

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

>> Leah Frazier: Thank you, Tom. We have a great slate of panelists today, very diverse. And they draw from numerous sectors, including the technology sector, law enforcement, collection agencies, and consumer advocates. And I will briefly introduce them. All the way over here, to my right, is Jim Adamson of Columbia Ultimate, Chad Benson of CBE Group, which is a collection agency out of Iowa, Stevan Goldman from Automated Collection Control and Commercial Legal Software, and Michael Kinkley, who is a practitioner out in Spokane and also a member of the board of the National Association of Consumer Advocates. We have Gary Portney of Convoke Systems, and last but not least, Laura Udis from the Colorado Attorney General's Office. So, if you want more information on these folks all of their biograph-- well, not all of their biographical information, but the important stuff is in the biographical materials. And I would also like to mention that we're very lucky to have Dan Becker as a co-moderator, because he was a software developer in a former life. [Light laughter] So you can direct all of your technical questions to Dan. But during the session, it's going to be our goal to shed light on the software systems that enable collectors to go about their business. So, we'll be exploring the range of software that collectors of all types are using, the capabilities of that software, and most importantly, their potential to assist collectors in complying with the law. We'll also examine how various debt-collection functions have become automated. And we'll also address the consumer-protection concerns that may arise where technology isn't being adequately utilized or where it fails to function properly. We'll also be looking at what's next on the horizon, including what the up-and-coming trends in collector software are, and the idea of a centralized data repository to house information on consumers and debts. So, with that, I will turn it over to Dan.

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

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

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

>> Stevan H. Goldman: Well, I can't add much to what information is gathered. We are a business-to-business data conduit, and we help people in the collections industry move information from the debt owner to whoever they wish to do the collecting work, whether it's an agency or an attorney. And we accommodate whatever data they want to send. So if one of our customers is looking to expand the amount of data that they want to send to their collectors, we simply enforce our data standard so that we can accommodate whatever data they wish to send.

>> Michael D. Kinkley: The information that's flowing answers a number of questions. Unfortunately, it doesn't answer it very well, most times. The is whether the debt is owed, whether the amount of the debt is a sum certain, whether the data, as it flows through the electronic system, properly identifies the proper person who owes the debt, and then whether the data can properly identify who owns the right to collect the debt in terms of assignments. And in tracing the assignments, there are problems. There are problems in determining the sum certain. Less often but still frequent are identifying the proper person. And then still less often, if some debt is owed

to someone, it's probably the least. The problem we have is, the accuracy of information is not accurate as it starts, and it gets less so as it moves through the technology. There's a difference between the legal requirements and the technological abilities, and that disconnect is the big problem that we're having in the state court systems and collection at this time. It's the flow of information is not adequate for legal purposes.

>> Gary Portney: I specifically -- or my company, specifically -- addresses the management of the documentation or media associated with the debt. And we assist in tracking the ownership of debt, specifically.

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

>> Daniel Becker: Just want to follow up. Chad said that you aggregate third-party debt. What types of debt is that? Or third-party information, what sorts of information is that?

>> Chad W. Benson: So, we would go out and receive additional scoring, as an example, through TransUnion, skip-trace processes, and data sites for data -- batch-level data.

>> Daniel Becker: Okay. And then how is this information... We've talked about information from original credit grantors, contact information, debt information. What you can tell us about how this information is used and what software is available to use it?

>> Chad W. Benson: Yeah. So, I would break it down into probably three kind of chunks. And if you think about we deal with hundreds of clients, and so I think that what you have is a varying degree. I think this is an interesting, probably, discussion topic in terms of the information that comes over -- you know, the standards, whether it's shell or sFTP or how information gets, from a security standpoint, kind of in that second bucket. That's evolved so the quality in which information is delivered to us in exchange, from an input/output standpoint, has evolved. I think the next part of that then is how that information is fundamentally used as a process within our...

We have an internal collection system to most effectively collect on the debt but also comply with the loan, federal or state regulation.

>> Gary Portney: I think it's important to distinguish what kind of data we're talking about here, and I think someone alluded to it earlier. Talking about two types of data, in my mind, which is row-level data, and that's, specifically, if you will, a row in an Excel spreadsheet or some kind of database, which is a field in a database identifying certain characteristics about a debt -- the name of the debtor, phone number, charge-off amount, balances, et cetera. And then you have another type of data, which is much less structured data, which is the documentation associated with the debt, which allows you to -- Is this on? -- which allows you to evidence the debt much more effectively. One of the premises that we make, that the documentation, which is a seminal issue within the industry, is paramount to the collection and recovery efforts. That's where a lot of the underlying information lives, without question, versus within row-level databases or Excel spreadsheets.

>> Michael D. Kinkley: The problem is that the... I agree that the biggest problem is the documentation. And the problem with the collections are the legal requirements of getting past the hearsay rule with the business-records exception. And unfortunately, most automated collectors see that as merely a speed bump on their way to a judgment. And they do all sorts of things which are not correct in applying the documentation. They attach documentation media. The industry, I believe, calls it "media," normally. They attach it to... One person will attach the media to a documentation of another, pretending that it's being authenticated by the first person when it's not, pretending that first person is a business-records custodian for those records when they're not. And that's the biggest problem. And what this has resulted in is what one New York court called "squirting cider in the ears of the court system." And I have no idea what that means, but I'm sure it's bad. [Laughter] And that was in American Express Bank vs. Dalbis. And these cites and so forth, as I go along with various cases, will be in materials that we provided the FTC. The other problem that was alluded to is that the debt buyers themselves... What it's fruitful to find out in this area, what's going on, is to find out what the corporations do when they sue each other, or they sue for other reasons than debt collection. For instance, the Debt Buyers organization, which is 550 debt-buyer entities in the United States that have banded together, sued the IRS over attempting to

get an injunction against enforcement of the 1099 rules. And the debt buyers argued to the court that all they normally receive is the aggregate amount of the charge-off from the originating lender for a particular debtor and, consequently, do not know the component amounts of stated debt principal, unpaid interest, late fees, and other charges. And of course, if you know the FDCPA, you know you're required to know those things. Most state laws have even greater specific requirements. And so you start with garbage in, and I think our software experts here would say, "When you start with garbage in, you get garbage out." I think they call that GIGO or GIGGO. And that's the problem. The debt buyers were quite insistent that to the federal court that they generally, often, usually, typically, or customarily don't receive component information. And the problem is then magnified as it moves through the system, because you've got variable interest rates tied to LIBOR. The software currently in effect, it's too expensive to write an algorithm and use the labor costs to develop what interest rates should be on a month-to-month basis. So they just pick an interest rate -- usually, a high one -- and apply it across the board. Well, it's the wrong interest rate, and nobody is taking into that account. That's another one of those problems.

>> Leah Frazier: And if I could remind everyone to speak into the microphone, please.

>> Daniel Becker: Are there any other comments about that question on this side of the table?

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

>> Gary Portney: Guys, let me, if I could, just one thing. I think, some of the things that have happened...

>> Michael D. Kinkley: Good thing we sat next to each other, huh?

>> Gary Portney: It's fantastic. I think, historically, the way companies have managed, the real issue is getting the information or the underlying documentation from the issuers. If you look at the topic of this conversation, white papers or studies that the FTC has put out, and other regulatory

bodies and the GAO, the flow of information is broken -- or systemically broken -- within the industry. And what is broken about that? I think we're trying to get to the heart of that right now, and I think it is important to distinguish about how media or documents flow throughout the industry. There, both from a media perspective and from an actual account-level perspective, there is no standards or best practices in this industry. I think that is changing. I think best practices and standards are starting to evolve. I think several things are happening in both the regulatory environment, but modern technology is driving that in large part. Things you couldn't do 10 years ago, you can actually do today, using modern technologies. So I think some of the issues that Michael raised is a result of not being able to get the original documentation in an effective and efficient way.

>> Male Speaker: Speak up a little.

>> Gary Portney: Yeah. Can everyone hear me? That's my comment.

>> Laura E. Udis: Dan, Dan?

>> Daniel Becker: Yes. Please, Laura, go ahead.

>> Laura E. Udis: I think Mike raised a good point about issues in court and certainly the implication with falsified affidavits or robo-signing. But on the other hand, the advances in technology and in the ability, seems that the technology has the ability to allow the flow of information. Automation has increased the ability to allow the flow of information from creditor to collection agency or debt buyer. To be much quicker and more efficient should help some consumers, because a number of consumers that complain to us just want to know, or want to see, verification to try to figure out do they owe the debt. Now, some will then determine, no, they don't. But a lot of the complaints that we get are simply, "I don't know. I want verification of the debt." And they want it in a quick way, they want it in an efficient way. It shouldn't have to take 30 days, 60 days, or more for the debt collector to go back to the creditor and to wait while the creditor is searching their files. So to the extent that technology can make that process much quicker so that that information can flow to the consumer who disputes the debt, this should be a

vast improvement so that that consumer can then decide whether to pay or whether to exercise their rights and say, "It's not me, wrong consumer," or for whatever reason, cease communication. This should be a big help -- technology in this area.

>> Michael D. Kinkley: The problem, though, is one of economics. Look, the debt buyers are buying these debts for pennies on the dollar. It has to be expedient, it has to be cheap. Technologies outrun the legal requirements that are involved. And the thing is, the portfolio buyers recognize this. They put into their sales agreements -- and this is another problem that I see that the FTC could look at -- is they put in the first sheet of a bill of sale, but they don't put the entire sale agreement. Why? Because, in the sale agreement, it says the seller does not warrant, represent, or ensure the accuracy or completeness of information. A fruitful source of information in this area is, again, business-to-business lawsuits. When a buyer of a portfolio sues the seller of a portfolio because the buyer has now gotten caught in a situation where they can't collect honestly the debt that they purchased, they sue the seller. And when they sue the seller, they always lose. The reason they always lose is because, in that portfolio sale agreement, it says, "We don't warrant it, it's as is." There's a number of cases. Again, these will be on the Webpage. It's a couple of good ones. There's Summit Recovery, LLC, vs. Credit Card Reseller, out of Minnesota; RAS Group vs. Rent-A-Center out of Texas; there's a couple out of Georgia. Anyway, we'll put all of these on the Webpage. But what you find is that the buyer and the seller both agree that the data they're getting isn't accurate, it may not represent actual debt, it may not actually represent the amount of the debt, and they even put in there, oftentimes, "We don't warrant that we own the debt we're selling you." Now, why would anybody buy such a thing? [Laughter] Why would you buy that, honestly? Because you buy it cheap, and you collect it dear, to paraphrase Adam Smith. You are able to go to the court, and you have a hole in your case, of course, when you get to court. That hole is the hearsay hole that's filled with a false affidavit. That's why you buy debt that is being represented to you as not even being accurate, because it doesn't matter.

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

>> Stevan H. Goldman: Thank you. I, um, with all due respect to my friend Michael, I want to disagree about one thing that he said, and that is that, as data is moved through -- by technology and moved from one place to the next, that it deteriorates, or the quality of the data actually deteriorates. That's exactly what -- the issue that we address in our service, and that is, we actually can apply business rules to the data that's being passed through our portal. And, for example, if an attorney attempts to send a judgment record through, where he has a judgment amount but not a judgment date, we reject it, which prevents the originator's system from being populated with incomplete information. Or, for example, if he sends through a judgment where the elements of the judgment don't add up to the judgment amount. They're sending through a judgment for \$1,200, where the principle was \$900, and there was \$200 of allowable interest and \$30 of court costs. If they don't add up to what the judgment amount is, again, we bounce that back, as well. So we have the ability to validate data before it populates another system, and, so, we prevent -- not only do we prevent data drift, but we actually improve data, because we let both sides know that the data they're sending appears to be either incorrect or incomplete.

>> Michael D. Kinkley: How do you calculate interest rates as it passes through?

>> Stevan H. Goldman: Well, the interest rates are a very interesting issue. It's not a matter of whether an algorithm can be written to properly assign the interest rates. The real issue is the number of data points that are needed to correctly reconstruct what the debtor might owe. In other words, you'll need to know what the prevailing interest rates were every time a payment was made, every time a credit was given -- if they returned something to the store, in other words. They have an ongoing account, and the amount goes up and down until it becomes delinquent. But all during that period of time, there's interest that's accrued based on the cardholder agreement, if we're talking about a credit card. So, if you're gonna reconstruct the interest, the algorithm is actually -- it's simple mathematics, and any computer can do it. But what you'll need is every single data point and what the prevailing interest rate was at the time that the balance changed. If you had all that information, including statutorily, when the interest rates change in some states every January 1st. If it's post-judgment, you'll need to know that, as well. And when the debtor made payments. If you had all those data points, reconstructing what the actual interest owed is a simple mathematics,

and like I said, there's not a computer out there -- Everyone has one in their pocket that can do that in math. You just need to know all the data points.

>> Daniel Becker: I'd like to --

>> Michael D. Kinkley: What are we required to do with it?

>> Stevan H. Goldman: Well, I'm -- We're getting back to what Gary said, and that is the quality of the original data, and that, in many cases, may or may be lacking, but I think it's not an accurate statement to say that, just because technology is helping data pass from one entity to the next, that it's contributing to the deterioration of the quality of the data. That is not the case.

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

>> Gary Portney: Yeah, so I -- There's probably several answers to that question. I think the issuer's ability to do that today is challenged. I don't think they've had the resources or, really, up until very recently, the reason to actually do it in a very systemic way. I think that's changing as we speak because of all the things that are happening. I would argue that attaching all of the information is probably not economically feasible. In most cases, you don't need all the information. You need certain pieces of media or documentation that -- All the information that Michael raised and that Seth was talking about lives in the original documentation. If you have that, if you have the original card-member agreement statement, statements of charge-off, statements with payment, you can deduct that information or those algorithms and get to the right numbers by looking at the original documentation. So, I think there's a -- That's probably a -- we could spend two hours on that and why it hasn't happened, but we are seeing issuers take this much more seriously. We are seeing standards evolve and best practices evolve. We certainly think that

third-party repositories can go a long way at improving the flow of that information instead of passing all of that information from one entity to the next to the next to the next. We think that's probably the best way to do it for a number of reasons, especially from a consumer-protection standpoint, which I think we get further in the conversation.

>> Daniel Becker: Please go ahead.

>> James R. Adamson: And I'd like to add to that. All of this data originates generally with an original credit grantor, and as I mentioned, it's -- in many cases, you're dealing with a store that doesn't have a lot of technology or an outlet that -- I mean, when they export their data, they might be exporting it to a spreadsheet. They might not have the imaging capabilities to pass all this information down line. But once the information makes it into the flow of the collection process, it really doesn't degrade going from there on, because, as Steven mentioned, there are rules that you can apply to the data as you transform it and load it into a new system, whereby it will maintain the data integrity. Really, I think most of it stands at the original credit grantor at the origination of that data, whether it is all contained at that point and time.

>> Leah Frazier: And I think this might be an interesting time to move on to a discussion of what the range of software platforms out there are once the data has been obtained by a collection agency. What systems are used to manipulate that data in order to go about the business of collection?

>> Daniel Becker: Did you have one last com-- I saw you had one last comment.

>> Laura E. Udis: Yeah. I was just gonna say that I think, obviously, on the issue of the quality of data coming from a credit grant or some of it from, I guess. My perspective is that it's expensive for creditors to maintain it, and creditors have charged off this debt and don't have a lot of incentive in maintaining the records, and we've actually heard collection agencies say, "Please pass a law or pass a requirement that creditors have to maintain and provide this data so that all collection agencies are on equal footing and have to obtain this information from credit grantors." So they're

sort of asking that this has to be maintained and has to be provided so that everyone has to have that information.

>> Daniel Becker: And to go back to the point that Leah was bringing up, so it sounds -- would everyone on this panel agree that the limitation is more due to the creditor side, and that there's a big -- or bigger differences in the software capabilities on the creditors' side than on the debt collection -- debt collectors' or debt buyers' side?

>> Michael D. Kinkley: I don't agree. I don't agree because the creditors are required under federal law -- I believe it's the Equal Opportunity and Credit Act -- to keep data for two years to some extent. And the problem is one of cost. And all we've been talking about, technology can do -- I mean, we've got a lot of the white hats here that manage the technology. I'd like to make them a lot of money. I'd like them to have customers that pay for the services that are available rather than the services they're paying for now. And I'm not talking about degradation of data when I'm talking about the problem with the ongoing database. It's that, on a continuing basis, interest is being added, but it's being added wrong. Other charges are being added, but it's not up to the software problem. It's up to the fact that nobody wants to pay to have multiple data points to have interest calculated on a monthly basis, based on a liable or variable rate. It's just too expensive, and nobody wants to pay for it right now, and they don't have to, because they're getting away with doing it the way they've been doing business as usual. And some of these people are looking forward to the day when they can charge more money to do more to get it right.

>> Gary Portney: I'll just say one thing. I think the economics will vet out over time.

>> Michael D. Kinkley: With class action.

>> Gary Portney: Well, however you get there, you get there. So, I think the fact is that, in terms of economics and who pays for what, that's normal. Markets will figure these things out if it's needed within the market.

>> Stevan H. Goldman: There's one other issue, and it gets back to the same quality of data coming from the credit grantor. You know, when Citizens First gets bought by NatWest, which gets bought by Fleet, which gets bought by Bank of America, they don't replace all those existing systems in most cases. They keep the existing systems going until they either die by attrition or they're able to move all of their customers over to a more centralized system as banks consolidate. That is an example of why this goes bad sometimes or why the data that comes from the banks is not as accurate as it will be going forward. It's a legacy issue as much as anything else. And I guess Michael's correct to a certain point. I guess they could spend the money, but when you buy another bank, I guess the first priority is not to then put in a whole new computer system and get everybody into one system as fast as possible. They just don't do that.

>> Michael D. Kinkley: The other problem is, the banks are using robo-signers, too. I mean, we all know about the comical affidavit where it wasn't really here signing it. You saw the "60 Minutes: Robo-signers." The banks themselves are trying to sell this. Their legal departments are sales departments. They're trying to sell it. Their sales process is to keep it as cheap as they can, so they don't apply the technology they have either.

>> Leah Frazier: Okay. We could talk forever about the issues of where the data comes from and how available it is, but I think that we should really talk about the technology that collectors use and the software platforms they employ. So, maybe, Jim, it would be good to start with you to give a description of what your knowledge is of the range of platforms out there and who's using what.

>> James R. Adamson: Yes. Most of the platforms out there are -- they're all similar in functionality, at least as far as the commercial. There will be differentiations between them, but I think most of them have the capability to calculate interest correctly. They have the ability to, as you import the data from where it's coming from, the original credit grantor, all of that occurs by extracting, transforming, and then loading the data into the system, and that's all pretty standard for all of the systems that take collection information. Once you have that information into the system, then rules are applied to determine if you have the complete data, and there can be alerts generated that indicate we're missing certain pieces of data, and you won't accept it, as we mentioned earlier, until that data is obtained. And then, also, if the data can't be obtained, then that's where there can

be automated services to start skip tracing and to see if you can locate that information or just put the account into "I need some information about this." And you'll call in a collector, or someone in the collection-management process will call back the original credit grantor or the debt buyer, whoever they got the information from, and see if they can obtain additional information. And then, from there, it starts through the collection process. And then there are forwarding capabilities that these systems will have, where when it needs to go to a legal process, the information, everything that the collection agency has, can be forwarded to a, like, YGC or some other repository for helping with the legal process or any other aspects of the collection process that needs to happen.

>> Daniel Becker: And how widespread are these systems that you're discussing? And are sort of proprietary systems that are built by the collector generally as capable?

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

>> Leah Frazier: And, Chad, why did CBE decide to develop a proprietary software instead of using an off-the-shelf product?

>> Chad W. Benson: Yeah. We've been on our own system now for, I guess, 20-plus years, and I think there's a number of ways you look at the architecture of a system, and we're kind of a strategy driven, and I think that's kind of an interesting decision versus, you know, an action-based, where human intervention is driving the next step. You're bringing the system architecture into driving the process. And, so, what that essentially does is, especially when you look at FDCPA and how that may be relevant, is in areas where there's a lot of gray area, you begin to confine that -- instead of having 800 people making a decision in somewhat of a gray area, you now confine that decision

in a step process with the system doing most of the work. I think the other thing is speed. So we want to be able to respond to issues that come up very quickly. Innovation and ideas that we believe are fundamentally gonna serve all the different markets. And we cut across pretty much every market from government to healthcare, financial services. And, so, all of those needs are fundamentally different, and, so, being able to customize and build the right strategies to drive that business effectively from a compliance and performance standpoint makes a lot of sense. But it's a big investment. That's the flip side. And, you know, we want to believe that, you know, emerging technologies -- when you talk about voice analytics 15 months ago, we made the decision to do a -- go down the path with voice analytics in the database levels where we can begin to aggravate information with not only, you know, capturing every phone call but now analyzing every phone call and using that information to improve our entire process. You just can't do that when you're trying to pull all the pieces together.

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

>> James R. Adamson: We found that very small agencies can be as complex as very large. We found it really doesn't have anything to do with the number -- how large the agency is. How many collectors they have has to do with the type of debt that they collect. And that generally dictates the complexity that they will have as they go through the collection process. So we got some very small agencies with just a few collectors that are more complicated in what they have the software do and the rules that they have, and it's all because of the type of debts they have. Then much larger agencies that maybe aren't dealing with the same type of local conditions or the type of debt that a small agency is dealing with.

>> Leah Frazier: And what type of debt would require a higher level of sophistication in terms of software?

>> James R. Adamson: Well, one thing is, when you get into the legal process, there's much more that needs to be done in that regard. Some of them, if you get into some of the medical collection areas, their restrictions that HIP in play requires that agencies have. And debt buying in itself has -- when you get into the collection of that, there are reporting requirements that they have that have gone back to the original debt buyer or all the way back to the original credit grantor on that there.

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

>> James R. Adamson: Yes. As the data comes in from the original credit grantor, data to be used in the collection process, meaning where you can apply a rule, where you can make a binary decision, "I need to do this or not do that," that needs to be put into -- it needs to be defined very specifically, such as you can build rules that can act on it. So, data like documents, original paperwork that a loan may have originated from, that needs to be put into specific fields, and comments that are on those forms need to be turned into something that can be translated as binary. Means it's a rule. So, one of the critical parts of having data that you can do something with needs to go through this transform, or translation, process. And the more that you can get into a binary form -- this is a date, this is an interest rate, you shouldn't call this number, don't call this person dead, it's in dispute -- you get all of that information into specific data elements. Then you can then have rules that act upon that. And as Chad mentioned, it's better -- they found it much better to have the system manage 800 collectors by making the rules and deciding how to work the debt than to have 800 decisions on how to collect a debt. During the collection process, collectors then can also add what we call free-form notes, and those can be a synopsis of a discussion that they had with a consumer. But in order to get that into a useable form where the system can make decisions on it, they then need to have the ability, which all the commercial systems out there have, is the ability to record this as a dispute. During the conversation, I record dispute. So, hence they can do a check box. "This is a dispute." Or they can say, "This number shouldn't be called" or "The promised amount is X." And that's generally how they work through the process.

>> Chad W. Benson: So, like, we don't do any work for debt buyers, but I can respond to, I think, the best practices that relates to document import, export, and management. I think that's a feature. It's a function of the history of the debt. Being able to import PDF files and store those is a function of the account at the account level.

>> Stevan H. Goldman: This is an example of how technology can help improve efficiency, which is in everyone's interest, because we don't think that efficiency as opposed to accuracy. They actually work hand in hand. And as Jim was saying, once you can get a piece of data and reduce it to knowing that the data's there or not there -- For example, once you have correctly flagged a matter as being a dispute, any computer can instantly give you a list of all of the cases that are in dispute and not miss a single one, regardless of how many are in the database. And you can treat them differently. If an attorney -- if the debtor's represented by an attorney, most of the systems I'm aware of will actually prevent the collector from doing something that's illegal. For example, corresponding directly with the debtor when the system knows that there's an attorney involved. So this is an example where, in the old days, everything was on 3"x5" file cards, and you could make erasures, and it was all paper-based. The opportunity for error was much, much, much greater than it is now, and the opportunity to overlook something is much greater now. Technology goes a long way toward improving accuracy.

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

>> Stevan H. Goldman: We have places for that information. It's a question whether it comes -- And remember, we're just a conduit. So if the information comes to us, the answer is yes.

>> Daniel Becker: Can anyone in the panel -- generally, is this information forwarded?

>> Gary Portney: When it's placed or when it's sold? What was it?

>> Daniel Becker: Well, how about both?

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

>> Michael D. Kinkley: I disagree. Well, a bigger and related problem is, when debt collectors have a dispute, some of them just fold the tent and sell the debt, and they pass that on without marking it as disputed. Of course, there's credit reporting requirements that they don't comply with and so forth. Those are violations of the law already. I wanted to comment on the technology. You have to, really, when you're talking about the technology and the software. My experience is the off-the-shelf stuff is better than the proprietary. I haven't dealt at all with Jim or his proprietary, so I don't know. It might be that I just get better information about the capabilities when it's off the shelf, because I have people that will tell us what it'll actually do when we're suing them. But you have to distinguish, really, three different types, although it's often the same software -- the local collection software and how that's used versus the litigation software, whether national or local, and then the national software. And one of the problems with the national and litigation combined is that you have one software platform doing the local collection, producing the documentation for litigation, collectors' notes, action codes, and so forth. But then you have an interface with a different national software program, and the problem is, the people on the national level are able to interface and actually add to the local collection. It's one interface, and you'll see collectors' notes or actions being taken by somebody somewhere, where we don't know who he is, and the local collector. So you don't have a clear responsibility of who's making that note or creating that action code, from somebody in Minneapolis or Virginia or Georgia, versus a guy in Spokane, Washington, is doing the litigation collection. So, there's an accountability problem there that often leads to errors.

>> Gary Portney: I had -- I'm sorry.

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

we see a passive debt buyer -- "passive" in big quotes -- who keeps assigning a debt to another debt collector, pulling it back on dispute, then reassigning it to another debt collector, pulling it back as soon as the consumer disputes it again and again and again to the consumer's great frustration, we say that that's an unfair practice, and we go after the "passive," in big quotes again, debt buyer for that practice, because the consumer's validly trying to exercise their right to dispute the debt, and as soon as they do exercise that right, it just gets passed along down the road. That's a big problem, from our point of view.

>> Michael D. Kinkley: And on a national level, that hasn't been held necessarily to be an FDCPA violation as a problem.

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

>> Laura E. Udis: Yeah. We've -- I'd mentioned this in our pre-panel discussion. We've seen some big problems where parallel software seems to work fine in isolation but not when it's coordinated. And the big concern from our point of view is the intersection between skip tracing software and dialer software, where the skip tracing software finds what might be contact information for the consumer, and then that is automatically populated into the debt-collector's database for the dialer, which calls the consumer, and the consumer says, "Wrong person. Not me." And then it's removed from the database for the dialer. Then the account is assigned back to the skip tracer to try to find a good number for the consumer, which then finds the same number, which then is repopulated back into the dialer that calls the same consumer who, again, says, "It's not me." And then it's removed from the system, which is correct. But then there's nothing that blocks it permanently from going back to the skip tracing software and repopulating it. Literally, in one case, we saw it 10 times. And because of this problem -- Now, I know there has to be -- from the people on this panel, there has to be software out there, or expensive enough or sophisticated enough software out there, that permanently blocks the skip tracing software from repopulating the same skip trace number back into the dialer. So, part of the problem, I'm sure, is that some of the

collection agencies we're seeing aren't using the software correctly or are paying up for the added capability that connects the two systems so this doesn't happen. But curiously, we've seen this in not just, you know, a 10-collector shop, but, in addition, in collection agencies that have thousand-employee operations, and this has been the biggest problem that my office has faced in the last year. We've taken at least 15 disciplinary actions for this very violation. It's so pernicious that it's just the same action, the same disciplinary action, that we're seeing over and over again. To make it even more problematic for some of the consumers is the less sophisticated type of voice-mail message that might be left on consumers' phones from the dialer that says, "If you're not the correct consumer, hang up," as opposed to saying, "If you're not the correct consumer, press option whatever" so that your only option, if you're not the correct consumer, is to hang up and presumably receive these calls over and over again, which is, of course, not a good solution. So, this problem of too much automation, in a way, is a problem that we've seen and we've had to take disciplinary action against. And there is obviously a solution where the two systems have to be able to communicate, but it's something that apparently some of our even quite large and sophisticated license-collection agencies were not aware of. Another problem is -- and it seems very simple -- the consumer calls and says, "It's not me. You've got the wrong person." But somehow, when that number is removed from the debt-collector's database, it's only -- the search only removes it from one account, and, yet, the consumer's phone number was mistakenly skip traced in or associated with more than one account. So there have to be, and obviously there are, broader search mechanisms to make sure that this is done to remove that wrong phone number from the entire system.

>> Leah Frazier: For more industry-oriented folks, what -- have you seen this problem? And if so, what has your response been to prevent something like that from happening?

>> Chad W. Benson: I mean, I would characterize best practices and some of the things that we do, as far as integration. I mean, I think there's actually three components. There's the dialer, there's the system, and then there's the database, and I think those two things merging and being able to manage from an integration standpoint, your do-not-call list, and the process by which you - - and policy by which you manage the do-not-call list or wrong-number list. Those two things definitely have to be aligned, and when they do, I mean, it's a fairly straightforward process. I'd

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

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

>> Chad W. Benson: I would have -- our general counsel does that. So he has that authority.

>> Leah Frazier: And, Mike, in your experience as a consumer advocate, what problems have you seen when software fails to function as it should?

>> Michael D. Kinkley: Well, the function of the software is really quite good. I mean, the technology is there to do things right. It's just that it's economically more feasible to not use all the functionality. And what we're talking about is trying to automate and streamline processes, which sometimes, with litigation, particularly don't lend themselves well to automation. If everything that was done that Mr. Goldman was talking about a moment ago with interest rates, it could be done. It should be done. And that's where I see what contributes to compliance problems with the software, is that it's more about money and not using the capabilities that are there, because it's expensive to do it the absolute best practices way. And that differs over platforms, of course, but in the litigation software, it really has not been necessary to this point to do it right, because the default judgments regular on their face are being presented to courts. So if you're producing it badly, it hasn't had any economic impact until now. The FTC is looking at it. There's class actions in it. Those changes will inform what software platforms, how they should be used more than what they're capable of. 'Cause my understanding from these gentlemen and others is, the software is really quite, quite capable. It's just that nobody wants to pay the money to do it in that really, really correct way.

>> Stevan H. Goldman: It's not always a matter of money. It's also a matter of the availability of the data.

>> Michael D. Kinkley: I agree.

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

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

>> Stevan H. Goldman: Certainly, garbage in would be a problem, but I think what we're really talking about here is that there's a very distinct difference between legal obligations in terms of best practices and technology and automation. And technology and automation should be an aid, should make it easier to identify the legal responsibilities. It would be a mistake to assume that just because you're super efficient and can produce a lot of paperwork in a short period of time, that that alleviates a lawyer or a collection agency from doing the right thing.

>> Michael D. Kinkley: And Leah keeps trying to steer us back to technology. But for me, that legal tail, the legal requirements, is the tail that wags the dog here, because once you understand what the legal requirements really are -- and I don't mean false affidavits in front of a court or getting by with default judgment. I mean doing it right. Once you have those legal requirements,

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

>> Stevan H. Goldman: I don't think it can be done without the software, frankly.

>> Michael D. Kinkley: Oh, of course not.

>> Stevan H. Goldman: So, uh... But, yeah. But, yeah. I think we're saying the same thing.

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

>> Michael D. Kinkley: At least two.

>> James R. Adamson: So that may not be clearly understood in all cases.

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

>> Chad W. Benson: Yeah. I mean, I'll take that. I mean, I have a tendency to think about contact as a set of risk events. So, I mean, if you think about state -- If you think about it at the legislative state or federal level, you have a -- let's just call it 8 or 10, 12 different events within a

communication that could effectively end up in some kind of violation. So what is the best way to maneuver and mitigate that process? And so I think, you know, as you look into the future, you're definitely gonna see the migration of voice analytics and, I think, businesses intelligence and the analytical capabilities to best manage information and provide screen-driven requirements prior to next step as an example verification of debt. Insurance submitting veranda -- those functions, when you start to integrate a push-type environment with being able to capture a voice and then use voice analytics to acknowledge that that all happened is one side. I think the other side of it is how negotiation with a vast majority of the consumers who want to settle the debt, and, so, essentially, you've got to find the best outcome. And, so, that creates a lot of challenge, right? So how you go about thinking about pushing information and negotiating most effectively to solve without creating any kind of harassment-related issues?

>> Leah Frazier: So what -- what functions are programmed into software to make sure that compliance occurs? You said something about screen-driven solutions?

>> Chad W. Benson: Yeah. So, as an example of function before, as a verification the process of contact takes place, verifying that you are speaking to the right person, as an example, would be the first step before you could move on to any other function within the conversation. So, you know, those steps, including verification of the debt and then how you go about negotiating the debt and balance in full, all the way down to any kind of settlements and parameters that would be a function of what your clients are allowing you to do or not.

>> Leah Frazier: And how does a software ensure that there is verification and that the process doesn't move forward if there isn't adequate verification?

>> Chad W. Benson: Well, that's, I guess, a function of the software now, being able to tell you where you're compliant or not, and then action being taken from that process. So, you know, you're gonna see, you know, reporting that says, "Hey, this or that isn't necessarily -- you're not necessarily compliant on a call, and now you can address it."

>> Leah Frazier: And I think what I'm trying to get at are functions programmed into the software that prevent collectors from taking certain action or things of that nature. So, if anyone on the panel could speak to that, I would be interested in hearing about it.

>> James R. Adamson: I'll take that. Yes, there are functions built into the software where you can have security or user security that they can do certain things or can't do certain things in the software. There's also -- the software has the ability to, instead of requiring a collector to do many steps, they can do one thing, like the verification of "Do not call," for example. And there may be several steps that you need to do to properly record that within the database. And, so, the software can automatically do all of those steps just by requiring the collector to enter in one item there. Another thing, though, that the software I don't think is really good at is controlling behavior. A lot of what a collector does can be done just by what they say on the telephone, and software basically can control the data behind the scenes that it presents to the collector, and it can control what happens with that data, but when it comes to the collector interacting with a consumer, at that point, all the computer system can do, and the software, is just to display the data. But there are some things that can and are done to help control behavior. There are, as Chad mentioned, when you have a voice recording and you play analytics to it, that can allow you to determine the quality of that conversation that a collector had with a consumer. The computer will also keep track of audits and logs and time and date stamps of other things they did on the system and keep track of URLs or any other information that is pertinent to that, to a call, which can then be used in an indirect fashion to control behavior or prevent them from doing things that they shouldn't do if they were malicious about wanting to do it. So there are lots of things that it can do directly and indirectly.

>> Leah Frazier: And I think now is a good time to move the discussion to a more forward-looking proposition. And, Gary, you had earlier mentioned that using third-party data repositories would be a good idea to ensure that there's access to accurate information. So what information should be contained in such a repository, and how -- what do you think the chances of adoption of such a technology are?

>> Gary Portney: Well, I think they're high. I think it's happening now in repositories and companies that have been established and are getting customers and market adoption. My

perspective is that the information in a third-party repository should actually start with the original issuer. It should be the base-line data associated with the debtor, whether or not it's in the form of some kind of flat file or an Excel spreadsheet, and the underlying documentation, or the important documentation, or median needed to evidence or validate or verify debt. I personally think, in terms of just listening to this panel, the advantages or the potential of cloud-based computing our softwares or service offers, I think, a tremendous amount of advantages to consumers to establishing best practices and standards within this domain. I think it offers a level of transparency that doesn't exist. This industry is operated with a level of opaqueness that is changing. As we speak, I think technology can actually force that. It can force best-practicing standards. There's other information but from a pure repository standpoint. I think centralizing this information, potentially opening it up to the consumer directly, so that when consumers are speaking with collectors, having the same conversation, they're seeing the same information, I think, to a certain extent, levels the playing field. I think it instills consumer confidence. I don't think you can do that with shippable software or more proprietary systems. I think you can only do that with modern technologies. I think we'll hear a lot about it in the years to come, about cloud computing. It's already happening, obviously, in a lot of industries and other vendors in this industry that are adopting those models or that are starting out. The costs to do those are much less. The openness of those systems are much greater than proprietary or older legacy systems. The movement of information becomes more seamless, more transparent. But to answer your question specifically, I think that underlying documentation belongs in a single reposit-- one central place, and then whoever has permissible purpose, you're actually just changing access rights, and that really reduces the costs and improves transparency, I believe. And, Stevan, your company offers a conduit for information to pass from the issuer to the collection agency, and, so, I was wondering, what -- do you think that using a conduit is the best solution or do you think that there is a benefit to having a centralized repository?

>> Stevan H. Goldman: Well, both. We are a central repository. That's exactly what we do. We build a new database with all the information that's passed back and forth in both directions, and then we allow both sides to access that database. So it allows the credit owner to check the progress of the collection activity, because every time someone in the agency touches a file, puts a note in, collector talks to a debtor, strikes a payment arrangement, finds out it's the wrong guy, puts

that information into the system, it automatically updates both our database, and then we pass it along to the original sender. So, that's exactly what we're doing. We are, you know -- But we're doing it with row-level data, as Gary had described, as opposed to the actual documentation itself. And then, if the owner of the debt sends it to one particular agency for collection -- and this was discussed, of course -- and they return it or can't collect it, we don't have to send that back to the original sender. We can then, at the sender's instructions, send it to the next collection agency, because we maintain that data and maintain the integrity of it. So the answer's yes.

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

>> Gary Portney: Or multiple repositories. But the implementation of a repository is to manage certain information, not all information. But certain information I think has great potential.

>> Leah Frazier: So do you think that a conduit could be a solution instead of having a centralized repository? Because there's a system where an issuer could choose to buy your services to pass information on to the collectors it's doing business with, but what about the idea of kind of a global or even multiple central repositories?

>> Stevan H. Goldman: I think it's a great idea. I mean, again, that's exactly what we're doing, and by giving all the participants access to our central database, number one, neither one of them has to expose their own system of record to the outside world. There's no security issues involved, because they are only passing us data, but they're not exposing their systems of record to the outside world. They can come to our system, which we maintain, in terms of security, but we think that is an advantage in terms of the quality of the data. The conduit idea is just nothing more than a delivery aid. We kind of, like, have an electronic mailman. So if a debt owner has 30,000 accounts they want to place in a given day, and that's gonna go out to a combination of 400 lawyers and 300 collection agencies, they can send us a single data file, and we break it apart and then securely deliver it to all the different recipients. And conversely, when all those people work those files and the information comes back to us, we conglomerate it and send that information off to the debt owner as a single data file. So we facilitate their moving of the data. That's the conduit idea. But

the centralized-database idea, I mean -- and frankly, as Gary said, there's no reason we couldn't give the consumers access. Just like we give the collectors and the debt owners access to our data, they do it for their own purposes. They think it's a great business advantage to be able to track progress. But there's no reason that that ability couldn't be given to the consumers, as well.

>> Leah Frazier: So is there -- is the software capable of that yet, of providing consumers with access to the information?

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

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

>> Leah Frazier: And what consumer-protection concerns may arise from centralizing this information or establishing a repository?

>> Michael D. Kinkley: Well -- do you want to go first?

>> Laura E. Udis: No, go ahead.

>> Michael D. Kinkley: All right. Well, the first problem is that I agree with Gary that there is a problem with transparency. And one of the problems is, if there were the actual purchase and sale of the portfolio agreement, the 20- or 50-page agreement, if that were in this repository and if it were ever shown to state-court judges, they would never sign a default, and they would never sign a summary judgment, because the sale agreement itself says you can't rely on this very data they're now claiming is supposed to come in under an exception to hearsay. And that's what we're talking about when you're talking about the media, the documentation, the records. The problem comes in. It's not that the software probably can't do it. In fact, there are a number of depositories. There have been depositories in the mortgage field. It didn't work out so well with merge, necessarily. There's depositories now. The problem you have is, you have robo-signers who are trying to perform the legal function of authenticating the documentation and providing the business records affidavit, and both of those are necessary. The problem that's been happening with the repositories as they exist now and the conduits is they find A terms and conditions that might have existed at some time. It may not necessarily be the right one. Oftentimes, the data is stored as bits, zeros and ones, and then it's re-created and printed out to look like a credit-card statement, when that was never kept. They have data they can reproduce, and that comes up with some really interesting anomalies where you have ads being forced onto the documentation that are copyrighted in 2009 for a supposed credit-card statement from 2007, and that's an interesting thing that happens with the conduits even now today. And the other problem with the conduit is the -- You're still gonna have the quality of information. Again, the problem with having this data storage is that the people selling it have very little interest in the quality of the data that they're providing, because they're getting rid of it instead of that they -- It doesn't have much value, so they're selling it for very little. The problem with the person storing it is -- in the repository and turning it out, is they have to do it cheaply. It's very competitive. And, so, you're only able to do it most cheaply if you can do it in some sort of economies of scale, and the problem with economies of scale is there's too many variances across state lines, across different credit providers, and so forth. So, again, having the right kind of depository that would meet the legal standards is impossible. In our current environment, I think it is doable. It would be great for consumers if it were doable with accurate, complete information. Look. Debt buyers now can go back to a lot of the original creditors, for a fee, have them research their files, find the original records, scan them, and get them. But they don't do it because it's too expensive, and, frankly, it's not necessary, because the judge is gonna

sign a default anyway without it. Just anything in front of them. And that's where we've got to get past. We've got to get past the point where the state judges are just signing anything because it looks regular. And that's my concern about the databases. It's one more place where it's gonna look regular. The computer said so. It looks like you're giving a stamp of approval or authority to support this documentation when it doesn't really meet those requirements. Other than that, I think it's a great idea.

>> Gary Portney: Yeah. Can I say a couple things? Sorry. So, first of all, I think it's -- to solve some of these problems that we're talking about, you need to innovate and bring new technologies to bear, or else they're never gonna get solved. I would argue that, certainly from robo-signing, I don't know how prevalent that is today, given all the happenings. I think -- well, I think if you solved the media problem or the document problem, the need for affidavits goes down precipitously, first of all. And I think, secondly, the fact of the matter is that this information lives electronically within a lot of these originators and how they get it out. And the problem has been extracting it out of those systems and getting it into the hands of the people who actually have permissible purpose and need it. So, you know, when I showed up in this industry, they were -- this still happens -- you got creditors printing the stuff out, putting it on pallets, and sending it out the back door to a debt buyer. That's changing as we speak. If that first-line debt buyer sells that debt, he re-scans all that information, puts it into an imaging system, and then he does the exact same thing. He prints it out and sends it out to the next thing. That is a completely inefficient, un-secure model, and I think if you solve the problem of delivering information or media, the documentation, to the appropriate party, a lot of the problems that you just mentioned go away. I think this is completely doable. It's happening. I don't think it's happening fast enough, but it is happening, and some of these problems are being cared for.

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

>> Laura E. Udis: Well, I mean, certainly, to use the extreme example of the robo-signed affidavits, those are gonna -- those litigation costs are gonna drive changes in the industry, as well. So, talking about costs of obtaining media or verification of debt, it's gonna happen through the court-imposed costs. So it's gonna be there either way. Probably be cheaper just to have that media from the start instead of having court-imposed costs. But I do think that, again, there's sort of this dichotomy between having verification to address questions that consumers have about disputing debts that might be able to resolve, quickly and efficiently, questions about, "Is this my debt? I just need a little bit of clarification to make that determination either to pay it or to refuse to pay and say 'Cease communication' on the one hand that could perhaps be resolved through some kind of centralized repository versus what kind of proof is required in court in litigation, which I think is a different animal and requires a different level of proof and is the kind of thing where we should not assume that something from a repository necessarily meets the level of proof required in court. And that's inherent potential risk there, that that then becomes hard and fast proof in a lawsuit. And I think those are two different kinds of proof of a debt -- one proof that satisfies a judge, another kind of proof that might satisfy a consumer into saying "Oh, yes, I remember that," or "No, that's definitely not me." And, so, the repository could satisfy one need but not necessarily the other. And, so, I think a repository is perhaps an intriguing idea for one but definitely has some concerns with the other.

>> Michael D. Kinkley: But the problem, I agree with you -- And as you articulated, the problem was the semblance of reliability that is what's trying to be accomplished, 'cause the real money is in the litigation collection. The debt buyer and litigation model is the most effective model. The company's making hundreds of millions or billions are doing that model, and that's why they want it, or some think that, because they've been getting by with a less than reliable data. Now we're finding out more and more about it, and they want some other way to say, "Oh, but this is reliable." That's my huge concern. As far as, "Oh, let's share this information and talk about it," that's supposed to be reliable, too, under the FDCPA, but I understand what you're saying.

>> Laura E. Udis: Right. And including the overlay of the prevalence of default judgments and litigations. So, yes. That is a concern.

>> Leah Frazier: And just before we wrap up, Gary, it would be interesting to hear from you what steps are taken to ensure that the information housed in such a repository is accurate.

>> Gary Portney: Well, we -- My company specifically, we interface the back-end systems of the banks that we work with. So, from an integration standpoint, it's a single interface. You're not interfacing to multiple parties. So we directly access that information. And those are whole. That's their document system or their other -- where their whole documents live. We're not assembling documents as we get them. We're actually delivering whole documents. From a security standpoint, there's all kinds of standards that any company doing this should certainly adhere to, starting with things like SAS 70 or the new SAS regulations, SAS 16, I think it is. PCI compliance.

>> Leah Frazier: Don't look at me.

>> Gary Portney: What did you say?

>> Leah Frazier: I said, "Don't look at me."

>> Gary Portney: Oh. So, PCI, DSS. There's evolving standards. Doing anything within this kind of information, obviously, you have to build that into your plan. My company specifically is a...redundant. We have multiple data sites. Everything is encrypted. We would argue that we're as secure as any -- as you could possibly get with handling this information, as any company doing this should be. That also is an important point, that you can enforce this. You know, single repositories are light and have much better enforcement. From a security perspective, you know, you know who's accessing it. You know when they're accessing it. All of those things. That doesn't happen when you have, you know, different ways of doing it.

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

>> James R. Adamson: I think one of the biggest problems for software developers is when new technology arrives on the scene. How can it be used? There's many collection companies that would like to utilize it, and they ask us to start implementing it, and we ask "How?" or "What should it do?" And there's not enough case history or enough guidelines to know what should be done or how it should be implemented. So that's always an issue, and anything that can be done to help from a regulatory board or others that -- looking forward with regulations. 'Cause often, when you can't apply the new technology, it's not 'cause we don't know how. It's not knowing how it will impact you from a legal or regulatory standpoint. And, often, it's years before some of those issues are known, and that's probably our biggest challenge.

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

>> Stevan H. Goldman: One of your questions, Leah, was how to encourage adoption of technology that you deem that is deemed to be worthwhile. I would suggest that it would be in everyone's interest to have some sort of a reward of a legitimate defense in the event of bona fide human errors. There will always be human errors. I mean, that's just the nature of things. But you have -- It seems to me that it's in the consumer's interest to do everything that they can to separate the good players from the bad players. The good players that we're all aware of here certainly use technology because they want to improve their practices. There's no profit in chasing down the wrong debtor or abusing somebody. They do it for their own selfish purposes. They're in the business to make money, and there's no money in litigation, as, you know, if you get tied up in lawsuits or get sued or violate the FDCPA. So, but if their law had a way built into it where there was a -- in the event of legitimate mistakes, the penalty was not so onerous, that would encourage the adoption of technology.

>> Leah Frazier: I think that's all of our time. So I would like to thank all of our panelists for their insightful comments. [Applause]

>> Male Speaker: Thank you. Our next panel will be an e-mail panel. I'm gonna ask the e-mail panelists to come up and switch places with the folks who've been up here talking about information systems. Bear with us a moment. All right, if everyone could take their -- please take their seats, we'll begin with the next panel. The moderator of this panel is Ron Isaac, who works in the division of financial practices here at the FTC.

>> Ron Isaac: Good afternoon. This panel will explore e-mail, whether it's a boon or bane to collectors and consumers in the collection area. It will explore the use of e-mail, how widespread it's being used by collectors, consumers receptivity to having collectors contact them by e-mail, and we will, of course, talk about the implications for the FDCPA compliance. How can collectors use e-mail and still meet their compliance obligations under the Fair Debt Collection Practices Act. At that, I will introduce our distinguished panelists. To my far right is Zafar Khan, a chairman and CEO of Rpost US Incorporated. Rpost is a company that provides variety of specialized services, with respect to the delivery, content, and security of electronic communications. To my immediate right is Robert Murphy, secretary of the National Association of Consumer Advocates. Mr. Murphy's a private attorney who specializes in consumer-class litigation. To my immediate left is Barbara Sinsley, general counsel for DBA International, which is a trade association for debt buyers. And to my far left is Rich Turner, vice president of sales and marketing for sales for DANTOM Systems Incorporated. DANTOM Systems provides credit and collection data processing, high-speed printing, and mailing services for the accounts-receivable industry. You may have noticed that in the agenda David Rainey, president and CFO of Debt Resolve Incorporated was scheduled to appear on the panel today, but he had to deal with the sudden hospitalization of a family member, and he won't be able to join us. So we wish him well in having to deal with that unfortunate circumstance. Okay. So how widespread is the use of e-mail in the collection industry with respect to communications with consumers? The ACA in its comment submitted in connection with this workshop has reported that fewer than 2% of hundreds of millions of annual collection communications use e-mail or text messages. So, if that's accurate, why, in fact, is that the case? Does that signal that this is a fledgling industry that's just finding its

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

>> Zafar Khan: Thank you. So, from our perspective, one of the reasons why e-mail is not used en masse in the collections industry is because most of the collections companies are looking for some clarification as to what type of e-mail, special e-mail services, should be used for what type of notices and pieces of correspondence. So what happens today is standard e-mail -- there are a lot of challenges with standard e-mail and common misconceptions, and they're looking for some direction from the regulators. Now, I can go into more detail on that now or wait for a later point.

>> Ron Isaac: Does anyone else want to comment on that initial question?

>> Barbara Sinsley: Sure. You know, I think one of the problems is what Mr. Khan said, there's no clarity to e-mail. So you have people that routinely will e-mail military overseas, because that's really the only way you can communicate with them, and then you have a handful of collectors that are doing it more frequently, but they still don't know the clarification on, "Are they gonna get sued? Is it possibly a third-party communication?" If you look at the FDCPA, it talks about the definition of communication as a conveyance of information through any medium, but it doesn't say what the medium means. Then you have the rest of the FDCPA that doesn't define the word "send," and it doesn't really talk about the word "mail" that much. It talks about mail with the response to verification. It talks about mail mailing when you have a post-dated check. But other than that, there's no real clarification in the case law out there either. The FTC in its 2009 workshop report said that debt collectors should be able to use all emerging technologies, and the GAO said the same thing. So I think people would use it more if they had clarification from the FTC or really rather not have it through the case law.

>> Ron Isaac: Well, I don't think there's anything in the FDCPA that says that you can't use e-mail. Is that correct? And I would assume that if there's nothing that prohibits its use, that it's permissible under the FDCPA. So are you suggesting that there's some uncertainty about, in the industry, as to whether or not they can actually use e-mail?

>> Zafar Khan: I think it comes to a lot of the common misconceptions out there, and it might be helpful just to review those common misconceptions. The legal technology journal of London 2009 January published a list of the most common misconceptions when it comes to e-mail, and we find that this is prevalent across even e-mail experts both consumer and on the business side. And I brought a paper here that was published by Jeff Ramangles Butler Mitchell, a law firm that outlines these in more detail. But just to highlight, a record of what you claim to have sent is not a record that's gonna show that, in fact, the message was received on the other side. So what you have is, you have a lot of people relying or incorrectly believing that what you have in your "Sent Item" folder is, in fact, what was received. So, first-class mail, the presumption is of legal delivery if you have a record of sending that will stand to scrutiny. For e-mail, that's not the case, as defined by the Uniform Electronic Transaction Act. So it's really -- a record of sending is not a record of delivery. A lot of the requirements under FDCPA require record of delivery or are providing certain types of notice. You also have people that incorrectly believe that if you print out an e-mail, that print-out is gonna be a record that will stand to scrutiny. It's easy for the recipient to simply claim they didn't get it. And, so, you have some challenges there.

>> Robert Murphy: The FDCPA has no requirement proof of delivery of anything. It's just that you send it out, not delivery. So that issue is not important. I think what the issue is, is whether or not -- What is the reluctance of debt collectors to use e-mail? It's 'cause they get sued. And every single time I've seen a debt collector use e-mail, I've sued them because of E11 non-compliance. Just the content of the e-mail tends to be more informal. And Barbara and I were talking about some of the issues that come up with this. And that's why. And Congress has already stated, when they enacted CAN-SPAM, that CAN-SPAM Act, that unwanted e-mails can be considered to be harassment. Now, the final rule that the FTC had kind of tried to clarify some of the issues of debt collection, but I think the FTC has to probably step in and do some rule-making with respect to using e-mail. The reason why e-mail's not used is because I think a lot of collection houses -- and I'm looking around the room. There's some very -- I know a lot of faces in here, and, candidly, everyone has an interest in trying to comply with the law. I think it is that you cannot trust your own employees to use e-mail without abusing consumers, and that's one of the problems. It tends

to gravitate towards informal communications. Unless you go automated e-mail, and automation is a job killer.

>> Ron Isaac: Well, we'll get into compliance issues a little later, but first of all, let's talk. Richard?

>> Richard Turner: Yeah, Ron. I just want to mention, you know, when you're talking about e-mailing, we have a lot of agencies that are actually e-mailing, and, so, it really starts with being very conservative. So, the way they're doing that is, they're actually getting concurrence from the debtor on the front end that they can communicate electronically. So getting consent on the front end, recording that in their systems, then being able to agree in terms of templates that are very generic in terms of that, and then the actual letters are then encrypted in a PDF and able to be opened by the consumer with their own keys. So, not necessarily a debt collector that's communicating with the debtor, but more in an automated fashion that's compliant with FDCPA.

>> Zafar Khan: In a manner where there's a record. So if there's a claim from sender or receiver that certain things have not transpired, there's a record that will stand up to scrutiny that this is, in fact, what was said at that point and time and this is, in fact, what has transpired. But, you know, keep in mind, this is about use of e-mails, about not just benefiting the collector but, importantly, providing a very low-cost simple means for the correspondence back and for that's gonna protect the consumer, as well, let the consumer respond and also let the consumer, if they claim not to have received something or claim something has not happened, provide a mechanism to easily solve that type of dispute.

>> Ron Isaac: Let's talk about how consumers feel about having collectors contact them by e-mail. What's your understanding of consumers accepting this type of communication? Is it something that they favor or is it something that they shy away from?

>> Robert Murphy: I can answer that as a guy who represents consumers. I think your comment, Rich, about consumers initiating e-mail communications, that is more common in terms of communications than when the e-mail communications start. The concern I have as a consumer

advocate is not when the consumer initiates it but rather when there's a collection of information concerning the e-mail of that consumer, and I think a lot of the reason why collection -- debt collectors haven't been using e-mail to communicate is up until recently, in the last, I think, 24 months, there hasn't been an effective way to collect the e-mail addresses for people, and now that has come about. The concern I have as an advocate for consumers is that we're gonna have a lot of C violations in attempt to locate a consumer. And in the initial collection phase, we all know that the most effective way to communicate to collect a debt, initially, is to communicate with all the surrounding people -- the neighbors, the friends, the people that work with your client. And nothing better than to have mom calling on the phone, saying, "Son, I got an e-mail from somebody looking for you at Joe Blow Collection in Buffalo." And I can see abuses occurring in the very near future of epic proportions, where we're gonna have group e-mails. It's very cheap and very effective to send 10 e-mails to anyone with an e-mail address at lawoffice@robertmurphy.com. I'm looking for Bob Murphy. Can you verify his address? You track C in, you know, a PDF form, as somebody said, but what you're really doing is to try and put pressure on that consumer to pay. That's the first issue, the C violation. And, Barbara, go ahead.

>> Barbara Sinsley: Oh, I was -- You knew I was gonna respond to that. Well, I agree that there can be C violations. There can be third-party issues. But let's talk about consumer convenience. And if you talk to most consumers nowadays, people don't like phone calls, right? Nobody likes to be called on the phone. That's the most inconvenient thing, to get called at home at dinner. But what do people like? What do attorneys like? We like e-mails. If I want to talk to the FTC, I send them an e-mail. They send a response. I can wait to respond till I'm home in my pajamas eating my Cheetos when it's a time that's convenient for me. So, if you talk to consumers, consumers want the same sort of ability to decide when to open their mail. So how is that really any different than the mail that goes in your mailbox and you decide when you're going to open it?

>> Robert Murphy: I'm glad you asked that question, because about half of consumers right now have two e-mails -- one at work, one at home. If the debt collector decides to communicate with the consumer at his place or her place of work, you're gonna have a C violation, and you're gonna have, what -- why? Well, they're being contacted at work. Let's say I didn't give you permission to contact me at work, right? And some companies have very strong firewalls. My brother's

company, I would test it to see if they would catch things. And my client's communications end up being caught by a firewall from a debt collector. Secondly, if you work for, let's say, the state of Florida, all communications using a government e-mail address are subject to public disclosure. That's the problem, and we don't know where the information's going. If the consumer says you can e-mail me at my home address at bobmurphy.gmail, whatever, okay. Fine. But let's say you go a step further, and this goes back to the TCPA issues. Let's say that Chase or Capital One says, in the fine print, "We can e-mail you at any e-mail address we find," is it fair to have that consumer two or three years later to get a debt collector calling from Buffalo, e-mailing from Buffalo, at her place of work? No.

>> Barbara Sinsley: How is that any different than a mail -- a piece of mail that goes to a mailbox that you're trying to lo-- you're sending it to that consumer's home address? People keep their e-mail addresses for years. I've had the same AOL address since 1993, when I first figured out there was AOL. So, you can move around, but your e-mail address stays the same.

>> Ron Isaac: Let's take a step back and ask, how are collectors obtaining consumers' e-mail addresses in the first instance?

>> Richard Turner: Sure. In our instance, there's two ways. Either the debt collector is getting debtor concurrence on the front end and entering the e-mail address and then opting in -- basically, he's opting in to communicate electronically, and, therefore, that e-mail -- that record gets marked as being able to communicate electronically. Or in the letters, they're driving them to the web and allowing them to opt in via the web. So either way, they then have permission to communicate electronically.

>> Ron Isaac: So is there a way for collectors to ensure that the e-mail address that they have is, in fact, the accurate e-mail for the debtor they are trying to collect from?

>> Richard Turner: Well, from what we see, you know, getting that opting in on the front end isn't 100%, but, like, over 90% accuracy in terms of that. So, if, in fact, in our world, if that gets a hard

bounce or soft bounce, then they can go by mail after that. But, basically, they're confirming that e-mail.

>> Ron Isaac: So, if a consumer has consented, let's say, to the use of e-mail, is that, in fact, a convenience that the industry should be embracing for consumers?

>> Richard Turner: I think so. I think, like Barbara had mentioned, it gives them the ability to look at it. It's obviously very convenient. It's not confrontational. It's not abusive. It's not anything. I mean, it's basically a good mechanism, just another option, in terms of communicating.

>> Barbara Sinsley: Rich, how many e-mails do you think a consumer should be able to get in one day from a debt collector? What would be harassment, though? See, Congress already determined that electronic communications can be harassment when they enacted the CAN-SPAM law, and I get e-mails to me that fill up my box, spam and everything else. Let's say a debt collector decides to e-mail that consumer 100 or 200 times a day, 'cause there's no cost involved in e-mailing. And once again, starting to automate things, it's a job killer. We're depriving people of employment.

>> Ron Isaac: Again, the way it's being used today is, the debtor is asking to communicate electronically, so they're not abusing it. They're basically communicating electronically.

>> Zafar Khan: They're confirming consent that they want to be contacted at that particular e-mail address. There's a record of that confirmation of consent, and there's a record of all the correspondence back and forth. So, if there's a question that someone's acted out of line, there's a record of that. There's a way for the receiver, the consumer, to also have some accountability around that correspondence by e-mail. There's arguably much more accountability around electronic correspondence than a telephone call and telephone message, and it provides the consumer much greater access and ability to respond with accountability if they're doing it electronically with some special e-mail services so that they -- a lot easier than having the consumer try to find a fax machine or go to the post office and send a certified letter or something. E-mail is easier, it's more convenient, and if the right measures in special services are implemented

in the e-mail system, then it can have far greater accountability at lower costs for the consumer as well as for the collections agency.

>> Robert Murphy: I have one comment. Mr. Khan, I've heard this now from Ms. Sinsley and you, talking about the convenience to the consumer. And this is a lot of word usage that's very purposeful on your part, because you represent the industry. The thing that you don't mention, which I think everyone in this room knows, it also saves money for the debt collectors, right?

>> Zafar Khan: Well, it saves money for the debt collectors and the consumers. We have a lot of users of our services that are consumers that are using our services to respond, and they want to respond in ways where they have a record, they have a registered e-mail record, that, in fact, their correspondence to eliminate or stop being contacted at that particular address, to respond to whatever the letter is. They can do that at no cost to them in a manner that has far greater accountability and more convenience than trying to send a paper, letter, a fax, or call the person up.

>> Robert Murphy: But the bottom line is the bottom line, isn't it?

>> Zafar Khan: The bottom line is protecting both the consumer and the organization with a re-- from our perspective, with a record of who said what to whom and when. Most disputes, most lawsuits, are around who said what to whom at what point and time. Certainly, if you're using standard e-mail, I agree with you. You shouldn't use standard e-mail services without any special features for this type of correspondence, because it is a highly litigious area. You want to use e-mail services that provide the right additional features that give the sender the protection, accountability, and proof. And, also, better yet, if the receiver, the consumer, can respond using the same type of mechanism. So, certainly, it does save the consumer cost. It does save the debt collector cost. But it is about efficiency and convenience and accountability.

>> Ron Isaac: Let me ask this. If we assume that there are some consumers who would be receptive to receiving e-mail communication from collectors and there may be some others that are not, are there any collectors who are, in the first instance, for example, with the initial written

communication they send to a debtor, listing an e-mail where the consumer can contact that debt collector? Is that being done in any cases?

>> Zafar Khan: We have a service that's being used -- we call it our register reply service -- where the outbound e-mail goes as a registered e-mail to a known address and the receiver can simply reply and confirm their consent in writing, and both the outbound and the reply back by e-mail is recorded in a court admissible record. They can prove the times of the whole transaction, the forensic audit trail, and the content associated with it. So this is a way for both parties to be able to have a record of consent to conduct the rest of the collections process at that e-mail address.

>> Robert Murphy: Mr. Isaac, I think your question was, is anyone sending out a G notice using e-mail? Was that it?

>> Ron Isaac: What do you mean by "G notice"?

>> Robert Murphy: The initial communication.

>> Ron Isaac: Yeah.

>> Robert Murphy: The initial written communication. I've not seen any what I consider to be -- I've not seen any legitimate debt collectors using e-mail to send out initial written communication, which we refer to as a "G notice."

>> Ron Isaac: Okay. I wasn't talking about sending out an initial e-mail. I was talking about sending out an initial written communication in a letter in the first instance.

>> Robert Murphy: That's what I meant.

>> Ron Isaac: Okay. If that happened, would that alleviate your concerns, Bob, if the consumer then responded to that letter by contacting that debt collector through the e-mail address that he provided?

>> Robert Murphy: No, not particularly, but what comes next is what concerns me. What comes next if the consumer, let's say, she requests validation, right, by e-mail, by letter, by mail -- whatever. Let's say she properly requested validation, and the debt collector decides to use e-mail to respond. Is that permitted under the FDCPA at the present time?

>> Ron Isaac: What's your view about that?

>> Robert Murphy: No.

>> Ron Isaac: Why not?

>> Robert Murphy: It says "Mail." It says "Mail."

>> Barbara Sinsley: Why isn't e-mail mail?

>> Robert Murphy: Congress used the word "mail."

>> Zafar Khan: But there's also the -- this --

>> Robert Murphy: At the time this was created, that was considered the US Mail. And I'll tell you why I view having it sent by electronic means not to fulfill the intent of Congress. I've actually followed a lawsuit on this issue, because the removal of the word "mail" from the initial -- from the G notice -- A consumer gets it by e-mail, okay? And they open -- They see it, and they go, "Wow. Should I open this?"

>> Zafar Khan: Let's dial back to your point there. Congress did enact electronic signatures laws that were specifically so that each other piece of legislation out there didn't have to change the word "mail" to "e-mail." In fact, we have a legal opinion that we'll talk more specifically about that, and we left a copy out front. So, because it says "mail" does not -- The concept of functional equivalents here should prevail.

>> Robert Murphy: I disagree. I'll tell you why. If a consumer gets an e-mail back from a debt collector which has got an attachment -- let's say it's a finance agreement or a credit-card statement -- that consumer may be disinclined to open up the e-mail because they may believe there's malware contained inside of it.

>> Barbara Sinsley: Well, there's ways to deal with that, though, Bob. One, what Mr. Khan said, which is that Congress had said these documents -- the Electronic Signature Act says a document is an electronic document. So why is a piece of written mail any more of a document than a piece of -- a PDF? And, secondly, you can send a PDF encrypted where the consumer has to know something, the consumer has to provide their own password, such as their last four digits of their social-security number. Then, if you're gonna convey validation, you can do it through the types of FTP portals where the PHI gets stripped out. The consumer has to go in. It goes into -- Different servers have these features. I have clients that anytime I e-mail them, I have to go into this special server because, for some reason, I forgot, and I put an account number in my e-mail. If I put an account number in my e-mail, I have to go to this special server. I have to load up my own account, have a certain amount of information before it lets me look at the document. The same thing can be true with consumers, where a consumer asks for validation to the debt collector. The debt collector wants to send it back to them. In order for the consumer to get it, they're gonna have to have something. They're gonna have to know something to go onto that portal.

>> Richard Turner: Yeah, I agree. I think that both the legislature and the courts have basically recognized the effectiveness of e-mails and, you know, have afforded the same legal effect and privacy as the postal mail in a lot of different businesses. So I think that it's definitely treated a lot like the mail.

>> Ron Isaac: So, moving aside from whether or not any persons in the FDCPA considers e-mail to be mail. If we assume, for purposes of discussion, that it is permissible, as it's a form of communication of the FDCPA that's permitted, should consumers be required to give their consent before a debt collector can contact them through this technology?

>> Robert Murphy: Actually, can I just respond real quick? All due respect. I read the white paper. But in the context of this, this was under "G." "Its a verification or judgment will be mailed." Okay? It's not anything to do with the communication, but rather a physical document, and that's not encompassed within what you were saying.

>> Zafar Khan: The concept of functional equivalence is -- this is precisely why Congress passed the Electronic Signatures Act. The concept of functional equivalents prevails here, absolutely. And look. I'm not a lawyer, but I have a document here, a very detailed legal opinion that does map these things, and I think most people here that are in the legal profession understand that concept. If it says "mail," then it can be done by e-mail or mail. The point here is that, in the collections industry, you would want to use some special services so that you have the protections that are gonna protect the consumer and have a record for the debt collector so that there is not a problem if there's a dispute, if someone claims not to receive something, or claims to have been send 100 messages in a day. A debt collector wants to have a record of precisely what they've sent out, what was received to protect them, and the consumer needs a way to respond electronically in a way that protects them and simplifies the process and reduces costs for both parties.

>> Ron Isaac: If, as Bob states, there is some uncertainty as to whether or not e-mail is permissible under the FDCPA, is that something that should be raised in terms of a possible amendment to the law? If consumers are receptive to using this technology, is that sufficient to justify possible recommendations to making changes in the law?

>> Barbara Sinsley: Can I answer that?

>> Ron Isaac: Yes.

>> Barbara Sinsley: Well, you know, the FTC could issue a formal opinion letter on it right now, and then we would have clarification. We could have that next week. But the answer is yes, but getting Congress to amend the FDCPA, what, since it's 33 years old and hasn't been substitutively amended... But I want to go back to your last question. Should consumers have to give consent? And my answer is no, because it's mail. I don't have to -- If I incur a debt, you want to mail me a G

notice or collection letter, I don't have to give consent for you to mail me that letter in the same way I have a right to cease communications as a consumer. So, consumers have no lesser rights for e-mails than other mail. So, if I want to cease communication, I use the same provisions under the FDCPA.

>> Robert Murphy: Except many people share e-mail addresses, and sometimes you've got older people, seniors, sharing e-mail addresses with younger people. Like, for example, my mom. So you send an e-mail without that person's permission to an address that may be shared by a family or a mom and dad or a minor child and her mother or father.

>> Barbara Sinsley: But if you use my example, your mother would have to open the PDF with her social-security number, and then, if her son's opening her mail using her social-security number, that's something he shouldn't be doing.

>> Zafar Khan: I mean, this is precisely why you would not use standard e-mail as it's offered today in the market by standard e-mail systems. You want special features that are gonna give you the protections that, again, both parties are gonna want.

>> Robert Murphy: As I represent flesh and blood people, I don't know too many of my clients that are gonna go ahead and agree to put their social-security number or any identifier information in an e-mail from anyone in the world unless it's a Nigerian looking to give them money. [Laughter]

>> Barbara Sinsley: But shouldn't they have that option, Bob?

>> Zafar Khan: It's not for everyone, right? We're not saying that you can't use mail and you can't use traditional techniques. What we're saying is that there are a lot of people out there that prefer to communicate by e-mail, and they should certainly be able to do that. We're not gonna solve it for everyone, but what we're doing is, we have -- there are ways to do this electronically that do, again, provide those protections. And if people want to opt out, fine. Better yet, if you can record that they opted out.

>> Robert Murphy: You just said "opt out." So you're gonna impose a requirement on consumers to opt out. Usually the fair way is to opt in.

>> Zafar Khan: They don't have to respond. They can not respond.

>> Robert Murphy: And then they don't get anything or they get it in the mail?

>> Zafar Khan: It's whatever the action is that the collectors decide is the action. If there's no response after a week or two weeks, then there's an action, and that action could be different for different types of debt, different for different types of recipients, depending on what information, the source of information, they have. So we're not gonna define all the potential actions that can happen, but the point here is that standard e-mail doesn't have the right protections in this type of industry for collections for potentially contentious communications between sender and consumer. Special e-mail services do provide that capability and are being used today and should be able to be used in the future. What, I think, Barbara was asking from FTC is just some further clarity so that it helps people continue to adopt electronic processes that, again, are gonna be more convenient and cost beneficial and provide the consumer a greater accountability in the back and forth correspondence.

>> Ron Isaac: Following up, Barbara, on your position that consumers should not have to be -- should not have to consent to having e-mail communications sent to them, would you -- Do you feel that debt collectors should adopt some type of procedures that would, at least, make it more palatable to consumers to receiving this type of communication?

>> Barbara Sinsley: Well, I think it necessarily is more palatable, because it's more convenient, and people can open it when they want to open it. That's really how -- Most people pay their bills online. Most people do most of their personal transactions online now. I don't have one bill that I don't pay online. But I think if they want to have the options of following the rest of the provisions of the FDCPA to cease communication, to say that there's a violation, then they have the same

rights. But if a consumer gets the initial validation letter and they don't want it, they want regular mail and they want the phone calls, sure. They should have the right to say that.

>> Robert Murphy: They have to opt in or opt out?

>> Barbara Sinsley: What's different than "cease communication"?

>> Robert Murphy: Well, the industry's been pretty bad about ceasing communication. We'll put another requirement on these people, right?

>> Barbara Sinsley: But they're not losing the right. But they're not losing the right to ask for something else, right? By sending an e-mail, you're not telling them they have no other rights. You're giving them an option to have something at their convenience.

>> Zafar Khan: And you can also provide very good records for the consumer's benefit that they, in fact, notified them electronically in that reply that they don't want to be communicated with. That gives the consumer potentially a very good record if the debtor keeps sending out notices and ignoring that type of response. It gives them the evidence that they would need to take to court if that was the action that they wanted to take.

>> Barbara Sinsley: It's great evidence for plaintiff lawyers. Bob, I'm really surprised you don't like this, because this is like this great paper trail back and forth that you can get and file lawsuits on versus, well, he said, she said, which are very hard to prove.

>> Robert Murphy: Actually, I'm not looking to file lawsuits. I'm actually looking to -- in truth. My history has been one where I used to represent debt-collection companies and consumer-finance companies. But the issue is -- I look at this thing as being a Pandora's box, and I don't report to be a guy that can write a \$50,000 or \$60,000 white paper. I can, however, say that I represent people, and a lot of my clients, about 40% or 50% of my clients, are seniors or people who are poor. And you know what? That's germane to the debt-collection industry -- poor people who have got financial problems, financial stress. Seniors -- I think the usage of computers is

probably -- I don't know. You experts can tell me. I don't know, 30%, 40% of people over 70. And right now, the penetration rate for computers -- this is from the Sun Sentinel Miami Herald from last week -- in Broward and Dade County, it says only about 50%, in my community. So my concern is that, if they don't have a computer, don't have access to the Internet, what do they got to do, go to the public library and do this?

>> Barbara Sinsley: Well, let them find them, then. Can't send them an e-mail if they don't have an e-mail address.

>> Robert Murphy: Well, let's say you think you have an e-mail address, and you say you sent it to an e-mail address that's not attached to them. I mean, this is what I'm talking about.

>> Barbara Sinsley: We could go all day, but Ron has another question.

>> Ron Isaac: Well... I want to move in to talk about a couple of possibilities for technologies that would make this possible, possibly more convenient for consumers and also for debt collectors here. For example, if there was a portal, a way for consumers to log on to a site where they can view the details of the debt -- where they can view the details of the debt, is that something that would be attractive to consumers and make them more receptive through using this technology? Is that something that collectors could provide in a fairly cost-efficient way?

>> Richard Turner: Yeah, I think so. I think today, you know, we have web portals where they can opt in, for sure, and basically sign in and log in to communicate electronically. There's also ones where they can actually get pulled back to a website to view an account or a bill or a late statement. So, yeah. I would say yes, that's very doable.

>> Zafar Khan: The other side of that is, if you're pushing that information to the consumer after they've requested it, this allows the consumer to have that information much sooner than if you have to provide it through other means. So it allows them to see the information, decide what they're going to do, and they can take action or not take action based on receipt of that information. It gives them more power, more information faster.

>> Robert Murphy: Well, no. I think what this does is it tends to alleviate the obligation of the debt collector to provide and to furnish the validation information to the consumer. Most collection agencies have got access, have places on their websites where the consumer can go on and make payments. The concern I've got is that the debt collector's gonna say, "Well, if you want validation information, you can go -- here's our www.buffalodebtcollector.com." I'm banging on Buffalo debt collectors today. "And you can go put your information in and get it from the website." And, Barbara, you think that would comply in response to a G obligation, to provide validation verification?

>> Barbara Sinsley: Well, I think it might be easier if they requested it and the consumer, or the debt collector, provided it through the portal -- the portal I described, so that the personal information is encrypted. When the consumer goes to it, they've provided their own password to access their information, instead of -- You're saying log on to a website and then access their own information somewhere on the website? I haven't seen that.

>> Zafar Khan: Robert, I agree with you on this point. I believe that consumers should not be required to jump through hoops and hurdles and visit websites to retrieve information that the debt collectors said they were providing to them. We believe that -- and, again, I'm gonna reference legal opinion that you don't -- you certainly don't have to agree with and certainly is just for clarity for people if they want an opinion. But the point that we see is that that information should be delivered to the receiver and should be provided to the receiver in a means -- in a format that they can open without any extra downloads or software that they might need on their end. So, delivery to the receiver, providing them information, is not providing a link back to a website to come and jump through hoops and hurdles to retrieve it.

>> Robert Murphy: We have a partial commonality of thought.

>> Ron Isaac: Let's talk about some of the consumer-protection concerns that e-mail may pose for collectors and consumers. Anyone have any thoughts on that? Are there any consumer-protection

concerns that consumers should be aware of and that collectors should take heed in using this technology?

>> Robert Murphy: Okay. In the first panel, there was a discussion by the gentleman that was seated on the far left concerning the theft of information, and most of the persons in this room probably are aware that there's been a growing problem with payday lender information having been leaked to Indian debt collectors. And the concern I've got is that consumers may get spoofed and have e-mails sent to them from, basically, a malevolent source. Not a debt collector. And, you know, there's issues with respect to safeguarding information once you start promoting electronic communications.

>> Zafar Khan: I agree again that standard e-mail -- and there should be awareness, and there should be ways for the consumer to verify the sender the authenticity of the sender of that particular correspondence. And standard e-mail can be very easily spoofed. I mean, in less than a minute, anyone could send an e-mail appearing to be from anyone. So, again, standard e-mail should not be used in the debt-collection practice in our opinion, but there are special e-mail services that do solve most of the points and, again, won't solve all of them, but, certainly, there will be scenarios where there is the ability to do more with special e-mail services.

>> Ron Isaac: Mm-hmm. Is e-mail our -- Is e-mail any more susceptible to spoofing or hacking than traditional forms of communication, like, for example, letters being sent to consumers that may come from false sources?

>> Zafar Khan: It may be easier by e-mail, and people tend -- but it's probably comparable. It's just as easy by mail than e-mail, but, Rich, you might have some more experience with the mail side.

>> Richard Turner: Well, I was gonna say, just, in terms of automating that process and controlling it and driving it, you know, it's set up very much like a letter process, right, where they're communicating electronically, but it's tied into, you know, having that secure environment, having that PDF, encrypted PDF, and, so, it's really built into the whole collection process, and, so, it's

really controlled in terms of that environment, and, obviously, in terms of the PDFs being encrypted and passwords being used by, you know, either a date of birth or a social-security number, in terms of that. Just access by the debtor.

>> Zafar Khan: But standard e-mail and standard mail, are they equally as easy to spoof? I think that was the question. Rich, and you're an --

>> Richard Turner: I'm not sure. I'm not sure, there, in terms of spoofing.

>> Ron Isaac: Anyone else have any thoughts on that? Okay. Well, since we -- this isn't a one-way street, let's ask, if debt collectors can contact consumers by e-mail, how receptive would collectors be by having consumers serve them with legal notice through e-mail if they had a problem with their possible failure to comply with FDCPA requirements?

>> Barbara Sinsley: Well, I think that -- First of all, if you're getting lawsuits through e-mail, you're gonna have to look at the state by state rules on service process, and I don't think there's any state currently that has service process through e-mail. Now, there is something, though, that I think should be afforded to debt collectors under the FDCPA that's not afforded that is afforded to consumers, which is, there's a 30-day notice that's given to a consumer, but there's no 30-day notice given to a debt collector when that consumer is going to sue them. So maybe they should have -- they can e-mail a 30-day no-- "I'm gonna sue you," a good-faith notice, back to the debt collector. But service or process, you have to follow the state court rules on that.

>> Zafar Khan: One of the things that we -- Well, there are two sides of this. From a personal perspective, I think that, a lot of people, there's nothing more maddening than being contacted by a debt collector or another organization and them telling you that you can't contact me by e-mail, because we don't have a mechanism for you to e-mail me back. So we believe that it should be a two-way street. But, again, there should be awareness of special e-mail services that are gonna provide the consumer the record that they did, in fact, file a complaint or issue a complaint or send whatever correspondence back to the debt collector. Now, at Rpost, we do provide a free registered e-mail service that gives consumers at no cost, and with no software downloads needed, the

capability of sending a registered e-mail to the debt collector. We would think that it would be beneficial for the consumers for the debt collectors to set up an e-mail -- a work-flow e-mail address to accept these types of correspondence back. It also would provide the debt collector corporation greater insight into whether or not a particular individual debt collector was doing something that wasn't within the guidelines of what that corporation wanted to have happen.

>> Ron Isaac: Let me ask you about this particular type of technology. Let's talk about instant messaging. One of the things that I find fascinating is the possibility, for example, of having consumers be able to contact collectors online and interact with them in real time. For example, a debt collector may provide an e-mail address where a consumer can go online and respond to a written communication or initial e-mail communication, explaining why the debt is their or is not their, why they feel they don't owe it. And the collector can then respond while the consumer is still sitting there at his computer, and they can have an ongoing dialogue electronically. Are any companies taking advantage of this type of technology right now?

>> Zafar Khan: I don't know if there are any companies doing it, but I think it's a terrible idea, because the whole point of the electronic correspondence by e-mail is to make sure that, well, if you're using a special e-mail service, you have a record. And the consumer is gonna want a record just as much as the debt collector, and instant messaging lends to more ad hoc and casual correspondence. In this type of written correspondence, you want to have -- it's better for the consumer to have a mechanism to communicate electronically where they're thinking about what they're writing before they quickly just type in a few words and hit "send, submit."

>> Ron Isaac: But, Zafar, is that any different than communication by telephone, where you don't have a written record of telephone communication?

>> Zafar Khan: Well, that's why I think that the e-mail is better than telephone, because if you have a telephone conversation, again, most disputes are about who said what to whom at what point in time. By telephone, you don't have that. Instant messaging is too ad hoc, and e-mail is more deliberate. But you would want to have mechanisms like registered e-mail where the consumer does have a valid record of exactly what is transacted.

>> Barbara Sinsley: I saw one of these the other day with instant messaging. The consumer logged onto the portal, and they said, "Do you want to talk to a collector right now?" And the collector populated the mini Miranda, and they had a designated team that would talk to people, and it would save to their notes. And the consumer could also print their page so that there was a record of it. So, if a consumer wanted -- they were up and they wanted to pay the bill, work out something right then, I think IMing at least gives them that -- affords them that opportunity to talk to somebody when they want to talk to someone. And there are ways, I think, you can print and store all the same information just like you would in e-mail and a PDF.

>> Zafar Khan: But most of that you can edit with a couple clicks of a mouse. So if someone claims that that's not what has transacted -- And we see this with our customers, that people do, with two clicks of a mouse, edit correspondence, edit text files to their benefit, and then print it out, and it looks authentic, but there's no way to verify the content. So it's very easy for -- and people are very enterprising. It's very easy for people to change text content. So, you know, we think that electronic is good, but for this type of correspondence, you'd want a mechanism to be able to authenticate the content, maybe the time it happened, and maybe that it was, in fact, transacted and received back and forth.

>> Ron Isaac: Barbara, you mentioned the mini Miranda. Is there a way that collectors can use e-mail communications and still comply with their FDCPA obligations?

>> Barbara Sinsley: Sure. I mean, it's like any other letter control that a company would implement. If you're gonna have a PDF sent and you're not having it sent randomly by the collectors, it's a controlled environment where the letters are approved by the legal department, they're written in compliance with the FDCPA, then if they are controlled who they go to, they have the mini Miranda on them or they have the validation notice on it and it's not just collectors randomly e-mailing statements back and forth, you can have the same protections as the companies have already put in place on their regular mail.

>> Ron Isaac: So should collectors be required to provide the exact same information that's currently required under the FDCPA by e-mail?

>> Barbara Sinsley: Yes. I mean, it's -- I think I'm being redundant, but my position is, e-mail is mail. Therefore, same protections, same prohibitions.

>> Richard Turner: And just to take one step on that, that's exactly right. In terms of the letters, they look exactly the same. So wherever the debtor is, the address, it's looking exactly the same. It has the same state. It has the same Federal information that it should have on the letter but just delivered electronically.

>> Barbara Sinsley: And if you're in Colorado, you have to do Laura's notice.

>> Richard Turner: Yeah. Yeah, that's right. And it's even more secure than regular mail, because it's encrypted, whereas regular mail can be opened at a mailbox level.

>> Zafar Khan: But just a point on the encryption side -- I believe that, for some types of correspondence, you would want to send encrypted. For others, you might not need to or want to send encrypted, 'cause that also creates complexity for the -- as little as it might be, for the consumer to open the message. So, certainly, there are also-- there are requirements to send messages encrypted in the context of this discussion, but there certainly should not be any requirement to send, for example, a mini Miranda notice attached, encrypted.

>> Male Speaker: You can repeat the question, but previous discussion around the phony type of third-party disclosure versus "Did provide the required notices" would apply to e-mail if you believe an e-mail can be read by a third party.

>> Zafar Khan: So, certainly, if there's a specific type of piece of information that you're delivering by e-mail and there's either a requirement -- a regulatory requirement or a best-practice requirement to put that in a manner or send it in a manner that cannot be read by a party other than the intended recipient, then you can send it by a means of sending it encrypted, where it's delivered right to the

recipient's desktop, not a click back to a website to retrieve the information. Certainly, there are other types of correspondence that don't have that requirement based on the content, and if they don't have that requirement based on the content, then I think that we believe that there are other ways to send it by e-mail that don't need to go encrypted for privacy.

>> Male Speaker: Which is exactly where all these phony boxes come from. The phone calls in question are simply, "Please call me back." That doesn't seem too, you know, much requiring encryption, but it's essentially the same what you're saying, these casual e-mails could go back and forth unencrypted and not incur a risk of phony --

>> Zafar Khan: No, that's not what I said. Because just the act of -- potentially the act of communicating with that person on the collections process might require the fact that the -- any recipient can only determine that this is a collections type of correspondence if they can access the content of the message. But there certainly are -- What I'm just emphasizing here is that there should not be any perception of, we believe, of a requirement that all correspondence associate with collections must be -- if it goes by e-mail, must be encrypted. We believe that that's not the case. Certainly the content and the situation will dictate what special e-mail service you need to use.

>> Ron Isaac: Let's talk about the convenience restrictions of the FDCPA. How can the collector comply with the time-of-day restrictions that currently apply with respect to communications?

>> Richard Turner: From an e-mailing standpoint? Yeah. So, basically, the way we look at it is, it's similar to the phone, I mean, in terms of access in between the hours of, say, 8:00 in the morning and 9:00 at night. We still have that same capability. So if an agency can only call between those hours, that we're doing the same thing in terms of the e-mailing process -- exact same thing. So we're treating it more like a phone call, from that standpoint.

>> Ron Isaac: Okay, if you're identifying the time, location of the location of the recipient of the e-mail?

>> Richard Turner: Actually, of the agency that's sending it out. And then that's the time zone that's the basis of the 8:00 to 9:00 at night, in terms of the process today. So if an agency is in Eastern Standard Time, that's the basis of what we use, and then using that from 8:00 to 9:00 at night, in terms of sending. Yeah.

>> Barbara Sinsley: And that probably is best practices and probably a good idea to do that, but it if you're treating it as mail, you're putting things in the mail, they might be get it in the mailbox at midnight. So if it's mail, there's no call restrictions. So my position is, where that would be best practices, it's not necessary to do that. If someone wants to access their mail at midnight, if it was sent at 7:30 in the morning and they got their mail -- their mailman comes at 7:30 in the morning -- how is that any different?

>> Robert Murphy: Well, it interferes with my playing Warcraft. [Laughter]

>> Barbara Sinsley: You don't answer your e-mails anyway.

>> Ron Isaac: [Chuckles] Okay, how about the limitations on the number of calls? Of course, the FDCPA prohibits abuse of calling or abusive contacts. Should e-mail communications be held to the same standard? If we assume, for example, that consumers have the option, with e-mail, of opening up the communication at any time they want and not looking at it if they don't want, should that somehow justify a distinction in the number of communications or number of e-mail communications that a collector can send out to a debtor?

>> Robert Murphy: The answer is, if... I get about 500 e-mails a day. If I'm gonna get 100 e-mail a day from a debt collector, it's filling up my box. I have to still spend my time to delete that stuff. Or because I want to have a record of it, I have to print it. And there is a point where e-mails become abusive, and Congress already made that determination. And I think, part of what... I'll make my closing remarks, and I'll save it. Go ahead.

>> Richard Turner: Yeah, I think, just in terms of the process, again, it's an automated process, and again, it's very similar to sending out a notice. So it's tied... It's really business-to-consumer. It's

not consumer-to-consumer. So it's really... It's just an automated process. And it's sending one notice, basically, just it would a letter.

>> Ron Isaac: Let's talk briefly about communication to third parties. Are collectors, to your knowledge, using e-mail at all to contact third parties for location information? Anyone?

>> Richard Turner: Say that again?

>> Ron Isaac: Are debt collectors using e-mails to contact third parties? For example, they may not have the location information for the debtor, but they know the e-mail address of the debtor's brother or debtor's employer. Are they using that information to contact those parties by e-mail?

>> Richard Turner: Not in my world, no.

>> Ron Isaac: Should they be allowed to? Anyone have any comments on that?

>> Richard Turner: Well, again, I think the whole basis is communicating with a debtor that wants to communicate electronically and, therefore, opting in and communicating that way. So it's a process. It's very conservative in terms of the process, but, again, not... There is probably... Technology is changing and where you can confirm probably that debtor address down the line, where that will be a part of the play. But right now, it's, obviously, very conservative in terms of that.

>> Robert Murphy: I think the reason why you're not seeing it yet is because, in terms of the underwriting of loans, when they get credit references still, auto loans and other types of extensions of credits, they're not asking for e-mail addresses. And I don't want to encourage you all to tell people to do that, but they're getting traditional information -- name, address, telephone number. And that's why the third-party communications go by telephone, is because they have the references there. That's the primary reason why they have it, to find the consumer. I don't see it presently. I anticipate we'll be seeing it shortly, so that's why I'm speaking about it.

>> Ron Isaac: We have a question from the floor. "It's conventional wisdom that it is a federal crime to open another's U.S. mail. Under its functional equivalence, is it also a crime, under U.S. law, to open someone else's e-mail?"

>> Richard Turner: Yeah. Yeah, I think that's a yes. As a matter of fact, there's even...

>> Robert Murphy: Electronic Communications Privacy Act.

>> Richard Turner: There's even a postmark that can be used in terms of the federal and the USPS that can actually go along with the e-mail. And it's treated just like the same offense in terms of federal offense in terms of opening mail. Same -- exact same, yeah.

>> Zafar Khan: I don't have the detailed answer, but in terms of e-mail having... I believe e-mail and mail are -- the protections around them are different categories. So there are different protections afforded to U.S. mail than any e-mail, even with a U.S. Mail Postal Service emblem on it. But that's just a thought on that topic.

>> Ron Isaac: Okay. I want to encourage the audience to submit their questions at this time. We'll be taking comments or questions from the floor and also from our Webcast. So feel free, at this time, to raise your hand if you have a card with your question. Okay. In the meantime, I want to talk about electronic payment. How widespread is the use of electronic-payment mechanisms in the debt-collection area with respect to this technology? Are collectors employing this technology to have consumers contact them and pay their debts online? Is that being done?

>> Barbara Sinsley: I think what you're saying is, debt collectors using standard payment portals where the consumers can go to PayPal or PayMyBill or some of the other ones and direct the payments through a third party. You don't see... You see some direct payments to some agencies, but more third-party payments are done electronically.

>> Ron Isaac: So, there aren't a number of collectors who are equipped, at this point in time, to receive payments directly from collectors. Is that correct? It's done through third-party sources, is what you're saying?

>> Barbara Sinsley: Probably the majority, yes.

>> Ron Isaac: Do you see that changing in the future?

>> Barbara Sinsley: Well, I think, as the technology changes and debt collectors have more of the security in place on payments and can figure out the issues around convenience fees -- because that's a huge issue with receiving payments -- and the cost of it -- who's bearing the cost. The third party... The consumers can go to a third party, and if there's a fee, they're paying a third party. They're not paying the debt collector. And there's been quite a bit of litigation on convenience fees imposed by debt collectors. So if you outsource that function, you also outsource the liability.

>> Ron Isaac: Okay. If collectors were able to make this source -- this electronic source of payments -- available to consumers, is that something that you see attracting consumers and being more receptive to using that form of technology?

>> Richard Turner: Yeah, I think it's used quite a bit, obviously, in the first-party world. And so I think, from an agency standpoint, it really facilitates a lot of the automated process. So, on a lot of the letters that are going out, they'll have that Web portal where they can have that option to make a payment, and it really kind of facilitates and makes it easy and convenient to make those payments.

>> Ron Isaac: Okay. Are there any FDCPA compliance issues that arise with respect to this technology?

>> Richard Turner: I think Barbara made mention to the convenience fee. I think that's probably the biggest thing.

>> Robert Murphy: It's just the charges. That's it.

>> Richard Turner: Yeah, exactly.

>> Male Speaker: If a consumer uses the PayPal or a credit card to pay a debt electronically in full, are you just shifting the debt to the new credit-card collector if the consumer ultimately can't pay the balance on that credit card?

>> Ron Isaac: I'm sorry. You're going to have to, if you want, to stand up and speak out so that that can be recorded.

>> Male Speaker: I'm just wondering...

>> Ron Isaac: Could you speak up?

>> Male Speaker: ...if the electronic payment is used -- if the consumer pays the debt and pays it in full using a credit card, that debt is paid, but if he's paying it through a credit card, haven't you shifted an obligation to a new creditor who may not get paid over time as the credit-card balance just remains unpaid?

>> Ron Isaac: Okay, any...

>> Male Speaker: Is there any exposure or reliability or payback?

>> Ron Isaac: Okay. Anyone want to comment?

>> Zafar Khan: I mean, that's... You know, it is whatever happens there. It's not really anything that electronic processing or any third-party collections-processing system is gonna have any impact on, where people are shifting their debt. So I don't see a lot of relevance to the panel here.

>> Male Speaker: Well, I can see a lot of incentive for the current debt collector to encourage the consumer to use his credit card to pay the current debt.

>> Robert Murphy: It happens all the time. They check credit reports and see what you've got in the way of open lines of credit. They also see if you've got a home-equity line that's not been fully tapped. Their goal is not to ensure that somebody else gets paid. Their goal is to get paid. And I think, your question, I understood. But the issues with respect to this, basically all deal with fees. In that instance of using a credit card, the debt collector takes a hit because they're gonna get charged a fee by MasterCard or Visa or American Express.

>> Ron Isaac: Okay, here's a question from the floor. "If a collector chooses to execute electronic transactions to closure -- that is, payment under electronic law, E-SIGN -- the consumer must provide up-front consent to proceed electronically. Is that correct?"

>> Robert Murphy: That's my understanding. And it also is a problem with providing the "G" notice electronically -- the initial validation notice -- is that the consumer had to provide that consent. And unless they had the consent, they can't do it.

>> Barbara Sinsley: I agree. That sounds more like an ACH question, though, on how the payments are being consented to, and then the storage period for those ACH consents.

>> Zafar Khan: And I think one of the things that we found with some of our business partners is that they're employing different electronic mechanisms to process a transaction, based on the type of transaction. So with a recurring ACH, they'll use a different way to record the consent than if it's a credit-card payment.

>> Ron Isaac: This questioner has a concern about shared e-mail accounts. "The concern is that U.S. mail can only be opened by the addressee, but e-mail can be opened by anyone. So doesn't e-mail tend to disclose confidential information to unintended parties when e-mail accounts are shared?"

>> Zafar Khan: I think we touched on this earlier. The key thing here is, yes, standard e-mail, if it has information that's confidential in the collections process, probably should be sent -- the e-mail

should be sent -- using a special e-mail service, and a special e-mail service that protects the information and has a way to confirm that the intended recipient is the only one that can view it. So standard e-mail services, yes, have those problems. Special e-mail services, some of them have ways to work that don't have those same issues.

>> Ron Isaac: Any other questions from the floor? Any other comments from the panelists?

>> Robert Murphy: I have a closing remark. Is this what you're offering?

>> Ron Isaac: Yeah.

>> Robert Murphy: This whole workshop was dedicated towards discussing technology. And most of it, however, is related to the reduction of a workforce from the debt-collection agencies, both with respect to robocalls, where you're getting automated telephone calls, to electronic communications. From the viewpoint of a consumer advocate, oftentimes the consumer -- they're, once again, flesh-and-blood people -- don't want to have an electronic means for communicating about something very personal -- the fact that they may be in financial difficulty or, in some instances, a financial failure. And I'm not advocating this, but oftentimes it is effective to have traditional first-voice and second-voice communications to a consumer. And we also can have a development of basically outsourcing all debt-collection activities to outside the United States. And I use the expression "job-killer," and this is a bipartisan comment. A lot of people depend on being debt collectors for their jobs. And I know that most of the people in this room are management. And it's odd that I, as a consumer advocate, would make that comment, but I'm very sensitive to the fact that I've taken depositions -- in fact, of some people in this room, and they're very decent people with jobs. And the trend could go towards where you're not having people collecting debts from Americans in the United States, even with respect to having the instant communications that you had commented. Most of those instant communications done by industry throughout the United States are done outside the United States by persons in India and elsewhere, taking jobs away from Americans. And this is where we have a commonality of interests, is I do want to have an American collection industry, not only because I, obviously, make my living off of suing you folks... [Laughter] ...but also I'm candid. You know, just like he is out here talking

about what his business does, the same with everyone on this panel, the fact of the matter is we need a vibrant, strong, and compliant debt-correction industry in the United States. And if lawyers like me are a pain to you, it's because we're bringing out some instances where your employees are not doing their job. That's it. And you know what? If it's a compliant world and I don't have to do this, great. I move on to something else. I sue auto dealers, too. [Light laughter] And I enjoy being with the panel members, and Barbara and I... I got a text from her partner when I was up here. Thank you, Manny. [Light laughter]

>> Zafar Khan: So, I just...

>> Barbara Sinsley: Thanks, Manny.

>> Ron Isaac: Sorry. Okay, I'm gonna give Barb a chance to respond, and then...

>> Barbara Sinsley: I mean, that's interesting and heartwarming, Bob. [Laughter] But I think the problem is that the industry realizes that consumers have a problem with communication. The communication gap with consumers has caused this huge litigation glut. And Julie Brill from the FTC came to the ACA last year with the FTC report on litigation and said, "Enough is enough. You got all these lawsuits that you're suing against people. And, yes, there's a problem with the lawsuit, but why are you suing everybody?" And everywhere I go -- I go to the attorney generals -- and their biggest beef is the number of lawsuits against consumers. And I know Cary Flitter wrote an article that said, "Sue up or shut up" or "Shut up or sue up." And I said to Cary, I said, "you know what, consumers don't want to get sued. People would rather work it out. They're rather work out their debts either by letter, by phone call, and by e-mail, but have some opportunity for communication." And the biggest problem with the FDCPA right now is that there's lack of clarity on how to communicate with consumers. The FTC said it and the GAO said it. So, "We're taking away jobs from collectors that might be making phone calls and sending letters," I think, is an interesting point. I think the problem with the point is you're not addressing the bigger problem of the communication gap and the amount of suits we have going on right now.

>> Cary L. Flitter: Barbara, I didn't write it. "Time" magazine wrote it. [Light laughter]

>> Ron Isaac: Okay, Zafar.

>> Zafar Khan: So, we look at e-mail as certainly it doesn't have... Whether they use e-mail or whether there's other forms of communication, we see it as, e-mail, if you're using special e-mail services, provide just as much benefit to the consumer to correspond back to the collector as the collector to communicate with the consumer. And so what we believe is that there certainly... Well, in the regulations right now, it's permitted, but people should use special e-mail services that do provide the right accountability around that correspondence. But it's both ways. It's out to the consumer and from the consumer back to the collector. So if are simple ways for the consumer to communicate with the collector, as Barbara was mentioning, that's a benefit to the consumer, as well.

>> Ron Isaac: Richard?

>> Richard Turner: Yeah. And I really think that the e-mail really promotes the FDCPA's purpose in terms of communicating easily and efficiently with the debtors and being able to have that extra option. And it is a very secure process and so just another option in terms of communicating and improving communication.

>> Ron Isaac: Okay, we're just about out of time. I want to thank our panelists for a very lively discussion this afternoon. [Applause]

>> Thomas B. Pahl: Thank you. We'll now take a break. And I'd ask everybody to be back in their seats at 3:15 for our social-media panel.