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FEDERAL TRADE COMMISSION

Public Workshop:

THE INFORMATION MARKETPLACE:
MERGING AND EXCHANGING CONSUMER DATA

March 13, 2001

Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, D.C.

For The Record, Inc.
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MR. WINSTON: Let me introduce myself, I'm Joel Winston, Acting Associate Director for Financial Practices at the FTC, and I want to welcome all of you to the Federal Trade Commission, and give a special greeting to those people who are listening in on our audiocast on the website, ftc.gov.

Now, there are several members of the Commission who are going to be giving some opening remarks this morning, and I would like to introduce first Chairman Robert Pitofsky. Chairman Pitofsky has served as chairman of the FTC since April of 1995, and he will be beginning the proceedings. Mr. Chairman?

CHAIRMAN PITOFSKY: Good morning, everyone, and welcome to another of the Federal Trade Commission's workshops. This one, we have entitled The Information Marketplace: Merger and Exchange of Consumer Data.

I don't think I have to belabor the point with this audience that privacy, especially privacy in the commercial marketplace, is and remains a very important issue.

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1 If you take polls, you find today, just as
2 you did three and four years ago, that somewhere
3 between 88 and 92 percent of consumers when asked
4 what their concerns were about doing business,
5 buying online, will say that they have
6 reservations, and think it's not a secure
7 marketplace. They're not giving their credit card
8 online without having some knowledge of how it's
9 going to be used.

10 As a result, you now have, I think, just
11 since Congress reconvened, something like a dozen
12 bills addressing various issues relating to privacy
13 in the commercial context.

14 But let me position this workshop. We are
15 not looking for enforcement targets for companies
16 that may be invading unfairly or deceptively
17 consumer rights, and we're not looking for
18 legislative proposals.

19 This is another kind of workshop, and it's
20 like many that we've conducted in the past five or
21 six years. We're trying to find out in a new area,
22 a fast-changing dynamic area, what's going on, so
23 that we are informed about the kind of issues that
24 eventually we'll be called upon to address.

25 We did that with our earliest privacy

1 workshops, just to find out how personally
2 identifiable information was collected and whether
3 or not it was being sold. We did it with
4 profiling, more recently B2B commerce on the
5 Internet, and wireless technologies.

6 In this instance, we would like to be able
7 to take the measure of the extent and the ways in
8 which firms exchange information and data that
9 create consumer profiles; not necessarily only the
10 information the firm collects itself, but
11 information that someone else collects that then
12 becomes merged into a firm's database.

13 How is that information used commercially?
14 Is it used commercially? And if so, in what
15 fashion? What is the source of the data? Is it
16 mostly online, is it offline, is it a combination
17 of the two? Does it come from public records,
18 private records, a combination of the two?

19 We know that the ability of firms to
20 collect data has been enhanced dramatically over
21 the last five to ten years, and what we want to
22 find out is how it's being used so that down the
23 road we can spot issues. It is an
24 information-gathering enterprise. It is not
25 designed at the end of the day, at the end of these

1 sessions, to come up with policy proposals.

2 We have no predisposition on this. My own
3 view, as some of you have heard me say before, is
4 that this kind of enterprise is what Congress had
5 in mind in 1914 when it created a Federal Trade
6 Commission. Not just law enforcement, but a group
7 that would try to work with the business community,
8 with consumers, and others, to understand new and
9 emerging dynamic trends in the economy.

10 That is what we've been about over the last
11 five or six years. We've tried to restore that
12 tradition, and I certainly feel that this workshop
13 moves in that direction.

14 We have a wide variety of people here today
15 who represent the business community, the consumer
16 community, academics, and others, and if history is
17 any guide, we will at the end of the day have
18 learned a good deal from each other.

19 With that, we'll receive some words on
20 video from my colleague, Mozelle Thompson, but
21 while that's being set up, let me introduce my
22 colleague and friend, Commissioner Orson Swindle.

23 COMMISSIONER SWINDLE: Thank you very much,
24 Chairman Pitofsky. I would like to welcome you all
25 here, and before I forget it, the last couple of

1 days in preparation for this, Bruce Jennings and
2 his crew of youngsters around here have been
3 scurrying in about 9,000 different directions
4 making all this come together. Wires have been
5 dragged all over the building and I think we've got
6 a good set-up here, and this will be recorded for
7 posterity and hopefully there won't be too much
8 blood on the floor when it's all over, but it's a
9 delight to see you all.

10 I know so many of the organizations that
11 are represented here, you have a vital interest in
12 this, certainly from a personal perspective of your
13 business, but we are all, as the chairman says,
14 grasping to understand. And I would hope that we
15 would view this process here today, as we have in
16 previous workshops, as the Chairman mentioned, as a
17 learning process in which we listen and offer our
18 suggestions from time to time, but mostly we listen
19 to you, the practitioners, and try to get a better
20 understanding of what we're all about and what
21 we're doing here with this very controversial -- is
22 that a good word to describe it -- but the issue of
23 information flow and its effects and the concerns
24 that various and sundry people have today in the
25 consumer population or in business population.

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1 I do want to welcome you all here today.
2 The use of third party information from public
3 records, information aggregators and even
4 competitors for marketing has become a major
5 facilitator of our retail economy.

6 Even Chairman Greenspan suggested here some
7 time ago that it's something on the order of the
8 life blood, the free flow of information. This was
9 made even more clearly by a new study released
10 yesterday by the Privacy Leadership Initiative and
11 the ISEC Council of the DMA.

12 The study made it clear that consumer
13 prices would increase if public policy
14 significantly limited the flow of data into catalog
15 marketing and sales. At the same time, the digital
16 revolution, both online and offline, has given an
17 enormous capacity to the acts of collecting and
18 transmitting and flowing of information, unlike
19 anything we've ever seen in our lifetimes.

20 Obviously the debate has been furious over
21 the appropriateness of these data flows, this
22 passage of information from one entity to another.

23 The perceived harm that this data flow
24 causes and what the appropriate remedies might be.
25 As we all know, we've had a heavy debate on privacy

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1 going on now for at least three years, I've been
2 here three years, and it was going on even before I
3 arrived.

4 I believe that issues related to the real
5 harm that might be caused are well addressed by
6 existing laws, but now we need to explore issues
7 related to customer or consumer and business
8 entities or the seller and the buyer, if you will.

9 It is also useful to note that the digital
10 revolution has revolutionized the knowledge that
11 the buyer has about the marketplace. Buyers today
12 are more informed than they have ever been ever
13 before. The information age and information
14 technology is literally changing the way every one
15 of us does business, the way we conduct our lives,
16 how we pick and choose, and certainly this
17 information flow has made the buyer far more
18 informed.

19 It is crystal clear that there have been
20 quantitative and qualitative changes in the
21 marketplace, and the manner in which information is
22 made available and used.

23 There are real benefits in this for both
24 consumers and businesses, from these changes.
25 There are also changes in the way we all interact

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1 with each other. More of the interaction is being
2 defined by data and less by each of us based on
3 what we reveal about ourselves.

4 The FTC has traditionally dealt with harm
5 that comes from bad actors and market failures.
6 The issues being raised today don't necessarily
7 fall easily into either of those categories. Such
8 as the challenge that we face.

9 Productivity gains are well documented and
10 the new technology, as I said earlier, is changing
11 the way we do everything. However, there is a
12 great trust deficit in existence out there now.
13 The public has concerns about the private sector's
14 ability to govern information use, or manage that
15 information that they happen to have on people. At
16 the same time, the same observations will tell you
17 that the public has great concern as to what the
18 government does with the information it has.

19 And I would contend that we might ought to
20 be a little bit more concerned about what the
21 government is doing than the private sector, but
22 nevertheless, we've got a great distrust going here
23 between the consumers who more and more today
24 understand the value of their information, and what
25 goes on around them.

1 We therefore have a dilemma. The use of
2 information drives our economy, I think that's
3 pretty well established. That includes information
4 to make sales, marketing and customer service more
5 efficient, and more effective. The information
6 flow allows businesses to build the right product,
7 deliver it at the right time, to the right place,
8 to the right address, and meet the demands, unique
9 as they are, among all consumers, carefully
10 tailored to them. That I would suggest most
11 consumers would say not a bad deal.

12 However, this increased use of information
13 about people creates consumer concerns. The public
14 is concerned about the potential misuse of the
15 information, and individuals are concerned about
16 being defined by the existing data on themselves.

17 This is a huge misunderstanding deficit
18 that parallels and matches the trust deficit.
19 Consumer education has lagged market changes driven
20 by new technology. Government is behind the new
21 technology changes, too, as we've all noted.

22 Consumers struggle to understand the
23 technology itself, not just in the ways in which a
24 technology is used in the marketplace, I'm still
25 wrestling with my ISP, I was about to use a name

1 there, but I won't. I'm having so much trouble
2 with it, I don't want to defame the country at this
3 point in time, but I'm having trouble with the
4 technology itself, not to mention the information
5 flow.

6 Today's workshop is a great opportunity to
7 begin to bridge this learning gap and this trust
8 and misunderstanding or untrust and understanding
9 deficit. We're here today to gather facts and
10 begin to understand the flows of data that support
11 marketing and customer service.

12 This should increase our understanding of
13 the benefits of the free flow of information, and
14 to begin to understand the level of real harm, to
15 whatever degree it might exist, related to
16 information use.

17 And perhaps we have an opportunity to ease
18 the fears that are related to that emotion of fear
19 of the unknown. I would suggest, plead with,
20 counsel all participants to please leave your
21 emotions at the doorway.

22 This session today, folks, please, is not
23 about sound bites, it's not about exposing people
24 in public, it is about learning and sharing what we
25 each know and how we go about doing what we are

1 concerned with, and understanding how to balance
2 legitimate privacy concerns and economic and social
3 benefits.

4 Remember, today's objective is to learn, to
5 explore, and perhaps start to identify so we can
6 put our hands on it, some policy approaches that
7 are balanced in their -- they're balanced in a
8 sense that they balance the consumer's interest in
9 choice and economic opportunity, they balance the
10 consumer's interest in not being harmed by security
11 breaches and data misuse, they're balanced in the
12 sense that they respect the consumer's interest in
13 choosing when to not participate in a market, and
14 also the other side of the coin, so to speak, is
15 business interest in serving all markets in a most
16 effective and efficient and, quite frankly,
17 profitable way that they can. That's what you are
18 our free enterprise system is all about.

19 I thank you again for joining us. This is
20 an important session. Perhaps it's the first of
21 several important sessions on the very subject,
22 because I think we have a lot to learn and we
23 appreciate you coming here and being a part of our
24 family and helping us learn more, learn faster, and
25 hopefully, as I always say, helping us to look

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1 before we leap. Thank you very much.

2 (Applause.)

3 COMMISSIONER THOMPSON: Good morning. I
4 would like to join the Chairman in welcoming you to
5 the FTC for this important workshop on the
6 Information Market Place.

7 As he mentioned, today we will all be
8 sharing what we know about the topic of Merging and
9 Exchanging Consumer Data. It's no secret, for
10 example, that the Federal Trade Commission has been
11 long talking about issues dealing with personal
12 data and privacy.

13 I think that today we will be talking about
14 how the issues raised with data collection converge
15 when we're talking about an online and offline
16 environment.

17 At present, there are some real reasons to
18 distinguish those two classes of information, in
19 light of the speed and the manner in which
20 information is collected. But I also recognize
21 that, as a practical matter, it doesn't make sense
22 for consumers and businesses to view separate
23 protocols for online and offline data collection.

24 So, I would encourage industry and
25 consumers to work together to formulate practical

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1 solutions that foster consumer confidence.

2 But there will also be some important other
3 questions that you'll be dealing with today about
4 issues like legacy data, information that was
5 collected before there was an online environment,
6 and, also, how information changes -- does the
7 character really change when you have offline data,
8 including public information that's merged with
9 online data and made available in a mode like on
10 the internet.

11 I look forward to hearing your
12 presentations and hope that you'll enjoy the day.

13 Thank you very much for coming.

14 MR. WINSTON: Before we get started, I have
15 a few ground rules and announcements to make. The
16 first one I approach a little bit gingerly, but I
17 have been asked to ask all of you to turn off your
18 cell phones. I'm just the bearer of bad tidings
19 here. Apparently there's some feedback between the
20 cell phones and our equipment, and it's messing
21 everything up, so if you could please turn off your
22 cell phones.

23 Also, I would like to remind our panelists
24 that because we have so much ground to cover today,
25 we're going to try to hold you to the time limits

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1 that we've discussed with you previously. We're
2 going to give you a one-minute warning before your
3 time elapses, and then when your time is up, we're
4 going to gently encourage you to conclude your
5 remarks. If that doesn't work, we have someone
6 with a hook who's going to come out and kind of
7 pull you away, but if you could try to stay within
8 the time limits.

9 Also, it's our practice in our workshops to
10 invite the audience to ask questions of the
11 panelists, if time permits, at the end of each
12 panel. But, again, because we have so much ground
13 to cover, I'm going to ask the questioners to limit
14 themselves to asking questions and not to make any
15 statements for the record.

16 Which brings me to my last announcement,
17 and that is that the record of this workshop is
18 going to remain open for 30 days, until April 13th,
19 so that anyone who wants to file something, a
20 comment or other materials, for the record, and for
21 the Commission's consideration, can do so. The
22 instructions for filing these post workshop
23 comments are available on our website at
24 www.ftc.org. So, I encourage you all of you to
25 participate in that process. Dotgov, I'm sorry,

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1 somebody gave me the wrong web address here, okay.
2 Anyway, I encourage you all to submit comments if
3 you like.

4 Now we're ready for our first panel, in
5 which Professor Mary Culnan of Bentley College will
6 lead a discussion designed to provide an overview
7 of the flow of data through the information
8 marketplace. Professor Culnan is the Slade
9 Professor of Management and Information Technology
10 at Bentley College in Waltham, Massachusetts, where
11 she teaches and conducts research on information
12 privacy. She is the author of the 1999 Georgetown
13 Internet Privacy Policy Survey, and was a member of
14 the FTC's Advisory Committee on Access and
15 Security. And Professor Culnan will introduce the
16 members of her panel.

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1 SESSION ONE:
2 MERGER & EXCHANGE OF CONSUMER DATA:
3 AN OVERVIEW

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5 MS. CULNAN: Thank you, Joel, and thank
6 you to the FTC for inviting me to participate in
7 this workshop. It's going to be a terrific day.

8 One comment about our session. We were
9 instructed we're not going to have Q&A at the end
10 of our session, because we're just providing an
11 overview, so I didn't want you to think that we're
12 cutting off the flow of discussion arbitrarily.

13 What we are going to do today is we're
14 going to talk you through a slide, which I'm going
15 to put up here, and which you also have in your
16 packet. Because the other two people are going to
17 be having their own slides.

18 We're going to talk you through this 30,000
19 foot view of profiling to set up the rest of the
20 day's sessions. And so, if we skim over a topic
21 that you think we should have gone into in more
22 detail, you will hear about this in more detail in
23 the other sessions later on today.

24 We're going to focus primarily on the
25 compilers, the third party organizations that

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1 collect, slice and dice and then resell consumer
2 data (but these firms do not have a direct
3 relationship with consumers), rather than focusing
4 on the profiling that's done by individual firms
5 with their own customer data.

6 And for the purpose of simplicity, we're
7 also not going to talk about co-op databases, which
8 fall into the category of third party organizations
9 that collect information on customers, because
10 there's such a small number of these systems, but
11 for some of the things that we're going to talk
12 about, they also fall into our slide.

13 So, let me first introduce our two
14 panelists. First is Johnny Anderson, who is the
15 president and CEO of Hot Data, Incorporated. He
16 has over 30 years of technology industry
17 experience, holding executive and management
18 positions at e2 Software Corporation, Saber
19 Software Corporation, Novell, Excelan and Digital
20 Equipment.

21 Our second speaker is Lynn Wunderman, who
22 is the President and CEO of I-Behavior,
23 Incorporated. Prior to founding I-Behavior, she
24 was the founding partner of Wunderman, Sadh &
25 Associates, which is a consulting firm specializing

1 in information-based marketing services for both
2 consumers and B2B marketers in the financial
3 services, high-tech graphic arts, non-profit and
4 Internet industries, and President and Chief
5 Operating Officer of Marketing Information
6 Technologies, a company providing database services
7 for major Internet and Fortune 100 companies. She
8 currently serves on the Internet committee of the
9 board of directors of the Direct Marketing
10 Association.

11 So, what we've done, we've divided the
12 slides into thirds. I'm going to discuss the first
13 part which is on the left, this is the consumer
14 part where consumers generate information in our
15 daily lives that ends up in a compiler's database.
16 Johnny Anderson is going to discuss the middle part
17 of what goes on in the compiler's black box, and
18 Lynn is going to discuss the third part on the
19 right, how compiled data is used to generate offers
20 to consumers, both prospects and consumers.

21 And then as you can see, our picture begins
22 and ends with the consumer, which is an important
23 point I think.

24 After I attended my first DMA convention
25 and went through the exhibits, I came away

1 convinced that anything anybody does puts you on
2 somebody's mailing list or you end up as a record
3 in somebody's database. And the slide shows some
4 of the main ways that this can happen.

5 First of all, all of us generate a number
6 of public records, depending on the kinds of
7 activities we engage in. Some of these include
8 personally identifiable information such as
9 property records, which do have our name and
10 address attached to them, or telephone directories
11 or other directories, and then there's public
12 records that have nonpersonally identifiable
13 information in them such as census records.

14 And compilers can acquire this information
15 in two ways. First they can acquire it directly
16 from the source, so they could buy the records from
17 the state or local government. Or they may acquire
18 the information from a second firm, such as
19 Claritas, that acquires this information and does
20 some analytics on it and then generates geographic
21 and demographic profiles that do not include
22 personally identifiable information but can be
23 overlaid on top of a record that does have an
24 address.

25 And in fact there was an example of this

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1 information in yesterday's Washington Post, if you
2 happened to see this, of talking about Fairfax
3 County, Virginia that has the highest average
4 family income in the United States. And inside the
5 article, they talked about the different lifestyle
6 segmentation profiles that are represented by the
7 people who live in Fairfax County.

8 For example, they said 22 percent of the
9 people who live in Fairfax County are in The
10 Winner's Circle, that's the name of the profile, or
11 Executive Suburban Families, age 35 to 64,
12 household income is \$90,700 a year, and these
13 people are most likely to have a passport, shop at
14 Ann Taylor and read Epicurean Magazine.

15 So, this will give you a flavor of how this
16 information is used to, again, help companies
17 understand who their customers or their prospective
18 customers are.

19 A second source of information is surveys,
20 such as warranty cards or marketing surveys that
21 could include questions about what people's product
22 preferences are across a whole range of different
23 kinds of products, their life styles, their
24 hobbies, and their demographics.

25 The third way that the information can end

1 up in a compiler's database is that people sign up
2 for mailing lists, and I was thinking about this as
3 I read the Sunday paper and, you know, there are
4 cards that fall out of the Sunday magazine where
5 you can request information on various topics.

6 Or people who order things by mail, or you
7 request information, call an 800 number, sign up
8 for something online, enter a sweepstakes or a
9 contest, and these types of things will put you on
10 a mailing list.

11 Well, mailing lists may be made available
12 directly, without going through a compiler, either
13 by the firm itself or more likely through a list
14 broker who is going to manage the mailing list on
15 behalf of the firm that owns the list. And that
16 can end up with targeted offers to prospective
17 customers.

18 Or some of the information may end up in
19 the compiler's database, and go into subsequent
20 uses that we'll hear about.

21 And then, finally, down at the bottom, we
22 see the customer database, and when consumers
23 establish a customer relationship with an
24 organization, with a business, they end up in the
25 customer database. And I think this is not a big

1 surprise to everybody.

2 And then that firm can generate new
3 targeted offers to its current customers. I think
4 people expect this to happen, but we're also going
5 to hear how compilers can help these firms generate
6 new offers to their customers, better target these
7 offers and help these firms do cross marketing of
8 new products and services.

9 So now Johnny will talk about what goes on
10 in the middle of the picture.

11 MR. ANDERSON: Good morning. My name is
12 Johnny Anderson, I'm Chief Executive at Hot Data.
13 How Data is an infomediary that connects customer
14 relationship management marketing automation
15 systems to sources of both household information on
16 consumers, and business information about
17 businesses, and provides a complete set of data
18 quality and standardization services for both
19 small, medium and large-sized businesses.

20 I'm going to spend a little time and talk
21 about the kinds of information that's collected,
22 how it gets compiled into a database, and then gets
23 delivered into a marketer's, end user's, database.

24 But first I want to kind of digress. I've
25 looked at some of the other slide shows, and a lot

1 of the topics are going to be hit. I really want
2 to digress and talk about why people are -- why
3 marketers are interested in this kind of
4 information to begin with.

5 Building a data warehouse and collecting
6 this kind of information is a massive undertaking,
7 and very expensive. What's the payback, and what
8 are businesses looking for out of taking third
9 party information and merging that in with their
10 in-house information?

11 If you think about commerce, if you think
12 back, all the way back to the middle ages when
13 commerce really first started. The buyers and
14 sellers knew each other. There was a one-to-one
15 relationship. Even up into the beginning of the
16 last century, people knew -- the storekeepers knew
17 who their customers were.

18 After World War II and the mobilization of
19 America, and the move from urban centers into
20 suburban centers, and the creation of the now
21 shopping mall, merchants now lost track of who
22 their customers are. They don't know who buys
23 products anymore.

24 So, merchants really spend a lot of time
25 doing product level analysis to figure out who

1 bought the stinky cheese, and what stinky cheese
2 purchases drove what other kind of purchases.

3 The change in the new economy, and the
4 evolution of the Internet now has really empowered
5 consumers with information, and has broken down a
6 lot of the geographic boundaries in terms of, I
7 have to travel to a mall to purchase something.

8 This has already been broken down quite a
9 bit with the direct marketing and catalog
10 industries, but now with the Internet, people now
11 have a lot of information.

12 So, it is now dependent on -- a business'
13 dependence on success is now leveraged by what kind
14 of service they can deliver. And to deliver that
15 service, they again have to know who their
16 customers are.

17 So, you really look at all of the kinds of
18 information that's available so that businesses can
19 get a complete 360-degree view of their customers
20 to be able to understand them not only in the
21 context of their own transaction that may have
22 taken place, but also what the likes and dislikes
23 of that customer are.

24 So, when you really look at the kind of
25 information that's available, it really falls down

1 into three categories. There's the geographic
2 information, or where you live, and that kind of
3 information is really address data, quality of the
4 address, standardized to the Post Office's
5 standards, what's the bar code for the address, but
6 also includes information like what MSA that
7 address is in, what census tract that address is
8 in, and important things like latitude, longitude
9 and geocoding, which are really used by businesses
10 to do things like drive time analysis, and trade
11 area analysis.

12 But one of the first segmentations, at
13 least in the retail industries, and now in the
14 telecom industries, is where do you -- where do
15 people live and how far are they likely to travel
16 to get to one of my retail locations.

17 The second is really the demographic
18 information, and the collection and the detail of
19 this will really be talked about a lot in panel
20 number 2, but that's things like name, address and
21 phone number, at a very basic level, but also
22 reported and modeled information around a person's
23 income level, what their marital status is, whether
24 they buy by mail, whether they're a credit card
25 user, whether they own their own home or not,

1 information about what you're like.

2 And then the third piece is really the
3 psychographic information, and that's really what
4 you like, what your life style indicators are, and
5 that's where a lot of the compiled information
6 comes in from, lists and surveys, to determine what
7 somebody's propensity to buy a specific kind of
8 product is. And those are indicators that could be
9 that you're an outdoors enthusiast, a gardening
10 book reader, dot, dot, dot, there are a number of
11 different life style indicators.

12 So, how is that information merged into one
13 particular database? Data compilers really look to
14 those three sources and do a very complex job of
15 extraction, transformation and loading of that
16 data. And that data is bought from public sources,
17 and that could be things like tax records, home
18 owner information, up until recently motor vehicle
19 information was used, and in some states, even
20 driver's license information.

21 But that information is reported
22 information that's public record that's brought
23 into the database. Self reported data really
24 drives a lot of the demographic and psychographics,
25 and that's information from surveys and warranty

1 cards and registrations.

2 And then information from mail lists, and
3 that is I'm -- I have a wooden boat, I subscribe to
4 Wooden Boat Magazine. If I subscribe to Wooden
5 Boat Magazine, there is a great likelihood that I
6 am likely to buy products for wooden boats.

7 So, affinity modeling and propensity
8 scoring is really driven by the self-reported data
9 from both subscriptions and product registrations.

10 That information is matched based on name
11 and address, so that there's really a view of a
12 consumer that takes into account all of those
13 different kinds of data sources. And then there's
14 some additional modeling that's done on top of
15 that, based on scientific samples and surveys,
16 different kinds of models are put into place for
17 specific vertical industries.

18 Not every industry is interested in the
19 same kind of consumer information. A telecom
20 merchant is not interested in the same kind of
21 information that a retailer is interested in.

22 So, modeling is done based on a set of
23 attributes that's been collected to be able to put
24 together things for financial services and other
25 industries. And then the output of that

1 information really goes to two sources.

2 One is the data enhancement source, in that
3 I have a customer database of people that have come
4 to my company from a number of different sources,
5 could be a customer that signed up for a frequent
6 buyer program at a retail location, could be a
7 customer that's come to me at a trade show or sent
8 back a business reply card, or a customer that's
9 walked into one of my retail locations.

10 The customer that's in my database, so I'm
11 really looking for information that's outside my
12 organization so I can understand that customer
13 better.

14 And the second is the targeted lists, and
15 that is really if I've done some analysis in terms
16 of what my best customer looks like, give me some
17 more prospects that I can market that look just
18 like those folks. I don't know who they are yet,
19 and in most cases those targeted lists are going to
20 go to a mail house who is going to get a mail drop,
21 and I won't know who they are, until they respond
22 to that direct mail campaign and come back into my
23 database.

24 And then they'll go into the normal process
25 of my selling process inside my customer database.

1 So, there will be a lot of detailed talk
2 about both the collection of data in the second
3 panel, and then the use and kind of how the
4 technology drives some of the business models for
5 the use of that data in the third panel a little
6 bit later on.

7 So, with that, let me turn it over to Lynn,
8 and let her talk about some of the internal uses of
9 data.

10 MS. CULNAN: Thank you, Johnny.

11 MS. WUNDERMAN: Bear with me just one
12 second here. Thank you.

13 Well, I've been asked to spend the next 15
14 minutes talking to you about the end user
15 applications that have evolved really over the last
16 two to three decades, so it might be a little
17 tight, but we're going to do the best we can.

18 I'm going to start where Johnny left off,
19 which is to help you understand how this kind of
20 compiled data really brings a name and address
21 record to life for a marketer.

22 Now, this is a real, live consumer record
23 off of a compiled database. I can attest to it
24 because it's me, it's the Wunderman household at 94
25 Mercer Avenue in Hartsdale, New York. I have

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1 signed a release so that my data can be made public
2 here today. But just from that information, we can
3 now geocode this record and find out its census
4 block group, attach all the geographic information
5 available for the census, as well as we can now
6 construct a match code, which you see here on the
7 right side of the screen. That match code is the
8 link to the compiled database by which we overlay
9 the demographic and the psychographic information
10 that Johnny was just earlier describing to you.

11 Now, what happens when we do that? This is
12 pretty much what you get, on the Wunderman
13 household, a fairly distinct profile of a
14 relatively affluent middle-aged, suburban couple,
15 dotes on their dog, is extremely mail responsive,
16 somewhat techno savvy and lives pretty much a
17 high-end, fairly active life style.

18 Now, I can tell you this is a pretty
19 accurate record. There are two things they missed
20 here. They missed the registration on my husband's
21 antique motorcycle, okay. They are off by one
22 category on our income; that's okay with me if it's
23 okay with the IRS.

24 But why do we want this data? Why do we
25 want this information? As Johnny said before, it's

1 not because we're being nosy, it's because we're
2 looking to establish and build a relationship with
3 a consumer.

4 Now, Webster defines a relationship as a
5 connection, a bonding or a contract, and the way we
6 build relationships for marketing purposes is
7 really no different than the way we establish and
8 nurture relationships in real life. I mean, we do
9 it through data, whether it's by factual
10 information or observation, we're looking to
11 establish some common ground by which we can create
12 a meaningful, relevant communication to gain that
13 connection.

14 Now, I will tell you that the way it's done
15 by general advertisers is different from the way we
16 do it as direct marketers. In fact, it's the exact
17 opposite.

18 As a general advertiser, I'm looking for
19 large numbers of people with something in common.
20 Maybe I'm targeting women, 25 to 49, maybe some
21 broad-based income qualifier. I'm going to talk to
22 them based on what it is these women have in
23 common. Or at least I think they have in common.

24 Now, the issue is just because these are
25 women largely of child-bearing age doesn't

1 necessarily mean they have kids, but when I'm
2 spending \$7 to \$10 a thousand to reach them on TV
3 or maybe \$20 to \$30 a thousand to reach them in
4 print, I can afford to have a certain amount of
5 misses there.

6 But it's very different when you're a
7 direct marketer. I may be spending \$500 or \$1,000
8 a thousand to reach somebody at an individual or at
9 a household level.

10 So, I'm going to be much more stringent and
11 rigorous when I look at and evaluate the success of
12 that communication. I'm not looking for soft
13 measures like awareness or reach and frequency, I'm
14 looking for that household to take a specific
15 action, and I'm going to value the cost
16 efficiency of that action based on return on
17 investment.

18 So, I've got to be much more precise in my
19 ability to target that household and develop a
20 meaningful, relevant communication so I can capture
21 their attention and do it quickly.

22 So, we've learned over the years as direct
23 marketers a very important principle over the
24 years, and that is that people's differences are
25 more important than their similarities.

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1 Now, what do I mean by that concept? I
2 mean that what it is when you're studying a group
3 that sets them apart from everybody else is more
4 important than what it is that the people in that
5 group have in common with each other.

6 So, the differences are more important than
7 their similarities, and they respond better when
8 those differences are recognized.

9 Now, here's what I mean by differences.
10 It's all the data we've been talking about. It
11 might be geographic, could be climate, market size,
12 it might be demographic, life stage or life stage
13 change, you know, maybe I just got a new spouse,
14 got a new house, got a new baby, preferably in that
15 order.

16 It could be psychographic information,
17 hobbies and interests we've been talking about, or
18 it could be your purchase history. Now, we haven't
19 talked a lot about that, but that purchase history
20 could be self reported that I got off of some kind
21 of a survey, or it could be the purchase history
22 that a marketer captures and utilizes in their own
23 database.

24 And normally when we talk about this, we
25 talk about the recency, the frequency, the monetary

1 value segments as a marketer. And I will tell you
2 this is incredibly powerful information from a
3 segmentation standpoint.

4 So, I might talk to you differently if
5 you're a new customer versus a tenured customer.
6 I'll not only talk to you differently, but I'll
7 invest differentially if you're a high-value versus
8 a low-value customer, and I'll have an entirely
9 different contact strategy, frequency of the kind
10 of offers I'm going to send you, if I happen to
11 know that you're a loyal customer as opposed to a
12 competitive switcher.

13 Now, as I said, this behavioral information
14 is incredibly important to marketers, and it works
15 terrificly, if you have it. But you don't always
16 have it. I mean, it's great if I'm talking to a
17 group of customers that have been with me a long
18 time and I have a lot of data on those people, it's
19 an established product, it's a proven offer, but
20 what do I do in a situation when I'm trying to
21 attract new prospects into the base? I don't have
22 a lot of data about their purchase behavior,
23 particularly about what they're buying from my
24 competitors.

25 What about if I'm trying to spend on my new

1 customers based on their potential to become
2 high-value customers every time. Not much there in
3 my database about these people. Or if I've got
4 some test market results that I've done with new
5 offers, new products, I know in aggregate how
6 people are likely to respond, but I've got to think
7 about who do I target with those offers because I
8 don't have that response information on everybody
9 in my database.

10 So, what do we do? We use surrogate data.
11 We use surrogate data as a bridge to help us be
12 able to apply that behavioral information to
13 another universe.

14 Now, the most important data that we tend
15 to use as surrogates is this compiled information
16 we're talking about today, because there's a very
17 important criterion that data has to be as
18 available on the target audience that I'm studying
19 as the application universe that I'm applying it
20 to. And the compiled data is virtually available
21 on just about every household in the U.S.

22 So, what I am going to do is I am going to
23 use my behavioral data in my own customer database
24 to define a target. I'm then going to use the
25 bridge data, the compiled data to describe the

1 target and create a profile, and then I'm going to
2 use that profile to help me find lookalikes in some
3 larger application base.

4 So, let me show you schematically how this
5 works. I'm a marketer and I have defined a target
6 as my high-value customers, however I define it,
7 profits, revenues, purchase frequency, et cetera.
8 And my goal is that I'm looking to identify
9 prospects in the population who have a high
10 potential to become high-value customers every
11 time, I want to track them into my base.

12 So what do I do? I'm going to study how do
13 these high-value buyers look different from
14 everybody else in the U.S.? And the data I'm going
15 to use to do that is all the demographic
16 information, the psychographic information, and I
17 will tell you the coverage on the psychographics
18 does not tend to be as large as some of the other
19 data, so it doesn't often enter these statistical
20 analyses, but we use it and we see if it's
21 predictive. The geographic data and the census
22 information, all to help me understand what is it
23 about this group that makes it look different from
24 everybody else.

25 I'm going to overlay statistical tools so

1 that I can really quantify which of these
2 differences are statistically significant in
3 identifying this target. I'm going to look at the
4 interaction and the relative weight or strength of
5 those variables, and I'm going to apply it back to
6 a broader universe, in this case, the U.S.
7 population.

8 Every household gets this -- every
9 household gets a score, excuse me, and the highest
10 scores are the most likely to generate and to
11 exhibit that target behavior. Those at the bottom
12 are least likely to become your high-value
13 customer, and this is nothing more than a planning
14 tool. Okay, I'm going to penetrate that universe
15 of U.S. population based on my volume objectives,
16 my budget limitations, whatever.

17 Now, I think it's important for you to
18 understand as we talk about these concepts, where
19 the predictive value of that data comes from.
20 Okay, and I promise, no formulas, you don't need to
21 be -- have a degree in applied statistics, it's a
22 very simplistic example.

23 I'm just going to use marital status and
24 I'm only going to give it two values. So, here I
25 am studying my high value-customers, all right, and

1 I'm looking at them and I see well, big deal,
2 they're just as likely to be married as they are to
3 be single, that doesn't tell me much of anything,
4 does it? How do I target anything based on this
5 information, how do I talk to them based on this
6 data?

7 Well, guess what? I compared them to the
8 U.S. population, and they're twice as likely to be
9 single as the rest of the population at large.
10 Now, take this predictive value, multiply it times
11 another half dozen to a dozen variables, you start
12 to see where the power of these statistical tools
13 comes from.

14 So, how do we use these tools? Well, we
15 use them to help drive differential contact
16 strategies. Who do we target, when do we target
17 them, how do we target them so that we're more
18 efficiently reaching them with more relevant
19 communications across the entire life cycle of the
20 customer. From acquisition to value stimulation,
21 all the way to eventual retention and
22 re-activation.

23 So, for instance, I'm going to rank my
24 customer database based on this information, and
25 I'm going to spend differentially based on the

1 probability of these people being high-value
2 customers, the repeat sales, cost sale, up sale,
3 I'm also going to apply it as well to my customer
4 information applications. Maybe I'm even going to
5 develop new services for high priority customers.

6 I can overlay this data on any vertical or
7 apply it out from a compiled database, I can use
8 this for direct sale or regeneration offers. Also
9 remember, that because this tool is developed at an
10 individual household level, I can aggregate it back
11 up to any level of geography.

12 So, for local support programs where
13 there's a retail trading area or there's a sales
14 territory, it become a very useful tool to
15 prioritize differential media and households for
16 these purposes.

17 It's easy to apply them to any form of
18 addressable media, those that are available today,
19 such as selective binding, addressable cable and
20 satellite, some of the Internet applications you
21 can hear about later this afternoon, and those
22 that, you know, we've hardly thought about in the
23 future, wireless, interactive television and things
24 that haven't even been invented yet today.

25 And these tools can also be used as a

1 planning template, we can bridge them into
2 syndicated research bases, such as Scarborough,
3 MRI, Simmons, Nielsen, and help us optimize the
4 value of our mass media, of our print and our
5 broadcast spending.

6 So, all of this is based on our study of a
7 high potential end user.

8 So, what does this do for us in the end? I
9 mean, basically it helps marketers invest their
10 marketing dollars smarter, more efficiently
11 reaching customers across virtually every channel,
12 and for consumers, it means hopefully you receive
13 more of the offers you want, and fewer of the
14 offers that you don't. And that to us is a win-win
15 for everybody. Thank you.

16 MS. CULNAN: We've got a lot of time left,
17 we've got about 25 minutes. What would you like us
18 to do?

19 MS. ALLISON BROWN: Do you want to take
20 questions?

21 MS. CULNAN: Sure, we'll take questions.
22 We changed our minds, we'll take some questions.
23 And there's a microphone over here, so I think
24 Jason Catlett has a question.

25 And then if you would address your question

1 to one of the panelists, if that's your preference,
2 please do so.

3 MR. CATLETT: May I address it to you,
4 ma'am?

5 MS. CULNAN: You may.

6 MR. CATLIN: Hello, this is called the
7 bleeding edge of technology. Well, I don't think
8 it's doing anything, but I'm going to hold it here
9 anyway.

10 Mary, you said that you were not going to
11 address co-op databases on the basis that there are
12 so few of them. And I think that's like saying
13 we're not going to address suppliers of Windows
14 operating systems because there are so few of them.
15 The dominant co-op database, Abacus Direct, really
16 has enormous influence, and I think it's a model
17 different to but very relevant here.

18 So, could you take a minute to describe
19 what co-op databases do?

20 MS. CULNAN: I may punt this to one of the
21 panelists who have more experience. I will say one
22 thing, for those people that are interested in
23 co-op databases, and particularly in Abacus Direct,
24 their data dictionary is on the DoubleClick
25 website, so if you go to doubleclick.com and you

1 click on Abacus, you can see exactly what kind of
2 information they have acquired, and I think
3 probably it's a really good example of
4 transparency, assuming you know to go there and
5 look for the data.

6 So, because Lynn is actually running a
7 co-op database, and again, it's not that we didn't
8 want to talk about these because we didn't want to
9 hide anything, but because we were doing the broad
10 overview, we decided as a panel it would confuse
11 things, thinking our talks would take longer if we
12 went off and then couldn't fit it all into the
13 slide.

14 MS. WUNDERMAN: I do promise that we will
15 spend some time this afternoon talking about the
16 co-op database model, and specifically about my
17 company, I-Behavior, unless there's something
18 specific to these applications that you would like
19 to talk about now.

20 I mean, I could go into the concept of
21 co-op database, it's going to be a little redundant
22 this afternoon.

23 MR. CATLETT: Why don't you spend 30
24 seconds describing a co-op database.

25 MS. WUNDERMAN: A co-op database is formed

1 when marketers share their customer names and
2 related buying information in order to gain access
3 to names of qualified prospects as well as
4 additional data on their customers that might
5 otherwise be unavailable for them to market and to
6 build their business.

7 So, if we had, I don't know, Mary, if you
8 could put back your first slide.

9 MS. CULNAN: Sure.

10 MS. WUNDERMAN: I mean, basically with a
11 co-op database, if we move the consumer aside to
12 the right and we were to create another box, what
13 you would see is the customer databases, the
14 compiled data would all come into a co-op database
15 and we would have a consolidation of many customer
16 files from marketers, publishers, catalogers,
17 e-tailers, et cetera, all going into one database
18 as well as it would be overlaid with the
19 demographic or the psychographic as well as the
20 census data we've been talking about earlier, all
21 to form a positive record. And that is the rich
22 behavioral and demographic base upon which
23 marketers would be able to do selections from that
24 file.

25 MR. CATLETT: Thank you.

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1 MS. CULNAN: One difference I think it's
2 important to point out, you have to be a partner in
3 the co-op database.

4 MS. WUNDERMAN: Yes, you do.

5 MS. CULNAN: You have to put data in in
6 order to take advantage of the data that's there,
7 as opposed to the compiled databases where
8 basically there's no relationship between
9 contributing data to the database and being able to
10 acquire data from the compiler.

11 MS. WUNDERMAN: Yes, and I will also say
12 that generally that there's notification to the
13 consumer about sharing data with trusted third
14 parties as well as the online component, there are
15 privacy protections as well.

16 MS. CULNAN: Anybody else? There's a
17 question toward the back.

18 MR. TUROW: Would you talk just a little
19 bit about the way databases get purged, based not
20 just on what consumers want, but also recency and
21 the decision that certain things become obsolete
22 and how those criteria are determined?

23 MS. WUNDERMAN: I want to make sure that I
24 understand your question. You're asking, you know,
25 I think on -- in terms of if I have information in

1 a customer database about an individual's purchase
2 behavior and over time that that data is no longer
3 relevant? Is that --

4 MR. TUROW: Yeah, how do you decide -- how
5 do you decide at what point you purge those
6 particular data like your sports car. Maybe you
7 decided to get more conservative about the car and
8 somebody has not picked it up, do you have any kind
9 of criteria to which to purge certain kinds of data
10 after a certain amount of time, based on certain
11 other criteria?

12 MS. WUNDERMAN: Let me say something about
13 the compiled data and its value, because they're
14 not going to be always 100 percent accurate. I
15 mean, you saw even my income on my own personal
16 record was not accurate. What's of greatest value
17 with the compiled data beyond its coverage is its
18 consistency, and when you're looking for predictive
19 value, consistency can be even more important than
20 sheer accuracy.

21 So, the procedures that are in place to
22 replace that information, the models that are done
23 to calculate data such as income, it's consistently
24 done even if it's inconsistent across households.
25 So that as that data is predictive, it may be

1 predictive, even though it's not 100 percent
2 accurate, but if it is predictive, it will rise to
3 the top, and then virtually it's a numbers game.

4 You will never be 100 percent on any
5 particular individual or household. What you're
6 trying to do is increase the probability of
7 identifying a high potential consumer.

8 So, for one or two or, you know, any number
9 of people, that data will still not be 100 percent
10 accurate, it ages over time, and it's the compilers
11 that capture that information from the various and
12 sundry public resources or surveys that gets
13 supplied back to us, it's accurate, it's not
14 accurate. But if it's still predictive, we will
15 still work with that information.

16 MR. SMITH: Richard Smith with Privacy
17 Foundation. I have a question for Lynn. How do I
18 get my compiled record, just like you got yours, on
19 the screen?

20 MS. WUNDERMAN: Call me.

21 MR. SMITH: Can everybody call you if they
22 want to see, every consumer if they want to see
23 this?

24 MS. WUNDERMAN: I'm sorry, you're asking
25 you as a consumer, how would you get access to

1 information? Well, I am not a data compiler, per
2 se, I mean we get our data from Equifax, there are
3 others, Experian, and First USA through their
4 Donnelly unit and Acxiom through their InFobase that
5 supply this information, but if you as a consumer
6 are interested in seeing your record on our
7 database, you can request a copy of your profile
8 and we'll supply it.

9 MR. SMITH: Do these companies, compiler
10 companies generally allow consumers to look at this
11 kind of data?

12 MS. WUNDERMAN: You know, I --
13 not being a compiler. I would have to say in
14 today's marketing environment, they should, but I
15 cannot tell you. Certainly the data that comes,
16 for instance, from a credit bureau, and the credit
17 bureau information gets channeled as part of
18 Equifax and that gets channeled into the Polk
19 Database, as a credit bureau, you need to be able
20 to provide consumers with access to that data, but
21 I'm not familiar with the policies of each and
22 every compiler.

23 MR. SMITH: Thank you.

24 MS. CULNAN: Okay, I think we're going to
25 take a break and you want to break for -- you're

1 going to let the people running this set the rules.
2 Thank you.

3 MR. WINSTON: This is kind of a unique
4 situation, we're actually ending a little early,
5 but that gives us a little more time for lunch.
6 So, if we could break until about 10:15, and I want
7 to thank the panelists and the Magazine Publishers
8 of America.

9 (Applause.)

10 MR. WINSTON: Also, thank you to the
11 Magazine Publishers of America for supplying our
12 repast out there.

13 (Pause in the proceedings.)

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SESSION TWO

CONSUMER DATA: WHAT IS IT?

WHERE DOES IT COME FROM?

- - - - -

MS. ALLISON BROWN: Hi, I'm Allison Brown, I'm an attorney in the FTC's Bureau of Consumer Protection, and I'll be the moderator for Session 2, entitled Consumer Data: What Is It? Where Does It Come From?

The overview that we just heard has provided us with a brief look at data merger and exchange. Now we will begin a series of in-depth panel discussions about these practices.

This panel discussion will focus on the original sources of consumer information, and we have five very experienced and knowledgeable panelists with us today for the discussion. We will also have about ten minutes at the end of the panel for the audience to ask questions.

If you're sitting in an overflow room and you want to ask a question, please come up to the doorway on the main room here on the fourth floor at about 11:20 and we'll have a wireless microphone here so that you will be able to ask the panelists your questions.

1 I will now introduce each person on the
2 panel and ask the panelist to spend about three
3 minutes to provide a brief introduction to the
4 sources of consumer data that businesses use.

5 C. Win Billingsley is the Chief Privacy
6 Officer of Naviant, Inc. Naviant is a provider of
7 marketing tools and integration methodology for
8 online and offline environments.

9 Win, please go ahead with your introductory
10 remarks now and I'll introduce the other panelists
11 in turn.

12 MR. BILLINGSLEY: Okay. Naviant is a
13 leading provider of integrated precision marketing
14 tools, for both online and offline environments.
15 So, we really integrate the virtual world with the
16 physical world.

17 This capability enables marketers to
18 identify, reach and build relationships with online
19 consumers. So, to probably state that in a form
20 that is more meaningful to you, Naviant has a
21 database of about 30 million households that are
22 Internet-enabled.

23 So, our niche is a database of people who
24 have the capability to buy products and services on
25 the Internet. This data is collected primarily

1 through product registration data, and we'll talk a
2 little bit more about that in the session on how
3 this actually occurs.

4 The data is fully permissioned. We only
5 want people in our marketing database that
6 permission us to do so. You know, an individual or
7 an Internet user that does not want to participate
8 in Naviant's database is not included in the
9 database.

10 And then there are other processes that we
11 have in place to make sure that our data is
12 accurate and as useful as possible.

13 MS. ALLISON BROWN: Okay, Elisabeth Brown
14 is Senior Vice President of Product Strategy for
15 Claritas. Ms. Brown oversees the development of
16 new data products and services, including
17 demographic, cartographic and segmentation systems,
18 and the management of the software and applications
19 that are delivered to Claritas clients.

20 Ms. Brown?

21 MS. ELISABETH BROWN: Thank you. One
22 comment, too, I have actually been not only am I a
23 member of the club, but I have been a client, so I
24 was actually a client of the Claritas marketing
25 products and services before I joined the company.

1 So, I do have a little bit of perspective on how it
2 can be used and how we used it when I was at the
3 Prudential Insurance Company.

4 Claritas is a marketing information company
5 that has been in business for over 30 years, which
6 makes us one of the more mature companies in this
7 industry -- as evidenced by a recent Wall Street
8 Journal article that referred to Claritas as the
9 granddaddy of demographic providers.

10 Claritas serves companies in financial
11 services, telecommunications, energy, automotive,
12 retail, restaurant and real estate industries, and
13 we have clients ranging from the top Fortune 500
14 companies to small, independent consultants.

15 I'll just give you a little bit of
16 background. Over 30 years ago, Claritas' founder,
17 Jonathan Robbin, who was a Harvard social
18 scientist, was analyzing U.S. Census data and
19 settlement patterns. He hypothesized that American
20 neighborhoods reflected the old adage that birds of
21 a feather flock together, and therefore, the
22 products and services that Americans consumed could
23 be predicted simply by knowing summary level
24 demographic information about the area, or "you are
25 where you live."

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1 This was referred to in the first slide as
2 geodemography. Thirty years later, our models have
3 become more sophisticated and are able to dissect
4 markets at a much lower level of geography, but
5 that same old basic premise still holds true that
6 by knowing some small amount of demographic
7 information, you can infer or predict the
8 likelihood that a household will be interested in
9 the products and services that you're offering.

10 So, we provide demographics and other
11 consumer and business data on multiple levels of
12 geography, delivered through our various mapping
13 and marketing application software platforms.

14 We are probably most well known for our
15 consumer segmentation systems, for example, Prism,
16 which was also identified earlier when Mary was
17 speaking about Winner's Circle and what some of the
18 attributes of a neighborhood would be that would be
19 tagged as Winner's Circle across the country. Our
20 consumer product demand estimates that our clients
21 use to more efficiently market their targeted
22 customers and prospects, which you could refer to
23 as surrogate or inferred data.

24 Claritas data and services are used for
25 broad marketing functions such as tracking new

1 customers, retaining current customers, determining
2 site locations and appropriate sales and marketing
3 distribution channels, and we help with more
4 efficient reach strategies and media planning.

5 So, basically, Claritas marketing
6 information helps our clients offer the right
7 products and services in the most appealing way to
8 the consumers and prospects. We provide basically
9 the benchmark information or the total universe
10 data that our customers can use to compare their
11 current customers and markets against so that they
12 can make better marketing decisions. Thank you.

13 MS. ALLISON BROWN: Next we have Paula
14 Bruening who is Staff Counsel for the Center for
15 Democracy and Technology. The Center for Democracy
16 and Technology is a non-profit public interest
17 organization that seeks practical solutions for
18 enhanced free expression and privacy in global
19 communications technologies.

20 MS. BRUENING: Thank you.

21 CDT has been asked today to discuss the
22 issue of public records as a source of information
23 about individuals from a factual basis, and as many
24 of you know, CDT generally has a specific viewpoint
25 on this issue. I will talk today about the factual

1 basis in my opening remarks and then any other
2 comments will be reserved for the Q&A, but I would
3 like to encourage the FTC to go to the state level
4 and to some other resources and some organizations
5 that are doing work on this issue, because I think
6 some of the really difficult work on how the
7 information is collected and how it is being used
8 specifically is being done at the state level. And
9 I'm happy to give the FTC that information.

10 Public records maintained by government
11 agencies disclose a vast array of detail about an
12 individual's life, activities and personal
13 characteristics. At the federal level, most
14 personal information is not available to the
15 public, because of the privacy exemption in the
16 Freedom of Information Act and the Privacy Act of
17 1974.

18 However, bankruptcy records are an
19 important exception to this rule and are maintained
20 by the federal courts. These records are a source
21 of detailed financial information, and the
22 sensitivity of that information has been recognized
23 by the Office of Management and Budget, which has
24 produced a study on this issue called Financial
25 Privacy in Bankruptcy: A Case Study on Privacy in

1 Public and Judicial Records.

2 At the state and local level, however, the
3 types of records that are maintained are different,
4 and the laws and policies governing records yield
5 disparate acts and disclosure practices, but it is
6 possible to construct a detailed profile about an
7 individual from public records.

8 And while I will spare all of you the
9 exhaustive list of all the sources of information,
10 I'll name a few: Name and address information come
11 from voting records; land titles are a source of
12 home ownership information; property taxes can give
13 you assessed value of homes; birth and death
14 records give you information about an individual's
15 parents.

16 The list goes on, there are occupational
17 license records, motor vehicle records that can
18 tell you about an individual's make and model of an
19 automobile, voter registration gives you party
20 political affiliation, and hunting and fishing
21 licenses, boat and airplane licenses can give you
22 information about how a person likes to spend their
23 leisure time.

24 There may be considerably more information
25 available in public records about an individual who

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1 has interacted with the courts as a criminal
2 defendant, as a plaintiff or defendant in a civil
3 litigation, in a divorce proceeding, as a juror, as
4 the beneficiary of a will.

5 Public access to government records serves
6 several important goals. Individuals need
7 government information to make political decisions
8 about government programs, legislative and
9 regulatory options, and candidates running for
10 office.

11 Government records also assure the
12 accountability of individuals as in the case of
13 business and real estate transactions. However,
14 it's important that public record information be
15 used for the reasons it was collected. This
16 information was not meant to be searchable in a
17 database, nor was it intended to be used in
18 marketing. And simply because there is a tradition
19 of collection of information, important decisions
20 need to be made on a case-by-case basis about the
21 appropriateness of access to public records and the
22 role of consumer choice.

23 MS. ALLISON BROWN: Thank you.

24 Michael Pashby is Executive Vice President
25 and General Manager for Magazine Publishers of

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1 America where he has also served as Executive Vice
2 President of Consumer Marketing. Before joining
3 the MPA, Mr. Pashby was president and publisher of
4 Art and Antiques Magazine, vice president of
5 circulation and new product development for Gruner
6 + Jahr USA, and Managing Director of U.S.
7 Operations for Marshall Cavendish.

8 Michael?

9 MR. PASHBY: Thank you. That sounded
10 impressive.

11 MPA represents about 85 percent of the
12 consumer magazine -- dollar volume of the consumer
13 magazine industry in this country, and about 85
14 percent of all magazines are sold through the
15 mails, using direct mailing techniques or direct
16 marketing techniques of extremely varying
17 sophistication.

18 The use of credit cards in our industry is
19 extremely small, but is now growing. Our members
20 strongly agree that we must protect the privacy of
21 our readers, and I think our industry has done a
22 very good job over the years in balancing our
23 legitimate business interests and our consumers'
24 reasonable expectations of privacy.

25 Obviously we value our readers and we

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1 wouldn't be in business without them, so our
2 industry is constantly looking for ways to improve
3 that service to our readers.

4 It's important to note that when our
5 readers ask us not to share information about them,
6 we don't. In the information section of most
7 magazines, the publisher discloses that the
8 subscription list may be rented to appropriate
9 businesses.

10 The magazine offers an address or toll free
11 number so that the reader can opt out. And many
12 magazines are taking advantage of the Internet to
13 inform consumers of their privacy policies, and
14 give consumers an additional opportunity to opt
15 out.

16 We're very careful with respect to the
17 customers, to the wishes of the customers who
18 choose to opt out. Generally when a consumer
19 requests that publishers not share information,
20 that publisher will not only remove the consumer
21 from their own internal rental lists, but will
22 refer the consumer to the DMA so that the consumer
23 can request to be on their nation-wide do-not-mail
24 list.

25 That said, magazines are very good sources

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1 for consumer data. And the reason is very simple.
2 More than any other medium, the choice of which
3 magazines a consumer reads can tell a lot about a
4 person, what a person likes, and his or her
5 interests.

6 In enabling our readers to get information
7 about products and services that are of interest to
8 them, it is advantageous to everyone. Our readers
9 are given more choices, they get information about
10 products of their interest and life styles, and
11 most importantly they're not inundated with
12 advertisements for products they have no interest
13 in.

14 Businesses benefit because they can target
15 their advertising to consumers who are most likely
16 to be interested in their products, saving them
17 time and money. And for magazines, with a cost of
18 mailing now between 65 cents and a dollar per
19 piece, and that's before the Post Office applies
20 for its newest rate increase this June, the cost of
21 acquiring a consumer, when the response rates are
22 in the low single digits, and in a very competitive
23 market, is extremely expensive.

24 But sharing information only works if it's
25 beneficial to everyone. Our magazine subscriber

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1 lists are our most important and valuable assets,
2 our readers do not want to get advertisements for
3 products they don't care about, so the magazine
4 industry is selective about letting advertisers use
5 their lists.

6 If a business intends to mail a
7 solicitation to a consumer, magazine staff review
8 that promotion to ensure its use is appropriate.
9 Most magazine publishers will not rent their list
10 to telemarketers because they have little control
11 over how the list is used, but if lists are rented,
12 we expect magazine staff to review the
13 telemarketing script.

14 And very importantly, the list is rented,
15 it's not sold. That means the advertiser can use
16 it only one time. And publishers, as a general
17 course, see their lists and track how that list is
18 used.

19 Thank you for inviting us again.

20 MS. ALLISON BROWN: Thank you.

21 Our final panelist is Ted Wham. Ted is the
22 President of Database Marketing for the Internet, a
23 sole proprietorship consulting practice. His
24 career has been concentrated in the direct and
25 database marketing industries, focusing most

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1 recently on Internet-enabled marketing
2 applications.

3 Ted?

4 MR. WHAM: The benefit of having the last
5 name of Wham is that although I am always at the
6 end of the line, I always get to hear what
7 everybody says before me and tailor my comments to
8 help amplify on those areas as well.

9 Database Marketing is an independent
10 consultancy that consists of myself as an
11 independent business person working out of my home,
12 and billing my cat at very low billable rates, I
13 have had an opportunity to work with organizations
14 such as Viacom Division, Curriculum Corporation,
15 Hewlett Packard, I have worked with Cisco Systems
16 here recently, NCR and so forth, helping them
17 formulate Internet privacy strategies and also how
18 to use information about consumers for part of
19 their contact strategies.

20 In general, the information which is
21 available about consumers in the United States
22 starts from very gross aggregate levels, compiled
23 information which is largely demographic
24 information, and as Ms. Wunderman explained in the
25 session immediately before this one, to a lesser

1 extent psychographic information.

2 You move from that into information which
3 is available from a wide range of public records,
4 such as the ones that Ms. Bruening referred to, and
5 ones that I have personal experience with as being
6 on the receiving side of some of the solicitations
7 for there.

8 That's important because those public
9 records the consumer doesn't have much choice in
10 terms of their participation in those lists, it's
11 an obligatory process. If I want to vote, I have
12 to register to vote, and if I register to vote,
13 those public records are then going to be available
14 for purposes unrelated to my voting, and, you know,
15 that's kind of the way it is.

16 There is then a second tier, and that is
17 government supported monopolies, and those
18 monopolies are, because they're either a natural
19 monopoly such as the provision of your gas service
20 or your telephone service, and for instance white
21 pages, telephone white pages are a major source of
22 compiled list information, but there's also
23 government supported monopolies in the form of
24 patent protection and copyright protection, which
25 gives a form of a unique ability to sell a product.

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1 So, for instance, if I want to operate with
2 a computer operating system called Windows, I have
3 to support the patent and copyright protections
4 available from Microsoft until those patents run
5 out, and I have to use that information and
6 Microsoft has that and has the opportunity to share
7 that information, if that is their business
8 practice to do so.

9 There is a whole range of different
10 products from drugs that you have to take to the
11 type of services that you buy and so forth, where
12 that government-mandated protection is there. For
13 monopolistic practice it serves a public good in
14 terms of inspiring innovation.

15 The last area is information which is in a
16 much more competitive area. I can go to any of a
17 number of different retailers to buy clothing, for
18 instance, and the retailers when I make that
19 purchase are going to collect various amounts of
20 information.

21 So, if I buy at Sears, that may be a
22 largely anonymous transaction, especially if I make
23 it in a cash basis. If I do it through a credit
24 card, they may have more information, and some
25 retailers through a traditional retail environment

1 such as Radio Shack actually will ask you for
2 information about your name and address, and
3 collect that information online.

4 Other businesses who run their business
5 model through a mail order process such as Lands
6 End and J. Crew and so forth become much, much more
7 adept at collecting very specific information about
8 you because what you've bought in the past becomes
9 most predictive about what you will buy in the
10 future. It's dramatically better than demographic
11 information, dramatically better than any
12 information you're going to get from public
13 records.

14 If I bought something from J. Crew in the
15 past, I will be better than any prospect that they
16 can find to buy stuff from them in the future.

17 But there's an opportunity for a consumer
18 to make a choice in those purchases on whether
19 they're going to choose retailer A versus retailer
20 B, and so there's an opportunity for control there.

21 So, in looking at this, I think it's
22 important to look at the spectrum of how that
23 information is collected in terms of the consumer's
24 ability to control the use of that information
25 downstream.

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1 MS. ALLISON BROWN: Now that you've heard a
2 brief introduction to the sources of consumer data
3 that businesses use, I'm going to ask our panelists
4 some questions so that we can learn some more
5 specifics.

6 Win, what data elements does your business
7 collect about consumers and how do you collect the
8 information?

9 MR. BILLINGSLEY: Most of us have done a
10 product registration or a software application
11 registration, and it's very important for the
12 manufacturer of that product to get to know who
13 their end user customers are, because all of them
14 distribute their products and services through some
15 intermediary. So, they're really isolated from who
16 their end user customers are.

17 The way they try to solve that problem, and
18 also to provide customer support and service, is
19 through a registration process. So, Naviant
20 provides software that is used by companies that
21 manufacture computer hardware and software products
22 to facilitate that registration.

23 So, the data that we collect for the
24 company includes all the information that we've all
25 seen on those product registration forms, but the

1 only data that Naviant really uses that goes
2 forward into a marketing database is the name and
3 the address, and the fact that this is an
4 Internet-enabled household.

5 And that's really what we focus on and what
6 we collect. The other information is analyzed
7 statistically and then passed back to the
8 manufacturer, and they can use it for various
9 business purposes to know who their customers are.

10 So, name and address, and the fact that
11 this individual is Internet-enabled is key to
12 our -- that's where the cycle starts with Naviant.

13 MS. ALLISON BROWN: What other data
14 elements do businesses collect about consumers and
15 how are they collected? Anybody? You can just
16 either raise your hand or put your tent card on its
17 side? Ted?

18 MR. WHAM: Yeah, I forgot the tent card on
19 its side, I don't live in Washington, D.C. That's
20 a rule.

21 Businesses often times have an insatiable
22 demand for information. They would collect as much
23 information as the consumer will spend time to
24 provide for them. In fact, one of the services
25 that I provide to my consulting clients is that I

1 will get the question, How much can we ask on a
2 registration process or in a survey process or
3 through a purchasing application before the
4 consumer is finally going to go Aye, "I don't want
5 to do this anymore" and will bottom out of that,
6 and they will test that very aggressively and try
7 several different formats. If we ask this extra
8 question, what's going to happen here? If I format
9 this as a drop-down question instead of a radio
10 button, what happens here and so forth. They will
11 collect as much information as they can until they
12 reach a point where the collection of that
13 information degrades completion of the desired
14 task.

15 MS. ALLISON BROWN: Betsy?

16 MS. ELISABETH BROWN: One of the things
17 that I didn't go over specifically is that there
18 are lots of sources of public information out
19 there, including the U.S. Census data, which is
20 pretty hot right now since it's been recently
21 updated.

22 Many companies are trying to get at this
23 information because it's a very good source for
24 benchmark information to understand sort of the lay
25 of the land. And when we talk about benchmark

1 information, there's a lot of other domain
2 information, public domain information that is also
3 collected and used by businesses.

4 Just from my experience at Claritas and my
5 experience with some of these customers, they
6 really do use a variety of information for
7 different business purposes, and from what we've
8 seen, we -- at Claritas, we try to assist them by
9 updating the demographic information annually so
10 they do have these benchmarks and we use lots of
11 different input sources, including consumer surveys
12 that are out there, you may have heard of people
13 like Simmons Market Research Bureau, Mediamark,
14 Nielsen Net Ratings, Scarborough, all of these are
15 collected with consumer consent, they're pretty
16 much anonymized in terms of you never really know
17 who these individual consumers are. Basically that
18 data is used and compiled and turned into models
19 that really say if the person is in this
20 demographic characteristic, they have a higher
21 likelihood than average to do these behaviors.

22 Some of the magazine data is used that way
23 as well. You can either use the individual
24 registration data or pretty much the anonymized
25 version which gives you the, quote, profile.

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1 So, there are many, many databases that
2 Claritas and other companies produce and put out
3 there, and the only way that information is linked
4 back to a customer record is through an inferred
5 modeling process, which either takes into account
6 what we believe their demographics to be, or
7 something as simple as the zip code or zip plus
8 four in which they live.

9 MS. ALLISON BROWN: And can you be a little
10 more specific about the types of information that
11 Claritas gets from surveys, you know, either
12 through Simmons or through its own surveys?

13 MS. ELISABETH BROWN: Depending on the
14 panel, Simmons and Mediamark Research have various
15 surveys that they put out there, some of them are
16 books of information that ask everything from how
17 much peanut butter do you eat a week, to what
18 brands do you prefer, what media you like, how
19 often do you spend in front of the television.

20 A.C. Nielsen actually captures specific
21 readership and views of which television programs
22 and what day parts in terms of which actual
23 physical programs you're watching. And a lot of
24 that data, again, it's all consumers are signing up
25 for these panels. That's the panel type of

1 research.

2 In addition, there's other types of
3 research which is more of the research where you're
4 calling up people on the telephone or just sending
5 them a direct mail package and asking them
6 something more specific about the financial
7 services that they're using, or the types of
8 Internet services they have and that type of
9 nature.

10 Once again, most of this data, what happens
11 is that all the data is collected at a household
12 level, but when it's modeled and analyzed, it's
13 analyzed in terms of demographic characteristics or
14 segmentation codes and not -- those people that
15 participate in the panel, that data is never used
16 for specific marketing purposes back to those
17 individuals.

18 MS. ALLISON BROWN: Thank you. Paula?

19 MS. BRUENING: Yes, I just wanted to talk a
20 little bit about business use of public record
21 information, and clearly the kinds of information
22 that I talked about in my opening remarks are
23 valuable to businesses in their marketing pursuits.

24 The problem comes with the fact that the
25 information has been given up by the individual, is

1 given up so that they can participate, as Ted Wham
2 said, in some very basic functions of life. They
3 want to drive a car, they want to buy a house.
4 They've had a baby. Someone's been born or died in
5 the family. Someone's received money in a will.

6 And I think that to say that Well, that's
7 being used for other purposes, and that's just the
8 way it is, I think is a -- is not a really very
9 thorough analysis. I think that if anything, what
10 the information age, computerization, will allow us
11 to do is give us an opportunity to re-examine those
12 uses to decide whether those are appropriate,
13 whether we can limit the access to that
14 information, to the -- to something closer to what
15 the initial collection was intended for.

16 MS. ALLISON BROWN: Are there currently any
17 restrictions on the use of public record data for
18 marketing? Anybody?

19 MR. WHAM: There's one large restriction
20 that I am familiar with and that is recently there
21 was legislation passed at the federal level which
22 gives consumers an opportunity to opt out of having
23 their information about their automobile
24 registration used for marketing purposes.

25 MS. BRUENING: That's opt in.

1 MR. WHAM: Opt in, opt out, excuse me,
2 okay. So, but it was very, very significant,
3 because prior to that legislation 46 of 50 states
4 made their consumer automobile registration
5 information available to the list rental
6 marketplace, and what type of car you own and drive
7 is extremely predictive of your household income.
8 It's one of the most predictive items.

9 And so if I wanted to drive a car in the
10 state of California, I didn't have any choice, that
11 information was going to make it into R. L. Polk's
12 database.

13 That's an example where there have been
14 some restrictions recently.

15 MS. ALLISON BROWN: Michael, I think you've
16 been wanting to say something?

17 MR. PASHBY: I was just going to say the
18 magazines themselves collect a relatively small
19 amount of information about their consumers. The
20 sort of information that they have is the date of
21 purchase, the source of purchase, whether it's by
22 the telephone or from a magazine previously bought,
23 whether it's through direct mail. The number of
24 times they've purchased, the value of the purchase.

25 That's the basic information that a single

1 magazine would have, that information can become
2 more valuable if you're a multimagazine publisher
3 or you have other lines of publishing so you can
4 then create a broader profile of the person if
5 they're also buying books or magazines in different
6 interests.

7 But the interesting thing about magazines,
8 is that on a -- say a broad interest magazine, one
9 of the seven sisters, when a publisher is trying to
10 promote to the consumer, probably the most useful
11 type of information that the publisher will have is
12 cluster information. If a person is of a certain
13 age and lives in a certain area, that their
14 neighbors may be likely to buy the same magazine.

15 The more specialized you get in a magazine,
16 let's take a woodworking magazine, just because a
17 person lives next door to someone who buys a
18 woodworking magazine, there is absolutely no reason
19 to suppose that the other person would want to buy
20 one.

21 So, the use of the use of data for the
22 small -- the small publisher, the small business,
23 is becoming far more important. We used to have
24 something, until a couple of years ago, called
25 Publishers Clearinghouse and American Family

1 Publishers, which mailed into every household in
2 the country, and the consumer could self select
3 their magazines.

4 Nowadays, those mailings are a thing of the
5 past. And information to a publisher has become
6 far more important, to be able to target their
7 consumers.

8 MS. ALLISON BROWN: Betsy?

9 MS. ELISABETH BROWN: There are fairly
10 significant restrictions on credit card information
11 and data that's used to actually make specific
12 financial offers, from the list compiler companies,
13 like Equifax and Experian. And although I don't
14 represent those companies, I'm not well versed in
15 specifically what those criteria are, the financial
16 services companies that we've worked with, they can
17 only use certain information if they're actually
18 making a credit offer, where they are willing to do
19 a pre-approved credit offer, which means that they
20 are going to say because I have pulled this
21 information on you, I'm willing to say that I will
22 guarantee that if I make this offer, you can have
23 this product.

24 And that data cannot be used by another
25 portion of the bank to make another type of offer,

1 whether or not extending credit. So, those
2 protections are in place, I don't have all the
3 details about all the specifics, but it's important
4 to know that they're out there.

5 MS. ALLISON BROWN: Right, and the FTC is
6 very familiar with the Fair Credit Reporting Act
7 and the restrictions on credit data, so that's
8 useful to know, although we are focusing here on
9 data that's not being used for credit decisions.

10 Paula?

11 MS. BRUENING: Yes, I just wanted to go
12 back to the Driver's Privacy Protection Act. I
13 think that that piece of legislation really
14 reflects heightened consumer concern about the
15 incompatible use of this public record information,
16 and it is a response to that.

17 And I think what it does is really offer to
18 individuals who are participating in these basic
19 life experiences, the same kinds of choice that we
20 have come to expect in the commercial realm. We
21 require notice and choice when we're doing business
22 now with a website, or with an organization, and
23 something -- legislation like the Driver's Privacy
24 Protection Act offers that same kind of consumer
25 choice, which I think is critical here.

1 MS. ALLISON BROWN: Ted?

2 MR. WHAM: Just a couple of concepts I
3 would like to throw out there, and I would like to
4 pierce a couple of notions about what's happening
5 with data out there.

6 There is certainly data just being
7 collected in a permissioned basis. There is also
8 certainly information which is being collected
9 which is not personally identifiable and is going
10 through a more of an aggregation, a blending type
11 of a process.

12 Ms. Brown talked about some of the
13 practices of Claritas, and Claritas uses largely,
14 if not exclusively, nonpersonally identifiable
15 information available from census tract records
16 from U.S. Government surveys through the census
17 process, but there's an immense amount of data
18 which is collected which is not permissioned in any
19 way, so the consumer is not being asked whether it
20 is okay for that information to be shared with
21 third parties, and there's an immense amount of
22 information which is available that is, you know,
23 personally identifiable and shared with third
24 parties quite readily.

25 So, I would have you think, we have an

1 especially erudite audience in terms of knowing how
2 this process works, although we're all here in this
3 workshop, I think a lot of us have an understanding
4 walking in the door how this process works. But if
5 you thought back to your five most recent
6 purchases, I would suspect that there are very few
7 of us in this room who would know whether the
8 companies with whom they did that transaction have
9 a process of sharing that information with third
10 parties, okay?

11 So, you know, think about what you've
12 purchased most recently, and there are many, many
13 companies who the difference between profit and
14 loss for those companies is made by selling their
15 customer information to noncompetitive businesses
16 who are going to be targeting the same type of
17 business.

18 So, if I'm buying a computer peripheral and
19 it's for an obscure, you know, system, other
20 customers that sell computer peripherals to that
21 same obscure system in a noncompetitive way, can
22 almost invariably buy that information.

23 And the best example that I can give of
24 that is the Bible for mailing lists in the United
25 States, the Standard Rates and Data System, SRDS.

1 I have a friend who is a list compiler, and before
2 this session, I called her and I said, How many
3 pages is that book these days? And the current
4 volume exceeds 3,500 pages. Something on the order
5 of 100,000 distinct mailing lists are available for
6 rental in the United States. Most of those, the
7 majority of those, with distinct personally
8 identifiable information in them.

9 MS. ALLISON BROWN: Win?

10 MR. BILLINGSLEY: I would just like to make
11 one other point and discuss an anomaly that we face
12 in our data collection process, in processing
13 warranty information. Some of that data is
14 collected via a web browser technology, fully
15 Internet-based, and clearly when you collect data
16 using that methodology, it comes under the fair
17 information principles of notice, choice, access,
18 security and enforcement, but there is also a large
19 portion of that data that's not collected using
20 browser-based technology. It's collected using a
21 dial-up, a synchronous modem capability with an
22 application that is loaded in the PC.

23 So, some people would make the contention
24 that since you're not on the Internet, that is
25 offline data. Now, you know, we have struggled

1 with how to deal with that issue, and the way we
2 resolve it in Naviant is we treat data collected by
3 either one of those two methods by the more
4 rigorous online marketing data collection rules,
5 but it is an anomaly that I think should be
6 addressed so that there is clarity provided in how
7 people that try to collect data in an ethical and
8 permissioned way, how they really should operate
9 when they face these kinds of dilemmas.

10 MS. ALLISON BROWN: I do want to go back to
11 some of the specifics about the data that are being
12 collected here. Betsy, you've talked a little bit
13 about census blocks, zip code information, and zip
14 plus four information. Can you give us a sense of
15 how many households are in a census block, versus a
16 zip code block, versus a zip plus four?

17 MS. ELISABETH BROWN: Yes, a zip plus four
18 would probably be the lowest level of geography,
19 not even geography, because there aren't
20 boundaries, but the lowest level at which you can
21 compile information that's not at household level.
22 And generally a zip plus four can have anywhere
23 from four to ten households in it.

24 Most of the zip plus four data that gets
25 compiled, they have factors in there whereas if

1 there isn't enough information for a particular
2 variable, that is data-filled so that you don't
3 have any privacy issues.

4 The next level up, a block or block group
5 tends to have anywhere from 250 to 350 households.
6 Zip codes can have anywhere from a few thousand to
7 25,000. They're not really cohesive types of
8 geographies. And census tracts are anywhere from
9 1,200 and up.

10 So, low enough levels of geography so that
11 if you're a broad, when you're looking at some of
12 the broad applications that we're talking about,
13 when companies are just trying to understand the
14 lay of the land, for example, generally zip codes,
15 counties, census tracts are a good way for them to
16 really understand what's going on in a marketplace,
17 if they want to enter the marketplace or not.

18 And what we see is that there's different
19 levels of using some of these data. A lot of the
20 clients that we deal with will use a lot of this
21 information for more of their strategic marketing
22 purposes, and when they go out to actually
23 implement a program, they will buy a direct mail
24 list.

25 The attributes that they use to understand

1 their total marketplace may be different than they
2 actually use on the implemented direct mail list.
3 And I think Lynn went over that a little bit, which
4 is that what you'll find is that just because they
5 know that a certain demographic characteristic is
6 currently their, quote, best customer, when they
7 actually go to pull the mailing list, there are
8 many different market -- let's say environments
9 that will cause them to maybe change a specific
10 type of demographic that they're going after, or
11 they'll look at a list and they'll find that the
12 people that they most want to attract, let's say
13 for private banking, are not direct marketing type
14 of customers, that they really aren't going to
15 reach them through a direct marketing list. They
16 don't exist much on the list, there isn't enough
17 data on them and they're not really responsive to
18 the list.

19 So, I think that sometimes people believe
20 that these companies have an enormous amount of
21 information, which they do, but in their practice
22 of actually rolling out marketing programs, it's
23 not as succinct as you might think it is, that they
24 know exactly who their targets are and they can
25 then implement against those targets. They have to

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1 really use a lot of strategy and analysis to just
2 try to reach the right person.

3 I don't know if that's a -- there's just a
4 lot of different ways you can use that type of
5 information. So, you can move from these
6 geographic levels down to the household level, but
7 you may not have an exact fit when you do that.

8 MS. ALLISON BROWN: And we heard a little
9 bit in the overview about how businesses append
10 data from third party databases. Can anybody give
11 any specific examples of what types of data
12 businesses append to their in-house customer files?

13 Win?

14 MR. BILLINGSLEY: Well, just having a name
15 and address and a flag that says you're an Internet
16 household is not a very effective product in terms
17 of providing marketing lists.

18 So, that base core of information is used
19 to do a match with various data compilers and
20 aggregators of information, and then we ingest
21 certain attributes that are associated with that
22 name and address. And some of those attributes --
23 and there's many -- but it would be things like
24 income range, age range, gender, hobbies,
25 interests, things of that nature, that we use to

1 embellish the marketing file so that we can do
2 selects and generate lists that are targeted for
3 specific products and services.

4 MS. ALLISON BROWN: Does anybody want to
5 add to that?

6 Michael?

7 MR. PASHBY: Generally magazines will
8 append information slightly differently, depending
9 on the type of magazine. A general magazine will
10 probably append more information or have the
11 ability to append more information.

12 I mean, clearly, the very basic information
13 of age, income, family size, gender, is generally
14 available to be appended to the -- to that list,
15 but the more general the magazine, probably the
16 more selections that will be made available.

17 There are a number of companies which will
18 take a magazine list and add information to it,
19 creating that database, and the sort of information
20 that can be appended is everything that's being
21 talked about today. Whether it be the types of
22 cars that people own, when they bought a car, the
23 type of house, the value of the house.

24 There's a lot of information that can be
25 appended, but in general, magazines tend to be the

1 starting -- the starting place rather than the end,
2 with all that information appended to it, because
3 they start -- you're starting with the general
4 interest area, and then it is merged and purged
5 with other lists during the marketing process.

6 MS. ALLISON BROWN: Thanks. Ted?

7 MR. WHAM: A very typical use of appended
8 information is to take a large universe file of all
9 your customers and presume you're a cataloguing
10 business that has, you know, for conversation's
11 sake, a million customers that have done business
12 with you over time.

13 You take a statistically representative
14 sample of that, of perhaps 10,000 individuals and
15 you go and append absolutely everything to those
16 10,000 people you can possibly get our your hands
17 on, from income, age, whether they've got children,
18 the age of those children, whether they're
19 grandparents, the type of interests that they have,
20 all of the psychographic information, everything
21 you can get to that.

22 And then you run that against statistical
23 processes and say, Okay, tell me of all of these
24 different processes, which one of these are going
25 to be predictive of the ones I care about most.

1 And as Ms. Wunderman pointed out this
2 morning, different businesses care about different
3 things. Some businesses want lots of transactions,
4 some businesses need to be very concerned about
5 turnover, loss of the customers, some long distance
6 carriers and cellular phone carriers, for instance,
7 are extremely interested to make certain that
8 they're getting customers who are going to stick
9 with them and are not switchers and so forth. And
10 it varies by businesses.

11 Once they identify which of those
12 characteristics are particularly predictive for the
13 customers that they want, they will then go to the
14 remaining universe, those 990,000 names that they
15 never did anything with, and they'll go back to the
16 original appending firm and say, Please append
17 these two or three variables that I want. Much
18 more cost effective than appending all 30 or 50 or
19 150 variables to the entire universe if only three
20 of those are going to be productive for what you're
21 trying to do.

22 MS. ALLISON BROWN: Betsy?

23 MS. ELISABETH BROWN: Yeah, that's a very
24 good point. I think one of the reasons that
25 Claritas has been in business for 30 years is that

1 one of the things that we have been able to do is
2 boil down a lot of those characteristics into
3 segment codes, which makes it a lot easier.

4 I mean, we have seen in the financial
5 services arena about ten years ago, they were one
6 of the first industries to really take customer
7 file records that they have done, they have a very
8 -- financial institutions tend to have a very
9 strong relationship, we talked about what a
10 relationship was, with their clients. There's a
11 lot of trust there that the clients are giving a
12 lot of very in-depth financial information to these
13 companies.

14 Financial services companies are fairly
15 conservative from what we've seen with what they do
16 with the collected information, but in addition,
17 they didn't really have the databases and the
18 software capability to manipulate these gigantic
19 files with so much information that they collect,
20 nor did they have a good way of updating them.

21 So, even with them collecting all of this
22 very personal information, they tended to use
23 companies like Claritas to help them boil it down
24 and understand from a one code type of an aspect
25 what can we know about these people quickly and

1 easily without having to look at 100 or 200
2 different variables that we've collected over time.

3 So, that's sort of in essence what a
4 cluster code is. The basic information we really
5 need there is just an address that will allow you
6 to say the likelihood is that these people live in
7 an upscale suburban neighborhood or an upscale
8 urban neighborhood. And a real quick example of
9 how that would be used would be if you knew -- if
10 you just had straight demographics on someone and
11 you knew you had two males, 30 years old, and you
12 figured out that they make about \$50,000, do they
13 need individual life insurance or not.

14 Not quite enough information for you to
15 make a decision on that, one male might be single,
16 doesn't own a home, doesn't really have any
17 dependents, where the other male might have a
18 family with three kids, a house, a mortgage, so
19 having a little bit more rich information on that
20 would make you look at these two similar
21 demographics and say I'm going to offer insurance
22 to the one because they are going to need it and
23 not the other.

24 Or another quick use is if they're only
25 using their internal data and they know that they

1 have got a thousand people who have \$5,000 in their
2 checking account and always have had \$5,000 in
3 their checking account, by overlaying some of these
4 segment codes, you can get a quick idea that five
5 of those people, that's all they're really ever
6 going to have in demand deposits at a bank, that's
7 really all they're qualified to have, and this
8 segment code would be something like a number, 27,
9 that would represent a string of demographics that
10 would predict that that person is probably in that
11 demographic.

12 And you might find out that half of these
13 people have a very high likelihood for using a loan
14 product. So, if you wanted to offer them another
15 service, you would be better off offering them a
16 loan product than the other half who you would be
17 better off offering an investment product.

18 So, without having to know a ton of
19 personal information, you can at least make some
20 good guesses as to what the next most likely
21 product is to offer those people.

22 MS. ALLISON BROWN: And can you give us a
23 couple of more examples of the segments, I think
24 that Mary in the overview gave us a couple from a
25 newspaper article, I think people might be

1 interested to hear what some of the other ones are
2 and how many there are as well.

3 MS. ELISABETH BROWN: Well, we have --
4 there are several different segmentation systems,
5 and a segmentation system really starts off as just
6 a predictive model. So, as Ms. Wunderman was
7 saying earlier in the session, different industries
8 care about different data.

9 So, a very generic model would be something
10 like our Prism segmentation system that's based on
11 the demographics of where you've settled, where you
12 live, there are several more like that out there in
13 the public domain, and they have -- some of them
14 have nicknames, they tend to be sort of upscale
15 suburban, like Blueblood Estates, Urban Singles,
16 Upscale Urban Singles, Midscale, you know, Urban
17 Dense Areas.

18 So, there's lots of different ways that you
19 can just get a quick snapshot of what the
20 settlement patterns are in that neighborhood.

21 And one of the things that we've -- because
22 these things, as everyone said, as I think Paula
23 was saying earlier, there's different uses for
24 that. It's important to know that you're in a
25 suburban market area if you're trying to sell lawn

1 mowers. You certainly don't want to be offering
2 that to urban upscale singles in high rises.

3 So, some of the data is critically
4 important to some of the things you're trying to
5 sell. It may not be very important at all to
6 somebody who is selling a very targeted niche
7 magazine that could appeal to many different people
8 and has no relationship in terms of a geographic
9 reference.

10 So, there are 62 Prism clusters, which
11 means that we have predicted 62 different
12 neighborhood settlement patterns.

13 Another segmentation system is based more
14 on predicting financial services behavior, or
15 telecommunications behavior. In those segments,
16 there are about 42 of the financial patterns, and
17 they are anything from upscale suburban families
18 with children, upscale suburban singles, upscale
19 urbanites, those type of cluster types or segment
20 types, and that's more based on a specific range of
21 income, asset prediction, age and presence of
22 children.

23 So, those -- they're slightly different,
24 but, you know, basically you can start with
25 anything. In our audit of the convergence data,

1 which is the telecommunications, I think we have
2 about 57 different segments and they're based on
3 patterns of usage that we have seen in terms of
4 product usage, and then on the back end, we infer
5 the demographic segment for that.

6 MS. ALLISON BROWN: Ted?

7 MR. WHAM: There's a distinction which
8 might be valuable for the FTC in doing this,
9 there's two major categories of lists that you can
10 consider. One would be compiled list information,
11 the other being response list information.

12 Compiled list information tends to be very
13 broad coverage, it's information about who you are,
14 whereas response list is more information about
15 what you've done, what type of products you've
16 done.

17 So, if I want to buy something that has a
18 very broad geographic coverage because I'm offering
19 a service that has something which is primarily
20 defined upon where people live and the types of
21 birds of a feather flock together type of analogy
22 that is the basis for Claritas' business, then I am
23 going to want that type of a compiled list.

24 If I'm trying to find people who have
25 interest in doing very specific types of activities

1 and so forth, I am going to want to buy lists from
2 similar businesses or businesses that point to
3 similar types of people.

4 Response lists tend to be very narrow. I
5 can't typically take a response list and very
6 effectively use that as an overlay tool against my
7 universe of customers, and say tell me additional
8 things about this, because if I took my, you know,
9 300,000 customers and matched them against somebody
10 else's 300,000 customers, I might find, you know,
11 700 that match between those two of them.

12 I would have a rich data set for those, but
13 I wouldn't have enough to make it economically
14 worthwhile to do that.

15 Right now it's very easy to go from the hub
16 out to the spokes. Go to a company that sells a
17 specific product and tell me all of the customers
18 for that product or set of products that they sell.

19 It's extremely difficult to say that I want
20 to start at a spoke and tell me all of the hubs
21 that they're attached to, so go to a specific
22 customer and tell me all of the products that they
23 have bought within a category, or perhaps even all
24 the products they have bought.

25 I will say that although you can't do that

1 today, there's an enormous economic potential
2 there, and I am certain that many, many very bright
3 people have spent a lot of time trying to figure
4 out how I can come up with a master universe of all
5 of the computing products that somebody has bought,
6 or all of the clothing purchases that somebody has
7 bought, because if I can do that, and if I'm a
8 marketer selling, you know, an upgrade to a
9 particular type of computer, that's the golden
10 list, and I will spend a lot of money to rent names
11 from that list.

12 MS. ALLISON BROWN: Michael?

13 MR. PASHBY: Yeah. I think in the magazine
14 industry, one of the most important sets of data
15 that can be added to a magazine list is catalog
16 information, and the merging of catalog
17 information, because it does add the recency,
18 frequency and value component to the magazine list.

19 If you go back to the woodworking magazine,
20 a person may buy a woodworking magazine noting that
21 they're interested, but if you can match that with
22 catalog information about the purchase of tools or
23 the purchase of other supplies, and they're showing
24 some frequency there, that separates out one group
25 of people who are peripherally involved to

1 high-volume purchases within that area, and I
2 suppose it also gives a greater degree of value to
3 the broader lists, like a news magazine or a seven
4 sisters magazine, those people may be then
5 segmented into very specific interest areas.

6 So, you have a -- one of the seven sisters,
7 but you can match that with kitchen and food
8 catalogs to show a high interest in cooking. So,
9 it then becomes much more interesting for other
10 marketers, and much more targeted to the consumer.

11 MS. ALLISON BROWN: And what do businesses
12 do to ensure that the data that you collect are as
13 accurate as possible?

14 Win?

15 MR. BILLINGSLEY: Well, we do several
16 things. Marketing data does not have to be 100
17 percent accurate to be effective, but you want to
18 make it as accurate as you possibly can, within the
19 economic constraints that you have to deal with.

20 But an example of some of the things that
21 we do to make sure our data are accurate, even if
22 you permissioned us to use your data in a product
23 registration effort, you say yes, I would like to
24 receive offers from third party -- from third party
25 marketers regarding products and services that

1 would be of interest to me.

2 You don't automatically go into Naviant's
3 database just because you have permissioned us. To
4 make sure that we're doing that accurately, we
5 match your name and address against a public data
6 source to make sure that you really are who you say
7 you are. That helps us get out the Donald Ducks
8 and the Roy Rogers and some people who like to play
9 games, but we find the utilization of the public
10 compiled data, a very meaningful tool to ensure
11 that our file is as accurate as it possibly can be.

12 MS. ALLISON BROWN: And can you just
13 clarify what you mean when you say public sources
14 of data and compiled sources of data? Can you be
15 more specific?

16 MR. BILLINGSLEY: Well, I probably
17 misspoke, I probably should have said compiled
18 sources of data which originated from public
19 sources of data. But it's a very effective way to
20 make sure that data is accurate.

21 The other advantage that it holds for us is
22 that we're very sensitive in not collecting data on
23 children, and so by matching the name and a
24 registration with an aggregator's data or a
25 compiler's data, kids don't buy real estate

1 property and cars and things of that nature.

2 MR. WHAM: You haven't met my brother.

3 MR. BILLINGSLEY: So, it gives us a
4 reasonable check to make sure that we're not
5 collecting data on children.

6 The other thing that we do to make sure
7 data is accurate is we use the DMA suppression
8 file, and we find that a very effective way to make
9 sure that we don't include data in marketing lists
10 to the people who have gone to the trouble to go to
11 DMA and sign up for either their direct mail
12 suppression file or telemarketing suppression file,
13 and a new product they started just a few months
14 ago which is an email suppression file.

15 So, that's another way to make sure that
16 the data we provide a marketer is accurate. And
17 the third way is the good old U.S. Post Office.
18 All marketers use the NCOA process, or should use
19 the NCOA process.

20 MS. ALLISON BROWN: And what does NCOA
21 stand for?

22 MR. BILLINGSLEY: National Change of
23 Address. And the way that basically works is if
24 you move and you fill out a card at the Post Office
25 so your mail will be forwarded to your new

1 location, that information is collected by the Post
2 Office, and the Post Office has this very large
3 file of people who have relocated that's utilized
4 to redirect their mail. And the Post Office
5 authorizes some 20-something companies to take this
6 data and do a match to make sure that if you have
7 an old address in your file, and you match the old
8 address, then you can substitute the new address.

9 And that's something that's been in
10 existence for a long time, it's been used in the
11 direct marketing world for a number of years. It's
12 a very effective tool to make sure that if you're
13 doing a direct mailing of a marketing list, that
14 the marketing collateral that you're spending hard
15 dollars for to be delivered by the Post Office is
16 truly deliverable.

17 MS. ALLISON BROWN: Thanks.

18 Michael?

19 MR. PASHBY: Some information really has to
20 be accurate. Some years ago I marketed a magazine,
21 which I won't name, but, well, let's say a parents'
22 magazine, and our primary source of readers were
23 parents of newborn children.

24 We were extremely sensitive to the problems
25 inherent in that. Somebody's buying lists of

1 potential new births, and some births obviously are
2 not live births, and you are mailing to people
3 saying congratulations, and that can be extremely
4 sensitive, obviously.

5 So, correcting data is very, very
6 important. We spent an awful lot of time and
7 energy making sure that the sources we were
8 compiling that data from were accurate. If we
9 found that there was an incidence of inaccuracy, we
10 would cut off from that source. And we would not
11 buy information from that source ever again.
12 Because of the responsibility to the consumers that
13 we had.

14 MS. ALLISON BROWN: And can you be a little
15 more specific about what the sources of that type
16 of data are?

17 MR. PASHBY: The sources of that data were
18 from -- no, I can't, they were from compilers. It
19 would come from doctors' office visits, from
20 insurance companies, from a lot of different
21 sources, I believe.

22 MS. ALLISON BROWN: And what did you do to
23 make sure it was accurate? How did you gauge that?

24 MR. PASHBY: We would -- we would do it
25 from the complaint level. That was the difficulty.

1 You were doing it after the event, but if one found
2 that there was a degree of inaccuracy there, then
3 we would cut off from that source.

4 MS. ALLISON BROWN: Ted?

5 MR. WHAM: You talk about data quality
6 issues, it's useful to look at it in two different
7 ways. There's the quality of the data at the time
8 that it's collected, and there can be errors
9 introduced through typographical errors, or to
10 purposeful, you know, fraudulence, Mickey Mouse and
11 so forth, but there's also a more significant issue
12 of data decay.

13 Like if I, you know, show up in a database
14 that I'm 25 to 34 years old, how old am I tomorrow?
15 Okay? So, date range information is very
16 inaccurate. Births, deaths, marital status and so
17 forth, and people moving all the time, but we have
18 a very mobile society. So, the statistic that I
19 heard, I can't vouch, say, for this, but the
20 average data in a data base decayed at a rate of
21 about one and a half percent per month, that was
22 the inaccuracy that built up over time.

23 The marketer has an absolute vested
24 economic interest in making sure that that
25 information is as accurate as possible. If it's

1 inaccurate, they can't use it for the goal that
2 they have. So the alignment of the market
3 interest, the consumer's interest of having
4 accurate information is absolutely, I mean,
5 perfectly together.

6 MS. ALLISON BROWN: We have time for one
7 more comment and then we will go to questions from
8 the audience.

9 Betsy?

10 MS. ELISABETH BROWN: One of the things
11 that I wanted to talk about data accuracy is that
12 from the Claritas standpoint, we've seen a lot of
13 different types of data. We not only use Census
14 data and other public domain data, consumer
15 surveys, which is really self-reported demographic
16 information, but in order to -- as I was talking
17 about implementing, in order to actually implement
18 an actual marketing program, we will take our
19 segmentation codes and place them on list files,
20 such as Acxiom, InfoUSA, Experian and Equifax, and
21 many other compiled lists.

22 What we have found many times, especially
23 when we're using the types of models that I
24 discussed earlier that go down to a more specific
25 household level, in terms of the demographic

1 variables that we say are predictive of the
2 behavior that we're trying to help our customers
3 use, what we find sometimes is that these list
4 sources have, I guess, decay, some other
5 information, missing information, fill-in models,
6 and we will show them that the data that we have
7 proves out that their list is not really
8 distributing the way the U.S. population
9 distributes down to a low level of geography, a zip
10 code, a census tract, a block group.

11 So that we can take a look at a list of
12 data out there and say you're reporting that only
13 two percent are in the income category, 50,000
14 plus, and we expect to see more like 27 percent.

15 So, we have actually created models that
16 help some of these list sources to improve their
17 models, their income models or whatever that might
18 be, to base them more on sort of a benchmark of
19 data.

20 So, there's a lot of -- it's sort of a
21 symbiotic relationship, back and forth with
22 Claritas and the list providers, sometimes they
23 actually do change some of their model information
24 on their file based on our information, and other
25 times we just use it to assign what we think is a

1 more appropriate segment code, then they don't
2 necessarily change that source of data, it depends
3 on how they prioritize their models, and they
4 prioritize their input sources.

5 MS. ALLISON BROWN: And I believe that
6 Claritas also updates Census data, how do you do
7 that?

8 MS. ELISABETH BROWN: On an annual basis.
9 We update census data, again, from a list of a lot
10 of sources, some of the postal information, some of
11 the moving information, NCOA. There's a lot of
12 intercensal data that is produced that's not
13 produced on 100 percent factor.

14 In other words, there are many, many
15 counties, communities and states that do many
16 updates of data and information, and we take really
17 whatever we can get that's available and utilize
18 that data. There are also many models that we have
19 perfected over time, and we've been doing this,
20 this is our third census that we've been actually
21 updating information where we just do projections
22 and straight line information based on other data.

23 So, there are many sources that we can use,
24 both census-type sources that we think we can have
25 a high degree, feel that we have a high degree of

1 accuracy in terms -- and relevance, and some of the
2 consumer survey research that's out there just
3 allows you to take a look at shifting data in terms
4 of how people are self reporting where their
5 incomes are.

6 And in addition, we do use a lot of the
7 list data just to try to get a handle on which
8 areas are growing. Postal drop rates, I think ADVO
9 counts, which is another list source where they
10 constantly are updating where the postal drops are
11 going.

12 MS. ALLISON BROWN: One thing that becomes
13 clear pretty quickly is how integrated the
14 aggregators are with the sources and how the data
15 sort of rotate in and out of the different
16 databases.

17 I know when I open up the discussion for
18 questions from the audience, if you have a question
19 you would like to ask, please raise your hand and I
20 will recognize you after one of our staffers comes
21 over with the wireless microphone. Please speak
22 into the microphone while asking your question and
23 state your name and organization before you begin
24 your question so the court reporters can get an
25 accurate transcript of today's proceedings.

1 MR. CATLETT: Thank you, I'm Jason Catlett
2 from Junkbusters. I have a question for Mr.
3 Billingsley. I have an advertisement in a trade
4 magazine from Naviant, it's quite amusing, it shows
5 a biker with tattoos and a beard, and it makes
6 light of the fact that he likes roses, and when
7 you're going online, you might want to -- I infer
8 from this advertisement -- you might want to pitch
9 a banner advertisement for roses.

10 Could you please tell us the process by
11 which when this biker goes online and visits a
12 website the website would know that he likes roses?

13 MR. BILLINGSLEY: Well, I'll talk a little
14 bit more about that this afternoon, if you would
15 like, because we'll talk about how the data is used
16 to administer marketing programs, but basically, we
17 would have business relationships with some of the
18 ad serving companies that collect data anonymously.

19 We would pass data attributes to those ad
20 serving companies anonymously, so that they could
21 then target a banner ad that was appropriate for
22 that particular person, without ever knowing the
23 person's name.

24 MR. CATLETT: Thank you.

25 MS. ALLISON BROWN: Don't forget to say

1 your name and affiliation for the record.

2 MR. HENDRICKS: Thank you, Evan Hendricks,
3 Privacy Times. I had one question, but first I
4 wanted to follow up on what you said about the
5 babies, because we always wondered about that, a
6 lot of us.

7 So, is it the doctor's offices would sell
8 that information, or the insurance companies were
9 some of the sources for people who are about to
10 have babies?

11 MR. PASHBY: I am not absolutely certain, I
12 believe that was, and this was some time ago.

13 MR. HENDRICKS: But I also wanted to
14 comment, hospitals and birthing classes, and do
15 they sell it to a compiler, is that how it would
16 work?

17 MR. PASHBY: It's my belief that that's how
18 the information was compiled.

19 MR. HENDRICKS: Okay. The other thing is
20 you said that the magazines, I think correctly, are
21 at the front end of this process, much more so than
22 some of the others who are at the back end, and in
23 the UK, on a subscription form, the little cards
24 that you get in your magazine, you have a check-off
25 box, it says if you don't want your name shared,

1 check here, and send it in with your subscription,
2 and one of the big problems in the U.S. is that at
3 the point of the collection of data from
4 individuals, people are not notified what could
5 happen or given the chance to even opt out.

6 And so, do you think that makes sense from
7 a data practices point of view, and do you think
8 that your association is ready to sort of endorse
9 that and recommend it, you know, considering the
10 growing strong feelings about privacy?

11 MR. PASHBY: I think from the standpoint of
12 having to fill in, check a box on a card, what we
13 found in any promotional activity, having the
14 consumer take actions in a promotional activity
15 reduces the response. Therefore, we have cards
16 which are prechecked, and yes I want this magazine,
17 and then all they have to do is tear the card out
18 and put it in the mail.

19 But as I mentioned, we also do publish in
20 the magazine the privacy policies and the ability
21 to -- and the ability to call an 800 number or send
22 to the magazine fulfillment house to be taken off
23 the list.

24 MR. HENDRICKS: And of course what I'm
25 describing wouldn't even, I mean someone could

1 still take the card and just throw it in the mail.
2 It's only those people that took the time to look
3 and see that there was a check-off box, and could
4 check off they didn't want their name sold.

5 So, what I'm saying is would it interfere
6 with, you know, with what you're saying? I mean,
7 it wouldn't require the individual to check the box
8 to say I don't want my name sold, it would only be
9 for those individuals that cared enough. And if
10 this is practice -- am I confusing you? You look
11 like you're not following me.

12 MR. PASHBY: I'm saying that any time there
13 is -- you give people the option in a promotion,
14 the response declines. And as we mentioned before,
15 the whole use of information has been more
16 effective and more efficient when we are spending
17 or when businesses are spending 65 cents to a
18 dollar to put a piece of promotion into the mail
19 and you're getting single digit responses, you're
20 trying to be as efficient as possible.

21 MS. ALLISON BROWN: Ted, do you want to
22 comment on that?

23 MR. WHAM: Yeah, I absolutely would. The
24 basic fundamental question is if I -- if consumer X
25 chooses to do business with Business Y, should

1 consumer X have the opportunity to say Business Y,
2 don't contact me. That's question A.

3 And question B is, Business Y, don't
4 share my information with company Z and Z sub
5 one and Z sub two and so forth. I fundamentally
6 reject the notion that a consumer should be able
7 to say I want to do business with a particular
8 company Y, but that company can't follow on and
9 make money out of that relationship. I think
10 that that has terribly negative consequences
11 for the efficiency of economic transactions in
12 this country.

13 The reason we don't have mom and pop stores
14 in the United States very successfully anymore and
15 the reason we have Wal-Mart's in this country is
16 because they provided a very economically efficient
17 way of delivering low-priced goods in the United
18 States, for better or for worse, but the wheels of
19 that continue to turn by having the businesses be
20 able to use that information in the most effective
21 way possible.

22 MS. ALLISON BROWN: We are trying to stay
23 on a factual level here and stay away from policy
24 discussions.

25 MR. WHAM: I couldn't help myself.

1 MS. ALLISON BROWN: Does anybody else have
2 a question?

3 MR. DIXON: Tim Dixon from Baker McKenzie.
4 A question, just to pick up on that point to take
5 it a little bit further. When we talked,
6 particularly when you mentioned the 30 million
7 permissioned people or households in the database
8 that you've got, what proportion do you know is
9 that people who have done the sort of check box as
10 opposed to the kind of I guess you could call it
11 permission by inertia where they would need to read
12 a privacy policy and then go through an active
13 process of say opting out if they wished to opt
14 out?

15 MR. BILLINGSLEY: I don't know the
16 percentage. We use in collecting the data, and
17 this is primarily a decision that's made between us
18 and the client that we're providing registration
19 services for, we use three different kinds of
20 permissioning processes. I'll try to get through
21 this without confusing myself and the audience, but
22 we use the opt-in process, which we define as a
23 permissioning question with either yes or no, not
24 preselected.

25 We also use the opt-out permissioning

1 process, which is a permission question with
2 yes preselected, and in certain situations,
3 not a lot, we use the explicit process, which
4 basically is a bold statement that says, Do
5 not provide us your marketing information unless
6 you're willing to receive, you know, marketing
7 offers.

8 So, we utilize all three of those,
9 depending upon the circumstance. We do flag how
10 the permissioning process worked for that
11 particular consumer, and we are sensitive based
12 on the permissioning process, how that
13 information is used when it is -- when a
14 marketing program is generated based on that
15 permissioning.

16 But the percentage, I don't know the number
17 to be very specific about your question.

18 MS. WOODWARD: My name is Gwendolyn Woodard
19 with Worldwide Educational Consultants. I'm
20 consumer A, and I decide that I'm going to attend a
21 conference, so I go online and complete the form.
22 The site that I'm going to complete the form on has
23 a third party advertising network associated with
24 it, okay? As I complete the form, I notice in the
25 URL the information that I put in the form is

1 reflected up there.

2 So, as a consumer, how would I know how
3 that information is going to be used, what
4 databases will it be going to, especially if this
5 third party advertising network uses a push and
6 pull technology to disseminate that information to
7 different databases?

8 MS. ALLISON BROWN: Does anybody want to
9 take that on?

10 MR. WHAM: It's very useful if you're
11 omniscient.

12 MR. BILLINGSLEY: I'll respond a little
13 more. The --

14 MR. WHAM: Comprehensively, perhaps.

15 MR. BILLINGSLEY: Yeah. The way it should
16 work, in my opinion, is if you're in that kind of
17 situation where a redirect is occurring, without
18 your knowledge, then the privacy policy should be
19 very explicit in saying -- in discussing the
20 redirect to another website, why that is occurring,
21 what your choices are to either participate in that
22 or not participate in that. And disclosure, in my
23 opinion, is the key for the consumer in
24 understanding what is or is not happening to
25 their data, particularly when you see it in the

1 URL.

2 MS. ALLISON BROWN: And let me just say
3 that that's really a question that should be
4 directed to network advertisers, and none of the
5 panelists up here represent any network
6 advertisers, and it's really a separate issue that
7 we're not addressing today. But, you know, that's
8 a question for other people.

9 We are running out of time. Paula, did you
10 want to comment on that issue?

11 MS. BRUENING: No, thanks.

12 MS. ALLISON BROWN: So, I think we are
13 going to break for lunch now, and we would like to
14 see everybody back at 1:00, and I want to thank the
15 panelists for a very informative discussion. We
16 really learned a lot.

17 (Applause.)

18 (Whereupon, at 11:30 a.m., a lunch recess
19 was taken.)

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AFTERNOON SESSION

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SESSION 3: WHAT ARE THE BUSINESS PURPOSES FOR
MERGING AND EXCHANGING CONSUMER DATA?

MARTHA LANDESBURG, Attorney, FTC, Moderator

PANELISTS:

MARTY ABRAMS, Executive Director, Center for
Information Policy Leadership

JOHNNY ANDERSON, Chief Executive Officer, Hot Data,
Inc.

C. WIN BILLINGSLEY, Chief Privacy Officer, Naviant,
Inc.

JERRY CERASALE, Senior Vice President, Government
Affairs, Direct Marketing Association

PETER CORRAO, Chief Executive Officer, Cogit
Corporation

LYNN WUNDERMAN, President/Chief Executive Officer,
I-Behavior, Inc.

1 SESSION THREE
2 WHAT ARE THE BUSINESS PURPOSES FOR MERGING
3 AND EXCHANGING CONSUMER DATA

4 - - - - - -
5 MS. LANDESBERG: If everyone would please
6 take a seat, we would like to get started. We have
7 a very full afternoon.

8 Good afternoon. My name is Martha
9 Landesberg. I'm an attorney in the Division of
10 Financial Practices here at the Federal Trade
11 Commission. Let me just state, before we get
12 going, we have a couple of announcements to make.
13 I want to reiterate for everyone our ground rules.

14 We request that you turn off your cell
15 phones, please. Once again we are going to very
16 gently but firmly hold our speakers to the time
17 limits we've discussed with them. My colleague,
18 Allison Brown, will be your timer. She's right
19 here, so just look for a sign from her that you're
20 coming toward the end of your time, if you would.

21 We will as time permits again have a
22 question and answer session. I'll ask again that
23 you please identify yourself for the court
24 reporters before asking your question.

25 And finally, the record of the workshop

1 will be open until April 13 for submission of any
2 comments or materials you want the Commission to
3 consider, and we invite you to participate in that
4 process.

5 And also a fond welcome for those of you
6 listening on the audiocast. We apologize and
7 understand there was some trouble this morning. We
8 hope things are up and running, and we're happy to
9 have you with us.

10 One last comment, Michael Pashby in our
11 prior panel has submitted a written statement
12 regarding his comments on the use of medical
13 records to identify new prospects, and that
14 statement, as others, will be posted in the
15 workshop record for everyone to have a look at and
16 comment upon.

17 Now, it's my pleasure to begin session 3 of
18 our workshop, and this is where we really get to
19 the meat and potatoes of what it is that businesses
20 do with all the information we've been hearing
21 about all morning, and what we're going to do here
22 is have presentations from each of our panelists
23 one by one. I'll introduce them one at a time, and
24 we'll take it from there, and as time permits have
25 some questions too.

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1 We'll begin with Marty Abrams. Marty is
2 the Executive Director of the Center for
3 Information Policy and leadership at Hunton &
4 Williams. Before joining Hunton & Williams Mr.
5 Abrams, or Marty, spent 12 years as Experian
6 leading their information policy and privacy
7 efforts.

8 Marty?

9 MR. ABRAMS: Thank you very much. As we go
10 through this technical process of keying up my
11 presentation, I would first like to thank the FTC
12 staff for inviting me here this afternoon, and I
13 would also like to thank them for the excellent
14 program this morning. I found it incredibly
15 worthwhile and very informative, and hopefully we,
16 this afternoon, can be just as informative.

17 And we are talking about the uses and
18 purposes for third-party data, and I think that the
19 best place to start with understanding third-party
20 data is understanding that it matches with in-house
21 data, and it begins with the in-house data because
22 that's what marketers begin with, their own
23 customer base, understanding their own customer
24 base.

25 And that data comes from multiple sources.

1 The most important of those sources is directly
2 from their customer, and the second is their
3 relationship with their customer, and this is the
4 majority of the data that the organizations,
5 marketers, have in their databases and their files.

6 And to understand that data, to make the
7 best use of that data, they have to match that up
8 with third-party data, and I'm going to be talking
9 about purposes and not processes. I have
10 colleagues on this panel who I think are going to
11 get more into the processes, but I would like to
12 really put the emphasis on why the data is used.

13 And there's a paper that really goes in to
14 how this works that was released yesterday by the
15 Privacy Leadership Initiative and ISEC Council of
16 the DMA, and that paper is available on the DMA web
17 site I believe.

18 The first process, the first purpose, the
19 first reason for using third-party data is just to
20 make sure that your file is clean. 20 percent of
21 the American population moves each year. People
22 use variations of their names. They use variations
23 of spellings of their name. I'm Marty Abrams. I'm
24 Martin Abrams. I'm Martin E. Abrams. I've lived
25 in California. I've lived in Ohio. I've lived in

1 Texas. I sometimes buy from my office.

2 So one of the purposes is to merge all of
3 those Marty Abrams that are sitting on a company's
4 file into one Marty Abrams so that I can market
5 that to me in a unified fashion.

6 The second is to have a deliverable
7 address. We often have multiple addresses,
8 multiple variations of our addresses. We
9 abbreviate our address. We move, and one of the
10 purposes of using third-party data is to put that
11 data together to have an address that is
12 deliverable.

13 And having a deliverable address means that
14 you can deliver up to 15 percent more of the mail
15 that you mail on a regular basis, and that has
16 really cost implications for an organization.

17 The second purpose is to truly understand
18 your own customers, and I think Lynn Wunderman did
19 a great job of describing that this morning.
20 You're trying to understand what is similar about
21 your customers and what is different, and one of
22 the ways you do that is overlay your file with
23 demographic information from a third-party.

24 Examples of the type of data that you might
25 overlay is age because age is very predictive of

1 where you are in your life-style, what you might
2 buy and also inferred or modeled income, and again
3 we have no exact income on any files other than the
4 IRS's files, and those, of course, are not
5 available, so we model income to be able to try to
6 figure out how individuals are similar or
7 different.

8 And that information helps us understand
9 who to market to, how to market to them, what type
10 of products we should offer them in the future. We
11 begin to understand what is predictive of who's a
12 buyer and what is just really a red herring, not
13 very predictive.

14 And then based on what we understand about
15 our own customers, we can go out in to the
16 marketplace and find individuals who are very
17 similar to our own customers, folks who have very
18 similar demographics, very similar psychographics,
19 so we can begin to build our customer base with new
20 customers who are similar to the folks that we are
21 marketing to at the moment.

22 And those sources include competitors,
23 because organizations do exchange lists,
24 noncompetitive marketers, and lastly aggregators or
25 compilers, organizations that put together files of

1 individuals for other organizations to use who
2 create mailing lists, and the results are more
3 effective communication with existing customers.

4 We can put together the right message for
5 the right consumer at the right time to maximize
6 that relationship with the customer.

7 We also find prospects who we have the
8 greatest probability of reaching, folks who are
9 most similar to our existing customers, and more
10 important, in this modern age, is we begin to
11 understand how our customers are changing so we can
12 begin to develop the products and services that are
13 responsive to where our customers are going over
14 time.

15 Martha asked me to talk a little about the
16 differences between marketers and aggregators in
17 terms of the type of data they have and the type of
18 processes. When you think about marketers, the
19 folks who actually market to you and I, first their
20 data primarily comes from their own customers.

21 Even if I overlay with data from third
22 parties, if I'm a marketer, most of the data I have
23 is from my own customers. Most of that data is
24 either self reported, I give you my name and
25 address, I volunteer information with you, or comes

1 from my own experiences with you as a customer.

2 And lastly, I as a marketer typically have
3 regular contact with my customer and can
4 communicate with you as my customer about both what
5 I'm selling and my processes and the choices that
6 you have.

7 Aggregators have data on a broader
8 population. Some aggregators have most of the U.S.
9 population. The data comes from many, many
10 sources. As we discussed, some of them are public
11 record sources. Some of them are surveys. Some of
12 them are purchase data, but the data comes from
13 many sources, not a single source.

14 Typically the data that is held by an
15 aggregator is not experiential data. It tends to
16 be demographic or psychographic data, and, last,
17 typically the aggregator does not have regular
18 contact with the customer, the consumer, but rather
19 relies on the party that collected the data to have
20 had that contact with the consumer, and most
21 aggregators build systems to make sure they only
22 get data from reliable sources.

23 Thank you very much.

24 (Applause.)

25 MS. LANDEBERG: Thank you, Marty.

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1 Next we'll hear from Win Billingsley, the
2 Chief Privacy Officer of Naviant. Win?

3 MR. BILLINGSLEY: As we talked this
4 morning, Naviant's key value that they bring to the
5 marketplace is that we provide a database of
6 consumers that are Internet enabled, and we sort of
7 phrase our mission statement as Naviant is a
8 leading provider of integrated, precision marketing
9 tools for online and offline environments, so we
10 can send marketing messages or marketing campaigns
11 to consumers either through direct mail or through
12 Email or through banner ads, so we work in both of
13 those worlds and actually try to integrate those
14 two worlds together.

15 So we enable marketers to reach and build
16 relationships with online consumers, and that's
17 really Naviant's key sole business purpose.

18 It's always tough to get a business model
19 on one slide, so I tried to simplify this as much
20 as I possibly can but still make it meaningful for
21 you, and for Naviant the world begins with
22 electronic registrations.

23 We work with manufacturers that build
24 computer hardware, computer software, and we
25 facilitate the registering of their products and

1 services via the Internet. Most of that data, once
2 it's captured, is passed back to the original
3 manufacturer. We keep the name and address and
4 designate a flag that this individual, since they
5 registered their product or service via the
6 Internet, is an Internet enabled household.

7 So the data point for us begins with the
8 name and address and an Internet household. That
9 begins the database processing, and there's data
10 hygiene work that's applied to that database. I
11 talked about it a little bit this morning. We use
12 the compiler's information to make sure the names
13 that we have are accurate in our database.

14 We also append to that from the compilers
15 various data attributes that enrich the data and
16 make it meaningful and store and maintain the data.
17 We also use the DMA's file suppression list to make
18 sure that no one is in our database that has
19 expressed an interest not to be.

20 And I should have mentioned back in the
21 registration process that there is a permissioning
22 process that we go through before you ever really
23 enter into this diagram.

24 So once the data is there with an
25 enrichment of data attributes, then we have the

1 ability to deliver this data for marketing purposes
2 in a variety of channels in a variety of ways, so
3 the data can be used to administer direct mail or
4 Email campaigns. It be used to deliver direct mail
5 campaigns, telemarketing and targeted banner ads.

6 And we analyze the data to determine counts
7 based on criteria. A client will come to Naviant
8 and say, I'm looking for these kind of people, tell
9 me how many you have in your database so we can
10 analyze the data and determine how many people we
11 have that fulfills that particular requirement, so
12 that in essence is Naviant's business model.

13 Now, why do we do all this? What purpose
14 does it serve the business community? There are
15 many. I've just noted three here that I thought
16 might be meaningful to you.

17 One is we provide the data back to the
18 registration client with the enhancement of the
19 data attributes that we've associated so the
20 registration client has some view of who is buying
21 their products and services.

22 That's very important to the manufacturer
23 to know that because they -- since they distribute
24 through some intermediary, they are not in direct
25 contact with their customers.

1 So we would provide that back to the
2 registration client, and the registration client
3 would say, Gee, we have this kind of person buying
4 this model of computer, how can we find more of
5 those kinds of customers and launch marketing
6 campaigns to increase and enhance our business. So
7 that's the way a registration client would tend to
8 use this data is to find more like customers.

9 Another way they would use the data is say,
10 This particular product is being bought by
11 individuals that have these demographic
12 characteristics, so how can we fine tune our
13 advertising so that we are visible, more visible to
14 individuals with these kind of characteristics, so
15 it's used for a variety of purposes by a
16 registration client in order to improve the
17 efficiency of their marketing effort.

18 Another example would be a bank. Banks
19 love to promote their Internet banking packages and
20 capability because they can provide enhanced
21 service to their customers at a reduced cost for
22 those of us who sign up for Internet banking.

23 So a bank will come to Naviant and say, We
24 really would like to promote our Internet banking
25 capability, but we have a problem, we have no idea

1 in our customer base who is on the Internet and who
2 is not on the Internet, and really rather than do a
3 mass mailing to all of our customers, we would like
4 to do some selection.

5 So they would come to Naviant and say, If
6 we give you a list of our customers, can you match
7 those names against the names in your database and
8 tell us which ones of those are Internet enabled,
9 and we provide that service.

10 And then the bank can then target or
11 deliver a marketing campaign only to those
12 customers who are Internet enabled, and they might
13 even refine that further. They might refine it by
14 an age group or income level, but the primary key
15 for the bank, if they're promoting their Internet
16 banking package, is to only target to those that
17 can actually use that product or service.

18 A third example would be a retail dot com.
19 A retail dot com wants to drive traffic to their
20 web site, and you know you can always buy a
21 billboard on Highway 1 or you can buy an ad for the
22 Super Bowl, but what they would want to do is to
23 work with Naviant looking for a particular type of
24 customer or individual that meets the selection
25 criteria and then do a direct mail campaign to

1 those customers with some kind of marketing offer
2 that would drive them to their web site so they
3 could offer a product or service.

4 Thank you.

5 MS. LANDESBURG: Thanks very much, Win.
6 Our next speaker is Peter Corrao. Peter is the CEO
7 of Cogit Corporation. Before joining Cogit.com, he
8 was Division President of National Accounts
9 Marketing for ADVO and the owner and operator of
10 Sports USA.

11 Peter?

12 MR. CORRAO: Well, thank you very much for
13 inviting me here today. Even though I come from
14 one of the largest direct marketing firms in the
15 country in ADVO, my comments today will mostly be
16 related to online marketing and its applications.

17 So I would like to talk to you today about
18 the developing science of visitor relationship
19 management and how it's applied on the web.

20 Before I do that, though, let me tell you a
21 little bit about the dilemma in commerce today on
22 the Internet. My company, like many other dot
23 coms, is a highly capitalized, venture capitalized
24 company. We've taken around \$50 million in
25 investment to date and have yet to turn a profit

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1 with our company. We look similar to others that
2 are out there.

3 The Internet commerce dilemma can be
4 summarized pretty much on the slide that I've shown
5 you here. There's two ways in a B-to-C environment
6 that companies are making money or trying to make
7 money on businesses on the Internet today.

8 One is content sites, and they're heavily
9 required or exclusively required, excuse me, to
10 bring advertising in, so their model is all about
11 advertising. They deliver free content to
12 consumers. They put advertising up for sale. They
13 sell that advertising, and their business model is
14 developed around that.

15 The other side of that is the commerce
16 sites, who are the E-tailers or retailers that are
17 trying to sell their goods and services online, and
18 theirs is a simpler model in that they're trying to
19 gather customers, turn those customers into
20 repeatable revenue.

21 Here's the dilemma. The Internet today
22 isn't very efficient, even with the tools that are
23 being applied to it. Imagine that you bought
24 133,000 banner ads, and you paid around \$15 a
25 thousand for it, which would be the current going

1 rate if you had a media buying firm dealing with
2 either direct companies or with providers of those
3 services.

4 Of those ads that you bought out there,
5 around \$15 a thousand, you would have earned
6 probably in the range of 300 visitors or so, so ads
7 saying 300 visitors clicked through from those ads
8 and came to your site to look.

9 Of those only five took action, so you're
10 getting started with the 133. Now you're left with
11 five that took action, and if they did take action,
12 only 20 percent of those, or one, would return
13 within the next year to buy anything from your site
14 again.

15 So just think of it from its most simplest
16 format -- and you're only dealing with the
17 advertising and attention components of being an
18 Internet company, your acquisition cost for a loyal
19 customer in this model is \$2,000.

20 So the imperative here is that the Internet
21 has got to learn to be better and more focused on
22 how it brings -- on how it brings its clients in.

23 Let me show you a little bit about visitor
24 relationship management and why it's important.
25 Merchants want to increase desired action and get

1 consumers to buy things and services from their
2 site. Consumers want meaningful things to be shown
3 to them.

4 Merchants again want to display relevant
5 content to their customers. Consumers are
6 demanding instantaneous and ever faster access to
7 relevant content. Doing that is expensive.

8 Merchants want to optimize customer visits
9 and generate sustainable profits. Consumers expect
10 free Internet, other than access, or inexpensive
11 services at significantly discounted prices often.
12 We think that visitor conversion is critical to
13 making this model sustainable on the Internet.

14 What Cogit does is capture registration
15 information, I'm giving an example of what we do
16 here, with and amongst our customers. We match
17 that registration information then to available
18 data in the offline.

19 We have two data sources primarily. One is
20 Equifax Corporation, which we use their own bulk
21 data, and the other as of March 31 will be Claritas
22 data, which will be entered in our file at the end
23 of this month.

24 When that information is matched, we
25 irreversibly discard any personally identifiable

1 information that we found on the consumer, so if
2 you registered by name, we get rid of the name,
3 replace that with a random ID, and that random ID,
4 we can't go backwards and reengineer to find out
5 who that consumer is.

6 We generate then an anonymous profile on
7 that particular consumer, and then we allow our
8 customers to, one, know who's visiting their site
9 if they're not a customer yet, and, two, target
10 them with relevant content that will then incent
11 them to want to buy.

12 We think privacy is a big piece of doing
13 this. Consequently our profiles are 100 percent
14 anonymous. We think consumer PII shouldn't be
15 stored and used for further personalization. We
16 don't -- our visitors in the Cogit model are never
17 tracked across sites, so we only know what you're
18 doing on a specific site that you're dealing with.

19 Information from one client is never shared
20 with another. Behavior information is
21 never appended to our profiles, so the fact that
22 you bought something on one of our customers' sites
23 isn't appended to further your profile.

24 Clients aren't allowed to store Cogit's
25 returned data, and we semiannually have our web

1 site audited to validate that everything that we've
2 got in our web site is, in fact -- in our policy
3 is, in fact, what we do. Ernst & Young does that
4 audit. We were the first cyber audit that they did
5 and first audit attestation that they did.

6 So the notion is from a visitor
7 relationship management standpoint or knowing who
8 comes to your site so you can do something about
9 it, we think that that's critical to being able to
10 sustain the Internet commerce that's having trouble
11 sustaining itself today.

12 We think that convenient and relevant
13 information for consumers is what they demand and
14 what they want. Most of that information is given
15 to the consumer free today, although it's given
16 free against a model that is not panning out from a
17 general business model standpoint, and we think
18 that there's an optimum balance between
19 personalization and privacy.

20 We think we've come up with a method of
21 doing that and one that doesn't offend the consumer
22 and their ability to do it but yet does give the
23 tools needed to the sites so that they can continue
24 to make money in their commerce sites and/or money
25 in their content sites.

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1 So thank you.

2 MS. LANDESBURG: Thank you, Peter. Our
3 next speaker is Johnny Anderson, President and CEO
4 of Hot Data doing double duty for us today.

5 MR. ANDERSON: Thanks, Martha. I wanted to
6 take a second and kind of look at a higher level on
7 how companies interact with customers and what are
8 the analytic and customer relationship management
9 applications that are driving a lot of the demand
10 for third-party information.

11 This really depicts a pretty typical
12 architecture of a CRM application that any marketer
13 would use one or more components of. At the bottom
14 what you see is customer touch points. That's how
15 businesses will either get information from their
16 customers and prospects or communicate with them.

17 So on the left-hand side you see kind of
18 the outbound communications media that a business
19 will use to communicate directly with the customer.
20 This is not TV and radio ads and so forth, but
21 they'll really use kind of Email, direct mail and
22 maybe some telemarketing either from an in-house
23 organization where they have their own telesales
24 organization or a contracted organization.

25 And on the right, what you will see is

1 really the way that people get information and then
2 sometimes communicate with their customers, and
3 that would be kiosks, which is kind of a new
4 emerging way to communicate with customers. You're
5 starting to see kiosks in, of all places, baseball
6 parks where the San Diego Padres have a customer
7 loyalty program.

8 And a customer puts in their preferences
9 when they sign up for the customer loyalty program.
10 When they visit the ball park they'll get the 10
11 percent off coupon for a specific restaurant that
12 happens to be in the area.

13 In-house or in-store communications, and
14 we're now starting to see companies even like food
15 chains implement customer loyalty programs where
16 transactions are tracked so that customized offers
17 and customized coupons can now be delivered to a
18 specific consumer.

19 Call center being somebody is calling an
20 800 number and talking to a customer service
21 representative, either a sales rep or a support
22 representative, and then obviously the web as one
23 of the major ways that customers are getting
24 information about products and services that a
25 company may offer.

1 It is a web visit where they may fill out a
2 form that says, "Send me more information," and so
3 that companies are getting some explicit
4 personalization type information that says, If I'm
5 going to a dot com or another sports kind of web
6 site, I'm going to check that I'm interested in
7 golf, so send me some golf information.

8 That's really stored in an operational data
9 store that's used for day-to-day kind of activity.
10 That's the data store that a CRM system may use so
11 that sales reps and a call center get access to a
12 customer record when an inbound call comes in.
13 They may have some transaction information, maybe
14 used for actually back-end processing where order
15 fulfillment takes place, but it's the data store
16 that's being used on a day-to-day basis.

17 Some companies actually will have a
18 separate data store that is used for data
19 warehousing and the analytics, and that information
20 is transferred back and forth with some
21 synchronization, extraction, transforming and
22 loading where a lot of information is both
23 rationalized, and that is, Bill Smith is also
24 William Smith and Bill Smith came in through the
25 Web and William Smith called in on a call, and that

1 information is rationalized.

2 And then the analytical tools at the top
3 are the things that are really driving a lot of the
4 marketing automation pieces, and that's things like
5 campaign management. If I understand who my target
6 audience is and who my best customers are, let me
7 generate a campaign and plan that campaign and
8 implement that campaign and then manage the results
9 from that campaign.

10 RFM analysis has been talked about already.
11 That's really understanding recency, frequency and
12 monetary transactions on a per customer basis,
13 really to understand who my best customer is, and
14 then to clone that customer and find more that just
15 look like them or be able to recognize them when
16 one of those comes into one of my touch points.

17 Category management's driven from that, and
18 that's really driving product synergies so if
19 somebody buys a particular product, they know,
20 through doing some category management analysis,
21 retail analytics, that a customer is likely to
22 purchase an additional product.

23 And then that starts to drive a lot of the
24 tools that marketing managers use to understand
25 their business, and those are things like data

1 visualization, being able to look at customer maps
2 for drive time analysis and trade area analysis;
3 reporting, so aggregate reporting on a per product
4 or per customer segment or per campaign
5 performance, and then other kinds of data mining,
6 being able to mine data that's transactional and
7 maybe inventory management type applications and
8 merging that kind of piece together.

9 Where Hot Data fits is really on the left
10 side of the equation, and that is we provide a set
11 of services that offer data quality and enhancement
12 of those databases, whether that's an operational
13 database or a data warehouse database.

14 The business models that are really in that
15 kind of space, and not just Hot Data related but
16 kind of industry wide, are really geared around
17 four sets of services. Marty mentioned address
18 data quality, and that's a big part, not only in
19 the real world, but also on the electronic commerce
20 side of being able to verify that an address is a
21 deliverable address, that it is standardized to
22 Post Office standards so I get a better postal
23 rate, that I can manage the consumer's change of
24 address, i.e., the 20 percent of consumers that
25 move every year, that that can be tracked in a

1 database, and then geo-coding addresses so that
2 addresses can be looked at in terms of where people
3 live.

4 Data rationalization and standardizing,
5 that's understanding Bill Smith is William Smith.
6 Consumer data enhancement is enhancement of
7 demographic, psychographic, and business data
8 enhancement. The flipside for us is that we also
9 deal with business to business marketers.

10 In a broad sense this is the architecture
11 that we use. We house consumer household
12 information. We house carrier route information.
13 We have services that house standardization, area
14 code update changes and U.S. national change of
15 address.

16 We provide customer data integration
17 technology to our customer, to our customers who
18 are contractually bound to the privacy use
19 restrictions and viewing restrictions that we pass
20 along to them, and that really from one click of a
21 button they can profile a subset or their entire
22 database and do things like address standardization
23 and profiling.

24 This is kind of a bright real world example
25 of what one of our customers uses, and they're

1 really a wireless broadband provider that was
2 really looking for -- to really target market. I'm
3 sure a lot of DSL, everybody has probably got DSL
4 things in the mail, and when I did, I went to try
5 to sign up for it, and I was out of range, and I
6 couldn't sign up.

7 So they got me to respond, but they got me
8 to be hostile because I was outside the range, so
9 our customer really wanted to target people outside
10 10,000 foot radius from a central office, and after
11 having done some ideal customer profiling for them,
12 identified who their target should be and who their
13 ideal target should be in that particular
14 environment.

15 I am out of time, and the band's about to
16 start playing, so I'm going to turn it back to
17 Martha.

18 MS. LANDESBERG: Thank you, Johnny. Our
19 next speaker is Lynn Wunderman, CEO of I-Behavior,
20 also serving two roles for us today.

21 MS. WUNDERMAN: Actually, I don't know if
22 it's true, but I heard a rumor here today that the
23 real reason we've been asked to be here is that
24 we're being auditioned for participants on a new TV
25 game show. It's called "Database Marketing

1 Survivor," you know the one where they put a bunch
2 of database marketers in a room in Washington to
3 talk about their business models. Last one
4 standing wins a million dollars. Anybody else hear
5 this? I think I probably better keep my day job.

6 Anyway, I'm here to talk to you today about
7 a company called I-Behavior, and I founded this
8 company with my father-in-law, Lester Wunderman,
9 yes, there is a family relationship for those who
10 have asked, and we created this company largely
11 with the vision to bring a lot of the art and
12 science of traditional direct marketing to the web
13 and to new media.

14 Now, our formula is really very
15 straightforward. Everything that we do, the way we
16 manage data, the way we structure it, the way we
17 analyze it, all the products that we create from
18 data has its roots in a very simple but proven
19 principle we've known for decades as traditional
20 direct marketers. You've heard this theme a lot
21 today. Past behavior is the single, strongest
22 predictor of future behavior. It's no coincidence
23 that our name is I-Behavior.

24 Now, we take for granted gaining access to
25 behavioral information in direct mail. We can pick

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1 up the phone. We can call a list broker, and we
2 can rent names from one of any 30,000 plus odd
3 lists based on what people bought, when they bought
4 it, how much they spent.

5 Can't do that today on the Internet. That
6 type of behavioral information doesn't exist. We
7 have interest categories. We have product
8 registration data, but not that level of
9 behavioral, experiential information.

10 Beyond that, what's been largely unexplored
11 is the opportunity to target and understand
12 consumers based on their multi-channel buying
13 behavior. Even though we know that a merchant's
14 multi-channel shoppers, the buyers, tend to be
15 their best customers, in fact statistics show that
16 they're worth an average of over 30 percent more
17 than their single-channel counterparts, and we know
18 that those customers that can master these tools
19 will be the multi-channel winners of tomorrow.

20 So to fill this gap in the marketplace,
21 we've created one of the first, if not some say the
22 first, cooperative database that truly combines
23 highly detailed, transactional information on and
24 offline on known direct channel buyers.

25 Now, before anybody starts slinging arrows

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1 up here, I will tell you that there are significant
2 privacy safeguards built into this product, but
3 before I get to them, I want to make sure that
4 everyone has an understanding of the business model
5 so they have the context in which to evaluate them.

6 First of all, I mentioned earlier for those
7 of you who are not familiar with the concept of a
8 co-op database, it's created when marketers pool
9 all their customer names and related buying
10 behavior in order to gain access to names of
11 qualified prospects as well as additional data on
12 their current customers that would otherwise be
13 unavailable in the marketplace by which to build
14 their business.

15 Now, this is a proven business model in the
16 offline catalog industry. I'm sure you're probably
17 familiar with names of companies such as Abacus.
18 Experian has a similar offline product catalog
19 called Z-24.

20 The reason that these products are so
21 successful is really two basic things; number 1,
22 the superior performance of a list. The fact that
23 all this rich behavioral information goes in to
24 fuel the selections, they have significantly higher
25 response rates than the average mailing list,

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1 outside mailing list, by which one would normally
2 have the opportunity to do prospecting in the world
3 today.

4 Secondly, in terms of their pricing, they
5 are offered to members, and by the way only members
6 have access to these names. You have to contribute
7 in order to get data out. Members get access to
8 these names at a preferred rate, virtually half the
9 price of a standard vertical list today.

10 So what we're doing at I-Behavior is we're
11 expanding this context so that beyond catalogers
12 we're including publishers, E-tailers, club and
13 continuity marketers, virtually anyone who does
14 direct-channel marketing, and we're creating it in
15 a way that's a true multi-channel vehicle so that
16 you can target more efficiently the Email and
17 postal mail today. Tomorrow it will incorporate
18 wireless, interactive television and virtually all
19 forms of addressable media.

20 Now, there are two reasons why marketers
21 want to gain access to the data. The first and
22 most obvious is prospecting, and certainly you can
23 see by the way that we consolidate information
24 across marketers, across channels, we have a much
25 more complete portrait of these shoppers, their

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1 buying patterns and their value.

2 This thing is bigger, smarter than any
3 single marketer could ever create on their own.
4 That's because when we take data in from a
5 merchant, we get it down to each transaction, the
6 entire shopping basket of a person's purchases so
7 that we can collect all the rich recency,
8 frequency, monetary value information we've been
9 talking about earlier today as well as we also get
10 one component that's generally not been available
11 in co-op databases previously.

12 Instead of just giving to each marketer who
13 participates, to all their transactions, some high
14 level general category associated with the affinity
15 for that particular property, we actually get item
16 level data so that we know exact products down to
17 the SKU level that an individual is buying, and I
18 can tell you that that is incredibly powerful
19 information from a predictive standpoint when
20 you're looking for those subtle predictive patterns
21 in the data for those kinds of tools that we were
22 talking about earlier today.

23 Now, we have proprietary technology that
24 allows us to create a common language across
25 marketers that we can really leverage the value of

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1 this product level information. We also have
2 proprietary technology that helps us link multiple
3 Email addresses back to a single individual and
4 optimize the match between the on-and the offline
5 data, but I'm not here to talk to you about some of
6 our competitive strengths. I really want to focus
7 on the business model itself.

8 There are two key features that I think are
9 inherent in the kinds of co-op you should be aware
10 of. First of all, this is the only place on the
11 Internet today where you are assured of not talking
12 to your own customers as prospects. That's
13 because, unlike in the traditional direct mail
14 community where mailers are really familiar and
15 comfortable with the process of sending their files
16 to a compiler -- I'm sorry, to a reputable service
17 bureau, I see I'm getting short on time here,
18 whereby they can exchange their names, they can
19 unduplicate them, you can suppress out your current
20 customers, we already know who your customers are
21 because we already have them in the database.

22 Secondly, it's a closed loop process so
23 when we send an Email to someone about this
24 product, they may read the Email. They may not
25 respond to that particular communication, but if

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1 they remember the marketer and two or three weeks
2 later they have a particular need, they go to the
3 Web site and they buy, we would know about that,
4 not because we're tracking anything in terms of
5 cookies. I don't want to get anywhere near that,
6 in terms of your surfing of the Web, but we know
7 because the merchant sends us back their data.

8 We match that back to our contact history.
9 We get smarter about targeting you the next time
10 around in the future, even if we don't get credit
11 for that response, because we maintain a
12 professional history on the file.

13 Now, the fact that we maintain a promotion
14 history is really of true benefit to both the
15 consumer and to the merchant. First of all, it
16 allows us to identify habitual non responders.
17 That's very important. Don't want to keep mailing
18 to people who don't want to purchase from you.

19 Secondly, we keep tabs on any correlating
20 between the volume of mail so we can look at your
21 individual saturation rate and any negative
22 correlation against response.

23 Now, the second way that mailers want to
24 gain access to this database is to be able to
25 target their own and mine the value of their own

1 customers. Now, we can do that to help them expand
2 it into new categories, to reactivate lapsed
3 buyers, to turn their offline buyers to more
4 efficient online buyers.

5 So, for example, if an apparel merchant
6 comes and says, "We're expanding into swimwear,"
7 and they may say, "I want to target everybody in
8 own our file that has bought from us in the last
9 12 months, who has bought swimwear from any other
10 merchant in your database. We'll create a one time
11 file, do a one time mailing. Anybody who responds
12 to that mailing, they own the rights to that data.

13 But we will not append any information
14 permanently to that marketer's files, not an Email
15 address, not a transaction because we don't have
16 marketing rights, and there are privacy issues
17 attached to that.

18 What we will append on an ongoing basis are
19 model scores. Remember from our discussion
20 earlier, it's nothing more than a mathematical
21 probability. I have a .8, you have a .4. I'm
22 twice as likely to buy swimwear as you are. Even
23 if we have the same score, you don't really know
24 what it is in terms of personally identifiable
25 information that got us there because it's a

1 formula, and it's made up like a Chinese menu. I
2 got there because of age and income. You're there
3 because you just bought shoes over the Web and you
4 have kids. We don't necessarily have the same
5 profile.

6 I will also say that there's some other
7 creative ways to use these tools. In fact you can
8 use them to serve up dynamic content right on the
9 Web site to register users.

10 Now, I promised you that we would talk
11 about privacy, and I just want to say that in terms
12 of the offline data, we follow the industry
13 standard which is opt-out for direct mail
14 solicitations. We're not looking to reinvent the
15 wheel in direct marketing from that standpoint.
16 All of our member companies actively notify the
17 people who buy from them that they share data with
18 trusted third-parties.

19 If they choose not to do that, they send a
20 request to the merchant. That data comes back to
21 us in one of their updates, and that information is
22 removed in the course of our database build.

23 However, online is a different animal, and
24 we know that people have different expectations
25 from a privacy perspective online. We respect

1 that. We've been extremely proactive on the
2 privacy front going what we believe is really above
3 and beyond today's best practices in industry
4 standard.

5 First of all, this is a double opt-in
6 database, so in other words, no consumer will be
7 targeted for an Email communication unless they
8 raised their hand, self selected, and said they
9 actively agreed to participate. When they do, we
10 allow them to tell us the maximum number of Emails
11 that they're willing to receive in any time period.

12 We will not exceed that. We give them
13 access and control to the aggregated level of
14 information that we utilize for selections, so they
15 can come in, request a copy of their profile. They
16 can say, "Don't use this Email address, use that
17 one. I know I bought sports equipment in the past;
18 but you know what, that was just a gift, please
19 don't send me any more sports offers." Obviously,
20 they can opt-out at any point in time.

21 I will also tell you that we do not allow
22 marketers to cherry-pick this file. They can not
23 come in and say, We want people of this age and
24 this income who bought these products in this time
25 frame." Not online, because as far as we're

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1 concerned, anyone who would respond to that kind of
2 an offer, you could attach that purchase history
3 and that profile of the individual and you would be
4 releasing personally identifiable information, and
5 we don't think you should do that.

6 So we work with the marketer to understand,
7 What's the product you're selling, what's your
8 price point, what's the promotional nature of your
9 offer. We construct targeting tools, create a
10 composite score, rank them on the database. All
11 you know is these people had a score of .75 and
12 above. That's nothing in terms of personally
13 identifiable information.

14 Finally, we do not release any of the data
15 on this file to -- no addresses -- to anyone for
16 any purpose beyond a reputable service bureau
17 offline. They go seamlessly through our own
18 service bureau online. They never get access to
19 the data.

20 I will also tell you that we took this
21 concept into consumer research. We told them what
22 kind of data we have, how it benefits them, what we
23 do with it, what we don't do with it, and they were
24 not only very positive about the concept, they
25 actually embraced our privacy policies.

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1 So, in summary, I just want to say that we
2 have a proven business model in terms of the
3 behavior-based co-op, which has been expanded to
4 meet the unique needs of multi-channel marketers.
5 We have superior technology and a level of data
6 that helps us generate superior behavior
7 predictions at a good value to our clients, and
8 we're doing it in a way that we believe respects
9 consumer privacy and is looking to set new
10 standards in that area.

11 Thank you.

12 MS. LANDESBURG: Thank you, Lynn. The last
13 speaker on our panel today is Jerry Cerasale,
14 Senior Vice President for Government Affairs at the
15 Direct Marketing Association. Jerry joined the DMA
16 in January 1995 and is in charge of the DMA's
17 contact with Congress, all federal agencies and
18 state and local governments, a very busy man.

19 Thanks for being with us.

20 MR. CERASALE: Thank you, Martha. Lynn,
21 just so you know, for this panel, I'm the last one
22 standing, so send the check.

23 Before I get to my slides, I wanted to
24 just, first of all, thank the FTC for having me
25 here and for having this workshop.

1 I wanted to make three quick points. The
2 first is that the information that we're talking
3 about today is marketing information, information
4 that's used to send you a solicitation, an offer
5 for something. It's not being used to give you
6 employment or refuse employment or anything of that
7 sort or for insurance, whether or not you're
8 eligible for insurance and things like that.

9 In particular as well, just to get on a
10 topic that was raised, DMA guidelines would also
11 say that information that comes from a doctor-
12 patient or medical provider-patient relationship
13 should be only on a consent basis, and that's
14 pretty well standard within the industry as far as
15 we know.

16 Second, the information that you gather is
17 basically to send a solicitation about a particular
18 product, so it only goes once. It's a one-time use
19 that people use to try and find new, prospective
20 clients.

21 And third is that, generally speaking, the
22 information doesn't go to the marketer. What you
23 receive is, the information goes to a service
24 bureau that is either sending out -- making phone
25 calls or sending out the mail pieces and then

1 returned back to the -- it's not used again, so
2 it's that kind of information that we're talking
3 about.

4 Martha asked me to talk specifically about
5 prospecting and why we do it and how is it used, so
6 I wanted to use because of my -- to make it simple
7 so I could understand it, use some hypotheticals,
8 and if Allison gives me time, I'll go to some more
9 specifics after the hypotheticals, depending how
10 nice she is to me.

11 The first is the idea of a new company. I
12 just started something, I have a brand new idea.
13 Think about Marty's view when he had the list of
14 what marketers have and what compilers have. He
15 said marketers have information on their customers.

16 Well, I'm brand new. I haven't got
17 anything. I have no customers, nothing. I have a
18 new idea for a new golf club, so what am I going to
19 do? And the other thing is I'm going to sell it
20 over the Internet. That's what I want to try and
21 do. So what do I do?

22 Well, I'm going to go to a golfing magazine
23 likely and try and see if I can rent the list,
24 because those are people I would assume would be
25 interested in golf, and I'm going to use this list

1 to mail it because I'm starting to find -- and
2 we're starting to find that mail, snail mail is
3 being used successfully to drive customers to Web
4 sites to make sales.

5 We find that from our catalogers and so
6 forth, that it is a very important piece tool in
7 E-commerce or multi-channel marketing. So, this is
8 what I want to do so.

9 So I go and get the golfing magazine list,
10 and it's one million names, and that is
11 outrageously expensive to send, so I can't do it,
12 so I want to go -- I go to an information compiler,
13 and I say, Look, I would like to have some more
14 information from an information provider, I want to
15 try and narrow this list down.

16 I think that maybe this piece would likely
17 be best suitable for women. I think that it may be
18 for women probably over 40 because it helps give
19 distance, and if you really swing hard it messes up
20 the way the ball goes, so I think that that's what
21 I want, and I know that likely I think that it's
22 expensive, higher income, let's see if I can get
23 that from Census data.

24 I'm selling it over the net so I want to
25 use Win's stuff to make sure they're Internet-

1 enabled, and I think maybe five miles from a golf
2 course. Let's just pick these out of the air.
3 Maybe we can get these things, and it finally comes
4 down to 500,000 pieces, people that I can send this
5 to, and that's within my budget, and that's what
6 I'm going to use, and that's how a marketer can try
7 and prospect a new start-up business.

8 Without the information from third parties,
9 I can't start. I cannot start a catalog. I cannot
10 start driving people. I can try, put it up on a
11 Web site, see if search engines get me some people,
12 but that's not going to be a viable economic model.

13 Another idea for prospecting is a current
14 marketer looking for new customers. The idea I'm
15 trying to use here, I'm selling books and probably
16 I'm selling books online, I'm trying to use online
17 and offline because this is supposed to be online
18 and offline information so these are my examples.

19 And I know because I sell books that
20 they're upper income, they're Internet-enabled and
21 these people that purchase from me happen to be
22 people who live more than 20 miles from a book
23 store and more than a hundred miles from a discount
24 book store, so that's my marketplace of my current
25 set of customers.

1 40 percent of Americans never purchase
2 remotely. 60 percent of Americans do, so I want to
3 try and reach some new customers, so I'm going to
4 go and try to find information that matches that
5 market because it works for me today, and I'm going
6 to send a mail piece to them.

7 I may in fact ask for a split on this test,
8 people who have purchased, those that were in the
9 60 percent piece of the pie, and those in the 40
10 percent that have never purchased, to try and see
11 if I can reach new customers differently through
12 this mail piece, and so I send it.

13 This is what I want. This is the
14 information I asked for. The information provider
15 supplies a list to the letter shop I'm going to
16 use. They send it out. They make sure the current
17 customers are deleted. They use hopefully the DMA
18 mail preference list, and they prepare the pieces,
19 and they send them out.

20 I never see the list. I only know someone
21 was on the list if in fact they come back and
22 purchase from me. Then I would know that they
23 responded, so that's the only way it happens, and
24 that's generally how you use prospecting data.
25 That's to try and find someone new. You know from

1 past behavior or you have a guess, if you're brand
2 new. You don't have any past behavior in your --
3 on your product. You make a guess: We think this
4 is what the market is for. That's how we use the
5 prospecting.

6 Now, let me give you a couple of quick
7 examples of real life things that have been
8 testified, to the process has been in Congress, in
9 testimony before Congress. One company is Grolier.
10 It's no longer in existence. It's been bought out,
11 but Grolier is a bookseller selling things remotely
12 out of Danbury, Connecticut, and it basically sells
13 to children, basically sold discounted Dr. Seuss
14 books.

15 The market for this company was rural
16 Americans who lived more than 50 miles from a book
17 store, families that had young children and were
18 low income. The only way for Grolier to find these
19 people to give them books that their children can
20 read or books that they could read to their
21 children was to have information to find them, so
22 it was necessary to have a free flow of
23 information.

24 And marketers -- the other is stylists, an
25 after-market automobile company that sells after-

1 products for minivans, seat belts that can be
2 adjusted better for children, back-up warnings on
3 minivans, so their market, families that own
4 minivans that have children that are outside of car
5 seats, to try to give them an offer of some safety
6 to add to their cars, and that's the market, and
7 they needed the information to try and find it.

8 One of the things that I want to make sure
9 that you also know, my time is now up, I did get
10 through the two examples, thank you, I didn't get
11 my million dollar check yet though, but the one
12 thing that the DMA says, you have to tell people
13 that you share information with third-parties and
14 give them an opportunity to say "no."

15 And that's really the basis, that people
16 who take the information and share with
17 third-parties have to tell you that they do that,
18 and to be a member of DMA you must do that.

19 Thank you for the time.

20 (Applause.)

21 MS. LANDESBURG: Well, we have just a very
22 few minutes for questions from the audience. If
23 you would raise your hand, and if do you have a
24 question, we'll bring the mike to you.

25 MR. HENDRICKS: Two quick questions. Evan

1 Hendricks, Privacy Times. In the offline world, a
2 lot of times people want to know when they receive
3 a mailing, "Where did you get my name?"

4 Aren't there a lot of instances where
5 there's contractual language that prevents
6 organizations from disclosing that? That's the
7 first question.

8 And the second question is I assume that
9 the 20 licensees of the NCOA sell new movers' lists
10 which they're able to produce because of the data
11 they get from NCOA, but do other companies also
12 sell new movers' lists?

13 MR. ANDERSON: I'll answer the NCOA
14 question, and one of the restrictions that we have
15 from the USPS is that we specifically cannot
16 generate new movers' list, so this is specifically
17 -- our NCOA services are specifically for people
18 that are in a database, but we will not, cannot
19 contractually generate a new movers' list that can
20 then be sent out to marketers that are interested
21 in people that have just moved.

22 MR. HENDRICKS: How are they generated,
23 where they're moving?

24 MR. ANDERSON: A lot of other different
25 sources, but none of which come from the USPS.

1 MR. ABRAMS: In terms of the question
2 about, "Where did you get my name?" Increasingly
3 during the 12 years that I was with an information
4 aggregator, the contractual arrangements that
5 limited the ability of the marketer to say where
6 the name came from began to disappear from the
7 marketplace.

8 And increasingly organizations are
9 acquiring data from organizations that have given
10 notice, and organizations that even if they say,
11 "No, you can't tell them where the data came from"
12 they say "Pass on the name to us and we will call
13 the individual and let them know that we were the
14 source."

15 So while that was the norm ten years ago,
16 that norm has been changing over time.

17 MS. LANDESBURG: Jerry, did you have a
18 comment?

19 MR. CERASALE: I was going to just comment
20 specifically on the NCOA because actually there is
21 a contract, but no one can use that for marketing
22 purposes. It's just to correct mailing lists, to
23 increase the efficiency of the Postal Service, so I
24 don't have a lot of those letters.

25 MS. LANDESBURG: Other questions? All

1 right, then. Seeing no more questions, I would
2 like to thank our panelists for a wonderfully
3 informative session.

4 Thank you. If I could ask you just to bear
5 with us for a moment, we'll go straight into the
6 next session -- so don't go anywhere.

7 (Discussion off the record.)

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1 SESSION 4: HOW DO MERGER AND EXCHANGE AFFECT
2 CONSUMERS AND BUSINESSES?

3 JESSICA RICH, Assistant Director, Division of
4 Financial Practices, FTC, Moderator

5

6 PANELISTS

7

8 FRED CATE, Professor of Law and Harry T. Ice
9 Faculty Fellow, Indiana University School of Law

10 JASON CATLETT, President, Junkbusters Corporation

11 JERRY CERASALE, Senior Vice President, Government
12 Affairs, Direct Marketing Association

13 MARY CULNAN, Slade Professor of Management and
14 Information Technology, Bentley College

15 EVAN HENDRICKS, Editor/Publisher, Privacy Times

16 RICK LANE, Director, eCommerce and Internet
17 Technology, U.S. Chamber of Commerce

18 GREGORY MILLER, Chief Privacy Officer and Vice
19 President of Corporate Development, MEconomy, Inc.

20 BRIAN TRETICK, Principal, eRisk Solutions, Ernst &
21 Young

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1 about keeping to their time, so I probably don't
2 have to lecture them too much.

3 Then we'll have a discussion among the
4 panelists so we can examine the issues in greater
5 detail, and we'll hopefully have time for
6 questions. I think for this panel questions are
7 fairly important, so at about 3:15, if you're in --
8 get ready to ask some questions if you're in this
9 room, and if you're in one of the overflow rooms,
10 please come up to the door here so we can give you
11 a microphone to ask your question.

12 I want to emphasize that this is a long
13 panel, and it's easy to focus on a lot of different
14 topics, but we really want to focus on the effects
15 of the particular practices we're talking about
16 today, which is the merger and exchange of consumer
17 data, the effects on consumers and businesses, that
18 specific topic.

19 We're going to let our speakers go
20 alphabetically. I think they may be seated
21 alphabetically, and we're going to start with Fred
22 Cate, and I'll introduce him. He's a professor of
23 law and Harry T. Ice Faculty Fellow and Director of
24 the Information Law and Commerce Institute at the
25 Indiana University School of Law in Bloomington.

1 He also serves as senior counsel for
2 information law with Ice Miller Legal and Business
3 Advisors and is a visiting scholar at the American
4 Enterprise Institute. He specializes in privacy
5 and information law and appears regularly before
6 various legislative committees and professional
7 groups on these matters.

8 Fred?

9 MR. CATE: Great. Thank you very much, and
10 thank you also for the opportunity to be here.

11 I've tried all morning long to condense
12 this to three minutes, and I think I've got it now,
13 so let me just make two points. I'm just going to
14 take up one of the questions that was asked, and
15 that is the impact on consumers, and let me talk
16 about just briefly two points.

17 One of them is the use of information to
18 overcome the obstacles of market size and distance
19 to make it possible to deliver customer service,
20 customized service and personalized service to
21 customers, and there are many examples of this,
22 such as better targeting of what is stocked in
23 stores.

24 We've already heard about better targeting
25 of the type of mail or commercial offers that are

1 sent into homes, more accurate decision-making
2 about customers, about consumers who come seeking
3 service, greater convenience for consumers in many
4 ways all the way from having forms pre-filled in,
5 one call service center being able to change your
6 or address in multiple accounts with a single call,
7 loyalty programs.

8 I think frequent traveler programs are
9 something we almost all share in common at least in
10 this room, or returning goods without a receipt.
11 These are exactly the types of examples of, if you
12 will, sort of overcoming the type of problem that
13 large, diverse and particularly online markets
14 pose.

15 The second, I think, set of examples of the
16 real impact on consumers is where we see
17 dramatically new and different types of benefits,
18 and maybe the best example is lower cost, and this
19 is one area in which there's been a fair amount of
20 studies completed recently showing, for example,
21 Mike Turner's study, a billion dollars in the
22 retail apparel industry in cost reduction by the
23 ability to use personalized information, Walter
24 Kitchenman's study showing \$85 to 100 billion in
25 annual savings in the mortgage credit market

1 because of access to personalized information, the
2 Staten and Barron Study showing \$150 billion
3 annually in non mortgage credit, the Ernst & Young
4 study, Ernst & Young will be speaking later, \$17
5 billion a year focusing just on 30 percent of
6 financial services companies.

7 The point is this consistent evidence from
8 these studies about the way in which the use of
9 personalized information saves consumers money, but
10 there are other good examples, either dramatically
11 new and different services, for example, the wider
12 availability of products and goods and services.

13 I don't mean simply expanded access to
14 credit, although we have studies clearly
15 demonstrating that, but even the points made on the
16 earlier panel about the way in which a business
17 operates, the way in which AOL got started by
18 sending out floppy disks to people who had
19 computers (and identifying people who had computers
20 of course was key to that strategy), and finally
21 the more apt, rapid and efficient, more accurate
22 fraud detection and prevention.

23 I think one thing that almost anyone who
24 works in that field will say is that personalized
25 information is the key to detecting and preventing

1 fraud. If you don't have access to it, you'll lose
2 one of those key tools.

3 Thank you.

4 MS. RICH: Next we have Jason Catlett.
5 He's President and Founder of Junkbusters
6 Corporation, a computer scientist with a Ph.D. in
7 data mining. Dr. Catlett has worked on issues
8 relating to the interplay between technology,
9 marketing and privacy at such places as AT&T, Bell
10 Laboratories, the University of Sydney and various
11 other academic settings.

12 In addition to academic publications, Dr.
13 Catlett has contributed articles to such
14 publications as the Privacy Journal and Direct
15 Marketing News.

16 DR. CATLETT: Thanks very much, Jessica,
17 and thanks again to the Commission for inviting me
18 today.

19 First let me put a concern to rest of Jerry
20 and anyone who feels like they're on a survivor
21 program, or Commissioner Swindle, that I'm not
22 going to be posting any profiles of people. I did
23 go through an exercise that you can read in the
24 handout out there of asking people if they would be
25 willing to have their profiles posted and then

1 going to companies to actually see the profiles
2 that the consenting data subjects have.

3 Unfortunately, though I have a number of
4 volunteers, I have no company yet willing to place
5 on the table before us a real profile, which I
6 think is regrettable.

7 However, what I'm going to talk about today
8 is not that. It's three points. First, let me
9 state that Fred is absolutely right that the
10 benefits of information processing are enormous.

11 Let's remember, however, that the
12 overwhelming majority of those benefits come
13 without personally identifying information.
14 Wal-Mart is an extremely good example. It's all
15 about inventory and forecasting, and most of the
16 benefits come without PII.

17 Where you do use personally identifying
18 information, as Marty Abrams pointed out, the vast
19 majority of that is about personal information that
20 the business already has and not that it gets from
21 third parties.

22 Now, turning to the question of whether
23 direct mail actually reduces -- sorry, targeting
24 that information reduces the amount of junk mail
25 that people get, in fact it actually increases it.

1 If you look at the historical trend from say 70
2 billion direct mail pieces per year in the United
3 States, it's been trending up as the technology has
4 made targeting better and better.

5 We do see more offers that people respond
6 to. This is true, but the typical response rate
7 being in the low percentage figures as Michael
8 said, that results in a lot more junk, and Jerry's
9 example of the golf course magazine is a good one
10 here because without the information, a lot of
11 offers are uneconomical and would not be mailed.
12 So the additional information causes more offers to
13 be responded to, also causes more unwanted
14 solicitations because the information isn't
15 perfect.

16 Now, let me turn to some of the negative
17 aspects of personal information. One that we
18 haven't discussed yet, I think is important, goes
19 under the name of dynamic pricing or price
20 discrimination. The American public loathes the
21 idea that the person sitting next to them is
22 getting a lower price on the same goods that
23 they're getting.

24 They loathe the idea that I'm getting a
25 lower price than Fred is for example, and I think

1 Amazon learned this to their distress when it came
2 out that they were randomly, they said, pricing,
3 and Amazon very quickly stated that they would
4 never base price points on demographic information.
5 They said they didn't really have click stream
6 data. I would like to see a clarification on that.

7 I'll wrap up with my last point, which is
8 the effect on non-participation. I would dearly
9 love to see some figures that talked about the
10 impact on participation of profiling, but we don't
11 have those figures. We just have figures that
12 Forester put out last year of \$12 billion lost in
13 online commerce due to privacy concerns.

14 But those privacy concerns were not
15 specified to the level of particular profiles where
16 the people were concerned about SPAM, or about the
17 actual nature of the profiles. We simply do not
18 know.

19 I'll leave it at that.

20 MS. RICH: Great. Jerry Cerasale is next.
21 He was just on the previous panel, but I'll remind
22 you that he's Senior Vice President of Government
23 Affairs at the Direct Marketing Association.

24 MR. CERASALE: On this panel, still looking
25 for my million dollars, but whatever, I wanted to

1 just take a look at that study of restriction of
2 data that was released yesterday and just raise to
3 you that it's a billion dollars in just the apparel
4 area, but there's an additional study that's an
5 overlay on it that says that the individuals -- the
6 groups that purchase apparel remotely to a greater
7 extent, a greater proportion than their density in
8 the population, are rural Americans and
9 economically disadvantaged intercity, the people
10 who are not adequately served by brick and mortar
11 retailers, the people who don't have other choices,
12 who end up paying a disproportionate share of any
13 restrictions, cost of restrictions on privacy.

14 Those who have the fewest choices are the
15 ones who pay the most based on that study.

16 I want to add to what Fred had said. What
17 we know is that the sharing of information helps
18 reduce fraud. We've seen studies where fraud,
19 credit card fraud over the net in Europe is twice
20 as great as that in the United States. We can
21 attribute that in part I guess because we're more
22 honest than Europeans, but I'm not certain that
23 that is the full case.

24 The real reason is that part of the
25 restriction in Europe is you can't use information

1 collected for purposes other than the specific
2 reason that information was collected, so a billing
3 address on a credit card cannot be used for
4 anything other than billing.

5 So that in the United States, if you're on
6 the Internet or even on the phone, if you call or
7 want to purchase a good and here's the credit card
8 saying, I'm Jerry Cerasale, give them a credit card
9 number, and it's being delivered to the billing
10 address, that's fine.

11 In Europe they can't check that. In the
12 U.S. they can. If it's not going to the billing
13 address, I'm sending it to my mother or ostensibly
14 I'm sending it to my mother, they ask for the
15 billing address. If I can't give them the billing
16 address, then they figure it's probably not Jerry
17 Cerasale, so it's an added thing for fraud
18 prevention.

19 So information flow is important from that
20 score as well, giving benefits to people. There
21 are an awful lot of jobs, low income jobs. It's
22 interesting when you go on visits with senators and
23 representatives that they want direct marketers to
24 come with them to set up call centers, to set up
25 warehouses and so forth in areas where there are

1 economic downturn areas because they want to try to
2 build them up.

3 These are jobs that can be part time.
4 People can be trained fairly readily, so those are
5 advantages as well as choices to consumers. You
6 also have employees and the efforts there in trying
7 to do that.

8 It also allows for easy entry, easier entry
9 for new businesses so that you can get greater
10 competition. I do not have to build the store. I
11 can be L.L. Bean in my basement getting a list of
12 Maine hunters, Maine hunting licenses, out of state
13 people, sell 15 shoes, have to repair 14 of them,
14 but that's how I start a billion dollar business.

15 Those are the things that can happen and
16 happen readily with the sharing of information.

17 Thanks.

18 MS. RICH: Next we have Mary Culnan. As we
19 noted earlier, Mary is the Slade professor of
20 Management and Information Technology at Bentley
21 College in Waltham, Massachusetts, where she
22 teaches and conducts research on information
23 privacy.

24 MS. CULNAN: Thanks, Jessica. My point I
25 would like to make in my three minutes is that fair

1 information practices should apply to the merger
2 and exchange of consumer data, that is to
3 profiling, and it's not clear that it really does
4 today.

5 One way I think to close the trust gap and
6 the misunderstanding that Commissioner Swindle
7 talked about this morning is through much greater
8 transparency about how compilers and co-op
9 databases acquire personal information and what
10 they do with it.

11 There's some parallels here to the network
12 advertising model where in fact consumers do not
13 have a direct relationship with the compilers and
14 the co-op databases, and they frequently don't know
15 who these firms are, so if they wanted to contact
16 them, they would not know how to start.

17 So what are some of the things that we
18 need? We need much more notice where data are
19 collected directly from consumers. I've never seen
20 a notice that says, "We share your name with
21 carefully selected companies or carefully selected
22 third parties and one of America's largest data
23 compilers."

24 And I think to the consumer in fact the
25 idea of a carefully selected company, while in fact

1 the information is being shared for marketing
2 purposes, that is not the same thing to the
3 consumer as you buy from L.L. Bean and you get a
4 mailing from Eddie Bauer or something like that.

5 So I think that all the compilers should
6 provide an easy way for people to opt-out, and
7 there needs to be a better way for people to be
8 pointed to the Web site or however the opt-out is
9 handled, and I think the companies that enhance
10 their customer databases should include this fact
11 in their privacy notices just out of fairness.

12 There are a couple questions that need to
13 be answered. What does opt-out mean for compiled
14 databases? Does my personal information stay in
15 the database? Is it still used for enhancement
16 purposes, or does it just mean that my name is
17 removed from the mailing list when people come to
18 get a prospecting list and it is just gone?

19 Should consumers be able to have their
20 personal information removed from a compiled
21 database? And then, second, the always popular
22 "What kind of access is appropriate?"

23 In conclusion, I think really there's a
24 need to bring consumers into the loop. What I hear
25 -- it strikes me a lot of it is "We know what's

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1 good for you" is kind of part paternalistic because
2 most consumers are smart, and they make good
3 choices in their own interest when they have
4 information.

5 And I think access to personal information
6 is not an entitlement just because people don't
7 know about the compilers, and basically then they
8 don't know about it.

9 Consumers do benefit a lot from compiling,
10 and I think the marketing profession needs to
11 develop some effective strategies to educate and
12 communicate with consumers the benefits of
13 profiling and that these benefits outweigh the
14 risks, which also means that the people that hold
15 these databases have to make sure that they have
16 very good privacy policies in place and that they
17 enforce them.

18 MS. RICH: Next we have Evan Hendricks.
19 Evan is the Editor and Publisher of Privacy Times,
20 a biweekly newsletter that reports on privacy and
21 freedom of information law. He's also the author
22 of several other publications on consumer privacy,
23 including his book "Your Right to Privacy" and he's
24 Chairman of the U.S. Privacy Council.

25 He regularly lectures on information policy

1 issues in the U.S., Canada and Europe.

2 MR. HENDRICKS: Thank you, and thank you to
3 the FTC for the hard work they've put into this and
4 the opportunity.

5 In January I had the good fortune of
6 hearing Commissioner Swindle speak not once but
7 twice in different gatherings, and he said
8 something that I strongly agree with.

9 He said that when we talk about this issue,
10 we should not talk about it emotionally because it
11 can be an emotional issue, and it doesn't really
12 help. This is something we need really more light
13 than heat, so I made a commitment to him that when
14 I come before the FTC, I will not discuss this
15 emotionally.

16 And then I started thinking about it this
17 morning, and I started getting really mad because I
18 love to talk about this emotionally, but I'm a man
19 of my word, so I can't do that.

20 Seriously I think that we should speak
21 about this in cool and analytical ways, and I
22 think, first of all, there's a greater irony here,
23 and one of the ironies is that the direct marketing
24 industry was subsidized by the taxpayers. The
25 direct marketing industry was able to get public

1 records at low or no cost, which was a great way to
2 start a business if you can get your primary source
3 that makes your business possible paid for by
4 taxpayers.

5 We've seen it -- and that's not such a bad
6 thing. We've seen it with investment in computer
7 chips by the Defense Department has led to the
8 computer revolution, but let's recognize that as
9 people speak against government regulation, what
10 got them to a point where they can speak about
11 that.

12 Second of all, I think already from today
13 and all the years I've seen leading up to this, on
14 the issue of warranty cards, I think there's enough
15 evidence to justify an investigation of unfair and
16 deceptive trade practices.

17 I think it's widely understood that
18 consumers fill out warranty cards thinking that
19 they need to do this for the warranty to be good,
20 and in fact you do not need to fill out a warranty
21 card for the warranty to be good.

22 The purpose of warranty cards is generally
23 to collect information by database companies. It
24 is then sold and used for other purposes, and
25 warranty cards are one of the primary sources of

1 unlisted phone numbers, which people are unable --
2 companies are unable to buy from phone companies,
3 but they can get them.

4 And I think it shows that people who pay
5 extra for an unlisted phone number would not be
6 giving their unlisted phone numbers if they knew
7 that information was going to be sold on the open
8 market, so I think we have a real problem there
9 that deserves official attention.

10 I think another example -- since I only
11 have three minutes, another example of something
12 that cries out for concern is say a company like
13 American Student Lists based in New York.
14 Factually, for instance, they have over 12 million
15 names of children ranging in age from 2 to 13 years
16 representing PK through 8th grade. All names are
17 selectable by age, birth date and heads of
18 households, and approximately 25 million age birth
19 through 17 compiled from numerous direct response
20 sources selectable by age, birth date, head of
21 household, income and geography.

22 Well, I doubt that most of the people in
23 those categories or their parents really had a
24 chance to exercise much in the way of notice and
25 choice.

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1 A third area of I think concern which now
2 -- finally the good thing about the workshop -- is
3 it is being described as a very routine process and
4 it has been for years, but that is not known to
5 consumers, is the idea of enhancing your database,
6 which really means by virtue of being a customer of
7 a bank or of an Internet provider or whatever,
8 because you're a customer, then they go to outside
9 sources of data and fatten their file on you
10 saying, This is what kind of car you drive, this is
11 what kind of home you own, this is your estimated
12 income, do you have children.

13 And I think that there is again no notice,
14 awareness or education to consumers about what's
15 happening and certainly no rights for individuals
16 to do anything about it; and I think that is a very
17 significant privacy issue because if you join a
18 company, you know they're going to have information
19 on you as a customer, but when they merge
20 information, they're basically creating a whole new
21 file that you don't know about.

22 I think also the whole issue of public
23 records, I think that in public records, it's a
24 difficult issue. As a FOIA advocate, I think there
25 should be public access to public records, but when

1 it's personal data, I think we should apply the
2 purpose test that we find in Fair Information
3 Practices and that if it's a driving record, it can
4 be accessed for driving purposes.

5 Well, if it's a voter record, and in answer
6 to one of the earlier questions, Are there
7 restrictions on public records, half the states
8 have laws that say you cannot use voting records
9 and the other half don't, but I think the idea is
10 that if it will interfere with people's right to
11 vote, if they're concerned that their information
12 will be used for commercial purposes, that's the
13 purpose of the privacy law there.

14 I think we have to apply that kind of
15 purpose test where people can get access to a
16 voter's list if they're doing a campaign. How do
17 we do that? I think one way to do it is that I
18 think we should have to certify to the record
19 holder that you're using it for this purpose and
20 then have a notice sent to the data subject so they
21 know that someone has accessed their record.

22 That can be done either by postcard or
23 electronically to reduce cost, but I think that's
24 the direction we need to go to handle the public
25 records issue.

1 My final point is that I think there's a
2 lot of important players missing at this workshop
3 starting with Acxiom, which has records on over a
4 hundred million Americans, something like 120
5 million Americans pulled from all sorts of sources.
6 I commend you to two articles in the Washington
7 Post that dealt with Acxiom over the last couple
8 years.

9 I think a lot of hard work goes into
10 putting a workshop together like this all the way
11 up and down the Commission, and I think it's a
12 disservice to the Commission and the American
13 public if a major player like Acxiom and other
14 players like that don't participate to shed light
15 on what they do.

16 Thank you.

17 MS. RICH: Our next panelist is Rick Lane.
18 He's the director of E-Commerce and Internet
19 Technology for the U.S. Chamber of Commerce, where
20 he's responsible for coordinating the development
21 and implementation of the Chamber's E-commerce and
22 technology, legislative, and policy initiatives.

23 Mr. Lane has served in leadership positions
24 on a variety of federal, state and local
25 commissions and committees, including the

1 Montgomery County Cable and Communications Advisory
2 Committee.

3 Rick?

4 MR. LANE: Thank you very much. I just
5 have a quick question. How many people in the
6 audience have started a small business, have
7 started their own business?

8 That's what this is all about. That's what
9 we're talking about in the free flow of information
10 and being able to have entrepreneurialism in this
11 country.

12 I started my own business called Cyber
13 Sports. We spent a lot of money in development of
14 a product, and basically what the product was was a
15 database that college and university sports
16 programs could use to help track the college
17 recruits that they were recruiting through the
18 recruiting process.

19 In the old days they had paper files, and
20 they had problems complying with NCAA requirements,
21 but how did I get that product to market? It was
22 easy for the most part to develop the product, but
23 how did we target our audience? Our audience was
24 college coaches.

25 What we did was, first, we looked and

1 thought, Well, we can call every college and
2 university sports program in the country. I think
3 there are about 5,000 colleges. We were four
4 people. We couldn't afford to do that.

5 So what we did was we found a list that was
6 already available, that had information on all the
7 college coaches in every sport across the country.
8 It made our life easier. Then we got additional
9 information from other sources that put on top of
10 it the coaches win-loss records.

11 So we saw those coaches that were losing
12 would be a better potential market for our product
13 than those that were winning because the ones who
14 were winning figured, Hey, we already understand
15 this game.

16 And then on top of that, we took the
17 information of size of school because what we found
18 was the smaller the school, the more kids that they
19 had to recruit because they didn't have name
20 recognition.

21 I have a nephew who is six-three, 215, the
22 fastest kid on the team. He's not hard to find.
23 He's going to be recruited by Michigan and Ohio
24 State and other schools are going to find him and
25 probably offer him a scholarship, but what about

1 the kids who are in the smaller towns and how do we
2 get information about them?

3 Here's the next part of the process, which
4 is people send information on college kids
5 throughout the country into these coaches'
6 databases which they search on grade point
7 averages, height, weight, positions and they fill
8 them.

9 Now, what we're talking about is, Is that a
10 bad thing? Is offering kids scholarships a bad
11 endeavor? We have information, these college
12 coaches, on thousands of kids based on public
13 information through newspaper articles and so on
14 and so forth.

15 Yet they are using it to offer kids
16 scholarships, and those of us who enjoy March
17 Madness think, well, maybe it's not a bad idea at
18 all, but what we found is the academic side of the
19 colleges liked it because we were tracking grades
20 and other information for the kids that were being
21 sent in, but then other departments who were
22 offering scholarships began using our software to
23 offer kids scholarships for music and academic
24 scholarships and drama and so on and so forth.

25 So the information flow is critical. We

1 looked at it in Acxiom, yes, big macro, large
2 company, important to look at, but there are also a
3 lot of smaller, targeted uses of information
4 database and flow that is beneficial to the
5 foundation of this economy and how we operate.

6 So from our standpoint, we look at this
7 issue from a small business perspective. Let's
8 give small businesses the opportunity to grow and
9 survive and to create competition in the markets
10 unlike in the EU, and let's not arbitrarily just
11 cut that information flow off.

12 Thank you.

13 MS. RICH: Greg Miller is Interim Chief
14 Privacy Officer and Vice President of Corporate
15 Development for MEconomy, an Internet privacy
16 infrastructure venture. Before joining that
17 company, Mr. Miller was Medicologic Netscape's
18 chief Internet strategist of governmental affairs
19 and a director of strategic marketing for Netscape.

20 Mr. Miller has worked on issues involving
21 technical Internet infrastructure, online marketing
22 strategy, including personalization and data
23 warehousing, and Internet security and privacy
24 policy issues.

25 Greg?

1 MR. MILLER: Thank you, and I want to thank
2 the Commission for inviting me to participate this
3 afternoon.

4 Actually a little bit beyond MEconomy, I
5 have the privilege of being a venture capitalist,
6 not to be confused with capitalist, so MEconomy is
7 one of my portfolio companies.

8 But in the process of doing that, I
9 facilitate the development of emerging security and
10 privacy companies in the digital economy and advise
11 up-starts on issues of consumer privacy and
12 information security, and two very different, yet
13 perhaps paradoxically complementary sectors of
14 digital entertainment and U.S. health care.

15 I've been asked here today to participate
16 with my esteemed colleagues on an exploratory
17 discussion on the effects to business and consumers
18 of the merger and exchange of consumer information
19 and digital economy.

20 And of potential applicability to this
21 discussion, I spent the last six months working
22 with a client start-up to engineer an inflow
23 mediation and user registration system that was
24 designed specifically to address required
25 consorting of offline and online consumer

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1 information for multiple sources in order to create
2 the best possible user experience and online
3 digital entertainment while simultaneously
4 respecting the privacy of those subscribers.

5 Our solution, which we dubbed JOIN for
6 "just opt-in," addressed many of the issues raised
7 by this workshop, so the net of my work there, as
8 it may contribute to today's discourse, can
9 probably be summed up as follows: Over time the
10 convergence, Consortium and brokering of personally
11 identifiable information, or PII, we believe will
12 require a balancing test between the needs of
13 business and the needs of consumers, nothing too
14 profound there.

15 And I can see the broken smiles of the
16 lawyers among us. I call it YABT, "yet another
17 balancing test," and thankfully for all of us I'm
18 going to avoid going down that particular rat hole
19 of jurisprudence.

20 But anyway, what we learned last year in
21 this online music start-up was that consumers might
22 not worry about privacy per se as much as they
23 worry about surprises and uninvited interruptions,
24 and apparently Seth Goddin this week concurs at
25 least in part with that finding in the current

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1 issue of Red Herring Magazine.

2 So I submit that consumers simply want to
3 be left alone and are not interested in being
4 interrupted, unless they've agreed to such as part
5 of the deal for receiving the information, product
6 or service that they're seeking.

7 I also submit that the majority of
8 businesses are not interested in snooping but
9 simply selling more products and services. For
10 business success in the digital economy means
11 gathering information to improve the customer
12 experience and relationship.

13 Compiling information on consumers from
14 whatever source is legally available should be
15 intended to improve the customer experience and
16 nothing more, and this may mean not only sharing
17 and consorting of PII, but synthesis of data into
18 homogenized databases.

19 This can raise potential concerns. The
20 ease with which PII can be extrapolated is
21 improving -- it's proving really possible to be a
22 very powerful thing and perhaps to one's detriment.

23 Witness Web M.D.'s move last week or the
24 week before to rescind their contractual
25 obligations to provide certain data to Quintiles,

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1 one of their supply chain trading partners, due to
2 the technical wherewithal to ascertain an identity
3 with only a date of birth and a postal code.

4 I submit there are demonstrative benefits
5 to PII compilation and the downside in terms of
6 consumers' lack of confidence in business to do the
7 right thing or unwillingness to participate I think
8 can be addressed through what we call permission
9 based approaches to the data gathering use. Of
10 course, consumers should be aware of the possible
11 misuse of PII but also understand the cost benefit.

12 So through that work we also came to the
13 conclusion that unless and until the incentives of
14 business and consumers are matched in a manner that
15 encourages and authorizes the compilation and usage
16 of PII, something we're studying right now at
17 MEconomy, this so-called digital economy we think
18 may stall.

19 For the consumer the concern should
20 probably run to security more than privacy as the
21 real threat may lie in identity theft.
22 Unfortunately we weren't able to find a lot of
23 empirical evidence last year on the use or misuse
24 of PII.

25 I think the digital economy is still fairly

1 nascent, but I think prospectively industry should
2 focus on the now well settled principles of notice,
3 choice and access, and as they're equally important
4 in the compilation of PII, we think the consumer
5 should be notified of information gathering
6 practices and policies whenever they're used in any
7 service, online or not, and where appropriate or
8 practical given the choice to participate in
9 advance of such gathering.

10 We think the compiled PII by business
11 should be accessible to the consumer's review, too,
12 and we think applying these three principles with
13 equal force and meaningful standards for each
14 empowers the consumer to take an active role in
15 protecting their own identity and its uses.

16 So as we grapple with the complex issues of
17 the underlying and I think most valuable commodity
18 of a digital economy, PII, I believe that notice,
19 choice and access can serve as safeguards for over-
20 reaching data collection, and I think that that
21 would be the basis for my contributions today, if
22 any, that are hopefully useful.

23 Thank you.

24 MS. RICH: Thanks. Lastly Brian Tretick is
25 a principal with Ernst & Young, who works in the

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1 area of global privacy assurance and advisory
2 services. He serves clients in the online
3 financial services, retail and software industries
4 focusing on the technological, organizational,
5 regulatory and third-party relationship aspects of
6 data privacy.

7 He also works in the firm's global privacy
8 practice where he helps to provide various
9 consolidated services, technical, advisory, and
10 legal, to Ernst & Young's global clients. Brian?

11 MR. TRETICK: Thank you, Jessica. Prior to
12 this panel, you heard from marketers, and I
13 represent here the assurance industry.

14 I want to talk a little bit about what
15 companies are doing, especially companies that hold
16 on to marketing information, hold on to information
17 about their customers, merge third-party
18 information with that to get to know their
19 customers better and perhaps then provide an avenue
20 for other parties, their merchant partners,
21 business partners, to reach the company's customers
22 with those third-party messages.

23 First off, I would like to talk a little
24 bit about the organizational issues, namely, the
25 appointment of privacy officials, and these aren't

1 the privacy officials, the celebrity CPOs that were
2 appointed over the last year, year and a half.

3 These are people with a lot less glamor.
4 They have assurance, audit and compliance
5 responsibilities, so what we're doing, we're seeing
6 a push, an evolution of privacy and privacy
7 responsibilities out of the PR, the business
8 development type environments and down into the
9 business.

10 We're seeing an emergence of the roles and
11 responsibilities, the policies and procedures out
12 of marketing groups for marketing data, although
13 they need to keep executing those policies and
14 procedures. There's someone with authority and
15 accountability in companies who is much more,
16 pardon the expression, humorless about the use of
17 information because they're much more regimented
18 and disciplined in their backgrounds.

19 So we're seeing those again
20 accountabilities and authorities extending outside
21 of the marketing arrangement, marketing groups, and
22 into business development, into other compliance
23 and auditing functions.

24 We're seeing the extension of security and
25 controls, again not just on Web sites. All this

1 data is back in enterprise systems and increasing
2 technical, procedural controls in these situations,
3 and also assurances where management needs to
4 establish confidence among themselves that their
5 technology groups, that their business development
6 groups, customer service groups, marketing groups,
7 sort of fulfillment groups, are all meeting these
8 policies and procedures, these internal policies
9 and procedures.

10 So they're seeking assurance internally and
11 externally on these practices. They're providing
12 training and awareness for their employees and
13 third-party vendors on their policies, on their
14 detailed practices, dos and don'ts, what they
15 should and should not do regarding the use of
16 collected data.

17 And they're also reregulating their
18 dealings with third parties, with people who they
19 receive information from and people who they
20 provide information to, vetting them, selecting
21 them carefully and doing due diligence and
22 including specific terms of use in contracts with
23 third parties and also then various verification
24 and monitoring.

25 The final point here is that these

1 companies are working again internally or with
2 third parties to establish assurances that their
3 controls are in place to prevent bad things from
4 happening, to discourage bad things from happening,
5 and to put controls in place to encourage the right
6 things, the appropriate business practices to
7 happen.

8 Thank you.

9 MS. RICH: Thanks to everybody for your
10 prepared statements.

11 We thought it would be useful next to open
12 up the panel for a discussion of some of the issues
13 you touched on in your opening statements. Some of
14 you have identified ways in which consumers and
15 businesses benefit from the merger and exchange of
16 data, for example, better targeting of ads, lower
17 costs, better customer service, lowering end
18 barriers for start-up, other examples.

19 I think it would be useful if the panelists
20 expanded on some of these points and had a chance
21 to comment on others' points that were made in this
22 area, and also if anybody has data to support or
23 even contradict the points they're making, if you
24 could mention it now, I think it would make for a
25 better discussion if there was any data and

1 everyone could hear about it.

2 I guess Jason is putting his tent up, so he
3 would like to start it off.

4 DR. CATLETT: Thanks very much. Let me
5 talk about dynamic pricing a little. There's very
6 little data on this because companies don't put out
7 press releases saying, " We are able to gouge our
8 customers to the extent of \$6 million."

9 However, I would point you to an article in
10 Harvard Business Review last month that says that
11 an unnamed consumer electronics store was able to
12 differentiate between price sensitive consumers and
13 price insensitive consumers who were in a hurry and
14 to charge the more hurried customers a 20 percent
15 premium over the more diligent shopper, so that's
16 the only empirical data point that I have about
17 dynamic pricing, an area that's shrouded in
18 secrecy.

19 What could we possibly do about dynamic
20 pricing? Well, there's a diversity of opinion
21 about whether this is a good thing. The airline
22 industry does differential pricing, not based on
23 personal information, but whether, for example, you
24 want to be home with your wife and children on
25 Saturday night.

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1 A benefit to rationing that, and I think
2 there's a diversity of opinion on whether dynamic
3 pricing is a good thing.

4 What privacy protections are necessary in
5 that environment? I believe the appropriate one
6 here is that adopted in the EU's data directive
7 which gives the data subject not only the right to
8 see the base data on which the decisions are made,
9 but also to have an automated decision-making
10 process explained to him or her.

11 So that, for example, if an E-commerce
12 merchant is charging Fred \$2 less for a paperback
13 book than it is charging me, then I can, in
14 principle, ask to have that decision-making process
15 explained to me, and then the merchant can say,
16 "Well, it's because of your past behavior in this
17 area," and then at least I have some understanding
18 on which to base my future behavior.

19 MS. RICH: Is that Rick down there?

20 MR. LANE: Yes. Just a couple points. On
21 the dynamic pricing issue, obviously that just puts
22 up red flags for us in terms of you're dictating
23 how businesses are going to charge particular
24 customers for particular items. Does it mean
25 dynamic pricing includes presenting certain

1 customers with coupons that provide a 10 percent
2 discount over maybe my neighbor who doesn't get
3 that and based on my buying habits, and so that is
4 obviously of concern.

5 Also market forces, if what happened at
6 Amazon.com is accurate and all this brew-ha-ha
7 erupted, obviously there is concern in the
8 marketplace that reacted very quickly and swiftly
9 that consumers weren't ready for that or did not
10 appreciate that, and it stops, so there are market
11 forces already out there.

12 Also the direct marketing that Jason put
13 forth in his discussion about the increase in
14 direct marketing over the course of time, well,
15 yes, obviously there's been more mailings done.
16 There are more people in the country.

17 So, of course, you're going to have more
18 mailings. There's more businesses. There's more
19 small businesses, and we've had a dynamic growth
20 over the past couple years. It's called economic
21 growth. I thought it was a good thing.

22 So, yes, you're going to have more direct
23 marketing out there, but the fact is you're getting
24 less mail that's not of interest to you, and that's
25 a critical point, and that's what this is all

1 about.

2 DR. CATLETT: Could I respond to that
3 quickly? There are several factors at work, the
4 increase in population, the increase in the price
5 of paper and the price of postage, which Jerry I
6 guess constantly is working on, all work to cause
7 the total number of solicitations to vary for a
8 number of different areas.

9 But I think if you learn DM Math 101, you
10 will find that more information means more total
11 solicitations, more accepted solicitations, but
12 also more unwanted solicitations.

13 And on the issue of dynamic pricing, I
14 didn't seek to say that the Federal Trade
15 Commission should stop dynamic pricing or stop a
16 company from offering a coupon to a subset of its
17 customers based on the Claritas Prism rating or
18 whatever criterion.

19 I simply think that from the point of view
20 of privacy and fair information practices, the
21 consumer should have the right to see the
22 information that that decision is being based on.
23 The information may be incorrect, and they may be
24 missing out on something that they might otherwise
25 be entitled to, and the decision-making process

1 should be transparent.

2 If there is a trust gap, and I agree with
3 Commissioner Swindle and the many other speakers
4 who have said that there is a trust gap here, the
5 way to close that gap surely is greater
6 transparency, to give the consumer the right to see
7 what's going on and the right to delete it if they
8 don't want it.

9 MS. RICH: Evan, you've been waiting
10 patiently, calmly.

11 MR. HENDRICKS: And unemotionally too.

12 MR. RICH: Unemotionally, yes.

13 MR. HENDRICKS: Well, let's talk about
14 small business. If you look -- I commend everyone
15 to the latest study from Forrester. Jason cited
16 one earlier in our Privacy Times. It's out on the
17 table. We report on the latest Forrester which
18 looks at wireless, how privacy is not only integral
19 to wireless, but privacy is integral -- it's the
20 core business issue, and that it has to be dealt
21 with top to bottom or businesses will suffer.

22 And Forrester staff are not consumer
23 advocates or political. They're just worried about
24 their clients' bottom line, and I think it's a very
25 important analysis.

1 Let's talk about small business. I mean,
2 so much of being in business depends on your
3 judgment as a businessman and what is your business
4 model, and so sometimes you need information to
5 make your business go, and sometimes you can
6 configure your business so you don't need to rely
7 on people's personal data.

8 I started my small business in January
9 1981, and I had \$3 in my pocket, and I've not
10 borrowed money, and I'm still in small business
11 and -- is the business you described still going?

12 MR. LANE: It's the number 1 recruiting
13 software in the country.

14 MR. HENDRICKS: Excellent, excellent. So
15 we like that, but I think the other thing that
16 happened to be in the 1980s is when the federal
17 agencies were making a lot of claims about computer
18 matching and that computer matching -- when I
19 wanted to match databases from different agencies
20 to fight fraud, they would make these projections
21 about how bad fraud was among federal agencies.

22 And I was part of studies that actually
23 drilled down and looked at the numbers, and we
24 found that the costs and the fraud projections were
25 completely specious. There was no basis in fact to

1 them, and that they were just pulling numbers out
2 of the air.

3 So I look in today's Wall Street Journal,
4 and I see that the cost of the 90 largest financial
5 institutions will be \$17 billion for some sort of
6 restrictions on sharing or selling customer
7 information, and Fred is quoted as saying that the
8 costs run into the trillions, so I look forward to
9 looking at those numbers too.

10 I'm very skeptical that these will hold up
11 to objective analysis and that the one thing when
12 you hear about Gramm Leach Bliley, notices will be
13 going to customers by banks of information
14 practices and privacy policy.

15 But Gramm Leach Bliley, the provisions in
16 there were -- that's what the banking lobby wanted.
17 They got what they wanted in this bill, and the
18 other proposals advocated by the consumer advocacy
19 community were rejected.

20 So this is a case where maybe they didn't
21 think out long enough what really were the best
22 privacy standards and the most cost efficient ones.

23 MS. RICH: Fred?

24 MR. CATE: Thank you very much. I think
25 one of the points Evan makes, he raises one, and

1 frankly this goes to something Jason said which
2 might be worth following up on, several people have
3 mentioned, and Evan just did then, the question of
4 how many people don't engage in an activity because
5 of privacy fears and trying to put numbers, and
6 Forrester certainly tried to do that.

7 I think there's some reason to be a little
8 skeptical of that, and I think Europe is the reason
9 for that. Europe offers the most restrictive set
10 of privacy laws we have on the books.

11 The polling data on reasons for staying
12 offline is just as high as in the U.S., so in the
13 presence of very high legal protection, you have a
14 very high anxiety rate.

15 Moreover, something else we seem to know is
16 that there's a certain disconnect here between what
17 you want to be worried about and what you are
18 worried about, that what we might perceive because
19 we don't know, because we don't understand, and
20 that this is also reflected frankly in a lot of
21 these -- a lot of these numbers.

22 And if you read the whole survey you see
23 what they were really talking about was something
24 different. They were talking about security or
25 they were talking about some specific issue, not

1 the question of, Is this information going to be
2 shared.

3 They're worried about, Is the information
4 even going to get to the end point, but this
5 reminds me -- this is my segue alert. This reminds
6 me of Jason's point, which I think actually is
7 excellent, dynamic pricing is an issue. If it's a
8 problem, it's a problem that should be looked at as
9 a phenomenon itself.

10 And if Commissioner Swindle can get me a
11 cheaper fare home because I'm not going to be
12 subject to the sort of pricing that the airlines
13 use, I think that would be terrific.
14 Unfortunately, I guess jurisdiction doesn't extend
15 there.

16 But it highlights the sort of need to focus
17 on what is the use of the information that causes
18 the problem; in other words, not what's the specter
19 of uncertainty. What's the way in which you can
20 sort of look across sort of all possible uses of
21 information.

22 But if in fact there is a use of
23 information, for example, we have all sorts of laws
24 in this country prohibiting discrimination, that
25 you would use information to discriminate in. We

1 don't have nearly as many laws restricting the flow
2 of that information. We have laws restricting the
3 use of that information.

4 You cannot use it to discriminate in
5 certain ways, housing, public accommodations and so
6 forth, and so I think really both of these points
7 highlight the importance of focusing on
8 demonstrated behavior and real harms as opposed to
9 sort of speculation and system wide regulation of
10 information flows.

11 MS. RICH: Mary?

12 MS. CULNAN: This is another segue alert,
13 but I think for the business people in the
14 audience, I mean, one way to think about privacy,
15 it's not really privacy, it's really disclosure.
16 You want consumers to be comfortable disclosing
17 information and allowing it to be used for
18 marketing.

19 And there have been a couple of good Harris
20 surveys that have looked at people's willingness to
21 disclose. There was one done in 1997 so these were
22 mostly computer geeks in the sample because at that
23 time everybody wasn't on AOL like they are now.

24 But they asked some questions about, Have
25 you ever either lied or not disclosed information

1 to a Web site when they asked for it, and everybody
2 knows the numbers. A huge number of people say,
3 Yes, at some point I did do this.

4 So then they asked, Well, what if the Web
5 site told you, gave you notice and choice, and a
6 huge -- about half the people who did not disclose
7 before or lied say, "Yeah, I'll disclose my
8 information then," or if you already had a previous
9 relationship with a firm, then a lot of people
10 would disclose.

11 I think what it says is you've got to get
12 at least notice and choice into the equation, and
13 it does make people more comfortable.

14 Now, the other interesting side to this is
15 there is still a clump of people that under any
16 circumstances are still not comfortable disclosing,
17 and the issue is, What is it that would make these
18 people disclose or, in fact, is this just how
19 marketing works, and there's a segment of people
20 that don't want to do business online.

21 MS. RICH: Jason?

22 DR. CATLETT: Let me go from those
23 habitual, non responders, who comprise
24 approximately half of the United States, back to
25 the dynamic pricing issue.

1 Rick said that market forces have corrected
2 that, and in the case of Amazon, I would feel a lot
3 more comfortable if Amazon disclosed the fact that
4 they were doing dynamic pricing. This was not the
5 case. It was discovered by someone who talked
6 about it on an Internet discussion group, and then
7 it went out to the media.

8 So I think again the problem we have is a
9 lack of transparency here. If we want to
10 investigate the practice, we have a very difficult
11 time doing so, if we don't have a right of
12 consumers to see what information is being held
13 about them and how it is specifically being used in
14 their case.

15 MS. RICH: Since we seem to be moving
16 partly into what effect this has on consumers, let
17 me just go back to a point made earlier, which is
18 if there are cost efficiencies and lower costs
19 generally from being able to share data, are any of
20 these cost efficiencies passed on to consumers?
21 Has anyone measured that or thought about that?
22 No.

23 Another point I just wanted to go back to
24 before we move into effects on consumers completely
25 is I heard different statements being made about

1 whether the number of solicitations is really
2 reduced when you can share data and target more
3 efficiently with some people saying that, Yes,
4 people will get fewer solicitations and others
5 saying, Well, they'll be targeted more.

6 Does anyone have any data on that or any
7 information that would be useful in talking about
8 that issue?

9 Evan?

10 MR. HENDRICKS: Well, in the credit cards,
11 we do have data out, just in the last few months,
12 showing that the response rate for pre approved
13 credit card is plummeting, and I think that deals
14 -- I mean, here's a situation where they're able to
15 use credit bureau data, highly targeted, and it's
16 just a question of the market is so saturated, and
17 there's not much differentiation anymore among the
18 credit card offers.

19 So I can't remember, someone told me it was
20 .4 percent or something was the response rate, so
21 the customer acquisition is going much higher, and
22 that's many factors.

23 DR. CATLETT: They key point there is the
24 number of credit card solicitations is going up.

25 MS. RICH: Jerry?

1 MR. CERASALE: The basic -- this isn't
2 precise data, but the basic use of mail
3 solicitation tends to be standard mail, although
4 there are solicitations that go out first class,
5 and standard mail growth is growing faster than the
6 rest of the mail volume is growing, but
7 significantly below what would be expected in
8 the -- what was expected in the growing economy.

9 The Postal Service is coming in and asking
10 for new rates and so forth based on new market
11 forces, so that the amount of total volume of
12 standard mail is not growing, what would be
13 expected in the economy.

14 One of the things you can see has changed
15 over time, however, is what used to be known as
16 resident or occupant mail, that in standard mail
17 the non resident, non occupant mail percentage of
18 standard mail is growing, meaning that the
19 targeting has increased. It's not just the
20 saturation shock on hitting every house everywhere,
21 even though those have the lowest postage rates
22 offered by the Postal Service.

23 So that type of data we have seen as well,
24 and the solicitations also tend to follow a pattern
25 of the economy, that if the economy turns down, you

1 tend to get a significant increase in standard mail
2 solicitations to try to drum up the business that's
3 being lost, and that lags the drop in the economy
4 about six months to nine months before that
5 plummets down as it follows the economy.

6 So that's what's happening. You have an
7 increase in targeted pieces, less saturation pieces
8 going through the mail, but they are growing less
9 rapidly than they have historically based upon
10 what's happening in the economy.

11 DR. CATLETT: Jerry, could you just clarify
12 that standard mail is what used to be called third
13 class mail?

14 MR. CERASALE: Yes, that's what the Postal
15 Service used to call third class mail. They now
16 changed it to standard.

17 MS. RICH: Before we get too deep into
18 consumers, I realize I left out the piece of -- we
19 talked about the benefits for businesses of these
20 practices.

21 Does Greg or Brian or anyone else want to
22 talk about some of the downsides or the risks for
23 businesses of these practices?

24 MR. MILLER: We both probably have
25 interesting remarks to make about this, and just

1 perhaps as a segue from the business side over to
2 the consumer side, I want to speak to you a moment
3 about infrastructure cost on the business side and
4 then how that transitions over to consumers.

5 And I have two quick case points for you
6 that would be great for you to comment on too, and
7 I will start with health care, which is where I
8 spent a lot of time in the medical records space,
9 and what we were trying to do at Medicalogic was
10 give to the consumer for the first time in history
11 a secure, authorized access to their authentic
12 medical history.

13 Well, it turns out that for most of us, our
14 medical history is comprised of several records,
15 our primary care physician and at least a couple of
16 specialists, and so what we were trying to do was
17 give a view port to that comprehensive medical
18 history, and that required literally the opt-in of
19 several physicians and the proactive relationship
20 building that went on with the patient to encourage
21 them to allow that.

22 That required a lot of infrastructure cost
23 for us in the consorting and homogenizing of that
24 data and creating the necessary safeguards to even
25 create Chinese walls, if you will, between the

1 dermatologist and the OB-GYN and the primary care
2 physician, so there was a view port challenge
3 there.

4 In the entertainment space, the most recent
5 case, we had a very challenging one with -- another
6 one of our panelists, Ted Wham and I worked
7 together on a project in the music space, and the
8 problem we had there was when you go buy music, you
9 don't say to yourself, I've got to go get me one of
10 those Sony records. You say, I want to go buy a
11 Dave Matthews album.

12 You, the consumer, purchase by artist, but
13 the music industry, by which I mean the five record
14 labels that control 90 percent of the music that's
15 distributed worldwide, have their view of the world
16 on you.

17 So we literally had to engineer what we
18 called a data escrow service to ensure that privacy
19 policies across five labels actually reconciled
20 with one another and then the JOIN, the just opt-in
21 program, was the means by which we encouraged the
22 consumer to get the experience that we're really
23 looking for which was a unified locker service
24 which allowed them to compile all music they've
25 ever purchased across any label from any retailer

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1 in history into one homogenized database.

2 This really presented a lot of problems
3 because all the labels jumped up immediately and
4 said, Not on my watch are you going to be mixing my
5 data with the data of Universal without my customer
6 explicit opting in says BMG, so we literally had to
7 create this membrane.

8 This produced some substantial costs, and I
9 dare say it may have been the straw that broke the
10 camel's back because unfortunately that company is
11 now in receivership. They spent tons of money on
12 infrastructure to build the data escrow service
13 that would ensure the privacy policies of five
14 labels were maintained and protected and then still
15 get the subscriber, the consumer, opting in to
16 participate.

17 And I think that put a lot of pressure on
18 them from the standpoint of ensuring privacy as
19 well as building infrastructure that would support
20 and then shield them from a certain amount of
21 liability which I think segues over to you.

22 MR. HENDRICKS: Also, Greg, wouldn't an FTC
23 standard, a uniform standard solve that problem
24 across those five Web sites?

25 MR. MILLER: I think to a certain extent

1 that's possible, yeah, but it's interesting the
2 challenge of being a lawyer, working with lawyers
3 and their view of each of their privacy policies.

4 MR. TRETICK: I think there are always some
5 risks in the exchange of any valuable asset, both
6 upstream and downstream from a marketing data
7 provider to a marketing data consumer company.

8 The providers are looking to make sure that
9 the information that they provide is going to
10 reputable and responsible parties and going to be
11 used in reputable and responsible manners, that
12 children's information that is being offered up
13 about all these school kids and college kids isn't
14 going out to market them, drugs, liquor, cigarettes
15 to athletes, things like that upstream.

16 Downstream is the same thing. We want to
17 make sure that when we receive information it's
18 coming from sources that got this data under again
19 a reputable and responsible regime and that we can
20 reach out and touch these customers and make sure
21 then that they're not annoyed by our message, that
22 the frequency of being able to be touched is
23 reasonable, that the method of touching these
24 customers is reasonable and responsible and
25 appropriate for that.

1 So these are the risks that are faced both
2 upstream and downstream.

3 MR. CERASALE: I think we're switching to
4 some risk to businesses. I think the first risk a
5 business has is they promise more than they can
6 deliver, so that you have to make sure that you
7 promise to do certain things and that you can and
8 will be able to do it.

9 The risk -- the real risk you have, a
10 business has in sharing information is to become
11 complacent and sloppy. If you don't treat the
12 information that's given to you as part of a trust
13 relationship, ensure that you have safeguards to
14 keep the data secure, you want to make sure -- as
15 you just said, you want to make sure to whom data
16 is being shared, what type of procedures, what type
17 of marketing piece is going out.

18 If you're just sharing data from one
19 marketer to another, you want to see what the
20 marketing piece is. You want to make sure if
21 you're -- for a one time use that the list is
22 seeded so you can see, to make sure the person you
23 dealt with actually does, in fact, live up to his,
24 her, its agreement they had with you.

25 So that those -- and you have to train your

1 employees as they work with -- we've seen that way
2 back with -- an example that was publicly stated
3 here with Metro Mail where on the 13th phone call,
4 an untrained person gave information out. You have
5 to make sure that you work that way because you can
6 quickly lose consumer trust.

7 A 60 Minutes program, something like that,
8 can destroy your business, so I think that that's a
9 big downside for businesses.

10 The upside is that you can try and grow and
11 expand and give people who don't have as many
12 choices more choices and so forth, but you can, if
13 you are reckless, totally destroy your business
14 with some mistakes.

15 MS. RICH: I'll take Jason, and we'll move
16 on.

17 DR. CATLETT: Thanks. Building on Jerry's
18 point there, it's not any danger to the individual
19 company. It's a danger to the collective trust by
20 consumers of companies and the technologies.

21 I would refer you to another Harvard
22 Business Review article by Susan Fornia called
23 "Preventing the Premature Death of Relationship
24 Marketing" in which she tells -- gives an example
25 of a supermarket with a loyalty card that would

1 send out personalized letters saying, You haven't
2 bought X lately, why don't you come in and buy some
3 more.

4 And of course, inevitably some woman became
5 pregnant, and the company -- the supermarket sent
6 out a solicitation saying, Why don't you come in
7 and buy some more tampons.

8 There are a number of similar horror
9 stories. We heard the miscarriage example this
10 morning. We've heard the prison inmate sending the
11 personal letter to Beverly Dennis.

12 It's very difficult to quantify the degree
13 to which the average consumer is aware of these
14 horror stories, but I think that the American
15 public is largely aware that they have very few
16 rights in these cases. The company takes a PR hit.
17 They change supplier, but what about the individual
18 whose data was used inappropriately?

19 And I submit that the American consumer,
20 under current law in the U.S., has inadequate
21 recourse.

22 MS. RICH: Well, in addition to these
23 issues Jason has just raised about how consumers
24 are affected, I think the main concern for
25 consumers that I heard identified in the opening

1 statements was whether the practices are
2 transparent to consumers.

3 Mary, you're nodding. Would you like to
4 expand on the points you raised earlier in the
5 panel?

6 MS. CULNAN: I just don't think people know
7 what's -- the average consumer knows what's going
8 on, and then the problem is, and it exacerbates the
9 trust gap, that people are surprised. Then they
10 become unhappy.

11 And it's when -- wasn't what they were
12 expecting, wasn't the bargain that they bought
13 into, and so then they write to their members in
14 Congress or they do whatever, there end up being
15 stories in the newspaper, et cetera, and it causes
16 a lot of problems for the collective business
17 community.

18 One of the things I forgot to mention
19 before too, the people who were sort of the least
20 trusting and the more concerned about privacy and
21 the least willing to disclose were also the ones
22 who were most likely to favor legislation, so I
23 think there's a take-away there.

24 I think the industry can do a lot to help
25 educate people as they've done in other areas,

1 online privacy, kids privacy. There were some
2 terrific presentations at today's sessions. Why
3 not put them up on the Web? Why not try to get
4 people to go there?

5 I think the DMA can play a big role in
6 terms of trying to push your members along to do
7 better disclosures by putting -- changing the model
8 disclosures in the compliance manuals to be more
9 forthcoming about what is really happening to your
10 information when it's shared or when you provide
11 it. I think -- go ahead.

12 MS. RICH: Before we talk about this issue,
13 could somebody, Jerry, Brian, somebody describe
14 what kind of notice is being provided regarding
15 these practices?

16 MR. CERASALE: I can start this at least.
17 Notice has been provided by catalogers, for
18 example, for an awful long time, and the notices
19 generally -- I have a box of catalogs I was going
20 to give Martha, I forgot to do it, I'll do it later
21 now, that show on the order forms, basically is
22 where they are, mailing, preference service
23 information, so forth on how to, and they state
24 basically that information is shared with third
25 parties to send you -- to market to you offers that

1 you might be interested in, and if you don't want
2 that, either call this number or write to us here.

3 MS. RICH: Does that encompass --

4 MR. CERASALE: That's the notice that
5 generally comes in the off -- I would say in the
6 offline world.

7 Online is a little different in the sense
8 that there's more space. The real estate is fairly
9 inexpensive, and some privacy policies are very
10 lengthy, as some people have heard when they went
11 to testify up on the Hill, a little bit too long,
12 so they can -- some of them are a little bit more
13 detailed in the offline world.

14 Plus if you have a network advertiser on
15 there, you have to add -- there's a whole slough of
16 more notices that are required.

17 MS. RICH: When you say the notice says we
18 share with third-party, does that include sharing
19 with compilers?

20 MR. CERASALE: Yes, that's the way it is
21 today, sharing with third parties for marketing
22 purposes to send you offers, and it does say for
23 marketing purposes, and that's where DMA requires
24 it be for marketing purposes as well, but that
25 would include that at this point, yes.

1 MS. RICH: Do the notices talk about
2 bringing in data from third-party sources and to
3 provide overlays or other enhancements?

4 MR. CERASALE: Generally the examples I
5 have with catalogers, they do not.

6 MS. CULNAN: I would say, first of all, I
7 think again saying you share for marketing
8 purposes, most consumers understand that if you buy
9 X, you get Y where Y is the same industry as X, but
10 they don't understand compilers.

11 Second thing -- and now I've forgotten what
12 I was going to say.

13 MS. RICH: We'll come back to you.

14 MS. CULNAN: Oh, oh, oh. The enhancement
15 thing, I have seen -- there was one excellent
16 financial services notice about enhancement that
17 basically said, We do profiling, we do data mining,
18 we acquire third-party data, non credit report
19 data, to understand how you use our card and we use
20 this to serve you better, and they had an opt-out
21 form right with the notice, and you could mail that
22 back or call the 800 number.

23 Unfortunately, with the Gramm Leach Bliley
24 requirement, that doesn't cause companies to have
25 to specify how they're going to use information,

1 just what they collect and who they disclose it to.
2 That very nice statement disappeared from the Gramm
3 Leach Bliley notice that this company has sent out,
4 which is now their de facto privacy notice.

5 So I think that's an issue that's probably
6 not going to get Congress to act on it, but again
7 more disclosure I think makes people more
8 comfortable.

9 MS. RICH: Fred, were you going to address
10 this point?

11 MR. CATE: Yes, and I have to say I am
12 genuinely confused, and that is we talk a lot about
13 transparency and that we all want transparency and
14 we want more transparency, we want more disclosure.

15 On the other hand, we know as a statistical
16 matter people don't read these, and therefore we're
17 saying we're going to make ourselves feel better
18 about privacy because we're going to mail a lot
19 more notices to people so they can throw those
20 away, but we can then say we've met disclosure
21 obligations.

22 And what I wonder is if there isn't a
23 better way, in other words, if there isn't a way to
24 make -- to go back to that point.

25 I mean, two things that have been said.

1 One is people don't want to be bothered, period. I
2 think you could just stop there. It doesn't need
3 to be qualified. They don't want to be bothered
4 with privacy notices any more than they want to be
5 bothered with anything else.

6 And if you want empirical evidence of that,
7 just go home and set your own browser so it asks
8 you every time you get a cookie and see how long
9 you live under that system.

10 You just don't want to be bothered. I
11 mean, it's that simple. You will set the default
12 to accept all cookies or you will stop browsing on
13 the Internet. I'm only describing 97 percent of
14 the population. I know there are three of you out
15 there who will be different.

16 So is there a better way to provide to get
17 rid of the surprises, if you will, yet recognizing
18 people really don't want to be sort of educated
19 generally about this? I mean, as a professional
20 educator, I know how hard it is to hold the
21 attention of anybody at any time, but the idea of
22 providing sort of a lesson on privacy at point of
23 sale, it's a little easier maybe on the Internet.

24 But it also comes back to that problem of
25 thinking specifically about when are we talking in

1 a transaction and what is the impact on the
2 consumer depending upon when that is?

3 At time of collection it's probably much
4 easier, Why am I asking you for this information,
5 here's why I'm asking, but that requires of course
6 that we're only talking someone who is dealing
7 directly with the consumer. We're not talking
8 about any third-party activity there, and we're
9 talking about they're going to anticipate all
10 possible uses at that moment.

11 And of course remember that notice, if it's
12 complete, will be criticized as being overly
13 detailed, and if it is incomplete will be
14 criticized as forming a contract that doesn't
15 include all of its correct terms.

16 But what I worry about is the later use.
17 Back to the AOL example, AOL decides it wants to
18 start mailing disks to people's houses. It didn't
19 have any dealings with any of those people. It had
20 no chance to talk about consent with any of them.
21 It can't mail them notices for consent because to
22 do that, it would have to use the very information
23 we want them to get consent before they use.

24 What are they to do, buy ads educating
25 people, I'm a start-up business. You have \$3 in

1 your pocket but you can buy an ad in the New York
2 Times saying, let me educate you about something we
3 know the public is not interested in generally
4 being educated about?

5 I think it's a real conundrum that frankly
6 none of us, and I'm certainly including me, have
7 done a very good job getting at.

8 MS. RICH: Evan?

9 MR. HENDRICKS: That's why I brought up
10 earlier, I think it has to be case by case. I
11 think we have to be practical here because nobody I
12 know in the privacy advocacy community wants to see
13 bad things done in the name of privacy.

14 That's why I brought up with the magazine
15 publishers, How about putting a box at the bottom
16 of the card? It's not going to cost you anything.
17 A lot of people -- and it's opt-out, which is the
18 altar that many people here are praying at, and
19 still there was no willingness to commit to
20 anything like that, and I think that evidence is a
21 certain level of bad faith, to be frank.

22 I think the one -- the other thing I fear
23 is like the two real harms to privacy, the most
24 extreme harms are identity theft which is supposed
25 to be the fastest growing crime in the U.S., and

1 information brokers, the guys that get your
2 information.

3 And for many years the credit reporting
4 agencies have been the easiest target for those
5 people, and I think because of litigation under the
6 Fair Credit Reporting Act and business cases and
7 settlements and losses, the credit reporting
8 agencies, you're going to see them tightening and
9 tightening and tightening the procedures and
10 protections against those two threats.

11 And what you're going to see is the
12 identity thieves are going to be turning to these
13 other sources of data, and so when the marketing
14 material says this will only be used for marketing
15 purposes, I think there's a real warning cloud out
16 there about these existing threats that you can
17 anticipate.

18 And finally, I have to point to the
19 ToySmart case which the FTC is familiar with. I
20 mean, here's a company that had a privacy policy.
21 It went bankrupt, and its privacy policy lost out
22 to its fiduciary duty to in that case the trustees
23 and the bankruptcy, that they had to sell their
24 data.

25 And I think that if a marketing company

1 basically says they only want to sell this
2 information for marketing, but if certain revenue
3 streams and opportunities come up which says that,
4 Well, you can sell more individual profiles for
5 different purposes for screening, then that's going
6 to create the same quandary because that
7 corporation will have a fiduciary duty to its
8 shareholders to go after those revenue streams.

9 MS. RICH: We'll take Greg and then Jason,
10 and then we'll open it up for questions.

11 MR. MILLER: Just a quick couple of points.
12 One, I also was sort of surprised this morning
13 about the response with regard to the check box on
14 the bottom of the card.

15 For some empirical data from the
16 entertainment industry from the focus groups we've
17 been working on, we actually got quite a different
18 result. We discovered that if we engage consumers,
19 a trust relationship was built.

20 We started to minimize the notion of
21 surprising, and we actually found there was an
22 updraft or an uptake in people opting in if you
23 gave them the permission to opt-in.

24 I think one of the big fears about this,
25 from the marketers is that, Gosh, if we start

1 asking people for permission, they're going to say
2 no. That was a suggestion this morning that was
3 made that, no, people won't fill it out. They'll
4 actually not opt-in. In fact, we find -- we have
5 empirical data that shows they will.

6 Another point we found out is nobody reads
7 the privacy policies, as Professor Cate observed
8 correctly, and we once we started describing to
9 people the notions of data gathering and what can
10 be done with it, that was really what started
11 sending people into a tizzy because, let's face it,
12 people have no idea what an aggregator is.

13 They don't know the difference between an
14 aggregator and a marketer. They couldn't recite
15 that slide up there to make a conscious decision
16 about whether they should participate or not, and
17 as you begin to educate them, you end up drifting
18 into this rat hole of technicalities and nuances.

19 So we had that problem, and to speak to Mr.
20 Cate's notion of what do we about it, one thing
21 that we have been experimenting with is the sort of
22 interactive privacy policy, and it was because on
23 advice of legal counsel, somebody started saying,
24 Guess what, it turns out it's not really a policy,
25 it runs more like an agreement, like a terms of

1 service agreement. We're going to find that a
2 privacy policy is in fact a contract, and that sent
3 up the red flag.

4 And we said, Okay, so we need to reengineer
5 the privacy policy and be an interactive document,
6 so what we did with the JOIN program is that we
7 asked people to actually read through the policy,
8 meanwhile in the back while we're consorting their
9 data and setting up their locker, and we asked them
10 to click off a check box between each major section
11 in the privacy policy.

12 And we started compiling that data to see
13 which sections people were reading and what they're
14 doing with it. It also gave us some affirmation
15 that they had at least seen the privacy policy,
16 whether they were going to do anything about it or
17 not, and we found that that was pretty instructive.

18 And then finally the last thing was that in
19 the focus groups that we ran, and they were in New
20 York and Texas and North Carolina and Seattle,
21 Washington, Los Angeles as I recall, it turned out
22 that the most common thing that people reacted to
23 about what would happen with their data was again
24 being surprised, being bothered, not being left
25 alone.

1 They didn't give permission to get that
2 piece of mail or that announcement or whatever, and
3 the second thing, identity theft. The second most
4 popular concern turned out to be identity theft,
5 and this is data, talking to people who are
6 consumers of musical and video entertainment and
7 are looking for ways to get that through the
8 Internet.

9 MS. RICH: Jason?

10 DR. CATLETT: Thanks. I think the solution
11 to Fred's conundrum about transparency is to
12 guarantee each individual access to the data about
13 them. If you think transparency means putting up a
14 long notice, I think that's very much mistaken.

15 Let's take the analogy with the federal
16 government departments. I don't read the mission
17 statement of every federal government department
18 that might have personal data about me, but I know
19 that if I think they're doing something wrong, I
20 can put in a FOIA request, find out the specific
21 data they have and see if I need to fix something
22 there.

23 So I think a similar principle of
24 transparency would provide a lot of assurances
25 about direct marketing companies. Unfortunately,

1 and other trade groups and companies have refused
2 not only to give general access to marketing data,
3 but also even at this workshop to show us specific
4 examples of known individuals who have consented to
5 it.

6 I think that's astonishingly arrogant, and
7 that the FTC should have a forceful response to
8 open up that transparency to the degree people
9 want.

10 MS. RICH: Let me follow up. Jerry, when
11 you said that the privacy policies, when they in
12 general talk about sharing with third-parties and
13 that encompasses sharing with compilers, is that --
14 some of the comments here made me realize we may
15 not have -- I didn't understand your response.

16 Does it actually discuss sharing with
17 compilers?

18 MR. CERASALE: No, no. It's sharing with
19 third parties. The view of DMA is that data that
20 is shared should be subject to a notice and an
21 opportunity to say no, and that data can be shared
22 with third-parties for marketing purposes and
23 compilers.

24 And I think Win talked about making sure
25 the information they received had come from

1 marketers that had given notice and opt-out, so
2 that's where it's at.

3 As far as the general common notice, there
4 is no statement concerning compilers at this point.

5 MS. RICH: We'll go to questions, but if
6 Fred and Evan could -- did you want to say
7 something?

8 MR. HENDRICKS: Go to questions.

9 MS. RICH: Fred, did you have something
10 very quick to say.

11 MR. CATE: I just wanted to say, there is
12 now a data set, which Jason has reminded me of, and
13 that is if we're going to talk about the federal
14 FOIA, there's excellent data under what access
15 under FOIA costs, about the litigation it generates
16 and about the amount agencies spend on it.

17 At some point in the late 90s the agencies
18 stopped collecting data because the process of
19 collecting that data was high, but certainly for
20 the preceding 20 years, there's excellent data
21 which would be easily available to the Commission
22 on what complying with an access regime costs.

23 MS. RICH: I saw some questions in the
24 audience, lots of questions. This gentleman right
25 here was holding his hand up earlier, right here

1 with the gray or the -- I can't see in the light.

2 MR. O'HARROW: I don't know if this is
3 going to work. I'll talk into it.

4 MS. RICH: Could you say your name?

5 MR. O'HARROW: Robert O'Harrow. I'm a
6 reporter at The Washington Post, and I have written
7 a little bit about this over the last couple years.

8 MS. RICH: I didn't know who he was when I
9 called on him.

10 MR. O'HARROW: That's okay, and excuse me,
11 and one thing I thought was very interesting, and
12 I've actually noticed it for several years is the
13 discussion oftentimes found its way back to the
14 question of whether or not the use of data
15 warehousing, data mining and so on increases or
16 reduces the mail that an individual receives at
17 home.

18 And then the discussion sort of surrounds
19 that for quite awhile, and I guess I wanted to sort
20 of raise a question of whether that's really the
21 issue. It seems to me that in some ways it used to
22 be the issue, but in many cases it might be a
23 canard that tends to distract us from the larger
24 issue at hand, which I think is profiling.

25 And so I wanted to sort of raise that as an

1 open ended question, of whether or not that's
2 something that's salient at this point.

3 Secondarily, there was an assertion up
4 there that people don't want to be educated, and I
5 think what I've found in interviewing many, many
6 people and industry folks, academics and so on is
7 that the reality is that people don't want to read
8 legalistic privacy policies that are written to
9 meet a very low threshold for privacy disclosure.

10 I find it very difficult, and I've read a
11 lot of them, and some of them I've actually
12 understood. In fact, I would have to say as gently
13 as possible that I don't think anything could be
14 further from the truth, and that at my paper, it's
15 one of the most widely read subjects that we've
16 written about and that people can't seem to get
17 enough of true, clear, explanation.

18 And oftentimes a clear explanation will
19 create a great deal of anxiety which, to loop back
20 to my original assertion about the direct marketing
21 and the mail and so on, the real issue, is the
22 question is, Do people want to feel like they're
23 being watched, and charted without their
24 permission?

25 Just some food for thought or if anybody

1 wants to address that.

2 MS. RICH: Evan?

3 MR. HENDRICKS: Yes, thank you. I think it
4 is because some of the steadiest pollings by Lou
5 Harris and through the 1990s was, "Do you feel like
6 you're losing control of your data," and that was
7 the issue.

8 And, of course, the direct marketing
9 industry is in the business of sending out mail, so
10 they're going to try to refocus the issue there,
11 but the truth of the matter is what's driving this
12 issue is people feel they're losing control of
13 their data, and they don't like it, and they would
14 like something to be done about it.

15 MS. RICH: Fred?

16 MR. CATE: Yes. I think on the education
17 point, of course it's exceptionally well taken. If
18 you write it in language that people don't
19 understand, they're less likely to perceive it.

20 I think, however, the issue goes much
21 farther than that, and I think probably everyone in
22 the room would know it, and if you want to try a
23 test, have The Washington Post when people call to
24 subscribe or to buy classified ads read the first,
25 say, page of their privacy policy on the phone to

1 them, people aren't overly interested.

2 They really didn't want to go on. They
3 want the service. They couldn't care less. Let's
4 move ahead. It might be different if you were
5 going to a doctor or something, very contextual.

6 I understand that, but I think the problem
7 is, is when we talk about transparency, whether we
8 mean notices or that you tell everything you do or
9 you make it possible for them to find it, that
10 there really is a reality that people are not that
11 interested in that they love great stories. They
12 love human interest stories and all of that.

13 But to describe the data processing
14 operation of a corporation, to have anyone do it,
15 the best marketer in the world, I just don't think
16 it can be done.

17 MR. O'HARROW: If I could add one follow up
18 thought, which I think is interesting. One of the
19 things that's interesting here is without a doubt
20 that without a doubt, people love the services,
21 even if they don't know how it's done.

22 There's no question, people are loving the
23 personalized services. They're climbing on to the
24 stuff like crazy, and it's definitely the future of
25 business in our time.

1 Yet, when they find out how that service is
2 provided, and not just necessarily in a human
3 interest story, but let's say an analytical story,
4 they find -- we find that oftentimes they get
5 freaked out, and they're not so sure they like the
6 service under the terms that they've taken it.

7 MS. CULNAN: Jessica, can I add just one
8 quick point? I think we don't really know a lot
9 about sort of the consumer process of learning
10 about this and what really works. We haven't done
11 a lot of research, and I think it's an area where
12 now that we've moved past sort of the, yes,
13 everyone is concerned about privacy kind of surveys
14 that are coming in, is to really do some academic
15 research.

16 What are the trade-offs people make? What
17 kind of notices make sense? I think the idea that,
18 well, notices are too hard to understand so let's
19 not have any notice at all is a bad idea, just my
20 personal preference.

21 There's also a lot of research that's
22 looked at justice, fairness, because this is what
23 this is really about, treating people fairly, and a
24 lot of times people may not want to read the policy
25 or they may not want to exercise their rights under

1 some kind of a justice system, but they want to
2 know that they have the rights, and that then makes
3 them more comfortable in participating, and it
4 makes them think things are fair.

5 So even if they don't click on the privacy
6 policy, they may want to see that link.

7 DR. CATLETT: Just to comment on Robert's
8 observation that people like the product but when
9 they found out how it's made, they're not so sure,
10 it reminds me of Prince Von Bismark's remark that
11 the less people know about what goes into making
12 laws and sausages, the better they'll sleep at
13 night.

14 I think that the food analogy is a useful
15 one here. Congress passed the Pure Food Act in
16 1904. It didn't actually say you couldn't put
17 cocaine into the Coca-Cola. They said you just
18 have to label the fact that you're putting it in.

19 And I think that transparency in terms of
20 actually showing us the data about you and what
21 goes into making it is part of enabling consumers
22 to have a real choice about whether they want to
23 buy or participate in that product.

24 MS. RICH: Let's take the next or a few
25 more questions.

1 MR. LE MAITRE: I'm sorry, I was going to
2 respond on the point, Am I losing control of my
3 data. My name is Marc Le Maitre. I work at
4 Nextel.

5 I moved to the U.S. about four years ago,
6 and I started from ground zero literally. Nobody
7 had anything on me, including the credit reporting
8 or anything, and the first pieces of mail and the
9 first unsolicited phone calls were actually quite
10 welcome. My wife engaged the gentleman on the
11 phone for an hour and a half. She didn't buy
12 anything but was delighted to receive the phone
13 call.

14 It actually taught me a lot about the
15 community that I moved into, so I actually welcomed
16 it, but it's now got to the point now where I can't
17 sit down in the evenings to dinner with my children
18 without getting an unsolicited phone call.

19 And I think it's got to the point now where
20 I -- at first I knew exactly who it was who was
21 abusing it. The first company I gave my
22 information to was my bank. I will not say which
23 bank, unless you ask me afterwards, but it's now
24 got to the point where I bought a DVD player two
25 weeks ago, and I was getting unsolicited requests

1 to join clubs to buy DVDs.

2 And so some of it is good. My question is:
3 Where is it going to end? I don't have a great
4 deal in the way of health information in this
5 country yet, so I still don't know whether that's
6 being abused.

7 Financial information I'm fairly confident
8 is being used without my knowledge, but working in
9 the wireless industry, things like location
10 services, where will it end? At which point do I
11 say, This data is sacrosanct, you cannot have
12 access to it, or will I have the opportunity, or
13 will it just be taken for granted that this is just
14 another piece of information that can be used to
15 market to me?

16 MS. RICH: Does anyone want to respond?

17 DR. CATLETT: Your video rental records
18 are sacrosanct according to Congress.

19 MR. LE MAITRE: But not DVDs.

20 DR. CATLETT: I know the fact that you
21 bought a DVD is not sacrosanct.

22 MR. HENDRICKS: Okay. I think that to
23 answer your question in the short run, no, you will
24 not have that right. I don't there's any realistic
25 chance in the next six months to nine months that

1 significant legal protections for privacy and
2 individual's personal information will be passed.

3 I don't think the current power machine and
4 the administration in the Republican leadership is
5 interested, and so I think this is more of a long
6 term struggle.

7 MS. RICH: The gentleman on the left there?

8 MR. BEHRENS: If this is working, I'm Ed
9 Behrens with the Progress and Freedom Foundation.

10 I wanted to follow up briefly on Mr.
11 Miller's comments on providing notice, choice, et
12 cetera, in the interest of serving consumers, but I
13 think there's two dimensions to the question.

14 One is: Should they be provided? The
15 second is: Should they be mandated? And I think
16 that's a separate question.

17 And I would like to draw out the panel on
18 the practical ramifications of mandated principles
19 versus not, both beneficial and adverse.

20 Thank you.

21 MS. RICH: Who would like to respond?

22 MR. CERASALE: Sure, what the hell? I like
23 to use an example of a business model that would
24 not be allowed by the DMA guidelines and decide
25 whether or not we want to outlaw that business

1 model.

2 You go to my Web site, Jerry Cerasale.com,
3 and the first thing you see, notice, and I sell
4 radios, so it's a commodity. I try and sell you,
5 provide you these radios at the lowest price
6 possible. I hold down costs as much as possible.
7 In that light I share and rent your information to
8 others and provide the savings on to you.

9 I do not provide you the opportunity to not
10 participate in this sharing. I do not provide
11 access opportunity to you because both of those
12 things will increase my costs and therefore
13 increase the cost of my goods to you. If you don't
14 like this, please, please shop elsewhere.

15 Is that business model illegal? And that's
16 what most -- a lot of people discussing would make
17 that an illegal business model. I don't think
18 that's where we should be.

19 MS. RICH: If people are willing to go a
20 little bit into the break, we could take some more
21 questions, and it looks like everyone wants to ask
22 questions.

23 MR. HENDRICKS: And, Jessica, just quickly,
24 the OECD guidelines were adopted in 1980 and
25 endorsed by the United States government and all

1 Western, European and Japan and Canadian.

2 Yes, I would say we want to see those
3 guidelines incorporated into law across the board,
4 yes.

5 MS. LEGIEREM: (Phonetic) My name is Ann
6 Legierem with a banking agency, and my question's
7 really with as far as I'm a consumer, this morning
8 there were statements made that best practices
9 would have it that marketing associations disclose
10 that you're going to share the information or
11 whatever.

12 And I was wondering if there's any kind of
13 figures that you collect that you really have an
14 idea of how many do really make disclosures to
15 their consumers.

16 And then as a consumer, a mother and all, I
17 saw an article on the CNN Web site recently, about
18 two weeks ago, about how schools had -- the kids
19 were surfing the Internet I think as part of their
20 classroom studies, and there was a marketing
21 company who had software on the computers.

22 They were following the click streams.
23 Well, the parents didn't know about it, but then
24 that, like the dynamic pricing, somebody tripped
25 over it, found out about it, caused an uproar, it

1 was pulled.

2 So I guess what I'm saying is this morning
3 representations were made about -- representations
4 were made about, Well, our best practices are that
5 we disclose to consumers but I'm wondering in
6 reality how many really do.

7 MS. RICH: Would anyone like to respond?
8 Jerry's on the hot seat.

9 MR. CERASALE: DMA has a privacy promise
10 that requires disclosure. We have an FTC letter
11 exempting us from antitrust problems as long as we
12 can kick people out. There are 3,000 marketers,
13 3,500 marketers that have signed it.

14 I would say that 80 percent of the mail you
15 receive is probably from members of the Direct
16 Marketing Association, and so we have -- so those
17 are the numbers we've got. We have our own mail
18 preference service, telephone preference service to
19 pull people off of lists.

20 There are well over 3 million names on each
21 of them. They're free to consumers to get on, and
22 so those are the numbers that we have, so the major
23 marketers who are members of ours do direct
24 marketing, which are some of the largest marketers
25 in the country, do provide notice and an

1 opportunity to say no.

2 They in a sense would not follow that
3 business model I just mentioned.

4 MR. LANE: Can I just make a comment
5 getting back to Mr. Behrens' comments about
6 federally mandated laws?

7 I think what this panel has shown, for the
8 most part because it was supposed to be empirical
9 evidence about the effects of mergers and
10 acquisitions or mergers and exchange on consumer
11 businesses, and there are reports that are
12 beginning to come out to highlight what some of the
13 costs are.

14 But I think what we have found is we don't
15 have a lot of information, that we are just looking
16 at the impact that information sharing has on the
17 overall economy. Who is in Mary's first survey on
18 Web sites and who has privacy policies and who
19 doesn't and what impact that has on consumers.

20 We have the Forrester research that says \$2
21 billion lost on Internet sales. Are they real?
22 What other information do we have?

23 So from our point of view, what our biggest
24 concern to get to federally mandated legislation is
25 that we don't have enough information on what harms

1 are we trying to address specifically and how those
2 harms -- and the cost benefit ratio of those harms
3 and where really are the American people.

4 We know the American people are concerned
5 about privacy. We all know that. That's why this
6 room is filled. Yet we don't have the details of
7 what are those concerns, the next five layers below
8 that, and I think before we move forward in any
9 federal legislation, we need -- or state
10 legislation -- we need to get a little more
11 dynamics and not the rhetoric that we constantly
12 hear across the board on both sides, but some real,
13 factual data of what are we talking about.

14 And I don't think we're there yet, and this
15 panel is a perfect example. We don't have a lot of
16 facts. We're all saying the same rhetoric that
17 we've been saying for five years now. Yet nothing
18 has improved, but we're beginning slowly to get
19 information, and that's critical.

20 MS. RICH: The gentleman back here?

21 MR. MEISINER: Thank you, Madam Chair.
22 Speaking of facts, my name is Paul Meisiner from
23 Amazon.com. I have to do this stand up routine
24 now.

25 Maybe it's the lack of oxygen in this room,

1 but I understand it was alleged that we engaged in
2 dynamic pricing last fall. In fact, there was
3 apparently some long description of how this
4 so-called dynamic pricing was discovered.

5 But let me assure you that policy making is
6 difficult enough based on facts, but when it's
7 based on fiction, it cannot go right. We did not
8 engage in dynamic pricing. We never have, and we
9 actually have promised never to do it, even though
10 it would be perfectly legal for us to do so.

11 Let me repeat, back last fall we engaged in
12 some random price tests where we would serve up
13 different prices to consumers based on when they
14 came on. If you were the same person sitting at
15 the same terminal, same browser, you hit our site
16 several times, you're going to get a different
17 price for the same item.

18 The whole idea was to figure out where to
19 price the item. Well, random, again based not on
20 demographic information. It was not a privacy
21 issue, full stop.

22 Well, we got a lot of flack for it and
23 rightfully so. It confused our consumers, our
24 customers, and we regretted doing it.

25 As a result what we did is we promised

1 never to engage in dynamic pricing ever again,
2 something that would be perfectly legal for us to
3 do, and then we went and refunded all of our
4 customers, even the ones who had paid willingly 12
5 bucks for a CD.

6 We went and refunded them the difference to
7 the very lowest price, and we said, If we ever in
8 the future ever do this random price testing again,
9 we'll do the same thing so that everyone will
10 always pay the lowest price.

11 Frankly we're being held to a much higher
12 standard than other businesses are being held to,
13 but I think frankly it really pains us all when we
14 have to sit through one of these meetings and find
15 out that what has been discussed here is factually
16 inaccurate.

17 DR. CATLETT: Paul, I don't think I
18 misrepresented that Amazon did the random pricing.
19 I think I said that it was accused of -- we'll have
20 it in the record.

21 MS. RICH: Ted Wham has a quick comment,
22 and then we'll take one more question, and I think
23 everyone wants to splash water on their face, it's
24 so hot in here.

25 MR. WHAM: Ted Wham with Database Marketing

1 for the Internet. I had one quick statistic I
2 wanted to share. I previously worked at
3 Excite@Home, and when I was there, I was the Chief
4 Privacy Officer among several hats that I wore at a
5 rapidly growing company.

6 There was a segment on 60 Minutes regarding
7 Internet privacy. It was approximately two years
8 ago, two and a half years ago. Jason Catlett
9 actually was one of the speakers on that session
10 just describing -- so you hold it closer, it works
11 -- describing the risks to the consumer on the
12 Internet basis.

13 We were asked by 60 Minutes to participate
14 as one of the companies being interviewed, and we
15 originally said yes, and then we went, Oh, God, we
16 don't want to do this, and we said no.

17 And because we additionally owned a
18 third-party ad serving firm, MatchLogic, we were
19 concerned that we were going to be targeted within
20 the segment and wanted to be very prepared, so we
21 went full out and made certain everything was
22 aboveboard, and we went through the privacy policy
23 links, privacy policy on absolutely every page of
24 the site, where they remain I believe to this day,
25 and really tried to make certain that we were

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1 ready.

2 The day immediately following the airing of
3 one of the top five most watched television shows
4 in the United States where portions of our site
5 were shown and the risks to consumers of privacy,
6 Excite@Home, as it does every day for the past year
7 or so forth, received over 20 million unique users
8 visiting the site that day. If my recollection is
9 correct fewer than 100 of them accessed our privacy
10 policy links.

11 The notion that consumers want to take --
12 now, you can argue whether the privacy policy that
13 I wrote was easily readable and comprehensible and
14 so forth, but only a hundred people got there to
15 find out.

16 The notion that the consumer is interested
17 in learning about this and spending the investment
18 I think is mistaken. I think the comments that
19 Fred brought up, Fred Cate brought up that most
20 consumers want to have, quote, privacy, don't
21 bother me with the details, is much, much more
22 accurate.

23 MS. RICH: One more quick question, and the
24 gentleman over here.

25 MR. SMITH: Yes, Richard Smith, The Privacy

1 Foundation. One thing we're hearing a lot about,
2 how profiling and gathering of consumer information
3 benefits businesses.

4 I've heard very little about cost, other
5 than two very interesting numbers. One person said
6 acquisition costs today for E-commerce sites was
7 \$2,000 a customer, which is probably on the high
8 side, but I don't know of really any business,
9 other than maybe the yacht business, that could
10 afford that.

11 And then also the issue of the credit card
12 offers, that the number that are going out is going
13 up dramatically in the last two or three years. At
14 the same time the response rate inversely
15 proportional is going down at the same rate.

16 So I'm wondering here in business how much
17 feedback in the process is really going on. Were
18 these online and data gathering things cost
19 effective really or is it just we're on a sled here
20 and we're heading in this direction and we'll go
21 on?

22 Thanks.

23 MR. LANE: I think a lot of businesses, and
24 if you look at the downturn in ad revenue on the
25 Web sites, as we all know, they're hurting, in the

1 newspaper industry where San Jose Merc is laying
2 off hundreds of people because ad revenue is
3 dropping, and companies are beginning to
4 reevaluate, Is it worth spending \$2 million
5 advertising on the Super Bowl.

6 I think there's a wholesale looking at what
7 is the best way to reach out to your customers, and
8 that is the whole goal, but what I think is great
9 though, having said that, there hasn't been a lot
10 of facts in terms of pure data and research from
11 this panel.

12 What I think has been very important, and
13 one of the reasons why I was one who supported the
14 FTC putting this workshop together, was we do have
15 an education process to consumers of how
16 information is used in the economy.

17 And I think the other previous panels were
18 better at doing that than maybe this one, but I
19 think once you have a better understanding, I think
20 there will be less fear, and the trust deficit will
21 be reduced once there is again an educated
22 consumer.

23 And so I appreciate and I wanted to thank
24 the FTC for putting this forth to begin our efforts
25 at having the business community focus our efforts

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1 on educating consumers on I think these critical
2 issues because they are all about how our economy
3 is going to grow and work in the future.

4 MS. RICH: Thank you. Finally we're at our
5 break. If you could keep it at a short break since
6 we did get into the break, maybe five minutes, and
7 then come back, maybe we can try to open the
8 window.

9 (A brief recess was taken.)

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1 SESSION 5: EMERGING TECHNOLOGIES AND INDUSTRY
2 INITIATIVES: WHAT DOES THE FUTURE HOLD?

3

4 DANA ROSENFELD, Assistant Director, Bureau of
5 Consumer Protection, FTC, Moderator

6

7 PANELISTS:

8

9 JOHN KAMP, Counsel, CPExchange

10 LAWRENCE PONEMON, Founding Board Member,

11 Personalization Consortium

12 BECKY RICHARDS, Director of Compliance and Policy,

13 TRUSTe

14 ARI SCHWARTZ, Senior Policy Analyst, Center for

15 Democracy and Technology

16 RICHARD SMITH, Chief Technology Officer, Privacy

17 Foundation

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SESSION FIVE

EMERGING TECHNOLOGIES AND INDUSTRY INITIATIVES:

WHAT DOES THE FUTURE HOLD?

- - - - -

MS. ROSENFELD: Okay. Everybody, we're getting ready to start our last panel of the day. Please take your seats. Please take your seats. Thank you.

Welcome, everyone, to our last panel of the day. I'm Dana Rosenfeld. I'm an Assistant Director in the Office of the Director and the Bureau of Consumer Protection.

Our final panel is entitled emerging technologies and industry initiatives, what does the future hold, which I think will be a very interesting panel.

We are going to discuss whether new technologies are emerging that will increase the sharing of detailed consumer data, and also we will focus on what self-regulatory initiatives are underway to address the privacy of consumer data in the merger and exchange process.

Our first presenter today is John Kamp. John is an attorney with Wiley, Rein & Fielding in town and serves as counsel for CPExchange. He has

1 extensive experience in privacy and other
2 regulatory issues through his work of over more
3 than ten years as senior vice president with the
4 American Association of Advertising Agencies, the
5 four As, and from his ten years at the FCC before
6 that.

7 CPEXchange Network is a volunteer
8 Consortium of over 90 business organizations. It's
9 dedicated to developing a vendor-neutral open
10 standard to facilitate the exchange of privacy-
11 enabled customer information across enterprise
12 applications.

13 CPEXchange facilitates the management and
14 promotion of customer relationships by businesses
15 across industry sectors.

16 Special data elements of the CPEXchange
17 specification support the development of privacy
18 policies by companies consistent with Fair
19 Information Practices.

20 And with that, I will turn the podium over
21 to John.

22 MR. KAMP: Thank you, Dana. As I'm
23 bringing this up, I must remind some of you, many
24 of you know that I'm a former college professor,
25 and as such, we former college professors know that

1 there is only one class in the day that's worse
2 than teaching an eight o'clock in the morning
3 class, and that's a four o'clock class.

4 So we're going to make this quick. We're
5 going to keep it lively and go forward from there,
6 and we also, as professors, know that we learn more
7 from our students, and thank you to the FTC for
8 organizing this today because I know that we all
9 have learned a lot.

10 The CPExchange is about consumers
11 generally, and one of the things I think as we've
12 listened today through the morning, we heard people
13 talking about it, was businesses who were doing
14 most of this, but they were doing it in order to
15 reach consumers.

16 And looking at our sort of then and now
17 kind of yin and yang here, this is about long-term
18 customer-focused relationships, about new business
19 processes, but it's mostly about high consumer
20 knowledge, mass customization, multiple channels,
21 proactive, integrated and highly responsive to
22 consumer preferences.

23 We want to know who are our customers, what
24 are their wants and needs, what are the economic
25 value of those needs, and how do we apply that

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1 knowledge and how do we focus on those consumers.

2 So the successful enterprise interacts with
3 consumers through many channels such as -- and has
4 many opportunities to understand those consumers.

5 The imperatives in all of this, this
6 customer driven, are protection of privacy, the
7 sensing and responding to consumers' needs,
8 satisfying those needs, reducing those costs to
9 consumers and increasing the shareholders' equity
10 of the company.

11 Looking at this, the CPExchange was really
12 designed to facilitate an enterprise's ability to
13 share consumer information internally in large
14 companies. Of course it's gone forward. It's no
15 longer just used, designed for consumers.

16 If you look at this model here, the
17 schematic here, the CPExchange core, the group got
18 together to look at the preferences, business
19 objects, whatever, also added the functionality of
20 the Web, most importantly through Dan Jaye, also
21 someone who is very familiar in these quarters, at
22 Engage Technologies, was part of the FTC Advisory
23 Committee on Access and Security, worked very hard
24 to develop the CPExchange privacy principles, which
25 are P3P compatible, and all this is an XML

1 schemata.

2 Looking at just the privacy declaration
3 component in the P3P compatible, you see in that,
4 you see very specific data elements for purpose,
5 retention and access, and looking just at one of
6 those, the retention component, you can see that
7 there are many data elements that make it possible
8 for this system, this protocol to ensure that there
9 is a face with the consumer.

10 Now, remember, CPExchange is not a data
11 aggregator or a business that's in the business of
12 aggregating these data. It essentially is the
13 development of a protocol that people can use, may
14 use. It's wholly voluntary, can be used by
15 companies for the purposes they wish.

16 But because in this -- in these late data
17 sensitive times, privacy times, it was created
18 during the period that the FTC was looking at these
19 privacy principles and customers were making their
20 preferences so apparent to companies, these privacy
21 elements were contained in it.

22 So quickly our summary slide, CPExchange
23 facilitates that customer awareness and focus,
24 enables corporate privacy policy implementation and
25 addresses the privacy preferences of the consumer.

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1 It's platform, vendor and application
2 independent, provides a comprehensive view of the
3 customer and the way that customer interacts with
4 the many facets of the enterprise, provides
5 granular privacy and an authorization model and is
6 designed to promote optimal query and reporting
7 systems.

8 We suggest that you, as you look at this,
9 remember that it's neutral, and it's open, and you
10 also can find more information about it by going to
11 the Web site CPEXchange.org.

12 Thank you.

13 MS. ROSENFELD: Thank you, John. That was
14 very succinct.

15 Our next presenter is Ari Schwartz. Ari is
16 a policy analyst at the Center for Democracy and
17 Technology, CDT. His work focuses on protecting
18 and building privacy protections in the digital age
19 by advocating for increased individual control over
20 personal information and expanded access to
21 government information via the Internet.

22 Ari also serves on the advisory committee
23 of the Worldwide Web Consortium and is a monthly
24 columnist for Federal Computer Week Magazine.

25 Ari?

1 MR. SCHWARTZ: Thank you. This is the
2 first time I've ever seen the windows opened up in
3 this room, and I kind of like it actually.

4 I'm going to talk about how technology has
5 both -- kind of the positive ways that these new
6 technologies can be used to protect privacy. The
7 story with most of these new technologies is always
8 bad news for privacy and good news for privacy.

9 In this case the bad news is you look at
10 XML technologies, technologies that allow companies
11 to tag information and exchange it more clearly and
12 more openly means that there's greater sharing and
13 that there's going to be greater profiling.

14 Richard Smith will go into this in a little
15 bit more detail, but the good news is that these
16 same technologies open the door for new types of
17 privacy enhancing technologies.

18 I'm just going to give you two examples of
19 this to kind of kick things off. At CDT we don't
20 build technologies, and that's for other people to
21 come up with those kind of -- these kind of
22 applications, but just to give some ideas of what
23 people have been talking about and what they've
24 been thinking about.

25 The first one is the idea of tagging data

1 collections with a current privacy policy using the
2 P3P vocabulary. John talked about this a little
3 bit, but I'm going to try to explain a little bit
4 more what P3P is and how other technologies can use
5 this.

6 P3P was really designed originally to do
7 business to-consumer transactions, to get at the
8 question that we heard on the last panel asked
9 maybe seven or eight times, about how consumers are
10 having trouble reading privacy policies, that
11 they're seven pages long, that they don't go there.

12 Ted Wham brought up the point that people
13 aren't going to a page. Well, having read many,
14 many, many privacy policies over the past six
15 years, I can tell you that I find them difficult to
16 read, and therefore I know how consumers must feel,
17 that you go to one, you don't really feel the need
18 to go to the next one if you're not going to be
19 able to understand it.

20 The idea of P3P was to allow a consumer to
21 put in their preferences, their expectations of
22 what they want to see out of a site and have the
23 site put in what their privacy policy is. When the
24 browser gets to that site, they match up, and at
25 that point the consumer has more control, and they

1 can decide whether to block that site. They can
2 decide whether to provide information. They can be
3 prompted.

4 Really that's up to the browser
5 manufacturer right now, and we're going to be
6 seeing some of these applications in the next few
7 months, but in order to do this, we had to create a
8 vocabulary because we went around looking for
9 vocabularies for privacy that went in to the real
10 details about retention, as John showed us.

11 And no vocabularies existed that really
12 gave kind of multiple choice answers in the way
13 that a Web site would need to be able to describe
14 it if P3P were going to work.

15 So we created this vocabulary. Let me see
16 if I can get it open now. I lost the mouse. Oh,
17 here it is. This mouse, okay.

18 So this is just the basic P3P vocabulary,
19 and we came up with these questions based on the
20 Fair Information Practices. The eight Fair
21 Information Practices in the OECD guidelines were
22 the starting point, but we really instead of --
23 because those are really at a high level and we had
24 to go into the detail and answer the multiple
25 choice questions underneath, we worked with -- this

1 is a P3P working group, worked with data
2 commissioners in the EU and in Canada, privacy
3 advocates, companies and others, and really built
4 this kind of -- the kind of questions that would
5 need to be answered.

6 But the idea here is that this is -- while
7 this was -- we originally came up with this
8 vocabulary to be used for business to consumers,
9 people quickly found out you can use this for
10 business to business as well, for sharing of
11 information.

12 You can tag this on and use it to help
13 companies audit internally or have third parties
14 come in and audit for them, to set up software that
15 controls the use of information so that you can't
16 send out, put people's Email addresses in the "to"
17 field when it has -- when individuals sign up to a
18 policy saying that their Email address would not be
19 shared.

20 There's a company called Privacy Wall
21 that's building this kind of software right now, so
22 there's a whole bunch of uses for this technology
23 not originally envisioned, but you can use this
24 vocabulary to answer that.

25 Also, there's the ability of access that

1 these new technologies provide. We heard a lot in
2 the last panel again about cost and how cost -- how
3 this was going to be -- that access was too
4 expensive for consumers, this was discussed a lot,
5 to provide to consumers.

6 Well, if companies can provide the sharing
7 between companies and make that less expensive,
8 then they can also make it less expensive to
9 provide it to consumers as well, and we shouldn't
10 be overlooking the fact that making it cheaper in
11 one aspect is also making it cheaper in another
12 aspect.

13 And then the final point here is the
14 question of how this is really going to work and
15 whether there will be market incentives for
16 companies to use this vocabulary, to use the new
17 access features, and that's still really
18 questionable.

19 This is obviously all stuff that happens
20 behind the scenes, and right now responsible
21 companies seem to be taking up these ideas, but
22 will it be wide spread practice? And the answer to
23 that is that we still don't know.

24 MS. ROSENFELD: Thank you. Ari.

25 Our next presenter is Richard Smith.

1 Richard is the Chief Technology Officer for The
2 Privacy Foundation, where he directs The
3 Foundation's research activities. He also has
4 primary responsibility for explaining The
5 Foundation's research findings to the media and at
6 public events like this.

7 Richard?

8 MR. SMITH: First of all, I want to thank
9 the FTC for inviting me to speak today, and I was
10 asked to actually look into the crystal ball here
11 to see where technology is heading in terms of
12 sharing more data, this idea of emerging
13 technologies increasing the sharing, and very
14 fortuitously yesterday, Steve Ballmer, the CEO of
15 Microsoft Corporation, gave a speech for the
16 Association of Computing Machinery, that's sort of
17 like the Bar Association for the lawyers in the
18 group here, gave a talk about XML which was going
19 to be my topic so I thought that was very good.

20 And I would like to quote from the article
21 that ZDNet wrote which said that XML as the lingua
22 franca of cyberspace would affect -- and it would
23 effectively clear away lingering barriers blocking
24 companies from exchanging information over the
25 Internet. And then the article goes along to talk

1 about the tools that are being developed to support
2 XML and so on.

3 What I found very interesting was there was
4 really no discussion of what kind of data is going
5 to be going back and forth, and pretty obviously
6 some of it is going to be about widgets, about
7 cars, packages and whatever, but it also is going
8 to be personal information, so the answer here,
9 looking into the crystal ball, is clearly yes,
10 we're going to see more sharing because tools are
11 being developed to make it easier to do.

12 There's nothing magical about XML. It's a
13 particular specification of how companies agree to
14 communicate data from one place to another, just
15 like English is a way that humans communicate.

16 The nice thing about it, it's very easy to
17 understand, and it's also human readable, so for
18 folks like myself who kind of like to look at
19 privacy practices of companies, it's actually going
20 to make it easier to look into things, but clearly
21 we're going to see it's -- XML is going to help in
22 the sharing of data, but it's also going to help in
23 some of these areas like P3P and CPExchange,
24 providing some privacy controls.

25 The question is is, Will they be

1 implemented? Just because they're in a
2 specification there's still the issue of, Will they
3 be implemented.

4 Now, another issue, if you want to predict
5 the future, I believe in looking in a crystal ball,
6 you have to also follow the money. We first follow
7 the technology, but then we also follow the money.

8 And pretty clearly in the Internet I think
9 the most ardent cheerleader would now say that
10 we've had a dot com meltdown of companies literally
11 wasting billions of dollars on business models that
12 are not going anywhere.

13 But one thing is very clear is that the
14 Internet is a very good place to get information on
15 things. If I wanted to go to the Google Search
16 Engine, I could get information about anyone in
17 this room probably, except for myself because I
18 have a common name.

19 But if you have a not so common name, it's
20 a lot easier to find out information, and I think
21 that really shows a good business model here, which
22 is the idea that people are going to go to the
23 Internet to make purchase decisions but then go to
24 the offline world and buy stuff, like buy a car.

25 And so I really see that as sort of the

1 money starting to focus people and business models
2 in that direction, and what that's going to mean is
3 the people that provide the information on the
4 Internet are going to want a piece of the action
5 when the sale is made in the offline world.

6 So I see technologies like XML and
7 CPExchange being done for that, so let me give you
8 a quick example here. We've all bought cars, and
9 it's always an interesting experience. Now that
10 I'm older, I actually feel fairly confident about
11 going in the showroom but at a younger age, it was
12 sort of like me against them, and they had the
13 information, and I think that's going to get more
14 interesting here.

15 For example, we go to a car Web site,
16 research three different models of cars that we're
17 interested in, and the Web site remembers that
18 information.

19 Well, the fun thing is going to be I
20 believe in the future is you can walk into the car
21 dealer. They ask for your driver's license in
22 order to do a test drive, and the other thing
23 they're using that for is to go find out what
24 you've been researching on the Web here, for what
25 kind of cars you're interested in.

1 And that gives the salesman one up on you,
2 which is he knows the other competitive models
3 you're looking at, and he can have computer
4 software that recommends how to sell against these
5 cars. You can also be scored on the likelihood of
6 buying a particular model that you express interest
7 in and so on.

8 So I think we're going to see this very
9 strong economic push, and I think it's basically
10 inevitable that when we have one part of the market
11 which seems to be dollar poor and another part of
12 the market where the money is being spent, that the
13 business models are going to have to go that
14 direction.

15 And we're going to see -- be forced into
16 more information sharing. It's just an inevitable
17 part of this economics, much more so than we've
18 seen on the Internet itself.

19 Thank you very much.

20 MS. ROSENFELD: Thank you, Richard.

21 Our next panelist is Lawrence Ponemon, who
22 is the president of Guardent, a services and
23 technology company enabling security, privacy and
24 data protection.

25 Prior to joining Guardent, Larry was the

1 founder of the PricewaterhouseCoopers global
2 privacy practice. Larry is a founding board member
3 of The Personalization Consortium, and he will talk
4 about that organization today.

5 MR. PONEMON: Thank you. Everyone looks
6 really hot and really tired. Is that true or is
7 that just a perception that I have? I need to
8 personalize on you.

9 How many people worry about personalization
10 and privacy? Raise your hand. Oh, come on. I
11 know it's late, everyone. How many people worry
12 about personalization privacy in the wireless Web?
13 Let's see if we can get those hands a little bit
14 higher?

15 Quite frankly, there is actually a lot to
16 worry about, in my opinion, and I know I sound like
17 a heretic as a founding member of the
18 Personalization Consortium. I have good news. I'm
19 going to be fast in my presentation, and I do not
20 have Power Point slides so you can actually watch
21 me.

22 The bad news is I'm going to read to you
23 our blurb about what the Personalization Consortium
24 is, and I'm going to tell you where we are and what
25 we are trying to achieve.

1 The Personalization Consortium is an
2 international advocacy group formed to promote the
3 development and use of responsible one-to-one
4 marketing technology and practices on the worldwide
5 Web.

6 The Consortium encourages the growth and
7 success of electronic commerce that delivers the
8 benefits of personalized electronic marketing while
9 articulating best practices and technologies that
10 protect the interest of consumers, and I want to
11 underscore consumers.

12 To achieve its goal of expanding the scope
13 and use of personalization technology that respects
14 consumer privacy, the Consortium has many
15 functions, for example, to provide a forum for
16 industry discussion and information, sponsor
17 research, foster standards for technology and best
18 practices and work towards consumer understanding.
19 And toward this end the Consortium has established
20 ethical information and privacy management
21 objectives that articulate its goal to create a
22 solid process that enables consumers to confidently
23 use personalization technology for their benefit.

24 Now, the Consortium was established about a
25 year ago chaired by Don Peppers and a few other key

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1 folks. I was co-oped into joining the Consortium
2 because of my very strong and very weird views on
3 privacy. So like you, I was pretty suspicious.

4 So I attended my first board meeting, and
5 at the first board meeting were about 30 or 40
6 company representatives, and I saw a sincere
7 interest to do it right, and I had this kind of
8 vision in my mind.

9 If someone could invent a cigarette that
10 didn't cause cancer, wasn't habit forming, maybe it
11 won't be so bad to smoke, right, and maybe that's
12 where we are in the evolution of personalization.
13 It's probably a bad analogy unfortunately, unless
14 you're a smoker.

15 But the idea is that we've grown from a
16 small group of good companies to 67 great
17 companies, and there are many, many other companies
18 that are taking a wait and see attitude.

19 Let me tell you a little bit about some of
20 the challenges. First, we set high standards. If
21 you read the Personalization Consortium and you go
22 to our Web site which is www.Personalization.org, I
23 don't know how to spell personalization, but my
24 friend Jason can spell it for you. And I think at
25 the end of the day though when you go to that Web

1 site, you're going to find that these principles
2 are about equal, not better than, not worse than,
3 but about equal to many wonderful statements about
4 privacy.

5 So then you scratch your head and you say,
6 "What's the difference here." The difference is
7 we're basically holding our members to a very high
8 standard. That is, it's not just good enough to
9 say you're going to comply with these principles,
10 but you have to undergo an audit, the A word,
11 audit.

12 And that's pretty scary because if you're a
13 small organization or a large organization and you
14 say you're going to be a member and suddenly you're
15 no longer a member, you're basically killed or
16 kicked off the membership list, it's a signal that
17 basically suggests -- not suggests, that tells the
18 universe that the company failed to comply.

19 Let me just tell you the courage of
20 members. The founding members are very courageous
21 because right now they just generally assume that
22 they're going to pass this audit, but my guess is
23 many will fall by the wayside and that the end
24 result will be that some members will not make the
25 grade.

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1 Now, let me just tell you it's not for pure
2 altruism, it's not because we're good guys.
3 There's a real economic value proposition,
4 something a little bit different than regulation
5 and lawsuits, and that is if we do it right,
6 becoming a member is going to be a good thing.
7 It's going to be something that is of great value.
8 It's going to be a way to differentiate your
9 services and product in this ever evolving
10 marketplace.

11 Now, if that's so, then people will knock
12 the door down to become a member. To become a
13 member will have real substantive meaning, and
14 that's really what we're trying to achieve through
15 the independent verification.

16 Also, some people are confused, and the
17 next speaker will talk about TRUSTe. The next
18 speaker will also discuss the issue of seals. This
19 is not just a seal. It's not a new form of a seal
20 program. It is in fact about an independent audit
21 conducted by a trusted party.

22 So that's all I want to say about the
23 Personalization Consortium. I'm very proud to be a
24 member, even though I was co-oped to becoming a
25 member originally. It's a great group, and I

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1 really encourage everyone here, as well as in the
2 spillover rooms, to go to our Web site and to find
3 out more about what we are and what we want to
4 become.

5 Okay so without further ado, I'll sit down.
6 Thanks.

7 MS. ROSENFELD: Thanks. Thank you, Larry.
8 Our next panelist is Becky Richards. Becky is the
9 Director of Compliance and Policy for TRUSTe, an
10 Internet privacy seal program. She oversees all
11 aspects of enforcement operations and policy
12 developments for the TRUSTe program, including
13 TRUSTe's compliance operations and the TRUSTe Watch
14 Dog Dispute Resolution Process.

15 Prior to joining TRUSTe, Becky was an
16 international trade specialist on the electronic
17 commerce task force at the U.S. Department of
18 Commerce's International Trade Administration.

19 Becky? That's a mouthful.

20 MS. RICHARDS: It is a mouthful. I don't
21 have a Power Point presentation either, so being
22 the last person to speak on the last panel, I hope
23 we'll get through this quickly.

24 I'm actually not going to really talk about
25 seals today. Most of you probably know what they

1 are. Instead, I'm going to talk -- we've heard
2 today a lot about merging and exchanging of
3 consumer data and what the benefits are and what
4 the risks are.

5 And at TRUSTe, we've been following the
6 practices of merging and exchanging consumer data
7 closely, but TRUSTe's main focus in the past has
8 been on the explicit and inexplicit collection of
9 information from consumers and the sharing of such
10 information.

11 TRUSTe's monitored the increasing practice
12 of merging and exchanging and has been and will
13 continue to work to ensure that consumers are aware
14 of these practices.

15 Mary Culnan in the previous panel brought
16 up a very good point. Transparency is very
17 important. If we're going to continue to increase
18 growth via E-commerce, we need to have consumers'
19 trust, and trust comes through transparency and
20 understanding of what those practices are.

21 Currently because we've really been looking
22 at how information is collected from the consumer
23 as opposed to the other way around, our license
24 agreement doesn't -- does not explicitly address
25 the disclosure of merging and exchanging of

1 information, although depending upon the practices,
2 it could be required.

3 As we look to the future, we will
4 explicitly require companies to disclose the
5 practices of merging and exchanging information, to
6 increase the transparency and to increase trust.

7 Our current practices are that we ask Web
8 sites whether they're combining information from
9 third parties by asking in the self-assessment," Is
10 your company supplementing the information that you
11 receive directly from users with information
12 received by an offline means or from a third-party?
13 If so, explain."

14 So if a Web site states that information is
15 being supplemented from such sources, this should
16 be disclosed in the privacy policy.

17 TRUSTe has a model privacy statement that
18 is currently used by a number of companies as a
19 privacy resource, and in this model privacy
20 statement, we provide two different examples of how
21 a company can address the supplementation of
22 consumer information from third parties.

23 The first example is really more
24 appropriate for gathering of financial information,
25 and so I won't go over that specifically.

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1 Our second example deals with the combining
2 of marketing information with consumer information.
3 It states: "In order for this Web site to enhance
4 its ability to tailor the site to an individual's
5 preference, we combine information about the
6 purchasing habits of users with similar information
7 from our partners, Company Y and Company Z, to
8 create a personalized user profile." So this is
9 the disclosure.

10 Now, for perhaps maybe a more real world
11 example. I have three examples. The first one is
12 one of our licensees that states explicitly that
13 they do not supplement consumer information by
14 stating that all information excluding our user
15 passwords originates solely from our primary
16 client.

17 Now, in the case of a company that does
18 supplement consumer information, one of our
19 licensees states: "We may research demographics,
20 interests and behavior of our customers based on
21 the information provided to us upon registration."

22 And finally, a third example that gets
23 lengthier; and as we've discussed, privacy policies
24 can be rather long: "The combination of offline
25 and online information provided by the customer has

1 the ability to enhance the customer experience and
2 make customers' interaction more meaningful and
3 relevant. Company X requires that any consumer
4 profiling or purchasing behavior captured online
5 and combined with offline information be clearly
6 stated to the consumer at the time of the online
7 data collection. The consumer will have the
8 ability to choose not to be part of a subsequent
9 marketing campaign."

10 So in this last disclosure, the company is
11 giving the individual the opportunity to opt-out of
12 being profiled.

13 I would like to thank the Commission for
14 having today's workshop. I think it's been very
15 informative as to both the benefits and risks
16 involved in merging and exchanging information
17 across businesses.

18 The important part of each of these, in
19 thinking about this for both businesses and
20 consumers, is that the consumer needs to be
21 informed of the practice if we are going to
22 continue to increase transparency and trust and
23 continue to see increase in business on the
24 Internet.

25 And as I mentioned at the beginning, TRUSTe

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1 will be changing our license statement to
2 explicitly address this particular practice in the
3 future.

4 Thank you.

5 MS. ROSENFELD: Thank you, Becky. I have a
6 few questions, we want to try to stick to the time
7 frame here, and then we'll open up the floor to
8 questions from the audience.

9 John, we know CPExchange is an open and
10 it's a voluntary standard, and I think that means
11 that the privacy related features also have to be
12 voluntarily adopted by the users.

13 How likely is it that companies are going
14 to deplore the privacy-related features of the
15 specification in your view?

16 MR. KAMP: I hope they don't deplore them.
17 It is getting late though.

18 MS. ROSENFELD: Did I say deplore?

19 MR. KAMP: Deploy.

20 MS. ROSENFELD: I'm sorry, the heat is
21 getting to everyone here.

22 MR. KAMP: We don't know. In fact, we have
23 reason to believe that they don't deplore them,
24 that they will deploy them, but because it's a
25 voluntary standard, as Jason once described it,

1 it's a safety that may or may not be used.

2 We expect though, because remember the
3 whole point of all of this day has been businesses
4 are interested in customization because consumers
5 are demanding it.

6 As consumers demand more and more privacy
7 transparency, the privacy transparency will be used
8 by the successful companies, and they will use that
9 part of the CPExchange protocol.

10 MS. ROSENFELD: Is there any effort
11 underway to develop a code of best practices for
12 those users of the specification?

13 MR. KAMP: We worked first of all to make
14 sure it was P3P compatible because we believe
15 that's really very important, and we have, just in
16 the last week, sat down again with the P3P people,
17 CDT, and are exploring alternatives, ways in which
18 we can continue to ensure that the protocol is as
19 multifunctional in this regard as possible and will
20 be looking at those very kind of things going
21 forward.

22 MS. ROSENFELD: I guess on a related note,
23 in terms of being multifunctional, will the
24 specification be used to facilitate merger and
25 exchange of consumer data across media, for

1 example, into wireless space?

2 MR. KAMP: Again, it's a neutral protocol.
3 It was designed for internal data sharing within
4 companies, and as we went forward, we added the
5 other functionality.

6 My guess is that all of the things that
7 will be possible and will be used by companies are
8 likely to use this protocol because we think that
9 it's valuable in that regard, and, yes, it could
10 very well be used for wireless or whatever other
11 scary things that might happen in privacy going
12 forward.

13 But because of the kinds of focus there has
14 been on privacy by this agency and others going
15 forward, I'm convinced that the American public are
16 learning what privacy is all about and learning how
17 to use, how to make their choices, and that those
18 kinds of things will automatically develop as the
19 industry develops.

20 The important point here is not that the
21 functionality will be required, but that it's built
22 into the system so that it can be used and the
23 commitment by CPExchange to make sure that the
24 system does have that functionality.

25 MS. ROSENFELD: Go ahead, Ari.

1 MR. SCHWARTZ: In terms of functionality of
2 CPExchange and whether that alone will spur
3 individual -- spur companies to use it, I do think
4 that the regular P3P that I was talking about
5 earlier in terms of Web sites, Web browsers going
6 to Web sites and seeing whether they have privacy
7 policies that match consumers' policy, that has a
8 -- direct impact on the consumer.

9 There's direct feedback that a consumer
10 will want to see a privacy policy because it will
11 show up in their browser. CPExchange doesn't have
12 that ability to be right in the consumer's face
13 like that, so there is that missing step there.

14 It really does have to be a responsible
15 company to take that on, and I look forward to
16 working with the CPExchange people, but we have to
17 recognize that there is that missing piece with all
18 of this behind the scenes type transaction.

19 MS. ROSENFELD: Larry, can you just
20 describe the kinds of companies that are members of
21 the Personalization Consortium and what kinds of
22 companies you expect will join in the future?

23 MR. PONEMON: Good question. Of our
24 members today, we have a combination of tool
25 makers, people who are inventing new technologies,

1 both in the wired and the wireless area, and
2 they're the largest chunk of members.

3 We also have vendors, companies that are
4 not actually making the technology but selling that
5 technology or embedding that technology into other
6 tools, so for example in the CRM universe we see
7 companies fall into that space.

8 Then we have end users, companies that, for
9 example, like AMR, American Airlines or Charles
10 Schwab, that are actually the users of this
11 technology.

12 If you kind of think about the model, the
13 model is a little bit weird because it's a
14 B-to-B-to-C model. We're adding now a new element,
15 and so the key is to get to the consumer.

16 Even if you are in a business mode, and you
17 personally -- as an organization you do not have
18 direct access to personal information, there's
19 still a chain of trust and responsibility, and
20 that's really what the audit is attempting to
21 prove.

22 So you can't say, " Well, we passed but
23 guess what, the audit was simple because we don't
24 have personal information, we don't collect any
25 information because we're a tool maker." You can't

1 get away with that.

2 That's obviously a very slippery slope, but
3 that's not what the audit is about, so the members
4 are primarily in those three categories, and we're
5 really -- to answer your question about what is the
6 future, if you'll look at all of the users of
7 personal information, there's a huge body of end
8 user organizations that would love to learn more
9 and become a member and to make sure that they're
10 using the technology that is ethical and that is
11 being managed at a high level.

12 Unfortunately to get there, we really have
13 to have those rigorous standards in place, and it's
14 ultimately the responsibility of the tool maker to
15 ensure that the process is a fair one, is a good
16 one, and so we would encourage end users as well as
17 tool makers and vendors to participate in this
18 process.

19 MS. ROSENFELD: Thank you. What about
20 enforcement with the guidelines?

21 MR. PONEMON: You had to ask the
22 enforcement question, end of the day, we're all
23 sweating here. Now I'm really sweating.

24 Basically if you don't comply with this,
25 and you know my favorite word, we're going to kill

1 our members. We have a license. They've agreed
2 to -- no, we're not going to kill our members, but
3 what we're going to do is you're going to get
4 kicked off the membership scroll.

5 And we're actually in the final stages of
6 establishing a disclosure standard. While it has
7 not been defined as yet, the plan is to have a
8 status report on our Web site to show where members
9 are in the auditing process, so obviously if you're
10 not there, if you mysteriously disappear one day,
11 you could reach your own natural conclusion.

12 But understand that enforcement is very,
13 very important for this to work. Without
14 enforcement, it is a wasted effort. It is
15 virtually a wasted effort, so self regulation means
16 that the organizations that have become members
17 have to work hard to maintain their membership, and
18 enforcement is going to be very costly for some
19 organizations that don't make the grade.

20 MS. ROSENFELD: Becky, you talked about
21 TRUSTe intending to revise your licensing
22 agreements to require disclosures about data merger
23 and exchange of information, and I'm wondering if
24 you have a time table for that.

25 MS. RICHARDS: We last updated ours I think

1 in August, September, and I'm told that the legal
2 fees have to stay lower so I'm not supposed to give
3 it to our lawyers for a couple more months, and we
4 also want to have a certain level of stability in
5 the program.

6 And we're actually on the sixth version
7 right now, we'll be going to the seventh, and there
8 will be a number of revisions, not just this one
9 but also to sort of-- what we have done always is
10 to follow along what the privacy debate is, where
11 are we going with things and make sure we're a step
12 ahead.

13 And so I think that we can anticipate to
14 see those sometimes in the July/August time frame
15 as we move forward.

16 MS. ROSENFELD: I think now I'm going to
17 open up to audience questions. The gentleman back
18 there, and again please identify yourself and your
19 organization.

20 MR. LE MAITRE: Hi. I'm Marc Le Maitre. I
21 work with Nextel Communications.

22 Larry, I agree absolutely, entirely with
23 you that privacy without enforcement doesn't fly.
24 During the B-to-B world, very few businesses would
25 do anything without signing a contract, and I'm

1 aware that P3P is policy based, no need for a
2 contract in P3P, how do you get from policy based
3 to contract based so that you've got some basis on
4 which to place -- to put some enforcement around?

5 MR. PONEMON: You're asking a very good
6 question, and we've tried to address this over the
7 course of the last few years, especially with my
8 involvement with the FTC and the Advisory
9 Committee.

10 Quite frankly, one of the problems you have
11 is a policy, doesn't necessarily suggest truth, so
12 you have a lot of organizations that are very quick
13 to post a policy, and P3P by the way is kind of an
14 offshoot of that.

15 P3P is good, but unless you have an ability
16 to say, Okay, you have this policy, how do we know
17 you're complying, it's kind of an interesting
18 problem because a lot of organizations aren't
19 really evil and they're really not trying to dupe
20 the consumer. It's not that at all, but they're
21 not actually digging deep enough into their own
22 business models or into their own organizations to
23 determine where they have vulnerability and risk.

24 And in many cases, in most cases
25 unfortunately, the legacy of being an auditor,

1 right, you basically stumble on some incredible
2 problems. Bad news doesn't necessarily get up to
3 the right people. That's the job of an auditor is
4 to communicate it ultimately to the board, and I've
5 been in many board meetings to say to major
6 companies," You know what, what you say you do on
7 privacy, you're just not doing, and it's going to
8 be very costly to fix it."

9 So then that's the other issue. What's the
10 accountability on the other side to actually now
11 fix the problem now that you have that information.

12 Audits are a good thing though. If there's
13 self regulation you might be able to move the bar.

14 MR. LE MAITRE: I think there's some
15 direction on it. The notice and choice aspects of
16 Fair Information Practices are well understood. My
17 own feelings are that it may take some sort of
18 binding between notice and choice.

19 This is the notice you gave me, this is the
20 choice I gave back to you, and some notion that
21 that forms a bond, a contract, that has some legal
22 status that we can both rely upon in an audit
23 situation.

24 MR. PONEMON: Can I just make one comment
25 about that? If you just look at the current

1 implementations around GLBA, Gramm Leach Bliley,
2 we've seen a lot of organizations having a very
3 difficult time just operationalizing choice. We're
4 starting to see evidence that companies are
5 failing.

6 They're getting the reply back, but
7 companies are having a difficult time making sure
8 that it sticks in their legacy systems, and they're
9 spending virtually no resources to fix the problem,
10 so I think we're going to have a lot of interesting
11 issues on the horizon in terms of lawsuits,
12 organizational culpability, but that's a problem.

13 And so even if you have a contract, even if
14 it's a legally binding contract, I'm not sure
15 that's going to change behavior in the short term.

16 MS. ROSENFELD: John?

17 MR. KAMP: I just wanted to mention, and
18 not in any way to slight the FTC enforcement
19 authority or even the authority of auditors, that
20 perhaps the most important thing that will happen
21 in the marketing space is happening, and that is
22 privacy is becoming part of the brand, and as part
23 of the brand, it's part of that image of the
24 product and the company that is part of the
25 relationship that the customer has with the brand,

1 and either a company is going -- going forward, I
2 think either companies are going to respect the
3 privacy of their consumers and treat them
4 appropriately or they're not, and that consumers
5 are going to take it out on them, and that the
6 value of the brand and the need to ensure that the
7 brand stands for something in the privacy space as
8 well as in the basic historical places where it
9 talks about quality, product quality and
10 consistency and value proposition, that privacy is
11 going to stand along that, and the American
12 consumers are going to make sure that their privacy
13 is protected in ways that they consider
14 appropriate.

15 MS. ROSENFELD: You in the back.

16 MR. KAMINSKI: Hi. My name is Jim Kaminski
17 from Arent Fox. This is a question for Ms.
18 Richards. I was wondering if you had a sense -- I
19 have two questions actually. My first question is:
20 Do you have a sense of what the industry practice
21 is for disclosing the company's enhancement
22 practices, and also when that new standard is in
23 place, are you going to require the companies to
24 provide access on the Web site to the data
25 collected offline to keep that parallel?

1 MS. RICHARDS: The lovely question access.
2 This is always difficult to answer. Let me maybe
3 revise a little of how I answered Dana's question.

4 Right now there isn't an explicit
5 requirement for you to disclose, but if we go
6 through your privacy practices and we find that
7 it's very appropriate and you should be disclosing
8 it, we will force you to disclose that information.

9 So it's sort of an implicit requirement if
10 you could have that, and so -- and what we have
11 been working with our account managers is to make
12 sure that they know this is an important aspect and
13 they need to be probing more about the questions,
14 and so I think on that aspect it's something that
15 we're -- as the practice becomes more prevalent,
16 we're seeing more disclosures.

17 When I asked the question around the office
18 of if they can give me some different examples, we
19 came out with some different ones, and it was a
20 really good learning experience for everybody to
21 see what is happening.

22 I would say that there's -- I can't give
23 you any numbers in terms of how prevalent it is or
24 how not prevalent it is in terms of how many
25 companies are doing it at this point. It's just a

1 sense that it's definitely increasing and that it's
2 something we're addressing as we go along.

3 I don't have a good answer for your access
4 question at this point.

5 MS. ROSENFELD: There in the middle.

6 MR. TUROW: Joe Turow from the University
7 of Pennsylvania. I just wanted to know if anyone
8 has a sense of whether what you guys have been
9 talking about is going to change when things go in
10 the not too terribly distant future to a much more
11 broadband, very dynamic environment where people
12 will be watching television, doing the Web stuff,
13 doing this, constantly moving between sites at such
14 a rapid speed with so many parties involved in a
15 transaction that the kind of privacy policy issues,
16 I'm just wanting to know, might be totally
17 irrelevant, the ones that we've been talking about.

18 If you have four or five parties that have
19 an interest in dealing with the data at the same
20 time who have very different notions of what's
21 acceptable, is that a scenario that's realistic,
22 and then what do you do?

23 MS. ROSENFELD: Would anyone like to take a
24 shot at that? Ari.

25 MR. SCHWARTZ: Well, I was just about to

1 say that's why XML technology, people are focusing
2 on XML technology, because it's really the only
3 realistic way the different parties can come in at
4 different points, and that's why I focus so much of
5 my time on P3P because I see it as the only
6 realistic way to provide notice in that realm.

7 Now, obviously Larry brought up the point
8 that P3P has a weakness that it doesn't do
9 enforcement. P3P, that's not what P3P was meant to
10 do. It's not supposed to do enforcement. It's
11 supposed to do notice and do it well, and that's
12 what we've tried to focus on.

13 So of course tying in all these access
14 points is going to make it very difficult for the
15 consumers to follow, it's difficult enough to
16 follow on the Web the way they do it today. In a
17 pervasive computing environment only XML
18 technologies will help do that so we need to map
19 everything to some --

20 MR. TUROW: Can you explain how? I don't
21 see how it's helping to solve the problem.

22 MR. SCHWARTZ: How will XML help to solve
23 it?

24 MR. TUROW: Yes.

25 MR. SCHWARTZ: Well, what's going to happen

1 is that you'll have -- it's a complex system, and
2 there's a few different ways that schemas will
3 work, but basically that everyone will be relating
4 to the same basic vocabulary or schema, and then
5 information will be flowing into points back and
6 forth using this same underlying data, using the
7 same tags.

8 So that we don't have the confusion that we
9 have today where everyone has different databases
10 labeled in different ways and uses the information
11 in different ways. It's a whole new infrastructure
12 that Tim Berners-Lee from the World Wide Web
13 Consortium calls the semantic Web.

14 MS. ROSENFELD: Jason?

15 DR. CATLETT: I have a quick question for
16 Larry. Does the Personalization Consortium require
17 its members to provide access to consumers about
18 the data they hold, and does it require an
19 opportunity to delete the information?

20 MR. PONEMON: That was probably again one
21 of the most contentious issues with our principles,
22 but we ruled. We prevailed. Basically access and
23 accuracy are actual principles, and that means that
24 you have to provide access, reasonable access which
25 means that -- I don't like that word reasonable

1 because it opens up for interpretation.

2 We're going to have to be really smart as
3 auditors in terms of finding what's the line
4 between reasonable and unreasonable, but more
5 importantly, if someone finds a problem, you have
6 to be able to provide that individual the proper
7 approach for fixing those problems as well as
8 redress if that is not being handled well.

9 But also this is opening up a can of worms
10 in terms of security and authentication issues that
11 have to be built into the system. From that point
12 of view it could be very costly to members, but
13 that's just what we have to do.

14 DR. CATLETT: But it was a requirement that
15 was accepted by the 67 companies.

16 MR. PONEMON: All but one company agreed to
17 it, and that one company basically has agreed to go
18 along with it so it was amazing, but it was a
19 battle. It wasn't like, Gee, it makes a lot of
20 sense. It had to be -- it took weeks and months,
21 as Win knows, a lot of work to kind of get us to
22 that point.

23 MS. ROSENFELD: Any other questions? No.
24 I want to -- was there anybody else? No?

25 I want to thank the panelists. This was an

1 excellent panel, and it's not over yet. I want to,
2 first of all, commend all of you for staying
3 throughout the day. I apologize for our air
4 control problems, but after this panel can step
5 down, we have some closing remarks by Joel Winston.

6 (Applause.)

7 MR. WINSTON: I think it's fitting that we
8 were able to get these curtains and windows open,
9 because the purpose of this workshop was to shed
10 some light and bring in some fresh air on a very
11 important subject, data merger and exchange, and I
12 hope we were able to accomplish that today.

13 I did notice that it took a crow bar to get
14 some of those windows open, and I don't want to
15 carry the metaphor too far, but actually I think
16 people were very open and honest with us, and we
17 really appreciate that.

18 I want to thank all of our panelists today
19 and our audience for a very lively and interesting
20 day. I also want to express my appreciation to the
21 FTC staff who really worked tirelessly to put this
22 workshop on and to do so really in record time.

23 Specifically I want to thank Martha
24 Landesberg, Allison Brown, Jessica Rich, and Ellen
25 Finn from the Financial Practices Division, Lou

1 Silversin from the Bureau of Economics, and Dana
2 Rosenfeld from the Bureau Directors Office, and of
3 course our intrepid team of support staffers who
4 really made this possible today.

5 Let me just close with a few brief remarks.
6 The Commission's been studying online data
7 collection for over five years now, and we've
8 hosted several workshops on a variety of topics
9 related to collection issues, but I think the
10 subject matter of this workshop is an especially
11 timely one. It seems like every day we hear or
12 read about new ways in which consumer data are
13 being collected and combined and put together for
14 various purposes.

15 It's been a very educational day for us and
16 we hope for all of you. Although some of the
17 practices we've heard about today are practices
18 that have been going on for many decades, new
19 technologies and other recent developments have
20 increased the speed and amount of data that
21 businesses exchange both online and offline, so
22 being able to discuss these practices really helps
23 us keep up with all of these recent developments.

24 We learned today, for example, about
25 various sources of consumer data used for creating

1 profiles such as public records, census data,
2 survey data, warranty cards and consumer
3 transactions.

4 In addition, many companies described their
5 business models and how the merger and exchange of
6 data benefits both the businesses and consumers.
7 For example, by purchasing third-party data,
8 companies are able to target their advertising more
9 effectively and efficiently and to personalize Web
10 content, so that consumers may get more advertising
11 that they want to see and fewer advertising offers
12 that they don't want to see.

13 Several panelists raised questions about
14 the transparency of these practices to consumers,
15 in particular, whether consumers know about the
16 existence of data compilers and the practice of
17 enhancing consumer information with data from
18 third-party sources. Do consumers know how and why
19 this data is exchanged between companies?

20 Well, I would harken back to what
21 Commissioner Swindle said this morning and many of
22 the panelists raised throughout the day, this
23 notion of the trust gap and the information gap,
24 the misunderstanding gap.

25 From what I heard today it seems like the

1 key problem here is that there's a gap between what
2 businesses are actually doing in their collection,
3 merger and exchange of data versus what consumers
4 think they're doing.

5 I haven't seen any specific survey
6 evidence, and I would certainly welcome it, but I'm
7 willing to bet that most people either dramatically
8 underestimate or dramatically overestimate the
9 scope and detail of information that businesses are
10 compiling about them.

11 On the one hand, I suspect that there are
12 lots of consumers who really have no idea that
13 hospitals and government offices and bankruptcy
14 trustees and lots of other people are selling or
15 providing personal information to businesses, all
16 of which may be combined and enhanced in various
17 ways to form consumer profiles.

18 On the other hand, I imagine there are lots
19 of consumers who think that their every action is
20 being traced, recorded, combined and deposited into
21 some mega database for anyone to use and see. What
22 I heard today is that the information that's
23 actually being compiled and combined out there is
24 not nearly that comprehensive or nearly that
25 granular.

1 To me this raises a real challenge. Alan
2 Westin did a survey several months ago on consumer
3 attitudes toward privacy. He found that there are
4 a fair number of people who simply don't want their
5 information shared or used by anyone for any
6 reason.

7 On the other side of the equation, he found
8 that there were some people who really didn't care
9 about their information. They were happy to allow
10 it to be used for any purpose whatsoever. But,
11 what he also found is that there are about
12 two-thirds of the survey participants who fit into
13 the category of what he called privacy pragmatists;
14 that is, people who are willing to share their
15 information under certain circumstances for certain
16 reasons and if they're promised certain benefits.

17 Now, the task for business is to convince
18 these pragmatists that in particular situations,
19 it's to their benefit for the businesses to combine
20 and use the information that they're putting
21 together about them.

22 My hope is that through workshops like
23 this, we can help bridge the information and trust
24 gaps and enhance public and business awareness of
25 what is and what is not going on out there.

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1 I'm not going to get into the debate about
2 the value of privacy policies, but I think we can
3 all agree that shedding more light and fresh air on
4 this subject has to be a good thing.

5 Again, I just want to thank all the
6 panelists for contributing to this workshop and to
7 remind you that we do have a record that will
8 remain open for 30 days, and I encourage you to
9 file comments.

10 Thank you very much for coming.

11 (Timed noted: 4:51 p.m.)

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1 C E R T I F I C A T I O N O F R E P O R T E R

2

3 CASE TITLE: MERGING AND EXCHANGING CONSUMER DATA
4 WORKSHOP

5 MATTER NO.: P014803

6 HEARING DATE: MARCH 13, 2001

7

8 We HEREBY CERTIFY that the transcript
9 contained herein is a full and accurate transcript
10 of the notes taken by us at the hearing on the
11 above cause before the FEDERAL TRADE COMMISSION to
12 the best of our knowledge and belief.

13

14 DATED: MARCH 26, 2001

15

16 SALLY J. BOWLING

17

18 DEBRA L. MAHEUX

19

20 C E R T I F I C A T I O N O F P R O O F R E A D E

21 I HEREBY CERTIFY that I proofread the
22 transcript for accuracy in spelling, hyphenation,
23 punctuation and format.

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25 DIANE QUADE

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