communicating with that person on the collections process might require the fact that any recipient can only determine that this is a collections type of correspondence if they can access the content of the message.

But what I'm just emphasizing here is that there should not be any perception of -- we believe -- of a requirement that all correspondence associated with collections -- if it goes by email, must be encrypted. We believe that that's not the case. Certainly, the content in the situation will dictate what special email service you need to use.

MR. ISAAC: Let's talk about the convenience restrictions of the FDCPA. How can the collector comply with the time of day restrictions that

currently apply with respect to communications?

MR. TURNER: From an emailing standpoint, yeah. So, basically, the way we look at it is it's similar to the phone in terms of accessing between the hours of, say, 8:00 in the morning and 9:00 at night. We still have that same capability. So, if an agency can only call between those hours, we're doing the same thing in terms of the emailing process. The exact same thing. So, we're treating it more like a phone call from that standpoint.

MR. ISAAC: Okay. You're identifying the time, location of the recipient of the email and then --

MR. TURNER: Actually, of the agency that's sending it out. That's the time zone that's the basis of the 8:00 to 9:00 at night in terms of the process today. So, if an agency is in Eastern Standard time, that's the basis of what have we used and then using that from 8:00 to 9:00 at night in terms of sending.

MS. SINSLEY: And that probably is best practices and probably a good idea to do that. But if you're treating it as mail, you're putting things in the mail, they might be getting it in the mailbox at midnight. So, if it's mail, there's no call restrictions. So, my position is that would be best practices, it's not necessary to do that. If someone wants to access their mail at midnight, if it was sent at 7:30 in the morning and they got their mail -- their mailman comes at 7:30 in the morning, how is that any different?

MR. MURPHY: Well, it interferes with my playing Warcraft.

(Laughter.)

MS. SINSLEY: Answer your emails anyway.

MR. ISAAC: How about the limitations on the number of calls?

Of course, the FDCPA prohibits abusive calling or abusive contacts. Should email communications be held to the same standard? If we assume, for example, that consumers have the option with email of opening up the communication at any time they want and not looking at it if they don't want, should that somehow justify a distinction in the number of communications or number of email communications that a collector can send out to a debtor?

MR. MURPHY: The answer is if -- I get about 500 emails a day. If I'm going to get 100 emails a day from a debt collector, it's filling up my box, I have to still spend my time to delete that stuff, or because if I want a record of it, I have to print it. And, you know, there is a point where emails become abusive and Congress already made that determination. And I think part of what -- I'll save it. Go ahead.

MR. TURNER: I think just in terms of the process, again, it's an automated process and, again, it's very similar to sending out a notice. So, it's tied -- it's really business-to-consumer, it's not consumer-to-consumer. So, it's just an automated process and it's sending one notice, basically, just like it would a letter.

MR. ISAAC: Let's talk briefly about communications with third

parties. Are collectors, to your knowledge, using email at all to contact third parties for location information? Anyone?

MR. TURNER: Say that again.

MR. ISAAC: Are debt collectors using emails to contact third parties? For example, they may not have the location information for the debtor, but they know the email address of the debtor's brother or debtor's employer. Are they using that information to contact those parties by email?

MR. TURNER: Not in my world, no.

MR. ISAAC: Should they be allowed to? Anyone have any comments on that?

MR. TURNER: Well, again, I think the whole basis is communicating with a debtor that wants to communicate electronically and, therefore, opting in and communicating that way. So, it's a process. It's very conservative in terms of the process, but, again, not -- technology is changing and where you can confirm probably that debtor address down the line where that will be a part of the play. But, right now, it's obviously very conservative in terms of that.

MR. MURPHY: I think the reason why you're not seeing it yet is because, in terms of the underwriting of loans, when they get credit references still, auto loans and other types of extensions of credit, they're not asking for email addresses. And I don't want to encourage you all to tell people to do that, but they're getting traditional information, name, address,

telephone number.

And that's why the third party communications go by telephone since they have the references there. That's the primary reason why they have it, to find a consumer. I don't see it presently. I anticipate we'll be seeing it shortly, so that's why I'm speaking about it.

MR. ISAAC: We have a question from the floor. It's conventional wisdom that it is a federal crime to open another's U.S. mail. Under functional equivalence, is it also a crime, under U.S. law, to open someone else's email?

MR. TURNER: Yeah, I think that's a yes. As a matter of fact, there's even --

MR. MURPHY: Electronic Communications Privacy Act.

MR. TURNER: There's even a postmark that can be used in terms of the federal and the USPS that can actually go along with the email, and it's treated just like the same offense in terms of a federal offense in terms of opening mail. Exact same, yeah.

MR. KHAN: I don't have a detailed answer, but in terms of email having -- I believe email and mail are -- the protections around them are different categories. There are different protections afforded to U.S. mail than any email even with a U.S. Mail Postal Service emblem on it. But that's just a thought on that topic.

MR. ISAAC: I want to encourage the audience to submit their

questions. At this time, we'll be taking comments or questions from the floor and also by webcast. So, feel free, at this time, to raise your hand if you have a card with your question.

In the meantime, I want to talk about electronic payment. How widespread is the use of electronic payment mechanisms in the debt collection area with respect to this technology? Are collectors employing this technology to have consumers contact them and pay their debts online? Is that being done?

MS. SINSLEY: I think what you're saying is, are debt collectors using standard payment portals where the consumers can go to Paypal or Pay My Bill or some of the other ones and direct the payments through a third party? You don't see -- you see some direct payments to some agencies, but more third party payments are done electronically.

MR. ISAAC: There aren't a number of collectors who are equipped at this point in time to receive payments directly from debtors. It's done through third party sources is what you're saying.

MS. SINSLEY: Probably the majority, yes.

MR. ISAAC: Do you see that changing in the future?

MS. SINSLEY: Well, I think as the technology changes and debt collectors have more of the security in place on payments and can figure out the issues around convenience fees, because that's a huge issue with receiving payments, and the cost of it, who is bearing the cost? The

consumers can go to a third party, and if there's a fee, they're paying the third party. They're not paying the debt collector. And there's been quite a bit of litigation on convenience fees imposed by debt collectors. So, if you outsource that function, you also outsource the liabilities.

MR. ISAAC: If collectors were able to make this source, this electronic source of payments available to consumers, is that something that you see attracting consumers and being more receptive to using that form of technology?

MR. TURNER: Yeah, I think it's used quite a bit, obviously, in the first party world. And, so, I think from an agency standpoint, it really facilitates a lot of the automated process. So, on a lot of the letters that are going out, they'll have that web portal where they can have that option to make a payment and it really kind of facilitates and makes it easy and convenient to make those payments.

MR. ISAAC: Are there any FDCPA compliance issues that arise with respect to this technology?

MR. TURNER: I think Barbara made mention to the convenience fee. I think that's probably the biggest thing.

MR. MURPHY: Just the charges, that's it.

MR. TURNER: Yeah, exactly.

UNIDENTIFIED MALE: (Off microphone) If a consumer uses the Paypal or a credit card to pay a debt electronically in full, are you just

shifting the debt to the new credit card collector if the consumer ultimately can't pay the balance on that credit card?

MR. ISAAC: I'm sorry, you're going to have, if you want, to stand up and speak out so that can be recorded.

UNIDENTIFIED MALE: I'm just wondering if the electronic payment is used, if a consumer pays the debt and pays it in full using a credit card, that debt is paid. But if he's paying it with a credit card, haven't you shifted an obligation to a new creditor who may not get paid over time as the credit card balance just remains unpaid? Is there any exposure or liability or paybacks?

MR. ISAAC: Anyone want to comment on that?

MR. KHAN: It is whatever happens there. It's not really anything that electronic processing or any third party collections processing system is going to have any impact on where people are shifting their debt. So, I don't see a lot of relevance to the panel here.

UNIDENTIFIED MALE: Well, I can see a lot of incentive for the current debt collector to encourage the consumer to use his credit card to pay the current debt.

MR. MURPHY: It happens all the time. They check credit reports and see what you've got in the way of open lines of credit, they also see if you've got a home equity line that's not been fully tapped. Their goal is not to ensure that somebody else gets paid; their goal is to get paid.

And I think your question I understand, but the issues with respect to this, basically, all deal with fees. In that instance of using a credit card, the debt collector takes the hit because they're going to get charged a fee by Mastercard or Visa or American Express.

MR. ISAAC: Okay, here's a question from the floor. If a collector chooses to execute electric transactions to closure, that is payment under electronic law with E-sign, the consumer must provide up-front consent to proceed electronically. Is that correct?

MR. MURPHY: That's my understanding. And that also is a problem with providing the G notice electronically, the initial validation notice, is that the consumer had to provide that consent. And unless they have the consent, they can't do it.

MS. SINSLEY: I agree. That sounds more like an ACH question, though, on how the payments are being consented to and then the storage period for those ACH consents.

MR. KHAN: And I think one of the things that we found with some of our business partners is that they're employing different electronic mechanisms to process transactions based on the type of transaction. So, with a recurring ACH, they'll use a different way to record the consent than if it's a credit card payment.

MR. ISAAC: This questioner has a concern about shared email accounts. The concern is that U.S. Mail can only be opened by the

addressee, but email can be opened by anyone. So, doesn't email tend to disclose confidential information to unintended parties when email accounts are shared?

MR. KHAN: I think we touched on this earlier. The key thing here is, yes, standard email, if it has information that's confidential in the collections process, probably should be sent -- the email should be sent using a special email service, a special email service that protects the information and has a way to confirm that the intended recipient is the only one that can view it.

So, standard email services, yes, have those problems. Special email services, some of them have ways to work that don't have those same issues.

MR. ISAAC: Any other questions from the floor?

(No response.)

MR. ISAAC: Any other comments from the panelists?

MR. MURPHY: I have a closing remark. Is this what you're offering? This whole workshop was dedicated towards discussing technology and most of it, however, is related to the reduction of a workforce from the debt collection agencies, both with respect to robo-calls, where you're getting automated telephone calls, to electronic communications.

From the viewpoint of a consumer advocate, oftentimes the consumer -- they're, once again, flesh and blood people -- don't want to have

an electronic means for communicating. That's something very personal, the fact that they may be in financial difficulty or, in some instances, a financial failure. And I'm not advocating this, but, oftentimes, it is effective to have traditional first voice and second voice communications to a consumer.

And we also can have a development of, basically, outsourcing all debt collection activities to outside the United States. And I use the expression "job killer," and this is a bipartisan comment. A lot of people depend on being debt collectors for their jobs. And I know that most of the people in this room are management. It's odd that I, as a consumer advocate, would make that comment, but I'm very sensitive to the fact that I've taken depositions, in fact, of some people in this room, and they're very decent people with jobs, and the trend could go towards where you're not having people collecting debts from Americans in the United States, even with respect to having the instant communications that you had commented.

Most of those instant communications done by industry throughout the United States are done outside the United States by persons in India and elsewhere, taking jobs away from Americans. And this is where we have a commonality of interests is, I do want to have an American collection industry, not only because I, obviously, make my living off of suing you folks, but also --

(Laughter.)

MR. MURPHY: I'm candid. You know, just like he is out here

talking about what his business does, the same with everyone on this panel, the fact of the matter is we need a vibrant, strong and compliant debt collection industry in the United States. And if lawyers like me are a pain to you, it's because we're bringing out some instances where your employees are not doing their job. That's it.

If it's a compliant world and I don't have to do this, great. I move on to something else. I sue auto dealers, too.

(Laughter.)

MR. MURPHY: And I enjoy being with the panel members. And Barbara and I -- I got a text from her partner when I was up here, thank you, Manny.

MS. SINSLEY: Thanks, Manny.

(Laughter.)

MR. ISAAC: I'm going to give Barbara a chance to respond.

MS. SINSLEY: That's interesting and heartwarming, Bob --

(Laughter.)

MS. SINSLEY: -- but I think the problem is that the industry realizes that consumers have a problem with communication. The communication gap with consumers has caused this huge litigation glut. And Julie Brill, from the FTC, came to the ACA last year with the FTC report on litigation and said, enough is enough. You've got all these lawsuits that you're suing against people and, yes, there's a problem with the lawsuit, but

why are you suing everybody? And everywhere I go, I go to the Attorney Generals and their biggest beef is the number of lawsuits against consumers.

I know Cary Flitter wrote an article that said, sue up or shut up, or shut up or sue up. And I said to Cary, I said, you know what, consumers don't want to get sued. People would rather work it out. They'd rather work out their debts either by letter, by phone call, by email, but have some opportunity for communication.

And the biggest problem with the FDCPA, right now, is that there's lack of clarity on how to communicate with consumers. The FTC said it and the GAO said it.

So, we're taking away jobs from collectors that might be making phone calls and sending letters, I think, is an interesting point. I think the problem with the point is you're not addressing the bigger problem of the communication gap and the amount of suits we have going on right now.

MR. FLITTER: Barbara, I didn't write it. Time Magazine wrote it.

MR. ISAAC: Zafar?

MR. KHAN: So, we look at email as certainly it doesn't have -- whether they use email or whether there's other forms of communication, we see it as email if you're using special email services to provide just as much benefit to the consumer to correspond back to the collector as the collector to

communicate with the consumer. So, what we believe is that people should use special email services that do provide the right accountability around that correspondence.

But it's both ways. It's out to the consumer and from the consumer back to the collector. So, if there are simple ways for the consumer to communicate with the collector, as Barbara was mentioning, that's a benefit to the consumer, as well.

MR. ISAAC: Rich?

MR. TURNER: I think that email really promotes the FDCPA's purpose in terms of communicating easily and efficiently with the debtors and being able to have that extra option. And it is a very secure process and, so, just another option in terms of communicating and improving communication.

MR. ISAAC: We're just about out of time. I want to thank our panelists for a very lively discussion this afternoon.

(Applause.)

MR. PAHL: We'll now take a break and I'd ask everybody to be back in their seats by 3:15 for our social media panel.

**PANEL 5: USING SOCIAL MEDIA FOR DEBT COLLECTION:
CONSUMER INFORMATION, COLLECTOR COMMUNICATIONS, AND
PRIVACY ISSUES**

MR. PAHL: All right, thank you very much, everyone. We're on to our social media panel. The moderator for this panel will be Bevin Murphy, who works in the Division of Financial Practices.

MS. MURPHY: Thanks, Tom. Welcome back, everyone. This is going to be the social media panel. Thank you to our panelists for graciously agreeing to be here and to our audience for graciously coming back from break. It's been a long slog and I know we're getting towards the end of the day. We still have some very exciting topics left to talk about. So, we appreciate everyone being here and actually everyone's participation as well.

So, I would just like to issue a couple reminders. For those of you joining us here in the conference room, please submit any questions you have. We had included comment cards in your folders. If you don't have

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those, you can get some more, and we will have FTC folks circulating to collect those.

And for those of you watching our webcast, we are still monitoring the email account, it's dctech -- D-C-T-E-C-H -- @ftc.gov.

Before we begin, I would like to briefly introduce my panelists. You can find their bios located in your folders.

Starting from my right, we have John Bedard. He is a principal at Bedard Law Group. Next to him is Dan Edelman. He is a principal at Edelman, Combs, Lattuner & Goodwin. Directly to my right is Susan Grant. She's the Director of Consumer Protection at the Consumer Federation of America. To my left is Billy Howard. He is the Head of Consumer Protection at Morgan & Morgan. To his left is Vytas Kisielius. He is the CEO of Collections Marketing Center. And last, but not least, we have Christine Schiwietz. She is a Professor of Sociology at Georgetown University.

So, just a short summary before we begin. I think it would be helpful, particularly with this topic, to just define our terms a bit. In terms of social media, the definition can actually be somewhat elusive. I think you will find different definitions depending on who you talk to. But, in general, what we're going to be talking about here are various website platforms that you can either access on your laptop or through an app on a mobile phone that have some sort of interactive social networking element, usually

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consumer-generated content or user-generated content.

Just very common examples are Facebook, LinkedIn, Twitter, Myspace. But there are certainly others and certain websites that have a user participation element can almost be, I guess, kind of considered crossover. They have certain aspects of social media. But, in general, we'll be talking about the Facebooks, the Twitters, LinkedIns, those types of platforms.

So, the way that we're going to organize this panel is that it can basically be divided up into two sub-topics. So, on the one hand, we have the research skip-tracing element. What we're generally talking about there is the public portions of social media sites.

So, when there are no privacy settings or limited privacy settings, what is out there about consumers and alleged debtors, you know, what information about them, about assets, how are collectors -- how are they using these sites, what information is out there, and what are consumer attitudes and perceptions, what sorts of privacy expectations are there?

After that, we're going to move into the communications element. So, this can also be done on portions of the sites that are completely public. And that, of course, generates some consumer protection concerns. But there are also elements of communication that are specific to the private forms of social media. So, when consumers have used various privacy settings, you know, can collectors on Facebook friend a consumer?

Can they use the email and messaging component? Can they post on a consumer's wall, the alleged debtor's wall? Can they post on a friend or family members walls? Those are going to be the questions we're going to be talking about.

So, throughout the skip-tracing portion, which we'll talk about first, and then going into the communications portion, we want to get at what's going on, so what is being done, how often is it being done, and what sorts of consumer protection concerns are raised? And then, just policy-wise, should something be done? What should be done and who should do it?

So, step one, starting with the skip-tracing research portion. We have heard that debt collectors are using social media sites as a form of or supplement to their research about consumers. They are skip-tracing. So, I'm going to throw it open to the panel.

Before I do, if I could remind all my panelists to just pull the mics a little bit closer. I think some folks watching the webcast are having trouble hearing. So, just kind of drag it forward.

Okay, let's throw it out there. So, are debt collectors using social-media sites to research consumers?

MR. BEDARD: Yes, they are and there's nothing wrong with it.

(Laughter.)

MS. MURPHY: Let's start with Part A there. To what extent?

MR. BEDARD: To the extent consumers are actually putting

their personal information in public places, I think that there are some debt collectors who are gathering that information and using it, and I don't think there's anything wrong with it because I think it comes down to an expectation of privacy.

And, in my view, consumers have no more an expectation of privacy when they put their personal information on public websites than when they take that very same information and publish it on an interstate highway billboard. And I think it's wrong to condemn debt collectors who view that information and who use that information when they drive by on the Internet superhighway.

MS. MURPHY: Well, backing up. So how are debt collectors using these sites? I mean, are they outsourcing this? Are they hiring companies? We heard this morning about skip-tracing -- social-network scraping that was offered as a service to debt collectors. So, is this being outsourced or are they doing this in-house? How's this working?

MR. BEDARD: I haven't seen many folks outsourcing that service. I have seen, however, in-house skip-tracers, who are trying to locate consumers, visit public sites, such as Facebook or Myspace or these other Internet services where consumers are very publicly providing their information to the public on who they are, what their birthday is, where they live, what their phone number is, how it might be easy to contact them. That's the context I have seen it in.

MS. MURPHY: And is this generally somehow automated or is it a we can't find these debtors, why don't we go look them up? Are there designated people within the agency who are doing this? How is it structured?

MR. BEDARD: I haven't seen that as an automated process, no. There are, to use Robert Murphy's term, flesh-and-blood people that are actually on the Internet trying to locate consumers, finding this information on the Web.

MR. HOWARD: And just to jump in here, just because somebody takes out a billboard doesn't mean that you can go and paint graffiti all over it, and that's what I've seen with Facebook specifically. I have a client where it's not just the contact of Facebook, it's everything. It's the harassment of numerous phone calls, and then there's text messages, then there's coming to somebody's work, and then on top of everything, they use Facebook to contact family members and friends. And the use of Facebook is very shocking to family members that have nothing to do with the debt.

Now, I heard somebody talking about it earlier, and that is, all of a sudden, a debt collector decides to use Facebook. They contact a family member, they contact a cousin, and then it has the desired effect, and that is, all of a sudden, mom finds out. Well, what's wrong with our daughter? You know, she's not making her payments or, you know, is she in trouble? And they're using Facebook to scare people, and the end result is just to get paid.

I mean, that's what harassment normally does. That's why people do it. That's why it's used to contact third parties, family members. That is one of the oldest debt-collector tricks that there is, is you contact third parties and family members, and that makes that bill get paid quicker than an individual has the ability to or sometimes, you know, when they don't even owe that money.

MS. MURPHY: Okay, let's bracket off the communications part just for now. In terms of the researching of consumers, it might be a good time to bring in our -- luckily, we have a Professor of Sociology who studies social media here.

Christine, can you speak to, I guess, consumer expectations? I mean, would a consumer who is on these social media sites -- and many are today -- would they think that a debt collector would be looking at the information they put out there?

MS. SCHIWETZ: Well, this is -- hello.

This -- oh, now my chair broke. There.

MR. KISIELIUS: You broke the floor (humorously).

MS. SCHIWETZ: I broke the floor (humorously).

MS. SCHIWETZ: So, what we're seeing right now in terms of the skip-tracing, it's not even necessarily skip-tracing or to be outsourced. What we see is that anybody can perform a quick Google search, and it doesn't take -- I mean, we've all put our information out there on the Web, and we

look at this in terms of digital footprints, and we call them first-degree digital footprints, which we voluntarily give away, and those are the types where we knowingly provide this information. Let's say we're purchasing something, and be interested, you know, to cooperate and trust, or we blog, tweet, you know, participate in social media, and we know that we're giving away this information.

Then we have the secondary footprints that we have, and that's information about us that's out there on the Web that others have provided about us. So, we might be tagged in photos. You might not have set up a site, but somebody else might have tagged us, and your nephew somewhere else has put your name out there. So all of this becomes coded and stored information that skip-tracers, sure, can find.

But any -- all groups Google. Even if you're meeting somebody, you know, you quickly Google, and some say it might even be irresponsible if you don't perform that quick Google search.

And on top of that, then you have those web-scraping companies who aggregate then all this data and everything they find about you, photos, websites, blogs, publications, and they give it away for free. And if you pay then, of course, a fee -- yeah.

So, you're very -- I think we, as Americans, we copiously believe that we can keep our information private, or we have these expectations of privacy. But, in a way, it's a myth because privacy pretty much is dead in

this context.

MS. GRANT: May I?

MS. MURPHY: Sure.

MS. GRANT: I think it's true that people are putting a lot of information online, but I don't think that they necessarily realize how it's being accessed and how it's being used. When people put their information on social networking sites, for instance, they think that that is going to be seen by their friends and relatives and colleagues and other people with whom they have mutual interests. They don't realize that things like web-scraping are going on because it's invisible to them.

And this is actually an issue that's larger than just debt collection, an issue about the collection of information, about people without their knowledge, about whether or not it's happening, who's doing it, and how it's being used. So, at the very least, it seems to us that consumers should know that it's happening, who's doing it, and for what purpose, so that they can make better decisions about what information they put out there.

MR. EDELMAN: From a legal standpoint, to the extent that somebody's using Google or a similar browser that anybody can use to obtain information on the Internet about someone that anybody can get, I don't see a legal problem. I do think that the process is fraught with legal risk where there is some communication between the searcher and the medium, the holder of the information, because you then get into issues of are you

properly disclosing your identity or corporate identity, and the purpose of the inquiry, is there some express or implicit misrepresentation made to either the target of the search or the media concerning the purpose of the search.

And I think, for example, something such as a friend request is a representation, and if made by a debt collector, is almost never going to be truthful, in the sense that it is not going to be a communication that is consistent in purpose with the ordinary understanding of the public when such a request is made. So, anything other than a simple search for what is literally posted as a billboard on the information superhighway is a problem.

MS. MURPHY: Okay, well, even the idea of a simple search still might not even be as simple as we think. So, I'd like to talk about the process, to the extent the panelists have any experience or knowledge. I mean, in terms of searching social media sites, is this a Google search that then pulls up social media sites, or are collectors going to Facebook, LinkedIn, and searching there?

If so, are they actually -- even before we get to communication, are they logging in anywhere to do these searches? Like, how -- logistically, how do you go about -- say you want to find someone and you think they might be on Facebook or LinkedIn. How do you do this?

MR. BEDARD: I mean, we've all done it whether we want to admit it or not. You can just go to the Facebook site, and I think they have a search bar right there. Literally, you can search folks on Facebook.

MS. MURPHY: Right. I know how I'd Google-stalk someone.

MR. BEDARD: Yeah, right.

MS. MURPHY: I'm just asking how collectors do it.

(Laughter.)

MR. BEDARD: Okay, well, it's the same search bar and, so, they don't do it any differently. I mean, I think that's the way it happens. Google searches or Facebook searches, I think it's the same search field for all of us, and I think that's -- that's the way I've seen it done, anyway.

MS. MURPHY: So, your understanding is that it would be done through a search engine, not necessarily logging into Facebook and viewing what can be seen without communicating with someone?

MR. BEDARD: I've actually seen it both ways, collectors who have actually created a truthful profile in Facebook and have done searches without engaging in any communications with consumers, and simply by Googling them, for lack of a better term.

MS. MURPHY: Do any of the other panelists have any thoughts on how exactly this is done?

MS. SCHIWETZ: No, but even if you do a simple Google search, and let's say that person's name appears in their LinkedIn network, they might list there that they have a new job title or a new position. So, automatically it will be like, well, they can pay their debt then.

MS. MURPHY: And what can we say about -- because it just --

especially since we're talking a lot about technology and automation here, it just seems like a very personal and time-intensive endeavor if we have someone searching online, I mean, if it's not automated. So, for what kinds of debtors or for what kinds of debt is this being done? Like why would a debt collector decide to make that next step, say, beyond whatever their other methods are to go on Facebook or go on LinkedIn?

MR. BEDARD: I think that the answer to that question is probably unique to every collector in terms of what kind of debt the collector's collecting, low balance, high balance, whether it's, you know, medical debt or some other kind of balance. I don't think the answer's going to be the same for every collector.

But if you've got no good contact information, what else is there to do other than to begin backing off these automated processes that you've referred to if they are not working and to really spend some human capital and try and get the proper information to get the proper consumer on the phone?

MR. EDELMAN: The instances where I've seen use of social networks involve fairly substantial debts, \$20-, \$25,000 and up. I wouldn't think it would make economic sense for much less than that.

I also don't think there's ever going to be a case where somebody has incurred a debt in a transaction that results in absolutely no

trace of who the correct person is. They presumably gave some kind of identifying information when they incurred the debt. If it's a case of identity theft, it's going to be completely false, in which case the likelihood of collection is -- from the correct person, is minimal. But some kind of information had to have been given, an address, a phone number, something.

And, normally, I would think that would be a far more reliable means of identifying somebody than an Internet search.

MR. HOWARD: And I've seen companies that are just implementing the use of Facebook in their search portfolio, and it's over -- I have a couple of lawsuits that are currently being litigated, and they're over just a few hundred dollars. It's just part of their system is to go on to Facebook and see what they can get.

MS. MURPHY: So, for these companies, there would be no selection process. Any sort of debtor, it seems, they would search for them on social media sites in addition to their other procedures?

MR. HOWARD: I think there's a lot of companies that have that as part of their repertoire right now, whether or not they're going to come out and tell everybody that or not. But there are a number of insurance companies that do this all the time as just part of their background search on individuals, and I think it's going to happen more and more in the future.

MR. BEDARD: Is there anything wrong with that, Billy, you think?

MR. HOWARD: You know, what I see is wrong with it is every time I see that there is a contact through Facebook, I see a violation of the law.

MR. BEDARD: Setting aside the contact -- we're going to get to that shortly -- but in terms of simply obtaining and viewing information that consumers publish in public places, is there any disagreement on the panel on whether or not that's okay?

MS. GRANT: Well, aside from the concerns that I already expressed, the other concern that I have about it is I'm not sure how accurate it is in finding somebody. There are an awful lot of people on sites like Facebook with similar names and other characteristics. And, so, that was my question earlier, and I don't know if anybody has an answer to it. If you are trying to locate somebody on Facebook, how likely is it that you're going to find the person you're really looking for, or does that generate more of these contacting people who happen not to be the ones that you're looking for?

MS. MURPHY: Thank you. That's a good question. Do any of the panelists have a response to that? Because the difference between using social media as a form of skip-tracing versus more traditional methods of skip-tracing is that there is more information out there.

So, if you're trying to find a debtor on Facebook, you know, you might see posts on their wall, you might see a picture of them. It does raise

more privacy concerns. So, how do collectors determine whether they're even finding the correct debtor on social media?

MR. EDELMAN: I've had a number of cases involving basically bad skip-tracing, bad identification, erroneous tracing of debtors, even to the point of filing lawsuits against the wrong persons. Unless somebody has highly unusual names and other characteristics, the likelihood of error is quite high, even with names that people might not think are that common.

MR. KISIELIUS: Isn't the issue here, though, that we're all kind of dealing with the creepiness factor of this?

(Laughter.)

MR. KISIELIUS: Because the truth is -- I mean, I yell at my kids about this. Anything you put out there, as Christine has said, is out there. It's like a party line that everybody can listen in on. Very few of you are old enough to remember party lines, but it used to be you didn't speak about things on the telephone because you didn't know if Mrs. McGillicutty was listening. And, so, you just -- you had the good sense not to do it.

What we're dealing with now in the early days of this social media is that people aren't using any good sense. They're putting information out that they have no business to put out, if we're really honest about it. But I don't see any reason why, having done that, it isn't -- if used appropriately for the research, to try to find that I'm looking to talk to Billy because he owes me 10 grand. And I'm trying to reach him through the

accepted media, and he won't respond. So, why can't I try to find ways to learn more about Billy so that I can do a better job of just engaging him in a dialogue?

Now, clearly, there are ways to do it inappropriately, but it's out there, and it should be acknowledged that people will use it rather than trying to put the genie back in the bottle.

MR. HOWARD: All right, and, you know, the problem with that is I already gave you that 10 grand, and there's no contact that I see, and I'm sure that, you know, there is, theoretically, a process that could be used that somebody can go and look at information and pull up information just like you can Google somebody.

But what I see -- and, you know, I only see cases where a consumer thinks that the law has been violated. And every time I look at those cases, the consumer's rights have been violated. And, so, normally, I see, like Dan sees, is, you know, some type of misleading information or deception on the part of the collectors.

MR. KISIELIUS: That would be the inappropriate part of "inappropriate use", right?

MR. HOWARD: Right.

MS. MURPHY: And in terms of the use of information, what I'm trying to get at is this additional information that's in social media that doesn't exist in other venues. So, for example, if you're collecting medical

debt, and say your creditor is a children's hospital, are you, you know, going through people's profile pictures and looking for someone with children? Or if it's, you know, for a car, are you looking for pictures of cars? I mean, there's that added information here that you can't find in other skip-tracing methods, and do we think that's being used, and if so, how so?

MR. BEDARD: I do not know.

MR. EDELMAN: Do not know.

MS. MURPHY: Okay, there's no response from the panel.

The second question -- and then I will let us get to the communication part. I think someone had asked this, but let's go down the panel. Does anyone think there's anything wrong with using social media for skip-tracing or research purposes?

MR. BEDARD: No.

MR. EDELMAN: Assuming that the information is something that anybody can get without any representation or communication, no.

MS. GRANT: I don't think it's illegal, and I think it can be done responsibly. But I also think that we have a problem with consumers not having the legal right to know that this is going on and being able to take advantage then of the tools that are available to them, to the extent that there are tools available to them, to keep that information private if they want to.

MR. HOWARD: And I agree. I think that, from my perspective, I just see all the violations. I can imagine that there's a way to

get information of the correct person that actually owes, you know, somebody money in a non-violative way.

MR. BEDARD: You can put that as a no for him, Bevin.

Thank you.

(Laughter.)

MR. HOWARD: With an asterisk.

MR. KISIELIUS: No, nothing wrong with it. It should be used appropriately.

MS. SCHIWETZ: I think it's inescapable and it's pervasive, and I also talk about we're all public figures now if we want to or not, and knowing this, we should all take proactive efforts in also establishing parts of our identity online in ways that we choose to do so before somebody else does it for you, which will roll back around to where I see harm, which is not just from the debt collectors writing something on the wall, but if they post something onto websites that's then cataloged by Google, which is in context to somebody's name, then that might appear with you on your Google search when you look for your name, and those secondary tags are very difficult to remove, if you find who even posted that about you -- let's say it is a debt collector -- and I think this opens a whole big door for harm in terms of affecting your reputation because that's who you then are because everybody's going to be researching you, all kinds of groups.

MR. KISIELIUS: That's not a debt collection -- that's not a debt

collection thing, though, right?

MS. SCHIWETZ: This is to the research.

MR. KISIELIUS: If you blog about me, and it's on the Web, then somebody Googles me and finds that you think I'm a bad person, right?

MS. SCHIWETZ: But it's not just in a blog. I mean, you know, right now, you have efforts to make sure that, like through search-engine optimization and having all these other web tools available to you, if you're on a blog on Page 6 of your name, that's irrelevant. But if you appear on Page 1 or 2 of your Google results, because it's been made to do that, that's terrible because that could mean you could not get the job or somebody -- I mean, yeah, so not just for debt collection, but it's certainly -- the research is no and pervasive. Thank you.

MS. MURPHY: Thank you. And that's a good segue into the communications portion. So, by whatever means, if a collector somehow has found a consumer, an alleged debtor, on social media, how does it get to the point where they decide to communicate with the debtor? Is this happening? Are debt collectors communicating with debtors on social media?

Billy, I think you have some information that it might be occurring?

MR. HOWARD: It is occurring for a fact. You know, I've looked at over 20 cases just this year where there was contact through

Facebook, and, you know, some of those cases are close to being a violation, some of them are, you know, clearly a violation. The cases that I have, Facebook is not just -- they're not searching for somebody. It's not a big mystery where this person is. They just are not satisfied with how much money they're getting. So, they implement different tactics, your standard harassment tactics. And then you do deal with that last thing is kind of that slimy factor. Like, oh, my God. Now, all of a sudden, they're collecting through Facebook.

But that used to be the same way with text messages. People used to be shocked when they were getting text messages, and now that's just a way that, you know, debt collectors collect debts, and it's going to get worse and worse as time goes on.

MR. EDELMAN: I have seen a Facebook posting used to basically shame a debtor into paying. I mean, I think it was a Fair Debt violation, it was a common law violation. It's just being used to post derogatory information that somebody owes a debt and isn't paying it for the purpose of inducing them to pay that used to be done by having people visit people's homes and then park a shame automobile outside. It's just a little more modern way of doing the same thing, and it's illegal.

MS. MURPHY: So, Billy, what you had said -- in your experience, when collectors contact a consumer via social media, have they already had some other form of contact with them, or have they somehow

determined that, in fact, this is the correct consumer and they're going to contact them now on Facebook?

MR. HOWARD: No, they know exactly where the consumer is. They have just decided to kind of turn up the heat on them because, you know, harassment works. Harassment makes people scared, and they just want the harassment to stop, so they pay the debt. They have a --

MS. MURPHY: And are you -- this actually brings up a comment we have on Twitter. Someone had posted, how do collectors know that the Facebook profile is accurate and started by the person? So, I mean, in your experience, are your clients -- are they actually a debtor or, in fact, are the debt collectors contacting the wrong person on Facebook?

MR. HOWARD: Probably of my clients, probably half of the individuals I have are debtors that actually owe the money and probably half of them don't. They have a similar name or it's common that people have paid their debts, they're up to speed on paying the debt, but they still get contacted through Facebook, and, you know, the common tactic is to use a fake name. I have a case where my guy's using the word "happenstance." My name's Mr. Happenstance, and you need to have your sister call me. And my name's Mr. Happenstance, and, you know, sending messages to their cousin. And then Supervisor Doofus gets involved.

(Laughter.)

MR. HOWARD: And then it's just a big party of harassment,

and, you know, it sets off -- you see a lot of these cases that you think are kind of minor, but these minor violation cases set off a domino effect in somebody's family, and, you know, the FTC talks about it, the Congressional finding about it's marital instability, it's bankruptcy, it's invasions of privacy. And these are not, you know, all the really bad cases. These are just regular -- unfortunately, they're kind of vanilla, run-of-the-mill violations that happen every day. It causes a lot of problems to families.

MS. MURPHY: Mm-hmm. Do any of the other panelists have experience with this?

MR. BEDARD: Well, I'd like to comment on that because a lot of what we're hearing about these anecdotal stories are all about the message and not about the mode, which is what we're talking about today, which is communicating with consumers via a new mode of communication. I don't think anybody's going to disagree on this panel, anybody in the audience, that folks -- collectors who are doing some of the things that you're describing ought not to happen. We ought not to be shaming consumers like you've suggested, Dan. We ought not to be harassing folks like Billy suggests.

But it's important to realize that that's the message, it's not the mode, and I advocate for the position that the mode is sound. It is okay to do this so long as the message is lawful. That's important.

MS. MURPHY: Okay.

MR. HOWARD: We're probably going to have some more lawsuits against each other.

(Laughter.)

MS. GRANT: I don't disagree. I think that it's probably legal to contact people this way. But I think when you do, a big yellow caution light has to go on because it's different than one-on-one contact with the debtor or even one-on-one contact with the debtor's neighbor. You're really entering into a whole universe of people that are interconnected and share information and, so, the potential for third-party disclosure, I think, is great.

I think that if someone's asking about somebody on a social networking site, it kind of raises questions in the minds of the other people about, you know, who is this and what is this about, maybe with more potential for back and forth than if I get a call about my neighbor, which I have, and I -- you know, everyone knows if someone doesn't identify themselves and they're asking if so-and-so lives next door to you that it's the debt collector. You know, but I'm not going to go to my neighbor and ask him about this. But this is kind of a more public forum, and I think you just have to be really careful, and I think that the FTC could provide some good guidance here.

MR. EDELMAN: I think that in addition to the message being, on its face, unlawful, the mode is such as to encourage illegality. For

example, who has access to the message? Is it the debtor and persons who are authorized under 1692c? I have a problem with a debt collector leaving an electronic communication of any sort on any place where they do not have some positive assurance or representation from the debtor that, yes, this is a permissible way of communicating with me and nobody whom I don't want to get this message is going to have access to it. Suppose a person's children look at the site without necessarily having their own password? I think if that happens, there's a violation.

MR. KISIELIUS: So, when you talk about mode for a second, we ought to stop talking about this in individual panels that talk about the different methods of communicating as if they're distinct, right? What's happening is if you owe me money, and I'm trying to reach you, just to -- since you're nearby.

MR. HOWARD: I paid you that money.

(Laughter.)

MR. KISIELIUS: Let's assume before you paid me, I was trying to reach you. I'm trying to phone you. I've probably mailed -- I've sent you a letter. I probably emailed you if you gave me a valid email address. If you gave me express consent, I texted you. And only if you gave me your consent to reach you via Facebook, because that's your preferred method of communication, would I want to even go to that place because of Daniel's concern. It's a pretty dangerous place to try to communicate with someone

given that it's not secure, and the FDCPA is pretty clear on what you're allowed to do and not allowed to do with respect to third-party disclosure.

So, I think we need to take into account the balance of the legitimate need to communicate if there is, in fact, a debt that's real, not that you paid me and I'm ignoring that. I think we need to balance it against what's the consumer's preference for how they want to communicate. We need to be able to show that we're complying with that consumer's preferred method of communication. We need to be accountable that we did what we said we were going to do and that we do it consistently across all the debtors.

And the other rogue collectors that do bad things on Facebook and those people that are harassing debtors should have to be held accountable for that.

But, in general, the mode isn't the problem. It's do I have the communication balanced with the needs and preferences of the debtor? And if I do, then the message can be communicated appropriately.

To Daniel's point, if you tell me to contact you on Facebook on your public page, I need --

MR. HOWARD: Do not contact me on Facebook.

MR. KISIELIUS: All right.

(Laughter.)

MR. KISIELIUS: If you told me that and if I'm a collector, I should know that I can't do that without you telling me, also, that you don't

mind that I'm going to post it in a public forum where everybody can see it. Because I can't be that stupid to know that I'm setting myself up for a lawsuit, right?

So, there's an appropriate way to communicate across each of the modes and there ought to be an acknowledgment that those modes are all available to us and make sure that the regulations catch up with that, because as we've heard in these other panels, that's the problem, is that everyone's hamstrung by the fact that the regulations haven't caught up to the fact that an email is like a mail and that Facebook exists and that, you know, cell phones are the only phone to reach people on. That's the problem we all face.

MR. BEDARD: And, likewise, it's important to also remember that in almost all -- in most of these social media sites that we've been talking about, it is possible to have a private communication with somebody. It does not have to be public on the wall like, hey, would you mind paying this debt? The mode allows for private communication, as well, and there's no reason why that can't occur lawfully.

MS. SCHIWETZ: That raises a good question, even in terms of even if we're not talking about wall posting, if we're just talking about the in-messaging, the supposedly private communication. Similar to the issues that are raised with email and voicemail, do we think that Facebook or LinkedIn or -- do we think these accounts are actually private or are people

sharing? Are they leaving it up on the computer and the kids and the babysitter can see it? I mean, are people using this in such a way that we can even say that private communications are only being seen by the debtors?

MR. BEDARD: Well, in my view, if you have to enter a string of characters in excess of 10 or 20 characters long in order to be able to access the information behind it, to me, I think that's personal. And to the extent consumers -- I mean, just think about how easy it is for your neighbor to go to your mailbox and open up your mail and compare that to how difficult it is to try and guess somebody's Facebook username and password and access all of that information.

And, so, in my view, if you need a username and a password to access this information, then that somebody else sees it because they have been given that information by the consumer, that reduces the expectation of privacy almost to zero in my view.

MR. EDELMAN: I disagree strongly because the person who -- if you give your password and identifying information to a family member, you're not doing it with the thinking that, oh, some debt collector may be contacting me and I really don't want them to look at it. You're exchanging information, pictures, whatever. So, unless the debt collector has some assurance in advance of using this method of communication that the consumer is satisfied that nobody else has access to it, then it should not be

used.

And one of the problems with these methods of communication is that they're informal, and people don't really think through, until the issue actually arises, who does have access to it. For example, a consumer gives out a work email address thinking that nobody else really looks at it. Now, the fact is it's the property of their employer. The employer undoubtedly has access to the account. The extent to which that access is actually exercised on either a regular or other basis may vary. But unless the consumer says, you may contact me here, I'm satisfied this is going to be private. I don't think an email concerning debt collection should be sent there.

MR. HOWARD: And I agree with that. I mean, there has been, you know, a theoretical situation where that could be okay. But even in that situation, you called me a bunch of times. I did not return your call. You sent me a letter. I did not respond. You then texted me, and I didn't respond. I mean, I don't want to talk to you and it's my right not to pick up that phone.

Now, if you get somebody to say, hey, you contact me on Facebook, then go for it.

But I just don't know anybody who is going to agree to that. And your scenario is what the FTC and the FDCPA has protected for a long time, and that is harassment. And you take harassment, and you look at the totality of the circumstances, you look at who it's out there to protect, you look

at the right of privacy. It's the least sophisticated consumer. These are the people we're out there fighting for. That's a violation of the law to do what -- even what you said, I think.

MS. SCHIWETZ: I'd like to agree with Billy on the fact that if we look at social media, and we're defining it, as Bevin said, as Facebook and Twitter and LinkedIn, then the communications, even if the consumer might not understand and chooses that as their mode of communication because their habits have changed, then their other habits are changing, also. Then they're already online. I mean, we're moving into mobility. We know this, so that's another issue. It's hard to imagine that the consumers would choose their Facebook account as the mode of communication -- I haven't seen any metrics on this -- and, I mean, the harm that it can do to their social network.

So, it just seems that -- I mean, the language and the protection also says, right, may not use postcards, right? So, wouldn't that be like a postcard if it's, you know, on the Facebook or public on the Twitter, on the social media? So, then, perhaps we should make an explanation and say, no social media, no -- as these definitions grow with us and these technologies and these interactions, and then we can specify whatever, not the Facebook or the tweets or something else.

MR. EDELMAN: I will say that I've actually filed a case alleging

-- it was some years ago -- that the use of a fax under circumstances where there was more than one person having access to the fax machine is the legal equivalent of a postcard if it's sent into an office or business environment.

MS. MURPHY: Well, that raises a good point. I think folks have been kind of hinting at this idea of consent when we're talking about what consumers would want. Do we think consent should be required for a collector to contact a consumer on Facebook or Myspace or LinkedIn, and if so, how should that consent be obtained?

MR. EDELMAN: I think that -- oh, I didn't mean to --

MR. BEDARD: Thank you, Dan. I think the answer is, no, consent ought not to be required because what you're doing is you're putting a restriction on the mode instead of the message. You know, there's no restriction on the mode in any other aspect of sort of communicating with consumers and we ought not to restrict it there, either.

MS. SCHIWETZ: A postcard is --

MR. BEDARD: If you want to regulate the content -- I'm sorry.

UNIDENTIFIED MALE: There is no postcard communication.

MS. SCHIWETZ: Yeah.

MR. BEDARD: There you go. Okay, fine. No postcard communication, which may be tantamount to a billboard. You know, we're

not going to take a billboard out on the highway and say, hey, we're looking for Joe, please pay me, all right? We're not going to do that. But in terms of consent to use other kinds of modes, I don't think -- it's not necessary.

MR. EDELMAN: I think -- oh.

MR. BEDARD: Especially when consumers want it. I don't think there's any disagreement on the panel that if the consumer -- that a collector ought to communicate with a consumer in the consumer's preferred mode of communication. I don't think there's any disagreement there, is there?

MR. EDELMAN: I don't have a problem with that. The problem is this. If the consumer initiates a communication from an email address to somebody known to be a debt collector, I think it's a fair inference that the consumer can be deemed to have understood that whoever has access to this account, I'm not concerned about it, or they're permitted persons and I'm giving permission by initiating the use to the security features of this method of communication.

If the debt collector initiates the communication, I think that they're either doing it at their peril if the communication, in fact, is seen by someone else. And I think some methods of communication are so similar to the ones specifically prohibited, such as a postcard or putting debt collection information on the outside of an envelope, that it might be found to be a violation, and I think it is a violation regardless of whether somebody saw it or

can be shown to have seen it in the particular instance.

So, that as a practical matter, such methods of communication should not be used unless the consumer has, in some manner, either by initiating the use of that method or by expressly stating, I wish to be communicated within this manner, that they consent to the security features of that method.

MS. GRANT: I think the only way that you should use this to contact somebody is if you can do so in a way that you know no one else is going to be able to see that message. And I worry about getting people's consent for things. I wouldn't want, for instance, consent to be used to waive rights that consumers would already have to expose their information, for instance, to other people on the network.

MS. MURPHY: Any other comments on the idea of consent?

MR. HOWARD: I think that -- you know, I'll even go a step further, that it's important to get that consent because most of the time, let's face it, these guys do not want to talk to debt collectors. They do not. Especially in the economy today. It's kind of like the imperfect storm. You have individuals that a lot of times, through no fault of their own, can't pay their bills, and you have debt collectors that are getting paid a percentage of what they collect. And, you know, that's one of the reasons, you know, harassment is higher than, you know, than it's ever been. And to contact somebody through

Facebook, I think it's got to be crystal clear that that's okay.

MS. MURPHY: And then, beyond the issue of consent, whether or not it's required or there's any process of consent conducted, we had a question from the audience that basically asks about how -- you know, assuming debt collectors are able to contact consumers via social media, how is it being done? So, are they issuing the mini Miranda? Are they disclosing that they are a debt collector?

And I would take it a step further. What should their profile look like? I mean, if they're going to post on a consumer -- if they're going to friend a consumer and then be listed in their friend list, I mean, can their profile name be Debt Collectors R Us? And can they show a picture of however you would visually depict debt? I mean, how would this work?

MR. EDELMAN: I'm hard-pressed to come up with a scenario of how it would work without committing numerous violations. I mean, if you have a profile that lists you as a debt collector and you are contacting who, the debtor? Then you have to make sure that the information is not accessible to anyone else, and I don't know how you can do that in advance without consent.

MS. MURPHY: Well, moving beyond the consent issue, how would they, assuming we can contact debtors? Do we put a mini Miranda? What do we -- what kind of --

MR. EDELMAN: You'd have to.

MR. BEDARD: I mean, I don't see anything wrong with the truthful profile of the collector's name. I mean, what would be wrong with that, Dan?

MR. EDELMAN: Without any disclosure of who they work for or the purpose of the communication?

MR. BEDARD: Well, if they're communicating with the consumer, right -- with the debtor, not in a public way, but in a private way. I don't see a reason why that consumer isn't governed by the same rules that other communications with consumers would be.

But in terms of the profile itself, why isn't the truthful disclosure of the collector's name otherwise lawful?

MR. EDELMAN: Well, how is this being communicated to the consumer? Is it a friend request or --

MR. BEDARD: Well, in terms of the profile -- in a vacuum, the profile of the collector, which has their proper name. Okay. When it comes to making friend requests, I know we're going to get about, what, eight different opinions on whether or not a friend request is compliant, and we can talk about that, but in terms of the content of the message between a collector and a consumer, I think we've got plenty of regulation that talk about what the content has to be and what it may not be.

MS. MURPHY: I'm just going to let the folks on this side jump

in.

MS. SCHIWETZ: Well, I think meaningful disclosure is very important because we're assuming now that all those -- that none of us want to pay back our debt, right? And everybody -- I mean, that's our society, right? Our creditors perform a very important function, and if we don't pay back, then our rates go up. **(Room lights flicker off.)**

UNIDENTIFIED MALE: Someone didn't pay their power bill.

(Laughter.)

(Lights come back on.)

MR. KISIELIUS: I guess they did pay their power bill!

MR. HOWARD: I'll talk to them on Facebook and ask them.

MS. SCHIWETZ: Yeah.

MR. BEDARD: We've confirmed the electric bill has been paid.

(Laughter.)

MS. MURPHY: It's our technology.

MS. SCHIWETZ: But if there is some meaningful disclosure of identities -- so it's not just like those cases where there's somebody who friends -- like, this beautiful woman opens a Facebook group and then friends, right, the consumer, that's unethical, you know. But if you have a meaningful disclosure of the identity, then also the person who owes the debt -- and you have those -- okay, now

we're getting into communications. And I'm not advocating social media, not on those open platforms. Let's say different, whatever, electronic communications.

Then you have also some type of accountability because you know who it is, you have a chain of correspondents. You can say, you know, you are mistaken, or I think it offers for the consumer also more protection in that context if you know who is --

MR. EDELMAN: I actually have difficulties with how one creates this profile and for what purpose. The first question I have is some -- well, I suppose somebody who is engaged in debt collection can have a Facebook page that they just use for personal purposes. I suppose lots of people do. But let's assume, for example, this is created at the instance of a debt collection company for business purposes.

The first question I have is, is some kind of misrepresentation being made to the purveyor of the service as to consistency with terms of service?

The next question I have is, what do you use this page for? If you're communicating with third parties, you can't disclose that you're a debt collector. If you're communicating with a debtor, you must disclose not only that you're a debt collector, but the true name of the entity for whom the collection is being performed. So, I'm not sure how this works because I'm not in the debt collection business, but I have a hard time imagining how it

can be done in a compliant manner.

MS. MURPHY: I think Vytas was going to jump in.

MR. KISIELIUS: I was just going to say the beauty of what you just said is that the FDCPA provides for the right behaviors and makes it extremely difficult, and clearly makes it fraudulent, if you try to sign on as a beautiful woman and friend people under a false premise.

If, however, somebody chooses to want to interact with me via Facebook -- probably on that private conversation -- then why should we preclude that mode? That's my only point. I agree with all of your points.

I happen to have a problem, which is when I call people in my family, and the thing that comes up, you know, on their ANI is Collections Marketing Center, and they have a short screen, it just says, collections, they don't pick up my phone calls, and I have to call them from another line and say, it's me, you know. So, I understand that one.

But, seriously, the idea here is that we want to find a balance. The fact is that people entering the debt, as Christine pointed out, they do so with the intent to pay it back and they have a responsibility to pay it back. And the problem is when people trying to collect that debt are being stonewalled by folks that won't respond to any of the -- let's call them appropriate. Let's not talk about the harassment cases. But when they're using appropriate means to try to reach the borrower and want to enter into a dialogue -- let's say the borrower has lost the ability to pay back and can

articulate that in a conversation with them. Usually, either by a formal cease-and-desist request, they can stop the calls, or by saying, this is my situation, let's work it out.

We work with creditors and creditors aren't interested in harassing people or wasting their time or wasting the debtor's time. They want to get paid back, but they also will work with customers to make an appropriate arrangement. And, so, we're always worried here about this, you know, 1 percent of lunatic-fringe collectors that are doing bad things, and those laws already should stop those collectors from doing those bad things.

MR. EDELMAN: The difficulty I have with your scenario is that you -- one of your premises is that this debtor does not want to talk to you. The only way you can establish communication by a social media is that the debtor does not understand that it is you, debt collector, who is attempting to contact them.

MR. BEDARD: It's because they're getting sued when they leave messages to call back.

MS. MURPHY: Actually, I'm going to jump in here. In terms of the -- we have a couple of questions from the audience. In terms of the potential harms that exist for consumers, just by the very nature of these technologies -- we have one question -- is it problematic if the collector's entire list of friends are alleged debtors? Could this be a publication of a debtor list?

So, let's assume this collector friends you, you accept their request. We'll even assume that there's nothing ostensibly on their profile picture or their name to indicate that they are a collector, but you friend them, and, in fact, they just use this account solely for collection purposes. So, their only friends -- they have 300 friends. It's all alleged debtors, people they're trying to collect from. So, nothing about the picture indicates they're a debt collection agency, nothing about the profile name, but you friend them. Your friends wonder who your new friend is, they click it on, and on this collection agency's list of friends, it's a list of debtors.

MR. EDELMAN: I think there's that problem. I think, going back a step, I think there's a problem with making a friend request which is made for debt collection purposes, but does not say that.

MR. KISIELIUS: I agree.

MR. EDELMAN: I think it's either an express or implicit misrepresentation.

MR. HOWARD: I'd love that case.

MR. EDELMAN: Well, I've had cases where somebody places a phone call to a relative, spouse, whatever, saying, I need to get a hold of this person. It's an emergency. It's no emergency. The only emergency is you haven't been paid in the last five years. I mean, I find that problematic, and what's the difference?

(Laughter.)

MS. GRANT: I agree. I think that if you're trying to friend somebody as a debt collector for the purpose of collecting a debt, you're not really a friend, and I think that's a per se misrepresentation.

MR. BEDARD: But that's not really representing that you are their friend. You're actually asking, may I be your friend? Is that really what it is?

(Laughter.)

MR. BEDARD: May I be your friend?

MR. HOWARD: No, you may not be my friend.

MR. EDELMAN: But you do not want to be their friend, you want to collect money from them.

MR. BEDARD: Well --

MR. EDELMAN: Look --

MS. SCHIWETZ: And then they use the poke function.

MR. EDELMAN: Yeah, I would put -- there's a New York City Bar Association opinion suggesting that if an attorney does that or causes it to be done, that you're committing a disciplinary violation.

MR. BEDARD: To a represented consumer?

MR. EDELMAN: No, if you're represented or you're simply a layperson, you're contacting them under false -- the charge is you're using deceit in contacting them because you're interested in getting information. Either they're a defendant, they're a witness. You want information. You're

not really interested in any kind of social or friendly relation, and you're using deceit to contact them.

MS. MURPHY: I'm going to jump in because we're getting to the 15-minute mark.

Another question from the audience. This is on the private nature of social media communications. Third-party application on such sites are given access to even private information. Doesn't that raise concerns about unauthorized disclosure?

So, I think this question gets at even if something's not posted on a wall or any sort of public place, if you are now in communications privately on the messaging function of, say, Facebook, the question's asking, are third-party applications -- do they now have access to this information that you're a debtor and what you owe money on, and the fact that it's trying to be collected? Does anyone know anything about this?

MR. EDELMAN: I don't know.

MS. GRANT: I'll just say that -- that could very well happen, and it's one reason why I think debt collectors need to be really careful using these kinds of networks.

MR. KISIELIUS: I think consumers need to be really careful about putting their information into places where it's not secure. I don't think this is an issue for debt collectors. I think for us to try to legislate or regulate people that do dumb things, there's just not enough time to do that many

regulations.

This is a mode of communication. We've talked about the fact that there are a load of ways to use it inappropriately and probably very few ways to use it appropriately. But that doesn't mean it should never be used. If it can be used appropriately, why should we restrict people from using it appropriately? But put the right restrictions on what appropriate means.

MS. MURPHY: In terms of how it can be used appropriately, we have a question from one of our webcast viewers. Is it practical to differentiate between the various modes of contact within Facebook?

So, you know, does anyone want to say that, well, you can submit a friend request, but then you have to make your friend list private, or, you know, you can do the in-messaging, but you can't comment on a post they make? Where do folks want to draw the line here? Assuming that we're already within, okay, they can use Facebook? How can they use it?

MR. BEDARD: You can use it in every way that the consumer has told you they would like for you to use it, to begin. In the absence of some kind of authorization or consent from consumers, you probably don't want to post that kind of stuff, you know, publicly on what's called the wall or something like that. Maybe a best practice would be to communicate privately until you get that information.

MS. SCHIWETZ: I don't think consumers understand completely yet what that means in terms of them even requesting to have

debtors call them or contact them, I mean, on their social media accounts. And it's not a good thing. I mean, inadvertently, it will leak out. You know, they might -- advertisers might find out, a web-scrape. It's just not secure, and consumers need to understand that using social media for this mode of communication maybe if that's -- you know, it's not a good thing.

MR. HOWARD: And I'll agree with that again and, you know, the -- one of the things consumers can do is, especially on Facebook, they can make their page private. They can make -- they can utilize the options that are out there that will restrict certain type of contact. Now, it seems that women use that protection more, and I asked my wife, why is that, and she said, well, because women are smarter than men.

(Laughter.)

MR. HOWARD: And, you know, that's probably true, but that -- it's a good point, though, is, you know, when you are going to have that type of information out there, then you should protect it as much as you can.

And you know what? I look forward to the litigation that is going to ensue with all of this contact because, to me, it just seems -- unless there's some kind of fantasy, that scenario, it just seems like these are consistently across-the-board violations of the existing laws.

MR. EDELMAN: I think one problem -- oh --

MS. GRANT: No, go ahead.

MR. EDELMAN: -- that the Commission should address by rule

or otherwise is the fact that I don't think consumers or members of the public generally understand how secure these methods of communication are or who has access to them.

I think two panels ago there was a discussion about communicating by email with members of the armed forces overseas. Now, you know, decades ago when that was done with pen and ink, a censor would go through everything and make sure -- and monitor it and make sure there was nothing problematic about the communications.

Now, I'm assuming that if you communicate with somebody in Iraq or Afghanistan by email that that is being done electronically. Maybe I'm just a little paranoid, but the government would have to be pretty dumb if they didn't do that, and I actually think it is being done.

So, if you're engaging in such communications, the question then is, are you basically publishing to the service member's superiors information about a debt? You can't call the person's commander directly and ask them to force them to pay the debt, and by disclosing the information in this manner, you may be doing exactly the same thing. If the service member has consented, it's not an FDCPA violation, but I question whether what's on their mind is, you know, who might be electronically monitoring this communication.

MS. GRANT: I just wanted to say that the privacy concerns about social networking sites and the applications and everything else are not

the fault of debt collectors, and there's nothing that debt collectors can do about that. But they exist, and so, the waters are very perilous. That's all I'm saying. And you need to be extremely cautious because there are lots of ways to get tripped up here in your attempt to use these.

MS. MURPHY: And another question -- I do want to get into the mobile aspect because a lot of folks are accessing LinkedIn, Twitter, Facebook on smartphones or Droids or BlackBerries. And we touched on this in some other panels. To what extent should convenience or time-of-day restrictions apply?

So, if people are checking their Facebook accounts, and if they're getting pings on their smartphones when they get a friend request or a message, should time-of-day restrictions apply if you communicate with a consumer on Facebook?

MR. EDELMAN: I think if there's a -- if the system is capable of producing a contemporaneous indication to the debtor upon receipt that you have received a message, it does apply. If it is like an email and -- well, even an email might generate a ping, but if, in some manner, it can be retrieved -- it's retrievable at your leisure without any contemporaneous indication then that doesn't apply.

MS. SCHIWETZ: I think this whole aspect of mobility is the key, and I think it's terrific that the FTC is looking into this because this is where we're trending. So, either we're going to separate the whole using the

electronic component, right, versus the social media. But without a doubt, we're trending towards this mobility, and it's foreseeable that with this time restriction that it would be fine if it stays in place because we already have location software. The phones are being monitored. We know where everything is, and so, it's not unforeseeable that next to the debt collectors -- next to that number where that phone is located, it will even probably give the exact local time, and then the debt collector will know whether or not to ping or call.

But moving into this mobility, you know, in terms of the foreseeable future, we might even have like holograms that then pop up or do something exciting, and it might not wake us up then at night. So, I think the restrictions would be a good thing.

MS. MURPHY: Okay, I apologize. We have a number of questions still left, but because we're hitting the five-minute mark, I wanted to go down the table and I guess just parting thoughts. What do you see as the most significant problem and what, if anything, should be done and who should do it?

MR. BEDARD: Well, here's my parting thought. Any rule or regulation or law that stifles the communication between a debt collector and a consumer, I think, is bad for consumers. If we're going to restrict all of the methods in which consumers can communicate with debt collectors, I think, in the end, consumers end up losing out.

MR. EDELMAN: I have little problem with the idea of doing an Internet search for information that anybody in the world can get about you. When you go beyond that, I think that there's so many areas which are going to be either -- either carry a high degree of risk of violation or are just going to be, per se, violative of either the FDCPA or other statutes that to engage in communications of this sort without the consent of the debtor to the medium in question is a very bad idea.

MS. GRANT: I think that the FTC should provide some guidance here just as it provided guidance about advertising online and its dot-com guides. I think that something here that used hypotheticals and went through different scenarios and pointed out some do's and don'ts where you are clearly in violation of the law, and some best practices where, perhaps, it's fuzzy would be very helpful.

MR. HOWARD: I think the main goal of the entities out here are really, you know, an individual's right of privacy, and it's their right not to be harassed. And you have a lot of very smart individuals on these panels, and they are all talking about what they should really be able to do. I think the law's very clear of what they can and cannot do.

It really boils down to you can't harass somebody, and that's what goes on. I mean, the -- if you just look at the statistics the FTC just, you know, put out again, I mean, the percentages are through the roof, the numbers are through the roof. I think the best thing the FTC can do is get

the rights of individuals to those individuals. Let those individuals know that, you know, they have the right to privacy and they have the right to be free from harassment. And you can Facebook me as well as anybody else.

MR. KISIELIUS: Thank you.

MR. HOWARD: You're welcome.

MR. KISIELIUS: Thank you. I think that trying to restrict the mode of communication is shooting at the wrong target. I think what we need the rules on are the situations and the intent of the content and appropriateness of contacts so that we're not harassing people, but balancing legitimate rights of the creditors and debt collectors to get paid back that debt without trampling the privacy rights of the individual.

So, if you could put some more guidelines that make it clear about what is the appropriate content of messages and make it clear that an email and a letter are the same thing, therefore the same sorts of restrictions should apply, that you can't communicate publicly about this person's situation. So, that means you can't post on their page. We don't have to talk about Facebook. It's obvious from the directive, that would be very helpful.

MS. SCHIWETZ: I think there's this very fine line between communicating and harassing, and surely we are certainly trending as a society towards this mobility, and for the consumer, to protect the consumer, it's not restricting them if we keep reminding them that -- I don't know. Take

the postcard. Let's remember that one. That social media is the postcard parallel to this issue that we're addressing right now to protect the consumer. Thank you.

MS. MURPHY: Thank you very much to all of our panelists. If everyone could sit tight, we do not have a break. We are transitioning right into our final panel of the day.

(Applause.)

**PANEL 6: FUTURE DIRECTIONS: LOOMING ISSUES AND THE
REGULATORY LANDSCAPE**

MR. PAHL: All right, thank you, everyone. We are on to our last panel, which is Future Directions, and this panel will be moderated by Joel Winston, who's the Associate Director here in the FTC's Division of Financial Practices.

MR. WINSTON: Thank you, Tom. Good afternoon, everybody, and thanks for staying. It's been a long day, a lively day, certainly, and we have a very lively panel here. So, let me introduce them.

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Just to remind everyone, put the mics in front of your mouth so that everybody can hear you, okay?

All right, starting with Valerie Hayes, who's General Counsel and Vice President of Legal and Government Affairs at ACA International. Then we have Bob Hunt, Vice President and Director of the Payment Cards Center, The Federal Reserve Bank of Philadelphia; Suzanne Martindale, Staff Attorney at Consumers Union. We have Manny Newburger, Principal of Barron, Newburger & Sinsley, PLLC. Then we have Marla Tepper, who's the General Counsel and Deputy Commissioner of the New York City Department of Consumer Affairs. And Laura Udis, with a return engagement, First Assistant Attorney General for Consumer Credit in the Colorado Attorney General's Office. Thank you all for coming.

It strikes me that it's kind of ironic for -- that I'm going to be moderating this panel, which is really kind of a wrap-up panel in a discussion of whatever it is we haven't already covered and where we expect things to go in the future. I say it's ironic because I'm one of those people who can't change the filter in his vacuum cleaner.

(Laughter.)

MR. WINSTON: I mean, I am technologically ignorant, but I've been learning a lot today. And one thing I've learned is that while the technology is different, some of the themes and concerns that have been raised about all of these new technologies are very familiar ones, certainly for

me and for the FTC, and we'll talk about those in this panel.

Now, I'd like to start by just asking generally that -- just to make sure that we haven't left out anything today. We've talked about mobile communications, text, email, predictive dialer, social media. Are there any other new technologies that are used in the debt collection industry that we haven't talked about today? If anyone can think of one?

MR. NEWBURGER: I can tell you one I haven't seen used yet, but I keep waiting to hear about it.

MR. WINSTON: Okay.

MR. NEWBURGER: You know, one of the hard parts for consumers is this faceless voice on the other end of the phone. I'm waiting to hear about people proposing video chats, and I just don't think it's something we should not expect. I mean, I can just picture the call. You know, it's so hard to have this conversation. Would you like to talk face-to-face?

MR. WINSTON: Does that raise any particular concerns, do you think?

MR. NEWBURGER: I actually think it might be more consumer-friendly. It has the potential.

MR. WINSTON: How is that?

MR. NEWBURGER: Because face-to-face is better. It's easy to have fear of this faceless voice on the other end of the phone, but making a

connection, a face-to-face connection, might actually make people feel more comfortable about having the conversation.

I don't know. I haven't seen it done yet, but I don't think it's hard to say that sooner or later someone's going to try it.

MS. UDIS: Well, one other potential is that since we now know that with the smartphones, your -- not really new, but your location is pinpointed and known. If the providers of those phones make that data available to debt collectors, it might be interesting for the debt collector to say to the consumer, we know that you are now, you know, at the FTC Building at -- you know, what is it? 6-0-1? Is that where we are? 6-0-1 or 5-0-1 New Jersey Avenue, and so, your exact location is known to the debt collector. That might seem very Big Brother. So, that might have some interesting implications where your exact location is known and disclosed to you during a debt collection call or email or other communication.

MR. WINSTON: Have you seen any of that happening yet?

MS. UDIS: No, just an interesting further idea from what I've been reading in the paper.

MR. WINSTON: Okay. And towards the end, I'd like to talk a little bit about what you see happening in the future and what consumer protection issues those raise.

Are there others? Any other new technologies that people have noticed?

(No response.)

MR. WINSTON: All right. And how about in terms of consumer protection concerns? We've talked about privacy, data security, the accuracy of information, the adequacy of notices, the problem of the wrong consumers being contacted. Are there other consumer protection concerns that the new technologies we've talked about also raise?

MS. TEPPER: We haven't talked about making sure that whatever is communicated is preserved for enforcement purposes, and that's certainly, from our perspective, an important consumer aspect of all of this. We want to make sure that government is able to enforce the laws and rules through preservation of documents, and while we're talking about using technology productively, we certainly think that's an important component of that.

MR. WINSTON: And how would you go about doing that?

MS. TEPPER: Well, New York City has pretty specific rules right now on how documents need to be maintained so that we can access them. We require debt collection agencies, for example, to record a certain percentage of their calls, maintain logs of all their calls, and other measures to make sure that we can obtain the documents to make sure that the collection agencies are complying with our laws and rules. Pretty much, a debt collection agency needs to be able to produce documents to us according to the last name of the consumer, zip codes, and other searchable

methods.

MR. WINSTON: Val, what do you think of that regulation?

MS. HAYES: Well, when we had -- we had sent a letter to Marla when the regulation was passed, and one of our concerns was the need to have 100 percent call recordings and how you would maintain that information and what it was going to be used for. So, we do have concerns with the need to have that much data and maintaining that much data, but I think not just in relation to the call recording, I think when Barb was talking about using email.

I do think there is a need to have some type of documentation so you don't have the he said/she said issues in the industry, but I think email is one of those technologies that allows itself to have that record of here's the communications that took place, the encrypted technology, that type of thing, and I think you can accomplish those things with these new technologies that have come into play in a meaningful way where AGs and states and the FTC and the CFPB will be able to enforce those laws, and you won't have those he said/she said types of situations coming up.

MR. WINSTON: Let me follow up on that. There was some discussion in earlier panels about email, and the statement was made at least a couple of times that email and snail mail are the same thing or should be treated the same way for purposes of the FD CPA. How do you folks feel about that? Manny?

MR. NEWBURGER: Joel, one of the things I always loved was the FTC was out in front in recognizing that electronic communications were no different than the reality of written communication. It was the FTC lawyers helping State AGs understand, Internet fraud's no different than doing it with a letter. Email fraud's no different than doing it with a letter. I think that's exactly right.

You know, whether I send the words on a screen or send them on a piece of paper, the key is to communicate with the consumer how truthfully, accurately, with -- and I'll quote Pete Barry, "with truthfulness, dignity, courtesy, and respect." And to the extent you can do that and do it in a way that helps the consumer get the message, isn't that a good thing?

I started doing consumer law in '83. I've taught consumer law for half my career, and I know consumers want to pay their bills. I mean, I've talked to people time and again. They wish they could pay their bills. They didn't default on purpose. And anything that makes the process less stressful is probably a good thing. And what I see is most of the people I know like communicating by email. My students prefer communicating by email. My friends prefer it. Colleagues prefer it. You can respond at your convenience.

It isn't good about tone. I'll concede tone can be misunderstood in email, but, gosh, the convenience is amazing, and

convenience for consumers would be a really good thing.

MR. WINSTON: Others have a view on that? Yeah, Bob?

MR. HUNT: Unfortunately, I have to start with the usual disclaimer. Everything I say today will be my own views and not those of the Federal Reserve Bank of Philadelphia or the Federal Reserve System.

It was interesting throughout the whole day listening to the points about communicating with consumers because when you're at the point of applying for credit or if you think about any time you're engaging in a transaction, there's always two things that go on, somebody's authenticating the payment device or the account or the channel, and they're authenticating you. And we have technology that does this very well, and we use it every day. And when we had the conversation about email, we were having a conversation about authentication. There are ways of making this technology very secure and storing records and having that available.

Some of the other means may be less effective in that way, but what I find interesting is that the technology is out there. Some people are adopting that technology. It does not seem to be too expensive to be prohibitive, and, you know, I already use similar technology for my conversations with my banks all the time.

MR. WINSTON: Others? Yeah, Laura?

MS. UDIS: Yeah, back to this question about consumer protections. I think with the increases in technology that allow so many

phone calls and so many contacts to be made automatically, which results in so many more contacts to potentially the wrong person or even potentially the correct person, I think what we're seeing is the need for more, better communication to consumers and the wrong person, who are also consumers, about their rights under the law. And this, I think, will help go a long way to how to handle new technologies, because I think there are some deficiencies in the current federal Fair Debt Collection Practices Act and some of the parallel state laws.

For example, as was mentioned earlier, consumers have the right to basically -- to say in writing, "cease communications," whatever that communication form may be, but do they know they have that right? And there's nothing, at least under current federal Law, that has to advise them that they have that right.

Someone mentioned my law. It's not my law, but Colorado law requires that the initial communication -- initial written communication with the consumer -- advise them in writing that they have the right to cease communication, but also that that may not preclude a lawsuit.

But I think, particularly with the advent of all the new communication methods, that would be really important, particularly for people that are the wrong party. And there may be difficult ways to figure out how to do that, but perhaps verbal, perhaps in writing, some way to indicate to consumers that they have that right to say to a collector, don't contact me,

and how to do it -- how to do it so it's legally effective.

And, likewise, I mentioned earlier in the prior panel that, of course, you all know consumers have the right to dispute a debt, but consumers have the understanding from the validation notice that if they dispute a debt in writing timely that they will receive proof of a debt, some verification of the debt. But, in fact, my understanding is that the collector can simply stop communicating, and that's fine. That's not a violation of the law.

But if the collection agency or debt buyer then assigns it to a new collector and another collector and another collector, and the consumer has to keep exercising that right all the time, the consumer never gets verification, instead is continually frustrated.

So, perhaps that notice should be rewritten to indicate that either if a consumer disputes the debt, they'll get proof of the debt, or the collector can stop contacting them. Now, I know that's getting a little far afield from the technology issue here, but there needs to be better disclosure of consumer rights as these technological communication methods change and increase.

MS. MARTINDALE: Well, and this does really bring back a lot of the points that were raised earlier about how we have these technologies. I'm thinking particularly about the automated software database technologies we discussed a couple panels earlier that have the capacity to retain a lot of

this information. But sometimes, you know, the left hand isn't talking to the right hand, and then you have the problem with the skip-tracing versus autodialer, and, you know, someone saying, it's not me, it's not me, and they just get put back in the other system. These are all problems that are really happening in a very alarmingly high rate.

There's one -- one of my favorite unfortunate stories that, you know, we received from a consumer who we featured in a "Consumer Reports" story a few years ago was a man named Harold Wood, who had a debt that was clearly sold multiple, multiple, multiple times to various debt buyers, and got very little information about his attempts to dispute the debt -- well, none I'm going to say. It was none. It was passed from one buyer to the next. He was contacted by 13 different debt buyers on one debt. So, that shouldn't have to happen if we have all this technology out there to actually pass the information.

So, for me, from my perspective as somebody who has spoken directly with consumers and who still continues to volunteer, particularly with the lowest of the low-income consumers in this country, their problem starts before the first communication even happens. Their problem is that no one is retaining the information. The folks who actually have the information aren't retaining it and passing it on so that someone, before they pick the phone call or hit the email button, is doing the due diligence to ensure they have the right person, the right amount, and a legally recoverable debt.

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And, you know, that would relieve so much of the tension and so much of the frustration for consumers who are never going to go to a plaintiff-side law firm and try to file an affirmative lawsuit. They're the ones who are defending themselves and are, more often than not, receiving imperfect communication or none and are just getting sued, you know, and sometimes don't even know they've been sued. And that's a whole separate issue.

A lot of these problems you have to go even further upstream to attack them, and I think that the newer technologies -- you know, we can talk about using them for communication purposes, but I would posit that we really have to go even one step further back about retaining anything that you have, especially if you're about to sell your debt, before you hand it off to a debt buyer, and that's a real problem for consumers.

MR. WINSTON: Val, I assume that the ACA would support legislation that would require collectors, before they sell a debt, to pass on any disputes that the consumer may have made using one of these snazzy new software applications we heard about earlier today.

MS. HAYES: We had -- ACA had drafted legislation last year, amending the Truth in Lending Act to require creditors to maintain certain pieces of documentation, certain information regarding a debt or an account that was acquired or incurred by a consumer and making sure that that information would be available down that chain of title to subsequent debt

purchasers.

So, it's absolutely something that ACA has been working on and is supportive of, and there is a need for that type of documentation to be provided. And it's something that really needs to start at the creditor's end where they need to be required to maintain that documentation and then providing it down the line.

MS. MARTINDALE: And I would just say I'm very glad to hear that. But I would mention that every pass -- you know, every time the chain of title gets longer, one step longer, it has to be checked every time, and that really means, in my mind, placing safeguards that specifically address the debt buyer who then receives the information to do a reevaluation of those accounts because we know these portfolios get sold, you know, multiple thousands of portfolios, and sometimes the debt seller -- they've even told The New York Times they've done this -- knowingly sells it down the chain and they know that there's errors in it and they resell it.

So, there has to be some accountability for the debt buyer before they then hand it down again to ensure that -- or, sorry, not the person handing it down so much as -- I want to say the person who's now received it and is looking to collect on the debts in that portfolio. They need to check again for the right person, the right amount, and a legally recoverable debt.

MR. WINSTON: Bob?

MR. HUNT: I think the most encouraging thing we heard today

was about all of this new technology and the software that goes through it. I'm not as sanguine about some of the information that goes into it.

We talked about how technology can increase the capacity of the industry, and that can have two effects. If the information's really good, then collection firms are going to be more selective. Otherwise, they can just do a lot more of what they already do, and there was a pretty good discussion about which of these is actually happening.

With the point of -- with the location and identification information, anybody who's worked with large microdata sets will sympathize with me here. It seems like it's such a simple thing to do to clean this stuff up, identify unique people, know where they are, et cetera, et cetera. It's never that easy.

There are many thousands of organizations that place some form of bill or debt for collection. A subset of those are creditors, but they're not all creditors. We have 5,000 collection firms. We have at least 1,000 firms that are in the business of providing data in one form or another to the collections industry, and then we have these dynamic files that we want to have updated with all of the disputes and other things without even having a standard for what that record should look like and all of the technology associated with it. I'm not saying that you can't overcome that, I'm saying that there's a lot of coordinating steps that have to take place for that to happen. As Valerie was just saying, it has to start with creditors and go

through the chain.

There is a substantial fixed cost to doing this. The variable cost might not be so bad, but the fixed cost could be very high. So, however we design this, we want to get that right. We want to make those investments once and then move on because we have to remember what somebody else said earlier today. We're talking about an average trade that's \$500. The average net return to the collector on that trade is about 23 bucks, and their average profit on that trade is 3 bucks. And, so, we have to keep in mind that while we have to improve this information problem so that the collections industry is more selective, this is the account. This is the kind of account they're collecting on, and it's -- the economics have to work for that. That requires that we study the technology and the cost and the business models very carefully so that we get this right.

MR. WINSTON: Those are good points, Bob, but I have to confess that I couldn't get past your use of the term "large microdata set."

(Laughter.)

MR. WINSTON: How can it be a large microdata set? I can safely say I've never used one, so...

MR. HUNT: Lots of observations on anonymous people. Let's put it that way.

MR. WINSTON: Okay, good.

MR. NEWBURGER: Could I pose a sort of -- I hate to pose a

rhetorical question, but I feel bound to do it.

Consider this. A consumer sends an email to a collection agency. It says, within 30 days of receiving your letter, I dispute the debt, and I request verification, or a consumer sends an email to a collection agency and says, I demand that you cease communications. Is there really any regulator or consumer advocate in this room who is not going to argue that the collection agency is bound by that communication as if it went by snail mail? And if you would argue that, or to put it differently, unless you're willing to deprive consumers of that argument, isn't it necessary to recognize that email is snail mail?

The minute you open the door and say if a consumer can stop a collector with an email, then the collector should be able to tell the consumer we're getting ready to process your check. Would you deprive consumers of the ability to email a collector and say, don't call me?

MR. WINSTON: Anyone want to take that on?

MS. TEPPER: Well, I think that the opportunity for a consumer to communicate in one way does not necessarily mean that they've given consent to be communicated with by that same means of communication. These are not equally situated entities, and many consumers don't know what consent is, and they don't really know what they're doing when they send an email. They don't know that they're conferring consent, and that should not be assumed.

So, I think that, as Laura said, we really need disclosures as to rights. We need affirmative consent, not opt-ins -- not opt-outs, rather, and we can't assume that consumers want to communicate in a certain way unless they specifically are told what that could entail and agree to it affirmatively.

MS. HAYES: But I think something that we do need to take care of in the industry, both at a state and federal level, is when you see these regulations or legislation coming down that's saying, please provide these 72 disclosures in a collection letter or the validation notice or some type of oral communication, at what point do you hit where the consumer just doesn't understand? It's confusing because there's so much information that has to be provided, so many different disclosures that need to be provided.

And we've all heard during the past year or so Ms. Warren talking about the need to simplify notices, whether it be at the mortgage level and the lending level. Well, I think that need is now in the debt collection realm, as well. I think there needs to be that balance of what information needs to be conveyed so the consumer understands what their rights are, and I'm not saying it isn't -- it's -- you don't say here you have the right to cease communications or you shouldn't be disclosing this information. But you do have to figure out what information needs to be conveyed in an effective manner and what is that effective manner to make sure the consumer understands what their rights are.

MR. WINSTON: Let me bring that back to technology. Are there technologies that are in place now or that might come in in the future that could make it easier for consumers to understand disclosures?

MS. TEPPER: This isn't really what we're talking about here, but there is a program that analyzes plain language which our office has used to make disclosures clearer and easier to be understood, and that would be something useful to use across the board.

MR. WINSTON: Bob?

MR. HUNT: I think the one technology that has -- the Federal Reserve has started using is actually market testing disclosures before they mandate them. This is something we've done for almost 10 years. We started it with -- I think they were the TILA disclosures in Reg Z, and it was a recognition that, in fact, we were writing up disclosures that looked beautiful from a legal standpoint, but which the typical consumer could not comprehend. And then we started road testing these disclosures.

The latest example of that we did for disclosures on the overdraft rule, and the process of actually market testing those disclosures, we think, makes them much more effective, and I think that that will be a standard tool kit for many regulators going forward.

I was at a conference in Washington about a year ago where someone was asking about mobile payments and mobile commerce. How do you put in an effective disclosure on the screen of a mobile phone?

Because that's going to come. And that's an important question.

MR. WINSTON: Yeah, we really haven't talked much about disclosures today, but that's a huge issue, and it's an issue that we face as regulators every day. We've been doing copy testing for, you know, decades, and we're certainly big fans of doing that.

I guess my favorite story, along those lines, is -- Lori Garrison, who's here in the audience, may remember this. Back when Congress passed the Gramm-Leach-Bliley Act requiring the financial privacy notice to go out to consumers, everyone was wondering what was going to happen. So, the banks came up with these disclosure forms that were five or ten pages long in legalese. No one understood them. People were just throwing them out in droves.

So, we decided to gather a group of top officials from the bank agencies, who shared enforcement authority with us, to come up with maybe a better template for a clearer, more usable disclosure form. So, we met in our conference room, and these were top officials from the OCC and the Fed and the other agencies, and they said, "well, we've got the answer. We all got together at lunch yesterday, and we wrote out a form." These are a bunch of lawyers. And we took one look at this form, and it was worse than what had been used and it was absolutely incomprehensible.

(Laughter.)

MR. WINSTON: So, we gently convinced them that maybe we

ought to do some consumer testing and find out what works and what doesn't. Six years later, we came out with -- was it six years or --

UNIDENTIFIED FEMALE: At least.

MR. WINSTON: At least. We came out with a new model form that Congress actually adopted in legislation, and now consumers, to the extent they don't just throw out the envelope, can read this notice and maybe understand it.

MS. HAYES: And I think it's important, as Bob pointed out with testing, what you're trying to put into place. We met with a regulator a couple weeks ago who was looking to implement, well, this is the new disclosure we want to include in all communications. Well, that would mean in a message when you look at the definitions and when you look at case interpretations. And they wanted to include a disclosure dealing with how you collect time-barred debt. And we all heard Tom Pahl read ACA's suggested Foti language and everyone laughed because it's really long. Well, now I add another 15 seconds to that to disclose the time-barred debt disclosure that the state wanted to incorporate, and you're going to laugh even harder.

And I think that's something you have to look at and test out and think about logically. What does this actually mean to the consumer and what does it mean to be able to effectively communicate? And a couple of people on the panels have pointed out, well, consumers aren't obligated under the FDCPA to communicate with collectors, and that's right. They

aren't obligated to communicate, but they are obligated to pay their debts when they're incurred. And I think to do that, you have to be able to effectively communicate back and forth between the parties, and that includes leaving the messages and whether it be email or the written communication or incorporating the text messaging when that technology catches up.

You have to be able to communicate effectively, and consumers do need to understand what their rights are, and you do need to educate consumers as to what those rights are, as well.

MS. UDIS: Well, and I agree with Valerie. The devil's in the details. Luckily, at least currently, a validation notice can generally fit on one page and so can usually be a one-page disclosure. I do agree consumers should pay their valid debts, but they also should know what their rights are, and I think that can be on one page.

I do think that, you know, this whole problem with technology, if it's a problem, about consumers not anymore answering phone calls is due to whoever invented Caller ID because that probably started us down the road of no one answering phone calls anymore from numbers that you don't know because you know somebody's either asking for charitable donations, it's a political call, or it's a debt collection call, or it's from, you know, my father who I don't want to speak to because he keeps me on the phone for an hour at night, and so, I'm going to, you know, decide when I'm going to call him.

But other than that, with Caller ID, you choose who you're going

to call -- whose call you're going to answer and whose call you're not going to answer. And, so, I think the idea that consumers can decide who they're going to answer the phone from and what communication method they're going to use is great.

I realize that creates problems, but I think this idea of, yeah, how do we fit a validation notice on a smartphone screen or a dumbphone screen is a real difficult one. So, we need to look at that, but I still think that we can do that on a one-page form, and that's something we need to look at.

MR. WINSTON: Yeah, and I can reassure you that an enormous amount of work is being done on this very issue in the Federal Government right now. I've been on any number of panels and conferences and meetings where we've been discussing these issues, and the consensus is that the difficulty of explaining even relatively straightforward information to consumers is often not understood, that consumers tend to be not able or not willing to process that kind of information. So, you have to come up with alternative ways of communicating to them.

And, certainly, one of the main purposes of the new CFPB is going to be to figure out a way to make disclosures better. Indeed the task that they've undertaken really first is combining the two mortgage disclosure forms into one simple form that supposedly is going to be on one page. You know, good luck to them.

(Laughter.)

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MR. WINSTON: People have been trying to do that for 30 years, but certainly they can be made better, and we certainly hope that would happen.

MR. NEWBURGER: In this context, you realize the validation notice has a 12th-grade-plus reading level.

MR. WINSTON: Hmm.

MR. NEWBURGER: If you run a readability on the notice that we require be sent to every consumer -- newspapers are, what, 5th grade? And this is a 12th-grade-level notice. It is beyond the comprehension of many consumers when we talk about what people understand. The Section 811 notice is a problem.

MS. MARTINDALE: Right, and I would even say that there -- you know, to take some baby steps in the right direction, again I'm going to go back to the debt buyer context because that really is what most low-income consumers are dealing with. They're dealing with debt buyers, and sometimes they're just contacted by somebody. You know, it's a company or a personal name they've never heard of before who says, "you owe me money, and you owe me this amount." You know, like, who are you and why are you calling me?

And, so, even just getting in that initial validation notice the original creditor and a redacted account number -- sometimes the debt buyers don't even have that. That's a problem. I mean, how are you supposed to

figure out, you know, who this person is, whether they validly own your debt or not? I mean, if you're a Harold Wood and 13 different people say they own your debt, I mean, where are you supposed to start?

So, I think those are two small things you could just add on to the one-pager that would at least kind of get us in the right direction.

MR. WINSTON: So, here's a question from the audience. We require testing of drivers before they are allowed to drive. Should we be testing consumers before they are allowed to borrow or use credit?

(Laughter.)

MR. WINSTON: Would this satisfy the need to disclose their rights in the event they default? You know, it seems funny on the surface, but actually there's been a lot of serious talk about that. And I think it's another issue that the CFPB is going to be looking at, not necessarily to require a test, but something, you know, along those lines.

Anyone have any thoughts?

MS. TEPPER: Our office offers free financial literacy training to consumers in New York City. So, we certainly support the idea that educating consumers about their financial obligations and rights is a good idea, and teaching them how to balance their budgets is a great idea, as well.

But I think that there's also the obligation of businesses to evaluate more closely the ability of consumers to pay instead of promoting credit wantonly. So, I think there's a balance there.

MR. WINSTON: Yeah, and along those lines, there are new proposed rules out of the Fed that would require mortgage lenders to conduct a suitability analysis before they give a mortgage to a consumer to make sure that they are actually suitable for the terms of that. So, those are all efforts to really grapple with this problem.

Let me change the focus a little bit. There was a lot of talk earlier today about the benefits and costs of automated technologies, and in terms of cost, I think, actually, Laura talked about this repopulation problem of a consumer says, "it's not me," but then it goes back into the database, and they get another call a week later, and this goes on and on and on.

For those of you who are following the mortgage-servicing federal and state government efforts to -- and the robo-signing issues and other issues -- one of the provisions in the agreements that have been made so far is that the mortgage-servicing companies have to actually designate a human to be available to answer consumers' questions about their mortgages and the servicing because, again, consumers are getting caught in automation hell and never escaping.

What do people think about something like that in the debt collection context?

MS. TEPPER: We have a rule in New York City that if a debt collection agency contacts a consumer, that communication has to include a phone number that the consumer can call back and make contact with a live

person. And we think that's a great rule because it ensures that if a consumer wants to pay or wants to come up with a settlement plan, they'll reach someone knowledgeable about their debt so they won't be frustrated by that experience, and at the same time, they will reach somebody who's knowledgeable about the debt. So, we would support that idea.

MR. WINSTON: It seems like every time I come up with a topic that, is this something that maybe people should do, New York City already has an ordinance on it.

MS. TEPPER: Thank you.

(Laughter.)

MR. WINSTON: That's very impressive. Suzanne?

MS. MARTINDALE: Oh, thanks. No, I was just going to say I absolutely would support that. I've also seen cases of consumers who have, you know, actually reached a settlement agreement with the current owner of the debt, and that never gets recorded, and then it gets sold down again, and then they're back at square one once more.

And, so, if there is a way to, again, ensure that, you know, despite the fact that in many ways the information is, you know, transmitted in automated fashion, that there's some gatekeeper, some human being with a brain gatekeeper who has to, you know, add in some of these notes and take that account off the portfolio list before they resell it. I mean, this really has to happen.

MS. UDIS: Yes.

MR. WINSTON: Bob?

MR. HUNT: Valerie can probably back up what I'm about to say, which is that collection firms ought to be pretty well disposed to handle the call and to talk about debt. We've been talking about communication all day. Clearly, you want to do that.

The mortgage analogy is interesting because we have, you know, a million, perhaps 2 million people that got in trouble, and a portion of those consumers reached out to their mortgage lenders and hit a wall because, technologically, the lenders were not ready to handle this. And lenders have spent several years trying to automate and standardize and get their software and stuff up so that they can get do their workouts and they can do the HAMP workouts and all of this other stuff, and it's been amazingly difficult for these guys to start from zero in the middle of a crisis and do that.

Other people who got in trouble with their mortgages did what a lot of people do, which is shut down. So, they don't answer the phone call from the lender, they don't answer the letters. Eventually the home goes into foreclosure, and we know that the appearance rate at foreclosure hearings around the country is pretty darn low. So, those homes just go.

The city of Philadelphia, is trying something a little different, which is called the Mortgage Diversion Project, and the idea is -- and you can do this with mortgages. Obviously, you can't do this with a lot of other debt.

But a foreclosure notice is a public document. So, you can go to a credit counselor, for example, and say, could you reach out to this consumer, tell them they're about to lose their house, and if they could show up at the foreclosure hearing, maybe we can negotiate something with the lawyer who's there to foreclose on your house?

And it turns out that people do show up. Maybe it goes to 40 percent. I'm not sure. But more people show up, and they at least talk to the creditor. At this point, we don't know what happens in the long run -- whether more people stay in their houses or whatever. We don't know yet. But the fact that they were able to facilitate that communication at least bought the consumer a little bit of time and maybe helped them make a decision about what they had to do and make a decision about whether that mortgage really was going to be saved or not.

It may very well be the case that we have to reach something like that for unsecured credit or some other kinds of credit because we do have this segment of the population that simply shuts down when they get in trouble.

MS. UDIS: Joel? On that issue of requiring a live employee to answer the phone, although we would generally be fairly hesitant to require that as a statutory requirement in the debt collection area, and given how important live communication is according to the industry, it's something that I think is interesting, particularly in the area of the wrong consumer because,

as I had mentioned earlier, some of the recorded messages that have been left have said, if you're not so and so, hang up. And then if you continue to listen and select an option, you are admitting, acknowledging that you are so and so. So, you are not given the choice, on some of the messages, of the option that you're the wrong person. So, the idea of a live-person option without acknowledging, admitting that you are that debtor is something that I think is interesting and that we might consider in an appropriate situation.

MS. HAYES: And one of the reasons when we drafted the language for our proposed message to leave in regards to the Foti case, we incorporated at the beginning of that message the language, if you aren't this person, call this number. And whether at that agency you get a live person, or it's a system where all you do is enter your number and it's automatically deleted from the system, that's one of the reasons we did that because you would be in this catch-22. Well, I'm not the person so I definitely should hang up, and we know everybody does that when it says please hang up and you're not the person. So, we did incorporate that into the message.

And I think you also have -- you know, as Bob was saying, our industry does want to talk to you. That's what we're trained to do. We're trained to talk to you, to talk to consumers to figure out how to pay your debts and get those obligations taken care of. That's what they want to do.

You do have consumers who don't want to talk to debt

collectors. We get that. There are options. There is technology out there where you can drive somebody to a website, drive a consumer to a website and allow the person to go to a website and work out a settlement arrangement on a website. And they don't have to talk to anybody at all if they don't want to. There's the letter process. So, you do have these -- you have different consumer preferences, and the industry's really trying to communicate effectively.

Whatever that communication preference is, we really just want to talk to the consumer, figure out how to get that consumer to pay that debt, and then move on to the next obligation and then deal with the next consumer in an effective manner and in the way that that consumer wants to be communicated with.

MR. WINSTON: Let me just delve a little deeper into that. Is there a trade-off between accuracy and efficiency? And if so, what's the right balance?

MR. NEWBURGER: Efficiency is not an alternative to accuracy. Steve Goldman said it earlier. He's absolutely right. You can be efficient and still be accurate. That's what his company's based on, frankly. Why should one diminish the other?

MS. HAYES: And it doesn't do anyone -- no, you don't want to contact the wrong consumer. It doesn't do you any good. You want to know when you're communicating with the wrong person. And we've heard

several conversations up here -- several panelists have commented about, well, you get 127 calls. I just don't want to talk to you. Well, that's all well and good, but if you would have just picked up your phone on the second call and say, "hey, I'm not the right person," we remove you from the system. We don't call you anymore and you don't get the next 115 calls.

Because there are instances where consumers don't pick up the phone, and you are the right person and you're not communicating, and when you aren't able to communicate -- somebody else, a panelist, said, well, you can file a lawsuit. Yes, you can file a lawsuit, but as a consumer -- I'm a consumer -- I'd rather not be sued for debt. I'd rather you call me, we work it out, or you send me a letter, and I pay it. I don't want to get dragged into court.

So, I think you have to balance those interests. But you do want to communicate accurately with that right person. You want to know when it's the wrong person.

MR. WINSTON: All right, does anyone feel like there are things that collectors could be doing technology-wise to make their information more accurate?

MS. TEPPER: Well, I was puzzled by the inability to -- and remain puzzled by the inability to collect accurate information that consistently proves that a debt is owed. And it could be that I'm not that technologically savvy, but with all the things that we're talking about, that seems to be the

most fundamental thing that we should be talking about. That's the first step for debt collection, and that's where that energy should be focused.

MR. WINSTON: Other things people think we should do?

MR. HUNT: Suzanne already hit on something, which is, in the credit-reporting context, when there's erroneous information, there's a feedback loop to correct it. There's a dispute process. There's a dispute process under FDCPA, but it doesn't seem to have the same feedback effect, and I can't figure out whether that's an issue about the way the law is designed or whether something technological or economic that prevents that, but that seems like a fixable problem. It may require coordination because, you know, this is not a highly concentrated industry, but it seems like a fixable problem.

MR. NEWBURGER: It's a problem that's, in part, been created because the banks have been allowed to do some things that are, quite honestly, troubling. If you're a consumer and you want to figure out who a bank is, try looking up the bank history on a few of the major banks and see how many times they've changed names in ways that are so similar that no one could figure out who a bank really is or who they did business with through the history and which one merged into which.

Then you have a two-year document-retention policy for banks. Why? You're going to push six years out on an industry with stocks, but you're going to let banks have two years? Aren't they supposed to be the

most fiscally and financially accountable in the country? Why would we let them have two years, okay? And, so, the answer is that the banks have been allowed to do this.

And we're talking about the debt buyers, look, a debt buyer buys paper from a nationally chartered bank that the Federal Government says is supposed to keep accurate records. They get a warranty that says this debt's just, true, due and owing. They get account data that pertains to the consumer. All the ones I represent then go out and check the credit bureaus to be sure that the data matches up. They see this account -- the numbers here and what we bought, it's on the consumer's file. Balance appears to be right. If it's not right, they go back and look at where the data came from to begin with.

The breakdown does not tend to occur in the subsequent transfers. The question is whether the original data was right.

MR. HUNT: I'm not saying it did.

MR. WINSTON: We have a question from the audience that's right on point. Can anyone comment on what the responsibilities of the original issuers of credit, "the creditors," should be in solving some of these challenges discussed today, and what role should they play in future rules and regulations?

So, I'd ask you all to assume, for the purpose of this question, that there's going to be a consumer protection agency that has jurisdiction

over all the banks and the collectors and pretty much everyone else who will have rule-making power, enforcement power, examination power, and a lot of other things. If you were running that hypothetical agency, what would you do?

MR. HUNT: I think Manny just hit on one point, that there ought to be some kind of coordination between the information that's provided by the original creditor and the information that's required in the process of collections, and that has been bifurcated, I think, for a very long time.

MR. WINSTON: Can you be more specific about who should do what?

MR. HUNT: Well, no, I can't because when you think of -- one of the interesting things about the Consumer Financial Protection Bureau is that it does unify all of these responsibilities, and so, for the first time in maybe 30 or 40 years, this group of people are going to have to sit down and think about how they comprehensively design this. And there are numerous tradeoffs to think about in terms of the data requirements, the data retention requirements, the data transmission requirements, the feedback loop through the dispute process.

I'm assuming that the evidentiary requirements in the state courts will continue to be determined by state courts, but that's also a factor in here. Bureau staff are going to have to sit down and sort all that out, and I wouldn't be able to predict, you know, without being part of that whole

conversation, exactly how that's going to work, but that would be a much better system than trying to do it piece by piece.

MR. WINSTON: Would anyone else like to give the CFPB some ideas? Marla?

MS. TEPPER: I think it would make sense for the creditors not to be able to assign or sell debts for collection unless certain documentation is maintained and transferred, and I think that's pretty -- that would be great.

MS. MARTINDALE: The Consumers Union has already told CFPB to do that many times. We're working on it.

(Laughter.)

MS. HAYES: And that's something from the industry perspective that ACA has also been advocating for is figuring out what documentation is necessary to show that this is the consumer that owes this amount to this party. And once you figure out what that documentation is, it really -- you have to start with the creditors, that they have that information, and then they maintain it for a sufficient period of time. And we advocate for at least a seven-year retention period because that's the credit reporting period. That's how long you can report to a consumer reporting agency for that debt. So, that's how long at least that documentation should be maintained. And whether it's the creditor or it's the next person down the line, that documentation should be there so you can show that this is the debt that's owed to this party by this consumer.

MR. HUNT: I think we're all saying that there's probably a lot of room for gain here. At the end of the day, the thing's got to be able to accommodate the fact that most of these debts are relatively small. So, the information collection and retention, this has got to be well-designed, cost-effective, but then we've just listened for six hours about all the technology that should help us get there.

MS. UDIS: Well, I think that there's also an inherent tension, which might be fixed by the joining of regulation under the CFPB, but in my own personal view, and this is my personal view only, but in the current structure, I think a lot of the bank regulation -- and we're talking generally in the debt collection area about unsecured debt, and a lot of that's credit-card debt. I think a lot of the focus on the bank regulation has been what will profit the banks? So, we're talking safety and soundness, in a narrow view, financially what will benefit the bank's profit, the bottom line.

And, so, perhaps regulation was looking only at selling off assets and how that would benefit the bank, whereas from the debt collector regulatory area, both from the FTC and state regulator point of view, we were looking at consumer protection. And, so, I think there's an inherent conflict there between what benefits the bank in getting some of this debt off its books versus consumer protection in ensuring that the debt collector or debt buyer is following consumer protections. And I think that conflict doesn't result in the best consumer protection when the bank is doing whatever it can, in some

cases, to get that bad debt off its books.

So, that may mean that it's not being sold with good back-up, good paperwork, and if a debt buyer does not or cannot or will not obtain any kind of verification of the debt, there could be a real problem. In fact, I think it's a former FTC staff person that came up with this -- it's not my own original idea -- that if the debt collector cannot get any kind of proof of the debt, is that a Section 5 of FTC Act violation to even try to collect it?

So, an interesting concept, but I think maybe the CFPB won't have, perhaps, that inherent conflict.

MR. WINSTON: Yeah. Actually, that's in our 2009 report, the idea that you have to have substantiation for your claims.

So, we've got about six minutes left. A reminder, any other questions, please get them up. We do have one here which is more of a general -- how do we anticipate dividing responsibility for this industry between the CFPB and the FTC?

And I can just answer that quickly to say, we're working on it. We're coming up with a memorandum of understanding, which we'll have by January, at the latest, and we do share enforcement authority, but rule-making authority is generally vested in the CFPB. So, there will be some difference. But we do anticipate working together closely to avoid duplication and certainly to avoid inconsistent standards. That's the last thing we want to do.

So, I guess a final question for all of you -- so, tomorrow morning, I'm going to come back into the office and go sit at my desk and think about what is the FTC going to do next to resolve these issues that have come up today. You know, what should we be doing? And I'd love to have any suggestions that you folks have.

MS. HAYES: I think there needs to be modernization of the FDCPA with the technologies that exist now and addressing technologies that exist or will exist in the future. And I think rather than being specific and saying, this is how you do email, this is how you text-message, it needs to be in a broader, more general sense to address technologies that will come into the future, but it definitely needs to be something that's modernized to address those types of communication methods.

And I think also another issue that we really didn't address in this panel, but was addressed during an earlier panel, is you also need to address how you leave messages and what is left in a message for a consumer so we can effectively communicate.

MR. WINSTON: And just to refine my question, until they elect me to Congress --

(Laughter.)

MR. WINSTON: -- I probably can't do that, but what is it that you think the FTC can or should do?

MS. HAYES: But I think you can -- when you're going to be

working with the CFPB, the CFPB will have regulatory authority beginning in July. And I think as the FTC and a partner with the CFPB, you can reach out to the CFPB and work with them on those regulations dealing with those issues. You can also advocate to Congress, with the CFPB, to modernize the FDCPA for the industry and improve consumer protection as well as improve the debt collection industry.

MR. WINSTON: Bob?

MR. HUNT: I think after this meeting and some of the other things that you've done, there's a rank ordering of some issues for which I think we have enough information to make policy recommendations on. But a lot of the conversation is about restructuring this entire environment, and there is a whole agenda of applied research that's necessary to do this well, and we need to push this along, and I encourage the FTC to try to do that.

In many ways, we need cooperation from the industry to do that because the underlying information that's necessary to make good decisions here is in your hands. It's not in ours, it's not in mine. And if we don't get that information, we're much more likely to make mistakes that are going to be very costly for the industry and for consumers.

MS. MARTINDALE: I would say that I agree that research is really, I think, a very important next step for the FTC. You know, we've seen that there really is a great amount of capacity that is in our hands, you know, with these new technologies for communicating more effectively, potentially in

ways that are preferential to the consumer. I'm setting aside privacy issues, which I don't specialize in.

Also, you know, the ways in which we can use technology to ensure the accuracy and integrity and, hopefully, the efficiency of retaining, obtaining, and then transmitting information so that we're not accidentally picking off innocent fish in the net, you know, which does -- it may not be the majority of consumers who are suffering debt collection abuses, but it's a significant percentage, and still that should be addressed.

I think this whole conversation, this whole day has been interesting. I've thought about how -- you know, what we always need to remind ourselves is that technology is really -- it's a really exciting topic. It's very easy to get in the weeds with it. We just always have to remember every once in a while, you know, to take a step back from the research and say, okay, this is -- the Fair Debt Collection Practices Act is a remedial statute. And I think only one person mentioned it toward the end of the day today.

It is meant to cover the most sophisticated consumer down to the least sophisticated consumer. So, we need to think about what that means, you know, whether it informs how we'd write our disclosures or whatnot. I mean, that just -- that, to me, is an important piece of it, is remembering that we have to protect even the least sophisticated consumer who may never file a lawsuit, an affirmative lawsuit, who may not know what

to do, who may freeze up, who may not know what to do when they get served a lawsuit, may not know that they have an affirmative defense. They probably have never heard what an affirmative defense is. I hadn't before I went to law school.

So, these are the types of issues that I think sometimes get -- fall by the wayside when we're talking about what our next step should be, and I would just reiterate that, you know, we have to think about the full range of, you know, consumers that we're dealing with, and who primarily recognize a moral obligation to pay their debt. They just want to make sure that they're, you know, dealing with someone who's legitimate. MR. NEWBURGER:

In its white paper for the 2007 workshop, the Commercial Law League pointed out that the Act had not been amended to deal with technology, that in 1977 when the Act was passed, there were no cell phones, no fax machines.

Well, if you look at the statistics on the rate at which technology's advancing, it's advancing a whole lot more quickly today than it was during a good portion of the history of this Act. I've seen statistics saying that in a four-year trade school, by the time you get to your third year, what you learned in your first two years is outdated. That's how fast technology is moving right now. The law has got to be able to keep up with that.

At the same time, we've got to recognize some of these technologies are good for consumers. We talked last week about the fact -- and I've heard Professor Warren talk about this. Driving people into bankruptcy's a bad thing. No one wants that. The creditors don't want it, the agencies don't want it, the debt buyers don't want it, the consumers don't want it. We don't want to push people into bankruptcy, and that means we have to find ways to make it more possible to collect, more possible to reach agreements with consumers, more possible to communicate with them so that consumers have a chance to get back on their feet. We need to provide these opportunities for the dialogue. We need to find ways not to force cases into court.

The case law has gotten to the point now where one of the number one issues is call frequency. Why? Because with the Foti cases, no one wants to leave a message. So what do you do? You call, you don't get an answer, you don't want to leave a message, so you call back a few hours later. Well, you don't get a message, you call back a few hours later. Well, if you know someone's sitting at home and you're doing it to harass them, that's illegal. If you think no one's there and you're trying to avoid risking damaging someone's privacy rights, it's not illegal.

MR. WINSTON: I hate to cut you off, but we're pretty much out of time. So, Marla and Laura, briefly.

MS. TEPPER: Well, I think we all agree that the law needs to

be written or evaluated in a flexible way that reflects new technology and incorporates that to the benefit of both the industry and consumers, and a lot of issues came up that emphasize that there are opportunities here for business to do the right thing and for consumers to be protected, and that's probably a good starting point for you tomorrow morning.

(Laughter.)

MR. WINSTON: I'd just remind everybody that, again, back in 2009, in our workshop report, we recommended that Congress amend the FDCA to modernize it, and the results speak for themselves.

(Laughter.)

MR. NEWBURGER: But you were right.

(Laughter.)

MR. WINSTON: We'll say it again.

MS. UDIS: I don't really have anything more to add. I'll just say that I do think it's a shame that -- that the FTC never had rule-making authority in its tenure, and it's nice that the CFPB will. So, that's a shame, but good luck to the FTC in trying to figure out what to put in its reports.

MR. WINSTON: Thank you. I just want to thank everybody, those in the audience who stuck through the entire day. I also want to mention the FTC staffers who put this together and worked tirelessly to do that. Tom Pahl.

(Applause.)

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MR. WINSTON: I'm going to name them. Hold your applause till the end, if you would. Tom Pahl, Leah Frazier, Julie Bush, Ron Isaac, Bevin Murphy, Tony Rodriguez, Dan Becker, Nick Herrera, Kara Redding, Erin Feehan-Nelson, Emily Hagan, Jillian Wagman, Russell Caditz-Peck, and Joseph Kennedy.

And thanks to the panelists, also, for a terrific discussion, and you can all go home now. Thank you.

(Applause.)

(At 5:31 p.m., the workshop was concluded.)

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