

>> ELLA KRAINSKY: All right everyone, welcome back. This is now our third panel on mobile advertising disclosures.

>> PATRICIA POSS: Hello. Welcome back. My name is Patty Poss. I am the chief of our Mobile Technology Unit here within our Division of Financial Practices in the Bureau of Consumer Protection. I'm glad you made it back for the afternoon. This panel promises to be quite interesting. We are going to try to examine all those challenges we've heard in our comments and we heard from this morning. We're going to try and address some of those challenges and hopefully provide some insight on how one can do -- Uh-oh. Uh-oh. There we go. We got our slides up to date now. We're going to provide some insight and address the challenges that folks have talked about earlier today on how one can do adequate disclosure in the mobile space when you've got a reduced screen size, when you've got consumers who are on the go. You may even have a consumer who's literally walking across the street as they are reading your advertisement. How does one make sure that there's clear and conspicuous disclosure when you're dealing with those kinds of issues? I think there's going to be more. And I just want to be clear that our next panel is about privacy. So, while this is a mobile panel, we're not going to be talking about privacy disclosure. We're going to be talking about advertising disclosure with this group. So, I'm going to -- We have a lot to cover. And I'm going to go right ahead to get to our panelists here who are each going to introduce themselves to you very, very briefly, introduce themselves to you and then give me, in one or two sentences, what you think the top challenges are for advertising disclosure in the mobile space. So, Anna, will you start us off?

>> ANNA BAGER: Yes. So, My name is Anna Bager, and I'm responsible for mobile at the IAB, the Interactive Advertising Bureau. And for those of you who may not know it, even though we're an incredibly important and fantastic organization, we are a trade association, and we represent the sellers or the sell side in advertising -- so, any company who is either serving or has inventory to sell in the interactive space. So, that may be Websites. It could be on mobile phones, et cetera. And again, I run the mobile part of it. So, what we're doing is we're trying to create a better environment for mobile advertising either on mobile phones or tablets or across different kinds of

platforms. So, then it's the media being mobile rather than just the device. The main obstacles or, I guess, challenges when it comes to disclosure on mobile, I think, are -- You know, it's pretty straightforward. It's actually screen size and the different operating systems that exist in the mobile space. So, it's a lot harder to interact with the user. It's harder and it's easier to interact with the user when you're doing that on a mobile screen because it's smaller. The user is probably in a different mind-set than when he's accessing content via the Web. He may be on the go. He probably has a very specific purpose with doing so. And he also has a smaller screen to work with. So, how do you provide disclosure in an effective way that is not annoying or counterproductive so that the user just gets irritated and closes it down before even reading it? I think that's the main challenge -- and again, the different operating systems. So, the fact that we have Android and iOS, Windows, et cetera, makes it harder from a technology point of view, too, to produce effective disclosure.

>> PATRICIA POSS: Okay. Thank you. Michelle?

>> MICHELLE DE MOOY: Hello. My name's Michelle De Mooy. I'm from Consumer Action. We're a 40-year-old national nonprofit based out in San Francisco, but we have offices in L.A., San Francisco, and Washington, D.C. So, Consumer Action advocates for underrepresented consumers. Thanks.

>> JIM HALPERT: Sure.

>> MICHELLE DE MOOY: Particularly minority and low-income communities. So, that's where I'm going to be coming from today. It's a little bit of a different perspective, I think. But it's important because, of course, the largest and growing population of mobile users are Hispanic and African-Americans. And that's something that is rarely discussed or brought up in the context of advertising and disclosures and what that means for them, so I'll try to focus on that a little bit. I think challenges are many. I think consumer expectations are different on mobile phones. I think it's a very personal product for most consumers, and they're pretty unaware of the ecosystem that surrounds them, the marketing and advertising ecosystem. I think they tend to think of their phones as something that is not a Website. For example, I think they think when they go online to visit a

Website, that's going on the Web and don't necessarily understand sometimes that apps are going online, as well, and sort of the different expectations that may come into play there. I think also a challenge is getting advertisers on board with this. I think there's been a lot of disincentives -- except for the FTC sort of looming -- for these companies to really design well for consumers, to make the experience more transparent, and to give consumers control over their transactions. I think that's, from our perspective, some of the major challenges.

>> JIM HALPERT: I'm Jim Halpert. I'm a partner at DLA Piper, which is a global law firm. And I am General Counsel to the Internet Commerce Coalition, speaking on their behalf today. It's a trade group with members that include Amazon, AT&T, Comcast, Career Builder, eBay, Google, monster.com and Verizon. And the members of the organization see this question of mobile disclosures as very much a win-win issue for businesses and for consumers. It's very important to our members that consumers not be surprised about important terms, and it's very important that, in the space-limited format, which is the major challenge -- I agree completely with the way this problem has been framed by Anna and then by Michelle -- that there be ways, in a limited space, to attract the attention of consumers so that important clarifications as to what offers are and are not about are readily apparent to somebody who is on the go and who's looking at what's often a small screen. At the same time, mobile is many different things. It also includes a tablet computer, where it's pretty easy to expand out and see things. So, I think we need to be careful in our terminology as we talk about mobile to focus on the formats that really present the greatest challenge and speak empirically and practically about solutions that will work.

>> PATRICIA POSS: Mark?

>> MARK ODEGARD: Hi. I'm Mark Odegard. I'm the Senior Attorney at Best Buy's Legal Department for advertising and legal marketing matters. There's about three or four of us that are charged with responsibilities for the United States. The advertising runs the gamut from the traditional circulars that you get in your Sunday newspaper, all the way to SMS and mobile advertising. I won't rehash all the discussion about limited real estate, other than I will add that, as our offers get more and more complex, it's not just about sell selling widgets. We're going to sell subscription offers. We're going to sell services. We're going to bundle other types of offers

together. As our offers get more and more complicated, it becomes harder and harder to disclose the material terms of the offers and to become fully in compliance with the FTC's regulations and rules. Imagine trying to also disclose, on top of all of that, a financed offer, on top of all of that, let's say, a sweepstakes offer. It becomes harder and harder. Another challenge is that the rules require us to focus on the reasonable consumer. It becomes increasingly difficult to know who the reasonable consumer is these days. It might be my mother, who asked me to look up something on "the Google," as she calls it. It might be my nephews, you know, who can put everything together. They don't need all the services that we might have relied on selling. So, it's a tougher and tougher environment that we're in, and the challenges are getting greater and greater.

>> DAVID SCHELLHASE: Hi. I'm David Schellhase. I'm the General Counsel at Groupon. I have my one-year anniversary at Groupon, I think, on Friday. So, I'm excited about that. I think most of what I know about mobile technology I've learned from my 15-year-old niece. So I will be able to represent the high school-sophomore demographic up here. I think the number one challenge, really -- and I learned from her -- is consumer attention because getting people to actually pay attention even if you've got all the appropriate disclosures is very difficult. You know, again, not to rehash sort of what everyone said, but typically when you're using a mobile device, you want something instantly, right? You want it right now. You're hungry. You need to find something, and you want it now. And you swipe through all of the things that you're used to that are disclosures. And breaking people out of that paradigm and giving them important information about what they're doing is, I think, the biggest challenge.

>> PAUL SINGER: Hi. I'm Paul Singer. I'm an Assistant Attorney General in the Consumer Protection Division at the Texas Attorney General's office. For those that weren't here this morning, I will inform everyone that, if I express any opinions, they are mine. They are not necessarily those of the Texas A.G. or of any other state attorney general. And nothing should be construed as legal advice. All that said, I think the sort of biggest problems -- I think we've heard a lot of them, right? Obviously, space limits -- that's a big deal on a mobile device. But I do think, you know -- Michelle described it as consumer expectations. I think that's a big one, right? It's really understanding, "What do consumers know about their mobile device? What do they understand about how advertisements are working there? And exactly what information is being

provided and gathered about them.” You know, just understanding what consumers really know about the functionality.

>> SHERYL ANN YAMUDER: Hi. My name is Sheryl Ann Yamuder, and I am counsel for Dunkin' Brands. And I think probably the biggest challenge, which is partly what everyone's been saying, has to do with the various ways that ads are accessed through various devices. I think it's not a one-size-fits-all situation. So, to be able to provide ads in so many different formats, to meet so many different needs, never being sure exactly how the consumer is going to access the content becomes a real challenge for advertisers.

>> PATRICIA POSS: Great. All right, thank you. And that was a great setup for our first example here, which I'll put up. So, we're reusing one of our examples from the previous panel. So, you take a look there. Example one here is a fantastic cuisine Dutch oven Website selling the oven. If you look over in that far right-hand corner, you might see the disclosures over there that say you're going to be enrolled in a recipe club that's going to be charged -- I think it's \$4.95 a month. I can't quite read the disclosures from here. So, now let's take a look at this same Website from a mobile device. It just got shrunk. Well, then let's pinch and zoom in. And where did the disclosure go? I can add it to my cart, but the disclosure is gone. Let's look at one of the other examples that we had from this morning, where you see near the "add to cart" button -- the disclosure is right there. And now let's shrink that one. We shrink, and then we zoom in. And at least it's there. And one more example would be what I call a mobile-specific site. Let's say you've actually created a separate Website from your m-commerce site that, when a consumer is coming from a mobile device, the browser directs them to this. Okay, so, now I'd like to get -- And the panelists -- we've talked about this a little bit already, this issue, which is part of the screen-size issue. We have browsers that are helping us. But how are companies dealing with this? How are folks trying to handle this problem, if at all? Jim, do you want to talk about that?

>> JIM HALPERT: Sure. Now, here I can't speak to the practices of the individual members of the association, but I'll speak as a lawyer who counsels clients on how to deal with these kinds of problems. In the case of a recurring contract or negative-option contract, already under a variety of state laws, there's a requirement to provide proximate notice. So, thinking through the scenario that

Patty laid out, it is important to put inside of the box, close to the point where the user is going to click to accept the arrangement, the disclosure, because that's a material term. And there's significant potential class-action liability under state laws for failing to comply with the requirements in various areas of clear and conspicuous disclosures, but also proximate disclosures. So, in this context, to be safe, my legal advice would be to put that information about the enrollment and the ongoing payment arrangement very close to where the user is going to accept and not on the outside.

>> PATRICIA POSS: Mark, did you have anything you want to add?

>> MARK ODEGARD: No. I would echo what was just said. You know, obviously, I tend to prefer the one later in the packet, where it's nearby and close that we disclose the material terms of the offer. When I review these kinds of things and I counsel my clients, what I'm looking at is our history of, let's say, litigation. Have we had similar claims of that nature? I also look at the history of enforcement actions taken against our competitors or similarly situated companies. All of that, you know, goes into the formula for me to try to determine whether or not this is a risky endeavor to go ahead and do something like that. Some things become of greater concern to me. This kind of an offer, with the obligation on the part of consumers for regular, recurring payments does cause me greater concern. I have a heightened sensitivity to that.

>> PATRICIA POSS: David, did you have anything you want to add?

>> DAVID SCHELLHASE: Well, I'll violently agree with what Mark and Jim said. I mean, I think, you know, the key thing is to figure out what the key things are. And so, you know, when you're talking about some kind of an offer on a mobile device, you've got to decide what the salient features of that offer are -- price availability, refund availability, things like that. And they may change, right, depending upon what goods or services are being offered. But you've definitely got to be up front with everything, or you're going to mis-set a consumer expectation. And over the life of your brand, that's the worst thing you can do.

>> PATRICIA POSS: Great. Hopefully that's our only violence on the panel here. Okay, so, how likely is a consumer to scroll to right or to the left to find a disclosure, even if it's something different than that? Or will they scroll down? We talked a little bit about this in the first panel this morning. Does having the disclosure in the same column as the product or near the "add to cart" button increase the likelihood that a consumer will read it? Michelle, do you want to talk about that?

>> MICHELLE DE MOOY: Sure. I think it's crucial that it's right by the cart, right as they're about to buy, not just so that they can see it, but because, you know, if you have a phone that's not that fast, scrolling can actually be a really big hindrance to being able to read this. And, you know, again, just coming from that sort of underserved-community perspective, that is the case. That's what we hear from people. You know, it can be difficult to download, which is what sometimes happens when you move, on a mobile phone, over. So, I think it has to be there. I think the other thing I would add that was talked about earlier today would be a line item. I think that would strengthen this even more, showing that there's a financial transaction that's about to happen. It's not just you're agreeing -- You know, with privacy policies -- You know, for example, people see those a lot and assume it means they're being protected. I think it's similar in this context, that they think they're agreeing to some sort of disclosure. They may not really get that there's a financial transaction being involved. But when you put a line item into the shopping cart, that is pretty clear.

>> PATRICIA POSS: And, Paul, did you want to add to that?

>> PAUL SINGER: Sure. So, I touched on this some this morning in the first panel, right? But, I mean, certainly in terms of where states have gone in enforcement actions, you know, a core concept is, when something materially modifies an offer, that disclosure needs to be made right there next to it. I mean, this transaction is not really an offer just to buy this \$220 Dutch oven. It's an offer to buy the oven and this enrollment in this membership program. So, I mean, I think at each step of the process certainly that's what needs to be clearly communicated to the consumer. And, you know, we talked in the first panel some about how that can be done at the actual checkout process, with sort of, you know, an additional affirmative acknowledgment that they're doing it. But certainly when the offer is made and presented, it needs to be in direct proximity to that offer.

And I think when that's done, as sort of demonstrated in these hypotheticals, you know, the issue of looking at it on a mobile device versus looking at it on a computer becomes somewhat less of an issue because now, even on a smaller screen, you've got that material information right there, presented to you.

>> PATRICIA POSS: Great. Anybody else want to comment on that or on the examples?

>> MICHELLE DE MOOY: I just want to add one thing. I think a key principle that would come out of that would be that the transaction has to pause, you know, that there has to be some pause between the consumer putting something in their cart and moving to buy it.

>> PATRICIA POSS: Which you -- Earlier this morning we had a panel where they had a box to check it.

>> MICHELLE DE MOOY: Mm-hmm. I think people made valid points about that being obsolete or somehow becoming less attractive as technology moves forward and maybe there's voice command or something like that. But there's a big part of me that feels like, "Well, you know, just because technology gets advanced, it's still going to be pretty easy to check a box." So, especially on a mobile phone, where there is limited real estate, I think there's something to be said for -- Just, you know, from a design standpoint, it's easy to see. I think there's an understanding that you agree, especially if there's a negative option, too. So, I think that that's a good option. I think that would strengthen this.

>> PATRICIA POSS: Great. Okay, let's talk for a moment about responsive design. Anna, you want to talk about that and describe how it compares to a mobile-specific site?

>> ANNA BAGER: Yeah. So, responsive design is somewhat of a buzz word in, at least, our industry right now, and I just want to kind of explain what it is, first of all. It's basically an evolved -- It's the evolution of HTML5, which is the programming language for the Web. The difference, though, with responsive design is that it creates -- If you think about a Website, it creates a grid, or it sorts the pieces of information into small boxes. And that is the content. And when you want to

enter the content with your phone or with a tablet or through your PC, it would feel that you're coming from that kind of device, and it would shuffle those boxes around so that they end up in a place where you can read, but where it also makes sense on the screen. That's kind of what it is, really. And it's very practical for that purpose because, in comparison to other types of creation of mobile Web, it works on any device. So, you only have to do it once for all of your different screens that you want to reach. What it also does that is different than the traditional HTML is that it considers mobile first. So, whatever kind of content you try to produce, you have the mobile device in mind, and then it will adjust to the other devices rather than the other way around, which makes it more practical from many perspectives. And especially, again, coming back to the point that I made before, in the beginning, when we talked about the challenge -- there are so many different screen sizes. A mobile phone is not just one 600x800. It can be anything. It's not really clear what is a tablet because there are mobile phones that you have to hold with two hands, and there are tablets that you can only hold with one. And depending on what kind of device you have, as a user, you will be in a different state of mind and a different mode, and you will be differently interested in the content that is upon it. So, responsive design is a very effective way of solving a problem across different platforms.

>> PATRICIA POSS: Great. Do you want to just mention -- I know you weren't going to talk about the cost, but are there ways around using responsive design or more inexpensive ways in which a company might be able to design their site?

>> ANNA BAGER: So, I don't think that it's more expensive to use responsive design, necessarily, than any other technology, depending on how you budget, of course, or how you define cost. But responsive design has been around for a long time. The reason everybody's so interested in it right now is that Steve jobs mentioned it, I think, in 2009 or '10 in a speech, saying that responsive design was something that -- that's the future, when Flash is dying and other kids of other kinds of technologies that have been existing before. And as with everything else, he said, people picked up on, it and that was kind of the claim to fame for the responsive design. So, it's not a new technology. It's commonly known. It's also in evolution. So there will be an HTML6 eventually. This is HTML5, for the most of it. So, I don't think that it's more expensive to produce in responsive design. It may also be more cost-effective because, again, you can have one Web

strategy for mobile as well as for display. And if you think about, again, the fact of what kind of content you're producing, it may be effective to do it across devices and not have a separate strategy for one device as opposed to another. From a user perspective, it will also make them feel at home. So, if they have access to your site on the Web and they access it on the mobile, they will recognize it. The problem with other types of Web designs -- above all, the pinch and pull. So, when you have a Website that is accessible from a mobile, but it's just your traditional Website and then you have to enlarge it and make it smaller -- is that you can -- while doing so, you can press hyperlinks. You can check boxes. You can be transported to other places, where you don't really want to be. It's not in total control. If you have children using it, you don't really know where they will end up. So, responsive design really is a good way of solving it. And I think from an economical perspective, it doesn't have to be more expensive than anything else.

>> PATRICIA POSS: Okay. And should all commercial Websites be designed to ensure that their disclosures are clear and conspicuous when they're viewed from a mobile device? Should we expect that everybody's Websites should be able to be viewed from a mobile device? Jim, you want to take that? Oh, Paul?

>> JIM HALPERT: Why don't you start from a regulator perspective?

>> PAUL SINGER: Yes. That's the answer. No. I mean, look, I -- Certainly, you know, all of this discussion about, you know, how consumers are using their devices, I think, comes into play with this, right? Because I think one of the questions would have to be, you know, understanding consumers and their usage of the device and whether or not they're using the commercial Website, you know, as they would when they're just sitting at their desktop. But I think in terms of basic disclosure principles, it's -- what I was saying before, I think, rings very true. If there is some material disclosure that needs to be made and it's made in direct proximity to whatever that trigger is, where the call to action is, you know, I think that that's, in some ways, answering this question because now you're presenting it in a format that, whether you're designing a mobile-specific page or whether it's a standard page that someone is viewing and has to actually locate that call to action, that disclosure is still there. And so the placement of it may solve a lot of these issues.

>> JIM HALPERT: Again, violent agreement on this. It's not so interesting. But I think it's also important to think about the function of Websites, and not all Websites are going to be the sites of huge amounts of consumer activity that would suddenly trigger material events. And so saying all Websites need to do X or Y at this point in the evolution of the commercial Web is probably moving ahead faster, particularly, than one should. If there is a site, though, that's specifically designed for mobile users, it's very important to take these kinds of considerations into account and then, as Paul explained, for general purpose sites, some of the best practices in the nonmobile context will work very well in the mobile context, as well.

>> PATRICIA POSS: Anybody else want to comment on that?

>> MARK ODEGARD: I would just like to add that, if, as viewership through mobile phones and smartphones and tablets increases -- and it's rapidly, if not already, outpacing desktop viewing -- you'd be foolish, from a retailer's or business perspective, not to take that into consideration and not to craft your marketing message, your offer information, and the associated disclosures and catches so that it's all properly disclosed there. Because, you know, from Best Buy's perspective, we're certainly not in the business to try to disappoint consumers. You want to maximize sales, and as a side benefit, wonderful benefit is FTC compliance. So, it goes without saying that that's a very, very important thing 'cause at the end of the day, what I'm around to do is to help support the business, to drive sales.

>> MICHELLE DE MOOY: I just want to echo that and say -- I was going to say something similar, but more in terms of, businesses today would be wise to start with mobile and then move to the Web. I think that's pretty much where everything is headed, and I think it makes a lot of sense to design that way. And I think the problem is that it's not so much -- I think the screen size is the problem when you're doing that, but, again, like you said, Paul, the location. And I think there are different expectations as far as how people receive information on a phone versus the Web. And it's partly size, but I think it's also partly the way the space is played out. You know, pop-ups are something that are sort of viewed negatively more on the Web because they're pop-up ads. And while that occurs on phones, it's mostly, I think agreements, right? I mean, we're sort of used to that on iPhones and other phones. So, I think that's something to take into consideration.

>> PATRICIA POSS: Okay. Well, let's talk about that, some more about the differences between mobile use and desktop use. I've heard both sides, that there are differences, there are similarities. You know, we certainly have heard about the consumer who's in a hurry, just wants to get a task done, may actually be tapping by as they're walking down the street. Do consumers use mobile devices differently than desktop, and, if so, how does this impact the ability to provide clear and conspicuous disclosure? Anna, you want to talk about that?

>> ANNA BAGER: Yeah. Well, yes, I think we probably can just go to ourselves and say that, yes, they do. Consumers use mobile phones for a lot more, and it's a much more -- It's a device -- as well as the tablet -- that is much more integrated in their lives, personal lives, in a way, than the PC ever was or will be. It's kind of the remote control to our lives. Consumers use the mobile device when they're shopping. they use it to find their way. They use it to find out information about things in a much more engaged way than we ever have used the PC for. We also use it together with the PC and together with TV and together with other types of mobile devices, as a kind of navigation device to those, as well. So, I think you have to take that into consideration a lot. I mean, just from a shopping perspective, we just released research about a week ago looking at consumers' shopping behaviors on mobile phones. And first of all, we have close-to-60% smartphones penetration in the U.S. in all customer groups, not just affluent users. All of us have them. And over 60% of the people that we researched in this survey showed that they had been buying something over a two-week period on their phone. And 53% said that they had stopped to purchase in store because of information that they found on their mobile phone at the counter. So, of course, it's very important, because it's such an important and integral device in our lives, that you can provide effective disclosure, but also that you then you think about that it's not just about the phone. It's about the cross-media usage, several devices, including this.

>> PATRICIA POSS: Michelle, you've talked about different use, but do you want to address that also?

>> MICHELLE DE MOOY: The only thing -- I think just a minor comment 'cause I think the context, right, is so crucial when it comes to mobile phones, the context of how it's being used. But

I was going to say that, that was interesting to me that consumers stopped a transaction based on -- And again, I think that's a disincentive to provide adequate disclosure for businesses. So, I think that's something -- I'm not exactly sure how you'd solve that issue, but I think that's just another way that it's making it harder for advertisers to actually want to inform their customers.

>> JIM HALPERT: I'm not entirely sure that that follows. I think we have these data points that are pretty general, and if somebody does some price research or something while they're at the checkout, that may not mean that there's any greater incentive for disincentive. But it does mean that there's more information. We then have to go one step further and look on a case-by-case basis if there was misleading representation as to that offer. And given that most Websites aren't tailored specifically to a mobile audience, I'm not sure that all that really, at this point, comes into play. But that said, it's obviously very important that disclosures be adequate and that consumers be fully informed.

>> PATRICIA POSS: Mark, do you want to talk about what you're seeing, in terms of consumer mobile use?

>> MARK ODEGARD: Yeah. I wish I had some of the certainty that a lot of folks express about consumers and their wants and desires on how they're using equipment and devices to go ahead and shop to do research before they decide to buy something or participate in some kind of an offering. On the one hand, I'VE been in meetings and marketing meetings, and folks have told me about how the consumer today is so speedy quick to judge, Not deliberative. On the other hand, we've experienced firsthand that consumers today -- some of this is my personal opinion -- have never been so well-informed, in that they use their devices to both enhance the shopping experience in a bricks-and-mortar store, comparison-shop, price-match right in our stores. Things like that are happening. So, it's very difficult for me to generalize because I've seen the data go both ways. But I guess I'll just come back to the point that you've got to do the best you can, take the data that makes the most sense to you, and meet with your business folks to go ahead and align on a strategy that's going to drive, you know, the business, in my particular instance. It is quite difficult to formulate opinions regarding that, and I see the opinions are changing, too. You know, the that I

might have held or been told a couple years ago regarding consumer behavior -- I think a lot of that's already becoming outmoded, and I'm seeing continual change in that area.

>> PATRICIA POSS: Anybody else want to add to that, the impact on being able to provide clear and conspicuous disclosure, based on the use of mobile? Okay. Well, let's move on to proximity. We heard a lot of discussion about proximity earlier today. And the current guidance says that disclosure is more effective if it is near the claim that it qualifies and that proximity increases the likelihood that consumers will see the disclosure and relate it to the relevant claim or product. Now, is this principle still true for mobile, and is it important for mobile advertising, given how consumers using their devices, even though we've heard a little bit back and forth of how they're using them? Is it still important for mobile advertising? Paul?

>> PAUL SINGER: Absolutely. I mean, and we've certainly talked about it earlier today. We've talked about it on this panel. But, you know, certainly states and other regulators out there have been following the same general principles, and proximity is most definitely still a very key concept to making sure consumers see and understand, you know, a disclosure. So, you know, when it is something that is material, that needs to be made because it relates directly to the offer, then it needs to be made directly proximate. With mobile devices -- I mean, I think this first example -- You know, we talked about it before. This first example still provides a means to make that disclosure in proximity. The question of sort of use and consumers' use, I think, is a much harder one. I think it's, you know, whether a consumer is going to read a disclosure, even if it's proximate -- just because they're on the go and want to hit "buy" right away -- is certainly a question, but I would almost sort of throw that back out to the folks advertising, you know, through that mechanism and say, you know, "It's in some ways up to y'all to be keeping track of, you know, what consumers really understand and how they're processing the disclosures that you're making and how they're using your mobile sites. I mean, if you're seeing that users are just quickly on a page and hitting "buy" on a mobile device, you know, maybe you need to rethink sort of the mechanism and explore ways to make sure that they're getting the relevant information.

>> PATRICIA POSS: Michelle, would you like to answer that?

>> MICHELLE DE MOOY: I think he answered it very well. I would just add that, yes, I think proximity is huge. And it can still be accomplished on mobile phones, but I also think, again, maybe to amend the principle to somehow include context on mobile phones, which would mean sort of -- and also timing -- so, the moment in which there is a transaction happening, the context in which a transaction's happening so that the consumer's really given more than just location, which, you know, sort of could vary based on the merchant, but they're also given it in real time at a crucial moment as a transaction's taking place. And the other thing I might add is that they have sort of like the yes/no example earlier -- more ability to control whether or not they go forward with that. So, I'm not sure if that would be the principle where you would add that, but I think adding something about context and timing would be important.

>> PATRICIA POSS: Okay. Let's talk about hyperlinks. We also heard about those this morning. Hyperlinks in the mobile space, though. So, the first panel spoke about hyperlinks and when to use them. The original guidance states that disclosures, which are an integral part of the claim or inseparable from it, should be placed on the same page and immediately next to the claim so that the claim and the disclosure are read at the same time, without referring the consumer to somewhere else. Let's take a look at our next example here. Okay, so, we have a fictitious DealOn example. And the disclosure of the restrictions on the offer -- they're available, but they're through a hyperlink labeled more info. Let's see what they are. And there they are. For those of you who are not from the D.C. area., if you look real closely at that, you will see that there are some restrictions that this deal is only valid at the Germantown location, which is way up in north Montgomery County, which is in Maryland. And I believe it's also only available during lunch? Do I have that right? So a couple of restrictions there that are in the hyperlink. So what does the panel think about that? Is this disclosure sufficient for a mobile user? Why or why not and how could it have been done better? David, do you want to take a crack at that?

>> DAVID SCHELLHASE: Sure. This looks like it targets our competitor, LivingSocial, so -- speaking of D.C. You know, I do think we've kind of touched on one thing, but we haven't met the issue head-on. And I'll answer the question. I don't want to duck the question, but I want to bring up one other point, which is I think proximity in the disclosures is critical, but also prioritizing the disclosures is very, very important, right? And so -- And I'll use an analogy to another medium

which also has limited sort of screen space and duration. And that's television advertising, right? So I watched "New Girl" last night because Zooey Deschanel is "adorkable." [ Laughter ] And there was an ad for an Acura TL. And the Acura TL had, I think, five different disclaimers or disclosures running across them. Well, three of them ran across the bottom, and there were two screens at the end of the advertisement that had about 100 words per screen of disclosure. It all happened in 15 seconds. And there's no way any human being can assimilate all of those and understand the disclosures in those 15 seconds. It's not physically possible. So to me, that suggests a couple things. One, proximity is very important. Prioritization of what the disclosures -- what are the important disclosures about, whatever is being offered or advertised is also critical. The other thing it suggests to me is that one size definitely does not fit all in the sense that there are some things that, you know, are difficult to advertise over a mobile phone. There are some things challenging to advertise over television. I'm not suggesting that there needs to be regulation about it. I think most of the brands and companies that are represented sort of understand what those are and put measures in place to try to prevent people from doing harm to themselves if that's what's gonna happen or, on the happy upside, to create an environment where their brand is not gonna be harmed if the customer's expectation isn't met. So these disclosures that are here on the second page are obviously better disclosures, right? And I think we can all agree on that. In food and drink deal, there probably aren't as many important salient pieces of information you want to know. You do want to know, do I have to buy anything else in order to take advantage of the offer? The fact that, for example, please tip on the full cost of the meal. Well, that's important to your server at the restaurant. It's probably less important to a consumer deciding on whether to buy the deal, because I think there's an assumption, in this country anyway, that you're gonna tip. And, you know, how much you tip is based on the service and all that. So I definitely feel as though context is important, but also content is important, and so, you know, the prioritization of the disclosures changes depending upon what's on offer, what's being advertised. And you've really got to think about what are the most important things because you have special limited opportunity to say anything.

>> PATRICIA POSS: Sheryl Ann?

>> SHERYL ANN YAMUDER: I was gonna say that I think one thing that would --

>> PATRICIA POSS: Pull that mike right up to you.

>> SHERYL ANN: I completely agree with everything that was just said. I think one thing that would help in a situation like this is how the link is used. So I think it is hard to fit everything in, and you do need to prioritize what's up front and what comes next. But to make it more likely that the consumer is going to go the next step in getting all the information they need, something like more info may make it sound like they're simply going to get more information about the restaurant, where we found that if you put something like "terms and conditions" or "restrictions that may apply," you're more likely to get someone to take the next step to see what's behind that. So I think that there are ways that, despite the space restrictions, you can incentivize people to look farther and have more of a sense of what's behind the link, even if a link is what you need to use. Another point I was gonna make is that I do think that, you know, whether you're acting on a mobile phone or you're using a browser on a computer is going to affect what room you have to put things in and also, I think, consumer expectations about what will be there is definitely not the same. And I think how you prioritize based on whether it's on a phone or whether using a browser on your computer is going to be different. So it's hard to say that you can do a one size fits all. And while I think you can start with mobile to try and tailor your ads, I don't think that you can take one way of designing it and fit it into every single media.

>> PATRICIA POSS: Jim, do you want to comment on this?

>> JIM HALPERT: I do agree, and I also think it's important to think about this in the context of the particular space limitations that are faced. If, for example, a tweet goes out promoting a particular product and there are important restrictions on the offer, it's important either to have a very prominent hyperlink that will go to and then prioritize on the -- if somebody clicks on the hyperlink to the most important disclosures or to send a follow-on tweet, if the information can't be included in the 140 characters, to follow up with a second disclosure, which is perhaps foreshadowed at the end of the first tweet that then goes into the additional terms. It's important as an advertiser to think through practically how you're going to convey this information to consumers in a way that they will understand the restrictions. You do not want people showing up at your

restaurants, even if they're franchisee restaurants, furious because they saw some ad and the restriction was incredibly narrow in terms of the places that consumers could go to take advantage of that. So it's really worth planning as you do these kinds of campaigns to figure out how you're going to inform consumers and they're not going to be disappointed and angry at your brand because they didn't see the restrictions on an offer. And being creative and thinking about the parameters we've been discussing is a good way to start to avoid that kind of trouble.

>> PATRICIA POSS: Michelle, you have something?

>> MICHELLE DE MOOY: Yeah. I think -- Just in terms of my comments about context, I was looking at Groupon. And, you know, I think they do disclosures pretty well. I mean, you know, they have sort of a "fine print" tab. I don't know if everybody's used it. Which is really great. And it helps you understand what some of the restrictions are. But what I noticed is if you go into the discussion tab, a lot of consumers are confused about what the disclosures are and so Groupon has a nice way of allowing them to interact with the merchant to ask questions. But I think that's a little bit tricky because it's sort of putting the onus on the user to find that out. So then, again, I think when you talk about context, you say how can Groupon provide disclosures for so many different types of things. But I think that's an important way to sort of categorize some of this -- when you're talking about the principles, that, you know, there's certain information that's more important for certain types of transactions. For example, there are subscriptions that, you know, start and never end. That would be something you need to know, where you get offered for a health membership that lasts for three months. And there's a specific end time versus that's how long you have to use it. I think that's something that needs to be considered when -- whether it's that somebody clicks on it and there are specific prompts that the advertiser has disclosed that would then allow Groupon to customize each offer that way. I think that might be one solution to it.

>> DAVID SCHELLHASE: So maybe I should take the praise and go home, but I'll add to that, that I think creating the brand perception that you want -- You know, Patty, you asked us to give our advice to startups at the end. I'll give a little advice in the middle, I guess, which is, I think, you do want to think very hard about what brand perception you want to create if you're a company and how you want to be perceived. And so one of the things that we've thought -- We think a lot about

that, and one of the ways we've addressed it is with our truly mobile product, which is a now product which enables you to sort of click on a button, and if you enable geolocation, you get to see restaurant deals, for example, that are in walking distance. If you buy that restaurant deal, it's evanescent. In other words, it's good only for a certain period of time, and if you don't show up at the restaurant by that period of time, the deal is over. And so, when we first started thinking about that, we thought, you know, "How can we make this risk-free for the customer?" because the customer, if they show up at 4:01 and the deal is over at 4:00, they're gonna have a very bad experience. So we made a decision, and it's not for everybody, but it was right for us as we sort of roll this new product out, that if you don't get to the restaurant by 4:00, you get an automatic refund. So even though you bought it and you bought it through your credit card, your credit card will then be refunded instantly -- or not instantly, but within a day or so day if you don't go to the restaurant and take advantage of the deal. And that, I think, creates a lot of kind of chocolaty goodness around your brand and a good customer feeling. It's not necessarily -- And you can see it in our disclosures. It's right below the "buy" button on the "now" product and it says you're gonna get an automatic refund if you don't use the deal. And I think that's something very important for everybody. You really got to think about your brand and think about what customer perception you're creating. So it's not just about -- I mean, so much of our conversation's about the lowest common denominator, right? What's the minimum we can say to get a good disclosure that's gonna pass muster with the FTC, that's gonna not outrage plaintiffs' lawyers too much and so on and so forth or A.G.s. And we think that that's important, but it's also important not to just say what the lowest common denominator is, but to also think about sort of more aspirational things.

>> PATRICIA POSS: I promised Paul I'd give him a chance to change his answer from this morning on hyperlinks.

>> PAUL L. SINGER: I just appreciate the fact that David acknowledged the fact that you should be scared of A.G.s, in addition to the FTC. [ Laughter ] I think that this discussion has sort of hit on a couple of different issues, right? But, I mean, one is the actual labeling of the hyperlink and whether more info effectively communicates what's mind that link. And I mean, you know, we talked a lot about that on the first panel and the consensus answer was no. So, you know, that the link itself would need to be clear and conspicuous and explain what's behind it. And I think that's

consistent with certainly actions that regulators have taken when they're looking at how a hyperlink would need to be disclosed. But I think more to the point of this example and this offer, you know, back to what we've been talking about all along, the material limitations on your ability to get a \$15 for -- or 15 for \$30 worth of this Italian food should be displayed right there proximate to the offer and this isn't a space-limit issue. I mean, They can be. When you click on "more info," I mean, they are. It's on a nice screen that's right next to the "buy" button, and it's proximate right there. You don't have the pretty picture of the pasta anymore, but the disclosures can be made, and certainly, I know from my personal use of Groupon that there's some of these facts that get disclosed in different ways. I mean, the location, for example. The location limitation would probably be right here in the title of it. You know, I've certainly seen plenty of those come across on my phone. It'll say "Germantown location only" or something like that. And so my point of all this is I think there are ways even within this space constraint mechanism here to get that information across without necessarily having to use hyperlink.

>> PATRICIA POSS: Let's -- I do want to get a chance to talk about location-based ads to drive traffic just so we -- I talked about that also at the panel. But since it's very mobile and that seems to be one of the hot areas in mobile, let's talk about that. Let's say there's -- If a consumer receives a location-based ad for a discounted sandwich and what if when they get to the restaurant -- for a restaurant that's just a few blocks away. So they go to the restaurant, but when they get there, they find you have to buy two sandwiches to be able to get the discount. What do we think about that? What all should need to be in the banner ad itself or in the push notification or in the text -- whatever method in which that ad was displayed? What needs to be in there if there's some kind of restriction like that? Sheryl Ann, you want to talk about that?

>> SHERYL ANN YAMUDER: So, I think it is important to make it clear on the banner ad, even though, you know, it is a use of a very small amount of space. If you had to buy a second sandwich in order to get the deal that you were looking for, obviously, it's everyone's benefit that the consumer knows, not just from a disclosure, but from a consumer satisfaction perspective, which everyone has spoken to here. You know, I think the interests are very much aligned in these areas because it's important that the consumer has a positive feeling about the brand, that they appreciate the experience experience, and they want to go back, and since that's a goal, if they show up and

find out that the offer isn't what they thought it was and they're unhappy, then clearly, they are not going to go back, and they are going to be dissatisfied, and nobody wants that.

>> PATRICIA POSS: Jim, you want to talk about that?

>> JIM HALPERT: I just agree completely that your brand is on the line when do you this kind of high-profile advertising. If you're on the mobile phone, people are very likely to see it, probably more likely to see if than if you have an ad on a Website where there's a lot more content and the viewer won't necessarily -- the Internet user won't necessarily focus. And your brand is on the line. Do this carefully. In the end, an ad that -- particularly some of those Geo Limited ads that people go out of their way to try to take advantage of a deal -- if the deal's a loser, it's the classic kind of annoying consumer experience. I agree completely.

>> PATRICIA POSS: Anybody else want to comment on that before I move on? Well, I just -- I agree fully. But, then, there is a little bit of a problem with, again, the banner ad and how much -- How do you actually disclose that extra piece of information? You know, how do you not annoy the customer then and there with that much information? You could write next to -- by the sandwich message, "For more information, click here and go to the mobile page and have more information there."

>> JIM HALPERT: Well, I think you could say, for example, buy two in small writing, and people can see that or you can have a link saying, you know, "See restrictions" if there's more.

>> PATRICIA POSS: Yeah, "See restrictions" if there's more. Yeah. Yeah.

>> JIM HALPERT: And obviously, it's a space limitation so you can only use a few words. But ultimately, within the constraint, we have to be practical about what's possible and what's gonna be clear and not expect perfection, but within the constraint, it's important to make the effort to make sure that consumers are likely to be aware of the restrictions.

>> MICHELLE DE MOOY: Conversely, you can just say two for one.

>> ANNA BAGER: Yeah, that's probably the best. [ Laughter ]

>> JIM HALPERT: I'm Sorry. Yeah. That's it.

>> PATRICIA POSS: Okay. Let's move on to this discussion about reading every word. So the current guide asserts that advertisers should assume that consumers don't read the entire Website -- should assume they don't read the entire Website just as they don't read every word on a printed page. Does this assertion raise specific issues for mobile advertising? Do consumers read more or less of the content on a mobile screen? We heard a little bit from Jen King about this. Michelle, you want to address this question?

>> MICHELLE DE MOOY: Sure. I'm definitely no expert. But I can tell you that we get a lot of -- We have a national hotline and we get some complaints about this where when you go through a Website, whether it's mobile or on a typical Website, they were notified in the fine print. So I think in general, this really ticks people off. When there's sort of a legal ease, and I think consumers typically don't read -- You know, as they don't read privacy policies, they don't read these. And I think one of the problems is what they're name. In the same way the privacy policies are sort of this misnomer and convey a certain inference to consumers that isn't true, I think these, disclaimer, and even some of the words that we've been talking about today, I think the average consumer is slightly less savvy -- not that people are stupid. I think that they understand the way advertising works for the most part. But I think on, you know, the mobile phone, you say "disclosure," and I don't think that's clear at all. And so I think it's not just that they don't read it and the onus is on them. You know, they're not reading it, but it's to get them to understand the financial ramifications in an engaging way. And I think that is on the advertisers to o do that.

>> PATRICIA POSS: Okay. Anybody else want to comment on that, about consumers reading?

>> DAVID SCHELLHASE: Yeah. Just briefly. I will say that, you know, the fine print section of our mobile device that you appraised was actually a riff on the notion that people never read the fine print, right? You know, it's kind of meant to draw your eye as a little bit of a joke. The joke

predated me. No one laughed at joke here. That's good. But so labeling, I guess, does count in some way, but you do have to be sort of clever. If you've got things to say, people are in a hurry, and you've got to find a way to get their attention. That was our effort. It's 3 years old now. Maybe we need a new riff.

>> PATRICIA POSS: Okay. Let's talk about some of the other differences for mobile. Beyond the screen size and the nature of the use which we've talked about, we had a few other issues raised in our opening statements here. If you want to comment on those constraints or challenges. Are there other differences or constraints that the commission should consider in providing disclosure guidance for mobile? Are there other limitations that impact the ability to provide disclosure that should be considered or other techniques that offer solutions? David, do you want to talk about this?

>> DAVID SCHELLHASE: I'm probably focused more on techniques 'cause I think we've kind of beaten the dead horse of some of the limitations and so forth. And so, you know, and I will also sound like a dead horse to say that brand is very important, how you present yourself to customers, and what image you want to create is very important. You know, there are some obvious choices that we could talk about here. We could talk about industry standards as one technique, right? We can get an industry to agree on a common set of standards and disclosures. That probably won't work except at a very, very generic high level, in my opinion, and probably won't provide much meaningful protection or disclosure to consumers. You know, the one thing that we found that's been very effective. And I think it was said at the panel before lunch is that third-party reviews from strangers carry a ton of weight. Third-party reviews from your friends and acquaintances, obviously, carry a lot of weight, too. But, I think, increasingly in the mobile world, you're seeing things like third-party reviews either linked to or a certain number of stars given to a product or service. And I think Google announced yesterday they were going to use Zagat, which, you know, everyone has thought of as a review service until now, as sort of their entryway. So Google purchases Zagat, I guess, about six months ago, and they're going to use that as their entryway or gateway for local search. And I think the thinking there -- I haven't talked to anybody at Google about this, but I'm guessing the thinking is they will trust Zagat reviews and therefore, be more likely to patronize the businesses that are highly reviewed on that site. And if you're sort of --

You're using the Google Zagat review site, you then trust the businesses that pop up with good reviews. And so I think, you know, in terms of kind of techniques for getting people to pay attention to what best practices are or the disclosures that are out there, I think reviews are actually sort of an untapped source for that.

>> PATRICIA POSS: Okay. Paul, do you want to talk about, address this question also?

>> PAUL L. SINGER: Sure. I mean, responding to your first question about what are some of the other differences with a mobile device, you know, I think that -- And this does go back to some of what we said at the outset, but understanding what consumers understand about the technology and certainly as it changes is very important and I think that, you know, with a mobile device, there are so many different, for example, payment methods that could potentially come into play. So, you know, is there some sort of offer that may carry with it some sort of subscription service that's going to be billed directly to my cell phone bill? Is there -- Can I use my device and swipe it in front of a reader and be paying for things that way and what payment method is associated with it? And the point of all that is just that knowing what consumers' expectations are with that device is very important and relevant to what kind of disclosure needs to be made to them before they're in that situation. So I think the evolving technology really sort of complicates that issue, and it's gonna have to create some, you know. It's something that needs to be factored considering what disclosures are relevant.

>> PATRICIA POSS: And that's a good bridge. Let's talk about some of the other emerging technologies associated with mobile and who knows what else is coming down the road. So, mobile technology continues to evolve and provide creative marketing opportunities such as the use of augmented-reality games that promote products, the integration of video, the growth of tablets, and cross-platform or device campaigns. Do these present new and unique disclosure issues or the applications of the same principles we've been discussing today? Sheryl Ann, you want to take that question?

>> SHERYL ANN YAMUDER: Sure. Well, if we're gonna address sort of brand-integrated content, reality games, things like that, I think that there are so many different ways that content is

being used and brands are being integrated into content that it is definitely not clear-cut. It depends on the circumstances. So a reality game may be an opportunity to have your brand incorporated into the game, but if the game is such that it's about everything that appears on a city street, if, you know, your brand is there, then, you know, the game company wants it there, you want it there, and it's really more of a functional presentation of something, whereas, if you're sponsoring brand-integrated content for a Web series, it's a completely different scenario as to sponsorship, as to disclosure that your products are being shown in that content for purposes of your benefit, based on you're buying advertising or funding the content. So I think that, as all of these different types much content evolve, I think the way that brands are placed and the way that we would view it would be different. As far as looking at more of the cross-platform issue, which I know has been discussed a lot today, I mean, with respect to cross-platform, whether you're looking at a promotion or some kind of a sweepstakes, it's very difficult to assume that you can, as I mentioned before, make the exact same disclosure or start with mobile and end up in the same place. So if you're running a promotion that's gonna be on Facebook and is gonna be on Twitter and is gonna be in various locations, without even getting into how you're accessing it, the way you're going to be able to provide the information is not going to be the same. And so you're doing your best to come up with a way that you can provide as much information as possible or get the consumer to the information you want to share, but you're definitely dealing with completely diverse environments. And I think the device you're using will also affect that because you can't control how the consumer is going to access that information. And so, while might make more sense for a consumer to access the ad or the content on a mobile phone through an app, they may choose to click an e-mail and go through their browser, and you really aren't in control of that. So you're doing your best to, you know, I think, sort of shape ads that will address various methods of accessing them through various devices and various platforms. And I think it becomes very complicated to ensure that you're anticipating every different way the consumer is going to access those ads.

>> PATRICIA POSS: Michelle, do you want to talk about some of the new technology issues?

>> MICHELLE DE MOOY: Sure. I think from a consumer perspective, one tricky thing that comes up when you have cross-platform and all these different products living all over the place and where you purchase -- you know, you could go through Facebook and you can go through all

these different platforms -- is the complaint and grievance process. I think that's really unclear for consumers. You know, "who do I call if I feel deceived?" You know, the FTC is great, but that's just one resource. I think that's really something that is unfairly confusing for people. And certainly, when you have a mobile phone and then you add a cell carrier into that equation, you know, a lot of times, you hear people say, you know, they called AT&T to complain about this ad. And so they may not understand the liability in it. I've also heard of consumers being caught in between a merchant and say a Groupon -- Not specifically, but just so that they really don't know. So I think that's something that, you know, just on a basic level really needs to be resolved. And the FTC could probably offer some guidance on who and how that liability should flow. And then the other thing I would say, I think, when you talk about rich-content type stuff, I think there's two ways to look at it. One is that there's an opportunity for consumers to be better educated. Perhaps, if they're not going to read certain disclosures, there would be a way to provide them within the context of a game or video. The danger, I think, would be that those don't imply, again, financial ramifications a lot of times. You know, if you're in a game, it's about fun. You may not really understand, depending on how the disclosure is offered to you, again, the financial ramifications or that you are accepting sort of a financial ramification if you agree to something.

>> PATRICIA POSS: So, we have one question from the audience that I'll read here. "So, what about the use of disclosures on multiple cart pages after the "add to cart" button is checked? On the final page, where the payment -- where the payment info are populated. Must disclosures be repeated there?" Repetition is one of the items that's listed in our guidance documents, too. What does the panel think about this question? Anyone want to take a crack at it? Jim, you're starting to move. [ Laughter ]

>> JIM HALPERT: No, I'm prepared on this one. Again, all these are contextual. And if there's a very clear and prominent disclosure in the first page before the user clicks "I accept," it may not be mess to provide repetitious notice. On the other hand, if you have a term that is an extraordinary term and something that would create huge potential liability for a consumer, for example, it would be important to disclose that perhaps a second time, depending on the context. But the beauty of the Dot Com Disclosure document, guidance document, which they had enormous foresight in putting out in 2000. It's really stood the test of time, and it's quite striking when one considers, for

example, how the COPPA rule, which was issued two years earlier has been the subject of this back-and-forth. This document is a terrific document, and one of its greatest strengths is that it is flexible and that it anticipates that there are different contexts. And so I think, as we think about these different factors, it's important to consider the overall principles of, for example, proximity, prioritization, et cetera. But there isn't a particular format or a particular approach that will always apply even if someone similar circumstances. And it's that flexibility recognizing that the mobile medium is really quite young and it's exploding and it's going to change that I think will ultimately lead us to an approach that really communicates in a way that's most effective with consumers and adapts over time. So as this really good document and farsighted document is modified, it's important to build in that sense -- the sense that there isn't a right answer today that will be the right answer tomorrow or the day afterwards and that we need to look contextually in different circumstances and look at how technology's going to evolve over time to keep up with this important task of making sure that consumers are very aware of key terms when they agree to do something online.

>> PATRICIA POSS: Excellent. That's a great lead-in to my last question, which I -- We're gonna ask each of the panelists -- This could have been a subject of another panel -- but each of the panelists to give their best advice for a start-up who's creating new ad content to provide clear and conspicuous disclosure and definite no-no's when they're trying to provide this disclosure. And we'll mix it up a little, start with Sheryl Ann on the other end this time.

>> SHERYL ANN YAMUDER: I mean, I think the biggest piece of advice is looking at where you're going to be advertising, who you're looking to reach, and how you're looking to reach them, because you really do have to think through everyone you're going to reach out to and how they're going to be accessing the information you're providing them. I think most of the discussion here is about how to make information readily accessible. And I think it's so complicated that if you're not thinking through, "Okay, well, this may show up here and it may be accessed this way," then you're going to miss something.

>> PATRICIA POSS: Paul?

>> PAUL L. SINGER: So, I'll echo a little bit of what Jim was just saying. But I think that the basic principles and really the content, the core substance of the 2000 Dot Com guidelines is still very true. And I think that the basic principles that apply to future technology as well. And so, I mean, I think, in terms of getting into the space, you know, I think it's wrong to assume that just because it's a new technology or just because, you know, it's something new to you or new to users means that the principle should change, right? So, you know, the core concepts and the core fundamental consumer-protection values are still gonna be true, regardless of the platform, and I think that's important to remember.

>> PATRICIA POSS: And David?

>> DAVID SCHELLHASE: I will third that with respect to the Dot Com guidelines. And I keep coming back over and over again to context being very important and content. And so, you know, there is really no "one size fits all" approach. And it's a little bit cliché to say that, but I think it's very true. You know, you have to kind of look at what you're selling, what you're advertising, what you're trying to market, and who your audience is, right, because that's something that I think we sort of touched on very, very early on in this panel, but then we didn't come back to, which is different cultures, different age groups, different demographics react to advertising in different ways. And, you know, we're in 48 countries around the world, and so we know that, right? We know it sort of firsthand. But even within this country, obviously, there are a lot of differences that don't always get acknowledged. But if you're interested in being a start-up and you want to appeal to as many people as possible, you've got to find ways to address that.

>> PATRICIA POSS: And Mark?

>> MARK J. ODEGARD: One thing I would add is that the old rules do apply, as it's been stated over and over again. Not all of my business clients know that. The other thing -- I think it's worth mentioning. We've been talking about the complexity and engaging in the spaces. This is a wonderful problem to have from a marketing and a business perspective. Compare the static printed page and the limited options you have in conveying a message. All our consumers want is to be playing in this space and with a mobile device and with some of the techniques and

functionalities we've been talking about. You have so many layers, so many options to go ahead, to get to the consumer, yet still in a compliant fashion with FTC regulations and associated laws to get there. So, truly a wonderful problem to have. It might keep us up late sometimes. But it's better than the alternative.

>> PATRICIA POSS: And Jim?

>> JIM HALPERT: I think I already concluded with my last answer.

>> PATRICIA POSS: Yeah. Pretty close. Okay. Michelle?

>> MICHELLE DE MOOY: What I would say my advice to a mobile start-up would be -- and I think people have mentioned this, but, you know, the context should be what prioritizes the disclosures. And I think the merchant should conform to the consumer expectation, not the other way around. I think that's a good business principle, a good consumer-protection principle. I think -- In terms of what should be updated, I think the FTC should look at context really closely and timing, 'cause I think those are different on mobile phones, in terms of not just the deal you get that expires that you need to get to, but also the sorts of the -- the kind of offers that consumers are getting. And I think there needs to be a frame of transparency somehow written into the disclosures. I think it's really crucial that advertisers take this into account, not just in terms of giving information, but what consumers are expecting from the advertising, when they're expecting to be advertised to. And then somebody brought it up, and I kept meaning to bring this up today, but also the idea of multiple languages. You know, I think that's an issue that, if English is not your first language, these disclosures are pretty meaningless to you. And being the largest users of mobile phones, as I said before, Hispanic and African-American communities -- Hispanic in particular -- that becomes a huge issue. So it's not one that -- You don't hear people talk about, but it's a big issue.

>> PATRICIA POSS: And, Anna, do you have any -- You're gonna get the final word here.

>> ANNA BAGER: Great. No, I mean, I can only end where I started in saying that responsive design is probably -- especially if you're a start-up and you have the luxury to start from scratch. Think mobile first. Think about the fact that a lot of people are accessing content via the mobile today, and more will do so in the future. Eventually, everything will be mobile at least from a networking perspective. So mobile first. Think about responsive design and how you can from that context design your site. And then above all, be tentative and check what's going on. One of the beauties of this is that you can actually kind of figure out what works and what doesn't by tracking the usage of your site. So, if something doesn't seem to work, rework it and do it in a different way.

>> PATRICIA POSS: And now you've led into the next panel, into the privacy issues. We're gonna take a break for 15 minutes, but please join me in thanking our panel.