

>> Thomas B. Pahl: All right, thank you very much, everyone. We're on to our Social Media Panel, and the Moderator for this panel will be Bevin Murphy, who works in the division of Financial Practices.

>> Bevin Murphy: Thanks, Tom. Welcome back, everyone. It's going to be the Social Media Panel. Thank you to our panelists for graciously agreeing to be here and to our audience for graciously coming back from the break. It's been a long slog. I know we are getting towards the end of the day. We still have some very exciting topics left to talk about, and so we appreciate everyone being here and actually everyone's participation, as well. So I would just like to issue a couple reminders for those of you joining us here in the conference room -- please submit any questions you have. We had included comment cards in your folders. If you don't have those, you can get some more, and we will have FTC folks circulating to collect those, and for those of you watching our webcast, we are still monitoring the e-mail account. It's dctech -- d-c-t-e-c-h at ftcgov. Before we begin, I would like to briefly introduce my panelists. You can find their bios located in your folders. Starting from my right, we have John Bedard. He is a principal at Bedard Law Group. Next to him is Dan Edelman. He is a principle at Edelman, Combs, Lattuner & Goodwin. Directly to my right is Susan Grant. She's the Director of Consumer Protection at the Consumer Federation Of America. To my left is Billy Howard. He is the head of Consumer Protection at Morgan & Morgan. To his left is Vytas Kisielius. He is the CEO of Collections Marketing Center. And last, but not least, we have Christine Schiwietz. She is a Professor of Sociology at Georgetown University. So just a short summary before we begin. I think it would be helpful, particularly with this topic, to just define our terms a bit. In terms of social media, the definition can actually be somewhat elusive. I think you will find different definitions depending on who you talk to, but, in general, what we are gonna be talking about here are various Website platforms that you can either access on your laptop or through an app on a mobile phone that have some sort of interactive social-networking element, usually consumer-generated content, or user-generated content. Just very common examples are Facebook, LinkedIn, Twitter, MySpace, but there are certainly others and certain Websites that have a user-participation element -- can almost be, I guess, kind of considered crossover. They have certain aspects of social media, but, in

general, we'll be talking about the Facebooks, the Twitters, LinkedIns -- those types of platforms. And so the way that we are going to organize this panel is it can basically -- basically, you'll be divided up into two subtopics. So, on the one hand, we have the research skip-tracing element, and what we're generally talking about there is the public portions of social-media sites. So when there are no privacy settings or limited privacy settings, what is out there about consumers and alleged debtors -- you know, what information about them, about assets, how are collectors -- how are they using these sites, what information is out there, and what are consumer attitudes and perceptions? What sorts of privacy expectations are out there? After that, we're gonna move into the communications element. So this can also be done when -- on portions of the sites that are completely public, and that, of course, generates some consumer-protection concerns. But there are also elements of communication that are specific to the private forms of social media -- so when consumers have used various privacy settings. So, you know, can collectors on Facebook friend a consumer? Can they use the e-mail in-messaging component? Can they post on a consumer's wall -- the alleged debtor's wall? Can they post on a friend or family member's walls? Those are gonna be the questions we're gonna be talking about. So throughout the skip-tracing portion, which we'll talk about first, and then going into the communications portion, we want to get at what's going on -- so what is being done, how often is it being done, and what sorts of consumer-protection concerns are raised, and then just policy-wise, should something be done, what should be done, and who should do it? So, step one, uh, starting with the skip-tracing research portion. We have heard that debt collectors are using social-media sites as a form of or supplement to their research about consumers, their skip-tracing. So I'm going to throw it open to the panel. Before I do, if I could just remind all my panelists to just pull the mike a little bit closer. I think some folks watching the webcast are having trouble hearing. So just kind of drag it forward. Okay, let's throw it out there. So, are debt collectors using social-media sites to research consumers?

>> John Bedard: Yes, they are and there's nothing wrong with it. [Laughter]

>> Bevin Murphy: Let's start with Part "A" there. To what extent?

>> John Bedard: To the extent consumers are actually putting their personal information in public places. I think that there are some debt collectors who are gathering that information and using it,

and I don't think there's anything wrong with it because I think it comes down to an expectation of privacy. And, in my view, consumers have no more an expectation of privacy when they put their personal information on public websites than when they take that very same information and publish it on an interstate highway billboard, and I think it's wrong to condemn debt collectors who view that information and who use that information when they drive by on the Internet superhighway.

>> Bevin Murphy: Well, backing up. So how are debt collectors using these sites? I mean, are they outsourcing this? Are they hiring companies? We'd heard this morning about skip-tracing -- social-network scraping that was offered as a service to debt collectors. So is it being outsourced or are they doing this in-house? How's this working?

>> John Bedard: I haven't seen many folks outsourcing that service. I have seen, however, in-house skip-tracers who are trying to locate consumers visit public sites such as Facebook or MySpace or these other Internet services where consumers are very publicly providing their information to the public on who they are, what their birthday is, where they live, what their phone number is, how it might be easy to contact them. That's the context I have seen it in.

>> Bevin Murphy: And is this generally somehow automated or is it a "we can't find these debtors. Why don't we go look them up?" Is there other designated people within the agency who are doing this? How is it structured?

>> John Bedard: I haven't seen that as an automated process, no. There are -- to use Robert Murphy's term -- flesh-and-blood people that are actually on the Internet trying to locate consumers, finding this information on the Web.

>> Billy Howard: And just to jump in here -- just because somebody takes out a billboard doesn't mean that you can go and paint graffiti all over it, and that's what I've seen with Facebook specifically. I have a client where's it's not just the contact of Facebook. It's everything. It's the harassment of numerous phone calls, and then there's text messages, then there's coming to somebody's work, and then on top of everything, they use Facebook to contact family members and

friends, and the use of Facebook is very shocking to family members that have nothing to do with the debt. Now, I heard somebody talking about it earlier, and that is, all the sudden, a debt collector decides to use Facebook. They contact a family member. They contact a cousin, and then it has the desired effect, and that is, all of a sudden, mom finds out. Well, what's wrong with our daughter? You know, she's not making her payments or, you know, is she in trouble? And they're using Facebook to scare people, and the end result is just to get paid. I mean, that's what harassment normally does. That's why people do it. That's why it's used to contact third parties, family members. That is one of the oldest debt-collector tricks that there is, is you contact third parties and family members, and that makes that bill get paid quicker than an individual has the ability to or sometimes, you know, when they don't even owe that money.

>> Bevin Murphy: Okay, let's bracket off the communications part just for now. In terms of the researching of consumers, it might be a good time to bring in our -- luckily we have a Professor of Sociology who studies social media here. Christine, can you speak to, I guess, consumer expectations? I mean, would a consumer who is on these social-media sites -- and many are today - - would they think a debt collector would be looking at the information they put out there?

>> Christine Schiwietz: Well, this is -- hello. This -- oh, now my chair broke. There.

>> Vytas Kisielius: You broke the floor.

>> Christine Schiwietz: I broke the floor.

>> Vytas Kisielius: Wow.

>> Christine Schiwietz: So... Um, well, what we're seeing right now in terms of the skip-tracing -- it's not even necessarily skip-tracing or to be outsourced. What we see is that anybody can perform a quick Google search, and it doesn't take -- I mean, we've all put our information out there on the Web, and we look at this in terms of digital footprints, and we call them first-degree digital footprints, which we voluntarily give away, and those are the types we knowingly provide this information. Let's say we're purchasing something, and they'll be interested, you know, to

cooperate and trust, or we blog, tweet, you know, participate in social media, and we know that we're giving away this information. Then we have the secondary footprints that we have, and that's information about us that's out there on the Web that others have provided about us. So we might be tagged in photos. You might not have set up a site, but somebody else might have tagged us, and your nephew somewhere else has put your name out there. So all of this becomes coded and stored information that skip-tracers sure can find, but any -- all groups Google. Even if you're meeting somebody, you know, you quickly Google, and some say it might even be irresponsible if you don't perform that quick Google search. And on top of that, then you have those web-scraping companies who aggregate then all this data and everything they find about you -- photos, websites, blogs, publications, and they give it away for free. And if you pay then, of course, a fee -- yeah. So you're very -- I think we -- as Americans, we copiously believe that we can keep our information private, or we have these expectations of privacy. But, in a way, it's a myth because privacy pretty much is dead in this context. So, I think...

>> Susan Grant: May I?

>> Bevin Murphy: Sure.

>> Susan Grant: I think it's true that people are putting a lot of information online, but I don't think that they necessarily realize how it's being accessed and how it's being used. When people put their information on social-networking sites, for instance, they think that that is going to be seen by their friends and relatives and colleagues and other people with whom they have mutual interests. They don't realize that things like web-scraping are going on because it's invisible to them, and this is actually an issue that's larger than just debt collection -- an issue about the collection of information about people without their knowledge about whether or not it's happening, who's doing it, and how it's being used. So at the very least, it seems to us that consumers should know that it's happening, who's doing it, and for what purpose so that they can make better decisions about what information they put out there.

>> Dan Edelman: From a legal standpoint, the extent that somebody's using Google or a similar browser that anybody can use to obtain information on the Internet about someone that anybody

can get, I don't see a legal problem. I do think that the process is fraught with legal risk where there is some communication between the searcher and the medium, the holder of the information, because you then get into issues of are you properly disclosing your identity or corporate identity, and the purpose of the inquiry, is there some express or implicit misrepresentation to either the target of the search or the media concerning the purpose of the search, and I think, for example, something such as a friend request is a representation, and if made by a debt collector is almost never going to be truthful. I mean, in the sense that it is not going to be a communication that is consistent in purpose with the ordinary understanding of the public when such a request is made so that anything other than a simple search for what is literally posted as a billboard in the information superhighway is a problem.

>> Bevin Murphy: Okay, well, even the idea of a simple search still might not even be as simple as we think. So I'd like to talk about the process to the extent the panelists have any experience or knowledge. I mean, in terms of searching social-media sites, is this a Google search that then pulls up social-media sites, or are collectors going to Facebook, LinkedIn, and searching there? If so, are they actually -- even before we get to communication -- are they logging in anywhere to do these searches? Like, how -- logistically, how do you go about -- say you want to find someone, and you think they might be on Facebook or LinkedIn. How do you do this?

>> John Bedard: I mean, we've all done it whether we want to admit it or not. You can just go to the Facebook site, and I think they have a search bar right there. Literally you can search folks on Facebook.

>> Bevin Murphy: Right. I know how I'd Google-stalk someone. I'm just asking how collectors do it. [Laughter]

>> John Bedard: Okay, well... it's the same search bar, and so they don't do it any differently. I mean, I think that's the way it happens -- Google searches or Facebook searches, I think it's the same search field for all of us, and I think that's -- that's the way I've seen it done, anyway.

>> Bevin Murphy: So your understanding is that it would be done through a search engine, not necessarily logging into Facebook and viewing what can be seen without communicating with someone.

>> John Bedard: I've actually seen it both ways -- collectors who have actually created a truthful profile in Facebook and have done searches without engaging in any communications with consumers and simply by Googling them for lack of a better term.

>> Bevin Murphy: Do any of the other panelists have any thoughts on how exactly this is done?

>> Christine Schiwietz: No, but even if you do a simple Google search, and, let's say, that person's name appears, and they're linked in network, they might list there that they have a new job title or a new position, so automatically it'll be, "well, they can pay their debt, then."

>> Bevin Murphy: And what can we say about -- because it just -- especially since we're talking a lot about technology and automation here, it just seems like a very personal and time-intensive endeavor if we have someone searching online, I mean, if it's not automated. So for what kinds of debtors or for what kinds of debt is this being done? Like, why would a debt collector decide to make that next step, say, beyond whatever their other methods are to go on Facebook or go on LinkedIn?

>> John Bedard: I think that the answer to that question is probably unique to every collector in terms of what kind of debt the collector's collecting -- low balance, high balance, whether it's, you know, medical debt or some other kind of balance. I don't think the answer's going to be the same for every collector, but if you've got no good contact information, what else is there to do other than to begin backing off these automated processes that you've referred to if they are not working and to really spend some human capital and try and get the proper information to get the proper consumer on the phone?

>> Dan Edelman: The instances where I've seen use of social networks involve fairly substantial debts -- \$20,000, \$25,000 and up. I wouldn't think it would make economic sense for much less

than that. I also don't think there's ever gonna be a case where somebody has incurred a debt in a transaction that results in absolutely no trace of who the correct person is. They presumably gave some kind of identifying information when they incurred the debt. If it's a case of identity theft, it's gonna be completely false, in which case the likelihood of collection is -- from the correct person -- is minimal. But some kind of information had to have been given -- an address, a phone number, something -- and normally I would think that would be a far more reliable means of identifying somebody than an Internet search.

>> Billy Howard: And I've seen companies that are just implementing the use of Facebook in their search portfolio, and it's over -- I have a couple of lawsuits that are currently being litigated, and they're over just a few hundred dollars. It's just part of their system is to go on to Facebook and see what they can get.

>> Bevin Murphy: So for these companies, there would be no selection process. Any sort of debtor, it seems, they would search for them on social-media sites in addition to their other procedures?

>> Billy Howard: I think there's a lot of companies that have that as part of their repertoire right now. Whether or not they're gonna come out and tell everybody that or not, but there are a number of insurance companies that do this all the time as just part of their background search on individuals, and I think it's gonna happen more and more in the future.

>> John Bedard: Is there anything wrong with that, Billy, you think?

>> Billy Howard: Um, you know, what I see is wrong with it is every time I see that there is a contact through Facebook, I see a violation of the law.

>> John Bedard: Setting aside the contact -- we're gonna get to that shortly -- but in terms of simply obtaining and viewing information that consumers publish in public places, is there any disagreement on the panel on whether or not that's okay?

>> Susan Grant: Well, aside from the concerns that I already expressed, the other concern that I have about it is I'm not sure how accurate it is in finding somebody. There are an awful lot of people on sites like Facebook with similar names and other characteristics, and so that was my question earlier, and I don't know if anybody has an answer to it. If you are trying to locate somebody on Facebook, how likely is it that you're going to find the person you're really looking for, or does that generate more of these contacting people who happen not to be the ones that you're looking for?

>> Bevin Murphy: Thank you. That's a good question. Do any of the panelists have a response to that? Because the difference between using social media as a form of skip-tracing versus more traditional methods of skip-tracing is that there is more information out there. So if you're trying to find a debtor on Facebook, you know, you might see, um, posts on their wall. You might see a picture of them there. It does raise more privacy concerns. So how do collectors determine whether they're even finding the correct debtor on social media?

>> Dan Edelman: I've had a number of cases involving basically bad skip-tracing, bad identification, erroneous tracing of debtors even to the point of filing lawsuits against the wrong persons. Unless somebody has highly unusual names and other characteristics, the likelihood of error is quite high even with names that people might not think are that common.

>> Vytas Kisielius: Isn't the issue here, though, that we're all kind of dealing with the creepiness factor of this? Because the truth is -- I mean, I yell at my kids about this. Anything you put out there, as Christine has said, is out there. It's like a party line that everybody can listen in on. Very few of you are old enough to remember party lines, but it used to be you didn't speak about things on the telephone because you didn't know if Mrs. McGillicutty was listening. And so you just -- you had the good sense not to do it. What we're dealing with now in the early days of this social media is that people aren't using any good sense. They're putting information out that they have no business to put out if we're really honest about it. But I don't see any reason why, having done that, it isn't, if used appropriately for the research, to try to find that I'm looking to talk to Billy because he owes me 10 grand. And I'm trying to reach him through the accepted media, and he won't respond. So why can't I try to find ways to learn more about Billy so that I can do a better job of

just engaging him in a dialogue? Now, clearly there are ways to do it inappropriately, but it's out there, and it should be acknowledged that people will use it rather than trying to put the genie back in the bottle.

>> Billy Howard: All right, and, you know, the problem with that is I already gave you that 10 grand, and there's no contact that I see, and I'm sure that, you know, there is, theoretically, a process that could be used that somebody can go and look at information and pull up information just like you can Google somebody, but what I see -- and, you know, I only see cases where a consumer thinks that the law has been violated. And every time I look at those cases, the consumer's rights have been violated, and so normally, I see, like Dan sees, is, you know, some type of misleading information or deception on part of -- on part of the collectors.

>> Vytas Kisielius: That would be the inappropriate part of -- the inappropriateness.

>> Billy Howard: Right.

>> Vytas Kisielius: Right, right.

>> Bevin Murphy: And in terms of the use of information, what I'm trying to get at is this additional information that's in social media that doesn't exist in other venues. So, for example, if you're collecting medical debt, and say your creditor is a children's hospital. Are you, you know, going through people's profile pictures and looking for someone with children? Or if it's, you know, for a car, are you looking for pictures of cars? I mean, there's that added information here that you can't find in other skip-tracing methods, and do we think that's being used, and if so, how so?

>> John Bedard: I don't know.

>> Dan Edelman: We don't know.

>> Bevin Murphy: Uh, okay. There's no response from the panel. Uh, the second question -- and then I will let us get to the communication part. Um, I think someone had asked this, but let's go down the panel. Does anyone think there's anything wrong with using social media for skip-tracing or research purposes?

>> John Bedard: No.

>> Dan Edelman: Assuming that the information is something that anybody can get without any representation or communication, no.

>> Susan Grant: I don't think it's illegal, and I think it can be done responsibly, but I also think that we have a problem with consumers not having the legal right to know that this is going on and being able to take advantage then of the tools that are available to them to the extent that there are tools available to them to keep that information private if they want to.

>> Billy Howard: And I agree. I think that, um, from my perspective, I just see all the violations. I can imagine that there's a way to get information of the correct person that actually owes, you know, somebody money in a nonviolative way.

>> John Bedard: You can put that as a "no" for him, Bevin. Thank you. [Laughter]

>> Vytas Kisielius: No, nothing wrong with it. It should be used appropriately.

>> Christine Schiwietz: I think it's inescapable, and it's pervasive, and, um, I also talk about it raw public figures now if we want to or not, and knowing this, we should all take proactive efforts in also establishing parts of our identity online in ways that we choose to do so before somebody else does it for you, which will roll back around to where I see harm, which is not just from the debt collectors writing something on the wall, but if they post something onto websites that's then cataloged by Google, which is in context to somebody's name, then that might appear with you on your Google search when you look for your name, and those secondary tags are very difficult to remove if you find who even posted that about you -- let's say it is a debt collector -- and I think

this opens a whole big door for harm in terms of affecting your reputation because that's who you then are because everybody's going to be researching you -- all kinds of groups.

>> Vytas Kisielius: That's not a debt collection -- that's not a debt-collection thing, though, right?

>> Christine Schiwietz: This is to do research.

>> Vytas Kisielius: You've blogged about me, and it's on the Web, then somebody Googles me, finds that you think I'm a bad person, right?

>> Christine Schiwietz: But it's not just in a blog. I mean, you know, right now, you have efforts to make sure that, like, through search-engine optimization and having all these other web tools available to you, if you're on a blog on Page 6 of your name, that's irrelevant. But if you appear on Page 1 or 2 of your Google results because it's been made to do that, that's terrible because that could mean you could not get the job or somebody -- I mean, you know, so not just for debt collection, but it's certainly -- the research is no and pervasive. [Chuckles] Thank you.

>> Bevin Murphy: Thank you. And that's a good segue into the Communications portion. So by whatever means, if a collector somehow has found a consumer, an alleged debtor on social media, how does it get to the point where they decide to communicate with the debtor? Is this happening? Are debt collectors communicating with debtors on social media? Billy, I think you have some information that it might be occurring?

>> Billy Howard: It is occurring for a fact. You know, I've looked at over 20 cases just this year where there was contact through Facebook, and, you know, some of those cases are close to being a violation, some of them are, you know, clearly a violation. The cases that I have, Facebook is not just -- they're not searching for somebody. It's not a big mystery where this person is. They just are not satisfied with how much money they're getting, so they implement different tactics than your standard harassment tactics, and then you do deal with that last thing is kind of that slimy factor. Like, oh, my God. Now, all of a sudden, they're collecting through Facebook. But that used to be the same way with text messages. People used to be shocked when they were getting

text messages, and now that's just a way that, you know, debt collectors collect debts, and it's gonna get -- it's gonna get worse and worse as time goes on.

>> Dan Edelman: I have seen a Facebook posting used to basically shame a debtor into paying. I mean, I think it was a fair debt violation, it's a common-law violation. It's just being used to post derogatory information that somebody owes a debt and isn't paying it for the purpose of inducing them to pay that used to be done by having people visit people's homes and then park a shame automobile outside. It's just a little more modern way of doing the same thing, and it's illegal.

>> Bevin Murphy: So, Billy, what you had said -- in your experience, when collectors contact a consumer via social media, have they already had some other form of contact with them, or have they somehow determined that, in fact, this is the correct consumer and they're going to contact them now on Facebook?

>> Billy Howard: No, they know exactly where the consumer is. They have just decided to kind of turn up the heat on them because, you know, harassment works. Harassment makes people scared, and they just want the harassment to stop, so they pay the debt. They have a, uh...

>> Bevin Murphy: And are you -- this actually brings up, um, a comment we have on Twitter. Someone had posted, "how do collectors know that the Facebook profile is accurate and started by the person?" So, I mean, in your experience, are your clients -- are they actually a debtor or, in fact, are the debt collectors contacting the wrong person on Facebook?

>> Billy Howard: Probably of my clients, probably half of the individuals I have are debtors that actually owe the money. Probably half of them don't. They have a similar name or it's common that people have paid their debts, they're up to speed on paying the debt, but they still get contacted through Facebook, and, you know, the common tactic is to use a fake name. I have a case where my guy's using the word "happenstance." My name's Mr. Happenstance, and you need to have your sister call me. And my name's Mr. Happenstance, and, you know, sending messages to their cousin, and then Supervisor Doofus gets involved... [Laughter] ...and, you know, and then it's just a big party of harassment, and, you know, it sets off -- you see a lot of these cases that you think are

kind of minor, but these minor violation cases set off a domino effect in somebody's family, and, you know, the FTC talks about it, the Congressional finding about it's marital instability, it's bankruptcy, it's invasion of privacy, and these are not, you know, all the really bad cases. These are just regular -- unfortunately, they're kind of vanilla run-of-the-mill violations that, you know, happen every day, cause a lot of problems to families.

>> Bevin Murphy: Mm-hmm. Do any of the other panelists have experience with this?

>> John Bedard: Well, I'd like to comment on that because a lot of what we're hearing about these anecdotal stories are all about the message and not about the mode, which is what we're talking about today, which is communicating with consumers via a new mode of communication. I don't think anybody's gonna disagree on this panel, anybody in the audience that folks -- collectors who are doing the things -- some of the things that you're describing ought not to happen. We ought not to be shaming consumers like you suggested, Dan. We ought not to be harassing folks like Billy suggests. But it's important to realize that that's the message, it's not the mode, and I advocate for the position that the mode is sound. It is okay to do this so long as the message is lawful. That's important.

>> Bevin Murphy: Okay.

>> Billy Howard: We're probably gonna have some more lawsuits against each other. [Laughter]

>> Susan Grant: I don't disagree. I think that it's probably legal to contact people this way, but I think when you do, a big yellow caution light has to go on because it's different than one-on-one contact with the debtor or even one-on-one contact with the debtor's neighbor. You're really entering into a whole universe of people that are interconnected and share information, and so the potential for third-party disclosure, I think, is great. I think that if someone's asking about somebody on a social networking site, it kind of raises questions in the minds of the other people about, you know, who is this and what is this about maybe with more potential for back and forth than if I get a call about my neighbor, which I have, and I -- you know, everyone knows if someone doesn't identify themselves and they're asking if so and so lives next door to you that it's the debt

collector. You know, but I'm not gonna go to my neighbor and ask him about this, but this is kind of a more public forum, and I think you just have to be really careful, and I think that the FTC could provide some good guidance here.

>> Dan Edelman: I think that in addition to the message being on its face unlawful, the mode is such as to encourage illegality. For example, who has access to the message? Is it the debtor and persons who are authorized under 6092c? I have a problem with a debtor -- with a debt collector leaving an electronic communication of any sort on any place where they do not have some positive assurance or representation from the debtor that, yes, this is a permissible way of communicating with me and nobody whom I don't want to get this message is going to have access to it. Suppose a person's children look at this site without necessarily having their own password? I think if that happens, there's a violation.

>> Vytas Kisielius: So when you talk about mode for a second, we ought to stop talking about this in individual panels that talk about the different methods of communicating as if they're distinct, right? What's happening is if you owe me money, and I'm trying to reach you, just to -- since you're nearby.

>> Billy Howard: I paid you that money. [Laughter]

>> Vytas Kisielius: Let's assume before you paid me, I was trying to reach you. I'm trying to phone you. I've probably mailed -- I've sent you a letter. I probably e-mailed you if you gave me a valid e-mail address. If you gave me express consent, I texted you. And only if you gave me your consent to reach you via Facebook, 'cause that's your preferred method of communication, would I want to even go that place because of Daniel's concern. It's a pretty dangerous place to try to communicate with someone given that it's not secure, and the FTC is pretty clear on what you're allowed to do and not allowed to do with respect to third-party disclosure. So I think we need to take into account the balance of the legitimate need to communicate if there is, in fact, a debt that's real -- not that you paid me, and I've been ignoring that. I think we need to balance it against what's the consumer's preference for how they want to communicate. We need to be able to show that we're complying with that consumer's preferred method of communication. We need to be

accountable that we did what we said we were gonna do and that we do it consistently across all the debtors, and the other rogue collectors that do bad things on Facebook and those people that are harassing debtors should have to be held accountable for that. But, in general, the mode isn't the problem. It's do I have the communication balance with the needs and preferences of the debtor? And if I do, then the message can be communicated appropriately. To Daniel's point, if you tell me to contact you on Facebook on your public page, I need --

>> Billy Howard: Do not contact me on Facebook.

>> Vytas Kisielius: All right. [Laughter] If you told me, and if I'm a collector, I should know that I can't do that without you telling me also that you don't mind that I'm gonna post it in a public forum where everybody can see it. Because I can't be that stupid to know that I'm setting myself up for a lawsuit, right? So there's an appropriate way to communicate across each of the modes and there ought to be an acknowledgement that those modes are all available to us and make sure that the regulations catch up with that, 'cause as we've heard in these other panels, that's the problem is that everyone's hamstrung by the fact that the regulations haven't caught up to the fact that an e-mail is like a mail and that Facebook exists and that, you know, cellphones are the only phone to reach people on. That's the problem we all face.

>> John Bedard: And likewise, it's important to also remember that in almost all -- in most of these social-media sites that we've been talking about, it is possible to have a private communication with somebody. It does not have to be public on the wall like, "hey, would you mind paying this debt?" It is -- the mode allows for private communication, as well, and there's no reason why that can't occur.

>> Christine Schiwietz: That raises a good question even in terms of even if we're not talking about wall posting -- if we're just talking about the in-messaging, the supposedly private communication similar to the issues that are raised with e-mail and voice mail. Do we think that Facebook or LinkedIn or -- do we think these accounts are actually private or are people sharing? Are they leaving it up on the computer and the kids and the babysitter can see it? I mean, how are

people using this in such a way that we can even say that private communications are only being seen by the debtors?

>> John Bedard: Well, in my view, if you have to enter a string of characters in excess of 10 or 20 characters long in order to be able to access the information behind it, to me, I think that's personal, and to the extent consumers -- I mean, just think about how easy it is for your neighbor to go to your mailbox and open up your mail and compare that to how difficult it is to try and guess somebody's Facebook user name and password and access all of that information. And so within my view, if you need a user name and a password to access this information, then that somebody else sees it because they have been given that information by the consumer, then that's -- that reduces the expectation of privacy almost to zero in my view.

>> Dan Edelman: I disagree strongly because the person who -- if you give your password and identifying information to a family member, you're not doing it with the thinking that, oh, some debt collector may be contacting me, and I really don't want them to look at it. You're exchanging information, pictures, whatever. So unless the debt collector has some assurance in advance of using this method of communication that the consumer is satisfied that nobody else has access to it, then it should not be used. And one of the problems with these methods of communication is that they're informal, and people don't really think through until the issue actually arises who does have access to it. For example, consumer gives out a work e-mail address thinking that nobody else really looks at it. Now, the fact is, it's the property of their employer. The employer undoubtedly has access to the account. The extent to which that access is actually exercised on either a regular or other basis may vary, but unless the consumer says, "you may contact me here," I'm satisfied this is gonna be private. I don't think any mail concerning debt collection should be sent there.

>> Billy Howard: and I agree with that. I mean, there has been, you know, a theoretical situation where that could be okay, but even in that situation, you called me a bunch of times. I did not return your call. You sent me a letter. I did not respond. You then texted me, and I didn't respond. I mean, I don't want to talk to you, so... It's my right not to pick up that phone. Now, if you get somebody to say, "hey, you contact me on Facebook," then go for it. But I just don't know anybody who is going to agree to that. And, you know, your scenario is what the FTC and the

FDCPA has protected for a long time, and that is harassment. And you take harassment, and you look at the totality of circumstances, you look at who it's out there to protect, you look at the right of privacy. It's the least sophisticated consumer. These are the people we're out there fighting for. That's a violation of the law to do what -- even what you said, I think.

>> Christine Schiwietz: I'd like to agree with Billy on the fact that if we look at social media, and we're defining it, as Bevin said, as Facebook and Twitter and LinkedIn, then the communications, even if the consumer might not understand and chooses that as their mode of communication because their habits have changed, then their other habits are changing, also. Then they're already online. I mean, we're moving into mobility. We know this, so that's another issue, but I -- it's hard to imagine that the consumers would choose their Facebook account as the modes of communication -- I haven't seen any metrics on this -- and, I mean, the harm that it can do to that -- their social network. So it just seems that -- I mean, the language and the protection also says, right, "may not use postcards," right? So wouldn't that be like a postcard if it's, you know, on the Facebook or public on the Twitter on the social media? So then, you know, perhaps we should make an explanation and say no social media, no -- as these definitions grow with us and these technologies and these interactions, and then we can specify not the Facebook or the tweets or, uh, something else.

>> Dan Edelman: I will say that I've actually filed a case alleging -- it was some years ago -- that the use of a fax under circumstances where there was more than one person having access to the fax machine is the legal equivalent to a postcard if it's sent into an office or business environment.

>> Bevin Murphy: Well, that raises a good point. I think folks have been kind of hinting at this idea of consent when we're talking about what consumers would want. Do we think consent should be required to -- for a collector to contact a consumer on Facebook or MySpace or LinkedIn, and if so, how should that consent be obtained?

>> Dan Edelman: I think that -- oh, I didn't mean to...

>> John Bedard: Thank you, Dan. I think the answer's "no." Consent ought not to be required because what you're doing is putting a restriction on the mode instead of the message, and so there - - you know, there's no restriction on the mode and any other aspect of sort of communicating with consumers, and we ought not to restrict it there, either.

>> Christine Schiwietz: A postcard is --

>> John Bedard: You want to regulate the content -- I'm sorry.

>> Male Speaker: There is no postcard communication.

>> Christine Schiwietz: Yeah.

>> John Bedard: There you go. Okay, fine. No postcard communication, which may be tantamount to a billboard. You know, we're not gonna take a billboard out on the highway and say, "hey, we're looking for Joe. Please pay me," all right? We're not gonna do that. But in terms of consent to use other kinds of modes, I don't think -- I don't think -- it's not necessary.

>> Dan Edelman: I think -- oh.

>> John Bedard: Especially when consumers want it. I don't think there's any disagreement on the panel that if the consumer -- that a collector ought to communicate with a consumer in the consumer's preferred mode of communication. I don't think there's any disagreement there, is there?

>> Dan Edelman: I don't have a problem with that. The problem is this. If the consumer initiates a communication from an e-mail address to somebody known to be a debt collector, I think it's a fair inference that the consumer is -- can be deemed to have understood that whoever has access to this account, I'm not concerned about it, or they're permitted persons, and I'm giving permission by initiating the use to the security features of this method of communication. If the debt collector initiates the consumer, I think that they're either doing it at their -- initiates the communication,

they're either doing it at their peril if the communication, in fact, is seen by someone else, and I think some methods of communication are so similar to the one specifically prohibited, such as a postcard or putting debt-collection information on the outside of an envelope that it might be found to be a violation, and I think it is a violation regardless of whether somebody saw it or can be shown to have seen it in the particular instance. So that as a practical matter, such methods of communication should not be used unless the consumer has in some manner either by initiating the use of that method or by expressly stating, "I wish to be communicated within this manner" that they consent to the security features of that method.

>> Susan Grant: I think the only way that you should use this to contact somebody is if you can do so in a way that you know no one else is going to be able to see that message. And I worry about getting people's consent for things. I wouldn't want, for instance, consent to be used to waive rights that consumers would already have to expose their information, for instance, to other people on the network.

>> Bevin Murphy: Any other comments on the idea of consent?

>> Billy Howard: I think that, uh -- you know, I'll even go a step further that it's important to get that consent because most of the time, let's face it, these guys do not want to talk to debt collectors. They do not. Especially in the economy today. It's kind of like the imperfect storm. You have individuals that a lot of times through no fault of their own can't pay their bills, and you have debt collectors that are getting paid a percentage of what they collect, and, you know, that's one of the reasons, you know, harassment is higher than -- you know, than it's ever been, and, you know, to contact somebody through Facebook, I think it's got to be crystal clear that that's okay.

>> Bevin Murphy: And then, um, beyond the issue of consent, whether or not it's required or there's any process of consent conducted, we had a question from the audience that basically asks about how -- you know, assuming debt collectors are able to contact consumers via social media, how is it being done? So, are they issuing the Mini Miranda? Are they disclosing that they are a debt collector? And I would take it a step further. What should their profile look like? I mean, if they -- um, if they're gonna post on a consumer -- if they're gonna friend a consumer and then be

listed in their friend list, I mean, can their profile name be debt collectors are us? And can they show a picture of however you would visually depict debt? I mean, how -- how would this work?

>> Dan Edelman: I'm hard-pressed to come up with a scenario of how it would work without committing numerous violations. I think -- I mean, if you have a profile that lists you as a debt collector, and you are contacting who -- the debtor? Then, um, you have to make sure that the information is not accessible to anyone else, and I don't know how you can do that in advance without consent.

>> Bevin Murphy: Even if we -- moving beyond the consent issue, how -- how would they, assuming we can contact debtors? How do we -- put a Mini Miranda? What do we -- what kind of...?

>> Dan Edelman: You have to.

>> John Bedard: I mean, I don't see anything wrong with the truthful profile of the collector's name. I mean, what would be wrong with that, Dan?

>> Dan Edelman: Without any disclosure of who they work for or the purpose of the communication?

>> John Bedard: Well, if they're communicating with the consumer, right -- with the debtor, not in a public way, but in a private way. I don't see a reason why that consumer isn't governed by the same rules that other communications with consumers would be. But in terms of the profile itself, why isn't the truthful disclosure of the collector's name otherwise lawful?

>> Dan Edelman: Well, how is this being communicated to the consumer? Is it a friend request or, uh...?

>> John Bedard: Well, in terms of the profile -- in a vacuum, the profile of the collector which has their name. Okay, when it comes to making friend requests, I know we're gonna get about, what,

eight different opinions on whether or not a friend request is compliant, and we can talk about that, but in terms of the content of the message between a collector and a consumer, I think we've got plenty of regulation that talk about what the content has to be in, what it may not be in.

>> Bevin Murphy: I'm just gonna let the folks on this side jump in.

>> Christine Schiwietz: Well, I think meaningful disclosure is very important because we're assuming now that all those -- that none of us want to pay back our debt, right? And everybody -- I mean, that's our society, right? Our creditors perform a very important function, and if we don't pay back, then our rates go up.

>> Male Speaker: The FTC, right?

>> Christine Schiwietz: Yeah, so... [Laughter]

>> Vytas Kisielius: I guess pay your power bills.

>> Susan Grant: [Chuckles]

>> Christine Schiwietz: Um...

>> Billy Howard: I'm talking about Facebook.

>> Christine Schiwietz: Yeah.

>> John Bedard: We've confirmed the electric bill has been paid. [Laughter]

>> Bevin Murphy: It's our technology. [Chuckles]

>> Christine Schiwietz: Um, but if there is some meaningful disclosure of identities -- so it's not just like those cases where there's somebody who friend -- like, this beautiful woman opens a

Facebook group, and then friends, right, the consumer -- that's unethical. Yeah. But if you have a meaningful disclosure of the identity, then also the person who owes the debt -- and you have those -- okay, we're getting -- but communications. And I'm not advocating social media -- not on those open platforms. Let's say different, whatever, electronic communications. Then you have also some type of accountability because you know who it is, you can have -- you have a chain of correspondents. You can say, you know, "you are mistaken," or I think it offers for the consumer also more protection in that context if you know who is, you know...

>> Dan Edelman: I actually have difficulties with -- with how one creates this profile and for what purpose. The first question I have is some -- well, I suppose somebody who's engaged in debt collection can have a Facebook page that they just use for personal purposes. I suppose lots of people do. But let's assume, for example, this is created at the instance of a debt-collection company for business purposes. First question I have is, is some kind of misrepresentation being made to the purveyor of the service as to consistency with terms of service? Next question I have is, what do you use this page for? If you're communicating with third parties, you can't disclose that you're a debt collector. If you're communicating with a debtor, you must disclose not only that you're a debt collector, but the true name of the entity for whom the collection is being performed. So I'm not sure how this works 'cause I'm not in the debt-collection business, but I have a hard time imagining how it can be done in a compliant manner.

>> Bevin Murphy: I think Vytas was going to jump in.

>> Vytas Kisielius: I was just gonna say the beauty of what you just said is that the FDCPA provides for the right behaviors and makes it extremely difficult and clearly makes it fraudulent if you try to sign on this beautiful woman and friend people under a false premise. If, however, somebody chooses to want to interact with me via Facebook -- probably on that private conversation -- then why should we preclude that mode? That's my only point. I agree with all of your points. I happen to have a problem, which is when I call people in my family, and the thing that comes up, you know, on their ANI is "Collections Marketing Center," and they have a short screen, it just says "collections," they don't pick up my phone calls, and I have to call them from another line and say, "it's me," you know, so... [Laughter] I understand that one, but -- but,

seriously, the idea here is that we want to find a balance. The fact is that people entering the debt, as Christine pointed out, they do so with the intent to pay it back, and they have a responsibility to pay it back, and the problem is when people trying to collect that debt are being stonewalled by folks that won't respond to any of the -- let's call them appropriate. Let's not talk about the harassment cases. But when they're using appropriate means to try to reach the borrower and want to enter into a dialogue -- let's say the borrower has lost the ability to pay back and can articulate that in a conversation with them. Usually either by a formal cease-and-desist request they can stop the calls, or by saying, "this is my situation. Let's work it out." We work with creditors. And creditors aren't interested in harassing people or wasting their time or wasting the debtor's time. They want to get paid back, but they also will work with customers to make an appropriate arrangement, and so we're always worried here about this, you know, 1% of lunatic-fringe collectors that are doing bad things, and those laws already should stop those collectors from doing those bad things.

>> Dan Edelman: The difficulty I have with your scenario is that you -- one of your premises is that this debtor does not want to talk to you. The only way you can establish communication by a social media is that the debtor does not understand that it is you, debt collector, who is attempting to contact them.

>> John Bedard: It's 'cause they're getting sued when they leave messages to call back.

>> Bevin Murphy: Actually I'm gonna jump in here. In terms of the -- we have a couple of questions from the audience. In terms of the potential harms that exist for consumers just by the very nature of these technologies, we have one question -- is it problematic if the collector's entire list of friends are alleged debtors? Could this be a publication of a debtor list? So let's assume this collector friends you, you accept their request. We'll even assume that there's nothing ostensibly on their profile picture or their name to indicate that they are a collector, but you friend them, and, in fact, they just use this account solely for collection purposes. So their only friends -- they have 300 friends. It's all alleged debtors, people they're trying to collect from. So nothing about the picture indicates they're a debt-collection agency, nothing about the profile name, but you friend them.

Your friends wonder who your friend is, they click it on, and on this collection agency's list of friends, it's a list of debtors.

>> Dan Edelman: I think there's that problem. I think going back a step, I think there's a problem with making a friend request which is made for debt-collection purposes, but does not say that.

>> Vytas Kisielius: I agree.

>> Dan Edelman: I think it's either an express or implicit misrepresentation.

>> Billy Howard: I love that case.

>> Dan Edelman: Well, I've had cases where somebody places a phone call to a relative, spouse, whatever, saying, "I need to get ahold of this person. It's an emergency." It's no emergency. The only emergency is you haven't been paid in the last five years. I mean, I find that problematic, and what's the difference?

>> Susan Grant: I agree. I think that if you're trying to friend somebody as a debt collector for the purpose of collecting a debt, you're not really a friend, and I think that's a per-se misrepresentation.

>> John Bedard: But that's not really representing that you are their friend. You're actually asking, "may I be your friend?" Is that really what it is? [Laughter] "May I be your friend?"

>> Billy Howard: No, you may not be my friend.

>> Dan Edelman: But you do not want to be their friend. You want to collect money from them.

>> John Bedard: Well, uh...

>> Dan Edelman: Look... [Stammering]

>> Christine Schiwietz: And then they use the POKE function.

>> Dan Edelman: Yeah, I would put -- there's a New York City Bar Association opinion suggesting that if an attorney does that or cause it to be done, that you're committing a disciplinary violation.

>> John Bedard: To a represented consumer?

>> Dan Edelman: No, if you're represented or you're simply a layperson, you're contacting them under fa-- The charge is you're using deceit in contacting them because you're interested in getting information. Either they're a defendant, they're a witness. You want information. You're not really interested in any kind of social or friendly relation, and you're using deceit to contact them.

>> Bevin Murphy: I'm gonna jump in 'cause we're getting to the 15-minute mark. Another question from the audience. This is on the private nature of social-media communications. "Third-party application on such sites are given access to even private information. Doesn't that raise concerns about unauthorized disclosure?" So I think this question gets at even if something's not posted on a wall or any sort of public place, if you are not in communications on -- privately on the messaging function of, say, Facebook, the question's asking, "are third-party applications -- do they now have access to this information that you're a debtor and what you owe money on, and the fact that it's trying to be collected?" Does anyone know anything about this?

>> Dan Edelman: I don't know.

>> Susan Grant: I'll just say that -- that could very well happen, and it's one reason why I think debt collectors need to be really careful using these kinds of networks.

>> Vytas Kisielius: I think consumers need to be really careful about putting their information into places where it's not secure. I don't think this is an issue for debt collectors. I really -- I think for us to try to legislate or regulate people that do dumb things, there's just not enough time to do that many regulations. This is a mode of communication. We've talked about the fact that there are a

load of ways to use it inappropriately and probably very few ways to use it appropriately. But that doesn't mean it should never be used. If it can be used appropriately, why should we restrict people from using it appropriately, but put the right restrictions on what appropriate means?

>> Bevin Murphy: In terms of how it can be used appropriately, we have a question from one of our webcast viewers. "Is it practical to differentiate between the various modes of contact within Facebook?" So, um, you know, does anyone want to say that, "well, um, you can submit a friend request, but then you have to make your friend list private, or, um, you know, you can do the in-messaging, but you can't comment on a post they make?" Where do folks want to draw the line here... assuming that we're already within -- okay, they can use Facebook? How can they use it?

>> John Bedard: You can use it in every way that the consumer has told you they would like for you to use it to begin. In the absence of some kind of authorization or consent from consumers, you probably don't want to post that kind of stuff, you know, publicly on what's called the wall or something like that. Maybe the best practice would be to communicate privately until you get that information.

>> Christine Schiwietz: I don't think consumers understand completely yet what that means in terms of them even requesting to have debtors call them or contact them, I mean, on their social-media accounts. And it's not a good thing. I mean, inadvertently, it will leak out. You know, they might -- advertiser might find out, a web-scrape. It's just not secure, and consumers need to understand that using social media for this mode of communication maybe if that's -- you know, it's not a good thing.

>> Billy Howard: and I'll agree with that again and, you know, the, um -- one of the things consumers can do is -- especially on Facebook -- they can make their page private. They can make -- they can utilize the options that are out there that will restrict certain -- certain type of contact. Now, it seems that women use that protection more, and I asked my wife, "why is that?" And she said, "well, because women are smarter than men." [Laughter] And, you know -- and that's probably true, but that -- it's a good point, though, is, you know, when you are gonna have that type of information out there, then you should protect it as much as you can, and you know what? I look

forward to the litigation that is going to ensue with all of this -- this contact because, to me, it just seems unless there's some kind of fantasy, that scenario, it just seems like these are consistently across-the-board violations of the existing laws.

>> Dan Edelman: I think one problem -- oh.

>> Susan Grant: Oh, go ahead.

>> Dan Edelman: ...that the commission should address by rule or otherwise is the fact that I don't think consumers or members of the public generally understand how secure these methods of communication are or who has access to them. I think two panels ago there was a discussion about communicating by e-mail with members of the armed forces overseas. Now, you know, decades ago when that was done with pen and ink, a censor would go through everything and make sure -- and monitor it -- and make sure there was nothing problematic about the communications. Now, I'm assuming that if you communicate with somebody in Iraq or Afghanistan by e-mail that that is being done electronically. Maybe I'm just a little paranoid, but, uh -- but the government would have to be pretty dumb if they didn't do that, uh, and I actually think it is being done. So if you're engaging in such communications, the question then is, "are you basically publishing to the service member's superiors information about a debt?" You can't call the person's commander directly and ask them to force you to pay the debt, and by disclosing the information in this manner, you may be doing exactly the same thing. If the service member has consented, it's not an FDCPA violation, but I question whether what's on their mind is, you know, who might be electronically monitoring this communication?

>> Susan Grant: I just wanted to say that the privacy concerns about social-networking sites and the applications and everything else are not the fault of debt collectors, and there's nothing that debt collectors can do about that. But they exist, and so the waters are very perilous. That's all I'm saying. And you need to be extremely cautious because there are lots of ways to get tripped up here in your attempt to use these.

>> Bevin Murphy: And another question -- I do want to get into the mobile aspect because a lot of folks are accessing LinkedIn, Twitter, Facebook on smartphones or Droids or BlackBerries. And we touched on this in some other panels. To what extent should convenience or time-of-day restrictions apply? So if people are checking their Facebook accounts, and if they're getting pings on their smartphones when they get a friend request or a message, should time-of-day restrictions apply if you communicate with a consumer on Facebook?

>> Dan Edelman: I think if there's a -- if the system is capable of producing a contemporaneous indication to the debtor upon receipt that you have received a message, it does apply. If it is like an e-mail, and, uh -- even an e-mail might generate a ping, but if in some manner, it can be retrieved -- it's retrievable at your leisure without any contemporaneous indication than that.

>> Christine Schiwietz: I think this whole aspect of mobility is the key, and I think it's terrific that the FTC is looking into this because this is where we're trending. So either we're gonna separate the whole using the electronic component, right, versus the social media. But without a doubt, we're trending towards this mobility, and it's foreseeable that with this time restriction that it would be fine if it stays in place because we already have location software. The phones are being monitored. We know where everything is, and so it's not unforeseeable that next to the debt collectors -- next to that number where that phone is located, it will even probably give the exact local time, and then the debt collector will know whether or not to ping or call. But moving into this mobility, you know, in terms of -- you know, the foreseeable future, we might even have like holograms that then pop up or do something exciting, and it might not wake us up then at night. So I think the restrictions would be a good thing.

>> Bevin Murphy: Okay. I apologize. We have a number of questions still left, but because we're hitting the 5-minute mark, I wanted to go down the table and I guess just parting thoughts. What -- what do you see as the most significant problem and what, if anything, should be done and who should do it?

>> John Bedard: Well, here's -- here's my parting thought. Any rule or regulation or law that stifles the communication between a debt collector and a consumer I think is bad for consumers. If

we're gonna restrict all of the methods in which consumers can communicate with debt collectors, I think in the end, consumers end up losing out.

>> Dan Edelman: I have little problem with the idea of doing an Internet search for information that anybody in the world can get about you. When you go beyond that, I think that there's so many areas which are going to be either -- either carry a high degree of risk of violation or are just going to be, per se, violative of either the FDCPA or other statutes that engage in communications of this sort without the consent of the debtor to the medium in question is a very bad idea.

>> Susan Grant: I think that the FTC should provide some guidance here just as it provided guidance about advertising online and its dot-com guides. I think that something here that used hypotheticals and went through different scenarios and pointed out some do's and don'ts where you are clearly in violation of the law, and some best practices where, perhaps, it's fuzzy would be very helpful.

>> Billy Howard: I think the main goal of the entities out here are really, you know, an individual's right of privacy, and it's their right not to be harassed. And you have a lot of very smart individuals on these panels, and they are all talking about what they should really be able to do. I think the law's very clear of what they can and cannot do. It really boils down to you can't harass somebody, and that's what goes on. I mean, the -- if you just look at the statistics the FTC just, you know, put out again. I mean, the percentages are through the roof, the numbers are through the roof. I think the best thing the FTC can do is get the right of individuals to those individuals. Let those individuals know that, you know, they have the right to privacy and they have the right to be free from harassment, and you can Facebook me as well as anybody else.

>> Vytas Kisielius: Thank you, man.

>> Billy Howard: You're welcome.

>> Vytas Kisielius: Thank you. Um, I think that trying to restrict the mode of communication is shooting at the wrong target. I think what we need the rules on are the situations and the intent of

the content and appropriateness of contacts so that we're not harassing people, but balancing legitimate rights of the creditors and debt collectors to get paid back that debt without trampling the privacy rights of the individual. So if you could put some more guidelines that make it clear about what is the appropriate content of messages and make it clear that an e-mail and a letter are the same thing, therefore the same source of restriction should apply, that you can't communicate publicly about this person's situation. So that means you can't post on their page. We don't have to talk about Facebook, it's obvious from -- from the directive, that would be very helpful.

>> Christine Schiwietz: I think there's this very fine line between communicating and harassing, and surely we are certainly trending as a society towards this mobility, and for the consumer to protect the consumer, it's not restricting them if we keep reminding them that -- I don't know. Take the postcard. Let's remember that one -- that social media is the postcard -- postcard parallel to this issue that we're addressing right now to protect the consumer. Thank you.

>> Bevin Murphy: Thank you very much to all of our panelists. If everyone could sit tight, we do not have a break. We are transitioning right into our final panel of the day. [Applause] [Indistinct conversations]

>> Thomas B. Pahl: All right, thank you, everyone. We are on to our last panel, which is Future Directions, and this panel will be moderated by Joel Winston, who's the Associate Director here in the FTC's Division of Financial Practices.

>> Joel Winston: Thank you, Tom. Good afternoon, everybody, and thanks for staying. It's been a long day, a lively day, certainly, and we have a very lively panel here. So let me introduce them. Just to remind everyone -- put the mikes in front of your mouth so that everybody can hear you, okay? All right, starting with Valerie Hayes from -- who's General Counsel and Vice President of Legal and Government Affairs at ACA International. And we have Bob Hunt, Vice President and Director of the Payment Cards Center, The Federal Reserve Bank of Philadelphia. Suzanne Martindale, Staff Attorney at Consumers Union. We have Manny Newburger, Principal of Barron, Newburger & Sinsley, PLLC. Then we have Marla Tepper, who's the General Counsel and Deputy Commissioner of the New York City Department of Consumer Affairs. And Laura Udis with a

return engagement -- First Assistant Attorney General for Consumer Credit in the Colorado Attorney General's Office. Thank you all for coming. It strikes me that it's kind of ironic for -- that I'm going to be moderating this panel, which is really kind of a wrap-up panel in a discussion of whatever it is we haven't already covered and where we expect things to go in the future. I say it's ironic because I'm one of those people who can't change the filter in his vacuum cleaner. I mean, I am technologically ignorant, but I've been learning a lot today, and one thing that I've learned is that while the technology is different, some of the themes and concerns that have been raised about all of these new technologies are very familiar ones for -- certainly for me and the FTC, and we'll talk about those in this panel. Now, I'd like to start by just asking generally that -- just to make sure that we haven't left out anything today. We've talked about mobile communications, text, e-mail, predictive dialer, social media. Are there any other new technologies that are used in the debt-collection industry that we haven't talked about today? If anyone can think of one?

>> Manny Newburger: I can tell you one I haven't seen used yet, but I keep waiting to hear about it.

>> Joel Winston: Okay.

>> Manny Newburger: You know, one of the hard parts for consumers is this faceless voice on the other end of the phone. I'm waiting to hear about people proposing video chats, and I just don't think it's something we should not expect. I mean, I can just picture the call. You know, it's so hard to have this conversation. Would you like to talk face-to-face?

>> Joel Winston: Does that raise any particular concerns, do you think?

>> Manny Newburger: I actually think it might be more consumer-friendly. It has the potential.

>> Joel Winston: How is that?

>> Manny Newburger: Because face-to-face is better. It's easy to have fear of this faceless voice on the other end of the phone, but making a connection, a face-to-face connection might actually

make people feel more comfortable in having the conversation. I don't know. I haven't seen it done yet, but I don't think it's hard to say that sooner or later someone's going to try it.

>> Laura Udis: Well, one other potential is that since we now know that, um -- that with the smartphones, your -- not really new, but your location is pinpointed and known. If the providers of those phones make that data available to debt collectors, it might be interesting for the debt collector to say to the consumer, "we know that you are now, you know, at the FTC Building at, you know, what is it? 6-0-1? Is that where we are -- 6-0-1 or 5-0-1 New Jersey Avenue, and, you know, so your exact location is known to the debt collector. That might seem very Big Brother. So that might have some interesting implications where your exact location is known and disclosed to you during a debt-collection call or e-mail or other communication.

>> Joel Winston: Have you seen any of that happening yet?

>> Laura Udis: No, just an interesting further idea from what I've been reading in the paper.

>> Joel Winston: Okay. And towards the end, I'd like to talk a little bit about what you see happening in the future and what consumer-protection issues those raise. Are there others -- any other new technologies people noticed? All right, and how about in terms of consumer-protection concerns? We've talked about privacy, data security, the accuracy of information, the adequacy of notices, the problem of the wrong consumers being contacted. Are there other consumer-protection concerns that the new technologies we talked about also raise?

>> Marla Tepper: Um, we haven't talked about making sure that whatever is communicated is preserved for enforcement purposes, and that's certainly, from our perspective, an important consumer aspect of all of this. We want to make sure that government is able to enforce the laws and rules through preservation of documents, and while we're talking about using technology productively, we certainly think that's an important component of that.

>> Joel Winston: And how would you go about doing that?

>> Marla Tepper: Well, New York City has pretty specific rules right now on how documents need to be maintained so that we can access them. We require debt-collection agencies, for example, to record a certain percentage of their calls, maintain logs of all their calls, and other measures to make sure that we can obtain the documents to make sure that the collection agencies are complying with our laws and rules. Pretty much a debt-collection agency needs to be able to produce documents to us according to last name of the consumer, zip codes, and other searchable methods.

>> Joel Winston: Val, what do you think of that regulation?

>> Valerie Hayes: [Chuckles] Well, when we had -- we had sent a letter to Marla when the regulation was passed, and one of our concerns was the need to have 100% call recordings and how you would maintain that information and what it was going to be used for. So we do have concerns with the need to have that much data and maintaining that much data, but I think not just in relation to the call recording, I think when Barb was talking about using e-mail. I do think there is a need to have some type of documentation so you don't have the he said/she said issues in the industry, but I think e-mail is one of those technologies that allows itself to have that record of "here's the communications that took place, the encrypted technology" -- that type of thing, and I think you can accomplish those things with these new technologies that have come into play in a meaningful way where AGs and states and the FTC and CFPB will be able to enforce those laws, and you won't have those he said/she said types of situations coming up.

>> Joel Winston: Let me follow up on that. There was some discussion in earlier panels about e-mail, and the statement was made at least a couple of times that e-mail and snail mail are the same thing or should be treated the same way for purposes of the FDCPA. How do you folks feel about that? Manny.

>> Manny Newburger: Joel, one of the things I always loved was the FTC was out in front in recognizing that electronic communications were no different than the reality of written communication. It was the FTC lawyers helping State AGs understand Internet fraud's no different than doing it with a letter. E-mail fraud's no different than doing it with a letter. I think that's

exactly right. You know, whether I send the words on a screen or send them on a piece of paper, the key is to communicate with the consumer how truthfully, accurately, with "with truthfulness, dignity, courtesy, and respect." Uh, and to the extent you can do that and do it in a way that helps the consumer get the message, isn't that a good thing? I started doing Consumer Law in '83. I've taught Consumer Law for half my career, and I know consumers want to pay their bills. I mean, I've talked to people time and again. They wish they could pay their bills. They didn't default on purpose, and anything that makes the process less stressful is probably a good thing, and what I see is most of the people I know like communicating by e-mail. My students prefer communicating by e-mail. My friends prefer it. Colleagues prefer it. You can respond at your convenience. You -- it isn't good about tone. I'll concede tone can be misunderstood in e-mail, but, gosh, the convenience is amazing, and convenience for consumers would be a really good thing.

>> Joel Winston: Others have a view on that? Yeah, Bob?

>> Bob Hunt: Unfortunately, I have to start with the usual disclaimer -- these are my views and not those of the Philadelphia Fed. It was interesting throughout the whole day listening to the points about communicating with consumers because when you're at the point of applying for credit or if you think about any time you're engaging in a transaction, there's always two things that go on -- somebody's authenticating the payment device or the account or the channel, and they're authenticating you, and we have technology that does this very well, and we use it every day, and when we had the conversation about e-mail, we were having a conversation about authentication. There are ways of making this technology very secure and storing records and having that available. Some of the other means may be less effective in that way, but what I find interesting is that the technology is out there. Some people are adopting that technology. It does not seem to be too expensive to be prohibitive, and, you know, I already use similar technology for my conversations with my banks all the time.

>> Joel Winston: Others? Yeah, Laura.

>> Laura Udis: Yeah, back to this question about consumer protection. I think with the increases in technology that allow so many phone calls and so many contacts to be made automatically,

which results in so many more contacts to potentially the wrong person or even potentially the correct person, I think what we're seeing is -- is the need for more better communication to consumers and the wrong person, who are also consumers, about their -- their rights under the law, and this is -- this, I think, will help go a long way to how to handle new technologies because I think these are some deficiencies in the current Federal Fair Debt Collection Practices Act and some of the parallel state laws. For example, as was mentioned earlier, consumers have the right to basically -- to say in writing "cease communications" whatever that communication form may be, but do they know they have that right? And there's nothing at least under current Federal Law that has to advise them that they have that right. Someone mentioned my law. It's not my law, but Colorado Law requires that -- that the initial communication -- initial written communication with the consumer advise them in writing that they have the right to cease communication, but also that that may not preclude a lawsuit. But I think particularly with the advent of all the new communication methods, that would be really important, particularly for people that are the wrong party, and there may be difficult ways to figure out how to do that, but perhaps verbal, perhaps in writing some way to indicate to consumers that -- that they have that right to say to a collector, "don't contact me" and how to do it -- how to do it so it's legally effective, and, likewise, I mentioned earlier in the prior panel that, of course, you all know consumers have the right to dispute a debt, but consumers have the understanding from the validation notice that if they dispute a debt in writing timely that they will receive proof of a debt, some verification of the debt, but, in fact, my understanding is that the collector can simply stop communicating, and that's fine. That's not a violation of the law. But if the -- if the collection agency or debt buyer then assigns it to a new collector and another collector and another collector, and the consumer has to keep exercising that right all the time, the consumer never gets verification, instead is continually frustrated. So, um, perhaps that -- that notice should be rewritten to indicate that either if a consumer disputes the debt, they'll get proof of the debt, or the collector can stop contacting them. Now, I know that's getting a little far afield from the technology issue here, but there needs to be better disclosure of consumer rights as these technological communication methods change and increase.

>> Suzanne Martindale: Well, and this does really bring back a lot of the points that were raised earlier about how we have these technologies. I'm thinking particularly about the automated software database technologies we discussed a couple panels earlier that have the capacity to retain

a lot of this information, but sometimes, you know, the left hand isn't talking to the right hand, and then you have the problem with the skip-tracing versus autodialer, and, you know, someone saying, "it's not me, it's not me," and they just get put back in the other system. These are all problems that are really happening in a very alarmingly high rate. There's one -- one of my favorite unfortunate stories that, you know, we received from a consumer who we featured in a "Consumer Reports" story a few years ago was a man named Harold Wood, who had a debt that was clearly sold multiple, multiple, multiple times to various debt buyers, and very little information about his attempt to dispute the debt -- well, none I'm gonna say. It was none. It was passed from one buyer to the next. He was contacted by 13 different debt buyers on one debt. So that shouldn't have to happen if we have all this technology out there to actually pass the information. So for me from my perspective as somebody who has spoken directly with consumers and who still continues to volunteer, particularly with the lowest of the low-income consumers in this country, their problem starts before the first communication even happens. Their problem is that no one is retaining the information. The folks who actually have the information aren't retaining it and passing it on so that someone, before they pick the phone call or hit the e-mail button, is doing the due diligence to ensure they have the right person, the right amount, and a legally recoverable debt, and, you know, that would relieve so much of the tension and so much of the frustration for consumers who are never going to go to a plaintiff-side law firm and try to file an affirmative lawsuit. They're the ones who are defending themselves and are more often than not receiving imperfect communication or none and are just getting sued, you know, and sometimes don't even know they've been sued. That's a whole separate issue. A lot of these problems you have to go even further upstream to attack them, and I think that the newer technologies -- you know, we can talk about using them for communication purposes, but I would posit that we really have to go even one step further back about retaining anything that you have, especially if you're about to sell your debt before you hand it off to a debt buyer, and that's a real problem for consumers.

>> Joel Winston: Val, I assume that the ACA would support legislation that would require collectors before they sell a debt to pass on any disputes that the collector may -- that the consumer may have made using one of these snazzy new software applications we heard about earlier today.

>> Valerie Hayes: We had -- ACA had drafted legislation last year, amending the Truth in Lending Act to require creditors to maintain certain pieces of documentation, certain information regarding a debt or an account that was acquired or incurred by a consumer and making sure that that information would be available down that chain of title to subsequent debt purchasers. So it's absolutely something that ACA has been working on and is supportive of, and there is a need for that type of documentation to be provided, and it's something that really needs to start at the creditor's end where they need to be required to maintain that documentation and then providing it down the line.

>> Suzanne Martindale: And I would just say I'm very glad to hear that. [Chuckles] I want to mention that every pass -- you know, every time the chain of title gets longer -- one step longer -- it has to be checked every time, and that really means in my mind placing safeguards that specifically address the debt buyer who then receives the information to do reevaluation of those accounts because we know these portfolios get sold, you know, multiple thousands of portfolios, and sometimes the debt seller -- they've even told The New York Times they've done this -- knowingly sells it down the chain, you know, and they know that there's errors in it, and they resell it, and that's -- so there has to be some, you know, accountability for the debt buyer before they then hand it down again to ensure that -- Oh, sorry. Not the person handing it down so much as -- I want to say the person who's now received it and is looking to collect, you know, on the debts in that portfolio. They need to check again for the right person, the right amount, and a legally recoverable debt.

>> Joel Winston: Bob.

>> Bob Hunt: Um, I think the most encouraging thing we heard today was about all of this new technology and the software that goes through it. I'm not as sanguine about some of the information that goes into it. We talked about how technology can increase the capacity of the industry, and that can have two effects. If the information's really good, then collection firms are gonna be more selective. Otherwise, they can just do a lot more of what they already do, and there was a pretty good discussion about which of these is actually happening. With the point of -- with the location and identification information, anybody who's worked with large microdata sets will

sympathize with me here. It seems like it's such a simple thing to do to clean this stuff up, identify unique people, know where they are, et cetera, et cetera. It's never that easy. We've got at least a million people that have bills. A subset of those are creditors, but they're not all creditors. We have 5,000 collection firms. We have at least 1,000 firms that are in the business of providing data in one form or another to the collections industry, and then we have these dynamic files that we want to have updated with all of the disputes and other things without even having a standard for what that record should look like and all of the technology associated with it. I'm not saying that you can't overcome that, I'm saying that there's a lot of coordinating steps that have to go take place for that to happen. As Valerie was just saying, it has to start with creditors and go through the chain. There is a substantial fixed cost to doing this. The variable cost might not be so bad, but the fixed cost could be very high. So however we design this, we want to get that right. We want to make those investments once and then move on because we have to remember what somebody else said earlier today. We're talking about an average trade that's \$500. The average net return to the collector on that trade is about 23 bucks, and their average profit on that trade is 3 bucks, and so we have to keep in mind that while we have to improve this information problem so that the collections industry is more selective, this is the account. This is the kind of account they're collecting on, and it's -- the economics have to work for that. That requires that we study the technology and the cost and the business models very carefully so that we get this right.

>> Joel Winston: Those are good points, Bob, but I have to confess that I couldn't get past your use of the term "large microdata set." [Scattered laughter] I can safely say I've never used one, so...

>> Bob Hunt: Lots of observations on anonymous people. Let's put it that way.

>> Joel Winston: Okay, good.

>> Manny Newburger: Could I pose a sort of -- I hate to pose a rhetorical question, but I feel bound to do it. Consider this. A consumer sends an e-mail to a collection agency. It says, "within 30 days of receiving your letter, I dispute the debt, and I request verification," or a consumer sends an e-mail to a collection agency and says, "I demand that you cease communications." Is there really any regulator or consumer advocate in this room who is not gonna argue that the collection

agency is bound by that communication as if it went by snail mail? And if you would argue that -- or to put it differently, unless you're willing to deprive consumers of that argument, isn't it necessary to recognize that e-mail is snail mail? The minute you open the door and say if a consumer can stop a collector with an e-mail, then the collector should be able to tell the consumer we're getting ready to process your check. Would you deprive consumers of the ability to e-mail a collector and say "don't call me"?

>> Joel Winston: You want to take that on?

>> Marla Tepper: Well, I think that the opportunity for a consumer to communicate in one way does not necessarily mean that they've given consent to be communicated by that same means of communication. These are not equally situated entities, and many consumers don't know what consent is, and they don't really know what they're doing when they send an e-mail. They don't know that they're conferring consent, and that should not be assumed. So I think that, as Laura said, we really need disclosures as to rights. We need affirmative consent, not opt-ins -- not opt-outs, rather, and we can't assume that consumers want to communicate in a certain way unless they specifically are told what that could entail and agree to it affirmatively.

>> Valerie Hayes: But I think something that we do need to take care of in the industry -- both at a state and federal level -- is when you see these regulations or legislation coming down that's saying, "please provide these 72 disclosures" in a collection letter or the validation notice or some type of oral communication, at what point do you hit where the consumer just doesn't understand? It's confusing because there's so much information that has to be provided, so many different disclosures that need to be provided, and we've all heard during the past year or so Miss Warren talking about the need to simplify notices, whether it be at the mortgage level and the lending level. Well, I think that need is now in the debt-collection realm, as well. I think there needs to be that balance of what information needs to be conveyed so the consumer understands what their rights are, and I'm not saying it isn't -- it's -- you don't say here you have the right to cease communications or you shouldn't be disclosing this information. But you do have to figure out what information needs to be conveyed in an effective manner and what is that effective manner to make sure the consumer understands what their rights are?

>> Joel Winston: Let me bring that back to technology. Are there technologies that are in place now or that might come in in the future that could make it easier for consumers to understand disclosures?

>> Marla Tepper: There -- this isn't really what we're talking about here, but there is a program that analyzes plain language which our office has used to make disclosures clearer and easier to be understood, and that would be something useful to use across the board.

>> Joel Winston: Bob.

>> Bob Hunt: I think, um, the one technology that has -- the Federal Reserve has started using is actually market-testing disclosures before they mandate them. This is something we've done for almost 10 years. We started it with -- I think they were the Reg "Z's" and the TILA disclosures, and it was a recognition that, in fact, we were drawing -- we were writing up disclosures that looked beautiful from a legal standpoint, but which the typical consumer could not comprehend, and then we started road-testing these disclosures. The latest example of that we did for disclosures on the overdraft rule, and the process of actually market testing those disclosures we think makes them much more effective, and I think that that will be a standard tool kit for many regulators going forward. I was at a conference in Washington about a year ago where someone was asking about mobile payments and mobile commerce -- how do you put in an effective disclosure on the screen of a mobile phone? Because that's going to come. And that's an important question.

>> Joel Winston: Yeah, we really haven't talked much about disclosures today, but that's a huge issue, and it's an issue that we face as regulators every day. We've been doing copy-testing for, you know, decades, and we're certainly big fans of doing that. I guess my favorite story along those lines is -- Lori Garrison who's here in the audience may remember this. Back when Congress passed the Gramm-Leach-Bliley Act requiring the financial privacy notice to go out to consumers, everyone was wondering what was gonna happen. So the banks came up with these disclosure forms that were 5 or 10 pages long in legalese. No one understood them. People were just throwing them out in droves. So we decided to gather a group of top officials from the bank

agencies who shared enforcement authority with us to come up with maybe a better template for a clearer, more usable disclosure form. So we met in our conference room, and these were top officials from the OCC and the Fed and the other agencies, and they said, "well, we've got the answer. We all got together at lunch yesterday, and we wrote out a form." These are a bunch of lawyers. And we took one look at this form, and it was worse than what had been used -- I mean, it was absolutely incomprehensible. So we gently convinced them that maybe we ought to do some consumer testing and find out what works and what doesn't. Six years later, we came out with... [Laughter] Was it six years or...? David? At least. We came out with a new model form that Congress actually adopted in legislation, and now consumers, to the extent they don't just throw out the envelope, can read this notice and maybe understand it.

>> Valerie Hayes: And I think it's important, as Bob pointed out with testing, what you're trying to put into place. We met with a regulator a couple weeks ago who was looking to implement, "well, this is the new disclosure we want to include in all communications." Well, that would mean in a message when you look at the definitions and you look at case interpretations. And they wanted to include a disclosure dealing with how you collect time-barred debt, and we all heard Tom Pahl read ACA's suggested Foti language and everyone laughed because it's really long. Well, now I add another 15 seconds to that to disclose the time-barred debt disclosure that the state wanted to incorporate, and you're gonna laugh even harder, and I think that's something you have to look at and test out and think about logically -- what does this actually mean to the consumer and what does it mean to be able to effectively communicate? And a couple of people on the panels have pointed out, well, consumers aren't obligated under the FDCPA to communicate with collectors, and that's right. They aren't obligated to communicate, but they are obligated to pay their debts when they're incurred, and I think to do that, you have to be able to effectively communicate back and forth between the parties, and that includes leaving the messages and whether it be e-mail or the written communication or incorporating the text-messaging when that technology catches up. You have to be able to communicate effectively, and consumers do need to understand what their rights are, and you do need to educate consumers as to what those rights are, as well.

>> Laura Udis: Well, and I agree with Valerie. The devil's in the details. Luckily, at least currently, a validation notice can generally fit on one page and so can usually be a one-page

disclosure. I do agree consumers should pay their valid debts, but they also should know what their rights are, and I think that can be on one page. I do think that, you know, this whole problem with - - with technology if it's a problem about consumers not anymore answering phone calls is due to whoever -- whoever invented Caller ID because that probably started us down the road of no one answering phone calls anymore from numbers that you don't know 'cause you know somebody's either asking for charitable donations, it's a political call, or it's a debt-collection call, or it's from, you know, my father who I don't want to speak to 'cause he keeps me on the phone for an hour at night, and so I'm gonna, you know, decide when I'm gonna call him. But other than that, with Caller ID, you choose who you're gonna call -- whose call you're gonna answer and whose call you're not gonna answer, and so I think the idea that consumers can decide who they're going to answer the phone from and what communication method they're gonna use is great. I realize that creates problems, but I think this idea of, "yeah, how do we fit a validation notice on a smartphone screen or a dumbphone screen is a real difficult one. So we need to look at that, but I still think that we can do that on a one-page form, and that's something we need to look at.

>> Joel Winston: Yeah, and I can reassure you that an enormous amount of work is being done on this very issue in the Federal Government right now. I've been on any number of panels and conferences and meetings where we've been discussing these issues, and the consensus is that the difficulty of explaining even relatively straightforward information to consumers is often not understood, that consumers tend to be not able or not willing to process that kind of information. So you have to come up with alternative ways of communicating to them, and certainly one of the main purposes of the new CFPB is going to be to figure out a way to make disclosures better. Indeed the task that they've undertaken really first is combining the two mortgage-disclosure forms into one simple form that's supposedly gonna be on one page. You know, good luck to them. [Laughter] People have been trying to do that for 30 years, but certainly they can be made better, and we certainly hope that would happen.

>> Manny Newburger: In this context, you realize the validation notice has a 12th-grade-plus reading level.

>> Joel Winston: Hmm.

>> Manny Newburger: If you run a readability on the notice that we require be sent to every consumer, newspapers are, what, 5th grade? And this is a 12th-grade-level notice. It is beyond the comprehension of many consumers when we talk about what people understand. The Section 811 Notice is a problem.

>> Suzanne Martindale: Right, and I would even say that there -- you know, to take some baby steps in the right direction, again I'm gonna go back to the debt-buyer context because that really is what most low-income consumers are dealing with. They're dealing with debt buyers, and sometimes they're just contacted by somebody. You know, it's a company or a personal name they've never heard of before who says, "you owe me money, and you owe me this amount." You know, like, who are you and why are you calling me? And so even just getting in that initial validation notice, the original creditor and a redacted account number -- sometimes the debt buyers don't even have that. That's a problem. I mean, how are you supposed to figure out, you know, who this person is, whether they validly own your debt or not? I mean, if you're a Harold Wood and 13 different people say they own your debt, I mean, where are you supposed to start? So I think those are two small things you could just add on to the one-pager that would at least kind of get us in the right direction. So, here's a question from the audience. "We require testing of drivers before they are allowed to drive. Should we be testing consumers before they are allowed to borrow or use credit? [Scattered laughter] Would this satisfy the need to disclose their rights in the event they default?" You know, it seems funny on the surface, but actually there's been a lot of serious talk about that, and I think it's another issue that the CFPB is going to be looking at, not necessarily to require a test, but something, you know, along those lines. Anyone have any thoughts?

>> Marla Tepper: Our office offers free financial literacy training to consumers in New York City. So we certainly support the idea that educating consumers about their financial obligations and rights is a good idea, and teaching them how to balance their budgets is a great idea, as well, but I think that there's also the obligation of businesses to evaluate more closely the ability of consumers to pay instead of promoting credit wantonly. So I think there's a balance there.

>> Joel Winston: Yeah, and along those lines, there are new proposed rules out of the Fed that would require mortgage lenders to conduct a suitability analysis before they give a mortgage to a consumer to make sure that they are actually suitable for the terms of that. So those are all efforts to really grapple with this problem. Let me change the focus a little bit. There was a lot of talk earlier today about the benefits and costs of automated technologies, and in terms of cost, I think, actually, Laura talked about this repopulation problem of a consumer says, "it's not me," but then it goes back into the database, and they get another call a week later, and this goes on and on and on. For those of you who are following the mortgage-servicing federal and state government efforts to - - and the robo-signing issues and other issues -- one of the provisions in the agreements that have been made so far is that the mortgage-servicing companies have to actually designate a human to be available to answer consumers' questions about their mortgages and the servicing because, again, consumers are getting caught in automation hell and never escaping. What do people think about something like that in the debt-collection context?

>> Marla Tepper: Um, we have a rule in New York City that if a debt-collection agency contacts a consumer, that communication has to include a phone number that the consumer can call back and get, make contact with a live person, and we think that's a great rule because it ensures that if a consumer wants to pay or wants to come up with a settlement plan, they'll reach someone knowledgeable about their debt so they won't be frustrated by that experience, and at the same time, they will reach somebody who's knowledgeable about the debt. So we would support that idea.

>> Joel Winston: It seems like every time I come up with a topic that, you know, is this something that maybe people should do, New York City already has an ordinance on it.

>> Marla Tepper: Thank you.

>> Joel Winston: That's very impressive. [Chuckles]

>> Bob Hunt: Suzanne.

>> Suzanne Martindale: Oh, thanks. No, I was just going to say I absolutely would support that. I've also seen cases of consumers who have, you know, actually reached a settlement agreement with the current owner of the debt, and that never gets recorded, and then it gets sold down again, and then they're back at square one once more. And so if there is a way to, again, ensure that, you know, despite the fact that in many ways the information is, you know, transmitted in automated fashion that there's some gatekeeper, some human being with a brain gatekeeper who has to, you know, add in some of these notes and take that account off the, you know, portfolio list before they resell it. I mean, this really has to happen.

>> Laura Udis: Yeah.

>> Joel Winston: Bob.

>> Bob Hunt: Valerie can probably back up what I'm about to say, which is that collection firms ought to be pretty well-disposed to handle the call in to talk about debt. We've been talking about communication all day. Clearly you want to do that. The mortgage analogy is interesting because we have, you know, a million, 2 million people that got in trouble, and a portion of those consumers reached out to their mortgage lenders and hit a wall because technologically they were not ready to handle this, and they have spent several years trying to automate and standardize and get their software and stuff up so that they can get do their workouts and they can do the HAMP Workouts and all of this other stuff, and it's been amazingly difficult for these guys to start from zero in the middle of a crisis and do that. The other half of the people who got in trouble with their mortgages did what a lot of people do, which is shut down. So they don't answer the phone call from the lender, they don't answer the letters. Eventually the home goes into foreclosure, and we know that the appearance rate and foreclosure hearings around the country is pretty darn low. So those homes just go. In Philadelphia, we're trying something a little different, which is called the Mortgage Diversion Project, and the idea is -- and you can do this with mortgages. Obviously you can't do this with a lot of other debt. But a foreclosure notice is a public document. So you can go to a credit counselor, for example, and say, "could you reach out to this consumer, tell them they're about to lose their house, and if they could show up at the foreclosure hearing, maybe we can negotiate something with a lawyer who's there to foreclose on your house?" And it turns out that

people do show up. Maybe it goes to 40%. I'm not sure. But more people show up, and they at least talk to the creditor. At this point, we don't know what happens in the long run -- whether more people stay in their houses or whatever. We don't know yet. But the fact that they were able to facilitate that communication at least bought the consumer a little bit of time and maybe helped them make a decision about what they had to do and make a decision about whether that mortgage really was going to be saved or not. It may very well be the case that we have to reach something like that for unsecured credit or some other kinds of credit because we do have this segment of the population that simply shuts down when they get in trouble.

>> Laura Udis: Joel? Um, on that issue of requiring a live employee to answer the phone, although we would generally be fairly hesitant to require that as a statutory requirement in the debt-collection area, and given how important live communication is according to the industry, um, it's something that I think is interesting, particularly in the area of the wrong consumer because, as I had mentioned earlier, some of the recorded messages that have been left have said, "if you're not so and so, hang up." And then if you continue to listen and select an option, you are admitting, acknowledging that you are so and so. So you are not given the choice on some of the messages of the option that you're the wrong person. So the idea of a live-person option without acknowledging, admitting that you are the debtor is something that I think is interesting and that we might consider in an appropriate situation.

>> Valerie Hayes: And one of the reasons when we drafted the language for our proposed message to leave in regards to the Foti case, we incorporated at the beginning of that message the language, "if you aren't this person, call this number." And whether at that agency you get a live person, or it's a system where all you do is enter your number, and it's automatically deleted from the system, that's one of the reasons we did that because you would be in this catch-22. Well, I'm not the person so I definitely should hang up, and we know everybody does that when it says please hang up and you're not the person. So we did incorporate that into the message, and I think you also have -- you know, as Bob was saying. Our industry does want to talk to you. That's what we're trained to do. We're trained to talk to you, to talk to consumers to figure out how to pay your debts and get those obligations taken care of. That's what they want to do. You do have consumers who don't want to talk to debt collectors. We get that. There are options. There are -- there is

technology out there where you can drive somebody to a website, drive a consumer to a website and allow the person to go to a website and work out a settlement arrangement on a website. And they don't have to talk to anybody at all if they don't want to. There's the letter process. So you do have these -- you have different consumer preferences, and the industry's really trying to communicate effectively whatever that communication preference is. We really just want to talk to the consumer, figure out how to get that consumer to pay that debt, and then move on to the next obligation and then deal with the next consumer in an effective manner and the way that that consumer wants to be communicated with.

>> Joel Winston: Let me just delve a little deeper into that. Is there a trade-off between accuracy and efficiency? And if so, what's the right balance?

>> Manny Newburger: Efficiency is not an alternative to accuracy. Steve Goldman said it earlier. He's absolutely right. You can be efficient and still be accurate. That's what this company's based on, frankly. Why should -- why should one diminish the other?

>> Valerie Hayes: And it doesn't do anyone -- no, you don't want to contact the wrong consumer. It doesn't do you any good. You want to know when you're communicating with the wrong person, and we've heard several conversations up here -- several panels have commented about, "well, you get 127 calls. I just don't want to talk to you." Well, that's all well and good, but if you would have just picked up your phone on the second call and say, "hey, I'm not the right person," we remove you from the system. We don't call you anymore, and you don't get the next 115 calls. Because there are instances when consumers don't pick up the phone, and you are the right person, and you're not communicating, and when you aren't able to communicate, somebody else, a panelist, said, "well, you can file a lawsuit." Yes, you can file a lawsuit, but as a consumer -- I'm a consumer -- I'd rather not be sued for debt. I'd rather you call me, we work it out, or you send me a letter, and I pay it. I don't want to get dragged into court. So I think you have to balance those interests. But you do want to communicate accurately with that right person. You want to know when it's the wrong person.

>> Joel Winston: All right, does anyone feel like there are things that collectors could be doing technology-wise to make -- to make their information more accurate?

>> Marla Tepper: Well, I was puzzled by the inability to -- and remain puzzled by the inability to collect accurate information that consistently proves that a debt is owed, and it could be that I'm not that technologically savvy, but with all the things that we're talking about, that seems to be the most fundamental thing that we should be talking about. That's the first step for debt collection, and that's where that energy should be focused.

>> Joel Winston: Other things people think we should do?

>> Bob Hunt: Susan already hit on something, which is -- in the credit-reporting context, when there's erroneous information, there's a feedback loop to correct it. There's a dispute process. There's a dispute process under FDCPA, but it doesn't seem to have the same feedback effect, and I can't figure out whether that's an issue about the way the law is designed or whether something technological or economic that prevents that, but that seems like a fixable problem. It may require coordination because, you know, this is not a highly concentrated industry, but it seems like a fixable problem.

>> Manny Newburger: It's a problem that's, in part, been created because the banks have been allowed to do some things that are, quite honestly, troubling. If you're a consumer, and you want to figure out who a bank is, try looking up the bank history on a few of the major banks and see how many times they've changed names in ways that are so similar that no one could figure out who a bank really is or who they did business with through the history and which one merged into which. Then you have a two-year document-retention policy for banks. Why? You're gonna push six years out on an industry with stocks, but you're gonna let banks have two years? Aren't they supposed to be the most fiscally and financially accountable in the country? Why would we let them have two years, okay? And -- and so the answer is that the banks have been allowed to do this, and we talk about the debt buyers. Look. Debt buyer buys a paper from a nationally chartered bank that the federal government says is supposed to keep accurate records. They get a warranty that says this debt's just due and owing. They get an account data that pertains to the consumer.

All the ones I represent then go out and check the credit bureaus to be sure that the data matches up. They see this account -- the numbers here and what we bought, it's on the consumer's file. Balance appears to be right. If it's not right, go back and look at where the data came from to begin with. The breakdown does not tend to occur in the subsequent transfers. The question is whether the original data was right.

>> Bob Hunt: I'm not saying it did.

>> Joel Winston: We have a question from the audience that's right on point. "Can anyone comment on what the responsibilities of the original issuers of credit, 'the creditors,' should be in solving some of these challenges discussed today, and what roles should they play in future rules and regulations?" So I'd ask you all to assume for the purpose of this question that there's going to be a consumer-protection agency that has jurisdiction over all the banks and the collectors and pretty much everyone else who will have rule-making power, enforcement power, examination power, and a lot of other things. If you were running that hypothetical agency, what would you do?

>> Bob Hunt: I think Manny just hit on one point -- that there ought to be some kind of coordination between the information that's provided by the original creditor and the information that's required in the process of collections, and that has been bifurcated, I think, for a very long time.

>> Joel Winston: Can you be more specific about who should do what?

>> Bob Hunt: Uh, well, no, I can't because when you think of -- one of the -- the interesting things about the bureau is that it does unify all of these responsibilities, and so for the first time in maybe 30 or 40 years, this group of people are gonna have to sit down and think about how they comprehensively design this, and there are numerous tradeoffs to think about in terms of the data requirements, the data-retention requirements, the data-transmission requirements, the feedback loop through the dispute process. I'm assuming that the evidentiary requirements in the state courts will continue to be determined by state courts, but that's also a factor in here. They're gonna have to sit down and sort all that out, and I wouldn't be able to predict, you know, without being part of

that whole conversation exactly how that's gonna work, but that would be a much better system than trying to do it piece by piece.

>> Joel Winston: Would anyone else like to give the CFPB some ideas?

>> Marla Tepper: Um, I think it would make sense for the creditors not to be able to assign or sell debts for collection unless certain documentation is maintained and transferred, and I think that's pretty -- that would be great.

>> Suzanne Martindale: The Consumers Union has already told CFPB to do that many times. We're working on it. [Laughter]

>> Valerie Hayes: And that's something from the industry perspective that ACA has also been advocating for figuring out what documentation is necessary to show that this is the consumer that owes this amount to this party, and once you figure out what that documentation is, it really -- you have to start with the creditors, that they have that information, and then they maintain it for a sufficient period of time. And we advocate for at least a 7-year retention period because that's the credit-reporting period. That's how long you can report to a consumer-reporting agency for that debt. So that's how long at least that documentation should be maintained and whether it's the creditor or it's the next person down the line, that documentation should be there so you can show that this is the debt that's owed to this party by this consumer.

>> Bob Hunt: I think we're all saying that there's probably a lot of room for gain here. At the end of the day, that things got to be able to design -- to accommodate the fact that most of these debts are relatively small. So the information, collection, and retention -- this has got to be well-designed, cost-effective, but then we've just listened for six hours about all the technology that should help us get there.

>> Laura Udis: Well, I think that there's also an inherent tension which might be fixed by -- by the joining of regulation under the CFPB, but in my own personal view, and this is my personal view only, but, um, in the current structure, I think a lot of the bank regulation -- and we're talking

generally in the debt-collection area about unsecured debt, and a lot of that's credit-card debt. I think a lot of the focus on the bank regulation has been what will -- what will profit the banks? So we're talking safety and soundness in a narrow view financially what will benefit the bank's profit, the bottom line. And so perhaps regulation was looking only at selling off assets and how that would -- would benefit the bank, whereas from the debt-collector regulatory area, both from the FTC and state regulator point of view, we were looking at consumer protection. And so I think there's an inherent conflict there between what benefits the bank in getting some of this debt off its books versus consumer protection in ensuring that the debt collector or debt buyer is following consumer protections. And I think that conflict doesn't result in the best consumer protection when the bank is doing whatever it can in some cases to get that bad debt off its books. So that may mean that it's not being sold with good backup, good paperwork, and if a debt buyer does not or cannot or will not obtain any kind of verification of the debt, there could be a real problem. In fact, I think it's a former FTC staff person that came up with this. It's not my own original idea that if the debt collector cannot get any kind of proof of the debt, is that -- is that a Section 5 of FTC Act violation to even try to collect it? So an interesting concept, but I think maybe the CFPB won't have, perhaps, that inherent conflict.

>> Joel Winston: Yeah. Actually, that's in our 2009 report -- the idea that you have to have substantiation for your claims. So we've got about 6 minutes left -- a reminder. Any other questions, please get them up. We do have one here which is more of a general -- "how do we anticipate dividing responsibility for this industry between the CFPB and the FTC?" And I can just answer that quickly to say, um, we're working on it. We're coming up with a memorandum of understanding, which we'll have by January at the latest, and we do share enforcement authority, but rule-making authority is solely vested in the CFPB, so there will be some difference. But we do anticipate working together closely to avoid duplication and to avoid -- certainly to avoid inconsistent standards. That's the last thing we want to do. So, um, I guess a final question for all of you -- so, tomorrow morning, I'm gonna come back into the office and go up to my -- sit at my desk and think about what is the FTC going to do next to resolve these issues that have come up today? You know, what should we be doing? And I'd love to have any suggestions that you folks have.

>> Marla Tepper: I think there needs to be modernization of the FDCPA with the technologies that exist now and addressing technologies that exist or will exist in the future, and I think rather than being specific in saying, "this is how you do e-mail, this is how you text-message," it needs to be in a broader, more general sense to address technologies that will come into the future, but it definitely needs to be something that's modernized to address those types of communication methods, and I think also another issue that we really didn't address in this panel but was addressed during an earlier panel is you also need to address how you leave messages and what is left in a message for a consumer so we can effectively communicate.

>> Joel Winston: And just to refine my question, uh, until they elect me to Congress...

>> Valerie Hayes: [Laughs]

>> Joel Winston: ...probably can't do that, but what is it that you think the FTC can or should do?

>> Valerie Hayes: But I think you can -- when you're gonna be working with the CFPB, the CFPB will have regulatory authority beginning in July, and I think as the FTC and a partner with the CFPB, you can reach out to the CFPB and work with them on those regulations dealing with those issues. You can also advocate to Congress with the CFPB to modernize the FDCPA for the industry and improve consumer protection as well as improve the debt-collection industry.

>> Joel Winston: Bob.

>> Bob Hunt: I think after this meeting and some of the other things that you've done, there's a rank ordering of some issues for which I think we have enough information to make policy recommendations on. But a lot of the conversation is about restructuring this entire environment, and there is a whole agenda of applied research that's necessary to do this well, and we need to push this along, and I encourage the FTC to try to do that. In many ways, we need cooperation from the industry to do that because the underlying information that's necessary to make good decisions here is in your hands. It's not in ours, it's not in mine, and if we don't get that information, we're much more likely to make mistakes that are gonna be very costly for the industry and for consumers.

>> Suzanne Martindale: I would say that I agree that research is really, I think, a very important next step for the FTC. You know, we've seen that there really is a great amount of capacity that is in our hands, you know, with these new technologies for communicating more effectively, potentially in ways that are preferential to the consumer. I'm setting aside privacy issues, which I don't specialize in. Also, you know, the ways in which we can use technology to ensure the accuracy and integrity and hopefully the efficiency of retaining, obtaining, and then transmitting information so that we're not accidentally picking off innocent fish in the net, you know, which does, you know -- it may not be the majority of consumers who are suffering debt-collection abuses, but it's a significant percentage, and still that should be addressed. You know, I think this whole conversation, this whole day has been interesting. I've thought about how, you know, what we always need to remind ourselves is that technology is really -- it's a really exciting topic. It's very easy to get in the weeds with it. We just always have to remember every once in a while, you know, to take a step back from the research and say, "okay, this is -- The Fair Debt Collection Practices Act is a remedial statute, and I think only one person mentioned it toward the end of the day today. It is meant to cover the most sophisticated consumer down to the least sophisticated consumer. So we need to think about what that means -- you know, whether it informs how we'd write our disclosures or whatnot. I mean, that just -- that, to me, is an important piece -- is remembering that we have to protect even the least sophisticated consumer who may never file a lawsuit, an affirmative lawsuit, who may not know what to do, who may freeze up, who may not know what to do when they get served a lawsuit, may not know that they have an affirmative defense. They probably have never heard what an affirmative defense is. I hadn't before I went to law school. So these are the types of issues that I think sometimes get -- fall by the wayside when we're talking about what our next step should be, and I would just reiterate that, you know, we have to think about the full range of, you know, consumers that we're dealing with, and, you know, who primarily recognize a moral obligation to pay their debt. They just want to make sure that they're, you know, dealing with someone who's legitimate.

>> Manny Newburger: In a -- in its "White Paper" for the 2007 Workshop, the Commercial Law League pointed out that the Act hadn't been -- had not been amended to deal with technology, that in 1977 when the act was passed, there were not cellphones, no fax machines. Well, if you look at

the statistics on the rate at which technology's advancing, it's advancing a whole lot more quickly today than it was during a good portion of the history of this Act. I've seen statistics saying that in a four-year trade school, by the time you get to your third year, what you learned in your first two years is outdated.

>> Joel Winston: [Chuckles]

>> Manny Newburger: That's how fast technology is moving right now. The law has got to be able to keep up with that. At the same time, we've got to recognize some of these technologies are good for consumers. We talked last week about the fact -- and I've heard Professor Warren talk about this. Driving people into bankruptcy's a bad thing. No one wants that. The creditors don't want it, the agencies don't want, the debt buyers don't want it, the consumers don't want it. We don't want to push people into bankruptcy, and that means we have to find ways to make it more possible to collect, more possible to reach agreements with consumers, more possible to communicate with them. So that consumers have a chance to get back on their feet, we need to provide these opportunities for the dialogue. We need to find ways not to force cases into court. The case law's gotten to the point now where one of the number-one issues is call frequency. Why? Because with the Foti cases, no one wants to leave a message. So what do you do? You call, you don't get an answer, you don't want to leave a message, so you call back a few hours later. Well, you don't get a message, you call back a few hours later. Well, if you know someone's sitting at home, and you're doing it to harass them, that's illegal. If you think no one's there, and you're trying to avoid risking damaging someone's privacy rights, it's not illegal.

>> Joel Winston: I think -- I hate to cut you off, but we're pretty much out of time. So, Marla and Laura, briefly.

>> Marla Tepper: Well, I think we all agree that the law needs to be written or evaluated in a flexible way that reflects new technology and incorporates that to the benefit of both the industry and consumers, and a lot of issues came up that -- that emphasize that -- that there are opportunities here for business to do the right thing and for consumers to be protected, and that's probably a good starting point for you tomorrow morning. [Laughter]

>> Joel Winston: I'll just remind everybody that, again, back in 2009, our Workshop Report, we recommended that Congress amend the FDCPA to modernize it, and the results speak for themselves. [Laughter]

>> Manny Newburger: But you were right. [Laughter]

>> Joel Winston: I'll say it again.

>> Laura Udis: I don't really have anything more to add. I'll just say that I do think it's a shame that -- that the FTC never had rule-making authority in its tenure, and it's nice that the CFPB will, so that's a shame, but good luck to the FTC in trying to figure out what to put in its reports.

>> Joel Winston: Thank you. [Laughter] I just want to thank everybody -- those in the audience who stuck through the entire day. I also want to mention the FTC staffers who put this together and worked tirelessly to do that. Tom Pahl. [Applause] Uh, let me... I'm gonna name them. Don't -- yeah. Hold your applause till the end if you would. Tom Pahl, Leah Frazier, Julie Bush, Ron Isaac, Bevin Murphy, Tony Rodriguez, Dan Becker, Nick Herrera, Kara Redding, Erin Feehan-Nelson, Emily Hagan, Jillian Wagman, Russell Caditz-Peck, and Joseph Kennedy. And thanks to the panelists, also, for a terrific discussion, and you can all go home now. Thank you. [Applause] [Indistinct conversations]